

Business and Human Rights

MBA/ Executive Module

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1. What do you need to know & understand about Human Rights?

- Awareness of business impact on human rights
- Why is this part of a company director's responsibility?
- What are the implications of this responsibility?
- What are the main strategic & management issues for companies regarding human rights?
- Follow-up information sources

2. Relocating to lower cost country

A company plans to move its components manufacturing operations from its home (rich) country to a 'poor' country, where the government is negligent in its protection of the human rights of its citizens. The company is attracted by lower labour costs and lower employment, environmental and health and safety standards.

Assignment: *You are with a strategic management consultancy invited in to advise on risks of relocating overseas. What due diligence or risk analysis should you advise the company to do and what issues should you raise with them?*

3. Key questions

- What is a company for?
- To whom and for what is a company and its managers responsible?
- Why and how far should a company get involved in public interest issues, e.g. human rights?
- Leave it to market forces and rules of game or active company management?

4. Business case for managing human rights impact

- Market opportunities
- Reputation or brand risk analysis
- Social licence to operate; keeping ahead of the game in terms of regulation
- Successful NGO campaigns against the company or competitor companies
- Pressure from the increasingly influential responsible investment lobby
- Internal staff attitudes and concern regarding motivation, recruitment and retention.
- Leadership by enlightened senior management with a long term sustainable business model in view.

(4 minute interview with John Ruggie, see

<http://www.youtube.com/watch?v=ZLnF4qIL9lk&feature=related>)

5. What are Human Rights?

International Human Rights (Law)

- Universal Declaration on Human Rights (UN 1948)
- International covenant on civil & political rights 1966
- International covenant on economic, social and cultural rights 1966
- International Labour Organisation (ILO) 7 Core Conventions:
 - No. 29 Forced Labour (1930)
 - No. 87 Freedom of Association (1948)
 - No. 98 Right to Organise & Collective Bargaining (1949)
 - No. 100 Equal Remuneration (1951)
 - No. 105 Abolition of Forced Labour (1957)
 - No. 111 Discrimination (Employment/Occupation) (1958)
 - No. 138 Minimum Age (1973)

6. Universal Declaration on Human Rights

- calls on 'every individual and every organ of society' to play their part in securing the observance of the rights contained within it.

Civil & Political

- right to life, liberty, security
- freedom from slavery, torture
- equality before the law
- protection arbitrary arrest
- right to a fair trial
- freedom of thought, opinion
- freedom of association
- political participation

Economic, Social & Cultural

- right to work
- just & favourable conditions
- rest & leisure
- equal pay for equal work
- right to join & form unions
- right to education
- right to social security
- adequate standard of living

7. Public Interest Issues Facing Companies

(most involving human rights)

| Environmental footprint | Social impact | Ethical business practices |
|---|---|---|
| <ul style="list-style-type: none">• Sustainable sourcing• Emissions• Energy use• Product life-cycle• Bio-technology• Plant safety• Product safety | <ul style="list-style-type: none">• Public welfare impact• Community impact• Workplace practices• Discrimination• Cultural impact• Indigenous tribes• Social exclusion• Product access to poor• Product abuse• Security issues | <ul style="list-style-type: none">• Location issues• Restructuring• Conflict of interest• Bribery• Fair trade• Director's pay• Money laundering |

8. Examples of Voluntary and Soft Law Initiatives

- The Voluntary Principles on Security and Human Rights
- The Extractive Industries Transparency Initiative
- The Global Reporting Initiative
- The Global Network Initiative (IT)
- The Global Compact
- OECD Guidelines for Multinational Enterprises

9. Global Compact (Human Rights)

Companies agree to:

- support and respect the protection of internationally proclaimed human rights within their **sphere of influence**
- make sure they are not **complicit** in human rights abuses.

10. Protect, Respect, Remedy: A Framework for Business and Human Rights

Adopted by the UN Human Rights Council April 2008

- Responsibility of states to protect against human rights abuses by any third party within their jurisdiction, including business
- Responsibility of companies to respect human rights by ‘knowing and showing’ :
 - A policy commitment by the company to respect rights that is *approved* by senior management; *informed* by engagement with affected individuals and communities; *communicated* to personnel and business partners; and *reflected* in operational policies and procedures;
 - A human rights due diligence process to identify and address human rights posed by the company’s own activities and by business partners associated with those activities;
- Access to remedies: states to strengthen judicial capacity & companies to create and ensure access to effective non-judicial grievance mechanisms.

11. UN Framework's Foundation Principles

- Respecting human rights is a global standard
- Exists above compliance with national laws and applies to all human rights
- Businesses should avoid direct adverse impact on human rights & complicity in human rights impacts of others
- Applies to all businesses but responsibility varies according to size & severity of impact
- Businesses must have appropriate policies & processes in order to exercise due diligence.

12. Human Rights Due Diligence 4 Steps

- **Assessing** actual and potential adverse impacts: e.g. engagement with affected rights holders & other sources of expertise
- **Integrating** the findings of those impact assessments across relevant internal functions and processes
- **Acting** upon the findings: i.e. preventing or mitigating potential adverse impacts, and participating in the remediation of impacts that have already taken place
- A company should **track the effectiveness** of its systems and responses, and be prepared to communicate the results to impacted individuals and communities, as well as to other legitimate stakeholders.

13. Complicity Discussion Issues

- Legal definition (knowingly providing practical assistance or encouragement) may be more restrictive than public perception which may matter more.
- Should a company be held to be **complicit** in abuses
 - (i) through its mere presence in country, paying taxes,
 - (ii) if it is silent in face of abuses?
 - (ii) if it appears to derive benefit?
 - (iii) if it should have known?
- Is it acceptable for companies to compensate harm done by doing good elsewhere?

14. Human Rights Cases

- What is/are the Human rights issue(s)?
- What are the company's responsibilities?
- What actions should the company take to exercise due diligence?

15. Human Rights Buzz Group Cases

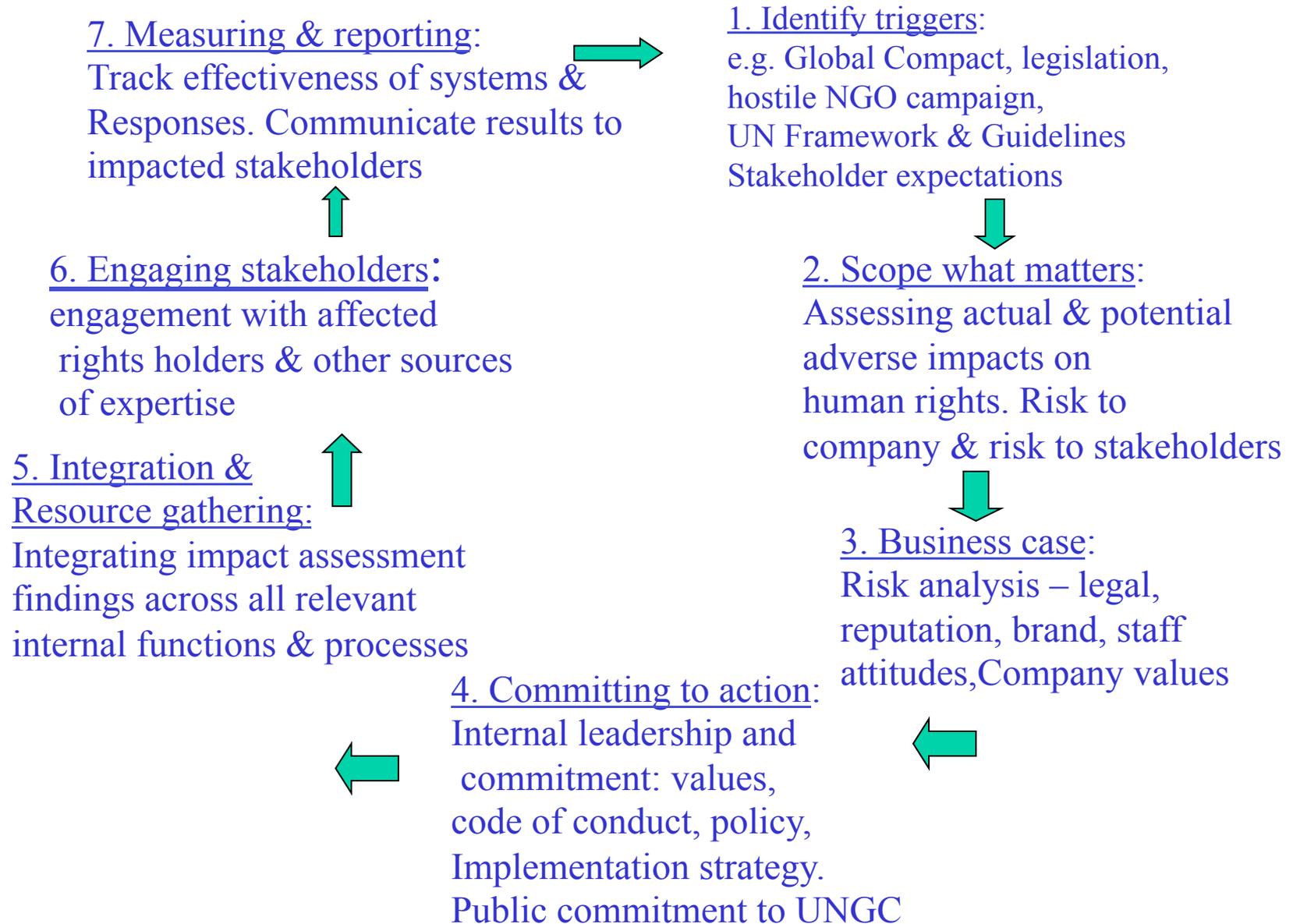
- A clothing and footwear retail chain discovers manufacturers in its supply chain that are using child labour and enforcing employees to work long hours in order to earn subsistence wages.
- A bank discovers that it is financing directly and also indirectly through client accounts a manufacturing company in a country that is using forced prison labour.
- A steel company operating in a traditional ‘company town’ which largely depends on its employment and service contracts faces need to make major cutbacks during economic downturn.

16. Human Rights Management

KSFs

- Internal leadership and commitment
- Statement of values, code of conduct & policy
- Implementation integrated into mainstream management systems
- Issue analysis & stakeholder engagement*
- Partnership and alliance building
- Local ownership
- Grievance mechanisms
- Measuring and reporting

17. Seven Step Model for Managing Human Rights Impact



18. Company HR responsibility depends on:

- Its actual and potential direct HR impacts
- Its indirect HR impacts due to its relationships with business partners, governments & customers
- Its sphere of influence; a company's ability to affect the behaviour of others

19. Community Engagement KSFs

- Understand local cultures & traditions
- Understand differing perceptions of rights
- Develop a genuine relationship with affected communities
- Show respect and simple courtesy
- Enable people to communicate ideas and concerns in their own terms
- Ensure women and other disadvantaged groups are properly included
- Assess how company impacts will affect groups differently
- Develop tailored strategies for mitigating negative impacts.

20. Buzz Group Case

- A hotel chain is building a new development on a game park, which was originally populated by an indigenous community which had been forcibly moved by the government to less suitable land with inadequate compensation.

21. Sphere of Influence Dilemmas

- How to respect human rights when the state does not fulfil its obligations?
- How to avoid infringing the rights of others when some impacts are outside its control, e.g. suppliers and contractors?
- How to mitigate negative impacts when it cannot do so alone?

22. Engaging with Governments

- Assessing government's capacity, authority, legitimacy and will to protect human rights
- Considering the risk associated with deficiencies in government
- Providing technical support to increase government capacity, particularly at local level
- Advocating for a stronger state role in socio-economic development
- Identifying partnerships and alliances with international organisations to support and encourage government
- Being transparent when it is possible; when it is not, discussing measures confidentially.

23. Ethical Reasoning

| Theory | Meaning | Basic principle | Problems |
|---------------------|--|--|---|
| Cultural Relativism | What is fitting, acceptable, customary | Respect each culture's values | No absolute moral truths? Globalisation |
| Utilitarianism | What is good End results | Greatest good for greatest number | No judgement on good, bad or relative importance Ends justify means? |
| Absolutism | What is right universally e.g. human rights | Golden rule: do as you would be done by | How to prioritise when rights conflict Cultural imperialism? |

24. Typology of NGOs

Polariser

Integrator

Discriminator

ORCA

Scrutinises relative performance and attacks selected targets

DOLPHIN

Scrutinises relative performance and selects appropriate partners

Non-discriminator

SHARK

Ignores relative performance and attacks most targets

SEA LION

Ignores relative performance and works with anyone

25. Buzz Group Case

- A pipeline company, with an otherwise good human rights record, is accused by a human rights NGO that its host government agreement (HGA) with a state, well known for its abuse of human rights towards a minority group, which lives close to the pipeline route, has inadequate safeguards to the rights of those living nearby. The NGO feared that financial penalties built into the agreement if any disruption occurred might provoke the state to take heavy handed action.

26. Partnership Prerequisites

- Common purpose: common agenda & two way benefits
- Mutual respect: no ‘deficit model’ or philanthropic approach
- Shared investment of money, in-kind resources and time
- Clear balance of responsibilities
- Shared commitment: long term commitment to sharing problems and opportunities

27. Buzz Group Case

- A recently privatised energy company faced with problem of what to do with customers not paying their bills during a harsh winter, which threatens to cause the deaths of substantial numbers of poor people.

28. Managing Human Rights impact in areas of conflict

Characteristics:

- Authority failure: organised political violence, areas with no effective authority, high levels of criminality
- Service failures: inadequate health, basic education, water & sanitation, poor infrastructure, no poverty support
- Legitimacy failure: no democracy, high military influence, suppression of opposition, media restrictions, denial of civil & political liberties

29. Managing Human Rights impact in areas of conflict

Challenges for companies:

- Absence of state control; lawlessness
- Potential abuse by state and non-state forces
- Risk of being accused of complicity in such abuses
- Risk of becoming a target or opportunity: exposure to threats of sabotage, kidnapping & extortion
- Threats to surrounding communities (which company's presence may make worse)
- Obstacles to sound and transparent community engagement
- Revenue mismanagement
- Systematic corruption
- Ethnic, religious or gender discrimination
- 'Conflict' minerals

30. Managing Human Rights impact in areas of conflict

Due Diligence Requirements:

- Full analysis of the company's impacts
- Understanding the agendas of all parties in the conflict
- Avoidance of paying off or otherwise benefiting armed groups as far as possible
- If part of the company's security structure, supporting the capacity of legitimate state forces with human rights training consistent with company values
- Doing all it can to address community grievances relating to company impacts
- Developing joint approaches with other companies
- Discussing risks and mitigation measures with trusted international bodies

31. Managing Human Rights impact in areas of conflict and post-conflict

Red Flags:

- Expelling people from their communities by force
- Forcing people to work
- Handling questionable assets
- Making illicit payments
- Engaging abusive security forces
- Trading goods in violation of international sanctions
- Providing the means to kill
- Allowing use of company assets for abuses
- Financing international crimes.

32. Buzz Group Cases

- A mining company operating in a part of a country where government control is being challenged by armed insurgents is subject to threats of kidnapping and infrastructure destruction. Security is provided by government armed forces. The company is accused in media reports in its home country of complicity in the killing of local villagers accused of supporting the insurgents by local paramilitaries, who are supported unofficially by the army.
- A mobile phone company is told to close its operations down by a dictatorial government under pressure from a popular protest by its citizens and later to pass on messages by the government to incite action against the protestors.

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