Responsible business and human rights

Background
Human rights were historically regarded as a matter for governments with companies’ involvement being limited to compliance with domestic law in areas where they operate. However, globalisation, and a trend towards the privatisation of many key services previously provided by government, has seen an increase in the potential impact on human rights of multinational corporations. This has led to calls by a diverse range of stakeholders for greater business accountability on human rights issues throughout global supply chains.

Many countries where businesses operate suffer from weak governance, low income or high corruption levels, which can result in widespread human rights abuses. Further, operating in the UK or other western democracies is no guarantee against associations with human rights violations. Indeed the private sector is so diverse and broad in its reach that it can impact on the full spectrum of human rights from freedom of expression and the right of life to the right to education and the right to water. Businesses’ association with or complicity in human rights abuses can result in irrevocable reputational damage resulting in share price depression. This makes human rights a key boardroom issue that must be considered in all responsible business operations.

The briefing note sets out: the generally accepted scope of human rights and its link to the responsible business agenda; human rights in the workplace and wider supply chain; consumers and human rights; examples of corporate good practice; and finally looks at the future direction of business and human rights, outlining the recent conclusions of Professor John Ruggie, the UN Secretary General’s Special Representative on Business and Human Rights. The briefing also considers issues such as migrant workers, oppressive regimes, grievance mechanisms and concerns regarding ‘stabilisation clauses’ in investment contracts.

Human rights – a definition
Human rights are rights that everyone everywhere is entitled to on the same basis. The Universal Declaration of Human Rights (UDHR) is the founding instrument of human rights in international law. Entered into in the wake of the horrors of the Second World War, the UDHR is aimed at allowing all people to lead a dignified and independent life free from abuse. The UDHR protects a wide variety of rights including the right to life, liberty and security of person, protection against cruel, inhuman and degrading treatment or punishment, freedom of association, expression and religion, as well as the right to education and an adequate standard of living.

The rights in the UDHR form the basis of a code of human rights found at the core of national and international law across the globe. These rights are expanded on in the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ESCR), which together with the UDHR form the International Bill of Human Rights. The ICCPR tackles civil and political rights such as freedom of expression, association and religion, equality, and the right to liberty. In contrast the ESCR deals with economic, social and cultural rights such as the right to the highest attainable standard of health, education and an adequate standard of living. Despite the fact that human rights are set out in various different
Instruments all human rights are recognised as inalienable, interdependent and universal.

Although States have traditionally been regarded as the duty holders under international human rights law the UDHR states that the rights it sets out should be respected by "every organ of society". This has been used to support the principle that Business, as well as States, have obligations in respect of human rights. It is increasingly becoming clear to corporations that human rights concerns are material to their business and particularly risk management.

**Responsible business and human rights**
The power and reach of business has grown exponentially as the world has globalised. In some cases businesses have more impact on the day-to-day lives of people than many governments. Consequently expectations on companies in respect of human rights have increased. Human rights concerns can no longer be pushed to the fringe but are major boardroom issues that can also have a significant effect on the reputational value of a company.

**The business benefits**
In addition to the fact there are compelling moral reasons to ensure respect for human rights, there are also clear business benefits to mainstreaming human rights in organisations.

A recent research report carried out by Business in the Community with IpsosMORI established that companies consistently participating in its Corporate Responsibility Index outperform their FTSE 350 peers on total shareholder return by between 3.3% and 7.7% per year.

Integrating human rights into a business can:

- enhance a company's stakeholder relationships and reputation with everyone from shareholders to staff, customers and future employees.
- enhance supply chain relations and increase security of supply.
- help recruitment and retention, as well as reducing legal and business risks.
- help attract investment in the current difficult economic climate. Investors are increasingly carrying out due diligence on human rights prior to making investment decisions and looking for companies that are taking action proactively.

This has increasingly led businesses to recognise the need to engage with human rights issues and demonstrate their commitment.

**The scope of human rights and business**
Some have argued that business only affects certain rights such as those associated with labour. However, it has become clear that the reach of business is so great and diverse it has the potential to impact (positively and negatively) the full spectrum of human rights outlined above. Nevertheless, there are geographies, sectors and types of business activity that pose a greater human rights risk than others.

**Business in the Community member views**
"We have committed to supporting the Universal Declaration of Human Rights, and will challenge the companies in which we invest to do so also." – The Cooperative

"We recognise our broad responsibility embodied in the expectations of civilised society and in the Universal Declaration of Human Rights to use our influence to promote and protect human rights and freedoms by establishing clear ethical standards for ourselves and foster similar standards in all third parties who act with us or on our behalf." – Diageo

"We are committed to upholding the UN Universal Declaration of Human Rights, the OECD guidelines for MNEs [multi-national enterprises] and the core labour standards set out by the International Labour Organisation. We expect the same standards of our suppliers, contractors and business partners working on GSK’s behalf.” – GlaxoSmithKline

**The workplace and human rights**
Examples of human rights issues in the workplace include racial and sexual discrimination, not providing safe workplaces, training or information on safety issues or adequate safety wear or equipment in hazardous working conditions, exploitative
working conditions such as poor remuneration or extended hours with insufficient breaks.

Human rights issues may also arise where companies directly employ vulnerable people for low paid work such as manual labour in the cleaning and catering trades, work on building and demolition sites, factory processing lines, clothing production, etc. It may also be an issue for companies who indirectly employ people through contracts: sub-contracts; short-term contracts; recruitment agencies; home-workers; and other indirect or temporary arrangements in the outsourcing of particular activities. In these cases the company may not be aware of the employment conditions of the outsourced workers. However, the business still has some responsibility to these employees.

For further information and support on these issues, particularly in the UK, please visit [www.bitc.org.uk/workplace](http://www.bitc.org.uk/workplace)

**Migrant workers and human rights**

Even where there is tough workplace regulation around human rights issues one group that tends to remain vulnerable to rights abuses are migrant workers.

Issues affecting migrant workers include the failure to pay a living wage, unsafe working conditions, unequal pay, discrimination, and sometimes even forced labour. The risk factor is particularly high when labour is supplied by subcontractors.

Migrant workers tend to be employed in low skilled work and in industries such as agriculture, forestry, horticulture, shellfish gathering, textiles and food processing and packaging. Recognising the risk of this group, the Gangmasters Licensing Authority was set up to safeguard the welfare of migrant workers in certain industries, but unfortunately reports of abuses continue to surface.

For further information and support on these issues, particularly in the UK, please visit [http://www.bitc.org.uk/document.rm?id=8450](http://www.bitc.org.uk/document.rm?id=8450)

**The supply chain and human rights**

Companies may rely on hundreds if not thousands of suppliers taking products to market that have long and complex international supply chains often leaves them exposed to associations with human rights abuses.

In many countries human rights and particularly labour rights abuses may be extensive and significant. Sourcing goods from such countries opens a business up to possible associations with abuses including child labour, forced and bonded labour, unsafe working conditions, the failure to ensure a living wage, interference with the right to education, as well as the possibility that the sourcing of a particular good is indirectly supporting a conflict or oppressive regime.

Many of the human rights risks, emanating in the operations of separate businesses, may be outside the purchaser company’s total control and therefore provide a considerable challenge for companies to manage effectively. However these difficulties do not negate the responsibility to ensure goods and services are sourced responsibly. Failure to manage the risks may result in the business becoming the subject of a human rights campaign by Non-Government Organisations (NGOs) and can cause long term reputational damage.

For further information and support on these issues, particularly in the UK, please visit [http://www.bitc.org.uk/marketplace/suppliers/index.html](http://www.bitc.org.uk/marketplace/suppliers/index.html)

**Local communities and human rights**

The presence of a business will often have a positive impact; it may for example provide jobs or boost the local economy. However it can also result in the displacement of populations and environmental damage that endangers the welfare, health, security or livelihood of the surrounding communities.

If a business’s operations result in the loss of land or the pollution of a vital water supply, human rights such as the right to health, the
right to an adequate standard of living and even ultimately the right to life could be impacted. Many communities are deeply attached to their land for religious or cultural reasons and interference with the land could result in breaches of the freedom of religion or the right to enjoy their own culture.

Such issues are particularly likely to arise where governments are prone to prioritise the push for foreign investment over other considerations. A responsible business must remember that just because a government grants it a legal right to operate in a certain area this does not mean they are not risking breaching the human rights of the communities impacted by their future operations.

**Oppressive regimes and human rights**

Businesses operating in areas of unrest or where governments operate repressive regimes are presented with particular risks in respect of human rights.

In countries where the state is criticised for carrying out rights abuses companies must be careful to avoid any charge of complicity. If a company assists the violation of human rights and either knows or should have known about the violation, it is likely to become the subject of criticism and in some jurisdictions, the target for potential legal action.

In 2008 many companies came under pressure to divest operations from Robert Mugabe's Zimbabwe. Such circumstances provide a difficult challenge for companies to resolve. Is it better to cease to operate under such a regime? Do you risk giving an oppressive regime tacit support by staying? What are the implications for local communities and employees if you do divest? There are no easy answers to such questions and the appropriate action will usually depend on a multitude of factors.

**Case study: The Co-operative Bank**

Under its Ethical Policy, The Co-operative Bank refuses to provide finance to organisations that advocate discrimination and incitement to hatred or are involved in the manufacture or transfer of armaments to oppressive regimes.

Relations with oppressive regimes need to be carefully managed. Some companies have been criticised for using or benefiting from the actions of the military or private security forces against communities or even the workforce. Such an association, besides being morally questionable, could possibly attract legal accountability, and could have significant consequences for a company's reputation.

A responsible business must be alive to and guard against complicity in violations of human rights and may be able to use its influence to improve human rights where it operates. Any such action provides an opportunity to enhance reputation and standing internationally.

**Consumers and human rights**

Unsafe and faulty products and services can impact on various human rights and businesses need to be aware of such risks to ensure irreparable damage is not done to their reputation and consumer trust.

A consumer's right to health, and even their right to life, can be compromised with the marketing of an unsafe or inappropriate product or service. The danger posed to human rights is illustrated by the increasing number of product recalls. Research carried out by Navigator CM uncovered that UK product recalls have more than doubled since 2004. Concerns about the human rights impacts of goods and services are particularly prevalent in the food and drink production industries. The summer of 2008 saw thousands of milk based products recalled in China where contamination resulted in several child deaths.

In contrast a responsible approach could see business help vulnerable customers realise their human rights. Such examples could include:

- Ensuring adequate heating for elderly customers who could otherwise suffer ill health or even death;
- IT and technology companies developing innovative ways to communicate information to disabled customers or seeking to break into developing economies reducing the digital divide and helping people realize their right to seek and receive information;
- Pharmaceutical companies pursuing pricing structures and development.
which increases access to medicines for the world’s poor.

For information on vulnerable customers see The Inquiry by the All Party Parliamentary Group on Corporate Responsibility: http://www.bitc.org.uk/document.rm?id=8210

Setting the future direction – the UN Special Representative on Business and Human Rights

In response to the growing expectation on Business to address human rights issues, Professor John Ruggie was appointed to the role of Special Representative of the UN Secretary-General on business & human rights in July 2005.

Ruggie was charged with defining the scope and content of the responsibility of business in respect of human rights. In April 2008 he published “Protect, Respect and Remedy: a Framework for Business and Human Rights” – a report to the UN Human Rights Council. This generally well received report defines the responsibilities of governments and business in relation to human rights. It is a significant step in establishing what is expected of business and what steps should be taken to ensure companies are acting responsibly.

The framework has three core principles:
1. States have the duty to protect against human rights abuses by business.
2. Business has a responsibility to respect all human rights.
3. There must be effective mechanisms to remedy abuses.

1. States’ duty to protect against human rights abuses

The State duty to protect human rights will have consequences for Business as Governments are increasingly put under pressure to address business behaviour and culture.

Ruggie’s report stated that addressing corporate culture was an “urgent policy priority for governments”. The focus on corporate culture will interact closely with the business duty to respect rights. Indeed Ruggie remarked that in the UK we have already seen the Government take some action on this matter with the inclusion of s172 in the Companies Act 2006, which obliges company boards to consider the interests of employees as well as the impact of the company’s operations on the environment and community.

Ruggie highlights that some countries are starting to use Corporate Culture to determine corporate criminal liability and that regulators are starting to thwart attempts by company directors to stop shareholders’ proposals on human rights issues being considered at AGMs.

For further information on corporate culture see the Business in the Community’s Briefing note on “The whys and hows of corporate values”: http://www.bitc.org.uk/document.rm?id=9002

2. The business responsibility to respect human rights

The responsibility of business to respect human rights essentially means businesses must do no harm; it must not infringe any human rights. This is the “baseline expectation” for all companies although depending on the particular company, its operations and the context that it works some rights may acquire greater significance and materiality.

Further, even though the duty to respect is a negative duty, it does involve positive obligations. As John Ruggie states in his report “To discharge the responsibility to respect requires due diligence”. Essentially in order to ensure that a business is not infringing human rights it must not only make sure that it is complying with national laws where it operates; it must also carry out due-diligence in relation to its operations to ensure it identifies and mitigates, with a view to avoiding potential human rights issues.

Due diligence is what the company must do to firstly make its self aware of adverse human rights impacts and secondly prevent those impacts. What will be involved will depend on the facts of the situation. However the scope of their due diligence will be governed by:

- Geography – what are the country specific human rights challenges of where they operate?
- Nature of activities – what are the human rights impacts of their activities?
- Relationships - are they contributing to abuse through their relationships with for example business partners or the state?

The framework asserts that a due diligence exercise should involve:
1. The adoption of a human rights policy.
3. The integration and embedding of human rights throughout the operations of a company.
4. Monitoring and tracking human rights performance throughout the company to allow refinement and improvement of performance.

Due diligence is an ongoing process. The human rights risk is something that businesses will continually need to re-evaluate and cannot be relegated to a once off tick box exercise.

In order to carry out an effective due diligence impact assessment Ruggie suggests that companies should:

- Establish the country context where they are operating so that they are alert to particular human rights considerations.
- Analyse the impact of their operations on all stakeholder groups including consumers, suppliers, and communities.
- Analyse their relationships in order to guard against complicity in abuses by others.

3. Effective grievance mechanisms
The Framework also highlights the State duty to ensure there are effective grievance mechanisms, both judicial (court based) and non-judicial, for those that may be the victim of human rights abuses by business.

Pressure is increasing on States to provide access to remedies where a company has violated human rights and increasingly quasi judicial mechanisms of holding companies to account are being developed.

OECD National Contact Points
One such method is through the Organisation for Economic Co-operation and Development (OECD) Guidelines. The OECD Guidelines are recommendations to multinational enterprises operating in adhering countries.

The Guidelines are voluntary and provide principles and standards for responsible business in various spheres including human rights. Each adhering country is obliged to set up a National Contact Point (NCP) that provides a “forum for discussion” for matters relating to the Guidelines. NCPs can receive complaints from people that claim to be the victim of corporate abuses. There has been criticism of the operation of NCPs, in particular they are accused of lacking transparency and any decisions they render are not legal binding. Dissatisfaction with these flaws may well lead to further regulation. However, following its recent reform, the UK NCP has made notable decisions concerning alleged abuses by high profile UK corporations.

The Corporate Responsibility Coalition (CORE) has recently published a paper called ‘Filling the Gap’ calling for a new UK commission to investigate and provide remedies in respect of corporate abuses committed abroad.

In addition to external means of redress, Ruggie points out that part of the business obligation to respect human rights requires business to provide a means for people to bring human rights breaches to the attention of the company and seek redress. Ruggie cites the possibility of external mechanisms such hotlines for raising complaints or external mediators, as well as company administered mediated dialogue overseen by both sides of the dispute to ensure the integrity and fairness of the process.

The setting up of non-judicial company level grievance mechanisms provides a company with the opportunity to proactively address business and reputational risks. In addition such steps would improve stakeholder engagement and alert businesses quickly to problematic areas that may require preventative action allowing better management of operational risks.

Case study: G4S enter into global agreement with UNI
In December 2008 G4S signed a global agreement with the union UNI that explicitly provides that all of G4S’s 570,000 employees in all 110 countries where it operates have the right to unionise. The agreement represents a strong commitment towards labour rights and specifically provides that G4S will observe all national and international labour standards.
Stabilisation Clauses
One of the specific areas of concern highlighted by Professor John Ruggie in his reports to the UN Human Rights Council is the potential for stabilisation clauses – included in some investment contracts as a means of risk management – to negatively impact the protection of human rights.

Stabilisation clauses are used to protect the company that is investing in a foreign State against arbitrary action by the State such as nationalisation. However, research conducted by Ruggie and the IFC shows that, in developing countries, they are often also used by an investing company to protect them against new environmental and social legislation during the life of the contract that may result in increased costs for the investor company. For example a stabilisation clause may “freeze” the law in the host state for the duration of the contract or perhaps require that the State compensate the company for any increased cost it incurs as the result of legislative changes.

Although often viewed as legitimate risk management, it is argued the effect of such clauses is that the host states (often developing countries) are precluded or discouraged from initiating legislation that would improve labour, health and safety or environmental standards. Such clauses would appear to hold back the improvement of human rights in states where such improvement is often desperately needed.

First steps - developing a corporate human rights policy
A corporate human rights policy is a high level statement that focuses on the issues material to your business – where your human rights impacts are, through your employees, supply chain, customers and impacted communities. Issues may differ depending upon the countries you operate in, and what kind of operations you have.

Producing a good human rights policy
A human rights policy should:
• reference internationally recognised standards e.g. the International Bill of Human Rights (which includes the United Nations Universal Declaration of Human Rights, the ICCPR and the ICESCR), Core ILO Conventions, Global Compact principles.
• have a clear purpose, objective or statement of intent.
• state the scope of the policy - which parts of the business does it apply to, whether it covers subsidiaries, associate companies or joint ventures.
• briefly detail the management process associated with the implementation and monitoring of the policy, and the responsibilities for the policy through the business e.g. board, business heads, employees.

A good policy should be accompanied by guidance notes for employees to communicate what the policy means in practice. Some companies who operate in countries with different cultural and regulatory frameworks, where there are conflicts, threats to security or high risk human rights abuses, give details of dilemmas and how these can be navigated e.g. Talisman Energy.

Some of the better policies will describe the nuances in difficult situations and offer the best guidance to employees on how to resolve the most appropriate business response.

In order to be effective policies must be lived. Integration into your mainstream business strategy is vital. In times of distrust in business make sure you are living up to your values.

For examples of company human rights policies see the Business and Human Rights Resource Centre Website. http://www.business-humanrights.org/Documents/Policies
Additional resources

Protect, Respect and Remedy: a Framework for Business and Human Rights (2008) – Professor John Ruggie’s report to the UN Human Rights Council:

Business and human rights: Towards operationalizing the “protect, respect and remedy” framework” – Professor John Ruggie’s report to the UN Human Rights Council:

United Nations - human rights declarations and treaties and also the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights:
www.ohchr.org

http://www.iblf.org/docs/HumanRightsTranslated.pdf

Human Rights Companies and the Law (2009) – Commentary by Michael Smyth Partner and Head of Public Policy at Clifford Chance LLP prepared for the Business & Human Rights Resource Centre:

Winning with integrity – Human rights (2000) – Business in the Community/ IBLF, 2000:
http://www.bitc.org.uk/document.rm?id=5459

Amnesty International (AI):
http://www.amnesty.org/

Business & Human Rights Resource Centre website – The website covers the human rights impacts (good and bad) of over 4000 companies in over 180 countries. It also provides access to over 240 corporate human rights policies:
http://www.business-humanrights.org/Home

Institute for Human Rights and Business
http://www.institutehrb.org/

Global Business Initiative on Human rights
http://www.global-business-initiative.org/

International Business Leaders Forum
http://www.iblf.org/

Ethical Trade Initiative (ETI):
http://www.ethicaltrade.org/

International Labour Organisation (ILO):
http://www.ilo.org/public/english/

• Ministry of Justice (MOJ):
http://www.justice.gov.uk/whatwedo/humanrights.htm

UK OECD Guidelines National Contact Point:

UN Global Compact:
www.unglobalcompact.org