"Good Governance in Sensitive Countries" BLIHR project 2007

INTRODUCTION

Support for human rights is primarily the responsibility of government but business has a role to play along with other non-state actors. Globalisation has increased the economic and political power of business. While companies clearly have responsibilities and accountabilities in all countries, these are increased in sensitive or weak governance zones, where governance of a country and governance of a company become interrelated.

In such circumstances a responsible business will take steps to ensure it is not complicit in any state abuses and upholds internationally recognised human rights within its spheres of influence. Operating in such an environment carries risk. Businesses, as well as other stakeholders, need to ascertain what can reasonably be expected of them and manage their human rights impacts accordingly in order to turn social risk into business opportunity and at the same time contribute positively towards the realisation of human rights within the country concerned.

AIM: GOOD GOVERNANCE THROUGH A FRAMEWORK OF SHARED RESPONSIBILITIES

The aim of this section is to define what business can do from a human rights perspective to demonstrate good corporate governance and do no harm in a sensitive country while recognising the primary role of states in upholding human rights in line with international obligations. Good governance can be achieved through a framework of shared responsibilities of states and non-state actors, including business, in contributing towards the realisation of human rights.

This chapter underlines both the need for such a multi-stakeholder process to be taken by individual companies, as well as for progress to be made more generally towards a global framework of shared responsibilities of governments, business, investors and civic society on the role they play in upholding human rights. Such an approach will be beneficial to all parties in holding each other to account and sharing best practice.

WHAT IS A SENSITIVE COUNTRY?

Sensitive countries can be broadly defined as those where the government is unwilling or unable to meet its human rights obligations, as identified by diverse sources and stakeholders. Ultimately individual companies will have to proactively determine which countries are sensitive for their operations rather than wait for stakeholder pressure to bring issues to their attention.

Indicators which help to define a sensitive country include:

- *track record on human rights based on UN reports, NGO communications such as Amnesty International geography of human rights risk, etc;*
- *presence of UN or other international sanctions;*
- *degree of participation of non-state actors in the political process*
- *scale/degree of poverty and viability of social infrastructure/indebtedness;*

- *corruption levels;*
- *nature of current government (democratic, one-party, military-controlled);*
- *existence of conflict (pre-post-current).*

ROLE OF BUSINESS WITHIN GLOBAL GOVERNANCE - PART OF THE SOLUTION, NOT PART OF THE PROBLEM

Companies are increasingly expected by their stakeholders to demonstrate the broader role they play in the shared responsibility of upholding human rights. Such stakeholders can include investors, governments, communities, employees and NGOs. For example, the OECD Council in June 2006 recalled that *"the common aim of the adhering governments is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress".* This reflects the increased pressure on businesses to demonstrate they are not perpetrators or complicit in human rights abuse and are also contributing to the realisation of human rights proportional to their position and influence.

While this may not be a challenge for many responsible businesses which are already committed to acting as a positive influence it may give credence to what they already do.

For example, many companies can readily demonstrate the role they play in developing or enabling critical infrastructure in a country; or participating there in a network that acts as a catalyst for change, such as the UN Global Compact; or contributing to humanitarian or development projects; assisting the host government of a sensitive country in capacity-building to fulfil its international obligations to respect and promote human rights; or discussing with home governments what frameworks may be put in place to support responsible business and create a level playing field such as the Extractive Industries Transparency Initiative. Such elements should be integrated into the governance of companies active in sensitive countries.

GOOD CORPORATE GOVERNANCE: AN ORGANISATIONAL CULTURE WHICH IMPLEMENTS A POLICY OF SUPPORT FOR INTERNATIONALLY RECOGNISED HUMAN RIGHTS AND NON-COMPLICITY IN HUMAN RIGHTS ABUSES

Good governance begins at home. Failure to set the right tone and have appropriate policies and processes in place, communicated and implemented, can undermine a company's credibility and licence to operate in a sensitive country.

A company ought to be able to demonstrate an organisational culture which implements a policy of support for internationally recognised human rights and non-complicity in human rights abuses. This concept is drawn from Principles I and 2 of the UN Global Compact and is a good starting point for a company to consider throughout its business operations. Such business operations may be in-country or involve trading relations or the provision of services from outside the country.

As part of this organisational culture, a company needs to take steps to develop a human rights-aware approach to business. A company will need to identify the rights at issue, the responsibilities it bears within its sphere of influence and the actions that have to be taken to avoid complicity and strengthen its licence to operate. These actions fall into two categories – “essential” actions to

ensure compliance with essential standards (national and international law), “beyond essential“ actions to meet reasonable and legitimate stakeholder expectations to contribute towards the broader realisation of human rights within the country.

To ensure human rights-aware behaviour in a sensitive country, a company should consider the following:

1. *Undertaking a Human Rights Impact Assessments*
2. *Integration of human rights criteria into management systems*
3. *Reporting on its activities in the country with information/data independently verified*

THE HUMAN RIGHTS IMPACT ASSESSMENT

Professor John Ruggie, Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations, reported to the Human Rights Council in 2007, *"Business and Human Rights: Mapping international standards of responsibility and accountability for corporate acts",* that accountability for business should begin with assessments of what their human rights impact will be through a stand alone Human Rights Impact Assessment (HRIA).

Ruggie states that *"No single measure would yield more immediate results in the human rights performance of firms than conducting such assessments where appropriate".* Companies operating in a sensitive country will increasingly be expected by strategic stakeholders, including certain investors, to carry out an HRIA to assess fully the human rights implications of their operations.

Part of Ruggie's mandate covered the development of materials and methodologies for undertaking HRIAs for business activities. In a companion report, "*Human Rights Impact Assessments- resolving key methodological questions*" Ruggie describes the principles and characteristics of HRIAs and provides updates on current initiatives. These are also covered in the process designed by the International Business Leaders Forum (IBLF) Human Rights Impact Assessment Tool developed by the International Finance Corporation, IBLF and UN Global Compact.

The Business Leaders Initiative on Human Rights (BLIHR) recognises a "rights-aware approach" by business to human rights as being useful in gaining clarity of respective roles and responsibilities. The International Bill of Human Rights provides guiding principles and the approach advocates the starting point of recognition of rights-holders as a step forward from the traditional business-centric and project risk mitigation approach.

While recognising that a Human Rights Impact Assessment may not always be appropriate, for example if the risks are not material, there needs to be recognition of the need to develop a broad awareness of the human rights risks and impacts of business decisions.

This chapter emphasises two further elements of an HRIA.

First, a company should consider its broader relationships in society and the role it plays in impacting upon rights. In this way the HRIA would shift from being “business-centric” and related to project-specific risk mitigation towards being “rights-aware” and including a country or societal impact assessment, thus broadening the understanding of "spheres of influence".

Second, having considered this wider impact or influence, the company should then consider what positive impacts it can make. The BLIHR two-tier approach of "essential, and beyond essential" actions provides valuable guidance on how a company can go beyond baseline compliance with legal obligations and internationally recognised standards to play a wider role in the realisation of human rights. This can be done, for example, by increasing the capacity of the host state to meet its obligations towards its citizens.

This may involve assisting in capacity-building of both host states and home states in supporting initiatives that will assist business to make a positive contribution towards the realisation of human rights. A company may, for example choose to support such initiatives as the promotion of the Voluntary Principles on Security and Human Rights or the Extractive Industry Transparency Initiative, etc.

In those situations in particular where national law or practice falls below international human rights law or best practice, the company can explore ways of implementing and/or promoting such international standards. This need not always be done by the company by itself; indeed it may not always be possible. In such cases the company can look towards other partners and support their efforts, such as home governments, business associations, sectoral initiatives or NGOs, etc. At all times, it is vital the company accesses the highest quality, objective local information in order to assess its potential impacts and raise its performance.

Key features of proposed HRIA:

- *Baseline study of country of operation, political and legal from human rights perspective and scope of operation*
- *Identification of rights-holders, key stakeholders and prior engagement where appropriate*
- *Customised checklist approach to assess human rights impact across spheres of influence - employees, contractors, local community and societal (i.e. not only to ensure non-complicity but recognising broader governance role and potential to contribute to capacity-building of host state to implement its human rights obligations)*
- *Produce a report identifying human rights risks and recommended essential and beyond essential actions*
- *Incorporation of recommendations into action plan for management and report back to Group level where appropriate*
- *Continued engagement with internal and external stakeholders*

An impact assessment of any kind has to be timely and the degree of due diligence undertaken should be appropriate to the scale of impact or the nature of country involved. An HRIA may be only one component of a broader impact assessment (legal, political, environmental etc).

While a full HRIA will include the other components we have identified as key to a company demonstrating an organisational culture of human rights (i.e. integration of human rights into

management systems; engagement with a broad range of stakeholders; reporting and independent verification) an HRIA conducted in isolation will not be able to embed human rights good governance at a group level within a company as it is likely to deal only with one operation in a specific location. A more strategic response to human rights is therefore required.

INTEGRATION OF HUMAN RIGHTS INTO MANAGEMENT SYSTEMS

For business to succeed in creating a culture sensitive to human rights issues, it will be vital that both management and employees understand the business case for integrating human rights into their practices. This requires a shift from not only understanding human rights negatively as part of risk assessment to an appreciation that the effective management of human rights issues can be a positive means of increasing business opportunities and enhancing reputation.

Top management: Initially it will be necessary to ensure that top management at board or executive committee level approves a company's commitment to human rights within its operations and spheres of influence. This usually translates into a statement of support or policy relating to human rights and to an employee Code of Conduct which includes a commitment to human rights. Top management also needs to understand that such a commitment involves training of staff and additional costs. Such costs will be recouped through better risk management and reputation enhancement.

Employees: Buy-in from employees at all levels may be generated through training. Employees should have an understanding of what human rights are and how they can impact the business both negatively and positively. They should understand what the expectations of the company are and what the company ought to be demonstrating within its spheres of influence. Decision-makers within the company should integrate human rights considerations at an early stage into non-financial risk assessment. It may be appropriate in some instances to incentivise a human rights-aware approach to business through a scheme which rewards or penalises practices which take into account human rights issues. Good behaviour may be encouraged through reward/sanctioning processes, e.g; performance assessment/employee contracts

In order to avoid complicity, management should also ensure there is an effective screening procedure to evaluate and select major suppliers, contractors and business partners to ensure they meet requirements of the company in respect of human rights. Management must maintain reasonable evidence through criteria contained, for example, in risk reviews, HRIAs or audits (see page 6) that its requirements are being met. Where standards fall short a company ought to attempt to advance the application of human rights standards, for example, the ILO Declaration, through engagement and collaboration with their contractors.

Examples of Integration into Management System

- *Statement of support or policy statement relating to human rights*
- *Code of Conduct for employees which explicitly mentions human rights*
- *Training for employees and management*
- *Incentive schemes*
- *Procedures to evaluate and select suppliers and contractors ability to meet standard*
- *Internal reporting procedure*
- *Whistle-blowing policy (confidential, and with guarantee of non-victimisation)*

ENGAGEMENT WITH A BROAD RANGE OF STAKEHOLDERS

Both as part of the HRIA process, and separately, a company ought to map its key stakeholders likely to have their human rights impacted by company operations and decisions. Dialogue should take place with governments, investors, partners, regulators and financial authorities, civic society and NGOs, affected communities, and independent experts. It is important to accept that stakeholder engagement is not an end in itself and relevant issues should be carefully considered and where appropriate implemented. Where stakeholder engagement is not practicable, this does not mean a company can go ahead with "business as usual".

In a global operation the stakeholder engagement process may involve employees from across the business, such as investor relations, country management, compliance officers, Human Resources, CSR personnel and Risk Management. This highlights the importance of ensuring that employees understand the importance of managing human rights risk, engaging stakeholders and the benefits of a human rights-aware approach.

REPORTING AND INDEPENDENT VERIFICATION

Having applied human rights-aware business practices and engaged with relevant stakeholders, companies will then be in a position to carry out transparent reporting of activities. A company will benefit in its stakeholder relations and reputation from being able to demonstrate it has taken the necessary steps of carrying out a full HRIA, has integrated human rights into its management systems and has engaged with the appropriate parties. In this way a company can offer assurance that it is actively addressing social and human rights risk and can demonstrate its positive role in the host sensitive country and beyond. It is, of course, up to the company concerned to decide the extent to which it accepts and implements any recommendations, and the findings may not necessarily be made public.

Further constructive engagement for the business will also come from learning exchanges with other companies in the same sector or similar operational circumstances. A company may also wish to consider the use of services of an external advisor or human rights specialist to advise on the processes the company has applied and offer constructive challenge.

Even if a company follows this path of good governance, events may nevertheless unfold where it is no longer sustainable to continue to do business in a country.

To do this in a responsible way, the company should attempt to minimise the negative impact its exit may cause to stakeholders including employees, contractors, customers, local communities and the broader society. For example, this consideration needs to be factored in to the ways in which a company supports humanitarian or community projects.

Avoiding a dependency relationship as far as possible and promoting capacity-building through training, education, empowerment and sustainability will stand the company in better stead if it needs to withdraw.

Conclusion

Article 28 of the Universal Declaration of Human Rights states that *"Everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration can be fully realised"*.

If they are to abide by this article, companies need to acknowledge they play a crucial part in the social and international order and have a role in contributing to the realisation of human rights. This expectation can be demonstrated by companies though the creation of an organisational culture which supports internationally recognised human rights and non-complicity in human rights abuses.

Companies which acknowledge their powerful positions in a globalised world need to go beyond concentrating on their potential negative impacts through direct, indirect or silent complicity in human rights abuses in their spheres of influence and appreciate that they can make a significant positive impact in society.

In a sensitive country this involves carrying out a Human Rights Impact Assessment; ensuring that human rights are integrated into management systems; engagement with a broad range of stakeholders; and reporting and independent verification. It is hoped that with further dialogue a consensus will be reached regarding such principled and pragmatic steps for good governance in sensitive countries.

Previous thinking on human rights business practices in sensitive countries may fall short on two issues.

First, business should show awareness of its societal impact beyond the narrow scope of its operations and demonstrate its positive role in the realisation of human rights. This should be embedded into the HRIA, understood by management and employees and integrated into management systems.

Second, experience shows the need for a shared understanding among different stakeholders of what to expect from business, without which there can be no real, effective and constructive accountability.

CASE STUDY - ABB AND SUDAN

ABB has worked in Sudan supplying power technologies to strengthen the electricity supply since the 1970s and believed that through the nature of its operations and the way in which it operated it could work for societal and environmental progress.

In the past few years the company, along with others operating in Sudan, faced criticism from a variety of quarters about their involvement in Sudan and allegations of complicity in human rights abuses in the country. The stock divestment campaign from the US expressed concern about the company's presence in Sudan in view of the ongoing atrocities in the western Darfur region. ABB was also accused of complicity in forced removals and environmental damage in relation to the Merowe Dam project to which it supplied products.

Proactive steps were taken by ABB in addressing human rights concerns by broad stakeholder engagement, including on the ground in Sudan and with investors and NGOs outside Sudan,

as well as internal engagement with management and employees. ABB initiated a successful stakeholder forum in Khartoum in May 2006 – "Public-Private Partnership in Post-Conflict Development" - hosted by the UNDP and Afhad University for Women. This was attended by 40 representatives of the government, local and international business, NGO's, local and international UN officials and observers. The agreed outcome was to set up a local UN Global Compact Network led by local business with the support of the UN Global Compact.

ABB took further steps in consulting with external human rights experts and carried out a human rights impact assessment of its operations. Much of the feedback it received was that to exit Sudan - as demanded by the divestment lobby - would not necessarily serve the fragile post-conflict reconstruction process.

Nevertheless ABB felt continued pressure from US legislators and investors concerned with the lack of demonstrable progress in ending the Darfur atrocities, and despite efforts to engage and step up their management of the issues, it was decided that the risks outweighed the benefit and at the start of 2007 ABB announced the suspension of new business activities in Sudan citing political, legislative and economic reasons.

The lessons from the ABB experience are two-fold.

Firstly, ABB's Sudan experience taught it valuable lessons about what needed to be done to strengthen its risk management system, the result of which has been increased non-financial risk management procedures with in-built human rights criteria, increased stakeholder engagement and internal awareness-raising.

Secondly, the experience of ABB in Sudan points to the pressing need for business of having a "common framework" recognised by strategic stakeholders including governments, legislators, investors and NGOs. Such a framework of human rights standards for business in sensitive countries would serve as a guide to companies, facilitate a level playing field and bring benefit to the populations of such countries.

Key questions a company needs to ask and answer when doing direct and indirect business in relation to a sensitive country

Within a company, there are several key issues that need to be addressed by qualified personnel in a company considering business in a sensitive country. These should preferably be addressed before a business decision is made.

- *What human rights issues are at stake?*
- *What are my company's spheres of influence and responsibilities?*
- *What actions do we need to take to earn and maintain our licence to operate?*

Identify the human rights issues at stake

1. Weigh non-financial considerations carefully before entering into business negotiations. What are the likely risks/benefits/opportunities?

2. Consider how incorporating social and environmental risk management capacity may add value to the competitive bid of the company

3. Examine different kinds of risks involved in the overall project. These may include:

    a. Environmental
    b. Social, particularly the human rights at stake from the rights-holders perspective
    c. Security
    d. Reputational
    e. Operational

4. Ensure environmental, social and particularly human rights criteria in the company's risk review process are in place and conform to international standards

5. Ensure through training of key employees that these criteria are understood and implemented, and are not a box-ticking exercise

6. Bring together different parts of the business so they work together consistently i.e. front-end sales people with staff dealing with human rights, sustainability issues

Identify the company spheres of influence and responsibilities

1. Establish a clear idea of the company's likely spheres of influence and environmental and social responsibilities through its involvement in the business operation

2. Map potential stakeholders

    a. Employees
    b. Commercial partners, investors and supply chain
    c. Communities and individuals directly and indirectly affected by the project who are rights-holders
    d. Relevant authorities re. project and host country governance
    e. NGOs, local and international
    f. National and international specialist organisations

3. Engage stakeholders throughout the lifetime of a project, after spheres of influence have been defined and stakeholders mapped

Identify the actions to be taken by the company (including promotion of framework of shared responsibilities among stakeholders)

1. Determine actions to be taken by company – "essential" and "beyond essential" following stakeholder engagement

2. Promote a shared understanding among stakeholders of potential benefits of the project and of shared responsibilities to realise such benefits:

    a. Raising of environmental, social and human rights standards
    b. Benefits for local community
    c. Possibility of value-added projects

3. Internal communications:

    a. Ensure key managers are fully informed about risks and opportunities
    b. Where appropriate, inform employees about the philosophy behind key decisions

4. External communications:

    a. Ensure appropriate spokespeople have the necessary background briefings and clear, consistent statements are available
    b. Weigh the positive/negative consequences of over-communication

5. Top management training on non-financial issues is vital to set a top-down tone

6. Set regular review targets for the business undertaking

7. Be aware of conditions under which the company might re-think involvement in the project. (This may already be contained in the contract) Be aware of likely financial/legal consequences

8. Develop exit strategy, taking into account stakeholders' expectations and obligations to them.

9. Keep up to date on changing national and international standards

10. Apply lessons from other projects to similar ventures

11. The company needs to ensure it has trained and sufficient staff to monitor and report on the above and that findings are subject to external constructive challenge