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Implementing human rights into a company A blueprint for action¹

Abbreviations

CSR - Corporate Social Responsibility

JV - Joint Venture

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

IFC - International Finance Corporation (part of World Bank Group)

ILO - International Labour Organisation

OECD - Organisation for Economic Cooperation and Development

PPE - Personal Protective Equipment

SRSR - Special Representative of the UN Secretary-General for Business and Human Rights
(Professor John Ruggie)

UNGC - United Nations Global Compact

UDHR - Universal Declaration of Human Rights



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Introduction Human Rights - part of doing business

In the increasing complex world of business, governments and civil society have advocated an improvement in the policies and practice of businesses.

Over the last several years, increasing attention has focused on the human rights performance of companies. Some high profile cases include:

- Foxconn, a major supplier of Apple Computers, used child labour (14-16 years old) in a Chinese factory in late 2012;
- factory conditions for Nike have led to the examination of a company's human rights policies and practice;
- Shell Petroleum Development Corporation's activities in Nigeria have been in the spotlight for 15 years, leading to significant interruptions in oil and gas production and multi-million dollar out-of-court settlements for alleged human rights abuses.

In 2005, the United Nations appointed Harvard University's Professor John Ruggie as the Special Representative on Business and Human Rights to devise a framework which would place a company's actions in a human rights prism, without taking on any State responsibilities. Professor Ruggie's "Protect, Respect and Remedy" Framework has been welcomed by not only governments and civil society and approved at the United Nations, but more importantly, by business, as establishing the role and the rules according to which companies should operate with respect to human rights. Human Rights are not a passing fad. They are part of a process in today's society that expects better performance from companies. The process has evolved from anti-corruption measures and environmental impacts to now include social-economic and health impacts. Professor Ruggie's work purposely tried to leverage the increasing focus on business and human rights with the simultaneous re-writing of several important international standards and guidelines. The Ruggie Framework's influence can be seen in the OECD Guidelines, the World Bank's International Finance Corporation (IFC) Performance Standards, amongst others, which will make the Framework nearly impossible to ignore. Ignoring the Ruggie Framework will be at a company's peril. These standards and guidelines are very relevant because they will apply **to all** businesses operating in Kazakhstan.

This document's structure and its use

Becoming "Ruggie-proof" is a process that can take a number of months. In some companies with a large footprint and complex operations, it can take years. However long it takes, incorporating respect for human rights will lead to a less exposed, more favourably seen and ultimately more profitable business.

This document is intended to provide a **broad blueprint** for incorporating human rights into a company's policy, due diligence and its impact assessment process. It provides an outline of requirements and ideas to implement the policies.

The document is not a one-size-fits-all approach, but details some of the key components in the process to allow a company to hit the ground running and make quick progress.

A. The Business Case for Human Rights

A number of significant reasons exist for implementing a company-wide human rights programme.

Court Cases – a number of high profile court cases, not only in so-called "host" countries (those

where a multinational operates), but also in the "home" country (where a multinational has its headquarters) have demonstrated that violations of human rights (or perceived violations) can carry a heavy price tag. Many NGOs are assisting victims of human rights with court cases, not only in the state in which the alleged violations occurred, but also abroad. Cases have also been heard in the United States, where the Alien Tort Claims Act has provided an audience for those with grievances. With settlements already in the millions of dollars, having a robust human rights programme can significantly reduce a human rights-related court case. In addition, a company's share price can be dramatically affected by court cases.

OECD Guidelines/ Project Finance Standards – human rights are now part of the OECD Guidelines for Multinational Enterprises, which will **de facto** force companies to comply with the Ruggie Framework. The 2011 updated Guidelines include this about companies and human rights:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

A violation of the Guidelines, while not financially costly in itself, can take up a significant amount of management time and can severely impact a company's reputation. Human Rights are also part of the EBRD Performance Requirements and the World Bank International Finance Corporation's Performance Standards. The IFC's Performance Standards say this about human rights:

Business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to. Each of the Performance Standards has elements related to human rights dimensions that a project may face in the course of its operations. Due diligence against these Performance Standards will enable the client to address many relevant human rights issues in its project. (IFC Performance Standards, page 10)

These two standards are the litmus test for international project financing and nearly all large funding and financial institutions examine a project's human rights policy and performance in funding proposals. Civil society and trade unions are increasingly using the complaint mechanisms of these standards to (at a minimum) alter projects or (at a maximum) to shut them down because of human rights concerns.

Stock Market Listing /Governance Requirements –stock market exchanges around the world are increasingly making human rights and so-called "non-technical" risks an integral part of a company's valuation. Socially Responsible Investors (SRIs), those investing in progressive companies, have been behind this movement. Although these SRIs usually do not hold a significant portion of a company's stock, their influence is wide in investor and civil society circles, with backing from some of the world's largest financiers. In the post-2008 world, regulation of business has increased, one aspect being the conduct of multinational companies outside of their home jurisdiction.

Employee Morale –perception of human rights violations will reduce staff morale, leading to a

decrease in productivity and reduce a company's pool of potential employees. No one wants to work for a company that violates human rights.

Reputation – The reputation of a company can be described as the differences between its assets and its share price. A company's sterling reputation opens doors, allowing access to decision makers. It leads by example. Many companies see their reputation enhanced by successfully working with and in the communities where they operate. It takes many years to build a reputation – and moments to destroy it.

The Ruggie Framework – What it is, what it isn't International Human Rights obligations for business

Although dozens of documents, declarations and treaties exist concerning human rights, Professor Ruggie highlighted several in particular that are relevant for the private sector:

- The International Declaration of Human Rights, adopted in 1948 and outlined 30 rights, including the right to just and favourable condition of work, an effective remedy and freedom of expression and freedom from torture, cruel and inhuman treatment;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- The “Core” Conventions of the International Labour Organization, regarding child and forced labour and anti-discrimination:

The UN Guiding Principles outline the “Protect, Respect and Remedy” framework:

- **Protect** – a government should protect its citizens from human rights abuses, taking proactive measures to ensure that human rights are protected. The establishment of law and order and providing oversight for any violations through established and functioning regulatory agencies are two major aspects of state duty to “protect”.
- **Respect** – a company should respect the human rights of those around its operations. “Do no harm” is the simplest way to describe the role that companies should play in respecting human rights. Companies are not obliged to take pro-active steps towards the protection of human rights. They must ensure however that through their actions, they are not violating the rights of others.
- **Remedy** – those affected by human rights violations should have more opportunities for remedying these violations through grievance mechanisms. Many companies, either wittingly or unwittingly and directly or indirectly, have violated human rights in their operations. However, those victims have rarely been able to voice their claims to a legitimate body to have those grievances addressed. The “Remedy” aspect of the Ruggie Framework is just about that – giving a voice to the voiceless, listening to their grievances and resolving them quickly and fairly.

Many companies strongly react when the term “human rights” is used. One company executive even quipped, “It is not my job to change the government of China”. This demonstrates the lack of understanding of many executives.

Business and Human Rights concerns the company's actions and the company's potential impact on the human rights of those around their operations. Affected parties could include local communities, a company's own employees, a contractor in the supply chain and those consuming a company's products.

Private Sector impacts on Human Rights

A company can have a number of human rights impacts, foreseen and unforeseen. Several examples include:

- What is a company's hiring practice? Does it involve favouring one ethnic group over another or does it prejudice against the hiring of women for fear that they will start a family soon after being hired?
- Does the company have a strongly-phrased and enforced child labour policy? Does it make that policy known to its subcontractors and ensure the policy's enforcement through periodic audits?
- Does a company's operation infringe on the local community to practise its traditional way of living or does pollution prevent its people from practising their livelihood (e.g. adversely affecting their livestock)?
- Does the company use migrant labour and if so, are the contract's rules and conditions fully clear to the labourers before entering the country?
- Could a company's catering contract be indirectly supporting child labour in a country where child labourers (picking fruits and vegetables) are commonplace?
- Has a government forcefully evicted a community to make way for a company's construction camp? Was the population compensated based on international resettlement guidelines or standards? Or simply told to pack its bags?
- Does a company supply a bulldozer with or without air conditioning in 40 degree heat? Does the bulldozer's operator have sufficient amount of rest breaks during extreme weather?
- Does a company's hiring of teachers/interpreters and doctors for its own personnel exert too much pressure on education and health care services to meet the local community's needs?
- Does a company allow the establishment of a trade union or have a forum in which employees can voice their concerns about the operations? Does the company have an equivalent forum for the local community?

The above examples demonstrate the wide-ranging aspects of human rights across business sectors and function. Some executives have criticized the "creeping" of human rights into business. However, this is a false characterization. Human rights have been an established part of international law since World War II, arguably since the Magna Carta (13th century). The increasing focus of human rights in business and human rights represents an awakening as to the increasingly sophisticated and complex ways that business can and has violated human rights.

Human Rights risks in Kazakhstan

In Kazakhstan, the private sector should focus on a number of human rights issues. Because of its Soviet past, many labour-related human rights have a strong tradition and thus are strongly protected.

Health, Safety and Environment

A number of fatalities in a mining accident has highlighted the **right to safe working conditions**. Safety still has some way to go and should continue to be improved (as a violation of the right to a safe working environment). Some basic safety issues are:

- Does every employee have personal protective equipment (PPE)?
- Has the employee received sufficient training to carry out his/her job?
- Does every employee have (and take) the required number of rest breaks?
- Do those positions which require heavy lifting have additional safety equipment and rest breaks built in?

Migrant Labour

Kazakhstan has attracted a significant amount of migrant labour for several of its large oil and gas projects. The building up of Astana over the years and the plans for the modernisation of many cities will continue to attract thousands of migrants to meet the required labour demand of these projects. However, the rules under which these migrants will be hired (and housed) are unclear.

- Will they have signed a contract with clear terms and conditions? Can they read the agreement and has it been explained to them? Do they understand the contract?
- Where will they be housed? How many to a room?
- What are the working hours, how many rest breaks will they have?
- Will they retain their own passport or will the company retain it for “safe keeping”. If the company retains a passport, then it is violating the right to free movement. Internationally, many would call it bonded labour.

Child Labour

Many companies would say that child labour does not affect their operations. However, potential exposure may be in the following areas:

- Has a company’s catering contractor procured fruits and vegetables from smaller farms, those usually employing children?
- Are dairy gathering points accepting milk from cows milked by children?
- Is a child’s employment preventing him or her from attending school?

Companies need to be aware of the unintended consequences when “handling” child labour, which usually entails sacking the child. Although this action rids the company of the problem, it leads to the loss of a family’s livelihood. Various options exist in handling the problem, usually the hiring of a sibling who is of age or even potentially a parent, should that be possible. That way, the problem is resolved, with the least amount of damage to both the family and the company.

Supply Chain Issues

A company will usually feel comfortable about the first level tier of contractors – those well-established Engineering, Procurement, Construction (EPC) contractors who have the manpower and money to handle large jobs. The economic spin-off for these large projects, particularly in the oil and gas industry, centres around local content – the procurement of local goods and services. Some supply chains are extensive, more than five layers separated from the main contractor.

As many companies go down the supply chain, some of the main human rights issues include:

- How much and how often is an employee receiving his/her pay? Is the employee receiving a “living” wage, able to support him/herself with his/her salary?
- How many hours does the employee work and what are his/her work conditions?
- Does its factory meet all local health, safety and environmental codes (particularly overcrowding and fire safety, i.e. multiple marked fire exits and fire extinguishers)?

Many companies trust their subcontractors, but in many instances, they possess little knowledge about what actually happens further down the supply chain. Often, they simply do not want to know. Unfortunately, many managers simply want their product delivered on time and on budget. This attitude could have grave financial and legal consequences for the company.

A main contracting company is not expected to be omniscient. However, it is expected to practise **human rights due diligence** (see part C below) for those contracts seen as potentially violating

human rights.

Private Sector support for the Ruggie Framework

Dozens of international companies and business and industry associations have embraced the Ruggie Framework because for the first time it outlines a company's human rights obligations. The private sector heavily participated in the Ruggie Framework process from 2005-2011 and that involvement has led to a Framework that is acceptable to business. The International Chamber of Commerce (ICC), the World Business Council for Sustainable Development (WBCSD) and some of the world's largest multinational corporations operating in Kazakhstan, e.g. ENI, Total, Chevron, Total and Arcelor Mittal have embraced the Ruggie Framework and are integrating human rights into their policies and operations.

Additionally, hundreds of companies from around the world have joined the United Nations Global Compact, a platform that promotes responsible business. These companies (e.g. Kaz Temir Zholy, Kazkommertsbank, Samruk Energy and KazMunayGaz) have signed up to the Global Compact's 10 principles, which address human rights, labour, environment and anti-corruption. Six of the ten principles are related to human rights:

Human Rights

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that 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.

With an identified and accepted framework, companies should follow their competitors and implement a human rights strategy.

B. Implementing a Human Rights Strategy

Implementing a human rights strategy requires leadership, time and budget.

A CEO's leadership and vision will ensure that the human rights strategy receives the required manpower and budgetary resources. The CEO's "tone at the top" is crucial for any change process – arguably more so for human rights given the reticence of some in the private sector. A human rights working group, consisting of senior leaders from human resources, contracting and procurement, health, safety and environment, legal, social performance and security should be created. **The working group must incorporate those in the business and not be seen as a corporate headquarters-run exercise.** Business involvement will also ensure that there is buy-in to implement the strategy and that it accurately reflects the potential human rights issues.

The working group should meet more often at the beginning and, once a workplan has been established, meet less frequently. Budget may involve site visits to understand operational impact, the retaining of external expertise, training of relevant staff as well as communicating internally to staff about the human rights relevance for the company.

In addition, that leadership will send a clear signal to the entire organization that human rights

should be taken seriously and could dramatically affect the company's well-being. The CEO's vision also includes the external world, where awareness of human rights can bolster the reputation among potential customers and peer companies. It may also lead to the company being the "company of choice" within a sector.

Leadership and vision cannot do it alone though. Action and follow-up in a host of areas will ensure that policy gaps are filled and new practices become the rule, not the exception.

The Importance of External Expertise

Regardless of what is needed, companies should take in short-term external expertise, allowing companies to learn from others about strategy implementation. The retaining of an external expert also prevents the company from cutting corners and appearing to have implemented a strategy focusing more on public relations and less on fixing human rights gaps. There is a conflict of interest in trying to undertake this work, as companies may downplay the seriousness of any perceived violation. Finally, an external consultant will also provide legitimacy to the company's human rights strategy should a non-governmental organization criticize the company's practices.

Getting down to business – the State of Play document

Once the working group is established, it is important to understand where the company is and how far it needs to go to implement its human rights obligations. Maybe the company has a strong background in labour practice, but given the nature of its business, it is concerned about its supply chain. Perhaps it is acquiring a business where data privacy is crucial (i.e. mobile service provider). A "State of Play" document is not intended to be an in-depth examination of the company's problems. It outlines the relevant functions for human rights, gives a quick overview of the policy and practice and provides recommendations on where to begin addressing changes in policy and practice and map out a strategy to fill them. This mapping of the potential risks and issues and prioritising them will allow a company to understand where it needs to concentrate.

Communication and Training

Internal

Communications are a crucial aspect of incorporating human rights into a company's policy and practice. While a working group will have the mandate to implement the strategy, a majority of company employees may not understand the reasons for changes and how the employees should implement the strategy.

The Working Group, having examined its areas of exposure, may present human rights in different ways, depending on the audience.

- An internal email from the Chief Executive about the creation of the human rights working group and the intended direction for the company.
- Create a 10-12 slide presentation (with notes) which provides an overview of the Ruggie Framework, what it means to the company and the strategy (and timeline) that the company has chosen. This can be made available to management teams to present in their regular meetings. An additional slide presentation could examine another company's human rights challenges.
- Create 6-8 human rights dilemmas around the company's portfolio and exposures. This can help provoke thought among managers who will have to interpret and implement adapted policy changes. Dilemmas may not be resolved all of the time, however when properly written they provoke thought and discussion and place the dilemma in a human rights context.

- Once material has been presented, create a brief quiz (10-15 multiple choice questions) about human rights, which would allow the employee to correct him or herself. **Quizzes should not be turned into management.**
- Senior Management can potentially host “lunch and learn” updates on a quarterly basis in which progress is reported and staff questions are fielded.
- Use United Nations Human Rights Day (10 December) as a way to flag the issue and keep it front and centre. It is also a very convenient time to develop a strategy for the coming year.

Some companies have annual surveys, questionnaires of 40-50 questions, about the company, its business direction, confidence in its management, and questions around working conditions. Inserting a few questions about human rights will provide a good overview of employee sentiment:

- “Is the adoption of a human rights strategy moving the company in the right direction?”
- “Have you been able to see the policy and practice changes since the adoption of the strategy?”

These types of activities will increase the company’s human rights knowledge. Some functions and staff will require additional training (see due diligence section below) to allow them to fully understand the human rights implications of some decisions. Examples could include:

- New Business Development – those at the forefront of creating business for the company will have to understand the complexities and potential liabilities around human rights, largely through the due diligence and impact assessment process.
- Legal Function - understanding of court jurisdictions and the basis of similar cases in the company’s business.
- Human Resources – understanding the implications of migrant labour and the right to join a labour union (and understanding the subtle ways of preventing freedom of association).
- Security – of companies with large installations (e.g. a refinery or factory), a fuller understanding the “rules of engagement” and using “appropriate force” for trespassers should include specific training on the Voluntary Principles on Human Rights and Security (<http://www.voluntaryprinciples.org/>).
- Social Performance/HSE – the creation of a well-functioning grievance mechanism consistent with the Ruggie Framework, which allows local communities to lodge complaints which the company handles quickly and fairly.

External

Depending on the company’s history around human rights, it may or may not be pressed to communicate the adoption of a policy or the progress that it has made. Some companies have had such trouble around being accused of human rights violations that they have had to proactively communicated policies embracing human rights, but the practice on the ground has not kept pace with the rhetoric.

It is NOT recommended to externally communicate regarding the company’s progress, unless the company is confident of not only the required policy changes, but also that the practices on the ground have also been implemented. Having a policy in place is the beginning, not the end.

C. Human Rights Due Diligence

*“Naming and shaming is a response by external stakeholders to the failure of companies to respect human rights. **Knowing and showing** is the internalization of that respect by companies themselves through human rights due diligence”*
Special Representative John Ruggie

Moving from the visualisation of human rights to implementing concrete measures demonstrates a

company's progress. If a number of outstanding issues and questions arise in the course of implementation, then the policy changes may have to be revisited.

It is recommended to road-test the process of human rights due diligence in two projects, based on the most perceived need.

- **Existing project** to demonstrate how human rights can be integrated into a project's long-running operation.
- **New Business Project** to examine how new projects will consider human rights from a project's inception.

Understanding the concept

Human rights due diligence is the process of assuring that a company does not infringe on human rights in its business. The process involves the following:

- Human rights policy;
- Assessing impacts;
- Integration;
- Tracking Performance.

Due diligence's initial step is adapting current policies to be human rights aware. The second step of the process, assessing impacts, concentrates on the development of new projects and the examination of existing projects. Integration details the process where human rights becomes part of the company, just as corporate governance and environment issues have become part of a company. Finally, tracking performance allows the company to monitor progress

Similar to environment and corporate governance issues, human rights must also be integrated into the company and become part of the company's culture. The mainstreaming of these processes will ensure that a systematic, long-term approach to the subject has been undertaken.

Some of these processes will include a grievance mechanism and the hiring of the appropriate expertise, to ensure that human rights are considered in projects. The process will also include occasional adjustments due to legislation or the development of a new business (such as information technology) where right to privacy becomes a very important issue. Finally, companies should be ready to demonstrate – indeed “knowing and showing” – what measures they have taken to ensure the respect of human rights. The potential involvement of externals to “judge” the process will improve any strained relationships with civil society and will allow them to see the complexities of the business and the difficult decisions that must be made under a constrained time and financial framework. This demonstration, carried out in good faith and acknowledging imperfections, should pay off, not only in added financial value to a project, but also in a better reputation.

Thinking human rights risk

Human rights due diligence is a combination of art and science. However, it should not be viewed as an intangible concept either. In all company decisions, there is an examination of risk. The risk may be political, economic, financial, geological, or environmental. In calculating whether a company should pursue a project, these types of risks are lined up and examined. Human rights are exactly the same. Explaining human rights to an engineer is easy – s/he understands risk. What do they do to reduce that risk and what do they do to eliminate it altogether? Some operations will see various risks, value them and see whether the project is still economic. If a company pollutes, it will have to pay. If a government's tax policy changes, then the company will have to pay more.

For human rights due diligence, a company must adopt a different mindset. Some employees must put themselves in the shoes of those that could be affected.

- || A local community may be exposed to significant amounts of dust and noise through a significant increase of road traffic. How can that be changed? Maybe only during the day and during school times to prevent any child from being hit as he or she goes to school?
- || A subcontractor may not pay his own employees a living wage or have safe working conditions. Can conversations be started with the employees about fire safety, rest breaks and paperwork of its main subcontractor? Are they hearing anything “on the street” about how the subcontractor treats his staff?

In many instances, a company will have NEVER thought about any of these issues. Slowly, an understanding of how a company really operates locally will begin to take root. This understanding should put the “theory” of values into practice.

Human Rights cannot be violated and then “corrected” by paying off a local community. In the past, some companies have violated rights of local communities and then “corrected” the violations through social investment. Violating a community’s right to information (not being transparent about the potential impacts of an operation) and then building a school does not change the fact that the company violated a community’s right to information about how much a factory may pollute.

It is not all negative

Managers view human rights as an arduous task. However, as the process starts, many managers will be pleasantly surprised how much they are already contributing to human rights. Some examples include:

- Providing a safe working environment
- Actively pursuing an anti-discrimination policy
- Providing communities with the opportunity to comment on a project that may affect them
- Allowing an employee to take more time off after a birth in the family

Being systematic

Understanding due diligence requires a systematic approach. Companies usually carry out human rights due diligence examining the potential human right or the business.

Graphing the Core Conventions and then examining all aspects of the business makes for a large table (e.g. in Microsoft Excel), but it allows little room for error. Carrying out due diligence for child labour (ILO Convention 182 on Child Labour) could be approached with following table:

Aspect of Business	Likelihood	Proof	Follow-up required	Addressed systematically?
Direct Employees	None	All birth certificates on file	<input type="checkbox"/> Potentially include in human rights awareness raising campaign. <input type="checkbox"/> Human resources to sensitize contracting and procurement about risk	None required
Contractors	Low	In contract	<input type="checkbox"/> Annual discussion with main contractors,	<input type="checkbox"/> Clause included in standard template

			<input type="checkbox"/> clause improved and made applicable to sub-contractors, <input type="checkbox"/> potential audit rights discussed, <input type="checkbox"/> slide presentation about identification. <input type="checkbox"/> "At risk" contractors given 3 months to comply	effective now, <input type="checkbox"/> awareness raising campaign for company's senior managers <input type="checkbox"/> human rights now part of bonus calculation
Products – does the company sell trinkets made in countries where child/forced labour exists?	Unclear – source of product may not be known.	To be established	<input type="checkbox"/> Identification of seller and source of product <input type="checkbox"/> What measures does the company take to ensure that child labour is not used? <input type="checkbox"/> Senior management to put supplier on probation	<input type="checkbox"/> If no progress after probation period, potential dropping the contract and informing authorities.

Nearly all companies will feel confident that they do not employ under-age children and point to a policy as justification. More often than not, even a basic examination of that policy will raise questions about the policy's implementation. Even if the company is confident that child labour does not exist, a number of risks are involved in the supply chain. Catering is one part of the business that does employ seasonal workers, so this should be examined. Another aspect of a company's impact on child labour involves what it sells. Maybe it is selling trinkets predominantly made in China. While many well-designed products come from China, a risk exists that very inexpensive products (such as balls, toys, flashlights) at a petrol station could be produced by minors. In many instances, other than the fact that it says "Made in China", the factory source is uncertain. Employees should be realistic in evaluating risk and take appropriate action.

1. Policy Adoption

Once the State of Play document has been produced, a range of policy issues will likely be exposed. How these policies are introduced and under which company function depends on the company's structure.

Where do human rights sit in the company's structure and its culture? Some options include:

- Compliance - overseeing wider policies on bribery and corruption, risk management and interacts with a range of regulatory authorities.
- Ethics - interpreting human rights as a moral issue, potentially with the Non-Executive Board
- Health, Safety and Environment/Sustainable development - mixing human rights with environment, social performance and health and safety.
- Legal department - handling the significant number of court cases with which the company could be burdened.

Many smaller companies will have neither the broad footprint nor the required manpower to consider where human rights are based. For smaller companies, it may be a CEO's advisor or for many companies in the **Corporate Governance/Compliance** office. The luxury of smaller companies is that they can implement a human rights strategy faster than a large company.

As mentioned earlier, a number of policy documents will have to be changed. These documents may include a values statement, business principles, compliance and risk manuals. How these documents are changed is quite important. Many companies will have core values, usually "respect

for others” or similar is one of those values. Royal Dutch/Shell has honesty, integrity and respect for people. In addition, a company should examine the standard agreements and contracts that it uses in doing business. These contracts are usually in the form of templates, which should be updated to include specific references to human rights documents that the Ruggie Framework cites as affecting business, notably the ILO Core Conventions relating to child and forced labour and discrimination and potential audit rights. In doing so, the contracting company should be made aware of the changes and what that specifically means for the contracting company.

Mainstreaming respect into practical policies and documents can be tougher than one thinks. The incorporation of human rights into the due diligence process is the embodiment of practical actions taken towards implementing these policy decisions (see below).

Many companies will have a “hotline”, on which company employees are able to anonymously report unethical behaviour inside the company. Most hotlines concentrate on unethical behaviour relating to compliance, corruption and conflict of interest issues. Most hotlines usually are for internal purposes – one employee whistleblows another employee’s questionable behaviour. Such hotlines can be extended (with appropriate training of personnel) to receive human rights grievances, both within the company and outside the company.

2. Assessing Impacts

For all major projects, an environmental and social impact assessment (ESIA) is required. The Ruggie Guiding Principles seek company inclusion of human rights impacts into their projects. ESIA’s typically have several consultants examining environmental and social impacts over a project’s lifetime, consulting with communities, understanding livelihood issues and making recommendations how the positive impacts can be increased and negative impacts decreased. With the Guiding Principles, companies should now have the human rights expertise to examine the project’s human rights impacts. A number of issues and options related to human rights and impacts assessments exist.

Project “scoping document”

Before a project is undertaken, a project scoping document should be written which will examine some of the main issues. A scoping document, written by a general expert on the subject and not usually longer than 15-20 pages, will help the company understand the project’s potential impacts and allocate the appropriate time and budgetary resources for its development. For oil, gas or mining projects, environmental, social and human rights issues will exist. The human rights issues may be right to information and right to a clean environment, amongst many others. For a smaller city-based project involving textile production, the issue may be less environmental and more supply chain issues concentrating on safe working conditions. The scoping document will highlight these issues, ensuring that they are examined more thoroughly during the impact assessment process.

External expertise in Impact Assessments

Many companies will have the automatic tendency to include a human rights expert from an environmental consultancy. Currently, many consultancies do not however have sufficient expertise to evaluate human rights impacts. An external human rights expert should be used. This expert will not only do a better job, but will provide more legitimacy to the project. It is highly recommended to have a company employee “shadow” the expert during the impact assessment so

that the employee can bring some of that expertise back into the company. Having an external human rights expert meet with senior management or lead discussions about a company's impact on human rights will equally spread knowledge and understanding throughout the company, ensuring that more than just one pocket of expertise exists. As the employee's capacity to understand human rights impact increases, the company could potentially use its own employee for detailing a future project's human rights impacts.

Human rights as a value

The ESIA process and its outputs are large empirically based. Number of communities, their livelihoods, and parts per million (PPM) of a chemical's release into the atmosphere will be detailed. The project's geography will also be specific – e.g. a 2500 square metre camp or a one-kilometre pipeline corridor. However, human rights impact must be viewed through a different lens. The potential reduction of a farmer's grazing area (or his/her property) may be seen as an impact, but could include a violation of a right to an adequate standard of living and the right to own property. If a company dominates in the *lingua franca*, then a minority group's rights to their own culture may be violated. The company will have to take pro-active measures to ensure that that culture does not fade out because of its presence.

Human rights language and the audience

Human rights can be a very emotive term, provoking evocative responses from companies as well as governments. Human rights should not be mentioned to all audiences. Consulting local communities about a project's impacts will bring far more information than "Do you think this company or this project will violate your right to an adequate standard of living"? It is important to have the relevant expertise in the room to translate project impacts into a rights-based lens. Consulting with government will be slightly different, but likely include the same lack of comprehension. Speaking to a Head of Department about human rights will not be nearly as productive as discussing environmental, social and health impacts.

Consulting with whom?

The Ruggie Framework makes it explicit to speak with rights holders, those whose rights are affected by a project. These rightsholders are often easily identified in a factory or in a community. On some occasions, it will be less clear. Large projects usually require migrant labour. Although this is obvious, with whom should a company consult? In situations like these, consulting with international organisations (International Labour Organization) or NGOs familiar with the subject will be an important stakeholder in understanding the impacts of these groups. In addition, sex workers are usually part of large infrastructure projects. Companies need to also be aware that speaking with some representative organisations may not always be the best option. Many international NGOs have purported to represent local communities, such as oil and gas drilling in remote regions of Russia or Alaska in the United States.

ESIA timing and integration

Unlike human rights impact assessments, ESIA's will have regulatory requirements with time restraints. Integrating the human rights impacts into their ESIA from the very beginning is advisable and will save a significant amount of work in coordinating consultations and mitigation actions in the future. Organising two separate processes may fatigue stakeholders. They may equally

question the project's professionalism. Managing two processes will erode time and money. In addition, the ESIA, as a statutory requirement, will have a number of actions that must be completed for the project to advance. The human rights impacts do not have to be submitted to the regulatory body. However, it may be good to include human rights into the company's ESIA mitigation plan, so that they can be actioned.

3. Integration

The long-term effect of a human rights strategy will be the integration of policy and due diligence procedures into company processes. If human rights are well integrated, then they will become a part of the company's DNA, allowing them to become as natural as anti-bribery and environmental protection measures. The company will also see the value of hiring those with human rights expertise. Below are a few ways to ensure that integration actually occurs.

Incentives and disincentives

Some employees will not work immediately for the common good and it may be necessary to incentivise the employee to work harder. Adding "softer" issues such as human rights or social issues into bonus calculations is a good start. There is not only a moral issue around human rights implementation, but also a hard-edged financial aspect to respecting human rights, which in the long run, will ensure a more sustainable and financially successful project. Equally important, disincentives should be introduced. Sending a message that violating rights in the name of financial gain will not be tolerated and will be dealt with swiftly and harshly. The same policy exists for anti-bribery and corruption.

Recruiting

Human rights will not be at the top of mind for many recruits. However, there are subtle and important ways in which the subject can be discussed, without overtly mentioning it.

- A petroleum engineer may be asked about the impact reduction of drilling a well near a settlement.
- The interviewer could ask a project manager applicant what would be the best criteria for a grievance mechanism/hotline.
- An applicant for a human resources position could be asked what the company can do to facilitate collective bargaining.
- A company should never ask an applicant about starting a family, which could lead to discrimination because of additional costs for maternity leave.

Human rights knowledgeable employees should be spread around the organisation and not just in one "human rights" department, where they will have little access to the business. To facilitate company-wide integration, human resources should formalise the establishment of a human rights network to gather interested employees to share experience and broaden their network.

Training

Training can take several forms – internet-based, external presentations or through project walk-arounds. One of the most informative internet sites on the subject is the Business and Human Rights Resource Centre (www.business-humanrights.org, English-based). Allowing an employee a structured approach to learning from websites, as well as the dissemination of the learnings to

various functions will be extremely beneficial to an employee's understanding, his/her morale and productivity and the company's bottom line. **It is a very cheap training approach.** Neutral external expertise can be brought in on occasion to "test" and monitor company progress. It can also expose company staff to another world rarely seen and little understood. Finally, examining a project site will assist those responsible for human rights to examine these issues first hand. Walking through a factory floor may bring up fire safety issues, workplace conditions and sufficient rest time. As earlier mentioned, creating human rights dilemmas– how would you balance company profit with a potential human rights abuse? – also helps employees to think critically about the subject.

Grievance Mechanisms/Hotlines

The third pillar of the Ruggie Framework is the establishment of a grievance mechanism, one that is transparent, timely and effective. Many companies have avenues for their own personnel to lodge complaints, but almost all do not have an equivalent for those outside of the company. Many companies have argued that external mechanisms are too much work and will lead to a significant number of complaints. A spike of complaints may occur when the mechanism is first introduced; however the number usually drops dramatically after a brief period of time. If the complaints continue, then the company has a systemic problem. Going forward, a well-working grievance mechanism will save significant amounts of time and cost, acting as an early warning system for companies. As the old adage goes- "a stitch in time saves nine."

4. Tracking Performance

After several months, differences in policy and practice should be seen. An external consultant should measure these changes to provide an honest interpretation of how well the company has implemented the strategy up to that point.

Data are an important part of the human rights transformation. They provide an understanding of where a company started and where it needs to go. Below are some issues that will need to be tracked:

- What percentage of new contracts has relevant human rights treaties reference (no forced or child labour)? New contracts should be pretty straightforward. The long-standing contracts may need to be renegotiated or be changed at the start of the next year. What is the timeline for all contracts to include the appropriate references?
- How many managers have received training in human rights and business? Is training part of their development plan and are those positions with human rights risk filled with capable personnel?
- How many existing operations have established grievance mechanisms? Are grievance mechanisms mandatory for all new projects? Is there a policy for non-judicial grievance mechanisms? What is the timeline for all operations?
- How many complaints has a company operation received? Sometimes no complaints are not necessarily an indication of a well-run operation – the community may not know about the grievance mechanism or filing a complaint may be too cumbersome.

Professor Ruggie has pointed to the need for companies to "know and show" when it comes to human rights. It is not only understanding the subject, but being able to demonstrate measures taken to respect human rights.

Complex Decisions

A number of thorny issues exist around the implementation of human rights and business, given various aspects around jurisdiction, lack of awareness of supply chain issues and handling sensitive issues with the host government.

Contractor Leverage – Changing sub-contractor behaviour

Company executives will hesitate to question the source of a product or to even broach the subject with a sub-contractor. While not raising the subject with a subcontractor may have been a legitimate excuse a number of years ago, it is now unacceptable with the level of the problem as well as the negative impact on a company's reputation. A case in point is Apple, which admitted to child labour in one of its subcontractors in China in late 2012. Responsible companies have no affiliation with child labour. If child labour is found, then it is important to address it, using the *Impactt* Guidelines, a link to which is in the Index.

How large is Company A's contract with Company B that may be violating a human right? How much influence does Company A have? If Company A's contract is 2% of Company B's business, then it has very little influence. However, if Company A's contract with Company B is 30% of Company B's revenue, then Company A has **significant** influence, which can lead to a change in behaviour.

Senior managers may hesitate to use leverage. "We cannot interfere with their business!" Or "how can we afford to interfere with their policies and practices?" The short answer is "how can you NOT afford to become involved?"

One potential format is an annual gathering of a company's 10 largest contractors to discuss the company's human rights strategy and the measures that it is taking to respect human rights. An overview of the Ruggie Framework and what it means for the contractors would be beneficial to the contractors. This will provide an opportunity to understand more about the issues that the contractors face and allow for initial thought about resolving some thorny issues.

In addition, a subtle change in the contract template referring to the Ruggie Framework, a specific clause on child and forced labour, that the company has a policy and it is rigorously enforced, as well as the potential to audit will likely bring about a change in behaviour. Inserting human rights as an element to pre-qualification tendering will also change a contractor's suspicious behaviour.

Not everything will be resolved overnight; however, the introduction of a timeline for when a contractor is expected to be human rights-compliant should be a required goal. It will also bring a taboo subject out into the open.

Avoiding Complicity with Government

Companies with an asset or a project that is important for a country can find themselves complicit with a government. Complicity refers to a company's indirect affiliation with a state's human rights violations. Some examples include:

- the government demolishes a village and its inhabitants' livelihood without compensation to make way for large infrastructure (e.g. a refinery or a road),
- law enforcement agencies violate freedom of expression of a project's opponents,
- security forces, called by the company to provide assistance in securing infrastructure during a protest, use excessive force in handling protesters, resulting in injuries and death.

In these instances, it is important that the company initiate an honest conversation about

government actions and what responsible and appropriate measures can be taken. Stark demands that the company wants to avoid "being associated with a country's human rights abuses" will not be productive. The above situations could be diffused and dealt with in the following way:

- For the large infrastructure example - "have these people been properly compensated and resettled according to international standards or society expects?" "How can we demonstrate that?" If the company is not willing to properly compensate them, then the company will have to compensate the villagers.
- For opposing a project - "how can we ensure that these people have their say and convince them that this project will be good for the community?"
- For the security example - "how can we handle this situation without anyone getting hurt?"

The "social" licence to operate - societal or communal approval of a project - is crucial. Being heavy handed with protesters or stifling (or being perceived to stifle) dissent will not help the project long-term. This approval is nearly as important as the "standard" licence to operate, the countless permissions and project approvals provided by various government ministries and agencies.

If a company has more than a 50% stake in the project and is left to operate the project, then it can use international standards. A joint venture with a State-Owned Enterprise (SOE) which has not implemented a human rights strategy could lead to difficult decisions. Operating the project with a 30% share will be more difficult and will require negotiation with the SOE or the Government body.

International vs. National Standards

Companies working across jurisdictions find it difficult to comply with the number of laws and regulations. In some countries, the government will prevent human rights from being violated. Examples of persecuted groups may include women, indigenous groups and Roma. For these types of situations, the Ruggie Framework notes:

In all contexts, business enterprises should: (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate; (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;

*Commentary: Although particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate. Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights **to the greatest extent** possible in the circumstances, and to be able to demonstrate their efforts in this regard (Ruggie Guiding Principles, paragraph 23).*

Although it is can be a long process, spending time to examine the possibilities around leverage, thinking creatively about following international human rights standards, as well as avoiding any appearance of complicity with the government will prevent significant financial and reputational damage to your project and your company.

Conclusion

This document has provided a blueprint for incorporating human rights into a small or large company. After examining its type of business and its footprint, each company will begin to

understand the extent of its human rights obligations and the gaps that need to be filled.

The transformation of a company's policies and practices can take months. In one European-based multinational, it has taken years (and a number of very costly court cases) to take the subject seriously. Beginning the process with a "clean slate" and without pressure from externals will allow a company to be thorough, creating a valid strategy for many years to come. Rushed strategies can provide conflicting advice as in the case of whether to follow national or international standards. It can also divide the company, with Corporate viewing human rights as an asset and the business seeing it as another barrier to business.

The development of a policy statement, assessing impacts, integrating and tracking performance is not an overnight procedure. However, when followed systematically, it can lead to big improvements in a short time and lead to a financially healthy company in the long term with a more productive and dedicated workforce. A policy alone does not constitute sufficient evidence that a right is not being violated. There must be change on the ground.

February, 2013

Annex One – Relevant Human Rights Documents and Links

Links

Business and Human Rights Resource Centre - www.business-humanrights.org/

United Nations Global Compact - <http://human-rights.unglobalcompact.org/>

United Nations Office of the High Commissioner for Human Rights *Human Rights Translated* - <http://www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx>

International Council on Mining and Metals - <http://www.icmm.com/page/225/business-and-human-rights>

Oil and Gas Industry Association for Social and Environmental Issues IPIECA - Human Rights

Training Toolkit - <http://www.ipieca.org/focus-area/human-rights>

Danish Institute for Human Rights – www.humanrightsbusiness.org

Impactt Operational procedures for the remediation of child labour in industrial contexts - <http://www.impacttlimited.com/resources/resources-part-3>

Documents:

Universal Declaration of Human Rights (in Russian) - <http://www.un.org/ru/documents/udhr/>

Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect,

Respect and Remedy' Framework (in Russian) - <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-russian-21-mar-2011.pdf>

Annex Two - Human Rights Reference in the 2011 Updated OECD Guidelines for Multinational Enterprises (section 4)

Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Commentary on Human Rights:

36. This chapter opens with a chapeau that sets out the framework for the specific recommendations concerning enterprises' respect for human rights. It draws upon the United Nations Framework for Business and Human Rights 'Protect, Respect and Remedy' and is in line with the Guiding Principles for its Implementation.

37. The chapeau and the first paragraph recognise that States have the duty to protect human rights, and that enterprises, regardless of their size, sector, operational context, ownership and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfil their human rights obligations, and does not diminish those obligations.

38. A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognized human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles.

39. In all cases and irrespective of the country or specific context of enterprises' operations, reference should be made at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and to the principles concerning fundamental rights set out in the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work.

40. Enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all rights should be the subject of periodic review. Depending on circumstances,

enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities; women; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law, which can help enterprises avoid the risks of causing or contributing to adverse impacts when operating in such difficult environments.

41. In paragraph 1, addressing actual and potential adverse human rights impacts consists of taking adequate measures for their identification, prevention, where possible, and mitigation of potential human rights impacts, remediation of actual impacts, and accounting for how the adverse human rights impacts are addressed. The term 'infringing' refers to adverse impacts that an enterprise may have on the human rights of individuals.

42. Paragraph 2 recommends that enterprises avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. 'Activities' can include both actions and omissions. Where an enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts.

43. Paragraph 3 addresses more complex situations where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity. Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship. Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. 'Business relationships' include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.

44. Paragraph 4 recommends that enterprises express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise; (ii) is informed by relevant internal and/or external expertise; (iii) stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise.

45. Paragraph 5 recommends that enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change

over time as the enterprise's operations and operating context evolve. Complementary guidance on due diligence, including in relation to supply chains, and appropriate responses to risks arising in supply chains are provided under paragraphs A.10 to A.12 of the Chapter on General Policies and their Commentaries.

46. When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the Guidelines recommend that enterprises have processes in place to enable remediation. Some situations require cooperation with judicial or State-based non-judicial mechanisms. In others, operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning. Operational level grievance mechanisms should not be used to undermine the role of trade unions in addressing labour-related disputes, nor should such mechanisms preclude access to judicial or non-judicial grievance mechanisms, including the National Contact Points under the Guidelines.