

Business and Human Rights:
An Analysis on How Companies Can Integrate Human Rights
into Their Business Operations

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30 August, 2013

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EXPLANATION ABOUT FORMAT AND CONFIDENTIALITY ISSUES

This master's thesis is presented in the format of a paper ready for submission to Business and Society Journal. In order to achieve this, a word limit of around 9000 words was necessary. The paper draws on four months of fieldwork undertaken by the student from April 2013 until July 2013, at Tete in Mozambique, with the cooperation of Rio Tinto, a multinational company, which has a coal mine there.

The format of an article was chosen to prepare the student for her (forthcoming) PHD trajectory within the Faculty of Spatial Sciences of the University of Groningen. Consistent with research ethics and the confidentiality agreement signed with Rio Tinto, it was decided between the supervisor and the student that the article has to be generic.

It should be noted that in addition to this article, a 13,000 word confidential internal report has been prepared and submitted to Rio Tinto Coal Mozambique. The report was an analysis of field observations and 20 conducted in-depth interviews, presented as recommendations to the company as to how their observance of human rights could be enhanced. It focussed specifically on the extent to which the company complied with human rights due diligence procedures.

Thus, this master's thesis comprises of two assignments: the confidential company report (of which proof can be obtained from Professor Frank Vanclay) and the academic article.

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Abstract

The United Nations Guiding Principles on Business and Human Rights (UNGPs) set out the expectation that companies have the corporate responsibility to respect human rights. This paper analyzes how companies can integrate respect for human rights into their business operations. First, the ‘Human Rights Sphere’, describe six steps through which a company can identify its human rights issues: (1) rights holders, (2) impacts, (3) relevant human rights, (4) its relationship towards the rights holders, (5) a justification for action, and (6) type of response. Second, the ‘Corporate Human Rights Integration Scheme’ (CHRIS) is an advice on how to integrate and embed human rights into corporate policies and standards. An important aspect of CHRIS is the establishment of a human rights function in a company. The ‘Human Rights Sphere’ provides a practical model for companies that they can apply to their own operations and in combination with CHRIS, corporate respect for human rights can be enhanced.

Keywords: corporate governance, human rights, due diligence, social impacts, extractive industries, multinational corporations

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Introduction

The development of the Business and Human Rights Discourse (initiated and led by Harvard professor and United Nations Special Representative of Business and Human Rights John Ruggie) underscored the need for a better understanding on how business impact on human rights and how they should be held responsible for such impacts (Ruggie, 2007). Companies can impact upon a broad spectrum of human rights laid down in the International Bill of Human Rights (Wright, 2008). Escalations of corporate human rights issues were specifically occurring in developing countries in the extractive sector and the footwear and apparel industries. The so-called ‘emblematic’ cases of corporate human rights abuse (Nike in Indonesia, Bophal in India, Shell in Nigeria and Yahoo in China) affirmed the necessity to put business and human rights on the international agenda (Ruggie, 2013).

In 2005, John Ruggie was appointed by The Secretary General of the United Nations, Kofi Annan, to investigate the development of a global regulatory framework in which corporate human rights responsibilities could be clarified. In 2008, this resulted in the “Protect, Respect and Remedy” Framework (the Framework) (Ruggie, 2008a). The Framework, endorsed by the United Nations Human Rights Council describes “the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedy, both judicial and non-judicial” (United

Nations, 2010, pp.1). In 2011, Ruggie developed the United Nations Guiding Principles on Business and Human Rights (hereinafter UNGP). The UNGP operationalize three pillars set out in the Framework: “The Framework addresses *what* should be done; the Guiding Principles *how* to do it” (Ruggie, 2013, pp. 81).

In practice, company personnel need to learn how human rights are relevant to the company and how they relate to the company’s operations. Respect for human rights need to be implemented in daily activities. This requires companies to start an extensive process of adjusting, inventing and applying human rights based policies and standards (Shift, 2012). The challenge for companies is to put human rights at the forefront of a business, implying a change in corporate culture from a business -centred into a human- centred approach (DIHR, 2011).

This paper provides an analysis on the question ‘*how to do it*’, i.e. how companies can become aware of, and respond to, human rights issues. The analysis offers insights in how companies can integrate human rights in their organization. This analysis is drawn from a literature study and from fieldwork performed in cooperation with a multinational mining company operating a mine in an African country. The fieldwork comprised of a four-month period of participant observation and 20 in-depth interviews with company personnel were conducted. The outcomes of the research are presented in this paper: (1) a process model outlining the steps a company can take to identify and act upon its human rights challenges; and (2) an advice on how a company can integrate human rights into its operations.

First, the paper will explain the business and human rights discourse. Then, the ‘Human Rights Sphere’ will be introduced, a six step process model that illustrates how business operations and their human rights challenges. In concurrence with this model, the ‘Corporate Human Rights Integration Scheme’ (CHRIS) is proposed. CHRIS will illustrate how to foster a corporate culture respectful of human rights and it introduces a separate human rights function.

The Business and Human Rights Discourse

The development of the Framework and the UNGP builds on a major study performed by Wright (2008). This study summarizes an investigation on the scope and patterns of corporate human rights abuse in 320 cases derived from the Business and Human Rights Resource Center. Corporate impacts on human rights were evident around the globe, were largely related to multinational enterprises, and involved issues of environmental degradation, corruption, and direct and indirect impacts on workers and communities. For example, multinationals operating in weak regulatory systems fashioned health and life threatening circumstances on the workplace causing harm (death and/or irreversible damage) to workers and included forced and child labor (Wright, 2008). More recently, other scholars have identified how corporate projects have an adverse impacts on individuals and communities through (temporary) loss of natural assets (LNA) and displacement, environmental pollution and overall environmental degradation (cumulative impacts) threatening people's personal health and livelihoods strategies (Alstine & Afionis, 2013; Kamlongera, 2013; Maconachie & Hilson, 2013; Pegg, & Zabbey, 2013).

From the beginning times of business, scholars discuss the role of a business in society (Bowen, 1953; Friedman, 1962). In the 1990s, there has been an escalation in the expectations on companies and their contribution towards society. This has changed from a merely philanthropic contribution to the concept of corporate social responsibility (CSR) (Carroll, 1999) and complementary and overlapping concepts such as corporate citizenship, stakeholder management and sustainability. Today, virtually all 'large and brand-sensitive firms' have developed their business case for CSR implying voluntary initiatives of companies to contribute to the enhancement of the societal environment in which they exist and operate (Ruggie, 2004; Carroll & Shabana, 2010).

Human rights have played a marginal role in the development and in the application of CSR (Wettstein, 2012). According to Ruggie (2013) the voluntary nature of CSR and its lack of consistent approach, and was not suitable for the effective protection of corporate-relate human rights issues that need to be addressed in a clear and systematic manner. From a law perspective, Ruggie (2013) found that international law does not impose direct duties on corporations when

they abuse human rights. Thus, the existing international legal jurisdiction was not suitable for addressing corporate-related human rights abuse. There was a need of developing a global governance framework in which (global) enterprises could be held responsible (Ruggie, 2013).

Before Ruggie, the Sub-commission of the then UN Commission on Human Rights (2003) produced the ‘Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights’. The Norms imposed binding obligations on companies, equivalent to human rights obligations of states. The Norms were rejected by the international (business) community because they were not comfortable with the legalistic language used (Ruggie, 2013). Nevertheless, there remained a clear need to rethink the traditional international human rights arena by introducing clear described guidelines for how corporations should fulfill their responsibilities.

After the rejection of the Norms, in 2005, John Ruggie was appointed as the Special Representative on Business and Human Rights. His assignment was to bridge the gap that emerged since the Norms between the business community, governments and civil society organizations on how companies should be regulated regarding human rights (Ruggie, 2013). After years of extensive research and consultation, the Human Rights Council (United Nations, 2010) was unanimous in ‘welcoming’ Ruggie’s “Protect, Respect and Remedy” Framework for better managing business and human rights challenges. The Framework comprises of three pillars: 1) the State duty to protect human rights; 2) the corporate responsibility to respect human rights; and 3) access to remedy, both judicial and non-judicial (Ruggie, 2008a). In 2011, the United Nations Framework was operationalized in the Guiding Principles on Business and Human Rights (United Nations, 2011). The UNGP describe how the three pillars need to be implemented by states and companies.

The second pillar of the UNGP outline an ‘independent’ corporate responsibility to respect human rights. ‘Independent’ implies that corporations should respect human rights regardless of state obligations and fulfillment thereof. ‘Respect’ for human rights indicates that companies should avoid direct and indirect corporate related human rights harm. The foundation for the corporate responsibility to respect is extensively debated by scholars of Business Ethics¹.

¹ In Business Ethics various scholars have different views on the foundation of the Framework. Scholars argued that the Ruggie’s foundation of the Framework; ‘enlightened self-interest’, is not appropriate as a single justification for companies to undertake respect for human rights. Effectiveness of the UNGP requires a moral justification (Arnold,

To comply with the corporate responsibility to respect, companies need to implement “a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights” (United Nations, 2011, pp. 15). Also: “As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy” (United Nations, 2011, pp. 15). Since the endorsement of the UNGP, an increasing number of companies are explicitly referring to the UNGP through a formal policy statement.²

The UNGP are (being) implemented in policies and guidelines from other UN related bodies, (research) institutes, international organizations and non-profit organizations, and governments. For example, the United Nations Global Compact (UNGCG, website, 2013) has adjusted its Ten Principles in accordance with the UNGP. The OECD Guidelines on Business Enterprises (OECD, 2011, pp. 3) included a new human rights chapter “which is consistent with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework”. The European Union “encourages and contributes to implementation of the UNGP” and they produced human rights guides for three business sectors (EC, website, 2013). The UNGP are also highlighted by large NGOs such as Human Rights Watch (HRW, website, 2013) that stated “The UN Principles have flaws, but demonstrate that the international community firmly believes that businesses have human rights responsibilities”, and by UNICEF (website, 2013) resulting in the Children’s Rights and Business Principles. Oxfam International (2013) produced a report explaining the organization’s perspective on the UNGP. Within Impact Assessment (IA) human rights impact assessment are being developed (Salcito et al, 2012; Vanclay & Kemp, 2013) and the Global Reporting Initiative (GRI, website, 2013) developed human rights reporting indicators. In addition, national human rights institutions have broadened its scope and mandate including corporate related human rights challenges; they include *inter alia*, the Danish Institute of Human Rights (DIHR), the Scottish Human Rights Commission (SHRC), and the Irish Human Rights Commission (IHRC) (Ruggie, 2013).

2010; Cragg, 2012; Wood, 2012). In contrast, Bishop (2010) question whether companies should have human rights responsibilities at all.

² A complete list can be found in the Business and Human Rights Resource Center, available online at: <http://www.business-humanrights.org/Documents/Policies>.

Explaining Business and Human Rights Concepts

The conceptual foundation of the Business and Human Rights Sphere originates from the Business and Human Rights Discourse including the Framework and the operationalization of the Framework that resulted into the Guiding Principles on Business and Human Rights (UNGP). The section below will highlight business and human rights concepts that are important for the understanding of the Human Rights Sphere.

The UNGP (United Nations, 2011) say that companies should, at a minimum, respect the rights in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work (ILO, website, 2013). The International Bill of Human Rights consists of The Universal Declaration of Human Rights (United Nations General Assembly, 1948), the International Covenant on Civil and Political Rights (ICCPR) (United Nations, 1966a) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations General Assembly, 1966b). The corner stone of the International Bill of Human Rights are freedom rights, those rights that are essential to the enjoyment of all others rights; they include right to life, right to liberty and right to security (United Nations, 1996). The ILO Declaration (ILO, website, 2013) is established around four fundamental principles: 1) freedom of association and the effective recognition of the right to collective bargaining, 2) elimination of all forms of forced or compulsory labour, 3) effective abolition of child labour, and 4) elimination of discrimination in respect of employment and occupation.

Companies can be involved in ‘actual’ and ‘potential’ human rights impacts; “an actual impact is one that has occurred or is occurring, a potential impact is one that may occur but has not yet done so” (United Nations Office for the High Commissioner on Human Rights, 2012, pp. 20). ‘Rights holders’ are those individuals and groups whose rights are potentially and/or actually impacted by corporate activities (Kemp & Vanclay, 2013). They include all individuals and groups as well as vulnerable groups involving Indigenous peoples³, women and children.

³ The United Nations recognizes specific rights to Indigenous peoples through the 2006 United Nations Declaration on the Rights of Indigenous Peoples. However, the Declaration does not fall under the International Bill of Human Rights that has been set as a minimum for corporations to respect. The Declaration can be retrieved from http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf.

Wright (2008) identified three groups of rights holders: workers, communities and product-end users on which companies (can) have an impact.

Companies can be directly and indirectly responsible for actual and potential human rights impacts on rights holders. Direct responsibility for human rights impacts is originating from a company's activities. Indirect responsibility means that human rights impacts are caused in a company's supply chain; i.e. through its business relationships. A company has different functions: a producer, service provider, employer and/or neighbor (Ruggie, 2008b) and taking into account each function; it has to consider its human rights issues and responsibility for direct and indirect human rights impacts. For example, as a producer, a company's human rights impacts can occur through its business relationship with a supplier or customer. In this way the company might be 'complicit' in human rights harm caused by its suppliers and/or customers. A company also has to consider to what extent, through its function and relationship, it might be complicit in so-called 'gross abuses' that are international crimes (e.g. slavery and genocide) conducted by third parties including States. Complicity is thus relevant because it indicates an indirect form of company involvement in various human rights abuses (Ruggie, 2008b, Wettstein, 2010).

Companies can be held responsible for indirect human rights impacts because they can use their influence or 'leverage' to enhance the protection of human rights. Leverage "refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact" (United Nations Office for the High Commissioner on Human Rights, 2012, pp.7). Regarding direct impacts a company has to mitigate to 'reduce its extent' and when the human rights harm already occurred it has to provide remedy that may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (United Nations Office for the High Commissioner on Human Rights, 2012).

The main challenge for companies lies in the process of due diligence to identify, act and track upon human rights issues that may manifest themselves in various ways in a company's operations. Therefore, companies have to understand the human rights sphere of their business operations. They can do so by taking into account how rights holders are related to, and/or involved in, a company's operations including its business relationships.

Towards a Model for Understanding the Human Rights Sphere

The UNGP expect that companies integrate human rights and perform human rights due diligence in their operations. Therefore, ‘the Human Rights Sphere’ (Figure 1) offers a preliminary step towards understanding a company’s scope of human right issues by illustrating six steps: 1) identify the rights holders; 2) investigate the impacts 3) link the impacts to human rights impacts; 4) determine the relationship of the company with the (impacted) rights holders; 5) establish the justification for action (the business case) and, 6) decide on the type of response.



Figure 1. The Human Rights Sphere

The model (Fig 1) is divided in six areas or spheres. The change in colors relate to the rights holders and their proximity to the company's operations. The 'distance' of the rights holders to operations is in corporate jargon referred to as 'inside and outside the fence'. The thick black line in the model between sub-employees and local communities inside the license area defines this concept. There is a dotted line between employees and sub-employees because companies might claim that all employees 'inside the fence' including those from sub- and contractors are treated in the same manner but in practice this might not be the case. For example, the extractive sector appears to recognize impacts and responsibility on communities ahead of human rights issues with sub-employees (Ruggie, 2010).

The steps are illustrated in a circle because the process of identifying and acting upon corporate related human rights issues 'should be ongoing' (Ruggie, 2011). This means that respect for human rights does not 'stop' after identifying and responding to impacts, it includes that a company tracks the effectiveness of its response (United Nations, 2011) with the affected rights holders. Below each step of the Human Rights Sphere will be illustrated.

I. Rights holders

The first step is to identify the rights holders that are potentially and actually affected by a company's business operations. In this model rights holders are distinguished between employees (workers directly employed by the company) and sub-employees (workers employed by contractors and subcontractors that form a relationship with the company), local communities living inside of the company's license area and local communities outside of the company license area (neighboring), and 'society'. Rights holders involving communities inside the license area can be faced with different or 'severe impacts' compared to communities outside of the license area. Therefore they have been separated in the model. The society level in this model implies different groups including vulnerable groups, individuals and communities in proximity distance of operations and company activities (for example people living in the nearby city).

In the words of the UNGP, project-affected individuals and communities are no longer impacted stakeholders but they are rights-holders with legitimate interests that need to be

respected (Kemp & Vanclay, 2013). Therefore, the identification of rights holders requires a level of analysis that goes beyond CSR based stakeholder identification.⁴

II. Impacts

Identifying a company's rights holders goes hand in hand with identifying corporate related impacts. From the perspective of Impact Assessment (IA), impacts can be direct and indirect. Indirect impacts can take place through, for example, biophysical (environmental) changes; for example a mine leaks toxic chemicals a river which create a bio-physical change which subsequently impact local communities' health. Direct impacts are caused by a proposed intervention or project that directly leads to changes and impacts on the rights holders (Slootweg et al, 2001). A direct impact, for example, is the construction of a mine or factory that requires unavoidable displacement of a community and/or individuals. For example (involuntary) resettlement is a change that can negatively or positively impact on the resettled communities, depending on the conditions. Other impacts involve employees and sub-employees, for example through a company policy or type of behavior that causes discrimination.

Impacts can be identified through an internal company process by undertaking a 'gap analysis'. The gap analysis can be conducted by mapping company practices within corporate departments including Human Resources, Procurement, Production, Security, Social Performance, Marketing and so on. A gap analysis is relevant for a business to identify possible gaps between company practice and the law, and/or between company practice and the company's code of ethics. When gaps are identified these can imply impacts on rights holders.

The socio-economic situation of local communities inside and outside the license area will partly determine how and to what extent they are impacted by the company activities. For example in poor, economically underdeveloped regions, cumulative impacts such as an inflow of migrant workers, inflation and/or increase of the sex industry can have large consequences for the stability of livelihoods and health of the peoples living around the project. Socio-economic characteristics of local communities should be identified to establish a 'baseline'; in this way the

⁴ Stakeholder identification is a practice of Social Impact Assessment (SIA) that is part of CSR obligations of companies (Vanclay & Esteves, 2011).

company can ‘measure’ how their activities change the people’s situation from this baseline. These could include employment levels (type of economic activities) existing in the region, the amount of households in local communities depending on self-subsistence farming and the overall literacy levels of people in the region. In addition, it is important to identify the role and value of existing local norms and habits of rights holders and what this means in terms of their ‘acceptation level’ regarding impacts. For example, air and water pollution caused by a project can be ‘accepted’ by people from a poor community as long as they are able to get a job in the company.

A relevant concept in the identification of rights holders and their impacts is Free Prior Informed Consent (FPIC). FPIC is a human rights based concept, indicating ‘the right to decide’, developed in the context of the self-determination of Indigenous peoples. Now, FPIC is becoming a general principle applicable to all project-affected peoples (Vanclay & Esteves, 2011).

III. Human rights

Historically, Impact Assessment (IA) practice has not explicitly linked impacts with human rights (Kemp & Vanclay, 2013). Though, the UNGP emphasis on the notion of rights holders instead of stakeholders has triggered new developments in the IA approach. The development of human rights in impact assessments are increasing in the literature (Salcito et al, 2012) but also international organizations (IFC, 2010; Nomogaia, 2012) have developed them as a tool for companies to add the element of human rights into regular social and environmental impact assessments.

The Human Rights Sphere illustrates how rights holders can be faced by (different) impacts and, dependent on the type of impacts, how they relate to three groups of (potentially or actually impacted) rights: freedom rights, labor rights and/or socio-economic rights. Table 1 and 2 specify on relevant human rights drawn from the major international human rights documents . Wright (2008) and identified a couple of labor and nonlabor rights as ‘frequently’ impacted by corporate activities.

Freedom of association	Right to equal pay for equal work
Right to organize and participate in collective bargaining	Right to equality at work
Right to nondiscrimination	Right to just and favorable remuneration
Abolition of slavery and forced labor	Right to a safe work environment
Abolition of child labor	Right to rest and leisure
Right to work	Right to family

Table 1. Labor Rights Impacted (Wright, 2008)

In practice, there is specific challenge with labor rights in less economic developed countries (United Nations Working Group on Business and Human Rights, 2012). For example, in former colonized countries working relationships between (foreign) expats and employed nationals can be challenging. Discrimination can be very common but put ‘under the mattress’ and therefore not an easy topic to discuss. Issues of trust and misunderstandings between foreign company personnel and national company personnel might hide potential and actual human rights issues.

Right to life, liberty and security	Right of peaceful assembly	Right to privacy
Freedom from torture, cruel or inhumane treatment	Right to marry and form a family	Right to social security
Equal recognition and protection under the law	Freedom of thought conscience and religion	Right to an adequate standard of living
Right to a fair trial	Right to hold opinions, freedom of information and	Right to health

	expression	
Right to self-determination	Right to political life	Right to education
Freedom of movement	Minority rights	Right to participate in cultural life

Table 2. Nonlabor Rights Impacted (Wright, 2008).

Depending on the type of industry, a company its activities can have impacts on nonlabor rights. Regarding socio-economic rights (including the right to an adequate standard of living, right to health, right to education and right to participate in cultural life) there exist local challenges in particular in less economically developed contexts. In such contexts the (absent) role of the State regarding human rights protection and enhancement is a challenge for companies in defining the extent of their responsibilities.

To identify how impacts are related to human rights impacts, company personnel need to know what human rights are. To connect the impact of corporate operations with human rights challenges requires learning and therefore company personnel need basic training and education on human rights. Companies should develop internal expertise, a business and human rights function that is assigned with the task to promote and educate human rights to personnel, and play a leading role in human rights due diligence.

IV. Relationship

The fifth subject of the Human Rights Sphere is about the company’s relationship with the (impacted) rights holders. A company can fulfill several functions in society and for each function its business activities can create impacts on rights holders. Depending on the relationship between the company and the rights holders (whether this is direct, indirect or involving complicity) a company has to act by using its leverage, and/or to mitigate and remediate. Table 3 provides an example showing how each company function can be involved

with and relate to human rights issues with its rights holders, and subsequently what type of responsibility the company has for these impacts.

Function	Rights holder	Relevant question	Human rights actually/potentially affected	Responsibility and influence
<i>Producer</i>	Workers (sub-employees)	Do our suppliers subscribe and adhere to International Labor Standards?	Right to equality Right to freedom from discrimination	Indirect – leverage
<i>Service provider</i>	End-users	How do we know that our customers are not using child and/or forced labor?	Right to just and favorable work Gross abuses (child labor and slavery)	Complicity – leverage
<i>Neighbor</i>	Communities (inside and outside license area)	Do we consult local communities and how are we sure of our Social License to Operate (SLO)?	Right to information Right to an adequate standard of living	Direct – mitigate/remediate
<i>Employer</i>	Workers (sub-employees and employees)	Are our workers protected on the workplace against potential health hazards?	Right to life Right to health	Direct – mitigate/remediate

Table 3. The Relationship Between Company and Rights holders

V. *Justification*

Corporate human rights issues tend to be viewed by companies as constituting a business risk (Ewing, 2013); not respecting local individual and local communities rights can be financially costly to business (Davis & Franks, 2011). Therefore, company decisions that involve financial actions to respond to corporate related human rights harm evolve around the business case. Also, external stakeholders (for example international NGOs and/or media) can put pressure on companies so that justification to respect human rights is reputational (strategic) based.

However, respect for human rights in the ‘business case’ does not necessarily mean making an economic case; the business case entails corporate values, doing ‘the right thing’ and

inspiring the workforce (Shift, 2012). A company its response to mitigate and/or use its leverage to address impacts (see table 3) should be justified out of the company's business code of ethics including respect for human rights.

Thus, respect for human rights and for human beings in and around the company should become a justification for action on itself. This requires a change of direction within the traditional corporate governance paradigm that is putting upfront business profits and increasing shareholder value. Corporate governance is “the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined” (OECD, 2004, pp. 13).

According to Ruggie (2013) human rights are part of social norms; social norms exist and are complied, or not complied with regardless of legislation. The underlying purpose of the corporate responsibility to respect is that, eventually, respect for human rights comes from within the company as an established social norm that is effectively pursued by company personnel of all levels.

VI. Response

The fifth step illustrates what types of response can be executed by a company depending on the type of human rights impact and the rights holder(s) at stake. According to the UNGP (United Nations, 2011) companies should try to avoid human rights impacts and when impacts are unavoidable, they have to implement mitigation measures and when impacts already occurred they have to provide remediation. The Framework's third pillar; 'access to remedy', indicates that companies should have a grievance mechanism in place in this way the company should stimulate people to express their concerns, for example, about sexual harassment in the workplace. Also, companies should engage with the host government and civil society organizations to find solutions for accumulative impacts that can result in human rights harm to people on the society level in the Human Rights Sphere (and thus not to a specific group of rights holders).

Financial compensation is a type of remediation by companies to compensate individuals and/or households for impacts, for example to compensate for loss of (natural) assets. A

company should take into account the socio-economic circumstances in which communities live and whether financial compensation is a sustainable solution for individuals and communities livelihoods, in particular when they are displaced (or resettled). As previously indicated, impacts on socio-economic rights in less economic developed countries are a challenge for companies because of lacking capacity of the host government to safeguard citizen's rights. Corporate mitigation and/or remediation involving only financial compensation for impacts relating to socio-economic rights is not recommended. The IFC Performance standard 5. Land acquisition and involuntary resettlement (2012) states that companies, should at a minimum, restore the livelihoods of the resettled communities and preferably they need to be 'better off'.

The manifestation of the corporate responsibility to respect human rights can become a politicized issue. Human rights as a concept and 'respecting' human rights as corporate policy goal might need consent from part of the host government. It also might interfere with the state obligation to protect human rights; therefore companies should engage with civil society organizations that could help 'sell' respect for human rights to host governments. In this way, companies can become part of a regime change agenda in countries where governments fail to protect their citizens' rights (Maak, 2009).

Conclusion

Conducting a thorough analysis on a company's human rights issues is an extensive exercise and can be puzzling because of the quantity and variety of terms and definitions, and the challenges that lie in the local context. For each operational site there will be different and overlapping challenges as indicated in the Human Rights Sphere. Therefore, understanding and defining a company's human rights sphere should go hand in hand with the integration of human rights into its business functions. Each operational site should consider the steps of the Human Rights Sphere and take notice of the examples provided on how the company might be involved in human rights challenges. An increasing amount of companies are developing human rights policy and a public statement, but what remains is a lack internal 'knowhow' to link impacts with human rights impacts. Therefore, internally, company personnel need to become familiar

with human rights language. The Corporate Human Right Integration Scheme (CHRIS) is an advice on how to embed human rights into corporate culture.

The Corporate Human Rights Integration Scheme; an Advice on How to Integrate Human Rights

Ruggie (2011) prescribe that respect for human rights needs to become embedded in an enterprise by integrating the company's human rights policy and/or statement throughout the organization. The policy should be communicated internally to all personnel within the business, as well as externally to the business its partners and other relevant actors. In addition, the policy should be reflected in the company's operational policies and procedures (United Nations, 2011). Respect for human rights needs to be 'translated' into concrete action plans for companies. The Danish Institute (2011) and Shift (2012) identified that companies have questions about the relevance of human rights for each department in a business unit; should human rights become integrated, indicating an implicit role (for example in risk assessment) or should human rights be explicit next to existing social, environmental and risk standards. There are also discussions about the relevance and role of a separate human rights function in a business, and if established, at which level this function should be executed.

The UNGP is not explicit about how a company can embed human rights and whether it should take an implicit or explicit approach. Each company, regardless of its size and the magnitude of its human rights challenges, has to go through an internal change process deciding on how to translate human rights into its business activities. The Corporate Human Rights Integration Scheme (CHRIS) presented in Figure 3 support enterprises in this process. The underlying template is a standard model of a multinational company. Added to this organizational structure are focus areas for human rights integration. New to this template is the set-up of a human rights function.

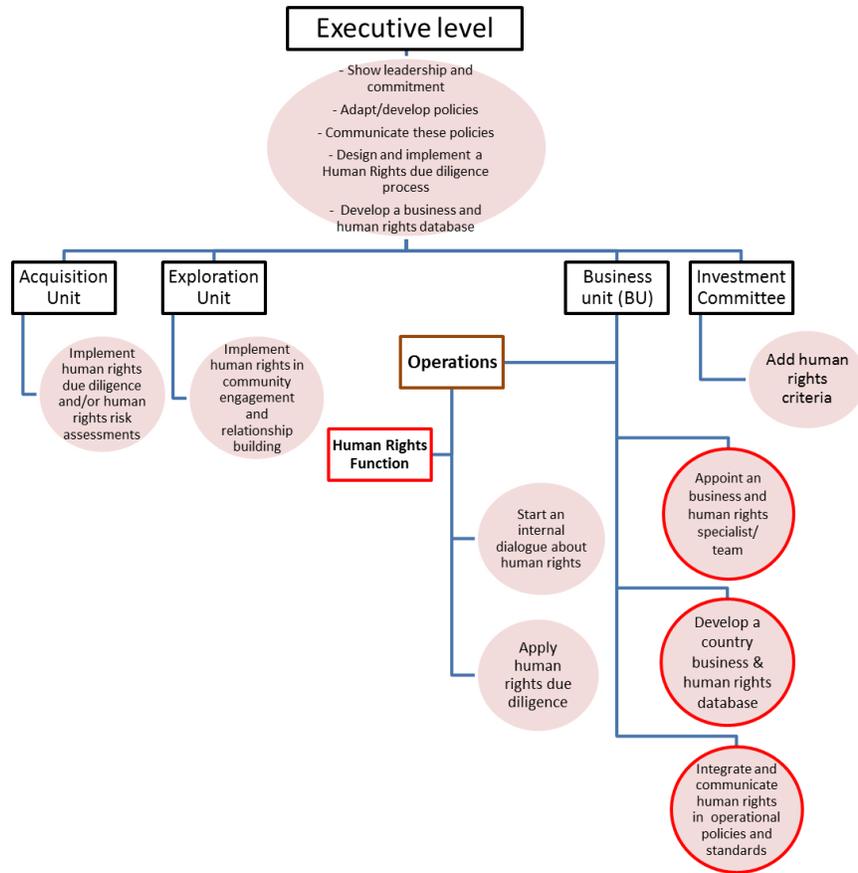


Figure 2. The Corporate Human Rights Integration Scheme

Executive level

From the executive level there is a need for leadership and vision (Shift, 2012) and therefore a need for individuals in the company that are knowledgeable regarding the business and human rights discourse and understand how respect for human rights can be implemented in the local context. This requires from part of the executive level that they are aware of the issues happening ‘on the ground’ in business operations. In other words, the executive level needs to understand the human rights sphere of its (various) business operations.

The executive level/board of directors has a major role in developing and spreading the company’s policy commitment of respect for human rights. This includes creating awareness and understanding of human rights in the different levels in the organization; from the executive level

(e.g. headquarters) to the business unit(s) and subsequently within the business unit(s) to the operational level including those company personnel working directly on the ground and (potentially) faced with rights holders. The executive level is responsible for providing sufficient information, and when needed authoritative support including clear directions to business units on how to implement respect for human rights into their operations. Even though human rights issues might differ per context and right holders can be impacted differently, the message: respect for all human rights, should be the same in all business units of a company.

The executive level should develop a consistent message they communicate to external parties including their rights holders (affected and potentially affected individuals and communities) and other stakeholders (for example from the international community) regarding its commitment, policy and actions it (plans to) undertake to respect human rights.

Each company should have a business and human rights database that comprehends all information possible involving corporate related human rights issues drawn from company personnel experience. This should be documentation from all business units per country context indicating societal challenges relating to human rights and context specific challenges including, for example, resettlement and human rights, culture and human rights, poverty and human rights and employees and human rights. There should also be specific documentation regarding (used) human rights protocols and experiences relating to mergers and acquisitions. The database is important to create a knowledge base within the company that personnel can easily access when they want to understand the business operations' human rights sphere.

The executive level should develop an internal approach of human rights due diligence that has to be performed on each business unit level. The steps of the Human Rights Sphere can be used by the business unit to consider human rights issues. Each business unit will be faced with different challenges regarding the local context; therefore outcomes should be reported and shared with other business unit's into the aforementioned human rights knowledge database.

Acquisition unit

“Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the

stage of restructuring contracts or other agreements, and may be inherited through mergers or acquisitions” (United Nations, 2011, pp. 16).

Human rights due diligence should be performed when deciding on an acquisition or merger. Human rights due diligence should be performed next to the overall risk assessment to understand the company activities will likely impact on human rights and whether that is acceptable taking from a human risk perspective and whether there mitigation measures are possible, regardless of other risks and/or opportunities.

Exploration unit

Starting good community relationships is important for the future sustainability of a business, i.e. to obtain and maintain its social license to operate and grow. In many cases, the exploration unit is the first face communities’ see of a company and the installation of drill sites could (temporarily) pose damage to natural resources on which communities base their livelihood. Free Prior Informed Consent (FPIC) should be applied by consulting the communities beforehand, explaining what is going to happen and where the drill sites are going to be. Another approach includes the attendance of company personnel with traditional ceremonies in which people from the company and the communities group together to establish a trust relationship. All these activities are related to respect for human beings, for the respect for their right to be heard by consulting them, to respect their right to information by including them in the process and showing them the drill areas in which they should have a voice in accepting or refusing the chosen area for drilling purposes.

Business unit

Companies should involve internal and external expertise to become familiarized with its human rights challenges (UNGP, 2011). The business unit should to integrate human rights by training company personnel from each department. Each department needs clear directions and leadership on how to communicate the changes to the operational level that involves company personnel responsible for the implementation of the policies. Cooperation or partnerships with

local NGOs can bring in knowledge from the country and the region which is important, particularly in a human rights constrained environment: communities and workers might not be aware of their rights and the government has no objectives to inform them.

External human rights expertise, for example from research institutes and/or consultancies, can be use full because they can bring in an outside perspective on the human rights situation of the company (Shift, 2012). There is, however, a downside to a mere involvement of external expertise; it could hamper embedding human rights into the company. In other words, it might not promote a corporate human rights based approach that should come from within, and not imposed on the company by external parties. The establishment of a separate human rights function on the operational level is important for continuous tracking and improvement of human rights performance. Expertise needs to be ‘on site’ and provide support on daily basis and over a long(er) period of time, in particular to company personnel working in the business unit and faced with the actual human rights issues on the ground.

Investment committee

The investment committee (often situated at the executive level) judges the soundness of investment proposals. In these proposals there should be a section that explains actual and potential human rights issues. For example, when a business unit asks for financial resources to construct a pipeline from point A to point B, it should detail how the social and human rights impacts are to be avoided and if not, minimized. This requires that the investment committee has the expertise available to judge project proposals in relation to human rights issues.

Any project related to social performance should be explicit about the project goals in human rights terms. The investment committee should be able to judge whether the social activity is responding to the company’s overall corporate responsibility to respect human rights. In particular when it requires investment proposals regarding mitigation measures of impacts on local communities, decisions to do so should not evolve around the business case of the company, but should be determined from the need to minimize corporate related human risk. As previously discussed, a human centred approach to business management requires the need to accept that responding to human rights issues is a legitimate justification.

Operations

The operational level is one of the most important levels in a company in which human rights should become embedded because on this level company personnel are directly faced with rights holders and involved in the actual and potential human rights impacts and mitigation/remediation measures thereof. In this respect, human rights due diligence should be performed on a regular basis; this could be on a yearly.

The Danish Institute (2011, pp.2) identified that “key methods of reinforcing human rights in business culture and systems include raising rights awareness through training and emphasizing the importance of human rights due diligence within recruitment, hiring, training and appraisal processes, besides developing clear incentives and disincentives to encourage good performance and discourage bad behavior with regard to human rights”. Business units can have several strategies in place by which they try to embed a safety and security culture into company personnel mindsets. It is essential that, part of the human rights integration, will consist of a comparable face to face dialogue on human rights issues that also involve human risk.

Human rights function

CHRIS introduced an internal business and human rights specialist. The invention, purpose and role of a separate human rights function in a business, is a discussed topic amongst companies (Shift, 2012). The role of the human rights function should be supportive for company personnel operating and faced by issues on the ground. On the operational level, the human rights function can link human rights issues at stake with the local context and thereby has a guiding and guarding role for other departments. The human rights function should be on balance with the level of general managers. This means that they should have a strong mandate, compared to general managers, in order to influence (have a say) the company’s decision-making on the development of projects and activities. Depending on the size of the company, the size of operations and the severity of human rights challenges, the size of the human rights function (e.g. how many personnel) may vary.

Conclusion

The acceptance by the international community of Ruggie's corporate responsibility to respect human rights established clear relevance for integrating human rights into business operations. Integrating human rights into business is an extensive exercise and human rights can relate to a large spectrum of business activities and relationships. The integration of human rights also includes contextual challenges that are unlikely to be solved in a fixed period of time, but require a continuous process of learning.

The Human Rights Sphere is an important step in how companies can systematically identify their human rights challenges by taking into account six aspects; rights holders, impacts, relevant human rights, the business relationship, justification for action and type of response. The Human Rights Sphere provides a clear picture of how the different subjects can be interlinked by taking into account both a business and a human rights perspective. Also, it does not involve extensive human rights language which makes it accessible to company personnel. The model can be used by companies regardless the stage of human rights integration they are in (i.e. to what extent they already have integrated human rights into their business operations).

The Corporate Human Rights Integration Scheme (CHRIS)' should be used to stimulate the process of embedding human rights into different parts of a company and to foster internal organizational change. The establishment of the human rights function in a business indicates a significant step forward in integrating respect for human rights as a business value. It should play a large role in finding common grounds regarding the definition of and perception on human rights responsibilities between governments, civil society, communities and corporations. Progressively, companies can form an educating role in informing their employees and business relationships about human rights.

The Human Rights Sphere and CHRIS show relevant insights and give guidance to companies on how they can fulfill the corporate responsibility to respect human rights. They include practical instructions that can be directly implemented by companies.

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