



THE GLOBAL
COMPACT
LEADERS
SUMMIT



Embedding Human Rights into Business Practice

*A joint publication of the United Nations Global Compact
and the Office of the High Commissioner of Human Rights*





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COMPACT



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Cover Photo: The Universal Declaration on Human Rights – Article 1

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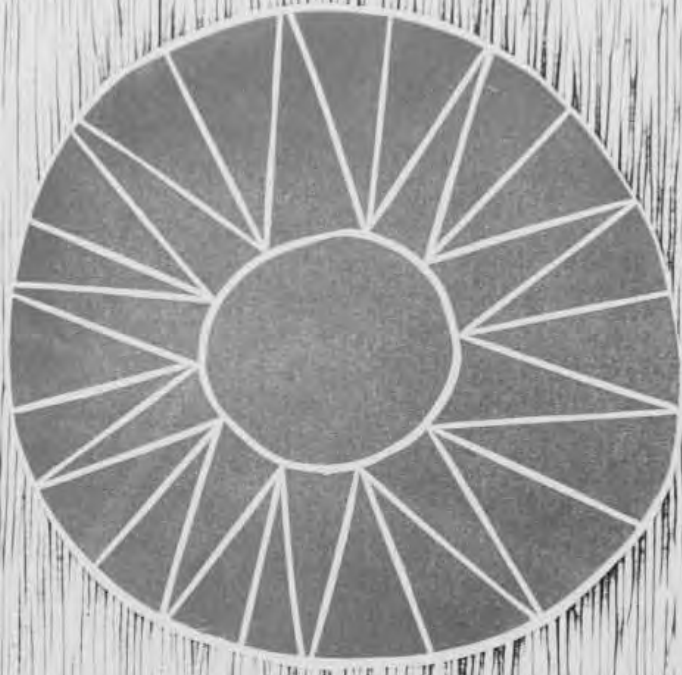


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**EVERYONE
HAS THE RIGHT TO
LIFE,
LIBERTY AND
SECURITY OF
PERSON.**

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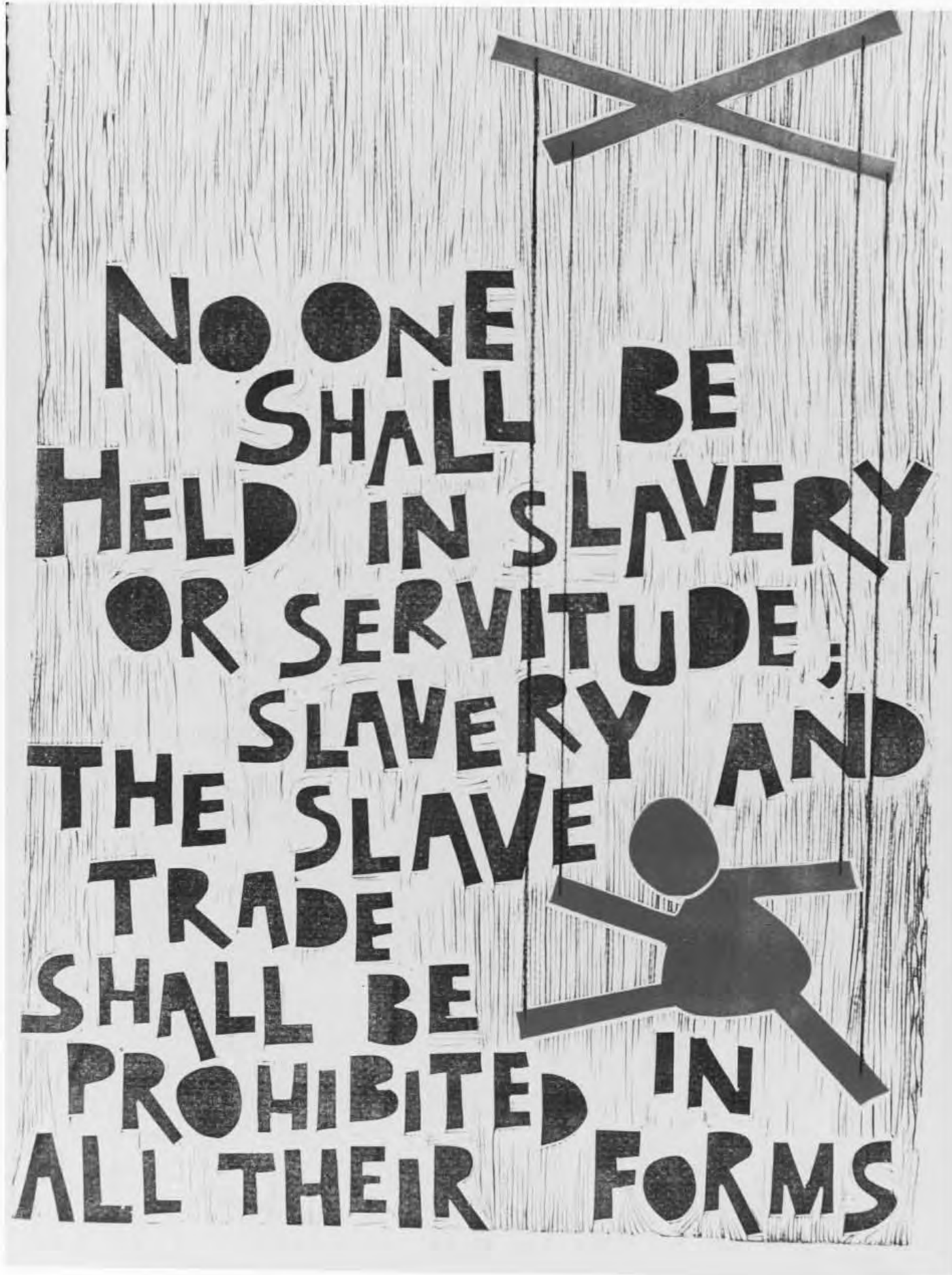
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Foreword

Mr. Dzidek Kedzia
Chief, Research and Right to
Development Branch

Office of the High Commissioner
for Human Rights

When the Universal Declaration of Human Rights was adopted more than 50 years ago, States were the principal actors in the international arena. States continue to have the primary responsibility for protecting the human rights of their citizens, but there are growing expectations from the public and civil society organisations that corporations should do everything they can to promote and respect universally agreed standards. The parameters, however, are still being defined, and uncertainties remain about what is expected from corporations with regards to human rights.

While discussions are underway in the United Nations human rights system to address the role of the private sector with regards to human rights, the Global Compact offers an important vehicle for corporations to voluntarily engage in discussions about human rights and to develop practical solutions to address difficult human rights issues within their sphere of influence. In the words of the late High Commissioner for Human Rights, Sergio Vieira de Mello:

“Business leaders don't have to wait — indeed, increasingly they can't afford to wait — for governments to pass and enforce legislation before they pursue “good practices” in support of international human rights standards within their own operations and in the societies of which they are part.”

The present book, published jointly by the Global Compact Office and the Office of the High Commissioner for Human Rights, aims to provide information to companies to help with the human rights challenges they face and give informative and useful examples of how companies from different sectors and in different political and geographic contexts have tried to address some of these challenges. True to the Global Compact's multi-stakeholder approach, the contributors to the book offer a broad range of perspectives on the issues at hand.

While this book does not offer any easy solutions to the myriad of complex issues facing companies in their efforts to implement the human rights principles of the Global Compact it is my hope that it may inspire practical actions in support of human rights.



Foreword

Mr. Georg Kell
Executive Head

The United Nations Global Compact



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Without a doubt, the primary responsibility for human rights promotion and protection rests with governments. Most of the dilemmas we face at the intersection of business and human rights arise from governments' inability or unwillingness to meet their human rights obligations. One of the most visible, but not the only, area where governments are not living up to their human rights responsibilities is in the conflict zones of the dozen or so countries across almost all regions of the world where armed conflicts are currently being waged.

Voluntary initiatives are not a panacea to this problem. They are primarily an effort to fill the gap and therefore must be formed and fashioned in such a way as to simulate improvement in public policy so that the root causes of the problem are tackled. Enhancing the contribution of business to sustainable development is a complex goal that requires a range of different methodologies. In this context, both regulatory and voluntary approaches play an important role. The Global Compact is designed to complement, and not substitute, regulatory frameworks by encouraging voluntary, innovative corporate practices.

Through a growing web of trade and investment people are tied ever closer together. However, while business and civil society have become global, politics has not. As power and responsibility walk a parallel path there is now an urgent need to advance our understanding of the

role of government and business in the support and protection of human rights. Voluntary initiatives are meant to provide a means of engaging business in an effort to support those that governmental failures hit hardest - the marginalized.

When the Compact began its work, only a handful of companies had human rights practice on their radar screen. Today the executive offices and board rooms of over 1,700 companies have seen discussion of human rights practice and policy for the first time. Admittedly, this number is small compared to the over 60,000 multi-national companies working in the world today and far more companies need to get off the fence. However, it is an excellent start.

When tackling corporate social responsibility issues we must remain mindful of the root causes. What can business do given that most of the root problem lies in the hands of the states? The Global Compact calls on companies not to wait for all governments to get it right. But rather to heed the call and focus their societal impact in such a way as to create social innovation and higher standards.

This course towards private and public policy improvement must be based on dialogue, constructive engagement in learning and the courage to experiment. We hope this publication does just this and that the lessons contained herein married with a commitment to action might help prompt the social innovation necessary to create a better tomorrow for all.



**NO ONE
SHALL BE
SUBJECTED TO
TORTURE
OR TO CRUEL,
INHUMAN OR
DEGRADING
TREATMENT OR
PUNISHMENT**

The Ten Principles

Human Rights

Principle 1 | Businesses should support and respect the protection of international human rights within their sphere of influence; and

Principle 2 | make sure they are not complicit in human rights abuses.

Labour

Principle 3 | Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4 | the elimination of all forms of forced and compulsory labour;

Principle 5 | the effective abolition of child labour; and

Principle 6 | the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7 | Businesses should support a precautionary approach to environmental challenges;

Principle 8 | undertake initiatives to promote greater environmental responsibility; and

Principle 9 | encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10 | Businesses should work against corruption in all its forms, including extortion and bribery.

Introduction

Ursula Wynhoven
Global Compact Office¹

Lene Wendland
Office of the High Commissioner for Human Rights

This publication grew out of the human rights sessions that formed part of the Third Annual International Global Compact Learning Forum conference in Belo Horizonte, Brazil, in December 2003. These sessions sought to shed light on the theoretical and practical meaning of the Global Compact's two human rights principles, as well as to offer guidance to companies on how to implement them.

This publication has the same aim. In it, you will find five case studies of how companies in different sectors are trying to implement the human rights principles. Also included are a number of papers offering different perspectives on what the human rights principles mean in practice and what are the key human rights challenges that companies face. We are also very pleased to present a new paper by the Office of the High Commissioner for Human Rights that poses and responds to frequently asked questions on the topic of the Global Compact and human rights. In appendices, we have added the Universal Declaration of Human Rights and included information about two human rights tools that were presented at the conference.

Elaborating the human rights principles

The human rights sessions at the Learning Forum conference included both plenary and breakout sessions, which were well attended by Global Compact participants from around the world representing all of the Global Compact's different stakeholder groups. The plenary session focused on the second Global Compact principle and the sometimes difficult question of how to avoid being complicit in human rights abuses. It also offered perspectives on what the key human rights



EVERYONE
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TO RECOGNITION
EVERYWHERE
AS A PERSON
BEFORE
THE
LAW.

challenges are in a diverse range of industry sectors — mining, technology, energy and pharmaceuticals. A paper based on the keynote presentation that Mark Taylor delivered on the concept of corporate complicity is included in this volume, along with other papers, contributed by Professors Klaus Leisinger and Anthony Ewing, elaborating the Global Compact human rights principles. Important aspects of the human rights principles are also explored in a question and answer format in the FAQ document that the Office of the High Commissioner for Human Rights has provided.

Human rights case studies

In the breakout sessions at the conference, a number of case studies on business and human rights topics were presented about company efforts to tackle the human rights issues they face in their own operations and sphere of influence. The case studies are about activities undertaken by BP, Hewlett Packard, BHP Billiton, Novo Nordisk and Total. The activities discussed include efforts to address human rights and labour issues in the supply chain, stakeholder relations, human rights policies and their implementation, and operating in a country where there is a serious lack of respect for human rights. Each case study discusses elements such as what efforts are working, what has not worked, lessons learned, and ongoing challenges.

Global Compact case study research guidelines have been developed to enhance the learning opportunities that the case studies offer. They provide the framework for the preparation of Global Compact case studies.² Ideally, case studies should be independently funded and prepared by an individual that is not related to the company whose activities are the subject of the case study. This has not always been possible. Global Compact case studies should also be peer reviewed by a person that is not connected with the company. The case author is then expected to take on board

the feedback received and finalize the case study. In the interests of transparency, each case study presented in this publication discloses how it was funded and whether it was peer reviewed and by whom. Once the case study has been completed and the company has signed the release form, the case study is published on the Global Compact website. You are welcome to comment on the case studies and other submissions published there using the comment facility provided on the website.

Other companies interested in being the subject of a Global Compact case study on their efforts to address human rights issues within their own operations and/or sphere of influence are encouraged to contact Ursula Wynhoven (+1-212-963-5705; wynhoven@un.org) at the Global Compact Office. Case authors with proposals for case studies are also welcome to contact the Global Compact Office.

Human rights tools

The tools described in the appendices to this publication were presented to participants at the conference. They were developed by the Business and Human Rights Resource Centre and the Danish Institute for Human Rights, respectively. Both tools — a comprehensive, information rich business and human rights website, and a human rights compliance assessment tool — are excellent resources to help companies improve and assess their own human rights impact and performance.

For descriptions of other tools, techniques, case studies, information and resources available to help with implementation of the human rights principles, the Global Compact publication *Raising the Bar — Creating Value with the United Nations Global Compact* is an important reference document. It was developed in conjunction with major corporate social responsibility organizations, like the World Business Council for Sustainable Development,

Business for Social Responsibility, European Foundation for Quality Management, and Ethos, along with UN agencies (the International Labour Organization, the United Nations Industrial Development Organization, and the United Nations Environment Programme) and Amnesty International. It also offers a helpful framework — called the Global Compact Performance Model — for embedding the Global Compact principles within company operations.

The Global Compact and the Office of the High Commissioner for Human Rights are currently working with partners on the development of other tools to help with implementation of the human rights principles.

Acknowledgements

Both the human right sessions at the conference and this publication are the product of close collaboration between the Office of the High Commissioner for Human Rights and the Global Compact Office. In addition, there are a number of individuals that we need to thank: the authors of the cases and papers included in this publication, the company representatives who worked with the case authors, the peer reviewers (who are introduced by name at the beginning each case study), the organizers of the Learning Forum conference in Brazil, John Morrison of Respect Europe and the Business Leaders Initiative for Human Rights for chairing some of the breakout sessions at the conference, and Salil Tripathi of Amnesty International and Klaus Leisinger of Novartis Foundation who made very helpful suggestions in connection with the design of the human rights sessions at the conference.

We hope that this publication will be used to promote learning and better awareness and implementation of the Global Compact human rights principles.



ALL
ARE EQUAL
BEFORE THE LAW
AND ARE ENTITLED WITHOUT
ANY DISCRIMINATION
TO EQUAL PROTECTION OF THE
LAW.

ALL ARE ENTITLED TO
EQUAL PROTECTION AGAINST
ANY DISCRIMINATION
IN VIOLATION OF THIS DECLARATION
AND
AGAINST ANY INCITEMENT
TO SUCH DISCRIMINATION.

OHCHR Briefing Paper

The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity

Office of the High Commissioner for Human Rights



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UN Global Compact Principle 1:
Businesses should support and respect the protection of internationally proclaimed human rights.

UN Global Compact Principle 2:
Businesses should make sure that they are not complicit in human rights abuses.

Introduction

The United Nations' Global Compact is a voluntary initiative asking participating companies to embrace, support and enact, within their sphere of influence, 10 principles concerning human rights, labour rights, environment protection, and anti-corruption.³ The first two principles are focused on human rights.

The concept of "sphere of influence" qualifies the scope of all 10 Global Compact principles, including the second human rights principle asking companies to ensure that they are not complicit in human rights abuses. However, sphere of influence is not defined in international human rights law. Instead, understanding is evolving from company practices, the work of international organisations, non-governmental organisations (NGOs), academics and national jurisprudence of what constitutes a company's sphere of influence in relation to complicity and how it affects the scope and content of the commitment made by companies participating in the Global Compact.

This briefing paper is for companies and other stakeholders already in the Global Compact, as well as for companies considering signing on to the Compact, who may be uncertain about the nature of the human rights commitments involved. It provides a broad overview of the current understanding of what sphere of influence and complicity mean in the context of the Global Compact's human rights principles. This briefing paper is also intended to facilitate further discussion of how to translate these commitments into practical and measurable action in support of human rights. A list of further reading and tools is provided at the end of the document.⁴

Human Rights and the Global Compact

? How are business practices and human rights linked?

While governments have the primary responsibility to promote, protect and fulfil human rights, the Universal Declaration of Human Rights (UDHR) calls on 'every individual and every organ of society' to strive to promote and respect the rights and freedoms it contains and to secure their effective recognition and observance. The concept of 'every organ of society' covers private entities such as companies.

Companies are supporting and respecting human rights in their spheres of influence in a wide variety of ways, including by adhering to national laws that have been adopted as a result of a States' international human rights obligations and commitments. The commitment made by companies in the Global Compact to support and respect human rights in their sphere of influence includes policies that many companies are already implementing, either as a result of legal requirements or voluntary initiatives. Provision of health insurance to workers, implementation of worker safety regulations, stakeholder advisory fora, positive involvement in communities in which they operate, and Corporate Social Responsibility (CSR) codes of conduct compliant with international human rights standards are examples of how many companies are already supporting human rights in their operational activities.

To date, much of the public criticism of multinational corporations in the context of human rights has focused on companies that are perceived to be associated with gross and systematic violations of rights. These have often taken the form of claims that a particular company has colluded, conspired or acquiesced in a pattern of abuse committed by State forces that would not

have happened had it not been for the presence or support of the company. In most cases, it is the silence or failure to act on the part of companies that brings censure rather than their active involvement in the violations. However, both have the potential to attract allegations of complicity in the abuses of the authorities.⁵

? How does the Global Compact fit into existing human rights frameworks?

“The Global Compact human rights principles derive from the Universal Declaration of Human Rights (UDHR) adopted by the General Assembly in 1948.⁶ The UDHR, defining itself as ‘a common standard of achievement for all peoples and all nations’, both proclaims a set of fundamental values shared by the international community, and sets standards recognizing rights and the corresponding duties to protect those rights.”

To be able to take effective measures to avoid complicity in human rights abuses in its sphere of influence, a company needs to have a clear understanding of the human rights standards underpinning the Global Compact. The Global Compact human rights principles derive from the Universal Declaration of Human Rights (UDHR) adopted by the General Assembly in 1948.⁶ The UDHR, defining itself as ‘a common standard of achievement for all peoples and all nations’, both proclaims a set of fundamental values shared by the international community, and sets standards recognizing rights and the

corresponding duties to protect those rights. The rights laid down in the UDHR have been further elaborated in seven international treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The UDHR and the two covenants are together referred to as the International Bill of Human Rights. All the rights in the International Bill of Human Rights are universal, interrelated, interdependent and indivisible.⁷ The rights enshrined in international human rights treaties are, in many cases, incorporated in national laws when they are ratified by governments.

The UDHR defines human rights, embracing three critical areas:

- u **Rights protecting life and security of the person**, developed through, *inter alia*, the right to life, liberty and security; the right to be free from slavery, servitude, torture, and cruel, inhuman or degrading treatment or punishment; the right to equal protection of the law; the right to be free from arbitrary arrest; and the right to judicial remedy against human rights violations before a court.
- u **Economic, social and cultural rights**, encompassing, *inter alia*, the right to a standard of living adequate for health and well-being that includes food, clothing, housing, medical care and access to social services and social security; the right to education; the right to just and favourable remuneration ensuring the worker and the worker’s family an existence worthy of human dignity; the right to form and join trade unions; and the right to rest and leisure. These rights are to be realized through national efforts and international cooperation in accordance with conditions in each State.

- u **Personal and political rights and freedoms**, including freedom of movement and rights protecting a person’s privacy in matters concerning family, home and correspondence; the right to take part in government; the right to vote; the right to equal access to public service; the right to own property, and the prohibition of arbitrary deprivation of property; and the right to freedom of expression, religion, peaceful assembly and association.

? What is the scope of corporate responsibility for human rights?

“The draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights⁹ focus on the right to equal opportunity and non-discriminatory treatment; the right to security of persons; the rights of workers; consumer protection; environmental protection; and economic, social and cultural rights.”

While the UDHR applies to all “organs of society”, the exact nature of company responsibility for human rights is subject to continuing discussion. The Sub-Commission on the Promotion and Protection of Human Rights⁸ has adopted a set of draft norms, based on existing international standards that seek to identify which human rights apply directly to companies within their respective sphere of activity and influence. The draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights⁹ focus on the right to equal

opportunity and non-discriminatory treatment; the right to security of persons; the rights of workers; consumer protection; environmental protection; and economic, social and cultural rights. The draft Norms are not legally binding, but they may provide illustration to companies wishing to better understand human rights and the content of the human rights commitment they have undertaken by signing on to the Global Compact.

Working within Spheres of Influence

? What defines a company's sphere of influence?

“The concept of sphere of influence is not defined in detail by international human rights standards, it will tend to include the individuals to whom the company has a certain political, contractual, economic or geographic proximity.”

The scope of the commitment made by companies in the Global Compact to support and respect human rights and to avoid complicity in human rights abuses is limited to the company's own sphere of influence. While the concept is not defined in detail by international human rights standards, it will tend to include the individuals to whom the company has a certain political, contractual, economic or geographic proximity.¹⁰ **Every company, both large and small, has a sphere of influence**, though obviously the larger or more strategically significant the company, the larger that company's sphere of influence is likely to be.

As various academic studies have observed, current trends in the globalization of business are marked by the emergence of **core firms** at the centre of large networks of business relationships. This network is made up of a firm's global value chain and its relationships with possible joint venture partners and government authorities in different regions where it operates. The core firm plays a key role as the driver of change within its global value chain. It has substantial influence not only on its own employees, but also on upstream suppliers and downstream customers. **The concept of “sphere of influence” encompasses this combination of relationships, and the core firm's central position as the leader of its global value chain.**

? Who is in the sphere of influence?

“The relationship a company has with its employees lies at the centre of its sphere of influence.”

A company's commitment to respect and support human rights and to avoid complicity in human rights abuses **extends to all those who are in its sphere of influence**. However, the extent of a company's ability to act on its human rights commitment may vary depending on the human rights issues in question, the size of the company, and the proximity between the company and the (potential) victims and (potential) perpetrators of human rights violations.¹¹

The relationship a company has with its **employees** lies at the centre of its sphere of influence. Indeed, most corporate human rights programmes begin by assessing the enjoyment of human rights by the company's own workers.

Beyond its employees, a company has relationships with a broader range of actors over whom it may have the ability to exert influence to varying degrees with regard to human rights. For example, **communities living near its operations or who are otherwise dependent on the company**¹² are also close to the centre of a company's sphere of influence, as are **business partners** such as suppliers, contractors and joint venture partners. Where companies produce goods, they also have a connection with consumers, even though the latter may not be physically proximate. Companies may also have direct and close connections with the **companies' host or home Governments, or with armed groups that control the territory in which they operate**. Through the advocacy and lobbying activities of sectoral, national or international business associations of which a company is a member, its sphere of influence may furthermore extend to **governmental and inter-governmental policy-making bodies**.

? Which human rights issues may arise within a company's sphere of influence?

“Some commentators have suggested that a company's duty to respect and protect the human rights of its employees implies taking reasonable steps to protect workers from violations committed by the State, or to seek legal redress for their employees if violations have been committed.”¹⁵

The specific human rights issues that companies may face vary considerably

between sectors, geographic locations and a company's specific business functions (e.g. marketing, supply chain, investment, human resources etc). While human rights are interrelated and indivisible, some companies might find that certain rights are more relevant within their sphere of influence, for example labour rights in the supply chain, the focus on security issues particularly by the extractive sector, and the emerging focus on the right to health by the pharmaceutical sector.¹³

The following section provides examples of some of the human rights issues that companies may face within their sphere of influence.

Within its core operations, a company is confronted most directly with human rights issues in **its labour relations and human resources management**. The UDHR guarantees a range of basic labour rights, including the right to just and favourable conditions of work, the right to just and favourable remuneration, and the right to form and to join trade unions. These and other fundamental labour rights have been further developed in the International Labour Organization's seven core conventions,¹⁴ including the right to healthy and safe working conditions, fair wages, equal pay for equal work, no forced or bonded labour, no exploitative child labour, no discrimination based on race, gender, religion, or ethnic group, and the right to freedom of assembly, association and collective bargaining.

Some commentators have suggested that a company's duty to respect and protect the human rights of its employees implies taking reasonable steps to protect workers from violations committed by the State, or to seek legal redress for their employees if violations have been committed.¹⁵

Ensuring the **safety and security of its operations** is an issue falling within the core operations of a company and therefore is squarely within its sphere of influence.

There are several examples of companies being confronted with human rights issues arising from their security procedures and from the actions of security officials employed or contracted by the company.

Important human rights issues may arise from the way a core firm exercises its influence over issues like the **price and quality of a product**. At the most basic level, core firms are able to influence price, simply through the process of supply and demand and price negotiations. Pressing a supplier too hard on the price of the product may have a **negative impact on the labour standards enjoyed by the supplier's employees**, including their right to receive fair wages (if the price paid to the supplier by the core firm does not allow the supplier to pay fair wages), the right to safe and healthy working conditions (if the price paid by the core firm does not take into consideration the cost of ensuring safe and healthy working conditions), and the right to reasonable limitation of working hours (if the employees have to work excessive hours to make a living wage due to the low price paid by the core firm to the supplier).

Human rights issues arising in relation to a company's **host communities** could include issues relating to the **right to health**, if the operations of the company have an environmental impact. If the company's operations require relocation of the original inhabitants, a number of **procedural rights** issues may also arise, as may issues relating to the **right to adequate housing**. Particular human rights issues may also arise in relation to **indigenous peoples**, many of whom are especially vulnerable to human rights abuse.¹⁶

Human rights issues may confront a company as a result of the actions of one or more of its business partners, including joint venture partners, suppliers, contractors, sub-contractors, licensees or others with whom the company has a working relationship.

“Human rights issues may confront a company as a result of the actions of one or more of its business partners, including joint venture partners, suppliers, contractors, sub-contractors, licensees or others with whom the company has a working relationship”

Depending on their degree of control over and knowledge (or imputed knowledge) of their business partners, **companies may be seen to be complicit in abuses that the partners commit where the company concerned does not try to prevent or stop those abuses**. The clothing and footwear industries have been particularly vulnerable to allegations that they have permitted workers to suffer sweatshop conditions in the factories of sub-contractors across the world.¹⁷

Defining Complicity

“The Global Compact is focused on inspiring practical action rather than legal definitions.”

The Global Compact is focused on inspiring practical action rather than legal definitions. However, attempts to explain and explore the scope of principle 2 of the Global Compact, are important and are enhanced by taking into account the legal standards of corporate complicity as they are evolving in international and national jurisprudence. A basic overview of steps companies may take to avoid complicity in human rights abuses is provided by the Section *Taking Action*.

? What is “complicity”?

“A company is complicit in human rights abuses if it authorises, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse.”

Broadly speaking, corporate complicity in human rights abuses means that a company is participating in or facilitating human rights abuses committed by others, whether it is a state, a rebel group, another company or an individual. A company is complicit in human rights abuses if it authorises, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse. The participation of the company need not actually cause the abuse. Rather, the company’s *assistance or encouragement* has to be to a degree that, without such participation, the abuses *most probably* would not have occurred to the same extent or in the same way.¹⁸

Whether a company is a principal actor or accomplice in the human rights abuse might depend on such factors as the company’s knowledge of the abuse, its intentions, whether its actions helped to cause the abuse, and the relationship between the company and the victims or perpetrators. As yet, international legal rules have not been elaborated to determine specifically when a company is

complicit in human rights violations committed by others. Different branches of law — public international law, domestic criminal law, tort law, contract law, consumer law or company law — apply different tests. Furthermore, complicity includes notions of political or moral responsibility. Even where legal complicity cannot be proved, public opinion may attach blame.¹⁹

One commentator has suggested that there are four different situations in which the charge of complicity is made:²⁰

- u A company actively assists, directly or indirectly, in human rights violations committed by others. In this scenario the company’s assistance helps to cause or bring about human rights violations. There is a causal link and the company knows, or should know, the consequences of its actions. A positive action or active participation by the company is involved;
- u Complicity in case of Joint venture. The company has a common design or purpose with its contractual partner to fulfil the joint venture. It knew or should have know, of the abuses committed by the partner;
- u A company benefits from the opportunities or environment created by human rights violations, even if it does not positively assist or cause the perpetrator to commit the violations; and
- u A company is silent/inactive in the fact of human rights violations. A company is aware that human rights violations are occurring, but does not intervene with the authorities to try and prevent or stop the violations.

? Does a firm always know if it is complicit in human rights abuses?

In some instances, the activities of the human rights abusers are known and

indeed organised and facilitated by the company in question. In these cases, the corporation either knows, or should know, that it is complicit in human rights violations. However, with the spread of global value chains throughout the world, and the increasingly wider category of ‘dual use’ products, (i.e. products that can serve both a legitimate civilian purpose as well as an illegitimate military or paramilitary purpose), there can be incidences of companies becoming involved in human rights abuses without any intent or knowledge. This presents a serious challenge to all companies that seek to observe legitimate business practices, including the respect for human rights, in all their dealings, at all times, worldwide.

Emerging Legal Norms

? What does international law say about corporate complicity?

Support for the Global Compact does not call for an expression of intent to legally bind the company or to create legal duties towards third parties. However, an appreciation of the evolving concept of complicity in international law can be useful to companies in developing appropriate strategies and policies in support of principle 2.

Under the UDHR, as “organs of society,” companies are expected to strive to protect and respect human rights in all of their operations. Furthermore, through their interactions with various states, companies can be legally considered state actors under certain circumstances.²¹ Additionally, throughout the 1990s, there have been more than a dozen cases initiated in the United States and elsewhere relating to human rights violations in other countries.

One legal expert has summarized corporate complicity in human rights

abuses under international law in the following way:

- u Where a corporation assists another entity, whether it be a state, a rebel group, another company or an individual to commit an international crime, the rules for determining responsibility under international law will be the rules developed in international criminal law. The corporation will be responsible as an accomplice, whether or not it intended for a crime to be committed, if it can be shown that
 - a) The corporation carries out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific international crime and this support has a substantial effect upon the perpetration of the crime.
 - b) The corporation had the knowledge that its acts would assist the commission of a specific crime by the principal.
- u Where a corporation is alleged to have assisted a government in violating customary international law, including some human rights, in circumstances which do not amount to international crimes, but rather to international delicts or torts, the international rules for responsibility suggest that the corporations must be
 - a) aware of the circumstances making the activity of the assisted state a violation of international human rights law;
 - b) the assistance must be given with a view to facilitating the commission of such a violation and actually contribute significantly to the violation;
 - c) the company itself should have an obligation not to violate the right in question, such obligations stem for example from the principles

in the Universal Declaration of Human Rights.²²

In which situations have companies been accused of corporate complicity?

“Companies should avoid situations of complicity for reasons of principle.”

The following list gives a few examples of situations where companies have faced accusations of complicity in human rights abuses:


- u An oil company is being sued in the USA for alleged complicity in serious abuses committed by foreign government forces in the building of a natural gas pipeline. The list of alleged abuses include rape and forced labour;
- u complaint has been filed in a US court against a company for allegedly hiring or otherwise directing paramilitary security forces that used extreme violence and murdered, tortured, unlawfully detained or otherwise silenced trade union leaders of the union representing workers at the company’s facilities in a third country;
- u Banks have been sued in the US with respect to the dormant bank accounts of Holocaust victims and their heirs. It was alleged that the banks facilitated the Nazis’ looting and retention of wealth. The banks were portrayed as “fences” for the Nazi regime;
- u South Africa’s Truth and Reconciliation Commission concluded that companies had been “willing collaborators” with the apartheid regime since the early 1960s. It said certain corporations had had a “direct interest in maintaining the status quo.” They bypassed attempts to impose sanctions by “forming

partnerships with South African para-statal organizations”;

- u A report by the UN Panel of Experts on the Illegal Exploitation of Natural Resources from the Democratic Republic of Congo (DRC) found in 2003 that the exploitation of natural resources by international corporations had fueled a bloody civil war characterised by widespread human rights violations. Corporations that had obtained, traded or purchased lucrative natural resources in the DRC were said to have financed the groups who carried out these violations.

Companies should avoid situations of complicity for reasons of principle. However, it is to be noted that such accusations of corporate complicity, whether or not upheld by courts or other official bodies do have an impact on corporate reputation and brand value. Even where legal complicity cannot be proven, public opinion may attach blame. The risk of these types of accusations should be taken into account at the risk assessment pre-investment stage, as discussed further below.

Assessing Risks Making Decisions

 Is a company expected to react to everything/anything that occurs in its sphere of influence?

“Having signed the Global Compact, a company is expected to support and respect human rights in all its business relationships.”

A company’s human rights commitment, as a participant in the Global Compact,

extends as far as its reasonable capability to influence events. A company is responsible for its own behaviour, including any decision to do business with a known human rights violator. Having signed the Global Compact, a company is expected to support and respect human rights in all its business relationships. However, a company does not have complete control over every business partner, and cannot be held responsible for the actions of partners over which it has little influence.

The closer a company is to actual or potential victims of human rights violations, the greater will be its control and authority over their lives. This implies that a company is expected to support and respect more strongly the human rights of proximate populations. Similarly, the closeness of a company's relationship with authorities who may abuse human rights may also determine the extent to which a company is expected to react to such abuse by supporting human rights in its sphere of influence.²³

? How much influence does a company have?

Large companies typically have a very wide sphere of influence, covering a range of partners, issues, and operations. However, the degree of influence a company has may vary significantly from partner to partner, issue to issue, and operation to operation. The largest degree of influence is clearly within a company's core operations. In other situations, a company may have a substantial degree of influence over certain partners and may use this influence to promote respect for human rights. Large firms, for example, may have greater influence over suppliers.

Large firms may also have a significant degree of influence over some local and national governments, especially those keen to attract new investment. While the influence of a large company over a host Government should not be overstated, neither should it be

minimized. As a major investor and employer in a developing country, a large company may have considerable economic leverage with the Government, and thus be in a position to raise concerns about human rights abuses that adversely affect its reputation or the business environment.

“Individual companies may have a substantial influence on policy issues impacting on human rights through the advocacy activities of their respective business associations before policy-making bodies.”

Individual companies may have limited influence over individual policy issues decided at the national, regional or international level. However, they may have a substantial influence on policy issues impacting on human rights through the advocacy activities of their respective business associations before policy-making bodies.

The degree of influence a company has is not static, but evolves dependently and independently of the sector and the national economy. In situations where companies have little influence over the behaviour of some of their partners, they may want to consider taking steps to increase their influence, for example through the formation of industry associations and the formation of partnerships with other stakeholders. For instance, in 2002, the global chocolate and cocoa industry, in partnership with organized labour unions and NGOs, established the International Cocoa Initiative — Working Towards Responsible Standards for Cocoa Growing. This initiative had one primary goal; the elimination of abusive child labour practices in cocoa cultivation and processing.²⁴ This is one of many examples of how, by pooling their resources, and by including other stakeholders, the core firms of the industry stand a better chance

to promote human rights throughout their common supply chains.

? Is it possible to do business in countries with known human rights abuses without becoming complicit?

Yes. However, the particular circumstances (e.g. the country, the industry and the nature of the human rights violations in question) will determine exactly how feasible this is in reality. Unfortunately, countries where the greatest number of human rights violations occur are also those countries that have the greatest need for foreign direct investment and commercial development. This raises an important ongoing question: is it better for companies to operate in such countries, while encouraging respect for human rights in their operations, and thus bring economic and other benefits to the local population; or is it better to avoid such states all together in order to bring attention to the actions of the offending government, even though this may impose more economic hardship and human rights violations on the local population?

Companies wishing to do business in such countries may want to follow the steps outlined below and in the section *Taking Action* to understand the specific circumstances of the country and which of the firm's functions might be most at risk of becoming involved in human rights violations.

A company should determine whether the country is the subject of international sanctions; is accused of committing acts of genocide, war crimes and/or crimes against humanity; or refuses access to a neutral body such as the International Committee of the Red Cross (ICRC) or to UN humanitarian aid agencies. Companies wishing to avoid complicity should seriously consider the risks of investing in such countries. Dealings with such states have the potential to legitimize the government and its human rights violations. In many

Deciding to do business in states with poor human rights records ²⁵		Government Proximity to human rights abuses	
		Actively committing abuses	Possess insufficient resources for addressing abuses
Company Proximity to human rights abuses	Activities intersect with abuses	AVOID	Proceed with Caution
	Activities do not intersect with abuses	Proceed with Caution	OK

cases, the precarious legal and political situation found in such states also makes them poor locations for business.

Beyond such minimum standards, a company should consider the nature of the human rights abuses being committed in the country and how the company’s activities would relate to those abuses. There are two questions here: first, the question of the proximity of the host government to the human rights violations, and second, the question of the proximity of the company to human rights abuses. Concerning the first question, it is possible to make a distinction between governments actively violating human rights and ‘ineffective’ governments (those that acknowledge and officially respect human rights, but are incapable of effectively protecting them). Racial discrimination, for example, may be found in many countries; however, one can make a distinction between the practices of Apartheid era South Africa, where racial discrimination was reinforced by official state laws and actions, and other countries where racial discrimination is embedded in the culture despite official state laws and actions to the contrary. Making these distinctions is not

always easy and companies should seek advice from relevant agencies within their home government (for example, the Ministry of Foreign Affairs), relevant UN agencies and non-governmental organisations. In general, however, countries where human rights abuses are more the product of ineffective law enforcement, rather than an active program of oppression, are less likely to produce incidences of corporate complicity in state violations of human rights.

This does not eliminate the risk of complicity, however, and companies should also consider the proximity of the company to the human rights abuses in question. It is often possible to determine if the pattern of human rights violations in the country is going to intersect with some aspect of the firm’s operations. For example, if the human rights abuses are located in a specific province or region of the country and that is where the firm is, or would be, located, then this is cause for concern. In addition to a geographic intersection, there could be an intersection based on the industry itself: if the firm is producing dual use products, and these types of products have been

known to significantly aid in the violation of human rights, then this would also be a cause for concern. Either through a geographic or industry intersection with human rights abuses, the firm could find itself involved in human rights abuses to a degree that constitutes complicity.

Taking Action

? What can a firm do to avoid complicity in human rights abuses?

“The most effective way to avoid corporate complicity is to have appropriate human rights assurance mechanisms and practices in place that are both transparent and properly enforced.”

The most effective way to avoid corporate complicity is to have **appropriate human rights assurance mechanisms and**

Creating a Functional Risk Map: some sample questions to get started

<p>Purchasing</p> <ul style="list-style-type: none"> u Are suppliers committing human rights violations, including violations of economic, social and cultural rights, to lower the price of materials sold to the firm? u In the case of raw materials (e.g. minerals, timber, etc.), are the suppliers in possession of legitimate permits to extract the resource? Are they observing legal requirements vis-à-vis the rights of local communities and environment? u Are suppliers committing human rights violations which are funded by the sales of products to the company? (e.g. cases of military/rebel groups engaged in commerce to fund conflicts and or other human rights violations) 	<p>Sales</p> <ul style="list-style-type: none"> u Are dealers selling products to be used for illegitimate purposes? <p>Logistics</p> <ul style="list-style-type: none"> u Are company assets such as aircraft, ships or trucks being used by third parties to support HR violations? <p>Marketing</p> <ul style="list-style-type: none"> u Are marketers providing truthful, contextual and complete information about their products, especially as regards health and safety? <p>Product Management</p> <ul style="list-style-type: none"> u Does the company deal in “strategic” products, such as key natural resources, which may be the subject of internal host country power struggles? 	<p>Board Level Management</p> <ul style="list-style-type: none"> u Is the company making its commitment to respect for human rights clear to all joint venture partners? u Is the company engaging in sufficient due diligence regarding new investments, locations, and JV partners? u Is the company ensuring appropriate independent oversight of its operations and partners to assure legality? <p>Human Resources</p> <ul style="list-style-type: none"> u Is the company sticking to the letter and spirit of anti-discrimination rules? u Is the company respecting host country ethnic sensitivities in its hiring practices? <p>Security</p> <ul style="list-style-type: none"> u Is plant security outsourced? u Does the security provider maintain adequate standards of legality? u Is respect for human rights an integral part of the security
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practices in place that are both transparent and properly enforced. As mentioned above, it is not always easy to know when a company is at risk of being complicit in human rights abuses. Informed judgements by management on measures to avoid complicity require ongoing and continuous **consultation within and outside the company** with relevant stakeholders during both pre-investment and post-investment stages. This includes unions and employee organisations, civil society groups, and relevant government bodies, such as departments of human resources, and national and regional human rights commissions.

Another important measure to avoid complicity is to **raise awareness within the company of known human rights issues within the company’s sphere of influence.** This would include an increased awareness of the human rights situation in each of the countries in which

the firm has its own operations, or deals closely with partner companies such as suppliers. Creating a ‘risk map’²⁶ of known human rights issues in those countries where the firm does business can help to identify possible areas where the firm might be, or might become, complicit in human rights abuses.

A further **key step is to identify those functions within the firm that are most at risk of becoming linked to human rights abuses.** Companies, especially those in capital-intensive industries, may consider **identifying potential human rights risks even at the pre-investment/project exploration and planning stage.** A human rights impact assessment consists of an **analysis of the functions of a proposed investment and the possible human rights impacts (intended and unintended) they may have on the community or region.** Understanding how a proposed investment can affect human rights gives companies

more reliable information for making crucial business decisions.

The Global Compact Business Guide to Conflict Impact Assessment and Risk Management in Zones of Conflict has identified a number of important questions which could form part of a human rights impact assessment. The questions are also relevant for companies operating outside zones of conflict. They include the following:

- u Is the company familiar with the international human rights obligations, including specific human rights treaty obligations, of the country where it operates/intends to operate?
- u Does the company systematically and regularly collect qualitative and quantitative data and information on the country’s human rights situation (from the UN, NGOs, academia, and other sources)?

- u Has the company developed an understanding of possible sources of conflict in areas where it plans to operate or is currently operating?
- u Has the company consulted with local community leaders about the proposed project?
- u Has the company put policies in place to ensure responsible management of its security arrangements consistent with international human rights standards? Have specific measures been put in place concerning relations with government security forces?²⁷
- u Has the company taken steps to ensure that any community investment programs are not sustaining groups responsible for human rights abuses?
- u Has the company established internal or/and external monitoring mechanisms to assess the actual impact of its investments and operation on human rights standards?

The process of identifying internal ‘functional risks’ in the **post-investment** situation might look at such functions as purchasing, logistics, government relations, human resource management, HSE (health, safety and environment), sales and marketing. In the case of purchasing functions, for example, firms may become complicit in human rights abuses if they are purchasing materials from human rights violators. By doing so, the firm is possibly providing indirect aid and/or encouragement to the human rights violators. Concrete examples might include firms purchasing so called ‘conflict diamonds’ or firms purchasing coltan from conflict zones in the Congo (DRC).²⁸ Indeed, human rights violations in supply chains have become issues of concern in a wide range of businesses, including the apparel, chocolate and the electronics industries. Companies may also want to put in place some measures of external verification of systems in order to deal with functional risks.

How can companies support and respect human rights in their sphere of influence?

“Yet another way of supporting human rights in their sphere of influence is for companies in different business sectors to engage in multi-stakeholder dialogue with both Governments and civil society groups to proactively address human rights issues of particular concern to these sectors.”

In addition to observing national laws, companies of any size can support human rights by making respect for human rights a key theme of the company’s relations with employees, local communities and business partners, and by communicating clearly the reasons for applying its human rights policies. For example, in relation to its own employees, a company can ensure that labour rights are fully respected and these rights are fully communicated throughout the organization. The company could set procedures for regular independent monitoring and verification of compliance with its commitment to uphold human rights standards. This may be done by an independent NGO or NGO consortium, accredited social auditor or other independent body.²⁹ The findings of any such independent audit can also be shared throughout the stakeholder community.

It is over the concrete details of product development, manufacture and delivery that a company often has the most control, whether these processes are conducted “in-house” by the company itself, or contracted out to a partner. For example, at the initial project design stage, a company can consider the human rights context in which the project will be operating. At the project approval stage, the company can

ensure that mechanisms are in place to protect the rights of interested and affected parties prior to proceeding with the project. When it comes to asset protection, a company can ensure that measures taken to safeguard the company’s installations and employees do not result in human rights violations.³⁰

Larger companies, or core firms, generally have a much greater opportunity to support human rights throughout their value chains. In recent years, for example, it has become common for many core firms to support human rights through a company code of conduct; increasingly these codes of conduct are being applied to suppliers, dealers, and other members of the value chain. Since core firms often have tremendous purchasing power, making supplier contracts conditional on respect for human rights may be an effective way to support international law in the firm’s sphere of influence. By agreeing from the outset with business partners mechanisms for regular independent monitoring and verification of compliance with contractual commitments to respect human rights, the company gives business partners some ownership over the process.³¹

Beyond codes of conduct, firms may also make use of various certification programs. In the development of quality management in the 1990s, certification programs such as the QS 9000 series,³² became widespread as a direct result of core firms’ demanding that suppliers become certified. As newer standards are developed that relate to social and environmental practices, core firms have the opportunity to promote these issues by requiring their suppliers or dealers to be certified.

Many firms also maintain a dialogue with government officials. While respecting the limits of the appropriate role of business in politics, firms may nevertheless make their support of human rights clear to the authorities in their host country. For large global firms in small developing countries,

the simple act of publicly stating support for human rights, or condemning human rights abuses, can have a significant impact. Whether through quiet diplomacy with relevant government officials, public condemnation of human rights abuses, or advocacy for respect for human rights, large companies may be in a position to raise concerns about human rights issues that adversely affect their reputation or the business environment.³³

Beyond that, firms can ensure that regional or international trade agreements that they actively support do not have negative implications for human rights. Equally important, firms can warrant that the lobbying efforts carried out by the firms or on their behalf do not hold up agreements that can safeguard human rights.³⁴ In this regard, firms can pay close attention to the operations of their industry associations and clearly communicate their support for human rights to such trade groups.

Some large corporations may also be able to cooperate with governments with regard to the development and application of international human rights law. Legal agreements reached between companies and governments (known as host government agreements) may have considerable implications for the protection of human rights.³⁵ Where companies are in a position to encourage respect for human rights in these agreements, it is within their sphere of influence to work to ensure that the host government agreement is consistent with universal human rights norms and standards.

In addition to communicating with government officials, companies can benefit from maintaining a dialogue with civil society groups where possible. Such groups can often provide a company with valuable information about potential human rights problems in its area of operation, and ongoing dialogue with stakeholder groups can play a crucial role in identifying appropriate remedies in cases where human rights violations have occurred.

Yet another way of supporting human rights in their sphere of influence is for companies in different business sectors to engage in multi-stakeholder dialogue with both Governments and civil society groups to proactively address human rights issues of particular concern to these sectors. Through such multi-stakeholder dialogue, companies in the extractive and energy sectors, the Governments of the United States and the United Kingdom, and civil society groups developed, in 2000, the Voluntary Principles on Security and Human Rights. This is a set of voluntary principles intended to guide extractive and energy companies maintain the safety and security of their operations within an operating framework that ensures respect for human rights. Another such voluntary initiative is the Extractive Industries Transparency Initiative, developed by a multi-stakeholder group, including Governments, oil, gas and mining companies, industry bodies, international institutions, investors and NGOs. The objective of the initiative is to increase transparency with respect to payments and revenues in the extractive sector in countries heavily dependent on these resources.

A further example of a sector-specific initiative aimed at pre-empting potential human rights issues within its sphere of influence comes from the banking sector. Under the auspices of the International Finance Corporation (the private sector lending arm of the World Bank Group), over 25 leading banks have voluntarily adopted common environmental and social standards in their financing projects around the world. By adopting the Equator Principles, these banks have agreed to use clear, responsible and consistent rules for environmental and social risk management in project finance lending.³⁶ While the human rights component of the Equator Principles is not very strong, the initiative is an example of a particular sector identifying how companies in the sector can collectively limit the risks to

human rights and the environment within their sphere of influence.

Concluding comments

The key steps outlined in this document are starting points in clarifying how companies can support human rights and avoid being complicit in human rights abuses within their sphere of influence. They also provide a gateway to developing new management practices that include human rights impact assessments as part of sound corporate stewardship. Firms wishing to avoid complicity in human rights abuses may want to integrate these steps into management systems as an ongoing process of corporate self awareness. Simply put, the firm can maintain accurate up-to-date information about exactly what it is doing, where and with whom. This may sound straightforward enough, but in large, globally active, decentralised, multi-divisional firms, it is a process which requires the active support and attention of senior management, along with all of the professional management skills at the disposal of a modern company. The readings and tools in the attached list provide further avenues for addressing this issue and for identifying and adapting useful management practices.

Further Readings and Tools on the Issue of Corporate Complicity in Human Rights Violations

Banks and Human Rights: Should Swiss Banks Be Liable for Lending To South Africa's Apartheid Government?

Anita Ramasastry

2002

<http://writ.findlaw.com/ramasastry/20020703.html>

Beyond Voluntarism: Human Rights and the Developing Legal Obligations of Companies

International Council on Human Rights Policy

2002

<http://www.ichrp.org/>

Business & Human Rights: A Geography of Corporate Risk

Amnesty International, The Prince of Wales

International Business Leaders Forum

2002

<http://www.amnesty.org/business>

Business Guide to Conflict Impact Assessment and Risk management in Zones of Conflict

UN Global Compact

2000

<http://www.unglobalcompact.org>

Corporate Complicity in Violations of International Law: Beyond Unocal

Andrew Clapham in W.P Heere (ed) "From government to governance: the growing impact on non-State actors on the international and European legal system", Proceedings of the Sixth Hague Joint Conference held in the Hague, The Netherlands, 3-5 2003. TMC Asser Press, The Hague, 2004, pp. 227-38.

Deciding Whether to do Business in States with Bad Governments

The Confederation of Danish Industries, The Danish Centre for Human Rights, The Danish Industrialization Fund for Developing Countries.

2001

<http://www.humanrights.dk>

Defining the Scope of Business Responsibility for Human Rights Abroad

Margaret Jungk

The Confederation of Danish Industries, the Danish Institute for Human Rights, the Danish Industrialization Fund for Developing Countries.

<http://www.humanrights.dk>

Human Rights: Is it any of your business?

Amnesty International, The Prince of Wales Business Leaders Forum

2000

<http://www.amnesty.org/business>

Legal Issues in Corporate Citizenship

International Institute for Environment and Development

2003

<http://www.iied.org>

Raising the Bar — Creating value with the United Nations Global Compact

Fussler, Cramer, van der Vegt (eds)

Greenleaf Publishing

2004

Transnational Corporations in Conflict Prone Zones: Public Policy Responses and a Framework for Action

International Alert

2003

<http://www.international-alert.org>

Voluntary Principles on Security and Human Rights

Fact Sheet of the Bureau of Democracy, Human Rights, and Labour U.S. Department of State

2001

<http://www.state.gov>

Annex I:

The Universal Declaration of Human Rights

Annex II:

Commentary on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.4/Sub.2/2003/38/Rev.1)



**EVERYONE
HAS THE RIGHT TO AN
EFFECTIVE REMEDY BY THE
COMPETENT NATIONAL
TRIBUNALS
FOR ACTS VIOLATING THE
FUNDAMENTAL RIGHTS
GRANTED HIM BY THE
CONSTITUTION OR BY LAW.**

Understanding the Global Compact Human Rights Principles

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Introduction

“Human rights are a central element, arguably the core concern, of the United Nations Global Compact.”

Human rights are a central element, arguably the core concern, of the United Nations (UN) Global Compact. Proposed by UN Secretary-General Kofi Annan in 1999 and formally launched in July 2000, the UN Global Compact is a voluntary corporate citizenship initiative that calls on companies to integrate into their core business operations ten principles on human rights, labor rights, environmental protection, and anti-corruption. By adopting the Global Compact, companies commit to make the Global Compact principles part of their “strategy, culture and day-to-day operations,” support public accountability and transparency, and report publicly on their progress. While “not a regulatory instrument, a code of conduct or a legally-binding standard,”³⁷ each of the Global Compact principles is derived from widely accepted international agreements on universal standards. The Universal Declaration of Human Rights is the source for the Global Compact human rights principles.³⁸ Principle 1 of the Global Compact calls on businesses to:

“support and respect the protection of internationally proclaimed human rights.”³⁹

Principle 2 calls on businesses to:

“make sure that they are not complicit in human rights abuses.”⁴⁰

Corporate human rights compliance presents both conceptual and practical challenges. Few human rights experts, and even fewer corporate leaders, can easily explain the precise meaning of the Global Compact human rights principles

and describe how these principles should guide business practices. A growing number of companies face human rights issues in their operations and many are beginning to develop and implement corporate human rights programs, despite the absence of well-established best practices in the emerging field of business and human rights.

This paper addresses the human rights issues raised by the UN Global Compact in an attempt to help companies, and all actors at the intersection of business and human rights, better understand the Global Compact human rights principles and how they can guide corporate decision-making. The discussion that follows draws upon case studies submitted by companies that have signed on to the Global Compact describing corporate efforts to implement Principles 1 and 2, as well as presentations, discussion and debate at the December 2003 Third International Global Compact Learning Forum Meeting in Nova Lima, Brazil. The opinions expressed and conclusions drawn are solely those of the author and do not represent the views of the UN Global Compact or the Executive Office of the UN Secretary-General. This synthesis of the human rights principles of the Global Compact necessarily raises more questions than it answers, but, by doing so, flags many of the issues companies will encounter if they make the Global Compact human rights principles part of their business strategy.

Business and Human Rights

Over the past fifteen years, business and human rights has emerged as a distinct field within the broader corporate citizenship or corporate social responsibility movement.⁴¹

The convergence of three trends — the globalization of human rights, the globalization of trade and investment, and

the globalization of communications — has led to growing pressure on companies to address human rights issues.⁴²

“The convergence of three trends — the globalization of human rights, the globalization of trade and investment, and the globalization of communications — has led to growing pressure on companies to address human rights issues.”⁴²

Countries, or sovereign states, are the principal subject and authors of international law. For centuries, a fundamental doctrine of international law held that how a government treated its own citizens was a matter shielded by national sovereignty, and was not a legitimate concern of any other government.⁴³ World War II shattered that doctrine and led to the globalization of international human rights standards. How a government treats its own citizens — or permits its citizens to be treated by others — became an appropriate subject of inquiry by other governments and the international community.⁴⁴ The United Nations Charter (1945) clarified the commitment of the world’s governments to promote and protect human rights⁴⁵ and the Universal Declaration of Human Rights (1948) enumerated the individual rights and freedoms recognized by the international community. The Nuremberg military tribunal affirmed individual responsibility for international crimes by charging individuals, including German industrialists, with crimes against humanity under international law. The United Nations system,⁴⁶ regional intergovernmental organizations such as the Council of Europe and the Organization of American States, and UN member states have expended considerable energy since 1948 defining

and codifying international human rights standards, including standards relating to civil and political rights; economic, social and cultural rights; the rights of children, women and others. These standards impose obligations on governments to respect, promote, and protect internationally proclaimed human rights.

A community of nongovernmental advocates — religious leaders, lawyers, trade unionists, political activists and others — has advanced the international human rights movement by challenging repressive practices and abuse wherever they occur. Governments can no longer hide behind the claim that human rights conditions in a country are purely domestic concerns.

“Today, alongside governments, companies often are viewed as a source or cause of human rights abuse, as well as an international actor with the capacity to promote human rights.”⁴⁸

Over the past twenty years, the human rights movement has increased its scrutiny of private actors and their responsibilities under international law.⁴⁷ Beginning with the issue of Apartheid in the 1970s, expanding in the 1980s to business operations in countries with poor human rights records, and exploding around labor conditions in the 1990s, human rights activists have placed the private sector at the center of their advocacy efforts. Today, alongside governments, companies often are viewed as a source or cause of human rights abuse, as well as an international actor with the capacity to promote human rights.⁴⁸ The role of business promoting human rights is particularly important in countries with limited state capacity to ensure human rights. There is also a

growing recognition that private corporations have duties under international human rights law, though the extent of these duties — and the mechanisms to enforce them — are not yet clearly defined.⁴⁹

During the same period, the globalization of international trade and investment has weakened the relative economic power of governments and dramatically increased the geographic scope and economic power of transnational companies. Over the past twenty-five years, an elaborate global financial architecture has evolved to promote greater economic integration between countries and reduce national restrictions on trade and investment. Businesses have become global enterprises in order to expand and protect their markets and to lower their costs.

“An estimated 65,000 transnational corporations operate with more than 850,000 foreign subsidiaries and millions of suppliers.”⁵⁰

An estimated 65,000 transnational corporations operate with more than 850,000 foreign subsidiaries and millions of suppliers.⁵⁰ A transnational firm typically has direct investments in multiple countries, customers and suppliers around the world, and investors with access to the company’s securities in at least one international capital market. As a result, the private sector often has substantially greater economic influence over the economic performance of emerging markets than do national governments or inter-governmental organizations.

The growing importance of private economic relations has propelled a public debate about the benefits of economic globalization. Does greater economic

integration fuel a “race to the bottom” where companies force developing nations to lower social standards, including human rights standards, to attract trade and investment? Or does it encourage a “race to the top” where trade and investment are correlated with greater respect for social standards as companies seek out the most productive workforce and the most stable business and political climates?⁵¹ Globalization fuels both trends simultaneously. Globalization links more people’s economic livelihoods to the global marketplace than ever before while creating profound economic dislocations and exploitation. The result is growing pressure on business to play an active role promoting social objectives formerly the responsibility of national governments alone.⁵² The Global Compact was conceived as one way to address the inequities of globalization and make the global economy more sustainable and inclusive.

Finally, the globalization of communications has eliminated the ability of governments and businesses to control the information others receive about the consequences of their policies and practices. Revolutionary improvements in the speed and quality of communication have transformed human rights reporting and magnified its impact. Similar reductions in the cost of communication have expanded the number of human rights monitors and the scope of their reporting. As a result, dramatic images of abuse or exploitation now cross national borders with the touch of a button. Just as information technology has permitted the globalization of production, so also has it opened the window for scrutiny of human rights conditions wherever production takes place.

Business practices have emerged as a particular source of scrutiny, not simply in human rights “hot spots” such as previously Apartheid South Africa or present day Burma, but in every corner of the globe. Since the mid 1990s, human rights advocates and the media have

shined a spotlight on human rights conditions in a wide range of transnational industries, including the oil and mining industries; the apparel, carpet, footwear, sporting goods, and toy industries; and the pharmaceutical and other high technology sectors. More recently, human rights activists have focused attention on human rights conditions in agriculture on farms that produce coffee, tea, cocoa and bananas for global markets. The activities of transnational companies in foreign markets are no longer invisible to stakeholders at home.

The convergence of these trends has led to growing pressure on companies to address human rights. Companies have responded to increased scrutiny of business practices, allegations of corporate responsibility for human rights abuses, and calls for corporate action to promote human rights in many different ways, ranging from hostility, denial and inaction to acknowledgement, engagement and the transformation of business strategy and practices. The vast majority of transnational corporations have not taken any steps to address human rights issues. The companies that have acted on human rights tend to be transnational companies operating in the industries or sourcing markets targeted by human rights advocates, and/or companies with well-known, valuable brands in global markets.

Most corporate human rights initiatives address human rights conditions within the company’s own operations. International concern over Apartheid in South Africa, infant health in developing countries, discrimination in Northern Ireland, and the repression of political dissent in China prompted some of the first private initiatives to set human rights standards for business operations.⁵³ Since the mid-1990s, many companies have begun to address human rights conditions in their supply chains. The past ten years have witnessed an explosion of voluntary

codes of conduct to guide corporate conduct, and human rights criteria are increasingly included in these corporate codes.⁵⁴ More than 1,600 companies have signed on to the Global Compact, including seventy-nine of the world’s 500 largest corporations.⁵⁵ Despite the increasing attention to human rights issues by business, few companies have responded to calls for the private sector to promote human rights beyond their own operations or the operations of their suppliers and business partners.

The nature of corporate human rights initiatives has changed over time and is shaped by a company’s competitive and financial position, industrial structure, corporate leadership and culture, and the particular human rights conditions at issue. Corporate human rights programs generally include some combination of due diligence, standard setting, standard implementation, evaluation and reporting. Whereas initial corporate efforts to address human rights issues commonly took the form of written policy statements or codes of conduct, the most advanced corporate human rights programs today are implemented comprehensively throughout a company’s operations, can extend to a company’s entire supply chain, and may comprise independent monitoring, multi-stakeholder partnerships and robust public reporting.

“While many corporate efforts to address human rights issues are purely defensive measures or public relations exercises in response to specific allegations, a small but growing number of companies are beginning to make the affirmative business case for substantive corporate human rights programs.”

While many corporate efforts to address human rights issues are purely defensive measures or public relations exercises in response to specific allegations, a small but growing number of companies are beginning to make the affirmative business case for substantive corporate human rights programs. The notion that human rights are a legitimate concern of business has gained broader acceptance in the business community over the past decade.⁵⁶ CEOs have begun to identify human rights as a corporate responsibility. Some major international brands now have vice presidents for “human rights,” even human rights departments, and the Universal Declaration of Human Rights is no longer altogether unknown to business managers.

“BP supports the belief that human rights are universal. They are enshrined in the Universal Declaration of Human Rights, which we support. . . . It is the responsibility of States to defend the human rights of their population. As a company, we have a responsibility to contribute to the promotion of human rights in society and to consider the impact of our operations. We will ensure that we adhere to the principles of human rights within our operations and in those areas that are under our control.”⁵⁷

“Novo Nordisk is committed to support the Universal Declaration of Human Rights as part of our social responsibility. . . . Respecting, protecting, fulfilling and promoting Human Rights globally will contribute to a more sustainable world in social terms, thereby . . . increasing our potential markets. The human rights standards are the only set of standards on the treatment of people that are globally recognized and accepted, thus preventing undue “cultural imperialism” when operating internationally.”⁵⁸

“Human rights are the standards of treatment to which all people are entitled. The most widely recognized definition is the Universal Declaration of Human Rights, adopted by the United Nations in 1948. Although human rights are principally the responsibility of

national governments, this has become an increasingly important issue for business.”⁵⁹

The companies that presented human rights cases at the GC Learning Forum Meeting in Nova Lima, Brazil have made human rights a business issue.⁶⁰ According to a recent survey of corporate leaders, the business case for responsible corporate practices in general includes:

- u protecting and enhancing reputation, brand equity and trust;
- u attracting, motivating and retaining talent;
- u managing and mitigating risk;
- u improving operational and cost-efficiency;
- u ensuring a license to operate;
- u developing new business opportunities; and
- u creating a more secure and prosperous operating environment.⁶¹

The same arguments support the business case for corporate human rights programs.

Allegations of human rights abuse damage corporate reputation, particularly for companies with the best-known brands.

“The mere accusation that a company is using child labour in its operations, either directly or indirectly, can lead to an immediate blow to its reputation and the threat of consumer boycotts.”⁶²

Companies that fail to take allegations of corporate human rights abuse seriously, do so at the risk of substantial damage to their company’s reputation among key stakeholders, including customers, investors, shareholders, and current and prospective employees. Allegations of human rights abuse can imperil a company’s license to operate.

“Social responsibility is a matter of hard-headed business logic. It’s about performance and profits, and attracting the best people to work for you. . . . To work effectively we need trust and the

confidence of the society in which we are operating.”⁶³ — John Browne, Chief Executive, BP

“Social responsibility is a matter of hard-headed business logic. It’s about performance and profits, and attracting the best people to work for you. . . . To work effectively we need trust and the confidence of the society in which we are operating.”⁶³

**—John Browne,
Chief Executive, BP**

Effective human rights policies can manage or mitigate legal and investment risk. Victims of human rights violations are turning to courts in the United States and Europe to hold transnational companies accountable for complicity in human rights abuse.⁶⁴ In a survey of the five hundred largest companies worldwide, thirty-six percent reported abandoning a proposed investment project and nineteen percent reported disinvesting entirely from a country due to human rights issues.⁶⁵ Many voluntary corporate human rights programs have been prompted by a regulatory threat, or have averted government regulation. Human rights criteria are used to screen or identify companies by an increasing number of investors.

The most efficient corporate human rights programs improve human rights conditions while cutting costs or increasing revenues. Collective programs to address human rights issues in the apparel, toy and sporting goods industries have set industry-wide standards while reducing costs and improving operational efficiency for program participants.⁶⁶ A few companies have created a market niche by

closely associating their brands with the promotion of human rights.⁶⁷ There is a growing body of evidence that strengthening respect for human rights in a particular market also strengthens respect for the rule of law, creates a stable political and social environment, and ultimately, provides a more prosperous operating environment for business.⁶⁸

“We believe that the winning companies of this century will be those that not only increase shareholder value, but increase social and environmental value.”

**– Carly Fiorina
CEO, Hewlett Packard**

The Global Compact human rights principles can guide companies as they decide how to address the business challenges and opportunities that arise at the intersection of business and human rights.

Principle 1

Businesses are asked to support and respect the protection of internationally proclaimed human rights.

The Global Compact Human Rights Principles

? What are internationally proclaimed human rights?

Internationally proclaimed human rights are rights defined and widely accepted by the international community of states.

The Universal Declaration of Human Rights is the most widely accepted and long-standing international proclamation of human rights.⁶⁹ Adopted by the UN General Assembly in 1948, the Universal Declaration asserts the fundamental rights and freedoms to which everyone is entitled “without distinction of any kind.”⁷⁰ The Declaration’s thirty articles address life and security, equality before the law, personal freedom, and economic, social and cultural rights. The Declaration prohibits slavery, torture, arbitrary arrest or arbitrary interference with privacy. Under the Declaration, everyone has the right to own property, legal recognition, effective remedies before national tribunals, and due process. Everyone has the right to freedom of thought, religion, expression, peaceful assembly and association. The Declaration also proclaims rights particularly relevant for employers, including the right to work, to free choice of employment, to just and favorable conditions of work, to equal pay for equal work, to just and favorable remuneration and to form and join trade unions. Everyone has the right to rest and leisure, to a standard of living adequate for health and well-being, and to education. The rights contained in the Universal Declaration are rights of individuals and constitute claims upon society.⁷¹

The rights in the Universal Declaration are detailed in two widely ratified treaties, the International Covenant on Civil and Political Rights (1966) (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR).⁷² Subsequent international human rights instruments have elaborated certain rights, such as the rights of the child, and defined new categories of human rights violations, including genocide, discrimination against women, trafficking in persons and the worst forms of child labor.⁷³ The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the American Convention on Human Rights (1969) define and apply similar

rights through regional human rights mechanisms.

Some human rights are so widely accepted that they have become part of customary international law, or the international law that binds all states regardless of whether states have ratified particular international treaties.⁷⁴ Customary international law, also known as peremptory norms or *jus cogens*, is generally understood to prohibit genocide, slavery, disappearances, torture, murder, prolonged arbitrary detention, systematic racial, religious or gender discrimination, war crimes,⁷⁵ crimes against humanity,⁷⁶ the denial of the right to self-determination, the unjustified use of force by one state against another, and any consistent pattern of gross violations of other human rights. The Universal Declaration is considered by some commentators to be so widely accepted that it has become part of customary international law.⁷⁷

“Internationally proclaimed human rights are universal — they do not change based on geography, nationality, religion or culture.”

Internationally proclaimed human rights are universal — they do not change based on geography, nationality, religion or culture. Human rights are fundamental, but not absolute. Some rights contained in international instruments may be restricted under certain circumstances, for example for reasons of national security. Those rights that can never be restricted — the right to life, to freedom from torture and slavery, to freedom of thought, conscience and religion — are considered basic human rights.

It is important to note that international human rights evolve and new rights can

emerge over time. Within the past twenty years, for example, rape and other forms of sexual violence have been added to the list of internationally recognized war crimes and crimes against humanity.

? Are labor rights human rights?

The short answer is yes: labor rights are human rights.⁷⁸ One can argue that the Global Compact principles on labor standards are, by definition, incorporated in the Global Compact's human rights principles. The Global Compact calls on companies to uphold freedom of association, the right to collective bargaining, and the elimination of forced and compulsory labor, child labor and discrimination in employment. Member states of the International Labour Organization (ILO) have identified these labor standards as fundamental labor rights that all ILO members must promote, whether or not a state has ratified the specific ILO conventions.⁷⁹ With the exception of the right to bargain collectively, each of these labor rights can be found in the Universal Declaration or subsequent widely accepted human rights treaties. The rights to freedom of association and freedom from discrimination, and the prohibition of slavery, and forced or compulsory labor,⁸⁰ are contained explicitly in the Universal Declaration and the ICCPR. The Convention on the Rights of the Child establishes the rights of children to freedom from economic exploitation and the ILO Convention on the Worst Forms of Child Labor calls for the immediate elimination of all forms of child slavery, the use of children in illicit activities, and any work that harms the health safety or morals of children. The Universal Declaration and the ICESCR contain the right to form and join trade unions, but not the explicit right to bargain collectively. The right to collective bargaining is found in ILO Convention 98, which commits signatories to adopt

“measures to encourage and promote voluntary negotiation to regulate terms and conditions of employment by means of collective agreements.”⁸¹

? Who is responsible for protecting human rights?

Governments established human rights standards to regulate how states treat their own citizens. The Universal Declaration, ILO conventions and subsequent international human rights treaties place the primary responsibility for protecting human rights on governments.

International human rights trigger negative and positive duties. States may not violate rights through their own actions. The rights to life, to freedom from torture, and to freedom of religion, for example, require states not to act — to refrain from violating these rights. Other rights trigger positive obligations. States must act to provide effective remedies and due process before the law, for example. The rights to education and to an adequate standard of living require state action to provide resources for education and to assist individuals who are unable to provide for their own basic needs.

States also have the positive duty to prevent non-state actors, including companies, from abusing human rights. State parties to the ICCPR undertake to “respect and ensure” the rights in the treaty, implying duties both to refrain from violating the rights in the treaty, as well as to take measures to protect individuals from violations committed by others. The language of the ICCPR and the ICESCR distinguishes the civil and political rights states must “respect and ensure” unconditionally, from the economic, social and cultural rights states may fulfill progressively depending on available resources. Based on their obligations to respect and ensure human rights, states have been held responsible under

international law for failing to adequately prevent and punish human rights abuses committed by private actors.⁸² The ICESCR allows states to achieve rights progressively, acknowledging that certain rights, including the right to work and the right to an adequate standard of living, can only be ensured to the extent of available resources.⁸³ Notably, the prohibition of slavery (or forced labor) and the right to freedom of association — human rights issues that arise frequently at the intersection of business and human rights — are contained in the ICCPR, where their protection is not conditioned on available resources.

National governments are the principal mechanism for enforcing human rights. Most widely recognized international human rights are guaranteed under national laws and violations are prosecuted by local governments. A factory that uses forced labor, for example, is likely to be in violation of local law and responsibility for ensuring compliance falls to the local government. International human rights enforcement can only take place when local law does not meet international standards or when local governments fail to enforce local law consistent with international human rights standards. International mechanisms to enforce human rights include the European Court of Human Rights, the Inter-American Court of Human Rights, various UN treaty bodies and the newly formed International Criminal Court (ICC).⁸⁴ Each of these international bodies requires the exhaustion of domestic remedies before it can act to address human rights violations. With the exception of the ICC, the only remedies available — typically calls by the international body for a government to take appropriate measures to end or change practices that violate human rights, or to prevent future violations — are aimed at states, not individuals or other organs of society.⁸⁵

Human rights standards for business

The Universal Declaration itself is a potential source of corporate human rights obligations. The Universal Declaration, in its preamble, states,

“every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance . . .”⁸⁶

Corporate human rights obligations can be derived from international human rights instruments, as well as internationally proclaimed corporate responsibilities.

The Universal Declaration itself is a potential source of corporate human rights obligations. The Universal Declaration, in its preamble, states,

*“every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance . . .”*⁸⁶

Companies are organs of society and, according to the Universal Declaration, must “promote respect” for human rights and take “progressive measures” to secure their recognition and observance.

*“The Preamble to the Universal Declaration is, in effect, a fundamental affirmation by states of corporate responsibilities.”*⁸⁷ International declarations of corporate

responsibilities are another source of corporate human rights standards. International statements that contain corporate human rights standards include the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the World Bank policy guidelines, and the UN Human Rights Norms for Business. Like the UN Global Compact, each of these international instruments sets out voluntary standards and guidelines for business.

The OECD Guidelines, revised in 2000, address child and forced labor and workers’ rights, among other issues. The OECD Guidelines state that:

“Enterprises should respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.”

Notably, the OECD Guidelines include a “specific instances” procedure that allows interested parties, including any person or organization, to bring instances of alleged non-observance of the Guidelines to the attention of National Contact Points that are then expected to help resolve issues relating to specific instances of business conduct.⁸⁸

The ILO Tripartite Declaration, endorsed by governments, employer organizations and trade union organizations, addresses labor rights. The Tripartite Declaration calls on all parties to “respect the Universal Declaration of Human Rights and the corresponding International Covenants.”⁸⁹

The International Finance Corporation (IFC) Safeguard Policies for World Bank funded projects incorporate international human rights standards on involuntary resettlement, indigenous peoples, and child and forced labor.⁹⁰

“The [World Bank] Guidelines have forced multinational companies to become more

*familiar with human rights provisions, and to take responsibility in some cases for acting in ways that do not violate them.”*⁹¹

According to some commentators, voluntary business codes of conduct “reflect the gradual emergence of commitments that could form a basis for legitimate, agreed international standards.”⁹²

The UN Norms, adopted in 2003 by the UN Sub-Commission on the Promotion and Protection of Human Rights, is the most comprehensive international statement to date of human right standards for business.

*“The UN Norms provide clarity and credibility amidst many competing voluntary codes that too often lack international legitimacy, and provide for less detail on human right issues.”*⁹³

Unlike the OECD Guidelines and the ILO Tripartite Declaration, the UN Norms are intended to regulate corporate conduct as mandatory standards.⁹⁴ According to the UN Norms, business enterprises, as organs of society, are responsible for “promoting and securing the human rights set forth in the Universal Declaration” and obligated to respect “generally recognized responsibilities and norms contained in UN treaties and other international instruments.” The UN Norms place the primary responsibility on states to “promote, secure the fulfillment of, respect, ensure respect of and protect” human rights, and to ensure that businesses respect human rights. The UN Norms place the same obligations on companies “within their respective spheres of activity and influence.” The Norms appear to equate a company’s sphere of activity and influence with “the human rights impact” of all its activities.

The Norms require companies to exercise due diligence to do no harm, and not benefit from human rights violations.

“Transnational corporations and other business enterprises shall have the responsibility to use due diligence in ensuring that their activities do not contribute directly or indirectly to human abuses, and that they do not directly or indirectly benefit from abuses of which they were aware or ought to have been aware.”

Additionally, companies shall not “engage in nor benefit from” war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labor, hostage-taking, extra-judicial, summary or arbitrary executions” or the violation of international criminal or humanitarian law.

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The Norms call on companies to go beyond human rights compliance within their own operations to promote respect for human rights generally.

“Transnational corporations and other business enterprises shall further refrain from activities that would undermine the

*rule of law as well as governmental and other efforts to promote and ensure respect for human rights, and shall use their influence in order to help promote and ensure respect for human rights. Transnational corporations and other business enterprises shall inform themselves of the human rights impact of their principal activities and major proposed activities so that they can further avoid complicity in human rights abuses.”*⁹⁵

The Norms detail the responsibilities of business with respect to non-discrimination, security of persons, worker rights, national sovereignty, consumer protection and environmental protection. The Norms identify rights contained in international instruments relevant for business, requiring companies to recognize the right to collective bargaining, to provide a safe and healthy working environment and to protect children from economic exploitation. The provision of the UN Norms likely to trigger the most resistance from business and the greatest debate over whether the standard is a widely-accepted international human right is the requirement that companies pay wages that “ensure an adequate standard of living” for workers and their families.

The Norms call on all transnational companies to incorporate the Norms in their business practices and report on their implementation, give the United Nations a monitoring and verification role, and urge states to ensure Norm implementation and corporate accountability through national law.

? What is the relationship between the Global Compact Principles and the UN Human Rights Norms for Business?

Amnesty International has called on the Global Compact and the OECD to formally indicate that the UN Norms are an authoritative guide for understanding the scope of the GC human rights principles

and the human rights clause of the OECD Guidelines.⁹⁶

The Office of the Global Compact has taken the position that the Global Compact and the UN Norms complement one another, and that regulatory authority lies entirely with governments and governments will have to make decisions on the Norms as adopted by the Sub-commission of Human Rights. The UN Human Rights Commission declined to adopt or implement the Norms at its April 2004 meeting, instead requesting the Office of the High Commissioner for Human Rights to continue to study the issues raised by the Norms and to report on the scope and legal standing of existing standards for transnational corporations.⁹⁷

“The Norms can serve as a useful tool for business and for activists.”

Even if not adopted, the Norms can serve as a useful tool for business and for activists. Indeed, a group of private companies and NGOs have announced an initiative to test the Norms as a guide for corporate behavior.⁹⁸ Some human rights advocates view the Norms as having more credibility than voluntary corporate codes of conduct.

International norms like the Universal Declaration and other human rights treaties, and statements of the OECD, ILO and World Bank, while less influential with companies than national laws, contribute to growing awareness by business leaders and investors of the strategic importance of responsible business practices.⁹⁹

“There is growing recognition that companies have obligations under international law.”

? Do companies have duties under international human rights law?

There is growing recognition that companies have obligations under international law. Many human rights advocates take the position that companies can and should be held accountable for violations of international human rights standards.¹⁰⁰ Other advocates argue that under international law only states can violate international human rights.¹⁰¹

Both sides in the legal debate acknowledge the primary responsibility of states to ensure and secure the fulfillment of human rights for their own citizens, and accept that human rights responsibilities of companies and governments are not identical. Many international human rights can only be protected by governments. The private sector, for example, is not in a position to ensure fair trials or the right of individuals to a nationality. Companies do, however, play a central role protecting the human rights of their employees at work, and may be in a position to protect the human rights of employees in their supply chains, members of the communities where they operate, and even of customers in some cases.

The limited extent of corporate human rights responsibilities is reflected in the GC human rights principles. The Global Compact calls on businesses to “support and respect” the protection of human rights, but does not call on companies to “protect” human rights, to “ensure” human rights, or to guarantee that all human rights are respected. The Global Compact principles suggest limits on corporate human rights obligations by calling on companies to act only within their “sphere of influence.”

While the extent of corporate duties under international human rights law is unclear, whether or not one believes companies have direct or indirect legal obligations to meet international human rights

standards, there is a growing consensus on the human rights issues that arise in business operations. And there is ongoing pressure on companies to voluntarily assume some of the same obligations traditionally placed on governments — to respect and ensure, to promote and to progressively achieve international human rights. The clear trend is the elaboration of specific corporate human rights standards.

? What is a company’s “sphere of influence”?

“Clearly, the closer the company’s connection to the victims of rights violations, the greater its duty to protect. Employees, consumers, and the communities in which the company operates would be within a first line of responsibility.”

**—Mary Robinson
Former UN High
Commissioner for
Human Rights**

The Global Compact principles ask companies to “embrace, support and enact, *within their sphere of influence*, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption (emphasis added).” In the context of GC Principle 1, the “sphere of influence” concept defines the limits of corporate responsibility for human rights conditions. Similarly, the OECD Guidelines suggest companies should respect the human rights of “those affected by their activities” and the UN Norms limit corporate human rights duties to their “respective spheres of activity and influence.”

Sphere of influence is a potentially broader formulation than sphere of activity. Sphere of influence suggests

corporate obligations not simply to respect human rights through a company’s own actions, but to promote the protection of human rights by others where the company can exert influence. Conversely, this language implies that companies should not be held responsible for the actions of parties over which the company has little influence. Assessing a company’s sphere of influence in relation to human rights issues is a function of the company’s relationship both with human rights victims and with human rights violators. Defining a company’s sphere of influence also involves examining the connection between company activities and the specific human rights at issue.

Human rights victims that have a direct relationship with a company are within that company’s sphere of influence. There is little debate that a company’s sphere of influence extends to its own workers and facilities. Most corporate human rights programs begin by assessing human rights conditions of the company’s own workers. Companies have a duty not only toward employees whose human rights are affected by company actions, but also employees whose rights are threatened by others. If a company’s employees are arrested for expressing political opinions, for example, it is within the company’s sphere of influence to advocate with the government on their behalf. A company’s sphere of influence may also extend to victims of human rights abuse who are targeted because of their relationship to company activities. Individuals persecuted for objecting to company activities fall into this category. A company’s sphere of influence may extend beyond the workplace to its suppliers, the communities where it operates, the government or even its customers or those who use its products. Companies gradually are accepting responsibility for the human rights conditions of their own employees, of the employees of their principle suppliers and business partners, and in the communities and markets where they operate.¹⁰²

“Clearly, the closer the company’s connection to the victims of rights violations, the greater its duty to protect. Employees, consumers, and the communities in which the company operates would be within a first line of responsibility.” –Mary Robinson, former UN High Commissioner for Human Rights

Human rights violators in direct relationship with a company are within that company’s sphere of influence. Those abusing human rights may include a company’s own employees, business partners, suppliers, host governments or customers. A factory manager that abuses workers making a company’s products is within that company’s sphere of influence. So is a business partner that confiscates the identity documents of contract workers. To support the protection of human rights, companies may have a duty to publicize any human rights abuse the company discovers within its sphere of influence, not simply to avoid complicity under Principle 2. The question becomes more difficult when a host government is the human rights abuser. The government that licenses a company to extract natural gas reserves, and bans independent political parties or imprisons political opponents, presents a typical case. It is not clear whether companies must avoid doing business with known human rights violators if the company is unable to influence its partner to change its behavior.

The nature of the rights at issue is relevant for defining a company’s sphere of influence. Labor rights may be substantially influenced by a company’s policies and operations, whereas civil rights are most appropriately protected by the government. A single company, for example, has little influence over the right to a fair trial. The degree of influence may shift, however, if the company’s own employees are the victims of unfair trials.

A company’s activities also determine its sphere of influence. Companies with large

operations in a particular community or with close relationships, financial or otherwise, with host governments may have a broad sphere of influence over human rights conditions otherwise unrelated to company operations. Companies that account for a large percentage of a factory’s production exert more influence than smaller customers. Companies that sell products that are potential instruments of human rights abuse have correspondingly broad spheres of influence. One technology company posed the question, “When the internet is your marketplace, how should a company define the ‘community where it operates’? How should technology companies who have no business relationship with the end-users of their products, address the use of their products to commit human rights violations or by repressive regimes?”

Companies need to constantly reassess their sphere of influence and test its boundaries. A pharmaceutical company representative noted that five years ago, access to healthcare was not widely accepted to be within company’s sphere of influence, but today it is a key corporate concern.

The way a company defines its sphere of influence will determine the appropriate scope for any corporate human rights compliance program.

How can companies respect the protection of human rights?

Companies respect human rights by not abusing human rights themselves. At a minimum, companies should not abuse internationally proclaimed human rights. Companies must not physically abuse employees nor use forced or exploitative child labor, for example.

Elements of a corporate human rights program that effectively respects the promotion of human rights may include:

incorporating into company policies internationally proclaimed human rights as defined in the Universal Declaration of Human Rights and subsequent international instruments; assessing the human rights situation in countries where the company does, or intends to do, business; adopting explicit policies that protect the human rights of the company’s employees and workers throughout its supply chain; implementing a monitoring system to ensure that human rights policies are being implemented; and adopting explicit policies to ensure that the company’s security arrangements do not contribute to human rights violations.

Determining the appropriate compliance standard is an important element of a corporate human rights program. No single compliance standard is realistic or appropriate for all human rights issues that arise in business operations. Compliance levels may correspond to legal liability standards. Violations of the most fundamental rights usually trigger strict liability under national and international law, i.e. the actor is held responsible regardless of intent. The absence of intent is not a legal defense. Companies involved in torture, genocide, or slavery would be held strictly liable under international law — no instance of these violations is acceptable. Effective corporate human rights programs will seek to protect against any corporate involvement in these kinds of human rights violations. Other human rights violations, however, trigger a due diligence standard. Notably, the achievement of many economic, social and cultural rights defined in international conventions are closely related to a country’s level of economic development, and are to be enforced progressively. Translating this standard for companies: companies found to be employing children between fifteen and eighteen years old or exceeding local wage and hour standards are to be expected to take reasonable measures to achieve compliance, but not to ensure one hundred percent compliance in all instances.

? How can companies support the protection of human rights?

“Businesses can no longer be willfully ignorant of the circumstances in which they operate; they must become much more aware of and sensitive to those circumstances, and much more engaged in taking actions to influence human rights positively.”¹⁰³

Obviously, companies support the protection of human rights by not abusing human rights through their own actions. The more difficult question is not what companies are required to refrain from doing, but what companies can do on their own initiative to support the protection of human rights. Companies, by virtue of their skills, resources, and political influence, are in a position to promote human rights wherever they operate.

“Businesses can no longer be willfully ignorant of the circumstances in which they operate; they must become much more aware of and sensitive to those circumstances, and much more engaged in taking actions to influence human rights positively.”¹⁰³

Companies should not interfere with or oppose government efforts to protect human rights. A main criticism of a pipeline project led by BP was that the legal regime governing the pipeline could have the effect of penalizing the participating governments for adhering to international human rights standards.¹⁰⁴ BP responded by incorporating international human standards into the legal agreements governing the pipeline project. Another example would be a company that interferes with government efforts to enforce labor standards, such as the rights to organize and bargain effectively.

Companies can identify and publicize human rights problems. Through their regular operations, or in the course of responding to specific human rights issues, transnational companies are often in a position to gather reliable information on human rights abuse. Surveys of human rights conditions funded by industry groups, often in partnership with other stakeholders, have helped to define the nature and magnitude of particular human rights issues, such as child labor in the production of soccer balls in Pakistan and the trafficking of children in the West African cocoa sector.

Companies can initiate stakeholder dialogues and communicate openly with human rights organizations. Companies with robust corporate human rights programs have found that relationships with credible and well-respected human rights advocates can alert companies to potential problems, provide access to expertise and information unavailable within the company, help establish trust and credibility, and minimize damage when issues arise.

Companies can become human rights advocates. Some companies argue that the private sector can add value by taking up human rights issues with governments. One company, for example, acknowledges its “responsibility to express support for fundamental human rights in line with the legitimate role of business.”¹⁰⁵ The private sector, through the efforts of corporate leaders, individual companies, trade and business associations, lobbying initiatives and other interventions routinely makes its positions known to governments on issues ranging from taxation, trade and investment to labor and environmental policy. Human rights issues are also legitimate matters for corporate advocacy.¹⁰⁶ A company that advocates publicly or privately for free election or a free press in a particular country is supporting the protection of human rights. Companies should condemn, both privately and publicly, systematic and continuous human rights abuses.

Companies can educate employees and other stakeholders on international human rights standards.

In 1996, Daimler Chrysler, South Africa (DCSA) adopted a workplace policy on HIV/AIDS to prevent new infections in the workplace and provide care for employees and dependents living with HIV/AIDS. In partnership with the German Agency for Technical Cooperation, South African government agencies, UNAIDS and trade unions, DCSA developed HIV/AIDS programs that provide voluntary anonymous testing, education and treatment. By 2002, 1,750 employees had been anonymously tested, 180 had been trained as peer educators, and 137 employees and family members were receiving treatment. The DCSA HIV/AIDS program is a way for the company, within its sphere of influence, to support and respect the protection of the rights to the highest attainable standard of physical and mental health, to information and education, to privacy, and to freedom from workplace discrimination.¹⁰⁷

The Italian clothing retailer Benetton conducted a public advertising campaign to mark the 50th Anniversary of the Universal Declaration of Human Rights in 1998.

Finally, companies can help build the capacity of governments and others to effectively respect, ensure and promote human rights. Wherever the private sector strengthens the rule of law, for example, it strengthens the national mechanisms necessary for effective human rights protection and enforcement. If companies are able to strengthen governmental human rights protection, they can reduce pressure on the private sector to assume these functions.

Principle 2

Businesses should make sure their own corporations are not complicit in human rights abuse

? What triggers corporate complicity?

“The first step in understanding complicity is to distinguish complicity in human rights abuse from the direct violation of human rights.”

Understanding complicity is a challenge for business. Allegations of corporate complicity in human rights abuse appear with increasing frequency and pressure for corporate human rights accountability is growing.¹⁰⁸

“On the one extreme are those who feel corporations operating in the presence of human rights abuse are by definition complicit and, on the other extreme, the sense among companies that complicity is a concept that will be used to hunt multinationals as a kind of anti-neo-liberal blood sport. . . . In the absence of a good understanding of what complicity really is, consumer markets and shareholders will act on whatever information they do have, be it well founded or not.” —Mark B. Taylor, *Fafo Institute for Applied International Studies (Oslo, Norway)*¹⁰⁹

The first step in understanding complicity is to distinguish complicity in human rights abuse from the direct violation of human rights. Human rights abuse by companies is not complicity. An enterprise that uses slave labor or prohibited child labor violates human rights directly.

Corporate complicity in human rights abuse has been described as taking three forms: direct, beneficial or silent.¹¹⁰ Companies are directly complicit when

they knowingly assist or encourage human rights abuse by others. If contractors, joint venture partners, the host government, or other independent actors abuse human rights on behalf of, or with the active aid and encouragement of, a company, the company is directly complicit in the human rights abuse. The legal definition of this standard, known as aiding or abetting, requires a company to provide substantial or material assistance in the commission of human rights abuses and to have knowledge of the likely effects of its assistance. A company that pays state security forces to harass local activists is directly complicit in their activities. A company that provides equipment used by security forces to abuse human rights is complicit in the human rights abuse if the company knew the likely use of its equipment.

The legal source of this complicity standard is international criminal law.¹¹¹ One forum for prosecuting international crimes is the newly formed International Criminal Court (ICC). In drafting the treaty that defines the ICC’s jurisdiction, state parties to the ICC explicitly excluded corporations. The ICC prosecutor cannot bring cases against companies alleging international crimes. The ICC prosecutor can, however, charge individuals, and the court’s Prosecutor, Luis Moreno Ocampo, has already announced his intention to investigate economic actors complicit in war crimes in the Democratic Republic of the Congo.¹¹²

Companies are beneficially, or indirectly, complicit if the company benefits from human rights abuses committed by someone else, even if the company did not authorize, direct or have prior knowledge of the activities. As with direct complicity, the company must know the human rights abuses are taking place.

*A company’s “knowledge of ongoing human rights violations, plus acceptance of direct economic benefit arising from violations, and continued partnership with the host government should give rise to accomplice liability.”*¹¹³

A company is beneficially complicit if it tolerates or knowingly ignores the human rights violations of one of its business partners, committed in furtherance of their common business objectives. Violations committed by security forces, such as the suppression of a peaceful protest against business activity or the use of repressive measures while guarding company facilities are often cited as examples of beneficial complicity. Examples of beneficial complicity could also include a company that receives financial incentives in an Export Processing Zone where the government prohibits unions; a company that purchases materials from a supplier that is committing gross human rights violations; and a company that tolerates working conditions detrimental to worker health in its supply chain.

The third category — silent complicity — occurs when companies remain silent in the face of human rights abuse committed by others that is of no particular benefit to the company.

*“The notion of silent complicity reflects the expectation on companies that they raise systematic or continuous human rights abuses with the appropriate authorities.”*¹¹⁴

Silent complicity is the case of a company’s simple presence where human rights abuse, unrelated to the company’s business operations, is taking place. Inaction or acceptance by companies of systematic discrimination in employment law on the grounds of ethnicity or gender could trigger accusation of silent complicity, as could the failure of companies to raise human rights concerns with government authorities where they operate. Under international law, individuals have been found to be complicit in human rights abuse through their presence alone, when their moral authority was such that it encouraged the violations.¹¹⁵ Silent complicity does not yet trigger international legal responsibility for companies, but is considered by many to be a moral obligation of the private sector.¹¹⁶

“Silent complicity remains a moral principle, albeit one with the potential to have significant impact on corporate reputation or brand value.”¹¹⁷

Can a company do business in a country with known human rights violations without becoming complicit? Current international standards for corporate complicity in human rights abuse hold that companies are not automatically complicit in human rights abuse simply by virtue of their presence in a country, or even a local area, where human rights are being violated by others, though this principle is hotly debated by human rights advocates. The current standard, however, is not a blanket exemption from complicity for companies with no direct connection to (and deriving no economic benefit from) human rights abuse. An allegation of silent complicity is strengthened if the company’s economic activity inevitably benefits known human rights abuse. One example is Burma, where the control of the military regime is so pervasive that all economic activity arguably benefits the Burmese military.

While there is no consensus yet on exactly what conditions trigger silent complicity, the emerging definition begins with systemic or continuous human rights abuse. Companies operating in states widely known or subject to international sanctions for gross and systematic human rights violations are at high risk of silent complicity human rights abuse. There is a point, not clearly defined and subject to particular circumstances, where known human rights abuse becomes so pervasive that a responsible company must act.

Factors to consider when assessing silent complicity include whether a company’s operations lend legitimacy to a government that violates human rights, whether a company has the power to reduce or eliminate violations if it applies appropriate influence, and whether company could reduce or eliminate

human rights violations by leaving the market altogether.

There is also no consensus on what company actions can overcome allegations of silent complicity, particularly in cases where no company action can prevent the human rights abuse from taking place. In this respect, the Global Compact principle on complicity begins to have a practical meaning similar to Principle 1’s call for companies to support the protection of human rights — where the risk of silent complicity is high, companies would be wise to act on their own initiative to do whatever they can to promote human rights.

“There is not yet a consensus on how companies should approach countries with broad human rights violations.”¹¹⁸

According to company representatives, complicity is the most difficult human rights concept for local managers to understand and causes the most concern among executives. One company representative at the GC Learning Forum Meeting in Brazil, for example, expressed the concern that silent complicity in particular “feels different” than other human rights concepts. There is also concern that national judicial systems, e.g. a U.S. judge deciding a case against a company under the Alien Tort Claims Act (ATCA), may define complicity for all jurisdictions by default.

Corporate complicity is at the heart of recent litigation against companies brought by victims of human rights abuse. The ATCA gives U.S. federal courts jurisdiction over civil cases brought by non-U.S. citizens alleging torts, or “harms,” in violation of international law.¹¹⁹ Recent ATCA jurisprudence has opened the door to ATCA claims against corporations for alleged complicity in human rights violations.¹²⁰ U.S. courts have held that companies can be directly liable for violations of international law that do not require state action, such as

slavery, and as a “joint actor” with states that violate human rights under international law.¹²¹ While the controlling legal interpretation of the ATCA under U.S. law is still unsettled and likely to be decided by the U.S. Supreme Court, the appeals court most recently considering Unocal’s alleged complicity in human rights abuses by the Burmese military initially adopted the complicity standard from international criminal law and found that Unocal could be held liable for aiding and abetting the military’s actions.¹²² The same decision also contemplated other possible theories of third-party liability, including joint venture, agency, negligence and recklessness.¹²³

While most human rights violations are not attributed to companies, and many corporate activities that have a human rights impact may trigger no legal duties under national or international law, the absence of clear legal responsibility in specific cases does not preclude calls for corporate accountability.

““On the one hand we find it absurd that there is no mechanism through which companies can be held accountable for participation in human rights abuse. On the other hand, it seems ridiculous that companies should be held to account for violations that have always been the responsibility of governments to control and that have been, therefore, none of their business. . . . Until we deal with this lack of accountability, the corporate responsibility goalposts will keep shifting and companies will not have much clarity for their decision making in relation to human rights. In the absence of regulation, they will not know what not to do, what to avoid. And the communities affected by human rights abuse will not know against what standards they should be trying to hold those companies — and their governments — to account, or where they can take their complaints of corporate complicity.”¹²⁴

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? How can companies avoid complicity in human rights abuse?

*“There is an international norm emerging which views private sector complicity in human rights abuse as unacceptable.”*¹²⁵

To avoid complicity in human rights abuse, companies must invest time and energy understanding the human rights environment where they operate. Ignorance of a government’s human rights record, the nature of common violations, the likely perpetrators and victims, the rights at issue, or the places where violations occur exposes companies to a significant complicity risk. According to BP, for example, its approach to address complicity in human rights abuse includes research, education, prevention and partnership. The risk of complicity is a real one not just for extractive companies with significant fixed investments, but for any company operating where local practices fail to meet international standards. The Swiss pharmaceutical company, Novartis, for example, in the course of auditing its subcontractors for human rights compliance, discovered one that was administering a mandatory pregnancy test to all female job applicants and denying employment to pregnant women. While undisclosed pregnancy testing was not

against local law, it is inconsistent with international antidiscrimination standards and Novartis required its subcontractor to eliminate the practice.

Companies can conduct a human rights impact assessment of their operations to identify areas of possible complicity and take actions to address these areas. Some companies have created a “risk map” of human rights issues in countries where they do business.¹²⁶ BP, for example, views its human rights policy as part of its highly developed risk management capacity. To reduce the company’s complicity risk, BP conducts human rights impact assessments, is a signatory to the Voluntary Principles on Security and Human Rights,¹²⁷ has adopted the Global Compact, and engages in an open dialogue with human rights organizations and local communities. Other companies are beginning to use newly developed compliance assessment tools, such as the tool developed by the Danish Institute for Human Rights.¹²⁸ Companies operating in zones of conflict need to pay particular attention to human rights risks.¹²⁹

Wherever a government fails to meet its human rights obligations, companies are open to allegations of complicity.¹³⁰ The closer a company’s relationship to an oppressive regime or a targeted population the greater risk of complicity in government abuses. Once a company appreciates potential human rights issues, it can avoid complicity in human rights abuse by carefully managing its relationships both with potential human rights abusers (e.g. security forces, governments and armed groups, suppliers that exploit workers) and potential victims (e.g. targeted individuals and populations.)

Industry characteristics also shape efforts to avoid complicity. Industry-wide initiatives in partnership with intergovernmental organizations, civil society and other stakeholders can help companies address human rights issues and reduce the risk of corporate

complicity. Participants in the GC Learning Forum cited examples of multi-stakeholder initiatives in the extractive, pharmaceutical, technology and financial sectors.

Extractive companies frequently do business where democracies are not well-established and fundamental human rights are not well protected. Extractive industry initiatives to define human rights standards for business include the Voluntary Principles on Security and Human Rights and the Kimberley Process to certify diamonds.¹³¹ The World Bank Guidelines on Involuntary Resettlement are also a source of relevant standards.

Pharmaceutical companies often sell directly to government customers, creating a dilemma when the customer is a government with a poor human rights record. In these cases, companies must often balance the human rights record of its customer with the nature of its product (a life-saving drug, e.g.) and its intended use (benefiting the local population). Pharmaceutical companies may also help the government build critical infrastructure, train medical professionals, and educate patients. In these cases, according to one pharmaceutical executive, “You can’t just pull out.”

Technology companies face potential complicity in human rights abuse not just in their supply chain, but also if their products are used by repressive governments. A classic case was the use by the Apartheid regime in South Africa of Polaroid photographic film to make identity cards for Black South Africans. In 1977, the Polaroid Corporation chose to cut all business ties with South Africa in order to avoid complicity with the regime and its practices.

Financial institutions play an important role financing government projects and foreign investment. As an industry, financial firms have begun to set common standards for assessing social risk in project financing, including policies on

indigenous peoples, involuntary resettlement and child and forced labor.¹³² According to an oil industry executive, international financial institutions like the World Bank's International Finance Corporation and the European Bank for Reconstruction and Development provide companies considering investments with a "sense of assurance through recently developed policies and guidelines, even though compliance with these standards can be time consuming."

address human rights conditions in their operations.¹³³

"If companies make the Global Compact human rights principles part of their business strategy, they are better equipped to effectively manage the human rights issues that arise in the course of their business operations and can make a strong case that business objectives and the protection of internationally proclaimed human rights are complimentary goals."

Conclusion

Pressure for corporate human rights compliance is growing. Advocates of corporate human rights accountability, who in the 1990s focused on labor conditions in labor-intensive, low wage industries like apparel, footwear, sporting goods and toy production, are now examining labor conditions in the production of agricultural commodities like coffee, tea, bananas and cocoa. The extractive industries remain a focus of scrutiny for complicity in state human rights violations, but similar allegations are being leveled against companies in the consumer products, technology and financial services sectors. New industries will continue to come under the media, stakeholder and regulator spotlight for their human rights practices.

The Global Compact human rights principles capture the key human rights issues facing business: how to avoid corporate involvement in human rights abuse and how to appropriately promote human rights. Companies developing corporate human rights programs consistent with the Global Compact human rights principles have made human rights a business issue. Their experience sheds light on the practical challenges of corporate human rights compliance and provides a roadmap for the vast majority of transnational companies that have yet to meaningfully

**NO ONE SHALL BE
SUBJECTED TO
ARBITRARY
ARREST,
DETENTION
OR
EXILE**



Corporate Fallout Detectors and Fifth Amendment Capitalists: Corporate Complicity in Human Rights Abuse

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Principle two of the Global Compact human rights principles with regards to corporate complicity asks business to make sure their actions do not make them complicit in human rights abuses. In order to shed light on the meaning of the complicity principle, this paper draws on research undertaken by the Fafu Institute for Applied International Studies concerning private sector activity in zones of conflict.

Framing the discussion

Three general points are germane to the discussion of complicity and what it means to ensure that your business is not complicit in human rights abuses.

First, in order to grasp the links between market-based activity and conflict, it is imperative to understand the means through which economic opportunities are exploited. In terms of human rights abuses, companies should focus on the extent to which coercion is integrated to economic activity: when the use of force becomes a factor of production, companies must recognize the potential for human rights abuse.

Second, understanding the role of the private sector in relation to human rights abuses requires an understanding of zones of conflict as, among other things, areas of social and economic activity. This perspective focuses on activities, rather than actors, and encourages the examination of what actors are doing on the ground in a way that does not pre-judge their effects because of who or what they are (civil/military, state/rebel, local or multinational).

Finally, it is important to recognize that, in zones of conflict, what are actually informal economies are well integrated into the global markets, often via several steps involving criminal or abusive behaviour. This integration makes it difficult to

distinguish between what are licit and illicit commodities and implies an increasing importance to supply chain monitoring.

“Fifth amendment capitalists”

Harvard economist John Kenneth Galbraith reacted to use of the Fifth Amendment before Congress by the former officers of Enron and Andersen Consulting by noting,

“I entered politics at a time when there were Fifth Amendment communists and I’ve reached the age of ninety-four when there are Fifth Amendment capitalists.”

Complicity is always bad news, particularly when occurring among the grisliest end of the human rights continuum-genocide, crimes against humanity, and during armed conflict — which has been the primary focus of Fafu’s research into economies of conflict. For companies operating in states at war or in areas of conflict, the concept of complicity raises real risks to personnel, reputation and, increasingly, the risk of litigation.

In the United States, when someone is asked tough or incriminating questions under oath, they can “plead the Fifth Amendment” — that is, exercise their constitutionally guaranteed right not to answer. “Pleading the fifth” has a dual connotation. It implies guilt — but it also connotes persecution, owing to the use of the Fifth Amendment by the victims of the anti-communist witch hunts of Senator Joseph McCarthy in the 1950s. Harvard economist John Kenneth Galbraith reacted to use of the Fifth Amendment before Congress by the former officers of

Enron and Andersen Consulting by noting, “I entered politics at a time when there were Fifth Amendment communists and I’ve reached the age of ninety-four when there are Fifth Amendment capitalists.”

The notion of “Fifth Amendment capitalists” is a good one to keep in mind because it captures the extreme attitudes that frame the discussion on complicity. At one end of the spectrum, there are those who feel that corporations operating in the presence of human rights abuse are, by definition, complicit; at the other, there is the sense among companies that complicity is a concept that will be used to hunt multinationals as a kind of anti-neoliberal blood sport. This may be why companies often do not want to talk about complicity, and why they claim that complicity is notoriously hard to define.

Yet complicity is not that hard to define, at least in theory. Below I will outline some of the clarity to be found in law.

To get a better grip on what complicity is, we can first describe what complicity is not. Corporate complicity is *not* human rights abuse by companies. In public discourse, the word “complicity” is often used to describe company wrongdoing as if it were synonymous with the abuse itself. But complicity is not the act or commission of an abuse of a human right. A company is not complicit if it uses forced labour, or directly plunders a natural resource; the company is actually perpetrating or committing a human rights violation or a crime. Complicity is not direct commission — it is participation in a violation carried out by another.

This may seem like a semantic point, but it is important because company participation in crimes or violations perpetrated by others can take many forms. It may seem from afar that the presence of a company in the vicinity of human rights abuse is enough to constitute complicity. But for legal definitions of complicity, everything

depends upon the nature of company participation in the violations.

A recent case illustrates this point. In March 2003, a Canadian oil exploration company announced that its drilling operations had turned up “a new world class basin” in the Lake Albert region of Western Uganda, just across the border with the Democratic Republic of the Congo (DRC) and about 150 km from the town of Bunia. A year earlier, the same company had signed a deal with the Kinshasa government to explore the basin on the DRC side of the border, in effect giving it control of concessions in the middle of a war zone. At the same time that the company was announcing its find, the UN Security Council declared the situation in eastern Congo a threat to international peace and security. Ugandan troops were withdrawing from the DRC under international pressure, all the while proxy militias for the DRC and Ugandan governments were committing atrocities and forcing people to flee. The European Union (EU) sent a force to lead the United Nations in stabilising the situation. As the refugees emerged from the war zone, it was alleged that the fighting was an attempt by the Kinshasa government to ensure control over the region’s oil.

In principle, the presence of that oil company in proximity to human rights violations should not be sufficient grounds for allegations of complicity in wrongdoing. Such a charge would depend on any number of things, including the way and extent to which the company supports or benefits from the fighting factions on the ground and the scope and character of the human rights abuses (such as whether it is widespread and systematic).¹³⁴ In the above case, the mere presence of the Canadian company is not normally enough to establish complicity. Thus, each case needs to be evaluated individually.

If complicity is neither the direct violation of human rights, nor mere company presence, then what is it? Complicity

occurs when an individual, group, or company aids or abets — that is, helps or encourages — the actual perpetrator in the carrying out of the abuse or violation. Here we must endure some legal definitions (see, e.g., *Beyond Volunteerism*, International Council on Human Rights Policy). In most legal traditions, complicity usually takes the form of substantial or material assistance to the perpetration of the abuse: there must be knowledge of the violation or in some cases simply good evidence that the participant *should* have known, particularly if the violations were happening over a period of time. Complicity can also take the form of encouragement, or abetting. This is what the material on the Global Compact website refers to as “direct complicity.”

Indirect complicity, called “beneficial” complicity by the Global Compact website (also sometimes called “beneficiary”), involves a company that supports perpetrators of human rights violations and receives a benefit from that support and those abuses. For example, companies may be in joint ventures with government agencies or others in projects that involve the perpetration of human rights abuses. Although the company is not committing the abuses, nor is it directly helping specific abuses to be committed, its support to the perpetrators of the abuse results in benefits to the company.

Finally, a word on what the Global Compact website has called “silent complicity.” This is explained, rather delicately, as the view of human rights advocates that companies that remain silent in the face of obvious human rights violations are in some way complicit. If companies have a responsibility to report human rights abuse, then silent complicity may be a good way to oblige them to do so. However, the law in most countries has not yet reached that stage. Silent complicity is thus a moral rather than legal principle, albeit one with the potential to have significant impact on corporate reputation and brand value.

So, complicity is not too hard to define in theory. Why is it so hard to avoid in practice? The first part of an answer has to do with the law, particularly international law governing crimes against humanity. The core characteristic of crimes against humanity is their massive and systematic nature. Any company that operates in situations of crimes against humanity, or has a financial relationship with the perpetrators, governments or nonstate actors, is going to find it difficult to extricate itself from the systematic aspect of the violations, particularly if the company does nothing once the crimes become known. For this reason, and in apparent (though not real) contradiction to what I said above, a company that obtains permission to operate from the effective authority in a conflict zone may indeed have created a relationship of complicity. This would be so mainly in situations where the violations in question are widespread enough to rise to the level of crimes against humanity. This is one sense in which complicity is hard to avoid.

This may be why Luis Ocampo, the Chief Prosecutor of the International Criminal Court (ICC), announced in 2003 that he will look into alleged complicity of economic actors in the DRC. The ICC cannot prosecute companies (legal persons) but it can prosecute individuals acting on behalf of companies. And complicity is a violation of international law.

But such law has rarely been tested in relation to corporations. In the unlikely event that the Chief Prosecutor moves forward in this areas, he would be looking at the officers or personnel of companies that may have engaged in transactions that may have aided and abetted — that is, been complicit — in the perpetration of war crimes and crimes against humanity by members of various combatant groups since July 1, 2002. On this point, Mr Ocampo specifically mentioned the “money-laundering and other crimes committed outside the Democratic Republic of

Congo which may be connected with the atrocities,” as well as “[alleged] links between the activities of some African, European and Middle Eastern companies and the atrocities taking place in the Democratic Republic of Congo. The alleged involvement of organized crime groups from Eastern Europe [has also been mentioned. Their] activities allegedly include gold mining, the illegal exploitation of oil, and the arms trade. There is general concern that the atrocities allegedly committed in the country may be fuelled by the exploitation of natural resources there and the arms trade, which are enabled through the international banking system.” (Press conference of the Prosecutor — Communications, The Hague, 24 July 2003).

The same logic driving the ICC investigation in DRC has prompted resort to the civil courts in a number of jurisdictions. In the United States, the Alien Tort Claims Act (ATCA) permits civil action in U.S. courts for violations of international law committed abroad. In these cases — such as *Doe vs. Unocal*, involving forced labour in Burma/Myanmar — the principles of private sector complicity established by the post-World War II trials of Nazi and Japanese industrialists are being applied. As with the work of the ICC, this will go a long way toward clarifying potential liabilities for companies. Of course, the fallout from the recent spurt of ATCA cases in the United States has been the demonization of the legislation in business circles as a tool for hunting multinational corporations. The result has been a political backlash against ATCA, and attempts — led by the Bush administration — to undermine and possibly repeal the Act. This would be unfortunate because the principles established by such court actions — in the United States and other domestic jurisdictions — will help companies avoid complicity in the future and build the foundations for global norms in this area.

But even if ATCA is reformed or dropped from the statute books, resort to the courts will continue. Fafo research indicates that, in many jurisdictions, there are criminal law and civil law states presently on the books in a number of countries which create similar kinds of liabilities, but that these are simply unused, untested, and largely unknown.

Filling the Knowledge Gap

“Information about company activities and potential complicity for abuses is often available, but it can be difficult to find and act upon.”

Information about company activities and potential complicity for abuses is often available, but it can be difficult to find and act upon. An innovative example of this problem is that of an artist in the United States who developed a “Corporate Fallout Detector” — a handheld bar code scanning device, of the kind used in supermarkets, which clicks or beeps when scrolled past a bar code. However, this device responds to products produced by a company with a “dodgy record” on environmental issues or human rights. A switch on the detector lets you flip between the two. To stock the Corporate Fallout Detector with data, the artist (a PhD Student at the Media Lab at MIT) used a data set that consisted of a list of companies he compiled from bar code databases available on the web, cross-referencing those names with two other online resources. He ranked the companies, giving each a percentile score for social and environmental transgressions. When asked about his invention, the artist said something that goes to the heart of the notion of complicity: “As I was doing it, I learned a lot of the information you can gather is

subjective... It's really hard to collect a bunch of data about a company and come up with an objective assessment... With increasing globalisation it becomes more and more difficult to trace accountability to specific companies (Adbusters, Jan-Feb 2004, No. 51)."

Thus, there is a real problem of evidence and knowledge about the fact pattern concerning the kinds of activities that would create complicity. Attempting to fill the knowledge gap is important work because of a fact most companies realize, a fact illustrated by the story of the Corporate Fallout Detector: in the absence of a good understanding of what complicity really is, consumer markets and shareholders will act on whatever information they do have, be it well founded or not.

The problem of knowledge points to the fact that there is also an administrative gap. The law creates liabilities and defines complicity. But short of legal recourse (which should be a last resort), there is no way to raise the problem of corporate complicity in human rights abuse.

This is what happened in 2002 and 2003, when the UN Panel on Illegal Exploitation in the Democratic Republic of the Congo referred to the OECD Guidelines for Multinational Enterprises when it listed 85 companies that, it contended, were somehow complicit in the wars in that country. This move came as a shock both to the officers of the companies listed and to the OECD officials who never imagined the Guidelines would be used in such a way — especially the National Contact Points that exist in each OECD country as focal points for implementation of the Guidelines. It was a shock, in part, because the Guidelines say nothing about conflict and little about human rights.

In fact, there is little in the way of standards — or norms — against which to measure the behaviour of companies. Until recently, the basic decision-making

framework for foreign investment involved the laws of the host state — which are often not as rigorous, or as rigorously applied, as those in the companies' home states. Today, there is an international norm emerging that views private sector complicity in human rights abuse as unacceptable. Companies operating in contravention of this norm, or commodities produced in contravention of this norm, run the risk of being labelled rogue companies or conflict commodities.

It is true that the Global Compact and other initiatives are trying to clarify what normative development means in practice. Notions of benchmarking, voluntary measures, peer review, et cetera, are all, in their own ways, attempting to bring operational clarity. The application of the principle of corporate complicity — by legal action and by ethical consumerism — is also part of this effort.

The UN Norms on the Responsibilities of Transnational Companies and other businesses with regard to human rights, are clear on the issue of complicity, both direct and beneficiary. They state business “shall not engage in nor benefit from” the full range of human rights abuses and, further, companies “shall refrain from activity which supports, solicits, or encourages States or any other entities to abuse human rights.”

Take, for example, the UN Norms on the Responsibilities of Transnational Companies (TNCs) and other businesses with regard to human rights, adopted by the Sub-Commission in August 2003. The norms are clear on the issue of complicity, both direct and beneficiary.

They state business “shall not engage in nor benefit from” the full range of human rights abuses and, further, companies “shall refrain from activity which supports, solicits, or encourages States or any other entities to abuse human rights.” The norms conclude with an attempt to suggest an administrative framework for implementation, via reporting, monitoring of violations, and including input from all sides. But it remains preliminary.

In short, while the use of the OECD Guidelines by the UN Expert Panel may have come as a shock it was a perfectly logical use of the Guidelines: there was no other mechanism which concerned itself with corporate behaviour in relation to human rights.

Put yourself in the shoes of the UN panel experts: You know the people of the DRC are dying in massive numbers; you have clear evidence that the elite networks running the wars in the DRC are plundering the country's natural resources and stripping assets from state companies; you know these elite networks are well integrated into the global economy and that this is often made possible by trade and services provided by companies based in OECD countries; and you see that the law of the land is ineffectual in large parts of the country and that there is little effective exercise of state sovereignty.

Which points to a gap just as important as the lack of normative clarity: there is no administrative or regulatory mechanism that can deal with the problem. There is no body, no institution that has responsibility for these kinds of issues — no way to even facilitate asking the right questions.

If you are a member of the UN expert panel, what do you do?

I think the MIT artist had it right: you improvise a way to ensure that complicity does not go unnoticed. By referring to the Guidelines, the UN Panel effectively

sought to turn the National Contact Points of the OECD Guidelines into the bureaucratic equivalent of a Corporate Fallout Detector.

The issue of corporate accountability for human rights or international crimes, of which complicity is a large part, is a relatively young political problem (see Leiv Lunde and Mark Taylor, *Commerce or Crime? Regulating Economies of Conflict*, Fafo 2003). Its relative youth as a political problem determines much of the debate around these issues. On the one hand, we find it absurd that there are few norms and no mechanism through which companies can be held accountable for participation in human rights abuse. On the other hand, it seems ridiculous that companies should be held to account for violations that have always been the responsibility of governments to control and that have thus been none of their business.

In the context of this lack of policy or regulation, companies can probably be forgiven for feeling as though complicity is in the eye of the beholder. But the policy debate is evolving quickly. Indeed, we should be outraged by the notion that that three million people in the DRC can die in four years, yet the companies that participated in the economies that were a key part of that conflict cannot be held to account. That is a problem. It is called impunity, and it is a direct result of the lack of a regulatory or administrative framework that is mandated to take up these issues. Until we deal with this lack of accountability, the corporate responsibility goalposts will keep shifting and companies will not have much clarity for their decision-making in relation to human rights. In the absence of regulation, they will not know what not to do or what to avoid. And the communities affected by human rights abuse will not know against what standards they should try to hold those companies — and their governments — to account, or where they can take their complaints of corporate complicity.



**EVERYONE
IS ENTITLED IN FULL EQUALITY
TO A FAIR AND PUBLIC HEARING
BY AN INDEPENDENT AND
IMPARTIAL TRIBUNAL,
IN THE DETERMINATION OF
HIS RIGHTS AND OBLIGATIONS
AND
OF ANY CRIMINAL CHARGE
AGAINST HIM.**

Business and Human Rights

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“Companies cannot and should not be the moral arbiters of the world. They cannot usurp the role of governments, nor solve all the social problems they confront. But their influence on the global economy is growing and their presence increasingly affects the societies in which they operate. With this reality comes the need to recognize that their ability to continue to provide goods and services and create financial wealth — in which the private sector has proved uniquely successful — will depend on their acceptability to an international society which increasingly regards protection of human rights as a condition of the corporate license to operate.”

—Sir Geoffrey Chandler¹³⁵

Human Rights: A Business Duty?

“Whatever the tone of the debate, the fact remains that business enterprises have a moral obligation to respect human rights.”

Largely unnoticed by the management of most companies, an intense debate has arisen in recent years on the topic of “business and human rights.” The topic is not new, however. Specialist human rights groups in the 1980s were linking multinational companies in the extractive sector — oil, diamonds, gold, precious metals — with human rights abuses at their local mining sites.¹³⁶ Then in 1999, United Nations Secretary-General Kofi Annan challenged business to support a set of principles in the areas of human rights, labor, and the environment. The topic also

received attention in the *Human Development Report 2000*, which observed that “global corporations” have an “enormous impact on human rights — in their employment practices, in their environmental impact, in their support for corrupt regimes or their advocacy for policy changes,” and called for corporate human rights standards, implementation measures, and independent audits.”¹³⁷ A reference to human rights was also added to the *OECD Guidelines for Multinational Enterprises* when they were revised in 2000.¹³⁸ What is new, though, is the dynamic increase over the last three years or so in the breadth and depth of the general business-related human rights debate.¹³⁹

The intensity of the debate should not pose a problem for companies competing with integrity.¹⁴⁰ Today, all actors in civil society perceive a responsibility for human development and thus respect the equal and inalienable rights of all people enshrined in the Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly on 10 December 1948. “Good” corporations and those responsible for their corporate conduct will therefore see a duty to support and respect human rights and do their utmost to ensure that the spirit of the Universal Declaration is upheld in their sphere of activity and influence. At a minimum, they will refrain from actions that obstruct the realization of those rights. Where, then, are the problems?

The current business and human rights debate is highly charged. On the one hand, there is a tendency for some human rights activists to create the impression that, to a significant degree, the troubles of people in developing countries can be attributed to human rights abuses by multinational companies.¹⁴¹ At the other extreme, some institutions with close ties to business have publicly stated that there are no business-specific human rights concerns because the Universal Declaration is directed exclusively at governments.¹⁴² Human rights demands being made of other actors in society,

including business enterprises, they say, divert attention from the actual perpetrators — widely known despots and their entourage who abuse basic human rights.

The tenor of the human rights debate has become increasingly critical of “transnational corporations” due to a deep-seated disquiet about globalization. Opinion polls show that nine out of ten respondents interested in development policy and work within nongovernmental organizations (NGOs) or who otherwise have close ties to that work see too much emphasis on trade and investment and far too little attention being paid to human rights or other non-financial issues.¹⁴³

Against this background, the Secretary-General’s Global Compact (UNGC) initiative continues to be of major importance.¹⁴⁴ It takes up this disquiet and aims to counteract it by encouraging companies to commit themselves publicly to compliance with certain minimum standards of a political, social, and ecological nature. Convinced that weaving universal values into the fabric of global markets and corporate practices would help advance broad societal goals while securing open markets, Kofi Annan challenged world business leaders to “embrace and enact” the Global Compact, in their individual corporate practices, and to support appropriate public policies and promote fair business practices. “Fair business practices” include good labor standards and enlightened protection of the environment, as well as corporate efforts to “support and respect the protection of the international human rights within their sphere of influence” and “make sure their own corporations are not complicit in human rights abuses.”

The Global Compact principles relating to social and ecological issues were not a problem for companies working responsibly, because they correspond to state-of-the-art practices of “good corporate citizenship” or “corporate social responsibility.” The two human rights

principles, however, led them into territory that was new and unfamiliar to the management of most companies.

At about the same time, the Sub-Commission of the Human Rights Commission started developing a set of *U.N. Norms on the Responsibilities of Transnational Corporations and other Businesses on Human Rights*.¹⁴⁵ One of the central aims of this body of experts was to strengthen and put into operation the two human rights principles of the UNGC. The norms were adopted by the Sub-Commission in Geneva on 13 August 2003 and were transmitted to the U.N. Human Rights Commission for consideration. On 20 April 2004, the Commission affirmed that the norms, as a draft proposal, had no legal standing and requested that the U.N. Office of the High Commissioner for Human Rights compile a report setting out the scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises regarding human rights, including the norms. The report is due to be presented at the next Human Rights Commission meeting, in April/May 2005. The Commission also made clear that the Sub-Commission should not perform any monitoring function in relation to the norms. While the norms are a welcome strengthening of the two UNGC principles in terms of their content, they are unclear — at least in their present form — on a number of important procedural issues.¹⁴⁶

Whatever the tone of the debate, the fact remains that business enterprises have a moral obligation to respect human rights. If they do not observe these most essential elements of their social responsibility, they surely risk their societal (if not legal) license to operate. Thus, the management of enlightened companies is confronted with the question of how to respond to the increasing importance of human rights demands on business enterprises.

Entrepreneurial Options

“In the context of the human rights debate, the management of a company has, in principle, three options for action:

- u defend the perceived status quo or even actively resist change;
- u duck, wait, and hope for the best; or
- u see the human rights debate as an opportunity for corporate citizenship leadership.”

Companies respond in different ways to political challenges, depending on corporate culture, historical experiences, or the philosophy of top management. In the context of the human rights debate, the management of a company has, in principle, three options for action:

- u defend the perceived status quo or even actively resist change;
- u duck, wait, and hope for the best; or
- u see the human rights debate as an opportunity for corporate citizenship leadership.

Defend the perceived status quo: human rights are not “the business of business”

There are a number of credible reasons why managers of companies would not feel that demands on human rights have anything to do with them. First, they usually associate “human rights” with civil and political rights only (Articles 1-21 of the UDHR) and not with economic, social, and cultural rights (Articles 22-29). Second, they see governments and their institutions, not private companies, as the primary bearers of duties. Third, even

managers sympathetic to human rights concerns are surprised that business is receiving so much attention for its conduct when human rights abuse is still so rampant among state actors.¹⁴⁷ Last, but not least: a considerable portion of the debate on “human rights and business” consists of indiscriminate and generalized charges against businesses, and this makes many concerned people from the private sector hesitant to engage in a dialogue that could turn out to be too politicized to yield constructive results.¹⁴⁸

The way out of human rights deficits primarily calls for the implementation of national and international law through responsible government. In the absence of an effective national legal framework, no sustainable and essential progress can be achieved for those whose horrific stories are described in the reports of Amnesty International and other human rights NGOs. But regulatory approaches do not preclude other approaches: the commitment of governments and their agencies does not exclude the assumption of responsibility by “other organs of society.”¹⁴⁹ On the contrary, their duty arises precisely when the holders of state power are not able or willing to protect citizens from violation of their rights. Looking at the annual reports of Amnesty International, it is exactly in places where the state fails to meet its primary responsibilities that the potential vulnerability for companies is particularly high. In such situations, companies are faced with an extremely difficult socio-political environment.¹⁵⁰

- u inadequate legal frameworks and governance structures to ensure fair and equitable administration of justice and regulations;
- u weak, authoritarian, or failing public-sector institutions with thriving corruption;
- u high levels of poverty and inequality in the distribution of resources and livelihood opportunities;

- u lack of access to basic services such as education, health care, energy, water and sanitation, and telecommunications;
- u strict press controls; and
- u existing or potential civil conflict with politically or ethnically motivated human rights violations.

Lack of good governance gives rise to a vacuum that has to be responsibly filled by other actors in society, including companies: only in this way can they minimize the risk of becoming part of the problem themselves.

Duck, wait, and hope for the best

Most multinational corporations have not yet responded to the human rights debate, at least not visibly or audibly.¹⁵¹ It seems as if they are waiting until the “discussion caravan” has moved on and the globalization debate has turned its attention to other issues. On the other hand, if the debate ultimately results in new national legislation, then a company will no longer be able to avoid dealing with the issue. Nevertheless, some company inaction might be motivated by a fear similar to James Duesenberry’s “ratchet effect”: Corporate performance within the framework of a corporate citizenship policy — that is, beyond what is stipulated by law — could, by virtue of the normative force of what has become fact, establish a performance level below which it is no longer acceptable to fall and become the baseline for additional (including legal) demands.¹⁵²

Companies that opt for the duck-and-wait strategy unfortunately have a good chance of success. In many cases, the attention of the critical public is focused not so much on companies that use local deficits of the law and refuse to engage in debate, but instead on companies that

behave responsibly, face up to the company-related human rights debate, and take an active part in it with arguments of their own. The more prominent a company, it seems, the more likely it is to be a target for critics — regardless of the severity of the issue for which they are being criticized. Because of this, a crucial element of management’s decision to deliver corporate performance standards beyond the legal minima must be its conviction that it is “the right thing to do.”

The situation is different for companies that have signed up to the U.N. Global Compact — by doing so, they have already expressed their support for the two human rights principles and their commitment to work toward their implementation. Since the principles are relatively open in their wording, these companies have the choice of either defining for themselves the commitments they believe they have entered into or leaving this interpretation to other actors of civil society and then perhaps finding themselves confronted with demands that they either have to or want to reject. As this would be a strategically poor choice, the right thing to do is to take an active part in the “human rights and business” debate and to perceive this as an opportunity for leadership in corporate citizenship practices.

See the human rights debate as an opportunity for corporate citizenship leadership

Successful business enterprises are organized for constant change and innovation — and the current focus on human rights is just one of those changes. As Peter Drucker observed many years ago, successful companies are those that focus on responsibility rather than power, on long-term success and societal reputation rather than piling short-term results one on top of the other.¹⁵³ Getting the human rights dimension right — right in the sense of an

enlightened balance between the common good and enlightened corporate self-interest — is no longer only a question of moral choice; it is increasingly an important asset on the reputation market created by a growing part of global civil society. Good managers realize that it will be very difficult to be a world-class company with a second-class human rights record — and they act upon this.¹⁵⁴

“As Peter Drucker observed many years ago, successful companies are those that focus on responsibility rather than power, on long-term success and societal reputation rather than piling short-term results one on top of the other.”¹⁵³

Companies that signed up to the principles of the U.N. Global Compact will set in motion an internal process of definition and implementation with regard to all commitments entered into, including those on human rights.¹⁵⁵ A process of this kind has three different phases:

- u reflection and consultation,
- u discussion and decision-making, and
- u implementation

Reflect and consult

Rory Sullivan describes the intersection between human rights and business as “chaotic and contested: on the one hand, there are those who see companies as ‘the source of all evil’. On the other, are those who have a touching faith in the abilities of companies, economic growth and ‘the market’ to resolve all of these human rights problems. Yet the truth, if there is such a thing, is far more complex and indeterminate than either of these extreme perspectives allows. Despite the increasing use of human rights language in public

policy discourses, the expectations of companies remain unclear.”¹⁵⁶

Indeed, few companies had any clear idea before signing the U.N. Global Compact what it meant for them, “within their sphere of influence,” “to support and respect the protection of international human rights” as well as “to make sure their own corporations are not complicit in human rights abuses.” In normal cases — that is, when companies operate within the law and are committed to basic ethical values — there seems to be an intuitive assumption that there are no human rights violations occurring through their own activities and therefore no problems were expected. This assumption largely corresponds to my experience. Much of the action that is demanded today in the human rights debate already forms part of the social and ecological management processes of enlightened companies.

It is nevertheless inadvisable to carry on as if nothing had happened without any further reflection; a deeper consideration of the problems is called for. On the one hand, the issues in the human rights and business debate are defined substantially more broadly by many stakeholders than most managers assume. On the other hand, as far as actual human rights performance is concerned, it is not wise to operate with assumptions when empirical knowledge can be gained. The more facts that can be ascertained on sensitive issues and the more insight there is on the existing pluralism of values with regard to the facts, the better the decision-making basis for informed policy choices. What needs to be answered first and foremost are questions such as “What could be potentially sensitive aspects of our business activity?,” “Where do stakeholders outside the company see potential or actual issues of relevance to human rights in the context of our business activity?,” and “Are there vulnerabilities that arise through cooperation with others and, if so, how do we cope with these?” A conscious

human rights assessment, if not audit, of current corporate practices might be recommended if a rough assessment reveals unexpected negative surprises.

The intense search for answers to these complex questions triggers important sensitizing effects within the company, especially for managers whose area of responsibility is confined to day-to-day routine purely business or financial functions or, depending on the field of work, to biological, chemical, or other matters. The very fact that human rights issues are discussed internally on the company’s own initiative — not out of a defensive compulsion — and that critical questions are posed increases the corporate social sensibility and hence competence.

“Best practices are always anticipatory — a proactive approach, however, presupposes appropriate reflection on different fact-and-value scenarios.”

In internal and external consultation processes, the broadest possible spectrum of opinion needs to be obtained. Managers whose workplace is located in countries with a poor human rights performance can make hugely important contributions to the discussion that are of relevance to day-to-day practice. Procurement managers have a view of things that differs from that of communications officers and of the legal department: “General Counsels are paid to worry about possible threats of litigation, however remote,” as noted in the *Harvard Business Review*.¹⁵⁷ The legal view of things is becoming increasingly important if only by virtue of the way U.S. courts currently interpret the Alien Tort Statute of 1789. A serious analysis of potential vulnerabilities and corresponding guidelines for corporate activities in sensitive areas is a credible first “good

faith effort.” Best practices are always anticipatory — a proactive approach, however, presupposes appropriate reflection on different fact-and-value scenarios.

Internal consultation processes are also necessary to broaden ownership of what are, at least initially, “non-mainstream” positions: anyone who wants to change paradigms of corporate policy must mobilize the required support within the company, using powers of persuasion. Experience shows that something perceived as being imposed “from above” will have little effect in daily practice. If a policy change is seen as a threat (to investment plans, marketing policy, customer relations, and so on), it may — despite the decision being taken at the level of corporate policy — lead to passive resistance, cover-up practices, and refurbishment of some Potemkin façades. All this makes it more difficult to retain a dispassionate grasp of the essentials — and thus to make a rational analysis of the status quo.

Since intra-institutional analyses always involve the risk of being self-referential and therefore leaving out important aspects from the analysis, external consultations provide a better basis for decision-making. This is especially true in the case of complex political judgments, such as those required in connection with company-specific human rights issues. Not only is it wise to use the knowledge and experience of specialized NGOs in a company’s own decision-making processes, society’s pluralism of interests also creates opportunities. Potentially fatal deficits of perception arise when people or institutions confuse their view of things with the things themselves. Sustainable solutions to complex problems normally transcend the initial preferences of corporate management, taking into account differing life experiences, value premises, and constellation of interests to improve the quality of the eventual decision. Specialized interest groups are

best able to present the relevant portfolio of values, to articulate special interests, and to show ways to preserve them.

Discuss and decide

“Clearly, the closer the company’s connection to the victims of rights violations, the greater is its duty to protect. Employees, consumers, and the communities in which the company operates would be within a first line of responsibility.”¹⁵⁹

**—Mary Robinson
Former High
Commissioner for
Human Rights**

After a good decision-making basis has been developed through broad consultation and deep reflection, an intensive internal discussion process must follow. Weighing the pros and cons of different options and wrestling with them to come up with what will be the corporate position to be implemented contributes to a further sensitization within the company. This, in turn, increases the capacity to understand corporate responsibilities and their limits. The fact that differing views are presented not only between outside stakeholders and the management but also within management itself should be seen as an opportunity to improve mutual understanding and as a chance for better solutions. Precisely in the case of politically prestructured questions, it would be dangerous for a company to reach a concluding judgment too early based on the personal preferences of individuals. Here, too, consultation of people with different personal inclinations or professional or cultural backgrounds, different value judgments and experiences of life, or other characteristics that influence their judgment enriches the

debate and thus enhances the quality of the decision-making.

The consultation process must also be used to clarify ambiguous terms (such as “sphere of influence,” “complicity”). “Sphere of influence,” in the context of the Global Compact, is relatively clearly understood as core operations, business partners, and host communities.¹⁵⁸ The former High Commissioner for Human Rights, Mary Robinson, refined this concept with the remark “clearly, the closer the company’s connection to the victims of rights violations, the greater is its duty to protect. Employees, consumers, and the communities in which the company operates would be within a first line of responsibility.”¹⁵⁹

Analyzing the wide variety of possibilities for the definition of “complicity,” it seems much more difficult to come to an accepted corporate understanding of this concept.¹⁶⁰ And yet differentiations are possible: With a small number of known corporate common sense measures, it should be possible to rule out “direct complicity” in the sense of consciously assisting a third party in violating human rights. A well-informed and sensitive management should also be able to avoid “beneficial corporate complicity” — defined as benefiting directly from human rights violations of a third party.

Staying clear of “silent complicity” is a bigger challenge, as this notion reflects the expectation that companies will alert the appropriate authorities about human rights violations of a certain character. To speak out about human rights, whether in corporate management development courses, contract negotiations with third parties, or other occasions, helps create a business environment that supports the protection of human rights. Individuals working in corporations may raise human rights issues at private meetings with higher-ranking officials, politicians, or ministers — even there, diplomatic suggestions may achieve better results

than overt criticism. Many companies, however, do not encourage their managers to adopt a highly political role while on corporate duty. They see no corporate mandate to act as a vehicle for global diplomacy. As public perceptions of corporate behavior might differ significantly from corporate perception regarding “silent complicity,” a position paper on this topic is advisable.

As a result of the discussion processes, the company will have a better understanding of all human-rights-related aspects of its activities and will be in a better position to decide the matter. Different issues will have a different weight and importance for different sectors (such as oil, textile, banking, data processing, or pharmaceutical industries). Even within a specific sector (in the pharmaceutical industry, for example, between research-based and generics companies), different problems will lead to different decisions regarding corporate human rights policy. For companies competing with integrity in all sectors, however, it should be possible to develop a relatively broad basic corridor for their human rights performance.

Implement

Once a company has self-regulated the details of its corporate human rights endeavors, a “normal” management process has to be implemented — that is, compliance with the human rights guidelines becomes part and parcel of normal business activities. The usual process parameters for this are the following:

- u Appoint a senior manager to be in charge of the human rights responsibility, including mainstreaming and supervising the human rights strategy throughout the business.
- u Initiate an interactive communication strategy for all employees (not only management) and develop an attractive

roll-out campaign in different languages to enhance interest in the issues.

- u Provide internal training of key personnel worldwide, using case studies of relevance to corporate business and a tool box (including dilemma sharing); involving relevant NGOs to provide an “out of the box view” adds to the quality of such endeavors.
- u Develop “measurables” — qualitative and quantitative benchmarks that are relevant to the human rights debate of the sector the company belongs to.
- u Set performance targets for sensitive responsibility areas (such as security and human resources) and link achievement to the remuneration of the managers responsible.
- u Ensure compliance monitoring throughout the corporation, with special emphasis on potential vulnerabilities of corporations in that sector.
- u Develop and implement external verification mechanisms.
- u Report on the success and failure of performance as well as other activities according to sector of activity.¹⁶¹

As such a complex implementation process will take some time, management should set milestones to keep track. If this is done, the promise “to support and respect the protection of international human rights” as well as “to make sure their own corporations are not complicit in human rights abuses” becomes a self-evident part of normal business activity.

The concrete effects of all corporate good faith efforts depend, however, not only on the company itself, but also on what other actors in civil society do. The challenges of respecting and supporting, if not fulfilling, human rights are so huge and complex that individual societal actors

can usually only contribute to solutions — on their own, they would be overtaxed.

Open Issues for Discussion in a Learning Forum

The human rights and business debate has progressed a great deal. There are, however, a number of outstanding open issues that need further debate in good faith among different stakeholders. Four will be touched on here:

- u How far does the corporate arm reach?
- u What is an appropriate verification process of corporate human rights performance?
- u What are useful indicators?
- u How can we develop a human rights-related “Richter Scale”?

How far does the corporate arm reach?

No reasonable person would dispute that corporate activities must be conducted in a manner that upholds the rights of employees and workers as well as the local communities they are active in. The issue at stake is to define reasonable boundaries for the human rights responsibilities of business enterprises. It is relatively easy to determine where it begins: A company should adopt explicit corporate guidelines on human rights and establish procedures to ensure that all business activities are examined for the content relevant to human rights. Wherever a company has direct control (that is, predominantly in its own operations), it can be held accountable for its human rights record. This includes the moral duty to protect the rights of employees against the illegitimate

interference of local authorities, for example by providing them with legal assistance in cases of them suffering from violations of their civil and political rights.

It gets a bit more difficult to exert indirect control — to influence suppliers, subcontractors, and business partners to adhere to the spirit of someone else's corporate responsibility standards, including human rights. Yet there are ways (processes) and means (carrots and sticks) to correct deficits and initiate policy changes that prevent them in future.

But what are the limits? What ought to be the nature and extent of corporate contributions to the creation of an enabling environment for the realization of human rights in countries whose human rights performance attracts justified criticism and where local standards conflict with international norms? In contrast to the long-standing¹⁶² disapproval of transnational corporations interfering in domestic political affairs, recent thinking from advocacy groups and well-intentioned NGOs seems to call for corporate involvement in human-rights-related political activities in “difficult” countries.

It is relatively easy to declare that, at the very minimum, corporations have a moral obligation to ensure they do not undermine elected governments or the democratic process, but it is much more difficult to draw the line between acceptable direct interference in the political process — such as against repression of religious, ethnic, or political opposition groups — and inappropriate interference. Should a multinational corporation working in a country that does not allow or that severely restricts unions contravene local laws? Should General Motors contribute to the fulfillment of Article 18 of the UDHR (the right to freedom of thought, conscience, and religion) by permitting Falun Gong meetings at its Shanghai plant?¹⁶³ Is a “good” company expected to close down its plants in a country after an undesirable

change of government from a legitimate one to a human-rights-abusive regime? How would someone balance the value of such a human-rights-affirmative “gesture” against the personal losses of employment and income? Would you have to ask the workers who are direct victims of a boycott decision — mostly poor people, who usually suffer most from such regimes — whether they accept a deterioration of their personal life conditions as the price of an external pressure that could lead in the long run to an improvement of the human rights record of their nation?

It is obvious that tolerance of other cultural and political systems must stop short of the violation of absolute moral norms — as a consequence, a violation of human rights (such as apartheid) should not be tolerated with the pretext of cultural or ethical relativism. As a private individual, I share Sir Geoffrey Chandler's belief that the days when companies could remain silent about human rights issues are over: “Silence or inaction will be seen to provide comfort to oppression and may be adjudged complicity. . . . Silence is not neutrality. To do nothing is not an option.”¹⁶⁴ I am also aware of the dilemma that on the one hand industry associations or chambers of commerce are stronger because they are collective voices for corporate human rights lobbying, while on the other hand associations “too often adopt a lowest-common-denominator approach to human rights issues, doing as much in the human rights sphere as their least courageous members (i.e. often nothing at all).”¹⁶⁵

It would be an encouraging first step if managers would give the right signals to human rights violators at non-official events by refusing to rationalize what cannot be rationalized, by refusing to level down what should not be leveled down, and by not trivializing what is not at all trivial to the victims of the human rights violations. Martin Luther King Jr. left us with the legacy that “we shall have to

repent in this generation, not so much for the evil deeds of the wicked people, but for the appalling silence of the good people.”

What constitutes an appropriate verification process for corporate human rights performance?

Christopher Avery reminds us that twenty years ago most people probably would have given business the benefit of the doubt in a human rights controversy, but that this is no longer the case: “In the past two decades they have been disappointed too many times by disclosures about the human rights record of particular companies. While they welcome news that a company has adopted a human rights policy, they now withhold judgment to see whether the company follows through with action and whether the results have been verified by an organization truly independent of the company and without any motive to sugar-coat the findings.”¹⁶⁶

For this reason, companies propose verification processes by external auditors along the same lines as done to audit the companies' books. Following the scandals of Enron and others, NGO representatives are skeptical of such solutions. They see a risk that auditors who are profitably associated with the company in other business areas are not “credible third parties.” For human rights verifications, for instance, the outside companies are probably not prepared to jeopardize their main business (auditing of the books) through a critical reporting on possible deviations from the path of virtue.

The “general overall principles of independent monitoring” for claims of good employer practices developed by Elaine Bernard, Director of the Harvard Trade Union Program, offer a good base of reference for external verification of a corporate human rights performance.¹⁶⁷ Credible human rights verifications must be:

- u *Independent* from the business enterprise being monitored. This independence, however, should not be defined so restrictively that the corporation monitored is not allowed to pay for it — this is not sustainable for any monitoring institution.
- u *Ongoing* — that is, according to a plan being announced on a relatively short-term basis and not simply a superficial “celebrity” visit. All parties affected by a human-rights-relevant business activity must be able to talk with monitors in complete confidentiality and without reprisals.
- u *Institutional*, in the sense that the monitoring agency must have independent authority and sufficient resources.
- u *Indigenous* — where indigenous people are affected, the monitoring process must include people who speak the language and live in the country where the human rights performance is being monitored.
- u *Trusted* — that is, with a track record within the area of competence.
- u *Knowledgeable* about the business activities under review and with an appreciation of what is common practice and what is not.
- u *Transparent* — that is, as open as possible and — after giving the monitored corporation an opportunity to comment on and, if necessary, initiate action to correct deficits — with the right to communicate information without corporate pre-screening or control.

The monitoring system developed and implemented in the context of the Mattel toy company by S. Prakash Sethi’s Monitoring Council, in which the claims that a company has made voluntarily and publicly are the focus of monitoring, holds a lot of promise for serious companies who “walk as they talk.”¹⁶⁸

So who would be suitable candidates as monitors? Theoretically, it would be ideal if specialized institutions that enjoy high levels of authority and credibility, such as Amnesty International or Human Rights Watch, could take on this role. To do this with any sustainable success, however, it would have to be possible for companies to pay for these services, as is the case with financial auditing, and it would have to be ensured that a verification process takes place in a way that both parties could consent to.

A company that systematically puts publicly proclaimed values into practice in the form of corporate citizenship guidelines and lives up to these in the form of consistent business practices has little to fear from external verification. However, it is in the nature of human beings that they tend to commit individual lapses, make stupid mistakes, or get priorities wrong. Every company with more than 1,000 employees must expect a normal distribution of individual virtues, social competence, and other elements of the collective profile of strengths and weaknesses — and thus also individual misconduct. Where corresponding management processes are implemented and such misconduct can be uncovered and corrected as a result, it can at least be shown that individual problem cases by no means represent “company policy.” In this respect, too, the presumption of innocence should apply — or at least there should be a certain “power sharing.” It cannot be that the functions of “police,” “prosecutor,” and “judge” are all in the hands of those doing the external verification.

Where a deviation from the rule is the exception and not the norm, but external verification reports fail to make this transparent, even best-practice companies will seek alternative processes. Activist groups who engage in naming and shaming based on generalized preconceptions are understandably not at the top of the wish list of companies seeking verification

services — but the dislike is probably reciprocal. With institutions on record for activism, there is at least a risk that there is a self-imposed compulsion to detect some form of misconduct in order to retain credibility with their own constituency — and then perhaps to make the “molehill” of individual laxness into a “mountain” of a business policy that violates human rights.

What are useful indicators?

An important step toward the acceptance of verification processes is a broad-based agreement on practicable human rights indicators — for example, in collaboration with the Global Reporting Initiative (GRI). Indicators help a company translate their commitment to human rights into tangible and concrete human rights “deliverables.” At the same time, they communicate to the outside world and to NGOs the responsibilities the company is willing to fulfill and in what way. There are no harmonized expectations and thus there will not be consensus among human rights stakeholders on all indicators, and so the debate will continue — but on a higher and better-informed level.

The general human rights indicators proposed by the GRI (see Table) encompass all essential problems of relevance to business and therefore offer a good approach to gaining a general picture of a company’s human rights performance.

To prevent unnecessary and high administrative costs, duplication of effort must be avoided. Rather than creating new indicators to assess performance on labor standards and the environment, existing indicators (the GRI, for example) can be used. After reaching agreement on a selection of these indicators (HR 5, 6, and 7 might be taken care of by labor standards, while HR 11 and 14 might not

Indicators for general human rights performance

Core Indicators	Additional Indicators
HR 1 Description of policies, guidelines, corporate structure, and procedures to deal with all aspects of human rights relevant to operations, including monitoring mechanisms and results.	HR 8 Employee training on policies and practices concerning all aspects of human rights relevant to operations.
HR 2 Evidence of consideration of human rights impacts as part of investment and procurement decisions, including selection of suppliers/contractors.	HR 9 Description of appeal practices, including but not limited to human rights issues.
HR 3 Description of policies and procedures to evaluate and address human rights performance within the supply chain and contractors, including monitoring systems and results of monitoring.	HR 10 Description of non-retaliation policy and effective, confidential employee grievance system (including but not limited to its impact on human rights).
HR 4 Description of global policy and procedure and programs preventing all forms of discrimination in operations, including monitoring systems and results of monitoring.	HR 11 Human rights training for security personnel.
HR 5 Description of freedom of association policy and extent to which this policy is universally applied independent of local laws, as well as description of procedures and programs to address this issue.	HR 12 Description of policies, guidelines, and procedures to address the needs of indigenous people.
HR 6 Description of policy excluding child labor as defined by ILO Convention 138 and the extent to which this policy is visibly stated and applied, as well as description of procedures and programs to address this issue, including monitoring systems and results of monitoring.	HR 13 Description of jointly managed community grievance mechanisms or authority.
HR 7 Description of policy to prevent forced and compulsory labor and the extent to which this policy is visibly stated and applied, as well as description of procedures and programs to address this issue, including monitoring systems and results of monitoring.	HR 14 Share of operating revenues from the area of operations that is distributed to local communities.

Source: Global Reporting Initiative: Sustainability Reporting Guidelines. Boston 2002, pp. 53-54.

be relevant to all sectors), a deeper sector-specific workup is needed, because factors of importance for different industries vary.

Due to the dimension of human rights deficits and the characteristics of the different generations of rights (“freedom from torture” is a first-generation right, for instance, while “right to medical care” is a second-generation right), it is also advisable to differentiate the indicators into rights that should be “respected,” “protected,” and “fulfilled.”¹⁶⁹ Companies must respect human rights in the sense of refraining from interfering with people’s pursuit of their rights. They must also — to the best of their abilities — protect in

the sense of preventing violations by other actors. But they can only to a limited degree fulfill, for example, economic, social, and cultural rights when and where the primary bearer of duty — the government — is not able or willing to do that. Philanthropic efforts, as laudable as they may be in fulfilling economic, social, or cultural rights, will not compensate for non-compliance with human rights essentials in normal business activities (such as benefiting from child labor).

For pharmaceutical companies, it has to be expected that in the context of economic, social, and cultural rights particular importance is attached to Article 25 of the

UDHR, and specifically to the “right to medical care.” To measure individual corporate human rights performance in the pharmaceuticals industry, the following indicators could be useful:

- u *generics* as a proportion of total production or business volume;
- u the use of *intellectual property* rights in least developed countries;
- u willingness to offer *differential pricing* with life-saving medicines for special patient groups;
- u *pro bono research* activities for tropical, neglected, or poverty-related diseases;

- u specific policies in place for the regulation of *clinical trials* in countries with no local laws to ensure protection from abuse (or at least no enforced laws);
- u *donations* of medicines for needy patients in developing countries and in emergencies brought on by wars or natural disasters; and
- u further activities in the health care sector of poor countries (such as through corporate philanthropy).

How can we develop a human rights-related “Richter Scale”?

When the media report on the “human rights abuses” of a company, the concerned public will typically think of very severe cases such as “complicity in the abuses of foreign governments related to genocide, war crimes, slavery, torture, execution, crimes against humanity or unlawful detention,” as Mary Robinson notes.¹⁷⁰ In reality, however, it may be that the facts in question are an “abuse of human rights” only from the point of view of specific, individual preferences. Human rights violations can be in the eye of the beholder, and the public debate reflects different views, all of them with merit. But if the critical view is situated well away from the mainstream of the debate, it will not represent a relevant benchmark for a company. Still, the damage to reputation is done.

The current spectrum of the discussion on human rights and business is extremely broad, covering questions from free trade and investment¹⁷¹ to bioethical issues concerning the human genome¹⁷² and research priorities of the pharmaceutical industry.¹⁷³ If we assume that violations of the right to life, slave labor, or child labor are a different “quality” of human rights abuses compared with, for example, the profit focus rather than the poverty focus of the research priorities of a

pharmaceutical company, then it becomes necessary to differentiate between varying degrees of human rights violations.

A good analogy for what is sought here is the “Richter scale.” Earthquakes are measured on the Richter scale, which enables even people untrained in seismology to estimate the severity of an earthquake. But what about human rights abuses? Are we talking here about research with embryonic stem cells, to which people attribute the whole potentiality of a human being on the basis of their religious beliefs or value systems, and thus also rights and a dignity that are capable of being abused? Or are we talking about contempt for humanity as manifest, for example, in child labor in gold and diamond mines of poor countries? Does the severity of the violation in the various cases not differ enormously, and should this not be taken into account with an appropriate weighting? Even accepting the “universality, indivisibility, interdependence, and interrelatedness of all human rights,” it is clear that, at the level of socioeconomic development, different rights carry different degrees of weight. For example, there can be no justification for “torture” or “political murder” at any level of development (a “10” on my human rights measurement scale), but the “right to rest and leisure, including reasonable limitations of working hours and periodic holidays with pay” (UDHR Article 24), on the other hand — while important — comes under a less essential category (a “2” on my scale).

Through general indicators, such as those of the GRI, as well as sector-specific indicators it should be possible to take the political heat out of human rights reporting and to de-politicize the verification process. Through grouping and weighting of different indicators, it then becomes possible to draw distinctions, such as:

- u “Code Green,” which refers to lesser sins of omission that can be easily remedied — for instance, pregnancy tests among women working in production (Article 12, “interference with privacy”) or regular overtime among members of management (Article 24, “right to leisure”);
- u “Code Orange,” such as unknowingly violating but not making efforts to find out; and
- u “Code Red,” the systematic violation of human rights within corporate activities or direct benefit from violations by subcontractors or subsidiaries.

In his first lecture series in Germany following the end of Nazi power, in the winter term of 1945-46, German philosopher Karl Jaspers reflected on “The Question of German Guilt.” And he identified four types of guilt, which are also of relevance for the present discussion — the following is quoted from the English version:¹⁷⁴

- u *Criminal guilt:* Crimes are acts capable of objective proof and violate unequivocal laws. Jurisdiction rests with the court, which in formal proceedings can be relied upon to find the facts and apply the law.
- u *Political guilt:* This, involving the deeds of statesmen and of the citizenry of a state, results in my having to bear the consequences of the deeds of the state whose power governs me and under whose order I live. Everybody is co-responsible for the way he is governed. Jurisdiction rests with the power and the will of the victor, in both domestic and foreign politics. Success decides. Political prudence, which takes the more distant consequences into account, and the acknowledgement of norms, which are applied as natural and international law, serves to mitigate arbitrary power.

ii *Moral guilt*: I, who cannot act otherwise than as an individual, am morally responsible for all my deeds, including the execution of political and military orders. It is never simply true that “orders are orders.” Rather — as crimes even though ordered (although, depending on the degree of danger, blackmail and terrorism, there may be mitigating circumstances) — so every deed remains subject to moral judgment. Jurisdiction rests with my conscience and in communication with my friends and intimates who are lovingly concerned about my soul.

iii *Metaphysical guilt*: There exists a solidarity among men as human beings that makes each co-responsible for every wrong and every injustice in the world, especially for crimes committed in his presence or with his knowledge. If I fail to do whatever I can to prevent them, I too am guilty. If I was present at the murder of others without risking my life to prevent it, I feel guilty in a way not adequately conceivable either legally, politically or morally.... jurisdiction rests with God alone.

With these distinctions between different types of guilt, Jaspers sought to “preserve us from the superficiality of talk about guilt that flattens everything out on a single plane, there to assess it with all the crudeness and lack of discrimination of a bad judge.”¹⁷⁵ Enlightened corporations, under all circumstances, will shy away from criminal guilt; they will create a corporate governance structure to avoid the political guilt of not making the corporate “dos” and the “don’ts” unmistakably clear; and last but not least, they will strive for a management who feels also morally accountable for actions and omissions. As to Jaspers’ fourth category, as long as Amnesty International annual reports have more than 20 pages, we will all have to live with metaphysical guilt.

Preliminary Conclusions

“The Universal Declaration of Human Rights represents the most important value catalogue for human beings in all cultures and at all times.”

The Universal Declaration of Human Rights represents the most important value catalogue for human beings in all cultures and at all times. This declaration affirms that there are certain non-negotiable rights that are enjoyed by all people in all places at all times based simply on the fact that they are human beings. It is precisely in the context of globalization, where different cultures, social constitutions, and socio-economic conditions meet, that this common denominator is also of utmost importance to companies. Business enterprises need to do their respective “homework” and act consistently in order to adjust the corporate social responsibility concept to the changed socio-political framework of a globalizing world.¹⁷⁶

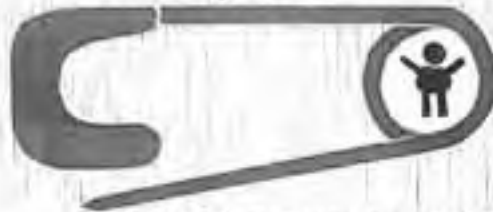
Beyond the day-to-day responsibilities of business, one of the most important questions for managers of global companies is, What kind of a world do we wish for ourselves and our children? Whatever the individual value-based preferences may be regarding a right to life in dignity, justice, equality of opportunity, and fairness, it cannot be a world in which human rights are not respected. And what duties are we prepared to assume to ensure that our vision of an “ideal” world as we see it can be achieved? This is something that has to be decided by every individual, in their families, in their jobs, and in their role as citizen. Karl Jaspers notes that as in the context of elections, anyone can say “that if he does not vote, it will not change the election result, but he will vote anyway because he knows that all individuals together make up the result. So the moral force of the seemingly vanishing individual

is the only substance and the true factor for what becomes of humanness.”¹⁷⁷

Change — even corporate change — is always initiated by minorities, by intellectual elites who take the risk upon themselves of being pioneers in uncharted territory; “the big values always remain closely tied to the small number.”¹⁷⁸ All those who are making their contribution to the world they would like to see for their children should be confident, for as Margaret Mead once reminded us, “Never doubt that a small group of thoughtful, committed citizens can change the world; indeed it’s the only thing that ever has.”¹⁷⁹

“What kind of a world do we wish for ourselves and our children? And what duties are we prepared to assume to ensure that our vision of an “ideal” world as we see it can be achieved?”

1. EVERYONE CHARGED WITH A PENAL OFFENCE HAS THE RIGHT TO BE PRESUMED INNOCENT UNTIL PROVED GUILTY ACCORDING TO LAW IN A PUBLIC TRIAL AT WHICH HE HAS HAD ALL THE GUARANTEES NECESSARY FOR HIS DEFENCE.



2. NO ONE SHALL BE HELD GUILTY OF ANY PENAL OFFENCE ON ACCOUNT OF ANY ACT OR OMISSION WHICH DID NOT CONSTITUTE A PENAL OFFENCE, UNDER NATIONAL OR INTERNATIONAL LAW, AT THE TIME WHEN IT WAS COMMITTED. NOR SHALL A HEAVIER PENALTY BE IMPOSED THAN THE ONE THAT WAS APPLICABLE AT THE TIME THE PENAL OFFENCE WAS COMMITTED.

Introduction

“Understanding key human rights concepts is only the first step toward implementing an effective corporate human rights program.”¹⁸⁰

Understanding key human rights concepts is only the first step toward implementing an effective corporate human rights program.¹⁸⁰ The experience of companies making the GC principles part of their corporate strategy, culture and day-to-day operations illustrates the practical challenges of corporate human rights compliance.

The companies that presented human rights cases at the GC Learning Forum Meeting in Nova Lima, Brazil represent different industries, geographies and stages of human rights engagement.¹⁸¹ BP p.l.c., headquartered in London, is the world’s largest integrated oil company with 2003 revenues of \$236 billion, over 115,000 employees, and operations in more than 100 countries on five continents. Hewlett Packard (HP), the U.S.-based technology company, recorded \$73 billion in sales in 2003, employs 142,000 people and operates in 178 countries. BHP Billiton is an oil and mining company based in Australia and the United Kingdom with \$15.6 billion in sales and 34,000 employees in 20 countries. Denmark’s Novo Nordisk is one of the world’s leading producers of insulin, with 2003 revenues of \$4.5 billion, 18,000 employees, production in seven countries and affiliates in 68 countries. All are public companies listed on at least one major stock exchange.

BP’s case study describes the human rights compliance regime surrounding the Baku-Tbilisi-Ceyhan (BTC) pipeline project. BP leads a consortium of

companies constructing a thousand mile oil and gas pipeline that will carry up to a million barrels of oil a day from the Caspian Sea in Azerbaijan through Georgia to the southeastern Turkish port of Ceyhan on the Mediterranean. HP presents its efforts implementing a Human Rights and Labor Policy based on the Universal Declaration. BHP Billiton provided a leading human rights advocate with open access to its South African facilities to assess corporate human rights compliance. In the final case, Novo Nordisk outlines its own efforts to implement a human rights compliance program in its supply chain.

The general applicability of the lessons drawn from the four case studies included in this publication is necessarily limited. One clear lesson is that no two companies will implement a corporate human rights program in exactly the same way. The cases do, however, serve to highlight key issues facing companies seeking to implement the GC human rights principles. Common elements of their experience include 1) making the business case for a corporate human rights program, 2) assessing human rights issues and vulnerabilities, 3) identifying relevant standards, 4) determining the appropriate scope for the human rights program, 5) making the program operational, and 6) measuring and reporting results.

The business case

“Open markets, steady economic development and an open society are the best conditions in which we can pursue our business.”

**—Sir John Browne
CEO, BP**

Implementing the Global Compact Human Rights Principles

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The decision to make human rights compliance a business issue is driven by industry structure, corporate culture, external and internal pressure, and in some cases, business strategy.

Industry structure and experience shapes corporate human rights programs. Companies in the extractive industries, with large fixed capital investments, difficult operating environments and close financial relationships with host governments, face a different set of human rights issues than companies sourcing labor-intensive, low wage goods. Technology and pharmaceutical companies face distinct issues of government customers and accountability for the end use of their products.

BP, and the extractive industry generally, has had much more experience with human rights issues, both as the subject of allegations of direct human rights violations and complicity in state human rights abuse, and in developing responsive corporate human rights policies.

“Open markets, steady economic development and an open society are the best conditions in which we can pursue our business. This is contrary to the common belief that companies find it easier to [support] the apparent stability of regimes than to manage the uncertainties of democracy. Stability built on repression is always false. Sooner or later the waters break the dam.” —Sir John Browne, CEO, BP¹⁸²

Leading companies are under a spotlight. In the words of one energy executive: “Governments pay attention to what we do.”

In the technology sector, human rights issues are not yet clearly on the industry’s radar screen. The technology sector shares many of the same supply chain issues with industries like apparel and sporting goods, but technology companies are taking only their first steps to implement codes of conduct, and do not contemplate collective industry-wide

standard-setting or monitoring programs. Technology companies face privacy issues related to the collection of customer information. The use or acquisition of technology by government customers with poor human rights records raises questions of the appropriate extent of the company’s influence and responsibility.

Like the technology and manufacturing sectors, pharmaceutical companies rely on global supply chains. Like the extractive sector, market access frequently requires pharmaceutical companies to develop close relationships with local governments. Pharmaceutical companies also have been the subject of allegations of human rights abuse concerning the conduct of clinical trials in developing countries and are at the center of the global debate over equitable access to life saving drugs.

Corporate culture shapes any attempt to develop a human rights policy.

“Corporate culture shapes any attempt to develop a human rights policy.”

At HP, the principles adopted by founders Bill Hewlett and Dave Packard more than forty years ago serve as a basis for the company’s current human rights initiatives.

“Good citizenship is good business. We live up to our responsibility to society by being an economic, intellectual and social asset to each country and community in which we do business.” —HP Corporate Objectives (1957)

HP’s human rights programs began in 2002 when the company adopted a “Global Citizenship Policy,” in which HP pledges to uphold and respect human rights as reflected in the Universal Declaration of Human Rights, and commits to fair labor practices and the

respectful treatment of all employees.¹⁸³ HP then began to assess human rights issues in its supply chain, prompted by the concerns of HP’s own procurement managers. HP became one of the first major U.S. companies to sign on to the Global Compact in 2002. A year later, HP adopted its Human Rights and Labor Policy, which explicitly incorporates the language of the GC human rights principles and addresses forced and child labor, minimum wages, working hours, nondiscrimination, inhumane treatment and freedom of association.¹⁸⁴

In its Health, Safety, Environment and Community Policy adopted in 2002, BHP Billiton declares its commitment to “support the fundamental human rights of employees, contractors and the communities in which we operate.” BHP’s mandatory Management Standards for all company operations and activities include performance requirements for human rights compliance. These standards require systems to ensure that “employees and contractors are familiar with and abide by the Articles of the Universal Declaration of Human Rights.”

According to Novo Nordisk, core company values, the company’s vision of sustainability and the acknowledgement of potential risks led to company efforts to improve human rights standards systematically across its business. The Danish insulin maker also took up human rights issues relatively recently — launching a human rights review in 1999. The company’s approach placed human rights at the center of a company-wide effort to “specify values and set priorities.” Novo adopted the Universal Declaration of Human Rights as its benchmark in 1999 and joined the Global Compact in 2001. For Novo, human rights compliance is a way to express company values as well as manage risk. According to company representatives, the knowledge Novo gathers through the process helps the company to understand its human rights sphere of responsibility.

“Impetus for corporate human rights programs comes from both the top and the bottom of an organization.”

Impetus for corporate human rights programs comes from both the top and the bottom of an organization.

Corporate leaders can make the case for a corporate human rights program. The commitment of a company’s chief executive can lead to the adoption of corporate human rights programs, and the support of senior management is critical for the successful implementation of company human rights initiatives. BP’s chief executive, for example, led efforts to position the company at the forefront of the corporate responsibility movement. “Business should be a force for good,” is a frequent refrain of BP’s Chairman, John Browne. BP’s decision to implement the GC human rights principles in its BTC pipeline project was driven by the company’s public commitments to corporate responsibility and BP’s experience with earlier projects, such as in Angola, as well as the momentum generated by the process of stakeholder engagement throughout the planning, negotiation and construction of the project. In 1998, BP had adopted an Ethical Conduct Policy that explicitly supports the principles set forth in the Universal Declaration and the ILO Tripartite Declaration.

Frontline managers can also generate internal pressure for improved human rights compliance and explicit human rights standards. HP’s foreign procurement managers were an early voice for a human right policy for the company’s suppliers. A local BP project manager was a driving force behind the human rights provisions of the BTC pipeline.

Employee perceptions that human rights are not an issue for their company can be an obstacle when making the business case for a human rights program. In the case of Hewlett-Packard, many HP employees expressed the belief that the “HP way” sufficiently addressed human rights issues. Treating employees fairly, not engaging in age or race discrimination, not using suppliers who do not comply with HP’s supplier code of conduct was viewed simply as good business, or the “HP way.”

Finally, the cases indicate that language plays an important role making the business case for corporate human rights compliance. Terminology is important. Companies already may be addressing human rights issues without using or understanding human rights language. HP, when it began to develop a human rights program, found that HP employees were unfamiliar with human rights terminology. Using common language is important for beginning conversations about business and human rights. In the BHP Billiton case, human rights language served to bring the company and the human rights community together.

Assessment

In each case, the company gathered information to assess the company’s potential human rights issues and vulnerabilities. Companies collected information through internal and external research, interviews and surveys; and dialogue with external stakeholders. BP included a human rights assessment as part of its extensive due diligence for the BTC Project. BHP has developed a Self-Assessment Toolkit for its operations that includes a graduated risk assessment for defined human rights issues. HP and Novo sought to identify human rights issues in their supply chains through interviews and surveys. Twenty-six people work in Novo’s stakeholder relations department,

independent of the public relations and communications function. A key question for Novo Nordisk was, “How do you find out what you don’t know?” Novo conducted an initial supplier survey of 289 suppliers representing eighty percent of the value of the company’s purchasing. Novo returned to those suppliers and asked, “What do you think we should do?”

Standard setting

Every company that adopts the Global Compact commits to incorporate the GC human rights principles in its operations. *Internationally proclaimed human rights standards become the relevant international standards for GC companies.*

One political obstacle to standard setting that emerges from the cases is corporate pressure not to offend particular governments by adopting international human rights standards that exceed local standards or practice.

Based on its human rights assessment, each company identified the international human rights standards particularly relevant for its operations. BP, Novo, and HP explicitly reference the Universal Declaration of Human Rights in their corporate codes of conduct.

BP’s BTC pipeline project is noteworthy for the extent to which international standards are incorporated explicitly in the legal framework of the project. BP incorporated in core Project documents a commitment to respect applicable human rights standards under European Union law, in the Universal Declaration, the ILO Tripartite Declaration and the OECD Guidelines. In response to concerns raised by nongovernmental human rights organizations, BP drafted and orchestrated the signing of a Joint Statement by the three host governments guaranteeing adherence to internationally recognized human rights standards, including a

commitment to the standards contained in the Voluntary Principles on Security and Human Rights. The joint statement was the first legally binding commitment to the Voluntary Principles. BP also executed a Human Rights Undertaking that protects government rights to regulate human rights without triggering financial penalties, and the rights of injured parties to bring claims against the BTC Project in domestic courts.

For HP, key compliance issues are privacy, human conditions in the supply chain and labor conditions. After extensive benchmarking and research, HP developed its own code of conduct — HP's Human Rights and Labor Policy. The most common default standard for corporate codes of conduct is compliance with local law. Where local standards differ from home country or widely accepted international standards, companies must choose an appropriate standard. An important question for HP was whether company policies should default to local legal standards. HP found that its U.S. managers were generally comfortable with local standards, while its local managers outside the United States expressed a preference for adhering to international standards that exceed local law. In some instances, such as HP's designation of sexual orientation as a prohibited basis for discrimination, HP's own policies were stricter than local law. In Malaysia, for example, it is common for local temporary employment agencies to base hiring decisions on age and race. HP Malaysia instead uses global temporary agencies that comply with HP's Human Rights and Labor Policy, despite the higher cost. HP has also engaged the Malaysian government on the issue of improving local labor laws.

Novo identified three priority areas on human rights: the right to health, the right of non-discrimination and the right to privacy. Supply chain standards also emerged internally as an important issue. To define the right to health, Novo looked

to international standards promulgated by the World Health Organization.

Under the South African Constitution, international human rights, including social and economic rights, are explicitly incorporated in national law. The advocate assessing BHP's human rights compliance with its Company Charter and Guide to Business Conduct identified HIV/AIDS education, remuneration and employment policies as key human rights issues for BHP. She found that the company standards needed to be better communicated and integrated throughout the company.

Scope

A company must determine the appropriate scope for its human rights program. Will human rights compliance efforts focus on the company's own employees or extend to suppliers and business partners? How far down the supply chain should a company seek to enforce human rights standards?

BHP employs company audits determine whether company sites have identified the Universal Declaration articles relevant to the business and communicated them to employees, contractors and business partners.

With more than 40,000 suppliers, HP began by asking its top forty suppliers, representing eighty percent of HP purchasing, to conduct a compliance self-assessment. If problems are identified, HP works with the supplier to remediate the problem. HP has incorporated these standards as contractual obligations for its top forty suppliers, and aims eventually to include them in all supplier contracts.

Novo completed a second social and environmental evaluation of ninety percent of the company's key suppliers in 2003, finding approximately two percent self-reported unsatisfactory performance. All non-compliant suppliers are audited and

asked to make assurances to Novo about improvements. *To date, no supplier has been dropped by Novo for noncompliance.*

An individual company's efforts to assess human rights conditions in its supply chain can raise human rights awareness at other companies. Novo's human rights questionnaire, according to one of its German suppliers, made that company realize that it must examine the same issues in its own supply chain. Novo has encouraged this "cascading effect" to second and third tier suppliers. According to HP, some U.S. based chip makers addressed human rights issues for the first time when they received a human rights questionnaire from HP asking about human rights practices among its suppliers.

The way a company defines its sphere of influence and assesses complicity risk will determine the appropriate scope for its corporate human rights program. An investment such as the BTC pipeline gives BP a wide sphere of influence and substantial complicity risk. BP's human rights compliance efforts for the project have been correspondingly comprehensive. Other companies are still defining the appropriate scope for their human rights compliance efforts. One question facing HP, for example, is, "When the internet is your marketplace, how should a company define the 'community where it operates'?" How should technology companies who have no business relationship with the end-users of their products, address the use of their products to commit human rights violations or by repressive regimes, for example? HP is exploring ways to go beyond legal compliance to its policies on customer uses of its products.

Implementation

“You should not underestimate the capacity of workers to absorb new values.”¹⁸⁶

Effectively implementing a corporate human rights program may require launching new policies and procedures, developing monitoring mechanisms, educating and training employees, creating incentives for corporate compliance, and engaging outside stakeholders.

“Developing an internal policy is important for four main reasons: 1) policy helps to define the company’s own commitments, 2) it guides company relationships with business partners and host governments, 3) it provides the basis for assessing company performance, and 4) it can serve as the vehicle for demonstrating its commitment to external stakeholders.”¹⁸⁵

Programs often begin with a code of conduct defining relevant standards for corporate conduct. A code, of course, is only the first step toward an effective program. A challenge for companies is how to internalize international principles. The BP case illustrates the value of institutionalizing multi-stakeholder standards in the legal regime. BP engaged stakeholders in conversations at every stage of the project, and worked to address criticisms. Based on input from stakeholders, BTC routed the pipeline to avoid areas of conflict and to minimize its impact on local communities. According to BP, no people have been displaced and no structures have been torn down in the construction of the pipeline.

Companies must then train the relevant stakeholders, including their own employees and suppliers, on the practical aspects of the corporate human rights program and build (or purchase) the capacity to implement it. Novo conducted a two-year

program of workshops and training for supply chain managers before distributing its human rights compliance questionnaire to suppliers. Managers initially expressed concerns that the questionnaire could harm relationships with suppliers or be overly time-consuming. Over time, Novo has noted a correlation between the level of learning and the level of human rights integration within the company.

Companies must create incentives for implementing a human rights program. An HP goal is to incorporate human rights into its performance evaluation systems. Novo employs individual incentives for implementing its human rights program.

Companies employ internal and external monitoring to ensure compliance. Novo’s program includes screening for high risk and high business impact issues, a self-assessment questionnaire and targeted audits. Novo audited ninety percent of its key suppliers. The BTC project incorporates nine levels of internal and external monitoring for the life of the project.

No corporate human rights program can be effective if it remains static or lacks the capacity to evolve. Each of the cases included here make the point that implementing the GC human rights principles is an ongoing process. The BTC Project, still under construction and expected to be operational for at least forty years, foresees the further development of human rights monitoring instruments and grievance mechanisms in collaboration with Amnesty International and other nongovernmental organizations. —HP’s next steps include better integrating its four major human rights-related policies into existing practices, making human rights criteria explicit, identifying and prioritizing the human rights issues HP is most likely to face, educating employees and management to identify these issues, and developing a framework to deal with the issues they identify.

Novo’s next steps include encouraging suppliers to require the same standards of their suppliers, and mapping the company’s sphere of influence, and developing its Human Rights Management System. BHP Billiton views the human rights audit as an opportunity to improve business performance, since addressing employee health issues requires building trust with employees.

“You should not underestimate the capacity of workers to absorb new values.”¹⁸⁶

Reporting

Every company that implements a human rights compliance program faces the issue of whether, and how, to make public the program and its results. The benefits of transparency and disclosure include greater credibility with stakeholders and critics, continuous improvement, and the adoption of best practices by others. The downside for companies are the risks of disclosing information that could benefit competitors, becoming a target of critics, or damaging corporate reputation. An obstacle to greater corporate transparency is the general reluctance of the private sector to publicize failures or initiatives under development.

According to BP, the BTC project is the first extractive project of this magnitude to embrace transparency — 11,000 pages of project documents are publicly available, including host government agreements signed with each country, production sharing agreements and environmental and social compliance reports.¹⁸⁷ How the governments subsequently use those funds is not publicly disclosed.¹⁸⁸ Novo publishes a corporate Sustainability Report featuring triple bottom line reporting on the company’s financial, social and environmental performance.

Dialogue with stakeholders on corporate human rights issues is one element of transparency. When criticized, companies

can ignore their critics, respond and/or act on the criticisms. Amnesty International UK issued a report arguing that the legal agreements between the BP consortium and the host governments governing the BTC pipeline undercut the governments' ability to ensure human rights and that the pipeline was at risk of "contributing indirectly to human rights violations."¹⁸⁹ Specifically, Amnesty International objected to the potential conflict between the legal framework for the pipeline and Turkey's international human rights obligations, and expressed concern over the delegation of all pipeline security to Turkish authorities with a record of unlawful suppression of peaceful protest. BP took the extraordinary steps, following intensive negotiations with AI, of modifying the project revenue agreements, issuing a joint statement with the local governments on human rights standards, and binding themselves legally to address the human rights concerns raised by AI.¹⁹⁰ According to one BP executive, "Our work with Amnesty International was an eye-opener, they viewed things in a way we never would have."¹⁹¹

"The impact of the dialogue — while only representing a beginning — was immediate and broad, providing Amnesty with new credibility as a guide and interlocutor with the business community, and BP/BTC with diminished reputational and legal risks with respect to the Project and enhanced brand equity."¹⁹²

Novo is a member of the cross-sector Business Leaders Initiative on Human Rights.¹⁹³

Sharing results is not easy for companies, however. According to BP, for extractive projects it finances, the World Bank holds the key for disseminating lessons effectively.

Finally, these cases highlight the need to create mechanisms for sharing best practices. The learning network model of the Global Compact is one mechanism for companies

to share experiences implementing the GC principles in the emerging field of business and human rights.

NO ONE
SHALL BE SUBJECTED TO
ARBITRARY INTERFERENCE
WITH HIS PRIVACY, FAMILY,
HOME OR CORRESPONDENCE,
NOR TO ATTACKS
UPON HIS HONOUR AND
REPUTATION.
EVERYONE HAS THE RIGHT
TO THE PROTECTION
OF THE LAW
AGAINST SUCH
INTERFERENCE
OR
ATTACKS.



** Peer review of this case study was provided by Professor Errol P. Mendes, University of Ottawa. Funding for this case study was provided jointly by BP p.l.c. and Foley Hoag.*

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The BTC Pipeline Case Study: Following through on Global Compact Commitments*

Gare Smith
Foley Hoag LLC**

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Case Abstract

This case study focuses on the Baku-Tbilisi-Ceyhan (“BTC”) oil and gas pipeline project which, when completed, will carry up to a million barrels of oil a day over a thousand miles across the Caspian region and provide the first direct transportation link between the Caspian and Mediterranean Seas. In designing the BTC Project, BP p.l.c. (“BP”), the Project operator, on behalf of itself and the other shareholders (collectively, “BTC Co”), sought to establish a new benchmark for a major infrastructure project with respect to the promotion of internationally recognized human rights and environmental standards. To this effect, BP incorporated into core Project documents a commitment to respect applicable standards articulated in the U.N. Universal Declaration of Human Rights (“UDHR”), the Tripartite Declaration of Principles established by the International Labor Organization (“ILO”), and the Guidelines for Multinational Enterprises promulgated by the Organization for Economic Cooperation and Development (“OECD”). Early initiatives to implement such standards included efforts to avoid a significant environmental and safety hazard, adopt a precedent-setting level of transparency, and comprehensively engage local populations.

Despite these commitments and BP’s initial efforts to implement them, several non-governmental organizations (“NGOs”) raised environmental and human rights concerns about the Project. In particular, these organizations contended that the pipeline could undermine the human rights of local residents, endanger the environment, and spark further conflict in a region that suffers from ethnic tension. This case study is primarily relevant to concerns raised in conjunction with Principles 1, 2, and 7 of the U.N. Global Compact regarding broad human rights and environmental principles, including the overarching objective that businesses are expected to support and respect,

within their spheres of influence, the protection of international human rights and adopt a precautionary approach in addressing environmental challenges.

After these concerns were raised by the NGOs early in 2003, BP guided BTC Co in addressing the issues in several ways. In the most far-reaching response, the company drafted and orchestrated the signing of a “Joint Statement” on May 16, 2003 by the three host governments, guaranteeing adherence to internationally recognized human rights, labor rights, and environmental standards, including a commitment to the standards espoused in the Voluntary Principles on Security and Human Rights (“Voluntary Principles”). Additionally, BP engaged Amnesty International (“Amnesty”) in an open dialogue about Amnesty’s concerns regarding the Project. As a result of this dialogue, BTC Co took steps to address Amnesty’s chief concern by drafting and signing a Deed Poll, a legally binding contract designed to protect the rights of the three host governments to promote and regulate human rights and environmental issues.

Although the BTC Project continues to face opposition from a group of NGOs that sought to halt funding for the Project from the International Finance Corporation (“IFC”) and the European Bank for Reconstruction and Development (“EBRD”), Amnesty, without endorsing the Project per se, has welcomed the company’s commitment to promote the highest human rights standards. BP may have been able to avert some of the NGOs’ concerns by undertaking a Human Rights Assessment and proactively engaging with these stakeholders at an earlier juncture. In light of the Project’s anticipated lifespan of forty years, the primary challenge facing BP at this juncture will be to effectively operationalize and implement the standards it has set.

Company Profile

The BTC Project is owned by BTC Co and its shareholders — a group of eleven petroleum companies with upstream interests in the Caspian region. BP holds the largest ownership share in BTC Co, and will act as the operator of the Project.

BP is the holding company of one of the world’s largest petroleum and petrochemical groups. Its main activities include the exploration and production of crude oil and natural gas; the refining, marketing, supply, and transportation of those products; and the manufacturing and marketing of petrochemicals. BP is also active in exploring renewable sources of energy generation, including solar power. It has operations in over 100 countries in Europe, North and South America, Asia, and Africa.

BP is one of the three largest integrated energy companies and has one of the top three reserves in the global oil and gas industry. Each day BP generates approximately three million barrels of oil equivalent production. With revenues of \$179 billion, market capitalization of \$152 billion, and over 115,000 employees, BP is among the world’s most significant multinationals. During the past decade it merged with Amoco and acquired other companies, including ARCO. Although BP maintains a diversified portfolio, the BTC Project is of great importance to the company and is the largest cross-border project in the world.

During the past decade, BP developed a reputation for adopting progressive policies, which are also closely associated with its chief executive, Lord John Browne. Lord Browne’s introduction to BP’s website states, “A good business should be competitive, progressive and a force for good. In everything we do, we seek to make a constructive contribution to the world’s increasing requirements for energy and materials.”

BP's business principles were adopted by all of BTC Co's shareholders for the BTC Project. To this effect, BTC Co shareholders are committed to "respecting the rule of law, conducting [their] businesses with integrity, and showing respect for human dignity and the rights of the individual wherever [they] do business; creating mutual advantage in all [their] relationships so that people will trust [them] and want to do business with [them]; demonstrating respect for the natural environment and work towards [their] goals of no accidents, no harm to people and no damage to the environment; and managing [their] financial performance to maximize long-term value for [their] shareholders."¹⁹⁴

The BTC Pipeline Project

Scope and History of Project

The BTC Project is of great regional significance because it represents the first direct transportation link between the Caspian and the Mediterranean Seas, thereby avoiding the environmentally sensitive Turkish Straits (including the Bosphorus, which flows through the center of the World Heritage City of Istanbul). The Caspian region has the potential to become one of the major oil and gas producing areas in the world; its oil and gas reserves are estimated to be similar in size to those in the North Sea and the Gulf of Mexico. The landlocked nature of the Caspian Sea, however, combined with the limited capacity of pipeline and rail networks serving the region and the reliance of the existing networks on export via the Turkish Straits, have posed particular challenges for the long-term development and export of Azerbaijan's petroleum resources.

The pipeline will be the primary conduit for oil produced from the Azeri-Chirag-Gunashli ("ACG") oil field, which is about 100 kilometers off the coast of Baku and has an estimated 5.4 billion barrels of recoverable resources. Oil exports from the development of ACG are expected to increase to more than one million barrels a day by 2009 and this production could meet up to 10% of incremental global oil requirements over the next decade. The pipeline will stretch for 1,760 kilometers from Baku, through Georgia, to the port city of Ceyhan in southeast Turkey. From Ceyhan, the oil will be loaded onto tankers and transported to international markets. The estimated cost of the pipeline's construction is \$2.95 billion.

When it is completed in 2005, the Pipeline and the associated ACG, Shah Deniz, and South Caucasus Pipeline ("SCP") projects will have generated more than \$20 billion in investment. This investment is expected to enable the Azerbaijan Republic to realize between \$30 and \$65 billion in revenues from the sale of its oil. Additionally, Georgia and the Republic of Turkey will together realize approximately \$2.4 billion in transit revenues during the first twenty years of operation and the Shah Deniz and SCP gas Projects will deliver energy throughout the region. Approximately 10,000 jobs will be created during the construction of the pipeline and approximately 850 permanent positions will be established during its 40 years of anticipated operation.

The oil and gas production facilities and pipelines in Azerbaijan, the pipelines in Georgia, and the pipelines and terminal in Turkey represent the largest single foreign direct investment in each country. This presents both opportunities and challenges for the Project and the host governments.

Consultations With Stakeholders

According to BTC Co, the Project was designed to "demonstrate that business can be conducted in a way that makes a positive commitment to human rights." It was also intended to be "a model for good corporate governance, and ...not become a catalyst for conflict in the region."¹⁹⁵ As the Project's operator, BP states that it is committed to "ensuring that the project results in real benefits for the countries through which the pipeline passes — from the seats of government, to local villages and farmers living along the pipeline route."¹⁹⁶

In an early effort to implement that commitment, BP undertook steps to ensure that the more than 450 communities and 30,000 landowners and land users affected by the pipeline were consulted over a 20-month period. BP publicly emphasized that it was critical to the Project's success that communities along the pipeline route and those directly affected by construction were actively involved in project planning. Community-level consultation occurred at every settlement within two kilometers of either side of the pipeline right of way, within two kilometers of potential locations for pipe yards, and within five kilometers of potential sites of major construction camps. The objective behind such extensive consultation was to secure significant community involvement and support at the outset of the Project by dealing with concerns proactively and supporting sustainable community development.

BTC's consultation process was based on the IFC's policy on Disclosure of Information. The consultation and disclosure process carried out for the BTC Project was designed to comply with international best practices and was unprecedented in scope. BP based this process on the IFC's guidelines for

managing a public consultation process: plan ahead; test the program; invest time and money; involve operations managers directly; hire and train the right people; maintain overall responsibility; coordinate all consultation; build dialogue and trust; manage expectations; work with governments; and work with NGOs and community-based organizations.

Key stakeholders for the Project were identified at an early stage: local authorities; national and local NGOs with an interest in the project and useful data or insight into local and national challenges; broad-based interest groups, such as the media, academics, foundations, and community organizations; residents of communities adjacent to the pipeline corridor and above-ground installations; landowners and land users, including migratory herders who would be affected by the Project and fishermen near the marine terminal; international financial institutions (“IFIs”), including the IFC and the EBRD; and BTC partner organizations.

Several projects were commissioned by BTC Co prior to commencement of the Project to communicate the Project sponsors’ goals and expectations to affected communities. One of these was the “Regional Review,” which was prepared to stimulate dialogue between the Project sponsors and the relevant stakeholders, as well as to increase the flow of information about the Project. The Regional Review reflects 18 months of consultation and evaluation and serves as a comprehensive socio- and macro-economic assessment of the BTC Project’s impact on the region. No other extractive sector project has undertaken a broader or more extensive multi-dimensional assessment of its impact on surrounding communities.

One of the Regional Review’s principal findings is that the BTC Project can serve as an example and as a positive influence by engaging with stakeholders in

constructive dialogue and incorporating them into the business process. Within the business teams, there was also agreement that the Project should use best international practices and standards. Broadly speaking, the issues addressed by the Review can be divided into three categories: economic (oil and gas revenues; employment, and procurement; community/social investment; and domestic energy), social (ethical performance; human rights; and conflict); and environmental (biodiversity; oil spill response; and greenhouse gas emissions).

Perhaps most important with respect to community engagement, the most detailed consultation regarding the pipeline route was done as part of the integrated Environmental and Social Impact Assessments (“ESIAs”). A separate ESIA was conducted for each of the three nations, as required under the Host Government Agreements (“HGAs”) signed by BTC Co with each sovereign government. The ESIAs examined the potential environmental and social impacts of the projects on the biological, physical, and human environment. The ESIA process culminated in the production of a draft ESIA report for each country, which was followed by a 60-day public consultation, disclosure, and review period. Comments received during the review stage were incorporated into a final ESIA report, which was submitted to the host government for review and approval. Management and monitoring plans were developed as part of an effort to ensure that the commitments made in the ESIAs will be delivered and acted upon throughout the life of the Project.

During the preparation of the ESIAs, a range of participatory consultation mechanisms were employed, including one-on-one interviews with members of the local communities along the pipeline corridor, workshops with local and international NGOs, workshops and meetings with regulatory authorities, meetings with scientists and experts,

feedback questionnaires, and project information leaflets. Cultural and gender-specific mechanisms were developed in an effort to maximize the consultation’s effectiveness, including female-to-female meetings, venues chosen to ensure maximum access, and transportation assistance. Local libraries, government and local authority offices, community centers, schools, NGO offices, and BP offices in Baku, Tbilisi, and Ankara were used to disclose and receive comments on the draft ESIAs. Draft ESIAs were also translated into local languages to facilitate the consultation process.

In conducting the ESIA for Georgia alone, 74 meetings were held with local communities; 6 environmental workshops were hosted; 27,500 disclosure documents were distributed to 26 locations around the country; and advertisements were run in 20 newspapers. Feedback from all of these initiatives was factored into the ESIA, along with more than 3,000 public comments that were individually answered. In Turkey, 450 copies of the draft ESIA were distributed to stakeholders along the route, and 10,000 non-technical summaries and 22,000 community pamphlets were distributed. In addition, BP hosted more than 100 community meetings, 10 meetings with regional NGOs, and three major conferences with international NGOs and the press. As a result of these engagement efforts, 1,652 comments were incorporated into the final ESIA submitted to the Turkish government.¹⁹⁷

In keeping with the HGAs and IFIs requirements, part of the consultation process with the local communities also included developing a comprehensive Public Consultation and Disclosure Plan (“PCDP”) for each of the three countries. Each PCDP was translated and appended to the country-specific ESIAs. Each PCDP articulates the following elements: roles and responsibilities, project description, regulatory context, stakeholders consulted,

plans for document disclosure, questionnaires used, and leaflets and other supporting information disseminated.

The continuous nature of the contact that BTC Co maintains with stakeholders has been essential for understanding concerns about the Project and expectations of the local communities. This dialogue has enabled BTC Co to identify potential problems at an early stage and propose solutions to such issues.

Traditionally, large projects are accompanied by philanthropic contributions to local communities. BTC Co reports that it intends to go beyond this approach by establishing a multi-million dollar community investment program with the objective of supporting local social infrastructure and stimulating economic opportunities. The program is intended to use the BTC investment as a catalyst for building sustainable economic and community capacity, including for education, local enterprise development, and other activities that extend associated benefits to the wider population.

The program is to be based on best practices developed by donor and development agencies and involve NGOs and other organizations as implementing partners. BP is exploring ways to create partnerships between BTC Co and other organizations, including the IFIs. In October 2002, for example, several projects were jointly funded with the Eurasia Foundation to support business ethics, commercial law, and accounting courses in Azerbaijan.

Transparency

BP publicly recognized at an early stage that transparency with respect to the BTC Project could play a significant role in ensuring the Project's success. It also recognized that establishing a stable and transparent legal and fiscal regime for the

Projects' investments could provide a model for other foreign investment in the region and help to facilitate the development of local enterprise.

To this end, BP took steps to ensure that the BTC Project set a new industry benchmark for transparency. Over 11,000 pages of project documents were made available to the public on the BTC website, www.caspianexportanddevelopment.com. The publication of this information provided stakeholders with a broad understanding of the Project and its implications. Included on the website are the HGAs signed with each country and the ESIA and PCDPs regarding each country, as well as core project documents such as the Production Sharing Agreements ("PSAs") and the Inter Governmental Agreement ("IGA"). The Regional Review is also located on the website. Readers are invited to submit comments regarding their questions and concerns with respect to the Project.

The BTC Project is the first extractive sector project undertaken to make this amount of material publicly available.

Human Rights and Environmental Concerns in Designing the Pipeline

In its Regional Review, BTC Co commits to ensuring that "respect for culture, individual dignity and human rights," will "dominate all interactions."¹⁹⁸ Implementation of this commitment in a manner deemed satisfactory to all stakeholders may not be possible and will certainly not be easy.

One of the first human rights issues the Project confronted was the selection of the pipeline route. BTC Co sought a commercially viable option that would deliver the oil to an appropriate location for sale to world markets while minimizing risk, avoiding the displacement of

communities, and incorporating long-term security arrangements.

Ultimately, BTC Co was able to design a pipeline route that avoided the permanent dislocation of any people and the destruction of any buildings. The BTC pipeline, as well as the affiliated SCP pipeline, will be buried, with land reinstated for use following construction. Economically displaced landowners and users are to be compensated using a transparent and consultative process that provides opportunities for economic enhancement. Procedures and mechanisms associated with the land acquisition and compensation process are reported in the Resettlement Action Plans ("RAPs"), which were publicly released to the communities and to the general public on the Project website.

Security considerations were another integral factor in the decision-making and design of the Project. The Pipeline was routed as far as possible away from conflict zones and areas with known security concerns in order to minimize the need for security interventions. The pipelines avoid, for example, passing through areas of unrest in Georgia and provinces in Turkey that were under a state of emergency during the last decade.

Environmental concerns were also fundamental in the design of the pipeline. Oil spills from onshore and offshore exploration, production, and transportation represent potentially significant environmental hazards. The independent Environmental Risk Assessment concluded that the pipeline presented the lowest risk of an oil spill and, therefore, was the environmentally optimal mode of transporting oil from the Caspian region to world markets. Perhaps most significantly, the creation of a pipeline avoids additional tanker traffic in the already congested and narrow Turkish Straits. Construction of the BTC pipeline eliminates approximately 29,000 ship movements through the Turkish Straits over the course of the 40-year lifetime of the Project.

During the pipeline route selection and facilities siting process, both BP and NGOs agreed that a particular emphasis needed to be placed on avoiding sensitive and protected environmental areas. As a result of numerous re-routings and route refinements, the pipeline was able to circumvent internationally or nationally-designated protected areas, including the Borjomi-Kharagauli National Park, the Ardahan Forest in Turkey, Lake Jandar on the Azerbaijani/Georgian border, the nationally designated Gorchay and Shamkir Reserves in Azerbaijan, and the Kelkit Wildlife Protection Area in Turkey. Some environmental NGOs, however, oppose the current routing. One of their chief concerns is that it poses an unacceptable risk to the Borjomi region in the event of a leak in the pipeline. According to BP, measures will be taken to minimize the number of potential leak sources, including optimizing pipeline block valve locations, designing adequate corrosion protection and secondary containment systems, and instituting procedural measures to prevent and minimize spillages.

Mitigation measures are also to be implemented during the Project's execution aimed at the removal or reduction of potential adverse impacts on natural habitats or their functions. These measures include restrictions on the conversion of natural habitats, restoration of degraded habitats, and retention of strategic species. A voluntary regional biodiversity action plan is also being developed which will include investments in projects to maintain and enhance biodiversity. Several such biodiversity initiatives have already been started, including a tortoise breeding project at Sangachal and a study of fish in the Caspian Sea.

Legal Framework

Legal regimes must provide clarity, certainty, and high international standards to attract complex and long-term infrastructure projects like the BTC pipeline. In this instance, the transitional economic and political natures of the three host governments, in particular, those of Azerbaijan and Georgia, presented obstacles to BTC Co and the international investment community. To ensure that the highest possible standards were maintained, the parties created a Prevailing Legal Regime ("PLR"), a specially designed legal framework, for the Project. The creation of such a legal framework is not unusual, and has been used by extractive projects even in nations with highly developed legal systems, such as Canada and Australia. The PLR is designed to supplement the existing framework, rather than replace existing laws or regulations. Its implementation enabled investors to obtain the necessary comfort required for investment in the Project and will help ensure that the Project is operated in accordance with best international practices.

The Project is to be implemented according to the terms of the IGA between the three host countries. The IGA was signed on November 18, 1999 by the Presidents of the Azerbaijan Republic, Georgia, and the Republic of Turkey, and memorializes each country's support for the development, construction, and operation of the pipeline across its territory, along with the transit of petroleum liquids. As such, the IGA has the force of an international treaty and contains commitments from each government with respect to the application of uniform and clearly identified technical, safety, and environmental standards; a detailed basis for taxation; and provisions regarding security for the Project.

The three Host Government Agreements (HGAs), which are between the host countries and BTC Co, enable the development of the Project. The HGAs are substantially similar for each of the countries and set out in greater detail the technical, legal, and fiscal regime under which BTC Co undertakes the Project and the mutual rights and obligations of each government and BTC Co. The HGAs contain rights and guarantees from the respective countries to BTC Co with respect to matters necessary to ensure the success of the Project, including land rights for the construction and operation of the Project, rights to import and export goods and services, rights to transfer and convert currency, and guarantees of economic stabilization. The HGAs also set out the terms of the direct financial compensation for each of the host countries.

The HGAs also set out a process for land acquisition and compensation that is tied to the legal requirements and preferences of the host countries. The Project participants are committed to ensuring that land acquisition and compensation is based on an open and fair process following consultation with affected communities and meets the standards established by the IFIs. To that end, the BTC Project complies with a range of regulations promulgated by the World Bank and the IFC, including World Bank Operational Directive ("O.D.") 4.30 on Involuntary Resettlement, World Bank Opinion 11.03 on the Management of Cultural Property, IFC Opinion 4.04 on Natural Habitats, and the IFC's Operational Procedure Opinion 4.01 on Environmental Assessment.

The PLR governing the Project ensures that health, safety, and environment (HSE) and the human rights and labor standards applicable to the BTC Project will in no event be less stringent than the highest of European Union standards (including EU Directives), World Bank Group standards applicable to the Project, and standards under applicable international labor and

human rights treaties. BP's policies on ethical conduct, relationships and security, which set out commitments and responsibilities for all BP employees and their contractors, are also incorporated into the PLR. These include explicit support for the principles in the UDHR, the 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises, and the 2000 OECD Guidelines for Multinational Enterprises.

Concerns Raised by External Stakeholders

Amnesty International

In 2002 and early 2003, Amnesty International UK conducted research and analysis on the legal structure underpinning the BTC pipeline. Amnesty's purpose was to understand "the human rights implications of the commercial agreements between the oil consortium and the host governments in the countries where the Pipeline would be built." Amnesty published its findings in May 2003 in a report titled, "Human Rights on the Line: the Baku-Tbilisi-Ceyhan Pipeline Project." The report concluded that the legal agreements "undermined the protection of human rights and created disincentives for the three states to fulfill their current and future human rights obligations." It warned that the agreements would "effectively create a 'rights-free corridor' where the human rights of thousands of people in the region will not be protected."

The essence of Amnesty's critique of the BTC Project was that the Project Agreements could have a "chilling effect" on the host governments' willingness to enforce their human rights, labor rights, and environmental obligations pursuant to international treaties. Amnesty warned

that the land acquisition could have the effect of resettling the 30,000 people who would be "forced to give up their land rights to make way for the pipeline"; there could be "inadequate enforcement of health and safety legislation to protect workers and local people"; and there could be a "serious risk to the human rights of any individuals who protest against the pipeline." Amnesty expressed particular concern that the HGAs would create a disincentive for the host countries to protect human rights because the "governments have agreed to pay compensation to the BTC consortium if pipeline construction or operation is disturbed" pursuant to the HGA clause indicating that host countries are liable for any "disruption to the economic equilibrium of the project."

Based on the report, Amnesty sought: (1) clauses inserted into the HGAs stating explicitly that no part of the agreements shall make it more difficult for the host governments to comply with their human rights obligations under national and international law; (2) the formation of independent stakeholder committees which would be responsible for monitoring standards and hearing grievances over the lifetime of the project; and (3) the signing of contracts by BTC Co with those employed to provide security for the pipeline making human rights obligations explicit and enforceable. In essence, Amnesty's overarching interest was to create a mechanism to ensure that BTC Co's commitment to construct and operate the Project in accordance with "best international practice" was enforceable by the host governments.

Other Stakeholder Concerns

Other NGOs, including Friends of the Earth ("FOE"), the World Wildlife Fund, Corner House, and the Kurdish Human Rights Project, raised similar concerns regarding

the interpretation of the IGA and the HGAs and additional environmental concerns. These groups targeted their energies primarily at the IFIs in an attempt to delay or halt financing for the Project, including loans by the IFC and the World Bank Group.

In addition, FOE wrote to the designated National Contact Points of five OECD countries alleging five areas of Project non-compliance with the OECD Guidelines for Multinational Enterprises. These allegations are that: (1) BP exerted undue influence on the regulatory framework for the BTC project; (2) BP sought or accepted exemptions related to social, labor, tax, and environmental laws; (3) BP failed to operate in a manner contributing to the wider goal of sustainable development; (4) BP failed to adequately consult with project-affected communities on pertinent matters; and (5) BP undermined the host government's ability to mitigate serious threats to the environment, human health, and safety. In response, BTC Co maintains that it exceeded the standards set by the OECD Guidelines. To date, several of the inquiries are still ongoing.

BTC Co Response to NGO Concerns¹⁹⁹

Joint Statement

In an effort to respond to concerns that BTC Co needed to clarify its commitment to international environmental, social, labor, and human rights standards, the Governments of Azerbaijan, Georgia, and Turkey, and BTC Co, issued a landmark "Joint Statement on the BTC Pipeline Project" on May 16, 2003.

The first paragraph of the Joint Statement notes that the parties "take the concerns [of the NGOs] seriously" and are "determined to make the BTC Project a

model project in all respects,” and that “the environmental, social, and human rights aspects of the project are of fundamental importance.” In paragraph four, the parties state that they are aware of speculation among NGOs that provisions in the project agreements might be interpreted in a manner contrary to international human rights, environmental, or social and labor norms.

The Joint Statement stipulates that BTC Co and the host governments “considered each of the provisions identified [by the NGOs] and have concluded that none of the speculation included in recent correspondence reflects the intent or understanding of the parties with respect to their meaning or operation. We are determined to uphold the highest international standards for BTC and we cannot agree with those speculations.” The parties entered into the Joint Statement to “minimize further misunderstandings, in particular in relation to project security and human rights, the environment, social and labor standards.”

The Joint Statement then delineates the international standards to which the parties are committed within the areas of human rights, security, labor, and environmental standards. It reaffirms that the principles and policies set out in the OECD Guidelines on Multinational Enterprises “were fully considered during negotiation of the BTC Project Agreements” and are reflected in the BTC Project Agreement structure. With regard to the environment, the Joint Statement clarifies that the “IGA commits each State to the application of environmental standards and practices that are ‘no less stringent’ than those generally applied within member states of the European Union from time to time. The HGAs and other BTC Project Agreements give effect to this commitment, and provide a dynamic benchmark that will evolve as EU standards evolve.”

With regard to labor standards, the Joint Statement confirms the parties’

understanding that ILO Conventions on Forced Labor, Freedom of Association and the Right to Organize, Collective Bargaining, Discrimination, Equal Remuneration and Minimum Age, “all as in effect from time to time, will apply to the development and operation of the project.”

Project Security

The Joint Statement is also a landmark document with respect to the issue of security, inasmuch as it is the first legal commitment to the Voluntary Principles on Security and Human Rights. The U.S. and U.K. governments announced the Voluntary Principles in December 2000, and they have since gained recognition as the emerging international standard addressing the human rights responsibilities faced by extractive companies in their global security arrangements. The BTC Project is the first time that the Voluntary Principles have been incorporated into the legal contracts governing a project.

Security is perhaps the single most important human rights issue to oil and gas companies due to the reputational and legal risks related to the actions of security forces assigned to protect company assets in conflict-prone or conflict-ridden countries.

The Voluntary Principles address three sets of issues: Risk Assessment; Interactions Between Companies and Public Security; and Interactions Between Companies and Private Security. The Risk Assessment of the Voluntary Principles identifies key human rights “factors” to be taken into account as security arrangements are planned, including: identification of security risks; potential for violence; the human rights records of public and private security forces; strength of the rule of law; conflict analysis; and equipment transfers. Key elements governing the interactions

between companies and public/private security include the degree of consultation and advice with stakeholders, responses to human rights abuses, compliance with policies, and the deployment and conduct of personnel.

Although BTC’s “Regional Review” provides that the Voluntary Principles “are embedded into BP’s security management system,” the Joint Statement was the first Project Agreement to state that commitment and ensure that it became part of the PLR governing the Project. Specifically, it provides that “[t]he parties confirm to each other their mutual commitment to the goal of promoting respect for and compliance with human rights principles, including those set forth in the Universal Declaration of Human Rights, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, United Nations Code of Conduct for Law Enforcement Officials, the European Convention on Human Rights and, in a manner consistent with our national laws, the Voluntary Principles.”

Subsequent to the signing of the Joint Statement, the three host governments made another important commitment to security practices that, in effect, helps to operationalize the Voluntary Principles. In accordance with both the IGA and the HGAs, and “recognizing the need for transparency and the sharing of information and experiences in performing security obligations and promoting human rights,” the Governments of Azerbaijan, Georgia, and Turkey signed a “Protocol Relating to the Provision of Security for the East-West Energy Corridor” on July 23, 2003. In the first chapter of the Protocol, the governments agree to cooperate in security matters, including identifying and classifying potential security risks related to terrorism or acts of sabotage, sharing information that directly impacts the Project, and exchanging information regarding methods to combat acts that pose security risks to the Project. In

addition, the parties agreed to establish a Joint Pipeline Security Commission and cooperate in the mutual training of members of security units involved in pipeline security.

The second chapter of the Protocol is titled the “Human Rights Dimension.” In this chapter, the governments recommit to implementing the Voluntary Principles within the framework of their national legislation, as well as taking all necessary actions to ensure that individuals who may have been credibly implicated in human rights abuses or criminal activities do not participate in security services. The parties also agree “to take all appropriate actions necessary to fulfill their obligations related to security in compliance with” the principles and obligations set forth in a variety of international treaties and human rights instruments, including the UDHR, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the European Convention for the Protection of Human Rights, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Deed Poll

Soon after the Amnesty report was published, BP and BTC entered into a dialogue with representatives of Amnesty to address their human rights concerns and mitigate negative human rights impacts stemming from the PLR. Over the course of several months, they engaged in a series of discussions regarding how best to resolve the issues outlined in the Amnesty report and, perhaps just as

importantly, to set the stage for a cooperative effort through which to share lessons learned more widely and develop best practice guidelines for the protection of human rights within legal frameworks for large projects.

As an outgrowth of this dialogue, BTC Co determined that, through the use of a Deed Poll, it could address both Amnesty’s overarching interest in creating a mechanism to ensure that BTC Co’s commitment to operate the Project in accordance with “best international practice” was enforceable by the host governments, and Amnesty’s more specific interest in ensuring that the HGA not have a “chilling effect” on the host governments’ willingness to enforce their human rights, labor rights and environmental obligations. (A Deed Poll, referred to more specifically on the BTC’s Project website as the “Human Rights Undertaking,” is a unilaterally binding contract made under British law.)

Accordingly, on September 22, 2003, a legally binding and irrevocable Deed Poll was signed to achieve the following goals: (1) protect the rights of the three host governments to regulate in the areas of human rights, health, safety, and the environment, without fear of claims by BTC Co that such regulation was a breach of the HGAs; (2) clarify that the standards in the HGAs are not “frozen” as of the time the Project Agreements were signed, but are instead dynamic and will change over time as EU directives and standards evolve; (3) protect the right of third parties injured by the BTC Project to bring claims in domestic courts without fear that BTC Co would argue that domestic courts do not have jurisdiction to hear such claims; and (4) protect the host governments from fear of having to pay compensation to restore the “economic equilibrium” of the Project as a result of legislation or other action reasonably required by international human rights, labor, health, or safety laws in force in the host countries.

In addition to the Deed Poll/Human Rights Undertaking, BP also committed to publishing a “Citizen’s Guide” to the BTC Project on its website in several of the local languages used along the pipeline’s route. BP will also seek Amnesty’s continued input with respect to operationalizing the Voluntary Principles and other security practices in a manner that demonstrates respect for human rights and monitoring human rights activities with respect to the BTC Project. Both BP and Amnesty agreed to work together to proactively address key human rights aspects of investment and development, such as the creation of best practices regarding the establishment of HGAs and IGAs, and monitoring instruments and processes.

Notably, without taking a position regarding the Project as a whole, Amnesty welcomed the Deed Poll for addressing the concerns noted and establishing a leadership position on human rights within the industry. Amnesty also emphasized, however, that the document was an “after-the-fact” effort to correct the HGA and that future Project Agreements of this nature should address these issues clearly from the start to avoid the need for additional Deed Polls. In addition, Amnesty believes that for the Deed Poll to have its intended effect, the option of local remedies will need to be communicated to local lawyers and relevant civic groups.

Overall, the BP/BTC-Amnesty dialogue and the execution of the Deed Poll and other steps to address human rights concerns represented significant progress for each of the parties and set a symbiotic precedent for other members of the industry and the NGO community. The impact of the dialogue — while only representing a beginning — was immediate and broad, providing Amnesty with new credibility as a guide and interlocutor with the business community, and BP/BTC with diminished reputational and legal risks with respect to the Project and enhanced brand equity.

Conclusion: Issues for the Future

Response of the IFIs

On November 4, 2003, the IFC's Board approved loans of up to \$250 million for the BTC Project. While acknowledging that the "IFC has heard from a number of environmental groups who have raised significant concerns with regard to routing options, particularly through the Borjomi area in Georgia," Rashad Kaldany, Director of the World Bank Group's Oil, Gas, Mining and Chemicals Department, responded to those concerns by observing that "[r]outing options were carefully assessed by IFC staff... who confirmed that the route chosen was the only viable one with the significant mitigation and protection measures proposed in this area."

The IFC described the Project as "break[ing] new ground in transparency, environmental and social safeguards, community consultation and involvement, national and international civil society engagement, and local economic benefit."

Regarding consultation with those affected by the pipeline, the IFC stated that it was "gratifying to hear directly from local NGOs and local communities. It is clear that local people want the pipeline to be built — but they want it built in a safe, sustainable, and environmentally sound way." The IFC also noted that the compensation packages for land, "which are consistently above market rates, have been set and are independently monitored."

On November 11, 2003, following the decision of the IFC, the Board of the EBRD approved \$250 million in loans for the Project. Agreement on the loan followed a two-year analysis of the Project's environmental and social impact and the EBRD's own public consultations.

Monitoring and Compliance

In the IFC statement regarding the approval of the loans, the Director of the World Bank Group's Oil, Gas, Mining, and Chemicals Department noted that the Project includes "nine layers of monitoring — four internal and five external — that will result in seven different reports being made public." He added, "IFC believes this level of monitoring and transparency is unprecedented and provides the correct balance of internal monitoring verified by external, independent monitoring and public disclosure for BTC. It also demonstrates that the project sponsors and the lenders will focus on implementation challenges and results on the ground."²⁰⁰

Although it appears that the BTC Project is a model for the industry with respect to its commitment to human rights, labor rights, and environmental standards, construction of the pipeline is only 40% complete, and the Project is expected to be operational for at least 40 years. Accordingly, it is imperative that BTC Co and the host governments quickly put these monitoring programs into place. Some of these programs will be more difficult to implement than others, particularly those for which monitoring standards are only now being developed — such as security compliance for the Voluntary Principles.

In developing monitoring and compliance mechanisms, BTC Co should continue to benefit from the relationships that it forged with Amnesty and other NGOs. Indeed, BTC Co and Amnesty are committed to working together to create effective human rights monitoring instruments and grievance mechanisms for people in affected communities.

Continued Relationships with Stakeholders and Communities

In a similar vein, BTC Co must follow through with respect to its comprehensive stakeholder engagement and consultation process, both in the short-term during construction of the Project as well as in the long-term over the life of the Project.

According to the Regional Review's Executive Summary, "As the projects move from planning to construction and into operations, there will be follow up consultation and reports tracking the issues and project activities in the region. In the projects' aim to keep dialogue flowing and to obtain feedback and suggestions, further consultations will be planned over the next several months, and will continue through the life of the projects."

The onus will be on BP to meet this commitment. The company must ensure that it continues its outreach to the communities including, perhaps, by facilitating the creation of citizens' advisory groups to counsel the Project regarding ongoing and timely issues. Although the company set numerous precedents with regard to community outreach and the incorporation of international standards and best practices in Project agreements, the challenge now will be to maintain this momentum. BP's ultimate test will be how it puts theory into practice and fulfills these commitments in the coming years.

Sources

The information and material in this case study was obtained from a variety of sources. Many publicly available corporate documents were used as reference, including BTC Co's "Environmental and Social Overview of the Baku-Tbilisi-Ceyhan Pipeline Project," published in September 2002; BTC Co's "Regional Review," published in February 2003; BP's 2002 Environmental and Social Review; BTC Co's pamphlets on "Breaking New Ground" and "Citizen's Guide to the BTC Project Agreements," and each of the HGAs and the IGA. In researching the perspectives of a broad range of NGOs, extensive web-based research was performed, and Amnesty International's report, entitled "Human Rights on the Line," published in May 2003, was cited frequently.

Additionally, the author was provided access to a number of senior-management officers at both BP and BTC Co, as well as to key NGO leaders. At BP, the author worked closely with staff members in the London, Washington, and Baku offices, including the Group Vice President; Vice President for Reputation and Assurance; Vice President for External Affairs; Director of International Affairs; Director of Government and Public Affairs; Commercial and Reputation Assurance Manager; Government and Community Relations Manager; and Manager of Corporate Communications.

At BTC Co, the author was provided access to a broad spectrum of individuals in both Baku and Tbilisi, including the Chief Executive Officer; Commercial Director; General Counsel; Director of Security; Regional Security Advisor; Communications Director; Environmental Manager; and Project Security Managers for Azerbaijan, Georgia, and Turkey.

The author met with representatives of Amnesty International offices in London,

New York, Washington, Oslo, and Paris, including the Chair of the Business Group (UK); Director of Finance (UK); Business Group Manager (UK); Legal Advisor (UK); Business & Human Rights Coordinator (USA); Political Advisor/IGO Coordinator (Norway); President (France); and Commission Enterprises (France).

The author also conducted first-person research by visiting the project site in Azerbaijan and Georgia and participating in meetings between BP, BTC Co, and Amnesty officials in London, New York, Washington, Oslo, and Paris.



1. EVERYONE HAS THE RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE WITHIN THE BORDERS OF EACH STATE.

2. EVERYONE HAS THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY.



BHP Billiton South Africa: Standards as a Human Rights tool*

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** Peer review of this case study was provided by Sune Skadegrad Thorsen of Lawhouse.dk.*

*** I am extremely grateful to BHP Billiton for allowing me the opportunity to undertake this Case Study and for their support; in particular to Mr Andre van der Bergh, Regional Advisor Southern Africa: Health, Safety & Environment for making the project possible and for providing all the necessary contacts. Also to Mr Marius van Tonder, General Manager: Bayside Aluminium and to Mr Bongani Mqaise, for setting up the meetings and for assisting me with the many interviews at Bayside Aluminium. In all my dealings with BHP Billiton in the development of this Case Study, they have provided me with unrestricted access to persons and documentation alike. Thank you. I am also extremely indebted in Sune Skadegrad Thorsen, the review examiner, for all the comments and suggestions. He has been extremely helpful in the development of this Case Study. Thank you.*

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Appendix 1

Overview

Abstract

This Case Study is based on the premise that if Management Standards are in place, systems, activities and operations will follow and employees will understand their roles and responsibilities. It examines the Global Compact's Principle 1 (P1), in the context of measures that BHP Billiton South Africa's Bayside Aluminium Smelter has taken to support and respect human rights within their sphere of influence, and Principle 2 (P2), in relation to whether Bayside Aluminium has been complicit in any abuse of human rights. To give effect to P1 and P2, the Case Study considers Health, Safety, Environment and Community (HSEC) Management Standards as a **measuring tool for human rights compliance assessment**. The Case Study examines BHP Standards and the human rights fit with activities and operations at Bayside Aluminium.

The concept of human rights is the product of debates that have raged over many years throughout the world. The debates relate to the search for moral standards or imperatives among states, across borders and between governments and its citizens. A broad consensus has emerged that seeks to frame human rights against a moral code which prescribes certain benefits and treatments simply because people are human, in spite of socio-economic, political and cultural differences. *The framework for human rights is set out in the universally politically agreed minimum standards for how people should be treated*. These minimum standards are found in the United Nations International Bill of Human Rights, which consists of the Universal Declaration of Human Rights (UDHR), its two associated Covenants, namely, the International Covenant on Economic,

Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), and their optional protocols. The International Bill of Human Rights, along with the Vienna Declaration (1993), enumerate human rights that are universal, indivisible, interdependent and interrelated.

Within the South African context, the UN International Bill of Human Rights forms the basis for the Bill of Rights which is enshrined in the Constitution. The human rights in the South African Constitution are not only inherent to all people and citizens alike, they are also justiciable. Thus, any complicity in human rights abuses (P2) may be taken up before the courts. The courts in turn could restrain a perpetrator from continuing the violation or could order the perpetrator to act in compliance with the law. Alternatively, offences relating to equality or discrimination may be referred to the National Director of Public Prosecutions for possible criminal action.

The South African Human Rights Commission, which is also embedded in the Constitution, acts as a human rights watchdog and serves to promote, protect and ensure the fulfillment of human rights in South Africa as set out in the Bill of Rights. In addition, legislation was passed in terms of the Promotion of Access to Information Act (2000) and the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) to further entrench human rights in South Africa. The Constitution and the legislation that flows from it are in broad terms binding both between state and citizen (vertical application), and among citizens (horizontal application). Similarly, corporate entities (juristic persons) are bound by both the spirit and letter of the Constitution.

The mining industry in South Africa, in which BHP Billiton has interests, accounts for slightly more than 8 percent of GDP.

This makes the industry a significant role-player in terms of economic growth in this country. If industry multiplier effects are added, the contribution to GDP increases to approximately 12 percent. Since transition to legitimate democratic status in 1994, the Chamber of Mines has committed the industry to the development of South Africa. South Africa in turn expects the mining industry to maintain and expand its corporate social responsibility in terms of socio-economic development. The challenge for the mining industry in transforming the sector is not only to achieve compliance with the Charter for the South African Mining Industry and the Balance Scorecard, but also to contribute towards nation building by investing in South Africa's young democracy and the future of its people.

David Wood and Mark Mattson in a recent article: "Beyond the triple bottom line" argue that "change in transformation and cooperation by the various sectors in society, including the business community, requires a positive attitude towards recognising the inherent rights (*i.e. defined by national and international legislation*) and dignity of people". It is against this background that BHP Billiton seeks "to support the fundamental human rights of employees, contractors and the communities" in which it operates and that Principle 1 (P1) and Principle 2 (P2) are discussed in the Case Study.

Company Profile

BHP Billiton is a Dual Listed Company comprising BHP Billiton Limited and BHP Billiton Plc. The two entities continue to exist as separate companies, but operate as a combined group known as BHP Billiton. The headquarters of BHP Billiton Limited and the global headquarters of the combined BHP Billiton Group are located in Melbourne, Australia. BHP Billiton Plc is located in London, UK. Both

companies have identical Boards of Directors and are run by a unified management team. However, the laws in Australia and the UK require BHP Billiton Limited and BHP Billiton Plc to adopt a different approach to reporting results. The Annual Report 2003 deals with the affairs of the BHP Billiton Group as a whole, supplemented by the Health, Safety Environment and Community (HSEC) Report 2003.

BHP Billiton has seven (7) Customer Sector Groups operating around the world, namely, Petroleum (Algeria, Pakistan, Australia, Europe, North America and South America); Aluminium (South Africa, Mozambique, Australia, Brazil, and Suriname); Base Metals, (Australia, Canada, Chile and Peru); Carbon Steel Materials (South Africa, Australia and Brazil); Diamonds and Specialty Products, (South Africa, Australia, Belgium, North America and Canada); Energy Coal, (South Africa, Australia, Indonesia, US and Colombia) and Stainless Steel Materials (South Africa, Australia and Colombia). The Company has some 35,000 employees across the globe with an annual turnover of US\$17.5 billion, attributable profit of approximately US\$1.9 billion and an enterprise value of US\$35 billion as at June 2003.

For the last financial year, BHP Billiton:

- u maintained their inclusion in the UK FTSE4Good Index, after passing the strengthened criteria on human rights in the extractive sector
- u maintained their position in the Dow Jones Sustainability Index
- u ranked 'best in class' for its environmental and social performance out of 21 metals and mining companies covered by Storebrand in Norway
- u received recognition from UK Financial Times top 500 Global Index companies in the Carbon Disclosure Project

- u took part in the UK Corporate Responsibility Index and in the Business in the Environment (BiE) Index.

BHP Billiton defines their business conduct with a set of principles. Among the Policies, Standards and Guidelines set out in the *Guide to Business Conduct* are:

- u Compliance with the Law
- u Competition Law
- u Health, Safety
- u Environment and Community
- u Equality in employment
- u Confidentiality
- u Intellectual Property
- u Personal Information and Privacy, (the right to privacy) Information Systems
- u Relationships with Government and Cultural Sensitivity.

The Guide addresses accountability issues with regard to Responsibilities of All Employees, Managers and Supervisors and the Board of Executives. It also describes the Global Ethics Panel, and Business Reporting Requirements. The Guide applies to all employees and provides directions and advice on conducting business internationally, interacting with government, communities and business partners, business integrity and general workplace behaviour.

For the year ending July 2002-June 2003, the HSEC Report was prepared in accordance with the Global Reporting Initiative (GRI) Sustainability Reporting Guidelines. For the reporting period, BHP Billiton's community contributions supporting community programmes and capacity building amounted to US\$42 million, or 1.4 percent of pre-tax profit, which exceeded the target of 1 percent. In addition, US\$12.5 billion was contributed to regional economies from expenditure associated with sustaining operations. BHP Billiton sets out its commitment to implementing the World Bank Guidelines on Involuntary Resettlement and the US-UK Voluntary

Principles on Security and Human Rights within its Management Standards. In June 2003, BHP Billiton reaffirmed its commitment to the United National Global Compact and associated principles.

BHP Billiton Charter

Central to the Company is the *BHP Billiton Charter*, which serves to create an alignment throughout the organization with a set of clearly defined values applicable to each employee throughout the Group. BHP Billiton stresses its overriding commitment to health, safety, environmental responsibility and community development as a **value driver** and a major challenge for the company whose core business is the extraction of natural resources. However, these organisational values are not framed in a human rights discourse or contextualised in a human rights framework.

Health, Safety Environment and Community Policy (HSEC)

The HSEC Policy sets out BHP Billiton's commitment to sustainable development as integral to the way in which they do business, to continual improvement in performance, to efficient use of natural resources and to their aspiration of zero harm to people and the environment. In addition, the HSEC Policy, which defines its basis as **value driven**, sets out BHP Billiton's commitment to:

- u support the fundamental human rights of employees, contractors and the communities in which we operate
- u respect the traditional rights of indigenous people
- u care for the environment and values cultural heritage

Management Standards

The HSEC Policy and BHP Billiton Charter are implemented via detailed HSEC Management Standards and Protocols, the requirements of which must be met at all operations on an annual review basis. The Management Standards were revised during the year, resulting in a consolidated set of 15 Standards. The HSEC Managements Standards form the basis for the development and application of HSEC management systems at all levels of the BHP Billiton Group. The **objectives of the Standards** are to:

- u Support the implementation of the Charter and the HSEC Policy across the Group (*i.e. national and international standards including UDHR*)
- u Provide a risk-based HSEC management system framework, broadly consistent with international standards, such as ISO 14001, OHSAS 18001 and SA 8000 (*i.e. labour rights and environmental processes*)
- u Set out the expectations of the Group for the progressive development and implementation of more specific HSEC management systems at all levels of the Group
- u Provide consistent auditable criteria against which HSEC management systems across the Group can be measured
- u Provide a basis from which to drive continuous improvement

The Standards:

Standard 1

Leadership and Accountability

Standard 2

Legal Requirements and Document Control

Standard 3

Risk and Change Management

Standard 4

Planning, Goals and Targets

Standard 5

Awareness, Competence and Behaviour

Standard 6

Health and Hygiene

Standard 7

Communication, Consultation and Participation

Standard 8

Business Conduct, Human Rights and Indigenous Affairs

Standard 9

Design, construction and commissioning

Standard 10

Operations and Maintenance

Standard 11

Suppliers, Contractors and Partners

Standard 12

Product Stewardship

Standard 13

Incident Reporting and Investigation

Standard 14

Crisis and Emergency Management

Standard 15

Monitoring, Audit and Review

- u In terms of scope, the Standards are intended to cover all operational aspects and activities that have the potential to affect, positively or negatively, the health and safety of people, the environment or the community. (NB: The scope of the Standards is not defined within a human rights framework in terms of the UDHR. Rather, the scope incorporates the rights that relate only to Business Practices.)
- u In terms of status, the Charter, HSEC Policy and HSEC Management Standards are **mandatory** to all BHP Billiton sites and operations.
- u Each Standard has a **set of performance requirements** which is measured via an auditing process. The performance requirements for Standard 8: Business Conduct, Human Rights and Indigenous Affairs are as follows:

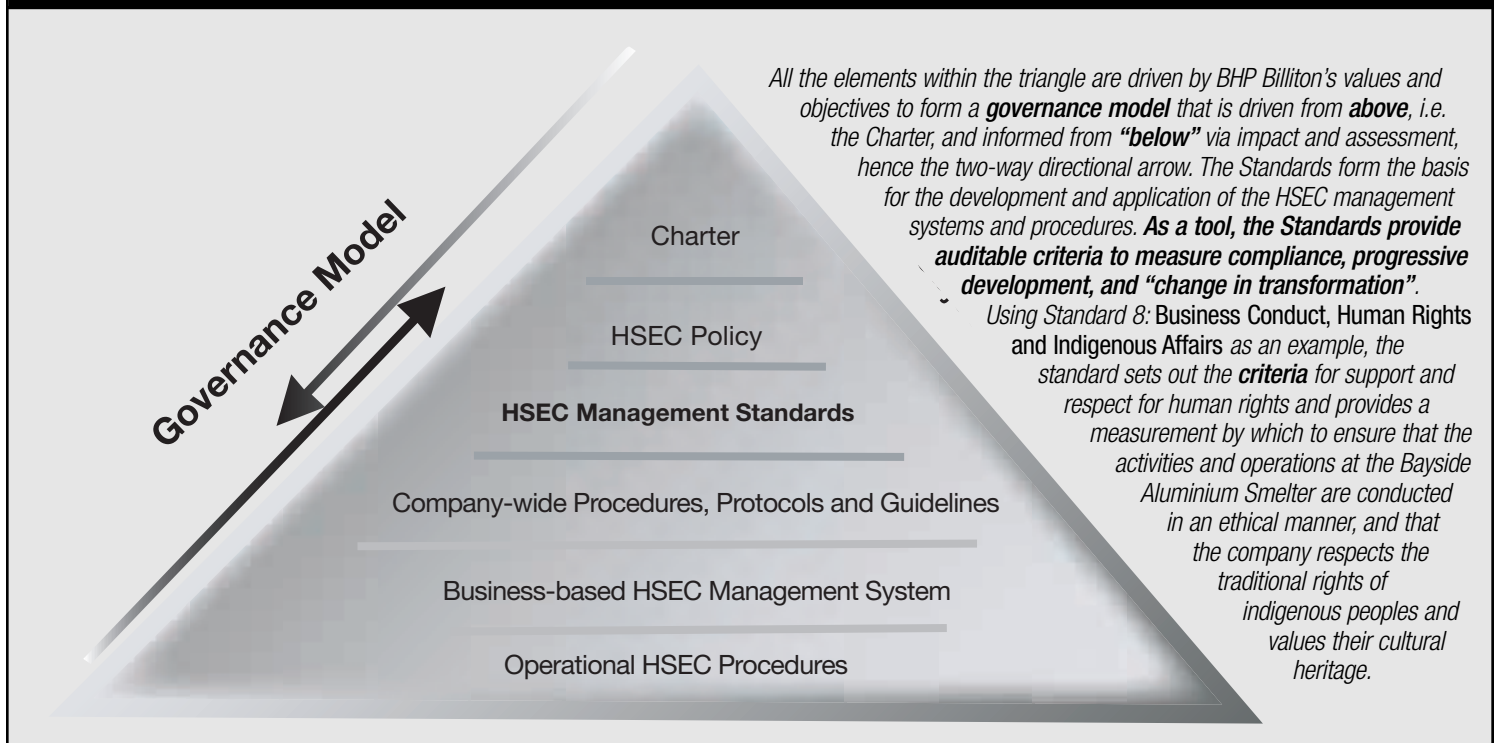
Intent

Activities and operation are conducted in an ethical manner that supports fundamental human rights, respects the traditional rights of indigenous peoples and values their cultural heritage.

Performance Requirements

- 8.1 Systems are in place to ensure that employees and contractors are familiar with and abide by the requirements of the BHP Billiton Guide to Business Conduct
- 8.2 Systems are in place to ensure that employees and contractors are familiar with and abide by the Articles of the United National Universal Declaration of Human Rights
- 8.3 Local and indigenous communities, and their traditional and cultural heritage values potentially affected by BHP Billiton operations, are identified, and strategies are developed to address their concerns and aspirations

Diagrammatic representation of the Standards as a *tool of measurement*.



8.4 Systems are in place to work with local communities through project development, operational and closure phases, to identify needs and prioritise support for sustainable community development initiatives

8.5 Where plant and equipment is installed as part of community development programmes, consideration is given to the provision of appropriate technology and training in its use, and the local capacity for ongoing care and maintenance

The criteria for performance should be an implementation approach to measuring human rights impact and assessing complicity. This differs from the intent of the Standard, which is to ensure that the activities and operations support a human rights framework, i.e. "supports fundamental human rights, respects the traditional rights of indigenous peoples and values their cultural heritage".

The **auditable criteria** for Standard 8: Business Conduct, Human Rights and Indigenous Affairs are as follows:

**Performance Requirement 1:
Protocol Questions**

- u Determine whether the BHP Billiton *Guide to Business Contact* has been communicated to employees and contractors, through presentations and group discussions
- u Determine whether systems are in place to communicate the content of the Guide to new employees and contractors
- u Verify that personnel are aware of the need for, and relevance of the Guide and the consequences of non-compliance

**Performance Requirement 2:
Protocol Questions**

- u Determine whether the site has a copy of the United Nations Universal Declaration of Human Rights (UDHR) and has identified *which Articles are relevant to the Business, contractors, and business partners*, e.g. Safe and healthy working conditions; Freedom of

association; Fair remuneration; Non-discrimination in personnel practices; No forced or child labour; No forcible displacement of individuals, groups or communities; Respect for existing international guidelines and standards for use of security

- u Verify that the relevant Declaration Articles have been communicated to employees, contractors and business partners, and that they abide by the principles of the Declaration
- u Determine whether regular reviews take place to assess performance against the relevant Articles of the United Nations Universal Declaration of Human Rights. Verify that systems are in place to respond to and manage non-conformances.

- u Determine whether compensation or benefits have been paid to local land owners and the methods used to determine the values. Determine the extent of local land owner involvement in the process

- u Determine whether the site has a copy of the World Bank Guide on Involuntary Resettlement
- u Verify that, where a resettlement program has been carried out after June 2003, the site has prepared a resettlement plan in accordance with the World Bank Operational Directive on Involuntary Settlement. Determine the extent to which people affected by involuntary resettlement programs after June 2003 have been consulted and involved in resettlement planning and how compensation issues have been addressed.
- u Determine whether the site has a copy of the Voluntary Principles on Human Rights and Security, and verify that relevant employees and contractors (including security personnel) have been trained in, and abide by, their responsibilities under the Principles.

Bayside Aluminium, Richards Bay

Context

Alusaf (Aluminum South Africa) was completed in the early 1970s and was initially a border industry created by the old apartheid government to propagate the separate development policy. The shareholders at the time were Gencor, Industrial Development Corporation (IDC) and Eskom (Electricity Supply Commission), all three government subsidised companies. The 1990 political and economic changes in the country led to the lifting of trade protection and the drying up of government subsidies. Criticism leveled at Alusaf at the time was that it was inefficient and badly managed resulting in financial losses to the company. To address these issues, two initiatives were implemented, namely, 1) the Bayside Reconstruction Programme,

which led to the restructuring and redesigning of the organisation and 2) the building of Hillside Aluminium Smelter next door to Bayside. Hillside was designed to be a highly technical, low cost/high production smelter. Major costs were to be shared with Bayside. Following the restructuring process, Gencor subsequently bought out the other shareholders, namely IDC and Eskom. The two smelters, Bayside Aluminium and Hillside Aluminium are situated in close proximity to each other and share a number of management and work related practices.

In 1998, Gencor bought Billiton from the Royal Dutch Shell Company. This followed the separation of Billiton and Gencor. Precious metals went to Gencor and non-precious metals went to Billiton. Billiton thereafter listed on the London Stock Exchange with 3 divisions: Aluminium, Samancor (manganese chrome) and Ingwe (coal). In September 2001, Billiton merged with BHP (Broken Hill Proprietary Company) Ltd in Australia to become the [world's] largest diversified resources company with seven customer sector groups.

The historical overview of Bayside Aluminium provides an insight into the many socio-economic and political changes that have taken place at the smelter over the past 33 years of its existence. At the same time, Bayside has developed into a mature organisation, which has shaped company policy and systems to fit its needs. Bayside has some 980 employees. Of these, approximately 300 employees have 30 years service with the Company. Most long-service employees are unskilled workers who provide the manual labour to operate the old technology used at the plant.

Problem Statement

Is there a human rights fit between HSEC Standards and the systems that stem from

the Standards and the activities and operations at Bayside Aluminium? Are these activities and operations conducted in a manner that respects, protects, fulfills and supports fundamental human rights, the traditional rights of indigenous peoples and values their cultural heritage?

The Case Study

The Case Study reviews the recently completed HSEC Managements Standards Audit covering the period 1 July 2002 to 30 June 2003. The Lead Assessor was Derek Rex, Health, Safety and Environment Manager. He was assisted in this process by the Team Line Managers outside the sector group as well as the HSE Team and Lead Auditors. The Audit covered all four occupational categories of Bayside ranging from managers to superintendents, specialists and administration staff/artisans/operators. (The previous Audit was completed in September 2001).

In order to facilitate the process across the Company, BHP Billiton developed a **HSEC Human Rights Self-Assessment Toolkit** which provides a framework that facilitates assessment of an operation's exposure to human rights related risks and identification of areas where mitigation measures are required. The Toolkit assesses BHP Billiton's impact on human rights in **nine aspects of operations** at Bayside Aluminium. The human rights listed against the operations do not cover all the rights set out in the UD HR or in the International Bill of Rights, **but rather reflect core labour rights and displacements.**

These are:

- u Country
- u Community
- u Land Acquisition
- u Indigenous and Minority Groups
- u Environment

- u Security
- u Employees
- u Contractors and Suppliers
- u Systems

The HSEC Human Rights Self-Assessment Toolkit is based on the human rights set out in the UDHR. The rights are divided into “minor human rights incidents” and “more serious human rights incidents”²⁰¹ for the purposes of the operation’s self-assessment.

Minor human rights incidents include:

- u Restricted access to basic necessities (*right to food, water, shelter, clothing, medical care*)
- u Restricted access to natural resources (land, air, water — *environmental rights*)
- u Inadequate legal protections (*right to a fair trial and equality before the law*)
- u Interference with family life (home, correspondence, reputation — *right to privacy*) (*right to privacy also applies in the working place and for customers — not specified*)
- u Interference with cultural life (customs, marriage, ceremonies — *cultural rights*)
- u Interference with religion (teaching, practice and worship — *freedom of religion*)
- u Interference with association or peaceful assembly (*right to collective bargaining — not specified or included*)
- u Unsafe working conditions (*right to collective bargaining — not specified or included*)
- u Decreased standards of living (cost, health, housing) (*right to health care and right to housing*)
- u Limited access to primary education (*right to education includes vocational training — not specified*).

More serious human rights incidents include

- u Arbitrary deprivation of life or disappearances
- u Physical and emotional violence or intimidation
- u Forced, slave, bonded or child labour

- u Severe or prolonged punishments
- u Arbitrary arrests
- u Arbitrary deprivation of property
- u Widespread religious discrimination
- u Widespread ethical, racial or sexual discrimination (gender discrimination not specified).

The level of risk is ranked from 1 to 10. The lowest level of risk, 1, occurs when there is no history of human rights infringement incidents within BHP Billiton’s ‘sphere of influence’ (including by government bodies, partners, agents or joint ventures) or the operation has no negative impact on the community. That is, when the operation has not:

- u Restricted access to basic necessities (food, water, shelter, clothing, medical care), education or natural resources (land, air, water)
- u Interfered with family, cultural, or religious life, association or assembly
- u Discriminated [on the basis of?] sex, race, ethnicity, or religion; arbitrarily deprived life, liberty or property; used forced, slave, bonded or child labour, physical violence, disappearances, intimidation; or severe punishments.

The level of risk generally increases from:

- u Isolated (1 or 2) to numerous (3 or more) human rights incidents
- u Minor to more serious human rights. Level 5 (out of 10) risks and above need to be mitigated as a matter of priority
- u The operation failing to implement procedures to monitor human rights
- u The local community protesting against the operation
- u The international community implicating BHP Billiton in human rights incidents
- u The international community taking active measures against BHP Billiton for human rights incidents, such as commencing litigation or striking BHP from ethical investment portfolios.

The HSEC Human Rights Self-Assessment Toolkit provides the *basis for the protocols* to be developed against each standard. The HSEC Management Standard 8 is as follows:

HSEC Management Standard 8

STANDARD 8 BUSINESS CONDUCT, HUMAN RIGHTS AND INDIGENOUS AFFAIRS

Activities and operations are conducted in an ethical manner that supports fundamental human rights, respects the traditional rights of indigenous peoples and values their cultural heritage

PERFORMANCE REQUIREMENT 1

Systems are in place to ensure that employees and contractors are familiar with and abide by the requirements of the BHP Billiton Guide to Business Conduct

Determine whether the BHP Guide to Business Conduct has been communicated to employees and contractors, through presentations and group discussions

Determine whether systems are in place to communicate the content of the Guide to new employees and contractors

Verify that personnel are aware of the need for, and relevance of the Guide and the consequences of non-compliance

PERFORMANCE FINDINGS 1

No Findings recorded

RECOMMENDATIONS

No Recommendations recorded

CORRECTIVE ACTION

Corrective Action recorded

COMMENT 1

The performance requirements relate to processes only. No impact assessment or human rights indicators are recorded.

COMMENT 2

The Findings, Recommendations and Corrective Action are not adequately recorded for analysis, decision/action or review.

HSEC Management Standard 8

STANDARD 8

BUSINESS CONDUCT, HUMAN RIGHTS AND INDIGENOUS AFFAIRS

Activities and operations are conducted in an ethical manner that supports fundamental human rights, respects the traditional rights of indigenous peoples and values their cultural heritage

PERFORMANCE REQUIREMENT 2

- (1) Determine whether the site has a copy of the United Nations Universal Declaration of Human Rights, and has identified which Articles are relevant to the business, contractors and business partners, e.g. safe and healthy working conditions; freedom of association; fair remuneration; non-discrimination in personnel practices; no forced or child labour; no forcible displacement of individuals, groups or communities; respect for existing international guidelines and standards for the use of security forces
- (2) Verify that the relevant Declaration Articles have been communicated to employees, contractors and business partners, and that they abide by the Principles of the Declaration
- (3) Determine whether regular reviews take place to assess performance against the relevant Articles of the United Nations Universal Declaration of Human Rights. Verify that systems are in place to respond to and manage non-conformances
- (4) Determine whether compensation or benefits have been paid to local land owners and the methods used to determine the values. Determine the extent of local land owner involvement in the process.
- (5) Determine whether the site has a copy of the World Bank Guidelines on Involuntary Resettlement.
- (6) Verify that, where a resettlement program has been carried out after June 2003, the site has prepared a resettlement plan in accordance with the World Bank Operational Directive on Involuntary Settlement. Determine the extent to which people affected by involuntary resettlement programs after June 2003 have been consulted and involved in resettlement planning and how compensation issues have been addressed.
- (7) Determine whether the site has a copy of the Voluntary Principles on Human Rights and Security, and verify that relevant employees and contractors (including security personnel) have been trained in, and abide by, their responsibilities under the Principles

PERFORMANCE FINDINGS 2 *LOW PRIORITY (in terms of risk analysis)*

8.2 No copy of UN Declaration on Site (how can human rights be implemented if there is no information — if the first performance finding is negative does this stop further measurement (i.e. requirements 2-7)

RECOMMENDATIONS

Get copy of Declaration on site and perform a gap analysis in order to mitigate possible shortcomings

CORRECTIVE ACTION

Get copy of Declaration on site and perform a gap analysis in order to mitigate possible shortcomings

Responsible: (person identified)

Due date:01/06/04

COMMENT 1

The rights enumerated above do not cover all the rights set out in the UD HR or in the International Bill of Rights, but rather reflect core labour rights and displacements and conduct of security forces — as referred to in the “Case Study” paragraph above.)

COMMENT 2

If there is no information on human rights and the first performance findings is negative, it raises the question as to how further measurement is determined in terms of requirement “Problem Statement” and “Case Study” above.

The summary of *Significant Findings for Business Conduct, Human Rights and Indigenous Affairs* for the 2001 Audit is recorded as follows:

Standard 11

Business Conduct, Human Rights and Indigenous Affairs

11.3 Through active participation in Zululand Chamber of Business Foundation (ZCBF) and its various committees, the site works very well with local communities to identify needs and prioritise support for sustainable development initiatives. [Note: Standard 11 in the 2001 audit is now Standard 8 in the 2003 audit]

The 2001 and 2003 audited Findings for Business Conduct, Human Rights and Indigenous Affairs demonstrates a huge gap in organisational management with respect to the human rights in the UDHR. In addition, no impact assessment is conducted nor human rights indicators used. Moreover, when no basic human rights information was available on site (Performance Finding 8.2), the measurement stopped.

- u Overall, the Standards, through their application and implementation, allow for constructive engagement at all levels within the organisation, which helps promote good business practice and good governance.
- u However, the Standards would be significantly improved as a human right tool if human right performance requirements were included as a measurement against each Standard, and across Standards. This, in turn, would result in a great human right fit between Standards and Activities and Operations.

BHP Billiton’s Standards are used as a tool to assess the application of HSEC management systems at Bayside, including all operational aspects and

Diagrammatically, the impact of the Standards as a tool for measuring the impact of human rights at BHP Billiton’s Bayside Aluminium Smelter could be represented as follows:



activities that have the potential to affect, positively or negatively, the safety of people, the environment or the community. In its broadest application, the Standards and the Audit allows for constant review and improvement both in terms of Standards Review as well as Systems Implementation and Operations. In this way, corrective measures are highlighted and implemented and measured against the next auditing process. The Standards also allow for noteworthy achievements at Bayside as well as for organizational fit between policy and application. In addition, once Standards are in place, according to policy, the Company has to report on its findings to shareholders. It is also balanced against the Company scorecard. However, in its current state, the Standards fall short in determining a human rights fit between Standards and Activities and Operations. Given the gaps on human rights issues in Standard 8, and while some human rights issues are addressed, though not framed in a human rights discourse, there is a weak human rights fit between Standards and Operations and Activities. Coupled with this is the absence of human rights indicators, monitoring and evaluation.

Integrating Human Rights

Other than Standard 8, Standard 6 (Health and hygiene) is the only other standard that is content rather than process oriented. Within a human rights framework, Standard 6 falls under the right to a safe and healthy working environment. All the Standards could and should be viewed as interrelated. Moreover, better performance and assessment could be achieved if the Performance Requirements were developed within a human rights framework and discourse, and included the development of human rights indicators, monitoring and evaluation of standards on a human rights grid. In this context, the following commentary and/or specific suggestions for improvement are offered:

Standard 1
Leadership and Accountability

- u Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the UDHR
- u Human Rights Training and Diversity Training should be compulsory for senior/executive management

Standard 2***Legal Requirements and Document Control***

- u It is noteworthy that where local legislation does not have an adequate level of HSEC performance, BHP Billiton has exceeded requirements in putting protective/human rights measures in place, especially around the right to health care with particular reference to HIV/AIDS
- u Documents should include the Constitution, the Bill of Rights and the UDHR
- u Employees should be given a copy of the South African Bill of Rights

Standard 3***Risk and Change Management***

- u Risk management processes could be identified as country and region/province specific such as health-HIV/AIDS, unemployment and black economic empowerment. In this respect, Bayside Aluminium Smelter should contextualize and profile the province and their working environment

Standard 4***Planning, Goals and Targets***

- u Planning goals and targets should include human rights benchmarking

Standard 5***Awareness, Competence and Behaviour***

- u Awareness and behaviour should include a rights based discourse which includes diversity training

Standard 6***Health and Hygiene***

- u Health and hygiene risk assessment should include HIV/AIDS/disease prevalence, management and treatment, future planning, benchmarking, indicators and monitoring and review

Standard 7***Communication, Consultation and Participation***

- u HSEC initiatives and programmes should include the Bill of Rights and a “know your rights” campaign that could be linked to the “Zero Harm” Campaign
- u All key documents should be communicated to employees in a manner that includes open consultation and participation on a regular basis

Standard 8***Business Conduct, Human Rights and Indigenous Affairs***

- u HSEC activities should include human rights monitoring and evaluation across the 15 standards. This could be a matrix or theme approach such as Health-HIV/AIDS, Environment or Diversity Training, and should include the development of indicators, monitoring and evaluation across standards
- u Human rights must be framed in a rights based discourse set against the UDHR
- u Performance requirements should include development of human rights indicators, monitoring and evaluation standards on construction and commissioning on an annual basis

Standard 9***Design, construction and commissioning***

- u Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the UDHR
- u Performance requirements should include development of human rights indicators, monitoring and evaluation standards on construction and commissioning on an annual basis

Standard 10***Operations and Maintenance***

- u Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the UDHR
- u Performance requirements should include development of human rights indicators, monitoring and evaluation standards on operation and maintenance on an annual basis

Standard 11***Suppliers, Contractors and Partners***

- u Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the UDHR
- u Performance requirements should include development of human rights indicators, monitoring and evaluation standards of suppliers, contractors and partners on an annual basis

Standard 12**Product Stewardship**

- u Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the UDHR
- u Performance requirements should include development of human rights indicators, monitoring and evaluation standards on product stewardship on an annual basis

Standard 13**Incident Reporting and Investigation**

- u Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the UDHR
- u Performance requirements should include development of human rights indicators, monitoring and evaluation standards on incident reporting and investigation on an annual basis

Standard 14**Crisis and Emergency Management**

- u Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the U D HR
- u Performance requirements should include development of human rights indicators, monitoring and evaluation standards on crisis and emergency management on an annual basis

Standard 15**Monitoring, Audit and Review**

- u Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the UDHR
- u Performance requirements should include development of human rights indicators, monitoring and evaluation standards on an annual basis.

Standards Application — Activities and Operations

In addition to the Standards review, a number of interviews were conducted at the Bayside Aluminium Smelter, to assess the *human rights fit*. The interviews provided a way of testing for human rights indicators at the Operations level. The issues of *Health, Remuneration and Employment Equity, Training and Development, Employment, Culture, Community Development, and Indigenous People* were examined to analyze for human rights indicators at the Operational level in the Plant.

Health Issues (right to health)

Bayside Aluminium is situated in the province with the highest HIV/AIDS infection rate in the country. It has an HIV/AIDS Policy in place as well as a policy document on Sexual Harassment (*non-discrimination*) Procedures and Ill-Health Procedures (*right to a safe and healthy working environment*). In addition, various systems have been put introduced to address employees' health issues. Currently, a "Voluntary (*right to privacy related*) Counseling and Testing Programme" is in place which has had a positive response from employees. At the

time of interview, Bayside was conducting a voluntary HIV/AIDS "Spit and Go" programme with an uptake of more than 90% of the workforce. The results will determine appropriate action to be taken by Management with regard to levels of infection. The Employee Wellness Procedure (EWP) policy document is currently in draft form with a view to implementation in 2004. The objectives of EWP is to establish a holistic, integrated employee wellness programme that will support the attainment of knowledge on preventing and managing chronic illnesses and diseases, especially, but not exclusively, HIV/AIDS. The programme also encourages employees to adopt and maintain a healthy lifestyle in order to minimize their risk of exposure to contracting life threatening diseases (*right to health*).

While Bayside Aluminium has made significant strides to address HIV/AIDS through various programmes, on a risk level, trade union representatives (relevant stakeholder) indicated that the Plant was not doing enough for their employees on the HIV/AIDS issue. While they could not indicate what additional measures should be put in place, they did believe that the EWP programme will go a long way towards addressing employees concerns.

Remuneration and Employment Equity (equal remuneration and the right to work)

Shireen Pillay, Specialist, Company Remuneration Policy, is responsible for medical aid, pension plans and benefit schemes. All information is disseminated to staff through newsletters, such as the Bayside News, news flashes and presentations in both English and Zulu. The Employment Equity Forum addresses the issue of legislative requirements for the company, maternity benefit policy, pension fund and recruitments. All remuneration benefits for all categories of

employees are considered to be equitable throughout the company (*equal remuneration and right to equality*). This was affirmed by the trade union representatives.

Members of staff as well as trade unionists raised the issue of employment equity particularly at senior level. They argue that since the Employment Equity Act 55 of 1998 was promulgated, there have been no significant changes in the organisation, especially at management and senior management level. According to Ms Pillay, goals for Employment Equity have been reviewed and updated for implementation by June 2005. (The Equity Plan with targets is available on request).

Within the South African context, the level of risk relating to employment equity may be both complex and high, and may influence employee perceptions of the company at large as not being willing to conform to the overall transformation process. An additional risk is that the trade unions may lead a challenge on the issue.

BHP Billiton's recruitment policy provides an illustration. All candidates must have matric (Grade 12) plus mathematics and science as subjects passed. All candidates, for whatever position in the company, must pass a medical examination. Candidates applying for positions at the plant must undergo a number of tests, which include psychological assessment; medical, stamina; hearing; eye sight and lung function. According to Ms Pillay, the reasons given for the rigorous testing is because potential employees need to operate heavy machinery in the Plant. On average, in an intake of 70 candidates, only three candidates qualified for employment. Most candidates failed the medical testing due to poor health and living standards. The net result, by default, is that the uptake of candidates is skewed in favour of people from the Indian and White communities.

To promote equitable access to employment, BHP Billiton is involved in a number of community projects. For example, in partnership with other major industries in the region, through Zululand Chamber of Business Forum, BHP Billiton participates in a number of school initiatives aimed at providing support structures to schools in the region, with particular emphasis on the fields of maths, physical science and biology, as well as physical school improvements. In addition, BHP Billiton is involved with a number of skills training projects in the Empangeni region.

Training and Development (right to education)

Unemployment in the area is very high, especially among Zulu speakers. The minimum job requirements at the smelters today effectively disqualify the majority of the population in the area, thus widening the employment and economic gap between "black and white" in South Africa. For the 300 unskilled employees as Bayside, there are a number of training programmes to upgrade their skills so as to improve their technical qualifications and remuneration. (*Such initiatives are part of the right to education and are also included in the right to work*). To help address possible indirect discrimination caused by job requirements that have a disproportionate impact on the Zulu speaking community, BHP Billiton could consider a community programme targeted at upgrading basic skills that, in the long term, could also benefit the company by increasing the pool of potential employees (with particular reference to future candidates identified in "Remunerations and Employment Equity" above).

Anneke Kleynhans, Specialist, Training and Development, implemented the Adult Basic Education programme for employees. She is in the process of

implementing a training programme, developed in Australia, on *Team Excellence*. The programme is currently being piloted at Bayside with the view to implementing it at other sites. The training programme is outcomes based and takes all employees through various learning units such as Team Alignment, Caring for People and the Environment, Caring for our Customers — Doing Things Right the first Time; Working in a Team; Being the Best — Continuous Improvement and Self Development. The training programme serves to ensure that all employees understand their contribution to the organization, to each other and to the environment — hence the "Zero Harm Campaign" against health, safety and the environment. The training programme is designed so that employees are able to do cross-over learning in their mother-tongue, i.e. English, Afrikaans or Zulu. As noted in the 2001 Standards Audit, Bayside Aluminium Smelter has accomplished much in the implementation of skills development and Adult Basic Education (*relates to the right to education and training*). Human rights training, education and awareness could be an integral part of training programmes and, in particular, the "Zero Harm Campaign".

Employment (right to work, right to a safe and healthy working environment and freedom of association)

Geraldine Fourie, Specialist-Employment Relations discussed wages and negotiations and industrial relations. There are two trade unions at Bayside which deal with issues at the national level and agenda rather than at plant level. Of particular concern to the unions were issues such as work related health problems rendering employees unfit to work in a particular area in the plant. The position at Bayside is that if the Plant is not able to place employees in other positions, disability benefits will apply (*relates to the right to social security*). This

was a specific recommendation raised in the 2001 Audit (9.2 and 20.1). Ms Fourie indicated that there were not sufficient positions in the Plant to accommodate everyone in this situation.

Another issue raised by the Unions was the possibility of retrenchments. During 1999, the merger process at Bayside resulted in a number of retrenchments, which created a great deal of uncertainty amongst employees. BHP Billiton sought to address the issue by implementing a *Business Ethics Policy*. The policy is aimed at ensuring that all employees are aware of practices that are regarded as unethical, to prevent such practices, to maintain unbiased judgment and independence of action in the execution of duties, and to provide employees with a formal process to disclose gifts, potential or actual conflicts of interest, alternative employment and other outside activities (right to a safe and healthy working environment).

Culture (workplace culture and cultural rights)

Bongiswe Mathenjwa, Numsa Union Representative, discussed a number of procedures including that of voluntary testing, safety, risk management, environment, health and safety. In all these areas, he indicated that Bayside did much to care for the well-being of its employees. Mr Mathenjwa indicated that the relationship between business and employees had changed over the past years in that the Unions no longer make demands on the Company, but rather set out proposals and its own issues for discussion (This is an example of the benefits from recognizing the right to freedom of association, and transparency). He indicated that there were good medical aid benefits for people living with HIV/AIDS and those who declared their status. However, he suggested that not enough was being done by the Company for

employees with healthcare problems. Mr Mathenjwa's concern may suggest broader healthcare problems than those at the Plant. As a risk factor, this may be something that should be further investigated as employees may not always wish to declare their health status for fear of lay-offs.

Mr Mathenjwa raised two further issues of concern for employees. The first issue of employment equity was discussed above. The second issue was the ongoing concern of employees (which, according to him, included perceptions in the community) that the merger and downsizing of Bayside caused retrenchments and many people in the community lost their jobs. He expressed the sentiment that BHP Billiton was more concerned with "profits than people", even though he acknowledged the extensive community service that BHP Billiton has undertaken in the community. In addition, Mr Mathenjwa expressed the concern of the workers that Management did not care about their workers in the community and that they did not represent the Company or the Plant at the funerals of workers or their family members. Funerals play a significant role in African culture and have an impact on the social fabric of the community. This has been a particularly trying time for the community given the high incidence of HIV/AIDS related deaths in the region (*cultural rights*).

The risk factor to the Plant is that it involves perceptions that have the potential to undermine the community work and social involvement of the Plant (*work place culture*). The matter was raised in a meeting with the CSI Manager and the General Manager. They indicated that it was difficult to deal with perceptions and issues of culture that they considered to be groundless. (While it could be argued that this was not a very responsive answer — it is legitimate for the Company to focus on its core

priorities of business and profits. However, community involvement initiatives could mitigate the specific risk. Similarly, the retrenchments of staff were a significant part of the restructuring that had to take place. They both stressed that the policy at Bayside is that everyone is treated equally and that no one religion or group of people is singled out for any favourable measures. However, with the high rate of unemployment in the province and in the country overall, retrenchments are a constant threat to employees' livelihood.

An employee forum — especially a human rights forum — could help address issues of race and racism, gender, religion and employment equality and equity. Such a forum could also consider training in diversity, coupled with a mechanism to address the above-mentioned issues and to provide redress.

Community Development

Bayside has a strong social investment portfolio which supports development programmes and addresses specific human rights issues, such as the right to education and training, and the right to health care, the right to work (especially job creation, training and capacity building, with a particular focus on the rights of women and children), cultural rights including to heritage and the right to a clean and healthy environment.

Approximately 80% of Bayside's corporate social investment is conducted through the Zululand Chamber of Business Foundation (ZCBF). The Zululand Chamber of Business Centre, in which the Foundation is housed, was originally the accommodation site of the builders and contractors of Hillside Aluminium. BHP Billiton purchased the site, which was then handed over to the ZCBF to house the NGOs in the area. Louis van Zyl is the

Director of the Centre and manages Bayside's projects and community involvement. Bongani Mqaise. BHP Billiton's Corporate Social Involvement Manager works closely with the ZCBF to ensure alignment with BHP Billiton's Business Strategy. A number of BHP Billiton's projects run by the ZCBF are done in partnership with other major companies in the area, as well as local government. However, as in the case of BHP Billiton, the ZCBF does not work or operate within a rights based culture or environment.

As a risk factor, there is a degree of concern about ZCBF managing Bayside's projects and community involvement, as the relationship with ZCBF essentially removes BHP Billiton from visible participation. Rather, the perception is that the benefactor is ZCBF. The roles of ZCBF and BHP Billiton are not clearly defined in the community. This recalls Mr Mathenjwa's comments about the Company not being represented in the Community referred to in "Employment" above.

Indigenous People

An issue of concern raised during the interviews was the removal of indigenous people from Bokhulu to Ntambanana in 1966-1967 to make way for industrial growth in the area. Following a claim to the land by the indigenous people, the Department of Land Affairs allocated a site to them, which became known as the Mandlazini Agri Village. However, the people of the Mandlazini Agri Village still do not feel that they are adequately compensated for their ancestral land. In the interim, Bayside Aluminium, along with a number of other companies in the area, has adopted the community as part of their Corporate Social Investment programme.

Concluding Remarks

HP Billiton has taken the first very important step in its commitment to incorporation of human rights within its organisation. However, now the challenge is implementation. The approach of integrating human rights into existing management tools is highly commendable and provides the basis from which to continue implementation, develop standards and conduct evaluation and review. However, the Management Standards, in their current form, do not convey a clear sense that the company perceives the interrelatedness and indivisibility of human rights, or the advantages of operating within a human rights framework and discourse.

Overall, the Bayside Aluminum Smelter has significantly aligned their business strategy with their workforce to establish institutional connectedness with the overall Charter, HSEC Policy and Management Standards. However, on a basic human rights level, the fundamental documentation, i.e. the UDHR, was not on the premises. Arguably, a clear strategy on human rights is not evident within the organisation.

Yet, the Plant has achieved much by way of complying or conforming to human rights norms and standards. As one of the oldest of the three smelters with over 300 unskilled employees, Bayside Aluminium has a highly commendable programme in place to address the Plant's specific needs, especially in terms of the Adult Basic Education Training Programme and the Team Excellence Training (right to education and training). No specific issues were raised on the Environment (right to the environment), which is benchmarked as the best in the country. Other issues include the right to health care and privacy, particularly with regard to HIV/AIDS; the right to form trade unions and operate openly within the company; the right to safe and healthy working

conditions/rest, leisure and holidays; and the right to social security, including social insurance.

Human rights within the working environment can mean more and be more than a compliance tool. BHP Billiton has put in place good initiatives, and best practices have been achieved at a number of levels within the Plant, including the right to life.

In addition, the right to health care, unemployment (*equal opportunities*) and retrenchment (*right to work*) are significant areas of concern for employees. Bayside Aluminium remains focused on these areas to ensure that their employees' needs are addressed within the structures of the Plant, the Company as a whole and the community at large. Bayside Aluminium Smelter, through their Management Standards, has set the foundations for the development of a human rights culture to take hold.

Recommendations (additional)

Standards

- u It is critical to the successful outcomes of the Standards that the communication gap be addressed. One suggestion is that the champions assigned to the various Standards should "talk" to each other on a regular basis to develop a system or structure that is able to convey information to employees and to allow for responses and corrective measure "from the ground".
- u Champions need to promote a human rights culture across Standards, systems, activities and operations that serve to create an enabling environment. The "Zero Harm Campaign" currently underway addresses the issues of safety and the environment. It is a highly visible Campaign throughout the Plant. The

Campaign could be extended to include and promote human rights issues. The implementation of the findings and recommendations of Standard 8.2 could be used as a basis for promoting human rights awareness within the Plant and subsequently throughout the Company.

- u The benchmarking *between* Standards should include human rights compliance benchmarking and the development of indicators, evaluation and review mechanisms. In addition, *Standard 15: Monitoring, Audit and Review* — the performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the UDHR.
- u Audit results should be supplemented/corroborated by an external auditor. The Audit should include stakeholder input as well as local human rights knowledge to relate to the most important human rights issues faced in the community especially around socio-economic rights, i.e, the right to housing, education, food, water, social security, health care, and the environment. Special emphasis should also be placed on the rights of the child and women.

Health Care

- u The Employee Wellness Procedure should be implemented as soon as possible and monitored against employee needs and concerns - especially around issues of HIV/AIDS.

Remuneration and Employment Equity

- u Bayside Aluminium must give effect to the Employment Equity Plans.
- u Diversity training programmes should be instituted to address human rights issues with specific reference to race and racism, gender, employment equity, norms, perceptions and cultural

differences. Diversity training should be seen as a tool to achieving the common value system set out in the BHP Billiton Charter.

Employment

- u The Business Ethics Policy must be communicated to employees and monitored against issues of concern and perceptions. This should also be discussed as part of diversity training.

Culture

- u Diversity training provides a platform for people to share cultural backgrounds and differences. It also creates the opportunity for people to participate in the transformation process of the company and the community at large.

Community Development

- u A more favourable relationship between the ZCBF and BHP Billiton should be found that allows BHP Billiton the role of the *lead agent* rather than the *support agent* to ZCBF. ZCBF is well placed to provide human rights training and development to the broader community as well as allow human rights to become an integral part of their projects, review and evaluation process and their discourse.

Indigenous People

- u The Mandlanini Agri Village creates an opportunity for Bayside Aluminium to take the lead in bringing together other industries in Richards Bay to join forces and assist the people in community and participate in sustainable development programmes.

The Global Compact Performance Model

Bayside Aluminum Standards, Audits and business strategy, along with the workforce, create an institutional connectedness with the overall Charter,

HSEC Policy and Management Standards. In the process, BHP Billiton has incorporated international human rights standards within their sphere of influence to ensure that the Company is not complicit in human rights abuses. As one of the oldest of the three smelters, Bayside Aluminium has addressed Plant specific needs, in terms of processes and operations as these relate to *Standard 8: Business Conduct, Human Rights and Indigenous Affairs*. Bayside Aluminium operates within the broader structures and values of BHP Billiton.

Vision and Leadership

Bayside Aluminium Standards Audit establishes institutional connectedness with the overall Charter and HSEC Policy. This institutional connectedness is led by senior management through the implementation of the Standards, the Audit and the related activities and operations, and is broadly shared by employees, shareholders and the community at large. The overall vision and leadership is led by broad based business acumen and leadership principles which define the framework for governance and investor returns.

Empowerment

The Standards Audit allows both employees and trade unions to actively engage in the process and to add value to the process. Empowerment is also addressed in terms of South African specific needs and criteria.

Resources

Resources are made available at corporate level to achieve objectives.

Policy and Strategy

The Standards cover international standards including the Global Compact Reporting Framework and are integrated into core business strategy. Compliance is monitored via the Balanced Scorecard approach to ensure that policy and strategy is taken down to the floor level.

Process and Innovation

The Company's policy is that "innovation" is used as a business imperative to drive the process — innovative systems in turn are translated into practical application.

Company, namely systems, processes and performance targets. The reports are also aligned with the Global Reporting Initiative Framework and are externally verified.

Impact on People

Processes and systems are in place to deal with issues that may arise as part of the formal structures of the Company. BHP Billiton has an independent Ethics Advice Panel to address individual complaints/community concerns. The Panel reports directly to Head Office. There is also an Independent Risk Management Committee which tracks issues that are recorded by the Ethics Advice Panel. The Ethics Advice Panel also takes up issues and operates in a proactive manner to deal with issues. In addition, there is an external "whistle blowers" system in place (via auditors) and an internal help line.

Impact on Society

The design, evaluation and review of the Standards have the potential to highlight both the positive and negative impact on society, including partnerships with government, non-governmental organisations and with the community.

Value Chain

The core business of Bayside Aluminium is mining smelting. The Standards consider the downstream user and how to promote appropriate use of the end product.

Reporting

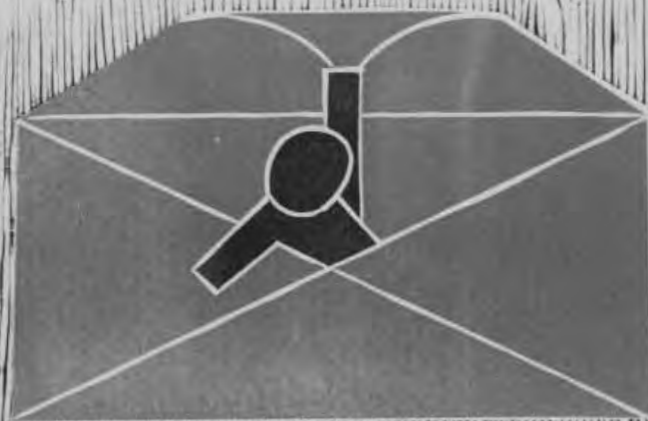
BHP Billiton has received a number of top awards in most categories in terms of reporting procedures. HSEC reporting procedures are directly linked to comprehensive performance audits throughout the Company. Two reports are released together each year: Financial/Business and the HSEC Performance Reports with the one supporting and informing the other. Both reports fit into the total governance of the

Appendix 1

BHP Billiton Bayside Aluminium Staffing Compliment as at October 2003

	Male	Male	Male	Male	Female	Female	Female	Female	EE Actual
Occupational Categories	African	Coloured	Indian	White	African	Coloured	Indian	White	April 03
Legislations, senior officials & managers (BB 6+7)	1	0	1	5	0	0	0	1	
Actual as @ October 2003	0	0	1	6	0	0	0	1	2
Professionals (BB8)	4	0	2	13	0	1	0		
Actual as @ October 2003	3	0	3	20	0	1	0	3	10
Technicians & associate professionals (BB9)	33	2	15	75	10	1	7	7	
Actual as @ October 2003	28	1	13	86	5	1	4	12	64
Clerks (BB10)	8	0	0	11	4	0	3	17	
Actual as @ October 2003	6	0	0	5	2	0	0	10	18
Craft and related trades workers (Artisan)	33	2	10	107	0	0	0	0	
Actual as @ October 2003	27	1	4	111	1	0	0	0	33
Plant and machine operators & assemblers (operators)	394	5	25	46	24	0	3	15	
Actual as @ October 2003	470	1	7	29	4	0	0	0	482

1. EVERYONE HAS THE RIGHT
TO SEEK AND TO ENJOY
IN OTHER COUNTRIES
ASYLUM FROM PERSECUTION



2. THIS RIGHT MAY NOT BE
INVOKED IN THE CASE OF
PROSECUTIONS GENUINELY
ARISING FROM
NON-POLITICAL CRIMES OR
FROM ACTS CONTRARY TO
THE PURPOSES AND PRINCIPLES
OF THE UNITED NATIONS

Human rights and supply chain management in the Pharmaceutical sector*

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TwentyFifty

Annette Stube
Novo Nordisk

** Peer review of this case study was provided by David Allen, Strategy Professor and Area Chair, Instituto de Empresa and Nicky Amos, Director of CSR, Corporate Culture plc. We are pleased to acknowledge that this case study was researched and written with the financial support of Novo Nordisk*

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Case Abstract

This case study analyses the way in which Novo Nordisk has integrated human rights (including labour rights) into its supply chain management over the past three years. It should be noted that the programme also includes the environment, but that this case study focuses on the human rights dimensions of the work. It follows the framework of the Global Compact Performance Model and compares the progress made under the Sustainable Supply Chain Management Programme with other human rights activities the company has undertaken. The authors have aimed to make the case study as accessible as possible and to highlight possible areas that might be transferable to the thinking of others.

This case study is particularly relevant to any company that is not yet facing specific legal, media or NGO pressure to comply with specific human rights norms in its management of its supply chain. This can present perceptual challenges within some sectors of the company and amongst some suppliers as to why they have to participate in self-evaluation questionnaires, telephone discussions and possibly auditing. Yet any rigorous movement towards the promotion of human rights within a company's sphere of influence and guarding against any form of complicity in the abuse of human rights, requires any sizable company to monitor its supply chain carefully. This case study presents a model for moving towards human rights-based supply chain management that is as much driven by broader strategic concerns about good corporate governance, as it is about any prior knowledge of labour rights abuses in the supply chain, of which there were none. It is a model which relies more on "pull-factors" within the company than "push-factors" from outside, and so from this perspective can be seen as pro-active.

This case study captures work in progress and we hope it will be thought provoking for any company interested in a better understanding of the first two Global Compact principles. It also shows that business approaches to integrating human rights can be based as much on opportunity and vision as on compliance alone.

Company Profile

Novo Nordisk is not the world's largest, but is one of the most specialised, of the international pharmaceutical companies. It is a focused health care company with 47% of the global market in insulin (70% of the company's business). It also produces products for haemostasis management, growth hormone treatment and hormone replacement therapy. In 2003, the turnover of the company was DKK 26.5 billion (Euros 3.56 billion).²⁰² Split geographically, 44% of the turnover is in Europe, 24% in North America, 16% in Japan and Oceania, and 16% in the rest of the world.

The company is registered in Denmark as a public limited liability company with a Board of Directors and Executive Management. In accordance with Danish law, three Board members (out of a total of nine) are elected by the employees and serve for four years.²⁰³ Novo Nordisk's share capital is DKK 709,388,320, which is divided into an A share capital of nominally DKK 107,487,200 and a B share capital of nominally DKK 601,901,120. Novo Nordisk's A shares are non-listed shares and held by Novo A/S, a private limited Danish company which is 100% owned by the Novo Nordisk Foundation. Holding 26.7% of the total share capital, Novo A/S controls 70.4% of the total number of votes. The B shares are quoted on the Copenhagen and London Stock Exchanges, and American Depository Receipts (ADRs) on the New York Stock Exchange.²⁰⁴ This corporate governance structure helps the values of

the company to be reflected throughout the company's ownership, and, in March 2004, the company's articles of association were amended to specify that the company will 'strive to conduct its activities in a financially, environmentally and socially responsible way'.

Novo Nordisk is represented in 69 countries and its products are sold in 179 countries. 99% of its sales are outside Denmark, but production is concentrated in its home country, with other production sites in the US, France, Japan, China, South Africa and Brazil. Of the total workforce of 18,800, 65% live and work in Denmark.

Human Rights at Novo Nordisk

Novo Nordisk's vision of sustainability can be traced back to the early 1990s and earlier, as will be analysed in the section on *Vision* below. In 1999, Novo Nordisk embarked on a SWOT analysis for the company based on the full content of the Universal Declaration of Human Rights across a sample of four countries: Algeria, Brazil, China and India. In parallel with this, Novo Nordisk carried out an internal review. This enabled Novo Nordisk to be one of the first companies to clearly define what it thought its 'sphere of influence' was relating to human rights (Global Compact Principle One²⁰⁵) even though Novo Nordisk was not a member of the Global Compact at the time. In 1999, Novo Nordisk made a formal public commitment to the Universal Declaration of Human Rights and signed on to the Global Compact in 2001.

It has declared that its priority areas within human rights are likely to be:

- u the right to health (i.e. access to health care and medicines)²⁰⁶
- u the right of non-discrimination (translated into equal opportunities and diversity)²⁰⁷

- u the right to privacy (including protection of patient information).²⁰⁸

This does not mean that Novo Nordisk takes no interest in other human rights — the Sustainable Supply Chain Management Programme demonstrates that this is not the case — rather it was one of the first companies to clarify its most immediate ‘sphere of influence’ relating to human rights, although this is not a term Novo has used directly.

The company has undertaken a number of programmes in order to help ‘fulfil’ and ‘promote’ these rights across a range of stakeholder groups. Many of these activities go beyond compliance to international norms and seek to harness business opportunity in the promotion of rights.

An important milestone in the development of human rights was the emerging profile of ‘the right to health’ within the pharmaceutical industry in the context of HIV/AIDS in southern Africa. Although Novo Nordisk is not a producer of anti-retroviral drugs, it was engulfed by the larger public debate about pharmaceutical patents and access to life-saving medicines, of which diabetes care is clearly a part. Rather than closing down the issue, or seeing it purely as an exercise in risk management, Novo Nordisk engaged in the following five programmes in relation to the right to health:

- u National Diabetes Programmes — Novo Nordisk works with national governments and other actors to ensure effective national programmes are in place;
- u The DAWN Programme²⁰⁹ — works on the psychosocial aspects of diabetes;
- u World Partner Programme — works to build effective diabetes care in Bangladesh, Costa Rica, El Salvador, Malaysia, Tanzania and Zambia;
- u Preferential Pricing Policies — marketing medicines at one fifth (20%

of the average price in the US/Japan/Europe as a benchmark) of the standard price in the world’s 49 poorest countries according to the UN.

- u Contributing to the World Diabetes Foundation for humanitarian assistance in the very poorest of countries.

In relation to equal opportunities and diversity, Novo Nordisk has a long term strategy with goals on how to reap the benefits of diversity built upon a foundation of ensuring compliance to non-discrimination. Two aspects have been identified as significant focus areas within the global company until 2006:

- u ‘Women in Management’ is a company-wide priority for 2004 and Novo Nordisk is working on a series of initiatives in partnership with the US-based NGO ‘Catalyst’;
- u ‘Ethnic minorities’ will be the focus for 2005, not least in Denmark where increasing the ethnic diversity of the workforce is seen as a priority.

In relation to privacy, Novo Nordisk’s has just initiated a project on safeguards for patients and employees reflecting increasing public concern about the way pharmaceutical companies use data, for example the genetic and other data in their research and marketing.

In summary, Novo Nordisk has tried to take a systematic approach to human rights across its general business. This is not without problems and challenges and the company is aware that mistakes will be made in the process. The company is currently developing its ‘Human Rights Management System’ as its commitment to membership of the Business Leaders Initiative on Human Rights.²¹⁰ This management system is being built on the company’s existing analysis of employee, product and project cycles to ensure a holistic approach. Looking forward, the company acknowledges that the second

Global Compact principle (relating to non-complicity in human rights abuses) is one of the priorities for Novo Nordisk.²¹¹ Where does a socially-responsible pharmaceutical company set its boundaries to human rights obligations? What level of safeguards can be expected to avoid direct, in-direct (‘beneficial’) and silent complicity across the globe?

Method

This case study is based on a series of interviews conducted in March 2004 with key staff and a selection of suppliers to Novo Nordisk. It builds upon earlier work conducted by Malcolm Macintosh for the company and also draws on a series of internal documents, surveys and reports that were made available to the authors. The aim was to provide a case study that was accessible to companies, NGOs, governments and trades unions around the world whilst adding to the collective understanding of how the Global Compact principles might best be implemented. Given the time and space available to the case study, the authors have decided to concentrate mainly on the first two principles of the Compact relating to human rights. However, as labour rights are also human rights (i.e. they are in the Universal Declaration and other human rights Conventions), reference will also be made to Principles Three, Four, Five and Six. It is important to recognise here, that Novo Nordisk are also committed to the remaining three Global Compact principles (Principles Seven, Eight and Nine) relating to the Environment, and these are also reflected in the Sustainable Supply Chain Management Programme. However, for the purposes of this case study, it is the first Principles that shall receive the most attention here.

Acknowledging that Novo Nordisk has done much in this area over recent years, the primary focus of the case study is the Sustainable Supply Chain Management Programme.

The Sustainable Supply Chain Management Programme

Novo Nordisk's purchases with external suppliers were valued at DKK 12.3 billion in 2002. This covered transactions with 5,000 suppliers ranging from flower shops to raw materials suppliers. Less than 200 suppliers delivered 80% of the value purchased. Geographically 93% of Novo Nordisk's suppliers are located in the EU or EFTA countries, 5% in North America, Japan, Australia and New Zealand. Only 2% by number and 0.4% by value are located outside these regions.

In 2003, Novo Nordisk undertook their second social and environmental evaluation of 90% of their key suppliers, in the form of a self-evaluation questionnaire. Of this total, 69% (i.e. 322 suppliers) were evaluated in 2003.²¹²

- u In the first instance, 87.6% showed satisfactory environmental and social performance;
- u 1.5% showed unsatisfactory environmental and social performance;
- u 10.6% showed unsatisfactory environmental performance;
- u 0.3% showed unsatisfactory social performance.
- u The majority of answers are of high quality, providing quite detailed responses suggesting that suppliers took the questionnaire seriously.

The self-evaluation questionnaire is an essential part of the Sustainable Supply Chain Management Programme. In 2004-2005, the project will also focus on assurance (audits) and expansion of the evaluation programme to R&D, Sales & Marketing. It is this Programme which is the focus of the analysis of this case study using the Global Compact Performance Model.

An analysis of the Sustainable Supply Chain Management Programme using the Global Compact Performance Model

The 'vanilla' performance model

The Global Compact Performance Model makes a distinction between three different approaches: 'cod-liver oil', 'caviar' and 'vanilla'.²¹³ When considering human rights in business, these distinctions are intriguing — with the 'cod-liver oil' being more normative, 'caviar' more process driven and the 'vanilla' model borrowing from both. This concept of a 'never ending cycle of improvement' is elaborated by the four stages in the cycle: 'vision', 'enablers', 'results' and 'reporting'.²¹⁴ This then implies an ongoing interplay between indicators of good process (vision and enablers) with tangible impacts on stakeholders (results) that are in some way measurable and communicable (reporting). The learning from this case study will be related to vision, enablers, impacts and reporting elaborated on in the sections below. The last section on *Managing stakeholder dialogue*, although listed separately in the Global Compact Performance Model, might be seen as an issue of ongoing process.

Vision

*"An important company in a small country"*²¹⁵

The Novo Nordisk vision relating to society and the environment can be traced back to the 1970s campaign against enzymes in laundry detergents by Ralph Nader and its effects on Novo Nordisk's business. If it is true that many socially responsible companies have their seminal point of awareness forged out of

crisis (i.e. their 'Brent Spar' or 'Niger Delta'), then for Novo Nordisk it happened very early. The Novo Nordisk vision was augmented in the early 1990s through environmental and animal welfare issues (enzymes, bioethics and animal testing), forming a broader platform of sustainability awareness. By the late 1990s, issues of human rights had started to emerge. At Novo Nordisk, the ethical questions faced by a global pharmaceutical company are not dodged, indeed it remains a stated aim of the company to lose its core business through the eradication of diabetes. Of course there is no prospect of this in the short to medium term with global diabetes increasing rapidly in both the developed and the developing world. The company has also some product diversity outside of diabetes, the *NovoSeven* anti-bleeding agent being a good example where Novo Nordisk aims 'to position NovoSeven as the world's first haemostatic agent for critical bleeds'.²¹⁶ The growth of this product would allow Novo Nordisk to survive commercially should global diabetes ever move into retreat and will also raise its own ethical questions.

Yet the Novo Nordisk vision goes beyond any particular business case and is inspiring because it allows a glimpse of what standard business behaviour might become over the decades ahead. Social and economic values are not just issues of Corporate Social Responsibility but also Corporate Governance. The 2003 Sustainability Report re-affirms the company's commitment to triple bottom line reporting and covers the following strategic areas: 'living our values', 'access to health', 'our employees', 'our use of animals', 'eco-efficiency and compliance' and 'economic contribution'.²¹⁷ Perhaps the ultimate statement any publicly listed company can make at a strategic level is to integrate social and environmental values into the articles of association, which the company did in March 2004.

The 2003 Report also reports on the extension of some of these values to the supply chain in the form of results from the self-evaluation questionnaires, describing these responsibilities as follows:

*"In seeking to promote social responsibility and good environmental performance throughout our business we work with suppliers and contractors to support human rights standards and sound environmental practices in our supply chain. In 2004, we will include auditing of their performance."*²¹⁸

Leadership

Leadership is crucial in developing such a strong values culture within a company. There are often a succession of skilful and like-minded people that drive such an agenda over years. Mads Øvlisen, formerly the CEO and now the Chair of the Board, is rightly credited in providing leadership in this area through the 1990s (several of those interviewed in the company cited the 1997 'values in action' programme as an important milestone) but it has continued to rise in prominence under the current CEO Lars Rebien Sørensen. Others often cited in the process are Lise Kingo, the Executive Vice President with direct responsibility for the area, Vernon Jennings and Elin Schmidt (at Vice President level) for directing the operationalisation of these values. Leadership on values is established within the management systems in place (This will be discussed in the next section on empowerment). It is no longer dependent on one or two people but is part of the culture and is a clear expectation of many stakeholders. One of the senior managers interviewed for this case study commented that one of the most valuable things the company gave her was the trust and discretion to interpret the values and show leadership on behalf of the company.

Leadership has also been implicit in the extension of these values to the supply

chain. Unlike the footwear industry for example, the pharmaceutical industry has faced much less external pressure to integrate human rights into supplier relationships. The fact that Novo Nordisk has rolled out a supplier programme over recent years is a testament to its leadership and reflects a belief that any approach towards addressing human rights has to be holistic and cover all operations. The pharmaceutical sector has always taken a keen interest in the quality of the product that suppliers provide, given the considerable risks involved to human health if a product is faulty. This relationship between the management of quality in the supply chain and that of upholding environmental and social standards represents an interesting opportunity for further leadership in this sector. There is a realisation, however, that the Pharmaceutical sector lags behind that of many branded-retailers in supply chain management generally and that there is much that remains to be learnt from initiatives such as the Ethical Trading Initiative in London and the work of NGOs and Trade Unions around the world.

Empowerment

The Stakeholder Relations team has direct responsibility for facilitating the empowerment of Novo Nordisk staff and suppliers relating to human rights and other values. In this team, Annette Stube is the project manager for the Sustainable Supply Chain Management Programme. This is not the same thing as saying that she has had the responsibility for upholding values in the supply chain; this responsibility has been devolved in great part to the people in the company who manage the commercial supplier relationships: the purchasing managers. During an interview for this case study, one of the strategic purchasers for the company talked eloquently about what it meant to uphold social and environmental standards in his area of the supply chain:

the sourcing of laboratory equipment around the world. He had a clear perspective on how the 'supplier risk matrix' (a tool to be analysed below) could be used to identify the appropriate level of engagement and whether an audit was necessary.

Given that purchasing managers are likely to develop the closest relationship with suppliers in their category, they can take the discussion a lot further than the initial self-evaluation questionnaire. This is especially important when it comes to second tier suppliers. For example, a recent visit to a new second tier supplier in Estonia yielded a series of concerns that could be taken up directly with the first tier supplier. In essence, purchasing managers are empowered, through bespoke training in the company, to see social and environmental management as integral to quality management in the supply chain. This is supported by an NOP Healthcare Survey of Novo Nordisk suppliers in 2003, which indicated that 91% of suppliers agreed or completely agreed with the statement that they 'had a good dialogue with the contact person at Novo Nordisk.'²¹⁹

The challenges involved in training all purchasers in human rights should not be understated. Few purchasers join any company with the prospect of human rights-based supply chain management in mind and a significant amount of work has been invested by Novo Nordisk in training and updating these workers. The strategic purchaser interviewed for this case study was obviously keen and well-informed, but there is likely to be variance between the ability and commitment of each of these key workers. Any system that places key ethical responsibilities on front-line staff needs internal systems and monitoring to support them and the quality of their work. It was clear from interviews that this is the role of the 'stakeholder relations' team, but there was no data available as to performance of each of the purchasing managers in this area.

Another example of empowerment is the 'Supplier Evaluation Committee' that deals with purchasing decisions that may have a strategic impact on Production. Issues brought to the committee arise from the environmental or social evaluation of a supplier. The Supplier Evaluation Committee can meet in cases of emergency. Issues are brought to the committee in cases of serious non-compliance or unsatisfactory performance by suppliers, media exposure, or sourcing decisions of a strategic nature.

The empowerment of suppliers themselves is also a vital component. This is explored in the section *Impact on value chain* below.

Policies and strategies

Strengths of the self-evaluation questionnaire

The self-evaluation questionnaire has been the first step in implementing the Sustainable Supply Chain Management Programme (a specimen is attached as an Appendix). The questionnaire was produced after benchmarking against other initiatives such as SA8000 and the Ethical Trading Initiative. However, since Novo Nordisk was one of the first movers in the pharmaceutical sector with regard to supplier responsibility, the nature of the questionnaire's content was thought through from first principles. The social content of the questionnaire focuses largely on labour standards and the International Labour Organisation core conventions. This is interesting when contrasted with the stated sphere of influence of the company for human rights. Whilst the 'right to privacy' and 'non-discrimination' are included in the questionnaire (in sections 13 and 11 respectively), 'access to health' is represented only in relation to 'health and safety' (section 7). This is an interesting compromise between focussing on the main sphere of influence of a

pharmaceutical company (Global Compact Principle One) and on the core labour standards that need to be upheld in supply chains of any business sector (Global Compact Principles Three, Four, Five and Six). Obviously, the supply chain is part of this sphere of influence but not as central to the business proposition as health itself.

Novo Nordisk reports that, for 2003, the target was to evaluate (by questionnaire) suppliers of production materials, services, office equipment and engineering work, as well as the licence manufacturers, covering 31% of the total value of purchasing in the company. The 90% targeted in these groups were those that could be characterised as having a high business impact, being manufacturers of substances or using environmentally hazardous processes, or industries or companies located in countries known for human rights violations. Through the use of the questionnaire, they were, in fact, able to evaluate 69% of these suppliers during 2003, representing a sample of 322 suppliers and licence manufacturers.²²⁰ As already stated, 87.6% of these questionnaires yielded satisfactory environmental and social performance, 10.6% unsatisfactory environmental performance, 1.5% unsatisfactory environmental and social performance and 0.3% unsatisfactory social performance alone. This means that only 1.8% of suppliers were not regarded as compliant with the social standards in the questionnaire based on their responses to the questions asked.

Weaknesses of the self-evaluation questionnaire

On closer inspection, this raises a serious question. Although the vast majority of first tier suppliers are in Europe and North America, are 98.2% of them really upholding the core labour standards and protection of privacy as set out in the self-evaluation questionnaire? Indeed, it is likely that the vast majority are compliant given the quality standards upheld across

the industry, but there might be some aspects (such as 'collective bargaining' in section 10 of the questionnaire) that would lend themselves to different interpretations by different stakeholders. Global Compact Principle Three infers that alternative representative bodies are acceptable but not if trades unions are excluded from the bargaining process against the wishes of workers.²²¹ It is unclear from the questionnaire whether all suppliers would read section 10 in this way, despite the stated intention of Novo Nordisk to include unions in the process. Similarly, the questions of working hours in section 6 of the questionnaire do not normally extend to managers for whom limits on working hours are rarely set (at least not in Denmark, the UK or USA). These shades of grey within the black and white nature of the questions posed in the questionnaire are recognised by the Novo Nordisk staff interviewed and might be explored in the auditing process (*The Auditing of suppliers* section below).

The suppliers interviewed for this case study were surprised that they were asked questions about 'child labour'²²² and 'forced and compulsory labour'²²³ in the questionnaire, in sections 8 and 9 respectively. As many of these suppliers were based in north-west Europe, some were shocked to be asked such questions. However, upon explanation from the Novo Nordisk team, most accepted that asking such questions was implicit in the systematic approach the company was taking and the universality of human rights themselves. A key benefit of including these questions is that the first tier suppliers would in turn use the template for asking questions of their own suppliers who might well be geographically more dispersed. This cascading effect of the questionnaire to the second and even third tiers of the supply chain is encouraged by Novo Nordisk and there is some evidence that for some suppliers it is having exactly this effect, with 39% commenting that they believed the evaluation had had a positive

impact on how they operated with their own suppliers.²²⁴ However, of the 61% of those who believed it did not have such a positive effect, a large percentage felt they were doing it already.

It is likely, given the comments during interviews for this case study, that some others did not see the relevance to their own operations. Given that some suppliers were identified for their environmental and not their social risk, the limitations in having such a generic questionnaire might have compounded this perceptual problem. However, child labour and forced labour are by no means absent from Europe and Novo Nordisk is supporting the indivisibility of human rights, as well as the holistic integrity of the Global Compact, by taking such an approach.

Another limitation, which is self-imposed, is a 'triviality limit' that excludes suppliers whose purchasing value to Novo Nordisk is worth less than DKK 250,000 each year (approximately US \$38,000). It is possible that some serving contracts in Denmark fall into this category, sectors that are traditionally underpaid in Europe and often really on more vulnerable migrant labour. Although these suppliers are likely to be locally based, many in Denmark, some will possibly be elsewhere in the world. This is not a practice that is transferable to other small or medium enterprises, for whom US \$38,000 might represent a significant percentage of their total purchasing.

There are also some more general limitations of a self-evaluation system, the first being that you can never be absolutely sure that suppliers are telling the full truth. Questionnaires also need chasing up in very many cases, most often by telephone, and this is resource intensive for the business concerned. Suppliers can also complain of 'questionnaire fatigue', asked to complete a range of different questionnaires sent by different customers. When asked about this, Novo Nordisk seemed aware of the limitations, but were not satisfied that any

alternative system would be practical for monitoring so many suppliers across the company. It is possible that, with time, present or new initiatives might eliminate some of this duplication. Yet, undoubtedly, auditing is a more thorough and satisfactory method of engagement on these issues, resources permitting. Companies with fewer suppliers, or those grouped in closer geographic proximity, might find it a better investment to leapfrog the questionnaire stage and invest in auditing all suppliers.

The auditing of suppliers

In 2002, all purchasers, including purchasers from production sites in France and USA, as well as some auditors, were invited for an information meeting with top management representatives to underline management commitment. A one-day training day followed. 64 people were trained and certified. The training focused on environmental and social issues as well as the practical elements of carrying out the actual evaluation.

The social auditing of suppliers is still in its initial stages at Novo Nordisk, but is likely to provide a very useful follow-up to the questionnaire process, in particular fleshing out some of the answers to the questionnaire. Given that Novo Nordisk's whole attitude to human rights is to go beyond compliance, some form of auditing is essential to encourage suppliers to be proactive and then to record the change following the audit. A good example of this is the licenced manufacturers who are all audited as a matter of course and enjoy a close relationship with the company.

During interviews for this case study, the authors discussed licence arrangements in countries such as India, Cuba, South Korea, Serbia, Mexico, Iran and Hungary. The supplier questionnaire is introduced to new licensees before the final negotiations are completed. This is followed up in the auditing process in

which local employees of Novo Nordisk, as well as external stakeholders such as local academics or lawyers, are involved. To date, the only major social issues have related to health and safety in the workplace, but Novo Nordisk has done some internal thinking about what to do should issues such as poor labour conditions be encountered. There is much that comes out of these audits that goes beyond compliance models. Some licensees and other suppliers provide a range of free medical resources such as doctors and dentists to employees. Others supply food coupons, still others make available social and recreational facilities. In some cases, this is to substitute for lower wages (although always above the minimum). These policies help fulfil economic, social and cultural rights, such as the right to health and the right to food, and echo Novo Nordisk's own stated main sphere of influence. That these rights are being fulfilled and promoted in the supply chain, and not just through a compliance framework, demonstrates a rich area of information about supply chain engagement that partnerships and auditing can provide.

Dealing with non-compliance

As already mentioned, levels of stated non-compliance from the questionnaire are low: 10.6% unsatisfactory environmental performance, 1.5% unsatisfactory environmental and social performance and 0.3% unsatisfactory social performance alone. The systematic limitations of a questionnaire-based system were discussed above, but it is important to stress that whenever any answers are vaguely or incompletely stated in response to the questionnaire, it is always followed up by a telephone call from the purchaser. This is often the most resource intensive part of the exercise, but does make the questionnaire evaluation more rigorous and helps drive down the non-compliance figures to those that represent real issues. The next stage is for all non-compliant suppliers to be audited and asked to make assurances to

Novo Nordisk about improvements. Should these improvements fail to materialise or if they refuse to do so, in the case of a strategic supplier, then it is referred to the Supplier Evaluation Committee' for a decision.

At this stage, our analysis becomes hypothetical, as Novo Nordisk has not yet had to refer a specific supply chain case to the Committee to discuss possible disengagement. The practical problems with this are likely to vary across different suppliers. The most challenging would be 'strategic suppliers' who produce essential, and sometimes unique, components and raw materials for specific drugs. Some of these suppliers take one to two years to locate and to pass quality controls. Dropping such a supplier on grounds of social or environmental non-compliance would be a very serious commercial decision and would test Novo Nordisk's values should such a circumstance arise. It is possible that as Novo Nordisk extends its programme to all suppliers and a greater number of audits are carried out, the number of non-compliant suppliers identified will increase.

Extension of the programme to other supply chains

There are still parts of Novo Nordisk's purchasing power that need to be included in the Sustainable Supply Chain Management Programme. 'Research & Development' and 'Sales and Marketing' each have their own supply chains that differ from the mainstream suppliers of product and raw materials. 'Research and Development' in particular will utilise smaller amounts of diverse materials from all over the world in the course of developing and trialling new drugs or new applications. Both these areas of the business will be included in the programme during 2004.

The allocation of resources

Given the fact that so much responsibility within the Sustainable Supply Chain Management Programme is delegated to purchasers and auditors within the company, it is difficult to measure the precise allocation of resources here. However, the human resources available to Lise Kingo, Executive Vice President for People, Reputation and Relations, who carries the executive level responsibility for all Novo Nordisk's social and environmental programmes, compares favourably with many other companies. However, social and environmental values are so well integrated into aspects of quality and assurance that it is difficult to separate them out. Members of the Stakeholder Relations team are experts, but are also facilitators within the company to engender wider ownership. They feed into a network of 17 'facilitators/auditors' across the whole company. Other resources are perhaps less tangible, such as the systematic approach to all problems and challenges across the whole company, that lends itself to a strategic approach to human rights and supply chain management.

Innovation and processes

Novo Nordisk has taken Corporate Social Responsibility seriously for at least the past ten years. This has required constant exposure to new ideas as well as the consolidation and operationalisation of ideas within the company. It is often stated that businesses prefer toolkits and management systems to conceptual ideas, but this has never been the Novo way. Presentations given by managers at the company blend external challenges and visionary thinking with in-house expertise about turning ideas into process. For example, in a presentation to the European Academy for Business in Society in Copenhagen in September 2003, Lise Kingo proposed a vision for 2020: the global growth rate will be at

4%; technology will have advanced in IT, fuel cells, nanotechnology and biotechnologies; a resource consumption tax will have replaced income taxes; even food companies will be selling predominantly healthy products and promoting exercise. All in all, there will have been a "mind change" towards buying from sustainable companies and living a healthier more eco-friendly life.²²⁵ Within this context, Novo Nordisk wishes to place itself firmly as a company of innovation and not one that profits from increasing poor health related to less active life-styles. Novo Nordisk's history of stakeholder engagement informs its thinking here and it encourages others to challenge its approach and therefore to sharpen its processes. Its membership of the Business Leaders Initiative on Human Rights and its active role in the Global Compact must be seen in this light.

Impact on the value chain

"Over half of suppliers believed that the evaluation of suppliers on social and environmental issues has had a positive impact on the way they operate internally, the remaining suppliers generally believed that it had had little impact because their standards were already sufficient or they saw little need to change. Thus, only a small percentage believed the evaluation to be negative. The main change made by suppliers as a result of the evaluation, was to begin to assess their own suppliers the same way."²²⁶

The research carried out for Novo Nordisk by NOP Healthcare in 2003, and already cited in this case study, provides a useful measure for starting to understand the impact that the company is having on its suppliers. This correlates well with the comments made by suppliers during interviews for this case study. It is clear that Novo Nordisk is a prestigious customer for many suppliers and that the values and reputation of the company are a key component here. The questionnaire

alone provides the basis for the wider relationship with purchasers at the company and the focus on quality. It is right, therefore, that the NOP survey also asked suppliers about the payment of invoices and quality of overall dialogue with Novo Nordisk, rather than just questions about environmental and social standards. The practical things matter as much as the big issues, and the ethical reputation of a company is quickly negated if it is inefficient or unresponsive to the economic and financial needs of suppliers.

The evidence suggests that Novo Nordisk continues to have a significant impact on the values of its suppliers and that the expansion of the depth and breadth of the Sustainable Supply Chain Management Programme will extend this impact to the second tier of the supply chain and possibly beyond. However, this will be very difficult to measure precisely and most suppliers are open to a variety of influences that might nudge them in this direction.

Impact on people

The fact that 56% of suppliers record that the evaluation of their internal operations by Novo Nordisk has had a positive impact is encouraging.²²⁷ As many questions in the supplier questionnaire relate to labour standards, one would expect that it would be a focus on labour rights that would be transferred down the value chain. What is less tangible, but fascinating nonetheless, is the way that Novo Nordisk inspires suppliers to move beyond compliance through the promotion of these and other human rights. Health, food and leisure benefits provided by some licensee manufacturers and suppliers are sometimes volunteered under section 5d of the questionnaire but are more likely to be discovered through more specific questions, site visits or auditing.

More generally, there can be little doubt that the values of the company are well-known to most staff at Novo Nordisk, whether they actively engage with them or not. A pocket size statement on 'Our Vision' is available at receptions and in coffee spaces, together with generous numbers of the Sustainability Reports. The 2003 Sustainability Report records a 7.1% turnover of staff.

The report also records an immigrant workforce (i.e. those of non-EU origin) at Novo Nordisk in Denmark of 5.9%, below the 7.9% representation in the Danish population. Likewise, for the other equal opportunities priority for the company, women in management, there are 164 men in senior management compared to 43 women. The figure for middle management is only slightly less stark, with 608 men and 258 women. With Novo Nordisk openly committed to non-discrimination and elements of positive action in both these areas, it should be possible to track the impact on the staff profile over time. Another aspect is the 'Take Action!' employee programme to help engage staff in sustainable development activities, which includes a three-week programme in Tanzania for some employees. The question here is: will any of these developments transfer to those working in the Novo Nordisk supply chain?

Impact on society

Perhaps the most difficult to measure is how the Sustainable Supply Chain Management Programme impacts upon wider society. It would be useful to track ways in which benefits made available by suppliers to their staff were made available to the wider community. Novo has already undertaken some interesting work in this area and more might come with time with further auditing and the continuing evolution of the Programme.²²⁸

However, if the Supplier Programme is looked at as one facet of Novo Nordisk's overall commitment to human rights and other aspects of sustainability, then its leadership role is already having an impact on wider society. That the company has such a vision and reputation notwithstanding the serious ethical challenges that face pharmaceutical companies, shows other businesses what is possible. One very recent example is Novo Nordisk's position on the 'Norms on the Responsibilities of Trans-national Companies and Other Business Enterprises with Regard to Human Rights', endorsed by the United Nations Human Rights Sub-Commission in August 2003 and presented to the 53 Governments of the Commission in March 2004. Whilst many industrial groups, including the Danish Confederation of Industries, have criticised these Norms, Novo Nordisk has been one of only seven companies globally to publicly state its commitment to test the worth of such a framework through practical application.²²⁹ For Novo Nordisk, it is an integral part of its systematic approach to testing ways of applying human rights in its work. Such a leadership position can only open the minds of suppliers, other businesses and governments to what is possible.

Reporting

When it comes to reporting, again Novo Nordisk is a leader with its commitment to triple bottom line reporting. However, the indicators that cover the social and environmental responsibilities of suppliers are still mainly derived from the self-evaluation questionnaire and therefore are not measurable absolutely. Whilst some of the core labour standards do lend themselves to yes/no answers, this is not the case for concepts such as 'sphere of influence' or 'layers of complicity in human rights abuses'. The 2003

Sustainability Report is one of the best available and the fact that great efforts have been taken to include suppliers in this through both the questionnaires and NOP Healthcare opinion survey is highly commendable. In the meantime, the problems of reporting 98.2% compliance to social standards in the supply chain have already been made in the section *Policies and Strategies* above.

Managing stakeholder dialogue

NGOs and external experts have never been far from Novo Nordisk's thinking process and it maintains a close relationship to Sustainability, Accountability, the New Economics Foundation and others. Clearly stakeholder dialogue, involving NGOs, trades unions and communities, is the way Novo Nordisk likes to do things. However, with regard to the Sustainable Supply Chain Management Programme a greater breadth of stakeholder dialogue might reap some results at this point. Obviously suppliers are already involved in the process, but trades unions and NGOs might offer some interesting perspectives on issues such as collective bargaining, living wage or the right to health that will make the process more complex but more robust. The auditing stage might well be the most appropriate stage to do this but it would also be worthwhile getting perspectives from a wider range of stakeholders as to what should be included in future questionnaires and how the feedback should be interpreted. This should open up some of the 'shades of grey' in what can seem to be a set of clear-cut questions and therefore result in very high levels of apparent compliance.

Final remarks

There is much that is transferable from what Novo Nordisk has undertaken so far that should be of interest to some other Global Compact signatories. Novo Nordisk does not profess to be the global leader in responsible supply chain management — other sectors such as clothing retailers have had several years head-start here. Novo Nordisk is however more progressive when it comes to the wider integration of sustainability and human rights across a whole company. It is because of this systematic approach that Novo Nordisk is one of first pharmaceutical companies to engage seriously with issues of human rights in the supply chain, when most of the ethical pressure in this sector relates more to issues of marketing and product development. This gives an interesting insight into how supply chain management can develop to incorporate not just the labour rights implicit in Global Compact Principles Three to Six, but also the more over-arching human rights in Principles One and Two. It is encouraging that Novo Nordisk sees this as much more than an issue of compliance, but also as a question of opportunity and identity. This is perhaps the greatest message for other businesses.

There is also the need to be realistic about the limitations of any supply chain management system. By the time you have looked at your second or third tier suppliers (possibly where most of the issues of non-compliance might rest) you are on the edge of your 'sphere of influence' as a company. There is little that is compliance-driven that you can do directly in the deeper reaches of your supply chain, other than to inspire and support your immediate suppliers to develop their own systems accordingly and to report publicly on their own supply chains.

Novo Nordisk's supply chain programme, its tools and thinking, will be available at www.suppliertools.novonordisk.com in September 2004.

Appendix
The social information requested
in the Novo Nordisk supplier
questionnaire



Environmental and social evaluation of suppliers and contractors

Dear Sir/Madam,

As you may be aware The Novo Group has made a public commitment to the Universal Declaration of Human Rights and the ICC Business Charter for Sustainable Development. We are actively seeking to promote social responsibility, and good environmental performance throughout our business. This includes working with our suppliers and contractors to support human rights standards and to promote improvements of the environmental practices in our supply chain.

We believe that there is a strong link between good social and environmental performance and an efficient and successful business. By working together on these standards we will be able to meet current and future expectations of our customers and investors, and this will also be an important factor in managing risk in our supply chain.

Our expectations

We expect all of our suppliers and contractors to ensure that their employees are adequately protected according to the UN Universal Declaration of Human Rights, which is considered universally binding by the UN. We also expect that our suppliers and contractors will participate in developing appropriate environmental improvements of their practices to make them consistent with the intentions of the ICC Charter. We consider these a baseline and we will expect suppliers and contractors to demonstrate continuous improvement in the future.

Our aim is to improve performance, not to terminate business. We want to create a climate of trust where suppliers feel free to approach us with a problem. Where possible, we will work with suppliers to find a solution.

The questionnaire

Enclosed with this letter you will find a copy of our environmental and social evaluation questionnaire. The part covering social information is based on the UN Universal Declaration of Human Rights. The questionnaire refers to relevant ILO (International Labour Organization) conventions governing labour standards where available. The ILO conventions help clarifying the understanding of the human rights principles. The questionnaire has been developed through a two-year project in consultation with suppliers around the world.

Your answers to the questionnaire will form part of our overall evaluation of you as our supplier or contractor. Data will be compared and evaluated on an annual basis. We are currently building environmental and social considerations into our supplier audits.

Please complete the questionnaire and return it to me by xx-xx-2002. The answers must cover the location where the products we buy, are produced and not e.g. sales agent.

We consider this information confidential and we will not pass it on to any third party. If you have any questions, do not hesitate to contact me.

Yours sincerely

Feedback is welcome

We are still learning how to evaluate our suppliers on environmental and social issues.. If you have any feedback on the questionnaire design, please send it to me along with the questionnaire.

Environmental and social evaluation of suppliers and contractors

Questionnaire

Please observe the following before completing the questionnaire

- u If your company is part of a major group, you should answer on behalf of your own operations, not the entire group.
- u If the product/s, we buy, are not produced in your country, please answer for the country, where the product/s or the majority of the product/s are produced.
- u Please answer each question as fully as possible. This gives you the opportunity to tell us about your initiatives and thereby a higher score. A blank space will be rated “non-satisfactory”.
- u The questions are not intended to include apprentices/trainees.
- u No documentation is required, but it is recommended that the data are thoroughly commented to increase understanding on our part. The data must be verifiable through an audit.

For more information

The UN Declaration of
Human Rights (UDHR)
www.unhchr.ch/html/intlinst.htm

The ILO conventions
<http://www.iccwbo.org/sdcharter/charter/principles/principles.asp>

Novo Nordisk
www.novonordisk.com

General information

Name of company	
Address	
Please state the product/s or services we buy, and in which country, the product/s is/are produced	<i>Please note that the questionnaire must be filled-in on behalf of this location (i.e. not an intermediary trading agent)</i>
Name of parent company (if any)	
Contact person and title	
Contact person telephone and e-mail	

Environmental information

1. Environmental impact	<i>We expect our suppliers and contractors to identify and monitor the environmental impacts of their company's activities. In this context environmental impact covers changes to the environment, wholly or partially resulting from the company's activities, products or services. We consider it a fact that any activity causes an environmental impact.</i>
a. What are the environmental impacts of your company's activities?	
b. How have these environmental impacts been identified or assessed?	
c. Has your company established a continuous monitoring of these impacts? If yes, please indicate how.	

2. Environmental management	<i>Active management of the environmental impacts related to the company's activities means, at a minimum, ensuring compliance with local environmental legislation and having an environmental policy or statement. More progressive companies may have an environmental management system (EMS), which may be externally certified under ISO 14001 or EMAS.</i>
a. Do you ensure compliance with local environmental regulation? How is this performed?	
b. Does your company have a documented Environmental Policy? If yes, when was it introduced?	
c. Does your company have an environmental management system or programme? If yes, which main environmental targets has your company worked towards during the last year?	
d. Is your company planning to achieve an ISO14001 certification or EMAS registration?	
3. Environmental actions	<i>We expect our suppliers and contractors to take action to improve their environmental performance. Actions can include e.g. environmental improvements of production or products, initiatives to increase the employees environmental awareness, improvements of the environmental organisation, sharing of better practices.</i>
a. Which environmental actions has your company introduced or supported within the last year, if any?	
4. Environmental dialogue	<i>We expect our suppliers and contractors to provide appropriate environmental information to interested parties including authorities, employees, shareholders, neighbours and other stakeholders. This can be voluntary initiative or part of a legal requirement</i>
a. Does your company publish an environmental account or statement?	
b. What environmental training has your company given your employees?	
c. Please give details of any breaches of environmental regulations within the last year	
d. If you have received enquiries during the last year regarding your environmental performance, what practical steps did you take to respond?	

Social information

5. Wages and benefits	<p>Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (UDHR)</p> <p><i>Wages earned for regular working hours should be sufficient for the worker and his/her dependents to meet their basic needs (UN interpretation)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the Universal Declaration of Human Rights regarding wages and benefits?</p>	
<p>b. What is the minimum wage as defined by the law in your country or industry average (whichever is higher)?</p>	
<p>c. What is the lowest wage paid by you to an employee on a full time basis?</p>	
<p>d. Which benefits do you offer to all employees beyond the legal minimum?</p>	
6. Working hours	<p>Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. (UDHR)</p> <p><i>Workers shall not on a regular basis be required to work more than 48 hours per week and shall be provided with at least 1 day off for every 7 day period on average. Overtime shall be voluntary and only used when justified. It is recommended that it does not exceed 12 hours per week and shall always be compensated at a higher rate (at least 125%). Employees are entitled to at least 3 weeks annual holidays with pay. (ILO convention)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the ILO convention regarding working hours, overtime, time-off and holidays? Rights regarding wages and benefits?</p>	
<p>b. How many hours of normal working time and overtime would a full time production worker or the like work in an average week?</p>	
<p>c. How many days-off would a full time production worker or the like have in an average week?</p>	

7. Health & Safety	<p>Everyone has the right to ... just and favourable conditions of work (UDHR)</p> <p><i>A safe and hygienic working environment shall be provided. Adequate steps must be taken to prevent accidents and injuries to health arising out of work. The causes of hazards in the working environment must be minimised. Workers shall receive regular and recorded health and safety training. (ILO convention)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the ILO convention regarding health and safety?</p>	
<p>b. What health and safety training do you provide for your employees?</p>	
<p>c. Is responsibility for the working environment clearly defined at all levels in the organisation? Kindly describe</p>	
<p>d. Please give details of any breaches of health and safety regulations during the last year</p>	
8. Child labour	<p>Everyone has the right to education. ...Elementary education shall be compulsory. ...and childhood [children] are entitled to special care and assistance (UDHR)</p> <p><i>The minimum age of an employee in developing countries is 14, and 15 in developed countries. However, in companies with hazardous working conditions the minimum age must be 18 (ILO convention)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the ILO convention on child labour?</p>	
<p>b. What is the date of birth (year) of your youngest employee?</p>	
<p>c. Do you have special procedures for employees under the age of 18?</p>	
<p>d. If child workers are identified how would you ensure that the negative consequences of laying them off are reduced to a minimum?</p>	

<p>9. Forced labour</p>	<p>No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Everyone has the right to work, to free choice of employment... (UDHR)</p> <p><i>There is no forced or bonded labour. This covers all work or service that is extracted from any person under the menace of any penalty for which the person has not offered him/herself voluntarily (ILO convention)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the ILO convention regarding forced and bonded labour?</p>	
<p>b. Are all your employees working in your company of their own free will?</p>	
<p>c. Does everybody have employment contracts?</p>	
<p>10. Freedom of association and collective bargaining</p>	<p>Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association. Everyone has the right to form and to join trade unions for the protection of his interests. (UDHR)</p> <p><i>Employees have the right to join or form trade unions of their own choosing and to bargain collectively (ILO convention)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the UDHR and ILO convention regarding freedom of association and to collective bargaining?</p>	
<p>b. Is there a union or alternative representative body with the right to bargain collectively on behalf of production workers?</p>	

11. Non-discrimination and Equal opportunities	<p>Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind. (UDHR)</p> <p><i>There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation (ILO convention)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the ILO convention regarding discrimination?</p>	
<p>b. What policies and procedures do you have on non-discrimination and equal opportunities?</p>	
<p>c. What improvements have been made as a result of the policy?</p>	
12. Disciplinary measures	<p>No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.(UDHR)</p> <p><i>Physical abuse, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited (UN interpretation)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the UN Universal Declaration of Human Rights regarding disciplinary practices?</p>	
<p>b. What disciplinary and grievance (e.g. anonymous complaint, whistleblower system) procedures do you have?</p>	
<p>c. How many times have the grievance procedures been used during the last year?</p>	
13. Privacy	<p>No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, (UDHR)</p> <p><i>Everyone has the right to his/her privacy. This covers among others the monitoring of persons and the handling of personal information. Interference with privacy should be guided by rules and should only be used if necessary to achieve a justified aim. (UN Interpretation)</i></p>
<p>a. Do you ensure that your employees are adequately protected according to the UN Universal Declaration of Human Rights regarding the privacy of employees?</p>	
<p>b. Are employees given clear information beforehand when they are being monitored (via computers, telephone, cameras or other)</p>	
<p>c. What procedures do you have for keeping employees' personal information confidential?</p>	

Your suppliers

1. Does your company evaluate your own suppliers on environmental issues?	
2. Does your company evaluate your own suppliers on social issues?	
3. What environmental and/or social risks do you anticipate in your supply chain?	

Thank you for completing the questionnaire

We ask you kindly for the signature of your General Manager.

Date

Name

Title

Signature



1. EVERYONE
HAS THE RIGHT TO
A NATIONALITY.
2. NO ONE SHALL BE
ARBITRARILY DEPRIVED
OF HIS NATIONALITY
NOR DENIED
THE RIGHT TO CHANGE
HIS NATIONALITY.

Business and Human Rights: The Case of Hewlett-Packard*

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**Peer review of this case study was provided by Professor David Levine, at Haas School of Business, UC Berkeley. No funding was accepted from Hewlett Packard for the preparation of this case study.*

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Case Abstract

This case study describes how a technology company developed a Human Rights and Labor Policy within their Global Citizenship strategy, and is engaged in the complex and unclearly defined issue of human rights within their business. The case also describes ongoing development and challenges, and examines how the company has been implementing the United Nations Global Compact, specifically the principles that deal with human rights.

Company profile

Hewlett-Packard (“HP”), headquartered in Palo Alto, California, is a technology solutions provider to consumers, businesses, and institutions. It operates in 178 countries and employs approximately 160,000 people across the globe. A distinct culture at HP, to be described in more detail, emanates strongly from within the corporation. Stanford University classmates Bill Hewlett and Dave Packard founded HP in 1939 in their Palo Alto garage. Their first product was an audio oscillator — an electronic test instrument used by sound engineers. One of HP’s first customers was Walt Disney Studios, which purchased eight oscillators to develop and test an innovative sound system for the movie “Fantasia.” Employees within HP claim to share a passion for satisfying customers, an intense focus on teamwork, speed and agility, and a commitment to trust and respect for all individuals.

Although its annual revenues for fiscal year ending October 31, 2002 were US\$72 billion and its scope and reach clearly span the globe, HP still revels in the “garage start-up” mentality of a company that is innovative, human-focused, and socially committed. Indeed co-founder David Packard stated in 1942:

“Many assume, wrongly, that a company exists simply to make money...the real

Table 1: HP’s Core Business Groups

Enterprise Systems Group (ESG)	ESG focuses on providing the key technology components of enterprise IT infrastructure to enhance business agility, including enterprise storage, servers, management software and a variety of solutions.
Imaging and Printing Group (IPG)	HP is the leading provider of printing and imaging solutions for both business and consumer use. IPG includes printer hardware, all-in-ones, digital imaging devices such as cameras and scanners, and associated supplies and accessories. It also is expanding into the commercial printing market.
HP Services (HPS)	HP Services is a premier, global IT services team. It offers guidance, know-how and a comprehensive portfolio of services to help customers realize measurable business value from their IT investments.
Personal Systems Group (PSG)	PSG focuses on supplying simple, reliable and affordable personal-computing solutions and devices for home and business use, including desktop PCs, notebooks, workstations, thin clients, smart handhelds and personal devices.

HP is divided into four businesses groups

reason HP exists is to make a contribution...to improve the welfare of humanity...to advance the frontiers of science...Profit is not the proper end and aim of management — it is what makes all of the proper ends and aims possible...”

Over 60 years later, current CEO Carly Fiorina restated even more eloquently:

“We believe that the winning companies of this century will be those that not only increase shareholder value but increase social and environmental value... By developing products and solutions that are environmentally sound, by bringing the benefits of information technology to emerging markets, by holding our company to the highest standards of business conduct, and by giving back to the communities in which we operate, HP is contributing to a more sustainable future while also making HP a stronger company and the preferred IT solutions provider.”

Through high-speed growth, mergers and acquisitions, downturns, new products, and new management, HP appears to

remain as committed to social responsibility and creating positive social impact today as they did when they started in the garage of co-founders David Packard and Bill Hewlett.

HP and the UN Global Compact

In his address to the World Economic Forum in January of 1999, United Nation Secretary-General Kofi Annan challenged business leaders to join an international initiative — the Global Compact — that would bring companies together with UN agencies, labor, and civil society to support nine principles in the areas of human rights, labor, and the environment. The Global Compact’s operational phase was launched at UN Headquarters in New York in July of 2000.

Through the power of collective action, the Global Compact seeks to advance responsible corporate citizenship so that business can be part of the solution to the challenges of globalization. In this way, the private sector — in partnership with other

Table 2: HP Corporate Objectives

Customer Loyalty	To provide products, services and solutions of the highest quality and deliver more value to our customers that earns their respect and loyalty.
Profit	To achieve sufficient profit to finance our company growth, create value for our shareholders and provide the resources we need to achieve our other corporate objectives.
Market Leadership	To grow by continually providing useful and significant products, services and solutions to markets we already serve-and to expand into new areas that build on our technologies, competencies and customer interests.
Growth	To view change in the market as an opportunity to grow; to use our profits and our ability to develop and produce innovative products, services and solutions that satisfy emerging customer needs.
Employee Commitment	To help HP employees share in the company's success that they make possible; to provide people with employment opportunities based on performance; to create with them a safe, exciting and inclusive work environment that values their diversity and recognizes individual contributions; and to help them gain a sense of satisfaction and accomplishment from their work.
Leadership Capability	To develop leaders at every level who are accountable for achieving business results and exemplifying our values.
Global Citizenship	Good citizenship is good business. We live up to our responsibility to society by being an economic, intellectual and social asset to each country and community in which we do business.

HP has the above corporate objectives, which were first written down by the co-founders in 1957

social actors — can help realize the Secretary-General’s vision: a more sustainable and inclusive global economy. The Global Compact is a voluntary corporate citizenship initiative with two objectives:

- u To mainstream the nine principles in business activities around the world
- u To catalyze actions in support of UN goals

The Global Compact is not a regulatory instrument — it does not “police,” enforce, or measure the behavior or actions of companies. Rather, the Global Compact relies on public accountability, transparency, and the enlightened self-interest of companies, labor, and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based. To this end, it has been largely criticized as “having no teeth” and as being fairly innocuous.

Human Rights and Business

Human rights are rights that individuals have simply because they are human. They are designed to respect the dignity and integrity of the individual. Human rights are fundamental principles that, if respected, ensure an individual can live a life of dignity, free from deprivation and abuse, free to participate in their community, and can freely express their beliefs. Human rights are recognized in international law. Although the rights are best achieved by action within a national legal system, such as the passing of laws and implementation of government programs, the national government is not the source of a person’s human rights. It follows that the government cannot withdraw human rights at will.²³⁰

HP was one of the earlier US companies to become a participant in the UN Global

Compact. This case will focus on HP’s adherence to UN Global Compact principles one and two, which concern human rights.

Table 3: UN Global Compact Human Rights Principles

Principle 1	Businesses should support and respect the protection of internationally proclaimed human rights.
Principle 2	Businesses should make sure that they are not complicit in human rights abuses

Human rights, as we know them today, grew out of the reaction against the horrors experienced during the Second World War. At the formation of the United Nations in 1945, one of the UN’s stated objectives was to encourage respect for, and realization of, human rights. Not long after its formation, the UN produced the Universal Declaration of Human Rights, which was adopted by the nations of the world sitting in the General Assembly of the United Nations. The Declaration was adopted without a dissenting vote being cast, signifying an extremely high level of commitment to the principles contained in the Declaration. Since then, numerous more focused and specific human rights documents have been drafted and accepted, but the Universal Declaration remains the foundational document in the human rights field.²³¹ The Universal Declaration contains a relatively comprehensive set of rights. It covers civil and political rights, as well as economic, social and cultural rights. Some of the main categories of rights covered by the Declaration include:

- u Physical integrity
- u Fair treatment before the law
- u Equal protection
- u Freedom of belief, speech, and association

- u Political participation
- u Access to education
- u Just and favorable conditions of work
- u Adequate standard of living
- u Participation in cultural life

A question is often raised concerning the scope of a firm's responsibility for human rights: If a business professes a commitment to human rights, do they become responsible for doing something about every human rights issue wherever it occurs? The answer is no. Businesses should think in terms of being responsible within their 'sphere of influence'.²³² A company's sphere of influence can be divided into four broad areas:

1. core operations
2. business partners
3. host communities
4. advocacy/policy dialogue

A company's core operations include issues that many companies are familiar with, such as labor rights, the regulation of the behavior of security forces, and independent monitoring, verification and reporting of company performance. In terms of relations with business partners, companies should ensure that business partners have an equivalent commitment to human rights and they should have some sort of monitoring and compliance verification processes in place. Effects of operations on the human rights of host communities should form part of the impact assessment performed by the company, and these communities should regularly be consulted on questions concerning human rights. Finally, companies should have a commitment to uphold international human rights standards in their dialogue with governments. A company might choose to achieve this by quiet diplomacy or advocacy, but whatever approach a company chooses should have some response to abuses such as the arbitrary detention of labour activists, unexplained disappearances of workers, or abuse committed by government-provided

security forces operating at or around a company's location.²³³ It can be seen from the discussion of issues that arise within a company's 'sphere of influence' that human rights extends beyond how a company deals with its own immediate work force, although that remains vitally important. Human rights are also concerned with the broader impact that a company has in the communities in which it operates.

Some examples of the ways in which human rights arise in the business context are: **Non-discrimination** is required in all dealings. This includes interactions with employees, customers, suppliers, partners, and contractors. Human rights issues might arise in relation to the behavior of **security guards** in and around company facilities. Issues include excessive use of force by security guards in the performance of their duties, the implication of members of the security forces in human rights abuse in the area, and the use of security forces to shut down legitimate forms of protest by workers or community members against the company. In relation to **communities**, human rights issues could arise in the context of competition between the company and local populations over land and other resource use. These issues will be particularly acute where indigenous populations are involved. People may be deprived of their means of securing a livelihood (or practicing their religion or culture) by the location of, or demand for local resources by, the new enterprise; they may be forcibly removed by the government to facilitate the new venture; or their health might be adversely affected by the activities conducted by the facility. In dealing with **employees**, fair working conditions, freedom of association and collective bargaining, freedom from forced labour, and health and safety need to be ensured in relation to workers wherever they are located, irrespective of the level of protection those workers are afforded under national legislation.

NGOs have long been involved in the study and connection of human rights responsibilities to global business. For example, Amnesty International and the Prince of Wales International Business Leaders Forum have been engaged in an ongoing study that illustrates the geography of corporate risk within human rights segmented by industry. For the "IT Hardware and Telecommunications" sectors, into which HP falls, they believe the following four issues are under the human rights spotlight:

- u Freedom of expression
- u Forced labor
- u Links to repression
- u Access to knowledge²³⁴

However, it is not only major NGOs who appear to be interested in corporations' human rights performance. In Global Issues Monitor, an ongoing large-scale study conducted by Environics International in 2003, which polled over 1,000 citizens in 20 countries, respondents cited "human rights" as the fourth highest priority for business behind "the rich/ poor gap," "biodiversity," and "basic education."²³⁵ In another study, conducted by Edelman on corporate social responsibility (CSR), which tracks attitudes towards business, media, government, and NGOs, the technology industry as a whole was viewed as the leading industry in CSR, ahead of consumer packaged goods, retail, manufacturing, pharmaceutical, publishing, automotive, financial services, and energy/ oil and gas industries.²³⁶ Yet respondents were only 38% trustful that business as a whole was adequately addressing human rights issues. Finally, the Reputation Institute at Harris Interactive found that "Treatment of Human Rights/ Employees" was the most essential element of corporate citizenship in Europe, the U.S., and Scandinavia. So while the tech industry as a whole is seen as a leader in CSR in general, stakeholders are becoming increasingly scrutinizing of human rights as a component of CSR in business.

Human Rights at HP

One senior manager from HP stated a compelling belief that the term “human rights” is largely an NGO term, not truly one that is used by business, and certainly *not* a term that has been used in the past at HP.²³⁷ This was clearly confirmed in the interview process that was conducted for this study. A clear and succinct definition of human rights, as described above, was sent out to all interview respondents prior to the interviews. Even after that, a significant portion of each interview was spent detailing what is meant by the term “human rights,” and fielding questions about the unbundling of the aspects of the term.

That is not to say that there is no attention paid to areas of human rights within HP; in fact, there is considerable commitment and attention. It is simply that, within HP, treating employees fairly, not engaging in age or race discrimination or using hiring agencies that do, and not engaging with suppliers who do not comply with HP’s Supplier Code of Conduct is not viewed by HP managers as paying attention to human rights per se; it is simply good business and part of the “HP way.” HP has recently publicly aligned itself to the Universal Declaration of Human Rights.²³⁸ HP is also committed to fair labor practices and the respectful treatment of all employees, including the protection of workplace health and safety, and data-privacy protections.

HP has policies that deal with a number of human rights issues relevant to their operations (eg. privacy, accessibility and supply chain management) and it is active in terms of developing and supporting community development activities in parts of the world in which they operate.

Commitment to the Universal Declaration of Human Rights

A commitment to upholding and respecting human rights, as reflected in the Universal Declaration of Human Rights, has recently been included in HP’s Commitment to Global Citizenship. The Global Citizenship Commitment goes on to set out HP’s “Human Rights and Labor Policy” which focuses heavily on labor rights. The policy addresses forced, bonded or involuntary prison labor, child labor, minimum wages, working hours, non-discrimination, harsh or inhuman treatment, and freedom of association. For the most part, the rights under this policy are expressed in a way that links them to compliance with local laws.

Supply Chain

HP recognizes that this is the area in which they have the most exposure if human rights are not made a focus; however, their efforts around supply chain and human rights are fairly nascent. The company currently contractually obliges its top 40 suppliers, which includes 100 sites and accounts for 80% of their spend dollars, to commit to HP’s supply chain code of conduct. HP is in the process of increasing the number of suppliers it requires to make this commitment and strengthening the means by which it ensures compliance with the obligation. Eventually, this code of conduct will be explicit in all new supplier contracts, so compliance will be a precondition for doing business. In developing their supply chain code of conduct, HP did their own extensive benchmarking and research, and worked with Business for Social Responsibility, a think tank and consultancy around CSR based in San Francisco, California. The Director of Supply Chain Services stated that they scoured the landscape of supplier codes of conduct, looked at the various international standards, even looked at the

UN Global Compact — but none were satisfactory or entirely relevant to HP. So they developed their own code. They did find one company whose code they modeled and that was British Telecom. The BT code was derived from the Ethical Trading Initiative standard, which HP felt closely embodied the elements that were important to them.

The “HP Supplier Code of Conduct” professes to focus on compliance with local laws in the areas of environment, worker health and safety, and labor and employment practices, and is intended to work in conjunction with management systems to measure, improve and communicate progress in these areas. The treatment of labor issues is fairly comprehensive and, despite the use of headings that refer to compliance with local laws, contains standards, for example, in relation to non-discrimination and prison labor, which may or may not be covered by local legislation. The focus on these issues is positive and its effectiveness will be greatly enhanced by the planned improvements in compliance monitoring. To meet HP’s human rights obligations, the supplier code of conduct should be expanded to cover human rights matters beyond labor issues, matters such as performance and monitoring of security guards by suppliers; the impact on the local community of supplier operations; and the penalization of suppliers for corrupt or human rights-abusive regimes.

Currently, HP monitors its supply chain using a self-assessment questionnaire completed by HP’s top 40 suppliers. HP then works collaboratively with suppliers to achieve the required standards in any area that is identified as falling below HP requirements. HP’s Director of Supply Chain Services reports that HP’s suppliers take this process very seriously given the importance to them of their relationship and business with HP. HP is moving to expand and strengthen their supply chain monitoring. They are extending self-

assessment beyond the top 40 suppliers to the suppliers HP regards as 'high risk'. At the same time, they are strengthening the monitoring of the top 40 suppliers by utilizing HP's own procurement auditing capacity to conduct site assessments of supplier performance, moving beyond the self-assessment model. In time, this model will also be extended to the high risk suppliers. Finally, HP is currently researching appropriate entities to conduct third-party assessment of supplier performance. Selective third-party assessment will be the final stage in the evolution of supply chain monitoring at HP.²³⁹

Privacy

HP invests considerable energy in the protection of information privacy for its consumers and its employees. HP has long had a policy dealing with employee information privacy stemming from HP's focus on 'doing the right thing' for their employees as part of the 'HP way'. From relatively humble beginnings as a one-person operation four years ago, the HP privacy program has grown considerably and now undertakes coordinated strategy on privacy for consumers and employees and conducts training on employee and customer data handling.

Since January 2001, HP has self-certified its privacy practices as consistent with U.S.-E.U. Safe Harbor principles on Notice, Choice, Onward Transfer, Access and Accuracy, Security, and Oversight/Enforcement. The Safe Harbor principles were designed in response to the prohibition in the European Commission's Directive on Data Protection on the transfer of personal data to non-European Union countries that do not provide 'adequate' privacy protection. HP also meets the requirements of the Council of Better Business Bureau's BBBOnLine Privacy Program. HP is a founding sponsor of the BBBOnLine Privacy Program, a privacy

Figure 1: HP's Global Citizenship Framework



certification scheme that awards a privacy seal to businesses that have proven to meet standards relating to the following: posting online privacy notices; completing a privacy assessment; monitoring and review; and participation in the program's consumer dispute resolution system.

HP adopts the approach of applying a consistent global policy for privacy protection and complies with that policy or local laws, whichever are more stringent.

CSR

As Global Citizenship is one of HP's seven core corporate objectives, HP has developed a well-integrated framework for this citizenship strategy (Figure 1).

Human rights, per se, is not explicitly one of the facets of this framework, although in language used to describe HP's

commitment to global citizenship, the Senior Vice President of Corporate Affairs does explicitly speak of human rights,

Socially, HP upholds and respects human rights as reflected in the 'Universal Declaration of Human Rights'. HP is also committed to fair labor practices and the respectful treatment of all employees, including the protection of workplace health and safety and data-privacy protections.

HP has four separate policies that address these topics: the Environmental, Health and Safety Policy; the Human Rights and Labor Policy, the Privacy Policy, and the Supply Chain Commitment Policy. Each policy includes issues of human rights within them, ranging from employee health and safety to freely chosen employment to privacy of personal data.

While there seems to be evidence that 'human rights' as a term has not made it into the language of HP's business managers, when the term is unbundled,

evidence of careful attention to human rights is clearly visible.

Labor

Country human resources managers were very aware of human rights issues as they relate to employment, and seemed confident that HP was duly addressing human rights issues. For example, in Malaysia, HP's competitors tend to employ local indigenous employment agencies. It is standard in Malaysia for these agencies to both collect information on and use in hiring decisions data on age and race. There is no local law against doing so. However HP Malaysia has chosen not to use these local temp agencies for this reason, and instead uses global temp agencies which adhere to HP's Human Rights and Labor Policy. The Human Resources Manager believes that HP is ahead of the local country laws, and while she fully believes in this position and the "HP way", she also admits that HP undoubtedly loses business and pays more for labor than companies who use local employment agencies. HP has engaged with the local government in trying to improve local labor laws, but notwithstanding that HP has been in Malaysia for 25 years and has grown from eight to 1000 plus employees, the manager felt that HP was behind competitors like Dell and IBM in having enough presence and leverage to really force the government to change labor practices or law.²⁴⁰

There were slightly mixed messages received on whether local country laws are the standard or whether there exist higher and more consistent HP standards. One manager claimed that there is a global HP approach governing the treatment of all employees within their sphere of influence, with local law being relied on for only a few things, like pay and benefits. Yet another manager's

understanding was that local law is the standard, and that documents like the Global Citizenship objectives, which claim to rely on local laws, also include some general standards that may be above the standard of law in some of the countries in which they operate. An example of this would be 'discrimination on grounds of sexual orientation' - this is not a widely or globally understood concept, yet HP has it in their Global Citizenship policy. Ultimately, there was uncertainty on the part of some HP managers about the source of the standards and their relationship to local laws. HP's Personnel Policy & Guidelines (PPG) is designed to provide the basis for decisions affecting HP personnel worldwide. HP's PPG are global in their application with some local variation based on local law and custom. It supports the decentralized organizational structure of the company by allowing local entity decision making, while still recognizing HP's dual objective of maintaining consistent treatment for its employees and complying with applicable legal requirements in the jurisdictions in which HP operates.

Recommendations for the UN Global Compact

There was a lot of discussion within HP of the UN Global Compact as symbolically good for HP and fitting with their brand identity and commitment to global citizenship, but beyond that, it has little impact on how HP conducts its business. The managers interviewed felt that HP was already far beyond what the UNGC compels them to do.

It seems that the value of the Global Compact for this, and perhaps for other North American companies, remains relatively unclear and largely symbolic. Perhaps further work, segmented by geographical areas, needs to be done to ferret out the clear value of the UNGC for segments of signatories, particularly in those regions in which the signatories are

fewer. In fact, HP, together with Pfizer, has already taken a lead in this direction. They organized a meeting in April 2003, bringing together North American companies, both UNGC signatories and non-signatories, to discuss the UNGC and its usefulness and place within North American business. The Global Compact seems to serve best as a starting, or entry point, for companies who are newer to the practices and strategy of corporate citizenship and issues therein.

Recommendations and Next Steps for HP

The following recommendations are relevant to HP's protection of brand identity as a leader in global citizenship, and are consistent with HP's public, consistent, and historical commitment to it. At this stage, they are leading the high tech industry with their Global Citizenship strategy and policy. The industry has not yet been subject to the intense scrutiny by NGOs around human rights issues that the apparel industry has known, but there is the belief inside the company that the risks and penalties of poor human rights performance are very high, given what Nike and others experienced. There is also scope for HP to enhance its implementation of the principles of the Global Compact and the UDHR (which HP has stated its intention to respect as part of the Global Compact and its Global Citizenship Policy).²⁴¹

HP has a corporate culture that values 'doing the right thing', which can be traced back to the original quote by David Packard in 1942. While this was mentioned time and time again by each and every manager interviewed, this valuable manner of thinking about the impact of HP's business cannot be relied upon *alone* to achieve appropriate levels of human rights performance, particularly in the context of high-paced growth and mergers and acquisitions. It seems improbable that newly acquired Compaq

employees could fully embrace the “HP way” without more systemic and explicit standards and policies. While four major policies touching on human rights issues do exist within HP, they could be better integrated into and aligned with the overall Global Citizenship strategy and framework. Across the company there is a need to:

1. Identify and prioritize the human rights issues that are most likely to arise across the company’s operations;
2. Educate employees and management in the identification of these human rights issues; and
3. Work to develop framework guidance on how to deal with these issues.

The HP tradition of ‘doing the right thing’ means that the company already operates with an eye towards the ethical and responsible dimensions of their work. This places HP in a perfect position to combine that commitment to ethics with education on human rights and guidance on how to handle the issues. This would help strengthen their human rights performance by achieving a greater level of consistency across the various operations and locations. It is also risky to rely on the ‘HP way’ in a post-merger context when 40% of the company are not pre merger HP employees, but rather came from Compaq. The ‘HP way’ needs to be made more explicit and systemically measured for individual employee comprehension and performance.

HP should allocate responsibility for human rights across the company to a high level manager, or team of managers. More study is needed to understand who is doing this currently and what the best practices of this model might be. This will allow a comprehensive assessment to be made of HP’s current human rights performance, identifying and prioritizing for HP the best way of addressing outstanding issues, and allowing the

development of company-wide policy performance objectives and implementation plans. Such a company-wide approach is presently lacking in HP and is needed to ensure that human rights are consistently addressed throughout the company’s operations. It would also help facilitate awareness-raising within HP and allow the sharing of information and good practice among various parts of HP. Importantly, a centralized approach will allow a fast, comprehensive, consistent response to any human rights incidents that do arise. This next step is crucial to furthering HP’s commitment to human rights, as embodied in its Global Citizenship policy, into a living part of HP operations. It is imagined that, given HP’s preference for decentralized structures, this company-wide activity would involve the close co-operation of regional and other managers as well as employees and would be best implemented by those close to the ground with a tangible understanding of the priority issues in their area.

HP should investigate how to strengthen its dual objectives of maintaining consistent treatment for its employees and complying with applicable legal requirements in the jurisdictions in which HP operates. This would include looking at timing and issues where there may be conflicts with local law and custom. This is already the practice in the privacy field where we understand arguments relating to the benefit of consistency and the ethics of providing the same level of protection to all, regardless of their location, were successful.²⁴² While an approach based solely on compliance with national laws may be valid for other considerations, it is not sufficient in achieving an adequate level of human rights compliance. Many countries have implemented laws that do not meet the standards required under international human rights law for the realization of particular human rights for members of their population. Other countries have no law at all on some human rights issues.

The reasons for an absence of adequate law at the national level are many and may include pressure on governments of developing countries to attract and retain international investment, as well as historical and cultural factors.

HP is actively implementing internal and external monitoring systems for its supply chain systems. In addition to expanding the scope of issues considered by the supplier code of conduct, in order for this system to be effective for monitoring the human rights performance of suppliers, it will need to evolve from the early self-assessment focused model to a model based on more effective compliance monitoring. HP’s efforts in this regard are welcome.

1. MEN AND WOMEN OF FULL AGE WITHOUT ANY LIMITATION DUE TO RACE, NATIONALITY OR RELIGION HAVE THE RIGHT TO MARRY AND TO FOUND A FAMILY. THEY ARE ENTITLED TO EQUAL RIGHTS AS TO MARRIAGE, DURING MARRIAGE AND AT ITS DISSOLUTION.

2. MARRIAGE SHALL BE ENTERED INTO ONLY WITH THE FREE AND FULL CONSENT OF THE INTENDING SPOUSES.

3. THE FAMILY IS THE NATURAL AND FUNDAMENTAL GROUP UNIT OF SOCIETY ENTITLED TO PROTECTION AND THE BY SOCIETY AND THE STATE.



The Global Compact Policy Dialogue “The Role of the Private Sector in Zones of Conflict”

Denise O’Brien and Melissa Powell
Global Compact Office

Private companies operate in many conflict-prone countries around the world. Their decisions — on investment and employment, on relations with local communities, on protection for local environments, on their own security arrangements — can either help a country to recover from conflict, or serve to exacerbate the tensions that fuelled conflict in the first place. Companies are increasingly recognizing the need to adopt a broader view of the role of the corporation in society (based on reputation assurance, risk management and license to operate) and are beginning to incorporate commitments to social responsibility and human rights protection into their business principles. Within this context, collaborative work with all stakeholders in society is viewed as a key factor in order to ensure the potentially negative impacts of business investments are minimized, and that the private sector makes a positive contribution to conflict prevention and peace-building.

The Global Compact Policy Dialogue on “The Role of the Private Sector in Zones of Conflict” launched in 2001, provides a dynamic forum where representatives from companies, NGOs, trade unions and the United Nations work together to identify key issues and concrete actions that can help to mitigate the negative impact of the private sector and enhance the capacity of companies to contribute to conflict prevention and peace-building. Building on the recognition that the rule of law and respect for human rights is a necessary foundation for business and society to flourish, this dialogue continues to explore ways and means by which business can collaborate with other actors in society to generate wealth, socio-economic development, protect human rights and contribute to peace and stability.

This Policy Dialogue began with three international-level meetings that produced a series of policy papers and a tool for company managers focused on conflict impact assessment and risk management.

The first policy paper, “Case Studies of Multi-Stakeholder Partnership” illustrates a number of different types of multi-stakeholder partnerships, the process that leads to the formation of these partnerships and lessons learned. These case studies serve to demonstrate that partnerships can be a useful tool in the effort to prevent the outbreak of conflict and to contribute to rebuilding a peaceful society.

The second paper of the series, “Conflict Prevention and Revenue-Sharing Regimes,” analyzes the essential factors for creating functional revenue-sharing regimes to contain socio-economic tensions that may promote conflict. It concludes with examples of current revenue-sharing regimes.

The final policy paper developed thus far, “Recommendations on Transparency” contains recommendations to all actors in society regarding how they can contribute to fight corruption. In many conflict-prone countries of the world where institutional and governance structures are weak, leaders remain in power through patronage. Foreign investors may contribute sizeable amounts to the funding of such administrations in the form of taxes, royalties and other fees and when these resources are not accountable to the general public, they can often become vehicles for embezzlement, fraud, corruption and the funding of conflicts.

Finally, the “Global Compact Business Guide on Conflict Impact Assessment and Risk Management” is a practical tool developed to aid companies in developing strategies that minimize their negative effects and maximize their positive effects of investing in areas of conflict or potential conflict. The ultimate goal of the Guide is to help companies contribute to conflict prevention and a sustainable business environment in the countries where they operate. The Business Guide addresses the following topics: Human Rights, International Humanitarian Law, Labour, Environment and Transparency.

A series of regional policy dialogues (Sub-Saharan Africa, November 2002; Central Asia, November 2003; Colombia, May 2004) were then convened to promote the objectives, activities and policy recommendations stemming from the international-level. These meetings at the regional and country-level have served to raise the awareness of company managers on-the-ground regarding the options for, and limits of, contributions by the private sector to conflict prevention and peace building. They have also generated practical recommendations and outcomes relevant to the local context regarding how companies can contribute to conflict transformation. Finally they have been critical in facilitating dialogue and co-operation between business, labour, civil society and UN Agencies and an important forum for sharing experiences and challenges.

For the private sector, being operational in “difficult” countries around the world poses a number of dilemmas for which there are no easy answers. In order to delve into some of the challenging issues faced by companies with operations in “conflict-prone” areas of the world, one session at the GC Learning Forum meeting in Brazil focused on the case of Total operating in Burma.²⁴³ Questions raised by the case include: What is a company’s sphere of influence in Burma? Does responsibility to respect the protection of human rights extend beyond a geographic limitation of “sphere of influence” in a country with such pervasive human rights violations? What actions by a company could constitute complicity in human rights abuses? Is there any way for a company to ensure that its payments to the government do not provide material support for the commission of human rights violations? Where does company responsibility begin and end?

The following case is the second field report of a series developed as part of the Corporate Engagement Project, directed by the Collaborative for Development

Action (CDA), in Cambridge, Massachusetts, USA with a focus on Total’s operations in Burma. The Yadana pipeline project, operated by Total, contracted the Corporate Engagement Project to have the impact of its presence in Myanmar/Burma on the local communities verified by an independent organization. As you will note from the preface below, the objective of the Corporate Engagement Project (CEP) is to provide managers with clear ideas about how their work with communities relates to the broader sociopolitical environment and to develop practical management tools for supporting stable and productive relations in the societies where corporations work. To this end, CEP field visits are undertaken to help corporations gain new insight into the positive and negative impacts of their daily activities on the local and national context.

In this context, Doug Fraser, Independent Consultant, and Luc Zandvliet, Project Director of CEP, visited Myanmar from April 22 to May 3, 2003 to visit the Yadana pipeline project as a follow up to their first visit conducted in October 2002. What follows is their field report stemming from that visit. Although the Total case is context specific, the Myanmar/Burma context offers valuable lessons for companies working in conflict-prone regions of the world.

The following case was not developed specifically for the Global Compact Learning Forum and as such, it does not meet the Global Compact Case Study Guidelines. It has not been through the Global Compact Learning Forum’s peer review process.



1.

EVERYONE HAS
THE RIGHT TO OWN
PROPERTY AS WELL AS IN
AS WELL AS IN
ASSOCIATION WITH
OTHERS.

2. NO ONE SHALL BE
ARBITRARILY DEPRIVED
OF HIS PROPERTY.



Corporate Engagement Project

Second Field Visit Report Yadana Gas Transportation Project Moattama Gas Transportation Company Operator: Total in Myanmar/Burma

Doug Fraser
Independent Consultant

Luc Zandvliet
Project Director
Corporate Engagement Project

April 22 — May 2, 2003

This field report is one of a series of reports developed as part of the Corporate Engagement Project, directed by the Collaborative for Development Action (CDA), in Cambridge, Massachusetts, USA.

The objective of the Corporate Engagement Project (CEP) is to provide managers with clear ideas about how their work with communities relates to the broader sociopolitical environment and to develop practical management tools for supporting stable and productive relations in the societies where corporations work.

To this end, CEP field visits are undertaken to help corporations gain new insight into the positive and negative impacts of their daily activities on the local and national context. CEP would like to acknowledge the willingness of the participating corporations to constructively explore their effect on surrounding communities in efforts to improve their daily interactions with, and impacts on, local stakeholders.

For more information on the Corporate Engagement Project, see www.cdainc.com

July 2003

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Preface

The Corporate Engagement Project (CEP) is a collaborative effort, involving multinational corporations that operate in areas of socio-political tensions or conflict. Its purpose is to help corporate managers better understand the impacts of corporate activities on the contexts in which they work. Based on site visits, CEP aims to identify and analyze the challenges for corporations that recur across companies and across contexts. Based on the patterns that emerge, CEP develops management tools and practical options for management practices that respond to local challenges and address stakeholder issues.

In this context, Doug Fraser, Independent Consultant, and Luc Zandvliet, Project Director of CEP, visited Myanmar from April 22 - May 3, 2003 to visit the Yadana pipeline project, operated by Total, as a follow up to our first visit conducted in October 2002.

This visit was the second CEP visit to the Yadana Project in what is planned as a series of three visits. To avoid duplication, this report should be read in combination with the first report (available at <http://www.cdainc.com/cep/cep-casestudylist.htm>). Our purpose, as in all CEP field visits, was to examine the interaction between corporate operations and surrounding communities, as well as the impact of corporate operations on the wider context of conflict.

The CEP team intends to visit Thailand to explore allegations from several international NGOs that people originating from the pipeline area were displaced into Thailand. If people had to leave Myanmar/Burma recently for reasons related to the pipeline or the presence of oil companies, this would be important for CEP to know. The trip will serve the following purposes:

- u To learn additional information related to the impact of the pipeline on local civilians. We want to address the possibility that we only hear positive stories about the pipeline from people currently residing in the corridor, while people that were possibly forced to leave the corridor might tell of a different reality.
- u To verify why CDA's observations in the pipeline area differ from the observations in some of the reports produced by international NGOs about the impact of the pipeline on the local contexts.
- u To explore rumors in the business community in Thailand and Myanmar/Burma (and among NGOs themselves) that some NGOs make a "business" of producing allegations against companies, based on testimonies from Myanmar/Burmese refugees. This is of concern to CEP because if CEP is unable to confirm allegations that NGOs fabricate "evidence," it supports the credibility of the NGOs that make allegations or advocate on behalf of Myanmar/Burmese refugees. On the other side, if the fabrication of evidence is confirmed, this would support sentiments in the business community that allegations should not be taken seriously. This undermines the ability of individuals with genuine grievances against companies to be heard.

We attempted to arrange the trip from Bangkok to Northern Thailand to precede this visit, but logistically it was not feasible (during the water festival), and therefore the trip has been postponed to coincide with the third visit. Because we were examining the operations of the Yadana project, in this report we consistently refer to Total's role as the operator of the project. However, our observations concern all joint venture partners.

The point of departure for any CEP visit is what we observe on site and what we hear that is substantiated both by examples and by consistent repetition. Although familiarity with the history of a project and region is indispensable for understanding current operations and policies, we neither validate nor invalidate past operational policies or their impacts, unless we observe these in current dynamics.

We invite feedback on the observations laid out in this report. We hope, as well, that this report will contribute to broader discussions within the company and between the company and stakeholders, on the options for corporate engagement in the Myanmar/Burma context.

After the introduction, in which our methodology is explained, the report is divided into two parts. The first section reports on the direct and indirect impacts of the Yadana project within the pipeline area. Direct impacts take place through the Socio-Economic Program implemented by the company. But equally important, according to villagers, is the indirect impact of Total's presence on the human rights situation in general, and forced labor in particular, in the immediate region.

The second section explores the company's impact on the broader national context. Addressing both the local impacts as well as the impacts of the pipeline on the national social and political level is a challenge for any company working in the country. In order to address these challenges, Total will need to develop a clear vision and coherent strategy to support this vision. We will discuss some of the building blocks for such a strategy and suggest options that could enable the company to constructively address these challenges while continuing its operations.

Introduction

This visit to Myanmar/Burma included five days in the pipeline area and six days in Yangon/Rangoon. Since the first visit in October 2002 provided detailed information on the manner in which Total conducts its daily operations, we met with relatively few Total staff this time. Instead, the CEP team focused its efforts on meeting with civil society organizations (including staff of international NGOs), religious leaders, political analysts, government representatives, a member of Parliament, diplomatic missions and other corporations working in the country. In the pipeline area, we met with local community members, company staff, contractors, government representatives, and NGO representatives.

We concentrated our visits on those villages located in the so-called "pipeline corridor." The corridor is the geographical area approximately 10-15 kilometers wide and 63 kilometers long. A 36-inch diameter pipeline is buried within this corridor. The corridor is only visible as drawn on a map; there are no physical delineations of its boundaries on the ground. The notion that there is a clear corridor with particular boundaries was created by Total, as it uses the corridor to determine how some operations are implemented. For example, different security measures apply inside and outside the corridor, and company staff does not travel outside the corridor. The corridor becomes further concretized and reinforced by the fact that the government and the army have been notified which villages lie within the corridor. People in the area claim that the army behaves in a more disciplined manner inside the corridor compared to outside the corridor. They believe this is because Total has made sure that negative behaviors have been corrected and that local commanders have received instructions to act in an acceptable manner.

The CEP team visited 16 of the 23 villages located along the pipeline that are included in Total's Socio-Economic Program, which will be briefly explained later. For comparison, the CEP team also visited one village outside the corridor. Similar to our first trip, visits to the sixteen villages were carried out under the following circumstances:

- u CEP hired two independent translators skilled at interviewing villagers. The translators were hired separately from Total.
- u The CEP team was transported in a Total car. Although it was unmarked, we are sure all villagers knew that this car belonged to the company.
- u Total staff accompanied us in the pipeline corridor during two out of the five days. Upon arrival in the village, they would stay at a teashop or at a clinic while the CEP team conducted interviews in the village.
- u The CEP team specified the requirements for the selection of villages to visit. These requirements aimed to gain as broad and diverse a perspective as possible, considering the village's ethnic make-up, distance from the main road and from the pipeline center (PLC), and the duration of participation in the Socio-Economic Program. We re-visited five villages that we visited during our first visit in October 2002 and eleven villages that we had not visited before.
- u During village visits, the CEP team split into two groups and moved separately through the villages, conducting interviews at random. Total staff did not arrange any meetings with community members or influence the decisions of the places we selected.
- u Over two visits, the CEP team has now visited 22 out of the 23 project villages. We were unable to visit one village

(Thingundaw) simply because of time constraints on the scheduled day. This village will be visited on our next visit in the fall of 2003.

- u We also insisted on visiting at least one village outside the pipeline corridor.
- u In our discussions, we, the CEP team, introduced ourselves as operating independently from Total. We made it clear that our visit was at the invitation of the company with the objective to observe the impacts of its operations on local communities.

The Corporate Engagement Project is not an audit in the sense that it "endorses" or "condemns" certain company policies. Therefore, this report will not contain a checklist of the options that have, or have not been implemented by Total following our first report. The aim of the visit and the options developed are to assist the Joint Venture partners to better deal with the social and political challenges they encounter working in the Myanmar/Burmese context. Total addressed many of the recommendations that we made based on our first visit, whereas other options require more discussion. We also observed new developments which we comment on in this report.

Section 1: Impacts on the local community pipeline corridor

This section will discuss our observations with regards to both the direct and indirect impacts of Total (and of Premier Oil, the operator of the Yetagun pipeline in the same corridor) on local communities. We will first discuss our updated observations regarding Total's Socio-Economic Program (a direct impact of the company's presence) and then discuss findings regarding forced labor (indirectly impacted by Total's presence). To compare the situation both inside and outside the pipeline corridor, we also

discuss our observations from a visit to a village outside the corridor.

Socio-Economic Program (SEP)

In the pipeline corridor, Total has implemented a Socio-Economic Program since 1995. Total's socio-economic activities provide infrastructure and social services as well as income-generating projects. Ongoing "social" components of the program consist of an extensive primary health care system, implemented through the health centers that are built or renovated, staffed and supplied by Total. Another key activity of the program consists of educational support including constructing schools, providing financial support to teachers, providing teaching materials, and initiating computer classes and a library program. The education program also operates a tutoring program to prepare children for their high school exams (nationally, fewer than 20% pass their exams).

The "economic" component of the Socio-Economic Program consists of development and income-generating activities such as pig farming, chicken farming, and agricultural activities such as the production of palm oil, groundnuts, and rubber. The Program also includes microcredit initiatives. The villagers themselves, through elected committees, determine who should benefit in the Total programs based on an annual plan that they design. Infrastructure projects include a wide range of activities varying from the construction of roads, schools, bridges, and water supply to market places and clinics.

Formal communication between Total and the villages occurs via three Village Communication Officers (VCO) who are part of Total's SEP team. A major task of the VCOs is to travel regularly to each village to hear people's concerns and to hold discussions with each of the 23

Village Communication Committees. Total established these committees, which consist of villagers who are elected by their communities to represent the interests of their community on a voluntary basis.

During the visit in the pipeline area, the CEP team attempted to be as inclusive as possible. We spoke with wealthier, middle class, and poorer people, with individuals as well as with groups, with men and women, with young and old, with rice farmers, other farmers (cashew, rubber, beetle nut), traders, fishermen and with people with a Dawei, Mon or Karen background (both Buddhists and Christians).

Overall Impact of the Program

During the approximately 70 interviews that we conducted within the corridor, every person we came across had heard about Total, and knew the basic components of the Socio-Economic Program. All of those we spoke with were in favor of Total's presence; if not for their personal benefit, then at least because the community as a whole benefits from Total's presence. Several times people acknowledged the wider benefits of the Socio-Economic Program and the fact that "Total is good for the village." In our discussions, not one person advocated that Total should leave the corridor.

The social program (the health and the education components) appears to benefit nearly everyone. Two villagers with limited means claimed they did not benefit from any components of the Socio-Economic Program; all other individuals stated that they benefit from at least the social aspects of the program. The free medical care is considered to be the most important aspect of the project, in addition to the educational support, including the provision of books and pencils and a tuition school for high school students who failed their final exams. The income-generating aspect of the program has substantial coverage as well. In some villages, about one-third of households have received a micro-credit

loan. In other villages, about one-third of the village is involved in raising pigs.

Since our visit six months ago, we noticed an increase in spending. We were better able to observe this on the second trip by means of comparison with a "reference point" — the previous visit in October 2002. We observed a noticeable increase in building construction. Interestingly, people are now constructing houses and shops from more expensive commercially cut timber or of brick to replace their traditional wooden structures. Other evidence of increased spending was the increased number of new motortaxi's on the road. When we asked, people told us of some direct gains from Total's Socio-Economic Program as well as some spin-off effects:

- u Some people have sold their first or second pig for a satisfactory profit. Most have reinvested this money in raising more pigs.
- u Some rice farmers claimed that seeds, fertilizer, and technical advice provided by the Socio-Economic Program have increased their yield from 50 to 70 baskets per acre.
- u Due to improved roads, several new public transport routes have been established, allowing access to villages previously only accessible by bike or ox cart. According to villagers, this has considerably reduced their transportation costs to markets.
- u Over the last six months, the number of brick factories has risen from one to three. In every village we observed several houses being built or renovated with bricks.
- u One local bus company in Kanbawk has expanded from 5 to 8 buses. Villagers themselves note the increase in motorcycles in the villages as well.
- u We met with several women on Kanbawk market who said that before,

flowers were imported from Dawei, while now they are locally grown due to increased demand.

While this all appears to be good progress, at the same time, people told us that the local economy is quite fragile, and highly dependent on Total's presence. Many shop owners in Kanbawk talked of reduced levels of sales and revenue since construction was completed and local employment decreased. Some shop owners said that they are going out of business. As well, three people complained that they have seen a rise in prices as a result of Total's presence because they perceive that Total employees do not negotiate hard for lower prices, and drive up prices. Others — the majority — said that the increase in prices is not related to Total's presence but signals a national trend.

Geographical Reach of the Program

These are the observations from villages located within the corridor. However, the benefits of the Socio-Economic Program reach farther than the boundaries of the corridor only. According to Program staff, about one-third of the students attending the boarding tuition school and about one-third of all people admitted in Kanbawk hospital come from outside the pipeline corridor. Few people with land outside the corridor move inside the corridor. The attachment to their land and the economic security it provides is too high to take the risk of starting a new life elsewhere. If people have relatives in the corridor, they may temporarily move in with them to enjoy the educational or medical facilities in the corridor but they return home afterwards. Total is aware of this and is willing to provide access to healthcare and tuition boarding school to "anyone" who applies.

The program's good reputation reaches well beyond the corridor. We encountered various young men from elsewhere in the country who had married women from local villages. Rather than the women

settling close to the husband's family, the wife's family had convinced these men that life was better inside the corridor (because of the Socio-Economic Program). We also heard that there is a small trickle of people establishing themselves in the corridor, largely of retirees without land, such as retired soldiers.

Some people originally from the area moved to other areas such as Shan State several years ago. They now return to their old grounds hoping to make a small business. There is one case in which a former KNU soldier surrendered his weapons at the border and was allowed by the government to resettle in his old village in the corridor. According to a Total staff member, the government spread a message to the relatives of KNU soldiers that "it is safe to come back now" and used the Socio-Economic Program as "evidence" that life in the corridor is now good.

Relative Winners and Losers

Within villages, the middle class and wealthier people appear to benefit most from the Socio-Economic Program. They have the means to invest in pigs or poultry or have enough collateral to be able to obtain micro-credit loans. Other wealthy individuals say they do not "need" the program, or, for example, find the smell of raising pigs too strong. Some lower-income villagers expressed frustration about the fact that the wealthy benefit more from the program than they do. For example, villagers complained that only three people in their community were able to invest in a cashew nut factory, which is supported by the program. People with no land or other assets state they have difficulties benefiting from the economic program for the following reasons:

- u Since they have no land or capital, they do not benefit from the availability of seedlings for cash crops, and cannot buy piglets or start a business.
- u Many of the poorer people we spoke with had not attempted to apply for a

loan because rumor has it that poorer people would be unable to find a guarantor to get a loan. While this may be true in some villages, we also heard from a Bank committee member in one village that they had given a loan to a poor crab fisher to purchase a fishing net. In other villages we also heard examples how some poor people had obtained loans to start a pig farm.

- u In some villages, there is a perception among the poorer people that one has to know the Head of Village (HoV) or Village Communications Committee (VCC) member personally to get a loan. Four people had the impression that "the VCC is only for the rich people."
- u Quite a few poorer people were interested in obtaining a loan, but feared that they would not be able to pay the 2% per month interest rate (which is significantly less than the inflation rate). They worried they would lose face if they were unable to fulfill their obligations. Hence, they did not want to get a loan.

We also observed some positive examples. Some wealthier people allow those without land to keep a pig in their backyard until they are able to buy their own land. Also, Total has recently introduced a Backyard Vegetable Project aimed at the poor. The first 43 villagers involved in 7 pilot villages had their first crop and apparently most made a profit. Based on this success the program will be expanded but it is yet too early to evaluate the larger impact of this program.

Governance structure of the program

The village-based and elected Village Communication Committee (VCC) is one of the core aspects of the Socio-Economic Program. The VCC operates on a voluntary basis and is designed to serve as a bridge between the company and the local community. This is still a relatively new concept in some villages. Whereas people were well aware of the structure of the

Socio-Economic Program in villages that have been part of the Program since its commencement, in the villages that were added to the program in 2001, about 50% of the interviewed people did not know about the existence of the VCC. Others heard about its existence but did not know the names of VCC members. Still they do know about Total's program and contact the company if needed through the Total doctor in the clinic or through the Total Village Communication Officers who visit each village on a regular basis.

The VCC is elected by the community themselves and is open to the candidacy of all. A government appointed Head of Village (HoV) could therefore also be a member of the VCC if the community elects him (all HoV that we have come across are male). Naturally, in these cases it increases his legitimacy and authority within the community and possibly weakens the relative authority of the other members of the VCC. For example, we repeatedly asked people who they approach to receive a loan, vegetable seeds, or small trees. The majority of people mentioned that the Head of Village is the key decision maker. Apparently he often signs off as a guarantor on loans or selects who in the village receives economic benefit and who does not. We were not able to verify if in these occasions the HoV was part of the VCC or not.

Analysis of the Socio-Economic Program: Challenges and Opportunities

As during our first visit, we are impressed by the manner in which the Socio-Economic Program is directed. Total should see it as a significant achievement that we were not able to find people who thought it would be better if the program were closed. In fact, the success of the program is reflected in the fact that the types of observations that we made and discuss here all deal with the challenges that come with expanding a successful program.

a) Risk that the Socio-Economic Program could be used for political purposes

Total staff has tried to implement the Socio-Economic Program strictly on a humanitarian basis. For example, it successfully established small civil society groups such as the Village Communication Committee and the Village Banking Committee based on the premise that such groups would refrain from being involved in politics.

Now the Government itself is at the brink of using Total's program in the corridor for political purposes. We heard in one village that the government is attempting to convince family members of KNU soldiers and others who fled the area in the past to return to their original villages in the corridor. They allegedly do this by talking about how good life is in the corridor (largely due to the work of Total and Premier). If this is indeed true, the program may lose its perceived neutrality. The moment that the program is seen as a tool to bring various groups back to the country, it supports arguments that the pipeline and the company are, unintentionally, being used as part of a larger political agenda.

b) Risk that success of the Program is used for personal gains

The Socio-Economic Program is visibly and measurably increasing quality of life for the inhabitants of the pipeline area. Its success consequently reinforces the authority and legitimacy of those individuals in the village that are in the position to allocate loans, trees, seedlings, or other wanted items. In some villages we heard people speak very positively about their Head of Village and VCC members. On the other hand, in some cases, we heard about incidents of abuse of position, as follows:

- u In most villages, in order to get new land allocated to them, people have to

pay the HoV. In one village the HoV attracted people that wanted to settle in the village by promising them jobs with Total (and received a fee for the land he handed out).

- u Other villagers are fully convinced that they will receive micro-credit loans from Total because the HoV has promised them. In reality, the Banking Committee is the only group that can allocate a loan.
- u One member of a VCC complained that, supposedly, the local bank committee keeps 2% of the interest payments for their work, instead of the approved 1%.
- u Several poorer people in various villages are convinced that they can get loans only when they know the HoV, VCC members, or "Total people."
- u Two villagers with little collateral mentioned that some villagers obtain Total loans at a 2% interest rate, and then loan to their poorer neighbors at a 10% interest rate.
- u In one village the HoV had cleared land for the seeds he expected. He was unclear when these seeds would arrive but he was convinced that "the VCC would get the seeds first."

Whether or not these stories are true is less relevant than that they signal a trend that the more successful the program is, the more people are likely to try to benefit from its success. The above-mentioned incidents (and based on our interviews, these emerged as only occasional incidents) of "abuse" should be balanced against the fact that the pipeline corridor is one of the very few pockets in Myanmar/Burma where some form of civil society structure is in place, albeit limited. Villagers' experience with any form of public administration is extremely limited. In light of this, the degree of abuse is small but should be addressed early.

c) Risk of increasing discrepancies between the haves and the have-nots

Total intends to further increase its socio-economic efforts within the pipeline corridor. This poses the question about the limits of expansion of the Socio-Economic Program. It will further enhance people's quality of life. At the same time, it will also increase the discrepancy between those that benefit more from the program and those that benefit less; for example between those that are able to benefit from micro credit and seeds programs and those that have no collateral or land.

Further concentrations of the program will also increase the discrepancy in quality of life between the corridor and its surroundings. Although we were not able to extensively visit the area outside the corridor, people generally reported that the health, economic, and security indicators are substantially higher within the corridor compared to outside the corridor.

This poses real challenges both from a moral perspective as well as from a security perspective. From a moral perspective, some government officials as well as some NGOs are concerned about the concentration of wealth in the corridor. One NGO representative wondered if Total, in its attempts to do good, was unintentionally creating a "Disneyland" in the corridor. A government official was concerned about "balance" in the development of regions and was not in favor of seeing one region disproportionately more developed than another region.

From a security perspective, some villages within the corridor were recently attacked and robbed and an increasing number of buses coming from the corridor are being robbed just outside the corridor. Although there is no proven relationship between the wealth accumulated in the corridor and

the increase in security incidents, keeping track of the trend in robberies in, or just outside, the corridor compared to the rest of the country will provide the company with a better idea if such correlation exists. In other countries, CEP has observed that increased discrepancies between the haves and the have-nots can lead to intergroup conflict.

Options

a) *Focus on the poorer members of the community*

Total is aware that poorer villagers are partly excluded from the benefits of some income generating programs. Despite the visible improvement in the quality of life some people have experienced due to the program, a considerable part of the population (estimated by one teacher to be as high as 50% in her village) does not have their own land or any other cash-generating activity. Total is currently in discussion with an international cacao producer who has shown an interest in buying cacao from within the pipeline corridor (as they are attracted by the relatively stable conditions within the corridor). There may be opportunities here, for example, to also make some land available (on a lease basis) to current landless people, or to a co-operative of the poorer segment of society, to help them start a cacao-growing business.

b) *Focus on capacity building of the VCC and the HoV*

The dominating role of the HoV in some villages and the fact that many villagers are simply not aware of the role of the VCC underlines the need to enhance the capacity of both the HoV and the VCC to administer the program and ensure fairness and equal distribution among villagers. The VCC also needs to ensure transparency and

ensure that a HoV is held accountable if he is not part of the (elected) VCC but uses the Socio-Economic Program for his own agenda.

c) *Expand on communication within the corridor*

We consistently hear that it is difficult to get any kind of public information in Myanmar/Burma. Total has attempted to address this concern by installing a bulletin board in each village. People in various villages mentioned that they visit the bulletin boards regularly. During our visit, Total's internal magazine was posted in each village and people said they appreciated the information provided in it. This observation revealed opportunities for Total to more actively use these bulletin boards in relaying information to the community. For example, Total could post the names of VCC members and their "job descriptions" as well as procedures for loans, job vacancies, complaint procedures, procedures to follow in case of a forced labor allegation, etcetera. We tested this idea with a number of villagers who all said they were in favor of communicating more directly with the company through this medium.

Since our first visit in October 2002, Total organized several "open days" at it's pipeline center for VCC members and local teachers from surrounding villages, and will continue to do so, to show its transparency and to provide an impression of life "behind the fence." The CDA team spoke with two individuals who had been part of such a visit. They appreciated Total's gesture, and said they were surprised by the fact that the company "is run by Myanmar people and not by Western people." Total intends to invite delegations from each of the project villages to their operations.

It would be useful to bring groups together on a more regular basis to

learn from each other's experience. For example, we heard that in some villages, poorer members are more excluded from obtaining loans because the bank committee doubts they will be able to pay back loans. On the other hand, we also heard that in some villages the bank committee provides loans to poorer people as well, and that these people were able to repay the loans plus interest. Through sharing these different experiences, communities could learn from each other, make more informed choices, and perhaps expand the impacts of their programs.

d) *Focus on sustainability*

Total intends to stay in the country for the next few decades. It also intends to maintain its Socio-Economic Program for the foreseeable future. As the program is still expanding, the current focus is not on designing exit or sustainability strategies. On the other side, staff acknowledges that if the Socio-Economic Program were to halt, especially the medical program (which is the most widely-appreciated part of the program) would not be able to continue at its current service level. Taking into consideration the longer-term benefits to the local population, it is sensible to start integrating sustainability strategies that ensure that a certain service level is maintained after Total stops directing the program. It is opportune to start this process sooner rather than later for several reasons. First, at this point villagers still do not take the program for granted and remember their situation before the start of the program well. This will make it easier now rather than in the future, for them to "sacrifice" paying some kind of compensation for the services they receive. Second, a fair portion of the population has started to generate additional cash, thanks to the program. This enables them to afford fees for

services. It is not our intention here to advocate changing the program dramatically. Rather, it is important to start thinking about these issues and introduce user fees for those who can afford them for medical services or, for example, for people who have more than three or four pigs — while taking into account, as discussed above, that there are many who still cannot afford fees, and should be exempted. Total could also start training local assistant veterinarians or agricultural experts that work side by side with Total staff and that can be paid by the villagers in the future.

e) Focus on improving local people's employment opportunities

One obstacle for local villagers to obtain jobs as security guards or as drivers is their limited English language skills, which is a problem because they have to be able to operate the radio. This is one reason why, in the past, many staff from Yangon/Rangoon have been hired. The result is that people in the villages perceive that “only” staff from the capital is hired. Total is already providing training and has a facility for such efforts. In order to increase the chances for people from the surrounding areas to obtain jobs with international companies, Total could consider providing English language courses as a precondition to obtaining such jobs.

Forced labor

One of the main concerns of the international community (and of the company itself) is the presence of forced labor in the country and particularly in the area of corporate operations. As in our first report, the CEP team paid careful attention to any possible linkages to the

presence, or absence, of forced labor. In our discussions with villagers we were also interested in how they themselves perceived “forced labor” and how they speak about it.

The Local Definition of Forced Labor

Villagers define “forced labor” along a continuum, and therefore it is not always clear what activity constitutes forced labor, and according to whose definition. Total may consider activities as forced labor that villagers see as voluntary. Given the sensitivity and the seriousness of the issue, Total uses a broad definition of forced labor in order to leave no space for any doubt.

Overall, in all discussions, we heard four elements that determine the severity of forced labor in the eyes of villagers;

1. the duration of the service,
2. the location where forced labor takes place
3. the type of labor and
4. whether or not payment takes place.

For example, people were unanimous that unpaid portering duties for the military for weeks at a time in frontline areas are the most “brutal and unacceptable” form of forced labor.

Villagers discussed several other themes:

- u Villagers themselves define forced labor in terms of whether they are paid for their labor or not. This is a substantially different interpretation of forced labor than the internationally accepted definition in which forced labor is understood as when people have no choice to refuse a request for labor.
- u Villagers define, and Total responds to, forced labor only in relation with the army; cleaning a pagoda at the instruction of a monk or cleaning the village or building a road under the instruction of the Head of Village (who is government appointed) is not

perceived as forced labor but as voluntary community service. Still, villagers explain that they have little choice to refuse such requests. Several people said that a second refusal results in punishment by the HoV although they did not know of anybody on whom punishment was inflicted. It is quite acceptable for the rich to pay others to do their part.

- u Villagers do not necessarily define all unpaid labor done for the army as forced labor. Some villagers living close to army camps explained the relationship of mutual dependence they have with the local battalion. They explain that the village sells fruit and vegetables to the barracks, given that other markets are far. They also state that the army provides security to the village. Hence, conducting light non-paid labor upon request of the army, such as cleaning the army compound for half a day, is not considered as forced labor by most people we spoke with, but considered to be part of a “give- and-take” relationship. Others said that it is, in fact, forced labor.

Mixed signals from the government towards forced labor

The various explanations, interpretations and perceptions of forced labor may explain why the different signals from the government seem confusing and contradictory. On the one side, we saw order I-99, which prohibits the use of forced labor, posted by the government on bulletin boards in various communities. On the other side, one senior government representative in Yangon/Rangoon was quite open about the current “need” to make use of forced labor, and mentioned these words himself. He explained that in order to develop the country in the absence of significant international assistance, the country needed to make use of its resources, specifically labor. This is why, according to him, villagers need to “help” the army build infrastructure projects. “You cannot stop

these projects (where forced labor is used) overnight, because a lack of progress could lead to dissatisfaction of the population which can lead to more support for opposition groups.”

Observations about forced labor from within the pipeline corridor

We consistently asked villagers about the presence of current forced labor within the corridor. Similar to our first visit, we did not hear of any systematic forced labor by the army in the pipeline corridor at present. Sometimes we framed this question as “When was the last time you had experience with forced labor?” At least 15 men stated that they had been subjected to (what they considered as) forced labor up to 1995; two people claimed it had occurred as recently as 1998. All of these cases were related to the construction of the Yei-Tavoy railroad, either digging the tracks or dumping stones and sand. We heard that only men were involved. The duration of the work was typically from 4 to 14 days at a time. Most people had to provide labor once, some twice.

No one we spoke with had direct experience working on the construction of the pipeline, although people were, of course, familiar with the project. When asked when forced labor stopped, all people we spoke with relate this to the arrival of Total; in three villages people explained their understanding that Total had requested the Army to stop such practices.

Despite the unanimous reports by villagers that no forced labor takes place within the pipeline corridor in a systematic manner, sporadic incidents do occur. One villager said that in December 2002, after the arrival of a new commander, his son was requested by the army to level ground and cut trees for a helicopter pad. The Head of Village (HoV) confirmed that he had been asked by the army to “provide” 20 villagers for several hours. Although some villagers did not perceive this exercise as forced labor, others complained to the

army, and they were exempted. In retaliation for the complaint, the battalion told the village that they could not sell their vegetables to the barracks, a situation that lasted for 6 weeks.

Total’s Procedure in Response to Forced Labor Allegations

When Total learns about incidents such as this (usually through members of the Socio-Economic Program team who live in the village), a standard investigation procedure is initiated. On a local level, the company sends an investigation team to the village in question, and if allegations are substantiated, the company requests that the representative of the Ministry of Energy (MOGE) who is based at the pipeline center, liaise with the military and tell them to halt these activities immediately. In addition, the MOGE representative requests that the military pay villagers for the work conducted. At the same time, in Yangon/Rangoon, Total’s General Manager documents the case through a letter to the Minister of Energy who takes necessary action with the other authorities. In this particular incident, on a local level, the army compensated villagers the next day after the intervention of the MOGE representatives, while the local battalion apparently received a reprimand that these practices are not tolerated.

Total is very alert to any allegations of forced labor. During our visit, we verified reports of an incident, treated by Total as “forced labor,” where the military supposedly instructed one village to plant teak trees along the road. When we checked, the villagers confirmed that the Department of Forestry had requested that each household plant 20 trees around their houses and that this was a truly voluntary exercise.

Observations Just Outside the Pipeline Corridor

In our first visit we noticed a significant difference between the situation with regards to forced labor outside the pipeline

corridor as compared to within the corridor. During this trip, we visited the same village outside the pipeline corridor that we had visited previously. This village is not included in the Socio-Economic Program. As we had to get official permission to visit the village, the local army battalion, made up of several dozens of soldiers, was instructed to guarantee the safety of the CEP team and although they did not accompany the CEP team, they were visibly present in the village. Their close presence noticeably affected people’s ability to speak freely. In this village we did not hear about any allegations of forced labor. However, we observed:

- u People demonstrated a visible fear of the armed forces.
- u People were markedly more reluctant to talk to us than peers had been in villages within the pipeline corridor. For example, we had agreed with the HoV to meet us at a certain time, and he never showed up nor left a message. Similar behavior did not occur anywhere else.
- u One person requested that we “not ask any political questions.”
- u Two people suddenly refused to speak with us after another person in civilian clothes spoke to them in Karen language.

In the village, someone who claimed to be the battalion commander approached us. He wanted the CEP team to know how “both the military and civilians had worked together to build a fence for a local school” (which is currently used as a “flying base” for the army). Although the situation was too tense to inquire about the conditions under which this “partnership” was established, it signals the local commander’s desire to be seen as working with the community. This was underlined by his remarks, “We want to work with Total. Together we can develop this village and make peace.”

We were unable to verify if some people we spoke with during our last visit had experienced any repercussions from speaking with us during our first visit. The home of one person with whom we spoke on our previous visit seemed abandoned (fence down, yard not swept, doors locked up). When we asked people about their whereabouts we got answers from “having an afternoon sleep” to “working in the forest.” These answers concern us because their variation signals that we may not be being told the truth about what happened to this family. Of the several families we met with and interviewed in our previous visit, this was the only household that was not now present. However, the lack of consistency in explanation about where they had gone raises at least the question of whether they were in any way targeted because of their conversation with us. In this previous conversation, we had discussed forced labor and the family and neighbors who were present confirmed that it occurs. (In our other conversations in this same village, every family we met offered this confirmation and, as noted, all of these still live in the village as before.) Because of our concern, CEP staff recommends that Total staff visit the village periodically to ensure that our visits do not have any negative consequences for the villagers.

Section II: Impacts at the national level

Challenges

The previous section dealt with the impact of Total’s presence in its local working environment. Obviously, Total’s presence also has impacts on a national level that the company acknowledges it needs to address, but over which it has less control.

Total realizes that the good efforts in the pipeline corridor will not satisfy the

demands of external stakeholders who are concerned about the impact of corporate activities on a national level. At the same time, there is no simple solution for operating in Myanmar/Burma. Total is faced with several challenges with regards to its roles and responsibilities. In addition to the challenges identified in our previous report, this visit highlighted the following additional ones:

Explore discussions about revenue spending

Critics of Total allege that the government uses the revenues that Total helps generate for the purchase of military hardware. According to a senior government official, who acknowledges that both the government and the companies are facing tremendous pressure over this issue, “hardly any” of the gas revenues is being used for war purposes. This provides an opening for the company to suggest to the government that it ensure that all gas revenues are used for civil purposes. Revenue allocation is perceived as one of the most contested “contributions” of the company to the country. Hence, increased transparency of how such funds are used and the possibility for independent verification by the international community would allow the tracking of these revenues. The challenge for Total is to constructively achieve this objective without being seen as meddling in government affairs. It is worthy to note that the Myanmar/Burmese government would not be unique if it decided to pursue a more transparent approach. Countries such as Cameroon and Chad have followed such an approach already and several other countries are considering it.

The MOGE Kanbawk-Myaingkalay pipeline; Total’s responsibility?

In addition to the gas provided to power plants in Thailand, the Joint Venture also sells gas to power a cement factory in Myaingkalay in Karen State. The gas is sold at the pipeline center in Kanbawk to

the Ministry of Gas and Energy (MOGE) and from there the gas is transported in a domestic pipeline that was constructed by MOGE in the year 2000. This domestic pipeline is gaining national and international attention for two reasons.

First, the international press reports allegations of negative social and human rights impacts of this pipeline on the lives of the population in Mon State (through which the pipeline traverses). While the domestic pipeline is technically and legally not Total’s concern, NGOs argue that Total nonetheless is morally linked to the pipeline since the gas comes from Total gas fields. In addition, two Mon political representatives stated that their constituencies considered the gas flowing to the cement factory as “Total gas.” They were not aware or chose not to acknowledge that Total sells the gas at the pipeline center. Regardless, Total is being linked with the allegations associated with this pipeline. This reflects a trend in the corporate social responsibility movement that, as one international observer stated, companies not only bear responsibility for supply-chain management but increasingly also for “user-chain” management.

Second, both the government and the KNU acknowledge that the domestic pipeline has been subjected to sabotage by the KNU in December 2002 and in April 2003. Both the act of sabotaging and the fact of acknowledgement are new developments. More significant for Total is the fact that the KNU in their statement makes a direct link to Total and states that the revenues generated by the company allow the government to buy military hardware “to continue killing and oppressing Karen people and the population in general.”²⁴⁴ Political analysts in Yangon/Rangoon interpret this statement as an attempt on the part of the KNU to use the presence of foreign companies as a lever to apply international pressure on the government for political dialogue in Myanmar/Burma

which is currently, all observers agree, at a stalemate.

Both developments pose the question to what extent the domestic pipeline is, or should be, of concern to Total, and what options the company has to respond to these new developments.

Refraining from opinions about the political situation does not mean the company is seen as neutral

In its Myanmar/Burma Code of Conduct, Total states its goal to, "Avoid interfering in relations between local communities and more generally in political matters." Some staff interpret this as refraining from any kind of political engagement in the country. The idea behind this statement is, officials say, an attempt for the company to stay "neutral." However, the KNU statement after the domestic pipeline attack explicitly links the revenues generated by Total and their use for warfare. It is a clear sign that the company is perceived as having an impact on the political situation in the country. Remaining silent on the political situation in the country is not perceived as a neutral stance. On the contrary, it is interpreted as support for the status quo. For outside critics, silence and neutrality are seen as uncritical compliance with the policies and practices of the military government.

Should one be public or not regarding engagement with the government?

The international Joint Venture partners each have their own approach in engaging with the authorities and in achieving change. Pressure from outside groups to "do something" makes it tempting to publicly speak about achievements or to openly express a company's opinion about certain government policies. On the other side, given the Myanmar/Burmese context, in which changes are seen to occur through a process of "saving face," such a critical public stance may, company staff fear, directly undermine their attempts at

urging genuine and effective dialogue with the authorities.

Limits to growth of the Socio-Economic Program in the corridor

Total is committed to making its program in the pipeline corridor a cornerstone of its efforts to fulfill its policy commitment of reaching out to affected communities and developing social and economic programs geared to their needs. The program has increased the quality of life for the overwhelming majority of the population in the corridor, which is no small achievement. Outside critics as well as some of Total's own staff wonder if it is time to maintain the level of attention in the corridor and focus more on "getting it right" in dealing with the larger socio-political climate in the country.

The discussion about Total's role in Myanmar is challenging. The variety of stakeholders both within and outside the country is great, each with its own perspective, agenda, and objective. As in all of the contexts where the CEP has worked, there are options and choices to address these challenges. Through discussions with the relevant stakeholders, interested parties can agree on benchmarks and explore the alternatives available to the company to work towards a presence that satisfies the demands of the key stakeholders: the people of Myanmar/Burma, the government, Total shareholders and company employees.

Develop a Vision and Strategy

The dilemmas that Total and its co-investors are facing will not disappear by themselves. If the Joint Venture partners do not work on clarifying and pursuing their role in Myanmar/Burma with respect to the socio-political issues, they will leave themselves increasingly vulnerable to stakeholders who criticize them. As one

manager at Total mentioned, "Hiding under the table and waiting until the dark clouds blow over is not going to help us." Conversely, proactive efforts to engage with the government on non-technical issues may not be effective, or even counter productive, when they are not well thought through in their approach.

The development of a vision, and a strategy to achieve this vision, will help Total take the initiative in being, and being seen as, working towards achieving a better future for the country. Without such an exercise, all of Total's other good efforts in the pipeline area run the risk of being considered "window-dressing," as one NGO representative described. Alternatively, efforts to address the socio-political situation will likely be less effective if they are not guided by a larger overall objective.

Articulation by Total of a long-term vision will focus internal discussion on what the company wants to achieve, not only financially but also reputationally. Once created, a focused strategy and action plan can then be developed which would address complex and important issues such as what role Total wants to play on a socio-political level in the country. It would also help the company to address the question of what "success" looks like. For example, what are the interim outcomes that are required to achieve the long-term objective? Identifying recognizable mileposts will assist in maintaining focus on the program and managing strategy expectations.

Based on conversations with a variety of stakeholders, CEP sees that no outside groups expect the company to manage the politics of a host country. As we stated in our previous report, it is up to the Myanmar/Burmese people themselves to determine their own future. Still, the challenge for the company is to play, and to be seen as playing a positive and constructive role in the country.

Following are some elements or building blocks that that company may take into consideration in developing its future vision and strategy. We discuss the building blocks per group of stakeholders.

(I) — Working with the government

As we pointed out in our first report, some Total staff equate engagement with the government as political interference, and equate political interference with non-neutrality. This is incorrect. The reality is that Total engages, and must engage (even if only on a technical level) with the government on a daily basis. Thus, the challenge for Total is how to work with the government in ways that promote progress in the country.

The overwhelming majority of the people we spoke with, ranging from senior diplomats and heads of UN agencies to NGOs and managers of other companies, were of the opinion that Total should take a more pro-active approach in relation to government issues and broaden their policy regarding political involvement in the country. Many people saw no reason why the company could not be more engaged. Others considered that Total was overlooking the business case pointing towards the impact of the political climate in Myanmar/Burma on Total's reputation and share price.

All international observers we spoke to, make the case that Total, as the biggest investor in the country, has considerable leverage over the government. All Myanmar nationals we spoke with also felt Total had considerable political influence with the exception of one business leader who felt the company was politically powerless.

Options

a) Use a variety of ways to effectively communicate with the government

The following is a careful analysis of how Total can engage most effectively

with the government. We consistently asked people to share their insights. The following are some recommendations from people in Myanmar/Burma:

- u Establish personal connections. All people pointed out the value of personal connections that are cultivated over time. Old family relations and ties that go back to school times matter.
- u Work via national staff. This tends to minimize the strain on government officials. Many NGOs have found the working relationship to be much more effective when they route most of their government communication via their senior national staff and only officially bring the international staff into the process if details have been sorted out.
- u Conduct business in a way that avoids anyone losing face. Several people identified the importance of acknowledging and maintaining contacts with each layer in the hierarchy and not skipping levels; for example, only contacting senior officials in case of a need. A bottom-up approach has been identified as more effective than going straight to the top.
- u No government officials like surprises or to be put on the spot unnecessarily. One organization overcame this problem by hiring a national government-liaison officer who is responsible for keeping government agents informed and for informally testing the tone of draft letters with officials before a final version is officially put forward.
- u Develop positive working relationships with bureaucrats through informal meetings and gatherings. These occasions can be parties organized by the by the various Embassies or Business Associations. Total and its co-investors can also create these

opportunities and have done so in the past, for example by sponsoring workshops on Humanitarian Issues.

- u Draw clear boundaries and be predictable. One senior UN official explained his experience that these boundaries are constantly tested and that a “hard-nosed, transparent and consistent approach” is most effective when working with the government. Another point that he made is that the military consider any “unpredictable” behavior as a threat. Instead, they are well able to handle an approach they may not agree with but that is at least in line with what the company said it would do.

b) Meet with government officials even when there is no fixed agenda.

In our own discussions with one senior government official, we noted the candid way in which he discussed issues such as forced labor, transparency of revenue allocation, and the position of the NLD. One of the reasons for this may have been the fact that the CEP team had no fixed agenda for the meeting but merely requested a meeting to listen and discuss. In other countries we have seen repeatedly that having a discussion around issues that “need to be driven home by the company to the government” creates an atmosphere of formality. Instead, it would also be valuable for Total to develop a relationship with senior government officials through regular meetings where there is no fixed agenda. It may well be that discussions in a more informal atmosphere provide a good opportunity to open up issues in more detail.

c) Spell out what constitutes political interference and what does not

A practical step in addressing communications with the government is to determine what constitutes political interference — which is what the

company wants to avoid. Some company staff considers any type of interaction with government officials over non-technical issues to be “political” and they therefore feel the company should refrain from these interactions. But not all engagement with the government is political interference. Many diplomatic, UN, and NGO representatives feel it is appropriate for a company to alert the government about what, from a business perspective, is good or bad for business. That does not, in their opinion, constitute interference or meddling.

For example, several diplomatic, UN, and NGO representatives in Myanmar/Burma indicated that statements from Total with regards to the political situation could not be interpreted as political interference when these statements were clearly and directly explained through a business lens for the company. They interpreted “political interference” to be an agenda of political change.

For example, if the company stated that it “supports government attempts to abolish forced labor and implement order I-99” or that is “in favor of a reconciliation process” or that it “supports a government policy that does not allocate gas revenues for war purposes”, these statements can all be made from the perspective that this development would improve the conditions for investment, regardless which government is in power. Similarly if the company stated it “would regret if the International Labor Organization (ILO) had to withdraw its representation in the country due to the lack of perceived progress on the part of the government”. it would signal encouragement to support the government in following through on commitments made earlier. In summary, international stakeholders in Myanmar/Burma encouraged Total to take a more liberal approach with regards to the political context in which they work,

provided they link the direct impact of the social-political situation to business.

d) *Increase contacts with more individual government representatives across more departments*

Many people stated that in the Myanmar/Burmese context, opportunities to influence, support, or encourage the government present themselves in unexpected ways. They stated that only those companies with a good informal network with government officials on various levels are able to capitalize on these opportunities. If the company wants to sell gas and to focus on its good efforts in the pipeline corridor, a minimalist approach predominantly focused on the Ministry of Energy will be sufficient to meet technical requirements. But the fact that the political situation in the country can negatively affect Total’s business underlines the case for Total to step up its engagement with the government, rather than to maintain an as-needed approach. Other ministries such as Home Affairs (the Minister of Home Affairs also serves as the chairman of the National Human Rights Committee) or the Ministry of Labor are relevant to Total’s operations. Total could have also have discussions with existing contacts within the Ministry of Energy about non-typical issues such as forced labor or the manner in which gas revenues are being allocated by the government.

An analyst with whom we spoke inside the country noted that most efforts to engage with the government are pitched at the top political level in the assumption that all decisions are made by the top. He stated that even in the Myanmar system, the government is not monolithic and that many opportunities exist to engage with different officials on various levels. This was confirmed by a senior diplomat who agreed that in various ministries officials on various levels are constructive thinkers

and open to new ideas but need to be legitimized and supported to be more open about this.

e) *Create vehicles for social functions*

One diplomat suggested that Total could proactively create venues where informal interaction with government officials takes place. Suggestions included seminars and workshop about technical topics such as “providing a good policy environment for business” or “fundamental Laws enabling foreign investment.” Workshops with such topics do not directly involve the military and, thus, will be easier to organize and may provide a more effective manner to address the challenges of working in Myanmar/Burma.

f) *Be alert to and document examples of the process of change within the government*

One observer also urged Total to look for the processes and steps by which any government changes its position. He noted that within the government, individuals are at various levels along a spectrum:

1. Officials invalidate a certain concept and do not see the relevance of its applicability to the country.
2. Officials validate a concept but do not see it as relevant to the context
3. Officials validate the concept as well as its applicability.
4. The government establishes Laws, committees and procedures as an enabling framework.
5. The government moves from procedures to implementation.

A company should be aware of where each bureaucrat is in this change process. A better analysis of such changes is important for Total to adjust its strategy and ensure that it supports decisions moving forward along this spectrum.

II) — Working with**Non Governmental Organizations**

At present, Total and its co-investors carry the “burden” of working in Myanmar/Burma largely by themselves. External communication has been largely re-active, defensive, and legalistic. This creates conditions where few NGOs feel invited to share ownership with the company to jointly seek constructive options to improve the positive impact of outsiders. One of the objectives of a well-designed strategy would be exactly that: to share ownership for Total’s challenges and to have more brains working on developing options for getting it right.

NGOs present in country

The General manager of Total has actively engaged with various humanitarian NGOs since his arrival. This exercise has been constructive, and increased contacts with NGOs have allowed the company to better disaggregate the various mandates and activities of NGOs. Still, contacts have been primarily with humanitarian NGOs and focused on the exchange of information about the Socio-Economic Program.

All NGOs and UN agencies with which the CEP team had discussions are open to direct discussions with Total. Even the NGOs that strongly oppose Total’s presence in Myanmar/Burma would welcome the possibility to have direct interactions with Total staff. Although parties may agree to disagree with Total that it should be present in Myanmar/Burma, the process of getting each other’s perspectives and sharing insights is an important step in clarifying factual misunderstandings. As we noted in the previous report, the disagreement between the company and outside groups over facts is currently one of the main obstacles to furthering a discussion about what these facts mean.

International NGOs and Stakeholders

Total’s open door policy to invite diplomats, journalists, and NGO representatives to the pipeline corridor has led to better informed discussions between the company and external stakeholders, as well as between various outside groups. In some organizations, people have been better informed through visits to Myanmar. Others have started to encourage their colleagues to rethink fixed position and, instead, focus on shared objectives. In other occasions, people observe closely what is actually going on and push for progress, but at the same time, “trust” the individuals in the company who are trying to make a positive change.

Still, this increased openness is fragile and the burden of proof to show that the corporate presence in Myanmar is positive lies on the shoulders of the company. Any form of corporate communications by any of the co-investors that is presented as definite but can factually be contested (for example that all accusations against the company are false, or that the Yadana project contributes to the overall development of Myanmar/Burma) will not help to build bridges between the Yadana partners and external stakeholders. While such information may be useful for potential investors, it reinforces the perception among NGOs that JV partners are defensive in their response, not open to listen to civil society groups and not able to reflect on their own practices. On the other side, we have also seen that Total’s response to an article that was critical of the company’s presence in Myanmar/Burma was integrally placed in the same magazine. This may be because of the non-defensive tone of the response accompanied with an open invitation of Total for journalists to visit its Myanmar/Burmese operations to verify facts for themselves.

Options

Various people we spoke with mentioned the following options. Of course, all these options should be part of an overall and coherent strategy linked to the approach to the government and other stakeholders.

a) Be strategic in broadening relations with various groups of NGOs.

Given the large number of stakeholders interested in the socio-political issues in Myanmar and the time commitment necessary to nurture a working relationship, careful selection of NGOs becomes an important practical consideration. This does not mean that others are unimportant or should be neglected, but Total’s relationship with them may be for other purposes.

A next stage in developing relations with NGOs is to also engage with other types of NGOs such as political analysis NGOs, UN agencies, and NGOs that have an advocacy mandate either in Myanmar/Burma, in the region (Bangkok) or internationally in the US or in Europe. Of course, each group has different objectives and discussions with different groups take can take place for different purposes. For example:

- u Medical NGOs can be useful for exchange of medical data. Some of this exchange is currently already ongoing.
- u Several NGOs in Myanmar/Burma have micro credit expertise and can teach, or learn from Total’s experiences on a programmatic level.
- u Other NGOs may be able to provide helpful information of how they engage with the government.
- u Some groups can be approached to get a better analysis of the political situation on an ongoing basis.
- u Others would be able to provide Total with a historical perspective of the

impact of the pipeline and why they would prefer for Total not to operate in Myanmar/Burma.

- u Some groups will be able to provide Total with a better idea of the perception of the various political parties in or outside the country about the Yadana pipeline.
- u It will be fruitful to actively approach some advocacy groups that have been critical of Total's program in the pipeline area (and its presence in the country in general) and to have discussions, see where some possible common ground exists (if any at all) and explore venues for regular discussion.

Various NGOs that fall within these categorizations have indicated they are willing to have ongoing discussions with Total. One option for meeting with NGOs in Myanmar/Burma is for Total to offer to provide a presentation of its Socio-Economic Program after one of the monthly NGO meetings. The fact that some NGO representatives in the country are not aware of the fact that Total has such a program suggests there is an opportunity to exchange experiences. One NGO representative suggested that Total should first meet informally with a small group of NGOs to share information.

One of the key-issues for the company is not only to explain its current activities, but to also actively seek feedback from outside groups about its role in society. For example, Total's Code of Conduct is one of the most important ethical guides for company behavior. However, this Code is developed by the company and, thus, holds little weight in convincing outside critics that the company means well. Since much thought has gone into developing the Code of Conduct and Total feels comfortable with it, it would be constructive to discuss with outside stakeholders how the current Code of

Conduct should be interpreted and applied in the Myanmar context.

b) Share information about existing policies and procedures in place

All company staff acknowledge that working in the Myanmar/Burma context is not easy and comes with challenges. The company is constantly discussing dilemmas, contemplating how to react to painful observations, and searching for the "right" approach. This process is not reflected in communications with external stakeholders via the web site or company brochures. Ownership for developing constructive options will increase when the company is more open about the dilemmas they are dealing with and more humble about its achievements. It would invite outside groups to bring ideas to the table and explain the company's approach, acknowledging that policies can always be improved. For example, Total could start by describing its current policies and procedures in place. It would be useful to explain Total's efforts to increase employment for local villagers or to explain, step by step, what procedure is followed when an allegation of forced labor within the corridor reaches the company.

(III)— Joint Venture Partners

In any joint venture, the different co-investors bring their own strengths and weaknesses to the venture. Each co-investor can also learn from its other partners. The Yadana project is no exception. While there are obvious differences in responsibilities between the operator and the co-investors, there are also shared interests. Especially in the Yadana project, all partners are, in one way or another, affected by negative publicity surrounding the project. Still, there are clear opportunities for synergy among the partners.

Options

a) Develop a joint vision and strategy

As discussed above, a joint vision among partners of how see their role in the socio-political context of the country would be an important first step. Currently such a common vision does not exist. In addition, none of the co-investors is explicit about how it sees its role in the country and what it wishes to achieve. Various government officials have regular meetings with representatives from the different co-investors about the same topics. There is a missed opportunity for Yadana to speak with one voice, aimed at achieving identified and agreed-upon common goals.

b) Capitalize on complementary competences

A joint strategy also means that co-investors can ensure that their efforts are better coordinated. For example, some co-investors are in a better position to work with local communities or NGOs whereas others may have a broader network with government officials.

c) Support the government on issues where interests overlap

The Minister of Energy has stated that under his Ministry "there is no forced labor." Such a statement provides ample opportunities for Total to help the Minister to ensure this indeed is the case and that everyone in the department is implementing this policy. For example, Total could suggest that outside groups verify allegations made by Mon human right groups of forced labor along the Kanbauk-Myaingkalay pipeline, since this has a large reputational impact on Total.

Other ideas that government officials and NGO representatives brought up and that should be explored by Total to develop a better working relationship with government are jointly activating the power line that has been partially constructed in the pipeline corridor or jointly undertaking a project to improve local knowledge on pipeline technology.

The building blocks above all need to be integrated and contribute towards a larger objective, which is articulated in a vision. The above-mentioned options may be positive actions in and of themselves. However, they may remain only good efforts, and not more than that, if they are not part of a strategy to materialize a vision. When companies try to tackle large problems in one “giant leap,” they often fall short, which can play into the concerns of critics. On the other hand, we have seen in other companies that it is valuable to focus on a series of smaller steps, in order to achieve a larger objective. Small steps increase opportunities to gain credibility and trust, because expectations are met in the immediate term in tangible, visible ways.

With a clear vision and strategy, efforts to achieve this outcome can be focused, and new working partnerships can be built and nurtured. Within these, creative solutions to the challenges of working in Myanmar can be formulated.

Conclusion

The second visit to the Yadana pipeline confirmed the positive impact that the presence of the oil companies currently has on the population within the pipeline corridor. It is also evident that these positive impacts in the pipeline corridor will not convince outside critics about Total's positive contribution to the country at large. The company will continue to be criticized and remain vulnerable to outside pressure from some stakeholders until it is better able to address concerns on the larger socio-political context in the country. The single most important observation revealed in this report is the need for the co-investors to develop a vision of the role they want to play in Myanmar/Burma and the strategy they will use to achieve this.



EVERYONE
HAS THE RIGHT TO
FREEDOM OF THOUGHT,
CONSCIENCE AND RELIGION;
THIS RIGHT INCLUDES
FREEDOM TO CHANGE HIS
RELIGION OR BELIEF,
AND FREEDOM, EITHER ALONE
OR IN COMMUNITY WITH
OTHERS AND IN PUBLIC OR
PRIVATE, TO MANIFEST
HIS RELIGION OR BELIEF
IN TEACHING, PRACTICE,
WORSHIP AND OBSERVANCE.

Resources and Further Information

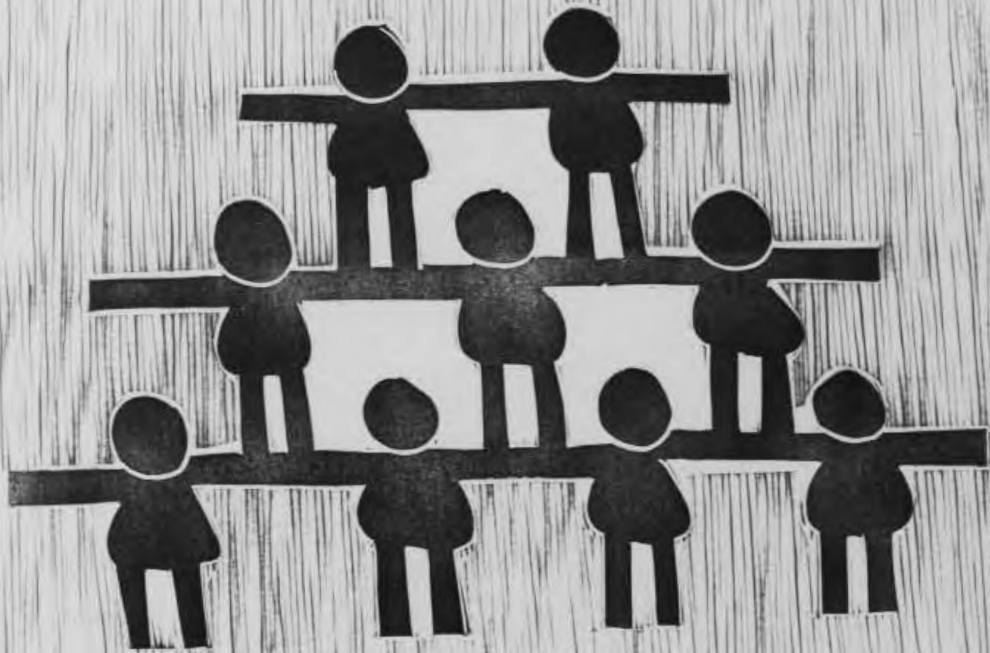
**151 Universal Declaration
of Human Rights**

**174 Business and Human Rights
Resource Centre**

**176 The Human Rights Compliance
Assessment (HRCA)**



**EVERYONE
HAS THE RIGHT
TO FREEDOM OF OPINION
AND EXPRESSION;
THIS RIGHT INCLUDES
FREEDOM TO HOLD
OPINIONS
WITHOUT INTERFERENCE
AND TO SEEK, RECEIVE
AND IMPART INFORMATION
AND IDEAS
THROUGH ANY MEDIA
AND REGARDLESS OF
FRONTIERS**



1) EVERYONE
HAS THE RIGHT TO
FREEDOM OF PEACEFUL
ASSEMBLY AND
ASSOCIATION.

2) NO ONE MAY BE
COMPELLED TO BELONG
TO AN ASSOCIATION

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,



1. EVERYONE HAS THE RIGHT TO TAKE PART IN THE GOVERNMENT OF HIS COUNTRY, DIRECTLY OR THROUGH CHOSEN REPRESENTATIVES. FREELY

2. EVERYONE HAS THE RIGHT OF EQUAL ACCESS TO PUBLIC SERVICE IN HIS COUNTRY.

3. THE WILL OF THE PEOPLE SHALL BE THE BASIS OF THE AUTHORITY OF GOVERNMENT; THIS WILL SHALL BE EXPRESSED IN PERIODIC AND GENUINE ELECTIONS WHICH SHALL BE BY UNIVERSAL AND EQUAL SUFFRAGE AND SHALL BE HELD BY SECRET VOTE OR BY EQUIVALENT FREE VOTING PROCEDURES.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

**EVERYONE,
AS A MEMBER OF SOCIETY, HAS
THE RIGHT TO SOCIAL SECURITY
AND IS ENTITLED TO REALIZATION,
THROUGH NATIONAL EFFORT AND
INTERNATIONAL CO-OPERATION
AND IN ACCORDANCE WITH THE
ORGANIZATION AND RESOURCES
OF EACH STATE, OF THE ECONOMIC,
SOCIAL AND CULTURAL RIGHTS
INDISPENSABLE FOR HIS DIGNITY
AND THE FREE DEVELOPMENT OF
HIS PERSONALITY.**



*Now, therefore,
The General Assembly,*

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.



1. EVERYONE HAS THE RIGHT TO WORK,
TO FREE CHOICE OF EMPLOYMENT,
TO JUST AND FAVOURABLE CONDITIONS OF
WORK AND TO PROTECTION AGAINST
UNEMPLOYMENT

2. EVERYONE, WITHOUT ANY DISCRIMINATION,
HAS THE RIGHT TO EQUAL PAY FOR EQUAL WORK

3. EVERYONE WHO WORKS HAS THE RIGHT TO
JUST AND FAVOURABLE REMUNERATION
ENSURING FOR HIMSELF AND HIS FAMILY AN
EXISTENCE WORTHY OF HUMAN DIGNITY,
AND SUPPLEMENTED, IF NECESSARY,

BY OTHER MEANS OF SOCIAL PROTECTION

4. EVERYONE HAS THE RIGHT TO FORM
AND TO JOIN TRADE UNIONS
FOR THE PROTECTION OF HIS
INTERESTS

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

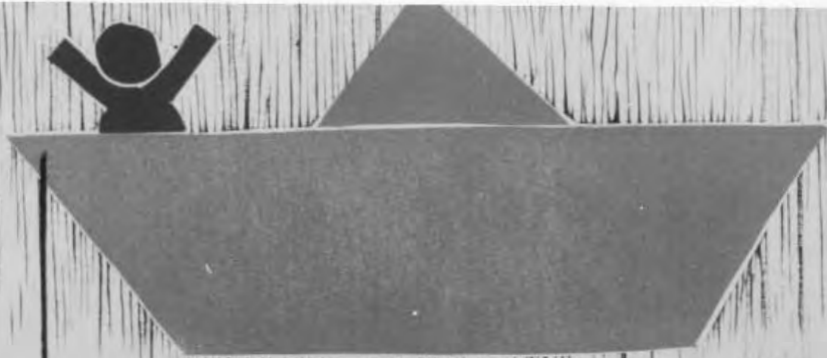
Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.



EVERYONE
HAS THE RIGHT
TO REST AND
LEISURE,
INCLUDING
REASONABLE
LIMITATION
OF WORKING HOURS
AND PERIODIC
HOLIDAYS
WITH PAY.



Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

1. EVERYONE HAS THE RIGHT TO A STANDARD OF LIVING ADEQUATE FOR THE HEALTH AND WELL-BEING OF HIMSELF AND OF HIS FAMILY,

INCLUDING FOOD, CLOTHING, HOUSING AND MEDICAL CARE AND NECESSARY SOCIAL SERVICES AND THE RIGHT TO SECURITY IN THE EVENT



OF UNEMPLOYMENT, SICKNESS, DISABILITY, WIDOWHOOD, OLD AGE OR OTHER LACK OF LIVELIHOOD IN CIRCUMSTANCES BEYOND HIS CONTROL.

2. MOTHERHOOD AND CHILDHOOD ARE ENTITLED TO SPECIAL CARE AND ASSISTANCE. ALL CHILDREN, WHETHER BORN IN OR OUT OF WEDLOCK, SHALL ENJOY THE SAME SOCIAL PROTECTION

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

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1. EVERYONE HAS THE RIGHT TO EDUCATION. EDUCATION SHALL BE FREE, AT LEAST IN THE ELEMENTARY AND FUNDAMENTAL STAGES. ELEMENTARY EDUCATION SHALL BE COMPULSORY. TECHNICAL AND PROFESSIONAL EDUCATION SHALL BE MADE GENERALLY AVAILABE AND HIGHER EDUCATION SHALL BE EQUALLY ACCESSIBLE TO ALL ON THE BASIS OF MERIT.

2. EDUCATION SHALL BE DIRECTED TO THE FULL DEVELOPMENT OF THE HUMAN PERSONALITY AND TO THE STRENGTHENING OF RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS. IT SHALL PROMOTE UNDERSTANDING, TOLERANCE AND FRIENDSHIP AMONG ALL NATIONS, RACIAL OR RELIGIOUS GROUPS, AND SHALL FURTHER THE ACTIVITIES OF THE UNITED NATIONS FOR THE MAINTENANCE OF PEACE.

3. PARENTS HAVE A PRIOR RIGHT TO CHOOSE THE KIND OF EDUCATION THAT SHALL BE GIVEN TO THEIR CHILDREN.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

1. EVERYONE HAS THE RIGHT TO FREELY PARTICIPATE IN THE CULTURAL LIFE OF THE COMMUNITY, TO ENJOY THE ARTS AND TO SHARE IN SCIENTIFIC ADVANCEMENT AND ITS BENEFITS.



2. EVERYONE HAS THE RIGHT TO THE PROTECTION OF THE MORAL AND MATERIAL INTERESTS RESULTING FROM ANY SCIENTIFIC, LITERARY OR ARTISTIC PRODUCTION OF WHICH HE IS THE AUTHOR

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.



**EVERYONE
IS ENTITLED TO A SOCIAL
AND INTERNATIONAL ORDER
IN WHICH THE RIGHTS
AND FREEDOMS
SET FORTH IN THIS
DECLARATION
CAN BE FULLY REALIZED.**

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.



1. EVERYONE HAS DUTIES TO THE COMMUNITY IN WHICH ALONE THE FREE AND FULL DEVELOPMENT OF HIS PERSONALITY IS POSSIBLE.

2. IN THE EXERCISE OF HIS RIGHTS AND FREEDOMS EVERYONE SHALL BE SUBJECT ONLY TO SUCH LIMITATIONS AS ARE DETERMINED BY LAW SOLELY FOR THE PURPOSE

OF SECURING DUE RECOGNITION AND RESPECT FOR THE RIGHTS AND FREEDOMS OF OTHERS AND OF MEETING THE JUST REQUIREMENTS OF MORALITY, PUBLIC ORDER AND THE GENERAL WELFARE IN A DEMOCRATIC SOCIETY.

3. THESE RIGHTS AND FREEDOMS MAY IN NO CASE BE EXERCISED CONTRARY TO THE PURPOSES AND PRINCIPLES OF THE UNITED NATIONS.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.



**NOTHING IN THIS DECLARATION
MAY BE INTERPRETED
AS IMPLYING FOR
ANY STATE, GROUP OR PERSON
ANY RIGHT TO ENGAGE IN ANY
ACTIVITY OR TO PERFORM ANY
ACT AIMED AT THE DESTRUCTION
OF ANY OF THE RIGHTS AND
FREEDOMS
SET FORTH HEREIN**

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.





Business & Human Rights Resource Centre: A free online tool

Christopher Avery
Director, Business &
Human Rights Resource Centre
August 2004

“No debate can move forward, no positive change can be made, without facts. The Business & Human Rights Resource Centre is the only website to provide such a broad range of balanced information on business and human rights.”

—*Mary Robinson*
Director of the Ethical Globalization Initiative,
Former United Nations High Commissioner for Human Rights and President of Ireland

Human rights have risen to the top of the business agenda, and business has come to the top of the human rights agenda. The Business & Human Rights Resource Centre website (www.business-humanrights.org) covers over 1600 companies, over 160 countries, and over 150 issues. It is updated hourly, and receives over 1.5 million hits per month. The United Nations, International Labour Organization and various business organisations have, at their request, linked their websites to ours.

About the Resource Centre

The Resource Centre is an independent non-profit organisation started by a group of former business people, human rights and environmental advocates, and academics. Our objective is to provide one-stop access to information about important social and environmental issues, and to promote respect for human rights.

We operate in partnership with Amnesty International sections and leading academic institutions. Mary Robinson, former UN High Commissioner for Human Rights and President of Ireland, is Chair of our International Advisory Network: 80 experts from all regions, recognised for their expertise in relevant subjects. The Co-Chairs of our trustees are Chris Marsden OBE (Chair of Amnesty International UK Business Group; former Head of Community Affairs at BP) and Ulf Karlberg (Founding Chair of Amnesty International Sweden Business Group; former Executive Vice President at AstraZeneca).

What does the website cover?

Our website has separate sections on over 1600 companies worldwide. In each of those sections we provide links to news and reports about the company's social and environmental record. At the top of each company section we provide

a link to the company's website, and indicate whether or not the company is a participant in the UN Global Compact. Other sections of our website include:

- ⌋ Latest news & featured reports (homepage)
- ⌋ List of companies with a human rights policy statement (link from homepage)
- ⌋ Selected company social/environmental reports: Examples of leading/substantive reports
- ⌋ Getting started: An introduction to the subject of business & human rights
- ⌋ Training managers & employees
- ⌋ Examples of company support for initiatives promoting development / economic & social rights
- ⌋ Sectors: over 150 industry sectors
- ⌋ Issues: over 150 issues, including:
 - Diversity & discrimination
 - Labour rights; Child labour
 - Environment — Why environmental issues are human rights issues
 - Development & poverty alleviation
 - Health; Safety; Access to essential medicines
 - Security issues & conflict zones
 - Supply chain/"Fair trade"
 - Impact assessment
 - Complicity
 - Profitability & human rights
- ⌋ Principles, including:
 - OECD Guidelines
 - UN Global Compact
 - UN Norms on business & human rights

Our sources

Our website links to materials published by a wide range of sources, including NGOs, companies, the media, corporate responsibility organisations, governments, policy experts and the UN. We are an information/education resource rather than an advocacy organisation and do not produce reports ourselves.

Who uses the site?

Companies use the site to keep abreast of developments, learn about "best practice", and check their suppliers. NGOs, investors, procurement officers, governments, universities and journalists use it in their daily work and decision-making.

Comments & suggestions

We aim to include a balanced range of information on the website. The website includes links to positive reports of "best practice" by companies, as well as reports about alleged misconduct. We encourage companies and organisations to contact us if they wish to submit a clarification or response to a linked item on our site. We also welcome suggested additions to our site – for example, an announcement of positive steps a company is taking, or a new report by a human rights or environmental organisation. We endeavour to include links to major social and environmental reports by companies, so we appreciate being notified when these are published.

Coming soon: Weekly Updates

Soon we will invite over 10,000 opinion leaders worldwide to receive our free weekly email updates, which will draw attention to breaking news and important developments. People will also be able to register for the updates via our homepage. The updates will include positive and negative reports about companies' activities. Before sending out a report focusing on criticism of a particular company we will invite that company to provide a response to be included in the update, alongside the critical report. This will keep the updates balanced, and encourage companies to publicly address important concerns being raised by civil society.

Coming soon: Custom Alerts

Soon we will be launching a special Custom Alerts service. Subscribers will receive an immediate email every time we add to the website an item about one of their selected companies or subjects. For example, Pfizer could choose to be alerted anytime an item is added about "Pfizer", "Merck", "Pharmaceutical", "South Africa", "Health", or "Access to Medicines". These alerts will save business people time, and ensure they are the first to know when relevant items are added to our website.

“The Resource Centre provides a service unique in the comprehensiveness and impartiality of its information. It is indispensable for anyone involved in business and human rights, whatever their standpoint.”

**–Sir Geoffrey Chandler
Founding Chair of
Amnesty International UK
Business Group; former
senior manager at Royal
Dutch/Shell; former
Director General of the
UK National Economic
Development Office**

The Human Rights Compliance Assessment (HRCA)

? What are the origins of the HRCA?

The HRCA is the result of a joint venture between the Danish government and the Danish business and human rights communities. All parties recognized that human rights were an increasingly important area for these businesses, but that many Danish companies were too small to provide adequate in-house expertise. The need was to find a widely accessible resource which would help these Danish companies help themselves to deal with human rights issues. The result was the HRCA.

? What is the HRCA?

The HRCA is a diagnostic tool, designed to help companies detect potential human rights violations caused by the effect of their operations on employees, local residents and all other stakeholders. From November 2004, the HRCA will be made available on the web to all companies who want to address human rights issues in a transparent and systematic manner.

? Who made the HRCA?

The HRCA was developed from 1999 – 2004 by a team of researchers at the Danish Institute for Human Rights, who drew on the input and expertise of many of the 120 other human rights specialists at the Institute. The researchers worked in direct cooperation with the Confederation of Danish Industries, the Danish Industrialization Fund and a number of affiliated companies to ensure that the resulting tool meets the needs of businesses.

? How does the HRCA work?

The tool runs on a database containing over 350 questions and 1000 human rights indicators, developed from the Universal Declaration of Human Rights, the 1966 Dual Covenants and over 80 other major

human rights treaties and conventions. An interactive web-based computer programme allows each company to select and modify the information in the database to suit their type of business and area of operations. The standards and indicators will be updated on an annual basis, based on feedback from company and human rights groups users, and to reflect changes/developments in international human rights law.

? What does the HRCA produce?

Running the tool produces a computerized report which identifies your company's areas of compliance and non-compliance with human rights. The programme also gives access to a 'country risk' database at the Danish Institute for Human Rights, so that the company can inform itself of the particular human rights risks in its area of operation before selecting the particular checks to run in the HRCA. This ensures that the checks selected reflect the most relevant human rights issues for the particular area of operations. In addition, where weaknesses are detected, the HRCA proposes ways of avoiding the main cultural and legal pitfalls, and offers suggestions for how to strengthen the rights at greatest risk. Your company's overall performance is quantified, so that continued improvements can be measured and tracked on a regular basis.

? How much will it cost?

The 'quick check' will be available for free and contains 10% of the most essential questions in the entire database, so this will give companies an idea of how the tool works and an initial assessment of their performance. Access to the entire tool will cost a fee in order to ensure that we have the resources to continually update the database. Timewise, the company will have to invest from one day to two weeks to test their compliance, depending on the type of checks selected.

? Can I be sure it is practical?

Throughout the development of the tool, the researchers have received input from a number of associated companies and business organizations to ensure that the practical interests and needs of the business community continually guided the work. In particular, Shell International has served as the test company for the tool. Field tests were run in relation to two distinct Shell companies: one in a country with a poor human rights record generally, the other in a society with racial conflict between populations.

? Are the human rights standards relevant to business?

The field of human rights is politically and academically well developed, with rights and standards emerging from treaties and conventions, international legal decisions, and reports of a number of different UN, national and international bodies. But most standards and application procedures have been developed for governments, not companies. As a result, the development of the HRCA has involved a year-long consultation process funded by the European Union, involving a total of 90 companies and human rights groups from 10 European countries. Each review team consisted of one commercial and one human rights representative to ensure that the resulting standards and indicators represent practical and economic concerns as well as community/rights interests.

? Where can I find out more about this tool?

More information about the aim and development of the HRCA can be found in 'Building a Tool for Better Business Practice: the human rights compliance assessment' (M. Jungk, 2003). The premise of business responsibility underpinning the HRCA is explained in 'Defining the Scope of Business Responsibility for

Human Rights' (M. Jungk, 2001). Both brochures can be obtained for free from the Human Rights & Business Project website (www.humanrightsbusiness.org), or ordered directly from the Danish Institute for Human Rights (+45 32 69 88 51).

The HRCA system and the pilot on Shell

The HRCA system and the pilot on Shell will be presented by Christina Schultz from the Danish Institute for Human Rights at the Human Rights breakout session, part B, 11 December, 2 pm – 4 pm.

The Danish Institute for Human Rights piloted the Human Rights Compliance Assessment (HRCA) system on Shell during 2003 in order to establish a systematic approach for addressing human rights risks in all its countries of operation (over 140). The system is comprised of 6 main steps:

Step 1: Country Risk Analysis (CRA)

The CRA takes every right in the Universal Declaration of Human Rights (UDHR) and examines the level of risk in the particular country. Risk is assessed in two areas: formal laws and practice.

The formal laws category documents any human rights violations which are upheld through the laws of the state, such as the prohibitions against unions, limitations on the rights of women, inadequate protection of property rights, etc. The sources used include: reservations to international human rights treaties and conventions, national constitution and laws and reports of UN treaty bodies, etc.

The practice category documents human rights violations, which are frequently perpetrated at the societal level, such as discrimination against religious minorities, violence against women, etc.

The sources used include: Reports from 60 sister National Human Rights Institutes, Danish Institute Human Rights project partners (NGOs in the field), Danida information officers, UN treaty review bodies, Special rapporteurs, Secondary material from Amnesty International, Human Rights Watch, US State Dept reports, etc.

Each right is colour-coded to reflect its level of risk in the country. Green is low-risk, yellow signifies medium-risk, and red is high.

Step 2: Human Rights Focal Areas for Contractors

The objective of this second stage of the human rights analysis is to determine 5 to 10 key human rights focal areas, where the local operating company should remain vigilant for human rights abuses in its contractors.

The selection of the Focal Areas is based on the results of the CRA:

1. Highest level of risk (only red lights from the CRA results are taken into account)
2. Severity of the violation (only jus cogens/non-derogable rights are considered)
3. Anticipated impact on Shell's reputation/operations (i.e. the focus of human rights groups in the particular area is taken into account).

Local Operating Company might choose to follow up on these key focal areas in a number of different ways: Use as selection criteria for determining which contractors will be hired in the future; Write into legal documentation with all existing contractors; Send as questionnaires with key indicators for completion on an annual basis; Undertake spot checks every few months.

Step 3: Human Rights Compliance Assessment (HRCA)

Questions and indicators are selected for appropriateness having regard to the nature of the Local Operating Unit and the result of the CRA. A 3-tier graduated indicator system is used in relation to each right.

Example: child labour

1. *Child labour is a low risk in the country xxx – a green light*

No checks required, if the right is fundamental perhaps a policy indicator such as: 'Does the operating unit have a policy against child labour? Does the policy have the right scope, covering children up to age of 14 for regular work, and up to age 18 for hazardous work'.

2. *Child labour was assessed to be a medium level risk in country xxx – a yellow light*

Then 2 different levels of indicators are selected. First, policy indicators (as described above). Second, we add a process indicator. For example: 'Does the company have a procedure in place where the personnel department checks the birth certificates of all job candidates before the employment contract is signed?' In countries where birth certificates are not commonly used, then the process indicator might require a check of local church baptismal records instead, or local school records.

3. *Child labour was assessed as a high level risk in country xxx – a red light*

Then we select 3 levels of indicators. First we check the policies and the processes, as in the previous examples. We then add a performance indicator, to ensure that the policy and process are actually working. For example, we might conduct random interviews with employees, or check with local area schools or child-rights NGOs to see if there are any reports of children working for Shell who should be in school.

The various indicators are formulated into a company-specific Human Rights Compliance scorecard, and the company's current coverage of the rights is assessed. The company is awarded a 'pass' for compliance, 'attention required' if the coverage is insufficient for the level of risk in the country, and a 'fail' for non-compliance. Areas where a performance level indicator requires field research are given a 'further information required' in the score category.

Each human rights issue has been placed in a category that is designed to reflect Shell's management structure, and should allow each process owner to target its human rights responsibilities quickly. To ensure ownership and "traction for action", process owners will be carrying out the assessment on their own processes (e.g. recruitment manager on recruitment issues). Each right could have a number of different issues covered under each key business process. For example, the right to adequate housing may be checked under employment practices, and the same right may also be checked under land management, with respect to the relocation of a population.

Step 4: Strength, Weakness, and Opportunities Analysis

Emphasis is on brevity here. This system is designed to facilitate follow-up action within the company, so we don't necessarily want people to read through a lengthy investigation before they can get right down to the action. Instead, they might read that a particular right (article 21) is a weakness, and then they can trace that article back to see what indicators were not fulfilled (HRCA), and back even further, to see whether that right is a risk in the particular country of operation (CRA).

Step 5: Stakeholder dialogue

To ensure wider feedback and good public relations, the local operating company is encouraged to assemble a group of individuals, either already based in the country under consideration, or with strong connections to that country, to engage in an ongoing review of the human rights and social impacts of its operations.

In particular, the stakeholders might be asked to review 1) the particular rights which were investigated: were any rights of concern to the stakeholders overlooked in the analysis; 2) the scores achieved: do the stakeholders believe these accurately reflect performance; and 3) what follow-up course of action would the stakeholders like to see with respect to the areas of substandard performance?

A list of suitable stakeholders will emerge during the research for the Country Risk Assessment as the CRA necessitates contacts with human rights experts on the ground. The candidates' suitability will be assessed on 3 levels: independence from the government (including funding considerations, and whether there are governmental representatives on the boards of their organizations, or any form of reporting process back to the government), their level of familiarity with human rights issues in the country; and their willingness to engage in relevant, objective and confidential dialogue.

Step 6: Reporting

Transparency is a key part of any company human rights activity, so we suggest that the local operating company reports externally on the results of the analysis in their annual reports.

Endnotes

- ¹The Global Compact Office would like to thank Jeffrey Senne for his substantial assistance in making this publication a reality.
- ²The Global Compact Case Study Research Guidelines are available on the Global Compact website: www.unglobalcompact.org.
- ³Participating companies are expected to set in motion changes to business operations so that the Global Compact principles become part of strategy, culture and day-to-day operations. A participating company is also expected to describe in its annual report or similar public corporate report (e.g. sustainability report) the ways in which it is supporting the Global Compact and its principles.
- ⁴See also for a practical overview of tools, techniques, case studies, information and resources, including those relating to human rights, see *Raising the Bar — Creating Value with the United Nations Global Compact*, Fussler, Cramer and Van der Vegt (eds.), Greenleaf Publishing, 2004.
- ⁵ *Beyond Voluntarism — Human rights and the developing international legal obligations of companies*, International Council on Human Rights Policy, 2002, p. 125.
- ⁶The full text of the Universal Declaration is attached in Annex 1.
- ⁷This was established in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights (Vienna, 1993).
- ⁸A body of 26 independent experts that functions as a “think-tank” for the United Nations Commission on Human Rights.
- ⁹United Nations document E/CN.4/Sub.2/2003/12/Rev.2. The Commentary on the Norms are contained in United Nations document E/CN.4/Sub.2/2003/38/Rev.1, Annex II. The Commission on Human Rights in 2004 asked the High Commissioner for Human Rights to prepare a report to be presented to the Commission in 2005, setting out, *inter alia*, the scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights, which will include analyzing the scope and legal status of the Norms (see Commission on Human Rights decision 2004/116).
- ¹⁰*Beyond Voluntarism*, p. 136.
- ¹¹*Ibid.*
- ¹²This would include any population dependent on the company when it de facto replaces the Government, either because the government is ineffective or because it has delegated government-like responsibilities to the company. See *Defining the Scope of Business Responsibility for Human Rights Abroad*.
- ¹³A draft comment submitted to the Business Leaders Initiative on Human Rights. Final statements from the Initiative are *available at* www.blihr.org.
- ¹⁴ILO Conventions No. 29 concerning Forced Labor; No. 87 concerning Freedom of Association and Protection of the Right to Organize; No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; No. 105 concerning the Abolition of Forced Labor; No. 111 concerning Discrimination in Respect of Employment and Occupation; No. 138 concerning Minimum Age for Admission to Employment.
- ¹⁵See *Beyond Voluntarism*, p. 138, and Human rights is it any of your business?, p. 28. See also Margaret Jungk, *Defining the Scope of Business Responsibility for Human Rights Abroad*, Danish Institute for Human Rights, Human Rights + Business Project, www.humanrights.dk.
- ¹⁶*Ibid.*, p. 38. See also www.ohchr.org for details of the work of the Office of the High Commissioner for Human Rights on the issue of human rights and indigenous peoples.
- ¹⁷*Beyond Voluntarism*, p. 140.
- ¹⁸This variation on a causation test has been applied by the Court in the US ATCA case, *Doe I et al v Unocal Corporation et al.* (See Clapham, 2004), section 3.2, p. 230).
- ¹⁹*Beyond Voluntarism*, p. 121.
- ²⁰*Ibid.* p. 126 – 135.
- ²¹This is known as the “colour of law” concept, a principle common to the legal traditions of many countries (e.g. U.S.C. 42 § 1983), wherein a private actor (e.g. a company) can be considered a state actor, for purposes of law, if it is working closely together with a state actor.
- ²²See Andrew Clapham, 'Corporate Complicity

- in Violations of International Law: Beyond Unocal*, in W.P. Heere (ed) "From government to governance: the growing impact on non-State actors on the international and European legal system", Proceedings of the Sixth Hague Joint Conference held in the Hague, The Netherlands, 3-5 2003, TMC Asser Press, The Hague, 2004, pp. 227-38 at 236.
- ²³*Beyond Voluntarism*, p. 136-142.
- ²⁴For more information about the International Cocoa Initiative, see www.international-confectionary.com (visited August 2004).
- ²⁵See also *Global Compact Business Guide to Conflict Impact Assessment and Risk Management in Zones of Conflict; Deciding Whether to do Business in States with Bad Governments*, The Confederation of Danish Industries, the Danish Centre for Human Rights, The Industrialization Fund for Developing Countries, 2001; and *Business and Human Rights — A geography of corporate risk*, *ibid.*
- ²⁶See *Business & Human Rights — A Geography of corporate risk*, Amnesty International UK and International Business Leaders Forum, www.humanrightsrisk.com.
- ²⁷Emerging best practices concerning security arrangements developed by industry, civil society, and governments reflect international human rights standards, particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Rome Statute of the International Criminal Court; the UN Principles on the Use of Force and Firearms; and the UN Code of Conduct for Law Enforcement Officers. See also the US-UK Voluntary Principles on Security and Human Rights for companies in the extractive and energy sectors, developed in dialogue with NGOs.
- ²⁸The Final Report of the panel of experts on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo which assessed the role of political economy in triggering or prolonging conflict.
- ²⁹*Human rights is it any of your business?*, p. 29.
- ³⁰*Ibid.*, p. 31.
- ³¹*Ibid.*
- ³²QS 9000 series is a quality standard created by the "Big Three" US automotive manufacturers (GM, Ford, Chrysler) and is a basic requirement for becoming a supplier to the "Big Three" for most parts and services. By late 2002, more than 24,000 factories in more than 70 countries had become QS 9000 certified.
- ³³*Human rights is it any of your business?*, p. 29.
- ³⁴United Nations Secretary-General Kofi Annan noted at the Global Compact Leaders Summit in June 2004 that "Business must restrain itself from taking away, by its lobbying activities, what it offers through corporate responsibility and philanthropy."
- ³⁵See for example, *Human rights on the line: the Baku-Tbilisi-Ceyhan pipeline project*, 2003, Amnesty International, analyzing the legal framework for the host government agreement between the pipeline consortium and the Government of Turkey, concluding that the agreement posed a threat to human rights. Following the report from Amnesty International, a joint statement was issued by the BTC Consortium and the three Governments involved in the pipeline project (Azerbaijan, Georgia, and Turkey), confirming their commitment to ILO conventions and explicitly committing the signatories to abide by the Universal Declaration of Human Rights. The BTC Consortium also provided a human rights undertaking (a so-called "Deed Poll"), including a formal agreement not to seek compensation from the governments for any breach of the host government agreements brought about by the Governments acting on obligations under international human rights, environmental, or other treaties.
- ³⁶For more information, see www.equator-principles.com.
- ³⁷Office of the UN Global Compact, *Guide to the Global Compact*.
- ³⁸Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 (1948). The International Labor Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the UN Convention Against Corruption are the sources for the Global Compact principles on labor rights, the environment and anti-corruption respectively.
- ³⁹United Nations, The Global Compact, The Ten Principles, Principle 1, *available at* <http://www.unglobalcompact.org>.
- ⁴⁰United Nations, The Global Compact, The Ten Principles, Principle 2, *available at* <http://www.unglobalcompact.org>.
- ⁴¹The history of the corporate social responsibility movement illustrates the evolving definition of the role and responsibilities of business in society, from a focus exclusively on shareholder returns or other financial measures, to the acknowledgment by business of a much broader group of corporate stakeholders and responsibilities. Cf. Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES MAG, Sept. 11, 1970; Peter Drucker, *The New Meaning of Corporate Social Responsibility*, CAL. MGMT. REV. (vol. 26, no. 2, Winter 1984).
- ⁴²The discussion of these trends *infra* relies heavily on Elliot Schrage & Anthony Ewing, *Engaging the Private Sector*, 14 FORUM FOR APPLIED RES. & PUB. POL'Y 44 (1999) and Elliot J. Schrage, PROMOTING INTERNATIONAL WORKER RIGHTS THROUGH PRIVATE VOLUNTARY INITIATIVES: PUBLIC RELATIONS OR PUBLIC POLICY? (University of Iowa Center for Human Rights, January 2004), at 3-6, *available at* http://www.uichr.org/content/act/sponsored/gwri_report.pdf.
- ⁴³See, e.g., D.J. Harris, CASES AND MATERIALS ON INTERNATIONAL LAW 470 (1983). Public outrage over the international slave trade and political action to prohibit it were a highly unusual exception -- and were recognized as such.
- ⁴⁴See Louis Henkin et. al, HUMAN RIGHTS 73 (1999).
- ⁴⁵See U.N. Charter, art. 1, para. 3 ("To achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . ."; art. 55 (" . . . the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.").
- ⁴⁶The UN system includes the International Labor Organization (ILO), established in 1919, which has developed hundreds of standards for working conditions and worker rights.
- ⁴⁷While most business and human rights

issues are a product of the modern human rights movement, there are earlier examples. The 19th Century movement to end European and American commerce in African slaves was perhaps the first successful campaign to ensure corporate compliance with a widely accepted international human rights standard.

⁴⁸See, e.g., Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (Aug. 26, 2003), U.N. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, U.N. doc. E/CN.4/Sub.2/2003/12/Rev.2, preamble (noting that transnational corporations "have the capacity to foster economic well-being . . . and wealth as well as the capacity to cause harmful impacts on the human rights and lives of individuals . . .").

⁴⁹See generally, International Council on Human Rights Policy, BEYOND VOLUNTARISM: HUMAN RIGHTS AND THE DEVELOPING INTERNATIONAL LEGAL OBLIGATIONS OF COMPANIES (2002) [hereinafter BEYOND VOLUNTARISM]; Jordan J. Paust, *Human Rights Responsibilities of Private Corporations*, 35 VAND. J. TRANSNAT'L L. 801 (2002); Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L. J. 443 (2001); Barbara A. Frey, *The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights*, 6 MINN. J. GLOBAL TRADE 153 (1997).

⁵⁰UNCTAD, "Overview," WORLD INVESTMENT REPORT 2002: TRANSNATIONAL CORPORATIONS AND EXPORT COMPETITIVENESS 1 (2001).

⁵¹For examples of the literature arguing that globalization is a race to the bottom, see, e.g., Dani Rodrik, HAS GLOBALIZATION GONE TOO FAR? (1997); Lori Wallach & Michelle Sforza, WHOSE TRADE ORGANIZATION? CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY (1999). For the counterargument that globalization is a race to the top, see, e.g., Thomas Larsson, THE RACE TO THE TOP: THE REAL STORY OF GLOBALIZATION (2001); Debora L. Spar, *The Spotlight and the Bottom Line: How Multinationals Export Human Rights*, FOREIGN AFF., Mar./April 1998.

⁵²See, e.g., Marina Ottaway, *Reluctant Missionaries*, FOREIGN POL'Y, July/Aug. 2001, at 44-54. Companies are called on to manage the "externalities" generated by globalization. See Virginia Hauffer, A PUBLIC ROLE FOR THE PRIVATE SECTOR (2001).

⁵³See, e.g., Sullivan Principles (1977), at <http://globalsullivanprinciples.org/principles.htm> (specifying labor practices for workers employed by U.S. companies and their affiliates in apartheid South Africa -- the principles were re-launched in 1999 as the Global Sullivan Principles for Corporate Social Responsibility); The International Code of Marketing of Breastmilk Substitutes, World Health Assembly, 24th Assembly, WHA Res. 22, U.N. Doc. A34/Vr/15 (1981); McBride Principles for Global Corporate Responsibility (1984) (addressing concerns of anti-Catholic discrimination in employment); United States Model Business Principles (1995) (voluntary principles on workplace safety, fair employment practices, fair competition and free expression developed by the Clinton administration in connection with the renewal of China's most favored nation trade status with the United States) (on file with author).

⁵⁴For a brief listing, see <http://www.business-humanrights.org/Categories/Companies/Policies/Companieswithhumanrightspolicies>.

⁵⁵See "The Global Compact Database of Participants," available at <http://www.unglobalcompact.org>.

⁵⁶See, e.g., UN Office of the High Commissioner for Human Rights, BUSINESS AND HUMAN RIGHTS: A PROGRESS REPORT, (January 2000), available at <http://www.unhchr.ch/business.htm>.

⁵⁷BP Group, GUIDELINES ON BUSINESS CONDUCT (2002), available at http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/B/BPs_guidelines_on_business_conduct.pdf.

⁵⁸Novo Nordisk, *Human Rights*, available at http://www.novonordisk.com/sustainability/positions/human_rights.asp.

⁵⁹Hewlett-Packard, *HP Human Rights and Labor Policy*, available at <http://www.hp.com/hpinfo/globalcitizenship/humanrights.html>.

⁶⁰BP, Hewlett-Packard, Novo Nordisk and BHP Billiton presented human rights cases.

⁶¹World Economic Forum, VALUES AND VALUE (2004).

⁶²International Organization of Employers, EMPLOYERS HANDBOOK ON CHILD LABOUR (2001).

⁶³"The Case for Social Responsibility", Presentation to the Annual Conference of Business for Social Responsibility, Boston, USA (Nov. 10, 1998).

⁶⁴See, e.g. Elliot J. Schrage, Judging Corporate Accountability in the Global Economy, 42 COLUM. J. TRANSNAT. L. 153 (2003); Elliot Schrage, *Emerging Threat: Human Rights Claims*, 8 HARV. BUS. REV., No. 8 (2003).

⁶⁵Survey by the Ashridge Centre for Business and Society, cited in United Nations, Office of the High Commissioner for Human Rights (OHCHR), "Business and Human Rights: An Update," July 26, 2000 available at <http://www.unhchr.ch/businesupdate.htm#l>.

⁶⁶See, e.g. . . . Schrage, *supra* n. 6.

⁶⁷Reebok (human rights advocacy), The Body Shop (indigenous rights), and Sweat X (labor conditions) are examples.

⁶⁸See, e.g. Spar, *supra* n. 15.

⁶⁹See Henkin, *supra* n. 8, at 73.

⁷⁰Universal Declaration, art. 2.

⁷¹Louis Henkin, THE AGE OF RIGHTS (1990).

⁷²Under international law, treaties bind only their signatories. 151 states have ratified the ICCPR, 148 states have ratified the ICESCR. OHCHR, Status of Ratifications of the Principal International Human Rights Treaties, Nov. 3, 2003, available at <http://www.unhchr.ch/pdf/report.pdf>.

⁷³Other international treaties containing widely accepted human rights standards include the Convention on the Prevention and Punishment of the Crime of Genocide (1951), the Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention against Torture (1984), the Convention on the Rights of the Child (1989), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the Convention on the Worst Forms of Child Labor (2000).

⁷⁴Statute of the International Court of Justice (1945), art. 38.

⁷⁵International crimes recognized by treaty or as part of customary international law include piracy, slavery, genocide, torture, war crimes and crimes against humanity. War

crimes include grave breaches under the Geneva Conventions (1949), other serious violations of the laws and customs applicable in international armed conflict, and, for civil wars, certain violations of the Geneva Conventions. Statute of the International Criminal Court (1998), art. 8.

⁷⁶Crimes against humanity include murder, extermination, slavery and trafficking, forced and arbitrary displacement of people, arbitrary imprisonment, torture, sexual violence, enforced disappearances, and apartheid if “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Statute of the International Criminal Court (1998), art. 7

⁷⁷All UN member states except six have ratified at least one legally binding human rights treaty that refers to the Universal Declaration. BEYOND VOLUNTARISM, *supra* n. 13, at 61 (the six states are Brunei Darussalem, Kirbati, Micronesia, Nauru, Oman and Palau).

⁷⁸See Virginia A. Leary, *The Paradox of Workers' Rights as Human Rights*, in Lance A. Compa and Stephen F. Diamond, eds. HUMAN RIGHTS, LABOR RIGHTS AND INTERNATIONAL TRADE 22 (1996).

⁷⁹ILO Declaration on Fundamental Principles and Rights at Work, 86th Session, Geneva, June 1998, art. 2.

⁸⁰Forced and compulsory labor is a modern form of slavery. Forced labor is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Forced Labour Convention, June 28, 1930, ILO C29, art. 2 (entered into force, May 1, 1932).

⁸¹Convention on the Right to Organize and Bargain Collectively, July 1, 1949, ILO C98 (entered into force, July 18, 1951).

⁸²See, e.g. Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am Ct. H.R., Ser. C, No. 4 (1988) (holding Honduras responsible for failing to prevent and punish the disappearance of a student committed by private actors — an unofficial death squad).

⁸³ICESCR, art. 2.

⁸⁴The ICC has jurisdiction over genocide, war crimes and crimes against humanity.

⁸⁵The ICC can bring cases against individuals, but not legal persons. The ICC cannot,

therefore, bring a case against a company.

⁸⁶Universal Declaration, preamble.

⁸⁷*Beyond Voluntarism*, *supra* n. 13, at 61.

⁸⁸OECD, “The OECD Guidelines for Multinational Enterprises: A Key Corporate Responsibility Instrument,” POLICY BRIEF, June 2003. The UN Expert Panel on Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of Congo (DRC) issued two reports identifying by name and home country eighty-five companies that it found had not observed the OECD Guidelines in the DRC. UN doc. S/2002/1146 (October 2002); UN doc. S/2003/1027 (October 2003)

⁸⁹ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977), art. 8.

⁹⁰World Bank, Operational Directives, Indigenous Peoples, OD4.20 (Sept. 1991), Involuntary Resettlement, OD 4.30 (June 1990); IFC, Policy Statement on Forced Labor and Harmful Child Labor (March 1998), Harmful Child Labor Interim Guidance (July 1999).

⁹¹*Beyond Voluntarism*, *supra* n. 13, at 107.

⁹²*Id.*, at 70.

⁹³Amnesty International, THE UN HUMAN RIGHTS NORMS FOR BUSINESS: TOWARDS LEGAL ACCOUNTABILITY 4 (2004) [hereinafter Amnesty 2004].

⁹⁴*Id.*, at 6.

⁹⁵Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003), para. A.1. (b).

⁹⁶Amnesty 2004, *supra* n. 57, at 15.

⁹⁷UN Economic and Social Council, Report of the Sub-Commission on the Promotion and Protection of Human Rights, UN doc. E/CN.4/2004/L.73/Rev.1 (April 16, 2004).

⁹⁸See The Business Leaders Initiative on Human Rights (<http://www.blihr.org/>).

⁹⁹World Economic Forum, VALUES AND VALUE (2004), at 8.

¹⁰⁰See, e.g. Amnesty 2004, *supra* n. 57, at 7; BEYOND VOLUNTARISM, *supra* n. 13; Ratner, *supra* n. 13; Frey, *supra* n. 13.

¹⁰¹See, e.g., Jonathan Birchell, *UN Ethics Guidelines May Alarm Multinationals*, FIN. TIMES (London), Aug. 13, 2003, at 8.

¹⁰²See, e.g., Royal Dutch/Shell Group of Companies, “Shell’s Approach to Human Rights,” *available at* <http://www.shell.com/home>.

¹⁰³Amnesty 2004, *supra* n. 57, at 8.

¹⁰⁴Amnesty International UK, HUMAN RIGHTS ON THE LINE (May 2003), *available at* http://www.amnesty.org.uk/images/ul/H/Human_Rights_on_the_Line.pdf.

¹⁰⁵Royal Dutch/Shell Group of Companies, “Statement of General Business Principles,” *available at* <http://www.shell.com/static/media-en/downloads/sgbp.pdf>.

¹⁰⁶See, e.g. Klaus M. Leisinger, *Business and Human Rights*, (Noting that the business and human rights debate has shifted from criticism of corporate interference in domestic affairs to the promotion of corporate engagement on human rights issues.)

¹⁰⁷UN Global Compact, “Case Study: DaimlerChrysler South Africa –Dealing with the Effects of HIV/AIDS on Human and Social Capital,” Dec. 2002, *available at* www.unglobalcompact.org.

¹⁰⁸National courts are one source of litigation against companies alleging responsibility for human rights violations. Cases in U.S. courts have alleged corporate commission of war crimes, crimes against humanity, genocide, torture, slave labor and murder, among other human rights violations. See Jordan J. Paust, *Human Rights Responsibilities of Private Corporations*, 35 VAND. J. TRANSNAT’L L. 801, 803 (2002) at n. 4. Allegations of corporate complicity in human rights abuse have been brought before U.S. courts against, among others, IBM, ExxonMobil, ChevronTexaco, Citicorp, Coca-Cola, Gap, Ford and Del Monte. See Paust, *id.* at 805, n. 9; Elliot J. Schrage, *Judging Corporate Accountability in the Global Economy*, 42 COLUMBIA J. TRANSNATIONAL L. 153, 154 (2003).

¹⁰⁹Address to Third International Global Compact Learning Forum Meeting, December 2003.

¹¹⁰See generally, Andrew Clapham and Scott Jerbi, *Categories of Corporate Complicity in Human Rights Abuses*, 24 HASTINGS INT’L & COMP. L. REV. 339 (2001).

¹¹¹The first international proceedings to establish individual responsibility for

- international crimes were the Nuremberg Tribunals. In the World War II cases, companies that actively and willingly participated in war crimes were found to have violated international law.
- ¹¹²Mark Taylor, Address to Third International Global Compact Learning Forum Meeting, December 2003.
- ¹¹³Anita Ramasastry, *Corporate Complicity*. From Nuremberg to Rangoon, 20 BERKELEY J. INT'L L. 91, (2002).
- ¹¹⁴Clapham and Jerbi, *supra* n. 74, at 347.
- ¹¹⁵Id.
- ¹¹⁶See, e.g., Frey, *supra* n. 13.
- ¹¹⁷Taylor, *supra* n. 76.
- ¹¹⁸OHCHR, "Business and Human Rights: A Progress Report," Jan. 2000, *available at* <http://www.unhchr.ch/business.htm>.
- ¹¹⁹28 U.S.C. 1350 (2000). Liability under tort law begins with a duty of care. There must be some relationship between the company and the victim and the company's action or failure to act must have led to violations of human rights. Liability under tort law does not require intent or knowledge — a company is responsible for the foreseeable consequences of its actions..
- ¹²⁰Schrage, *supra* n. 72, at 158. In a recent ATCA proceeding unrelated to corporate activity, the U.S. Supreme Court kept the door open for suits against companies by refusing to limit causes of action under the ATCA to a narrow list of violations of the law of nations. *Sosa v. Alvarez-Machain*, No. 03-339, June 29, 2004.
- ¹²¹Under the "color of law" principle, companies are considered state actors under U.S. law if they willfully participate in joint action with the state or its agents, act in concert with the state to deprive rights, participate in a conspiracy with the state, or act with significant state aid. 42 U.S.C. 1983. *But see* Paust, *supra* n. 73, at 805, n. 9 (arguing that "U.S. tests for 'color of law' or 'state action' responsibility are not part of international law and are inappropriate and too limiting with respect to non-state actor liability for various other human rights violations.")
- ¹²²*Doe v. Unocal*, 2002 WL 31063976 (9th Cir. 2002), *vacated by Doe v. Unocal Corp.*, 2003 WL 359787 (9th Cir. 2003). *See also, Recent Cases: Ninth Circuit Uses International Law to Decide Applicable Substantive Law under Alien Tort Claims Act*, 116 HARV. L. REV. 1525 (2003).
- ¹²³Schrage, *supra* n. 72, at 159.
- ¹²⁴Taylor, *supra* n. 76.
- ¹²⁵Taylor, *supra* n. 76.
- ¹²⁶See, e.g., Amnesty International and The Prince of Wales International Business Leaders Forum, BUSINESS AND HUMAN RIGHTS: A GEOGRAPHY OF CORPORATE RISK (2002). The Business Leaders Initiative on Human Rights has published a matrix of "essential, expected and desirable" actions companies can undertake on the issues covered by the UN Norms. The Business Leaders Initiative on Human Rights, BUILDING UNDERSTANDING 11 (2003).
- ¹²⁷Voluntary Principles on Security and Human Rights (2000). The Voluntary Principles adopt the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, and call on companies to establish clear safeguards that any financial or material support to security forces is not used to commit human rights abuses.
- ¹²⁸See, e.g., Royal Dutch Shell Group of Companies, "The Human Rights Compliance Assessment Tool," *available at* <http://www.shell.com/home>.
- ¹²⁹See, e.g., The Global Compact, BUSINESS GUIDE TO CONFLICT IMPACT ASSESSMENT AND RISK MANAGEMENT IN ZONES OF CONFLICT (2002) (identifying minority populations, land treaty rights and community displacement as key human rights issues for companies operating in zones of conflict).
- ¹³⁰Indicators of corporate vulnerability include: inadequate legal frameworks and governance structures to ensure fair and equitable administration of justice; weak, authoritarian or failing public sector institutions with thriving corruption; high levels of poverty and inequality; lack of access to basic services; strict press controls; and existing or potential civil conflict with politically or ethnically motivated human rights violations. Leisinger, *supra* n. 70, at 9.
- ¹³¹The Kimberley Process is a voluntary initiative of governments, the international diamond industry and civil society organizations to certify that shipments of rough diamonds are free of diamonds used to finance violent conflicts. The Kimberley Process (<http://www.kimberleyprocess.com:8080/site/>).
- ¹³²The Equator Principles, *available at* <http://www.equator-principles.com/principles.shtml>.
- ¹³³See Anthony Ewing's *Implementing the Global Compact Human Rights Principles*, also included within this publication.
- ¹³⁴See below for the discussion of company presence in an area where there is widespread and systematic human rights abuse in the form of crimes against humanity.
- ¹³⁵From his foreword to Amnesty International / The Prince of Wales Business Leaders Forum, *Human Rights — Is It Any of Your Business?* London 2000, p. 5.
- ¹³⁶For examples of current problems, see Amnesty International, *Human Rights on the Line. The Baku-Tbilisi-Ceyhan Pipeline Project*, London, 2003, and Amnesty International, Democratic Republic of Congo, "Our Brothers Who Help to Kill Us," Economic Exploitation and Human Rights Abuses in the East. London April 2003 (AFR 62/010/2003); see also http://action.web.ca/home/pac/attach/w_africa_e.pdf and L. Gberie, *West Africa: Rocks in a Hard Place. The Diamonds and Human Security Project*. Occasional Paper #9, Ottawa, May 2003; see also G. Chandler, "Oil Companies and Human Rights," *Business Ethics. A European Review*, Vol. 7, No. 2 (1998), pp. 69-72.
- ¹³⁷UNDP, *Human Development Report 2000. Human Rights and Human Development*. New York/Oxford: Oxford University Press, 2000, pp. 79ff.
- ¹³⁸OECD, *The OECD Guidelines for Multinational Enterprises: Revision 2000*, Paris: 2000, see <http://www.oecd.org/dataoecd/56/36/1922428.pdf> p. 19.
- ¹³⁹Anyone who enters the two terms in an Internet search engine such as Google will find over 5 million contributions to the debate.
- ¹⁴⁰See R.T. de George, *Competing with Integrity in International Business*. New York/Oxford: Oxford University Press, 1993.
- ¹⁴¹See, e.g., CETIM / American Association of

- Jurists: Will the UN Compel Transnational Corporations to Comply with International Human Rights Standards? Geneva/New York: 2002, p. 10f.
- ¹⁴²International Chamber of Commerce / International Organisation of Employers, "Joint views of the IOE and ICC on the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights," Paris/Geneva, July 22, 2003.
- ¹⁴³See the data of Globe Scan Research Teams/Enviro-nics International Ltd., Toronto 2003.
- ¹⁴⁴See www.unglobalcompact.org.
- ¹⁴⁵"Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights" E/CN.4/sub.2/2003/12/Rev.2 (Geneva 26 August 2003), see also the accompanying Commentary, U.N. Doc.E/CN.4/Sub.2/2003/38/Rev.2.
- ¹⁴⁶Whereas the U.N. Global Compact is a voluntary framework for promoting good corporate citizenship, the U.N. Norms are seen as a regulatory approach that entails imposing obligations on companies that previously only applied to governments. Another point to be discussed in more detail in the negotiation process ahead is the "periodic monitoring and verification by the United Nations and other international and national mechanisms already in existence or yet to be created." See Amnesty International's contribution to this debate: *The UN Human Right Norms for Business: Towards Legal Accountability*. London: 2004.
- ¹⁴⁷See the annual reports of Amnesty International.
- ¹⁴⁸See, e.g., *New Academy Review*, Vol. 2, No. 1 (spring 2003): "Business interests... have been antagonistic to human rights" (p. 50) or "MNCs can now pose a significant threat to human rights, and also undermine the ability of individual states to protect people from human rights abuses" (p. 92).
- ¹⁴⁹The text of the preamble says "that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance."
- ¹⁵⁰Robert Davis and Jane Nelson, *The Buck Stops Where? Managing the Boundaries of Business Engagement in Global Development Challenges*, London: International Business Leaders Forum, 2003, p. 3.
- ¹⁵¹The U.N. Global Compact, too, so far enjoys the support of fewer than 1,400 of the 70,000 or more companies with international operations.
- ¹⁵²See J.S. Duesenberry, *Income, Savings, and the Theory of Consumer Behavior*. New York: Oxford University Press, 1967; for a short introduction see: <http://cepa.newschool.edu/het/essays/multiacc/ratchet.htm>.
- ¹⁵³P. Drucker, *Post-Capitalist Society*. New York: Harper Business, 1993, pp. 57f, 80, 97-101; to support this notion see also C.L. Avery, *Business and Human Rights in a Time of Change*. London: Amnesty International, 2000.
- ¹⁵⁴C.L. Avery, *Business and Human Rights in a Time of Change*. London: Amnesty International, 2000, p. 46.
- ¹⁵⁵See K.M. Leisinger, "The Benefits and Risks of the U.N. Global Compact: The Novartis Case Study," *The Journal of Corporate Citizenship*, Autumn 2003, pp. 113-31.
- ¹⁵⁶R. Sullivan (ed.), *Business and Human Rights. Dilemmas and Solutions*. Sheffield: Greenleaf Publishing, 2003, p. 14.
- ¹⁵⁷E. Schrage, "Emerging Threats: Human Rights Claims," *Harvard Business Review*, August 2003. pp. 16ff.
- ¹⁵⁸See www.unglobalcompact.org; see also Amnesty International / The Prince of Wales Business Leaders Forum, *Human Rights: Is It Any of Your Business?* London: 2000, pp.28ff.
- ¹⁵⁹In U.N. Global Compact Resource Package — Human Rights Presentation.
- ¹⁶⁰A. Clapham and S. Jerby "Categories of Corporate Complicity in Human Rights Abuses," see http://www.amnesty.it/edu/mitw/documenti/Corporate_complicity.doc; see also P. Stoett, "Shades of Complicity: Towards a Typology of Transnational Crimes Against Humanity," www.migs.concordia.ca/workshop/typology.htm.
- ¹⁶¹See Amnesty International / The Prince of Wales Business Leaders Forum, *Human Rights: Is It Any of Your Business?* London: 2000, pp. 30ff.
- ¹⁶²After the 1973 coup d'état of the Chilean military against President Salvador Allende, the suspected support of the U.S.-American ITT corporation led to widespread protests and to a U.N. General Assembly Resolution (May 1, 1974) calling for an international Code of Conduct preventing interference with the "internal affairs" of the countries within which companies operate (ECOSOC-Commission for Transnational Corporations: Material Relevant to the Formulation of a Code of Conduct, 10 December 1976, §59). This view was confirmed by the U.N. Charter of Economic Rights and Duties and taken up by the 1976 version of the OECD Guidelines for Multinational Corporations. See: United Nations Division on Transnational Corporations and Investment (UNCTAD-DTCI), *International Investment Instruments: A Compendium*. Geneva: United Nations, 1996, p. 54ff.
- ¹⁶³See D. Litvin, "Raising Human Rights Standards in the Private Sector," *Foreign Policy*, November/December 2003, pp. 68-72.
- ¹⁶⁴G. Chandler, "Oil Companies and Human Rights," in *Oxford Energy Forum* (November 1997), p. 3, quoted from C.L. Avery, *Business and Human Rights in a Time of Change*. London: Amnesty International, 2000, p. 22.
- ¹⁶⁵C.L. Avery, *Business and Human Rights in a Time of Change*. London: Amnesty International, 2000, p. 24.
- ¹⁶⁶C.L. Avery, *Business and Human Rights in a Time of Change*. London: Amnesty International, 2000, p. 23.
- ¹⁶⁷E. Bernard, "Ensuring Monitoring is Not Co-opted," *New Solutions*, Vol. 7, No.4 (summer 1997), quoted in C.L. Avery, *Business and Human Rights in a Time of Change*. London: Amnesty International, 2000, p. 51.
- ¹⁶⁸S.P. Sethi: *Setting Global Standards. Guidelines for Creating Codes of Conduct in Multinational Companies*. New York: Wiley & Sons 2003.
- ¹⁶⁹As UNDP did in *Human Development Report 2000*. Human Rights and Human Development. New York/Oxford: Oxford University Press, 2000, pp. 93ff.

- ¹⁷⁰Mary Robinson points to such issues in R. Sullivan (ed.), *Business and Human Rights. Dilemmas and Solutions*. Sheffield: Greenleaf Publishing, 2003, p. 10.
- ¹⁷¹UN-ECOSOC: Human Rights, Trade and Investment. E/CN.4/Sub.2/2003/9, 2 July 2003.
- ¹⁷²For example www.unesco.org/ibc/en/genome/index.htm: "The Universal Declaration on the Human Genome and Human Rights."
- ¹⁷³S. Swithern, "From Bhopal to Doha: Business and the Right to Health," *New Academy Review*, Vol. 2, No. 1 (spring 2003), pp. 50-61.
- ¹⁷⁴K. Jaspers, *The Question of German Guilt*. New York: Fordham University Press, 2000, p. 25-26.
- ¹⁷⁵K. Jaspers, *The Question of German Guilt*. New York: Fordham University Press, N.Y., p. 27.
- ¹⁷⁶See K.M. Leisinger and K. Schmitt, *Corporate Ethics in a Time of Globalization*, Colombo, Sri Lanka: 2003.
- ¹⁷⁷K. Jaspers, "Über Bedingungen und Möglichkeiten eines neuen Humanismus," in *Die Wandlung*. Herbstheft, Heidelberg: Schneider Verlag, 1949, p. 734.
- ¹⁷⁸R. Guardini, *Das Ende der Neuzeit*. Die Macht. Mainz/Würzburg: Grünewald/Schöningh, 1986, p. 56.
- ¹⁷⁹I owe this quote to a poster shown at the 2003 Business and Human Rights seminar of the "Business Leaders Initiative on Human Rights" (Honorary Chair: Mary Robinson), London, December 9, 2003.
- ¹⁸⁰See *Anthony Ewing's Understanding the Global Compact Human Rights Principles, also included within this publication*.
- ¹⁸¹BP, Hewlett-Packard, Novo Nordisk and BHP Billiton presented human rights cases.
- ¹⁸²Case Study on Principle #2, UN Global Compact Resource Package.
- ¹⁸³Hewlett-Packard, "Global Citizenship Policy," available at <http://www.hp.com/hpinfo/globalcitizenship/gcpolicy.html>.
- ¹⁸⁴Hewlett-Packard, "HP Human Rights and Labor Policy," *supra* n.23.
- ¹⁸⁵OHCHR, *supra* note 82, at 7.
- ¹⁸⁶Andre van de Bergh, BHP Billiton.
- ¹⁸⁷BP, "Project Documentation for the BTC Pipeline," available at http://www.caspiandevlopmentandexport.com/ASP/PD_BTC.asp.
- ¹⁸⁸Public disclosure of revenues generated by natural resource extraction and how governments use these revenues is the subject of increasing scrutiny by the international community. The Publish What You Pay campaign (<http://www.publishwhatyoupay.org/>), for example, seeks to prevent revenues from fuelling conflict.
- ¹⁸⁹Amnesty International UK, HUMAN RIGHTS ON THE LINE (May 2003), available at http://www.amnesty.org.uk/images/ul/H/Human_Rights_on_the_Line.pdf.
- ¹⁹⁰BP's open dialogue did not extend to all critics. Kurdish Human Rights Watch, for example, argues that the pipeline will raise ethnic tensions.
- ¹⁹¹Jay Pearson, BP.
- ¹⁹²The BTC Pipeline Case Study.
- ¹⁹³See *supra* note 62.
- ¹⁹⁴"Breaking New Ground," BTC pipeline project.
- ¹⁹⁵*Id.*
- ¹⁹⁶*Id.*
- ¹⁹⁷BP Environmental and Social Review, 2002.
- ¹⁹⁸BTC Regional Review, Executive Summary.
- ¹⁹⁹Although there are always differences of opinion within any large organizations, the positions stated to the author within the context of the BTC Project were institutionally consistent. For a list of senior officials consulted in the course of writing this case study, please see Section VII.
- ²⁰⁰IFC Press Release, November 4, 2003.
- ²⁰¹It is important to note here that while the Human Rights Self-Assessment Toolkit is based on the UDHR, the International Bill of Rights does not recognize a hierarchy of rights — all rights are equally important, indivisible, interdependent and interrelated.
- ²⁰²*What does being there mean to you?* Novo Nordisk Annual Financial Report 2003.
- ²⁰³Novo Nordisk *Annual Financial Report 2002*.
- ²⁰⁴*What does being there mean to you?* Novo Nordisk Annual Financial Report 2003
- ²⁰⁵Global Compact Principle One — "Businesses should support and respect the protection of internationally proclaimed human rights".
- ²⁰⁶Article 25 of the Universal Declaration of Human Rights; refined in Article 12 of the International Covenant on Economic, Social and Cultural Rights.
- ²⁰⁷Articles 7 and 23 of the Universal Declaration of Human Rights; also in Article 7 of the International Covenant on Economic, Social and Cultural Rights and Article 24 of the International Covenant on Civil and Political Rights.
- ²⁰⁸Article 12 of the Universal Declaration of Human Rights; also in Article 17 of the International Covenant on Civil and Political Rights.
- ²⁰⁹Novo Nordisk's "Diabetes Attitudes, Wishes and Needs" (DAWN) programme.
- ²¹⁰A three-year (2003-2006) cross sector business initiative chaired by Mary Robinson with the aim of mainstreaming human rights in both the corporate social responsibility and corporate governance agendas. www.blihr.org
- ²¹¹Global Compact Principle Two — "Businesses should make sure they are not complicit in human rights abuses."
- ²¹²*What does being there mean to you?* Novo Nordisk 2003 Sustainability Report.
- ²¹³Global Compact Performance Model (2002), www.unglobalcompact.org
- ²¹⁴The four stages are derived from the Malcolm Baldrige Quality Award and the European Foundation for Quality Management.
- ²¹⁵Comment made by a member of staff during interviews for this Case Study.
- ²¹⁶*What does being there mean to you?* Novo Nordisk Annual Financial Report 2003.
- ²¹⁷Novo Nordisk (2004) 'What does being there mean to you?', Sustainability Report for 2003. www.novonordisk.com
- ²¹⁸*Ibid.*
- ²¹⁹NOP Healthcare (2003) *Social and Environmental Issues in the Supply Chain of Novo Nordisk — Quantitative Research*, NOP World.
- ²²⁰Novo Nordisk (2004) *What does being there mean to you?* Sustainability Report (2003).
- ²²¹Global Compact Principle Three — "Business should uphold the freedom of association and the effective recognition of the right to collective bargaining"..." the freedom to associate involved employers,

- unions and worker representatives freely discussing issues at work in order to reach agreements that are jointly acceptable” (www.unglobalcompact.org)
- ²²²Global Compact Principle Five — “The effective abolition of child labour”.
- ²²³Global Compact Principle Four — “The elimination of all forms of forced and compulsory labour”.
- ²²⁴Of this sub-set of 54 suppliers, 41% answered explicitly that the Novo Nordisk evaluation was a template for their own engagement with suppliers. NOP Healthcare (2003) *Social and Environmental Issues in the Supply Chain of Novo Nordisk — Quantitative Research*, NOP World.
- ²²⁵Kingo, Lise (2003) *A Business Model for the 21st Century* Slide show presented at the European Academy of Business In Society annual conference, Copenhagen 19-20 September 2003. With acknowledgements to Malcolm McIntosh
- ²²⁶NOP Healthcare (2003) *Social and Environmental Issues in the Supply Chain of Novo Nordisk — Quantitative Research*, NOP World.
- ²²⁷Ibid.
- ²²⁸For example:
http://www.novonordisk.com/sustainability/responsibility/economic_footprint.asp
 and
<http://www.novonordisk.com/esr2000/esr00/introduction.asp?ID=298&secID=1>
- ²²⁹Business Leaders Initiative on Human Rights (2003) *Report No. 1: Building Understanding*, Respect Europe: Stockholm. www.blihr.org
- ²³⁰For more on the nature and sources of human rights see J., Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca, 1989 pp. 14 – 19 and R., Higgins, *Problems and Process: International Law and How We Use It*, Clarendon Press, Oxford, 1994, pp. 95-110.
- ²³¹For more on the current system of human rights protection at the UN level see H., Steiner and P., Alston, *International Human Rights in Context: Law, Politics, Morality*, Oxford University Press, Oxford, 2000 pp. 137-141.
- ²³²Amnesty International and the Prince of Wales Business Leaders Forum look in some detail at a company's obligations in terms of their sphere of influence. See Amnesty International and The Prince of Wales Business Leaders Forum, *Human Rights: Is it Any of Your Business*, April 2000, pp. 28-9.
- ²³³Amnesty International and The Prince of Wales Business Leaders Forum, *Human Rights: Is it Any of Your Business*, April 2000, pp. 28-9.
- ²³⁴Business & Human Rights: A geography of corporate risk, Amnesty International and The Prince of Wales International Business Leaders Forum, November, 2001.
- ²³⁵2003 CSR Monitor, Environics International, March 2003.
- ²³⁶Edleman, *Rebuilding Public Trust Through Accountability and Responsibility*, address to the Ethical Corporation Magazine Conference, New York City, October, 2002.
- ²³⁷Interview with Senior Vice President, Corporate Affairs, HP.
- ²³⁸See HP's Commitment to Global Citizenship, 17 July 2003, <http://www.hp.com/hpinfo/globalcitizenship/>
- ²³⁹Interview with Director of Supply Chain Services, HP.
- ²⁴⁰Interview with country Human Resources Manager, HP Malaysia
- ²⁴¹HP's Global Citizenship policy, 17 July 2003, <http://www.hp.com/hpinfo/globalcitizenship/>
- ²⁴²Interview with Chief Privacy Officer
- ²⁴³Total S.A., headquartered in France, is one of the world's largest integrated oil companies, operating in more than 100 countries with 2003 sales of \$131 billion.
- ²⁴⁴Bangkok Post, April 21, 2003