



# Embedding Respect for Human Rights Within a Company's Operations

**Shift Workshop Report No. 1, June 2012** 

## 1. Introduction: Addressing the Challenge of 'Embedding' Respect for Human Rights

From 12-13 June 2012, Shift held the first in a series of planned workshops with business leaders, co-hosted with the Corporate Social Responsibility Initiative of Harvard's Kennedy School of Government. The workshops form part of Shift's

Shift is an independent non-profit center for business and human rights. Our team was centrally involved in shaping and writing the UN Guiding Principles on Business and Human Rights. We help governments, businesses and their stakeholders put the UN Guiding Principles into practice.

Business Learning Program aimed at supporting implementation of the UN Guiding Principles on Business and Human Rights by companies.

The purpose of the workshop was to explore the challenge of embedding the responsibility to respect human rights in business enterprises. The issue of 'embedding' respect for human rights arises in Guiding Principle 16 on 'Policy Commitment', for which the commentary states:

'Just as states should work towards policy coherence, so business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. This should include, for example, policies and procedures that set financial and other performance incentives for personnel; procurement practices; and lobbying activities where human rights are at stake.

Through these and any other appropriate means, the policy statement should be embedded from the top of the business enterprise through all of its functions, which otherwise may act without awareness or regard for human rights.'

As this reflects, 'embedding' is about translating a corporate policy statement into a company-wide commitment that becomes part of how the company operates and makes decisions, across all business units and functions. This raises issues from top-level leadership to cross-functional collaboration; from performance incentives and metrics to corporate values; from how human rights are 'translated' for staff across businesses to certain assumptions behind business models. It

relates to high-level policies and systems as well as day-to-day decision-making at the operational level.

However, experience suggests that getting embedding 'right' is – in practice – quite challenging. While high-level policy commitments to respect human rights are often an important early step, the policies and practices of the enterprise as a whole, or of individual business units, may unintentionally work at cross-purposes – undermining stated commitments and creating a real risk of inadvertently

"Embedding the corporate responsibility to respect human rights is about making respect for human rights part of the company's DNA, creating the adaptive capacity for the enterprise to respond to unforeseen circumstance in ways that respect the human rights of all stakeholders."

John Ruggie, Shift Chair and Workshop Participant

being involved with human rights harms. Getting embedding 'right' requires that respect for human rights be embedded throughout the totality of a company's management systems and procedures and becomes a core element of the corporate culture.

Participants in the workshop included teams from Anglo-Gold Ashanti, Codelco, Coca-Cola, Hitachi, Total and Unilever, representing a number of industries, from consumer-facing brands to extractive corporations, and headquartered and operating across all continents. Some participants were several years into their efforts to embed the responsibility to respect human rights within their companies, while others were at much earlier stages, while all had faced a variety of different challenges along the way.

The workshop was organized around several key themes that emerged from preworkshop interviews with the participants:

- Demonstrating Effective Leadership
- Organizing the Human Rights Function within the Company
- Creating the Space for Human Rights Amidst Competing Business Priorities
- Communicating the Relevance of Human Rights at an Operational Level
- Finding the Appropriate Balance Between Clarity and Flexibility in Policies and Processes

The workshop was conducted under the 'Chatham House' rule, meaning that insights and reflections shared during the workshop are reported without attribution, unless otherwise indicated.

### 2. Demonstrating Effective Leadership

Leadership from the highest levels of a company clearly plays a critical role in embedding the corporate responsibility to respect human rights – in transforming a high-level policy statement into a company-wide commitment by signaling its importance internally and externally. It is clear that most, if not all, companies have

faced challenges in this area to varying degrees. The workshop conversation sought to highlight specific advice for top management in demonstrating effective leadership around a company's commitment to respect human rights.

### The Importance of Authenticity

Adopting a high-level corporate policy statement is often an early step by a company in signaling its commitment to respect human rights. However, participants high-

#### Inspiration + Imagination

"Leadership in embedding the responsibility to respect must be a combination of 'Inspiration' and 'Imagination'. Inspiration is about conveying a set of corporate values that respect the human rights of all stakeholders. Imagination helps to translate the responsibility to respect human rights across all parts of the business, even where the business case is not as clear."

Workshop Participant

lighted that making such policy commitments 'raises the stakes', because stake-holders, both internal and external, are highly attuned to the perception of mixed messages, either in words or in actions. Stakeholders are listening and watching for signals of the true commitment of leadership to these types of policy statement: how often CEOs speak about human rights issues in their speeches, whether they report on human rights issues to their boards and investors, where organizational resources get invested, how the performance of employees and

"Say what we do, do what we say, and prove it."

Advice from one participant about demonstrating effective leadership

suppliers gets measured and who gets rewarded; and how operational decisions get made and explained when human rights issues are present. One participant offered simple and straightforward advice to leaders: "Say what we do, do what we say, and prove it."

Two companies shared examples of the ways in which they demonstrate authenticity of their company codes:

- During a leadership transition, one company's new CEO established a
  company-wide, 'bottom-up' process for creating a company Values
  Charter, generating more than 11,000 individual submissions from
  employees at every level of the organization. The resources invested and
  the participatory process used to establish the Charter signaled to all
  employees the sincerity of the effort and the leadership's commitment to
  the Charter.
- Another company uses its Code of Ethics, which incorporates its human rights commitments, as the basis for formal audits of its national affiliates on a rotating basis. The corporate chair of the Ethics Committee, who reports directly to the CEO, personally attends the in-country debriefing with the senior management of the national affiliate at the conclusion of each of the 20 audits conducted annually.

Embedding respect for human rights requires that authentic leadership extend beyond the level of the CEO and other top management in any large enterprise, to include the heads of business units and country managers. Statements, decisions and actions at these crucial middle-management levels need to be aligned with the stated expectations from the very top. Otherwise there is a high risk of sending mixed messages to company employees about how 'real' the company's commitment to its policy statements or company codes is in practice. This in turn will quickly undermine their implementation.

#### **Transparency and Engagement**

One of the clearest opportunities for leaders to demonstrate leadership on a company's policy commitment to human rights is when business needs appear to be in direct conflict with human rights commitments. The corporate instinct is often to deny rather than embrace the dilemma and withhold information that might bring it to wider attention. When leaders instead respond to difficult human

rights issues with transparency and engagement, they send a powerful message to employees at all levels about the company's commitment to its responsibility to respect human rights.

In one example, a company was faced with a decision about launching operations in a region that would bring substantial financial benefit to the organization but would raise obvious human rights concerns. Rather than deciding 'go' or 'no-go', the CEO invited the company's civil society critics into dialogue, to explore ways in which the project could proceed that could address potential human rights concerns. The decision to engage the company's critics sent ripple effects throughout the organization, signaling the importance of the company's commitment to respect human rights and its willingness to engage those challenges proactively, even when substantial business interests were at stake.

Another company, faced with a decision about disclosure of a human rights concern with one of their critical suppliers, decided to disclose the problem, even though they were still dependent on that supplier. They "got a lot of credit for acknowledging the problem, even though we had not solved it yet."

Several companies have institutionalized external engagement with stakeholders through standing stakeholder panels that are consulted to varying degrees on the company's efforts to address their social, including human rights, impacts and dilemmas. A number of participants reflected on this as a valuable way to gain additional, informed perspectives on critical issues and advice on possible responses to complex situations.<sup>1</sup>

### Searching for 'the Grain of Truth'

Leaders also send important signals to the organization in how they respond to concerns about actual or potential adverse human rights impacts. One company spoke about the critical shift that took place in the internal human rights culture

<sup>&</sup>lt;sup>1</sup> The various forms and functions of stakeholder panels are further discussed in the 2007 AccountAbility report 'Critical Friends' (http://www.accountability.org/about-us/publications/critical-friends.html), including standing corporate-level bodies on corporate responsibility and sustainability issues, ad-hoc panels convened to address specific challenges at key moments, and community-level panels that provide a platform for sustainable engagement. Ad hoc, time-specific stakeholder panels are discussed in a 2009 CSRI student report, 'The Mechanics of Accountability: Ad Hoc Time-Specific Stakeholder Panels', available at: http://www.hks.harvard.edu/m-rcbg/CSRI/publications/studentpaper 3 lombardo\_santiago.pdf.

when, after a period of denying and defending against what seemed like absurd allegations, the company began to search for the 'grain of truth' in what was being said. This shift opened up the opportunity for engagement with critics, transforming the dynamic from confrontation to learning. This has led to a broader learning culture within the company, where 'screw-ups' on human rights issues, when they do occur, and once addressed, can constitute learning opportunities to further embed the responsibility to respect human rights within the company.

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## 3. Organizing the Human Rights Function Within the Company

One of the foundational decisions a company makes in embedding the corporate responsibility to respect human rights is how to organize the human rights function within the company and where to locate it.

### Many Choices, Many Implications

There are many examples of the different ways companies have chosen to organize the function, from placing one existing function or department in the lead (variously legal, human resources, procurement, community relations, CSR/ sustainability, compliance or other departments), to establishing cross-functional working groups involving multiple departments. The question of how to organize the human rights function and where to locate it is very much context dependent.

Leadership of the hosting department is often a critical factor. In some instances, the nature of the business operations meant that the primary human rights concerns were likely to fall within the realm of a particular business department (for instance, linked to Human Resources in the case of a labor rights focus, or Community Relations in a case where impacts on communities are the greatest

risk). In other cases, the location of the human rights function within a specific department was the result of the issue being picked up by a particularly motivated individual. In yet others, it was the result of those who worked on human rights seeking to attach themselves to a company leader who was particularly influential and effective.

However, while there may not be a 'right' answer to the question of how to organize the function, there are often important implications flowing from the decision that is made. While hosting the function within a single department is likely to increase accountability and create clear leadership for human rights issues, this may lead to challenges in creating the broad ownership required across the business enterprise if the corporate responsibility to respect human rights is to be effectively embedded. Cross-functional working groups can send the clear signal that human rights is the responsibility of the entire business enterprise, but potentially at the expense of clear leadership and accountability. Hosting the function in a department that is not considered a 'power broker' or 'influencer' within the company is likely to send a negative message about the company's commitment to its responsibility to respect human rights.

Regardless of how an enterprise chooses to organize the human rights function internally, the legal department often plays a critical role in shaping how a company approaches its responsibility to respect human rights. In some instances, legal departments take a largely compliance-driven approach to human rights,

### Corporate Lawyers: Risk Managers or Opportunity Managers?

The General Counsel of one large company encourages his team of lawyers to see their role not just as risk managers, but as opportunity managers, surfacing and resolving potential human rights dilemmas as early as possible through engagement with relevant business units, in order to build more sustainable long-term business opportunities.

which can create tensions with the context-specific reflection and analysis that managing human rights dilemmas often requires. In other instances, legal departments that see human rights issues solely in terms of risk or threat (to the company) may promote a culture that discourages early identification and internal dialogue around potential human rights dilemmas. The General Counsel of one company encourages his team of lawyers to see themselves 'not just as risk managers, but as opportunity managers', surfacing and resolving human rights dilemmas as

early as possible with relevant business units, in order to build more sustainable business opportunities.

### Not 'Where?', but 'What?' and 'How?'

More important than the question of where to locate the function are the questions of what role the function will play and how it will engage and operate with different parts of the business. Is the function intended to be a 'guard dog', meaning that its role is to provide oversight and accountability for the effective implementation of human rights policies or processes it has developed, and to serve as an early warning system for problems? Or is the function intended to be a 'guide dog', meaning that its role is to act as a coach within the organization, serving as a re-

source from which other departments should seek assistance? In cross-functional working group models, is the committee simply a place where information is shared, or is it the place where decisions are jointly made?

In one example, a company hosts the function within a lead department but structures itself to achieve some of the benefits of more cross-functional ownership: each of the members of the team has dedicated responsibility for engagement with specific business units, spending as much as

#### 'Guard Dog' or 'Guide Dog'?

More important than choosing where to locate the human rights function is deciding on the roles of the function and how it will engage and operate with different parts of the business. Is the function intended to provide oversight and accountability for the implementation of human rights policies and processes (a 'Guard Dog'), or a resource and source of assistance for other parts of the business (a 'Guide Dog')?

90% of their time outside of their own department. Specific action plans are created with each of the business units, which are held accountable for their implementation.

Regardless of how the function is organized, company participants generally recommended that specific human rights activities (such as human rights due diligence processes) should reside within the operational business units and departments, rather than be conducted from the center - especially where an enterprise has geographically dispersed operations - in order to ensure ownership of the relevant human rights issues and measures.

### 4. Creating the Space for Human Rights Amidst Competing Business Priorities

A consistent challenge in embedding the responsibility to respect human rights is creating space amidst competing business priorities. Companies have limited bandwidth for company-wide initiatives, and 'human rights' often finds itself competing for attention with issues such as safety or anti-corruption, quite apart from operational issues such as efficiency, quality, innovation or profitability.

### **Repackaging Human Rights**

One strategy that several companies have used is to 'repackage' human rights issues and integrate them into existing systems and processes in other areas of company focus, such as safety, human resources, and the environment. For instance, one company representative noted that 2012 is 'the year of safety' for their company, and there are limited opportunities to promote other corporate-wide initiatives. They have instead identified human rights issues with clear links to safety issues and integrated them into the safety focus. The challenge is that human rights issues transcend the safety domain (or any other functional domain), and the primary focus on these issues may mean that other important human rights issues, such as potential impacts on neighboring communities, are left for a later time.

### **Learning from Safety**

Beyond using areas such as safety or anti-corruption as a 'hook' for human rights, these areas may provide instructive models of how to 'embed' issues effectively across and throughout corporate enterprises. For instance, the safety culture within the extractive industry is an example of an issue that has been effectively 'embedded', transforming an entire industry. Extractive companies routinely start all meetings with 'safety

While there are important differences to take account of, efforts to embed human rights may have much to learn from successful efforts to embed other corporate priorities, such as safety in the extractive industry.

moments' and positive safety records are a source of pride in extractive companies both internally and externally.

However, distinctive advantages were recognized in areas such as anti-corruption, environment and safety, which may make it easier to 'embed' these issues more effectively than human rights within corporate enterprises. For instance:

- Anti-corruption is often perceived as a 'hard law' compliance issue, and therefore either more 'mandatory' or more clear in terms of what is required of business leaders and employees. By contrast, human rights is perceived as 'soft law', and what business leaders and employees are being asked to do is often more complex and nuanced in nature.
- In at least one company's experience, environmental issues have found an effective foothold by framing simple, positive, ambitious and inspirational goals – goals around which it is easier to motivate the company due to their positive framing. By contrast, human rights goals framed as the 'absence of violations' may be more challenging for people to embrace.
- Safety issues focus internally, tapping into the company sense of 'family'. By contrast, human rights often focuses on external stakeholders, 'outside the fence'.
- Safety has clear, simple key performance indicators (KPIs) to measure progress, which enable some 'quick wins'. By contrast, the human rights space has not yet developed clear and simple KPIs. One company shared the example of a scorecard system which creates a clear metric, but this may also raise concerns about creating too strong a 'compliance' focus for human rights issues, encouraging 'tick-box' approaches.
- Safety issues have effectively been translated into efficiency and costsavings terms. By contrast, the cost-savings case has not yet been effectively made in relation to preventing human rights impacts.<sup>2</sup>

#### **Suggestions for Further Reflection**

These analogies led to several suggestions for further thinking to support efforts to embed human rights:

- Identifying what some 'quick wins' could be in the area of human rights.
- Identifying clear yet credible KPIs to measure progress in efforts to respect human rights, balancing quantitative and qualitative data so as to avoid simplistic approaches.
- Identifying a positive framing for addressing human rights issues where possible, rather than simply putting them in terms of the absence of violations.
- Making a clearer economic case for the prevention of human rights impacts in terms of financial costs to the company.

<sup>&</sup>lt;sup>2</sup> See Section 6 for more on emerging research into the 'costs of conflict' related to adverse human rights impacts in the extractive sector.

 Using the development or implementation of grievance mechanisms as an entry point for internal conversations about the relevance of human rights, since they 'speak the language of business' in terms of early warning systems, risk management and efficiency.

### 5. Communicating the Relevance of Human Rights at an Operational Level

Another critical challenge in embedding the corporate responsibility to respect human rights is finding effective ways to communicate the relevance of human rights to employees across the company.

In many contexts – cultural, national, or company – the language of human rights can carry significant 'baggage'.

In many countries, the language of human rights can carry significant 'baggage', making any dialogue on human rights seem either irrelevant or threatening to local employees. The language of human rights may in some contexts conjure up specific types of

abuse and have particular political or historical connotations (such as disappearances or extra-judicial killings in South America, or ethnic discrimination in certain Asian countries). Even where this is not the case, there is often a fear among employees that dialogue around human rights is necessarily about 'breaches' or 'abuses' with legal implications and personal repercussions, or the suggestion of harming human rights may be perceived as a personal affront.

A separate set of challenges arises in communicating the relevance of human rights to business units, many of whom may see human rights as the responsibility of someone else within the company, perceive a conflict between human rights and business objectives, and/or feel fatigued by what they perceive as too many 'non-core' initiatives.

### **Being Instrumental Where Necessary**

These challenges were seen as highlighting the need at times to be instrumental in choice of language and framing of human rights issues, without undermining the objectives and essential characteristics of human rights. One company determined that – at least in the earliest stages of its human rights initiatives – the language of human rights had so much negative cultural baggage that it was

better served by avoiding the language altogether. 'Human rights' do not appear in its baseline studies for projects, but are broken out and integrated into other relevant, issue-specific sections. While this has been effective, it has created additional challenges in being able to track and report on its human rights commitments.

Others facing similar challenges have found that internal stakeholders often become more receptive to the language of human rights over time, once the

issues underpinning them have been understood and embraced. In yet other examples, companies have found it is possible and positively received if they 'brand' relevant policies, processes and tools under the explicit banner of human rights. Regardless of the language that is used, the end goal must remain the same: to embed respect for human rights –

Regardless of the language that is used, the end goal must remain the same: to embed respect for human rights - with everything the concept entails - across the organization, while using the language and framing that most effectively helps to achieve that.

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### **De-Mystifying Human Rights**

Many companies have found that they need to start conversations about the corporate responsibility to respect human rights by connecting human rights to what the company, business unit, or employee is already doing in their daily work. Others have framed the conversation around the existing policies and processes that the company already has in place which address substantial areas of human rights, and then presented the challenge in terms of how to 'close the gap' with regard to other human rights issues. Others highlighted potential benefits in conveying the relevance of human rights at a personal level, in terms of individual values and how people would want to be treated themselves; while others reflected that in certain cultural contexts it would work less well to engage staff through the lens of personal experience. One company found that it simply needed to create an appropriate space for discussion of human rights (through a workshop format) to tap into a substantial appetite within a key business unit to engage in the discussion.

#### **Tailoring the Business Case**

Companies highlighted some successes in tailoring the human rights message to the business issues that individual business units care about. This may require alternatively framing human rights in terms of the 'sustainability of the business', 'brand protection', 'risk management', 'opportunity management', 'increased efficiency' or 'increased market opportunities', depending on the audience. For

"We can't be afraid to make the economic case of the impact on the brand from adverse human rights reports."

others, it may require quantifying the costs to the business of failing to prevent human rights harms. In an article co-authored by Shift's Rachel Davis, a typology for the 'costs of conflict' is proposed, identifying the types of costs typically incurred by extractive (and likely other) businesses when

adverse human rights impacts occur – including costs such as operational disruptions, staff time required to manage conflict, and lost opportunity of business activities not pursued. Experience suggests that using this typology to generate internal discussion and reflection may be sufficient for conveying the business case, without always needing to quantify those costs within the particular company.<sup>3</sup> Other examples suggest that making 'the business case' does not necessarily always mean making an economic case; the business case may entail corporate values, doing 'the right thing' and inspiring the workforce.

# 6. Finding the Appropriate Balance Between Clarity and Flexibility in Policies and Processes

Another challenge raised by companies in embedding respect for human rights is that – unlike areas such as anti-corruption or safety – it is often difficult to provide clear, prescriptive answers when human rights challenges arise. At the operational level, decision-makers desire clarity, while human rights dilemmas often require the flexibility to undertake considered, context-relevant analysis of a number of factors. This makes it more difficult to roll out simple company-wide directives or guidance based on 'tick-box' or formulaic approaches.

<sup>&</sup>lt;sup>3</sup> The article detailing the 'Costs of Conflict' research, authored by Shift's Rachel Davis, jointly with Daniel Franks of the Center for Social Responsibility and Mining at the University of Queensland, is available on Shift's website (<a href="http://www.shiftproject.org/publication/costs-conflict-local-communities-extractive-industry">http://www.shiftproject.org/publication/costs-conflict-local-communities-extractive-industry</a>). A more complete report will be available later this year.

### **Illustrating the Tension**

This challenge was illustrated by the contrasting ways in which two companies addressed similar concerns about company policies on child labor. One company faced substantial pushback from its field operations when the guidance it first offered for defining child labor simply referred them to the relevant International Labour Organization (ILO) Convention, which requires an understanding of the specific country context for its interpretation. The company therefore undertook a centralized analysis and issued a clear, 'bright-line' rule that excludes some of the flexibility provided within the Convention.

Another company, facing a similar challenge in a different industry, was concerned that the unintended consequences of a company-wide 'zero-tolerance' policy might have created even more severe adverse human rights impacts. They instead opted to convene a local multi-stakeholder dialogue to work through the various options, recognizing that the absence of a 'zero-tolerance' policy could leave the company vulnerable to allegations of violating human rights standards. While the difference in industries may have made both policy choices appropriate, the contrasting approaches highlight the challenges in finding the appropriate

balance between clarity and flexibility in policies and processes.

"Overly rigid guidance risks 'missing the big picture', while too much flexibility risks 'gaming the system' if the intent of the guidance is not understood and embraced."

Workshop Participant

These dilemmas arise across all kinds of human rights issues. Centralized policy directives provide clear guidance, but may inadvertently risk subsequent adverse human rights impacts by failing to account for key contextual factors. Flexibility for

operational-level decision-making equally creates the risk of staff bending the rules and 'gaming' the system if the intent of the guidance is not understood and embraced.

### Strategies for Thoughtfully Managing the Tension

Company experiences revealed several strategies in managing this dilemma. For one company, decentralized decision-making and flexibility to translate standards into action worked best when it was supported with a package of guidance, resources and support in how to make those decisions. Key factors often included local multi-stakeholder engagement and dialogue around the issues, and working with local civil society partners to help businesses navigate these dilemmas appropriately. Another company rolls out generic, higher-level standards that allow for flexibility in decentralized implementation, and supports that

approach with continued monitoring to see how that flexibility is being interpreted and acted upon. As necessary, the company provides additional guidance and

performance indicators to narrow the scope of flexibility. Similarly, another company whose experience was discussed brings global staff together annually so they can hear from each other how standards are being applied, enabling a 'race to the top' in terms of good practice.

Decentralized decision-making and flexibility to interpret standards has worked best when accompanied by a package of guidance, resources, support, monitoring and review.

These examples highlight that the tension between clarity and flexibility in policies and processes does not pose an insurmountable obstacle to embedding the corporate responsibility to respect human rights. However, that tension needs to be thoughtfully managed to ensure that the company as a whole is adhering to a consistent approach and undertaking the considered analysis necessary to maintain the intent of applicable standards in diverse contexts.

### 7. Potential Areas for Further Research and Thought

Based on suggestions from participants, several potential areas emerged which Shift may take forward for further research and reflection:

**Framing the Message**: Developing a 'toolbox' of concise messages and approaches on the relevance of human rights that will resonate with different internal business audiences:

**Structuring the Human Rights Function**: Developing clearer guidance and criteria for considering how to structure and where to locate the human rights function, with a focus on the roles that these human rights functions can play;

**Lessons from Experiences in Embedding**: Exploring the lessons from the 'safety' and 'environment' functions as models for embedding the corporate responsibility to respect human rights, and whether the field of change management has useful lessons;

Shift: Putting Principles Into Practice

**Transparency**: Aggregating examples of transparency and non-transparency in practice that demonstrate that the real risk is frequently in *not* being transparent, while also recognizing and exploring what the real limits are on transparency;

**Metrics/KPIs:** Finalizing a second CSRI/Shift research report on the 'costs of conflict' in the extractive sector (joint with the Centre for Social Responsibility in Mining at the University of Queensland) and looking for ways to combine quantitative and qualitative aspects of human rights metrics in an appropriate balance.