

EMBEDDING HUMAN RIGHTS IN BUSINESS PRACTICE

IV



United Nations Global Compact

About the United Nations Global Compact

The United Nations Global Compact is a call to companies everywhere to voluntarily align their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption, and to take action in support of UN goals and issues. The UN Global Compact is a leadership platform for the development, implementation, and disclosure of responsible corporate policies and practices. Launched in 2000, it is largest corporate sustainability initiative in the world, with more than 7,500 corporate signatories based in 145 countries, and Local Networks in over 100 countries.

More information: www.unglobalcompact.org


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CSR Specialist
Hitachi

Alessia Priolo
Human Rights Specialist
ENI

Rita Anne Roca†
Senior Specialist, Human Rights
Vestas Wind Systems;
Corporate CSR Manager
Maersk Oil‡

Ivana Schellangova
Senior Programme Manager
End Human Trafficking Now

Prashan Thalayasingam
Civil Society Advisor in the Humanitarian Context,
International Programme
Save the Children Sweden

David Vermijs
Project Advisor
Shift Project Ltd.

Mattia Villa
Citizenship and Public Affairs Coordinator
Microsoft

Lene Wendland
Adviser on Business and Human Rights
Office of the United Nations High Commissioner for
Human Rights (OHCHR)

* Organizational affiliations listed reflect positions held at the time of the peer review.

† This indicates that the individual reviewed two or more of the case studies in this volume.

‡ Ms. Roca changed positions during the period this volume was in development, reviewing some case studies while employed at Vestas and others after she transitioned to Maersk Oil.

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Introduction and Acknowledgements

Ursula Wynhoven and Matthew Daly¹

ABOUT THE EMBEDDING HUMAN RIGHTS IN BUSINESS PRACTICE SERIES

This series of case studies focuses on the practical application of the United Nations Global Compact's human rights principles (1 and 2) through concrete examples from business. The cases explore the steps businesses are taking to support and respect human rights in their operations, business relationships and wider sphere of influence. The case studies feature examples that: (1) demonstrate the relevance of human rights issues for businesses across sectors and regions; (2) build the business case for incorporating human rights in business; (3) inspire businesses to improve their performance on human rights issues; and (4) explain how businesses have successfully accomplished this already, to facilitate the dissemination of good practices. The *Embedding Human Rights in Business Practice* series is directed to all stakeholders engaged in human rights and business, including: businesses (both multinational companies and small or medium enterprises), investors, governments, Global Compact Local Networks (GCLNs), academics and other UN and civil society organizations engaged with companies on human rights issues.

VOLUMES I-III

The first three volumes of *Embedding Human Rights in Business Practice* investigated a wide range of human rights issues through the activities of many different companies around the globe.²

- **Volume I:** Published in 2004, the first volume focused on the practical meaning of the UN Global Compact's human rights principles for companies, presenting four case studies and a policy report from Hewlett Packard, BP, BHP Billiton (South Africa), Novo Nordisk and Total. The volume also features several articles on policy issues and resources related to human rights and business.
- **Volume II:** Published in 2007, the second volume includes twenty case studies about the efforts of Westpac Australia, ABB, BASF,

İpek Kağıt, Nike, Sasol, Shell, Asocolflores, Eskom, MAS, Achilles, Anglogold Ashanti, AREVA, Barloworld, Novartis, Starbucks, Titan Industries, Ketchum, Newmont and Volkswagen to respect and support human rights. The studies were organized according to the management practices they incorporated from A Human Rights Management Framework, a graphical representation of a continuous improvement approach to integrating human rights in business management.³

- **Volume III:** Published in 2009, the third volume features eight case studies that examine human rights and business at OMV, Ford, Cadbury, ASN, Endesa, Lexmark, Xstrata, and Engro Chemical. As in the second volume, these case studies are organized according to the management practices in A Human Rights Management Framework.

Together, the first three volumes in the series include more than thirty case examples of what the private sector has done over the last decade to support and respect the human rights enumerated in the Universal Declaration of Human Rights and other accepted human rights instruments. While there are common themes and strategies in these studies, the series also depicts the evolution of approaches to incorporate human rights into business management practices.

DEVELOPMENTS IN BUSINESS AND HUMAN RIGHTS:

On 16 June 2011 the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights:

1. Ursula Wynhoven is General Counsel of the United Nations Global Compact Office, where she also manages the office's Human Rights and Labour issue areas. Matthew Daly is a Consultant on Human Rights, Supply Chain Sustainability and Government Relations at the UN Global Compact.

2. All volumes are available at http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html.

3. A Human Rights Management Framework is available at http://www.unglobalcompact.org/docs/news_events/8.1/HR_poster.pdf.

Implementing the United Nations “Protect, Respect and Remedy” Framework, the first authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. This guidance is of the utmost importance for UN Global Compact business participants as they work to implement Global Compact Principles 1 and 2, which call for companies to support and respect the protection of internationally proclaimed human rights they may impact either directly or indirectly.⁴

- *The Guiding Principles on Business and Human Rights* can be accessed through the website of the Office of the High Commissioner for Human Rights in Arabic, Chinese, English, French, Russian, and Spanish.⁵
- The Working Group on the issue of human rights and transnational corporations and other business enterprises (the UN Working Group on Business and Human Rights), established by the Human Rights Council to promote the effective and comprehensive dissemination and implementation of the *Guiding Principles*, has also released *The UN Guiding Principles on Business and Human Rights: An Introduction*. This document summarizes their content and describes the mandate of the UN Working Group on Business and Human Rights.⁶

Another important development within the UN Global Compact is the launch of platforms that flesh out the social dimension of corporate sustainability and the concept of “inclusion” within the Global Compact’s overall mission to contribute to a more sustainable and inclusive global economy. These platforms align with the Guiding Principles recommendation that the risk of adverse impacts to human rights should be the focus of attention rather than merely risks to business. The concepts often overlap, but they are not the same. The platforms also recognize the enormous positive impacts that business can have to support and advance human rights through core business activities and working with other societal actors.

In 2010, the Global Compact and UN Women (then UNIFEM) launched the Women’s Empowerment Principles – seven steps that business can take to empower women and contribute to gender equality in the workplace, marketplace and community.⁷ In this short space of time, the Women’s Empowerment Principles has grown to be the Global Compact’s largest platform with over 600 CEO signers from all sectors and regions. Women’s empowerment is not only a human rights issue, it is widely regarded as a key driver of sustainable development more generally.⁸

Another set of principles, launched in 2012 by the Global Compact with UNICEF and Save the Children, is the Children’s Rights and Business Principles in recognition of the actual and potential impacts of business on children’s rights and the central place of children in sustainable development: “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. (Brundtland Commission). Children comprise 30 percent of the world’s population – much more in some areas. The principles seek to engage business across the workplace, marketplace and community to respect and support the rights of this major segment of the population.⁹

In 2012 and 2013, work began on guidance for business on respect and support for indigenous peoples rights and the rights of peoples with disabilities.

4. For a note co-published by the UN Global Compact and the Office of the UN High Commissioner for Human Rights on the complementary relationship between the Guiding Principles and UN Global Compact commitments, see: http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf

5. Office of the High Commissioner for Human Rights. “Publications and Resources: Reference Materials.” <http://www.ohchr.org/EN/PublicationsResources/Pages/ReferenceMaterial.aspx>.

6. UN Working Group on Business and Human Rights. “The UN Guiding Principles on Business and Human Rights: An Introduction.” http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/IntroToGPs.pdf.

7. See [wepinciples.org](http://www.wepinciples.org) for more information, including on how to join this movement by signing the CEO Statement of Support.

8. See, for example, Booz & Co, *Empowering the Third Billion: Women and the World of Work in 2012*, at: http://www.booz.com/global/home/what-we-think/third_billion.

9. See www.childrenandbusiness.org for more information.

VOLUME IV:

The fourth volume of *Embedding Human Rights in Business Practice* includes ten case studies detailing the experiences of companies in a diverse array of sectors operating in all corners of the world. It is the first volume of the series to appear after the introduction of the Guiding Principles. The following companies have practices that are examined in this volume:

- (1) **Australia and New Zealand Banking Group Limited (ANZ)**, which has incorporated the responsibility to respect human rights in business practices at all levels including corporate strategy, governance, and even lending criteria;
- (2) **Telenor Group**, a Norwegian mobile telecommunications company which has implemented a system that requires suppliers to comply with standards in human rights, labour, health and safety, the environment, and business practices, but which also provides training and assistance to those that fall short to help improve their performance;
- (3) **Sakhalin Energy Investment Company Ltd.**, an energy supply company specializing in the development of oil and gas off of Sakhalin Island in Russia, which has partnered with regional authorities and non-profit organizations to launch a programme to educate children about safety in emergencies.
- (4) **Xstrata Coal**, Australian Xstrata Group's coal production company with 30 operating coal mines in Australia, South Africa and Colombia, which has implemented partnership programmes with the South African government and civil society to develop programmes to combat HIV/AIDS in South Africa.
- (5) **Carlson**, a US-based hotel and restaurant operator with more than 1,300 hotels and 900 restaurants in operation and development in 150 countries and territories, which has implemented strategies to combat human trafficking and exploitation of children in the travel and tourism industry;
- (6) **FSI Worldwide Limited**, a workforce solutions specialist based in the United Arab Emirates but operating globally across multiple industries, which has based its policies on the commitment to combat human trafficking and forced labour, respecting the human rights of employment seekers and employees during the recruitment and employment process.
- (7) **ManpowerGroup**, a US-based staffing and workforce solutions provider operating offices in 80 countries and territories, which has committed to combating human trafficking and forced labor and promoting a policy of zero tolerance for human trafficking among employers around the world.
- (8) **Total S.A.**, a French oil and gas company operating in 130 countries globally, which has been working to embed a human rights approach in its operational policies and processes amongst more than 100,000 employees.
- (9) **Talisman Colombia Oil and Gas Ltd.** (a subsidiary of Canadian oil and gas company **Talisman Energy Inc.**), which worked to engage with indigenous communities in a complex, conflict-affected environment during a joint exploration project in Colombia.
- (10) **Goldcorp**, a Canadian mining company with operations and development projects throughout the Americas, which commissioned a human rights assessment of their Marlin Mine in Guatemala at the behest of company shareholders.

RECURRING THEMES

A number of recurring themes emerge from these ten case studies, many of which have also been observed in the three previous volumes of *Embedding Human Rights in Business Practice*.

The Importance of Stakeholder Engagement in Respecting and Supporting Human Rights

It is clear that listening to those whose human rights are or may be adversely affected by a company's operations is a key strategy for companies. Not consulting and establishing dialogue with these stakeholders at any early stage can mean that actual or potential human rights issues are missed and thus not addressed, and small issues may fester into big problems. The absence of ongoing communication channels and appropriate grievance mechanisms that allow stakeholders to safely, securely and effectively share their concerns can exacerbate these impacts as they continue without redress.

There is increasingly a compelling busi-

ness case for stakeholder engagement and proactive prevention of impacts by companies as part of a risk mitigation strategy. Resentment and tensions stemming from grievances in local communities can lead to conflict that not only undermines human rights further, but also hinders the effective operation of the business.¹⁰ One can observe this in the case studies on Goldcorp and Talisman in this volume.

The case studies on Goldcorp and Talisman also examine some of the specific challenges for business of engagement with indigenous populations. The United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”)¹¹ and the International Labour Organization’s Convention No. 169 on Indigenous and Tribal Peoples¹² set out State obligations in this realm and address participation in economic development by, and informed consent from, indigenous peoples. These also have implications for many business operations and relationships. Indigenous peoples’ rights are often not well understood and thus may be at greater risk of adverse impacts from business operations and/or relationships. To help raise awareness and understanding by business of indigenous peoples rights and how to respect and support those rights, the UN Global Compact is currently developing a Business Reference Guide on the UN Declaration on the Rights of Indigenous Peoples with input from indigenous peoples, businesses, academics, and other stakeholders.¹³

The Need for New Thinking on How to Respect Human Rights in Value Chains

Global Compact Principle 2 calls on businesses to ensure that they are not complicit in human rights abuses. Complicity basically means contributing to human rights abuse that another company, government, individual or group is causing. However, it can also include human rights abuses caused by another that the business’ operations, products or services are linked to by a business relationship. Avoiding complicity is part of the corporate responsibility to respect human rights under the Guiding Principles. For large companies engaged in the production of consumer goods, such as Telenor, addressing the risk of complicity can mean examining business relationships throughout the value chain to ensure that

they are not sourcing from suppliers that do not respect human rights. In other cases, concerns about complicity are downstream from the company; for example, banks, such as ANZ Banking Group, are conducting due diligence before investing in or providing loans for projects that could adversely impact human rights.

How far does this responsibility extend? Global value chains are increasingly complex, sometimes with dozens of tiers both upstream and downstream from a given company. Many businesses are struggling with how to effectively address risks of adverse human rights impacts in the value chain, including how to trace materials and products from start to finish.¹⁴ Guiding Principle 17 addresses this issue in the context of human rights due diligence, recommending that “business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers’ or clients’ operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence”.¹⁵

Beyond Respect – The Opportunity to Support Human Rights

UN Global Compact Principle 1 asks businesses to support and respect the protection of internationally proclaimed human rights. It is important to note, however, that support and promotion of human rights cannot offset a failure to respect human rights.¹⁶ The principle asks business to support and respect

10. For an in-depth examination of the costs of such conflict, see *The Costs of Conflict with Local Communities in the Extractive Industry*, a paper presented at the First International Seminar on Social Responsibility in Mining in October 2011: http://shiftproject.org/sites/default/files/Davis%20&%20Franks_Costs%20of%20Conflict_SRM.pdf.

11. The United Nations Declaration on the Rights of Indigenous Peoples can be found at: http://www.un.org/esa/socdev/unpfi/indigenous/DRIPS_en.pdf.

12. International Labour Organization Convention No. 169 is available at: <http://www.ilo.org/indigenous/Conventions/no169/lang-en/index.htm>.

13. For more information, see: http://www.unglobalcompact.org/Issues/human_rights/indigenous_peoples_rights.html

14. The Global Compact’s Supply Chain Sustainability issue team is currently developing guidance material on the challenges of traceability in supply chains. For more information, please visit http://www.unglobalcompact.org/Issues/supply_chain.

15. UN Guiding Principles on Business and Human Rights, Principle 17, Pgs. 17-18.

16. UN Guiding Principles on Business and Human Rights, Principle 11, Pg. 13.

human rights. Support for human rights means additional voluntary actions that go beyond respect for human rights to promote or advance human rights. It can be achieved through core business approaches (e.g. inclusive business models, innovating goods and services that help realize human rights), strategic social investment or philanthropy, public policy engagement or advocacy, and partnership or other forms of collective action. Companies have many opportunities to create shared value especially in areas closely connected to their core business and/or the region of their operations. Companies operating in contexts where human rights are not realized often have a host of reasons for wanting to take action to positively impact the enjoyment of human rights. In such instances, working with others is critical to pool resources, expertise and reach. Sakhalin Energy, for example, has partnered with government agencies in Russia to implement a programme to educate local children about safety in emergencies since they are headquartered in an area that is susceptible to natural disasters. Xstrata Coal has developed an initiative in conjunction with the South African government and civil society to combat HIV/AIDS in the country, which has high prevalence of the disease.

The business case for supporting human rights is as strong as that for respecting human rights. Consumers and other stakeholders are often eager to partner with organizations to make a positive contribution to the realization of human rights when a company is willing and able to do so. Sakhalin's work to educate children about safety, for example, has been embraced by members of the community who are enthusiastically working with the company to implement their programmes. In supporting clinics and care in many different areas of South Africa, Xstrata recognized that helping the government address HIV/AIDS issues would also mitigate risks to their business, since the health and productivity of their workforce were threatened by the disease.

Collaborating to Address Pervasive Human Rights Challenges – Human Trafficking – A Human Rights Challenge Across Sectors and Regions

The Global Compact has collaborated with End Human Trafficking Now to develop

three of the case studies in this volume of Embedding Human Rights in Business Practice, which focus on business initiatives to combat trafficking. Human trafficking is the recruitment or transfer of human beings through coercion or deception for purposes of exploitation, mainly for forced labour or sex work. The International Labour Organization estimates that 20.9 million people are victims of forced labour globally.¹⁷ It is widespread, occurring in every country and touching nearly every sector of business, with a market value of approximately US\$32 billion per year.¹⁸ It is a modern form of slavery and a crime that shames us all.

Every societal actor has a role to play in helping to combat the issue of human trafficking. Business has a responsibility to respect human rights, including to undertake due diligence so that they are not contributing to human trafficking or associated with it through their business relationships. Carlson, a global leader in the travel industry, has undertaken initiatives to prevent instances of trafficking and sexual exploitation of children that might occur in connection to their hotels and other venues located in 150 countries around the world. Sex tourism – travel with the primary purpose of engaging in illicit sexual activity – is a major challenge that Carlson and many of their industry peers are actively combating.

FSI Worldwide and ManpowerGroup have both established programmes to combat human trafficking and forced labour in their recruiting operations and also encourage businesses and other stakeholders with whom they engage to implement strategies to ensure that human trafficking and forced labour have no place in labour supply chains. The case study on FSI also examines the strong business case that the firm has developed in favour of ethical recruiting practices based on their experience.

Embedding Human Rights in Business Practice is an Ongoing Challenge

The successful integration of human rights in company practices is an on-going effort. It

17. UNODC, Global Report on Trafficking in Persons 2012, Preface (http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

18. <http://www.endhumantraffickingnow.com/what-is-human-trafficking>.

begins but does not end with the adoption of a policy, requiring engagement with employees and other stakeholders at all levels of the business. There must be buy-in from corporate leadership to ensure that support and resources are available to implement policy throughout operations. It is also necessary to build understanding and capacity among the employees who are carrying out everyday business functions to ensure that they are applying policy to inform practice.¹⁹

As we have seen in previous volumes, it is impossible to entrench human rights policies and practices in large corporations without ongoing training and capacity building. The case study on Total S.A. examines the company's ongoing efforts to engage and educate their employees from across the business since they adopted their Code of Conduct committing to respect human rights in 2000. With more than 100,000 employees and operations in 130 countries, continuous engagement and dialogue are necessary. The experiences in the case study provide useful lessons learned for other companies.

A WORD ON CASE SELECTION AND METHODOLOGY

Case Selection and Drafting

Prospective authors²⁰ initially submit brief case study proposals to the Human Rights and Labour Working Group (HRLWG) Secretariat. Once the Secretariat has approved the case study concept and it is clear that there is commitment from the author and the subject company to proceed, the case study proposal is made available to the members of the Working Group.

The author then begins the process of drafting the case study, working with a company representative to facilitate access to background documents, key personnel, and relevant external stakeholders that are integral to research. When the draft is complete,

the author submits it to the Secretariat for the first round of feedback. After the author has addressed any comments or concerns to the satisfaction of the Secretariat, the draft is also provided to the company to ensure that there are not any errors or omissions before circulation to peer reviewers.

Peer Review and Finalization

The Secretariat contacts members of the HRLWG, inviting them to provide feedback on the study. Three or four peer reviewers with appropriate industry or human rights expertise are selected, including at least one member of the HRLWG, to provide constructive feedback to the author and a company representative on a peer review conference call, organized by the Secretariat. Others may provide written comments as well.

Once the peer review call is complete and any additional comments from members of the HRLWG have been submitted, the author revises the case study based on the feedback received. The Secretariat reviews the updated draft, making final comments as necessary, and approving it for publication on the Global Compact website²¹ and in the next volume of *Embedding Human Rights in Business Practice*.

Future Volumes

Business and human rights case studies are developed on an ongoing basis and posted on the UN Global Compact's website as they are completed. Periodically, case studies are published together as a volume in the *Embedding Human Rights in Business Practice* series. Interested case authors, peer reviewers and companies should contact humanrights@unglobalcompact.org.

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19. For detailed information on establishing a statement of policy and incorporating it in practice, see Guiding Principle 16, Pgs. 16-17. For guidance on how to develop a human rights policy statement aligned with the Guiding Principles and the UN Global Compact, see: http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/HR_Policy_Guide.pdf.

20. The authors receive no remuneration from the companies concerned or the UNGC. Case authors, who are often graduate students, are sometimes able to obtain academic credit for their work.

21. Concluded case studies are published here: http://www.unglobalcompact.org/Issues/human_rights/Business_Practice.html.

BUILDING RELATIONSHIPS YOU CAN BANK ON:

ANZ's Approach to Promoting the Responsibility to Respect Human Rights in Its Business Relationships

By Christina Koulias¹

Human rights issues addressed

- › Business relationships
- › Diversity and equal opportunity
- › Education
- › Family life
- › Environment
- › Minorities
- › Occupational health and safety
- › Social investment and community development
- › Standard of living
- › Supply chain management
- › Water
- › Weapons
- › Whistleblower protection
- › Workplace bullying and harassment

Human rights management practices addressed

- › Getting started
- › Strategy
- › Policies and processes
- › Communications
- › Training
- › Measuring impact and auditing
- › Reporting

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › Association of South East Asian Nations (ASEAN)
- › Dow Jones Sustainability Index (DJSI)

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ABSTRACT

This case study explores how Australia and New Zealand Banking Group Limited (ANZ) aims to promote the responsibility to respect human rights in its business relationships. ANZ developed its approach to respecting people and communities through sponsorship and collaboration, and implements its human rights standards in its values, strategy, governance, policies, systems and processes through education and training.

The study focuses on how ANZ created greater legitimacy internally to drive its human rights strategy since becoming a signatory to the United Nations Global Compact (UNGC) and observing the United Nations “Respect, Protect and Remedy” Framework and Guiding Principles on Business and Human Rights (Guiding Principles).

Finally, the paper reflects ANZ’s aim to promote a strong culture of respect for people and communities across its global employee base, and provide the appropriate resources and tools to better understand human rights in everyday business dealings, particularly with respect to business relationships with customers and suppliers. This includes an analysis of the lessons learned and successes achieved throughout the development and implementation process, and a consideration of the possible strategic challenges and opportunities that lie ahead.

1. COMPANY PROFILE

1.1. The Business

ANZ has played a significant part in the Australian economy for over 175 years. While originally established in Sydney, ANZ’s headquarters is now located in Melbourne, Australia. In 2008, ANZ relocated its headquarters from Melbourne’s CBD to the Docklands precinct. The ANZ Centre – as it is known – has been the recipient of many architectural awards, and as one judge put it, is “setting a global social and environmental sustainability benchmark for others to follow”.²

Today, ANZ has established itself as one of the 30 largest listed banks globally; it is one of the five largest and most successful listed companies in Australia and the number one bank in New Zealand.³ Furthermore, ANZ operates in 30 other countries across Asia Pacific, Europe and America (APEA).

ANZ has an estimated 50,000 employees, 15,000 suppliers and 8 million customers.⁴ It offers customers a comprehensive product portfolio including deposits, lending, insurance and other financial services. These

products are delivered through ANZ’s core businesses including, consumer banking, commercial, corporate and institutional banking and wealth management.⁵ In October 2012, ANZ reported profit after tax of A\$5.7 billion.⁶

Australia’s banking and finance industry is one of the strongest in the world. In the same period, Australia’s four largest banks – known as “The Four Majors” and including ANZ – posted a combined profit of approximately A\$25 billion.⁷ The political landscape in which banks operate in Australia can be contentious, particularly with respect to public views on interest rates charged by banks vis-à-vis the level of profits generated. But with mounting pressure to maintain low

1. Christina Koulias is an Australian lawyer formerly at Clayton Utz and was a banker formerly at National Australia Bank. The author would like to thank ANZ’s representatives for sharing their stories. Peer review of the case study was provided by: Rita Anne Roca, Senior Specialist, Human Rights, Vestas Wind Systems A/S; David Vermijs, Project Advisor, Shift Project Ltd; Monica Bowen-Schire, Senior Sustainability Advisor, Vattenfall AB and Jonathan Drimmer, SVP and Deputy General Counsel, Barrick Gold Corporation.

interest margins in local markets and mitigate the adverse impacts of global financial markets, Australian banks face a range of challenges.

A combination of robust government regulation and astute industry management has ensured that the Australian banking and finance industry largely weathered the 2008 global financial crisis. But with the recent sovereign debt crisis spreading throughout Europe and North America, and the related impacts on the domestic economy, Australian banks are treading cautiously to manage their capital adequacy ratios and deal with a volatile wholesale funding market.

In light of the complexities of the economic and political environment, ANZ strives to balance social and environmental considerations while consistently delivering a healthy return on investment to its approximately 400,000 shareholders. While its core domestic business is delivering solid growth year on year, ANZ is expanding its operations abroad in an effort to deliver sustainable growth.

2. ANZ was awarded "Commercial Building of the Year" at the Leading European Architects Forum (LEAF) Awards; see ANZ Shareholder and Corporate Responsibility Review 2010, http://media.corporate-ir.net/media_files/irol/96/96910/ANZ/2010Review/anz_in_your_world/urban_sustainability/index.html.

3. ANZ Shareholder and Corporate Responsibility Review 2010: http://media.corporate-ir.net/media_files/irol/96/96910/ANZ/2010Review/index.html.

4. ANZ company profile: <http://www.anz.com/about-us/our-company/>.

5. For more information about ANZ's markets, products and services see Personal Banking: <http://anz.com.au/personal/>; Small Business Banking: <http://anz.com.au/small-business/>; Corporate Banking: <http://anz.com.au/corporate/>; Institutional Banking: <http://www.anz.com.au/corporate/banking-business/large-corporates/>.

6. ANZ Annual Report 2012: http://media.corporate-ir.net/media_files/irol/96/96910/FY12_Media_Release.pdf.

7. Sydney Morning Herald: <http://www.smh.com.au/business/big-four-to-pass-25b-in-profit-20121104-28s36.html> 5 November 2012.

1.1.1. Focusing on Human Rights

While internal discussions around human rights commenced around 2007, two critical events prompted ANZ to formalize its approach to human rights. Firstly, there was a changing of the guard with the appointment of Mike Smith as Chief Executive Officer (CEO). Secondly, there was mounting pressure from various stakeholders regarding ANZ's relationship with institutional customers, some of whom were alleged to be involved in human rights abuses.

Since joining ANZ as CEO, Mike Smith's vision has been to establish ANZ as a super regional bank, particularly in the Asia Pacific (APAC) region. Smith acknowledges that an integral part of this strategy is ensuring that the business is managed both profitably and responsibly. Moreover, there has been a growing appreciation for the need to build stronger business relationships (with customers, suppliers and civil society) to address the diverse social, political and economic considerations within the respective regions in which ANZ operates.

Despite these events, ANZ has always appreciated the importance of the rights of its people, customers and community. The bank has long upheld the rights of its employees with regard to, among other things, workplace diversity and workplace safety. It also observes the rights of its customers and the community, through the responsible products and services it offers, and through its social investment programs.

ANZ has articulated its commitment to these rights through a number of initiatives including:

- Code of Conduct and Ethics;
- Customer Charter;
- People (human resources) policies; and
- Corporate Responsibility framework, priorities and targets.⁸

... continued from the previous page

- › European Commission
- › International Finance Corporation (IFC) and Equator Principles
- › International Labour Organization standards (ILO)
- › FTSE4Good Index
- › Organisation for Economic Co-operation and Development (OECD)
- › Universal Declaration of Human Rights (UDHR)
- › United Nations Human Rights Council
- › United Nations 'Protect, Respect and Remedy' Framework and Guiding Principles on Business and Human Rights (Guiding Principles)
- › UN Special Representative of the Secretary General on Business and Human Rights

The bank has implemented these commitments through a number of initiatives including:

- Employee and customer engagement;
- Workplace diversity (including women in management);
- Financial inclusion programs (in Australia, New Zealand and various countries across the APAC region); and
- Indigenous Action Plan (partnering with Australian indigenous communities).⁹

ANZ is committed to incorporating human rights into its business, particularly with respect to its values, strategy, governance, policies, systems and processes. However, this commitment has come with its own set of challenges, including the politically charged nature of human rights vernacular and the importance of framing the bank's approach to highlight issues that are relevant to the business.

Julie Bisinella, then Group Head of Corporate Responsibility, oversaw the work to formalize ANZ's approach. She stated that, "connotations of child labour, slavery and torture were at the forefront of most people's minds, and so we knew that there was a long journey ahead of us, not only in raising awareness around human rights, but also in finding the right balance between passion and pragmatism".

Bisinella, now ANZ's Group Head of Culture and Engagement, is lauded by her colleagues as a leader in advancing the human rights agenda within the bank. However, she attests that this agenda may not have progressed without the advice and drive of the late Jonathan Sandler, former Group General Manager Human Resources and Deputy General Counsel. A highly respected human rights expert, Sandler served as a crucial sponsor and provided legitimacy and rigor to discussions at the most senior level of the bank.

While dialogue at the leadership level centered on the moral vis-à-vis commercial imperatives, ultimately, the most compelling view was the one that articulated a business case for human rights. ANZ appreciates that a failure to respect human rights and to adequately manage human rights-related risks could have negative reputational, financial, legal, and operational consequences.

1.1.2. Engaging the UN System

As ANZ worked on creating its own human rights framework, there was a significant amount of activity underway externally to deliver – what is now known colloquially as – the Guiding Principles.¹⁰

Aligning with the Guiding Principles

In 2006, Professor John Ruggie was appointed as the Special Representative to the UN Secretary General on Business and Human Rights. Over the next several years, Professor Ruggie and his team of legal advisors coordinated and engaged in extensive research and analysis, which culminated in the development of the Guiding Principles.

The Guiding Principles promote the duty of the State to protect human rights, the responsibility of corporations to respect human rights and the requirement of States to provide access to remedy to individuals whose human rights have been adversely affected by corporate misconduct.

In June 2011, the UN Human Rights Council unanimously endorsed the Guiding Principles.¹¹ Various intergovernmental, non-government organizations and State bodies have already incorporated, or are in the process of incorporating, the Guiding Principles into their respective frameworks. These include the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and

8. For more information see Code of Conduct and Ethics: <http://www.anz.com/about-us/corporate-responsibility/more-mike/code-conduct-compliance/>; Customer Charter: <http://www.anz.com/about-us/corporate-responsibility/customers/approach/>; People Policies: <http://www.anz.com/about-us/corporate-responsibility/employees/> and Corporate Responsibility framework, priorities and targets: <http://www.anz.com/about-us/corporate-responsibility/framework/>.

9. For more information see ANZ Employee and Customer Engagement: <http://www.anz.com/about-us/corporate-responsibility/employees/attracting-retaining-talent/engagement/> and <http://www.anz.com/about-us/corporate-responsibility/customers/approach/>; Workplace Diversity: <http://www.anz.com/about-us/corporate-responsibility/employees/valuing-diversity-respect/diversity/>; Financial Inclusion: <http://www.anz.com/about-us/corporate-responsibility/framework/financial-capability/> and Reconciliation Action Plan: <http://www.anz.com/about-us/corporate-responsibility/framework/responsible-practices/indigenous-action-plan/>.

10. For more information see: <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>.

11. See UN Human Rights Council resolution 17/4 on Human Rights and Transnational Corporations and Other Business Enterprises: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/4 16 June 2011.

the International Finance Corporation (IFC) Performance Standards and Equator Principles (both World Bank initiatives).

The Guiding Principles, and the UN system more broadly, have served as a critical reference point for ANZ in building its own framework. ANZ Group Corporate Affairs – the business unit chiefly responsible for ANZ’s human rights strategy – has relied on the Guiding Principles to not only guide its own human rights framework but also provide a solid platform to engage a broader group of internal and external stakeholders in promoting its approach to human rights.

Bisinella explained that “the degree of internal support for human rights principles by senior management and the external formalization of a human rights framework through the Guiding Principles has been vital in removing the angst of discussing this sensitive topic and providing a pragmatic approach to addressing issues in the context of a corporation’s responsibility to respect human rights”.

In a move toward aligning its approach to international standards, ANZ engaged Vanessa Zimmerman – former Legal Advisor to Professor Ruggie – to gain further insight into the relevance of the Guiding Principles to its values, strategy and operations. Through this (and other initiatives) ANZ is finding pragmatic ways to promote the concept of corporate respect for human rights.

Signatory to the United Nations Global Compact

In May 2010, ANZ reinforced its commitment to human rights by becoming a signatory to the UNGC and Global Compact Network Australia (GCNA), which includes a commitment to observe the UNGC’s Ten Principles.¹² In December 2010, ANZ was amongst the first group of participants across various industries to attend the inaugural GCNA Human Rights Leadership Group for Business, a forum which brings together existing and prospective members of the UNGC to build relationships and share experiences.¹³

Partnering with the UNGC and applying the Guiding Principles has allowed ANZ to effectively develop and implement its human rights strategy, which includes encouraging substantive conversations across all of its business relationships.

RELEVANT UNGC PRINCIPLES:

Principle 1

Businesses should support and respect the protection of internationally proclaimed human rights.

Principle 2

Businesses should make sure that they are not complicit in human rights abuses.

RELEVANT GUIDING PRINCIPLES:

Principle 11

Business enterprises should respect human rights. This includes avoiding infringing on the human rights of others and addressing adverse human rights impacts.

Principle 12

The responsibility to respect human rights refers to internationally recognized human rights standards, including as a minimum, the International Bill of Human Rights¹⁴ and International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

1.2. Business Relationships

1.2.1. The Value Chain

A unique feature of the banking and finance industry is the scope of factors that its members are required to consider and the degree of impact their conduct may have on global financial markets. This is further complicated by the nature of their business relationships, which in essence, create a tripartite responsibility – between a bank’s people, customers and suppliers – to respect human rights.

ANZ acknowledges that it has a responsibility to consider how human rights are impacted, or potentially impacted, throughout its value chain. This includes how ANZ, along with its business customers and global suppliers, demonstrates a respect for human rights within their own operations and in the communities in which they operate. For instance, the downstream effect

12. For more information see UNGC: <http://www.unglobalcompact.org/AboutTheGC/>; <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html> and GCNA: <http://www.unglobalcompact.org.au/>

13. For more information on the Human Rights Leadership Group for Business see: <http://www.unglobalcompact.org.au/leadership-groups/human-rights/>. The forum observes the “Chatham House Rule” in order to promote meaningful dialogue.

14. The International Bill of Rights comprises the Universal Declaration of Human Rights, International Covenant on Political and Civil Rights and International Covenant of Economic, Social and Cultural Rights.

of a manufacturer of corporate uniforms mistreating its employees or subcontractors; or the upstream effect of a business banking customer that has been granted project finance lending having no regard for the local community and the environment from which it extracts natural resources.

The banking and finance industry's relationship with business customers has attracted attention in recent years. The rise of globalization has provided greater opportunities for multinational enterprises and with this comes the need for greater responsibility in observing human rights standards – particularly where local laws may be developing or, in some cases, inconsistent with international norms (such as customary laws, treaties, conventions and standards).

A common feature of the relationship between a bank and its business customers is that it can be both commercially entrenched and enduring. These customers generally have a dedicated relationship manager who has carriage of the relationship and is supported by a suite of specialist bankers who assist in the execution of more complex transactions, such as project finance lending to corporate and institutional customers.¹⁵

Indeed, one of ANZ's greatest challenges is that the range of human rights issues across the various regions in which it operates varies considerably. This is where international norms serve as a useful benchmark in constructing conversations with business customers that promote a respect for human rights.

1.2.2. Impact on Human Rights

ANZ recognizes that it is extremely important for its relationship managers and specialist bankers to have awareness of and appreciation for the direct and indirect impact a customer's actions may have on human rights. Moreover, it is critical for bankers to have an awareness of human rights issues and turn their minds to potential risks during their interaction with customers. For instance, providing project finance lending to an institutional customer for the construction of a tailing dam may impact on the rights of the local community with respect to culture, livelihood, food and water.

15. For more information see Project Financing: <http://anz.com.au/corporate/products-services/financing/project-finance/>.

The manner in which a customer responds to a conversation about human rights may serve as an early warning indicator regarding their approach to managing environmental or social issues effectively, which may ultimately affect the viability of the entire business relationship.

A customer that is unable to "know and show" how it manages human rights-related risks or issues is likely to present a risk to ANZ's own operations and reputation. Specifically, a business customer that does not attempt to avoid or remedy a human rights-related risk may lose its social license to operate and find itself in financial difficulty. As such, the customer may pose a credit risk to the bank as it finds itself unable to repay the debt owed to the bank when it becomes due and payable. Further, any association by ANZ with a business enterprise that has received adverse publicity with respect to human rights may have an adverse impact on the bank's own reputation.

RELEVANT GUIDING PRINCIPLE:

Principle 13

The responsibility to respect human rights requires that a business:

- › Avoid causing or contributing to adverse human rights impacts through its own activities; and
- › Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services through their business relationships.

2. CREATING ANZ'S HUMAN RIGHTS STANDARDS

In an effort to develop its own framework for respecting human rights, ANZ employed a systematic approach to its consultation with key internal and external stakeholders. During the height of the global financial crisis, ANZ invited approximately 150 stakeholders from the APAC region to participate in two half-day workshops with business peers, intergovernmental organizations and non-government organizations.

The central theme of these workshops was to define what it means to be a socially responsible bank, which included under-

standing stakeholder expectations of ANZ in developing its own approach to human rights. The main challenges for ANZ during this process were facilitating constructive dialogue (taking into consideration the breadth of human rights issues raised and the depth of views expressed by participants) and to provide transparency with respect to what could realistically be incorporated into ANZ's human rights strategy.

Engaging with internal and external stakeholders was invaluable in the development and implementation of group-wide standards and initiatives including education programs and support tools designed to assist ANZ employees in applying its standards in the business context. The main ideas that emerged through the consultation process related to language, relevance and collaboration – all of which are reoccurring themes in the ANZ experience.

2.1. Language and Relevance

The language of human rights as used by governments, NGOs and the legal profession is not the traditional vernacular of business and this has at times challenged efforts to drive cultural change throughout ANZ. The use of the term “human rights” vis-à-vis the use of a more neutrally perceived phrase such as “social and environmental issues” has been the subject of much internal debate.

While ANZ has drawn from foundational instruments such as the Universal Declaration of Human Rights (UDHR) and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work (ILO Principles) to articulate its commitment to human rights, Bisinella stated that “there are inherent challenges in applying these instruments to ANZ's operations and relationships in various capacities, across various regions”.

Ultimately, ANZ opted to refer to social and environmental issues in conveying its commitment to respecting people and communities. This decision was driven by the need to define the scope and degree of responsibility that ANZ should accept with regard to respecting human rights within its own operations and business relationships. The rationale was that using less politically charged terms would encourage greater collaboration between ANZ's people, customers and suppliers.

2.2. Collaboration

In 2010, ANZ launched its human rights statement, ‘Respecting people and communities – ANZ's approach to human rights’ (Statement).¹⁶ The ANZ Group Board, Management Board and CEO-chaired Corporate Responsibility Committee reviewed, refined and, after considerable discussion, endorsed the Statement. This ultimately reflected a “tone from the top”, which served as a critical component of creating a sustainable human rights culture throughout the bank.

The preamble of the Statement refers to ANZ's commitment to respect human rights by becoming a signatory to the UNGC and includes a commitment to apply the UNGC's Ten Principles relating to human rights, labour, environment and anti-corruption.¹⁷ Since the release of the UN Guiding Principles, ANZ has amended its Statement to acknowledge them.

ANZ also states its support for the OECD Guidelines for Multinational Enterprises and requires adoption of the Equator Principles in all project finance decisions. These standards have also provided a solid foundation for ANZ, through its due diligence process, to actively address social and environmental considerations with its institutional customers and communication with civil society.¹⁸

The purpose of the Statement was for ANZ to publicly acknowledge the important role it plays in the lives of its people, customers and the communities in which it operates by:

- Reflecting ANZ's core values including integrity, collaboration, accountability, respect and excellence;¹⁹
- Prescribing the standards by which ANZ aspires to be responsible with respect to its business relationships (with employees, customers, suppliers and communities), purchasing decisions, and anti-corruption initiatives (collectively Human Rights Standards);

16. For more information see ANZ Statement, ‘Respecting people and communities: ANZ's approach to human rights’, August 2010: <http://www.anz.com/about-us/corporate-responsibility/framework/responsible-practices/human-rights/>.

17. The UNGC Ten Principles are principally derived from the UDHR and ILO Principles. For more information see: <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html>

18. For more information see OECD Guidelines for Multinational Enterprises: <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/48004323.pdf>; Equator Principles: http://www.equator-principles.com/resources/equator_principles.pdf

19. For more information see ANZ Values: <http://www.anz.com/about-us/corporate-responsibility/more-mike/values/>

- Embedding ANZ's Human Rights Standards into business practices including employee training, and global sourcing contracts and institutional customer due diligence processes; and
- Applying ANZ's sensitive sector policies (with respect to water, hydroelectric power, forestry and forests, energy, and extractive industries) to guide responsible business lending decision-making (Sensitive Sector Policies).

ANZ has also released a set of 'Frequently Asked Questions' that provide practical guidance to its people, ensuring that relationships with its customers, people and suppliers are informed by the bank's Human Rights Standards.²⁰

RELEVANT GUIDING PRINCIPLE:

Principle 16

A business enterprise should express its commitment to meet the responsibility to respect human rights through a statement of policy that:

- › Is approved at the most senior level of the business enterprise;
- › Is informed by relevant internal and external expertise;
- › Stipulates the business enterprise's expectations of all of its business relationships;
- › Is publicly available and communicated across all business relationships; and
- › Is reflected in operational policies and procedures necessary to embed it throughout the business.

3. DEVELOPMENT AND IMPLEMENTATION OF ANZ'S HUMAN RIGHTS POLICIES AND PROCESSES

3.1. ANZ's Operations

ANZ believes that focusing on how human rights affects the daily working lives of its people will encourage them to promote a respect for people and communities across all of its business relationships, particularly when dealing with external suppliers and large business (corporate and institutional) customers.

Bisinella stated "our initial focus was on promoting a culture of respect within our business by actively encouraging workplace diversity and workplace safety, and providing our people with various forums for their views to be heard, such as through our employee engagement survey and under our whistleblower protection policy. Bringing human rights home to our own people is a critical component in raising awareness and having a lasting impact on the rights of others. This has required us to find ways to empower our employees and enable them to 'practice what we preach' when dealing with colleagues, suppliers, and customers".

Early on, the bank recognized the importance of "getting its own house in order" to encourage ownership of human rights across the business. This involved developing a human rights strategy that promotes awareness through education, refines existing policies, and embeds processes into business practice.

The deployment of ANZ's Human Rights Standards to employees across all regions was a complex process. ANZ's Corporate Responsibility team realized early in the development process that a "one-size fits all" approach would not work. There was a real need to understand the particular cultural and economic sensitivities within each country and to tailor approaches for the people it relates with and communities in which it operates. This required translating ANZ's Statement into several different languages including Indonesian Bahasa, Vietnamese and Chinese to ensure stakeholders had equal access to the bank's Human Rights Standards.

Further, ANZ had numerous initiatives in place (predominately relating to employee benefits/programs and customer products/services) that fell squarely within the ambit of human rights. As such, the development process was more akin to a review of ANZ's current policies and processes to ensure a more consistent and formalized approach to respecting people and communities across the group.

One key activity was the review of ANZ's suite of People policies. This involved reviewing over 2000 varying policies and practices and condensing them into just over one hundred. ANZ's People policies now provide global consistency in areas such as equal opportunity, bullying and harassment, and employee entitlements such as parental

20. ANZ Human Rights FAQs: <http://www.anz.com/about-us/corporate-responsibility/framework/responsible-practices/human-rights/>.

leave and study assistance. For many of ANZ's employees this provided access to new entitlements — particularly in the APAC region — that in many cases go beyond the standard entitlements available to them in their respective countries.

This was a particularly important exercise for the implementation of ANZ's super regional strategy. ANZ believes that part of being a responsible bank is ensuring that it has consistent policies across its global operations that are aligned with international standards.

3.2. External Suppliers

Integrating ANZ's Human Rights Standards into its Global Sourcing business also presented challenges with regard to overcoming language barriers between human rights principles and business practices. Despite this, there is a heightened awareness at the senior management level that the adoption of sustainable practices is critical in managing its global supply chain into the future.

With over 15,000 suppliers globally, and some 3,500 across the APAC region, ANZ appreciates that it has significant purchasing power, which in turn, requires the bank to demonstrate a responsible approach to ensuring suppliers meet those standards expected by customers and stakeholders. This has been the key driver in the development of ANZ's global Responsible Sourcing framework.²¹

As part of its approach, ANZ reviewed the training and tools available to its sourcing staff, in particular Category Purchasing Managers, to help them make informed procurement decisions that take into consideration the impact such decisions have on people, communities and the environment. The work to drive a cultural change in Global Sourcing has been supported by ANZ's Human Rights Standards and two additional instruments:

- Global Sourcing Policy — outlining the principles and acceptable behaviors expected of all participants involved in the procurement and management of external sourcing activities; and
- Supplier Code of Practice — prescribes the social and environmental performance standards required by ANZ's suppliers. Its standards include an expectation that suppliers have strong internal systems and governance processes in place.

3.2.1. Education and Training of Category Purchasing Managers

ANZ acknowledges that efforts to implement its Human Rights Standards in Global Sourcing have been hampered by the challenge of establishing the relevance of human rights to specific roles and responsibilities in a meaningful and practical way. ANZ has a suite of activities underway to address this issue and to empower its Category Purchasing Managers to actively promote the mutual obligations of ANZ and its suppliers under the Supplier Code of Practice.

ANZ is in the process of deploying its Responsible Sourcing Program to all Category Purchasing Managers across its global operations. The program focuses on the bank's highest risk categories with respect to social, environmental and human rights risks in its supply chain. The bank also engages with its suppliers to improve its understanding of these risks. Further, ANZ is reviewing its due diligence processes when auditing the corporate responsibility credentials of its suppliers.²²

One of these high-risk categories is security services. ANZ is working with security service providers across the APAC region to better understand how to monitor and manage human rights risks and build the capabilities of ANZ employees to engage in meaningful conversations on these issues with their supply partners.

3.3. Business Customers

ANZ's approach to responsible business lending has been to apply a principles-based framework that informs its decision-making on a customer's business strategy and financial needs. This has been particularly critical with ANZ's growing presence in the APAC region and the financing of companies that operate in socially and environmentally sensitive industries.²³

In 2011, ANZ conducted a review of its Sensitive Sector Policies, which include water, hydroelectric power, forestry and forests, energy, and extractive industries, in order to incorporate feedback from external

21. ANZ Responsible Sourcing <http://www.anz.com/about%2Dus/corporate%2Dresponsibility/supply%2Dchain/approach/>

22. ANZ's UNGC Communications on Progress May 2012: http://www.anz.com/resources/6/d/6dd22e004ba7a9b2ab14ebc96010cd62/ANZ_UNGC_CoP.pdf?CACHEID=6dd22e004ba7a9b2ab14ebc96010cd62.

RELEVANT GUIDING PRINCIPLES:

Principle 17

Business enterprises should carry out human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts. This process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- › Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or business relationships;
- › Will vary in complexity depending on the nature of the business enterprise or severity of human rights impacts; and
- › Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's strategy and operations evolve.

Principle 18

Business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- › Draw on internal and/or independent external human rights expertise; and
- › Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

stakeholders and ensure consistency with its human rights standards. The Sensitive Sector Policies help guide ANZ's engagement with institutional customers, address any environmental and social risks – including human rights issues – within these sectors, and cover the range of products and services that the bank offers. In applying the Sensitive Sector Policies to particular industries, ANZ encourages its business customers to:

- Adopt management practices to continuously improve social and environmental performance;
- Apply a balanced approach to managing social and environmental risks; and
- Observe internationally accepted industry management standards and practices to manage social, environmental and economic impacts.

ANZ has also demonstrated its willingness to engage with customers involved in sectors of a controversial nature and to express its own views regarding specific social, envi-

ronmental and human rights issues. In 2011, after representations from investor groups, customers and NGOs (particularly the United Church of Australia), ANZ reviewed its Military Equipment lending policy, to state clearly that “we will not be involved with direct financing or contract bonding related to the sale or manufacturing of controversial weapons (specifically cluster munitions and anti-personnel land mines) and we do not wish to be involved more broadly with customers that are involved in the production of components designed for specific use in these weapons”.²⁴

3.3.1. Education and Training of Relationship Managers and Specialist Bankers

In an effort to support relationship managers and specialist bankers in their dealings with business customers and focus on applying the Sensitive Sector Policies, ANZ has developed a series of customer risk screening tools to assess the viability of a business relationship with regard to how they approach human rights issues and apply risk management disciplines. These tools require bankers to answer a series of questions that enable them to assess a customer's awareness and management of social and environmental issues.

23. ANZ Sector Policies: <http://www.anz.com/about-us/corporate-responsibility/customers/responsible-business-lending/policies-guidelines/sector-policies/>.

24. ANZ Responsible Business Lending: <http://www.anz.com/about-us/corporate-responsibility/customers/responsible-business-lending/>.

While these tools provide a solid foundation in providing awareness of how a customer's activities may have an adverse impact on human rights, there is room for improvement with regard to highlighting the relevance of these tools to bankers when undertaking due diligence with a customer in a given transaction. Kevin Corbally, ANZ's Head of Institutional Relationships Australia, International and Institutional Banking, stated that bankers "need to be armed with the right language and approach to engage clients with confidence when they seek to obtain clarification or question how they are addressing social and environmental issues".

Building awareness of ANZ's Human Rights Standards across its large business banking practice is a continuous and evolving task. ANZ has deployed training to over 4000 of its employees, in particular, relationship managers and credit managers from its Corporate Banking and International and Institutional Banking businesses. The training includes case studies that provide practical illustrations of how Human Rights Standards may be applied to due diligence in order to mitigate business risk and adverse impact on the environment and the community.

4. LESSONS LEARNED AND SUCCESSES

4.1. Lessons Learned

A major task for ANZ has been to distill real human rights issues into relevant business practices, particularly in relation to undertaking due diligence of supplier or business customer practices with respect to human rights. As Bisinella noted, "human rights is such a politically charged issue in Australia, so you can imagine how precarious it can be to try and drive change in States where human rights are not as entrenched". This has been especially true in ANZ's endeavor to translate human rights language in a way that can be understood by employees and incorporated into conversations with supply partners and business customers.

ANZ has also experienced some challenges in the development of human rights training modules and support tools for employees dealing directly with supply partners and business customers. While a significant amount of work has gone into the development process, acceptance and adoption of these has been varied.

The use of human rights specialists in raising awareness and understanding of various types of human rights issues was invaluable, but determining how human rights relates to the business has, at times, been difficult to translate. Some relationship bankers, specialist bankers and purchasing managers have been uncomfortable having conversations about the human rights practices of their suppliers or customers.

In the case of bankers, this has mainly been due to the challenge of balancing their dual role of service provider and trusted advisor. The former focuses on delivering to a customer's expectations and the latter focuses on being able to influence and encourage behaviors through engagement and understanding of a customer's business. ANZ is addressing this issue by reviewing current training programs and support tools, and developing practical solutions for bankers and managers to have meaningful conversations with suppliers and customers.

4.1.1. A Lesson in Focus

Several years ago, an issue arose regarding allegations of unsustainable practices by a resources company operating in the APAC region. The company was a long term ANZ customer. It refuted the claims, and moreover, had the support of the national government of the relevant country.

ANZ chose to work with the company to put in place processes to demonstrate its practices were sustainable. ANZ worked for 18 months with the client to implement measures that were externally verifiable. Ultimately, a persistent lack of cooperation and transparency by the customer led to ANZ exiting the business relationship.

Indeed, this very issue makes the role of a banker most challenging. Despite this, ANZ believes that collaboration between the bank and its customers is vital in order to influence the delivery of sustainable outcomes.

4.2. Successes

Obtaining sponsorship of a human rights strategy at the leadership level has been instrumental in promoting human rights awareness, dispelling preconceived notions about what human rights means in business, and ultimately adopting human rights policies and processes in business practice. Bisinella highlighted this point: "Alex Thursby,

ANZ's CEO International and Institutional Banking has truly taken a leadership role in driving the right behaviors throughout his business. Prospective transactions are carefully considered to ensure that we feel confident about a client's commitment to human rights issues".

A significant amount of work has also been undertaken to promote collaboration across various interest groups. Bisinella noted that, "naturally, there is a lot more work to be done to define the rules of engagement particularly given the unique challenges and opportunities that come with each and every transaction". But the degree of dialogue taking place is promising, particularly between NGOs and business. ANZ engages with these various groups independently to address specific human rights issues and as a participant of various business and human rights related forums, such as the GCNA's Human Rights Leadership Group for Business.

4.2.1. A Sample of Progress

ANZ supported the construction of a hydroelectric dam in Laos worth approximately A\$4 billion. The project involved the resettlement of approximately 4,600 people, and consideration of nearly 9,000 more people who were to be affected by the project. Furthermore, there were environmental issues regarding construction of the dam and the impact this activity would have on water flows and other cumulative impacts such as downstream interference with rivers and waterways. An NGO was actively opposed to the development of the dam.

By applying its own Sensitive Sector Policies – with reference to the Equator Principles – ANZ was able to articulate a clear and credible framework and require that all relevant assessments be completed before the bank was engaged to secure financing for the project. This particular initiative included multilateral bank and financing arrangements. Through the consultation of various stakeholders including the relevant NGO, a package of social and environmental considerations was developed and featured primary and secondary impact assessments, compensation and resettlement, and building of community infrastructure.

This illustration highlights the importance of collaboration between ANZ, its customers and the community. It is always

ANZ's preference to engage and work with customers to promote the effective management of human rights issues.

RELEVANT GUIDING PRINCIPLES:

Principle 17

- › Human rights due diligence (see section 3 above).

Principle 18

- › Assessment of human rights impacts and stakeholder consultation (see section 3 above).

5. ANZ'S GOVERNANCE AND REPORTING FRAMEWORK

5.1. Governance

ANZ has a strong compliance culture and robust corporate governance framework, which is an inherent feature of the Australian banking and finance industry. This provides the discipline and structure to incorporate human rights considerations into its risk management practices. The corporate governance framework is comprised of discrete committees that monitor activity from Board level to business unit level across each geographic region, including:

- Corporate Responsibility and Diversity Committee (executive level);
- Reputation Risk Committee (executive level);
- Board Governance Committee;
- Board Human Resources Committee; and
- Board Audit Committee.²⁵

ANZ's governance and reporting capabilities provide a structured framework and invaluable insight into the identification of precarious companies, industries and regions. The Group Corporate Sustainability team (which is part of Group Corporate Affairs) uses a 'Reputation Risk Radar' to monitor allegations and incidents of human rights abuses by existing and prospective customers on an on-going basis. The Radar is reviewed by risk executives and is used to escalate

25. ANZ Corporate Responsibility Governance <http://www.anz.com/about-us/corporate-responsibility/more-mike/corporate-responsibility-governance/>.

medium-to-high risk issues to an Early Alerts Review Committee and, as required, further to the Group Reputation Risk Committee to determine an appropriate course of action.

The decision by the Group Reputation Risk Committee to maintain or exit a business relationship is a significant one. ANZ takes a considered approach by assessing:

- Severity of the human rights impact;
- Criticality of the business relationship to the bank;
- Level of influence the bank may have in the business relationship to affect positive action by a customer or supplier;
- Willingness of the client/supplier to engage in discussion of the issues with the bank and stakeholders; and
- Whether exiting the relationship will have the consequence of causing further adverse human rights impacts.

Typically, this would also involve determining the criteria for engagement under which ANZ will work with customers to support a positive change in behaviors and practices. In some instances however, it may result in a prospective transaction not proceeding or a reconsideration of an existing relationship.

RELEVANT GUIDING PRINCIPLES:

Principle 18

- Assessment of human rights impacts and stakeholder consultation (see section 3 above).

Principle 19

Business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action. This includes:

- Effective integration that assigns responsibility for addressing impacts to the appropriate function and level in the business; and
- Appropriate action according to whether the business enterprise causes or contributes to an adverse impact – through its own operations or business relationships – and the extent of its leverage in addressing the adverse impact.

5.2. Reporting

ANZ has adopted the Global Reporting Initiative's (GRI) Framework and Sustainability Guidelines and the UNGC's Communication on Progress (COP) reporting as part of its corporate responsibility reporting framework.²⁶

ANZ produces its Shareholder and Corporate Responsibility Review that includes, among other things, reporting on the bank's progress to reach its public targets relating to responsible practices, education and employment, urban and rural divides, financial capability and urban sustainability.²⁷

ANZ has been recognized as a leading bank globally on the Dow Jones Sustainability Index (DJSI) for five of the last six years for its commitment to accountability and transparency in its corporate responsibility policies and practices.²⁸ Bisinella highlighted that "reporting obligations under Dow Jones Sustainability Index and FSTE-4Good Index provide a great opportunity to improve standards and influence behaviors, with many of the banks actively competing on these guidelines. All businesses should pay particular attention to these benchmarks, particularly as shareholders become more engaged".

While ANZ has a robust framework to report on its own performance with respect to human rights, there are inherent issues with reporting on human rights risks arising from its business relationships. Public reporting on these issues is often prohibited by the duty of confidentiality, and at times, lack of transparency by customers and suppliers.

That said, ANZ monitors and reports on progress that is being made by its business customers and global suppliers to respect human rights on a case-by-case basis. This is achieved directly through an assessment of relevant companies by the business unit responsible for the business relationship (such as Institutional Banking or Sourcing). It is also achieved indirectly through monitoring of ANZ's Corporate Responsibility

26. For more information see GRI Framework and Sustainability Guidelines: <https://www.globalreporting.org/information/about-gri/Pages/default.aspx> and UNGC COP: <http://www.unglobalcompact.org/cop/index.html>.

27. For more information see ANZ Corporate Responsibility Targets: <http://www.anz.com/about%2Dus/corporate%2Dresponsibility/reporting%2Dperformance/targets/> and ANZ Shareholder and Corporate Responsibility Review 2011: http://media.corporate-ir.net/media_files/IROL/96/96910/ANZ1/2011Review/index.html.

commitments by senior management and the board of directors, the Corporate Responsibility and Diversity Committee, and the Board Governance Committee, as part of ANZ's global governance framework.

RELEVANT GUIDING PRINCIPLES:

Principle 20

Business enterprises should track the effectiveness of their response. Tracking should:

- › Be based on appropriate qualitative and quantitative indicators; and
- › Draw on feedback from both internal and external sources, including affected stakeholders.

Principle 21

Business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- › Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- › Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; and
- › In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

28. ANZ Reporting and Performance <http://www.anz.com/about-us/corporate-responsibility/reporting-performance/>.

29. ANZ Banking Group UNGC Communication on Progress Reports May 2011: <http://www.anz.com/resources/5/4/547f9f804716f4fe82aabbf55bff9ae9/ANZ+UN+Global+Compact+Report.pdf?CA-CHEID=547f9f804716f4fe82aabbf55bff9ae9> and May 2012: Supra at note 21.

6. CHALLENGES AND OPPORTUNITIES AHEAD

ANZ has reported extensively (including through the UNGC's COP reporting) on the significant amount of work already undertaken and currently underway in creating a nexus between human rights and business practice. The bank acknowledges that further refining of training modules and support tools for its global employee base is necessary to drive sustainable change across all of its business relationships.²⁹

6.1. ANZ's Operations and Business Relationships

Throughout ANZ's extensive stakeholder engagement process the bank received consistent feedback that its approach to human rights has to be demonstrated through action rather than just words. However, with respect to ANZ's journey thus far, Bisinella candidly cautioned, "we are not even beyond stage one yet. We need to be very realistic about the progress we have made. Just because there is a whole lot of information on our website regarding our human rights standards and policies, this is not necessarily indicative of having achieved real change across our business behaviors and processes".

One of the key challenges has been to create a message that is "fit for purpose", especially for bankers and specialists in high-risk roles - for instance, roles that have a propensity to adversely impact human rights or the bank's commercial interests. Corbally suggested that "we need to be smarter in our approach and targeted in the development of policies and processes by covering the nature of the product, client, industry and country. Furthermore, we need to clearly articulate what a potential issue looks like and provide purposeful training and tools to support our people to have meaningful conversations with their clients or suppliers".

Efforts for greater collaboration with industry groups, human rights specialists and most importantly with business units will help establish common ground between business and human rights interests. Moreover, collaboration will heighten awareness, encourage "buy-in" and promote a respect for human rights in business practice as a commercial imperative. Corbally also suggested that "due diligence on social and environmental issues - including human rights - needs to be concise and relevant to ensure

that it is consistently adopted and applied by bankers in all of their business dealings”.

A perceived lack of relevance to responsibilities and remuneration can result in low incentive for action by ANZ employees. While environmental and social issues have been incorporated into the performance scorecards of ANZ’s leadership team, employees at all levels of the organization are still assessed predominantly on the monetary value of a given transaction or relationship. Peter Sharpe, ANZ’s Responsible Sourcing Manager noted, “it’s important to understand that incentives play a significant role in driving behavior in any commercial environment. The fact is, it’s often difficult to see the relevance in considering human rights issues if incentives are not included in key performance indicators”. Bisinella states that ANZ is cognizant of this issue and is working on programs in recruitment, development, remuneration and reward that will measure individual performance based on sustainable and socially responsible business behavior.

6.2. The Financial System

One of the inherent challenges of trying to promote a respect for human rights in business relationships is determining the degree to which a company can be compelled to intervene. Bisinella explained that “without a doubt, there are many human rights abuses that are morally reprehensible, but there are also many human rights considerations where the boundaries become increasingly blurred”. This issue is not unique to the ANZ experience.

Another significant challenge is that a decision to exit a business relationship does not cure the actions of the alleged offending company. Rather, the company is likely to seek funding elsewhere from financial institutions that may not be as vigilant in their client screening practices. As such, this limits the opportunity for collaboration and may fuel “race to the bottom” competition between financiers.

The adoption of the Guiding Principles, by States and business, is critical in addressing these challenges globally. With unanimous endorsement by the UN Human Rights Council, and subsequent adoption of by the OECD and IFC into their respective standards, the Guiding Principles provide a solid platform to drive commercial discourse and promote a respect for human rights in a legitimate and unified way.

6.3. An Optimistic Outlook

ANZ is candid and optimistic about how it intends to address the challenges it faces to promote a respect for human rights within its own operations and across its business relationships. It endeavors to achieve this end through — to use a term coined by Professor Ruggie — principled pragmatism. There could not be a better opportunity for ANZ to leverage the work of the UN system and other notable intergovernmental organizations to strengthen collaborative efforts within the banking and finance industry itself. The recent announcement by the International European Commission and the Association of South East Asian Nations (ASEAN) regarding plans to incorporate the UN Framework and Guiding Principles into their own respective frameworks is also a significant step in the right direction.³⁰

Moreover, the UN Human Rights Council recently established the Forum on Business and Human Rights.³¹ The first annual forum was held 4 and 5 December 2012 in Palais des Nations, Geneva.³² The forum aimed to foster genuine dialogue between intergovernmental organizations, world business leaders and civil society, and to advance collective learning on the dissemination and implementation of the Guiding Principles.³³

The heightened focus on business and human rights at a global level provides ANZ with the opportunity to promote a respect for human rights throughout its business relationships. By focusing on cultivating constructive conversations with its people, suppliers and customers, ANZ is able to work towards embedding a respect for human rights in its culture, strategy and operations.

Underpinning the commitment to promote the responsibility to respect human rights is the acknowledgment that “ANZ lives in your world” and is focused on “building relationships you can bank on”.³⁴

30. Ruggie, J “Building on a ‘landmark year’ and thinking ahead” http://www.ihrb.org/commentary/board/building_on_landmark_year_and_thinking_ahead.html 12 January 2012.

31. For more information see: <http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>.

32. For more information see: <http://www.ohchr.org/EN/Issues/Business/Pages/ForumonBusinessandHR2012.aspx>.

33. Also see: <http://www.business-humanrights.org/media/documents/un-working-group/invitation-un-forum-business-human-rights-31-aug-2012.pdf>.

34. ANZ “lives in your world” campaign.

HUMAN RIGHTS IN THE SUPPLY CHAIN:

The Telenor Group's Approach to Supply Chain Sustainability

By Bianca Wilson¹

Human rights issues addressed

- › Child labour
- › Complicity
- › Diversity and/or non-discrimination in employment
- › Forced labour
- › Freedom of association/collective bargaining/collective action
- › Human rights and environment
- › Occupational health and safety
- › Right to health
- › Sphere of influence
- › Standard of living
- › Supply chain management
- › Trade union rights
- › Working conditions

Human rights management practices addressed

- › Strategy
- › Policy
- › Processes and procedures
- › Communications
- › Training
- › Measuring impact and auditing
- › Reporting

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › Universal Declaration
- › ILO Standards
- › UN Convention on the Rights of the Child
- › Rio Declaration on Environment and Development
- › Electronic Industry Citizenship Coalition (EICC) Code
- › Ethical Trade Initiative (ETI) Base Code

ABSTRACT

This case study analyzes the development and implementation of the Telenor Group's Supplier Conduct Principles and related framework for supply chain sustainability. The company's response to human rights challenges leading up to the framework's creation and its process for designing the Supplier Conduct Principles demonstrate an underlying focus on human rights and sustainability within its own operations and throughout the value chain. Telenor's programme is particularly unique in that it contractually binds suppliers and sub-suppliers alike to a set of requirements related to human rights, labour, health & safety, the environment as well as prohibited business practices. Moreover, the company strives for continuous improvement and reduced risk among its suppliers with a collaborative approach through proactive trainings and a philosophy of working with suppliers to correct any non-conformities discovered.²

1. COMPANY PROFILE

Founded in 1855, Telenor Group is one of the world's largest telecommunications companies serving over 300 million mobile subscribers.³

Telenor is headquartered in Oslo, Norway and operates in 11 markets worldwide employing approximately 32,000 people. Telenor also has a stake of around 32% in VimpelCom Limited, which operates in 20 additional markets. With revenues of NOK 95 billion in 2010, Telenor is ranked as one of the top 500 global companies by market value as defined by the Financial Times Global 500 and is also among the top performers on the Dow Jones Sustainability Indexes.⁴

It holds the leading position in mobile, broadband and TV services in the Nordic region (Norway, Denmark, Sweden and Finland) and has major operations in Hungary, Montenegro, Serbia, Pakistan, Bangladesh, Thailand, Malaysia and India. Over the last 155 years, the company has grown from its beginnings as a national telephone service provider in Norway to a global business providing voice, data (internet and broadband), content and other services to consumers and businesses around the world.

Telenor's corporate structure is particularly important to the design of its supply chain monitoring framework. In addition to its Board of Directors and Corporate Assem-

bly, there is a Group CEO and Group Executive Management team that oversee operations in all 11 of Telenor's countries. Each country in turn has local Business Units, which manage individual functions and responsibilities at the country level. As a result, Telenor's governance structure is fairly loose and allows for significant freedom at the local level. Because sourcing is not a centralized function, most interactions with suppliers and sub-suppliers take place at the local Business Unit level.

2. RATIONALE FOR SETTING UP THE SUPPLIER CONDUCT PRINCIPLES

Telenor's decision to design and implement its Supplier Conduct Principles (SCP) is rooted in its commitment to human rights and corporate sustainability. According to Stein

1. Bianca Wilson graduated from Columbia University's School of International and Public Affairs in 2011 with a Masters of International Affairs concentrating in Human Rights. Peer review of the case study was provided by: Mr. Gustavo Perez Berlanga, Commercial Director, RestaurantesToks; Karl Daumüller, Program Manager, Global Procurement Services, Hewlett-Packard GmbH; Renata Frolova, Responsible Procurement, Maersk Procurement; and Monique Oxender, Global Manager, Supply Chain Sustainability, Ford Motor Company.

2. More information on Telenor's Supply Chain Sustainability framework and programme is available at <http://www.telenor.com/en/corporate-responsibility/supply-chain-sustainability/>

3. "Telenor at a Glance." Telenor Group. Web.<<http://www.telenor.com/en/about-us/telenor-at-a-glance>>.

4. Ibid.

Hansen, Head of Group Business Assurance, human rights have historically been a basic principle at Telenor. As a Norwegian company whose major shareholder is the Norwegian Government, respecting human rights has always been a priority as evidenced in the set of company Values and Code of Conduct⁵ that govern Telenor.⁶ Established in 2003, the Code of Conduct makes reference to the Universal Declaration of Human Rights and other UN conventions in describing its relationship with employees. It also states that working conditions must comply with International Labour Organization (ILO) core conventions including the ILO Minimum Age Convention 1973 (C138) asserting that Telenor shall not employ or contract child labor.

Though the SCP⁷ – which address human rights, labour standards, health and safety, environmental issues and prohibited business practices⁸ – were already being drafted at the time, an issue during the spring of 2008 propelled Telenor to move forward in establishing its Group-wide supply chain sustainability framework. That April, a Danish journalist produced a documentary for Norwegian television showing the work environment in some of the sub-suppliers for GrameenPhone, a Telenor subsidiary in Bangladesh. The documentary, which focused on the sub-suppliers building GrameenPhone's telecom infrastructure, contained examples of very poor health and safety conditions, serious environmental contamination and also the employment of child labor in steel manufacturing processes at the sub-supplier level.

Before the documentary, Telenor viewed itself mainly as an office-based service provider and focused primarily on the implications of its core business activities. However, the fact that the public was prepared to hold Telenor accountable for human rights violations and health and safety issues that occurred several levels down the supply chain demonstrated a need to create a system to back up its values of being a socially responsible corporation. As a result, Telenor initiated a Group-wide project to re-focus on preventing human rights violations and improving Health, Safety, Security and the Environment (HSSE) worldwide. Setting up a supply chain sustainability framework was a clear next step for Telenor.

3. RESPONDING TO BANGLADESH

Telenor's CEO spoke out publicly about the issue and the Group immediately began an investigation. With being responsible and sustainable among its key company values, Telenor decided it was necessary to develop a system to increase awareness and to monitor suppliers and sub-suppliers. The first step was to immediately follow up with the sub-suppliers involved in the allegations in Bangladesh. Telenor sent a third party company, Det Norske Veritas (DNV), to the sub-suppliers in question to assess their actual HSSE situation through on-site inspections. A number of actions were subsequently initiated based on the inspection findings and closely followed up on by GrameenPhone.

Following the DNV inspections, GrameenPhone began a series of local HSSE awareness workshops and training sessions for suppliers. It should be noted that, in the case of Bangladesh, a legal framework surrounding human rights, labour and HSSE was in place, and the training, therefore, focused on educating suppliers about these local laws and how to implement them. In addition,

5. "Code of Conduct." Telenor Group. Web <<http://www.telenor.com/en/about-us/corporate-governance/codes-of-conduct/>>.

6. Hansen, Stein. Telephone interview.

7. Jan. 2011. "Supplier Conduct Principles." Telenor Group. Web. <http://www.telenor.com/en/resources/images/Supplier%20Conduct%20Principles_tcm28-37840.pdf>.

8. Prohibited business practices defined in the SCP include corruption, business courtesies, money laundering and violations of competition laws.

the workshops and training also covered HSSE management practices and looked specifically at the area of child labour. Moving forward, GrameenPhone followed up with a number of subsequent site inspections and also supported the involved suppliers to ensure schooling facilities and a proper work environment for the underage workers.

As an approach to prevent child labour in Bangladesh, in June 2009, the Telenor Group entered into a five-year agreement with UNICEF Norway to fight child labour in Bangladesh, where an estimated 13 percent of children aged 5-14 work full-time.⁹ Together, joint funding from Telenor and UNICEF will target over 12,000 child workers each year in six cities in Bangladesh – and Telenor’s funds will cover more than 4,000 children per year.¹⁰ Taking a holistic approach, the project comprises three key elements: educating children, educating social workers and educating society.¹¹

In parallel to working specifically with the sub-suppliers in Bangladesh, Telenor began its Group-wide project to finalize its supply chain sustainability framework, including the SCP as well as the Group Policies and Procedures for implementation of the framework. As a first step, Telenor utilized two methods to conduct risk assessments of the supply chains in all countries where it operates. Firstly, Telenor again sent the third party inspector DNV to all countries with operations to assess the HSSE conditions. DNV inspected five to ten of the suppliers or sub-suppliers in each country determined to be high risk in terms of HSSE. In order to help the local Business Units identify the suppliers to be inspected, Telenor sent them general guidelines upon which to assess risk in their suppliers and sub-suppliers. These guidelines rated some of the highest risk suppliers to be those working in the construction, transportation and chemical sectors. In addition, local Business Units also used their own knowledge of suppliers to identify those of highest risk.

9. "Combating Child Labour Through Education." Telenor Group. Web <<http://www.telenor.com/en/corporate-responsibility/initiatives-worldwide/combating-child-labour-through-education>>.

10. Ibid.

11. For more information about Telenor’s project with UNICEF Norway, please see <http://www.telenor.com/en/corporate-responsibility/initiatives-worldwide/combating-child-labour-through-education>

The assessment of suppliers and sub-suppliers at the local level is crucial. Because Telenor has no central procurement or production, it is not practical to manage the supply chain centrally – and the local Business Units know their suppliers best. Following the DNV on-site inspections, Telenor’s Business Units in all markets have continued with their own regular inspections as part of Telenor’s general supply chain sustainability framework.

Secondly, at the end of 2008 Telenor sent a global supplier Self-Assessment Questionnaire (SAQ) to more than 500 suppliers globally deemed to be most high risk in terms of HSSE by the various Telenor Business Units. This SAQ consisted of approximately 90 questions designed to evaluate risks in the areas of health, safety, labor, environment and other areas according to the requirements of the SCP.

Based on the two independent assessments, Telenor gained an in depth understanding of the overall HSSE or SCP risk level in its local markets. The Nordic countries were found to have the lowest risk, followed by Central & Eastern Europe with medium risk, and then the higher risk Asian operations.

4. DESIGNING THE FRAMEWORK

Following the initial process of mapping the supply chain risk, the Group-level project team within Telenor began to design the supply chain sustainability framework and SCP. This team was cross-functional, with members from the Legal, Human Resources, Sourcing and Corporate Responsibility areas, and also included people with experience in operational Business Unit management and construction work in the field. A critical factor during this phase was continuous anchoring and communication with Telenor’s Group management to ensure a high level of involvement and buy-in to the solutions and their implementation plans. Other important elements in this phase included an assessment of national law in the countries of operation as well as benchmarking with comparable industries and other telecom companies.

As a result of this process, the SCP were drafted and finalized. The set of principles, which have been approved by the Group’s Board of Directors, “set out the requirements Telenor would like to see achieved by all its

suppliers (in a wide sense) over time.”¹² The principles cover six main areas: national law, human rights, labour standards, health and safety, environment and prohibited business practices. The standards apply throughout the entire Telenor Group. The SCP’s overarching philosophy is for suppliers and sub-suppliers to continuously improve their performance in order to improve human rights, labor health and safety, environmental and other conditions in workplace and community. Instead of eliminating suppliers for non-conformities, Telenor prefers to work with them to correct them.

According to Telenor, the team drafting the SCP considered a number of sources and criteria. The company began by mapping out the laws in each country. The laws related to the SCP in the countries where Telenor operates were strong but they were not always enforced. Next, Telenor looked to the relevant international laws and standards. The resulting SCP were inspired by the UN Global Compact’s Ten Principles, the UN Universal Declaration of Human Rights, the UN Convention on the Rights of the Child, ILO standards, the Rio Declaration on Environment and Development and the UN Convention against Corruption among others. Telenor also considered selected industry codes valid at the time, including the Electronic Industry Citizenship Coalition (EICC) Code and the Ethical Trade Initiative (ETI) Base Code, as well as supplier codes of conduct from certain other multinational companies. Gathering input from a variety of sources allowed Telenor to create the framework drawing on best practices while also tailoring it to work within the company’s unique structure. The resulting SCP is, therefore, specific to Telenor – as opposed to the company simply adopting an industry code – though it is directly based on sources mentioned above.

After the SCP was finalized, an important decision was whether to create a binding contractual obligation for suppliers to adhere to the SCP or to use a more relaxed approach in which suppliers simply indicate willingness to comply. Telenor took on a formal contractual approach with its Agreement on responsible Business Conduct (ABC) that legally obligates suppliers not only to comply with the SCP within their own operations, but also to take the requirements further down the supply chain. Since it is only

possible for Telenor to have a contractual relationship with its first line of suppliers, the contract binds Telenor’s suppliers to monitor and follow up with their own sub-suppliers.¹³ Telenor’s ABCs with its first-tier suppliers place strict obligations but Telenor’s supply chain sustainability strategy is based on continuous improvement of suppliers through collaboration.¹⁴ The goal is not to throw out or penalize suppliers who make mistakes, rather it is to help the suppliers improve and live up to the SCP.

5. IMPLEMENTING THE FRAMEWORK INTERNALLY

Telenor took two major actions internally to implement the SCP framework: creating a new department and making a new company policy. The company established a Group-wide “Business Assurance” function, with a Group-level Business Assurance unit and local Business Assurance Units in every Business Unit responsible for overseeing compliance with the SCP. Telenor also created a Group Policy and a Group Procedure, applicable to all Business Units, which govern their implementation of the responsible supply chain management framework.

Telenor’s Group Policy designates responsibility for implementing and monitoring compliance and specifically defines key actors in working with the supply chain. The local CEOs are ultimately accountable for securing supply chain monitoring, reporting and remediation in their Business Units, which demonstrates the high priority Telenor places on the issue. In addition, the permanent local Business Assurance Units established in each Telenor Business Unit are held accountable for implementing responsible supply chain management in practice at the local level, overseen by the Group-level Business Assurance Unit. The Group Business Assurance Unit manages and aggregates global risk, performance and incidents with the support of all of the local Business Assurance Units.

Another important decision point for Telenor was choosing to define “supplier” in

12. Hansen, Stein. Telenor’s Experiences and Approach to Supply Chain Sustainability. 26 Oct. 2010. PPT.

13. Hansen, Stein. Telephone interview. 7 Jan. 2011.

14. Ibid.

a very broad manner. According to the Group Policy, “suppliers are to be understood as any person and/or entity with a direct contractual relationship with the Business Unit and offering products and/or services to the Business Unit. This includes any manufacturer, vendor, contractor, consultant, middleman, service or facilities provider, dealer, distributor or other partner that is, or potential will be, directly cooperating with the Business Unit. For the avoidance of doubt, customers are not included in the definition of Supplier.”¹⁵ Sub-suppliers are defined to include any entity providing goods or services to a supplier, regardless of how far removed it is in the supply chain.

Telenor’s wide definition of suppliers and sub-suppliers is influenced by the manner in which the public held it accountable for violations deep in the supply chain in Bangladesh. Moreover, the broad definition places a serious obligation on the Business Units and suppliers to consider each and every actor in the supply chain. It mitigates the risk of suppliers outsourcing potential problems because all suppliers and sub-suppliers are legally obligated to comply with the SCP and will be monitored.

6. A CONTRACTUAL REQUIREMENT: THE AGREEMENT ON RESPONSIBLE BUSINESS CONDUCT (ABC)

Telenor’s Group Procedure for Supply Chain Business Assurance sets out the formal contractual relationship between Telenor and its suppliers as well as the procedure for monitoring and follow-up with suppliers. The first element of the framework is communicating the importance of the SCP to suppliers. The SCP are publicly available on Telenor’s external website as well as its Intranet.

Next, each of Telenor’s suppliers must sign the ABC that legally binds it to comply with the SCP, and several requirements in the ABC itself concerning monitoring, mirroring¹⁶ and other contractually important aspects. Each ABC also has two attachments, the SCP and an Improvement Plan. Recognizing that there may be a gap

between the supplier’s current situation and the SCP requirements, the Improvement Plan has the potential to identify issues and define specific steps and timelines within which to correct them. In addition to clarifying the relationship between the supplier and Telenor, the process of designing an Improvement Plan helps to reinforce Telenor’s strategy of working with suppliers to continuously improve their processes.

For all new Telenor suppliers, a risk assessment must be completed and an ABC must be signed prior to any contractual agreement to supply goods or services to Telenor. The ABC and SCP are also mandatory elements in all Request For Quotation (RFQ) processes. For existing suppliers, risk assessments shall be conducted as soon as possible, with specific deadlines dependent on the risk level assessed for the supplier. Telenor’s ABC consists of six core elements:

1. Implementation, monitoring and follow-up
2. Cascading of requirements
3. Transparency and inspection rights
4. Notification and remediation at own cost
5. Sub-supplier termination
6. Right to effective sanctions

The first requirement is straightforward and demonstrates a commitment to ensuring that the SCP is implemented and monitored internally at each supplier. The second requirement to reflect Telenor’s unique policy for suppliers to cascade these requirements by contractually obligate their own suppliers, Telenor’s sub-suppliers, to comply with the SCP. The third requirement means that suppliers must be willing to allow monitoring, including unannounced inspections, by the Telenor local Business Unit or its representatives. Fourth, the suppliers must notify the Telenor Business Unit of any non-conformities found and correct them at their own cost. The fifth and sixth requirements are also very strong. They allow the Telenor Business Unit to trigger termination of the relationship with a supplier or sub-supplier or impose sanctions if they are not able to correct non-conformities found in their operations.

Particularly significant is the availability of documents in a variety of languages. Both the ABC and the SCP are translated into the local language of each country where Telenor operates. As a result, staff at local Business Units

15. Group Policy Supply Chain Business Assurance. Telenor Group. 7 Jul. 2009, p. 2.

16. Mirroring refers to Telenor’s requirement that suppliers extend the SCP principles to their own suppliers.

as well as local suppliers and sub-suppliers are able to clearly understand the requirements.

7. MONITORING AND REPORTING

Telenor's supplier monitoring and risk tracking procedures are crucial to the success of the overall framework. The Telenor senior manager at the local Business Unit level that is "Contract Owner" is responsible for the compliance of his or her suppliers and sub-suppliers. However, the Head of Business Assurance for the local Business Unit is responsible for ensuring that supply chain assurance is carried out systematically across the Business Unit.

The supplier monitoring process produces important indicators on both risk and performance. As part of the overall risk assessment, Telenor conducts an annual SAQ with a sample of its suppliers worldwide. Telenor also assesses supply chain risk and performance through inspections by Business Units or third parties. The risk and performance picture at any time, as well as any actual non-conformities found - with related improvement plans - are tracked with "EasyRisk", a Group-wide web-based tool.

In the long term, Telenor's goal is to reduce the overall supply chain risk, which is continuously measured within the year through the Supply Chain SCP Risk indicator (SCSR). The SCSR is defined as the percentage of suppliers in a given Business Unit that have one or more "red flags", or issues of concern, based on the annual SAQ process. When a red flag is identified, the Telenor Business Unit takes concrete steps to resolve it, which reduce the SCSR.

Further, when significant non-conformities are uncovered through inspections, a Group internal notification procedure is initiated and the Head of local Business Assurance must notify the local CEO as well as the Head of Group Business Assurance. Significant non-conformities include any confirmed findings related to child labor, forced labor or prohibited business practices. In addition, work-related fatal accidents must be communicated through this procedure.

After an SCP risk or a non-conformity is identified within a supplier or sub-supplier, Telenor requires that the supplier address and remedy the situation through a plan of action approved by Telenor. Local Business

Assurance may also re-inspect suppliers to ensure that the remediation plan is being executed. Telenor strives to work with suppliers to correct non-conformities and terminating a supplier relationship is a last resort.

Telenor measures its performance in reducing supply chain risk through a number of internal Key Performance Indicators (KPIs). Some KPIs measure the execution of certain responsible supply chain management processes by Telenor's Business Units while others measure the actual SCP risk or non-conformity levels for suppliers or categories of suppliers. Examples of KPIs include a reduction in number of red flags or non-conformities in inspections; the percentage of "critical" suppliers; or the number of suppliers who have signed the ABC. Since training is a key aspect of suppliers' ability to enforce the SCP, Telenor also tracks the number of local Business Units holding training sessions for their suppliers. Because training programmes are tailored to local laws and challenges, they are mostly developed and executed locally by the various Business Units.

8. ADDRESSING NON-CONFORMITIES

While the majority of non-conformities found in supplier inspections carried out by Telenor Business Units relate to health and safety, other examples typically relate to labour rights. In very few instances, bonded labour issues are also seen, and an exceptionally small number of cases relate to underage labour issues. The following three examples from Pakistan, Thailand and China illustrate the types of non-conformities Telenor encounters and the steps taken to address them.

In Pakistan, Telenor discovered a labour rights issue with one supplier that was not disbursing salaries on time. While local law requires salaries to be paid no later than the 10th of each month, the supplier was not meeting this deadline because it was receiving late payments from its own suppliers, and its process for supervisors to disburse cash to employees was slow and manual. As a corrective action, the payment process was overhauled. Accounts were opened allowing employees to directly collect their salaries from banks. Though the previous manual process is still used in remote areas without banks, Telenor is also using "EasyPaisa", its own mobile phone financial services prod-

uct, to disburse salaries in these areas where possible and available. Two months later, the issue was closed after the supplier created a corrective action plan, which Telenor verified through random interviews with employees.

A supplier in Thailand was found to have a job application form containing questions, such as inquires about serious illnesses and the applicant's nationality, that could be used to discriminate. To correct this human rights issue, the supplier has removed the questions from the application template and instead included them on a form completed after employment is obtained. The case was closed after a few weeks once Telenor had seen the two revised forms.

Another non-conformity in China relates to a local law requiring employers to arrange regular health checks for young workers. One Chinese supplier was found to have employee contracts with young workers that did not specify the regularity of these health checks, and there was no reference to the matter in the company's other documentation. To remedy the issue, the supplier established a "Young Workers Management Procedure" outlining the regular health check requirements for young workers. In addition, the requirements have also been included in the staff handbook. After working with the supplier for a number of months, Telenor closed the issue once the new procedure was finalized.

9. CONTINUOUS FOCUS ON PERFORMANCE

Even after its implementation in 2009, the SCP and the monitoring framework remain a priority at Telenor. The permanent Business Assurance Units in every local Business Unit drive supply chain sustainability and ensure that it remains a key element of all supplier relationships. It is also significant to note that Telenor's framework has both structures and follow-up processes in-house as well as in the supply chain that strengthen its effectiveness. Furthermore, management from the Group-level executives through the local Business Units fosters a culture that supports the implementation of the ABC and the SCP.

As a result of this continuous focus, Telenor has already made significant progress working with suppliers and reducing supply

chain risk as evidenced by KPI data that each Business Unit reports to the Group Business Assurance Unit. In 2009, Telenor reduced the SCSR indicator by 86% and in 2010 it was reduced by 94%.¹⁷ These figures indicate that suppliers have greater knowledge of potential violations of the SCP and are taking steps to mitigate these risks.

Further, based on the annual global supplier self-assessments, which provide a sample of the SCP risk in the market at any given time, Telenor has seen improvement in the SCP risk levels found year by year. For example, the risk related to forced labour has been reduced from 29% high risk indications¹⁸ in 2008 to 16% high risk indications in 2010. For child labour, however, the high risk indications have remained around 1% every year. From the latest self-assessment in 2010, the initial high risk indications were as follows:

Forced labour	16.4 %
Child labour	0.7 %
Working conditions	3.0 %
Handling of waste	0.6 %
Employee's health	0.4 %
Serious accidents	19.6 %

On the monitoring side, Telenor carried out 1,419 supplier inspections Group-wide in 2009 and another 2,082 in 2010.¹⁹ Further, as of mid 2011, Telenor has implemented more than 11,000 ABCs with suppliers globally. The incorporation of more suppliers into the framework allows Telenor to have a deeper understanding of its supply chain and increases the likelihood of identifying and correcting non-conformities.

10. CHALLENGES AND LESSONS LEARNED

Before the supply chain monitoring framework, Telenor embedded human rights values into its Code of Conduct and corporate culture. However, the situation in Bangla-

17. Hansen, Stein. Telenor's Experiences and Approach to Supply Chain Sustainability. 26 Oct. 2010. PPT.

18. "High risk indications" refers to the percentage of questions answered in the SAQ in a manner that suggests the supplier has high level of risk in that area.

19. Ibid.

desh presented the significant challenge of ensuring that the company's values were reflected in its operations. Through designing the SCP and implementation framework, Telenor was better able to understand the human rights challenges its suppliers and sub-suppliers face. The framework's monitoring and remediation components begin to address these obstacles by providing a means to identify issues and correct them.

In creating and implementing the SCP, one of the biggest challenges that Telenor faced was the organizational dynamic involved in reaching a Group-wide consensus on the SCP and its supporting processes. Because Telenor is such a large group of companies, it was particularly challenging to consult all concerned parties. Some internal stakeholders advocated for a policy with very strong requirements for sustainability, human rights and corporate responsibility while other stakeholders emphasized the importance of creating a practical policy that is feasible for Business Units to implement. Business Units in different regions also reacted differently. Countries generally facing fewer human rights challenges were hesitant about a framework that would be time-consuming or expensive to put into operation but unlikely to uncover many non-conformities.

Hansen found that patience and time spent consulting with internal stakeholders at all levels of the Group was crucial for reaching a compromise.²⁰ It was only when all stakeholders felt that their input was heard and taken into consideration that Telenor was able to reach final agreement on the supply chain sustainability framework. The resulting framework is a balance between the ideal and the practical. The strict language in the ABCs reflects Telenor's high human rights and responsibility standards, while the company's strategy of working with suppliers for continuous improvement indicates the realities of implementing the policy on the ground. To address the regional concerns about the burden of implementation, the framework was designed around risk so that those Business Units assessed to be lower risk would have to execute fewer inspections.

From the outset, it was a challenging task for Telenor to sign ABCs with its many existing suppliers. Therefore, the company prioritized signing agreements with the highest risk suppliers first and also started inspections before the agreements were officially signed. This initial phase has now passed, and over 11,000 ABCs have been signed to date. Although some negotiations are needed with certain suppliers to sign ABCs, the process generally works well, which is indicated by the number of signed agreements. A signed ABC is a requirement in every RFQ or contract renewal process.

A significant lesson Telenor learned during the process was about the importance of high-level buy-in. The SCP is a top-level document at Telenor, approved by the Board of Directors of the entire Group, and the Group Policies and Procedures are approved by the Group CEO. In Telenor's experience, unless top management is behind the establishment and operation of a supply chain sustainability framework, it would likely be difficult for a company to translate the idea into sustainable practice. At Telenor, there is not only high-level management backing for supply chain sustainability but also a permanent sub-committee of the Board of Directors that monitors HSSE and supply chain sustainability specifically. Hansen reports to the committee three to four times per year – largely on health and safety, but also on human rights and environmental issues as they arise. The Group CEO also frequently communicates the importance of supply chain sustainability internally as well as towards large suppliers.

Hansen strongly feels that if the team working on the supply chain sustainability framework had not had support from the top, they may have struggled to get buy-in and participation in the local Business Units. Without backing from the Group CEO and Board of Directors, local Business Unit management might have found the supply chain sustainability framework to be a nice add-on but not crucial. After all, such a framework puts an extra burden on Business Units, both in putting additional requirements into

20. Hansen, Stein. Telephone interview. 7 Jan. 2011.

21. *Ibid.*

supplier contracts and in performing regular supply chain monitoring. Since there was sufficient awareness throughout Telenor that supply chain sustainability is a priority for executive management, it was possible for Hansen and his colleagues to gain local Business Unit support to implement the supply chain sustainability framework. “You really need to have top management behind you - and you need to have that from the start,” he argues.²¹

Telenor also saw the importance of awareness building and maintained focus within the company. When the Group-wide project started in 2008, Hansen and his team traveled to all the larger Business Units where Telenor operates to meet with their top management about supply chain sustainability. They held two-day workshops at each Business Unit. Without this initial focus on building awareness, the supply chain sustainability framework might not have achieved the level of success it has. To maintain a high level of engagement, the Group Business Assurance Unit meets with local management on a regular basis and also holds two workshops for the global Business Assurance network to discuss and further develop the supply chain sustainability framework, its requirements and performance.

Hansen also reflected that Telenor’s particular model of supply chain sustainability works well because of its governance structure. Telenor’s loose central governance devolves the responsibility for monitoring suppliers to the local Business Unit level because they best know their suppliers and local markets. For other companies – perhaps

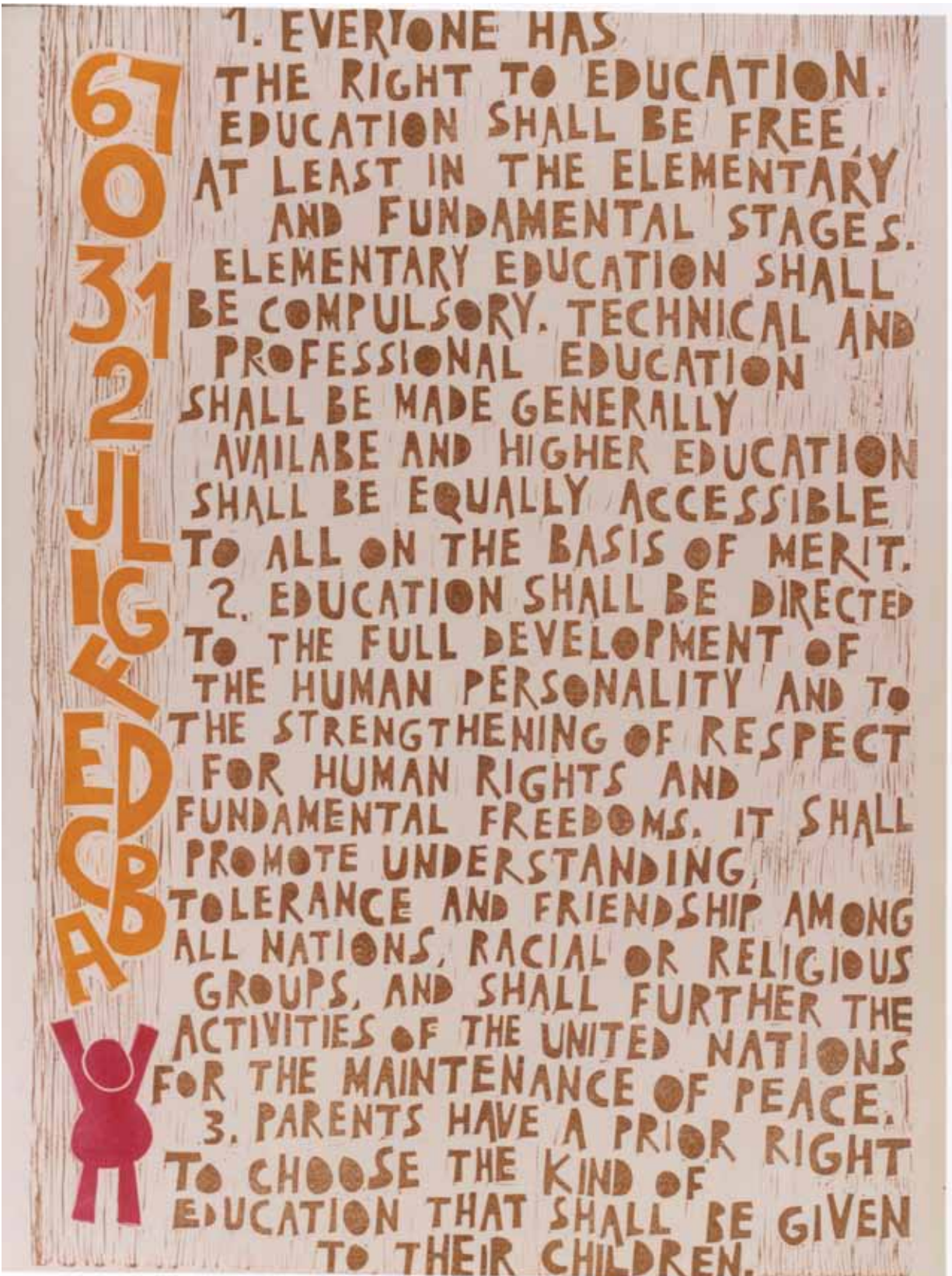
with more centralized sourcing in particular – there may be further opportunities to simplify the framework and to customize scoping and other activities.

11. LOOKING FORWARD AND CONCLUSIONS

With more than 11,000 supplier signatories to the ABCs and demonstrated reduction in SCP risk and non-conformities in the supply chain over the last three years, Telenor considers its supply chain sustainability framework successful.²² It demonstrates Telenor’s ability to address a crisis and respond in a constructive manner. Telenor’s framework differs from other approaches to supply chain monitoring because of its formal contractual process and extension of SCP requirements to sub-suppliers. Furthermore, Telenor’s wide definition of “supplier” encompasses a broad range of entities, and its philosophy of working with suppliers for continuous improvement sets an important precedent for supply chain sustainability.

It is difficult for any global corporation to oversee a multitude of suppliers and sub-suppliers operating around the world. However, Telenor has taken steps to identify and minimize SCP risk and address problems that arise. A continued process of monitoring, tracking and correcting non-conformities contributes to Telenor’s goals of acting responsibly and respecting human rights within its supply chain.

²². Ibid.



SAKHALIN ENERGY:

A Partnership for Promotion of Children's Rights and Safety

By Konstantin Shakko¹

Human rights issues addressed

- › Children's rights
- › Right to education
- › Right to health
- › Social investment and community development

Human rights management practices addressed

- › Strategy
- › Policy
- › Processes and procedures
- › Communications
- › Training
- › Measuring impact and auditing

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › Guiding Principles on Business and Human Rights
- › Millennium Development Goals
- › Universal Declaration of Human Rights

ABSTRACT

This case study explores collaborative commitments and respective achievements of Sakhalin Energy and its partners towards the issues of children's rights and safety in a disaster-prone region.

Sakhalin Energy (the "Company") is an energy supply company specializing in development of oil and gas in Russia's Far East Sakhalin region, an area where natural cataclysms are highly likely. While maintaining high standards of environmental protection, industrial safety, sustainability and corporate social responsibility, Sakhalin Energy also seeks to employ available resources and engage partners to meaningfully contribute to the sustainable development of the region in which it operates. Among the problems connected with development, issues of safety stand out quite prominently for Sakhalin. In a region where earthquakes, floods, snow storms, tsunami and many other natural disasters occur, any undertaking aimed at promoting safety is beneficiary. Moreover, the safety of children, who are particularly vulnerable, is of the highest priority. Responding to these challenges, Sakhalin Energy partnered with regional authorities and non-profit organizations to launch a specialized programme. Reflecting Children's Rights and Business Principles 1, 6, 9, and 10, as well as Millennium Development Goals 4 and 8, and UN Global Compact Principles 1 and 2, the programme unifies partners' efforts to help children understand the importance of safety issues and to provide them with education and training on safe behaviour and guidance in emergency situations.

1. COMPANY PROFILE

Sakhalin Energy Investment Company Ltd. is the management and operating company for the Sakhalin-2 oil and gas development project in the Sakhalin region of Russia. The Company was established and the Sakhalin-2 project commenced in 1994 through the joint efforts of the Russian government and foreign investors to develop Piltun-Astokhskoye and Lunskeye oil and gas fields located in the Okhotsk Sea of Sakhalin Island. The basis and respective terms of the project development were set in the Production Sharing Agreement signed between Sakhalin Energy and the Russian Federation in June 1994.²

Sakhalin-2 project infrastructure includes three oil and gas offshore platforms located northeast of the island, 12-16 km offshore. Oil

and gas extracted at these sites are processed at an Onshore Production Facility, and then transported to the Prigorodnoye Production Complex located in the southern part of the island via an extensive network of pipelines. The complex includes an oil export terminal and liquefied natural gas (LNG) plant. Oil and LNG processed at Prigorodnoye are loaded onto tankers for export to customers primarily in Japan, South

Korea, China, Philippines, Thailand, Taiwan and Indonesia. In 2012, Sakhalin Energy produced and exported 5.5 million tonnes (about 43 million barrels) of oil (Vityaz Blend)

2. According to the Federal Law "On Production Sharing Agreements" No. 225-FZ, dated 30 December 1995 (as amended), a production sharing agreement is a specific federal-law type of an agreement, executed between the Russian Federation and selected investors, which contains terms and conditions of exploration and development by the latter of natural resources as well as terms of land use and environmental protection norms. Normally, it also contains covenants by the investors to give preference to Russian-based contractors and employees when hiring for a project and to share the developed and processed natural resources with the Russian Federation in an established ratio. Investors are generally protected from the negative impacts of newly adopted legislation by a grandfather clause included in the production sharing agreement.

1. Konstantin Shakko graduated from Columbia Law School with an LL.M. in 2012. Peer review for this case study was provided by Jonathan Drimmer, Vice President and Assistant General Council, Barrick Gold Corporation; Rita Anne Roca, Senior Specialist, Human Rights, Vestas Wind Systems A/S; Monica Lindvall, Senior Advisor, Save the Children Sweden; and Prashan Thalayasingam, Civil Society Advisor in the Humanitarian Context, International Programme, Save the Children Sweden.

and a total of 10.9 million tonnes of LNG, based on the Company's Sustainable Development Report. In 2012 Sakhalin Energy's staff included 2,052 people, 88% of whom were Russian nationals. The majority, 2,016 employees, are based in the Sakhalin region, working at production sites and offices. The remaining employees work at the Moscow office. More than 55% of the Company's personnel are Sakhalin region residents.

Sakhalin Energy is a closely-held (or privately owned) company with stock distributed among four of the world's leading oil, gas, and financial companies. Gazprom, a state-owned Russian gas monopoly, owns 50% plus 1 share. Royal Dutch Shell plc. owns 27.5% minus 1 share. Mitsui & Co. Ltd. owns 12.5%. Mitsubishi Corporation owns 10%. Each company holds their respective shares through a special purpose subsidiary company. Sakhalin Energy has a unique management structure due to the nature of its business and the status of its shareholders. Core management of Sakhalin Energy is based on a 3-tier governance model:

- **Shareholders:** They make certain key decisions under the Shareholders Agreement, revised in 2007;
- **Board of Directors:** The Board oversees general management of the Company;
- **Committee of Executive Directors:** They carry out day-to-day management and operations, chaired by the Chief Executive Officer.

In addition to these, Sakhalin Energy also has a special Supervisory Board. The Board has 12 members (one half appointed by the Company and the other half by the Russian Party). The Supervisory Board is in charge of strategic management in accordance with the Production Sharing Agreement, including fulfilment of its terms, approval of long-term development plans, annual work programmes, budgets and LNG sales agreements, and certain other functions.

Sakhalin Energy's sophisticated management structure reflects a high level of control and supervision over all of the Company's activities, helping to accomplish their mission to be "a premier energy supplier, recognized for its operational excellence, reliability and safety",³ while conducting its business "in an ethically, socially and environmentally responsible manner".⁴ Moreover, as a United Nations Global Compact LEAD participant, Sakhalin Energy is highly committed to supporting and respecting human rights, corporate social responsibility, sustainability and environmental protection.

2. THE COMPANY'S APPROACH TO HUMAN RIGHTS AND CHILDREN'S RIGHTS

All Sakhalin Energy activities are held to the highest international standards covering human rights, including the United Nation's Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights and the UN Global Compact Principles concerning human rights. Based on these guidelines, Sakhalin Energy built its own extensive policies, including their Statement of General Business Principles (General Business Principles), their Code of Conduct, and their Human Rights Policy. Detailed procedures enacted within Sakhalin Energy outline the complex measures to "identify, assess and manage human rights risks and impacts within the spheres of influence and activities"⁵ of the Company. Based on their Human Rights Policy, Sakhalin Energy has committed to execute the following processes, or "human rights alerts":

- **Awareness-raising about the Human Rights Policy for all relevant parties:** Sakhalin Energy regularly offers training

3. <http://www.sakhalinenergy.com/en/aboutus.asp>.

4. Id.

5. Sakhalin Energy Human Rights Policy 2012, at 6.

and/or awareness sessions on basic aspects of human rights and the Company's core principles to employees, contractors, and the general public, especially to affected communities and vulnerable groups.

Sakhalin Energy's Human Rights Policy is a special subject area for induction trainings and social performance trainings. Local communities are informed and trained on the grievance mechanisms adopted in the Company. All members of the security staff, employees or contractors, are instructed to adhere to the Company's established standards on human rights. The Company routinely incorporates references to its Human Rights Policy in business contracts.

■ **Due diligence for all Sakhalin Energy activities which may cause violation and/or limitation of human rights, including:**

- Assessment of potential risks and actual impacts on human rights from activities of Sakhalin Energy or its contractors. This is done through an established impact assessment process, which is part of the overall corporate impact assessment procedure within Sakhalin Energy. This procedure helps to evaluate the policies and behaviour of potential business partners regarding respect of human rights before the Company enters into an agreement or creates a partnership.
- Consultations with all potentially affected stakeholders. Such parties may include the Company's employees, local communities, and contractors - anyone whose rights could be affected.⁶ Notably, Sakhalin Energy has conducted intensive consultations with indigenous populations in the region in order to develop a grievance procedure they can use to report their concerns about the Company's activities.

■ **Compliance monitoring and reporting**

All the above listed "human rights alerts" have proven to be effective mechanisms to prevent and address negative impacts on human rights.

To encourage unbiased feedback, Sakhalin Energy maintains a whistle blowing procedure, a community grievance procedure and a human resources grievance procedure through which the Company's employees, partners, contractors and the general public may confidentially communicate any concerns or grievances related to the viola-

tion of the General Business Principles and human rights.⁷ Upon receipt of a grievance, the Company will internally investigate the cause of the concern. It will engage its Business Integrity Committee should the grievance relate to a violation of the Company's business principles. The complainant will be contacted by a grievance focal point – with their findings from the investigation and any recommended next steps. The complainant is entitled to all information about the results of the investigation and any actions taken.

Children's Rights

Sakhalin Energy is fully supportive of the Children's Rights and Business Principles (CRBP), which are accounted for by implementing the Company's general human rights policies on all its activities involving or affecting children. According to the Human Rights Policy, the Company commits to address issues related to vulnerable groups, which include children, as the first priority. The "human rights alerts" procedure established within Sakhalin Energy reflects the Company's undertakings towards meeting the goals and purposes of CRBP 1, a broad and overarching principle that sets the criteria for meeting the responsibilities to respect children's rights and encouraging corporate commitments to support the human rights of children.

Addressing these appeals of CRBP 1, Sakhalin Energy employs a combined approach regarding children's rights that helps to meet other CRBP principles, such as CRPB 6 (use marketing and advertising that respect and support children's rights), CRBP 9 (help protect children affected by emergencies) and CRBP 10 (reinforce community and government efforts to protect and fulfil children's rights). Most of all, the Company's activities in this sphere are related to issues of children's safety.

3. SAFETY IN THE SAKHALIN REGION AND RESPONSE OF SAKHALIN ENERGY

Because of the geographical location and geological composition of the region, safety is a

6. Id. at 4.

7. For additional information on filing of concerns and grievances, see: Sakhalin Energy Whistle Blowing Procedure, Community Grievance Procedure and Human Resources Grievance Procedure - all available at: <http://www.sakhalinenergy.com/en/aboutus.asp?p=whistleblowing>.

central issue for Sakhalin. This region is one of the few in Russia where almost all types of natural disasters take place: earthquakes, tsunami, floods, hurricanes, snowstorms, forest fires and other emergencies. According to the Regional Sakhalin Catalogue of seismological activity, during the period from 1962 to 1999 there were 685 earthquakes in Sakhalin region.⁸ Some of these catastrophes claimed human lives. On May 28, 1995, an earthquake struck the city of Neftegorsk, killing more than 2,000 people. It is still fresh in everyone's memories.⁹ In these circumstances, regional authorities work with increased awareness and responsiveness throughout the year in order to help people in emergencies and save their lives. However, as stressed by one regional official: "The main mission of rescuers (regional authorities) is to rescue. Nevertheless, as seen from our experience, it is much easier to take preventive measures than to launch a rescue operation, especially when it concerns children".¹⁰ Due to the extreme vulnerability of children, their inability to appreciate risk and their helplessness in the face of a catastrophe, the issue of child safety remains the highest priority in the region. Also, the impact is magnified by the remoteness of this insular region from the mainland, which affects the children of Sakhalin in many ways. In addition to protection of children from natural disasters, child safety in its broad understanding encompasses other components,

such as outdoor safety, road safety, water recreation safety, Internet security and safety of social communications.

Response of Sakhalin Energy

Taking the initiative and approaching child safety in its broadest meaning, Sakhalin Energy is trying to work efficiently to strengthen its status as a responsible community member. The Company considers long-term partnerships as the most efficient way to achieve this goal.

Indeed, the systemic approach used by Sakhalin Energy has proven to be successful for the Company in dealing with its own business activities. Sakhalin Energy maintains high standards of health, safety, environmental protection and social responsibility, which apply to every aspect of the Company's operations. The Health, Safety, Environment and Social Action Plan (Plan)¹¹ employed by Sakhalin Energy provides a detailed framework addressing these issues and sets goals for further development. The Plan and other documents addressing these areas are regularly updated and available on the Company's website. All measures taken to address these issues are supervised internally and routinely reported to the relevant state authorities and business partners. Based on the Company's observation and measurement, the system of safety management has already yielded significant results.¹²

Consequently, Sakhalin Energy has adopted a similar approach in dealing with child safety issues on Sakhalin, which is the primary location of its business. Notably, the Company seeks to follow the CRBP recommendations with respect to voluntary corporate commitments¹³ to promote children's rights in the region.¹⁴ Solid ethic principles guide the Company throughout all its undertakings. As a result, Sakhalin Energy initiated a special programme "What to do in emergency situations?" (Programme).

The Programme was launched in 2005 pursuant to the decision of the Sustainable Development Council,¹⁵ the Company's former management body responsible for review and approval of strategic social investment projects. The Programme's mission is to implement modern educational technology to address issues of safety and mitigate the risks and consequences of emergency situations involving children. The Programme

8. Based on information obtained from the official website of the US Geological Survey, available at: http://earthquake.usgs.gov/research/data/russia_seismicity/regionalcatalogs/sakhalin.php.

9. Additional information on this disaster is available at: <http://www.ncbi.nlm.nih.gov/pubmed/10187029>.

10. Adapted translation by the author of interview with Olga Shekhovtseva, Chief Specialist of Public Relations Department of Sakhalin Regional branch of the Russian Federation Ministry on Emergencies (Emercom).

11. Health, Safety, Environmental and Social Action Plan, 2010 (revision 3), available at: http://www.sakhalinenergy.com/en/library.asp?p=lib_actions_shelf&l=lib_social_plan2010rev3.

12. For more information on Sakhalin Energy's performance in safety management, see SD Report 2011, at 88-89.

13. The Children Rights and Business Principles, at 3 (available at: http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf).

14. Relevant Sakhalin Energy documents are: Statement of General Business Principles, June 2010; Human Rights Policy, 2012; Code of Conduct, 2012; Commitments and Policy on Health, Safety, Environmental and Social Performance, 2011; and Health, Safety, Environmental and Social Action Plan, 2010 (revision 3). All are available at www.sakhalinenergy.com.

15. The Sustainable Development Council was comprised of high-ranked managers supervising the company's assets. It was co-chaired by the Director of the Sakhalin-2 Project and the Vice-Governor of Sakhalin region.

primarily targets young children of pre-school and early school age and pursues the following goals:

- Promotion of education and training on the basics of safety and norms of behaviour in emergency situations for children;
- Unification of society to solve problems related to children's safety;
- Formation of a conscious and responsible attitude towards issues of safety; and
- Broadening of the informational coverage of safety standards and rules of behaviour in emergency situations for the general public.

These goals were chosen in response to apparent necessities, including limited education of this type in a disaster-prone region, and the need to coordinate efforts between state authorities and non-governmental organizations dealing with child safety. The local population's lack of knowledge about safety rules required robust publicity and educational outreach on safety matters in the region through a set of decisive, positive actions.

Any project of such a scale and scope is quite difficult, if not impossible, for a single actor. The necessary experience and practical knowledge in the spheres of education and safety management are mostly held by state authorities in Russia. Therefore, the Company needed to cooperate with such state authorities to incorporate this experience and knowledge, which was vital for the implementation of the Programme. Sakhalin Energy partnered with the Sakhalin Regional Branch of the Ministry on Emergencies (Emercom) and the Sakhalin Ministry of Education (Ministry of Education). In addition, Sakhalin Energy also partnered with several non-profit organizations, including: TKK Pilgrim, ROSTO (DOSAAF),¹⁶ the Centre for Children's Tourism, the Regional Anti-Avalanche Centre, the Tsunami Centre, and others. The Partnership Agreement, signed by the parties on 7 July 2011, established a legal framework for joint actions of Sakhalin Energy and its strategic partners — Emercom and the Ministry of Education. Fully devoted to the purposes of the Programme, the agreement acknowledges the parties' endeavours to work jointly and amicably, stipulates methods of interaction and coordination, and defines each party's rights and obligations.

Sakhalin Energy's cooperation with the regional authorities and their joint efforts

reflect the objectives of Millennium Development Goal 8F,¹⁷ which encourages partnering for provision of benefits of modern technologies to the population. Approaching this goal in a unique way, Sakhalin Energy seeks to employ available sources and use advanced education technologies for the benefit of children in the Sakhalin region. Also, the complex approach of Sakhalin Energy to the issues of children's safety in the region indirectly benefits Millennium Development Goal 4,¹⁸ which aims to reduce child mortality and favours promotion of children's health. Through the Programme, this objective has been achieved specifically through a significant decrease in the number of children involved in car accidents over the course of Programme implementation, as discussed later in this study.

4. CORPORATE SOCIAL RESPONSIBILITY OF SAKHALIN ENERGY AND PROGRAMME IMPLEMENTATION

Sustainable development and corporate social responsibility are essential components of Sakhalin Energy's business methods and strategic development. All of Sakhalin Energy's social investment and sustainable development programmes are linked to the Company's long-term objectives and integrated into the general business strategy. Numerous social projects supported by the Company besides the Programme include the Sakhalin Indigenous Minorities Development Plan,¹⁹ the Korsakov Sustainable Development Partnership Council,²⁰ the Sakhalin Salmon Initiative,²¹ the Road Safety Partnership, Small Grants — Big Deeds, "The Enigmatic World. The Ainu", and Hurry Up for Good Deeds, among many others.²² The Company's overall

16. ROSTO (DOSAAF) is a nationwide non-profit organisation for support of the army, fleet and aviation, which provides education and training on driving, parachute jumping, radio-sport, pneumatic and firearms shooting, and other activities.

17. More information regarding Millennium Development Goal 8F is available at: <http://www.un.org/millenniumgoals/global.shtml>.

18. More information regarding Millennium Development Goal 4 is available at: <http://www.un.org/millenniumgoals/childhealth.shtml>.

19. Detailed information on this Plan is available at <http://www.simdp.ru/eng.php>.

20. Additional information is available at: <http://www.korsakovsovet.ru/eng.php?id=26&pid=2&PHPSESSID=4aef16b64f973529af9ba87062be76c8>.

21. Information on the Sakhalin Salmon Initiative Coordinating Committee is available at: http://www.wildsalmoncenter.org/programs/sakhalin/ssi_committee.php.

22. SD Report 2011, at 96-107.

contribution to the sustainable development of Sakhalin region could hardly be overestimated. Based on the Company's Sustainable Development Reports for 2010 - 2012, the average annual expenditure on social investments for these years was around US\$1.7 million per annum.²³ The main focus of the social investment and sustainable development activities is on implementation of long-term partnership projects. Currently ongoing, the Programme is one of the key long-term partnership projects of the Company. The Programme budget for 2011 and 2012 was approximately US\$290,000 total.

The Programme is comprised of the following key divisions, which reflect Sakhalin Energy's approaches to child safety in the region:

- a. Establishment and equipment of special classrooms for the Basic Safety²⁴ classes, including introduction of modern education technologies and experience sharing;
- b. Production and broadcasting of educational cartoons featuring a hero named "Senya";
- c. Organizing and holding cultural public events with the participation of children aimed at practical learning of safety standards and rules of behaviour in emergency situations; and
- d. Special projects within the Programme, such as the children's training camp, emergency information banners, and others.

To maximize effectiveness, the roles of partners and their degree of involvement are defined based on their knowledge and experience. Being the main coordinator, Sakhalin Energy also manages and supervises work under each division of the Programme. Within the Company's structure, the External Affairs Department is mainly responsible for overseeing the Programme's implementation and coordination, which is implemented through the Social Performance Team and its subdivision, the Social Investment Group. Also, the Communications Team provides necessary assistance and support in information technology, such as website development. According to Sakhalin Energy, the system used for social performance management is similar to the management of other company activities. It includes policy, planning, implementation, control and improvement stages. "It involves a clear prioritisation

technique and detailed descriptions of the programme implementation plans, decision-making processes and social investment management procedures".²⁵

The following is a more detailed description of the partners' activities within each of these divisions, including challenges that have arisen and their respective solutions.

(a) Establishment and Equipment of the Special Classrooms

This division of the Programme encompassing the establishment and equipment of special classrooms in Sakhalin schools was developed and implemented in 2006 and 2007 to promote children's education on the basics of safety. The Basic Safety course is aimed at students in grades 1-11. It is now included in the curricula of many schools across the country, with grade level and method of implementation at the discretion of each school's management. Sakhalin Energy's idea was to supply classrooms with special training equipment and modern multimedia devices that would bring safety studies to a higher level, thus giving the pupils the best available education on the subject. This division aligns with CRBP 9 and 10, the principles that seek corporate commitments to help children affected by emergencies and bolster private sector activities supporting government efforts to protect and fulfil children's rights.

At the first stage of implementation in this division, Sakhalin Energy encountered several challenges. There was a lack of special expertise among teachers in the sphere of education with respect to establishment and equipment of classrooms for the Basic Safety class. Another challenge related to the broad variety of teaching standards applicable to such a class. In order to bridge this gap Sakhalin Energy undertook intensive work on interaction with various regional authorities and educational institutions and eventually teamed up with the Ministry of Education and its subsidiary, Sakhalin Institute of Education Development (IED). IED, the

23. For detailed information, see Sustainable Development Report, 2010, at 48 and SD Report 2011, at 97.

24. Basic Safety is a class in the middle school focused on the study of general norms of safety and rules of behaviour in emergency situations, and other basic safety requirements and measures. Often, classes on Basic Safety are held in conjunction with Physical Education classes to train pupils on the proper usage of safety equipment.

25. SD Report 2011, at 98.

leading institution in the sphere of education technologies, created detailed guidelines on necessary equipment and proper administration of the special classrooms.

After the framework was established, the partners selected the first three schools to participate in a pilot project preceding the launch of the entire division. The results of this project were essential to assess feasibility, time and relevant costs of the whole task. Based on the results, it was decided to establish nine more classrooms. This time, the participating schools were selected through an open contest, which the partners believed was important to ascertain that the selected schools showed commitment to the project and a high level of motivation. In order to participate in the contest, each school-contestant provided certain assurances: a dedicated classroom for at least 25 pupils; ability to repair and maintain such a classroom; and the basic furniture for the classroom. Moreover, each winning school was obliged to follow the IED guidelines in their administration of the special classrooms. For each selected school, Sakhalin Energy procured necessary equipment suggested by IED, including: a re-animation simulation machine; information stands and banners; and special emergency equipment, such as gas masks, chemical protection costumes, fire extinguishers, compasses, and opisometers. Sakhalin Energy also sponsored the purchase of textbooks and supplemental materials on Basic Safety for students in grades 1-9, and multimedia equipment (projector, screens, PCs, TVs and DVD players). In order to finance these purchases, the Company spent approximately US\$64,500. In total, special classrooms were established in twelve of the eighteen districts in the region. The support of Sakhalin Energy and its partners was highly appreciated throughout the region. "We were just lucky that Sakhalin Energy had initiated this project. We would not afford establishment and equipment of such classrooms using the regional budget funds", said the director of a school in Voskresenovka, Tymovsky District.

Sakhalin Energy and IED regularly conduct inspections in order to check that the special classrooms are used appropriately and the classes on Basic Safety are run efficiently. Based on the results of the review in 2009, it was determined that all such classrooms were being used appropri-

ately in accordance with the IED guidelines and calendar plans. An overall efficiency check of this division of the Programme was held in the last quarter of 2012. Upon the results of the check, the decision was made to additionally support three of the existing classes since they demonstrated the most active work on promotion of safety essentials behavior both at the school and regional levels. These classes were equipped with the new interactive and multimedia equipment, and the modern software for teaching of life safety essentials. Sakhalin Energy invested over US\$36,000 in modernization of these classes. The equipment will help teachers to educate more innovatively. Plans for 2013 include a similar resource class being established in Yuzhno-Sakhalinsk on the basis of the Cadet School.

The special classrooms are also used to hold open events, conferences and seminars for teachers, parents and the general public aimed on experience sharing, public training and further promoting safety standards in the region. Many schools with such classrooms have become important education centres for their respective districts. Various training camps and student organizations are now based in such schools. Also, teachers of neighbouring schools often visit their colleagues to gain new educational experience. Indeed, many teachers of the schools participating in the Programme attended continuing education courses at IED on teaching of the Basic Safety class with the use of modern education technologies. Notably, during these courses IED organized several field trips to service departments involved in providing assistance in emergencies to show the practical use of knowledge on basic safety. Special IED representatives interact with teachers and provide them with the latest news on the subject.

In order to stay abreast of modern educational trends, the partners have decided to update the existing materials for the Basic Safety class. This initiative resulted in the contest that Sakhalin Energy and the Ministry of Education organized in 2010 among teachers in the Sakhalin region for the best methodical guideline. The contest board received 42 applications from 13 administrative districts. In February 2011, the 15 best papers were selected and approved for publication in the Digest on "Basic Safety".²⁶ With the help of the

Ministry of Education, the Digest was printed in 2012 and distributed among all of the schools in the Sakhalin region.

(b) Production and Broadcasting of Cartoons

Sakhalin Energy is currently implementing this division of the Programme in cooperation with Emercom and the Ministry of Education. Generally, the work focuses on the production of public service advertising – short-length (25-40 seconds) educational cartoons with themes on basic safety and emergency situations featuring a hero named Senya. This character was created pursuant to the Company’s idea that children better comprehend information if they recognize and relate to the speaker as their peer, thus transferring themselves into the action. Accordingly, Senya was given the common features of a boy who likes to play games, engage in active sports, hiking and fishing, and who is also clever and very diligent in terms of basic safety and rules of behaviour in an emergency. Making Senya similar to children in many respects helps to promote children’s safety and wellbeing more effectively. The character’s name was even chosen for a purpose. Senya is a short form of a typical Russian name and at the same time it reminds people of Sakhalin Energy (S-ENya). The Senya programming follows the framework of CRBP 6, which encourages corporate commitments to support children’s rights using marketing and communication tools. Through this public service advertising, Sakhalin Energy raises the public’s awareness of children’s education and training on basics of safety and how to act in emergency situations.

The cartoons are created by LLC Forsight, a studio that has nearly 10 years of experience in multimedia production.²⁷ Sakhalin Energy has selected this contractor via tender mostly for its willingness to contribute to the development of the Programme and for its competitive quotes for design services. Sakhalin Energy, Emercom and the Ministry of Education carefully elaborate on themes for each cartoon. While Emercom provides the theoretical basis for cartoons, such as the rules on diligent behaviour in an emergency or basic safety requirements, specialists from the Ministry of Education advise on the best ways to layout this information for children.

Sakhalin Energy sponsors the production of the cartoons, managing and supervising the process. The cartoons have been approved and certified by Emercom’s Centre for Urgent Psychological Assistance, which also provided essential comments on the cartoons to foster better understanding of the message by children. For example, they advised that the overall pace of the action should be slowed and that Senya’s voice should be milder.

The partners also outline the social components of the cartoons in detail. In each clip Senya interacts with various characters that play different roles, including family, friends, local residents, rescuers, officials, criminals, Internet users, wild animals, and others. This helps to recreate the real environment that children experience in their day-to-day lives, thus providing important practical advice. In many cartoons, his friend Vas’ka, the cat, accompanies Senya. This character was designed with a hint of carelessness and negligence to contrast with the diligence and responsibility exercised by Senya. Senya must always rescue Vas’ka from danger. This juxtaposition emphasises the educational message of the cartoons by illustrating which actions lead to danger, injury, or worse.

In addition to the main theme on emergencies, the cartoons also cover issues of Internet security, communications with strangers, safe bicycling and the use of public transport. Following the main goal that all deliverables of the Programme must be easily comprehensible by children, Sakhalin Energy effectively allows their input in many ways. Children have also had the opportunity to choose a theme for a new clip. The best theme selected in the contest among children younger than 12 was broadcast in 2009.

In all respects, the cartoon is a great achievement for Sakhalin Energy and its partners in the implementation of the Programme. The public service advertising through these cartoons is a huge success among children. Evaluations of Sakhalin Energy’s social programmes²⁸ suggest that

26. Also available at: <http://www.senya-spasatel.ru/uploads/files/posobie.pdf>.

27. Based on information available at Forsight’s website: <http://forsight.ru/eng/studioe.html>.

28. Sakhalin Energy Public Relations Brochure “Best Practices”, at 7, available in Russian at: http://www.sakhalinenergy.com/docs/ru/319/Broshura-SE-PR_08_09.pdf.

90% of children-respondents in the Sakhalin region knew Senya. Remarkably, because of their simple yet educational content, the cartoons became popular not only in Sakhalin but also in many other regions of Russia. Upon request, Sakhalin Energy has provided the cartoons for broadcasting in Yakutia, Kamchatka, Khakasia, Moscow, Saint Petersburg and other regions. Finally, in 2010 the cartoons received nationwide recognition when they took the main prize at the Annual National Contest of Public Service Advertising, “New Russian Horizon”. All these achievements helped to build Senya as a strong brand, which may be used by the Company in many other social initiatives involving children.

Pursuant to the Partnership Agreement, Sakhalin Energy agrees to fund the production of at least 3 cartoons annually. The actual number is far beyond that commitment though. As of January 2013, there were thirty-nine cartoons featuring Senya ready for broadcast. In Sakhalin region, the cartoons are shown on large screens, which are administered by Emercom and dedicated to emergency announcements, and on television (80-100 releases monthly), including a local television channel, ASTV,²⁹ regional and federal channels. Also, as coordinated by the Ministry of Education, children regularly watch Senya’s adventures in classes on Basic Safety. Additionally, the stories featured in these cartoons are depicted in comic books,³⁰ which are available for children in both electronic and paper formats.

(c) Cultural Public Events

In addition to establishing special classrooms and producing cartoons, Sakhalin Energy and its partners Emercom and the Ministry of Education organize and hold various public events for children devoted to the problems of safety and emergency situations on a regular basis. Freely accessible for the general public, these events attract many regional residents. Professional actors dressed as Senya and his friend Vas’ka conduct performances, play games with the children and give away prizes. Members of the Emercom staff assist them in giving lectures and presentations on various safety topics. Occasionally, partners invite other specialists from the Department of Road Safety,

the Fire Department, Water Inspection, the Small Vessels Authority and others to share their experience as well. These events are supplemented by screening of the cartoons with Senya. During the 5-year period of implementation of this division, the partners organized more than ten public events of a regional scale.

One such public event, called “Safety Day”, takes place each year on or around 13 October, the date of the International Day for Natural Disaster Reduction.³¹ The format of the event is different each year. In its first year in 2008, Safety Day was organized for the first-grade pupils. With the help and coordination of the Ministry of Education and Emercom, the youngest pupils in all schools in the Sakhalin region attended classes on elementary safety rules organized in the form of a game. Also, every first-grader in Sakhalin (around five thousand pupils in total) received a printed brochure with comics featuring Senya.

In 2010 and 2011, both Safety Days were held in the city of Yuzhno-Sakhalinsk as a part of the All-Russian Festival “Constellation of Courage”. Designed as contests among fifth and sixth graders, they included tests and contests on the basics of safety and rules of behaviour in emergency situations. Children competed in theoretical and practical skills, such as life saving in the water, safety at hiking, traffic rules and others. It appears that this event is gradually gaining in popularity, as the number of contestants has increased from around 100 pupils from 6 administrative districts in 2010 to 130 from 14 districts in 2011. Remarkably, Safety Day in 2010 was honoured as the best 2010 PR-event in Russia devoted to the issues of safety and emergency. As a result, Sakhalin Energy and Emercom received honours from the Minister of Emergency Affairs of the Russian Federation.

Safety Day 2012, held on 12 October 2012, included 16 teams from 15 of the Sakhalin Region’s districts (the greatest number so far) competing with each other for the title of “The Expert in Safety”. This event drew

29. <http://news.astv.ru/>.

30. Comics are easily accessible via the Programme’s website: http://senya-spasatel.ru/page_19.htm.

31. Resolution 64/200 “International Strategy for Disaster Reduction” adopted by the General Assembly of the United Nations, 5. Also available online at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/200.

heightened attention not only from the general public and mass media but also from the state authorities. Many officials, including the head of Emercom, attended this event as guests and speakers.

(d) Special Projects within the Programme

In addition to the previously mentioned divisions, Sakhalin Energy and its partners have administered or continue to conduct several special projects that range from one-time events to ongoing actions, all of which correspond to the Programme goals or to issues of safety in the region in general.

School of Young Leader

Implemented in 2006, this project was designed as a two-week training camp for 27 upper-grade pupils, where they were to compete in practical exercises and show their mastery of the theoretical knowledge acquired in Basic Safety classes. Located on the seashore of Western Sakhalin, the camp was remote from inhabited areas. These circumstances helped create a unique environment for the competition in conditions of simulated emergency. The emphasis was made on the collective work of the contestants in order to build the team spirit and teach children methods of interaction in an emergency. This camp was organized by TKK Pilgrim in association with ROSTO (DOSAAF) and district departments of the Ministry of Education and Ministry of Culture. The ASTV news channel provided detailed coverage of the event in the news. This project has resulted in methodical guidelines for Basic Safety classes on the organization of camping.

Safety of Hiking Trails

In 2009 and 2010, Sakhalin Energy, in cooperation with the Centre for Children's Tourism, equipped the famous 15-kilometre trail from the city of Yuzhno-Sakhalinsk to Chekhov's pike with information boards containing safety rules. They also installed safety measures such as ropes stretched along the trail, coloured stones, and warning signs for dangerous zones. In 2010, Sakhalin Energy and Emercom hosted a contest called "Safety Route" among tourist organizations and clubs. Sakhalin agreed to fund the best plan for equipment of hiking trails else-

where on Sakhalin Island. In 2010, Sakhalin Energy also held a contest among children for the best artistic or literary work on issues of safety at hiking called "Take a Hike with Senya". Using a well-known cartoon hero as one of the characters, children submitted more than 500 pieces of art, including drawings, cartoon strips, posters, rhymes, poems and fairy tales.

Information Boards

"Warning from Senya", a new project, was launched by Sakhalin Energy in 2011. It involves installation of information boards in the areas of Sakhalin with the most likelihood of natural disasters, such as tsunami and avalanches. These boards are designed to indicate the hazardous areas, advise on evacuation routes and the location of the nearest safe zones. As the project name shows, the boards feature Senya and are designed in a simple format. Sakhalin Energy constantly ensures that all instructions are written in plain and clear language understandable to minors as it falls within the Company's commitment to protect children's rights. Emercom, the Government of Sakhalin region, the Regional Anti-Avalanche Centre and the Tsunami Centre assist Sakhalin Energy with the implementation of the project. At the moment there are ninety-five information boards erected in four districts of the Sakhalin region. In 2011, the first forty-five boards were installed in the Nevelsk district, chosen because of the disastrous earthquake there in 2007. In 2012, fifty boards were mounted in dangerous areas of three more districts: Kholmsk, Korsakov and Aniva. There are plans to install information boards in the most dangerous and hazardous areas of eight more districts of Sakhalin within the next three years.

Website Launch

The Programme requires a centralized source where all participants, whether they are the Company's partners or contractors, members of the general public, or the target audience, can obtain information. The Programme has encountered problems with such communication and information sharing since its inception in 2005. To solve the problem, a special website (www.senya-spasatel.ru) was launched in 2011. As with

many other deliverables in the Programme, the website design features Senya and has a simple, friendly and fun interface adapted especially for young users. In fact, the Company conducted tests with children ages 7 – 11 years, both boys and girls, in order to ensure its user-friendliness and adaptability. Nevertheless, along with the cartoons and comics, the website also contains a database of detailed and comprehensive information covering the issues of the Programme, methodical instructions for school teachers, templates of agendas for public events and other related materials. A straightforward feedback page allows users to ask questions and give comments. The website serves as a main information platform, covering the activities and events of the entire Programme.

In December 2012, Senya’s website won the federal contest of Emercom under the “Sozvezdiye Muzhestva” (Constellation of Courage) Festival and became the best Internet project on safety in Russia.

5. RECOGNITION OF THE PROGRAMME

The internal support of the Programme throughout the Company’s corporate structure and efficient project management have resulted in broad recognition of the Programme and the Company’s other social initiatives. In addition to the awards bestowed upon different divisions of the Programme listed previously, in 2008 Sakhalin Energy won the contest “Corporate Donor of Russia”³² in the category “Enhancement of social climate in the society – care of the family welfare”. In 2009, Sakhalin Energy received an award in the All-Russian Festival of Social Programmes “SoDeystvie”. In the 2011 Study of Corporate Charity, the Company was awarded second prize for the effectiveness of its corporate charitable programmes, and it was identified as one of the leaders of charitable activities in Russia.

Evaluations of Sakhalin Energy’s social initiatives in 2008 and 2009 indicate that the community members surveyed recognize the impact of these initiatives in their communities, and they appreciate the Company’s contributions in the region. The respondents attributed Sakhalin Energy’s current reputable status to their deliberate and extensive participation in the social and sustainable development of the region.

6. CHALLENGES OF THE PROGRAMME AND LESSONS LEARNED

The success and broad recognition of the Programme have only been possible through hard work and improvement to address challenges. It is therefore very important to share some of the challenges that Sakhalin Energy has encountered in implementing the Programme so others can better understand and replicate the successes.

- Human factors play an important role in the whole process of implementation. With respect to the establishment of special classrooms, as described in Section 5(a), the most important concern is to keep the classrooms operating and retain the teaching staff. The evaluation reports³³ outlined several issues with the administration of the special classrooms. Although the routine checks have shown that the classrooms are used in compliance with the IED guidelines, the education on Basic Safety is fully dependent on the school staff and availability of teachers. Sakhalin is also geographically remote from the major cities of Russia, and there are very small populations in many of its districts. Because of these factors, the success of the Basic Safety class in a particular school sometimes depends on a single teacher. Though they have expended so much effort to establish the classrooms, Sakhalin Energy has neither the authority nor the leverage to fully address this situation. Raising public awareness, especially among the federal authorities, and maintaining close cooperation between Sakhalin Energy, the IED, and the Ministry of Education may help mitigate potential risks and allow schools to carefully select and maintain appropriate staff for the classes on Basic Safety.
- Based on feedback, there is currently one concern related to the Programme division focused on production of educational cartoons, as described in Section 5(b), which is that Senya requires further development. Teachers have correctly noted that students in middle or upper grades can only watch the cartoons once. Thereafter, they are not as excited about them as their younger schoolmates. One solution to engage advanced students, which is highly supported by the children, is a computer game featuring Senya. An interesting and dynamic game could help focus children’s attention

on the issues of safety through completion of various quests and puzzles. The Company is exploring the possibility of creating such a game in the future. Also, while this is under discussion, similar board games could be a good alternative for children. A third suggestion to address this challenge is to update the Senya website and make it more interactive for children, allowing their input and facilitating communication among them and with relevant specialists through the site. Sakhalin Energy is considering this as part of their plan to further develop the website in general.

- With respect to the Programme division devoted to cultural public events, as described in Section 5(e), one of the challenges has been that these events are primarily held in central areas of the Sakhalin region, and therefore might not be attracting residents from other districts. Taking this into account, the Company and its partners have focused more effort on achieving wider recognition of the public events in the region and attracting residents from other areas since the events began. As illustrated by the statistics included in Section 5(c), the geographic diversity, attendance and popularity of the events are gradually increasing, indicating the success of these efforts.
- Based on evaluations of the Company's social initiatives,³⁴ including the Programme, efficiency is sometimes difficult to analyse. Many performance indicators do not apply to social projects. Thus, overall efficiency of the Programme is often evaluated on the basis of public opinion and level of mass media coverage, which in turn may be affected by unrelated processes and factors.

Sakhalin Energy has also learned many lessons since the Programme began back in 2005.

- Approaching the Programme as a long-term partnership has helped all participants effectively consolidate available resources and use collaborative efforts to realise plans more productively and on a larger scale.
- Efficient interaction with regional authorities, educational institutions and various organisations introduced significant experience and knowledge to support and promote children's rights in Sakhalin region.
- Although it has been the primary spon-

sor of all activities under the Programme, Sakhalin Energy substantially reduced its costs by acting in close cooperation with regional authorities and other partners that offered their networks and human resources to help reach the Programme's goals.

- Numerous contests held by the Company have demonstrated and encouraged the strong commitment of participants to the project's goals and, where applicable, resulted in a higher quality of services.
- Deep involvement in realization of social initiatives throughout Sakhalin helped the Company to build a solid reputation as a responsible corporate citizen in the region and achieve recognition nationwide.
- The Senya character designed by Sakhalin Energy has become a well-known symbol of the Programme. This popularity also makes Senya a useful tool to promote other undertakings of the Company in the sphere of safety and children's rights.

The Programme, like Sakhalin Energy's other social initiatives, requires substantial effort and dedication by the staff responsible. The Company has faced different challenges in the implementation process. However, strong partnerships with the government and other organizations have facilitated progress towards the achievement of the Programme's goals.

7. OUTLOOK AND CONCLUSION

The Programme's objectives to promote and support children's safety and rights require continuous work and dedication from Sakhalin Energy and its partners. Success in the early stages became a vital indicator of progress in the right direction. Further implementation of the Programme is focused on the following in the long-term:

- Continuing to increase the number of children that possess special skills and knowledge of safety norms and rules of behaviour in an emergency;

32. Corporate Donor of Russia is the all-Russian contest arranged by PricewaterhouseCoopers, Vedomosti business newspaper and the Donors Forum, a non-governmental organisation.

33. Evaluation reports prepared by specialists of the International Program Evaluation Network with respect to social programmes of Sakhalin Energy in 2008 and 2009.

34. Id.

- Extending the experience and knowledge from the Programme to other regions with relatively high risk of emergencies;
- Raising public awareness of issues related to children's rights and safety; and
- Catalysing action to reduce child trauma and mortality nationwide.

One of the Company's most recent initiatives is an informational campaign "Safe Car Seat and Belt".³⁵ Launched in August 2012, this campaign is focused on further promoting safety in the car. In order to reach the audience, the Company uses the same methods of the Programme described earlier in this study, including production of a new Senya educational cartoon.³⁶ During the period between 2005 and 2011, the number of children injured in car accidents in Sakhalin region has decreased by more than 60%. This factor, although circumstantial, shows a rising awareness of safety issues among children, which is one of the Programme's goals. Sakhalin hopes to continue this improvement.

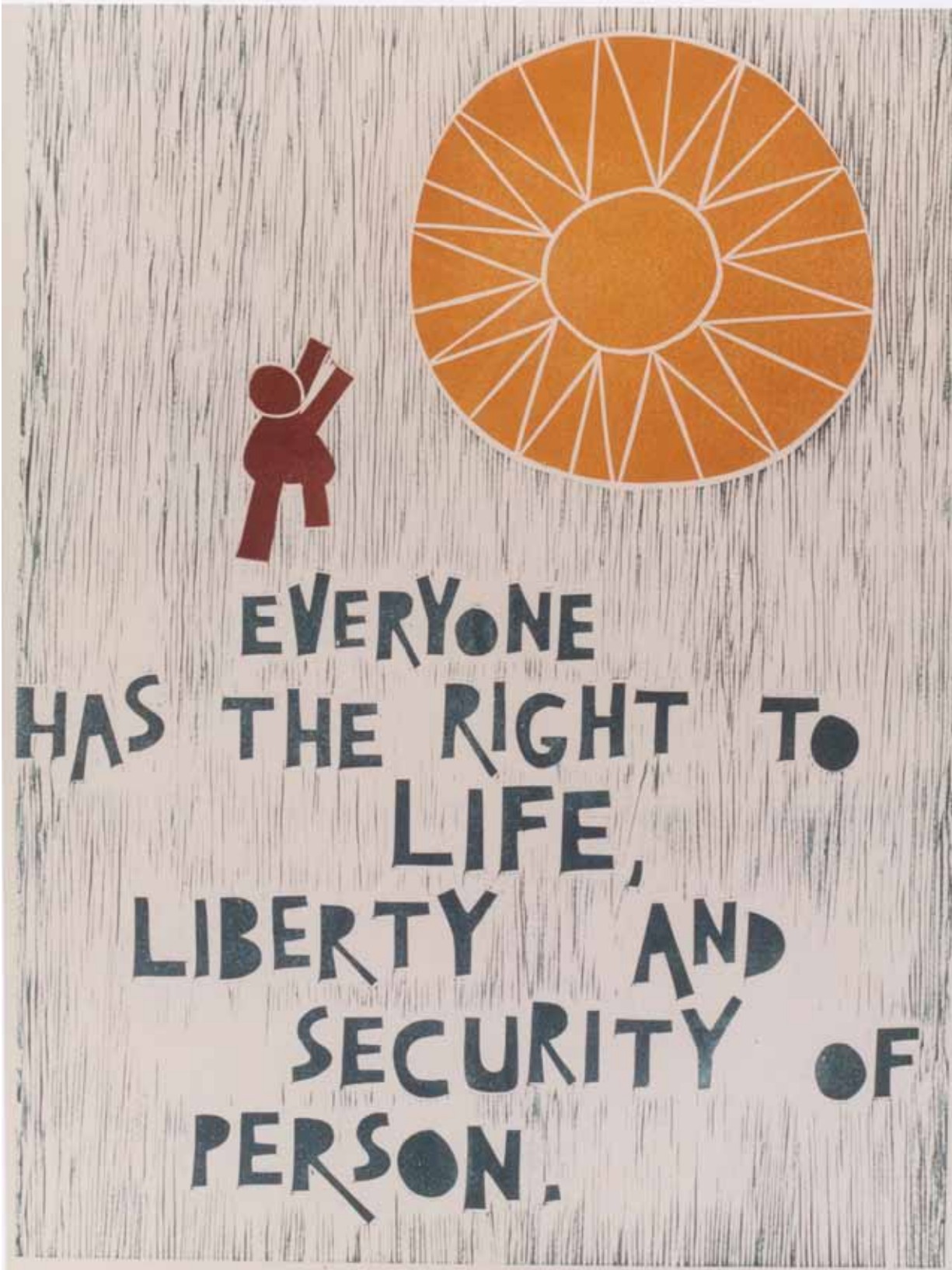
One of the priorities for further Programme development is to increase the capacity of school education through more active participation in the Programme implementation of life safety resource classes established in 2006. The classes were updated at the end of 2012 and the beginning of 2013. New contests to attract public attention to child safety and children's rights issues will be held for children in 2013.

In its ninth consecutive year of implementation, the Programme has made significant progress towards its goals. This demonstrates the ability of a self-motivated team of professionals to a complex but very important task – protecting children's rights. Lacking much assistance from other regional businesses or non-governmental organizations at the beginning, Sakhalin Energy nevertheless has been able to build strong relationships with its partners, including key regional authorities. On this road to success, the Company has faced numerous challenges. However, they have addressed these, analysing activities and improving the Programme's management and coordination. Sakhalin Energy's high ethical principles have provided the basis for the responsible and collaborative work.

Children's rights, especially children's safety, as recognized by the Children's Rights and Business Principles, Millennium Development Goals and Global Compact Principles related to human rights are fundamental in their nature and require strong commitment and dedication by the members of any impacted community. Sakhalin Energy's efforts are an example of how children's rights and their safety may be supported through the work of private enterprise in reliable partnerships with governments and NGOs in their region.

35. Additional information is available at: <http://senya-spasatel.ru/index.php?page=news&id=32>.

36. A news report made by ASTV, Sakhalin regional TV channel, is available at: <http://news.astv.ru/video/podvedeny-itogi-aktsii-bezopasnoe-mesto-s-remnem-i-avtokreslom>.



XSTRATA COAL IN SOUTH AFRICA:

Corporate Social Involvement in Tackling HIV/AIDS

By Špela Berlec¹

Human rights issues addressed

- › HIV/AIDS
- › Occupational health and safety
- › Right to life
- › Right to adequate standard of living
- › Right to health
- › Right to privacy
- › Right to non-discrimination
- › Women's rights

Human rights management practices addressed

- › Getting started
- › Strategy
- › Policy
- › Processes and procedures
- › Measuring impact and auditing

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › Universal Declaration of Human Rights
- › International Convention on Economic, Social and Cultural Rights
- › Millennium Development Goals
- › Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework

ABSTRACT

This case study illustrates how Xstrata Coal's partnership programmes with the South African government and civil society, as well as the integration of human rights principles into its business operations, have enabled the company to develop successful programmes to combat HIV/AIDS in South Africa. It provides an example of how companies can implement the provisions set out by the Guiding Principles on Business and Human Rights by partnering with governments in their efforts to implement "State Duty to Protect". In line with Principle 1 of the Global Compact, Xstrata Coal actively supports the enforcement of human rights in their sphere of influence. The case study describes the challenges faced by Xstrata Coal in operating in South Africa and the instrumental role played by the provincial government, Xstrata Coal's workers, and the surrounding communities in supporting the company's efforts to enforce the Right to Life and providing Occupational Health and Safety. The case study concludes with the lessons learned from Xstrata's efforts in combating HIV/AIDS in South Africa and provides lessons learned to companies operating in similar contexts.

1. COMPANY PROFILE²

1.1. Overview

Xstrata Coal is the world's leading exporter of seaborne thermal coal and the fifth largest producer of hard coking coal, producing both premium quality hard coking coal and semi-soft coal. The company's headquarters is in Sydney, Australia, however its operations are spread across more than 30 operating coalmines in Australia, South Africa and Colombia, with an exploration project in Nova Scotia, Canada.

Xstrata Coal was established in 2002 and is one of the Xstrata plc Group's five major commodity businesses that operate as global businesses in their own right and with maximum responsibility and accountability. Xstrata plc is listed on the London and Swiss Stock Exchanges and is headquartered in Zug, Switzerland. In 2011, the Xstrata Group employed approximately 70,000 people worldwide, of which over 20,000 were employed by Xstrata Coal. In 2011, Xstrata Coal's operating profit was estimated at \$2,810m³ with revenue of \$9,981m. Over the last three years (2009-2011), Xstrata Coal has contributed over \$67m to Community Social Involvement programmes globally. The Xstrata Group contributed over \$84m in 2011 across all commodities.

Xstrata Coal South Africa is the third largest coal exporter in South Africa. Its eight mining operations in South Africa are spread across three mine complexes in the Mpumalanga province. In 2011, Xstrata Coal South Africa exported 11.3 million tonnes of its thermal coal production, with the remaining seven million tonnes sold on the domestic market.

One of Xstrata's aims is to lead the industry in its contribution to sustainable development and to be seen as a preferred developer of mineral resources.

1.2. Sustainable Development Policy and Standard

While the values of Xstrata's management are important in establishing policies and practices related to human rights, Xstrata has a number of guiding standards and frameworks that define the way it does busi-

1. Špela Berlec is a graduate of the Master of Human Rights from the University of Sydney. Peer review for this study was provided by Abi Price, CSR Specialist at Hitachi, Monica Bowen-Schrire, Senior Sustainability Advisor at Vattenfall, Rita Anne Roca, Senior Human Rights Specialist at Vestas, Sarah Dolton-Zborowski, Advisory Services Manager at BSR, and Tom Hickey, Assistant General Counsel at Hess Corporation.

2. For more information, see <http://www.xstratacoal.com/EN/AboutUs/Pages/default.aspx> and <http://www.xstrata.com/>.

3. All dollar and cent figures provided refer to US dollars and cents.

ness. Xstrata's Business Principles⁴ set out the ethical framework within which the company commits to work ethically, responsibly, openly, holistically and with others. Xstrata's 17 Sustainable Development Standards⁵ set out requirements and expectations covering various areas of Xstrata's business, with Standard 12 dealing with Social and Community Engagement. Xstrata's Code of Conduct⁶ supports the application of those principles and provides practical direction in various work-related situations. All employees have been trained to align their decisions and behaviour with these standards that need to be respected. Likewise, contractors are also expected to follow the Code of Conduct standards.

All of Xstrata's standards are aligned with the Universal Declaration of Human Rights (UDHR). This case study shows Xstrata Coal's commitment to the right to life, liberty and security of a person in Article 3. Services offered by the HIV/AIDS programme and the farming programme contribute towards securing the right to life, as it provides access to the basic necessities that enable survival – health care and employment.

Article 23 of the UDHR states that everyone has the right to work without discrimination, and Article 25 provides for the right to adequate standards of living. The HIV/AIDS programme addresses both articles. In line with Millennium Development Goal number 6, the HIV/AIDS programme calls to “reverse the spread of HIV/AIDS”, to achieve “universal access to treatment for HIV/AIDS for all those who need it” and to reverse the “incidence of malaria and other major diseases”.

Xstrata's standards and principles apply also to its Social Involvement Program that covers various projects, including the public-private partnership to combat HIV/AIDS. A committee that meets on a quarterly basis and is chaired by the Chief Executive supervises the programme. It reviews and approves

projects based on the criteria that sites need to review and assess against:

1. Development and use of appropriate skills and technology;
2. Provision of employment opportunities;
3. Sourcing and purchasing from local suppliers;
4. Support for community projects;
5. Promoting local enterprise development; and
6. Support for the community's educational and health programmes.⁷

All projects need to meet Xstrata's Business Principles and are monitored regularly at the site level, divisional and corporate level through assurance and audit process.

Application of the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework

Xstrata Coal goes beyond “Responsibility to Respect”, as the minimum global standard, by assisting weak governments in their efforts to implement the “State Duty to Protect”.

2. THE NEED FOR HIV/AIDS INTERVENTION

Although South Africa is considered a middle-income country from an economic perspective, its health outcomes are worse than those in many low-income countries. While the South African constitution binds

4. Xstrata's Business Principles: <http://www.xstrata.com/about/key-policies/business-principles/>.

5. Xstrata's Sustainable Development Standards: <http://www.xstrata.com/about/key-policies/sustainability-development-policy-standards/>.

6. Xstrata's Code of Conduct: <http://www.xstrata.com/about/key-policies/business-principles/>.

7. Interview with Xstrata Coal's Group Manager – Health, Safety, Environment and Community, Lucy Roberts, 14.12.2011.

the country to take legislative action and other measures within its available resources, to achieve the progressive realization of the right to health, the country continues to struggle with immense health inequalities. The distinctive features of South Africa's history, such as racial and gender discrimination, poor education, income inequalities, 25% unemployment rate,⁸ migrant labour and persistent violence, account for the current health problems. There are around 5,600,000 people currently living with HIV/AIDS in South Africa,⁹ with 310,000 deaths annually due to this disease.¹⁰

Main causes of HIV/AIDS epidemic in South Africa:

- › Sexual violence;
- › Same-sex hostels;
- › Poor education;
- › Polygamy; and
- › Myths and cultural beliefs.¹¹

Xstrata Coal has been aware of the issue of HIV/AIDS since it entered South Africa. On acquiring the business in South Africa, Xstrata Coal's management witnessed first-hand the dramatic impact of the disease on its employees and, based on studies conducted by the company, they realized the situation could further deteriorate. An actuarial impact analysis found that approximately 20% of Xstrata Coal's workers were HIV positive. The disease would have a massive impact on employees and would cost the business an estimated \$10,188m annually by 2017. The prevailing view in the mining industry at the time was that HIV/AIDS was a personal issue and that the companies' obligations were limited to the distribution of information about prevention and the provision of limited numbers of condoms for safe sex. Such an approach did not seem suitable to Xstrata Coal¹² and the company

was compelled to do something about it. The common perception within the industry has traditionally been that due to the widespread nature of the disease it would be too expensive to treat employees. At the same time, government policies failed to recognize the relationship between HIV and AIDS, which resulted in an absence of clinics that would offer testing and treatment. Xstrata Coal identified this as a business risk with a real cost attached. The company determined that the cost of addressing HIV and AIDS in the workplace would be more beneficial than ignoring it, as a healthy workforce is more productive than an unhealthy workforce.

While the business case was important in deciding whether to address HIV/AIDS in the workplace, Xstrata Coal deemed the moral aspect of it to be equally important. As Xstrata Coal's Chief Executive, Peter Freyberg, explained, Xstrata Coal is just "another member of society... but we are a very large and influential one that can have a very large and significant impact". Similarly, Piet Henderson, the General Manager of Special Projects, currently responsible for the company's HIV/AIDS programme in South Africa, explained that one of the main reasons for Xstrata Coal's involvement in tackling HIV/AIDS lies in the belief that the company is not an island, but Xstrata Coal's employees and thus Xstrata Coal itself, are very much part of the larger community. Therefore, "to see colleagues passing away, not coming back to work, seeing their families lose a breadwinner" was not an option.

3. THE SOLUTION

3.1. Public-Private Mix Partnerships – Xstrata Coal, Re-Action! and South African Government Department of Health

Having made the decision to intervene, Xstrata Coal initiated discussions with management and employees, labour unions, and a non-governmental organization specialized in mitigating HIV/AIDS called Re-Action! Multi-party discussions regarding behaviour around the issue highlighted frightening facts about high levels of unprotected sex, a lack of understanding of the disease, and an underestimation of its impact.

To strengthen the process by seeking expertise on HIV/AIDS and to address the confidentiality of the issue, in 2004 Xstrata

8. For more information, see http://www.oecd-ilibrary.org/economics/country-statistical-profile-south-africa_csp-zaf-table-en.

9. World Health Organisation: <http://apps.who.int/ghodata/>.

10. World Health Organisation: <http://apps.who.int/ghodata/>.

11. Examples of misconceptions about HIV and AIDS include, that one can shower after unsafe sex to help prevent HIV transmission and that AIDS can be cured by having sex with a virgin. Interview with Re-Action! representatives, 16.11.2011.

12. Interview with Xstrata Coal's Chief Executive, Peter Freyberg, 16.12.2011.

Coal chose Re-Action! as its partner and implementing agency in combating the disease. Re-Action! has had years of experience in the area and as an external agency was able to access and monitor the database of HIV/AIDS positive employees. This was particularly helpful to Xstrata Coal, which was prohibited from accessing such data as a result of confidentiality laws and concerns regarding potential discrimination in the workplace. Xstrata Coal was only able to see numbers and the percentage of employees infected with HIV/AIDS, without knowledge of the personal details, occupation or department.

A Memorandum of Understanding was signed in 2007 between Xstrata Coal, Re-Action! and the South African local government, namely the Mpumalanga Provincial Government, Department of Health, making Xstrata Coal the only big mining company with a public-private partnership in South Africa. The starting point was the lack of government capacity to adequately address HIV/AIDS despite existing facilities, and Xstrata Coal's decision to provide support by building clinics, funding infrastructure developments and strengthening Public Sector HIV Testing, Care and Treatment capacity in Mpumalanga province. This was done to make clinics accessible and for the government to eventually take over the clinics, managing them and making them sustainable even after Xstrata Coal left the area.

3.2. Infrastructure

Xstrata Coal focused on infrastructure development by building new clinics and health centres and conducting renovations and alterations. So far, eight clinics have become operational, providing services to a population of over one million people in total.

As a result of its partnership with the Mpumalanga provincial government, the programme has since been offered in areas where Xstrata Coal does not operate and has no employees. An example is a Delmas clinic, which Xstrata Coal built and equipped to treat patients that previously needed to travel up to 160km to wait in long lines without a guarantee of obtaining treatment. Piet Henderson explains this as proof of the partnership, where the government identified a real need, and Xstrata Coal provided assistance, irrespective of whether there was direct benefit for its employees or nearby community.

3.3. Treatment and Awareness Raising

Re-Action! and Xstrata Coal approached the HIV/AIDS issue with a high level of consideration for the culture and tradition of its employees and their communities. There is a large stigma against HIV/AIDS in South African society, and Xstrata Coal needed to address this by changing perspectives and giving patients as much support as possible. Registering people for treatment has been an ongoing issue. One way this problem was addressed was by seeking the involvement of patients who had successfully been through the process and who knew the challenges and benefits — the Wellness Champions and the Wellness Advocates. The Wellness Champions are members of the programme's steering committee and are Xstrata Coal employees, living with HIV, who agreed to disclose their status so they could demonstrate to others the quality of life that is possible even when one is HIV positive. They are raising awareness among Xstrata Coal's employees and community members, not only about HIV/AIDS prevention and treatment, but also about other diseases such as cancer, and the benefits of a healthy lifestyle in general. Wellness Advocates are also living with HIV and are employed full-time by Xstrata Coal specifically to address the issue of HIV/AIDS in the workplace and in the community by fighting stigma and inspiring others to take responsibility for their own lives and to make use of the Xstrata Coal assistance available to them.

Traditional healers, who command respect and have strong influence in the community, are also involved in the programme. Strong beliefs in the effectiveness of traditional healing is often one of the main reasons people postpone seeking treatment. To overcome these beliefs, traditional healers have been trained by Re-Action! to understand and recognize HIV/AIDS, tuberculosis, malaria and other illnesses, and to refer people to clinics.

While an overarching goal was to give as many people as possible access to the programme, it was further improved in 2008 with the creation of a group of 25 community outreach workers employed by Re-Action! to undertake door-to-door household assessments. The workers travel on foot to visit people from the poorest backgrounds and assess their health and economic situation,

provide voluntary HIV testing and counselling, direct them to clinics for free treatment and advise them on other issues, such as how to access government grants. So far, the workers have visited approximately 35,000 households and through their services have succeeded in reaching people who would normally not visit clinics, either because of the stigma or because travelling to a clinic is not possible.

In addition to addressing HIV/AIDS, patients are given an assessment to determine their overall health and any risks in relation to diabetes, blood pressure, and cholesterol. The wellness aspect of the programme takes a holistic approach under the banner "*I Know! The way to live*" that promotes greater awareness about HIV/AIDS and other health issues.

4. THE PROJECT SCOPE AND OBJECTIVES

4.1. Main Objectives

The main objectives of the project were to halt the spread of HIV/AIDS and to offer free testing, counselling and treatment to all Xstrata Coal employees. A Steering Committee was established to ensure that all stakeholders, especially beneficiaries, were consulted in the process. The Steering Committee consisted of representatives of Xstrata Coal, its employees, labour unions, communities, Re-Action! and the Mpumalanga provincial government. In keeping with the slogan "*nothing for us without us*", employees have been actively engaged in the development of the programme, with no decision made without their consent. As Piet Henderson emphasised, nothing can be changed without workers and communities' consent, since this is "their programme and we are managing it together".

Only a few months after the workplace programme commenced, the Steering Committee decided that intervention needed to be extended into the community, or else there would be no real chance of fighting the disease. Xstrata Coal thus started to offer counselling, testing and treatment for community members, and through Re-Action!, obtained additional funds for treatment from agencies such as the United States President's Emergency Plan for AIDS Relief (PEPFAR).

4.2. Outcomes

4.2.1. Right to Health

The main achievement of this partnership programme has been the acknowledgement of people's right to good health by giving them access to health care and information. To date, more than 17,000 Xstrata Coal employees and members of the community have received treatment under the programme, representing people who would otherwise be unlikely to receive treatment.

Knowing that 774 employees were HIV/AIDS positive, overall targets were set to make every employee aware of their HIV status and get them registered for treatment. The targets also aimed to prevent new infections and offer access to the same programme to employees' dependents and community members. Concrete targets evolved over time once the programme started showing results. In 2010 and 2011, the target was to get 65% of HIV positive employees registered for treatment. A success rate of 64% was achieved in 2010, increasing to 70% in 2011.

4.2.2. Right to Privacy and Right to Non-discrimination

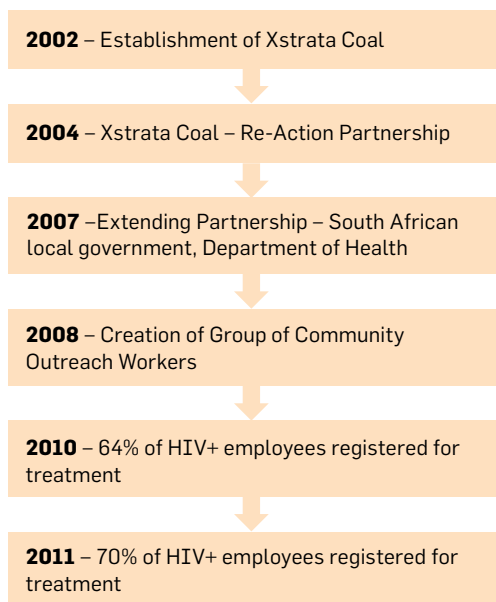
Xstrata Coal has ensured that human rights of employees were not infringed in conducting the programme by following its Business Standards, namely Respect for Personal Information and Privacy and Fair Treatment and Equality in Employment. To prevent discrimination and infringement on privacy in the workplace, Xstrata commissioned Re-Action! to collect data while not disclosing any details apart from the numbers and percentage of HIV/AIDS positive employees.

The real impact can be seen on the ground, in people who are alive and able to work, and who are not discriminated against because of the disease. As one of the Project Managers said, when the Ubuhle Bempilo Clinic started operating, people who went to the clinic were either already dead or would die there soon afterwards, while now most of the population who frequents the clinic are still in the early stages of HIV and can get the help they need in time.

4.2.3. Right to Life

Stories told by patients show the real impact that this partnership has had on their lives. Many believe they would be dead if not for a particular clinic, highlighting the importance and results of the programme.

TIMELINE OF XSTRATA COAL HIV/AIDS INTERVENTION'S DEVELOPMENT



5. LESSONS LEARNED

5.1. Challenges and Solutions

The overall lesson that can be learned from Xstrata Coal's HIV/AIDS Intervention and public-private partnership is that companies should proactively search for solutions to challenges that are not only a risk to business, but also to a community. While some companies have less developed sustainability practices and community involvement policies than others, this should not hinder their intent to do "the right thing" and establish projects that can make a real change on the ground. As illustrated here, engaging with experts, community members, and the public sector through partnerships can lead to successful projects.

5.1.1. Fighting Stigma - Registering for Treatment

The main challenge of the HIV/AIDS programme was the difficulty in achieving 100% enrolment of all HIV positive employees and community members in the wellness programme and anti-retroviral treatment. While 70% enrolment is an internationally recognized result, the partnership continues to strive towards achieving maximum enrolment. However, as an expert from Re-Action! explained, "Xstrata Coal provides the platform and the tools to encourage participation, but it is a voluntary process – both acknowledging your status and enrolling into antiviral treatment". The results therefore depend on the "maturity of the community to understand that they have the right to health, to treatment...it is there and it is available". Hence, while the initiative would like to reach all affected workers and communities in the course of the programme, the principle of voluntary participation does not guarantee participation, since some members of the community fear being stigmatized if they seek treatment, or remain unconvinced that HIV/AIDS can happen to them. Xstrata Coal and its partners addressed the issue by building trust among its employees through Wellness Champions and the Wellness Advocates, who are patients themselves.

While over 92% of Xstrata Coal's employees are aware of their HIV/AIDS status, many are concerned about the stigma of being seen participating in the treatment. This has been addressed by bringing all participants together and enabling patients to receive medications at locations of their preference, by not locating clinics at mine sites, and through efforts to eliminate stigma in general.

5.1.2. Inclusiveness and Holistic Approach

Recognizing that the issue of HIV/AIDS could not be resolved by focusing only on Xstrata Coal's employees, that they needed to include the communities, was crucial in the success of the programme. Taking a holistic approach by offering an overall health assessment and educating patients about other diseases and health risks, has made an additional contribution.

5.1.3. Sustainability - Securing Permanent Solutions

Xstrata Coal is committed to assisting the Department of Health in taking on management of clinics and health centres, and is required to make this programme permanent, as agreed in the Memorandum of Understanding. While Xstrata Coal has contributed around \$5m since the programme's inception, the main focus has been on making the services sustainable and handing over the clinics to the Department of

Health, so they remain operational after Xstrata Coal completes its mining operations. Even then, Xstrata Coal will still maintain a monitoring role.

Some challenges have emerged because of the lack of capacity of the Department of Health to provide human resources, specifically clinical nurses. Xstrata Coal has directly addressed this through a complementary programme aimed at training clinical nurses.

In addition, the public-private partnership took a different approach to financing the HIV/AIDS programme that proved successful and sustainable. Cooperation with PEPFAR has doubled or equalled Xstrata Coal's financial contribution. Match funding not only increases the capabilities of the programme, but also mitigates its risks. Additionally, to have a more significant impact, Xstrata Coal and Re-Action! are continuously encouraging other companies in South Africa to form similar partnerships and join them in their fight against HIV/AIDS.

5.1.4. Building Trust – Engaging All Parties

In a society that continues to live with the legacy of the apartheid regime, trust is not something that is easily given or taken for granted. The initial six months of the programme were therefore focused mainly on trust building.

By creating a Steering Committee, all stakeholders were involved in consensus building and decision making from the outset. Keeping the records and data of HIV positive employees strictly confidential was another strategy designed to increase trust

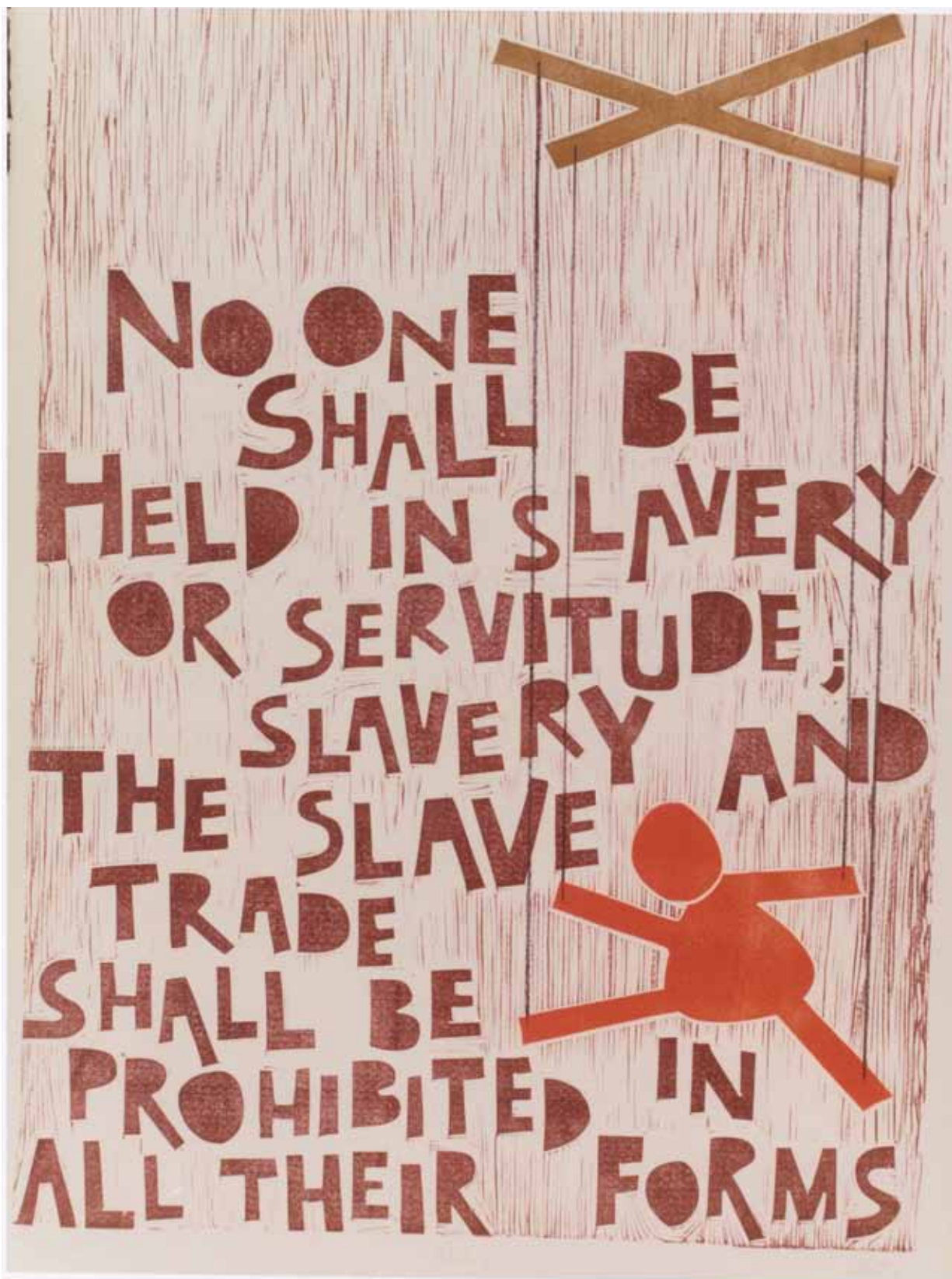
among beneficiaries, particularly for those who may have feared that their jobs were at stake if they were recognized as HIV positive. The input from employees themselves, especially the Wellness Champions and Wellness Advocates, created greater trust and contributed to higher participation in the programme.

6. CONCLUDING REMARKS

This innovative public-private partnership demonstrates Xstrata Coal's practical implementation of its own standards and frameworks that are aligned with the goals of the UN Global Compact and international human rights standards.

The rights-based empowerment approach adopted by Xstrata Coal and its partners in the programme enabled participation of beneficiaries in the decision-making process. Inclusion of community members and employees in designing the projects was crucial for the success of the HIV/AIDS programme. It contributed to the development of strong relationships and trust building that is necessary in fighting the stigma related to HIV/AIDS and Historically Disadvantaged South Africans (HDSA). Forming partnerships with the South African Government and Re-Action!, along with match funding, made the projects sustainable and operational regardless of Xstrata's support.

The project has confirmed the importance of the private sector in assisting the traditional duty bearers, the states, in the protection and provision of human rights. Further, it provides an example of how companies can promote the enjoyment of human rights through voluntary initiatives as an important complement to their obligation to respect human rights. Xstrata Coal's story will hopefully encourage other companies to learn from its experience and to create similar programmes that support human rights.



CASE STUDY:

Carlson's Efforts to Combat Trafficking and Exploitation of Children

By Evelyn Zemke¹

Human rights issues addressed

- › Child Sexual Exploitation
- › Human Trafficking
- › Child Labour
- › Complicity
- › Sphere of Influence

Human rights management practices addressed

- › Getting started
- › Strategy
- › Policy
- › Processes and procedures
- › Communications
- › Training

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › Universal Declaration on Human Rights
- › UN Convention on the Rights of the Child
- › Code of Conduct for the Protection of Children against Sexual Exploitation in Travel and Tourism
- › Athens Ethical Principles Organization standards (ILO)

ABSTRACT

The case study explores Carlson's proactive approach to human rights - in particular its efforts to combat child sexual exploitation in the travel and hospitality industry. Conducting business in a socially responsible manner has been a guiding principle during the company's 73-year history. Over the past decade, Carlson has advocated for and focused its efforts on the most vulnerable and helpless members of society: children around the world who are deprived of their most fundamental rights. The case study illustrates the company's initiatives and programs in place to safeguard children's rights, their collaborative efforts in the industry, success stories, lessons learned and plans for the future with the goal to motivate other companies to participate in the fight against child exploitation.

1. COMPANY PROFILE

Carlson is a privately owned and globally operating company in the travel and hospitality industry. The company's history started in 1938 when Curtis L. Carlson borrowed \$55 to implement a new business idea: grocery store trading stamps — one of the earliest customer loyalty programs. These "Gold Bond" stamps, redeemable for merchandise, were issued by storeowners to their customers in exchange for their purchasing loyalty. In the 1960's, Curt Carlson acquired several hotels and restaurants in his home town of Minneapolis, Minnesota. The name of the company was changed from The Gold Bond Stamp Company to Carlson Companies Inc. in 1973 to reflect a growing portfolio of marketing, hotel and restaurant services. Today, known simply as Carlson, the company includes such established brands as Radisson®, Country Inn & Suites By CarlsonSM, Park Inn by Radisson®, Park Plaza®, and T.G.I. Friday's® and Carlson Wagonlit Travel®, the global leader in business travel management, of which Carlson owns the majority stake. Carlson's travel agency, ho-

tels and restaurants service customers in 150 countries. About 170,000 employees around the world share the corporate spirit conveyed in The Carlson Credo: *whatever you do, do with integrity; wherever you go, go as a leader; whomever you serve, serve with caring; whenever you dream, dream with your all; and never, ever, give up.*^{2,3}

2. CASE STORY

a) Key Players

Carlson's efforts in the field of child protection affect all stakeholders: customers, employees, suppliers, NGO's and most importantly the societies in which the company operates. These groups contribute by collaborating and funding initiatives, raising awareness and by observing corporate policies. Within the company's management, three individuals stand out for providing leadership and motivation to the team of dedicated people working for a common goal.

Marilyn Carlson Nelson, Chairman and former CEO of Carlson. Under her leadership, the company was the first U.S. based, global travel and hospitality company to sign the industry's international code of conduct for the protection of children.⁴

1. Evelyn Zemke holds a bachelor's degree in international business from Georg Simon Ohm University of Applied Sciences in Nuremberg, Germany and an MBA from Pfeiffer University in Charlotte, North Carolina. She is currently employed by Siemens, and is enrolled in the Siemens Graduate Program for international management. Peer review of this case study was provided by: May Chaperon, Project Manager, Sustainable Development; Phillip Hunter, Program Specialist, Verite; Rovshan Muradov, Country Leader, Youth Employment Systems Azerbaijan Network; Sabine Loetscher-Ehrler, Project Manager in Corporate Responsibility; Ivana Shellongova, Senior Programme Manager, End Human Trafficking Now.

2. Carlson. "Company History." Carlson.com. Web. 20 Nov. 2010. <<http://www.carlson.com/our-company/history.php>>.
3. Curtis L. Carlson Family Foundation. "Carlson Credo." Web. 20 Nov. 2010. <<http://www.clcfamilyfoundation.com/Credo.html>>.
4. <http://www.carlson.com/our-company/board-of-directors.php>
5. <http://www.carlson.com/human-company/board-of-directors.php>

“Simply put, we committed ourselves to be a global army of eyes and ears, which is one of the very best weapons that we have to combat this injustice forced upon children”.

—Marilyn Carlson Nelson, Chairman

Hubert Joly, President and CEO of Carlson. In 2010, Hubert Joly signed the United Nations Global Compact on behalf of the company, further demonstrating Carlson’s commitment to human rights.⁵

“Signing the Global Compact is our company’s next, logical step in helping to address complex issues facing the world”, Joly said. “It builds on our rich legacy as an organization that seeks to conduct its business in a socially responsible and caring fashion”.

— Hubert Joly, President and CEO

Barbara Carlson Gage, President of the Curtis L. Carlson Family Foundation. Barbara oversees the foundation’s involvement in the protection of children’s rights. The foundation is well aligned with the corporation’s strategic objectives providing another significant platform for engagement in this issue.

b) The Company’s Motivation

As international tourism rises rapidly, commercial sexual exploitation of children is a growing problem that affects both tourism destinations and the travelers’ home countries. According to UNICEF, approximately two million children are victims of prostitution and pornography worldwide.⁶ And indeed, this exploitation is happening in the hospitality industry.

The World Tourism Organization (UNWTO) and its partners launched a campaign in 2008 to stress the moral obligation of the travel industry as well as travellers around the world to combat child labour, sexual exploitation and the trafficking of children.⁷

Additionally, sex tourism poses a significant risk to the attractiveness of tourism

destinations. UNICEF defines sex tourism as “trips organized from within the tourism sector, or from outside this sector but using its structures and networks, with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at the destination”.⁸ Developing countries are among the most affected and the majority of the demand originates in high-income countries such as the United States.⁹

Carlson supports the United Nation’s Universal Declaration of Human Rights and recognizes their role in supporting and respecting human rights. The company also recognizes that their business activities can offer opportunities to support human rights while advancing a successful business.

“We believe we have a broader capability and social responsibility to promote and enhance human rights. We do this through our core business activities, philanthropy, advocacy, partnerships and collaboration. Making certain our operating practices are consistent with applicable laws in the country of operation is one way we ensure our business does not infringe on human rights. Furthermore, our key corporate policies within Carlson’s Code of Business Ethics are also supporting human rights”.

— Beathe-Jeanette Lunde, Executive Vice President People Development, Responsible Business and Safety & Security

6. “UNICEF - Child protection from violence, exploitation and abuse - All children deserve protection from exploitation and abuse.” UNICEF - UNICEF Home. N.p., n.d. Web. 21 Apr. 2011.

7. Terracurve. “Help Stop Child Exploitation in the Travel Industry.” Terracurve The Guide to Responsible Travel. 10 Nov. 2008. Web. 20 Nov. 2010. <<http://www.terracurve.com/2008/11/10/help-stop-child-exploitation-in-the-travel-industry/>>.

8. Neal, Kerry L. Preventing Child Sex Tourism: Legal Responses and Private Sector/Community Partnerships. Rep. UNICEF. Web. 20 Nov. 2010. <<http://www.unicef-irc.org/files/documents/d-3596-Preliminary-results-of-th.pdf>>.

9. “Code of Conduct (CC) - We protect children from sex tourism.” Code of Conduct (CC) - We protect children from sex tourism, Web. 21 Apr. 2011. <<http://www.thecode.org>>.

The countries in which Carlson operates include environments with widespread corruption and complex human rights challenges. Key human rights issues for the industry include fair wages, women's rights, the capacity to join trade unions, and collective bargaining. Carlson does not in any way participate in or condone practices that breach international conventions covering these issues. On the contrary, Carlson feels that their presence can be a positive influence. Carlson team members work to protect human rights related issues hands-on by strengthening local communities and running a responsible operation. Child or forced labor is not accepted and this is ensured through training, local hiring policies and careful monitoring. Additionally, management pays close attention to and trains employees to be aware of the risk of child sexual exploitation.

According to Marilyn Carlson Nelson, the growing evidence of child trafficking and child exploitation makes it hard to deny the moral obligation to be responsive and actively combat it.

"Keeping in mind that children are being trafficked and exploited every day not only in far away countries but also in the heart of all U.S. cities, Carlson decided to give a voice to those who have no voice. The truth is that everyone's child is endangered by this issues as they will share the world with those who have been exploited".

— Marilyn Carlson Nelson, Chairman

c) Implementation and Impact of Carlson's Child Protection Strategy

World Childhood Foundation

Carlson's work with child protection began with a "royal" invitation. In 1999, Her Majesty Queen Silvia of Sweden invited Carlson and a few other corporate partners to join her in establishing the World Childhood Foundation with the common goal to protect and defend children in need. The Foundation's mission is to defend the rights of children to a secure childhood and to improve living conditions for children around the world. The UN Convention on the Rights of the Child is the Foundation's guiding principle.

Today the foundation supports more than 115 projects in 16 countries with a focus on preventing sexual abuse of children, especially girls and young women, who tend to

be at greater risk for becoming victims. Their working model focuses on prevention to reduce the risk of future abuse, intervention to stop ongoing abuse and education to promote a life free from abuse.

Through the World Childhood Foundation, the Curtis L. Carlson Family Foundation supports projects that assist sexually exploited and trafficked youth around the world. One example is Youth Link, a program in Minneapolis that the Carlson Family Foundation has supported since 2003. Youth Link reaches out to children and teenagers involved in prostitution and helps them to exit the sex industry. The project provides assistance to young people at risk and promotes public awareness of teen prostitution.^{10,11}

"When the Carlson Family Foundation became a co-founder of the World Childhood Foundation, we actively sought local partners who shared our vision for helping vulnerable and exploited children, as this is a local issue as much as it is a global issue".

— Barbara Carlson Gage, President —
Curtis L. Carlson Family Foundation

The Code

In 2004, then Carlson CEO Marilyn Carlson Nelson, further advanced the company's commitment to protect children when she signed the universal travel industry's "Code of Conduct for the Protection of Children against Sexual Exploitation in Travel and Tourism" (The Code).

The Code is designed to combat commercial sexual exploitation of children around the world and was launched by UNICEF, the World Tourism Organization and the international advocacy group ECPAT (End Child Prostitution, Child Pornography and Trafficking). For signatories of the Code, it is a moral imperative to protect minors from becoming victims of sexual exploitation. Currently, the Code is implemented in over 23 countries and affects over 30 million tourists per year. Consequently, the chances of identifying criminal activity and arresting traffickers and sex tourists around the world have increased considerably.¹²

10. Carlson Gage, Barbara. "President's Message." CURTIS L. CARLSON FAMILY FOUNDATION. Web. 20 Nov. 2010. <<http://www.clcfamilyfoundation.com/PresMsg.html>>.

11. "Childhood." Web. 20 Nov. 2010. <<http://www.childhood.org/eng/>>.

The decision to become the first global travel and hotel company based in the U.S. to sign the Code did not come easily. There were internal discussions on whether associating the Carlson name with such a sensitive topic could somehow create bad will towards the company. In the end, it was decided that it was more important to leverage whatever ability the company had to impact this issue. Marilyn Carlson Nelson signed the Code at UNICEF's headquarters in New York. The feedback from customers has been the opposite of what was initially feared and multiple stakeholder groups have applauded Carlson for taking this stand. In 2010, Marilyn Carlson Nelson received the Business Leaders Award to Fight Human Trafficking — given by End Human Trafficking Now, UN Gift and the UN Global Compact — recognizing her leadership in this global effort.

By signing the Code, Carlson committed itself to the following:

- Establish a clear policy regarding commercial sexual exploitation of children;
- Provide training to employees;
- Integrate a clause stating the common non-acceptance of child exploitation in supplier contracts;
- Provide information to customers and “key persons” at the destinations; and
- Report progress annually.¹³

As part of their commitment to signing the Code, Carlson implemented a legally binding clause in their contracts with suppliers stating the common repudiation of commercial sexual exploitation of children.¹⁴ Additionally, all suppliers are expected to be in conformity with the Carlson Supplier Code of Conduct, which was designed to fulfill the UN Global Compact principles.¹⁵

No business activity will be conducted with a company that is known to participate in any way in the sexual exploitation of children.

Carlson bans movies that involve sexual exploitation of children from their hotels.

The use of all company equipment for the viewing, storage, distribution, promotion or other use of materials that sexually exploit children is clearly prohibited. Carlson employees who are involved in sexual exploitation of children in any way face severe consequences, including immediate termination and referral of the incident to local police.¹⁶

U.S. Department of State Program: Combating Trafficking in Persons

Carlson has availed itself of another opportunity to energize leadership around the world in the movement to combat the sexual exploitation of children. The U.S. State Department's International Visitor Leadership Program (IVLP) is designed for current or emerging leaders in politics, media, government, arts and education. The IVLP aims to foster understanding between the U.S. and other countries through short-term visits that reflect the international visitors' professional interests. Another objective of the program is to support U.S. foreign policy goals. Alumni of the program include current and former Heads of Governments of 40 countries in the Western Hemisphere, Europe, the Near East Africa, East Asia and the Pacific and South and Central Asia. The programs are carefully designed with different thematic focuses to reflect the participants' interests.¹⁷

The Minnesota International Center (MIC) assists IVLP by arranging the schedule for those participants visiting Minnesota.¹⁸ Carlson partners with MIC to host visitors interested in the topic of human trafficking. The company uses this opportunity to raise awareness of the problem with these potential future world leaders and share practical examples of what a company in the travel and hospitality industry can do and how they can partner with other companies, government and non-profits to protect children around the world from becoming victims.¹⁹

12. "For a Socially Responsible Tourism Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, Overview and Implementation Examples." Thecode.org. Web. 9 Dec. 2010.

13. "The Six Criteria." Web. 20 Nov. 2010. <<http://www.thecode.org/>>.

14. Carlson. Carlson Supplier Contract, Article 21. Print.

15. Carlson. "Responsible Business - Suppliers." Corporate Website. Web. 20 Nov. 2010. <<http://www.carlson.com/responsible-business/suppliers.php>>.

16. Carlson's Policy Regarding Rights of Children Against Sexual Exploitation. Policy. Print.

17. "International Visitor Leadership Program." Bureau of Educational and Cultural Affairs/US Department of State. Web. 20 Nov. 2010. <<http://exchanges.state.gov/ivlp/ivlp.html>>.

18. Minnesota International Center. "International Visitor Leadership Program (IVLP)." Web. 20 Nov. 2010. <http://www.micglobe.org/program_ivlp/index.php>.

19. WORLD LEARNING VISITOR EXCHANGE PROGRAM. "Proposal." Letter to United States Department of State. 09 Aug. 2010. MS.

Living and Leading Responsible Business Training

In line with the Code's requirement to provide training to employees, Carlson developed a child protection training program that has evolved since its inception in 2005. When first implemented, the training was managed by a group of committed employees from various departments; however, because a particular department did not own the training, it was difficult to manage over the years as those employees changed roles or left the company. In 2010, a comprehensive Responsible Business training program was created and implemented by the Responsible Business department. Child trafficking and exploitation is an integral module within the training. This training, called "Living and Leading Responsible Business", was designed as part of Carlson's overall Responsible Business strategy to provide employees around the world with a better understanding of how they can positively impact people, communities and the environment. The training is linked to the hotels' individual Responsible Business programs to facilitate understanding and implementation of the training's goals for the employees.

The training consists of two modules:

- "Living Responsible Business" is a 3.5 hour comprehensive training session that is mandatory for all employees. It covers social and ethical topics affecting people, communities and the environment.
- "Leading Responsible Business" is a companion training session for managers and department heads that lasts an additional 1.5 hours.

Child Protection training is found in the "Living Responsible Business" module and lasts about 30 minutes. Specifically, it consists of the following:

- A 10-minute film clip from "Not My Life", a documentary by Robert Bilheimer about child trafficking and exploitation that was partially funded by the Carlson Family Foundation.
- Discussion about the film and an overview of child trafficking with corresponding statistics.

- A video featuring various scenarios that could arise in a hotel to help employees identify suspicious activity involving children.
- Discussion about how employees can observe, identify and properly report any suspicious activity to managers.
- A video of Marilyn Carlson Nelson providing the rationale for Carlson's initiatives in the area of child protection and human rights and thanking employees for their engagement in this issue.

Carlson carefully organized the roll-out of the training sessions to ensure optimal implementation in a timely manner. Master Trainers train Hotel Trainers in their geographic proximity. After successful completion of the training, these newly certified Hotel Trainers then train employees in their hotels.

More than 650 Hotel Trainers have attended the Living and Leading Responsible Business Train the Trainer courses since the roll-out in 2010. Additionally, at the Carlson World Headquarters in Minneapolis, 455 corporate employees have been trained in Living Responsible Business. Both the Hotel Train the Trainer and the corporate employee training courses are now available quarterly through the Business School at Carlson.

"Our employees have expressed to us how grateful they are that we have made them aware of this issue. They very much take to heart that their action could make a difference in the life of a child".

— Brenda Schultz, Director
Responsible Business

Challenges occur in the tracking of hotel employee training, especially in franchised hotels. One way Carlson combats this is with the "30-day Challenge". Hotel Trainers are challenged to hold at least one training session within 30 days of becoming a Hotel Trainer. They are asked to send in a copy of their sign-in sheet in order to receive their official Responsible Business Certification and this is tracked within the Carlson Learning Network database. The monitoring of Responsible Business training compliance is currently being incorporated into each

hotel's official annual brand compliance audit.^{20,21,22}

In 2009, Carlson's efforts to increase employee awareness proved to be successful when a hotel manager in Belize noticed suspicious activity in a hotel. He reported the incident to local authorities as well as the U.S. State Department. The suspect was apprehended, extradited to the U.S. and later imprisoned for child trafficking.^{23,24}

"Carlson has set the standard with its efforts to raise awareness of child sex trafficking and child sex tourism". Luis CdeBaca, Ambassador-at-Large to Monitor and Combat Trafficking in Persons

— U.S. State Department

Travel Advisories to Protect the World's Children

In 2011, Carlson Wagonlit Travel began issuing advisories on their electronic tickets issued in the U.S. to select destinations where there is a reported prevalence of child sex tourism.

The advisory is intended to educate travellers so they can help prevent this type of child exploitation. The advisory states: "UNICEF reports that trafficking in children for purposes of sexual exploitation is a global problem. The U.S. State Department advises its citizens that engaging in sexual conduct with minors outside the U.S. is a crime and punishable upon return to the United States. Travelers can help by reporting suspicious activity to the National Human Trafficking Hotline: 1-888-373-7888. When calling from outside the U.S.: 1-202-507-7966. Carlson Wagonlit Travel supports the protection of the world's children".

Some of the destination countries included in these advisories are Brazil, Costa Rica, Cambodia, Philippines, Mexico, Thailand and Vietnam where studies indicate child sex tourism is a serious issue.

Cross-Sector Collaboration

Eliminating child trafficking is a long, complex process that can only be fully realized by constructive partnering with businesses, governments, international organizations, local authorities and communities, as well as customers. Carlson continuously seeks to

extend its cross-sector collaboration by sharing Carlson's story at conferences on human trafficking, encouraging greater industry participation in this issue, partnering with NGOs as well as advocating before Congress for anti-trafficking legislation.

In 2006, in Greece, Carlson along with prominent private sector, government and NGO leaders became a signatory to the "Athens Ethical Principles" which called for the adoption of a set of principles against human trafficking and launched the "End Human Trafficking Now" campaign to facilitate implementation of the principles by businesses.

In 2009, in the U.S., Carlson co-founded the Business Coalition Against Human Trafficking, a gathering of global corporations that have joined together to raise awareness of the issue among their employees, assist other companies in their evaluation and implementation of anti-trafficking policies, and advocate for legislation to prevent modern slavery.

In 2010, in Egypt, Carlson signed the "Luxor Implementation Guidelines to the Athens Ethical Principles" which outline specific actions businesses can undertake to institutionalize the "Athens Principles".

1. ANALYSIS

The following analysis highlights the factors that enabled Carlson to successfully implement their child protection strategy, lessons learned, and the company's plan to overcome existing challenges.

a) Enabling Factors

The Carlson culture — Inspired by the entrepreneurial spirit of Curtis Carlson, the company has approached its fight to end child trafficking with the credo "wherever you go, go as a leader" in mind. This company culture empowered Carlson to step forward as a leader when others feared to do so.

20. Lunde, Beathe-Jeanette. "Required Responsible Business Training Reminder." Letter to General Managers, Radisson Hotels, The Americas. 16 Sept. 2010. MS.

21. Manager's Guide ECPAT Training CD. Carlson's Training Materials.

22. Training Films Living Responsible Business. Carlson's Training Materials.

23. Carlson Companies. Fact Sheet Trafficking. Topic Brief. Print.

24. Carlson. Carlson Anti-Trafficking in Children Overview. Doc.

Private, family-owned company — A privately held company since 1938, Carlson can make decisions that may be difficult for a public company, particularly when the decision requires taking a leadership position within the industry on a challenging issue. Further, as a family-owned business, Carlson has always placed an emphasis on “the next generation”. This is one of the reasons that its family foundation has identified children at risk as one of its primary focus areas.

Genuine support — Since joining the fight to end child sexual exploitation and trafficking, Marilyn Carlson Nelson and the Carlson Family Foundation have not wavered in their commitment to donate time and funding to further the cause. This genuine support is seen and felt by employees and the public; and has proven to be a driving force in mobilizing others to do what they can to progress the cause.

Global presence — Although being a global company presents challenges to implementing processes and policies, it is also an enabling factor which affords Carlson the opportunity to reach communities all around the world with the message of ending child trafficking. For example, more than 1,000 Carlson hotels worldwide are able to touch millions of guests to raise awareness and donations in support of the cause.

b) Lessons Learned

Carlson is proud of the steps it has taken in the fight against child sexual exploitation and trafficking; however, the company acknowledges that those efforts may have moved forward more quickly had they been able to devote more resources towards the implementation of initiatives such as employee awareness training.

Additionally, it was evident early in its training program that while Carlson could instruct its employees to “say something if they saw something”, the company ultimately must rely on well-staffed and responsive NGOs and governments to field “tips” and respond appropriately to close the loop in prevention efforts.

c) Existing Challenges

Successful implementation of anti-trafficking policies and initiatives depends heavily on cross-sector collaboration, employee commitment, the support of social services, and effective communication with all stakeholders. Child protection is a complex process and even more difficult in countries lacking a cooperative legal system or government support. It takes courageous leaders to raise awareness and support for the cause.

The two major challenges Carlson faces regarding their child protection efforts can be summarized as the following:

- Motivating more companies in the industry to get actively involved and collaborate more closely, and
- Coordinating activities among the different countries Carlson operates in more effectively.

While many companies in the travel and hospitality industry oppose human trafficking and child exploitation, only a few show considerable efforts to fight the problem.

One reason for this hesitation is that it takes a great amount of courage for a company to publicly associate their name with a topic as appalling as child trafficking and sex tourism. Some companies concerned that association with the topic may damage their reputation have chosen to disregard the problem rather than acknowledge that their hotels or personnel could unwittingly be involved in this illicit activity. Some have preventative measures in place, but prefer not to raise the issue publicly. Undoubtedly, a common, holistic approach and closer collaboration among all players in the industry would hasten the fight against child sex tourism.

“We look forward to the day when engagement by the travel industry in anti-trafficking activities is not considered to be a “corporate social responsibility initiative” but rather a normal business practice”.

— Deborah Cundy, Vice President —
Office of the Chairman

Secondly, Carlson is a truly global company. With operations spanning over 150 countries, the company faces cultural, legal and language obstacles in the implementation of a comprehensive and integrated approach to its child protection strategy and human rights policies. It is a tremendous organizational challenge to bring all entities closer together in their efforts to reach the corporate goal of eliminating child exploitation.

d) Assessment of the Impact

Although it is difficult to measure the impact Carlson has made towards ending the sexual exploitation of children, it is clear that the awareness around the subject is growing within the company and in the world at large. Many Carlson employees have been moved to action as a result of the child protection training, sharing stories of volunteering at shelters for victims of child sexual exploitation to donating meeting space to charities dedicated to ending human trafficking. Most encouraging, several major travel and hospitality brands have reached out to Carlson for advice prior to signing the Code.

2. PLANS FOR THE FUTURE

To overcome the challenges and to fight for children's rights around the world even more effectively, Carlson's plans for the future are guided by three strategic key elements: integration, collaboration and advocacy.

Integration: In the past, the implementation of Carlson's anti-child exploitation strategy has been focused mainly on the Americas. The company pursues the goal of expanding their efforts and in bringing Carlson team members around the world closer together in the fight for the common goal. For the expansion of the "Living and Leading Responsible Business" training program, Master Trainers for Asia were trained, and the first Asia Pacific "Train the Trainer" session took place in Australia in January 2011. Other countries are expected to follow soon.²⁵

Collaboration: Carlson plans to continue and expand its collaboration with governments, national and international organizations as well as other hospitality and travel companies. It will continue to work with businesses across industries to leverage their resources and voices. In the company headquarters' state of Minnesota, the Carlson Family Foundation is providing financial support through a local initiative called to "A Future Not a Past." This template for coordinated local market actions has proven to be highly successful in other markets.

Advocacy: In order to combat child exploitation in the travel and hospitality sector more effectively, Carlson goes beyond dedicating time, financial resources and knowledge. The company is committed to serving as an advocate in the industry for children's rights. Motivating other companies in the industry to follow their example is an essential part of its strategy - especially in the U.S., where companies tend to be less aware of the fact that child trafficking and sex tourism is not just specific to developing countries.

Carlson has a policy of sharing its knowledge as well as its Child Protection training model with other companies to assist them in protecting and defending children around the world.

The hope is that more companies will accept this offer, recognize the urgent need for action and find the courage and persistence to participate in the global fight against child slavery and sexual exploitation.

25. Brenda Schultz, Director, Responsible Business. "Case Study Questions." Telephone interview. 7 Oct. 2010.

*This case study was completed in November 2011. For more information about Carlson's continued efforts to combat human trafficking, please visit <http://www.carlson.com/responsible-business/index.do>.

FSI WORLDWIDE:

Ethical Recruitment to Prevent Trafficking and Exploitation

By Ivana Schellongova¹

Human rights issues addressed

- › Forced labour, labour exploitation
- › Freedom of movement
- › Human trafficking, slavery and slavery-like practices
- › Living wage
- › Occupational health and safety
- › Working conditions

Human rights management practices addressed

- › Getting started
- › Strategy
- › Policy
- › Processes and procedures
- › Communications
- › Training
- › Measuring impact and auditing
- › Reporting

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › International Labour Organization (ILO) standards
- › Athens Ethical Principles
- › International Bill of Human Rights Sexual Exploitation in Travel and Tourism
- › Athens Ethical Principles Organization standards (ILO)

ABSTRACT

This case study examines the ethical manpower solution launched by FSI Worldwide. The study details how the company's core business is based on its commitment to combat human trafficking and forced labour, and to respect human rights of employment seekers and employees during the recruitment and employment process. Furthermore, it describes the impact the company believes it is having in the prevention and elimination of human trafficking and forced labor. It describes FSI's recruitment policy and practice, analyzes the main challenges of ethical recruitment in difficult environments with regard to source and destination countries, and outlines the solutions applied by FSI to overcome them. The study demonstrates that ethical recruitment and management result in long-term benefits both for the recruited personnel and the client companies. FSI's experience reveals that such an approach is not only legally and ethically correct but also sustainable from a business point of view, and thus can be replicated elsewhere.

The study is based on documents provided by FSI and interviews with FSI CEO, Tristan Forster.

1. COMPANY PROFILE

FSI Worldwide is a British-owned manpower and security services provider. FSI Ethical Manpower Limited is the main operating company within the FSI Group of Companies.

Mr. Tristan Forster together with a number of professional associates founded FSI in 2006. Mr. Forster served in the Gurkha² and Parachute Regiments of the British Army for 12 years. During his time in the Army, he developed a deep respect and admiration for the people of Nepal and upon retirement was determined to help former Gurkhas find rewarding employment.³

FSI started its business activities as a specialist supplier of ex-Gurkha personnel from Nepal and evolved to serve the security industry worldwide. While such recruitment still forms an important part of the business, FSI has explored developing the business model of ethical recruitment, leadership and management of personnel to civilians as well as to ex military personnel. Today, FSI provides

a model for recruitment and management of skilled and unskilled labour for different sectors, including construction, facilities management, oil and gas, and hospitality.

FSI plans to expand its current business model to non-security staff and services. FSI predict that former Gurkhas working in security will soon be the minority among FSI's recruits, while the focus will be civilians working in non-security sectors.

FSI has its headquarters in Dubai (UAE) and offices in Washington, London, Delhi, Nepal and Kenya. It employs in total 50 personnel in its five main offices. FSI Group's turnover for 2009 was US\$ 11.8 million.

2. Almost 200 years ago troops in support of the British East India Company invaded Nepal. They suffered heavy casualties at the hands of the Gurkhas (hill tribes and original inhabitants) and signed a hasty peace deal and offered to pay the Gurkhas to join their army. After the British left India, Gorkhals continued seeking employment in British and Indian forces, as officers and soldiers. Under international law, present-day British Gurkhas are not treated as mercenaries but are fully integrated soldiers of the British Army, operate in formed units of the Brigade of Gurkhas, and abide by the rules and regulations under which all British soldiers serve. However, a spokesperson for the Communist Party of Nepal, which is expected to play a major role in the new secular republic, has stated that recruitment as mercenaries is degrading to the Nepalese people and will be banned (Wikipedia and BBC News, 2010)

3. About FSI at www.fsi-worldwide.com, 24/05/2011, <<http://www.fsi-worldwide.com/about-us/introduction-to-fsi/>>

1. Ivana Schellongova (LLM, D.E.A) is Senior Programme Manager at End Human Trafficking Now, a Swiss-based international non-profit association aimed at engaging the private sector to eliminate human trafficking. Peer review of the case study was provided by Ms. Branka Minic, ManpowerGroup; Monica Boven-Schrire, Vattenfall; and Phillip Hunter, Verite.

The Ethical Manpower Division (EMP) of FSI specializes in the recruitment, management and leadership of high quality personnel. In this context, it also conducts audits on recruitment and manpower management to other companies. FSI recruitment activity has been based largely in Nepal, India, and Kenya where there are a large number of unskilled, semi skilled and highly-qualified personnel looking for work overseas. The main destination countries for recruits are the United Kingdom, Iraq, Afghanistan and the United Arab Emirates. The future focus of FSI's business development will be in the Gulf countries and Asia Pacific countries that employ a large number of migrant workers.

FSI clients include the U.S. Government, the UK Ministry of Defence and the British Foreign and Commonwealth Office, the United Nations, major U.S. and UK government contractors and regional governments. FSI's target clients are organisations who employ a large number of migrant workers, especially those in the security, construction, hospitality, retail, oil and gas and facilities management industries. It focuses on clients that would like the reassurance that their workforce is selected ethically and is not a product of bonded labour. FSI Worldwide is a signatory of the United Nations Global Compact and therefore abides by The Ten Principles of the United Nations Global Compact⁴, and the Athens Ethical Principles⁵.

2. CASE ANALYSIS

2.1 The Problem

Human trafficking is defined as the recruitment, transportation and receipt of persons, by means of threat or force, for the purpose of exploitation.⁶ Forced labour is defined as work or service that is exacted from a person under the menace of a penalty and for which that person has not offered himself/herself voluntarily.⁷ Inadequate standards and mechanisms for the recruitment and placement of workers, combined with exploitative practices of labour brokers in many parts of the world, have resulted in human trafficking, slavery practices, debt bondage and forced labour.⁸ The U.S. State Department Trafficking in Persons (TIP) Report highlighted the practice of human trafficking through illegal recruitment and enumerated abusive methods, including changing the conditions of employment for those in a signed contract, withholding wages, requesting high transaction fees born by workers and confiscating personal documents.⁹

Human trafficking, slavery and forced labor are practices prohibited by the international law. Several human rights treaties request State Parties to suppress trafficking in human beings, and provide protection especially to vulnerable segments of population¹⁰. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime¹¹ obliges State Parties to adopt legislative and other measures to criminalize trafficking in persons. ILO treaties, such as Abolition of Forced Labor Convention¹², require State Parties to suppress and not to make use of any form of forced or compulsory labour. ILO Declaration on Fundamental Principles and Rights at Work¹³ declares that ILO Member States have an obligation to respect, promote and realize core ILO principles, including the elimination of all forms of forced or compulsory labour and

4. UN Global Compact website : <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

5. Athens Ethical Principles ©EHTN 2006 at End Human Trafficking Now website: http://www.endhumantraffickingnow.com/athens_ethical.php

6. Human Trafficking and Business: An eLearning course on how to prevent and combat human trafficking, 2010, UN Global Initiative to Fight Human Trafficking and End Human Trafficking Now (EHTN). For the legal definition, see Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000), <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

7. ILO Forced Labour Convention No. 29 (1930), Article 2(1)

8. The Cost of Coercion, ILO (2009)

the elimination of discrimination in respect to employment and occupation. To protect workers from abuses, ILO Private Employment Agencies Convention¹⁴ prohibits such Agencies “to charge directly or indirectly, in whole or in part, any fees or costs to workers”. However, the Convention allows for an exception, under specific conditions, if there are justifiable reasons¹⁵. In this context, it is essential that public authorities strictly regulate the collection of fees, set a limit for fee charging in legislation, and ensure strong safeguards to protect jobseekers from labor exploitation¹⁶.

The Athens Ethical Principles¹⁷ are a voluntary business code to address human trafficking and related exploitation, adopted in 2006 by representatives of the business community. It contains seven main principles, including commitment to zero tolerance towards trafficking in human beings, development of anti-trafficking corporate strategy, ensuring compliance by all personnel, encouragement of business partners and suppliers, contribution to prevention and sharing of good practices.

Unfortunately, international legal provisions and standards are not always translated in practice. Concerning Nepal and India, it is known that many migrant workers recruited from these countries to work overseas have been mobilized through a suspicious network of agents and fixers.¹⁸ These workers have to pay fees to labour brokers in their country of origin. To afford such high fees, workers take loans from agents, usually with extremely high interest rates. The latter use this debt as leverage to exploit recruits for years to come. As a result, the recruits arrive at the project location already demoralized, knowing that they will face years of hard work which will not benefit their families, instead, it will only satisfy the greed of the manpower agents and the network of corrupt fixers.

Many of the international companies which ultimately employ the workers are often aware of this divisive recruitment process and, in the worst cases, some decision makers in these international companies are bribed by the labour brokers to keep using them for recruitment.¹⁹ These bribes can be extremely high, and as competition increases, so too does the pressure on the recruitment companies to pay even larger bribes. Money to pay for the recruitment agencies’

profits, as well as the money to pay for the bribes is accumulated from the workers. This unethical practice exists on a large scale as modern day slavery.

It is not uncommon for workers to have to work for two or three years to pay back the loans from the manpower companies, who impose seemingly punitive levels of interest on those loans. The recruitment companies’ powerful hold over workers employed from overseas often results in a downward spiral of productivity and morale. This leads to a situation where staff turnover is very high and, in the construction industry, for example, significantly more personnel than necessary are employed to complete a given task, resulting in a poor final product. The cost implications for the employers are very significant²⁰. The devastating impact on the already poor workers is clear.

Even for the ethical companies who would like their personnel to be recruited without paying fees, it is still extremely difficult to control their recruiters. Thus, despite efforts to combat the problem, they find themselves with a demoralized workforce, selected on their willingness to be bonded, rather than on their suitability for the job. In such cases, everyone loses except the middle channels. The workers are exploited and the employer is provided with a largely unskilled and discouraged workforce.

9. US State Department Report on Human Trafficking (2006)

10. For example, Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1990), Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography (2000).

11. Article 5 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000), <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

12. Article 1, C 150 Abolition of Forced Labour Convention (1957), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>

13. Article 2, ILO Declaration on Fundamental Principles and Rights at Work <http://www.ilo.org/declaration/thedeclaration/text-declaration/lang-en/index.htm>

14. Article 7, C 181 ILO Private Employment Agencies Convention (1997), <http://actrav.itcilo.org/actrav-english/telearn/global/ilo/law/ilo181.htm>

15. Article 7 para 2, Ibid.

16. Verité: Vision May 2011, <http://www.verite.org/Vision/May2011>

17. Athens Ethical Principles ©EHTN 2006 at End Human Trafficking Now website: http://www.endhumantraffickingnow.com/athens_ethical.php

18. Hidden faces of the Gulf miracle, International Trade Union Confederation (May 2011)

19. Written submission provided by FSI on 6 April 2011.

20. Ibid.

2.1.1. A Specific Example of the Problem

FSI conducted a detailed audit of a large U.S. registered company's project. The company was having considerable difficulties with their workforce. The problems experienced by the client included: lack of skills, poor ability in the English language, falsified training certificates and employment references, low morale, a total lack of confidence and unpreparedness for the environment, no pre-deployment training, poor communication between the workforce and their management team and a prevalence of theft. In addition, the existence of a divisive, unofficial chain of command with political connections in Nepal was a concern. Supervisors promoted from within by the U.S. management team were undermined and intimidated by the supervisors put in place by the recruitment company.

Anonymous complaints citing bullying and corruption were forwarded to the company and the company's client. The problems experienced by the personnel included intimidation of personnel at the project and of their families, bullying (including physical beatings) and salaries not paid on time. Moreover, a member of the staff was killed in suspicious circumstances while he was at home on leave.

The company had their own, in-house human resources personnel who regularly visited the country of origin in order to monitor the recruitment company from whom they recruited, and purportedly vetted their recruitment processes. The problems occurred despite these checks. The company's in-house recruiters were experienced, human resources specialists who believed they had a detailed understanding of how to recruit the personnel with the skills and experience they required.

Having studied the project in detail and met and interviewed various members of the management team and the workers (both those on the project and those at home on leave), it was clear that despite their best efforts there were abusive practices infringing upon human rights of persons working on the project, including prohibition of forced labor and labor exploitation, freedom of movement, and the right to enjoyment of the just and favourable conditions of work, such as fair wages, and safe and healthy working conditions²¹.

FSI discovered evidence that only a small minority of the personnel had genuine certificates and references and that the majority had falsified paperwork given to them by the recruitment company. Most of the personnel interviewed (on assurances of anonymity) admitted that they were forced to pay a significant sum for their job (between \$4,000 and \$5,000). Most had taken out a high interest loan with the manpower company and as such were repaying the loan on a monthly basis, leaving their families with next to nothing to live on. Most believed that this would continue for a substantial period of their employment, most likely leaving them with little profit upon completion of their contracts. Despite this, they seemed resigned to their fate. The recruitment company, who provided the bulk of the personnel, is very large and supplies personnel to many other international companies. It is well known in the country of origin that this particular recruitment company charges high fees to the candidates, but despite this, due to the desperation for overseas work, candidates keep applying in exceptionally large numbers.

Many of the personnel interviewed claimed that, there were a number of 'supervisors' on the project who had been placed there by the recruitment company for the purpose of extracting money from the personnel and ensuring that the money continued to be paid on a monthly basis. The recruitment company also conducted similar intimidation tactics on the families of the personnel back home.

FSI uncovered evidence of extensive corruption sewn into every facet of the recruitment process and management of the personnel. It was the belief of many of the personnel that the murder of one of the workers whilst on leave was a result of the worker in question refusing to pay any more money to the recruitment company.

FSI was able to assist the client with the problems defined in the above example by separating them from the corrupt recruitment company and establishing an ethically recruited workforce based on the below mentioned principles.

21 As stipulated for example in the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights (both adopted on 16 December 1966).

2.2 Ethical Management System

2.2.1. Code of Ethics

FSI's actions are guided by the Code of Ethics.²² The Code confirms FSI's adherence to "highest legal, moral and ethical standards". While its provisions do not explicitly mention internationally recognized human rights, they contain some safeguards for implementation of these rights. For example, FSI restrains from making "false promises" or engaging in "inaccurate or misleading advertising" and it commits to making sure that "men are selected based on merit and that they never have to pay to secure their jobs". These are examples of guarantees to protect potential recruits from slavery, forced and compulsory labour.²³

2.2.2. Global Compact Ten Principles

FSI also adheres to the Global Compact Ten Principles whereas the most relevant for the company's operations are principles relating to human rights, labour and anti-corruption²⁴. FSI's policy and practice is directed by the first two Principles, namely to support and respect the protection of internationally proclaimed human rights (Principle 1) and making sure that the company is not complicit in human rights abuses (Principles 2). Moreover, the company operates in accordance with Principles 4 and 6 that require businesses to uphold the elimination of all forms of forced and compulsory labor, and the elimination of discrimination in respect of employment and occupation. FSI also applies Principle 10, requiring that "businesses should work against corruption in all its forms, including extortion and bribery".²⁵

2.2.3. Athens Ethical Principles

By endorsing the Athens Ethical Principles²⁶, FSI explicitly demonstrates its commitment to a zero-tolerance position towards human trafficking. The company abides by the seven principles, including development of the strategy against human trafficking, compliance of the personnel and encouragement to business partners and suppliers to apply the same ethical principles.

2.2.4. Standard Operating Procedures

The FSI's Standard Operating Procedures (SOP)²⁷ detail the recruitment, mobilization and management process pertaining to Ethical Manpower Provision. The procedures con-

tain specific guarantees for these processes to ensure implementation of the company's ethical policy. They are based on two core rules: vetting and non-payment principles. Vetting Principle suggests that all FSI contracts should be carefully vetted so that personnel are recruited to work for reputable companies on good projects where they are not subject to unnecessary or unreasonable risk. Non Payment Principle prohibits payment of any money to any personnel involved in the recruiting or mobilization by any candidate or potential candidate. All personnel should comply with SOP and an action is taken against anyone involved with FSI who does not stick to their terms. The SOP also stipulate in detail management and supervision of recruitment and the mobilization processes to maintain FSI as a "high quality and honest resettlement agency that trains people, protects them from exploitation, finds them good jobs and helps them deal with transition to a life working overseas".²⁸

The principles of ethical recruitment are included in Standard the SOP and individual contracts. Employees are briefed during every director's visit. They are trained and commit to respect these principles by signing. The commitment is also part of their working contract. Non-compliance with the principles of ethical recruitment is penalized by financial sanctions as well as other punishment, such as termination of contract and collaboration.

FSI is able to guarantee the ethical recruitment of all personnel because it owns and controls every aspect of the recruitment process and its infrastructure. This ownership is an essential factor in protecting rights of employees and tackling corruption. The robust culture of transparency within FSI ensures that no one within the company can deviate from the strict adherence to the key

22. FSI's website at <http://www.fsi-worldwide.com/about-us/fsi-code-of-ethics>.

23. Slavery, forced and compulsory labor are prohibited by international law, including International Covenant on Civil and Political Rights (adopted on 1 December 1966, ILO Conventions (No. 29 adopted on 28 June 1930, No 150 adopted 25 June 1957 and No. 182 adopted 17 June 1999).

24. UN Global Compact website : <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

25. Ibid.

26. Athens Ethical Principles ©EHTN 2006 at End Human Trafficking Now website: http://www.endhumantraffickingnow.com/athens_ethical.php

27. FSI SOP G1/0001, First version written 01/10/06, latest version written 01/11/2011

28. Ibid., pg. 4

principles of ethical recruitment. A significant factor in this has been the recruitment of highly trusted, former Gurkhas to fill key positions within the organization. Many of these personnel are long-term colleagues of FSI's managers. Their training as military personnel included emphasis on a strict ethical code and individuals that are chosen to fill such positions have excellent career records to reflect that. By allowing only trusted senior personnel to conduct recruitment, FSI can assure that the omnipresent threat of corruption is kept at bay. The following factors were identified as key in ensuring the Ethical Manpower Provision:

- All FSI recruitment and mobilization processes are regularly tested and audited.
 - The audit process includes the one to one interview of all candidates (by an FSI Director) prior to and post the recruitment process to ascertain whether they have been approached by anyone demanding any kind of payment. The other audit technique is having non FSI individuals apply for the employment to report on their experiences and in certain cases to try to pay the FSI staff they encounter. Just knowing that occasional 'moles' may be coming through the system is an effective deterrent. Every batch of recruitment is audited in one or both ways described.
- FSI conducts random spot checks on all of its offices.
 - These checks take place during every period of recruitment activity and on random Director's visits, which occur as a minimum of every three months.
- All personnel are interviewed prior to and after deployment by a bilingual British senior manager or director to ensure that they have been treated in accordance with FSI regulations.
- FSI invests significant time, effort and funds in ensuring direct contact with candidates.
- No agents or third parties are allowed.
- Every recruit signs a non-payment declaration (in English as well as in his/her mother tongue).
- FSI insists on background checks for each recruit.
 - In addition to policing the "non-payment policy", FSI insists upon stringent background checks for each recruit, including criminal record checks, health checks and

skills testing. Only those recruits who can demonstrate that they have the appropriate background and the necessary skills are considered for employment.

2.2.5. Sanctions For Non-Compliance

In the early days of FSI, the company was employing a manpower company in Nepal to assist with the administration of the personnel recruited. It was discovered that the wife of one of the staff members was taking money from the men who were recruited from her area. Twelve people were affected in one FSI project. The staff member was forced to pay back the money taken and fired for gross misconduct. The relationship with the manpower company was terminated shortly thereafter, as FSI felt it could not be trusted in terms of ethical consistency. FSI no longer subcontracts any recruitment procedures.

2.2.6. Complaint Mechanism For Employees

FSI directors regularly visit all personnel and anyone who may have any concern is encouraged to ask for a personal interview. Moreover, all personnel are advised - before they join and consistently through the course of their employment - to contact FSI HQ directly with complaints (they all have email and phone contact details from the moment they come into contact with FSI). All complaints are investigated and anonymity is respected.

On two occasions, management personnel were removed for failure to adequately look after the welfare of the personnel under their management. In both cases, the managers in question were overly dictatorial with the personnel they supervised. Complaints led to investigations by FSI directors that found the managers at fault. These incidents occurred in 2008. No additional complaints have been received since then.

2.2.7. FSI Induction and Training

FSI ensures pre-deployment training for all personnel. This includes language, skills and situational awareness training. Training ensures that, employees arrive at the project site fully prepared for their tasks and for the challenges of the employment environment. FSI also recommends the provision of structured continuation training to ensure the personnel's skills are continuously enhanced throughout the period of their employment. To-date, FSI has provided pre-deployment

training, and provides continuous training, to all personnel deployed across all of its projects.

Personnel under training are deployed through FSI so they are constantly reminded that no fees whatsoever are to be paid. They are clearly briefed on the actual terms and conditions they will experience on the project. Once deployed, they will be met by an FSI Director who will confirm that their terms and conditions are as they were promised.

2.2.8. Welfare and Management

FSI remains intimately involved in the management of the personnel after they have deployed into their contracts overseas in order to ensure that they are well looked after and continue to be motivated and productive.

Usually this ongoing involvement in the management of the personnel takes the form of a management consultancy agreement, which includes the placement of senior personnel recruited by FSI into managerial positions. In addition, the operations director of FSI maintains weekly communications with the project, to help deal with any welfare or disciplinary issues that may arise. The FSI operations teams are fluent in the languages of the deployed personnel, which ensure that the lines of communication are open and clear. When welfare cases arise back home, FSI uses its network to ensure that any help required by the family is delivered in a timely and effective manner.

To give an example, a common welfare problem is that a wife or family member becomes ill. FSI management personnel will visit the sick family member and provide a detailed report. If the illness is serious, the FSI staff member will be given compassionate leave to be with their family. Another recent example of welfare support is the payment of \$6,500 USD by FSI to the family of an FSI staff member who was tragically killed in a motor-bike accident in Nepal when he was home on leave. As he was the only breadwinner, FSI has also committed to training and employing the widow's only son.

2.2.9. Efficient Salary Payment System

Ensuring timely and efficient payment of a fair salary is a key element in preventing labour exploitation. To this aim, FSI offers a

secure and reliable payroll function for its recruits. Many of FSI's clients are unable to negotiate with the banking system in the source countries and personnel suffer from late or incomplete salary payments, which can severely affect morale. As a result, some companies make full or partial cash payments to workers in the country of employment, which exposes them to theft, intimidation and extortion. Ensuring that every worker is paid in full and on time every month is part of FSI's commitment to ethical manpower. It makes an enormous difference to the recruit knowing that their family has secure and fast access to the remittance money they are earning. Currently, all the FSI employees are using the system, except 114 personnel who are employed on a contract where the client pays them directly. In such cases, FSI does due diligence on the payroll process to ensure that it meets FSI standards.

2.2.10. Awareness-Raising of Clients

FSI has developed a three-stage approach to international companies who recruit migrant workers:

Firstly, FSI highlights the reality of human trafficking and its relevance to companies (most of the companies refuse to accept that they may be involved in something so heinous). Doing so requires FSI to outline, quite starkly, the methods employed by many labour brokers and the impact said practices are having on their businesses. It also highlights the human rights dimension of problem, such as violation of employees' human rights and their dignity.

Secondly, FSI illustrates a clear business case for improving recruitment and management of work force. Companies are often shocked to see how much money they could save on payroll and associated costs if they ethically recruit fewer workers with better skills, who also remain in their jobs.

Finally, FSI highlights the need for leadership in this area and points both to the negative impact of media coverage (if companies are discovered to be employing workers who have been exploited) and the positive image that a company can cultivate by being portrayed as a leader in the field.

In working closely with its clients, FSI has been able to demonstrate the clear commercial and reputational benefits of Ethical Manpower Provision. As such, FSI has witnessed

a fundamental change in the approaches of some companies in relation to the recruitment and management of their personnel.

2.2.11. Audit to Clients – Replacement and Redeployment of Personnel

FSI offers an audit service to clients. Where clients are experiencing problems on existing projects, including corruption, FSI advises the clients as to how they can turn around a failing project. This may include the replacement of corrupt and incompetent managers and unsuitable personnel with well-recruited ‘fit for purpose’ employees through the EMP process. This may also include the redeployment of those existing personnel who are qualified once they have severed their ties with the recruitment company.

So far three major audits have been done. Each audit has been conducted by a joint British and Nepali team of FSI senior directors. The outcome in all three cases was that the client terminated their contracts with the corrupt recruitment companies and adopted an Ethical Manpower Provision approach.

- Well-recruited and properly managed worker is significantly more efficient than his ‘bonded’ and exploited counterpart.
- Continuity of staff and procedures.
 - FSI has an industry-low staff turnover rate. This translates into a reduction in the need for the client to constantly re-train new staff. Continuity is particularly important in high-threat environments where safety and security are paramount. FSI recruited personnel also enjoy significantly lower levels of ‘dropped shifts’ as a result of sickness or absenteeism.
- High quality output.
 - FSI personnel are recruited only on merit and are subjected to skills testing before deployment. This ensures that the projects run smoothly and helps the client meet project deadlines and budgets.
- Reputation enhancement.
 - Corporate social responsibility is a key part of modern business, and FSI’s clients can demonstrate that by engaging with the ethical manpower process they are helping to improve the lives of migrant workers.

3. SUMMARY OF THE BENEFITS OF ETHICAL MANPOWER PROVISION

For Personnel

- Workers are free from human trafficking, forced labour and other exploitative practices.
- Jobs are offered on merit alone. No fees are paid at any stage.
- Salaries are paid directly into the workers personal bank account on time, every month, in their home country.
- Welfare cases are dealt with quickly and efficiently.
- Workers discharged from corrupt projects sever links with the fraudulent manpower companies. Qualified and suitable personnel will be eligible for re-employment on other projects.
- Workers’ families are helped and looked after by the welfare system.

For the Client

- A workforce that is loyal, high-quality, correctly skilled and trained, highly motivated, and productive.
- Lower payroll and associated employment costs.

4. NEXT STEPS: ONGOING CHALLENGES AND LESSONS LEARNED

Since beginning in October 2006, FSI has been constantly learning and developing the processes of Ethical Manpower Provision (EMP). The major challenge has been to transpose EMP into new industries and new countries. FSI has successfully achieved the establishment of EMP infrastructure in Kenya, India and Nepal. The training of staff has been an extremely important factor in achieving EMP and the most important element of the training and ongoing management of FSI staff is the focus on ‘*why we must never take money from our personnel*’ even in an environment where everyone else is taking money. In order to ensure ethical manpower provision, FSI learnt that education and training is not enough and that it is equally important to recruit people extremely carefully to ensure they are prone to being ethical.

Secondly, FSI believes that employees must be well remunerated to demonstrate that the company is rewarding their ethical approach. Otherwise, they may be tempted to default to the same business practices as

other manpower companies. FSI monitors compliance with the tenets of EMP through detailed oversight of all activities by directors and senior management but is also looking at specialist third party organizations to conduct additional audits.

Concerning work with partners, the main challenge is to get the private sector (particularly in the Middle East) to acknowledge that bonded labour exists on such a large scale, and that it has extremely negative impact both on productivity and good business practice. Corruption is a major obstacle in addressing this problem. Many people are profiting from exploitative labour – unethical recruitment companies, some government officials, and in some cases the human resources staff of the companies employing the personnel. Furthermore, the cultural perception among the business leaders is a significant problem; some of them share the belief that nationals of poorer countries are to be exploited.

FSI is constantly evolving and reviewing its strategy for expanding the reach of the Ethical Manpower Provision. FSI is keen to share its experience and ideas with international organizations and governments in order to create a more effective framework for regulating the recruitment. However, it is of paramount importance to engage with the client companies and to explain the benefits of ethical recruitment and the perils of bonded labour.

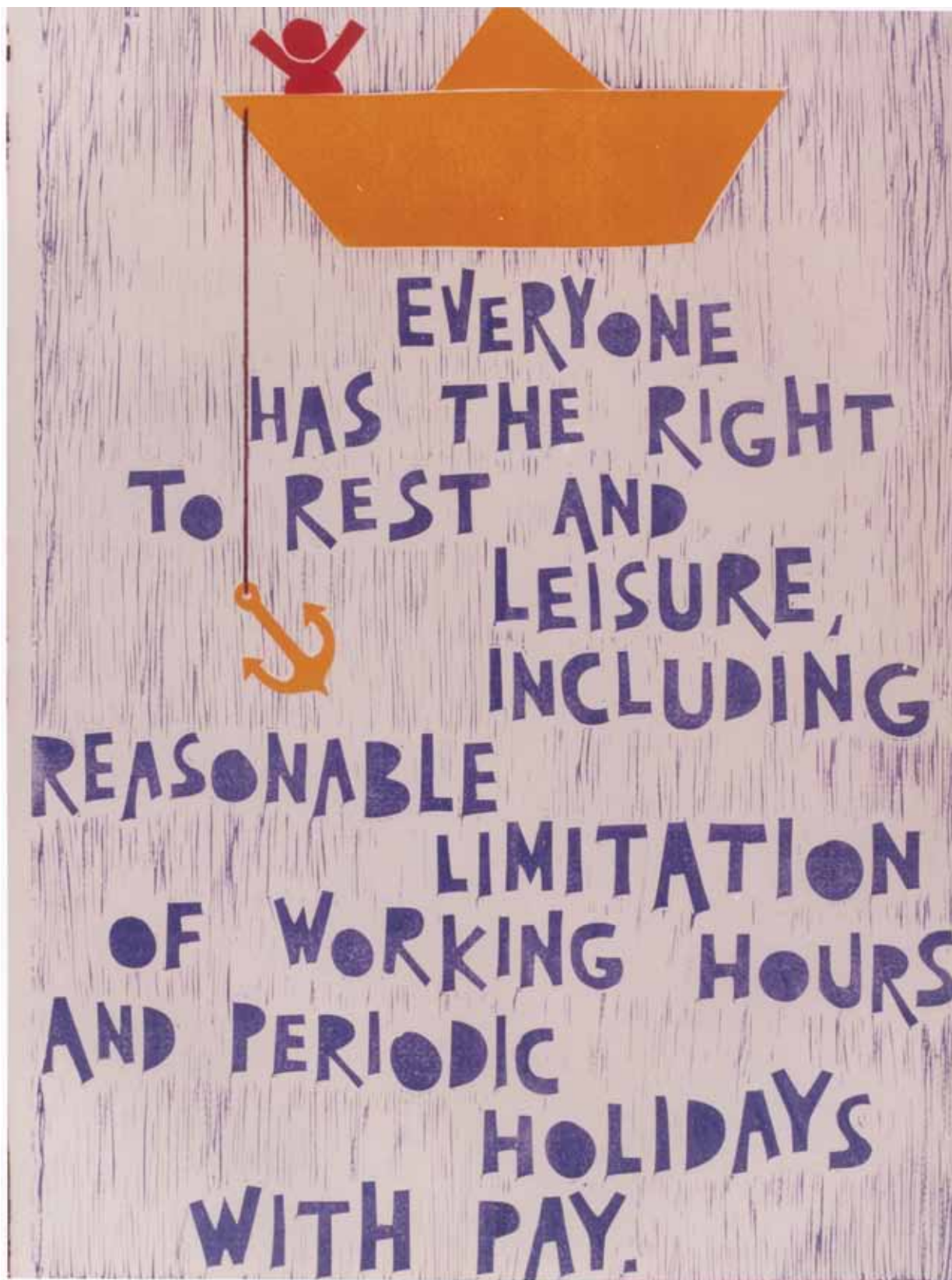
Governments of both the ‘source’ countries (i.e., where the personnel are recruited) and the ‘destination’ countries (i.e., the job location) have an obligation to ensure that effective regulation and policies are in place and enforced to protect migrant workers from human rights abuse and weed out bad

practice and prosecute criminal acts. Unfortunately, even in countries where regulatory frameworks exist, it is still a struggle to prevent exploitation.²⁹ This is because, people are desperate to find employment overseas and believe the only way that will happen is if they pay the fees or agree to be bonded. In some cases, the regulation even serves to exacerbate and perpetuate exploitation. Companies are able to operate with impunity under a veneer of legitimacy if they comply with some of the superficial regulatory requirements.

FSI believes that real change will be most significantly achieved through the private sector taking a stand against bonded labour and human trafficking. The key lesson that FSI has learnt is that businesses would like to help eradicate human trafficking, but will only do so if it makes commercial sense. Persuading them that it does make sense is the key challenge for FSI and the groups with whom they work. FSI would like to see companies genuinely auditing their labour supply chains. Companies must demand that their staff are recruited ethically and must be prepared to pay reasonable recruitment fees to ensure that this happens.

FSI is committed to encouraging more international companies to adopt ethical recruitment principles. As this momentum builds, more ethical manpower companies will come into the market, which will gradually marginalize and expose the criminals who make their fortunes from the misery of others.

29. Weak law enforcement was consistently identified as major determinant of human trafficking. *Forced Labor: Exploitation and Coercion in Private Economy* (ILO, 2009)



MANPOWER GROUP:

A Multi-Faceted Approach to Combating Human Trafficking and Exploitation in the Staffing and Employment Industry

By Ellen Policinski¹

Human rights issues addressed

- › Forced labor, labor exploitation
- › Freedom of movement
- › Human trafficking, slavery and slavery-like practices
- › Living wage
- › Occupational health and safety
- › Security and freedom
- › Working conditions
- › Ethical Framework for cross-border labor recruitment

Human rights management practices addressed

- › Getting started
- › Strategy
- › Policy
- › Processes and procedures
- › Measuring impact and auditing
- › Grievance Mechanisms

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › ILO standards and conventions
- › Athens Ethical Principles
- › Luxor Guidelines
- › Palermo Protocol
- › Dhaka Principles
- › CIETT Principles
- › Guiding Principles on Business and Human Rights

ABSTRACT

This case study examines the multi-pronged approach developed by staffing and workforce solutions provider ManpowerGroup to combat the serious issue of human trafficking and forced labor from various angles on a global scale. The case study details how ManpowerGroup's commitment to combating human trafficking and forced labor is reflected in its practices and policies worldwide and how the company strives to set industry standards and to promote a policy of zero tolerance for human trafficking among employers around the world.

The study discusses ManpowerGroup's internal supply chain and procurement policies, as well as its external measures designed to promote practices and policies among companies and governments, raise awareness, and provide assistance to survivors of human trafficking and forced labor. In light of the decrease in employee attrition and the reputational and branding benefits resulting from the company's ethical policies and practices, including those related to human trafficking, ManpowerGroup's experience demonstrates that ethical business practices related to human trafficking are not only legally and ethically correct, but also beneficial from a business standpoint, and therefore can and should be implemented worldwide.

This case study is based on documents and interviews provided by global leaders at ManpowerGroup.

1. COMPANY PROFILE

ManpowerGroup is a global workforce solutions and services provider that provides human resources services including recruitment, assessment, training and development, career management, outsourcing, and workforce consulting. It is comprised of four major brands: ManpowerGroup, Manpower, Experis, and Right Management.

ManpowerGroup Inc. was founded as Manpower Inc. in 1948 in Milwaukee, Wisconsin, by Elmer Winter and Aaron Scheinfeld. In 1956, the company opened its first international offices in Toronto and Montreal, Canada.

Although its international headquarters is still located in Milwaukee, ManpowerGroup now operates in 80 countries and territories worldwide. The company's international network is made up of 3,500 offices and nearly 30,000 staff members. ManpowerGroup serves approximately 400,000 clients per year in small and medium-sized enterprises, and local, multinational, and global companies across all industry sectors.

In 2012, ManpowerGroup's revenues were \$21 billion worldwide. Based on revenues, the company's largest operations for that year were in France, the United States, and Italy. ManpowerGroup estimates that it placed approximately 3.4 million individuals in permanent, temporary, and contract positions in fields ranging from IT, engineering, and finance professionals to administrative and industrial staff. Additionally, over 10.5 million people received training and development services from ManpowerGroup. For example, ManpowerGroup prepared over 30,000 individuals for new jobs through Right Management's outplacement services.²

1. Ellen Policinski holds a J.D. from Villanova Law School in Villanova, Pennsylvania and an LL.M. from the Geneva Academy of International Humanitarian Law and Human Rights in Geneva, Switzerland. Peer review of the case study was provided by: Vicky Bowman, Global Practice Leader, External Affairs (Policy), Rio Tinto; Emily Miggins, Senior Sustainability Manager, Safeway; Ron Popper, Head of Corporate, ABB; Rita Anne Roca, Senior Specialist on Human Rights, Business Ethics & Social Responsibility, Vestas Wind Systems; Tristan Forster, CEO, FSI Worldwide; Jonah Goldstein, Project Manager, Global Workplace Rights, SODEXO; Mattia Villa, Citizenship and Public Affairs Coordinator, Microsoft. Guidance and editorial assistance were provided by End Human Trafficking Now: Ivana Machonova Schellongova and Rasha Hammad.

1.1. Awards and Recognitions

ManpowerGroup is ranked as the 140th largest company in the U.S. in the 2013 Fortune 500 list compiled by Fortune magazine.³ The company ranked 1603rd on the Forbes Global 2000 list of the largest public companies in the world.⁴ It was named one of America's most honored companies by Institutional Investor magazine. In 2013, ManpowerGroup was named for the fifth consecutive year to the FTSE4Good Index Series. In 2012, for the sixth year running, ManpowerGroup was named to the Dow Jones Sustainability Index, and was ranked 16th on Newsweek's list of the Greenest Big Companies in America and first in the Professional Services Sector.

ManpowerGroup has been honored many times for its commitment to Corporate Social Responsibility (CSR) and ethical business practices. In 2013, it was named in the prestigious Ethisphere Institute's list of the World's Most Ethical Companies for the third year in a row – more than any other company in the industry. It was also named the number one Most Admired Company in its industry by Fortune magazine in 2013, in its eleventh successive year on that list. A number of local ManpowerGroup operations have also been recognized. In 2012, its German headquarters building was the first office space in Germany to become LEED Gold certified. In 2013, the Women's Business Enterprise National Council recognized ManpowerGroup as one of America's top corporations for Women's Business Enterprises for the fifth consecutive year. ManpowerGroup's Hong Kong operation received two awards in 2012: the Caring Company Award from the Hong Kong Council of Social Services, and the Award of Outstanding Society Contribution from the Capital CEO & Elite Entrepreneurship Association.

1.2. Corporate Social Responsibility Context

ManpowerGroup's commitment to CSR, grounded in its view of the importance of work as a component of human dignity, includes the company's focus on human rights. The company's key business practices and its commitment to CSR are laid out in its Code of Business Conduct and Ethics ('Code').⁵ The Code represents ManpowerGroup's expectations with regard to appropriate business and ethical behavior in all of its relationships. ManpowerGroup first introduced the Code in 2010; it was revised in 2011 to improve the content, readability, and accessibility. It has been translated into nearly 20 languages to make it as widely accessible as possible. Some key provisions address mutual respect, diversity and inclusiveness, safety and health, corruption, environmental stewardship, and borderless talent solutions. The Code explicitly states that ManpowerGroup stands against human trafficking and forced labor.⁶ The Code's provisions encompass the company's zero tolerance of human trafficking.⁷

All employees in ManpowerGroup operations, including new hires, go through Code of Conduct training each year in the form of an e-learning module called the "Code of Business

2. ManpowerGroup's 2012 Annual Shareholder Report, available at <http://www.manpowergroup.com/wps/wcm/connect/manpowergroup-en/home/investors/>.

3. Fortune 500: 140. ManpowerGroup, available at http://money.cnn.com/magazines/fortune/fortune500/2013/snapshots/2149.html?iid=F500_fl_list.

4. Forbes: The World's Biggest Public Companies, Manpower, available at <http://www.forbes.com/companies/manpower>.

5. ManpowerGroup Code of Business Conduct and Ethics, available at <http://www.manpowergroup.com/wps/wcm/connect/manpowergroup-en/home/about/corporate-governance/code-of-biz-conduct/code-of-conduct-ethics>.

6. ManpowerGroup Code of Business Conduct and Ethics, page 7.

7. ManpowerGroup Code of Business Conduct and Ethics, page 33.

Conduct and Ethics” course and certification. This course is followed by a test, which must be passed with a score of 100%. There is also a reporting mechanism for unethical conduct in violation of the Code — the ManpowerGroup Ethics Hotline — which promotes a culture of honesty and accountability throughout the company.

ManpowerGroup’s commitment to human rights extends to its external relations. The company seeks assurance that the businesses and individuals it works with throughout its entire supply chain understand, share, and commit to its standards as contained in its Supply Chain Business Partner Policy.⁸ This policy, described in greater detail in Section 2. Case Analysis, asks suppliers to positively affirm their commitment to ManpowerGroup’s CSR practices in writing, and agree to a system of monitoring designed to detect any deviation from those practices.

In 2006, ManpowerGroup adopted the UN Global Compact’s principles in the areas of human rights, labor, the environment, and anti-corruption by expanding its social responsibility program to encompass a broader range of initiatives, including helping disaster survivors, refugees, and victims of human trafficking corresponding to several of the ten principles.⁹ In 2009, ManpowerGroup’s CEO, Jeffrey Joerres, officially submitted ManpowerGroup’s Letter of Commitment to the UN Global Compact.¹⁰

In June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, which explain the responsibility of companies to respect human rights in detail.¹¹ The Guiding Principles relate to Principles 1 and 2 of the UN Global Compact, which call upon companies to respect and support the protection of international human rights and to ensure they are not complicit in human rights abuses. ManpowerGroup strives to embody these principles in its anti-human trafficking initiatives.

1.3. The Problem

“Human trafficking” is defined as the recruitment, transportation, transfer, harboring, or receipt of persons through the use of force, coercion, fraud, deception, abuse of power or vulnerability, or the threat thereof,

or through payment or other benefit to achieve consent of the trafficked person with the intent of exploitation.¹² “Forced labor” is defined as all work or service exacted from a person under the threat penalty and for which that person has not voluntarily presented him or herself.¹³

Human trafficking and forced labor are prohibited by international law. Human trafficking is a widespread crime that forces an estimated 20.9 million people into forced labor and sexual exploitation at any given time.¹⁴ It is currently considered the third largest illegal industry on the planet behind the drug trade and arms smuggling.

Several human rights treaties request States Parties to suppress trafficking in human beings, and provide protection, especially to vulnerable segments of the population.¹⁵ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) obliges States Parties to adopt legislative and other measures to criminalize trafficking in persons.¹⁶ International Labor Organization (ILO) conventions, such as the Abolition of Forced Labour Convention, require States Parties to suppress and not to make use of any form of forced or compulsory labor.¹⁷

The practice of subcontracting the recruitment and hiring functions for migrant laborers to labor brokers is on the rise around the globe. This increases the vulnerability of transnational recruits. One of the challenges of the cross-border recruitment market is that it is institutionally fragmented and

8. See Supply Chain Business Partner Policy of ManpowerGroup at http://www.manpowergroup.com/wps/wcm/connect/59d3f8e3-fa5c-4c56-a9f6-01a8d2d65ce5/ManpowerGroup_Supply_Chain_Business_Partner_Policy.pdf?MOD=AJPERES; Download the Supply Chain Business Partner Policy Positive Assurance Form at <http://www.manpowergroup.com/wps/wcm/connect/b438f4fd-717a-422a-ace7-9f5492fa73f2/PolicySupplierResponseFillInForm.doc?MOD=AJPERES>.

9. See Ten Principles of the UN Global Compact

10. The Letter is available at http://www.unglobalcompact.org/system/commitment_letters/6339/original/JJoerresLettertoUNGC.pdf.

11. The Guiding Principles can be found at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

12. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially women and Children, Supplementing the UN Convention against Transnational Organized Crime (“Palermo Protocol”), Art. 3(a) (2000).

13. ILO Forced Labour Convention No. 29, Art. 2(1) (1930).

14. ILO Special Action Programme to Combat Forced Labour, ILO Global Estimate of Forced Labour: Results and Methodology (2012). Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf.

employers, recruiters, and local or regional subcontractors operate in different jurisdictions with limited accountability. As demand for international sources of labor increases, many candidates for employment find themselves in “grey” markets involved with unscrupulous brokers or employers.

Current conditions in the staffing and employment services industry provide uneven protection for labor rights and put workers at risk of falling into conditions amounting to forced labor. Unethical labor brokers target vulnerable groups, taking advantage of the limited information available to cross-border recruits. They use superior bargaining power and leverage to take advantage of weaknesses and limitations in existing protection for workers. Employers and other stakeholders in the staffing industry also face risks, including potential legal consequences, threats to brand name and reputation, restrictions on the import of goods produced with forced labor, and the weakening of investor and community relations.¹⁸

As a leader in the staffing and employment services industry, ManpowerGroup takes its responsibility in combating human trafficking and related exploitation seriously. The company has chosen to focus on this issue in its internal and external policies and has developed a comprehensive approach, using many different initiatives in tandem to combat human trafficking and forced labor.

ManpowerGroup was the first corporation to sign the 2006 Athens Ethical Principles, a voluntary business code of ethics to combat human trafficking. The Athens Ethical Principles (AEP) contain seven main principles, including a commitment to zero tolerance towards trafficking in human beings, contribution to prevention through awareness raising and education, the development of anti-trafficking corporate strategy, ensuring compliance by all personnel, encouragement of business partners and suppliers to get involved, calling on governments to revise laws and regulations relating to anti-trafficking policies, and sharing good business practices.¹⁹

ManpowerGroup’s efforts to engage more companies in support of the Athens Ethical Principles have resulted in several thousand organizations becoming signatories, either directly or through the commitment of an industry federation. In February 2008,

ManpowerGroup facilitated endorsement of the AEP by the International Confederation of Private Employment Agencies (CIETT). The CIETT brings together 37 national employment industry federations and seven of the largest multinational staffing companies, as well as tens of thousands of small- and medium-sized enterprises.

As a member of the CIETT itself, ManpowerGroup has agreed to the CIETT Code of Conduct.²⁰ Through the principles contained in the CIETT Code of conduct, ManpowerGroup committed to, among other things:

- Respect for Ethical and Professional Conduct;
- Respect for Laws;
- Respect for Transparency in Terms of Engagement;
- Respect for free-of-charge provision of services to jobseekers;
- Respect for Worker’s Rights;
- Respect for Confidentiality.

In December 2010, ManpowerGroup endorsed the Luxor Implementation Guidelines, which provide guidance on how to implement the AEP through company policy, raising public awareness, strategic planning, creating codes of conduct, and the use of self-regulatory measures for both daily activities and long term strategy.²¹

15. See inter alia The Convention on the Elimination of All Forms of Discrimination Against Women (1979), The Convention on the Rights of the Child (1990), The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography (2009).

16. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, Art. 5 (2000). Available at <http://www.unodc.org/undoc/en/treaties/CTOC/index.html>.

17. The Abolition of Forced Labor Convention, Art. 1, C 150 (1957). Available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>.

18. ManpowerGroup and Verité, An Ethical Framework for Cross-Border Recruitment: An Industry/Stakeholder Collaboration to Reduce the Risks of Forced Labor and Human Trafficking, 8 (2012).

19. See Athens Ethical Principles, available at http://www.endhumantraffickingnow.com/?page_id=77.

20. The CIETT Code of Conduct is available at <http://www.ciett.org/index.php?id=30>.

21. The Luxor Implementation Guidelines to the Athens Ethical Principles: Comprehensive Compliance Program for Businesses (2010), available at http://www.endhumantraffickingnow.com/?page_id=79. The Luxor Guidelines identify the four main risk areas where companies may encounter human trafficking: Exploitation within companies’ supply chain through suppliers; through personnel supplied by third party agents; through traffickers’ use of the companies products, facilities, or services to maintain or obtain compelled service; and lastly, through the use of company property to victimize individuals.

2. CASE ANALYSIS

2.1. Talent Supply Chain Business Partner Policy and Monitoring

ManpowerGroup seeks to use its influence to promote anti-human trafficking policies in its supply chain. To this end, the company has developed an extensive internal system of checks and balances in its relations with suppliers. It uses the term “supplier” to refer to both talent suppliers (i.e., staffing companies, recruitment agencies, and companies who refer candidates) as well as suppliers of tangible goods and services (i.e., furniture, equipment, and office supplies).

ManpowerGroup’s supply chain management policy and practices are part of an ongoing process of research and checks to ensure that all suppliers connected with ManpowerGroup around the world adhere to the corporation’s CSR principles, especially in accordance with the first AEP – zero tolerance of trafficking in human beings – and the fifth AEP – encouraging involvement of business partners and suppliers. It aims to ensure that the company refrains from having a negative impact on human rights within the respect dimension of UNGC Principle 1, and is also in line with UNGC Principle 2 – ensuring that the company is not complicit to human rights abuses.

ManpowerGroup applies a no recruitment fee policy for workers for recruitment and placement throughout its operations and supply chain. The company explicitly declares to all job candidates that it will never charge them a fee.²²

This section deals with the policy regarding suppliers of talent, or candidates for employment. ManpowerGroup does most of its own talent recruitment; however, there are a few situations where the company turns to subcontractors to supply talent in order to meet specific client requirements, such as providers in niche talent areas and geographies, or a pre-selected slate of preferred suppliers. Contracts with talent suppliers vary from case to case because of the vastly different types of clients with which ManpowerGroup does business. All contracts that ManpowerGroup signs with suppliers contain a term explaining the company’s ethical standards. Adherence is a contractual obligation. A Program Manager is assigned to every contract to perform due diligence and ensure that the contract is honored. Many of ManpowerGroup’s larger clients require

the company to perform random checks and audits on both the candidates recruited by ManpowerGroup directly, and those recruited indirectly via subcontractors.

In most cases, ManpowerGroup works with subcontractors with which they have a prior existing relationship, or a supplier that is already in its database. When a talent supplier is used for the first time, ManpowerGroup engages in a process of research and reference verification. The depth and type of review depends on the terms of the contract with the particular talent supplier and varies between clients and countries.

If a particular talent supplier is found to be non-compliant with ManpowerGroup’s principles, then they must work toward compliance or ManpowerGroup will ultimately terminate the business relationship with that supplier. There is a standard disengagement process for terminating such a business relationship, including protocols for dealing with affected candidates. Talent suppliers may receive a grace period to work towards compliance depending on the circumstances of their violation. So far, there have been no instances of non-compliant talent suppliers, which ManpowerGroup attributes to its rigorous vetting process prior to engaging in business with these suppliers.

There was an isolated case where a business partner repeatedly failed to pay associates hired through ManpowerGroup in a timely fashion. The company received a warning from ManpowerGroup, but they continued to be delinquent in making payroll. ManpowerGroup therefore notified them that their business relationship was being terminated and associates were transitioned to ManpowerGroup or other sub-suppliers, based upon the circumstances of the individual assignments.

ManpowerGroup provides an Employee Resource Center, which recruits can contact to express concerns or issues regarding talent suppliers. In some of the countries, ManpowerGroup has designed programs to mentor and build the recruitment capacity of smaller suppliers. North America is a prime example of an area where ManpowerGroup uses proven best practices to shape the policies and procedures of its diversity suppli-

22. See ManpowerGroup’s Frequently Asked Questions at <http://www.manpower.us/en/Job-Seekers/FAQs.htm>.

ers. Each year in Milwaukee, Wisconsin, ManpowerGroup hosts an Annual Diversity Round Table, where they invite about 100 suppliers to participate in discussions of policies and best practices related to supply chain management. ManpowerGroup has also hosted a Supplier Advisory Board where twelve suppliers were invited to serve as an advisory committee providing input and ideas from the supplier's point of view. In addition to these initiatives, ManpowerGroup also conducts mentoring sessions to about six suppliers each year in North America. This facilitates interaction between ManpowerGroup and its suppliers. This is part of ManpowerGroup's strategy to standardize the supply chain management process and strengthen its own selection criteria for talent suppliers and the means of monitoring the talent supply chain.

2.2. Procurement Supply Chain Business Partner Policy

The Supply Chain Business Partner Policy is also intended to support ManpowerGroup as it works to meet the increasing need for transparency with regard to how its procurement suppliers manage their broad range of operational, environmental, and social responsibilities, including combating human trafficking and forced labor. The initiative to implement the policy began in 2009, and efforts to embed the principles into how ManpowerGroup operates continue to progress.

Prior to releasing a request for proposal, ManpowerGroup pre-screens potential suppliers by gathering publicly available data about them and interviewing key personnel within the company. Once this process is complete, they provide the supplier with an information letter outlining key CSR practices that make up the "Supplier's Code of Conduct." Supply chain business partners are required to provide positive assurance regarding their adherence to fourteen key CSR practices derived from the company's values, policies, and principles that make up the Supplier's Code of Conduct. These include:

1. Compliance with all applicable laws and regulations of the country or territory where operations are undertaken;
2. Provision of safe and healthy working conditions for all employees;
3. Practice zero tolerance on human trafficking in accordance with the Athens Ethical Principles;
4. No use of any form of forced or compulsory labor and freedom of employees to leave employment after reasonable notice;
5. No use of child labor and compliance with relevant International Labor Organization standards;
6. Respect for human rights, including no physical, psychological, or other abuse; zero tolerance for sexual harassment; and no discrimination due to race, color, religion, creed, gender, social status, or physical or mental disability;
7. Wages and working hours complying, at a minimum, with applicable laws, rules, and regulations regarding employment, including minimum wage, overtime, and maximum hours in the country or territory concerned;
8. Respect for the right of employees to freedom of association;
9. Data privacy and protection;
10. Provision of training and learning opportunities;
11. Delivery of services which consistently meet specified quality, safety, data privacy and other relevant criteria;
12. Giving back to the community;
13. Management of the business in an environmentally sound manner, including compliance with all relevant legislation of the country or territory where operations are undertaken;
14. No offer of improper advantage, including the payment or acceptance of bribes, to secure delivery of goods or services to ManpowerGroup companies.²³

At this point, potential business partners indicate whether they are willing to comply with the Supplier's Code of Conduct, though they do not yet sign any document. After supplier proposals are submitted and a supplier is selected, that supplier must then sign the Supply Chain Business Partner Policy and provide positive assurance that they will comply with the fourteen key CSR practices. Procurement suppliers acknowledge their commitment to ManpowerGroup's practices in two ways. First, suppliers must acknowledge receipt of an information letter and confirm the intention to apply the fourteen

23. ManpowerGroup CSR Policy: Supply Chain Business Partners. Available at [http://www.manpowergroup.com/wps/wcm/connect/manpowergroup-en/home/social-responsibility/policies/under "Procurement/Supply Chain."](http://www.manpowergroup.com/wps/wcm/connect/manpowergroup-en/home/social-responsibility/policies/under%20Procurement/Supply+Chain.)

key practices that make up the Supply Chain Business Partner Policy. Second, business partners must expressly notify ManpowerGroup should any of the fourteen key principles cause specific concerns.

This global policy extends to all worldwide operations. It was first piloted in 2009 in North America, with 65 of ManpowerGroup's largest global suppliers. To date, it has been implemented in nearly half of ManpowerGroup's operations across the world, specifically in most of their European operations, in Argentina, and in some Asian and African countries. Beginning in Q3 2013, all ManpowerGroup operations will be required to certify that they have taken steps to implement the policy.

France in particular, which represents nearly 25% of ManpowerGroup's business, has a very diligent system of supply chain management. Suppliers contracted by ManpowerGroup's operations in France must submit specific internal company policies and procedures, along with published Social Reports, and any other information that demonstrates further positive assurance to the adherence of the key CSR principles.

The following procedure is in place for situations where a supplier is suspected of violating any of the key practices:

1. Establish that the supplier is in violation of key practices.
2. Discuss with the supplier to determine what exactly the issues are.
3. Work with the supplier to achieve compliance.
4. If the supplier makes progress, ManpowerGroup will continue to work with them to achieve compliance; if there is no progress, however, the relationship is ended.

ManpowerGroup has designed this procedure in order to encourage non-compliant suppliers to improve practices. If a non-compliant supplier were cut off completely, it would not have any incentive to change the way it does business. By giving suppliers the incentive and opportunity to resolve challenges, ManpowerGroup has the opportunity to correct undesirable practices and have a positive impact on human rights in the industry. The policy is still relatively new, and as of yet, there have not been any suppliers de-listed due to non-compliance with the key CSR practices.

2.3. Specific Examples of External Initiatives

ManpowerGroup has launched various external initiatives to combat human trafficking and forced labor. These provide direct help to survivors, promote policies and procedures to combat these practices, and raise awareness about the issues. These initiatives positively advance human rights by combating human trafficking, thus following the support dimension of UNGC Principle 1 and the imperative to eliminate forced and compulsory labor under UNGC Principle 4. These external initiatives have a positive impact on the company's bottom line because ManpowerGroup's reputation as an ethical company increases brand value, and positive employee engagement directly correlates to decreased attrition rates and retention of talent.

While some initiatives begin with local ManpowerGroup offices, others are first implemented at the corporate level through the Corporate and Government Affairs department, which often partners with prominent anti-human trafficking and forced labor NGOs and sometimes engages local ManpowerGroup operations in these initiatives as well. ManpowerGroup encourages local offices to engage in both local and global initiatives to promote strong values and high standards in their work.

2.3.1. Directly Impacting Survivors

Recognizing that there is a need to address the negative impact of human trafficking and forced labor on individuals, ManpowerGroup has entered into numerous strategic alliances to provide trafficked persons with access to education and training to help them transition to non-exploitative, honorable work. The program also focuses on persons at high risk of exploitation to prevent them from falling into human trafficking or forced labor. This work is guided by the third AEP, which encourages development of corporate strategy and anti-trafficking policy permeating all activities.

One example of ManpowerGroup's support for the diverse initiatives of its local offices is their work with the Casa de las Mercedes organization. In 2008, ManpowerGroup Mexico and ManpowerGroup began an initiative to support a shelter for women and girls who were recovering victims of human trafficking. Through this initiative,

approximately 140 women and girls have been able to live in two residential facilities for an average of one year. The Casa de las Mercedes initiative provides counseling, recreation activities, and job training as well as beds, meals, and a nursery for children. ManpowerGroup's support has made a dramatic difference in the resources available to the women and girls the shelter serves. Much of ManpowerGroup's contribution has been in the form of volunteerism from local ManpowerGroup staff in Mexico. ManpowerGroup itself has given Casa de las Mercedes about \$5,000 in financial donations and has made in-kind contributions of online training resources to help some of the older girls prepare for work.

ManpowerGroup shares initiatives like the Casa de las Mercedes initiative with its entire global network of local offices through its annual Social Responsibility Report and frequent internal best-practice sharing communications.

Another example of an initiative that directly impacts survivors is ManpowerGroup Columbia's Jovenes Visionarios initiative. Launched in 2008, Jovenes Visionarios targets areas where workers are vulnerable to sexual exploitation and identifies competencies, provides training, and works to improve participants' personal and social skills to prepare for non-exploitative employment opportunities.²⁴

Since 2009, ManpowerGroup has worked with Second Chance Employment Services to advance meaningful employment opportunities for women at risk, including survivors of abuse and human trafficking. This initiative began at ManpowerGroup's Washington, D.C. office. ManpowerGroup has since helped Second Chance Employment Services' operations expand to New York City and Atlanta through ManpowerGroup offices in those two cities.²⁵

2.3.2. Promoting Policies and Procedures

In accordance with AEPs three, five, and seven, ManpowerGroup promotes anti-human trafficking policies and procedures both internally and externally. In July 2011, David Arkless, ManpowerGroup's then President of Corporate and Government Affairs, was named President of the Board of End Human Trafficking Now (EHTN), a Swiss-based

organization. ManpowerGroup has done extensive work with EHTN to combat human trafficking, including helping to draft and promote the Athens Ethical Principles. ManpowerGroup and EHTN promote the adoption of anti-human trafficking policies and procedures by other companies around the world, for example through the BBC Working Lives documentary, which highlights good business practices in tackling human trafficking in different business sectors and regions around the world.²⁶

Also in line with the seventh AEP — sharing good business practices — ManpowerGroup encourages companies to adopt their own anti-trafficking policies and initiatives by developing principles and policies the staffing and employment services industry can easily adapt and use to create their own anti-trafficking measures. In 2011, the Dhaka Principles for Migration with Dignity were produced at a round table in Delhi, India, by the Institute of Human Rights and Business, in consultation with a range of stakeholders from business, government, and civil society and with the support of ManpowerGroup.²⁷ The Dhaka Principles provide a guide for the due diligence and best practices companies should undertake to ensure migration with dignity. They include not charging workers for recruitment; clarity and transparency in work contracts; non-retention of passports and other identification documents; the creation of “inclusive” codes of conduct; non-discriminatory, fair, and direct remuneration; worker representation; access to effective remedy and to credible grievance mechanism, without fear of recrimination or dismissal; adequate health and safety protections; and safe and timely return of migrant workers to their countries of origin.

24. This project was featured in the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) report, Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking. UN.GIFT, Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking. Available at http://www.ungift.org/docs/ungift/Private_Sector_Web.pdf.

25. Second Chance Employment Services: http://scsnet.org/press_releases/press_release-global_leader_in_w.shtml.

26. BBC Working Lives documentary (first aired 1 May 2010). Available at http://www.youtube.com/watch?v=3bqS2NkxFak&list=UU_J5SAYEYD6lFZ15FAnZNBA&index=3. In this video, ManpowerGroup was showcased as a business active in fighting human trafficking and Mr. Arkless was interviewed in the Manpower Mexico offices introducing ManpowerGroup's projects assisting victims of human trafficking in Mexico.

27. Available at http://www.ihrb.org/about/programmes/dhaka_principles_for_migration_with_dignity.html.

In 2012, ManpowerGroup joined with eight other international corporations²⁸ to found the Global Business Coalition Against Human Trafficking (gBCAT). Through gBCAT, companies will coordinate their efforts to combat human trafficking, allowing them to effectively work together for an increased impact. They focus on certain key areas, including:

- Training and education of employees, vendors, and sub-contractors;
- Identifying and preventing forced labor in supply chains and operations;
- Raising awareness of company policies that combat sex trafficking, specifically of children in travel; and
- Outreach through leadership and the communication of best practices.

In February 2012, during a conference entitled, “Engaging Business: Addressing Human Trafficking in Labor Sourcing,” ManpowerGroup and Verité presented “An Ethical Framework for Cross-Border Labor Recruitment,” including a checklist of specific “Standards of Ethical Practice” for firms involved in cross-border recruitment of workers. The Ethical Framework for Cross-Border Labor Recruitment also includes a verification and certification process designed to document compliance with the framework and provide access to essential information, allowing potential business partners and other third parties to avoid unethical labor sources. This is the first of three phases for the project. Phase Two will create a demonstration project to measure the effectiveness of the ethical framework in a real-world labor market setting. Phase Three will include developing and disseminating the results, recommendations, and supporting materials for wider replication and adaptation.²⁹

2.3.2.1. Policy Promotion at the Governmental Level

In accordance with the sixth AEP, calling on governments to revise laws and regulations to enhance anti-human trafficking policies, ManpowerGroup also promotes policies to combat human trafficking at the governmental level in the countries where it operates. One example is ManpowerGroup’s work with the Vietnamese Department of Overseas

Labor (DOL) concerning migrant workers, a particularly vulnerable group.

ManpowerGroup works with the DOL to promote ethical policies at every stage of the labor migration cycle. In the pre-migration stage, ManpowerGroup promotes better practices towards managed, time-limited overseas job assignments and clear profiling of qualification requirements of overseas job opportunities. Also in the pre-migration stage, ManpowerGroup advocates for pre-employment training that satisfies host country practices and job requirements. During overseas employment, the goal is to introduce measures that ensure appropriate protection of migrant workers’ rights. They work to enhance the employability of migrant workers through training, providing almost 4,000 online training programs. One of ManpowerGroup’s goals is to implement effective grievance procedures to ensure that there is accountability for employment and working conditions. Post-migration ManpowerGroup works with the DOL to introduce better procedures and practices for repatriation and reintegration into the Vietnamese labor market. Reintegration involves recognizing skills and experience acquired during overseas employment and providing job placement services for returning workers, as well as promoting and supporting returning nationals’ entrepreneurial endeavors.

ManpowerGroup is in the process of working with the DOL to achieve these goals. As this project is still in its early stages, there are no statistics on its level of success yet. The ultimate goal is to make cross-border recruitment practices more accessible to Vietnamese job candidates and thereby reduce the potential for abuse and human trafficking.

2.3.3. Awareness-Raising

In accordance with the second AEP, awareness raising and education, ManpowerGroup seeks to raise awareness of human traffick-

28. The founding members of gBCAT are Microsoft, Ford, Coca-Cola, NXP, The Carlson Group, ExxonMobil, Travelport, ManpowerGroup and Delta Airlines.

29. ManpowerGroup and Verité, An Ethical Framework for Cross-Border Recruitment: An Industry/Stakeholder Collaboration to Reduce the Risks of Forced Labor and Human Trafficking, 2 (2012). See also <http://www.prnewswire.com/news-releases/manpowergroup-and-verite-release-ethical-framework-to-combat-human-trafficking-and-forced-labor-in-cross-border-recruitment-139392998.html>.

ing through a variety of initiatives that also call on governments to revise laws and regulations. Educational initiatives often include the company's own good business practices, in accordance with AEP six and seven. The following are a few examples representative of the company's many awareness-raising initiatives.

Speaking engagements and other public appearances are some of the methods that ManpowerGroup uses to raise awareness. President of Corporate and Government Affairs, David Arkless, has made many public appearances to speak about human trafficking. Mr. Arkless is a regular source on the subject for CNN, BBC and CNBC.³⁰ He has appeared as a speaker at the World Economic Forum, the Office of Economic Cooperation and Development, and before the United Nations, the European Parliament, the UK Parliament and House of Lords, US Congressional and Senate Committees and at various internationally renowned business schools. He also led a working session on ending human trafficking at the fifth annual meeting of the Clinton Global Initiative and was a featured speaker at the 2011 Global Women's Initiative in Atlanta, Georgia.

Additionally, ManpowerGroup raises awareness of human trafficking by sponsoring numerous events that garner international media attention. For example, in 2010, ManpowerGroup and the Not for Sale campaign entered into a memorandum of understanding – under which ManpowerGroup was the main sponsor – for the Stop Paying for Slavery Tour through which ManpowerGroup developed a workshop for businesses to educate them on what they could do to combat human trafficking. ManpowerGroup also sponsored the Red Card Campaign, a “flyer blitz”, during which ManpowerGroup staff and other volunteers distributed flyers raising awareness of human trafficking

and forced labor to over 9,000 soccer fans heading to the opening day of the 2010 FIFA World Cup in Cape Town, South Africa.³¹

Other awareness-raising campaigns ManpowerGroup has participated in include the UK's Anti-Slavery Day and Sport Against Trafficking's Row for Freedom, ManpowerGroup's largest awareness-raising campaign to date. This initiative is still receiving international media coverage.³²

3. CHALLENGES, LESSONS LEARNED AND RECOMMENDATIONS

ManpowerGroup's CSR commitments are evaluated each year by its Board of Directors, which reviews the total effectiveness of ManpowerGroup's performance, including its social performance, on behalf of the company and its shareholders. In this evaluation, each committee of the Board meets in executive session to analyze its work and processes. This analysis is then brought before the full Board, which reviews its work in executive session. The result of this analysis is used to start a dialog between senior management and the Board.

The first lesson from ManpowerGroup's experience is that any plan for such a policy must be executable on the ground. The organization must therefore focus on what it realistically can do – both practically and physically – and tailor its plan accordingly. A realistic timeline is paramount. Secondly, in order for any such large-scale plan to be effective, it must have the support of the company leaders. The leadership must fully embrace the program and support a practical timetable if it is to succeed. For ManpowerGroup, this has resulted in its current multi-faceted approach attacking the problem of human trafficking via internal and external initiatives.

The main difficulties in implementing anti-human trafficking policies for a large multinational corporation like ManpowerGroup lie in the global scale of operations and the large number of suppliers involved, both for the core business and for the procurement of ancillary supplies. There are also differences in laws and regulations related to labor across countries, all of which must be respected in a way that is consistent with ManpowerGroup's commitment to the ethical treatment of workers. This is especially problematic in the staffing and recruitment sector, where the

30. Examples include an appearance on CNN to defend the Athens Ethical Principles and to discuss the need for companies to self-regulate and make it a priority to check vendors and partners to ensure that they adhere to ethical business practices and do not use forced labour.

31. For more information about the Stop Paying for Slavery Tour and the Red Card Campaign see the Not for Sale Campaign website at <http://www.notforsalecampaign.org>.

32. For more information please see the Row for Freedom website at <http://www.rowforfreedom.com> and the Not for Sale Campaign website at <http://www.notforsalecampaign.org>.

good being supplied is human beings in need of employment. Accountability is fragmented both for suppliers and, in some cases, for governments. Issues related to this challenge are explained in Section 1.3. The Problem.

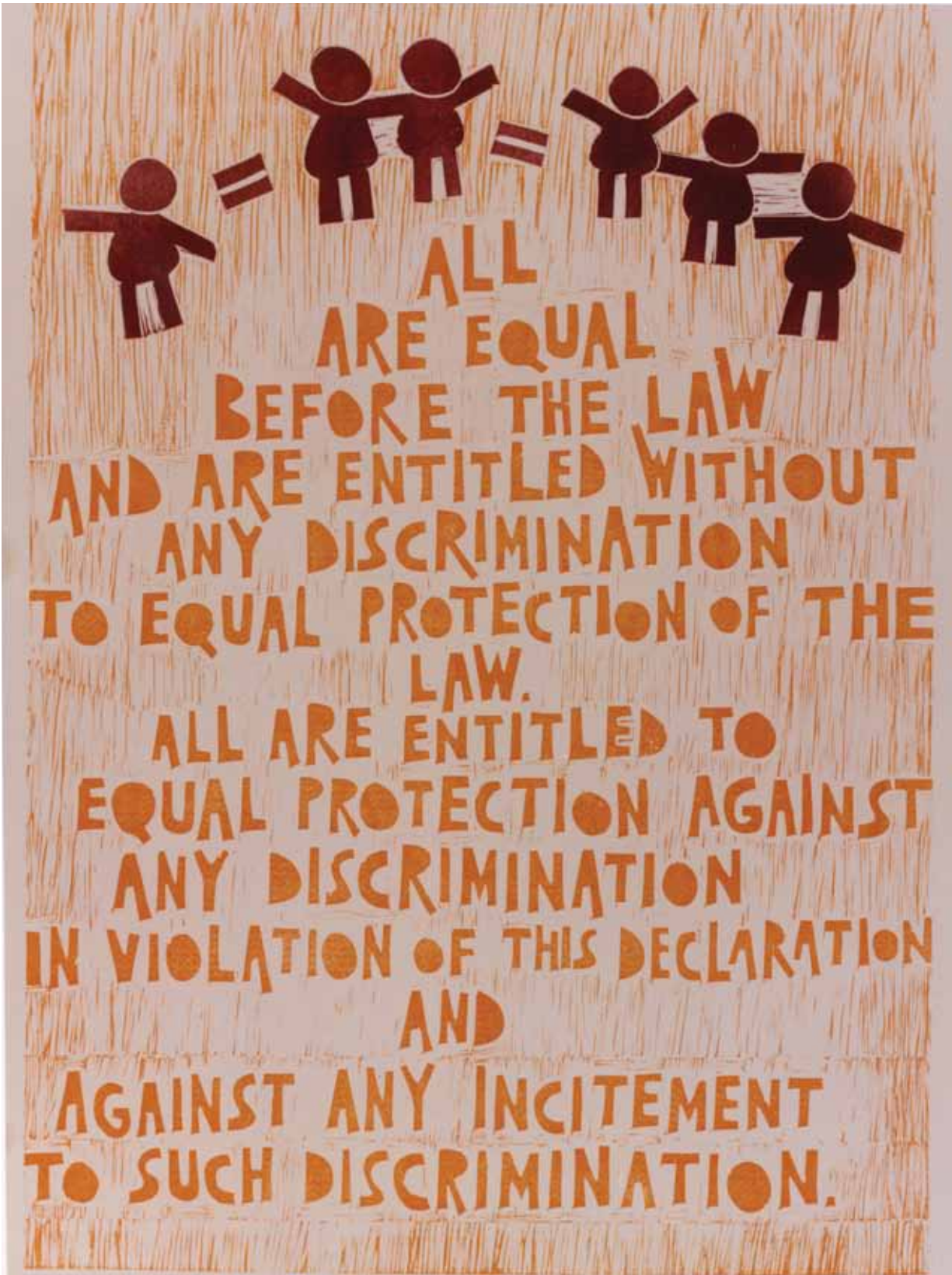
Addressing issues related to human trafficking and forced labor has had tangible benefits to ManpowerGroup's business. The issue of supply chain integrity has become very important to ManpowerGroup's clients, analysts, regulators, employees, and other stakeholders. The Supply Chain Business Partner Policy has helped increase ManpowerGroup's reputation as an ethical company and also benefits ManpowerGroup's investor and community relations as well as its reputation among shareholders. Furthermore, ManpowerGroup has found that its employees feel strongly about its ethical performance and are proud to work for a company that stands for ethical values. In fact, ManpowerGroup has observed decreased attrition among employees. When an experienced person leaves a company, it costs approximately one year's salary to find and train a replacement. As of 2011, attrition was nearly halved among ManpowerGroup employees in Sweden, who raised money for refugees and participated in anti-human trafficking programs and advocacy. ManpowerGroup's internal and external human rights policies

and practices, including its anti-trafficking initiatives, are credited with cutting attrition by 42% in ManpowerGroup's Swedish branch, saving approximately \$1.7 million in this part of the company alone.³³

ManpowerGroup already has a strong prevention program in place and is working towards developing a complementary monitoring mechanism. Moving forward, it is extremely important that ManpowerGroup establishes such a mechanism to ensure that human rights and anti-trafficking policies are duly implemented across the company. With a dedicated team to spearhead these initiatives, along with a value system that extends to the many arms and partners of the organization, further progress in addressing these challenges will be made.

ManpowerGroup is committed to promoting ethical business practices across the globe. Its multi-pronged approach to combating human trafficking and forced labor serve as an important example to other international companies that wish to implement policies to combat human trafficking and forced labor which are ethical, sustainable, and make good business sense.

33. See Interview of David Arkless, available at <http://womenetics.com/Pressroom/press-coverage-womenetics-global-womens-initiative-panelist-interviewed-by-the-epoch-times>.



TOTAL S.A.:

The Journey Towards Implementing a Commitment to Respect Human Rights

By Andrea Shemberg and Caroline Meledo¹

Human rights issues addressed

- › Child labour
- › Diversity and/or non-discrimination in employment
- › Forced labour
- › Freedom of association/collective bargaining/collective action
- › Human rights and environment
- › Indigenous people's rights
- › Occupational health and safety
- › Supply chain management
- › Working conditions

Human rights management practices addressed

- › Getting started
- › Strategy
- › Policy
- › Processes and procedures
- › Human Resources
- › Legal Compliance and Ethics
- › Procurement
- › Training
- › Communications
- › Measuring impact and auditing

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › Universal Declaration of Human Rights
- › UN Guiding Principles on Business and Human rights
- › Voluntary Principles on Security and Human Rights
- › Danish Institute of Human Rights Human Rights Compliance Assessment
- › CDA Collaborative Learning Projects
- › SA8000

ABSTRACT

Total S.A.'s (Total) commitment to respect human rights is expressed in the company's Code of Conduct. Since the year 2000, Total has been advancing on the journey to embed a human rights approach into its operational policies and processes. Total combines a value-based and a compliance-based approach to embedding human rights across countries and functions. On the one hand, it develops programs and initiatives to help ensure employees across the business are aware of and trained on the company's human rights commitment as it relates to the company's work and in relation to its work with business partners. For example, it is rolling out a company-wide awareness raising campaign, including a practical Human Rights Internal Guide for operational teams. Additionally, a series of mandatory policies and procedures have been implemented to help ensure human rights are respected across functions, business activities and contexts. For example, it conducts ethical assessments of its subsidiaries and is tailoring these assessments to include human rights relevant indicators. The company has also started to look into the sustainability practices, including human rights, of its suppliers and contractors. These approaches are helping the company to continuously improve performance regarding ensuring respect for human rights throughout its activities and relationships.

1. COMPANY PROFILE

Started in 1924, Total is an oil and gas company based in France. In 1999, the company merged with another major oil company, PetroFina, and in 2000 with Elf Aquitaine. The three companies are referred to as the "Group". Today, Total holds hundreds of subsidiaries in 130 countries and has nearly 110,000 employees² and thousands of suppliers worldwide. In 2011, Total had a net income

of €11.4 billion and its sales reached €184.7 billion. It is ranked 5th among listed international oil companies in the world. Recently, Total has repositioned its business strategy and diversified its activity and serves more as an energy company than just an oil and gas company. Total's mission is to "responsibly enable as many people as possible to access energy".

Total has three major business segments: Supply & Marketing; Upstream (Exploration & Production, Gas & Power) and Refining & Chemicals.

2. CASE STUDY METHODOLOGY

This case study is based on a document review and interviews carried out over a three-month period (June - August 2012). Eleven interviews have been conducted with Total employees who represented different geographical and technical contexts. All interviewees have been or are still involved either in creating the Group approach towards human rights at headquarters or rolling out human rights policies and procedures in operational contexts. Two external interviews were conducted with GoodCorporation and the Danish Institute for

1. Andrea Shemberg is a legal consultant on business and human rights with more than 10 years of experience in the field, including 4 years as Legal Adviser to the UN Secretary-General's Special Representative John Ruggie. Caroline Meledo is a corporate citizenship and engagement advisor at Sodexo UK & Ireland. She has expertise in sustainability and stakeholder engagement and works on the business and human rights agenda. Prior to joining Sodexo, she interned as a gender analyst with the UN Special Representative on Business and Human Rights, John Ruggie. This case study has been developed in line with the Global Compact Case Study procedures and process. Total, the subject of this study, has been involved in reviewing the text before publication. Peer review of the case study was provided by: Ms. Lene Wendland Adviser on Business and Human Rights at Office of the United Nations High Commissioner for Human Rights (OHCHR); Monica Bowen-Schrire, Senior Advisor, Strategy & Sustainability, Vattenfall; Alessia Priolo Human Rights Specialist, ENI, Betina del Valle Azugna, Corporate Sustainability Manager, Grupo Sancor Seguros.

2. Cited from Total Code of Conduct, statistic as of December 31, 2011.

Human Rights, both of which provide consultancy services to Total. Representatives of the Total Compliance office participated in all interview calls. The full list of interviews is listed in the Appendix. Pursuant to the Global Compact procedure, the draft case study text was reviewed by three external reviewers from industry and the Global Compact. The text has been approved by Total and the Global Compact before publication.

3. TOTAL'S EFFORTS TO IMPLEMENT THE CODE OF CONDUCT

This case study tells the story of Total's ongoing efforts to implement its "Code of Conduct"³ across the Group specifically regarding human rights issues. The case study focuses on a large and diverse company's approach to living up to its responsibility to respect human rights. It analyzes the company's challenges and initiatives and attempts to bring out some lessons that could be relevant to other companies that are on a similar journey.

3.1. UNGP 16 – Human Rights Policy and Implementation

Total's approach and initiatives are examined here in relation to UN Guiding Principle (UNGP) 16⁴ which requires companies to express their commitment to the responsibility to respect human rights in a statement of policy that is (a) approved at the company's most senior level, (b) informed by relevant internal and external expertise, (c) stipulates the expectations of all relevant parties with respect to human rights, (d) is publicly available and communicated to all relevant parties and "(e) is reflected in operational policies and procedures necessary to embed it throughout the business enterprise". The case study is also directly relevant to Total's implementation of the UN Global Compact Principles 1 and 2 relative to respecting human rights.⁵

3.2. Setting the Course: the Advent of a Policy Commitment to Respect Human Rights at Total

UNGP 16 requires that companies express their human rights commitment in a statement of policy approved by the most senior level of the business enterprise because the leaders of a company can "set the course", or decide on a strategic direction, from which other policies flow. While cultural shifts within organizations can come from employees or others at the operational level, and ultimately the behaviour of operations level people is fundamental, implementing policy changes across a company's operations will require commitment from the top of the organization.

Total's policy commitment started from the top in 2000, around the time when Total merged with Elf and Fina. The main driver for the creation of its Code of Conduct was the personal commitment of the CEO to ethical values and his endeavor to create a shared solid and ethical company culture across the teams of the three merged companies.

The CEO insisted on setting out a Code of Conduct that would be approved by the Board of Directors, publicly communicated and that would describe the expectations of Total's personnel, suppliers and business partners. Further to establishing the Code of Conduct, an Ethics Committee that reports to the CEO and Board of Directors was established to support its implementation. As described in more

3. Code of Conduct, Total, March 2012 (latest update) http://www.total.com/MEDIAS/MEDIAS_INFOS/5197/EN/Total-2011-code-of-conduct-EN.pdf.

4. See UN Guiding Principle 16 at: <http://www.business-human-rights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>.

5. Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; Principle 2: make sure that they are not complicit in human rights abuse (<http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html>).

detail below, the support from the top has been fundamental to Total's continued work to embed its policy commitment to respect human rights within the company.

The Code of Conduct is Total's core policy commitment that covers ethics and human rights. Over time, inputs from external and internal stakeholders have shaped both the Code of Conduct and Total's approach to its implementation. It has been updated six times since 2000. Leading external organizations working on ethics and human rights, as well as internal consultations and collaborations across functions and subsidiaries, helped shape a Human Rights Internal Guide. The guide brings the Code of Conduct's aspects relative to human rights to a practical and operational level and is used for training purposes as well as a reference guide. It is also publicly available.⁶

The Code of Conduct is available in 24 languages, published on both external and internal websites, and is distributed across its functions and subsidiaries. Total adapts the Code's communication strategy and style when needed. For example, the core elements of the Code are communicated to suppliers through the Fundamental Purchasing Business Principles. Where appropriate, the company uses accessible summary fliers or short documents in local languages. Where literacy levels are low, pictures or cartoons may be used to communicate the main concepts of the Code.

The section of the Code relevant to UNGP 16 states, "Our ethical commitment is based on three core values: Respect as the source of sustainable, trust-based operations and relations; Responsibility toward others and in our jobs; and Exemplary behaviour, which underpins the internal and external credibility of our actions and initiatives."

For these ethical values to have a meaningful impact, they have to be expressed through a certain number of business principles applied in our sphere of activity—continuously upholding respect for Human Rights standards, an ongoing concern with safety and environmental protection, respect for everyone we work with, integrity towards the company

and in our business relationships, non-interference in political processes, and support for colleagues, host communities and businesses partners. In every unit, senior management is responsible for instilling these ethical values and ensuring that the corresponding principles are applied".

In addition to top-level commitment to business ethics and human rights, external events also influence Total's approach. In the early 2000's, the development of the Voluntary Principles on Security and Human Rights created a new common consciousness around the human rights issues related to security in extractive industry projects. Additionally, Total was facing substantial criticism of its impact on local communities by NGOs and the media, notably but not only, with regard to some well publicized law suits filed regarding the Yadana pipeline project in Myanmar, in which Total was the operator. The external pressure turned rapidly into internal questions, where Total's employees, concerned themselves, asked for information and explanations about the situations at stake. It became important to internal and external stakeholders that Total demonstrate its efforts to ensure respect for human rights throughout its operations.

Another catalyst for building internal consciousness and competence on human rights was the movement at the United Nations on business responsibilities for respecting human rights. In 2004 and 2005, a lively and even divisive debate was in progress regarding a document approved by the Sub-Commission to the UN Commission on Human Rights, the "Draft Norms".⁷ Total's General Counsel convened internal thinking around the "Draft Norms" to raise awareness in the legal department and among others in the company of the human rights agenda. As a result of the UN-level discussions, NGOs, such as Amnesty International, submitted questions to Total regarding their views on the "Draft Norms" and sought Total's position on human rights responsibilities for businesses. This sparked active interest internally to understand the developments at the UN on business and human rights and how this might relate to the company's activities. In 2005, the UN Secretary-General appointed the first Special Representative on Business and Human Rights to examine business responsibilities for human rights. Total became actively involved in the consultations convened by the Special

6. Total, Human Rights Internal Guide, http://www.total.com/MEDIAS/MEDIAS_INFOS/4842/EN/Guide-pratique-des-droits-de-l-homme-VA.pdf.

7. The Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12 (2003).

Representative, and later the company's CEO and General Counsel expressed their public support to the business and human rights framework developed by the Special Representative. Around the same time, Total added human rights competence into their Compliance section to give support to the Ethics Committee on human rights issues and complement the work that lawyers across the company were providing to tackle human rights issues.

3.3. Making the Commitment Operational

Since 2000, Total has taken a number of conscious steps to implement its Group-wide commitment to respect human rights such as adding internal competencies, issuing several supporting policies along with the Code of Conduct, developing internal training and materials, creating requirements for suppliers, running assessments, and participating in sectoral or cross-sectoral efforts to improve practices. Total's efforts are both multifaceted and sometimes innovative. At the same time, there is firm awareness that the process to integrate human rights throughout the Group is an ongoing journey that will require continuous efforts to learn, innovate and improve over time. Most importantly, there appears to be a serious and high-level commitment to continue those efforts.

Total's high-level vision to embed human rights throughout the Group can be characterized as part compliance based and partially based on shifting culture and improving practices. Total's corporate vision takes on a compliance character where applicable legal rules exist. Where human rights remain in the realm of soft law however, Total's high-level vision is aimed at shaping internal culture and awareness, with Headquarters in a catalyzing role, facilitating, supporting and assessing improvements to practices. Total empowers the managers in subsidiaries and related entities to shape and enforce procedural changes given the context. Their individual understanding and proactive commitment are the crucial levers by which Total's high-level vision can be fully embedded into its activities.

Indeed, in some operating contexts, where human rights risks have been identified and where managers are particularly active and responsive to the Total human rights commitment, movement to embed human rights has been incisive. This case study will detail some of those efforts. As a general intro-

duction, the desk research and interviews for this case study include the below three categories of actions, which are driving some of Total's work to embed its human rights commitment throughout the Group.

3.3.1. Training, Awareness and Information Sharing

The Group undertakes companywide training and awareness raising on the Code of Conduct - the human rights modules have been strengthened in the last few years. In 2011, Total published the Human Rights Internal Guide specifically to offer concrete examples on how to manage human rights issues in operations. This Guide is used as the basis for awareness raising, training and internal discussions on human rights. Its publication also laid the foundation for further pilot projects on human rights. So far, the Guide is published in English, French and Spanish. A Chinese translation is currently in development.

3.3.2. Periodic Assessments of Subsidiary Operations

The Group conducts periodic ethical assessments of its subsidiaries, including respect for human rights. In recent years they have piloted an assessment that integrates more fully specific items and approaches for human rights issues.

3.3.3. Certifications, Assessments, Policies and Contractual Requirements for Suppliers and Contractors

Certification and assessment of suppliers are carried out along with standard appendices and clauses in procurement contracts that also relate to ensuring respect for some human rights issues. The Group has begun a project to help Lead Buyers and appropriate procurement Vice Presidents to identify priorities to improve purchasing practices related to human rights issues. Lastly, for the first time, Total is carrying out a pilot ethical assessment, derived from its internal assessments of contractors and subcontractors working on a project led by Total.

Other relevant activities, such as the consideration of human rights factors in strategic decision-making, are not covered. Further, this study does not detail the range of specific policies and directives that have been issued over the last few years. However, it is worth noting two policies implemented

in 2011 that include language on specific human rights issues and explain more specifically the Code of Conduct: the Security Charter and Security Policy (December 2011) and the Societal Policy (November 2011), which also implements implicitly the preexisting Indigenous Peoples' Charter for the Group.

3.4. The Journey Continues

Total has made significant progress since 2000 to build the necessary internal tools to ensure human rights are respected in the context of its business activities such as achieving the Human Rights Internal Guide, integrating human rights more fully into internal training and launching several pilot projects regarding procurement practices and assessments. It is difficult at this early stage to measure the effectiveness of some of Total's most recent and ongoing pilot programs in helping the company prevent, mitigate and remedy negative impacts on human rights. Total appears, however, to be on a constructive journey to embed its human rights commitment through learning experiences and continuous improvement. A few factors in particular indicate that Total's journey is indeed constructive. First, many of those interviewed seemed to understand that living up to the responsibility to respect human rights requires an ongoing commitment to shape business practices. Additionally, Total's corporate structure provides an appropriate high-profile for human rights, placing responsibilities across business functions, with the Ethics Committee and Legal Compliance and Social Responsibility office playing active roles. Additionally, those in charge of human rights have access to highest management in the company and the Board. Third, the company appears to have competent and committed individuals responsible for human rights who are supported by top level management in their active and open search for learning, innovative ideas and methods for embedding human rights more fully within the Group.

4. ANALYSIS - EMBEDDING THE HUMAN RIGHTS COMMITMENT

4.1. Human Rights Governance

The Ethics Committee and the Human Rights Coordination Committee (HRCC) oversee the human rights agenda across the Group's operations. The Ethics Committee reports directly to the Chairman and Chief Execu-

tive Officer. It is responsible for coordinating human rights progress, including raising awareness of and promoting a common baseline of values within the Group and defining guidelines for action collated within the Code of Conduct. The Committee implements and coordinates activities to ensure that the Code is known, understood and applied within each of the Group's sites, subsidiaries and branches. It also helps and supports operational teams facing ethical dilemmas and who can raise them directly with the Committee. Where requested, the Ethics Committee can play an advisory role in providing its expertise to operational teams dealing with high-risk situations or to the Strategic team making decisions on whether to pursue new projects where high risks have been identified. Importantly, the Ethics Committee has the power to determine on which subsidiary or related entity the Group will run ethical assessments, and it follows up with subsidiaries to ensure action plans are implemented and improvements are made post assessments.

The Chair of the Ethics Committee also chairs the HRCC, which meets every two months with members of relevant corporate departments including Legal, Communications, Purchasing, Public Affairs, Security and Sustainable Development, and the Exploration and Production Societal department. The Ethics Committee reports on HRCC discussions and activities to the board. The HRCC members discuss current issues and opportunities for training related to human rights such as disseminating the Internal Human Rights Guide across the Group.

The Ethics Committee and the HRCC are supported by two dedicated human rights lawyers who provide legal support and advice to the Ethics Committee in all matters of compliance, corporate responsibility and human rights. A number of other legal professionals across the Group with experience in human rights related areas, such as labour law, health, safety and security, also support the human rights agenda. The awareness raising activities of the Ethics Committee and Compliance Department over the last few years seem to have caught the attention of employees across the Group at operations level, as the number of questions and dossiers received by the Ethics Committee increased by 70 percent between 2010 and 2011, in particular regarding anti-corruption and other issues that have a human rights dimension.

IN PRACTICE – SHAPING BUSINESS PRACTICES IN MYANMAR

A former General Manager of Total Exploration and Production Myanmar (2008-2011) indicated that one of the big challenges in working in Myanmar during his tenure was to discuss human rights issues with authorities, local staff and community members because they did not always have a shared understanding of human rights, even for issues like forced labour.

However, in his view, Total successfully dealt with this lack of shared understanding in at least six ways:

1. establishing training for government officers: Total and the government established a program with the United Nations (UNITAR) for government officers to learn about international law, including human rights, international labor law, humanitarian law and other topics;
2. developing training for local communities and authorities on human rights and international labor law;
3. establishing a set of strict policies for contractors regarding employment rules, non-discrimination and other issues;
4. developing a particularly vigilant system of oversight for the operations regarding potential human rights issues;
5. establishing and maintaining close contact with the government—not only when there were problems, but to keep them informed more generally. For example, the former General Manager sent the Government copies of the Code of Conduct and Ethics Charter and policy on forced labour for their information; and
6. employing local people: 230 out of the 250 employees in the Myanmar subsidiary are local hires, including management positions, and they would have to take the training designed for all Total employees, including in the Code of Conduct.

Total's long-term presence in Myanmar means that the company has gained the trust of the Government as a responsible operator, providing local employment and a highly reliable supply of gas with a good safety track record and environmental performance. A stakeholder perception evaluation of the Myanmar operations conducted by CDA found that Government officials respected Total's operations because they felt they could trust the company's intentions. This trust, according to the former General Manager, allowed Total to broach discussions about human rights issues with the Government when other organizations in the country had difficulty doing so. He also said that such discussions would be facilitated if they started from basic values such as "respect" and "relationships of good neighborhood with local communities" rather than from a human rights angle.

The local Total managers developed special procedures on human rights with support from the corporate office. Each functional area of the company in Myanmar has a role to play in implementing the company's human rights policy, from human resources to contracting to security. The security staff, which

is unarmed, is made up of fairly high-level people, some with military backgrounds. Their role is to act as community liaisons and to maintain a good relationship with local authorities and community members. They also detect and report on potential human rights issues as they occur. Seventy percent of the staff are from local villages, and there is at least one security staff member originating from each village around Total's operations.

With regard to local community issues there are approximately 100 people employed to administer social and economic programs with local communities, even present in remote villages.

For the Myanmar subsidiary, a 'human rights event' includes what happens in the geographical proximity to Total's operations, even if not directly linked to operations, whilst bearing in mind that Total cannot interfere with public affairs but can raise awareness nonetheless. According to that definition, any 'event' is logged, reported internally and discussed at a meeting with operations, security teams and the social and economic development departments. The log goes to the General Manager who reviews it weekly; a copy is sent to the head office in Paris, which follows up. The former General Manager said that local community members are aware that he would get involved if an event created risks to human rights. In his opinion, this is why there are now only a few minor events occurring every year around the area of Total operations.

Most of the issues, perhaps 90 percent, are handled at site level. For example, if someone steals from a local vendor in the area of the operations, then it is handled on site. If a more complex issue arises, such as a person in the area of the operations charging community members with an illegal tax, then the event is addressed by the General Manager and if necessary taken to the national oil company or to the relevant government minister to discuss the event.

In the context of Myanmar, Total has also pushed forward an innovative project to improve local oil and gas practice. In 2009, Total presented the Government with the idea of creating a Forum with oil and gas companies to discuss good practices for projects. The idea was approved and this Forum is still active today.

According to the former General Manager in Myanmar, the responsible management of human rights issues can also contribute to the company's competitive advantage, in Myanmar and elsewhere. In his view, Total's Code of Conduct, its standards and record on health, society and the environment, as well as the operational standards and interest in building local partnerships in each country of operation, give Total an edge over companies who do not have the same approach to oil and gas investments.

4.2. Shaping the Company Culture

Embedding human rights into business activities requires a cultural shift. Achieving this is a major challenge when one considers the Group's large geographical, cultural and business operations diversity. Challenges include (1) resistance to rethinking issues that are traditionally referred to differently and handled by existing procedures; and (2) lack of skilled and experienced support (in house or by third parties) to help implement human rights due diligence processes in operations.

To address these challenges and advance the human rights agenda, as mentioned above, Total has opted for a combined approach that is both value-based and compliance-based. According to the Head of Compliance, this approach is adapted to the current normative reality of human rights responsibilities of businesses, which is regulated in some areas such as labour law, health and safety and often discrimination, but is often not regulated in other areas, such as with regard to community relationships.

A compliance approach to human rights applies where there is an applicable legal framework to the company, and the goal of this approach is to ensure conformity with the law. For example, Total has a compliance-based approach towards corruption. In this respect, Total is subject to strict laws in all its activities; Total has instituted a heavy compliance program across the Group. Over three years, the company developed an e-learning tool that is now available in 13 languages and which navigates cultural and religious issues. Since 2011, over 45,000 employees have completed the training, and 350 compliance officers for anti-corruption are present in branches, subsidiaries and in entities to facilitate the application of the anti-corruption policy.

Where no legal frameworks exist, Total has developed a number of mandatory policies that contribute to embedding human rights management throughout the Group and bringing about the needed cultural shift. For example, managers know that new projects will be evaluated for their human rights risks and that prevention and mitigation measures must be presented before new projects are approved. Additionally, all subsidiaries are supposed to take on and adapt the

Societal and Security Policies. Further, Total implements management tools to facilitate and monitor the implementation of the Code of Conduct, notably through its own operations (ethical assessments as described below), within collaborative projects (contractors' assessments as described below), and in its supply chain (described below). These efforts help signal to managers that they may be assessed on their performance of managing human rights issues. Along with these governance mechanisms, Total has developed a number of training (see below) and softer tools to diffuse the message of human rights (see the section on the Internal Guide and its dissemination) and get its managers fully and personally on board.

Whereas a compliance-based approach may guarantee alignment with applicable law in certain aspects of company management, it may not guarantee the best human rights outcomes. For example, shaping culture around respect for human rights can offer opportunities for more appropriate, innovative and custom prevention, mitigation and remediation techniques for each specific operating context as described in the Myanmar context previously. Further, and as identified by some interviewees, managing human rights issues requires a change in thinking, not just a change in procedures, which is difficult—if not counterproductive—to mandate. Encouraging subsidiaries and employees across functions and branches to take ownership and empower them to become more proactive, updating procedures as needed, may help to mitigate the problem of resistance that many companies face when there is distance between those writing directives (Headquarters) and those who must implement them (subsidiaries).

On the other hand, aiming to change the company culture could exacerbate previously discussed challenges, such as resistance to rethinking issues and a lack of skilled and experienced support, by providing an unclear mandate or associated incentives for managers throughout the Group to reshape policies and practices on the ground unless there is an existing perceived risk to those business operations themselves.

5. IMPLEMENTING THE RESPONSIBILITY TO RESPECT HUMAN RIGHTS - SOME SPECIFIC STEPS

5.1. Developing and Rolling-out the Human Rights Internal Guide⁸

In 2009, the Chair of the Ethics Committee and Legal Department commissioned a Human Rights Internal Guide to help communicate what the Group's human rights commitment means in practice to all company employees. The CEO fully supported the project – a recognized crucial step to the development, publication and dissemination of the guide.

The drivers for creating the Guide included (a) inquiries to the Ethics Committee signaling the need for further guidance to operations, (b) some rating agencies' expectations of a robust human rights management program, and (c) the need for a tool to get the Group's managers on board with the human rights agenda. It was felt that such a guide would be useful to define the responsibility to human rights of both the company and its employees in a number of different plausible situations, bringing into the same document several pre-existing policies covering different aspects of human rights. The project team had the difficult task of creating something practical that could be accessible and understandable across the Group. The design of the Guide was based on a similar guide Total had previously developed on anti-corruption issues that had been received positively throughout the Group.

The guide has two parts: the "Human Rights Internal Guide" covers the company Human Rights Policy, key standards and their definitions, and "Human Rights on a day-to-day basis" presents concrete case studies taken from a mixture of internal experiences and the experiences of other companies with key advice on actions to take.

During the 18 months that Total developed the Guide, the project team consulted with all relevant central functions: the Ethics Committee, Human Resources, Security, and the Exploration & Production Societal Department, which handles relationships with communities and is responsible for sustainable development issues. They also consulted with representatives of the three different branches although not individual national subsidiaries. Once the Guide was

in its final stage, Total also sent a draft to representatives of international labor unions for feedback.

Initially it was a challenge to get all departments that had a link to the human rights agenda on board with the project under a single 'human rights' rubric. Some of the teams had been tackling human rights related issues for years, but they had never linked their work to the company's human rights commitment. The Human Rights Coordination Committee played a key role in getting all the relevant departments on board. Those who developed the Guide felt it was crucial to the Guide's success that it not be developed in isolation from normal business practices.

5.1.1. Getting the Language Right

Another challenge to creating this Guide was to make human rights accessible to all employees across the Group. The human rights lawyers drafting the Guide had to strike a balance between accurately reflecting internationally recognized human rights standards and making the concepts accessible and practical to facilitate appropriate behavior.

At operations level, the words 'human rights' tend to make people wary and skeptical even if many human rights issues are already understood and managed either through environmental, human resources, or supply chain management. The Guide tries to link all of these familiar issues back to the human rights policy. It aims to help managers develop a reflexive reaction to both think about 'human rights' and reach out to the Ethics Committee when in doubt about the issues described.

While the project team did not consult with external organizations to put the Internal Guide together, it did rely on the substantial work done in the past with third-party organizations to help improve the management of ethical and human rights issues within the company.⁹

8. Human Rights Internal Guide, Total, June 2011, http://www.total.com/MEDIAS/MEDIAS_INFOS/4842/EN/Guide-pratique-des-droits-de-l-homme-VA.pdf.

9. See the work done with GoodCorporation and the Danish Institute for Human Rights in assessing human rights impact and compliance with subsidiaries, supply chain and affiliates.

5.1.2. Dissemination: Leading Culture Change – Communication and Training

The dissemination plan for the Internal Guide aims at a wide distribution throughout the Group, in particular to those who are perceived to be most vulnerable to human rights risks due to their position or geographic region. A dedicated online site was developed for the Guide; advertising boards were set up at Headquarters; targeted announcements were published on the Group's and subsidiaries' intranets. The Guide has been used in the ethics and human rights training, which

since 2011 has been extended. The Guide is also used in other seminars, conferences and training sessions that include presentations by the Ethics Committee and the Compliance and Social Responsibility Division.

Recently Total engaged an external organization to help them speed up the rolling-out process of the Guide and assist with internal awareness raising on human rights. They are in the process of making a few short videos that should speed up the dissemination process.

IN PRACTICE – RAISING AWARENESS AND E-LEARNING IN ARGENTINA

In an Argentinean subsidiary, the dissemination of a Spanish version of the Internal Guide, published in February 2012, was led by the Director of Human Resources and Communications. Immediately upon publication he presented it to the Management Committee of the Argentinean subsidiary and encouraged senior managers to share it with their teams. Along with the Head of Communications he developed a communications campaign. They distributed the Guide on their intranet and highlighted it in their widely read internal company magazine that each employee receives and often shares at home with their family. The magazine features an interview with the Chair of the Group Ethics Committee about the Guide and Total's commitment to respecting human rights. Additionally, once or twice a month, the communications team also organizes a breakfast with up to 12 employees to discuss personal issues in a more familial context. Initiatives around ethics are often discussed, which helps to sensitize employees to the importance of ethics for the company, and the Internal Guide has been on the agenda in the sessions since its publication.

The Internal Guide is being integrated into internal training. In the subsidiary, every new employee takes several mandatory e-learning modules within their first 4-6 months on the job.

They have developed a 2-hour module on ethics that covers the normative framework of the company in different areas (discrimination, bad behavior, corruption, conflict of interest). They are currently working on integrating the main aspects of the Human Rights Internal Guide into the ethics module. This e-learning tool will include a message by the country Director, as well as definitions and case studies.

The Director of Human Resources and Communications views the Internal Guide as a complement to existing guidance on other ethics issues such as anti-corruption, recruitment and others. He said he has noticed an important change at Total since he began with the company in 1994, where he sees much more rigor in their work on ethics and sees more active policies and tools are available to manage issues compared to past practices.

The Argentinean example is recognized as a good practice example within Total for taking ethics, including human rights, on board. It is also a good example of how crucial the active push of individual managers is to building awareness and sensitivity on human rights issues and Total's commitment to respect rights.

5.2. Ethical Assessments of Subsidiaries' Operations

Beginning in 2002, the Ethics Committee decided to use an external consultancy, GoodCorporation,¹⁰ to help assess the understanding and application of the Code of Conduct in its subsidiaries. Today, GoodCorporation's ethical assessments are carried out at the request of either a subsidiary or the Ethics Committee, and their purpose is to check the systems used to properly apply the Code of Conduct. GoodCorporation checks that (1) a policy exists; (2) a system is in place to implement the policy; (3) records exist and show that the system works in practice (performance); and (4) that stakeholders, when asked, agree that the system works and is fair. The original template covers 60 indicators, which have been complemented over the years with more criteria to cover issues specific to Total such as partnerships, security arrangements, privacy, terrorism, and physical security of sites. The assessment tool used for Total's operations now has 87 indicators, about a quarter of which cover issues related to human rights. Each year, since 2002, between eight and ten subsidiaries have undergone assessment; approximately 80 assessments have been conducted to date. According to the Head of the Ethics Committee, the assessments send strong signals to the entire Group that ethics are taken seriously.

In 2011, Total initiated an effort to more explicitly integrate and expand the scope of human rights issues in the assessment. GoodCorporation collaborated with the Danish Institute for Human

Rights (DIHR)¹¹ to create a custom assessment and include issues such as impacts on peoples' right to property, indigenous peoples' rights, resettlement, public security, security guards, and working conditions, such as working hours, rest periods, annual leave and maternity/paternity leave. The new set of indicators has been piloted in two subsidiaries in Myanmar and Bolivia. Myanmar was chosen because of the extensive experience of assessing operations there. Bolivia was chosen because of the active engagement of the Managing Director to test the new criteria in the local context, and because the subsidiary is planning significant new extractive operations in the country. Total plans to draw the lessons from the two

completed pilot assessments and mainstream them into all assessments.

The assessment process includes two weeks of interviews and visits on site. The subsidiary's practice is then evaluated against five grades, from non-compliance to commendation. The final report includes recommendations for necessary or encouraged improvements along with benchmarking and good practices. It is presented to the site management (senior management, health and safety officers, lawyers) and action plans are drafted accordingly. The Ethics and Compliance teams at Headquarters compile the results, benchmark performance subsidiary by subsidiary, and help drive performance with follow-up phone calls to review improvements. Further assessments may be planned after three to five years depending on the profile of the project and the size of the investment, especially if the subsidiary is considered to operate in a high-risk environment.

Most of the time, according to those who have carried out assessments for Total, the management in subsidiaries welcomes the assessments as it helps them identify where they are running the risks of non-compliance and reputational damage. However, it remains a challenge to engage with some operational-level teams where the understanding of some aspects of the Code of Conduct, notably human rights, is not well understood.

Beyond improving practice in the individual subsidiaries, the external assessment reports are used as an opportunity to tackle more systemic issues across the Group and improve processes by setting up pilot projects that could offer useful learning for other subsidiaries facing similar ethical and human rights challenges. Good practices and experiences are shared on the company's intranet.

5.2.1. Other External Assessments, Tools and Trainings Used

Total uses a number of other tools to help adapt practices at the subsidiary level. For example, it uses country-level human rights assessments from the DIHR to gather intelligence and analysis on human rights risks in a given country. These help Total inform decisions for investments and prepare the operational teams to adapt practices. The

10. <http://www.goodcorporation.com>.

11. <http://www.humanrightsbusiness.org>.

DIHR also runs workshops with local staff in subsidiaries to help them identify the local human rights risks. Total has used DIHR's Human Rights Compliance Assessment (HRCA)¹² in Angola (2009) and South Africa (2010), which helped draft tailored action plans and guide the subsidiaries' operations to mitigate human rights risks. The HRCA entails between 30 and 100 self-assessment questions depending on the country situation. It covers workplace and local community issues, as well as security forces and choice of supplier as specific modules added for Total's needs. This tool is considered useful internally to help raising awareness of human rights in various departments and stimulates discussions and collective deliberation on such issues.

Since 2003, Total has also worked with the CDA Collaborative Learning Projects¹³, an independent non-profit organization working on economic and social development issues and relationships with local communities. The CDA conducts assessments to try to detect how Total's impacts are perceived locally. The organization then recommends an action plan and publishes both the assessment report and recommendations on the web. Total has participated in CDA assessments in Myanmar, Uganda, Nigeria, Mauritania and Sudan. While Total is given the opportunity to flag misrepresented facts in the reports, the CDA does not seek Total's approval.

5.3. Improving Purchasing Procedures

The company's group-wide procurement policy spells out its own code for purchasing, which includes issues such as labour law and other compliance issues. Further, pursuant to a recommendation of the General Counsel and the Chair of the Ethics Committee, every procurement contract should append a document called the Purchasing Fundamental Business Principles or equivalent clauses detailing the expectations of suppliers to respect a range of ethical standards. This document covers 6 areas including: (i) prevention of corruption and conflict of interest and anti-fraud; (ii) free competition; (iii) fundamental rights

at work; (iv) protection of health, safety and security; (v) preservation of the environment; and (vi) economic and social development. A directive is currently being written to make it mandatory across the branches to either append the Principles or transpose it into agreements with suppliers.

Currently the Exploration and Production branch is developing a new set of clauses that focus on health, safety, society (local community issues), security and environmental protection. These clauses will represent expectations with which all major suppliers of the Exploration and Production branch should comply. Further, the Supply and Marketing branch is developing an audit tool on the Purchasing Fundamental Business Principles and carrying out a pilot of the audit tool with approximately 10 suppliers.

The specific operational procedures for procurement vary across the three branches: each has independent procurement strategies and vendor approval processes. They typically have very different supplier bases to adapt to the needs of their specific business operations. The branches still do share information and organize workshops to talk about topics they have in common, in particular when they have a major supplier in common.

5.3.1. Towards an Improved System: Integrating Human Rights Considerations into Supplier Assessments

The corporate Purchasing team is currently conducting a mapping exercise aimed at helping buyers better embed the company's sustainability commitment, including human rights, into their procurement activities and improve sustainable purchasing. A member of the corporate purchasing team in charge of governance, sustainable development and training and communication, leads the mapping project with the support of a cross-functional group. It consists of a self-assessment questionnaire that asks buyers about their knowledge of their suppliers' practices and suppliers' attributes in three sustainability areas: work rights, environmental issues and community or societal issues. An external consultant has been engaged to develop the assessment methodology to identify risk and opportunities for improvement in sustainability practices in the supply chain. The assessment methodology uses a scoring system with criteria to

12. <http://www.humanrightsbusiness.org/compliance+assessment>.

13. <http://www.cdainc.com>.

define the levels of risk. According to those interviewed, one of the key ingredients for the success of this project so far is the support and involvement of the purchasing Vice Presidents (VPs) at both corporate and branch levels. Their collective support sends a message that taking time to work on what can be done better is a necessary part of the Lead Buyer's job.

The questionnaire was sent to the Lead Buyers' line managers in each branch, who were mandated to complete it. One person in each branch was available to help Lead Buyers in this process. A member of the cross-functional group would discuss incomplete answers with the Buyer. The questions related to human rights issues were written in operational language and in a binary format (yes / no) to avoid confusion. This simple first version of the questionnaire can be improved over time. The key objective was that by simply asking Lead Buyers to think about the life cycle of products they buy they would think more broadly about the impact of their purchasing decisions.

The questionnaire itself helps therefore to both raise awareness and start bridging the awareness gap between the purchasing department at Headquarters and the Lead Buyers. Before the questionnaire was distributed, some had never engaged in human rights, environment or community issues. Now Buyers routinely flag issues and seek advice to define approaches to tackle them. This shows that the process has already met some success in raising awareness across the branches' purchasing teams.

Once the mapping is complete, Vice Presidents aim to create and validate action plans with their teams, including the Lead Buyers, to better manage the risks identified. They will develop audit tools, KPIs and remediation plans to be integrated into purchasing contracts and standard business reviews with suppliers. VPs plan to develop remediation initiatives that support suppliers' continuous practice improvement, rather than de-listing. While it might be easier for Lead Buyers to look for a new supplier rather than addressing the issues a particular supplier faces, this is not always realistic or constructive. In many cases, there are no alternative suppliers from which to choose. Most importantly, Total strives to improve supplier practices, rather than exclude them, which may have

adverse unintended consequences, notably in terms of human rights impact.

Ultimately, the pilot team hopes that Buyers will be more aware of and comfortable with human rights issues when engaging with suppliers. A good practice in that respect is for Lead Buyers to address human rights, environment and community issues with the supplier as soon as the contract is established, and then insert specific clauses linked to the specific risks identified. Similarly, Buyers can integrate sustainable purchasing considerations in their review of applications to a tender. At the time of the interview, the results from the branches were just being collected, thus the results of the mapping exercise were not known, nor was it known how successful the pilot project would be in terms of further shaping procurement practices around human rights risks. However, the clear aim for Total in this project is to develop an effective assessment methodology and roll it out across their procurement processes.

At this early stage of integrating human rights considerations into procurement, the scope of human rights issues and the level of integration into procurement practices will depend in part on individual managers' efforts to drive specific changes in their operations. But what the interview with the China subsidiary (see below) indicates, is that even where active managers are committed to human rights, their efforts will likely be affected by other considerations such as the need to find experienced auditors who use widely recognized audit tools, to be seen as fair to suppliers, and to balance the interests of the company to source locally and contribute to the development of the local economy.

5.3.2. Ethical Assessments of Contractors

Total has asked GoodCorporation to conduct an ethical assessment of the main contractors and sub-contractors executing a major project for Total. The assessment is tailored to the specific features of the project: management practices of Total, the main contractors and sub-contractors, with regards to issues such as treatment of employees and impacts on indigenous people. In GoodCorporation's view, this assessment is particularly robust and ambitious given the industry standard.

IN PRACTICE – SHAPING PROCUREMENT CRITERIA IN CHINA

In China, the Exploration and Production (E&P) branch contracts third party auditors to assess newly listed vendors, which are certified using Total's certification criteria. In recent years, some human rights issues have emerged from the audits, signaling a need to follow these issues more carefully.

After attending a two-day training on "ethics and business" in Paris, along with nearly 30 top managers from subsidiaries worldwide, the Sourcing Officer from China contacted the Compliance and Social Responsibility division to ask for someone to come to China to conduct a human rights workshop and help develop better social audits of suppliers.

The workshop in China brought a high-level message of standards and expectations, which brought greater clarity and understanding as operation teams can find it difficult to bridge the Group's standards with the lower standards in local markets and the business interest in sourcing locally.

Since the workshop, the Sourcing Officer has been working with the Group Compliance department to develop social audits of high-risk suppliers. They have chosen to use SA8000,

an auditable certification standard for decent workplaces. While SA8000 includes labour issues, it is not a complete human rights audit. Nonetheless, it is a positive step forward as suppliers trust it and auditors are experienced in following its process, notably because many retailers have been leading the way in that area. Because of this, Total can follow their lead.

Furthermore, this certification route takes advantage of the fact that human rights issues are more constructively framed and discussed through labour laws in China, especially as China has a set of protective labour laws on the books. Yet challenges exist where China's labour laws fall short of human rights standards. Total's policy commitment is to ask suppliers to follow the spirit of the international standard, which is more protective. This means that where no freedom of association is allowed by local law, the supplier can offer alternatives such as creating safety groups and setting up meeting rooms where employees can gather information and discuss employment related issues. How these issues are implemented in practice is still to be seen. A few pilot audits with the new tool will be conducted before the end of 2012.

5.4. The Road Ahead

Total has laid down firm building blocks over the years to drive the human rights agenda internally, but its strategy where legal rules do not exist is a long and arduous journey of changing both culture and procedures, while mandating some changes along the way. It means empowering employees to better understand human rights and integrate these considerations in their daily job and practices. But it also means involving suppliers and contractors in this process and engaging with industry partners, local communities, host countries and international organizations to drive the agenda everywhere Total operates.

In some respects Total has set out a course for itself that is much harder than a route using only top-down, mandatory approaches. But the hope is that this approach will lead to better outcomes such as improved human rights practices among suppliers and better human rights based solutions to resolve alleged grievances of community members where Total operates. In a strict mandatory, top-down approach Total could count on outputs such as measuring the numbers of suppliers excluded due to human rights issues, or a reduction in the number of human rights issues flagged. However, if Total is looking to improve practices internally and to be positively influential with its 150,000 suppliers and 110,000 employees, this harder, less certain journey is more likely to satisfy the goal.

6. ACHIEVEMENTS AND LESSONS LEARNED

The research and interviews carried out for this case study point to an evolution that is taking place at Total. According to a former Head of the Ethics Committee, reactions to the human rights discussion in internal trainings have moved from skeptical to interested to active. After three years of ethics seminars, managers are now well aware that ethics and human rights issues are crucial not only for Total Group, but also for them as individuals, for their career path and evolution in the company and industry. During 2011, senior executives from the Group came to the ethics seminars ready to share how they have dealt with human rights issues they have faced, demonstrating progress from theory to practice within the company. Movement on human rights is now spread among subsidiaries and business operations. Understanding around human rights is growing and more people are contacting the Ethics Committee and Compliance department for expert advice. Given Total's experience, there are several lessons learned that can help others in their efforts.

A. High level support is key: Top-level commitment and messaging is essential, especially when coming from the CEO and supported by active involvement of most senior management. A high-level consistent approach and commitment has shown subsidiaries the company's priorities and has supported local implementation.

B. Expect different paces in implementation: Different parts of the company move at different paces and a company should expect common strategies to be implemented at varied rhythms. Whereas the Human Rights Internal Guide can be used to train employees and conduct robust discussions of human rights in some places, it can simply send the right signals in other contexts. Where the topic is new and even threatening, the Guide can begin to open dialogue. All of these uses are productive.

C. No off-the-shelf solution: A tailored approach in specific contexts provides credibility and can assist sustainability by allowing local policies to change and stay relevant to the local context to achieve desired change.

D. What is achievable may depend on the history of the company in context: A whole set of factors will determine the drivers

for change in any context. The history of a company in an operating location, its business activity and the risk profile of the operating context will matter. All of these factors should be considered when new approaches are designed for managing potential and actual human rights impacts of company activities.

E. Internal challenges can be overcome through cooperation: Cultural gaps between and among business units and between central functions and operations can be overcome at least in part by forming cross-functional groups such as the Human Rights Coordination Committee. Additionally, internal learning and sharing can help bridge divides and create a community of learning within the company to speed up the progress of change.

F. Investing in a learning process: Implementing the responsibility to respect human rights requires a diversity of innovative approaches throughout business functions. Finding the right approaches for different contexts will require a large investment of time and energy to engage in a learning process. Along the way those driving change within the company will have to find ways to make the changes resonate with individual operating contexts.

7. APPENDIX: INTERVIEWEES FOR CASE STUDY

Legal Dpt. – Compliance and SR Division
Legal Dpt.-- Compliance and SR Division
Former Chairman of the Ethics Committee
Sourcing and Procurement Manager, Total Exploration & Production International Procurement
Office (IPO), Shanghai
Former Managing Director – Total Exploration & Production Myanmar (2008-2011)
Director Human Resources and Communication in Total Austral E&P (subsidiary in Argentina)
Sustainable Purchasing Manager – Corporate Purchasing Dpt.
Legal Dpt. – Compliance and SR Division
Legal Dpt. – Compliance and SR Division
Chairman of the Ethics Committee
Head of Compliance and Social Responsibility Division
Co-Founder GoodCorporation
Danish Institute for Human Rights, Analyst
Danish Institute for Human Rights, Analyst

TALISMAN COLOMBIA AND BLOCK 8:

Engaging with Indigenous Communities in a Conflict-Affected Environment

By Ana Maria Duque, Amy Jarek and Jennifer Poon¹

Human rights issues addressed

- › Human rights and environment
- › Indigenous people's rights
- › Occupational health and safety
- › Right to education
- › Right to food
- › Right to health
- › Security and conflict
- › Social investment and community development
- › Sphere of influence
- › Standard of living

Human rights management practices addressed

- › Getting started
- › Strategy
- › Policy
- › Processes and procedures
- › Communications
- › Training
- › Measuring impact and auditing

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › Voluntary Principles on Security and Human Rights
- › World Resources Institute
- › International Labor Organization Convention (ILO) 169
- › UN Declaration on the Rights of Indigenous Peoples
- › Organization of American States Declarations
- › Fundación Ideas para la Paz's "Conflict Sensitive Business Practice"

ABSTRACT

This case study examines how Talisman Colombia Oil and Gas Ltd. (TCOG), a subsidiary of Talisman Energy Inc. (Talisman), undertook community engagement with indigenous communities in a complex, conflict-affected environment during a joint exploration project in Block CPE-8 (Block 8) in Colombia.

As a signatory to the United Nations Global Compact (UNGC), Talisman and its subsidiaries seek to respect human rights in all business activities. In particular, TCOG's activities in Colombia were informed by Principle 'One' and Principle 'Two' of the Compact. The two Principles state that: "Businesses should support and respect the protection of internationally proclaimed human rights"; and that "Businesses should make sure they are not complicit in human rights abuses", respectively.² Talisman has also enshrined commitments to protect human rights and operate responsibly in two corporate policy documents: the Policy on Business Conduct and Ethics³ and the Global Community Relations Policy.⁴

To meet these commitments, TCOG undertook several efforts to ensure that its operations and engagement with the indigenous communities met or exceeded international best practice standards in regards to human and indigenous rights. These efforts included:

1. Conducting a detailed on-the-ground security risk assessment by senior security personnel trained in human rights issues management in Block 8. The assessment included a detailed analysis of the possible risks, potential for violence, the human rights record of security providers, the administration of the rule of law and a conflict analysis.
2. Entering into agreements with the Colombian Public Security Forces for the provision of security services in support of business operations that include a Memorandum of Understanding, which incorporates the Voluntary Principles on Security and Human Rights.
3. Sponsoring a process led by the Colombian Ministry of Defense to develop a Code of Conduct for guiding and regulating the Colombian Public Security Forces in their interactions with local indigenous communities. The Code was jointly developed and established by the Colombian Public Security Forces and local communities.
4. Partnering with an independent third-party observer, Fundacion Ideas Para La Paz, to monitor the engagement process and provide ongoing recommendations.
5. Developing a site-specific Code of Conduct for all actors engaged in activities on behalf of TCOG in Block 8, which incorporated cultural considerations.

1. Ana Maria is the Corporate Affairs and Communications Leader at Talisman Colombia Oil and Gas. From 2004 to 2006 she worked for Colombia's government as legal counsel on the High Counsel Office for Women Equity. Subsequently, she worked as Legal Counsel to the Deputy Minister of the Interior dealing with Human Rights' policies and Ethnic Groups' rights until 2009. She was then appointed as the Previous Consultation Process Leader related to projects in the Oil Industry in the Ministry of Justice and the Interior.

Amy Jarek is the Global Manager of Corporate Affairs Implementation at Talisman Energy Inc. As a founding member of Talisman's Corporate Affairs group she has played an integral role in the development and implementation of the Company's corporate responsibility policies, operating principles, risk assessment processes, stakeholder engagement, training and external reporting.

Jennifer Poon began her career as an intern in the Corporate Affairs Group at Talisman Energy Inc. She was subsequently hired as a Corporate Responsibility Policy and Ethics Analyst. She is currently a J.D. student at Harvard Law School in Cambridge, Massachusetts, where maintains her interests in international issues, human rights, and corporations.

The subject, Talisman Energy, Inc., has reviewed the text before publication. Peer review of the case study was provided by: Monica Bowen-Schrire, Senior Advisor, Strategy & Sustainability, Vattenfall; Jonathan Drimmer, Vice President and Assistant General Counsel, Barrick Gold Corp.; Gordon Glick, Head of Global Partnerships, Plan International; Errol Mendes, Editor-in-Chief, National Journal of Constitutional Law, University of Ottawa; Albert Kwokwo Barume, Head of the Programme on Indigenous Peoples, ILO; and Rita Anne Roca, Senior Specialist, Human Rights, Vestas. Sara Ellison & Esther Rodriguez of KMPG observed.

6. Developing a highly participative and tailored consultation process that sought to accommodate the communities' unique communication needs and incorporate cultural considerations into impact assessment and mitigation plans.

TCOG was ultimately recognized for its community engagement performance in a prominent national petroleum magazine, *Dinero*, by the director of Colombia's National Hydrocarbon Agency, who described TCOG's processes as "absolutely impeccable".⁵

Unfortunately, on 7 March 2011, in a highly publicized event, an illegal armed group operating in the area abducted 23 contractors. Within four months all abductees had been safely returned. The strength of TCOG's relationship with the communities, which was based on trust and mutual respect, allowed the company and the communities to face and overcome this crisis together in a collaborative manner. The case study will briefly address this incident and how it impacted community relations in Colombia.

The case study will provide a company profile of Talisman. It will then describe the challenges TCOG experienced with the community engagement process in Block 8 and elaborate on how TCOG overcame these challenges. Finally, the case study will reflect on the lessons TCOG has learned from its experience in Block 8.

1. COMPANY PROFILE

Established in 1992, Talisman Energy Inc. is a global upstream oil and gas company with headquarters in Calgary, Alberta, Canada. Talisman's main business activities include exploration, development, and production of crude oil, natural gas and natural gas liquids. Main operating areas include North America, the North Sea and Southeast Asia. Talisman also maintains a diverse international exploration portfolio with interests in South America and the Middle East. Aggregate production at the end of 2011 was 426,000 barrels of oil per day, of which approximately 55% were liquids and oil-linked gas and 45% were natural gas. Talisman's net income was \$775 million in 2011.⁶

Talisman has taken a number of steps to demonstrate its commitment to corporate responsibility, including becoming a signatory of the United Nations Global Compact in 2004 and becoming the first Canadian company to join the Voluntary Principles on Security and Human Rights initiative in 2008. As former President John Manzoni stated in Talisman's 2010 Corporate Responsibility Report, "Wherever we operate, we try to minimize our impact on the environment, work with the support of local communities and share the economic benefits of our activities...We recognize that Talisman must produce energy safely, responsibly and with the support of communities impacted by our activities, in order to preserve our license to operate".⁷

2. The Ten Principles. United Nations Global Compact. 25 April 2012. <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

3. Policy on Business Conduct and Ethics. 2010. Talisman Energy Inc. 25 April 2012. http://www.talisman-energy.com/responsibility/policies_management_systems/policy_on_business_conduct_and_ethics.html.

4. Global Community Relations Policy. 2010. Talisman Energy Inc. 25 April 2012. http://www.talisman-energy.com/responsibility/policies_management_systems/cr_policy.html.

5. Available in Spanish only. "Boom petrolero: hay que ordenarlo." Carátula — Boom petrolero: hay que ordenarlo. Artículo Impreso Archivado. 12 July 2010. *Dinero*. 25 April 2012. http://www.dinero.com/edicion-impresa/caratula/boom-petrolero-ordenarlo_73911.aspx.

6. "Talisman 2011 Highlights." Talisman Energy 2011 Annual Report. 2011. Talisman Energy Inc. 25 April 2012. <http://ar.talisman-energy.com/2011/talisman-2011-highlights.html>.

7. "President's Message." Talisman Energy 2010 Corporate Responsibility Report. 2010. Talisman Energy Inc. 25 April 2012. <http://cr.talisman-energy.com/2010/presidents-message.html>.

In December of 2010, Talisman issued its Global Community Relations Policy (GCRP)⁸, which defines Talisman's standards for engagement with communities, including indigenous and tribal communities residing in the areas of impact related to its projects. The Policy incorporates the broad principles of free, prior, and informed consent (FPIC) as recommended in a report commissioned by Talisman from Foley-Hoag, an internationally renowned legal and corporate social responsibility consultancy.⁹ The Policy was also informed by guidance provided by the World Resources Institute and several other expert organizations and individuals. The GCRP informed TCOG's community engagement practices in Colombia.

2. THE CASE STORY: COMMUNITY ENGAGEMENT CHALLENGES IN BLOCK 8

2.1. Block 8

Talisman began investing in Colombia in 2001, acquiring several non-operated interests over the years. In September 2008, TCOG entered a joint exploration project in Block 8 as the operating partner with Ecopetrol, Colombia's national oil company. TCOG is currently in the midst of exploration activities in Block 8.

Block 8 covers 2,392,424 hectares of land and is situated in Eastern Colombia, primarily in the municipality of Cumaribo in the department of Vichada. TCOG's activities take place mainly in the northwestern section of Block 8. The land is a mix of rainforest and savannah. As of 2011, TCOG has invested \$77.5 million in Block 8.

There are four indigenous reservations in Block 8: Saracure, Concordia, Chocon, and Unuma. The reservations are home to various indigenous communities. The majority of the people in the communities are of indigenous status (or descent), while a small minority is composed of settlers. TCOG encountered several challenging conditions in Block 8 that had to be taken under consideration during the community engagement process with the indigenous communities in the reservations.

8. Online copy available at: http://www.talisman-energy.com/responsibility/policies_management_systems/cr_policy.html.

9. Online copy available at: http://www.talisman-energy.com/responsibility/foley-hoag_report_on_fpic.html.

2.2. Challenges with Community Engagement in Block 8

2.2.1. The Presence of Illegal Armed Groups

Block 8 is located in a remote area of Colombia. Its remoteness plays a part in drawing and sustaining illegal drug-trafficking groups in the area, including the rebel guerilla group front of the Revolutionary Armed Forces of Colombia (FARC) and several other criminal gangs. By law, the presence of these groups necessitated Colombia's public security forces in Block 8 to protect TCOG's operations. The presence of public security forces created a particularly sensitive situation considering the possibility that communities would develop a negative perception of TCOG's presence in the area. TCOG also faced a heightened security risk due to the existence of these groups, which have a history of conducting attacks against the energy sector.

To better understand these challenges TCOG conducted a detailed on-the-ground security risk assessment by senior security personnel trained in human rights issues management in the block. The assessment included a detailed analysis of the possible risks, potential for violence, the human rights record of security providers, the administration of the rule of law and a conflict analysis. The results of this assessment informed the development of appropriate risk mitigation strategies and plans for the project as well as the establishment of agreements with the Colombian Public Security Forces for the provision of security services in support of business operations. These security provision agreements included a Memorandum of Understanding, which incorporated the Voluntary Principles on Security and Human Rights.

10. Available only in Spanish. Bulletin SISD No. 37. 2005. National Planning Department of Colombia. 25 April 2012. <<http://www.dnp.gov.co/PortalWeb/Progamas/Educaci%C3%B3nyculturasaludempleoyopbreza/Subdirecci%C3%B3ndePromoci%C3%B3nSocialyCalidaddeVida/SistemadeIndicadoresSociodemogr%C3%A1ficosSISD/tabid/336/Default.aspx>>

11. Data based on primary research conducted during the social baseline component of the environmental/social impact assessment (ESIA) conducted as part of TCOG's initial entry into Block 8 in 2009, as well as primary research conducted by TCOG security contractors in February 2009.

12. 46% of the project does not affect any reservation.

13. Numbers are for the amount of schools registered under the Ministry of Education per reservation. The territories of the Unuma and Saracure reservations extend beyond the boundaries of Block 8.

To further reinforce TCOG's commitment to human and indigenous rights, the company also sponsored a process led by the Colombian Ministry of Defense to develop a Code of Conduct for guiding and regulating the Colombian Public Security Forces in their interactions with local indigenous communities. The Code was jointly developed and established by the Colombian Public Security Forces and the communities in 2011 and implemented during the exploration program. Social, cultural and corruption risks on both the directly impacted indigenous reserves and the indirectly impacted neighboring communities were also considered, reviewed, and updated on a regular basis.

2.2.2. Underdevelopment and Lack of Infrastructure

Because of its remote location, state presence in Block 8 is limited. The municipality of Cumaribo, where Block 8 is located, is recognized in various national surveys as one of the most underdeveloped zones of the country with respect to economic and social

issues.¹⁰ The area lacks basic infrastructure such as paved roads, electricity, and running water, as well as administrative services such as police, schools, and hospitals. Roads and tracks are made of dirt, which makes navigation difficult, particularly during the rainy season. This impacts the accessibility of Block 8, the availability of communications, and the local economy due to a lack of proper infrastructure to support the transportation of goods.

The area also has a notable lack of civil authorities, including state representatives and offices. Government healthcare and education programs are insufficient. Due to a lack of clinics and hospitals on-site or near the villages, community members must walk several miles to reach the nearest clinics in urban centres. State mobile "health brigades" provide the only form of on-site health coverage, but the reach and effectiveness of the program is limited. In terms of education, only elementary schools covering grades 1-5 are available on the reservations. The schools face a lack of teachers and educational supplies.

SNAPSHOT OF THE CONDITIONS OF THE INDIGENOUS RESERVATIONS OF BLOCK 8¹¹

Reservation	Unuma	Saracure	Chocon	Concordia
Major Ethnicity(ies)	Sikuani; Piapoco	Piapoco; Sikuani	Piapoco	Piapoco
% of Project within the Reservation¹²	39%	9%	3%	3%
Approximate Population	2800	5000	200	180
Number of Schools & Students in the Reservation¹³	6 elementary schools; 301 students	9 elementary schools; 184 students	1 elementary school; 78 students	1 elementary school; unavailable
Number of Block 8 Schools & Students	13 elementary schools; 902 students			
Availability of Health Services	No clinics or hospitals on-site or nearby. Community members must walk several miles to reach nearest clinics in urban centers. On-site service delivery depends on mobile "health brigades" that periodically travel across the reservations providing health promotion and coverage. Most community members rely on traditional healers for health services.			
Description of Infrastructural Conditions	No running water; no electricity; accessible by dirt-track roads only.			
TCOG Social Development Focus Areas	(1) Food sovereignty projects: provision of chickens, pigs; cassava graters and roller mills for rice; support for the Vichada departmental program for food security. (2) Stockbreeding projects. (3) Education: provision of textbook translations and school endowments; classroom building projects. (4) Institutional strengthening: building of bridges, emergency transport, and infrastructure for basic services such as energy.			

In an area of weak institutional presence with no local police or state authorities, and where the communities did not have much experience with extractive activities, TCOG had to be especially careful in demonstrating its commitment to fairness and integrity to avoid even the appearance of impropriety. Additionally, TCOG immediately worked with the communities to develop several social investment programs to improve the situation. Below is a snapshot of TCOG's ongoing social development efforts in the four indigenous reservations overlapping TCOG's activities in Block 8: Unuma, Saracure, Chocón, and Concordia, as well as information on the initial conditions of the reservations.

2.2.3. Cultural Barriers

In Block 8, each community speaks one of two distinct languages, Sikuani or Piapoco, based on which ethnic group they belong to (also termed Sikuani or Piapoco). All the communities in Block 8 share a similar culture and worldview tied to their intimate relationship with the land. Linguistic and cultural differences had to be taken into account during the consultation phase of the community engagement process.

In terms of the communities' communication needs, although some members of the communities can speak and read very basic Spanish, most only speak either Piapoco or Sikuani. There is a lack of reliable translators for these dialects. Moreover, because the communities' worldview is informed largely by their grasp of the natural, physical world, they have a different understanding of such abstract concepts as "time." No future tense verbs exist in the Piapoco and Sikuani languages. As a primarily oral culture, the communities favor visual and spoken forms of communication.

The Piapoco and Sikuani have a distinct calendar of activities intimately linked with the natural cycles of the land. Sowing, harvesting, hunting and fishing are carried out according to different seasons. The seasons are identified using the appearance of certain constellations, which correspond to changes in weather. Certain trees and plants are also considered sacred. Traditional medicine men, who identify sacred plants to cure illnesses, have a vital role in the com-

munities offering guidance to individuals, making important community decisions, and providing health services.

TCOG had to develop methods to ensure that effective communication and understanding were taking place, especially in communicating the concept of seismic activity and its impacts. It also needed to find ways to minimize its impact on the communities' traditional lifestyle and avoid any practices that would offend their cultural beliefs. This meant working together with them to accurately identify their calendar of activities, and to incorporate cultural considerations into the impact assessment and mitigation plans.

Two other factors also informed how the consultation process ultimately took shape. First, TCOG had to respect the commitments made in Talisman's Global Community Relations Policy and conduct consultation in the spirit of upholding broad principles of free, prior, and informed consent. Secondly, as Colombia is a signatory to International Labor Organization Convention (ILO) 169¹⁴ regarding indigenous rights, a stringent consultation process documented in both law and regulation is required. As such, when companies decide to engage in exploration projects on indigenous lands in Colombia, they must first undertake a "Prior Consultation" process whereby they inform and consult with indigenous communities regarding the project through various workshops prior to the commencement of activities. The intent of this process is to gain community support for the project, even though consent is not legally required for the project to proceed. The Colombian Constitutional Court has made numerous statements relative to the rules and standards that the Colombian State is to follow for Prior Consultation. These standards include the concepts of: (i) good faith;

14. International Labor Organization (ILO) Convention 169: This is a legally binding international instrument open to ratification, which deals specifically with the rights of indigenous and tribal peoples. It came into force in 1991. Today, it has been ratified by 20 countries, including Colombia. The Convention requires that indigenous and tribal peoples are consulted on issues that affect them. It also requires that these peoples are able to engage in free, prior and informed participation in policy and development processes that affect them. Source: Convention No. 160. 2011. International Labor Organization. 25 April 2012. <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>.

(ii) inter-cultural communication; and (iii) accurate, sufficient information. The foregoing principles are inspired by other international vehicles such as the United Nations Declaration on the Rights of Indigenous Peoples and the Organization of American States Declarations. TCOG developed its consultation process within the framework of expectations set by both the Global Community Relations Policy and Colombian regulations.

Colombia has been part of ILO Agreement 169 since 1991, and to support this commitment, it has created norms and regulations intended to guarantee the Right of Prior Consultation that has constitutional status in the Colombian State.

2.3. Encounter with the Revolutionary Armed Forces of Colombia (FARC)

As stated previously, one of the largest challenges faced by TCOG in Block 8 was the heightened security risk due to the presence of illegal armed groups in the area, particularly the FARC, which has been active in this territory since the 1960s. Due to this security risk, Talisman implemented comprehensive security and human rights protocols to support business operations. This preparation, as well as two and a half years of community consultation and engagement, was put to the test during an abduction incident that occurred during the acquisition of seismic data to inform exploration activities.

At 2:15 pm on 7 March 2011 a call from the field notified TCOG that twenty-three of its contractors had been abducted. Four armed men had forced the contractors to leave the area and walk in the direction of the jungle. Because TCOG practices local hiring, sixteen of the contractors were members of the communities in Block 8, and eleven were of indigenous status.

On the same day, one of the abductees managed to escape. The next day, on 8 March, twenty-one of the remaining contractors were safely released. Four months later, on 28 July 2011, the single remaining abductee was returned. All of the abductees were safely released by the FARC of their own volition without interference or involvement of TCOG.

In the next section, we will examine the indigenous communities' reaction to this event, how it affected their relationship with TCOG, and what role the community engagement process played in the successful resolution of this crisis.

3. OVERCOMING THE CHALLENGES: TCOG'S APPROACH IN BLOCK 8

TCOG faced several challenging conditions in regards to community engagement in Block 8. In an area affected by conflict and where the indigenous communities could be perceived as particularly vulnerable due to the lack of local state authorities, TCOG's aim was to provide a stabilizing and peaceful presence, avoid any activities that would aggravate the security situation, and act in a manner that would prevent scrutiny. It also needed to conduct consultation that accommodated the communities' unique linguistic needs and cultural concerns in order to gain genuine support for the project. Below are three measures TCOG put into place to accomplish these objectives, followed by an account of how the abduction incident affected the community engagement process in Block 8.

3.1. Partnering with an Independent Third-Party Observer

The environment in Block 8 necessitated a significant degree of transparency for all of TCOG's activities. In order to demonstrate its commitment to integrity and fairness, TCOG partnered with a local civil society organization, Fundacion Ideas para la Paz (FIP), as an independent third-party observer of its community engagement process. By doing so, TCOG could not only ensure the integrity of its reputation by having independent verification of its activities, it could also garner insights from FIP about how to improve its practices on the ground. FIP monitored and documented the day-to-day progress of TCOG's engagement with the indigenous communities and provided ongoing reports and recommendations as a third-party observer.

3.1.1. Choosing a Partner: Fundación Ideas para la Paz (FIP)

Established in 1999 by Colombian businessmen, FIP is a respected think tank with the mission of helping to overcome the armed conflict in Colombia and build sustainable peace through various projects and initiatives. FIP seeks to promote a new understanding of corporate social responsibility attentive to human rights protection, peace-building, and observation of international standards for business operations in conflict-sensitive or weak governance areas. As an organization, FIP was a good fit for TCOG's needs as a third-party observer in terms of its expertise and organizational values.¹⁵

3.1.2. Fine-tuning Expectations

Defining FIP's exact role and duties was an important part of the process to developing a healthy working partnership between FIP and TCOG. As a first step, FIP and TCOG communicated their needs and expectations to each other. FIP was to be a neutral observer, and staff had to be careful not to unduly intervene in the proceedings in order to preserve their objectivity. At the same time, TCOG required day-to-day input on its progress rather than merely a final report in order to adjust and improve the engagement process with the indigenous communities within the Prior consultation framework in real time. For that purpose, FIP had to be able to offer ongoing expert advice that would inform the process.

Ultimately, responsibilities were clarified in a formal agreement that observers supplied by FIP would "look, observe, record, and provide insights" on areas of improvement to TCOG based on its "Conflict Sensitive Business Practice" methodology, but they would not talk on behalf of the community or the company, or engage with and report to other actors. The agreement subscribed to by the parties also expressly established that the FIP would fulfill all obligations in an autonomous, independent manner and established a payment schedule through which TCOG would remunerate FIP for the services provided.

According to the agreement, FIP was to undertake the following activities:

1. Actively participate in meetings with the community, whereby FIP would attend all meetings in the field and provide insights;
2. Observe the proceedings with a critical eye;
3. Document the activities, participants, behaviors, comments, questions, etc., of the actors involved in meetings; and
4. Periodically provide informative and constructive reports in meetings with TCOG.

3.1.3. Implementation of the Partnership

Implementation of the partnership went largely according to plan:

1. Active participation: Ultimately, one member of FIP accompanied TCOG staff to every activity in the field during the project. This included activities held during the Prior Consultation workshops, planning sessions, feedback sessions, and meetings with community members, government agencies, and other companies. FIP participated in discussions and offered insights.
2. Observation: FIP rotated observation among all groups, walking around to gauge the reactions and behaviors of the participants. However, it did not lead any activities itself during the workshops in order to maintain its neutrality.
3. Documentation: FIP documented the discussions and decisions reached during the planning sessions, the activities held during the workshops, the communities' reactions, and other contextual elements, such as if other civil society organizations became operative in the area or if particular issues arose.
4. Reporting: Lastly, FIP provided periodic reports to TCOG that included not only documentation of the aforementioned activities, but also identified upcoming challenges, provided recommendations, and highlighted key issues to which TCOG should pay attention.

15. For more on FIP, please see <http://www.fundacionfip.org.co/>.

3.2. Developing a Site-Specific Code of Conduct

Given that there were multiple parties engaged in activities on TCOG's behalf in Block 8, including TCOG's own employees, contractors, subcontractors, partners such as FIP, and the Colombian public security forces, TCOG needed to ensure that behavior regarding human and indigenous rights would be consistent across its area of operations. All those acting on TCOG's behalf and on behalf of the communities themselves had to be aware of the expectations for appropriate conduct in Block 8. To this end, TCOG, the communities, and the public security forces came together to jointly develop a Block 8 site-specific Code of Conduct. Development of the Code was highly participative and took place in a series of multi-stakeholder workshops. The Code takes local cultural considerations into account.

3.2.1. Provisions of the Code

The Code of Conduct applies at all times and in all places. Those bound by the Code are required to “endeavor to maintain harmonious and respectful relationships with the settlers, the indigenous communities and the environment”. They are to “avoid discriminatory conduct whether for reasons of culture, beliefs, ethnicity, gender, age, disability or physical handicap, political position or religion” and “respect the beliefs, uses, and costumes of the local population”. Specific provisions bar entry into homes unless an explicit invitation is extended, a rule that the indigenous communities found especially important.

The Code also appeals to internationally recognized norms and standards as well as local legislation. It stipulates that, “every activity must be based on the respect for Human Rights, the Voluntary Principles of Security and Human Rights, the National Political Constitution of Colombia, the Colombian Indigenous Legislation Agreement 169 of the International Labor Organization and all other applicable norms”.

3.2.2. Distribution of the Code

The Code was published in small pocket-sized books and cards and distributed to the communities and anyone working in the field. This ensured that all parties in Block 8 are aware of the Code.

3.3. Developing a Tailored Consultation Process

TCOG needed to accommodate the indigenous communities' linguistic and cultural needs in the consultation phase of the community engagement process. To accomplish this, TCOG first undertook a knowledge-gathering exercise through the development of a social and environmental baseline assessment and then, as per the requirements of the Prior Consultation process, TCOG participated in two workshop series with the communities. The first workshop series was essentially a mutual learning exercise whereby TCOG gained an understanding of the communities' calendar of activities and traditional lifestyle, and where the communities gained knowledge of TCOG's seismic operations in the area. In the second workshop, TCOG and the communities worked together to avoid and mitigate any potential negative impacts caused by TCOG's operations. TCOG took a tailored, creative approach towards ensuring that effective communication was taking place during the consultation process, and that the communities' cultural concerns were taken into account during the project.

3.3.1. Knowledge Gathering

In preparation for the consultation process, a specialized team including TCOG professionals as well as four anthropologists, two male and two female, lived among the communities for three months. The team gathered knowledge of the communities' cultural, social, economic, and political characteristics, with the ultimate goal of understanding their worldview. The team's inputs were included in the social baseline data study conducted for Block 8 and also provided background information for the consultation process.

3.3.2. The Prior Consultation Workshops

TCOG then participated in two series of workshops led by Colombia's Ministry of Interior, as stipulated by the Prior Consultation process. Both of the workshop series were highly participatory and took place on the indigenous reservations with translators at hand. Security was provided in accordance with agreements made with the Colombian Public Security Forces. Members of the community sat in groups of a maximum of nine

people, with at least one person fluent in both Spanish and the native dialect in each group in order to transcribe the reflections of the group. Significant time was allotted to allow for individuals to express their ideas both verbally and graphically. At the end of each session, the group was asked to produce a synthesis of their ideas, with issues that the group could not forge a consensus on also noted. After feedback from all the groups was collected, a discussion was held to reconcile different viewpoints and elaborate on key concepts.

3.3.3. Workshop Series One: Mutual Information Exchange

In the first series of workshops, the communities produced a calendar of activities for TCOG so that TCOG could gain a better understanding of their traditional lifestyles, and TCOG provided information on the seismic exploration it planned to conduct in the area.

The communities had to work together to agree on an accurate calendar of activities. Ultimately, the calendar took into account, from the indigenous peoples' point of view, the natural events marking the beginning and end of a designated period, relevant astronomical events, important cultural dates, and the activities commensurate to each of these markers. A timeline of fishing, hunting, crafting, building cassava-processing activities, rites, and festivals was also produced. Customs and traditions were outlined.

TCOG then informed the communities of its intent to conduct seismic exploration in the area and sought to explain the concept of seismic activity. It presented commonly used terms in environmental studies for seismic exploration, with an emphasis placed on the relationship between impact and management measures. Approximate terms in the relevant dialect were used in making reference to such concepts as cause and effect, prevention, control, mitigation, compensation, and others in order to prepare the way for the second series of workshops on impact assessment and mitigation. Cognizant of the communities' preference for visual media, TCOG used appropriate pedagogic tools to illustrate the seismic project, including a dramatization of the project, an explanatory video, and an interactive guidebook.

The interactive book was titled *The Proyecto Dajitaneja y el Resguardo*, or "The Dajitaneja Seismic Project". It aimed to help the communities understand the process and activities of seismic exploration and to assist them in thinking about how it affected them. The book was published in Spanish and relied mainly on illustrations to convey information. The chosen format was to have one page that explained the project, while the next page would ask certain questions, leaving blank spaces for the reader to fill in. In terms of content, TCOG introduced itself, explained what the project was and what steps it involved. It also provided detailed illustrations on soil layers, drilling, cleaning and restoration, where transport routes and camps would be, and what would happen once seismic results were confirmed. On the blank pages, community members were asked to write down an introduction of themselves, their daily activities, their location on the reservations, and what they considered good community-company relations. At the very end of the book, readers were asked to reiterate what they knew about the project so as to facilitate internalization of the information.

3.3.4. Workshop Series Two: Impact Assessment and Mitigation Planning

In the second set of workshops, the communities were asked to identify their perceptions of the possible impacts from the proposed exploration activities, keeping in mind the calendar of activities they had outlined in the first series of workshops. To cater to the communities' preference for visual mediums, a color-coded impact matrix was used in rating the potential impacts as positive, irrelevant, and possibly negative. Columns listed the activities of the project and rows listed the environmental, socio-cultural and economic components that could possibly be affected by the activities. There was space provided to elaborate on how the components could be affected, as well as extra rows for other less tangible and harder-to-classify cultural components. The rating of the potential impacts was conducted using the image of a traffic light, with the green color identifying the effects considered positive, yellow for those considered irrelevant and red for those that posed a concern.

After these potential impacts were identified, TCOG worked with the community to collectively create plans to prevent, mitigate and correct them, especially those with special cultural significance. The community's traditional medicine men were employed by the team and played a pivotal role in creating these impact mitigation plans. Together, TCOG, the community, and the medicine men determined such things as where to build helipads such that the noise would not scare off the animals, which would have made hunting difficult, and where to prohibit deforestation so that sacred trees (as identified by the medicine men) would not be harmed.

As a result of the 13-month prior consultation process, which included over 100 workshops, the communities of the indigenous reservations accepted and approved of the exploration project. This acceptance was documented in the form of written agreements signed by the representative authorities of each of the reservations and the Ministry of the Environment, and are reflected in written minutes kept under the custody of the Ministry of the Environment.

3.4. Community Response to the Seismic Program and the 7 March Abduction Incident

After obtaining the consent and support of the indigenous communities, TCOG initiated its exploration activities in block 8 in September 2010. A planned 1,502-kilometer seismic program commenced in November, using local labor contracted from the reservation for all unskilled labor positions. Progress was slow due to difficulties and delays caused by bad weather and difficult security and logistic conditions, but 249 kilometers of seismic data had been acquired in the territory of the Unuma reservation prior to the abduction incident on 7 March 2011.

After the abduction of the 23 contractors, TCOG representatives remained in permanent contact with indigenous community leaders from the area. From the beginning, the communities were updated and informed regarding the progress of search and rescue efforts conducted by the armed forces. Additional support was also provided to the families of those who were abducted by Pais

Libre, a civil society organization specializing in abduction and kidnapping issues.

The indigenous communities responded with strong support for TCOG throughout the abduction incident from 7 March 2011 until the situation's ultimate and positive resolution on 28 July 2011. When the abduction occurred, the communities publicly condemned the incident. They also sent letters and made numerous calls to the media and public officials expressing their support for TCOG's presence in the region and concern over the future of the project. The community members proved to be invaluable teammates as advocates during the incident and, with their knowledge of the terrain, as effective guards following the incident.

Fortunately, the abduction incident ended up consolidating support for the project and enhanced the strength of the relationship between TCOG and the communities. It can be said that the communities' advocacy efforts on behalf of TCOG during this time of crisis also served to confirm the success of TCOG's community engagement process in garnering support for the project.

4. LESSONS LEARNED

Below are reflections from and a summary of lessons learned from TCOG's community engagement process in Block 8.

4.1. Partnering with an Independent Third-Party Observer: Lessons Learned

TCOG's partnership with FIP was deemed a success in several respects.

1. Its documentation of TCOG's community engagement process provided a much-needed degree of transparency to TCOG's activities.
2. The partnership set an important precedent for industry-civil society collaboration by demonstrating the viability of such partnerships, and that interaction between the private and civil society sectors in general can be a constructive process.
3. The partnership provided mutual learning opportunities for both sides: for TCOG to grow in sophistication in terms of its community engagement practices and for

FIP to add to its body of practical knowledge on how companies can conduct business in conflict-affected areas.

4. Most importantly, FIP demonstrated its value as a partner on the ground in several instances through its real-time insights and recommendations. Several miscommunications with the communities would have occurred without the expert advice provided by FIP, as they were more knowledgeable of the local culture and context.

As to key lessons for the company, TCOG learned the following:

1. It is important for a third-party partner to have local expertise, as contextual knowledge can prove crucial to engagement efforts.
2. It was also very useful to have had a formal agreement in place for the partnership. The agreement ensured that the “observer” role would be carried through appropriately, and also clarified expectations on both sides as to what was or was not feasible ahead of time.

FIP provided the following insights as to its experience:

1. Regular consultation with other actors like the national government regulators who are accustomed to playing a monitoring role is very important in order to build trust.
2. A certain degree of flexibility is required regarding schedules, as the process will most likely evolve.
3. The civil society organization partner needs to commit to going to the field where developments are happening in order to gain the best perspective on the process.

4.2. Developing a Site-Specific Code of Conduct: Lessons Learned

Developing a site-specific Code of Conduct allowed TCOG to accomplish the following:

1. Demonstrate a formal commitment to respect the rights of community members.
2. Keep behavior consistent across its operations in Block 8 in regards to human rights and interactions with indigenous community members with all actors engaged in activities on behalf of TCOG.
3. By integrating cultural considerations, the Code also actively mitigated the risk of an adverse incident from occurring due to a misunderstanding with community members.

TCOG learned the following lessons:

1. All actors affected by the Code, including the public security forces and the community members, needed to participate in the development of the Code in order to ensure its relevance and create buy-in.
2. Development of the Code was not enough. Distributing the Code through pocket-sized books, cards, and other relevant media created crucial awareness of the Code, without which the Code could not have taken effect.

4.3. Developing a Tailored Consultation Process: Lessons Learned

Developing a tailored consultation process allowed TCOG to accomplish the following:

1. Demonstrate its commitment to obtaining the free, prior and informed consent of the communities through the emphasis placed on effective communication with the communities.
2. Genuinely engage with the communities so that it could develop meaningful impact assessments and impact mitigation plans such that the relationship between

TCOG and the communities could remain without incident in this regard throughout the phases of the project.

TCOG learned the following lessons:

1. It is important to be open-minded and flexible enough to forego culturally-based assumptions. The company must realize that the communities involved may hold vastly different, yet equally valid, worldviews. The communities' definition of what constitutes an "impact" may be different from the company's.
2. It is also important to collectively build impact assessments and mitigation plans. It was extremely useful to involve community "experts" in the process, similar to what TCOG did with the medicine men, as they understand the communities' worldview and often have the respect and support of community members.
3. Finding reliable and appropriate translators for the Sikuaní and Piapoco dialects proved to be a challenge. Sometimes, staff would provide a presentation using several numbers and figures, none of which would be mentioned during the translation. Quality assurance for translators, especially in rare languages, is an ongoing issue and an area for further thought and research.
4. Furthermore, regarding the translation issue, although some community members with some Spanish language skills volunteered as translators at first, they later withdrew as they eventually became to be perceived as being responsible for the "success" of the discussions as well. It would have been useful to find a way to communicate from the outset the distinction between the role of a translator and that of a negotiator to the communications.

4.4. Responding to a Crisis: Lessons Learned

TCOG learned two key lessons from the abduction incident:

1. Maintaining constant and open communication with the indigenous communities during the crisis was critical to minimizing the impact of the incident. It also provided useful, real-time feedback about the perceptions and concerns of the communities, and the potential impact that the abduction could have on the project.
2. Developing and implementing a recovery plan to address the concerns and perceptions of various stakeholders following the crisis was very helpful in addressing the reputation impact of the incident in a systematic way.

5. CONCLUSION

TCOG based its approach with indigenous communities in Block 8 on three fundamental values: transparency, fairness, and cultural awareness. This approach allowed for the development of a community engagement strategy that proved its worth during the abduction incident. Talisman learned that although unfortunate events such as the abduction incident may occur, a solid community engagement process is the key to building a strong relationship with communities that can be relied upon in such times of crisis. Although the following can only remain a speculation, the indigenous communities' demonstrated support for TCOG may have significantly contributed to the successful return of the hostages, as illegal groups such as the FARC cannot afford to alienate the communities in their areas of activity. In this case, a successful community engagement process may have ultimately proved to be critical to the ability of the overall exploration project to continue.

GOLDCORP:

The Human Rights Assessment at the Marlin Mine in Guatemala

By Megan Quek and Matthew Daly¹

Human rights issues addressed

- › Indigenous People's Rights
- › Security and conflict
- › Right to health
- › Right to life, liberty and security of person

Human rights management practices addressed

- › Policy
- › Communication
- › Auditing
- › Stakeholder Engagement

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- › The Guiding Principles on Business and Human Rights
- › Danish Institute Human Rights Compliance Assessment Tool (Version 1.0)
- › Rights & Democracy's "Step by Step Guide to Assess the Impact of Foreign Investments on Human Rights"
- › International Alert's "Conflict-Sensitive Business Practice: Guidance for Extractive Industries"
- › United Nations Declaration on the Rights of Indigenous Peoples
- › OECD Guidelines for Multinational Enterprises

ABSTRACT

This case study seeks to determine the challenges and lessons learned during a Human Rights Assessment² (HRA) of the Marlin Mine in Guatemala that was commissioned by Goldcorp Inc. (Goldcorp) at the request of a group of shareholders.

- The opening of the case study includes a brief company profile of Goldcorp and provides background on the Marlin Mine in Guatemala leading up to the HRA.
- Part 2 examines the HRA process and methodology.
- Part 3 analyzes challenges encountered in the process.
- Part 4 explores some key lessons drawn from challenges and successes, including Goldcorp's responses to findings and outcomes.
- The case study concludes by placing the Marlin Mine HRA in the broader context of business and human rights as a valuable early example of an emerging practice.

1. BACKGROUND: GOLDCORP AND THE MARLIN MINE

1.1. Goldcorp

Founded in 1954, Goldcorp is a Canadian company that is headquartered in Vancouver, British Columbia, Canada.³ It is a senior gold producer with operations and development projects throughout the Americas.⁴ The company has five operating assets in Canada and the United States, three in Mexico, and three in Central and South America.⁵ As of 2012, Goldcorp employed more than 16,000 people worldwide.⁶ Of those, 2,520 are employed at the Marlin Mine.⁷ Revenues for all operations in 2012 were US\$ 5.4 billion, with adjusted net earnings of US\$ 1.6 billion (US\$ 2.03 per share).⁸

1. Megan Quek received an LLM from the Graduate Institute of International and Development Studies (IHEID); a J.D., from the University of Calgary; and a B.A. from the University of British Columbia. Matthew Daly is a Consultant for Human Rights, Supply Chain Sustainability and Government Relations at the UN Global Compact. He received his B.A. from Yale University, and he is expected to graduate with an MBA from Cornell University's Johnson Graduate School of Management in 2015.

The authors wish to thank everyone who shared their experiences and knowledge about the HRA for the case study, especially Lloyd Lipsett, Susan Joyce and Dave Deisley. Peer review for this study was provided by Rita Roca, Corporate CSR Manager at Maersk Oil; Jonathan Drimmer, Vice President and Deputy General Counsel at Barrick Gold Corp.; and Michelle Lau, Project Manager for the Business Reference Guide on Indigenous Peoples' Rights at the UN Global Compact.

1.2. The Marlin Mine⁹

Geologists working for Montana Exploradora de Guatemala, S.A., a privately held corporation formed by the Montana Gold Corporation of Canada, first discovered the Marlin deposit in the western highlands of Guatemala in 1998. Montana obtained an exploration license for the area in 1999 and acquired the land rights for the area. In 2000, the company and deposit were purchased by Francisco Gold Corporation, which in turn merged with the US-based company Glamis Gold Ltd. in 2002.

Under the direction of Glamis, the development of the Marlin Mine began in earnest. In November 2003, the Guatemalan Ministry of Energy and Mines (MEM) granted Montana a 25-year exploitation license for a 20 km² area named Marlin 1. The actual mining operation described in the Environmental and Social Impact Assessment (ESIA) covered an area of about 5 km².¹⁰ Construction of the mine began in 2004, and in June of that year the International Finance Corporation (IFC) approved a US\$45 million loan for the project and a grant to support reforestation.

The mine began operating in October 2005 and in 2006 the mine property expanded to cover 6.5 km². The mine is located primarily in the Municipality of San Miguel Ixtahuacán (85%), with some industrial facilities located within the neighbouring Municipality of Sipacapa (15%).¹¹ These municipi-

palties are home to the Mam and Sipacapa Maya respectively. In November 2006, Glamis merged with Goldcorp and ownership of the operating company Montana Exploradora de Guatemala, S.A. passed to Goldcorp.¹² The management and staff remained largely the same, however, following the merger.

Initially, both open pit and underground mining operations were conducted at the Marlin Mine, but open pit mining came to a close in 2012, and the mine is now exclusively an underground operation.¹³ At the two open pits, Marlin and Cochise, conventional loader truck operations were used in mining operations. The underground mine uses mechanized cut-and-fill and long hole stopping mining methods and produces approximately 2,000 tonnes of ore a day.¹⁴ In 2012, the Marlin produced 207,300 ounces of gold and 317,000 Gold Equivalent Ounces (silver and copper of a value equivalent to 317,000 ounces of gold). The mine had overall revenue of US\$551 million for 2012, with earnings of US\$256 million.¹⁵

1.3 Tensions over the Marlin Mine

The indigenous Maya in the area, particularly those in Sipacapa, asserted that the

government of Guatemala granted the mining concession for Marlin in 2003 without adequately consulting them¹⁶, thus violating ILO Convention 169 on Indigenous and Tribal Peoples, which the country ratified in 1996.¹⁷

In December 2004 and January 2005, protests broke out demanding open dialogue between the government, Glamis, and the communities affected by the mine in San Marcos. These protests included violent confrontations on 3 December 2004 between indigenous communities and the convoys carrying material along the Panamerican Highway for construction of the Marlin Mine. When their demands to halt the transport and construction were not accepted, the protestors set fire to one of the vehicles carrying tools and fuel.¹⁸ During one protest against Glamis Gold in January, a protestor was killed by Guatemalan government forces.¹⁹ Relations with the surrounding community deteriorated further when an employee of a private security company working for Glamis allegedly shot and killed a young, local man with ties to the mine protests in March 2005.²⁰

2. The full text of the Human Rights Assessment (HRA) is available from: http://www.hria-guatemala.com/en/docs/Human%20Rights/OCG_HRA_Marlin_Mine_May_17.pdf.

3. Goldcorp (2012) About Us. Available at <http://www.goldcorp.com/About-Us/default.aspx>.

4. Ibid.

5. Ibid.

6. Ibid.

7. Goldcorp Reports & Filings, available at <http://www.goldcorp.com/English/Investor-Resources/Reports-and-Filings/default.aspx>.

8. Goldcorp Annual Report 2012, Pg. 2. http://www.goldcorp.com/files/doc_financial/Goldcorp_AR12_FINAL.pdf.

9. The information in this section is a summary of the background provided in the HRA, Pgs. 34-36, unless otherwise indicated.

10. HRA, Pg. 63.

11. HRA, Pg. 33.

12. In November 2006, Goldcorp Inc. acquired Glamis Gold Ltd. for approximately US\$ 21.3 billion. See http://www.goldcorp.com/Theme/GoldCorp/Files/Doc_news/aug31-06_2.pdf and <http://www.goldcorp.com/Investor-Resources/News/News-Details/2006/GoldcorpCompletesAcquisitionofGlamis/default.aspx>.

13. Goldcorp Annual Report 2012, available at <http://www.goldcorp.com/files/ar2012/operations.html>.

14. Goldcorp (2012) Unrivalled Assets. Marlin Mine – Mining & Processing. <http://www.goldcorp.com/Unrivalled-Assets/Mines-and-Projects/Central-and-South-America/Operations/Marlin/Mining-and-Processing/default.aspx>.

15. Goldcorp Annual Report 2012, Pg. 51.

16. MiningWatch Canada. Glamis Gold Accused of Violating Indigenous Rights. 13 August 2005. <http://www.miningwatch.ca/glamis-gold-accused-violating-indigenous-rights>.

17. See ILO Convention Ratifications for Guatemala, at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102667.

18. MiningWatch Canada. 40 Days of Protest Against Glamis Gold's Marlin Mine in Guatemala. 10 January, 2005. <http://www.miningwatch.ca/40-days-protest-against-glamis-golds-marlin-mine-guatemala>.

19. MiningWatch Canada. Killing of Alvaro Benigno Sanchez by Security Guards Working for Glamis Gold Subsidiary in Guatemala. 5 April, 2005. <http://www.miningwatch.ca/killing-alvaro-benigno-sanchez-security-guards-working-glamis-gold-subsidiary-guatemala>.

20. MiningWatch Canada. Mayan Organisations and Supporters Demand the Closure of the Marlin Mine in San Marcos, Guatemala. 27 March, 2006. <http://www.miningwatch.ca/mayan-organisations-and-supporters-demand-closure-marlin-mine-san-marcos-guatemala>.

In June 2005, the different communities living in the Municipality of Sipacapa undertook a consultation on the presence of mining in the area. It was the first identified use of this municipal power since the new Municipal Code took effect in 2002. On June 18, 2005, 2,564 residents of Sipacapa (from a population of more than 14,000) voiced their opinions. According to reports from the organizers, of those who voted, 98 percent “rejected mining”. Breaking the results down by community, eleven of the Sipacapanese communities voted against mining; one of the communities voted in favour; and one abstained.²¹

In spite of this call to stall the project for further consultation and consideration, the mine began operations in October 2005, and in early 2006 the footprint was expanded even further. Local residents complained of impacts as soon as the mine began operation. Indigenous residents near the Marlin Mine complained of skin rashes, hair loss, respiratory difficulties and other ailments that they attributed to air and water pollution from the mine since they had not suffered from them previously.²² Since the mine started operation in 2005, more than one hundred traditional adobe and block houses in San Miguel Ixtahuacán, nearest to the mine, have developed serious cracks in the walls, compromising their structural integrity. Community members, the local Catholic Church, and representatives from NGOs such as Rights Action argued that the damage was caused by blasting, mine subsidence (sinking of the ground caused by mining) and heavy truck traffic in the area.²³

When Goldcorp acquired Marlin in November 2006, all of these issues were causing considerable tension with the local communities surrounding the construction and operation of the mine.

2. THE HUMAN RIGHTS ASSESSMENT

2.1. The Decision to Conduct a Human Rights Impact Assessment

In February 2008, representatives from socially responsible investment institutions and research organizations with investments in Goldcorp visited Guatemala at the invitation of the NGO Rights Action to meet with non-governmental organizations, community members, Goldcorp officials, and government

representatives to “(1) learn more about the impacts of the Marlin Mine on local communities; and (2) to consider how shareholders could respond to such concerns”.²⁴ In their meetings, people from the surrounding communities described the impacts of the Marlin Mine on their houses and private property, on their access to water, and on the security of their families. Some community members felt that they were not adequately compensated for their land or fully informed of the impact that the mine would have on their lives. There was positive feedback as well, though, with many sharing that they benefited from the mine through skills development, employment, and small business loans.

In March 2008, a group of these shareholders (the Shareholders Group) including the Public Service Alliance of Canada (PSAC) Staff Pension Fund, the Ethical Funds Company, the First Swedish National Pension Fund and the Fourth Swedish National Pension Fund submitted a shareholder resolution on these issues prior to Goldcorp’s 2008 Annual General Meeting (AGM).²⁵ Goldcorp met with representatives of the Shareholders Group and agreed to commission an independent human rights impact assessment (HRIA) so the resolution was withdrawn.²⁶

The objective of the HRIA was to determine how the presence, activities, policies, procedures and practices of the Marlin Mine impacted the human rights of individuals living in the vicinity, through an independent, peer-reviewed assessment.²⁷ Goldcorp com-

21. Ibid.

22. A report on the subject was published by Physicians for Human Rights, but they were unable to determine causes. Toxic Metals and Indigenous Peoples Near the Marlin Mine in Western Guatemala. https://s3.amazonaws.com/PHR_Reports/guatemala-toxic-metals.pdf.

23. Rights Action. Goldcorp Inc. in Guatemala — Violation of the Right to Housing. 15 November, 2009. http://www.rightsaction.org/Alerts/housing_rights_Guatemala_111609.htm.

24. Details about the February 2008 visit may be found at http://www.hria-guatemala.com/en/docs/Shareholders/Goldcorp_Update_for_Communities_June_2008_FINAL.pdf.

25. Shareholders Release (2008) Investors Spur Goldcorp to Address Human Rights in Guatemala dated April 24, 2008. http://www.hria-guatemala.com/en/docs/Shareholders/Joint_Release_on_Goldcorp_080423.pdf.

26. Memorandum of Understanding between Goldcorp Inc. and the Shareholder Group (2008). http://www.hria-guatemala.com/en/docs/Steering%20Committee/Memorandum_of_Understanding_03_19_08.pdf.

27. The objective of the MOU was amended in 2008, as explained in the Minutes of the HRIA Steering Committee, Guatemala (November 17 @ 18, 2008), available at http://www.hria-guatemala.com/en/docs/Steering%20Committee/Minutes_of_the_HRIA_Working_Meeting_11_17-18_08_final_02_09_09.pdf.

mitted to use the information and recommendations of the assessor to improve its operations and meet its responsibility to respect human rights in its operations in Guatemala and other countries. The Memorandum of Understanding (MOU) between Goldcorp Inc. and the Shareholder Group called for transparency, independence, and inclusivity as the guiding tenets of the process.²⁸

The MOU stipulated that a Steering Committee should be established to set the scope and timeline of the assessment, select the consultant(s) to conduct the assessment, and manage the overall assessment process.²⁹ Representatives of the three stakeholder groups served on the committee: Vice President and General Counsel of Goldcorp Inc., David Deisley; Bill Brassington, from PSAC as a representative of the Shareholders Group; and the Executive Director of the NGO Accion Ciudadana, Manfredo Marroquin, as a third party representative from Guatemala.³⁰ In March 2009, PSAC withdrew from the HRIA and Bob Walker, Vice President of Sustainability with Northwest and Ethical Investments L.P., replaced Bill Brassington as a member of the Steering Committee.³¹ At the time, the Steering Committee was not aware of the reasons for the withdrawal, but in a statement about their decision later, PSAC explained that they had, “been especially concerned about the lack of free and informed prior consent of the communities in regards to the HRIA, and that the interests of Goldcorp [were] being put before the interests of the local people”.³² Several NGOs had contacted the offices of the funds and investors participating in the HRIA, pressuring them to withdraw. Bill Brassington was a strong advocate of the HRIA process and continuing PSAC’s participation, but he was ultimately compelled to withdraw by his superiors. PSAC never divested from Goldcorp, however.

The Steering Committee’s first task was to draft a Request for Proposal (RFP) for the roles of assessor and peer reviewer for the HRIA.³³ The RFP was publicly issued in July 2008, with more than forty human rights organizations, consulting companies, individuals, and law firms submitting proposals. From these, the Steering Committee selected On Common Ground Consultants Inc. (OCG) as the independent assessor and International Alert as the peer reviewer.³⁴ OCG added two additional

tenets to guide the HRIA: informed consent and confidentiality.³⁵ In the end, every single person who agreed to participate requested anonymity, and the assessors took measures to ensure that information would remain confidential by coding the interviews to keep them anonymous and refraining from citing specific interviews in the HRIA.³⁶

The assessment and peer review teams included the following members, several of whom were experienced in conducting Human Rights Impact Assessments.³⁷

Organization	Team Members
On Common Ground Consultants Inc.	Giselle Huamani, Myriam Cabrera, Susan Joyce, Eduardo Bryce, Monica Leonardo Segura, and Lloyd Lipsett.
International Alert	Salil Tripathi, William Godnick, Cristina Sganga, and Diana Klein.

28. These tenets were defined in the Memorandum of Understanding (MOU) between Goldcorp Inc. and the Shareholder Group (2008), available at http://www.hria-guatemala.com/en/docs/Steering%20Committee/Memorandum_of_Understanding_03_19_08.pdf.

29. HRA, Pg. 8.

30. Minutes of the HRIA Steering Committee, July, 2008, available at http://www.hria-guatemala.com/en/docs/Steering%20Committee/Minutes_of_the_HRIA_Steering_Committee_7_11_12_08.pdf.

31. The official announcement of this change can be found in the Steering Committee Update, May 2009: http://www.hria-guatemala.com/en/docs/Impact%20Assessment/Steering_Committee_Update_May_2009_05_27_09.pdf.

32. MAC: Mines and Communities. Public Service Alliance of Canada withdraws from Marlin mine Human Rights Impact Assessment. 20 April 2009. <http://www.minesandcommunities.org/article.php?a=9186>.

33. Request for Proposal (RFP). 14 July, 2008. http://www.hria-guatemala.com/en/docs/Impact%20Assessment/REQUEST_FOR_PROPOSAL_07_14_08.pdf.

34. Selection criteria and other details are included in the Minutes of the HRIA Steering Committee, Vancouver (September, 2008), available at http://www.hria-guatemala.com/en/docs/Steering%20Committee/Minutes_of_the_HRIA_Steering_Committee_9_4-5_08.pdf.

35. Ibid. Informed consent required OCG to explain the purpose of the HRIA and to obtain the consent of every individual who participated in the assessment process. Confidentiality required that, if requested, the identity of an individual who participated in the assessment would be protected from disclosure.

36. HRA, Pg. 12.

37. Prior to joining the HRIA team, Lloyd Lipsett had previously served as the senior assistant to three Presidents of Rights & Democracy from 2003 to 2008, where he contributed to the development and implementation of a community-based human rights impact assessment methodology. Before undertaking the HRIA, Susan Joyce, Principal and Co-founder of On Common Ground, had participated extensively in the Mining, Minerals and Sustainable Development Project and led the 2002 study “Social Impact Assessment in the Mining Industry”, which has become a standard text on the subject at several universities.

2.2. Methodology: from Human Rights Impact Assessment (HRIA) to Human Rights Assessment (HRA)

Following the selection of the assessor and the peer reviewer, the implementation of the HRIA began in November 2008.³⁸ With the principle of inclusivity in mind, OCG's methodology was based on community participation and a commitment to a broad consultative process.

OCG consulted a number of available tools and instruments in developing the methodology for the Assessment.³⁹ While the Guiding Principles on Business and Human Rights (the Guiding Principles) were not finalized and endorsed by the UN Human Rights Council until June 2011, the members of the assessment team were familiar with John Ruggie's work as UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, and his "Protect, Respect and Remedy: A Framework for Business and Human Rights" report (the UN Framework), all of which informed their approach.⁴⁰

Through the MOU and RFP, the Steering Committee had mandated the use of the Human Rights Compliance Assessment (HRCA) by the Danish Institute for Human Rights, in order to "provide the assessor with a baseline of relevant human rights questions and indicators".⁴¹ OCG applied the entire HRCA, which then contained more than 350 questions and more than 1000 corresponding human rights indicators, based on over 80 human rights treaties and conventions. The assessors found the HRCA helpful in providing a detailed set of questions and indicators based on international human rights standards; however, they found gaps in the indicators, including those focused on the rights of indigenous peoples or human rights issues related to conflict.⁴² Hence, OCG also made use of Rights & Democracy's "Step by Step Guide to Assess the Impact of Foreign Investments on Human Rights" and International Alert's "Conflict-Sensitive Business Practice: Guidance for Extractive Industries" and developed additional questions and indicators to address issues that were specific to the circumstances at the Marlin Mine.⁴³

The assessment methodology was broken down into five different phases, implemented over the course of 18 months. The first phase set out to identify the context in which the mine was operating and narrow down the issues to be reviewed. This included ini-

tial interviews with government and other relevant stakeholders in the capital.

In the second phase, OCG began the process of engaging with stakeholders in San Miguel Ixtahuacán and Sipacapa through interviews and community meetings to build relationships and solicit their input to the assessment process. During this field scoping work, OCG made numerous attempts to engage local communities, organizations and individuals in the process. Pre-existing conflicts and polarization regarding mining in Guatemala and the Marlin Mine specifically hindered open, transparent, and effective engagement of local community members by the assessment team.

Mines and mining have long been a contentious issue in Guatemala, and this certainly applies to the Marlin Mine. As described earlier in 1.3 Tensions over the Marlin Mine, protests during the construction of the Marlin Mine resulted in arson and the death of one protestor.⁴⁴ The conflict and tension continued and even escalated at the time the assessment was taking place. In October 2009, for example, a young Maya man was killed while protesting mining in Guatemala City.⁴⁵ As the country prepared for major elections in 2011, the debate over mining was increasingly a key area of discord between different factions.⁴⁶

The statement released by the Steering Committee in May 2009 explained the challenges of the situation in the context of the

38. Minutes of the HRIA Steering Committee, Vancouver (November, 2008), available at http://www.hria-guatemala.com/en/docs/Steering%20Committee/Minutes_of_the_HRIA_Working_Meeting_11_17-18_08_final_02_09_09.pdf.

39. The full list can be found in HRA Appendix E: Table of International Standards Related to Human Rights at the Marlin Mine, available at http://www.hria-guatemala.com/en/docs/Human%20Rights/HRA_Appendix_E_International_Standards.pdf.

40. The UN "Protect, Respect and Remedy" Framework for Business and Human Rights, September 2010. <http://198.170.85.29/Ruggie-protect-respect-remedy-framework.pdf>.

41. RFP, Pg. 3.

42. When conducting the HRA, OCG used HRCA 1.0 instead of 2.0, the version now in use.

43. Steering Committee Update (May 2009): http://www.hria-guatemala.com/en/docs/Impact%20Assessment/Steering_Committee_Update_May_2009_05_27_09.pdf.

44. Further details about the tensions following these protests and the death of the protestor can be found in a Washington Post Article from April 13, 2005, "Protests From Guatemala's Pulpits; Mine Dispute Kindles Resurgent Activism In Catholic Church," by Kevin Sullivan.

45. Reynolds, Louisa. Indigenous Protest Turns Deadly." Latin America Press, 16 October, 2009. <http://www.lapress.org/articles.asp?art=5968>.

46. Martorana, Kathryn M. Mining a Grave Concern in Guatemala's Election. Guatemala Times, 11 September 2011.

assessment: “At the national level, the current debate over proposed revisions to Guatemala’s mining law has mobilized individuals and organizations... This debate has contributed to a polarization of the positions of individuals and organizations at the local level. As a result, various groups and individuals who were initially willing to take part in the Assessment have said that participating at this time is perceived by others as equivalent to supporting the Marlin Mine or mining in general”.⁴⁷ As previously described, the Municipality of Sipacapa overwhelmingly rejected mining in their communities during their consultation in June 2005. The public position of the municipal authorities of Sipacapa was therefore not to work with the mine or engage in the assessment process.⁴⁸ In this context, many in the local community hesitated or refused to speak with the assessors about the Marlin Mine and thus information about impacts may have been withheld. It therefore looked as if there would be little participation in the assessment from either San Miguel Ixtahuacán or Sipacapa.

Indeed, the controversy over the issue ran so high that there were often threats and even violence between opposing sides in the local communities, creating a barrier for those in the community to contribute to the survey, and a real threat to the assessors themselves. While OCG made every effort to be thorough in verifying data, the process was limited because of the ongoing climate of tension surrounding the mine. For example, during the verification process, a congressional visit to San Miguel to discuss a proposed public consultation about exploration was cancelled because of the threat of violence.⁴⁹

Based on these concerns and a lack of baseline data with which to compare present conditions and assess impact, the scope of the assessment by OCG was modified in May 2009 to include a review of company policies, practices, and procedures, secondary data analysis and expert sources, while incorporating stakeholder views as much as possible. Due to the changes made to the assessment process, all parties agreed that a peer review as originally conceived was no longer feasible, so International Alert instead acted as an advisor to the Steering Committee and OCG during the assessment process.⁵⁰

The decision regarding the characterization and title of the final evaluation (as an HRIA or an HRA) was not straight-forward,

and it was only taken after much discussion among the Steering Committee, OCG and International Alert about what criteria are necessary to complete an HRIA. Representatives from International alert held that the final report was substantively an HRA because of the limited reach of the interviews and the fact that local stakeholders were not involved in defining the scope or methodology. Based on experience with past HRIAs, however, the team from On Common Ground believed that there was sufficient community participation to achieve the goal of meaningful consultation, making this an HRIA. In the end, the parties agreed to the change in title in order to end an academic debate, and thus the final report was called a Human Rights Assessment.

The ambiguity over the criteria that define an HRIA was not resolved; indeed, the ambiguity is indicative of a wider problem in the assessment field. There was a dearth of authoritative standards in 2009.⁵¹ Since the HRA was completed there has been further progress with new tools and instruments developed to support companies in assessing and managing human rights risks and impacts associated with their operations, but the field is still developing and there are still many challenges and ambiguities to navigate.⁵²

Following the adjustment of the methodology, the third phase of the assessment process began, with the goal of filling in gaps in data, investigating specific human rights allegations, and improving the participation stakeholder groups underrepresented

47. Steering Committee Update (May 2009): http://www.hria-guatemala.com/en/docs/Impact%20Assessment/Steering_Committee_Update_May_2009_05_27_09.pdf.

48. HRA, Pg. 43.

49. HRIA, Pg. 17. Additional examples can be found in the HRA at Pgs. 163-168 and Pg. 174. Steering Committee Update (May 2009): http://www.hria-guatemala.com/en/docs/Impact%20Assessment/Steering_Committee_Update_May_2009_05_27_09.pdf.

51. There were in fact standards available from the IFC and the International Association of Impact Assessment, but it was a relatively new field and was not sufficient to definitively resolve the questions then (interview with Lloyd Lipsett, 15 February 2013).

52. E.g. the Guide to Human Rights Impact Assessment and Management, developed by the UN Global Compact, the International Finance Corporation, and the International Business Leaders Forum, which can be accessed here: <http://www.guidetohriam.org/guide-to-human-rights-impact-assessment-and-management>; Harrison, James, (10 Nov 2010) Measuring Human Rights: Reflections on the Practice of Human Rights Impact Assessment and Lessons for the Future, University of Warwick, School of Law, Research Paper No. 2010/ 26 provides an 8-step procedural methodology for an HRIA. As this case study went to press, Shift had a paper on Human Rights Auditing Standards open for comment: <http://www.shiftproject.org/project/developing-global-human-rights-auditing-standards>.

in the process to date. In this phase, a local women's group from San Miguel Ixtahuacán began helping the assessors access members of their community for interviews, which led to significant feedback from the Mam Maya community. However, of the 213 local interviews and focus group discussions eventually conducted in the course of the assessment, only 35 were with residents of Sipacapa. The Maya of Sipacapa are a culturally distinct group from the Mam Maya of San Miguel, and thus consultation with the Mam would not serve as an adequate substitute to honour the tenets of inclusivity or informed consent as required.⁵³

When they finished collecting all of the information from stakeholder interviews, document review, and other research, OCR began the fourth phase of the process: analyzing and assessing the data. Based on their research, the team identified seven priority issue areas for the Marlin Mine: Consultation, Environment, Labour, Land Acquisition, Economic and Social Investment, Security, and Access to Remedy. These categories were used to determine and then organize the most relevant human rights concerns for the Marlin Mine in the final HRA report.⁵⁴

The final phase of the process was to write the final HRA report. This was completed and released in May 2010.

3. ANALYSIS: CHALLENGES IN PERFORMING GOLDCORP'S HUMAN RIGHTS ASSESSMENT

In the course of the HRA, a number of challenges arose, which can be broadly grouped into four categories: (1) challenges to the credibility of the assessment and the HRA report; (2) challenges that came up in the planning phase; (3) challenges related to the assessment phase; and (4) challenges related to the follow-up phase, after the HRA report was made public.

53. HRIA, Pg. 18. Details about the interview participants, sorted by category can be found in the HRA on Pg. 11.

54. A matrix with the results of the stakeholder interviews, including opinions on the prioritization of different issues, is available in Appendix D of the HRA: http://www.hria-guatemala.com/en/docs/Human%20Rights/HRA_Appendix_D_Stakeholder_Issues_Matrix.pdf. For a complete table of all the relevant international human rights and associated standards for each category, see Appendix E of the HRA report, "Table of International Standards related to Human Rights at the Marlin Mine." http://www.hria-guatemala.com/en/docs/Human%20Rights/HRA_Appendix_E_International_Standards.pdf.

3.1. Challenges to Credibility

The HRA was commissioned with the intention of learning about adverse human rights impacts stemming from the operations of the Marlin Mine, and to take steps to address those impacts. Several NGOs raised doubts about the credibility of the assessment, however, noting that Goldcorp financed it and that this would strongly influence any results. Goldcorp addressed this challenge by adhering to the tenets of the HRA from the outset, agreeing to make the assessment transparent and open to the public in its entirety, including negative findings that could be damaging, and committing to respond to recommendations. This approach helped to ease distrust among some critics. The OCG team was diligent in maintaining their impartiality by:

- Working with total independence from the company or any other stakeholder in carrying out all of the field work and interviews;
- Developing focus groups and selecting interviewees without any outside input or participation, with the exception of Marlin management's facilitation of group interviews with employees at the mine; and
- Establishing an agreement with Goldcorp and Montana stipulating that neither would have editing control of the report, nor any say regarding its final content, form, or findings.

Amnesty International, an early opponent of the Marlin Mine and the assessment process, reviewed the HRA report and provided positive feedback on the company's progress, according to a member of the assessment team. The report was in fact quite candid in identifying failures to respect rights and made many recommendations for improvement.

If a company is particularly concerned about maintaining its public image, then addressing such criticism is a significant obstacle. In terms of Goldcorp's goal of defining and addressing negative impacts, such external opinions are not important. Distrust of the process by rights holders, on the other hand, can prevent a full assessment or engagement to address impacts they have experienced, thus undermining the goal. This was especially true in Sipacapa.

In either case, distrust and concern about undue influence in the assessment process stem at least in part from the financing for such assessments. Human rights assessments

are complicated and costly to implement. Other business evaluations, such as financial audits and environmental impact studies have traditionally been funded by the companies being reviewed, but those in the sphere of human rights are relatively new, and thus have not achieved the same level of standardization or oversight.

3.2. Challenges in the Planning Phase

As explained previously in §2.2 Methodology: from HRIA to HRA, when OCG began work on the assessment, there was limited precedent or standardization for HRIAs due to the fact that human rights assessments are a relatively new practice. When the development of the Marlin Mine took place, data on human rights indicators were not collected by Glamis or Montana, which made it impossible to establish a baseline against which to compare current conditions and assess the actual impact of the mine. Some of the information could be derived from social, financial or environment-related data in existing records, but this did not cover the full range of human rights issues and indicators.⁵⁵ In order to fill in gaps in the records, OCG had to rely on the recollections of individuals, some of whom had very different memories of the same events, to ascertain the details of an incident or alleged impact that may have occurred five to eight years prior. For example, interviews with several members of mine management during the assessment revealed contrasting accounts of issues stemming from the acquisition of lands for which the legal title had been contested among the members of a local family.⁵⁶ This experience demonstrates the critical importance of collecting baseline human rights data early in a project as part of a company's human rights due diligence if your goal is to establish measurable, verifiable impacts and address them to meet the corporate duty to respect human rights.

The assessment utilized an inverse pyramid strategy to determine which human rights to focus on; working from a broad analysis of all issues then narrowing the list to those most important for the Marlin Mine through research and deduction.⁵⁷ While this approach may have been more onerous than simply preselecting the list of human rights to be considered at the beginning of the study, the process was set up this way in

order to ensure that the assessors were not eliminating important human rights without research or input from stakeholders. For example, through their scoping fieldwork, OCG discovered that labour rights were a challenge at the Marlin Mine, even though this was not flagged in a preliminary desktop review of prior NGO reports and assessments about the Marlin Mine. It is important to note, however, that this approach was appropriate for a stand-alone assessment of this type. For assessments that are ongoing, or conducted at regular intervals to track progress, this may not always be necessary.

3.3. Challenges in the Assessment Phase

3.3.1. Conflict and Polarization

As described previously in §2.2 From HRIA to HRA, conflict and polarization had a major impact on the HRA because it made open and broad community engagement difficult. Schisms existed in the communities due to differences within the indigenous peoples' heritages, different cultures, and different leadership. The political leaders of the Sipakapense Maya decided not to participate in the HRA process.

Another factor that complicated the situation was the initiation of a parallel study by the University of Notre Dame, which was commissioned by the Catholic Church, an outspoken opponent of mining in Guatemala and the Marlin Mine in particular. The analytical approach of the University of Notre Dame team, as described to the Steering Committee, differed from that of OCG. The University of Notre Dame team intended to adopt a legal-based approach, gathering facts, analyzing them relative to applicable law, and finally presenting conclu-

55. Secondary documentation was available about the overall human rights context in Guatemala that was useful for the assessment, such as annual reports from the OHCHR country office, mission reports from UN Special Procedure Missions, and NGO reports; however, few focused on business and human rights issues or any of the specific issues in the HRCA. The team also reviewed previous assessments and reports on the Marlin Mine, such as internal reviews of the implementation of the Voluntary Principles on Security and Human Rights; however, these lacked sufficient data for some human rights issues. For example, the Voluntary Principles were implemented several years after the mine opened, so its review did not provide baseline information, and the human rights focus was limited to those related to the potential use of force.

56. HRA, Pg. 163.

57. HRA Pg. 15, Table 1.2: Top 20 Issue Areas of Concern to Stakeholders.

sions regarding the compliance of the Marlin Mine with all applicable laws. The existence of a competing assessment executed by opponents of the mine created a scenario in which community members might decide to participate in one assessment process or the other based on their personal views on mining, thus skewing the results of each.⁵⁸ The Steering Committee met with the leaders of the University of Notre Dame team several times throughout the process, but a basis for collaboration between the two teams was not established. In the end, the conflict never materialized; as of July 2013, the report commissioned by the Catholic Church still had not been completed.⁵⁹

3.3.2. Staff and Management

In the interest of impartiality, the OCG team engaged with the staff and management of the Marlin Mine as they did with all stakeholders in the process. As a result, senior staff at the mine felt inadequately informed about the HRA. Members of the mine's management reported that mine employees approached them with questions about the process, and they were sometimes unable to provide answers. In their view, if they had been better engaged, they would have been able to answer these questions. Given that Goldcorp was sponsoring the HRA, the mine management felt it should have been more knowledgeable about the process.

Of course, increased communication with management and staff at the mine could have resolved this issue. However, this could have threatened the credibility of assessors, exacerbating the criticism they already received because Goldcorp was funding the study. Moreover, the assessors were in communication with managers and senior staff regularly, and felt that they sufficiently responded to any information requests that they received. It is possible that management's perception was the result of internal communication issues among mine staff, rooted in an understandable anxiety about ceding control to external auditors who had been commissioned to critically scrutinize their management performance. Some of these managers had been with Montana since before its acquisition by Goldcorp, and thus could be held responsible for issues that arose prior to the acquisition. In some instances, for example, different departments and staff members were reluctant to participate or supply information.⁶⁰

3.3.3. Government

Adopted by the UN Human Rights Council in July 2008, the UN Framework established that governments have the primary duty to ensure that human rights are protected.⁶¹ Even though the mandate for the HRA was focused on the company's duty to respect human rights, the assessment process also required a review of Goldcorp's interactions with the government, and an assessment of the government's protection of human rights. The reality that the HRA would present observations on the government's performance of its duty, at both the national and local levels, was a very delicate issue. Guatemala's political situation remains sensitive following a 36-year civil war.⁶² During the Assessment, local authorities (municipal mayors and indigenous mayors) and the national government (government ministries, departments and agencies focusing on mining, environment, water and human rights, and public security forces) participated in interviews and focus groups.⁶³

Following the release of the HRA, James Schenck, former Regional Director for Sustainable Development in Central and South America at Goldcorp, suggested that the Assessment should have included further suggestions about how the company could

58. According to Susan Joyce from OCG, this tension was set up but never really came to pass — it created the risk that this would happen. There was pressure on communities not to participate in the OCG work due to the other study, but the main issue was increasingly violent confrontations in meetings between mining opponents and local authorities.

59. A brief description of the other proposed assessment is available at <http://indigd.nd.edu/projects/initiatives/guatemala-human-rights-impact-assessment>.

60. Selected examples from the HRA. •Pg. 170: "The company declined to provide the assessors with internal security reports or any written documentation about internal risk assessments..." •Pg. 78: "In March 2009, the assessors were advised by a mine manager of the claims being made about cracked houses... The assessors were provided with the study commissioned by the mine, but not advised that there was an independent technical assessment underway in cooperation with Montana management during the same period as the HRA interviews."

61. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 7 April 2008. <http://shiftproject.org/publication/protect-respect-and-remedy-framework-business-and-human-rights>.

62. As part of the HRA process, an assessment of the human rights context in Guatemala was also completed. It examined the after effects of Guatemala's 30-year civil war and discrimination against indigenous populations as two of the most serious impacts in the country more broadly. That report, *Guatemala: the Context of Human Rights*, is available at http://www.hria-guatemala.com/en/docs/Impact%20Assessment/Rights_in_Guatemala_07_15_08.pdf.

63. Information about Government interviews is included in the HRA at Pg. 11.

strengthen the capacity of the government and help it fulfil its duty to protect human rights in areas where issues were identified. While the UN Framework called for an examination of the state role in protecting human rights, the assessors did not have the mandate to address specific recommendations to the government. They looked at these issues in order to understand the context in which the mine operates and any due diligence the company should perform to avoid being implicated in human rights violations in a relatively weak governance zone.

The findings about the performance of the state in terms of protecting human rights were all based solely on the findings of reports by the Office of the High Commissioner for Human Rights field mission in Guatemala, the International Labour Organization Committee of Expert reports on Guatemala, and others. The report did include some recommendations as to how the company should collaborate with government and other stakeholders to improve the dialogue and processes around key human rights issues.

3.3.4. Time Frame

The completion of the HRA took more than twice as long as originally anticipated.⁶⁴ The target date for the completion of the Assessment was the end of February 2009; however, the final report was not published until May 2010. There are many reasons why it was difficult to predict the duration of the project at the outset.

Applying a human rights assessment methodology to the mining sector was a novel process and thus there wasn't much precedent available to provide recommended methods and good practices. Extra time was thus necessary to navigate a learning curve in a new area — as demonstrated by the debate over the criteria for a proper HRIA in §2.2 From HRIA to HRA.

Issues specific to this HRA, such as the national debate in Guatemala over mining laws and the hostility toward the Marlin Mine from the Sipacapa community, also slowed the process considerably. As previously discussed, the assessors spent months trying to solicit locally-based input on the assessment methodology, and to engage with local communities, all of which were hampered by the existing conflicts around the mine.

Despite the many challenges encountered during the assessment phase, the assessment team and the Steering Committee decided to adapt the process based on circumstance. Even if the process and format did not follow the exact parameters established in the original MOU, the HRA process would still achieve the central goals that moved the Steering Committee to call for the Assessment in the first place: to provide the company with concrete recommendations regarding its implementation of practices, policies and procedures, and the impact of its operations on human rights.

3.4. Post-Assessment Phase

3.4.1. Communication of the Assessment

The difficulty encountered when translating the HRA into Mam and Sipakapense, the two local Mayan languages, was a manifestation of the significant challenge the team faced in communicating the substance of the assessment to local stakeholders such as workers, indigenous peoples, the national government, local and municipal authorities, and even civil society.⁶⁵ Given the inability to implement the broad consultative process initially proposed, there was little opportunity to really explain the human rights concepts at the core of the assessment process to local stakeholders. Without such an understanding of the relevant human rights concepts, the presentations of the HRA findings and recommendations lacked context. OCG had included a discussion of these concepts in the report, but it was not available prior to the public presentations. Management at the Marlin Mine confirmed that mine employees had many questions about the HRA following the initial presentations.

Logistical issues related to the timing of making the report public and completing the substantive reviews of the base English and Spanish versions of the HRA also precluded the opportunity to establish a context for the

64. See RFP for original timeline. http://www.hria-guatemala.com/en/docs/Impact%20Assessment/REQUEST_FOR_PROPOSAL_07_14_08.pdf. Revised timeline puts deadline at July 2009: http://www.hria-guatemala.com/en/docs/Impact%20Assessment/Steering_Committee_Update_May_2009_05_27_09.pdf.

65. Indeed, the company experienced challenges communicating with local populations on many topics beside the HRA; for example, Montana management have found it necessary to come up with "innovative communication strategies... to communicate technically challenging information..." HRA, Pg. 58.

report prior to its release. The Steering Committee went to the mine and visited members of the local communities soon after the final HRA was published. During this follow up visit, feedback channels were established for further questions about the report. All interested stakeholders were invited to provide comments and questions to the Steering Committee or OCG directly in order to maintain the separation between the company and the Steering Committee and OCG.

4. LESSONS LEARNED

Based on the challenges and solutions examined, there are many lessons that can be gleaned from each stage in the Marlin Mine HRA process. Many of these will be valuable for all future HRIAs as they address broader issues with process and practice. Others, however, are related to the unique circumstances around the Marlin Mine, and thus may apply only to assessments of mining companies and those operating in conflict-affected regions. All assessments will occur in the context of a unique set of circumstances. Thus, while the lessons learned described below may provide valuable guidance, an assessor should approach each situation on a case-by-case basis.

4.1. Lessons Learned from General Challenges

4.1.1. Start the Assessment and Engagement at the Earliest Stage Possible:

Glamis did initially consider the realities of operation in Guatemala when they began the development of Marlin. The company attempted to build on lessons learned from earlier operations in other areas by establishing a community development group early in the process. Moreover they sought an IFC loan in part because it would ensure the application of accepted international practices throughout the planning and permitting process. Finally, they hired Mr. Schenck, who had a long career in foreign aid and development, as the community development manager. Nonetheless, the early data collection and documentation of some human rights related indicators was not sufficient to establish a full baseline picture of the situation at the outset of the project.⁶⁶ The related challenges to measuring the Marlin Mine's impacts have already been examined in §3.2. Challenges in the Planning

Phase. Thorough human rights due diligence early in a project does more than establish a baseline, however. A thorough understanding of any potential impacts is critical to prevent or address them proactively and avoid impacts and confrontation.⁶⁷

This is significant in light of a company's responsibility to respect human rights, but there is a strong business case for proactively addressing impacts to maintain positive relationships with local communities. Negative impacts on human rights, which can engender distrust, hostility, and even violent protest toward a company or project, present a real risk to project development and operations. The Marlin Mine experienced such repercussions when local residents sabotaged power lines as a means of expressing their opposition to the mine. Robust stakeholder engagement must include a focus on human rights in order to prevent these impacts and the negative repercussions that often result from them.

By the time Goldcorp acquired the Marlin Mine and undertook the assessment at the behest of the Shareholder Group, many local stakeholders were already unwilling to engage in the process due to past grievances, further hindering the HRA process as well. Once a company has lost the social license to operate, it is very difficult to regain the trust of stakeholders and retrieve it. This demonstrates why early attention to these issues is important. Assessing human rights impacts after they acquired the Marlin Mine brought these issues to the fore in the management of other Goldcorp mines. It is a lesson the company learned from Marlin.⁶⁸ This was also captured in the Guiding Principles on Business and Human Rights, released a year after the HRA was published, which states "human rights due diligence should be initiated as early as possible in the development of a new

66. Different levels of assessments may be conducted at different stages of a mining project, where some are more in-depth than others. Guiding Principle 18 describes various reasons that different levels of HRIAs may be conducted. Guiding Principles on Business and Human Rights, Pgs. 19-20.

67. Guiding Principles on Business and Human Rights, Principle 17, Pgs. 17-19. See especially, "Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions."

68. See Goldcorp Sustainability Report 2007, Pg. 41, which demonstrates how addressing concerns at the Marlin Mine brought human rights to the forefront for Goldcorp more broadly. http://www.goldcorp.com/files/docs_sustainability/Goldcorp-SR_07_finalforweb.pdf.

activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers and acquisitions”.⁶⁹

4.1.2. Attain and Maintain Buy-in from the Company at all Levels

For obvious reasons, any assessment of a company’s impact on human rights will only be as successful as the stakeholders are committed to and cooperative with the assessment. This is perhaps most critical in the case of the company under review. While Goldcorp initially came to the HRIA process under pressure from the Shareholder Group, the company did cooperate at the corporate level by providing unprecedented access to internal company documents and personnel, which allowed the assessor to conduct a robust assessment of the company’s human rights impacts and assess gaps in policies and responses where the company could improve.

While buy in at the most senior level of a company is imperative, it does not guarantee full cooperation throughout the organization, which must be attained and maintained at all levels. This is particularly true for mining companies, where sites are spread out in many different and often remote locations all over the world. Site management may operate with a degree of autonomy, and thus should be engaged as a stakeholder throughout any process to ensure compliance. There were still challenges from the local mine management in terms of communication and cooperation as described in §3.3.2. Staff and Management. The overarching lesson to be gleaned for future assessments is that there may be tensions between the tenet of impartiality that is basic to any HRIA or HRA and the desire of company managers and staff to maintain control over their operations.

4.2. Lessons Learned - Planning Phase

4.2.1. Seek Local Representation on the Steering Committee

In this case, the process would have benefited from having a local representative who was elected or selected by the communities as part of the Steering Committee. While the Steering Committee attempted to achieve this by including Manfredo Marroquin on

the Steering Committee, he was not from the communities around the Marlin Mine. A locally-based person would have had an innate understanding of the subtle complexities of local cultures, politics and ideologies. OCG recognized that local consultation before starting the assessment would have allowed for a stronger process and facilitated engagement with local communities, and they did diligently endeavour to solicit local representation. Unfortunately, the polarization and political strife that hindered many other aspects of the HRA made it difficult to identify and select an appropriate local representative.

4.2.2. Build a Team with the Relevant Knowledge

Eduardo Villacorta, Vice President of Central and South America at Goldcorp, reflected that for such assessments, “The firm selected has to be fully aware of the political, cultural and social complexities or characteristics of the area”. Furthermore, an assessor should invest time in doing in-depth desk or background research of the region and communities before going into the field, as was highlighted by International Alert. This is critically important to appropriately defining the methodology, approach, fieldwork strategy, budget and timing of the assessment.

There is no guarantee, however, that these steps will prevent surprises or challenges in carrying out the assessment. OCG and IA followed these protocols, and still encountered and addressed the many obstacles previously addressed in this study.⁷⁰ The HRA began with an in-depth report entitled, “Guatemala: The Context of Human Rights”, which was completed by Jim Handy, a Professor at the University of Saskatchewan specialized in the history and human rights issues of Guatemala. Other desk-based research included the study and review of over 700 secondary documents, including human rights, extractive industry best practices, the context in Guatemala, and documents specific to the Marlin Mine from Montana, Goldcorp, human rights organiza-

69. Principle 17 of the Guiding Principles on Business and Human Rights. The UN Global Compact has also published a Good Practice Note to highlight evolving standards in this area: Integrating Concern for Human Rights into the Mergers & Acquisitions Due Diligence Process. http://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/MandA_GPN.pdf.

70. Guatemala: The Context of Human Rights.

tions, and others.⁷¹ The assessment team included experts in sociology, anthropology, conflict resolution, international and local human rights law, implementation of HRIAs, and other relevant areas. One of the assessment team members, Monica Leonardo, was a local human rights lawyer. Another member, Myriam Cabrera, was a Guatemalan with extensive international experience. Other members of the team had knowledge and project experience in Guatemala and Central America. Several were among the most experienced experts available in conducting HRIAs. For disciplines outside their expertise, such as environment and health, OCG engaged independent experts to study those issues.⁷²

4.3. Assessment Phase

4.3.1. Establish Standards, but Remain Flexible

As previously examined, challenges such as ambiguity in HRIA standards and national and regional conflict prompted the Steering Committee and the assessors to re-examine the feasibility of completing the HRIA as originally conceived. Ultimately the approach was modified to accommodate these realities by shifting from a heavily consultative approach with local communities to a review of existing company policies, practices, and procedures, secondary data analysis and expert sources to supplement limited stakeholder participation.⁷³ The final HRA did still adhere to the main tenets of transparency, independence, and inclusivity and achieved the goal to better understand the human rights impacts of the Marlin Mine and how they could be addressed.

This is a valuable example for others who may undertake similar assessments in the future. While there has been progress to resolve some of the challenges of this HRA and others will take place in very different contexts, by definition one cannot foresee and plan for all that will arise in the course of review before an assessment begins since an assessment is the very tool necessary to acquire that insight. The assessors at the Marlin Mine understood this from the outset, which is why they analyzed a wide-range of human rights issues before narrowing the list to those seven most important for the Marlin Mine based on interviews and research.⁷⁴ In the same vein, it was thus necessary to adapt protocols and approaches based on initial findings.

4.3.2. Respect Confidentiality in Stakeholder Interviews

Confidentiality was of the utmost importance with Guatemala's long history of war and oppression, and a community culture that does not accommodate minority opinions well. According to Allan Ovalle, the former CSR Manager of the Marlin Mine, a community is expected to share one opinion. Therefore, expressing an independent opinion, especially one that is in opposition to the established position of the community, is culturally discouraged. Dissidents may not have been willing to speak to an assessor for fear of social ostracism, repression and intimidation that communities have used against those who dissented in the past. In order to assuage these concerns and encourage participation, the assessors offered complete anonymity and non-attribution for any information shared during interviews. It is telling that every single person who agreed to participate in the assessment did request the anonymity offered.⁷⁵

4.4. Lessons Learned – Post-Assessment Phase

4.4.1. Communication is Critical

The Steering Committee and OCG discussed extensively how to communicate the findings and recommendations of the Assessment. The goal was not only to make the Assessment public, but also to ensure that it was comprehensible to the local community members with very different cultural and educational backgrounds. As already examined, the assessors and the Steering Committee went to great lengths to engage with the local populations and communicate the purpose, philosophy and findings of the HRA to them. The Executive Summary of the HRA was translated into Mam and Sipakapense,

71. HRA, Pg. 10.

72. See HRA Appendix H: External Environmental Review of the Marlin Mine, prepared by KPC Consulting for the HRA, March 2010 at http://www.hria-guatemala.com/en/docs/Human%20Rights/HRA_Appendix_H_External_Environmental_Review_KP_Consulting.pdf and Appendix I: External Hazard Assessment of Chemical Constituents at the Marlin Mine, prepared by Intrinsik for the HRA, March 2010 at http://www.hria-guatemala.com/en/docs/Human%20Rights/HRA_Appendix_I_External_Chemical_Hazard_Assessment_Intrinsik.pdf.

73. http://www.hria-guatemala.com/en/docs/Impact%20Assessment/Steering_Committee_Update_May_2009_05_27_09.pdf.

74. HRA Pg. 15, Table 1.2: Top 20 Issue Areas of Concern to Stakeholders.

75. HRA, Pg. 12.

and presentations were given to share the information with the communities.

Given the circumstances of the indigenous populations in the village, Allan Ovalle had a number of suggestions that he believes would have facilitated transmission of the HRA's findings and recommendations. He suggested the use of workshops and presentations with small groups, and that presentations be customized for different audiences. Lower-level mine workers, for example, who have often received only minimal education, would benefit from a presentation with more images and less text. The HRA presentation could also be translated and presented in the native languages of the respective communities, rather than being translated in real time during a general presentation. The use of digital or video recordings, instead of printed materials, would make the material easier to disseminate among a population where many are illiterate or have limited reading ability.

4.4.2. Corporate Culture

If a company is to meet the responsibility to respect human rights, institutional change in the corporate culture to incorporate consideration of human rights into company management processes is essential. According to Mr. Villacorta's experience, engaging site leadership so they are well prepared, informed, and supportive of the initiative will allow for the shift to take effect at all levels of the company, and determine whether the change is successful.

5. GOING FORWARD – CONTINUED ENGAGEMENT AND IMPROVEMENT

The assessment of human rights impacts does not end with the publication of a report. "Tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement".⁷⁶ Goldcorp recognized this and considered the assessment an on-going process rather than a case study to be shelved once completed. One of the company's central objectives for the HRA was that it provide a roadmap to improve its operations vis-à-vis human rights.

The HRA report released in May 2010 included findings about past practices and incidents, and provided more than sixty

recommendations for improvement to avoid negative impacts in the future.⁷⁷ Findings and recommendations were categorized based on the seven issue areas previously discussed: Consultation, Environment, Labour, Land Acquisition, Economic and Social Investment, Security, and Access to Remedy. The findings were rated according to the following classifications:

- Violation: Action or inaction by the State results in human rights of individuals or groups not being protected or fulfilled;
- Infringement: Action by company results in a worsening of the human rights situation for someone/group of people; and
- Failure to Respect: Inaction by the company results in worsening of the human rights situation for someone/group of people.

To give effect to its commitment, Goldcorp released three responses acknowledging where its performance did not meet stakeholders' expectations, and outlining how it is implementing these recommendations.⁷⁸

James Schenck, formerly Goldcorp's Regional Director of Sustainable Development, Central and South America, also outlined how the company has been talking to mine employees about issues and responses to changes on the corporate level at the Marlin Mine and beyond. The engagement process at the mine has been documented and included engagement with management and staff. Meetings are held with staff on an on-going basis to solicit feedback.

The Guiding Principles provide the baseline standard for business enterprises, setting out the corporate responsibility to respect human rights. In order to meet this responsibility, companies should have in place adequate policies and processes to prevent and address adverse human rights impacts. Human rights due diligence processes should contribute to identifying risks and impacts, acting on such impacts, tracking the effectiveness of the company's actions and com-

76. Guiding Principles on Business and Human Rights, Principle 20, Pg. 23.

77. A Summary Table of Findings by Human Right is included in the HRA Report as Appendix G: http://www.hria-guatemala.com/en/docs/Human%20Rights/HRA_Appendix_G_Summary_Table_of_Findings.pdf.

78. For the specific responses to all findings and recommendations see Goldcorp's Response in June 2010 and subsequent Updates in April 2011 and October 2011. <http://www.goldcorp.com/Unrivalled-Assets/Mines-and-Projects/Central-and-South-America/Operations/Marlin/Human-Rights-Assessment/default.aspx>.

municating on how risks and impacts are addressed to stakeholders. Assessing impacts is thus a core element of human rights due diligence. Goldcorp's first response to the Assessment stated that: "Goldcorp commits to integrate respect for human rights explicitly in Goldcorp's business management process throughout the company. Goldcorp today commits to begin a comprehensive process of developing and implementing business management practices that will ensure 'broader due diligence for human rights', consistent with the UN Framework established by John Ruggie. This commitment is the foundation for the responses to the recommendations specific to the Marlin Mine".⁷⁹

Formalizing their commitment, in October 2010 Goldcorp published both a Human Rights Policy⁸⁰ and a Corporate Social Responsibility Policy⁸¹ for all employees, contractors and partners. Prior to finalizing these policies, drafts were distributed to a variety of NGOs, socially responsible investors and other stakeholders for feedback, which was ultimately incorporated into the final policies.⁸² In November 2010, Goldcorp began outreach to human rights organizations with the goal of finding a potential partner for global integration and implementation of the Human Rights Policy. They began collaboration with Fund for Peace, an international NGO, to design and implement a training program and methods to monitor its efficacy.⁸³ Goldcorp continued to make progress in 2011 to integrate human rights in management practices. Key among these was the development of the Grievance System Framework in collaboration with an expert consultant on grievance mechanisms.⁸⁴ Going forward, these human rights based institutional changes are to be implemented throughout Goldcorp's operations. Goldcorp's commitment has expanded beyond the Marlin Mine to its Los Filos Mine in Mexico and it has plans to implement the standards at other operations.

Goldcorp's efforts to address impacts and implement recommendations from the HRA have resulted in measurable improvement. For example, in May of 2010, at roughly the same time the HRA was published, the Inter-American Commission on Human Rights granted precautionary measures at the request of members of the Sipakepense and Mam Maya communities in Sipacapa and San Miguel Ixtahuacán, which "asked the State of

Guatemala to suspend mining of the Marlin I project and other activities related to the concession granted to the company Goldcorp/Montana Exploradora de Guatemala S.A... until such time as the Inter-American Commission on Human Rights adopts a decision on the merits of the petition associated with this request for precautionary measures".⁸⁵ Following further evaluation of the situation, the Commission removed the suspension of Marlin operations from the precautionary measures in December 2011.⁸⁶

In December 2009, Frente de Defensa San Miguelense, a Guatemalan NGO, and the Centre for International Environmental Law, an NGO based in Washington D.C., filed a request for review with the Canadian National Contact Point for the OECD Guidelines for Multinational Enterprises (OECD Guidelines), raising issues related to the implementation of Paragraph 2 of the General Policies (Chapter II) of the OECD Guidelines, which states that enterprises should "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments".⁸⁷ In the Final Statement calling on the two sides to enter into constructive dialogue to resolve the issues in question, the NCP cited the HRA and Goldcorp's responses.⁸⁸ Though it is cited, it is important to note that the NCP made it clear that the HRA did not directly influence their decisions with respect to the initial assessment and the performance of its mandate. The citation of the HRA and the final recommendation for dialogue indicates, however, that the HRA demonstrated that Goldcorp was willing to listen to recommendations and implement change to ameliorate any negative impacts from the Marlin Mine, and thus dialogue was a viable option to

79. Goldcorp's Response to the Marlin Mine Human Rights Assessment Report, Pg. 1. http://www.goldcorp.com/files/doc_issues/Goldcorps_Response_to_Marlin_Mine_HRA_report_final_06_29_10.pdf.

80. The Human Rights Policy is available at http://www.goldcorp.com/Theme/GoldCorp/files/docs_governance/CSR%20Human%20Rights%20Policy.pdf. Further information about the Policy is also included at: <http://www.goldcorp.com/English/blog/Articles-Details/2012/Myths-of-Marlin-Mine/default.aspx>.

81. See Goldcorp's Corporate Social Responsibility Policy, available at <http://www.goldcorp.com/Theme/GoldCorp/files/CSR%20Policy%20Statement.pdf>.

82. Goldcorp Sustainability Report 2010, available at http://csr.goldcorp.com/2010/8_landing.php.

83. *Ibid.*

84. Goldcorp Sustainability Report 2011, available at http://csr.goldcorp.com/2011/8_landing.php.

solve the problem. To that end, Guatemala's Vice President, Rafael Espada, organized a multi-stakeholder dialogue (Mesa de Diálogo), which included some of the original petitioners to the Inter-American Commission on Human Rights, Ministries of the Guatemalan Government, the Presidential Commission on Human Rights, representatives from the Municipalities of Sipacapa and San Miguel Ixtahuacán, and representatives of Goldcorp.⁸⁹

The reception and feedback on the HRA were not universally positive. In spite of the HRA and Goldcorp's efforts to address the issues identified therein, there are still some complaints about impacts from the local communities and NGOs. Many of these are old or ongoing complaints. Grievance mechanisms for employees and other local stakeholders were established following the HRA, but very few new conflicts or complaints have been reported since the HRA was completed. The polarization and conflict over mining in Guatemala more generally continues beyond Goldcorp and Marlin as well.⁹⁰

The relationship between the local communities and Marlin has evolved and improved with ongoing engagement. In November 2012, a 7.4-magnitude earthquake struck Guatemala, with the majority of the damage in the San Marcos region. In the aftermath, community representatives reached out to mine management for help connecting with the appropriate government agencies in Guatemala City responsible for disaster relief. In the opinion of David Deisley, then Executive Vice President of Corporate Affairs and General Counsel at Goldcorp, this was a positive sign that the company was successfully engaging with stakeholders to establish sustainable infrastructure that will last long after Goldcorp is gone.

6. CONCLUSION

When Goldcorp acquired Montana and the Marlin Mine from Glamis in 2006, they inherited negative human rights impacts and resulting tensions with the local communities. Although the Shareholder Group initially proposed the assessment process, the company agreed to participate, contributing information and feedback and responding to the recommendations included in the final HRA report. Indeed, Goldcorp has now incorporated human rights in its business practices at other mines more broadly. Their efforts to address the impacts and recommendations in the HRA, while imperfect, do reflect progress in a continuing process. Other changes, including the election of a new government in 2011, have contributed to progress on that front as well.

There are a number of lessons that can be drawn from the experience of undertaking an HRA at the Marlin Mine, including understanding the challenges that the process represented for the operating company, the assessors, and all of the stakeholders involved. As observed in the analysis of several challenges, assessing impacts on human rights is a relatively new field. The Marlin Mine HRA is currently the only company-commissioned human rights assessment in the mining sector of its breadth and scope that is available to the public. Moreover, the Guiding Principles, unanimously adopted by the UN Human Rights Council a little more than a year after the completion of the HRA, call on business to conduct assessments and due diligence of their impacts and potential impacts on human rights. Thus these lessons are timely and have particular value.

85. Organization of American States. Precautionary Measures, at PM260-07. <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

86. Goldcorp Sustainability Report 2011.

87. Final Statement of the Canadian National Contact Point on the Notification dated December 9, 2009, concerning the Marlin mine in Guatemala, pursuant to the OECD Guidelines for Multinational Enterprises (3 May 2011), Pg. 1. http://www.goldcorp.com/files/doc_issues/canadian_ncp_final_statement.pdf.

88. Id., Pg. 5.

89. Goldcorp Annual Report 2012, Pg. 54.

90. MacDonald, Fiona. Tahoe trades down as complaint tied to violence at Guatemalan mine submitted to OSC. 3 June, 2013. <http://www.proactiveinvestors.com/companies/news/44588/tahoe-trades-down-as-complaint-tied-to-violence-at-guatemalan-mine-submitted-to-osc-44588.html>.

Table of human rights issues addressed

Human rights issues addressed	Case Study
Business relationships	ANZ
Child labour	Telenor, Carlson, Total
Children's rights	Sakhalin
Child sexual exploitation	Carlson
Complicity	Telenor, Carlson
Diversity and/or non-discrimination in employment	ANZ, Telenor, Xstrata, Total
Ethical Framework for cross-border labour recruitment	ManpowerGroup
Family life	ANZ
Forced labour	Telenor, FSI, ManpowerGroup, Total
Freedom of association/collective bargaining/collective action	Telenor, Total
Freedom of movement	FSI, ManpowerGroup
HIV/AIDS	Xstrata
Human rights and environment	ANZ, Telenor, Total, Talisman
Human Trafficking, slavery and slavery-like practices	Carlson, FSI, ManpowerGroup
Indigenous people's rights	Total, Talisman, Goldcorp
Living wage	FSI, ManpowerGroup
Minorities	ANZ
Occupational health and safety	ANZ, Telenor, Xstrata, FSI, ManpowerGroup, Total, Talisman
Privacy	Xstrata
Right to adequate standard of living	Xstrata
Right to education	ANZ, Sakhalin, Talisman
Right to food	Talisman
Right to health	Telenor, Sakhalin, Xstrata, Talisman, Goldcorp
Right to life	Xstrata, Goldcorp
Security and conflict	Talisman, Goldcorp
Security and freedom	ManpowerGroup
Social investment and community development	ANZ, Sakhalin, Talisman
Sphere of influence	Telenor, Carlson, Talisman
Standard of living	Telenor, Talisman, ANZ
Supply chain management	ANZ, Telenor, Total
Trade union rights	Telenor
Water	ANZ
Weapons	ANZ
Whistleblower protection	ANZ
Women's rights	Xstrata
Working conditions	Telenor, FSI, ManpowerGroup, Total
Workplace bullying and harassment	ANZ

Table of human rights management practices discussed

Management Practice	Case Study
Auditing	Goldcorp
Communications	ANZ, Telenor, Sakhalin, Carlson, FSI, Total, Talisman, Goldcorp
Getting Started	ANZ, Xstrata, Carlson, FSI, ManpowerGroup, Total, Talisman
Grievance Mechanisms	ManpowerGroup, Goldcorp
Human Resources	Total
Legal Compliance and Ethics	Total
Measuring Impact and Auditing	ANZ, Telenor, Sakhalin, Xstrata, FSI, ManpowerGroup, Total, Talisman
Policy	ANZ, Telenor, Sakhalin, Xstrata, Carlson, FSI, ManpowerGroup, Total, Talisman, Goldcorp
Processes and Procedures	ANZ, Telenor, Sakhalin, Xstrata, Carlson, FSI, ManpowerGroup, Total, Talisman
Procurement	Total
Reporting	ANZ, Telenor, FSI, Goldcorp
Stakeholder Engagement	Goldcorp
Strategy	ANZ, Telenor, Sakhalin, Xstrata, Carlson, FSI, ManpowerGroup, Total, Talisman
Training	ANZ, Telenor, Sakhalin, Carlson, FSI, Total, Talisman

For more information on management practices, please see "A Human Rights Management Framework" at http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/HR_E_Framework_Poster_A2.pdf.

Table of human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

Standard, Tool or Initiative	Case Study
Association of South East Asian Nations (ASEAN)	ANZ
Athens Ethical Principles	Carlson, FSI, ManpowerGroup
CDA Collaborative Learning Projects	Total
CIETT Principles	ManpowerGroup
Code of Conduct for the Protection of Children against Sexual Exploitation in Travel and Tourism	Carlson
Danish Institute Human Rights Compliance Assessment Tool	Total, Goldcorp
Dhaka Principles	ManpowerGroup
Dow Jones Sustainability Index (DJSI)	ANZ
Electronic Industry Citizenship Coalition (EICC) Code	Telenor
Ethical Trade Initiative (ETI) Base Code	Telenor
European Commission	ANZ
FTSE4Good Index	ANZ
Fundación Ideas para la Paz's "Conflict Sensitive Business Practice"	Talisman
Guiding Principles on Business and Human Rights	ANZ, Sakhalin, Xstrata, ManpowerGroup, Total, Goldcorp
ILO Standards and Conventions	ANZ, Telenor, FSI, ManpowerGroup, Talisman
International Alert's "Conflict-Sensitive Business Practice: Guidance for Extractive Industries"	Goldcorp
International Bill of Human Rights	FSI
International Covenant on Economic, Social and Cultural Rights	Xstrata
International Finance Corporation (IFC) and Equator Principles	ANZ

Standard, Tool or Initiative	Case Study
Luxor Guidelines	ManpowerGroup
Millenium Development Goals	Sakhalin, Xstrata
Organisation for Economic Co-operation and Development (OECD)	ANZ, Goldcorp
Organisation of American States Declarations	Talisman
Palermo Protocol	ManpowerGroup
Rights & Democracy's "Step by Step Guide to Assess the Impact of Foreign Investments on Human Rights"	Goldcorp
SA8000	Total
UN Convention on the Rights of the Child	Telenor, Carlson
UN Declaration on the Rights of Indigenous Peoples	Talisman, Goldcorp
UN Special Representative of the Secretary General on Business and Human Rights	ANZ
United Nations Human Rights Council	ANZ
Universal Declaration of Human Rights	ANZ, Telenor, Sakhalin, Xstrata, Carlson, Total
Voluntary Principles on Security and Human Rights	Total, Talisman
World Resources Institute	Talisman

The Ten Principles of the United Nations Global Compact

HUMAN RIGHTS

- Principle 1 Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2 make sure that they are not complicit in human rights abuses.

LABOUR

- Principle 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4 the elimination of all forms of forced and compulsory labour;
- Principle 5 the effective abolition of child labour; and
- Principle 6 the elimination of discrimination in respect of employment and occupation.

ENVIRONMENT

- Principle 7 Businesses are asked to support a precautionary approach to environmental challenges;
- Principle 8 undertake initiatives to promote greater environmental responsibility; and
- Principle 9 encourage the development and diffusion of environmentally friendly technologies.

ANTI-CORRUPTION

- Principle 10 Businesses should work against corruption in all its forms, including extortion and bribery.

