

THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS IN CHINA AND GLOBALLY

A case-based learning project involving business leaders from Chinese state-owned enterprises and multi-national corporations from diverse geographies

PROJECT PARTNERS

Peking University International Law Institute

Beijing Rong Zhi Corporate Responsibility Institute

Tracktwo

Global Business Initiative on Human Rights

CONTACT DETAILS

Professor Liang Xiaohui

Peking University International Law Institute
Xiaohuiliang@hotmail.com
<http://en.law.pku.edu.cn/>

Dr Wang Xiaoguang, Director

Beijing Rong Zhi Corporate Responsibility Institute
Wangxg21@gmail.com
<http://www.rzcsri.org>

Malin Oud, Founder and Managing Director

Tracktwo
Malin.Oud@tracktwo.se
www.tracktwo.se

Katryn Wright, Programme Director

Global Business Initiative on Human Rights
Katryn.Wright@global-business-initiative.org
www.global-business-initiative.org

© Report Copyrighted by Creative Commons
<http://creativecommons.org/licenses/by-nc-nd/3.0>

August 2014

Acknowledgements

The project partners and conveners would like to acknowledge the contributions from the following organisations and individuals. Their contributions to this project do not imply endorsement of this report, the substance of the project or the learning cases. The views expressed in this report are solely those of the project partners.

The project partners are grateful to the companies that have participated in this project: BASF; China Minmetals; China Ocean Shipping Company (COSCO); CPI Yunnan International Power Investment Company; Flextronics; General Electric; HP; Shell; Sinosteel; and The Coca-Cola Company. The companies participating in this project have demonstrated a welcome level of openness within safe-space discussions and in the inclusion of their learning cases in this publication.

The project partners are grateful to the individuals that have provided expert guidance to this project via the seminar: Professor Li Ming, Peking University International Law Institute; Professor Yang Dongning, Deputy Director, Peking University Guanghua School of Management Case Study Research Centre; and John Morrison, Executive Director, Institute for Human Rights and Business. A further word of appreciation goes to the Guanghua School of Management, Peking University for hosting the project's learning seminar in September 2013.

This project was kindly funded with generous contributions from BASF, the GE Foundation and Shell.



About this Report

This is a report from a 9-month project that engaged business leaders from Chinese state-owned enterprises and multi-national companies headquartered in diverse geographies outside of China. The project aimed to support participants to engage in meaningful peer-to-peer dialogue, and to share policies and practices related to corporate impacts on human rights. To support learning, each company presented and submitted small case studies or “learning cases”. Ultimately, the intention was to build a deeper appreciation and understanding of the UN Framework and *UN Guiding Principles on Business and Human Rights (UNGPs)*, and what companies should, and can do, as they meet their *Corporate Responsibility to Respect Human Rights*.

Why publish this report? The primary purpose of the project was to support peer learning for participants. However, the project team and participating companies have decided to produce and publish this report in order to:

- **Provide a resource to business leaders** – especially in China – who are increasingly recognizing the need to address social impacts, business risk, social license to operate challenges, human rights, and international standards;
- **Profile the learning cases in order to demonstrate action and challenges around diverse human rights impacts.** The learning cases are not intended to be good or best practice case studies (and they demonstrate that companies are at different stages in their understanding of corporate respect for human rights). Nonetheless, the cases are illustrative of how Chinese and international companies are addressing specific human rights impacts, including around indigenous peoples’ rights, collective bargaining, non-discrimination, migrant workers, and access to remedy.
- **Support other non-business stakeholders** (e.g. in academia, civil society and government) to increase their own knowledge about business practices and the UNGPs.

This report and project are small contributions towards encouraging business leadership and improving business practice in relation to human rights impacts in the Chinese context and globally. The project team hopes this will reinforce and support further ways to increase knowledge building and action on this issue.

This report, and all accompanying materials that have been used and developed for this project, are available in English and Chinese on the websites of the project partners.

Contents

Executive Summary	6
Part One: Introduction	10
Overview	10
Project objective	10
Background	11
Timeline	12
Participants and learning cases	13
Part Two: Context and Developments	16
Introductory messages	16
Recent developments in China	17
The <i>UN Framework and Guiding Principles</i>	18
The <i>Corporate Responsibility to Respect Human Rights</i>	21
Part Three: Learning Cases	27
Introduction	27
The learning cases	28
Conclusion	50
Appendix: Learning Case Compilation [Available online or on request]	

Executive Summary

This is a report from a project entitled “**The Corporate Responsibility to Respect Human Rights in China and Globally**”. The project aimed to support participants to enter into meaningful peer-to-peer dialogue, and to share policies and practices related to business impacts on human rights. The project took place over 9-months, starting in June 2013 and ending in February 2014.

The project was conceived in response to Chinese business leaders expressing an interest in approaches to address the social impacts of business in ways consistent with international standards and expectations, including on human rights. The project engaged business leaders from 10 corporations – 4 Chinese state-owned enterprises and 6 multi-national corporations headquartered in diverse geographies outside of China. Section one of this report outlines the background, process and methodology of the project.

A key reference-point for the project was the *UN Guiding Principles on Business and Human Rights* (UNGPs) which guide implementation of the *UN “Protect, Respect and Remedy” Framework*. The UN Human Rights Council endorsed these principles in June 2011 with unanimous support from governments, including the Chinese government. Section two of this report elaborates on the UNGPs and the Chinese context, and emphasizes that:

- Businesses can have both positive and negative impacts on human rights through their operations and investments
- As economies grow and venture into the global market, there is a clear benefit or “business case” for companies to respect human rights
- Business can impact all stakeholders and all human rights
- Human rights are clearly defined, and this is a benefit to companies seeking certainty
- Businesses are often addressing human rights already but simply do not talk about it in this way, and action is often spread across diverse business functions

The project included a learning seminar, bilateral meetings between the project team and participating companies, and the production of this final report. To support learning, each company presented and submitted small case studies or “learning cases”. The discussions reflected a diversity of human rights impacts, in a diversity of geographies and across industries. This variety reinforces that companies of all sectors and geographies must manage their actual and potential human rights impacts, and must be proactive in doing so.

The companies participating in this project have demonstrated a welcome level of openness within the safe-space discussions and in the inclusion of their learning cases in this publication. The summarized cases shared in section three of this report are intended to provide illustrative examples of how participating companies are approaching a diversity of business and human rights issues and to reflect on how the UNGPs can provide a framework to guide companies in preventing and addressing adverse human rights impacts.

COMPANY	INDUSTRY	LEARNING CASE TITLE
BASF	Chemicals	Human rights in the context of Community Advisory Panels (incl. in Nanjing, China)
China Minmetals	Mining and Minerals	Indigenous communities agreement and oversight mechanism in Queensland, Australia
COSCO	Shipping	Connecting human rights to risk management policies and systems
CPI Yunnan	Hydropower	The Myitsone Dam project and the social license operate
Flextronics	Electronics	Addressing the human rights of migrant workers
General Electric	Diversified	Addressing Hepatitis B in the workplace
HP	Electronics / Technology	Students and dispatch workers in the supply chain
Shell	Oil & Gas	Community complaints mechanisms in Eastern USA
Sinosteel	Steel	Local employment in African operations
Coca-Cola	Beverages	Building capacity on collective bargaining with bottlers in China

When reflecting on the learning cases and conversations, the project team observed that:

- Companies have different conceptions of what “responsibility” means in practice when seeking the social license to operate. The UNGPs can help to align attitudes and actions;
- Respect for human rights is possible, and good practices exist in China. There is an emerging community of business leaders that are knowledgeable and skilled when it comes to understanding and managing human rights impacts;
- Discussing real cases and demonstrating practical solutions with practitioners can “demystify” human rights and what international standards mean in practice;
- Engaging experts and rights-holders in developing policies and practices was a common theme in the conversations and learning cases. This issue requires further peer learning and attention;
- Companies expressed the importance of support and guidance that they can access within China and that are developed and supported by Chinese institutions.

The project team hopes that this project and report will be a helpful contribution towards encouraging business leadership and improving Chinese and global business practices in relation to human rights impacts. The project team hopes this will reinforce and support further ways to increase knowledge building and action on this issue in the Chinese context.

The project was established jointly by Peking University International Law Institute, the Beijing Rong Zhi Corporate Responsibility Institute, Tracttwo and the Global Business Initiative on Human Rights. BASF, the GE Foundation and Shell generously funded the project.

PART ONE:
INTRODUCTION

Introduction

1.1 OVERVIEW

“The Corporate Responsibility to Respect Human Rights in China and Globally: *A case-based learning project involving business leaders from Chinese state-owned enterprises and multi-national corporations from diverse geographies*” took place over 9-months, starting in June 2013 and ending in February 2014. The project was established jointly by Peking University International Law Institute, the Beijing Rong Zhi Corporate Responsibility Institute, Tracktwo and the Global Business Initiative on Human Rights. BASF, the GE Foundation and Shell generously funded the project.

The project engaged business leaders from 10 corporations – 4 Chinese state-owned enterprises and 6 multi-national corporations headquartered in diverse geographies outside of China. The project aimed to support company participants to enter into meaningful peer-to-peer dialogue, and to share policies and practices related to business impacts on human rights.

To support learning, each company presented and submitted small case studies or “learning cases”. In addition to the learning cases, the project included a learning seminar, bilateral meetings between the project team and participating companies, and the production of this final report. A key reference-point for the project was the *UN Guiding Principles on Business and Human Rights* (UNGPs) which guide implementation of the *UN “Protect, Respect and Remedy” Framework*. The UN Human Rights Council endorsed these principles in June 2011 with unanimous support from governments, including the Chinese government.

1.2 PROJECT OBJECTIVES

- To support increased awareness among Chinese business leaders about the impact of business on human rights.
- To increase understanding and appreciation of the significance of the “respect” pillar of the UNGPs, and of the application of the UNGPs in business operations (including in relation to risk management and securing the social license to operate).
- To strengthen knowledge about human rights issues and responses at the operational level, including human rights policy, due diligence, remedy and stakeholder engagement.
- To share experiences from the project to support understanding, further dialogue and action in the Chinese context.

The project was *not about generating best or good practice case studies*. Further, none of the information submitted by companies to the project has been verified. Instead, the learning cases have been used as a way to anchor discussions and dialogue in the project.

1.3 BACKGROUND

The project was conceived in response to Chinese business leaders expressing an interest in approaches to address the social impacts of business in ways consistent with international standards and expectations, including on human rights. Equally, the project supported multi-national companies headquartered outside of China to engage in mutual learning with their peers in China.

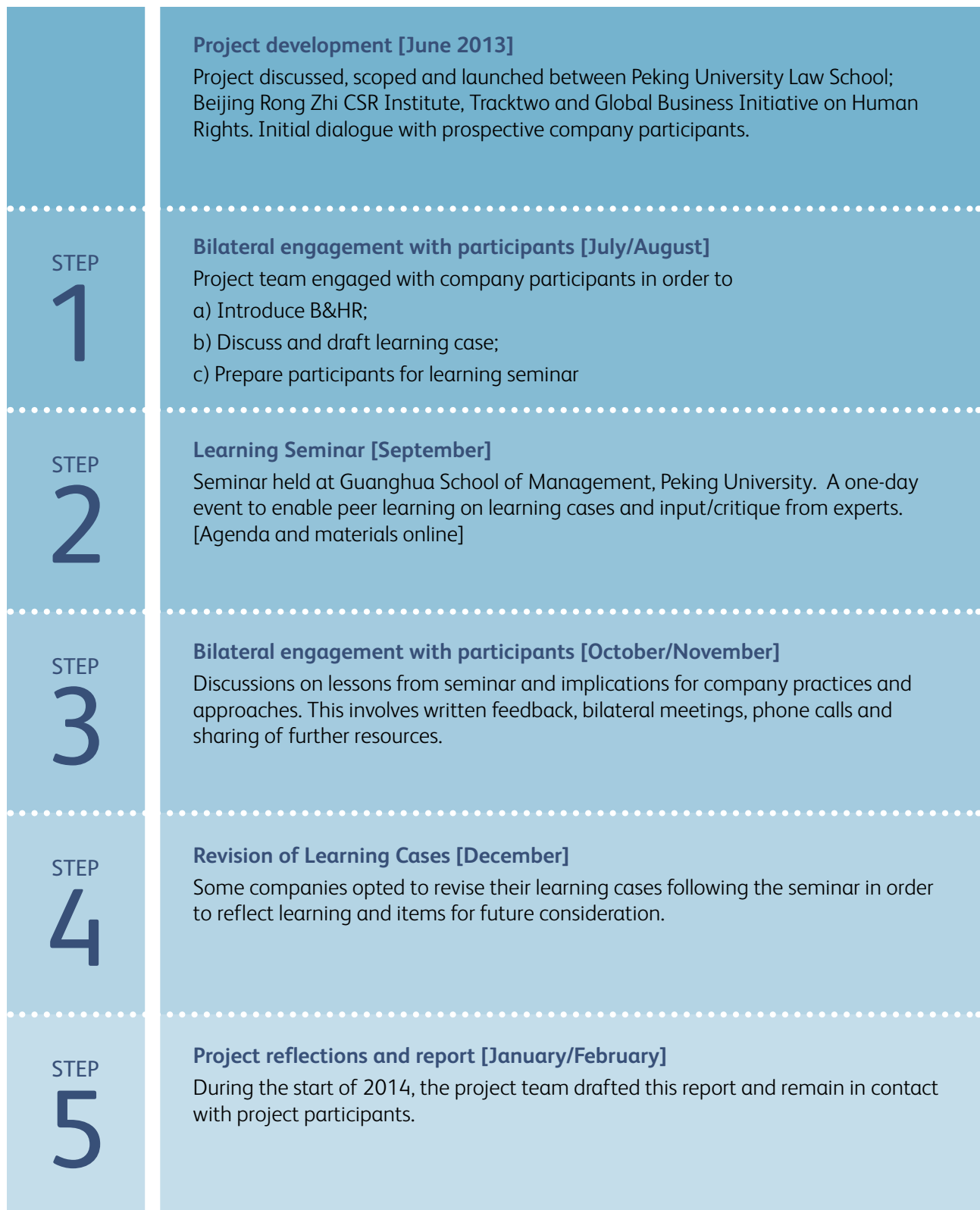
The organisations and individuals that partnered for this project have been leading work within, and outside of, China on the subject of Corporate Social Responsibility (CSR) and human rights. For example, Peking University Law School has a Business and Human Rights course as part of its Human Rights Masters programme, and the Beijing Rong Zhi Corporate Responsibility Institute has been working with some of China's largest state-owned companies on CSR for many years. Both of these organisations had noted an increased interest in human rights and business when engaging with leaders in China.

Further, in April 2013 a coalition of organisations, led by the Global Business Initiative on Human Rights, held an event series for business leaders entitled *Sustainable Business and Investment in the Global Context: Rights, Risks and Responsibilities* in Beijing. More information about the event series, including agendas, materials and the report, can be found at: <http://www.global-business-initiative.org/work/china/>. During this Conference and Roundtable, a number of themes were discussed including:

- Human rights challenges being encountered as Chinese companies operate and invest abroad;
- International and Chinese developments becoming more aligned, with the UNGPs as the reference point;
- A genuine interest to discuss human rights, albeit with many different questions and understandings about what “corporate respect for human rights” means in practice;
- Companies often integrating components of respect for human rights, though using operational language to describe their actions; and
- All companies – whether headquartered in China or internationally – needing to do more to ensure respect for human rights and sustainable business practices.

Some of the company representatives that attended the event series showed interest in understanding human rights responsibilities generally, as well as in the context of more specific issues or challenges that they are contending with in operating contexts. Given the lack of a forum to address these issues, the partners decided to work together to convene a select group of Chinese and international businesses in order to explore human rights impacts of business – and the UNGPs – in greater depth.

PROJECT TIME LINE



1.4 PARTICIPANTS

Ten companies participated in the project: **BASF; China Minmetals; China Ocean Shipping Company (COSCO); CPI Yunnan International Power Investment Company; Flextronics; General Electric; HP; Shell; Sinosteel;** and **The Coca-Cola Company**. An additional two companies, Chinese banking and finance enterprises, participated in the initial stages of the project and engaged in dialogue around CSR and the responsibility to respect human rights, but decided not to participate in the project.

Each company committed to:

- Providing a “learning case” to: a) demonstrate how the company addresses respect for a human rights in a specific instance; and/or b) share an area where they would like input/feedback from peers and experts;
- Attend a seminar in Beijing in September 2013; and
- Enter into dialogue with the project partners on the human rights learning case.

COMPANY	INDUSTRY	LEARNING CASE TITLE
BASF	Chemicals	Human rights in the context of Community Advisory Panels (incl. in Nanjing, China)
China Minmetals	Mining and Minerals	Indigenous communities agreement and oversight mechanism in Queensland, Australia
COSCO	Shipping	Connecting human rights to risk management policies and systems
CPI Yunnan	Hydropower	The Myitsone Dam project and the social license operate
Flextronics	Electronics	Addressing the human rights of migrant workers
General Electric	Diversified	Addressing Hepatitis B in the workplace
HP	Electronics / Technology	Students and dispatch workers in the supply chain
Shell	Oil & Gas	Community complaints mechanisms in Eastern USA
Sinosteel	Steel	Local employment in African operations
Coca-Cola	Beverages	Building capacity on collective bargaining with bottlers in China

The learning cases that were shared in this project represent a spectrum of human rights that companies can impact. The learning cases also represent different industry sectors, and are focused on impacts in a range of geographies – from China, to the United States, and from Africa to Australia. The variety among the cases shows that companies of all sectors and geographies must manage their actual and potential human rights impacts, and must be proactive in doing so. The diversity of industry sectors, geographies, and human rights challenges also strengthened the learning for participating companies.

PART TWO:
**CONTEXT AND
DEVELOPMENTS**

Context and Developments

2.1 INTRODUCTORY MESSAGES

Businesses can have both positive and negative impacts on human rights through their operations and investments: Human rights have historically been seen as coming under the domain of States. However, over the past few decades there has been an increased focus on how non-State actors – in particular businesses – can impact human rights both positively and negatively. Businesses can create safe and rewarding jobs, generate economic growth, develop technologies that improve quality of life, and distribute scarce resources (such as water and energy) efficiently. At the same time, businesses can also have adverse impacts on a range of human rights including the right to life, the right to participate in the cultural life of the community, the right to a health, the right to privacy, freedom of expression, and the right to non-discrimination.

As economies grow and venture into the global market, there is a clear benefit or “business case” for companies to respect human rights: Many major corporations now see the clear, long-term business case for respecting human rights, and knowing and showing how they do so. Recognized benefits include: enhanced risk management strategies; access to capital and finance; access to government contracts/concessions; improved employee relations and productivity; reputational concerns; access to suppliers, customers and new markets; establishing the social license to operate, and avoiding legal or other disputes.

Business can impact all stakeholders and all human rights: Businesses can impact the full range of stakeholders, including their employees, workers in supply/value chains, communities in which a company operates, and individuals or groups impacted by products or services. Further, it is now established that businesses can impact the full spectrum of human rights. Of course, depending on the company’s industry or operating context, some rights and vulnerable groups will be more relevant or salient than others. This is why companies need to assess and address their own particular impacts on a regular basis.

Human rights are clearly defined, and this is a benefit to companies seeking certainty: Human rights should not be understood as vague concepts. Human rights are the basic rights and freedoms that all individuals possess, the realization of which are necessary to ensuring all people are treated with dignity, equality and respect. The International Bill of Human Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work are the cornerstone of human rights principles, and are internationally recognized and accepted. The International Bill of Rights consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Over the years, a number of other international instruments have elaborated on human rights as they relate to specific groups such as women, children, migrant workers, people with disabilities, and indigenous peoples.

Businesses are often addressing human rights already but simply do not talk about it in this way, and action is often spread across diverse business functions: Within large corporations, there are often policies, processes and systems in place to address some of a company’s human rights impacts. For example, Health and Safety teams deal with the right to health, and right to just and favorable conditions of work (Articles 7 and 12 of the ICESCR); Company security personnel often deal with the right to peaceful assembly, and the right to liberty and security of person (Articles 21 and 9 of the ICCPR); and Human Resources and Procurement teams need to be concerned with, among other things, ILO standards for employees and for workers in the supply chain. In recent years, companies have begun integration of respect for human rights across these and other business functions (including for example, Sales and Marketing; Product Development; Enterprise Risk; Strategy; and Mergers and Acquisitions).

“BHR” VS “CSR”

For many years’ companies around the world have engaged in Corporate Social Responsibility (CSR). CSR has taken many varied forms, but is regularly associated with corporate philanthropy and charitable activities outside of core business processes and impacts. Examples of this would include, building schools, contributing to disaster relief funds, and volunteering programs. Though human rights are being incorporated into CSR frameworks, such as ISO 26000, there needs to be a greater understanding of human rights impacts of core business.

CSR is often seen as an “add-on” or positive philanthropic contribution that a company does when it chooses to, a business-driven choice and a top-down approach. In contrast, Business and Human Rights (BHR) is a rights-based approach that focuses on risks to rights-holders through business impacts.

From a BHR perspective, the foundation of responsible corporate behavior must be premised on respect for human rights. Respect for human rights, at its minimum, means to not infringe on rights. This is not to say that CSR activities are not desirable. But add-on CSR activities cannot substitute for addressing core human rights impacts. CSR alone rarely establishes sustainable social relationships and the social license to operate. Finally, BHR is concerned with the impacts of diverse functions (including legal, risk, human resources, procurement, sales, business development and government relations). This requires greater internal cohesion and integration than simply having social issues sitting in a CSR department.

2.2 RECENT DEVELOPMENTS IN CHINA

China’s companies are increasingly operating overseas, facilitated by the country’s accession to the World Trade Organization in 2001 and the “Go Out” policy, which encouraged Chinese companies to trade abroad. By the end of 2011, 18,000 Chinese-invested companies operated in 177 countries. The challenges facing these companies include the human rights impacts of their investments and operations, especially under conditions of weak governance. Societal reactions in host countries and external pressures are contributing to a greater awareness of the need to address and mitigate these challenges.

There have been many developments in the wider Corporate Social Responsibility (CSR) sphere in China, encompassing issues related to the environment, corruption, labour rights, philanthropy and aspects of human rights. A range of actors, both public and private, have proactively taken steps to encourage business to fulfill their corporate responsibilities. This is most apparent in the sharp increase in CSR and sustainability reporting. In 2006 only 19 such reports were published, but by 2013, over 2,000 Chinese companies were publishing CSR or sustainability reports. Many of these reports include issues related to human rights standards and responsibilities. Stock exchanges are leading the drive for corporate disclosure and have issued reporting requirements. For example, all companies listed on the Shenzhen Stock Exchange are encouraged to publish a CSR report, and the exchange has published reporting guidelines guidance. Similarly, in 2008

the Shanghai Stock Exchange encouraged companies listed on Shanghai Stock Exchange Corporate Governance Index, companies that list overseas and companies in the financial sector to publish an annual CSR report.

State-owned enterprises are also not immune from pressures to take a more responsible approach to business. In response to evolving expectations, CSR reporting became mandatory in 2013 for central state-owned enterprises under the State-owned Assets Supervision and Administration Commission (SASAC). In 2008, SASAC released the 'Guide Opinion on the Social Responsibility Implementation for the State-Owned Enterprises Controlled by the Central Government', which provides guidance on CSR implementation to state-owned enterprises. Further, the 18th National Congress of the Communist Party of China mandated that state-owned enterprises must fulfill social responsibility.

In 2012 the State Council announced that all major industrial projects must now pass a social risk assessment, aimed at preventing social incidents and grievances that might have operational consequences. There are also a number of international and Chinese organisations working with business to try to address societal concerns. For example, the UN Global Compact, which at the time of writing had 246 Chinese business signatories. The Global Compact Local Network China, which sits within the China Enterprise Confederation, annually highlights best practices relating to the 10 Global Compact principles on human rights, labour rights, environment and anti-corruption. Six Chinese companies are also members of Global Compact LEAD. Industry bodies have also released standards and guidelines: for example the Social Responsibility Guide of China Industrial Companies and Industrial Associations, and the development of the China Social Compliance CSC9000T standard by the China National Textile and Apparel Council.

These activities provide a snapshot of the growing CSR discourse and disclosure, and the increasing pressures on companies to meet standards and expectations. The impact of reporting requirements alone is difficult to discern, however the mandatory nature of some of these requirements is putting pressure on companies to consider their impacts and act accordingly.

2.3 THE UN FRAMEWORK AND GUIDING PRINCIPLES

Overview

There is now a clear expectation and globally accepted standard of business conduct regarding human rights. Historically there has been little clarity around the respective roles of business and government. Since 2011 the international community has seen a convergence and alignment around what States and companies should do in practice. In June 2011, the United Nations Human Rights Council unanimously endorsed the *UN Guiding Principles on Business and Human Rights (UNGPs)*, developed by United Nations Special Representative John Ruggie. The UNGPs were supported by a number of governments, including the Chinese government.

The UNGPs are organized under the three pillars of the UN 'Protect, Respect and Remedy' Framework that was endorsed in 2008. These are:

- **Pillar I. The State duty to protect** human rights against abuses by third parties, including businesses, by means of policies, regulation, incentives and adjudication.
- **Pillar II. The corporate responsibility to respect** human rights, meaning companies should act with due diligence to avoid infringing the rights of others and address adverse human rights impacts with which they are involved.
- **Pillar III. Access to remedy**, which addresses the need for greater access by victims to effective remedies, both judicial and non-judicial.

Following the endorsement of the UNGPs, companies now have an accessible, concise and authoritative global standard on the business responsibility to respect human rights. The challenge is now to increase awareness of the UNGPs among the business community as a whole, and for companies with relevant policies in place to fully embed good practice. Progress is encouraging but efforts by business to fully respect human rights are still in the early stages.

In June 2011 the UN Human Rights Council also established a *Working Group on the topic of Human Rights and Transnational Corporations and other Business Enterprises*, consisting of five independent experts, of balanced geographical representation, for a period of three years. In addition, the Council established an annual Forum on Business and Human Rights under the guidance of the Working Group to discuss trends and challenges in the implementation of the UNGPs, and promote dialogue and cooperation on issues linked to business and human rights. This includes challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices. The second Forum was held in Geneva on 2-4 December 2013. Almost 1,500 persons registered from more than 100 countries.

Global Convergence

Since their adoption in 2011, the UNGPs have been integrated in key international standards and guidance concerning responsible business – including ISO 26000, the OECD Guidelines for Multinational Enterprises and the EU CSR strategy. The UN Global Compact (UNGC) has recognized that they define the “respect” component of the UNGC Principles. Further incorporation of the principles in guidelines, policies and other instruments, at the national and international level, is also a rapidly evolving area. They have inspired a convergence in expectations of companies, and in approaches by business itself. It is now clear that “respect for human rights” by business is the foundation of socially responsible enterprises.

There are developments in diverse parts of the world, including in Asia. Some examples include Myanmar’s new Foreign Investment Law that requires Environment and Social Impact Assessments to be submitted as part of the application for certain large-scale and environmentally sensitive projects; the Indonesian Capital Market and Financial Institution Supervisory Agency requirement that listed companies report information on social responsibility (labour, community development and consumer safety are included); and the development of mandatory business reporting for some listed companies in India, with reference to the National Voluntary Guidelines on Responsible Business. Principle 5 of the Guidelines addresses human rights and draws heavily from the UNGPs.

Increasingly in China, new or updated industrial codes or guidance on CSR make references to the UNGPs, including the Social Responsibility Guidance for Chinese Electronic and Information Industry (2012), Social Responsibility Guidance for Chinese Overseas Mining Investment (2013), and the Social Responsibility Guidance for Chinese Small and Medium-sized Enterprises (2013).

UNIRED NATIONS RESOURCES

www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx



An introduction to the UN Guiding Principles

This document provides some background to the development of the UNGPS and summarises their content. The document also describes the mandate of the UN Working Group on Business and Human Rights, which has been established to aid in their implementation.



Full text of the UN Guiding Principles

The 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Project, Respect and Remedy' Framework', developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.



The corporate responsibility to respect human rights: An interactive Guide

This is designed to support the process of the effective implementation of the United Nations Guiding Principles. The guide focuses on the Guiding Principles that address the corporate responsibility to respect human rights. It was developed in full collaboration with the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

2.4 THE CORPORATE RESPONSIBILITY TO RESPECT

The corporate responsibility to respect human rights constitutes pillar two of the UN Framework and the UNGPs, which speak to business. The corporate responsibility to respect human rights is now firmly established as the baseline standard that all companies should meet. Below is a simplified summary of what the UNGPs state regarding *Corporate Responsibility to Respect Human Rights*.

How is the corporate responsibility to respect human rights defined?

- Business enterprises should respect human rights. This means to avoid infringing on human rights and to address adverse human rights impacts with which they are involved (Guiding Principle 11). Respect for human rights refers to internationally recognized human rights, understood as those expressed in the International Bill of Human Rights and the ILO's Declaration on Fundamental Principles and Rights at Work (Guiding Principle 12)
- The responsibility to respect human rights requires that businesses: (a) avoid causing or contributing to adverse human rights impacts and address such impacts when they occur, and (b) seek to prevent and mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships (Guiding Principle 13).
- The responsibility to respect human rights applies to all businesses regardless of their size, sector, operational context and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these (Guiding Principle 14).

What should companies do to meet their responsibility to respect human rights?

- To meet the responsibility to respect human rights businesses should have in place policies and processes appropriate to their size and circumstance. (Guiding Principle 15)



What is included in “policy commitment”?

- A policy commitment is a written statement made by senior leaders that sets out the company’s commitment to respect human rights. This sends the necessary signal - both within and outside the company – that the company understands that respect for human rights is a minimum standard for conducting business in all situations. The policy commitment should be informed by relevant knowledge and expertise, including regarding human rights. (Guiding Principle 16 a and b)
- The policy commitment needs to be communicated and understood by a range of individuals within and outside the company. Inside the company, this can include directors, managers, and employees in many diverse functions (e.g. legal, procurement, security, human resources, risk, strategy, sales and marketing). It should be communicated to business partners in order that respect for human rights become one of the foundations for the business relationship. It should also be made publicly available, especially to potentially affected stakeholders in the case of significant human rights risks (Guiding Principle 16c and d)
- The policy commitment needs to be integrated into operational procedures and guidelines. These should address what individuals should do to adhere to the company’s commitment. Often, many procedures and guidelines exist, so there is a need to review them and link them to the commitment to respect human rights. (Guiding Principle 16e)

What is meant by “human rights due diligence”?

- The 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 which may be directly linked to its operations, products or services by its business relationships;
 - Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
 - Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve. (Guiding Principle 17)
- Businesses should recognize that “human rights risk” is primarily about risk to people. Addressing human rights risks may be sensible as part of enterprise risk management (and companies may integrate human rights considerations into existing management systems), but the two are distinct. (Guiding Principle 17)
- The process of identifying and assessing human rights impacts should involve engagement with relevant internal and external expertise. (Guiding Principle 18)
- Integration of findings from impact assessments should involve working across relevant functions and processes, in order that all aspects of the business take appropriate action. (Guiding Principle 19)
- When businesses contribute to an adverse human rights impact via, or in parallel to, a business partner (customer, supplier or partner), the first step is to cease the contribution. Once this has happened, the business should use its “leverage” to mitigate any remaining impact – “Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm”. (Guiding Principle 19)
- Responses, corrective actions or preventative actions following impact assessments should be tracked for their effectiveness. This should involve input from stakeholders and affected individuals and groups. (Guiding Principle 20)

- Businesses should communicate externally – via stakeholder engagement and/or formal reporting particularly when concerns are raised by or on behalf of affected stakeholders. Communication is not limited to formal reporting and can include “in-person meetings, online dialogues, and consultation with affected stakeholders”. (Guiding Principle 21)

What is “remediation” and what does it involve in practice?

- Remediation is the process of addressing an adverse human rights impact that has already taken place. This is consistent with the human rights principles of fairness, accountability and justice. Remedy can take many forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. (Guiding Principle 25)
- Supporting effective remediation and supporting individuals to express grievances is a sensible thing for businesses to do. It enables active and immediate feedback about business activities. It also enables businesses to identify and address problems before they escalate.
- When a business has caused or contributed to adverse human rights impacts, it should cease the cause or contribution, and then provide for or cooperate in remediation. (Guiding Principle 22)
- Businesses should support and cooperate with remediation processes including those being administered by States. These could be judicial or non-judicial in nature. Cooperating also means not to interfere with or obstruct legitimate processes
- Business should consider establishing “operational grievance mechanisms” in order to offer direct channels to remediation for victims, including but not limited to employees. (Guiding Principle 29)
- Businesses should consider partnering or collaborating with relevant third parties when developing and administering grievance mechanisms. (Guiding Principle 20)
- Grievance mechanisms need to be credible and effective for individuals and groups seeking to use them. (Guiding Principle 31). They should be:
 - *Legitimate*: Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust;
 - *Accessible*: Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;
 - *Predictable*: In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Timeframes for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;
 - *Equitable*: In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;
 - *Transparent*: Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism’s performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals’ identities should be provided where necessary;

- *Rights-compatible*: Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;
- *A source of continuous learning*: Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm; and
- *Based on engagement and dialogue*: For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

CONFLICT AND HIGH RISK OPERATING ENVIRONMENTS

State-owned and private companies from all countries often operate in situations of particularly high-risk. In relation to such situations, Guiding Principle 23 provides guidance:

Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses. In complex contexts such as these, business enterprises should ensure that they do not exacerbate the situation. In assessing how best to respond, they will often be well advised to draw on not only expertise and cross-functional consultation within the enterprise, but also to consult externally with credible, independent experts, including from governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives.

The following resources provide helpful information and guidance to companies. Both have been developed with extensive input from Chinese business leaders.



**Mine Fields and Blind Spots of Overseas Investment Security:
Conflict Risk Assessment and Managements**



**Guidance on Responsible Business in Conflict-Affected and
High-Risk Areas**
UN Global Compact & UN Principles for Responsible Investment

PART THREE:
LEARNING CASES

Learning Cases

3.1 INTRODUCTION

As set out in *Part One* above, participating companies submitted learning cases that were used as focal points for the project. The companies participating in this project have demonstrated a welcome level of openness within the safe-space discussions and in the inclusion of their learning cases in this publication. The cases shared in this section are intended to provide illustrative examples of how participating companies are approaching a diversity of business and human rights issues and to reflect on how the UNGPs can provide a framework to guide companies in preventing and addressing adverse human rights impacts.

The process around the learning cases involved companies submitting an example of how they had responded to a human rights issue. The specific learning cases were therefore a starting-point for a dialogue around specific adverse human rights impacts and responses, and wider approaches that the companies take. This enabled a focus on real-life challenges and identification of improvements on how companies have responded to and addressed issues. The following pages offer a summarized version of the full learning cases shared by each company. The full submissions can be found on the project partners websites or can be requested in PDF format. In advance of each one-page summary, the project team has:

- Introduced the company and case;
- Outlined how the UNGPs were integrated into discussions;
- Indicated some of the human rights discussed in relation to the case; and
- Shared key questions that were discussed.

IMPORTANT NOTE: Although the introductions only list a few Guiding Principles and concepts, readers should remember that the UNGPs should be understood and implemented as a coherent whole. This is also true of human rights, which are interdependent and interrelated.

BASF

Human rights in the context of Community Advisory Panels | Nanjing, China

Introduction

BASF is the world's leading chemical company. Its portfolio ranges from chemicals, plastics, performance products and crop protection products to oil and gas. BASF contributed an example of how the company had approached the human rights of communities near a joint-venture petrochemical site in Nanjing, China through Community Advisory Panels (CAPs). This case demonstrates the process of communicating with stakeholders, and developing grievance mechanisms to facilitate stakeholder concerns, questions and requests that enable community-company dialogue.

Examples of UNGPs discussed during the project

- Guiding Principle 17 which outlines how businesses should identify and assess actual and potential human rights impacts through human rights due diligence processes, including via engagement with external stakeholders;
- Guiding Principle 21 which outlines that business should “communicate externally particularly when concerns are raised by on behalf of affected stakeholders”;
- Guiding Principles 22 which outlines that businesses should provide for, or cooperate in remediation; and
- Guiding Principle 29 which introduces “grievance mechanisms”, and Guiding Principle 31 which outlines “effectiveness criteria” for such mechanisms.

Some of the human rights relevant to this learning case

- Right to non-discrimination;
- Right to health;
- Right to work;
- Right to an adequate standard of living; and
- Right to freedom of opinion and expression.

Some discussion points during the project

- How was the CAP in Nanjing created and which individuals from the company participated?
- What are some of the example impacts that are raised by CAPs and how are they addressed?
- How does BASF address issues that it cannot resolve alone?
- To what extent do CAPs meet the “effectiveness criteria” for grievance mechanisms set out by the Guiding Principles?



BASF

Learning Case Information Provided by Company



BASF-YPC Company Limited (BASF-YPC) is a 50-50 joint venture between BASF and Sinopec operating in Nanjing, China. In 2005, BASF commissioned an independent study by the “Deutsche Gesellschaft für Internationale Zusammenarbeit” (GIZ, formerly GTZ) to provide an assessment of the site’s environmental, socio-economic and economic impacts on the city of Nanjing and the surrounding region. Interviews were conducted with members of government, local communities as well as with BASF employees in Nanjing. The assessment revealed positive impacts, including the creation of local jobs and the implementation of state-of-the-art safety standards among local business partners. The assessment also revealed negative impacts, including dust and noise generated during construction and transport, as well as concerns from local communities about emergency response and the effects of emissions on health and agriculture.

In order to meet this challenge with regards to communities near production sites, BASF employs a specific instrument: Community Advisory Panels (CAPs). A CAP should establish an open and honest dialog that provides the community around a BASF site with the opportunity for direct involvement, while also allowing BASF to better address the expectations of the community. CAPs typically consist of 10 to 30 members who represent the social fabric of their community. It is an opportunity for site management to become aware of and understand the community’s point of view. As of 2012, BASF had set up 78 CAPs, mostly at its larger production sites around the world.

In Nanjing, BASF-YPC has conducted regular CAP meetings since the initial construction of the site. In 2009, about 16 CAP members and site management started discussing the details of the planned turnaround and expansion project. The discussions aimed to provide transparent information about the duration and timeline of the project, preparation measures for environmental protection and safety, with highlights on emission plans and improvements. CAP members provided input on the responsible practices of the company and put forward a number of suggestions towards strengthening cooperation during emergencies.

CAPs can serve as operational-level grievance mechanisms to address community concerns. The Guiding Principles describe the criteria for effective grievance mechanisms. Meeting these criteria requires careful design. CAPs alone do not suffice to meet all criteria for effective community grievance mechanisms. In that regard, BASF wants to continuously improve and learn from other businesses and civil society as well.

The benefits of CAPs both in relation to rights to information for the individuals / communities and in relation to concerns / grievances are interlinked – CAPs attempt to address concerns before they turn into grievances exactly by offering a platform for questions and requests for information.

Overall, CAPs are important complements to BASF’s human rights due diligence process. Moreover, these open, transparent and regular dialogs have helped BASF to create strong relationships with communities near its production sites. In fact, CAPs are one of the most powerful tools BASF has for securing its license to operate.



CHINA MINMETALS

Indigenous communities agreement and oversight mechanisms | Queensland, Australia

Introduction

China Minmetals Corporation (“China Minmetals”) is primarily engaged in the exploration, exploitation, smelting, processing and trading of metals and mineral products. China Minmetals contributed an example of addressing impacts on indigenous communities surrounding MMG’s Century Mine in Queensland, Australia. MMG is a wholly-owned Australian subsidiary of China Minmetals. The focus of the case was an agreement between the company, the government and four Indigenous communities, and mechanisms to implement the agreement. Among other things, this case demonstrates the value of formal mechanisms that shape and guide interactions with communities.

Examples of UNGPs discussed during the project

- Guiding Principle 12, which states that companies should address their impacts on all human rights and should, as appropriate, consider additional standards (including those related to indigenous peoples);
- Guiding Principle 18, which notes that businesses should engage relevant stakeholders and affected communities in the process of identifying and assessing adverse human rights impacts;
- Guiding Principle 19, which addresses the importance of integrating responses to adverse impacts across relevant business functions and processes;
- Guiding Principle 22, which outlines that businesses should provide for, or cooperate in remediation;
- Guiding Principle 29, which introduces “grievance mechanisms”; and
- Guiding Principle 31, which outlines “effectiveness criteria” for such mechanisms.

Some of the human rights relevant to this learning case

- Right to non-discrimination;
- Right to work;
- Right to an adequate standard of living;
- Right to freedom of opinion and expression; and
- Indigenous people’s rights.

Some discussion points during the project

- What are some of the example impacts that have been raised by members of the indigenous communities, and how were they addressed?
- Has the company already, or does it plan to, review the appeal mechanism against the “effectiveness criteria” for grievance mechanisms set out by the Guiding Principles?
- Given the “State Duty to Protect”, what is the role of the local government?
- Have lessons from the process in Australia been applied in other countries or areas of operations, and if so how?



CHINA MINMETALS

Learning Case Information Provided by Company



China Minmetal's Century Mine in north west Queensland, Australia, is located near a number of Indigenous communities. China Minmetals faced an important human rights challenge in how to minimise the negative impact of resource development on the local communities and the environment, while enabling the Indigenous people to benefit from the company's operations, strengthening their indigenous capabilities, promoting sustainable development, and thus enabling the company and the local community to coexist in harmony in the long term. Since the company operates on Indigenous people's lands it needed to sign a formal agreement with the indigenous people on land use and benefit allocation.

The Gulf Communities Agreement is a three-party accord signed in 1997 by Century Mine, the Queensland State Government, and four local indigenous Native Title groups. The terms of the Gulf Communities Agreement include: ensuring that indigenous people participate as much as possible in work in mining area operations; no encroachment on where indigenous people live; all-out effort to protect the natural environment and natural resources; clearly identifying and protecting indigenous cultural areas; and ensuring that Indigenous people's standard of health, rate of employment, and educational opportunities all reach the Australian average.

To supervise the implementation of the Gulf Communities Agreement, the Century Liaison Advisory Committee (CLAC) was formed. It consists of representatives from each of the four Native Title groups, Century Mine, and the Queensland Government. The CLAC meets quarterly. In 2012, CLAC commissioned the University of Queensland's Centre for Social Responsibility in Mining (CSR/M) to assist in conducting a 15-year review of the Gulf Communities Agreement (the GCA Review). With the Review completed, the three signatory groups are working together to bring about completion of GCA commitments.

MMG believes that management that respects human rights is extremely important to its operations. Thus it developed a company-wide management system to attend to social and human rights issues: the "community relations management system." The system is a part of the company's "safety, health, environment, and community management system," and it has been integrated into MMG's overall management system.

Within the community relations management system the company has formally set up an appeal or grievance mechanism, which operates through various internal levels of the enterprise. The appeal mechanism includes a community representatives and community issues management committee. The mechanism allows for direct participation by the individual and provides various channels for appeal: in person, telephone hotline, post, and letter. System software records, categorises, prioritises, manages, and tracks the formal and informal appeals which it receives. Thus, when a violation of the Gulf Communities Agreement occurs, or the rights of indigenous people are harmed, the situation can always be remedied by way of this appeal mechanism. The mechanisms for supervision and appeal together ensure implementation of the Gulf Communities Agreement and the protection of the rights and interests of indigenous people.

To improve local sustainability, Century Mine redesigned its training and employment plan in 2012 to adjust coverage of local regions, shift the responsibility for training and employment of Indigenous people and expand the plan's training courses. Local participation was increased through numeracy and literacy support, community participation, training and development assistance, and targeted employment opportunities.

As part of preparing the local people for the end of production at Century (mid-2015), MMG Century ceased placing new apprentices and trainees in mine-related jobs. From the beginning of 2014, all apprentices and trainees are placed with host-employers in their home communities or in locations where they are happy to work. This shift has decreased dependence on short-term mining jobs and increased the number of sustainable jobs in communities.

MMG invests in skills improvement for community residents by organising training for local residents and graduates in adjacent communities and colleges. At the same time, supervision skills training provided by Century Mine's operations departments provide opportunities for potential and incumbent supervisors to obtain official certificates.



CHINA OCEAN SHIPPING CORPORATION

Connecting human rights to risk management systems and company policies |
Group-wide processes and systems

Introduction

COSCO is a multinational enterprise group whose main business is shipping, logistics, docks, and ship building and repair. COSCO ships more than 400 million tons of cargo a year. Its ocean shipping routes reach more than 1,500 ports in more than 160 countries and regions. COSCO's learning case concerned how the company had begun to approach human rights within the company. The company shows in the learning case how it has begun to formalize processes around human rights. The learning case demonstrates the relevance of human rights risk identification and capacity-building within the company as part of preventing and addressing actual and potential negative human rights impacts.

Examples of UNGPs discussed during the project

- Guiding Principle 12, which outlines how companies must respect human rights, understood as at a minimum those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work;
- Guiding Principle 17, which outlines that companies may include human rights due diligence into existing risk management systems, but should also consider "human rights risk" as risk to rights-holders; and
- Guiding Principle 20, which states that companies should verify the effectiveness of their responses to adverse human rights impacts, and Guiding Principle 21, which states that companies should account for their actions with relevant stakeholders.

Some of the human rights relevant to this learning case

- Right to non-discrimination;
- Right to work;
- Right to freedom of peaceful assembly and association; and
- Right to an adequate standard of living.

Some discussion points during the project

- How does the risk mapping/matrix address risk to people as well risk to the company?
- How has using the Global Reporting Initiative indicators and reporting helped to create internal commitment from senior leaders in the company?
- What types of discrimination are most difficult to address in the industry?
- What are the details of human rights requirements and training with suppliers?
- How does the company engage external stakeholders and relevant expertise in the identification and management of human rights impacts?



CHINA OCEAN SHIPPING CORPORATION

Learning Case Information Provided by Company



In 2001 COSCO set up a comprehensive management system which includes an international environmental management system and an occupational safety and health management system, and it became the first company in China to obtain “three management system” certification. The purpose of assessing human rights risk is to verify, understand, and manage the effects of company actions on human rights. As required by ISO 26000 and international conventions on human rights, COSCO uses a comprehensive risk management method.

On the process management level, COSCO systematically scores human rights risk incidents according to three dimensions: degree of impact, probability of occurrence, and difficulty of coping. The resulting risk values can be ranked. The company then manages risk by determining the greatest risks, creating a risk matrix, and taking measures in response. The company then conducts human rights risk assessment on the program level, in which, in addition to confirming, preventing, and managing (potential) negative impacts on human rights, the company also foresees and discovers (potential) positive impacts on human rights and opportunities.

COSCO has created a system of human rights performance indicators, which is a part of the company’s system of sustainable development indicators, and it discloses human rights indicators annually as required by the GRI [Global Reporting Initiative]. The indicators are evaluated every year and continually improved so that they reflect more fully the human rights risks of concern to the various parties.

In investment and procurement, the company performs due diligence investigations, avoids conspiracies, and takes measures to handle human rights appeals. It also conducts human rights education and training for suppliers, thus averting harm to the company’s own reputation from human rights problems in the supply chain. The company also promotes value chain social responsibility.

The company has formulated policies and systems to oppose discrimination and policies, which eliminate employment and occupational discrimination. The company has also set up effective monitoring mechanisms to ensure the full implementation of the principle of non-discrimination in all operational activities. When discrimination does occur, a channel for appeal can be provided.

Other commitment areas include: Freedom of association and collective bargaining, prohibition of child labour, opposition to forced labour and compulsory labour, concern for human rights in health and safety work, respect for and protection of the rights of indigenous peoples and local employees, concern for its employees’ professional development, their lives, their families, and their spiritual culture, and by respecting and protecting its employees’ rights relating to pay and benefits, medical treatment, health, and families, the company enables its employees to enjoy a dignified work environment and live dignified lives. The company also provides channels for appeal.



CPI YUNNAN

The Myitsone dam project, resettlement and the social license to operate | Yunnan, Myanmar

Introduction

CPI Yunnan International Power Investment Co., Ltd., (“CPI Yunnan International”) is a wholly-owned subsidiary of CPI Power Investment Corporation (“China Power Investment”). At present, CPI Yunnan International is mainly responsible for development, construction, operations, and management of the Upper Irrawaddy Hydroelectric Project in Myanmar. CPI Yunnan’s submission to the project concerns the Myitsone Dam project, which was suspended in 2011 by the Myanmar Government. The case demonstrates how the company originally had the legal and political license to operate, but not necessarily the social license to operate from stakeholders. During the project, the focus was on what the company had done and what more could/should still be done.

Examples of UNGPs discussed during the project

- Guiding Principle 18, which outlines how businesses should identify and assess actual or potential adverse human rights impacts and how this process should (a) draw on internal and/or independent external human rights expertise, and (b) involve meaningful consultation with potentially affected groups and other relevant stakeholders;
- Guiding Principles 22, which outlines that businesses should establish or participate in effective operational-level grievance mechanisms, and Guiding Principle 29 which provides “effectiveness criteria” for such mechanisms;
- Guiding Principle 23, the commentary for which outlines that in some operating environment such as conflict-affected areas companies should treat the risk of being complicit in gross human rights abuses as a legal compliance issue; and
- Numerous Guiding Principles related to the “State Duty to Protect” – the first pillar of the UN Framework.

Some of the human rights relevant to this learning case

- Right to freedom of opinion and expression;
- Rights of indigenous peoples;
- Right freely to participate in the cultural life of the community;
- Right to work; and
- Right to an adequate standard of living.

Some discussion points during the project

- How were the consultations with communities conducted and what could have been improved, including through engaging with third parties?
- What opportunities for complaints mechanisms exist that the communities could access; how can the company ascertain whether such mechanisms are effective; and how they could have been improved?
- How the company approached or should have approached the conflict dynamic in the state?
- How could the company have improved its efforts to secure the social licence to operate, in addition to the legal licence?



CPI YUNNAN

Learning Case Information Provided by Company



The Upper Irrawaddy Hydroelectric Project is located on a stretch of the Upper Irrawaddy above Myitkyina. The total investment is nearly 30 billion US dollars. Franchised operation will be for 50 years. A total of about 18,000 people are to be displaced by the Upper Irrawaddy Hydroelectric Project. The government of Myanmar, employing eminent domain, is forcing people through non-market transactions to relocate. On 30 September 2011 the new president of Myanmar, U Thein Sein, unilaterally announced that the Myitsone Hydropower Station Project under construction in Kachin State on the Upper Irrawaddy would be shelved during his term in office. CPI Yunnan International suffered huge losses and a negative impact.

After resettlement, the traditional lifestyle of the people affected will change. How to achieve a proper resolution to the problems of resettling displaced people and providing them with livelihoods, while truly respecting and protecting their right to survive and develop, their property rights, their right to know what is happening, their right to participate, and their right to obtain relief, is the most important human rights challenge the company faces. In addition, because of the diversity and complexity of religion and culture in Myanmar and the major social influence exercised by local elders and religious leaders, the company must also value local conditions, customs, traditions, and ways of life during project construction and planning and during the process of relocating displaced people. The human rights challenge of CPI Yunnan International's investment in Myanmar was also complicated by fighting in northern Myanmar.

The company has organized and implemented the project in accordance with the government's policy and standards. CPI Yunnan International has drawn upon the successful experience of the World Bank, the Asian Development Bank, and Sinohydro in the resettlement of displaced people.

To solve the problem of how the displaced people would make their living, the company – among other things – directly disbursed to displaced people compensation of about 4 billion kyat for orchards and economically useful woodland. The company also cleared 440 acres of virgin land for the displaced people, disbursed money for putting the land in order, and provided rice plants and chemical fertiliser. The company spent more than \$25 million on efforts to resettle 5 villages with 410 households and 2,146 people from the area to be flooded by the Myitsone Hydropower Station Dam.

The company has also absorbed the experience and learned lessons including, among others: (1) Using international norms. Drawing upon international norms including the United Nations Global Compact's "Guidance on Responsible Business in Conflict-Affected and High-Risk Areas," which provided guidance for the company's risk management; (2) Cooperation from all sides. Cooperation and dialogue with international NGOs, chambers of commerce, and civil society organizations; (3) Drawing upon the mature experience of multinational companies. Studying the management systems and experience of other multinational companies, and promoting the creation of "compliant" internal control mechanisms among Chinese enterprises which "go global"; (4) Paying attention to what society permits. The views of the public embody the expectations and demands of different interested parties. They are to a certain extent "social license" for a foreign enterprise to enter and develop. They have a huge long-term influence on investment and operations. Thus, in addition to legal and political permits, the securing of society's permission is something that an enterprise must take seriously; (5) Human rights due diligence. In the early phase of the project, in addition to performing the social, economic, and environmental surveys required for water resources and hydroelectric engineering, the company should also have needed to conduct assessments or due diligence on Myanmar's implementation of human rights and the political risks involved, so as to formulate a risk prevention and response mechanism; (6) Rights remedy mechanisms. The company will continue to set up and improve effective mechanisms for the remedy of rights, as the respect for the various kinds of human rights can be achieved on the foundation of ensuring the right of appeal.



FLEXTRONICS

Addressing the rights of migrant workers | Zhuhai, China

Introduction

Flextronics is a leading end-to-end supply chain provider focused on delivering complete design, engineering and manufacturing services to aerospace and defence, automotive, computing, consumer, industrial, infrastructure, medical, energy and mobile equipment manufacturers. Flextronics' learning case concerns how the company has responded to the rights at risk, and needs, of migrant workers at Flextronics facilities in Zhuhai, China. It addresses how the company reviews its own systems and actions, as well as engaging external stakeholder groups to respond to support their approaches.

Examples of UNGPs discussed during the project

- Guiding Principle 18, which outlines how businesses should identify and assess actual or potential adverse human rights impacts and how this process should (a) draw on internal and/or independent external human rights expertise, and (b) involve meaningful consultation with potentially affected groups and other relevant stakeholders;
- Guiding Principle 19, which address the concepts of cause, contribute and directly linked;
- Guiding Principles 22, which outlines that businesses should establish or participate in effective operational-level grievance mechanisms, and Guiding Principle 29 which provides “effectiveness criteria” for such mechanisms; and
- Guiding Principle 24, which outlines that where it is necessary to prioritise actions to address actual and potential adverse human rights impacts, businesses should first seek to prevent and mitigate those that are most severe or where delayed responses would make them irremediable..

Some of the human rights relevant to this learning case

- Right to work;
- Right to an adequate standard of living;
- Right to health;
- Right to education;
- Right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay; and
- Right to form and to join trade unions.

Some discussion points during the project

- How does the company avoid contributing adversely to the problem itself, as well as building support systems through the partnership?
- What are some specific examples of problems and issues that migrant workers have raised, and how were the issues dealt with in practice?
- What are the structural issues exist that lead to negative experiences of migrant workers? How is the company approaching this?
- To what extent do existing complaints systems meet the “effectiveness criteria” for grievance mechanisms set out by the UN Guiding Principles?



FLEXTRONICS

Learning Case Information Provided by Company



Flextronics has more than 100,000 employees in China, 90 per cent of whom are migrant workers. The company provides opportunities for people to work in a safe, dignified and rewarding environment. However migrant workers are a segment of the population that is especially vulnerable to human rights abuses, and often-acute economic situations. Across the industry, few migrant workers have access to adequate health and education services, despite working conditions that can lead to emotional and developmental difficulties.

The problem of conditions for migrant workers employed in the global electronics industry have been raised by NGO and news reports over recent years. Companies from Brazil to China have received attention for poor working conditions, worker suicides, lack of access to collective bargaining, and the growing gap between wages and living wage. The Hukou system in China creates particular challenges in relation to family life and mental health. Workers generally have no choice but to leave their family and children behind when they move the city, in order that their family continue to enjoy basic rights and services that are not accessible outside of their birthplace.

The identification and management of issues is not a one-time activity, but rather a matter of continuous improvement. Knowing all those industrial issues, we have institutionalized our CSER program in place to ensure all workers, including migrant workers human rights are protected and respected. During previous years, the company has identified and addresses numerous areas of improvement. These range from upgrading facilities – such as dormitories and living amenities; to cultural change around the relationship between supervisors and shift workers.

One key human rights challenge that has faced Flextronics in particular has been the mental health and wellbeing of its employees. In order to assess the situation, Flextronics conducted research that involved workers, NGOs and certain experts/writers on the topic of migrant workers, and found that today's migrant workers' expectations are much more diversified than the older generations. They are not just satisfied with how much they make a month, and have aspiration in other areas, professionally, emotionally and socially. This reinforced the imperative to focus on all rights and all aspects of the lives of workers.

In order to further address the challenge of adequate mental health provision for employees, Flextronics has collaborated with the Culture and Communications Centre for Facilitators' (CCCCF), a Beijing-based nongovernmental organisation NGO committed to migrant worker issues. Beginning in 2009, Flextronics provided seed capital to help CCCF set up the Zhuhai Social Work and Education Development Center for Facilitators (SWEDCF) in Xinqin Industrial Park in Zhuhai, Guangdong Province. The centre is the first officially registered NGO in China that is sponsored by a private company and backed by the Chinese Government. The centre provides counselling, advice on social welfare issues, legal aid and training for migrant workers, and educational and recreational programmes for their children free of charge.

These types of initiatives are valuable because they allow companies to share information on how to improve internal systems and processes that reflect these contemporary challenges. The key for industry in China going forward is to ensure that the right leadership is in place with the right long term vision and commitment to see the larger social trends.

In the future, Flextronics will try to replicate this model in other parts of China by engaging multi-stakeholders, government, community partners and the private sectors.



GENERAL ELECTRIC

Addressing Hepatitis B in the workplace | Operations and joint ventures across China

Introduction

General Electric (GE) is one of the largest and most diversified infrastructure and financial services companies in the world. With products and services ranging from aircraft engines, power generation, oil and gas production equipment, and household appliances to medical imaging, business and consumer financing and industrial products. In China, GE operates through more than 70 Sino-foreign joint ventures and wholly foreign-owned enterprises. GE China has about 17,000 employees. GE's learning case addresses the issue of employee health and Hepatitis B in the workplace.

Examples of UNGPs discussed during the project

- Guiding Principle 12, which outlines the importance of addressing the full spectrum of human rights. For example, the company addressing one right, the right to health, but also having to consider other rights that could be impacted, such as privacy and non-discrimination;
- Guiding Principles 18 and 19, which state that businesses should draw on the necessary internal and external expertise when identifying and also addressing adverse impacts;
- Guiding Principle 19, which outlines within the commentary that when a business causes an adverse human rights impact it should take the necessary steps to cease or prevent the impact; and
- Guiding Principles related to the "State Duty to Protect" - the first pillar of the UN Framework.

Some of the human rights relevant to this learning case

- Right to non-discrimination;
- No one shall be subjected to arbitrary interference with his privacy;
- Right to work; and
- Right to an adequate standard of living.

Some discussion points during the project

- How did the company balance employees' and prospective employees' rights to privacy and rights to non-discrimination in hiring practices given health screenings?
- What was the role of civil society in raising awareness and providing support to this issue?
- What are the next steps for the vaccination programme and wider matters around HBV and workplace health issues?
- What are the company's thoughts about scalability of the project?
- Are there any lessons or comparisons to be drawn with GE or other company's experiences with HIV/AIDS in Africa?



GENERAL ELECTRIC

Learning Case Information Provided by Company



Hepatitis B (HBV) is a viral liver disease estimated to have affected 2 billion people worldwide, of whom more than 350 million continue to live with chronic HBV, according to the World Health Organization (WHO). HBV sufferers in China frequently face discrimination in many areas of life – at school, at work, eating out, and dating. During the last few years, numerous periodicals have highlighted the plight of HBV sufferers, and several HBV action groups have formed. Given the seriousness of the HBV problem in China, many Chinese and multinational corporations (MNCs) have adopted measures to reduce the spread of the virus within their workforce.

In addressing Hepatitis B in the workplace, several fundamental human rights come into play. First, the right to health encourages social programs to address disease through medical innovations, treatment programs, availability of physicians and hospitals, and other methods and procedure to fight sickness and disease. Second, the right to work envisions farms, shops and factories where men and women are able to apply and develop their skills in commerce in order to produce goods and services and earn a fair wage. The right to be free of discrimination means that no one should be disadvantaged because of inalienable or other characteristics – in this case a curable disease – concerning which the law has afforded protection. And, finally, the right to privacy must be balanced against the foregoing human rights in any workplace treatment program so that those who seek help and treatment are not retaliated against or disadvantaged and their medical health status is protected from improper disclosure beyond those with a need to know.

MOH and the PRC Ministry of Human Resources and Social Security in May 2007 co-issued the Notice on Protection of Hepatitis B Surface Antigen (HBsAg) Carriers' Right to Employment. According to the notice, which took effect May 18, 2007, labor and social security and health bureaus at various levels are responsible for protecting HBsAg carriers' right to employment and their privacy. (HbsAg is a protein antigen test which is used to determine whether an individual is a carrier of HBV.) The notice states: HBV carriers' right to employment shall be protected. An employer shall not refuse to employ or dismiss an HBV carrier because the person is a carrier, unless the carrier is banned from the job by laws, regulations, or MOH rules. An employer's physical examination standards shall be strictly regulated to protect the privacy of carriers. An employer may categorize liver function as one of the physical examination standards but shall not use Hepatitis B Virus Serology Index as one of the physical examination standards unless the carrier is banned from the job by laws, regulations, or MOH rules.

GE requires a pre-employment physical for all new employees. Prior to the May 2007 notice that prohibits testing for the HBV antigen, GE tested for the HBV antigen. Having the HBV antigen did not affect a candidate's employment prospects, unless the candidate was suffering from active HBV and could not safely perform the job. Once GE's legal team advised its medical department of the notice, however, GE immediately discontinued pre-employment testing for the HBV antigen.

Dr. Jean (Jin) Wu, GE's medical director for China, however, asked: "Why not further protect employees by offering vaccination against HBV to all employees on a voluntary basis?" In February 2008, Dr. Wu raised her proposal with the GE China Human Resources Council, which was sympathetic but concerned about the cost. Dr. Wu took her campaign to the corporate leadership, and in early 2008, the company agreed to provide the first \$25,000 in funding for the program.

Critical to any vaccination program is a process to ensure that employees make an informed and voluntary decision to participate. The medical and legal teams developed information fact sheets and consent forms that were signed by all participating employees. Program records indicate that of the 3,212 employees who began the program, 2,569 employees completed it, or about 21.6 percent of GE's workforce in China and 80 per cent of employees who began the program. In the final account, the program cost \$40,000 – the largest part of which was for the cost of the vaccines. GE's positive experience developing and implementing an HBV vaccination program for its staff has resulted in a range of benefits to the employees and the company itself in terms of health, goodwill, and avoided costs. Other companies, and even governments, could benefit from offering similar programs.



Introduction

HP is a leading global provider of products, technologies, software, solutions and services to individual consumers, small- and medium-sized businesses and large enterprises, including customers in the government, health and education sectors. HP's learning case focused on the rights of student and dispatch workers in manufacturing supply chains as a particular vulnerable group. The learning case provides an overview of how HP developed guidance and monitoring for suppliers on respect for the rights of student and dispatch workers, as the approach taken to address the potential impacts.

Examples of UNGPs discussed during the project

- Guiding Principle 16, which states that companies should communicate policy commitments to suppliers and business partners, and also support policies with operational guidance;
- Guiding Principle 18, which outlines the need to draw on internal and external human rights expertise, and to engage in meaningful consultation with potentially affected groups;
- Guiding Principle 19, which outlines the need to integrate responses and establish appropriate oversight mechanisms; and
- Guiding Principle 20, which outlines the need to use qualitative and quantitative indicators to track the effectiveness of due diligence responses.

Some of the human rights relevant to this learning case

- Right to non-discrimination;
- Right to health;
- Right to an adequate standard of living;
- Right to just and favourable remuneration; and
- Right to education.

Note, it is particularly interesting that this case also involves the company educating workers about their rights

Some discussion points during the project

- How did the company first identify this topic as problem?
- Are there challenges in building commitment and alignment among suppliers? What are the challenges and how are they overcome?
- Does, or will, the company work with suppliers to see if existing complaints systems meet the “effectiveness criteria” for grievance mechanisms set out by the Guiding Principles?





HP has one of the industry's most extensive supply chains, comprising more than 1,000 production suppliers, tens of thousands of nonproduction suppliers, and spanning more than 45 countries and territories. HP noted a growing use of student and dispatch workers – such as temporary, auxiliary and substitute workers – in manufacturing facilities across China. Student and dispatch workers are two vulnerable groups within the Chinese workforce, as they often enter the workplace with limited experiences and support. Their vulnerability could put them at risk for infringement of their rights; working against their will for fear of negative repercussions, working excessively long hours or working in unhealthy or unsafe conditions.

HP issued new guidelines and measurement processes for its suppliers with operations in China in an effort to proactively address the issue of student and dispatch workers. The guidelines were a first for the information technology industry. HP's new guidelines for student and dispatch workers were developed in consultation with key stakeholders such as China's Center for Child Rights and Corporate Social Responsibility (CCR CSR).

Prior to the development of the guidelines for student and dispatch workers, HP engaged teachers from Vocational Training School and the government. Teachers were trained on worker rights so that they could inform and train students of their rights prior to taking internships. HP has also engaged the government, including inviting them to both attend and speak at Supplier Summits to share their perspective on labor, and hear from others.

The guidelines reinforce regulatory requirements while introducing additional “beyond regulatory” expectations for suppliers. In addition to mandating fair remuneration and regulatory required insurance, HP's guidelines focus on the following:

- Student and temporary workers are free to leave work at any time upon reasonable notice without negative repercussions, and they must have access to reliable and reprisal-free grievance mechanisms.
- All regulations regarding legal working age, work environment, working hours and contractual and term limits for student and temporary workers will be reinforced, and HP guidelines limit student working hours to below the legal limit.
- HP's guidelines specify the acceptable levels of student workers to ensure the direct labor force in manufacturing facilities is composed primarily of full-time workers.
- Student workers should only engage in work activities that complement the primary degree they are seeking to obtain.

To advance these practices, HP held roundtable discussions with suppliers, industry peers, NGOs, government officials and academics to foster public discussion around this topic and drive positive change across the electronics industry. HP issued a revised standard after these consultations to include additional learnings.

In addition to education and training, oversight and enforcement also are essential parts of HP's Supplier Management discipline. HP will require suppliers to regularly provide detailed data around these types of workers and will validate suppliers' performance through detailed on-site audits that include student worker interviews as well as special assessments for student workers where KPIs indicate risk. Recognizing the need to propagate these standards, HP worked directly with other leading brands and the Electronics Industry Citizenship Coalition (EICC) to integrate these provisions into standard industry audit protocols.



SHELL

Community complaints mechanisms | Appalachia, United States

Introduction

Shell is a global group of energy and petrochemical companies headquartered in The Hague, The Netherlands. The upstream business explores for and extracts crude oil and natural gas. The downstream activities include refining, supplying, trading and shipping crude worldwide, manufacturing and marketing a range of products, and production of petrochemicals for industrial customers. Projects & Technology manages delivery of Shell's major projects and drives the research and innovation to create technology solutions. Shell contributed a learning case on how the company engages with a varied and diverse range of stakeholders, and how it manages grievances in the Appalachia region of the Eastern USA. The company reflects on how a formal grievance mechanism was established, from a previously informal process, and how the company has endeavoured to meet international standards. The learning case also provides an example of the value of industry associations and peer review/learning.

Examples of UNGPs discussed during the project

- Guiding Principles related to Human Rights Due Diligence and the need to engage in meaningful consultation with stakeholders and affected populations;
- Guiding Principle 22, which outlines that businesses should provide for, or cooperate in remediation;
- Guiding Principle 29, which introduces “grievance mechanisms”; and
- Guiding Principle 31, which outlines “effectiveness criteria” for such mechanisms.

Some of the human rights relevant to this learning case

- Right to freedom of opinion and expression;
- Right to an adequate standard of living;
- Right to health; and
- Right freely to participate in the cultural life of the community.

Some discussion points during the project

- How was internal buy-in secured among senior management to establish the grievance mechanism?
- How did Shell engage with industry groups in developing the grievance mechanism?
- How did the effectiveness criteria of Guiding Principle 31 feature in developing the grievance mechanism?



SHELL

Learning Case Information Provided by Company



Located within a major oil and gas basin of the eastern United States – the Marcellus Shale – the Appalachia asset sits predominantly in a rural, moderately populated area. It has received widespread attention, especially in the media, due to the use of hydraulic fracturing to develop the “unconventional” natural gas found in rock formations there. Established in 2010, Shell’s operations in Appalachia have grown steadily in line with Shell’s “Unconventionals” business. Along the way it has been met with community feedback on a range of issues, from complaints about dust created by extra road traffic to leasing matters for property owners.

According to some estimates, there are more than a million stakeholders, close to 700 – local municipal governments, and over 1,500 communities. In some parts of the state, the asset is in close proximity to populated areas. Vast differences in the stakeholders and areas that make up the Shell Appalachia venture add further complexity to the environment.

When Shell purchased East Resources in 2010, production was already underway. With it came concerns and complaints from the community. There was no robust system in place for handling this community feedback and Shell found itself spending a significant amount of time sorting through the community issues.

Between 2012 and 2013, Shell Appalachia participated in a grievance resolution mechanism pilot study sponsored by the International Petroleum Industry Environmental Conservation Association (IPIECA). Its aim was to understand and help improve these mechanisms in upstream and downstream operations.

The Community Feedback Program (CFP) forms part of a suite of stakeholder engagement activities that seek a balance between proactively reaching out to community members on a regular basis through town halls, open houses, tours, stakeholder meetings, personal home visits, assistance with social investment funding applications, ongoing communication with Town Supervisors and County Commissioners; setting up targeted, proactive outreach before and during operations such as drilling, flaring or hydraulic fracturing; and responding to complaints when they arise.

Full implementation of the formal grievance resolution system began in November. The asset hired four case managers and handed responsibility over to this professional team to design and implement the system across the operation. One of the team members was specifically tasked by management to build the system, strengthening and formalizing the informal approach in place at the time. As the process ‘learned on the fly’ and grew organically, it took approximately five months to produce the first draft of the Case Management Manual, a comprehensive and noteworthy piece of work.

As a general goal and measure of overall effectiveness, the complaints mechanism should be part of a broader approach toward stakeholder engagement that enhances relationships, reduces social risk, decreases and prevents complaints, enables more responsive and responsible management, and contributes to the company’s overall performance. It is important to consider how the complaint mechanism fits into a site’s overall engagement strategy.

Twenty-one actions were recommended by the IPIECA study to strengthen internal legitimacy, clout and effectiveness of the CFP, and to further align with the UNGP effectiveness criteria.

Since the study was conducted, the CFP has initiated a number of programs to address identified recommendations. They have been working with other groups to identify opportunities to better manage case response and other risks. They have further integrated Shell’s Onshore Operating principles as a guiding foundation and have begun connecting the UNGP criteria into reporting and education about the program. The team has also undergone several changes, most notably a reorganization, to better deliver business objectives. The team is actively working with the Asset’s management to better engage and educate them.



SINOSTEEL

Local employment in global operations | Australia and Africa

Introduction

Sinosteel Corporation (“Sinosteel”) is a large, multinational enterprise group which provides comprehensive, systematically integrated services to the steel industry, steel production enterprises, and related emerging strategic industries and which integrates resource development, trading and logistics, engineering science and technology, equipment manufacturing, and specialised services into a single whole. Sinosteel is China’s main raw material supplier and product distributor for steel production enterprises. The learning case that Sinosteel contributed to the project concerns employees at their mines in Africa and Australia and how the company has approached issues relating to community relations in terms of employment.

Examples of UNGPs discussed during the project

- Guiding Principle 12, which outlines how companies must respect human rights, understood as at a minimum those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work, and how companies can impact the full spectrum of human rights;
- Guiding Principle 15, which states that business should have appropriate policies and processes in place to meet their responsibility to respect human rights; and
- Guiding Principle 20, which outlines that business should use qualitative and quantitative indicators to track the effectiveness of their due diligence responses.

Some of the human rights relevant to this learning case

- Right to equal pay for equal work;
- Right to an adequate standard of living; and
- Right to just and favourable remuneration.

Some discussion points during the project

- Why was it important for the company to employ local people?
- Was the employee localization strategy related to social license to operate issues and adverse impacts? Beyond localization how can social license to operate be addressed?
- Beyond access to jobs, are local employees able to exercise all of their internationally recognized human rights?
- How does, or will, the company seek to embed principles of non-discrimination and equality in employment practices on a global basis?



SINOSTEEL

Learning Case Information Provided by Company



With the rapid development of Sinosteel's operations abroad, proper handling of the relationships between interested parties – such as between the company and its employees, and the company and community residents – has become very important. If an enterprise hopes to succeed in entering overseas markets and operate there in the long term, it must obtain local permission and the support of the communities where projects are located. Most of Sinosteel's overseas mines are in remote areas where the standard of living of the local people is not high.

Raising the local employment rate and the incomes of community households are important aspects of Sinosteel's efforts to secure local support, as well as a legal requirement for obtaining permits from the governments of many countries. In addition, other issues that Sinosteel has to weigh when implementing localised employment include giving consideration to both localisation and non-discrimination and achieving fairness in hiring between local and non-local employees.

With Sinosteel promoting the localisation of employees, the vast majority of employees in its production enterprises are from the local area; the exceptions are Chinese managers sent from abroad to fill a few critical positions. As of the end of 2012, the ratio of local to Chinese employees in Sinosteel's overseas companies was 9 : 1. The degree of employee localisation in Sinosteel's African operations was more than 99%, and in Australia it was 88.3%.

Sinosteel ensures that employees enjoy equal employment rights, and the company practices non-discriminatory employment policies. The policy requires that local and non-local employees be given fair opportunities for work and development. In a superficial sense, that conflicts with the company's policy of employee localisation.

Abiding by the principle of benefiting the development of the enterprise. In certain largely non-technical jobs of a service and support nature, priority goes to local employees. But for specific, more critical jobs, job hiring criteria should be combined with local manpower resource advantages. The best candidate should be selected following overall consideration given to local and non-local employees in the light of multiple factors, including business skills, level of managerial ability, and the cost of manpower.

Sinosteel's localisation of hiring creates favourable conditions for the operation and development of enterprises abroad: It creates job opportunities where the operation is located; It helps the enterprise integrate with the local society more quickly and reduces external risk; Local employees have an advantage over employees sent from abroad with respect to language, culture, adaptation to the environment and the obtaining of local job qualifications.

Along with localisation, the company upholds equality and non-discrimination in employment of local and non-local employees of both sexes and different races, skin colours, nationalities, ages, and religious beliefs, and complies with basic principles of international human rights and labour standards.



THE COCA-COLA COMPANY

Building capacity for collective bargaining in the bottling system in China

Introduction

The Coca-Cola Company (TCCC) is the world's largest beverage company. TCCC make branded products available to consumers in more than 200 countries through their network of company owned or controlled bottling and distribution operations, as well as independent bottling partners, distributors, wholesalers and retailers. The TCCC learning case concerns how the company has approached collective bargaining in Coca-Cola-owned facilities and with their independent bottling partners operating in China. The case reflects on the importance of employee engagement and collective bargaining in line with international standards and the company's policies.

Examples of UNGPs discussed during the project

- Guiding Principle 16, which outlines that companies should have a statement of policy that expresses their commitment to respect human rights;
- Guiding Principle 13, which outlines that businesses should seek to prevent or mitigate adverse human rights impacts that are caused (the case of the TCC owned facilities) and those that are directly linked to their operations by their business relationships (in this case the independent bottlers' impacts); and
- Guiding Principle 19, the commentary for which describes how companies can use leverage to prevent or mitigate the adverse impact, including through capacity-building for business partners.

Some of the human rights relevant to this learning case

- Right to freedom of peaceful assembly and association; and
- Right to form and join trade unions.

Some discussion points during the project

- What guidance, training and other methods to build capacity on collective bargaining and broader labour rights issues are used?
- How do representatives of the independent bottlers receive training? Is there resistance? How does TCCC communicate the business case and importance of this?
- What are the challenges of securing commitment and aligned action across the bottling system? What examples are there of things not working?



THE COCA-COLA COMPANY

Learning Case Information Provided by Company



In May 2010, the Chinese government indicated a desire to see collective bargaining as the preferred method of setting pay and working conditions covering 60% of all enterprises by the end of 2011, and 80% by 2013. Specifically, the government set a target that 100% of the Fortune 500 firms with operations in China should have collective bargaining agreements in place by 2013. Consequently, throughout much of 2011, our business system saw a heightened interest in collective bargaining from unions primarily driven at the provincial and municipal levels.

To help build collective bargaining capability and align our business system around respect for human and workplace rights, The Company took the following actions:

- Secured local leadership commitment to approach collective bargaining consistent with TCCC's human rights policies and local law.
- Convened a 3-day collective bargaining capability building session: In collaboration with the local business partners, the Company designed and delivered a 3-day collective bargaining capability building session in May 2011, in Shanghai. The session was attended by 75 professionals from across a variety of business functions including human resources, public affairs, legal and operations. Highlights of the session included:
 - An overview from a local labor law scholar on current bargaining trends and the legal framework for collective bargaining in China;
 - Overviews of TCCC's human rights policies and its firm commitments to respect human rights;
 - Overviews from internal labor relations subject matter experts on practical approaches to collective bargaining and shared lessons learned from across the globe;
 - Presentations of practical tools for collective bargaining preparation; and
 - An 8-hour, realistic collective bargaining simulation

Established alignment routines with local bottling partners to share best practices, review results, identify any issues and course correct as needed.

Convened a second collective bargaining alignment meeting in October 2011, to:

- Review lessons learned regarding collective bargaining;
- Reinforce the importance of engaging key labor stakeholders on a regular basis; and
- Help drive further alignment around a shared strategy and vision for labor relations in the region.

Within one year of the Company's local capability building efforts, the Coca-Cola China system successfully completed collective bargaining for 32 collective contracts, covering 36,000 workers. While these results were positive, TCCC believes it is critical to have ongoing alignment routines with local business partners to sustain results. Consistent with The Company's Workplace Rights Policy and Supplier Guiding Principles, there will be follow-up assessments of Company owned facilities and those of our independent bottling partners.



I CONCLUSION

Conclusion

Following the endorsement of the UN Guiding Principles on Business and Human Rights (UNGPs), companies now have an accessible, concise and authoritative global standard on the corporate responsibility to respect, and the state duty to protect, human rights. The project team hopes that this project and report will be a helpful contribution towards encouraging business leadership and improving Chinese and global business practices in relation to human rights impacts. The project team hopes this will reinforce and support further ways to increase knowledge building and action on this issue in the Chinese context. In order to support thinking about next steps, the project team identified the following themes:

Companies have different conceptions of what “responsibility” means in practice when seeking the social license to operate. The UNGPs can help to align attitudes and actions.

There is a clear recognition that the legal license to operate is not the same as the social license to operate, and that this new paradigm requires new approaches. There is a strong feeling that it is necessary for all companies around the world to address their social impacts, develop sustainable social relationships and the social licence to operate, beyond the legal license to operate at home or abroad. Companies entered into the project seeking practical solutions. This is positive, but the shared reference of the UNGPs was – and will remain – important in order to define what companies should do in practice (and indeed what they should not do).

Respect for human rights is possible, and good practices exist in China. There is an emerging community of business leaders that are knowledgeable and skilled when it comes to understanding and managing human rights impacts.

Good policies and practices to respect human rights exist in China and around the world, including among Chinese enterprises. These exist in diverse industry sectors, operating contexts and in relation to all stakeholder groups. While the project did not set out to develop best practices, Chinese and international companies are addressing specific human rights impacts including around indigenous peoples’ rights, collective bargaining, non-discrimination, migrant workers, and access to remedy. New capacities are being developed also. Chinese business leaders working in foreign MNCs are taking responsibility for implementing policies and programmes related to human rights. But of equal interest is the knowledge and experiences being developed by managers within Chinese SOEs abroad. One common theme was that challenges addressed in Africa or Australia may eventually feed back into policies, commitment and approaches developed in China. Finally, multiple learning cases involved one company building capacity with business partners (e.g. in the context of joint ventures or in the context of supply chains).

Discussing real cases and demonstrating practical solutions with practitioners can “demystify” human rights and what international standards mean in practice.

During the project it was clear that many of the practices and approaches being shared, served to undermine preconceptions about what is possible when addressing social impacts (for example, in relation

to worker engagement, migrant workers, conflict, and working with NGOs). This can also support consistency of interpretation and implementation of international standards. While there is some familiarity with international standards – including the UNGPs – it is apparent that interpretations and implementation of them can differ. Terms such as “respect v support”, “remedy”, “impact”, “human rights risk”, and “consultation” can be understood in different ways. This is also the case for the substance of individual human rights.

Engaging experts and rights-holders in developing policies and practices was a common theme in the conversations and learning cases. This issue requires further peer learning and attention.

Many of the learning cases contained examples of companies engaging with local NGOs, local government, the media, technical experts, and academics. Cases also addressed the importance of engaging directly with affected populations, whether employees or communities. Within the project itself, some of the most valuable learning came from feedback from experts from civil society acting as “critical friends” in the learning seminar or from within the project team. The UNGPs offer an excellent tool for how companies can think about stakeholder engagement and communication. This includes providing a framework for thinking about the role of governments at home and abroad.

Companies expressed the importance of support and guidance that they can access within China and that are developed and supported by Chinese institutions.

Business leaders in China may lack access to support systems to enable them to do business in ways that are consistent with the UNGPs. This is the case for when operating in China as well as operating globally. Businesses must act together, and with governments, non-governmental organisations, investors and others to have significant impact. Companies can learn from each other and other stakeholders to find the most effective solutions. Further peer learning involving Chinese companies and MNCs from abroad would be useful. However, training, research, tools, guidance and consulting services are also required. It may be that the Chinese government and credible academic institutions could play a helpful role. Based on the learning cases and project discussions, the topics of focus for future peer learning could be impact assessments, grievance mechanisms and stakeholder engagement.

