Chapter four: Company

A cross-section of businesses and business associations has broadly accepted the ‘Protect, Respect, Remedy’ framework, making it possible to integrate human rights considerations into company operations in the years ahead. The question as to whether companies have a responsibility to respect human rights has been answered. The challenge now is how to implement the framework, especially in high-risk countries where human rights risks are more acute, more complex, and less familiar. The task can seem overwhelming when set alongside the many difficulties companies have with the concept of human rights:

- Companies run their affairs on the basis of priorities. Most of the measures they use are quantitative and the availability of resources determines expenditure. They are not used to applying principles that take priority almost irrespective of cost or the availability of resources.
- The language of human rights, and the way they are discussed, can seem alienating and distanced from the realities of business.
- Competing ‘social responsibility’ frameworks vie for attention.
- Human rights cut across function; it can be difficult to implement policies or standards which impact on a variety of activities.
- Companies often lobby in support of their interests but many are not willing to engage with wider political issues.

A company cannot respect human rights, least of all in high-risk countries, if it does not address its own systems and structures. Five aspects need to be considered: policies, structures, staff, integration, and reporting.

Policies

Human rights should not be seen as a threatening framework. Stripped back to fundamentals, the corporate commitment to respect human rights is about ensuring that company activities and relationships do not undermine the enjoyment of rights by individuals and communities.

In developed countries, the law, supported by regulatory agencies, largely ensures this is the case, although abuses still occur. Most companies operating or headquartered in developed countries will have established and integrated policies that ensure they comply with human rights, though these will not necessarily be framed explicitly in human rights language. Such policies may require better verification, benchmarking, or may need to be refined, but the foundation is usually in place. Companies that operate in more than one country will also know that they need to adapt their policies to the specific legal frameworks that prevail in the different countries in which they trade.

71 This section draws extensively on a background paper by Edward Bickham, commissioned for this report: Human Rights; the internal management challenges, IHRB, 2011.
No company needs to develop a stand-alone human rights policy; human rights can be integrated into policies that already exist. That said, the heightened risks which exist in high-risk countries and the additional complexities involved in preventing and mitigating those risks, make it advisable to outline a company’s human rights commitments in explicit terms. A statement of this sort will have limited value, however, unless the company then integrates and internalises the standards in all its operations.

This last point is critical. Comprehensive corporate-wide standards are invaluable for company managers working in high-risk countries, because they must solve extremely challenging problems that national law is unlikely to provide answers to. A company cannot assume, as it might in developed countries, that it will comply with human rights if it respects national laws. Company-wide standards (for example around resettlement) will help to compensate for deficiencies in national legislation.

The more that corporate headquarters fail to provide guidance, or instead grant autonomy on human rights matters to their country operations, the more likely it is that local abuses will take place and patterns of inconsistency will occur across a company’s global portfolio. Given that difficulties at one site can tarnish the reputation of a company as a whole, companies have a strong incentive to ensure that individual managers implement a set of shared standards, regardless of whether these are relevant in all operations.

Generic standards are necessary but not necessarily sufficient. In high-risk countries, they will need to be assessed against risk, via consultation, and probably adapted. Mapping a company’s human rights risks and establishing polices tailored to address them is the first step.

**Human rights policies and standards: seven steps**

**Headquarters**

1. Map existing company-wide policies against international human rights standards.
2. Benchmark policies against other companies in the sector or against companies which are perceived to be leaders.
3. Determine whether to produce a single framework for managing human rights or integrate human rights into existing management policies and systems.

**Project**

4. Define potential human rights risks for each business stream and country operation. Include risks posed by company relationships.
5. Assess identified risks against company policies and national legislation.
6. Consult with employees, investors, governments, communities and relevant NGOs to ensure full coverage.
7. Refine policies and standards accordingly.
**Structures**

Like law, policies only work if the structures exist to enshrine and enforce them. If they are to be more than declaratory they need to be supported by management systems to ensure integration with how the company is run and with its decision-making processes.

The policy, supported by standards and tools, indicate what a company’s objectives and positions are. A Board member, given responsibility for the human rights agenda, would then work with a group of professional staff to define who will be responsible for its implementation. Staff should be allocated responsibility in a similar way within each business unit of the company at country or site level.

Given the cross-cutting nature of human rights and their potential influence on company decisions and strategies, a company is likely to benefit from establishing a space where representatives of the company’s different operations can discuss human rights-related issues. This might be a full Committee (for example, a Principles Committee72) or an advisory or stakeholder panel.73 Whatever its form, such a body needs to have a direct line to the Board and preferably should be chaired by a Board member. Equally important, the structure should be mirrored at site level where it would harmonise risk assessments and mitigation strategies.

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Staffing

Both policies and structures require the right individuals to implement and people them. An obvious implication of taking human rights seriously, especially in high-risk countries, is ensuring that a company has appropriately qualified or experienced professionals. This does not necessarily mean that companies should recruit human rights ‘experts’; they should ensure that staff understand the human rights dimensions of their work and can deploy their knowledge effectively. The shift in emphasis from risks in the workplace to risks outside it, which is explicit in the ‘responsibility to respect’ framework, underlines that staff need to have the right skills to consult, engage and negotiate with, as well as understand, local communities and others with whom the company has external relationships. If it is doing business in a high-risk country, a company will need to manage social governance and related challenges with the same rigour and professionalism that it would its ‘core’ functions. This implies training.

It may prove difficult to attract managers of the required seniority or experience to work in high-risk environments. This raises important questions about incentives (see below). It also means that companies need to balance expatriate and local managers. Managers from the host country may understand the political and social context well, and are likely to have good local contacts. On the other hand, they may be less inclined to question the social order, or, depending on their political alignment, see the need to distance the company appropriately from government. It may be sensible to appoint some expatriates who have worked elsewhere to ensure that the company’s culture and values are reflected in the way the company conducts itself in a new country. A similar calculation may also be made further down the management chain, most obviously in the External Relations and Security functions. The objective should be ‘nationalisation’ over time, while ensuring there is a sound mix of skills and experience.

Integration

Companies do not march in lock-step directed by the Board’s ‘controlling mind’. Embedding human rights in country operations is therefore a more complex process than simply legislating from the centre.

Though promulgation of standards is essential, they may appear abstract to staff on the ground, perhaps struggling to keep an operation from foundering in a deteriorating operating environment. Staff may also be cynical about new policies communicated from ‘on high’, especially if they do not match their experience of company culture or the tone of other management communications. Such a reaction is more likely if human rights commitments are presented as additional to, and separate from, other core responsibilities; or the message is seen to come from staff who are comfortably distant from work on site. For this reason peer-to-peer communication is usually more effective than instruction by a specially-appointed human rights expert.

Managers should be equipped to ask the right questions; understand the principles that should guide them; and have mechanisms to support them. They also need to understand
the implications for other parts of a global organisation of making insensitive or bad decisions.

The policies and standards themselves need to be clearly expressed and to be supported by accessible briefing and supporting materials that are properly communicated. This will provide important reinforcement; but the most obviously effective way of integrating any issue is through remuneration and recognition. Since much management focuses on financial indicators, many employees may feel that a company is not serious about an issue until it is part of their incentives and performance contract. The greatest obstacle to this in respect of human rights is the problem of qualitative as opposed to quantitative indicators.

In some areas quantitative indicators are relatively easy to identify and use; human resources performance, for instance. More often, however, it will be necessary to define Key Performance Indicators (KPIs) which reflect the qualitative nature of human rights work. This is more easily done if assessment is linked to regular risk analysis and to a baseline.

Linking employee objectives and performance to risk analysis, and to impact prevention and mitigation, provides a means to encourage and measure progress. It promotes responsibility and ownership and rewards success and, over time, will help the company to embed a culture of human rights. Indicators can be developed on the basis of best practice standards; for example, meetings with local communities, the type and frequency of issues discussed, participation rates and diversity of group meetings, concerns raised and resolved. These provide a mix of quantitative and qualitative indicators. Developing social performance indicators may be more difficult than in other areas but is far from being the obstacle that is sometimes presumed.

Incorporating human rights considerations into job descriptions and promotion criteria is another important avenue. If a company advertises the fact that candidates for a post will need to show awareness of and commitment to human rights in their sphere of competence, it will spread the message far more rapidly than any number of information bulletins. Insisting that applicants for senior management positions, such as Site Director, also need to have demonstrated a commitment to human rights in their current or previous positions will promote the emergence within the company of leaders who consider human rights to be a core element of their jobs. Incentives are key to successful integration.

Sanctions are the corollary of incentives. If managers consistently fail to uphold a company’s human rights policy, it should be grounds for disciplinary action. Employees as well as contractors and suppliers should be encouraged to report infringements through their line managers or a whistle-blowing process. Good practice suggests that a company should make available to staff (and to contractors, where appropriate) a distance facility, via telephone, post or computer, which enables them to report suspected lapses in their own language or the working language used by the company.
From Red to Green Flags: The corporate responsibility to respect human rights in high-risk countries

Such mechanisms are elements of a company’s Grievance Mechanism (see Process below) and must be supported by assurances that individuals who raise issues or make complaints will not be sanctioned for doing so. Confidentiality is particularly important in high-risk countries, because complainants are likely to be at much greater risk. Analysis of complaints and responses to them provide very useful data for tracking the progress of human rights policies, and employee perceptions of them.

Reporting

The ‘Respect’ framework provides companies with an opportunity to re-orient reporting in two important ways. First, most or all of a company’s social or sustainability reporting can be combined. In theory, this should resolve problems of multiple reporting to different constituencies. Respect for human rights offers a company a way to measure its non-business performance, and this may become the primary function of a company’s social reporting. (Companies are not of course prevented from advertising their activities more widely.)

Second, it focuses attention on a critical audience: those on whom the company’s activities have an impact. Aside from the legal requirements of reporting to shareholders and investors, companies have tended to design their communications strategies with an international audience in mind. This has the unfortunate effect that organisations and individuals with little or no connection to the company are better informed about its activities than those who live on the company’s doorstep. Companies go to great lengths to fight international fires, sometimes forgetting that their source is local.

Reporting is a bottom-up process. While policies flow down a system, reporting flows back up. A company needs to examine the degree to which its reporting systems comply with policies and standards, but also capture the attitudes and treatment of external parties who relate to the institution. Measures for this can be developed via an external audit or self-assessment. From a human rights perspective, they are invaluable because they permit a company to track its impacts and distinguish them from the impacts of others.

If the company is arriving, and the project is a green field project, setting a baseline at the start will increase the transparency of reporting. A company will benefit greatly from initiating a well-structured reporting process before its activities have made significant impacts — and therefore before it can be held to be responsible for problems. Well founded reporting can also show progress more easily. Respecting rights is an iterative and incremental process, especially in high-risk countries. It is better to be honest about this and to describe the actions that have been taken to address gaps, rather than treat reporting as a public relations exercise, because a simplified positive story can rarely be sustained.
Key considerations

Ensure policies are aligned with international human rights standards.

Consolidate individual policies into an overarching human rights statement.

Refine corporate-wide policies for specific country operations.

Create structures at headquarter and site levels which promote a ‘whole of company’ approach to anticipating and addressing human rights issues.

Recruit and train properly qualified staff.

Incentivise through bonus and promotion schemes which reward success in social and human rights performance.

Combine social reporting under a human rights umbrella framework.

Focus external reporting and accountability on those impacted by the project.