

Chapter Three: Orienting and Embedding – Internal Company Management of Business Relationships

Human rights are firmly on the corporate agenda but compete for management attention in a crowded field of issues relevant to business relationships.

Almost all the companies that were involved in the research stressed that many issues compete for the attention of senior and middle managers. This highlights the difficulty of getting management to focus on one sustainability-related issue when so many other pressing questions also require action (climate change, the economic crisis, corruption, transparency, biodiversity loss, water shortages, diversity, minorities). Several respondents acknowledged that external factors may be decisive in pushing human rights up the management agenda: shareholder resolutions, a crisis or past crisis, investor attention, unwanted media interest, innovative experiments revealing that human rights policies save costs by reducing delays, etc. As one respondent observed: “the issue is to move human rights from being seen as an obstacle to growth to being seen as an enabler”.

Companies noted how complex it is to start a significant new business relationship. It often involves a range of departments, the completion of a detailed approval process, and a variety of significant risk and issue assessments. Transactional due diligence check lists can run to hundreds or thousands of pages, covering business development, regional analysis, legal, tax and accounting matters, the environment, health and safety (EHS), human resources, security, and procurement. Many external experts may be involved in the transaction, including law firms, investment banks, security experts, political analysts, environmental and social specialists, and topic specialists. How do social issues, and specifically human rights, fit in this crowded space? As one respondent remarked, “on the 1000 page questionnaire, it is hard enough to include legal and regulatory risk, let alone things that aren’t always requirements like social considerations”.

The integration of human rights considerations into business relationships benefits from clear leadership and coordination of knowledge and expertise across relevant functions in the company.

Several of those interviewed felt that it was crucial to appoint a focal point who is able to find human rights information, promote the human rights agenda, and track its relevance across many company functions. Numerous staff may be involved in the initiation of business relationships (business development, audit, legal, environment). Responding to different drivers, they may work at cross-purposes. Though many of the risks these teams are managing have underlying human rights aspects, this may not be apparent to them.

No “one size fits all” approach is appropriate for integrating human rights into company processes. Most respondents believed that achieving coherence across policies and across relationships, as the Guiding Principles recommend, remains a challenge that companies will not overcome without a wider array of tools, including: more human rights champions inside the company, a sound mix of training, tools, incentives and oversight systems, and their application to both the company’s operations and its relations with partners. Respondents noted that while business development teams need to understand the relevance of social issues, sustainability specialists also need to be sensitive to

commercial drivers. Several said that integrating human rights is not a unique case. Achieving vertical and horizontal integration and coordination is a structural challenge for complex organisations in many areas.

Procurement and sourcing teams may include team members (sometimes with their own legal and support staff), who follow supplier relationships from start to finish. However, few companies establish similar “cradle to grave” arrangements for the other relationships covered in the research. For joint ventures, or mergers and acquisitions, companies may appoint a business development team to find and develop new relationships, or a specialised counsel to initiate mergers and acquisitions or joint ventures; but they hand over the relationship once it is underway. Some human rights issues, such as discrimination, are well known to a wide range of corporate lawyers. Beyond these more familiar issues, different experiences with legal counsel were reported. Some companies take care to appoint lawyers who are familiar with human rights, while others have legal teams who feel that human rights do not present a risk, provided the company complies with national laws; they therefore leave the management of human rights issues to others. Nevertheless, companies need to be cautious in understanding the gaps between national law and international human rights standards as it is often around those gaps that key challenges concerning the corporate responsibility to respect appear.

Current contracting processes may cause discontinuities in human rights risk management and follow up. Those who negotiate with potential business partners may not be those who implement operations. The negotiating team may address human rights issues when it opens new business relationships, and include them in contracts, but its approach may not always be aligned or incentivised to be aligned with the team responsible for mitigating risk or managing the business relationship. Achieving a consistent approach, and tracking performance as relationships are handed from one team to another, requires clarity and consistency between teams.

Companies prefer to bring human rights into business relationships by embedding them in existing management systems.

Respondents indicated that their companies clearly prefer to integrate human rights into existing company systems, including those relevant to relations with business partners, rather than create stand-alone approaches. They perceived that by doing this it is easier to address human rights as part of routine business. Given the wide spread of human rights issues, their integration may affect a range of management systems in large and complex companies, including human resource systems, planning, environment, health and safety, risk management, compliance, sales, and procurement.

At the same time, several respondents noted that companies need to explain to their staff how human rights fit within their management systems, if staff are to know and show that the company is addressing human rights issues that arise. Innovation and sensitivity to change were also considered important. As one participant commented, a balance needs to be struck between consistent compliance with management procedures, incentivising innovation, and developing a capacity to manage emerging human rights challenges.

Many respondents recognised that the vast missing middle – staff not in departments or functions that have become familiar with and skilled in human rights – is a key target for companies that want to respect human rights, including in their business relationships. They raised questions about the extent to which such staff truly need to understand human rights and appreciate what human rights mean in practice – beyond questions in a checklist. Some noted that, if human rights are integrated in existing management systems well, companies do not need to provide specific human rights training to the majority of their staff. Skills-based functional training can equip them to implement company processes. More extensive training can then be provided to a smaller core team of staff and leaders who need to understand human rights policies and their implications in more detail. However, as several companies noted, without simple levels of specific training, staff may not be able to identify emerging human rights issues that may arise in their local context. Other companies recognise that, even when human rights are deconstructed in functional-specific instructions, it is still a challenge to understand how they interact with business and, by extension, business relationships. Some provide broader awareness-raising programmes to increase staff buy-in.

All respondents recognised that training is needed, and some companies are planning or have started to train staff. It is recognised that training needs to be adapted to specific audiences. A tailored approach focused specifically on human rights reduces the difficulty of integrating as complex a subject as human rights in the work of organisations that have tens or hundreds of thousands of staff.

Integration within Management Systems

A management system assists a company to plan, do, check and act in order to ensure the effectiveness of its action, and improve or alter its performance and approach. Listed below are some of the internal systems that companies commonly use to integrate human rights, recognising that individual companies will tailor their approach to their needs:

- Overall risk management system.
- Human resources management.
- Environment, health and safety management system.
- Security management system.
- Procurement management system.
- Sales procedures.
- Community Relations / Public Relations.

Specific fields of operation may generate an additional plethora of specific planning frameworks, operating procedures, standards, performance indicators, assessment processes and feedback loops that are relevant to embedding human rights in company systems.

Embedding new concerns across management systems operating in tandem is inherently complex for many issues and not just human rights. It requires horizontal integration (ensuring coherence across policies and procedures so that staff in a diversity of departments and functions receive consistent instructions, understand their implications, and are trained and incentivised to act in ways that support the company's policy), and vertical integration (clear definition of who needs to be involved from headquarters to field level and up again to make action on human rights effective). These two objectives require alignment of strongly embedded management system structures. At the same time, the successful integration of new concepts can produce effective action and aligned decision-making across a company.⁵⁴



54 See also: Arpel, «Corporate Social Responsibility Management System Framework» (2011), p. 2-6, at <http://www.arpel.org/library/publications/group/corporate-social-responsibility-management-system/>, which served as the basis of the chart.

There is a recognition that building capacity amongst business partners to manage human rights, rather than just to comply with codes of conduct, is a more sustainable approach.

Just as companies are working on integrating human rights into their own management systems and developing relevant capacity, there is a clear trend in supporting business partners in developing and evolving their management systems and capacity. Participants generally agreed that, in the long run, their companies will manage human rights-related impacts associated with their business relationships more durably if capacity is built in all relevant areas, both in the company and in business partners. At the same time, many business partners have low awareness of human rights issues, and companies recognise that they need to translate the Guiding Principles into specific policy documents, and establish mechanisms to measure and track the performance of partners with whom they have relationships, in order to know and show that they are respecting human rights and meeting expectations.

If companies send conflicting messages to their partners about their human rights expectations and requirements, this undermines the commitment of both parties.

Several respondents drew attention to conflicts that had arisen because companies had competing priorities or their corporate priorities differed from their performance incentives. For example, procurement departments are often incentivised to select business partners who offer the lowest price, and they do not necessarily take account of their company's sustainability requirements, including its human rights policies. In consequence, companies communicate conflicting expectations to their business partners and may undermine their own policy commitments. Some companies have taken steps to address such conflicts. Several apply two sets of criteria when they select business partners. To ensure that price does not automatically trump other considerations, one focuses on quantitative and the other on qualitative aspects, enabling the company to take its different requirements more fully into account. (See Chapter 8 on Suppliers and Service Providers).

Outside procurement, it is less clear what companies are doing to remove internal inconsistencies of practice regarding human rights. One company lines up personnel performance incentives with broader company policy, linking bonuses for management staff to broader EHS performance. Another is starting to consider the impact of its business practices on the human rights performance of its business partners, by examining, for example, the discriminatory effects of its bidding procedures. But, as the first *State of Play* report noted, this is recognised to be a challenge.⁵⁵

55 See footnote 19.

Faced by vast and complex value chains, companies constantly need to prioritise their investments of time and resources. Some are developing internal processes to ensure they give appropriate attention to human rights.

A key challenge is to reframe risk assessments, changing their focus from internal to external, in order to focus on adverse impacts on people; most company risk assessments highlight risks that a company's actions and relationships pose to the company rather than to others. A start has been made in re-focusing the risk lens in some relationship types (for example, customers, joint ventures and supply chain). A few companies reported that their supplier screening programmes have started to look more deeply at areas, sectors or suppliers that present higher human rights risks. However, they recognised that such initiatives can generate "counterintuitive" results where procurement systems have traditionally been driven by volume and price alone and that therefore may take time for staff to adjust to. In some cases, companies are changing their approach to a broader range of relationships, including customers and joint ventures.

In deciding which suppliers to focus on, one company prioritises suppliers that are located in high-risk countries *and* industries associated with human rights abuses. One company is working with the Danish Institute for Human Rights to develop an explicit human rights evaluation grid for suppliers. At the same time, it is undertaking much broader evaluations of its suppliers and service providers, with the aim of developing a methodology that will enable it to rank suppliers that potentially present the highest human rights risks.

Companies that start by addressing human rights in their own operations can address the human rights performance of their business partners with greater clarity.

The research suggested that companies that have thought deeply about their own human rights impacts, and developed effective internal policies to address them, are more advanced in assessing their business relationships. This is because they have identified which rights may be most salient and steps that they can take to prevent or mitigate impacts; as a result, they are better able to avoid involvement with adverse impacts associated with their business relationships. They may better understand what questions to ask in the first place of prospective partners.

Companies are actively learning from their efforts to integrate environment, health and safety, and anti-bribery and corruption concerns in their management systems and business relationships.

Many companies reported that anti-bribery and corruption is a governance issue that they track through business relationships. In the last 10 to 15 years, the main driver for changes in corporate behaviour with regard to corruption has been aggressive enforcement of domestic anti-corruption legislation, with extraterritorial effect, reinforced by international OECD and UN conventions that have been instrumental in prompting effective domestic legislation. The companies noted that, to meet legal requirements and build a culture of compliance, they have put systems in place that

are often extensive and include their business partners. One respondent noted, “human rights feels like where corruption was ten years ago”.

Respondents also drew comparisons with EHS policies. Companies in industrial sectors noted that they often spent extraordinary sums on worker safety, because this has become an ingrained value. “Safety gets its own dimension because it is about the impact – one life lost is not okay” as one respondent noted.

Action in both areas is no longer a novelty but an integral part of a company’s ethos and systems. Anti-bribery and corruption concerns were translated quite rapidly into hard law, at national, regional and international level. US, German and UK anti-corruption laws all emphasise (to varying degrees) corporate compliance procedures, including anti-corruption due diligence and contractual provisions. (See box below.) Environment and health and safety, while also grounded in hard law, have taken a management approach, as companies have developed often extensive management systems. Which path human rights take, including potentially their own unique path, will depend on a number of factors, including a well-reasoned business case (see Chapter Eleven: Conclusion and Ten Themes for the Next Five Years).

Anti-Bribery and Corruption: Parallels to Human Rights?

A company convicted of bribery may face very serious penalties. This has a major influence on compliance. Large international companies increasingly adopt global policies and procedures based on the highest legal requirements (with small variants for specific countries, such as different monetary thresholds). As a result, companies have addressed bribery and corruption at all levels: senior management has issued clear instructions; the subject is included in personnel performance standards; specific due diligence systems have been designed; corporate approval systems require mandatory sign-offs; large investments have been made in tools and training and human resources (with one company noting it employs hundreds of compliance lawyers across the organisation).

Under UK law, companies prosecuted for corruption can argue that they had put ‘adequate procedures’ in place. In the US, this defence is a mitigating factor in sentencing. Issuing guidance on this matter, the UK government has set out six principles that should inform procedures designed to prevent the occurrence of company bribery. They contain elements that mirror the policies and procedures set out in the Guiding Principles: a policy commitment; involvement of the organisation’s top management; risk assessment procedures; due diligence; governance of business relationships; transparency and disclosure of information; communication and training; and monitoring, review and evaluation of effectiveness. Will the fact that companies are familiar with such processes, plus reputational risk and the threat of litigation, promote effective human rights due diligence?

Participants noted that the main challenge is not designing policy, but establishing an effective system that permeates throughout the business but does not cause unnecessary disruption to the business. One participant described a multi-layered approach:

- A clear **policy** on no corruption through or by business partners.
- **Screening** through IT-based tools. As a first step key data is entered on the due diligence questionnaire for a specific transaction. Based on this, there is a risk assessment performed in the tool with scoring containing topics such as previous experience, purpose of the relationship, nature and interaction with government officials, the Transparency International Corruption Index rating for the country, payment terms, etc. Scoring results in low/medium/high risk.
- **Risk categorisation** then determines the scope of the due diligence questionnaire. Without certain information or documentation the transaction cannot proceed. There are eight red flags in the system that lead to specific mitigation measures.
- **Approval** is determined by the risk category. There are different contractual requirements and monitoring rights depending on the risk category, with additional steps for higher risk. The final decision remains with the business team.
- **Periodic Review**. The due diligence is valid only for a limited period of time (2-3 years) and must be renewed thereafter.