

# EMBEDDING HUMAN RIGHTS IN BUSINESS PRACTICE III



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The United Nations Global Compact brings business together with UN agencies, labour, civil society and governments to advance ten universal principles in the areas of human rights, labour, environment and anti-corruption. Through the power of collective action, the United Nations Global Compact seeks to mainstream these ten principles in business activities around the world and to catalyze actions in support of broader UN goals. With over 7,000 stakeholders from more than 100 countries, it is the world's largest voluntary corporate citizenship initiative.

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The beautiful illustrations in this publication of the 30 articles of the Universal Declaration of Human Rights are by artist Octavio Roth.

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# Editorial

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## Introduction and acknowledgements

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### About the *Embedding Human Rights in Business Practice* series

This series explores the practical application of the Global Compact's human rights principles using concrete examples of company experiences. It offers detailed examples of what businesses are doing to implement human rights within their own operations and spheres of influence. The aims of the series are: (1) to help demonstrate the relevance of human rights for businesses everywhere; (2) to help establish the business case for human rights and (3) to inspire businesses to raise the level of their human rights performance. The target audience for this series of case study publications is the business community, Global Compact Local Networks (GCLNs), academics and civil society organizations engaged with companies on human rights issues.

### The first two volumes

The first two volumes of *Embedding Human Rights in Business Practice* (both available at [http://www.unglobalcompact.org/Issues/human\\_rights/Tools\\_and\\_Guidance\\_Materials.html](http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html)) investigated a wide range of issues through the activities of an equally diverse range of companies. The first volume explored the human rights implementation efforts of Hewlett Packard, BP, BHP Billiton (South Africa), Novo Nordisk and Total, and it also included several analytical papers. The second volume was composed of 20 case studies about efforts by Westpac Australia, ABB, BASF, İpek Kağıt, Nike, Sasol, Shell, Asocolflores, Eskom, MAS, Achilles, AngloGold Ashanti, AREVA, Barloworld, Novartis, Starbucks, Titan Industries, Ketchum, Newmont and Volkswagen to respect and support human rights. The case studies in the second volume were organized according to the type of management practice they explored and were intended to reinforce *A Human Rights Management Framework* ([http://www.unglobalcompact.org/docs/news\\_events/8.1/HR\\_poster.pdf](http://www.unglobalcompact.org/docs/news_events/8.1/HR_poster.pdf)), which is a graphical representation of a continuous improvement

approach to integrating human rights in business management. Together, the volumes illustrate corporate approaches to conducting business in difficult operating environments, responding to HIV/AIDS, improving occupational health and safety, land issues, responsible sourcing and sustainable supply chain management, promoting equal opportunity, human rights advocacy, stakeholder engagement, strategic social investment and developing new products and markets by supporting human rights.

### The third volume

The third volume of *Embedding Human Rights in Business Practice* includes eight case studies detailing the experiences of companies in a diverse array of sectors operating in all corners of the world. The companies whose practices are the subject of case studies in this volume are:

- (1) **OMV**, an Austrian energy firm which developed a set of tools to address its own set of unique human rights problems;
- (2) & (3) **Ford** and **Cadbury**, two global giants in their respective sectors who approached the difficult task of implementing broad, cohesive human rights policies;
- (4) **ASN**, a Dutch bank that only invests in companies that promote human rights and environmental sustainability;
- (5) **Endesa**, a Spanish utility company operating in Brazil learning that bringing electricity to the poor can make good business sense;
- (6) **Lexmark**, a printing company whose support for diversity and particularly Lesbian, Gay, Bisexual and Transgender (LGBT) rights seems to have had far-reaching impacts on the community of Lexington, Kentucky in the United States, where the company is based;
- (7) **Xstrata**, a Canadian mining company operating in the Dominican Republic, which found itself in the unenviable posi-

tion of managing a massive layoff during financial turmoil and

- (8) **Engro Chemical**, a Pakistani chemical company implementing a new occupational health and safety policy.

The volume explores the approaches by these companies to tackling a wide range of human rights issues, from corruption/bribery to torture to occupational health and safety to diversity and the right to education. In doing so, it reinforces the findings of the earlier volumes that approaching human rights in a proactive and systematic manner, viewing human rights as an opportunity and not just a risk to be managed, can yield excellent results for business and for human rights. In many ways, the third volume picks up from where the first and second left off, reinforcing lessons learned and suggesting that certain strategies may have applicability across industries and sectors. In particular, this volume looks at both (1) higher-order principles and rationales that lie behind a company's engagement with human rights and (2) on-the-ground implementation. In terms of the former, the case studies in this volume pose and respond to questions like:

- What is the business case for proactive human rights policies and practices?
- How does a business determine the scope or the boundaries of its human rights responsibilities as related to its particular operations?
- What does complicity in human rights abuse mean, in practical terms, for a business?

Beyond these higher level questions, this volume also explores more concrete issues regarding on-the-ground application and implementation of human rights policies. For example, this volume asks:

- What strategies and approaches are the most effective in managing human rights risks and realizing business opportunities from supporting human rights?
- How can companies ensure that respect for human rights is incorporated into day-to-day business practices?
- How can employee awareness of human rights be sharpened and behaviour changed where necessary?
- What can a company do to improve its

stakeholder relations on human rights and what are the challenges and opportunities associated with multi-stakeholder dialogue?

By exploring both questions of first-order principles and on-the-ground issues of implementation, these case studies touch on the full scope of management practices set out in *A Human Rights Management Framework*, from the development of a policy, conducting risk and impact assessments, integrating human rights throughout the business, having grievance mechanisms in place and monitoring and reporting on progress. These are practices that are part of the human rights due diligence process that has been reinforced by the Special Representative of the Secretary-General on business and human rights.

Like the second volume, case studies in this volume are organized by the type of management practice addressed, as laid out in *A Human Rights Management Framework*. However, given that case studies often address multiple management practices, their arrangement in this volume is principally by level of focus and detail. For example, one case study may place more emphasis on Training and another on Communications, even when both also address Strategy. Thus, in this example, the case study with a focus on Training comes after the case study with a focus on Communication, despite the general overlap of content. While not covering all areas addressed in the *Framework*, the case studies in this volume illustrate a number of them and help convey that the relationship between the steps is not necessarily one of linear progression. Rather, for a particular company in a particular context, it may make sense to undertake some steps simultaneously or in a different order. Moreover, it should be remembered that the goal of the process is continuous improvement enabling the company to ensure respect for and support of human rights.

### Recurring themes

A number of recurring themes emerge from the case studies.

#### Determining Scope of Responsibility or Commitment to Human Rights

With regard to the issue of determining the scope of a business' human rights responsibilities or of the company's human rights

commitment (which for many companies will encompass the goal of going beyond respect for human rights to include making a positive contribution to human rights), several key themes emerge. First, a number of the case studies illustrate that having a coherent overall framework to human rights is considered necessary to better manage risks and secure and maintain the company's "social license" to operate. A number of case studies show how the companies found it helpful to prioritize and systematically pull together its human rights practices into a unique, company-specific model, as OMV did with its Human Rights Matrix or Cadbury did with its Human Rights Approach.

Second, for several of the companies whose practices are profiled in this volume, the past few years have seen a growing recognition of the real risk that complicity in human rights abuse poses for business. In other words, that avoidance of complicity is a key part of the responsibility to respect human rights. Efforts to manage human rights risk in the supply chain have thus intensified. In some cases, dealing with complicity means addressing a broadly defined and often sprawling supply chain (see, e.g., Ford and Cadbury), while in other instances, complicity entails dealing with entities that the business invests in (see, e.g., OMV and ASN Bank). For some of the companies, comprehensiveness and a systematic approach was again the best way to ensure that human rights were being respected by related third parties. In the case of Ford, this conclusion was arrived at through pragmatism, as Ford felt that only an integrated approach in addressing its supply chain would make its human rights efforts sustainable given the breadth of its operations.

### Engaging in Dialogue

Another major theme emerging from the case studies is the value of stakeholder dialogue. As with the previous two volumes, it is clear that engaging with relevant stakeholders and listening to those whose human rights are or may be affected is often an essential strategy for a company to effectively address its human rights issues. This dialogue allows both parties to realize that stakeholder engagement need not be a zero-sum game and that benefits need not run in only a single direction. For example, Endesa, upon learning that its recycling programme was having a

significant impact on the livelihood of homeless trash pickers in rural Brazil, actively sought to engage in dialogue with this often overlooked segment of the population. With dialogue, Endesa managed to find a mutually beneficial solution, incorporating these homeless stakeholders into their programme, ameliorating the situation and – in the process – creating new jobs. Similarly, for Lexmark, holding diversity forums has increased dialogue amongst stakeholders, helped to disseminate best practices and instituted a more progressive workplace culture.

### External Resources

A number of the case studies show that seeking out external sources of information and models proved helpful in preparing and implementing a new human rights policy. While just a few years ago, there was little in the way of guidance material on business and human rights, there are now a number of tools and guidance materials available for off the shelf use or customization. Many of the guidance materials that now exist are robust in their human rights content, as well as comprehensive in their coverage and were developed by or road-tested with business giving companies a high degree of confidence in the quality and utility of the guidance. For a list of some of the key business and human rights tools and where to find them, visit: [http://www.unglobalcompact.org/Issues/human\\_rights/Tools\\_and\\_Guidance\\_Materials.html](http://www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html). OMV was inspired by the Business Leaders Initiative on Human Rights when designing its own OMV Human Rights Matrix, while Pakistan's Engro, when developing its revised worker safety policy, looked to fellow chemical company DuPont.

### Techniques in Effective Implementation

Implementation of human rights policies or commitments is a key challenge for businesses from all sectors. The case studies illustrate the techniques that some companies are using to help move from policy to action and implementation. Some companies, for example, found that implementation of human rights policies was facilitated by clearly-stated goals that illustrated clarity of purpose. Such policies often distinguished between necessary and aspirational elements – nominally a form of prioritization. In the case of ASN, clear standards of investment based on

human rights factors enabled the bank to spearhead its shift towards a more human-rights-based focus. For Cadbury, clearly stated goals enhanced its ability to implement human rights across its operations — including in departments where human rights issues were not initially evident. And, in a similar vein, at least one company (Ford Motor Company) found that well thought-out metrics for measuring compliance proved effective when introducing a policy that needed to apply across its subsidiaries and suppliers

Clarity of purpose does not imply that a company must start from square-one when developing its approach towards human rights. Indeed another theme found in this volume of *Embedding Human Rights in Business Practice* suggests that an approach to human rights that builds on existing policies and practices and that is rooted in the company's corporate values may prove easier to implement (see, e.g., Cadbury, OMV). By building on an existing foundation, some companies found that the cost of implementation was significantly reduced, for example by reducing the time and money it takes to train employees in the new policy.

Training was another essential element to enable effective policy implementation. As some of the companies found, without training and capacity building, it would be difficult to entrench the kind of human rights compliant policies and practices with employees and suppliers. Knowing this, many of the companies applied actual class-room experiences when promulgating new policies (e.g. Engro and Xstrata). For Xstrata, to ensure that a major round of layoffs was implemented without issue, the company trained outside security forces, as well as internal management and employees.

The value of creating taskforces to address specific human rights concerns is also illustrated by the cases in this volume. Lexmark, for instance, discusses its three-tier diversity management structure consisting of the Lexmark Diversity Council (responsible for articulating the company's diversity goals and initiatives) Diversity Action Teams (responsible for monitoring the implementation of the Council's initiatives), and Diversity Network Groups (voluntary employee groups representing various interests). Similarly, Cadbury's Human Rights and Ethical Trading (HRET) Task Force, composed of employees from various departments, is responsible for

the implementation of the company's Approach to Human Rights.

### **Strengthening the Business Case for Human Rights**

The cases in this volume and the broader *Embedding Human Rights in Business Practice* series illustrate that more and more companies around the world recognize the importance of human rights to their business. That being said, in many instances, it is still necessary to make the business case for human rights policies, practices and initiatives in a way that will garner support among the company's management (see, e.g., Ford and Cadbury). The most effective human rights policies and practices are those that have the full backing of senior management. When human rights is viewed as an opportunity and not just a risk, the case may be easier to make. Endesa may personify this trend most clearly by treating its programme of getting electricity to low income families not as charity, but as an important part of its business strategy.

### **A note on methodology and process:**

#### **Case Selection**

The selection of case studies was based on examples of good practice that the Global Compact Office, Global Compact Local Networks or Editorial Board members identified. Brief proposals about the subject matter of the proposed case studies were then prepared by the case authors for consideration by the Editorial Board.

The case studies were then developed following the Global Compact's Case Study Template, which is available on the Global Compact website at: [http://www.unglobalcompact.org/Issues/human\\_rights/Business\\_Practice.html](http://www.unglobalcompact.org/Issues/human_rights/Business_Practice.html). The case studies are written with the companies' permission typically by independent authors often identified by the Global Compact Office or a Local Network. The case study authors received no remuneration from the companies concerned. Sometimes case authors, who are often graduate students, were able to obtain academic credit for their work.

#### **Peer Review Process**

In an effort to make the case studies robust, each case study underwent peer review before publication. Peer review panels were assembled for each case study, composed of

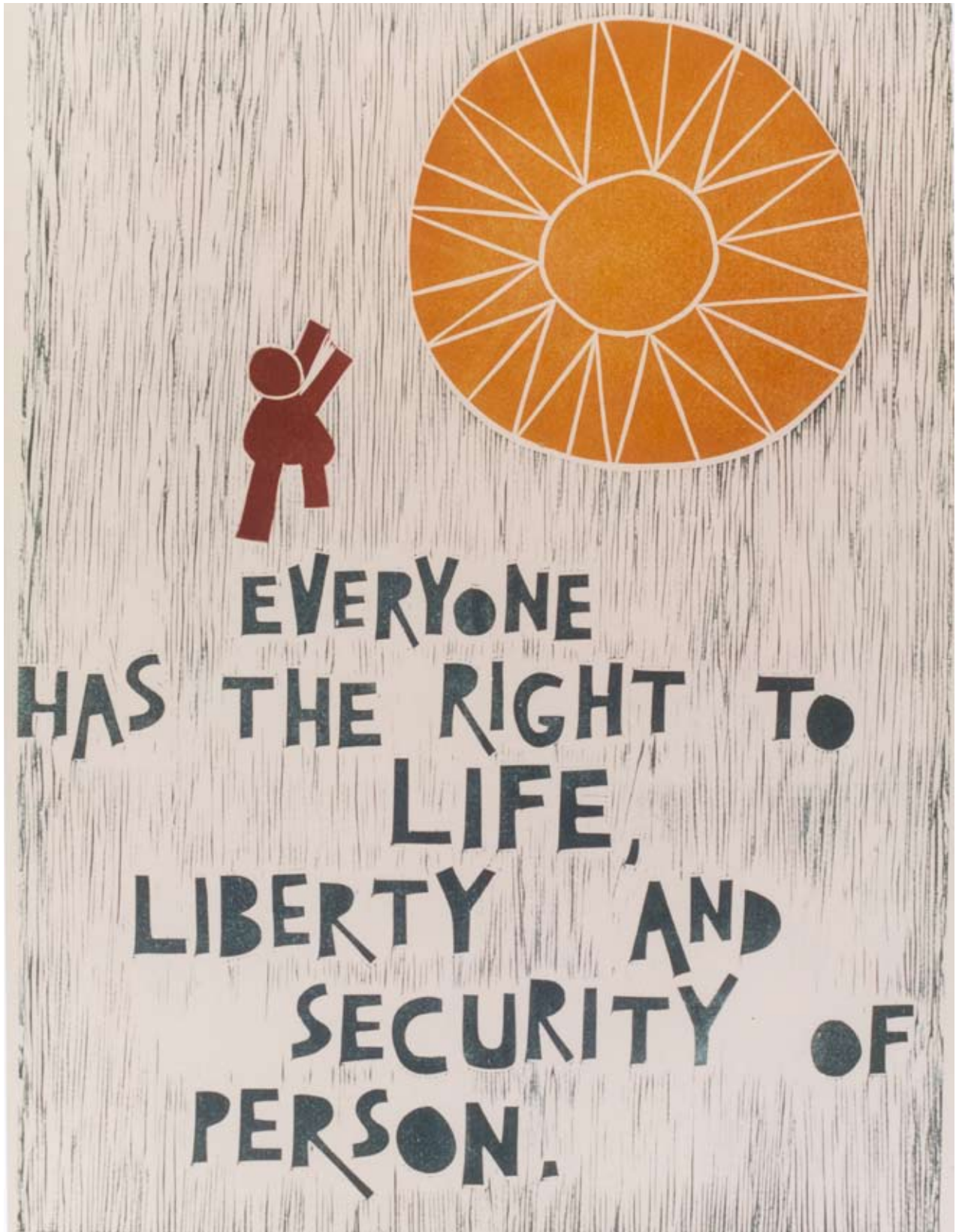
one member of the Editorial Board and two or more additional peer reviewers working in, or with expertise of, the industry or human rights topic discussed in the case study. Each peer review panel reviewed the case study assigned to them and provided feedback to the case study author(s) and company representatives during a peer review call. The final case studies reflect the feedback and comments received.

### **Future Volumes**

Business and human rights case studies are developed on an ongoing basis and posted on the UN Global Compact's website upon completion. Periodically, these case studies will be published as part of the *Embedding Human Rights in Business Practice* case study series. Interested case authors, peer reviews and companies should contact [humanrights@unglobalcompact.org](mailto:humanrights@unglobalcompact.org).

### **Acknowledgements**

In addition to the case study authors and peer reviewers acknowledged within the individual case studies, we also wish to recognize the company representatives and other individuals who dedicated ample time to the development of these case studies. A special thank you is reserved for the Editorial Board members who gave their time to review case study proposals, scout case study proposals, participate in peer review calls to give feedback on draft case studies and generally offer advice and guidance.



## I GETTING STARTED

Develop your company's business case for human rights

Make use of existing human rights resources and guidance materials, available on platforms like [www.business-humanrights.org](http://www.business-humanrights.org)

Understand the implications of the first two principles of the UN Global Compact: to support and respect human rights within your business and your sphere of influence, and to make sure that you are not complicit in human rights abuses

Develop and encourage a transparent and rights-aware approach to your business including by:

- Identifying and consulting with key stakeholders – including critics – to understand their concerns and expectations
- Identifying the key rights at issue, and the potential responsibilities of your company and the appropriate responses

## II STRATEGY

Find out what you are already doing on human rights e.g. under health and safety, union relations and human resources

Identify risks and opportunities and priorities for action, including by:

- Considering – in collaboration with operational colleagues – the nature and scope of the company's human rights impacts and responsibilities in relation to core business and relations with business partners (supply and distribution chains), local communities and governments
- Comparing current performance against industry standards and good practice
- Conducting a human rights risk or impact assessment, eg. using the IBLF/IFC/UNGIC Human Rights Impact Assessment Guide, the BLIHR Matrix, or the Danish Institute's Human Rights Compliance Assessment Tool
- Identifying any past human rights challenges for the company and feeding lessons into future decision-making
- Prioritising the key human rights objectives for the company

Assign senior management/board level responsibility for the implementation of the company's human rights strategy

## VIII REPORTING

Report annually to stakeholders on progress against human rights policy pledges

Decide which human rights impacts are priorities for you to report on

Submit a link/description to the Global Compact website (if Global Compact participants)

In particular, explain to both internal and external stakeholders how the company set its human rights priorities and met or attempted to meet its key human rights policy objectives

## VII MEASURING IMPACT & AUDITING

Set relevant performance indicators for measuring human rights impact across the different functions of your business

Apply continuous monitoring of practice and benchmark against other relevant companies to make sure that human rights policies are being applied

Undertake internal human rights-based audits and consider using third parties to make sure human rights policies are being applied

Use the monitoring and evaluation process as a tool for raising internal awareness and building the capacity of supplier management

Use audit findings to inform the strategic development of your business with respect to human rights

# A Human Rights Management Framework

### III POLICY

Use the term "human rights" within policy statements and refer to international agreements, especially the Universal Declaration of Human Rights and ILO core conventions

Include human rights in your existing policies

Develop specific human rights policies where appropriate

Develop local policies that align with global policies to meet local situations

Publish policies internally and externally and apply policies globally and across all operations of the company

Review your policy periodically on the basis of implementation experience and be ready to revise if necessary

### IV PROCESSES & PROCEDURES

Establish procedures for managing any identified human rights-related risks and opportunities

Adequately address human rights impacts and risks within business processes, including by:

- Opting to conduct a dedicated human rights impact assessment or ensuring that environmental and social impact assessments encompass human rights
- Ensuring that other company policies, processes and procedures do not conflict with those on human rights
- Including human rights responsibilities in job descriptions and performance appraisals of key personnel
- Seeing that human rights issues are appropriately addressed in contracts with business partners

Put in place management systems for human rights policy implementation, monitoring and reporting across the company

Learn from sector-wide business initiatives on human rights

Consider a collective action approach with industry peers where appropriate

Provide mechanisms to protect employees who report potential human rights concerns within the company or with business partners

### V COMMUNICATIONS

Share understanding of why human rights are important to business communications

Integrate human rights into your internal and external communications where appropriate

Communicate procedures to employees and business partners

Make procedures available in local languages and accessible to those unable to read

Openly acknowledge events where the company ran into difficulty or could have dealt with a problem more effectively

Use open and ongoing communication as a vehicle to gain active support from stakeholders in resolving problems

### VI TRAINING

Identify target groups in your business to receive human rights training

Review the different types of training materials available

Integrate real life dilemma solving into training efforts

BUSINESS LEADERS INITIATIVE ON HUMAN RIGHTS



United Nations Human Rights  
Office of the High Commissioner for Human Rights



# OMV, THE UN GLOBAL COMPACT AND HUMAN RIGHTS: From Signature to Implementation\*

By Nicole Polsterer\*\*

## Human rights issues addressed

- Child labour
- Complicity
- Diversity and/or non-discrimination in employment
- Forced labour
- Freedom of association/collective bargaining
- Resettlement and compensation of affected communities
- Right to education
- Social security and social insurance
- Sphere of influence
- Standard of living
- Supply chain management

## Human rights management practices discussed

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

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

- Business Leaders Initiative on Human Rights Matrix
- Danish Institute for Human Rights Quick Check
- Extractive Industries Transparency Initiative
- Global Reporting Initiative
- Millennium Development Goals
- Voluntary Principles on Security and Human Rights

## Abstract

OMV is the leading energy group in Central and Southeastern Europe and one of Austria's largest listed companies. It became a signatory of the UN Global Compact at the beginning of 2003. While OMV is also active in addressing the UN Global Compact Principles on environmental protection and anti-corruption, this study focuses specifically on how OMV internalized the UN Global Compact Principles on human rights and labour rights. The study provides a detailed account of OMV's development of tools for its human rights implementation (in particular, its Human Rights Policy and Human Rights Matrix) and how the company has been striving to create a favourable climate for the acceptance of human rights among its employees and within its wider sphere of influence, the way it integrated human rights into its business processes and how it strives to further implement and improve its human rights tools. Over a two-year period, the company developed all human rights initiatives and efforts jointly with its staff and consultants. It captured the issues, approaches and policies in an internal Human Rights Matrix, which helps to map OMV's responsibilities in relation to human rights, assess existing gaps between OMV responsibilities and activities and prioritize OMV's actions. While the author is familiar with the entirety of the Matrix, she signed a confidentiality agreement with the company that permits disclosure of the framework but not the details of the Human Rights Matrix, which is part of an internal company directive. International business operations, with a particular focus on Pakistan, Yemen and Tunisia, serve as the backdrop for this case study. It is based on interviews with OMV managers and Prof. Manfred Nowak, Head of the Ludwig Boltzmann Institute of Human

Rights in Vienna and UN Special Rapporteur on Torture, in his capacity as advisor to OMV. The case study covers the period from 2003 to 2008. As OMV's work on its human rights policy is not a completed process but rather a continuing one, the case study also gives an outlook on OMV's planned actions in 2009. The UN Global Compact Office had asked OMV to describe its human rights policy in the case study. OMV, however, decided not only to speak about the human rights policy document but to describe the whole development process of its human rights framework.

## 1. Company Profile

OMV was founded in 1956 as the state owned Österreichische Mineralölverwaltung ("Austrian mineral oil administrative authority") and was partly privatized in 1987.<sup>1</sup> In 2007, Austria's investment and privatization agency, Österreichische Industrieholding AG, still held 31.5% of ownership.<sup>2</sup> With Group sales of €25.54 billion and a workforce of 41,282 employees in 2008, OMV is one of Austria's largest listed industrial companies.<sup>3</sup> OMV further strengthened its leading position in Central and Southeastern Europe through the acquisition of 41.58% of Petrol Ofisi, Turkey's principal company in the retail and commercial business, in 2006.<sup>4</sup>

OMV's oil exploration and production activities (E&P) are spread across 19 countries in six core regions: Central and Eastern Europe, North Africa, Northwestern Europe, the

\* NB: Appendices and figures are available for this case study in the online version, found here: [http://www.unglobalcompact.org/Issues/human\\_rights/Business\\_Practice.html](http://www.unglobalcompact.org/Issues/human_rights/Business_Practice.html).

\*\* Nicole Polsterer is an independent development consultant. Peer review of the case study was provided by: Dean Cycon, Founder and CEO, Dean's Beans Organic Coffee Company; Constanze Helmchen, Focal Point, Global Compact Network Germany; Jeff Flood, General Manager, Social Responsibility, Nexen Inc.; and Lene Wendland (observer), Adviser on business and human rights, Office of the UN High Commissioner for Human Rights.

Middle East, Australia/New Zealand as well as Russia and the Caspian Sea region. OMV's daily production is about 317,000 barrels of oil equivalent (BOE) and guaranteed oil and gas reserves of about 1.2 billion BOE.<sup>5</sup>

OMV Gas & Power (G&P), with business units Gas Supply, Marketing & Trading, Gas Logistics and Power, as well as the Nabucco Gas Pipeline Project and the Central European Gas Hub, is one of the major gas trading and logistics companies in Central Europe. With the establishment of a new business unit, Power, OMV entered the electrical power business. OMV owns gas storage facilities with a volume of 2.3 bcm gas as well as a 2,000 km pipeline system. In 2008, OMV sold 13.07 bcm gas and approximately 66 bcm gas is transported annually via the gas turntable Baumgarten. With OMV's important role in major infrastructure projects, such as the Nabucco Gas Pipeline and participation in both the Liquefied Natural Gas (LNG) terminals in Croatia (Adria LNG) and the Netherlands (Gate Terminal), OMV significantly contributes to upholding the gas supply in Europe. In gas trading, with an exchanged volume of 15 bcm in 2008, the Central European Gas Hub developed into one of the three most important gas platforms in Continental Europe and will be further developed into a gas exchange in the future.<sup>6</sup>

OMV is active in oil refining and marketing (R&M) in 13 Central and Eastern European countries. R&M represents the largest share of the Group's consolidated sales. Together with its refineries in southern Germany, the plants in Romania and its 45% stake in Bayernoil, Germany, the OMV group has a total refining capacity of approximately 26 million tonnes/year and a network of 2,528 filling stations.<sup>7</sup>

In June 2006, OMV established the OMV Future Energy Fund with more than €100 million. It is a wholly owned subsidiary to support projects in renewable energy. OMV wants to move away from being a traditional oil and gas company to an energy group with renewable energy in its portfolio. The Fund supports projects that focus on emission reduction, energy efficiency and renewable energies like geothermal energy and biogas.<sup>8</sup>

In June 2007, Mr. Wolfgang Ruttensdorfer, Chairman of the Executive Board, together with executive board members, gave the impetus for formalizing OMV's corporate social responsibility (CSR) policy with a focus on human rights. For the case study, the au-

thor interviewed OMV managers Ms. Simone Alaya, Corporate CSR Manager, Mr. Wolfgang Remp, Senior Vice President Exploration and Production (E&P) International, Mr. Wolfgang Kraus, CSR Manager E&P International, and Mr. Elmar Collins, General Manager OMV Yemen.

## 2. Case Analysis

### (a) Getting Started

The deteriorating human rights situation in Sudan in 2002 was one of the determining factors that led OMV to look at the human rights principles of the UN Global Compact more closely. OMV had acquired shares in two blocks operated by Lundin Sudan Ltd., Malaysian PETRONAS and the Sudanese State company Sudapest.<sup>9</sup> OMV never actively operated or had any employees of its own in Sudan. OMV was only a financial investor. However, in view of the ongoing atrocities in Sudan's Darfur region, OMV, like other companies present in Sudan, faced significant criticism from human rights advocates, parliaments and the media for its engagement in the region. Having commissioned an independent human rights report, OMV did not want to risk being accused of complicity in human rights violations, despite the possibility of easy exploration of natural resources. After intensive internal discussions, OMV designed a clear exit strategy on a commercially viable basis and opted to sell its stakes in Sudan. Despite OMV's exposure to challenging situations in other countries, the experience in Sudan marked the first time the firm realized the boundaries of its commercial interests and took a closer look at its human rights risks and impacts. OMV realized how vital it is to analyse the operating environment before acquiring stakes in a new country. In the future, this analysis should be part of a thorough country entry study.

### (b) Strategy

Having faced the challenges mentioned above, OMV was determined to make a public commitment to corporate responsibility, and at the beginning of 2003, the company became a signatory of the UN Global Compact. The reasons for joining were threefold: first and foremost, to foster a company culture that recognizes moral and ethical obligations toward the population of host countries – OMV views local communities as key to

the success and longevity of its operations abroad; second, the overall trend by Western stock market listed companies to commit publicly to social concerns; and third, the increased awareness of operative and political risks within its core business. Being exposed to a wide range of technical, financial, commercial as well as health, safety, environmental quality (HSEQ) and human security risks, OMV saw the need to deal with them in a professional and structured manner and searched for a tool to help manage those risks. An integrated corporate social responsibility (CSR) policy, which is based on universal values, such as the UN Global Compact Principles, seemed to be the answer.

OMV's approach to corporate social responsibility<sup>10</sup> is based on the triple bottom line of financial, social and environmental components. Only by including all of these into its company culture and its daily business, including policies and tools, does OMV see a realistic chance to obtain the acceptance of local communities, the so-called "license to operate" in a country. For OMV, a CSR strategy is also a risk management tool. Corporate CSR Manager, Ms. Simone Alaya, says, "Our goal is to reduce risk through a systematic approach, enhance our reputation at a national and international level, strengthen identity and corporate culture and in doing so ultimately create a competitive advantage."<sup>11</sup> To reduce the risks within the non-financials, OMV currently scrutinizes human rights, health, safety and environmental risks. OMV strives to incorporate these into its enterprise wide risk management tools.<sup>12</sup> For OMV, CSR is also necessary to building a coherent and uniform corporate culture. OMV's company culture builds on its "driving values" as forces for sustainable growth.<sup>13</sup> OMV seeks to act as

- a "pioneer" with a spirit of change for continuous development,
- a "professional" with excellence for lasting success and
- a "partner" engaging in responsible relationships for mutual benefit.

OMV believes that only if it lives CSR, can it become or maintain being a pioneer, a professional and a partner. In short, OMV wants to conduct its business in alignment with its role as a good corporate citizen.

OMV feels that it has been engaging in partnership projects long before CSR became

an issue for other businesses. Within OMV's own structure, the international business operations of oil exploration and production (E&P) were at the forefront of innovating good business practices. For instance, they have been managing partnership projects in Libya and Pakistan since 1990. Its efforts and targeted CSR actions in the latter country have now been recognized as a best practice within OMV and serve as inspiration for development projects by the company in many other countries. Ten additional staff members have been hired for various projects in Pakistan, where OMV is the largest international gas producer. OMV provided the funds for the reopening of a school and regular training for teachers. In a first phase, it set up a water supply system, a mother and child health care centre as well as a hepatitis prevention project<sup>14</sup> to protect 9,000 people. The second phase, being conducted in 2009, involves vaccination and awareness-raising of 15,000 persons. In developing and implementing the hepatitis prevention project, OMV was inspired by its CSR drivers, the UN Global Compact and the Millenium Development Goals<sup>15</sup> (MDGs). More specifically, when conceptualizing the Community Development Programme and its projects,<sup>16</sup> OMV was guided by its CSR drivers related to improving the company's reputation, risk management, response to stakeholder expectations, MDGs 1-7, and the UN Global Compact Principles One and Two. More information on OMV's community development project is available on video.<sup>17</sup>

In 2003, OMV drew up its Code of Conduct collaboratively with its works council, staff units and business segments. The Code of Conduct is aligned with the UN Global Compact Principles and other internationally recognized standards. Its content can be summarized as follows: While striving for growth, activities should create lasting improvements in the quality of life for the people and areas affected by OMV's work. It covers all core areas of CSR: human rights, HSE and corporate governance, with its employees and stakeholders. Its principles apply to all joint ventures and companies in which OMV has a major influence. In situations where OMV operates with a partner, it strives to ensure equally high standards are met. It is also the basis for its supply chain management.<sup>18</sup> (For more information on OMV and the supply chain see below.)

### (C) Focus on Human Rights

The following section gives an account of how OMV familiarized itself with human rights issues and developed tools to help embed human rights into business practice. After signing onto the UN Global Compact and OMV's experience in Sudan, focusing on human rights issues was seen as the natural next step to formalizing the company's commitment to corporate responsibility. The company embarked on an intensive two-year process, characterized by its inclusiveness of stakeholders, to establish which human rights issues were key to OMV and how to implement its human rights vision and corresponding processes into its core business and cooperation frameworks. The executive board and the management of the E&P International Department accompanied by the Corporate Affairs Department began the formal process of formulating a human rights policy within the firm. The Business Leaders Initiative for Human Rights (BLIHR) Matrix<sup>19</sup> served as the basis for the development of a human rights tool unique to OMV.

OMV consulted external human rights specialists to accompany them in the process of adapting the BLIHR Matrix to OMV's specific needs with the overall objective of giving human rights more weight within OMV's CSR policy. OMV approached Prof. Manfred Nowak, Head of the Ludwig Boltzmann Institute of Human Rights (BIM) Vienna and UN Special Rapporteur on Torture, for advice. The team working with Prof. Nowak on OMV's case was comprised of Karin Lukas, team leader, Human Rights in Development Cooperation and Business at BIM, Mr. Walter Suttinger and Prof. Alfred Zauner, both of HumanRightsConsulting Vienna.

In various workshops and interviews the team discussed the topic jointly with key OMV staff. Prof. Nowak's team interviewed staff of OMV's E&P International Department both at headquarters and in the field. All executive board members and all general managers<sup>20</sup> were consulted on what OMV's commitment to human rights should be and how to best translate it into practice. During one of the regularly occurring workshops for all E&P general managers at OMV headquarters in Vienna, a whole day was dedicated to human rights and CSR. Prof. Nowak's team introduced the broader human rights agenda, and OMV's CSR team focused on the implications for the company. A big portion of the

meeting was dedicated to listening carefully to what general managers had to say about potential obstacles in the implementation of the proposed human rights agenda. In this process, the management and employees took a close look at which issues to include in the OMV's human rights tool and which to remove. For instance, the company paid particular attention to equality and non-discrimination as well as security issues, but it felt it was appropriate to disregard issues that the company was unlikely to impact negatively, such as prisoners' rights or the right to marry. In addition, OMV held several workshops with general managers from selected socio-politically sensitive countries.

General managers initially challenged the relevance of the human rights discourse and the decision to bring the debate to an operative level. Reluctance by general managers to embrace the topic stemmed from the perception of a top-down approach and the lack of information about human rights. The team faced the challenge of bringing employees with varied backgrounds to the same level of understanding human rights and international law. Topics concerning freedom of expression and investment in politically sensitive countries fuelled particularly good and lengthy discussions. The question, "Do we need to take ownership of human rights?" was a predictable and natural one to be asked in the beginning. General managers are by nature of their jobs very concerned with financial and production targets. Introducing human rights into that equation required a paradigm shift.

General managers feared that human rights would entail extra work. It was important to show that human rights would in the future be an integral part of the work process. The managers also pointed out that they were not human rights experts themselves and were concerned about the lack of funds and time available to address human rights. They had many questions on the issues of refugees, free speech and the responsibility of the state to fulfil and protect human rights. Slowly, the general managers became more familiar with the subject, including resettlements, standard of living, security forces training and anti-discrimination. In addition to workshops at headquarters, OMV invited external CSR and human rights experts to the countries where OMV is active.

Since 2006, OMV has been holding struc-

tured yearly stakeholder fora at the corporate level to listen and gather advice from external stakeholders. Executive board members meet for one day with political parties, civil society representatives (NGOs), industry associations and other interest groups to: 1) report what OMV has achieved in the environment and social areas since the last forum and 2) to listen to stakeholder expectations and receive feedback. In addition to human rights, the fora traditionally focus on climate change and other environmental concerns. OMV also holds stakeholder fora at the local level. For its human rights commitment, OMV has been recognized by Amnesty International Austria as a leader in Austria.<sup>21</sup>

The dialogue on human rights within the firm helped the company to reach a common understanding of the human rights issues OMV is facing and how to tackle them. The joint prioritization of issues and elaboration of OMV's sphere of influence was key to bringing the managers on board. The Corporate Affairs Department together with human rights experts created awareness tools such as a Human Rights Questions & Answers (Q&A) document and a human rights checklist. The Q&A document was particularly helpful in addressing uncertainty in general managers – what they are and are not responsible for. For instance, general managers wondered to what extent they should be concerned about violence against women outside working hours. Once the issues were agreed upon, a holistic concept seemed to be the only way forward. The Human Rights Matrix was born.

In 2007, the Corporate Affairs Department convinced the executive board to summarize its understanding and responsibility regarding human rights issues in a public policy statement (see Appendix). At that point in time, OMV felt it had sufficiently developed an understanding of what human rights meant for the company. It was time to communicate its vision. While the OMV Human Rights Policy Statement became OMV's official communication tool regarding the commitment to human rights, the Human Rights Matrix remained an implementation tool. In mid-2008, however, the content of the Human Rights Matrix entered the corporate directive on corporate social responsibility, available to all employees on the intranet. The directive describes the management of the CSR process and OMV's commitment. It is available in English, German and

Romanian. The directive was also adopted by Petrom, the largest oil and gas producer in Southeastern Europe. OMV has a 51% stake in the company.

#### **(d) A Tool Unique to OMV**

The following section explains the structure of the OMV Human Rights Matrix, which human rights issues it decided to address and possible limits. As mentioned above, the BLIHR Matrix served as the basis for OMV's own tool, which then carefully looked at each of the human rights issues below and developed a comprehensive internal company document. While the OMV Matrix<sup>22</sup> was shared in detail with the author, she signed a confidentiality agreement with OMV, which prohibited her from disclosing the details of the Matrix, except for the excerpts mentioned in this case study. The Matrix is part of an internal CSR Management system and, like all OMV company directives, is not available to the public.

The OMV Human Rights Matrix is a tool for 1) mapping its human rights responsibilities and 2) assessing existing gaps. It concentrates on the following human rights issues:

- equality,
- security,
- forced labour,
- child labour,
- health and safety,
- adequate remuneration,
- freedom of association and collective bargaining,
- property,
- procedural rights and effective remedy,
- social security,
- standard of living,
- education,
- minorities and indigenous rights and religions and
- freedom of expression and assembly.

The Matrix explains each of the human rights issues and outlines what OMV:

- shall do by law and moral obligation,
- what it should do within the wider field of OMV's sphere of influence and
- what it might do to support the fulfilment of human rights in the society as a whole.

The wording of the UN Global Compact Human Rights Principles One and Two was

crucial for OMV's elaboration of the Matrix. In Principle One, the UN Global Compact states that "businesses should support and respect the protection of internationally proclaimed human rights."<sup>23</sup> OMV added a new aspect that deals with the fulfilment of human rights. It wanted to express its desire to be particularly active in this area (see Policy Statement, Appendix 1).

The above mentioned categories of what OMV shall, should and might do to fulfil, respect and support human rights are synonymous with what OMV regards as:

- essential,
- expected and
- desirable.

In the category "essential," OMV highlights what it has to comply with according to national and international law, orienting itself by the higher standard in each case. For each issue, it also provides a practical example of how to avoid becoming complicit in human rights abuses. It defines the company policy for each issue, referring to internal sources such as guidelines, directives and relevant management structures. It also identifies what training and communication is necessary to further the understanding of and adherence to the relevant issue as well as how to deal with corrective action and complaints.

The following example illustrates only one of the 14 human rights issues addressed in the Matrix. For instance, on the issue of equality and non-discrimination, OMV explains in the category "essential" that "no one shall be treated differently" and notes that "not every distinction of differentiation constitutes discrimination as such but only when it is not based on reasonable and objective grounds."<sup>24</sup> "OMV's policy in this regard is to avoid any missionary approach, but looks carefully at the context, including local laws."<sup>25</sup> It also looks at its employment, harassment and maternal/paternal leave policies and explains its stance.

In the category "expected", OMV identifies for the issue of equality and non-discrimination affirmative action programmes, such as through job recruitment and job promotion programmes, keeping in mind that meeting job requirements has the highest priority. The Matrix lists possible awareness programmes dealing with, for example, diversity at work in the company, in the supply chain and in

the surrounding community, paying particular attention to the cultural and social context of the local communities, to name a few.

One example is the support OMV provides to women in Islamic societies by focusing on their basic needs such as access to water, rather than focusing on their role in an Islamic society.

In the category "desirable", OMV considers supporting the promotion of equality and non-discrimination in the wider society. For instance, it participates in global campaigns such as the "25 Days Against Violence Against Women" and supports other human rights-related activities in society.

In several annexes to the Matrix, OMV adds explanatory notes to all human rights issues. It gives examples of state versus business obligations and spells out what the distinction is between concrete measures to fulfil or to support the fulfilment of human rights. It also gives a historical account of where human rights standards originate and what sources of international law were relevant for the development of human rights.

In order to determine where its human rights obligations end and to avoid becoming complicit in human rights abuses, OMV first tried to define its sphere of influence. Principle Two of the UN Global Compact states that "businesses should make sure that they are not complicit in human rights abuses." This became a central element of OMV's Human Rights Matrix. OMV oriented itself by way of the report of the High Commissioner for Human Rights on the responsibilities of transnational corporations and related business enterprises, which states, "that the sphere of influence of a business entity tends to include the individuals to whom the company has a certain political, contractual, economic, or geographic proximity."<sup>26</sup> OMV mapped its sphere of influence and defined the following categories for itself:<sup>27</sup>

- employees,
- business partners,
- suppliers and contractors,
- the surrounding community,
- government and state bodies and
- the wider society.

In each of those categories, OMV looks at its legal obligations and moral responsibilities. It distinguishes between four types of complicity:

- substantial participation complicity – when a company participates in human rights violations by others;
- benefit complicity – when a company benefits from a human rights violation by others and knows of it;
- joint venture complicity – when the human rights violation is perpetrated by a business partners and the company should have known of it;
- moral complicity – when a company is active in a country known for grave and systematic human rights violations.<sup>28</sup>

The first three cases show the direct corporate responsibility of a company and its legal implications. While moral complicity does not imply a legal liability, consequences of it, such as reputational damages, are even more difficult to assess. OMV must check its legal complicity and engage in executive board consultations.<sup>29</sup> When OMV is active in a particularly politically sensitive country, it takes a pro-active approach and supports, for instance, community development and job creation programmes.<sup>30</sup>

OMV also describes its sphere of influence and human rights commitments in its public Human Rights Policy Statement. It defines OMV's sphere of influence as "individuals and groups to whom we have a certain political, contractual, economic or geographic proximity."<sup>31</sup> It also recognizes that the vast majority of OMV's human rights obligations are to its own employees. It further states that, "Where OMV is the designated operator on behalf of a consortium it has a responsibility to respect the human rights of the people in the surrounding communities as well as, in agreement with its partners, to support the fulfilment of their rights."<sup>32</sup> Also, "where OMV has an asset equity share of 50% or greater or has a controlling interest, OMV has a direct responsibility to respect and fulfil human rights and to support their fulfilment."<sup>33</sup> OMV also seeks to use its influence to make its business partners in consortia, as well as its suppliers and contractors, comply with human rights standards.<sup>34</sup> In Tunisia, for instance, OMV set up a code of conduct with its joint venture partner (see Figure 5). If national law falls short of international human rights standards, OMV will be guided by the higher standards, unless this would result in a clear violation of national law.<sup>35</sup>

OMV sees its work on human rights as

closely aligned with the work of John Ruggie, United Nations Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises (SRSG). OMV's Human Rights Matrix and Policy, however, were developed before the SRSG's main report, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, was released in 2008. The *Framework*, which has been welcomed by the Human Rights Council,<sup>36</sup> describes states as having a duty to protect rights, whereas the corporate responsibility is to respect human rights, that is, not to infringe human rights. OMV subscribes to the concept of respecting human rights and remedying human rights abuses, but it also aims, where appropriate, to protect human rights. OMV's specific actions to respect and protect are documented in other parts of this case study. In the case of "remedying" human rights abuses, OMV is currently considering the introduction of a grievance mechanism in the form of a human rights helpline (see below) and has already introduced such a mechanism in community development projects. OMV holds hearings with local community leaders and NGOs when a problem arises in a community development project. The SRSG recommends that companies apply a due diligence process to satisfy themselves and their stakeholders that they respect human rights. In determining the scope of the due diligence process, he recommends that companies consider three factors: their operating context, the human rights impact of their operations and their relationships. OMV's approach is aligned with these suggestions. It has introduced the human rights "new country/new area entry" checklist to help operationalize their commitment.<sup>37</sup>

OMV's understanding differs from the SRSG's work in the use of the concept "sphere of influence". While OMV makes a distinction between the rights it is directly responsible for through its sphere of influence (see below), the SRSG asks companies to consider all the actual and potential human rights impacts resulting from companies' business activities and relationships connected to those activities.<sup>38</sup> The SRSG does not promote the concept of sphere of influence. He recognizes, however, that it may be useful to determine where and how a company may want to go beyond respecting human rights.<sup>39</sup> OMV's understanding differs as to how to apply the

concept of sphere of influence. OMV uses the concept of sphere of influence to help systematically think through the categories of rights holders relevant for its business and to prioritize which human rights the company should pay most attention to. The term sphere of influence is used in this document in accordance with OMV's internal documents, which were elaborated together with Prof. Manfred Nowak before 2008.

### (e) Implementation of Tools

The Human Rights Matrix provided the opportunity to systematize and pull together the company's existing human rights practices into a coherent framework. Before the Human Rights Matrix was introduced, the issue of human rights was mainly dealt with within OMV's Human Resources Department and focused on human rights of its employees. While OMV's policy statement confirms that human rights issues are still strongest with its employees, the Matrix for the first time examined human rights issues in all business practices along the value chain; it served as an umbrella for work already undertaken and allowed for the translation of practices into company directives. The following examples serve as illustration of how human rights are integrated into OMV's business processes.

For instance, human rights matters are now part of OMV's formal decision-making process. During this so called "Tollgating" process,<sup>40</sup> a business proposal is also checked against the Human Rights Matrix and other CSR and HSEQ criteria. Only if the proposal passes these, does the "gate open" and the proposal passes muster. The tollgating is carried out at the beginning of the decision-making process. Whether or not to enter a new country is highly dependent on the outcome of this process. After seismic examinations, OMV carries out a due diligence process assessing the political situation of the country and associated risks for OMV. With the help of the new country entry checklist and international human rights reports by Amnesty International and Human Rights Watch, OMV reflects on the general human rights situation, how OMV could be affected and what OMV's human rights responsibilities are. If OMV decides on business entry, it carries out a baseline study for social and environmental concerns. It seeks to address the question of what impact OMV would have on the communities (see Figure 3). It develops a mitiga-

tion plan for a corresponding CSR project and nominates an experienced CSR professional to carry out the plan and stakeholder analysis. An evaluation is conducted at the end of the project.

The Human Rights Matrix is also a key component of the social impact analysis carried out when considering a new exploration opportunity and the building of related infrastructure. Exploration is no longer a purely economic decision in OMV. For instance, in Pakistan in 2008, OMV decided against developing an exploration project in the North Western Territories despite a bright economic outlook. The intelligence gathering or the so-called "scouting" by the CSR and HSEQ Teams of OMV Pakistan led to important discoveries. Findings concerning the changes in the security situation of the region among other things ultimately influenced the decision to abandon the exploration project.

The OMV Human Rights Self-Check constitutes another important part of OMV's toolkit for human rights. It is a 130-page description for managers of every human rights issue contained in the Matrix, the corresponding source of international law and indicators against which to make his/her assessment when carrying out a gap analysis. The Human Rights Compliance Assessment (HRCA) developed by the Danish Institute for Human Rights<sup>41</sup> served as a major inspiration in the development of OMV's tool and was subsequently adapted to OMV's reality. As a practical application, the management of E&P International requested ten general managers to undertake the gap analysis in 2008. A discussion of the proposed actions to be taken will follow.

OMV also strives to incorporate human rights into its supply chain. The Code of Conduct as a corporate directive, the business ethics directive and other CSR guidelines<sup>42</sup> serve as a basis. Potential suppliers and contractors of OMV need to demonstrate that they are in line with OMV's human rights policy and need to fill a pre-qualification questionnaire.<sup>43</sup> With the help of the questionnaire, OMV seeks to determine whether the potential supplier holds similar values to OMV, is a participant of the UN Global Compact and is ready to sign OMV's Code of Conduct. In the rare event that a potential supplier does not complete the questionnaire claiming to implement human rights standards higher than OMV, the company, if selected for the

contract, will be audited by OMV as a matter of priority. During the purchasing process, suppliers are required to document their commitment in writing. OMV requests a clear position on human rights in general and against child and forced labour in particular.<sup>44</sup> However, other labour issues still need to be defined in the supply chain.<sup>45</sup> OMV is currently working on harmonizing all human rights and HSE elements in its supplier audit process.

#### (f) Examples of Common Issues

The following section describes common human rights issues that oil and gas companies, such as OMV, face. The issues were selected on the basis of importance for the industry and discussions on some of the issues were held during workshops in which the Human Rights Matrix was developed. The Human Rights Matrix allows OMV to address these and others in a systematic manner:

- Resettlements,
- Standard of living,
- Freedom of association and collective bargaining,
- Security and
- Gender equality

To date, OMV has not faced any resettlement issues in its E&P business segment. Nevertheless, it is an important topic that OMV is glad to have a clear policy on, as it plans to expand its Gas & Power business segment. To support the right to an adequate standard of living in the surrounding community and to support global poverty reduction strategies, OMV finances community investment projects in countries such as Pakistan, Yemen, Romania and Iran.

If freedom of association is forbidden by law in a given country, OMV tries to navigate the situation by using an open door policy. OMV managers are encouraged to take a pro-active approach with regards to freedom of assembly, such as the creation of works councils. General managers and members of policy units cannot replace channels such as employee union representations. In 2008, 95% of OMV's employees were represented by statutory or voluntary trade unions, work councils or the like.<sup>46</sup>

Security was one of the first issues the company selected to work on as a matter of priority before developing the more compre-

hensive Human Rights Matrix. In 2003, OMV developed, together with an external consultant, security checklists for managers. The checklists are used when hiring security forces. The Security Manager of E&P International was actively involved in the security forces training in Romania, Yemen and Austria. OMV's efforts to achieve its goals are guided by the Voluntary Principles on Security and Human Rights,<sup>47</sup> which are referred to in its Human Rights Policy Statement (see Appendix). In 2009, OMV included a stipulation which requires a training course on human rights in its contracts with security companies. According to OMV, important aspects to consider in the field of security are:

- 1) the use of proportionality when using force or firearms—measures must be legitimate and suitable;
- 2) the sustainability of security training programmes—OMV applies a train-the-trainer principle to ensure the dissemination of its guidelines.<sup>48</sup>

The fight to end discrimination against women needs affirmative action and positive discrimination. Prof. Nowak recommends that companies look at ways to promote women to higher management positions, while carefully considering the legitimate stakes versus cultural prerogatives in the perspective country.

However, OMV has also learned that engagement in an area restricted by law can negatively impact the company. In such cases, OMV concentrates its efforts on supporting already existing local or international initiatives. For instance, OMV supports education programmes for girls in human rights sensitive countries and finances the Press Freedom Award of Reporters Without Borders.<sup>49</sup>

If a human rights violation occurred within its sphere of influence, OMV would consider tasking a human rights expert to objectively assess the situation. Only after careful consideration of the situation and its business interests would OMV take appropriate action. OMV's CEO, Senior Vice President for Corporate Affairs and CSR managers have all been open to dialogue with human rights activists to discuss their concerns in the light of OMV's sphere of influence.

The following country examples aim at giving the reader a clearer picture of OMV's operating environment and illustrate the

practical application of OMV's human rights tools.

#### **Country Example: Tunisia**

OMV has been operating in Tunisia since the early 1970s. With the acquisition of Preussag's crude oil and natural gas division in 2003, OMV significantly expanded its position by obtaining exploration and production licenses for seven oil fields.<sup>50</sup> In 2007, OMV carried out a human rights consulting visit to its operations in Tunisia with the aim of testing its internally developed human rights gap analysis tool and assessing OMV's activities against the backdrop of the Human Rights Matrix. The team included members of OMV's CSR department and human rights consultants. It interviewed local OMV management and staff, joint venture partners and contractors. When carrying out the gap analysis, the team found two human rights issues within its sphere of influence. One issue was the standard of living. Among the contractors hired by OMV was a Chinese firm that provided Chinese meals for its staff (among the staff were also Tunisians). During the interviews, it became clear that this was unacceptable to the local staff. OMV supported the non-Chinese workers and insisted that local food be provided in addition to Chinese meals. A second issue was health. A service company hired by OMV had not provided social security for its staff members. OMV insisted on the provision of social security and has been checking regularly if the commitment by the service company has been kept. As a result of the consulting visit, OMV improved its own tool with the help of the Danish Institute for Human Rights. The tool in its current form also comprises sources of international law and explanations of the human rights issues, making it much more comprehensive. OMV also realized that it needed to review the transparency of its remuneration schemes, refine its procedure on how to conduct a stakeholder analysis and improve HSEQ areas in the supply chain. Following the consulting visit, OMV conducted intercultural seminars for its staff and held a local stakeholder forum. OMV also insisted on working with its national joint venture partner to help them set up a code of conduct based on OMV's corporate Code of Conduct, in an effort to further improve human rights.

#### **Country Example: Yemen**

In 2003, OMV acquired Preussag's international upstream assets.<sup>51</sup> An exploration project in Yemen was part of that portfolio. After OMV had completed the appraisal drill in Yemen, it decided to develop the project. It started with small CSR projects, such as granting locals from the nearby community access to OMV's field hospital. But the question of how to operate sustainably in an environment characterized by human rights issues such as labour and corruption, security, health, education and discrimination against women remained. The Habban oil field is situated in a poor tribal area, where it is customary that men carry weapons, and girls sometimes are not allowed to attend school. Members of OMV Management and the CSR/Security team talked to members of central and local government, tribal chiefs and other stakeholders about their expectations from OMV. The longer the discussions lasted, the more people from different tribes came to the project area, looking for work and basic health care. As a first step, the E&P International management held discussions with its managers about the situation. In November 2007, the E&P International management acknowledged its commitment to CSR by approving additional resources and funds for CSR activities. In spring 2008, the CSR manager of E&P International carried out a specific training for line and HSEQ managers in Yemen. At the same time OMV tasked human rights consultancies, such as Synergy, to carry out thorough studies looking at health, environmental and social issues. The consultancies gave specific recommendations, even including detailed job descriptions for CSR team members. Following the recommendations of Synergy, OMV hired local, experienced CSR staff who speak the local languages to implement the projects identified and proposed by the consultancy. OMV's approach in general is to support existing local or international initiatives and development projects rather than starting new ones independently. This approach builds on the ownership of local initiatives and helps to ensure that the projects really meet the needs of the population. In autumn 2008, the Human Rights Matrix was introduced. Since then, OMV's advisors Prof. Nowak, Head of the Vienna Boltzmann Institute of Human Rights and Mr. Suntinger of HumanRightsConsulting Vienna have been supporting OMV in Yemen in the interpreta-

tion of the gap analysis carried out with help of the Human Rights Matrix. They have been advising OMV on how to deal with sensitive issues within the human rights gap analysis process, such as interviewing staff, contractors, business partners and local communities in order to gain a comprehensive and objective picture of the working and living environment in and around OMV's operation field site. Finally, the report was followed by a management debriefing. It included detailed recommendations which provided the basis for further improvements in the field of Human Rights within OMV's sphere of influence in Yemen.

### **(g) Timing**

OMV dedicates a considerable amount of financial and human resources to introducing the Human Rights Matrix to all employees. In classroom style trainings, the Human Rights Matrix is rolled out to first and second level line managers. While E&P International served as a leader in defining human rights issues for OMV, management pays due attention to transferring the knowledge to all its other business segments for implementation of the Matrix. The training methodology benefits from the experience gathered during the roll out for general managers in the two-year elaboration process. Corporate responsibility in general and certain key issues concerning human rights in particular are on the agenda during the standard three-days training on HSEQ and social issues. The company even offers extra training on leadership in HSEQ & CSR for managers. Managers are expected to become drivers of the issue. As its latest innovation, OMV will roll out an e-learning tool modelled after the industry best practice human rights training toolkit for the oil and gas industry by the International Petroleum Industry Environmental Conservation Association (IPIECA). In order to facilitate the roll-out of all the above mentioned training resources, they will be issued in three languages: German, English and Romanian.

### **(h) Timeline: Introduction of Human Rights Concepts, Process Summary**

The following section summarizes the process of OMV's history with CSR and human rights from the signing the UN Global Compact to the development of the Human Rights Matrix, Policy, tools and its testing and general roll-out.

#### **2003**

- OMV joined the UN Global Compact.
- OMV developed a Code of Conduct.
- OMV published its first CSR Performance Report on the implementation of the ten UN Global Compact Principles covering the time period from 2001 to 2002.
- Training of security forces on human rights in Pakistan.

#### **2004**

- OMV assessed which of the UN Global Compact Principles it needed to address further and decided to focus on human rights.
- OMV worked together for the first time with human rights experts focusing on two issues: child labour and forced labour.

#### **2006**

- OMV searched for implementation tools. OMV decided to use the BLIHR Matrix and the Danish Institute for Human Rights Quickcheck tool as a basis for further development of its own human rights tools.
- With the help of Prof. Manfred Nowak, OMV began to develop the OMV Matrix choosing a bottom up approach, prioritizing involvement of general managers of highly sensitive countries.

#### **2007**

- OMV enlarged the number of participants and invited E&P general managers to take part in the Matrix elaboration process.
- OMV developed together with the Boltzmann Institute its Human Rights Policy after it had thoroughly worked on the Matrix.
- OMV tested its Human Rights Matrix (70 pages) together with Human Rights Consulting Vienna in Tunisia.
- OMV developed a Human Rights Q&A document and checklists for all its business segments.
- Security forces trainings on human rights in Romania and Austria.

#### **2008**

- OMV introduced a CSR Management system detailing managers' responsibilities and management processes.
- OMV set up a CSR committee to support the executive board on human rights matters.
- OMV adapted the Quickcheck tool developed by the Danish Institute for Human Rights and set up its own indicators.
- OMV developed a "New Country Entry/New

Area Entry” checklist.

- OMV sent “self-check” lists to every E&P country it is operating in.
- Petrom introduced the Human Rights Policy + Matrix.
- The OMV CSR team paid a consultative visit to its operations in Yemen together with HumanRightsConsulting Vienna and Prof. Nowak.
- OMV published the brochure *CSR: Integration into the Business*.
- OMV conducted workshops to explain its human rights commitment and to raise awareness for the Human Rights Matrix.

## 2009

- External human rights experts tested the OMV self-check tools in E&P countries.
- First meeting of the OMV CSR Committee.
- OMV will implement the recommendations stemming from the human rights consultative visit to Yemen.
- Due to the security situation in Pakistan, the OMV CSR team decided to hold a consultative video conference with its operation managers rather than visiting the country.
- First comprehensive human rights workshops took place for Petrom CSR representatives.

## 3. Lessons Learned and Plans for the Future

From the first discussion of systematizing its approach to human rights to developing its latest training resources, OMV has learned many lessons. While placing the introduction of such a comprehensive new policy with top management gave it the necessary weight, anchoring the responsibility for implementation within line management was key. A CSR department alone would not have been able to achieve the same results. The joint elaboration of the Matrix in dialogue and workshops proved vital to dissipate the fear employees had of embarking on something new. OMV is convinced that because the tool was thoroughly discussed, its implementation will be easier at a later stage. In short, careful perception and information management were indispensable.

The discussions on issue prioritization were an eye opener. While OMV had previously placed great emphasis on community development projects, it became clear that

a shift of focus towards the group on which it has the most direct impact, its employees, was necessary. OMV would also recommend integrating central departments such as Human Resources at a very early stage of the discussion process. OMV has also learned to take time in any given country. In each of these countries, the direct contact with the local population will continue to play a major role. Acceptance by the local communities is OMV’s biggest asset.

OMV recognizes that it is vital to have a long-term planning horizon when introducing new policies or considering setting up new structures and projects. When it is understood that new policies are here to stay and will have a longer term impact, they are easier to accept. OMV’s experience with training programmes in Tunisia showed that training on inter-cultural issues should go both ways. Rather than only offering seminars on host country customs, in the future, OMV would also like to offer information on its own culture to host country staff. The human rights e-learning tool, to be introduced in 2009, will help to ensure that every OMV staff member is trained on human rights issues. Tracking the completion of the training will help to counter knowledge loss caused by staff fluctuations. OMV considers it important to continuously discuss human rights issues to guarantee that its human rights policy is understood and implemented.

Entry into a new country bears significant risks. In 2008, for instance, OMV faced public outrage for considering investment in Iran.<sup>52</sup> While OMV held individual consultations with stakeholders and human rights activists in Iran before negotiating the letters of intent for oil exploration, this proved not enough to inform the public about OMV’s human rights policies and standards within its sphere of influence. When entering a politically sensitive country, Prof. Nowak recommended holding a broader public stakeholder forum, making it clear what standards a UN Global Compact participant can meet.

In its report *Corporate Social Responsibility: Integration in the Business*, OMV identified the following recommendations for implementing human rights:

- Use a cascading principle for introducing human rights. Make line managers responsible for implementing the CSR policy and for communicating the principles behind

this policy to all staff.

- Raise awareness for sensitive issues such as widespread corruption the importance of local tribal structures, and actions of security personnel.
- Hold training seminars in local languages, too.
- Map the socio-economic situation before project planning. A social impact analysis helps to identify how legal and other obligations can be met and what resources have to be made available.
- Involve reputable local consultants in the baseline study.
- Use locals to help set appropriate expectations. Be clear what a company can and cannot take responsibility for.
- Assess community projects carefully. Community investments can lead to unfair gains for certain persons and groups and can result in counterproductive reactions by others.
- Select business partners with the highest possible standards. More outsourcing means that a company's reputation is increasingly dependent on the behaviour of suppliers.

In future OMV will concentrate on four issues: 1) the sustainability of its projects and policies, 2) CSR reporting, 3) the human rights gap analysis per country and 4) the improvement of information available on human rights to its employees

First, OMV aims at moving from project evaluations to impact analysis. While individual CSR projects are evaluated and managers' CSR performance shows up on the Balanced Score Card, the impact of specific actions let alone their longer term human rights policy is not yet systematically captured. To move forward, OMV is considering social audits by third parties (e.g. NGOs).

Second, with regards to reporting, OMV will continue to rely on internationally accepted indicators, such as those developed by the Global Reporting Initiative (GRI), and will look for ones that are better at capturing sustainability aspects.

Third, OMV will focus on strengthening its assessment tool for new country entry. In future, the questionnaire will be shorter, yet still comprehensive, and it will be made clear from the start who is responsible for filling them in. In the long run, audit missions should be able to use this tool as a yardstick

against which to measure the attainment of objectives.

Fourth, OMV will also continuously look at improvements of tools and availability of information. OMV has established a business ethics directive, including a web-based business ethics helpline (the helpline is also available via telephone), with the support of Prof. Mark Pieth of the Basel Institute of Governance.<sup>53</sup> Employees can file complaints anonymously. OMV is now evaluating whether to introduce such a tool for human rights as well. Finally, in its efforts to inform all employees about the company's human rights commitment and achievements, OMV posts the sustainability report online and publishes articles on human rights and CSR in the employees' magazine *Move*. E&P International has set up on the intranet a knowledge exchange platform called "E&P Connect", which gives E&P employees the opportunity to access all material related to the Human Rights Matrix and to enter into dialogue on important topics, including business ethics. Also, an e-learning tool on human rights as mentioned above is being prepared. Overall, the CSR team will improve the amount of information available to all employees on the intranet.

#### 4. Conclusion

OMV's human rights identification process was characterized by its comprehensiveness and inclusiveness of stakeholders. Each human rights subject matter was tackled in several steps. OMV first concentrated on what freedoms it was obliged to respect by law and subsequently looked at the more challenging questions. To implement human rights successfully in the company, the process required active participation from both headquarters and field managers. It was essential to show that human rights are not based on a rigid framework but are based on an approach with which one can carefully balance issues and actions. Working with managers to identify the key human rights issues for the company helped develop a more complete understanding of the importance of human rights. Investing a significant amount of time into that process was key. An important dividend from this investment of time was that during consulting visits and test runs of the tools, employees judged the new tools quite favourably.

Since the introduction of its human rights policy, OMV has reported to have received

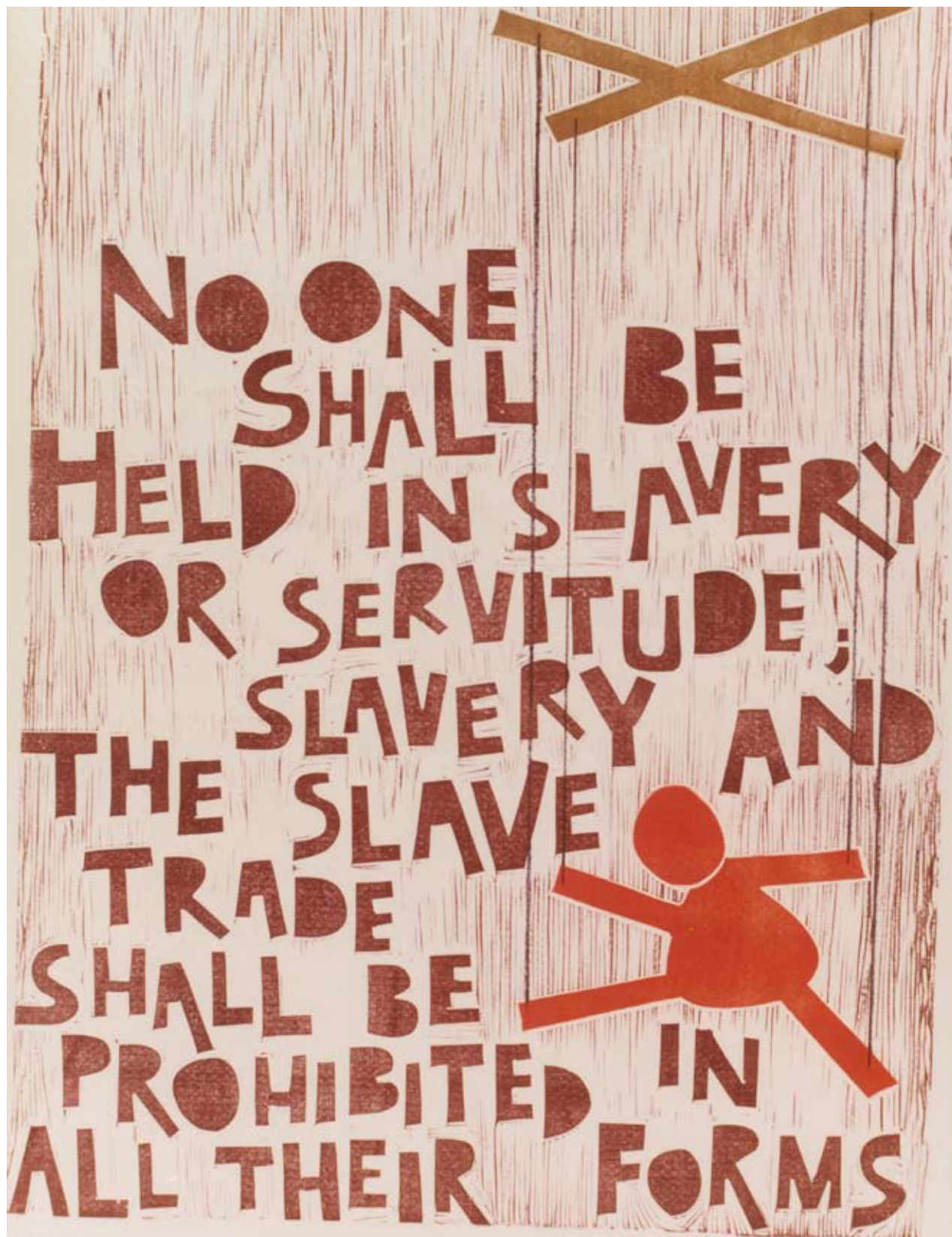
positive feedback from industry and CSR platforms. In its efforts to communicate on CSR more broadly, OMV has been publishing human rights and health, safety and environment (HSE) information in its financial quarterly reports since 2009. Measuring feedback from stakeholders is difficult. However, since OMV provides more information on CSR, the company is less prone to allegations by stakeholders and has more room to manoeuvre.

In order to further implement OMV's existing human rights commitments, one issue in particular remains to be addressed in detail: the implementation of the same human rights standards within the supply chain or at least with suppliers and contractors that cooperate very closely with OMV. This is likely to entail cost implications. Ideally, from an efficiency and effectiveness standpoint, the oil and gas industry will find a way to collectively deal with this issue.

## End Notes.

1. OMV Group in Figures 2007, p.22
2. OMV Annual Report 2007, p.64
3. OMV Annual Report 2008, p.55
4. <http://www.highbeam.com/doc/1P2-10838884.html>
5. OMV Annual Report 2008, p.16 and information provided by OMV "Corporate Affairs"
6. OMV Annual Report 2008, p.51
7. OMV Annual Report 2008, p.24
8. OMV Annual Report 2008, p.27 and updated information provided by OMV "Corporate Affairs" 16.
9. "OMV closes sale of Sudan exploration blocks," OMV Investor News 2004, 12 May 2004
10. While the UN Global Compact uses the term "corporate citizenship," OMV refers to it as corporate social responsibility. CSR will be used in the text for coherence purposes.
11. Ms. Simone Alaya, Corporate CSR Manager, in "OMV employee magazine XXL Driving Values 1/2008"
12. In 2006, 150 people in 20 countries assessed approximately 600 risks, pointed out 15 principal risks and strategies to address them. "OMV in Dialogue. Corporate Social Responsibility Performance Report," p. 31
13. "We get people on the move," <http://www.omv.com>, OMV Holding>About OMV>Our Vision as of 9 March 2009
14. The OMV Community Development Programme in Pakistan received 50% co-financing from the Austrian Development Agency (ADA). A total of 9,000 mothers and children are being inoculated. For this programme, OMV received the Austrian CSR Award TRIGOS in 2007 (OMV Annual Report 2007, p. 27). TRIGOS annually awards Austrian companies for its CSR actions in the four categories: workplace, marketplace, society and ecology. More info on [www.trigos.at](http://www.trigos.at)
15. <http://www.undp.org/mdg/basics.shtml> as of 6 May 2009
16. Slide CDP within OMV's overall CSR strategy, OMC Corporate Affairs
17. [www.omv.com](http://www.omv.com), OMV Holding>Our Commitment>Corporate Social Responsibility>Human rights>Regional Projects (Selection)
18. OMV Code of Conduct-Our Values. Corporate Social Responsibility, p. 4f
19. [www.blihr.org/Reports/GIHRBM\\_Matrix.pdf](http://www.blihr.org/Reports/GIHRBM_Matrix.pdf)
20. General Managers have responsibility for all of OMV's operations within a given country. OMV in Eco 4 the World, as of 30 April 2009.
21. Mr. Christian March, Managing Director of Amnesty International, OMV Holding>Our Commitment>Corporate Social Responsibility>Stakeholder Forum 2008>External perception>Human rights versus exploration, [www.omv.com](http://www.omv.com)
22. Version 7.2, 3 November 2008
23. <http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html>, as of 6 May 2009
24. OMV Human Rights Matrix, p.13
25. Id.
26. <http://www.unssc.org/web/hrb/images/Selected%20Quotes%20SoI.pdf>
27. OMV Human Rights Matrix, p.35
28. OMV considers the following as grave and systematic human rights violations: extermination, enslavement, deportation of forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violations of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity, persecution against identifiable groups or collective or political racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to it in, enforced disappearance of persons, the crime of apartheid, other inhumane acts of similar character intentionally causing huge suffering or serious injury to body or to mental or physical health. OMV "New Country or Joint Venture Entry Checklist," p. 5, as of 6 May 2009

29. OMV "New Country or Joint Venture Entry Checklist," p 5, as of 6 May 2009
30. OMV "New country or joint Venture Entry Checklist," as of 6 May 2009
31. OMV Human Rights Policy Statement, June 2007
32. Id.
33. Id.
34. Id.
35. OMV Human Rights Matrix, p.31
36. A/HRC/8/5, UN General Assembly, Human Rights Council, 8th Session, Agenda Item 3, 7 April 2008
37. Interpretation of John Ruggie's work by Ms. Lene Wendland, Adviser on business and human rights, Office of the UN High Commissioner for Human Rights
38. <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>, A/HRC/8/5, para 75
39. Interpretation of John Ruggie's work by Ms. Lene Wendland, Adviser on Business and Human Rights, Office of the UN High Commissioner for Human Rights
40. The tollgating process comprises the following phases: 1. acquire/divest; 2. explore; 3. appraise; 4 develop; 5. produce; 6. abandon
41. <https://www.humanrightsbusiness.org/>
42. In addition to the UN Global Compact, OMV also abides by the standards and guidelines of the International Association of Oil & Gas Producers (OGP) and the International Petroleum Industry Environmental Conservation Association (IPIECA). OMV has not signed the Extractive Industries Transparency Initiative (EITI) as only two governments of countries in which OMV is operating are candidates to the initiative: Kazakhstan and Yemen. OMV signed a Memorandum of Understanding with Kazakhstan. EITI aims to strengthen governance by improving transparency and accountability in the extractives sector. It sets a global standard for companies to publish what they pay for exploration rights and for governments to disclose what they receive in return.
43. [http://www.omv.com/sustainability2007-08\\_en/procurement.html](http://www.omv.com/sustainability2007-08_en/procurement.html), as of 6 May 2009
44. Slide "HR in the supply chain," 17 November 2008
45. "OMV & Human Rights. Frequently Asked Questions," 6 February 2008
46. OMV in Dialogue. Sustainability Report 2007/08, p.47
47. <http://www.voluntaryprinciples.org/principles/index.php>, as of 6 May 2009
48. Information on the training for Romanian Private Security Companies: [http://www.omv.com/sustainability2007-08\\_en/rights\\_training.html](http://www.omv.com/sustainability2007-08_en/rights_training.html)
49. OMV Holding>Presse>Pressemappe>Reporter ohne Grenzen, 9 March 2009
50. "Introducing OMV Exploration and Production," p. 40
51. "Introducing OMV Exploration & Production," p.43
52. <http://www.iranhumanrights.org/themes/news/single-news/article/austrian-firm-should-delay-investment-pending-abolition-of-child-executions.html>, <http://www.repclub.at/licra/aktuelles.php?show=aktuelles.inc.html>
53. In this process OMV is also guided by the Partnering Against Corruption Initiative (PACI). See OMV in Dialogue. Corporate Social Responsibility Performance Report 2005/06



FORD MOTOR COMPANY:

# The Ford Approach Towards Human Rights and Business Integration\* By Malte Dold\*\*

## Human rights issues addressed

- Sphere of influence
- Supply chain management
- Working conditions

## Human rights management practices discussed

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

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

- Automotive Industry Action Group (AIAG)
- ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
- OECD Guidelines for Multinational Enterprises
- Standards of the Fair Labor Association and International Metalworkers' Federation
- The Global Sullivan Principles of Social Responsibility
- Universal Declaration of Human Rights

## Abstract

This case study illustrates how Ford has systematically integrated considerations of human rights to management systems and operating procedures in the period of time from 2000 to 2009. Ford has defined quite clearly the relationship of human rights and business policy both in theory and in practice. The case study addresses particularly the first two UN Global Compact principles in placing special emphasis on sustainability policies and challenges in the context of supply chain management. It also elaborates on Ford's leadership role in bringing both the issues and potential solutions to the global automotive industry in an effort to expand and maximize the leverage within the company's sphere of influence through collaboration with other actors. The case study concludes with a passage on lessons learned and an outlook on the future of sustainability work at Ford.

## 1. Company Profile

Ford Motor Company is a family company founded in 1903 by Henry Ford. His idea was to combine mass production with mass consumption to produce sustained economic growth on socially just grounds. By linking mass production of affordable automobiles using the assembly line to high wages for his workers, Ford had the vision to foster material advancement and peace. From the beginning Ford identified those potential opportunities which embodied morally correct business.

Through a century of significant change, especially in recent years, Ford has maintained a commitment to social justice and human rights within its corporate culture

and, as an employer, affords its workers fair and just working conditions from a moral as well as a business point of view.

As has been highly recognized in literature and business reviews, business value is derived from responsible working conditions. A safe and healthy workplace in which people are treated with respect internally promotes employee satisfaction which, in turn, increases productivity and decreases quality issues. Advocating human rights externally within the communities Ford serves illustrates the company's trustworthiness to the consumers. Trustworthiness is a central value that contributes to reducing reputational risk and shapes business opportunities. The close cooperation Ford has had over the years with its corresponding labour unions is a demonstration of the good relationship with its employees.

Today, Ford Motor Company, based in Dearborn, Michigan, manufactures and distributes automobiles across six continents. The company has about 205,000 employees and runs 90 plants worldwide. The company's automotive brands include Ford, Lincoln, Mercury and Volvo. Besides those companies it owns and operates, Ford has relationships with over 2,000 production suppliers that operate at over 5,500 manufacturing sites and that produce 130,000 parts for inclusion in the vehicles the company sells. In addition, Ford purchases other non-production supplies, including services, marketing, construction, computers, industrial materials, health care and machinery from over 9,000 suppli-

\* NB: Appendices and figures are available for this case study in the online version, found here: [http://www.unglobalcompact.org/Issues/human\\_rights/Business\\_Practice.html](http://www.unglobalcompact.org/Issues/human_rights/Business_Practice.html).

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ers. Overall, the company spends over USD 90 billion globally per year on production and non-production purchases.

Ford has a Code of Basic Working Conditions to which it expects all owned and operated sites as well as all suppliers to adhere. The company has established programmes to communicate expectations for human rights standards on various levels, to provide factory-level training for supplier compliance and to evaluate the performance of suppliers.

## 2. Ford and Human Rights

Ford initiated formal acceptance of human rights as a core element of its sustainability strategy in 2000. At that time, multinational companies were increasingly coming under public scrutiny. The substantial power of the MNE at the end of the 20th century was accompanied by accelerating globalization and hastening environmental change. Public awareness about corporations' social responsibility rose perceptibly. As a consequence, the topic of CSR expanded increasingly into business consciousness. Ford as a global company – with customers, business partners and suppliers located in all regions of the world – clearly was affected by this new development. In response, Ford engaged in a three-day dialogue with internal (Human Resources, Manufacturing, Purchasing, Office of the General Counsel) and external (Interfaith Center on Corporate Responsibility (ICCR), Business for Social Responsibility (BSR), OXFAM and Amnesty International) stakeholders to clarify how and to what extent it could answer these challenges. Parallel to the stakeholder dialogue, the newly established Sustainable Business Strategies office compared initiatives developed by other leadership companies in the field of corporate citizenship (Levi-Strauss, Disney, McDonalds Nike, and Novartis) in order to learn from exemplary good-practice cases. As a result of these efforts, Ford identified two main dimensions of responsibility: climate change and human rights. Since then, Ford has undertaken numerous initiatives with regard to environmental issues;<sup>1</sup> this case study focuses on Ford's human rights activities.

Based on the results of the stakeholder dialogue, in 2003 Ford began implementing a Code of Basic Working Conditions (CBWC) or "The Code" which was then formally adopted in a revised version as a Policy Letter in 2007.

The Code [see Appendix 1] is the foundation of Ford's work in its own operations, supply chain and its collaboration with others in the industry. The original publication of the Code covered workplace issues such as child labour, compensation, forced labour, freedom of association and collective bargaining, harassment and discrimination, health and safety, and work hours as well as responsibility and implementation. The 2007 revision further articulates Ford's commitment on additional key issues such as community engagement and indigenous population, bribery and corruption, environment and sustainability. Therewith, it stands as a general endorsement of human rights frameworks and charters, such as the UN Universal Declaration of Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, OECD Guidelines for Multinational Enterprises, the Global Sullivan Principles of Social Responsibility and the standards of the Fair Labor Association and International Metalworkers' Federation.

Ford's CBWC applies to its own facilities as well as to those of its joint venture companies and suppliers. Since 2004, Ford has conducted 41 formal assessments of Ford facilities, four of which were joint-venture facilities. Ford has assessed between four and six owned and operated plants per year. The sites are selected by Ford's Sustainable Business Strategies and Supply Chain Sustainability functions based on the sites' impact on Ford's supply chain, emerging issues and the views of nongovernmental organization representatives and human rights activists.

The process of assessing Ford's facilities includes a questionnaire to be completed by facility management and a detailed review of documents related to the full range of working conditions issues (e.g., collective bargaining agreements, grievance procedure logs, employee hotline records and health and safety audit reports). The findings of the questionnaire and document-review serve as the basis for interviews with facility management. In particular cases in which there seem to be systematic failures in procedures, the assessments also include facility visits. The findings of the assessments are initially shared with neutral third party human rights organizations (such as ICCR) and then published on the Ford website.

In April 2008, Ford joined the United Nations Global Compact and was invited to join

the Global Compact's Human Rights Working Group as a representative of global industry. It is the only automotive company participating in that group. The Human Rights Working Group aims to: advance the business and human rights agenda within the framework of the Global Compact; identify obstacles to business implementing the Global Compact human rights principles/key dilemmas faced and advise on practical ways of overcoming them; provide advice to the Global Compact Office on business and human rights; and enhance synergies and cooperation, and avoid duplication, with other initiatives on business and human rights.

Ford has also developed a range of processes to ensure that the operations of its business partners and suppliers are adhering to the CBWC in practice. The next paragraphs describe the key actions Ford has taken to integrate human rights systematically into supply chain management.

### 3. Human Rights and Supply Chain Sustainability

Ford's suppliers are located all around the world. Its complex global supply chain encompasses several thousand supplier facilities that employ around a million people [see Appendix 2]. The legal structures governing working conditions and the level of enforcement vary widely across the countries in which the suppliers operate. Ford's aim is to ensure that its suppliers' business is consistent with the local law and aligned with Ford's own CBWC. Compared to the implementation of human rights considerations into plants owned and operated by Ford, this work demands more effort as Ford has relatively less visibility to suppliers' facilities, particularly at the sub-tier level.

In order to effectively promote human rights and proper working condition in the supply chain, Ford established the Supply Chain Sustainability (SCS) group in 2002. The SCS group sits within Ford's Global Purchasing organization and is responsible for providing local factory trainings and assessments for global supplier sites, directly engaging at the corporate level with strategic suppliers and driving industry collaboration on supply chain conditions. The group also manages emergent environmental issues relevant within the supply chain. The SCS group consists of four full-time employees located at

headquarters in Dearborn and four regional leads based within the regional business units in Brazil, Germany, India and China. With the exception of the China-based position, all the regional leads are on rotation and come from traditional business positions such as buyers, quality engineers and programme managers. Within a reasonable period of time in which they build competency and experience, these individuals rotate back into a traditional purchasing role, taking their new expertise with them to further apply within the context of the business.

Ford's Supply Chain Sustainability concept consists of a three-pronged approach containing: (a) the engagement with individual supplier facilities, (b) the engagement with key suppliers' corporate management and (c) collaboration within the automotive industry.

#### (a) Engagement with Individual Supplier Facilities

As part of the global terms and conditions that govern Ford purchase orders, suppliers are prohibited from using forced labour, child labour and physical disciplinary abuse, and they must abide by the local laws in the countries where they operate. These requirements were established in January 2004 for production suppliers and in September 2005 for all others. The global terms and conditions serve to set the expectation that suppliers will work toward alignment with Ford's CBWC in their own operations and their respective supply chains. The conditions point out Ford's right to perform third-party site assessments and stipulate that Ford can terminate the relationship for a supplier's non-compliance.

The primary focus of Ford's work on human rights in its supply chain is building capability among its suppliers to responsibly manage working conditions. Ford has developed and delivered tailored training programmes for Ford suppliers in cooperation with the Automotive Industry Action Group (AIAG), a North American member-based, non-profit industry group specializing in supply chain issues. By interacting with managers from human resources, health and safety, labour affairs and legal departments of participating companies the training workshops emphasize the interpretation and application of legal standards, international best practice and stress the vital importance of sound management systems to govern factory working conditions.

Supplier training sessions are customized and consist of a day long interactive workshop facilitated in the local language by qualified trainers and lawyers with local expertise. The workshops involve multiple automotive suppliers to encourage peer-learning. Additionally, the training includes a required communication cascade in order to provide for similar learning within the plant management and on the plant floor by all workers. Direct sub-tier suppliers also receive an information cascade following the training course. The training is mandatory for all Ford suppliers, and the training requirement is not considered fulfilled until evidence of the training cascade has been submitted back to Ford within four months of the actual course delivery.

Since the launch of the programme in 2004, Ford has trained 1,621 managers at 1,317 supplier companies. These suppliers have moved on to the process of self-assessing their facilities for compliance with local law and Ford's expectations. Now they are completing the final stage of the programme, which is communication to both workers and their own suppliers on the topic of working conditions expectations. Ford focuses its training programme on the 17 countries it previously identified as having higher risks of substandard working conditions.<sup>2</sup>

While communicating its expectations and building supplier capability, Ford has also conducted more than 550 assessments of existing and prospective suppliers in 20 countries.<sup>3</sup> The assessments provide feedback to Ford and suppliers about how well they are meeting legal requirements and Ford's expectations — creating a baseline for development discussion with suppliers in that country. They also inform training content and provide insight into the effectiveness of Ford's training programmes. Assessments consist of a detailed questionnaire, a document review, factory visits as well as management and employee interviews, and they are conducted by external auditors.

#### **Labour Issues Discovered**

In the 550-plus assessments conducted since 2003, findings have supported Ford's chosen approach of supplier development and capability building. The assessments revealed that suppliers did not always have a clear understanding of the local laws, which resulted in unintentional breaches. Generally, there

was no evidence of forced labour or physical disciplinary abuse among these supplier plants. However, the assessments revealed a wide range of observed issues connected to inadequate health and safety conditions at the working place accompanied by inadequate emergency systems. In some cases, wage-related infractions were identified. At times, these were related to inadequate or inappropriate timekeeping systems resulting in a failure to pay correct overtime wages. In other instances, suppliers failed to pay the correct local minimum wage or to provide the correct social insurance. Some situations are complicated further by the use of sub-contracted labour; it is difficult in these cases to identify responsible parties for labour non-compliances. Limited or restricted access to appropriate documentation regarding subcontracted labour was also evident in this context. The right to freedom of association is difficult to verify. While all assessed suppliers had either union representatives or a grievance process, there may be issues that are not effectively identified through the assessment process. For this reason, Ford continues with its commitment to open dialogue and engagement with suppliers through a developmental process.

Ford continues to assess its suppliers to develop and implement appropriate corrective action plans and pertinent capability building measures. Through the process of assessment and capability building, Ford has the opportunity to encourage change throughout the tiers of suppliers and affect positive change more broadly.

A limitation found during Ford's experience with supplier site assessments is that although individual factories are capable of change, they are often managed or under the direction of corporate offices located distantly in other countries. These are often one of many sites linked back to a multi-national corporation that controls policy and dictates management system structure. Unless these corporate entities are engaged in dialogue and systems evaluation, Ford found that it was unable to affect meaningful and systemic change.

#### **(b) Engagement with Key Suppliers' Corporate Management**

Ford has established long-term, strategic relationships with a select number of suppliers. Relationships with these suppliers are

structured through Ford's Aligned Business Framework (ABF). The bilateral ABF agreements comprehensively and formally spell out 22 key business commitments for both Ford and the ABF suppliers. The agreements thoroughly articulate business practices designed to increase future collaboration, including phased-in upfront payment of engineering and development costs, extended sourcing and data transparency. As part of the agreement, Ford increases the volume of business with select suppliers. Another element of the ABF agreement is the commitment by suppliers to manage and assure proper working conditions and responsible environmental management in their facilities and in their supply chain. ABF suppliers must also adhere to Ford's global terms and conditions.

Ford is facilitating this ABF commitment to responsible supply chain management through a three-phase process, in which ABF suppliers are asked to:

- Articulate clearly expectations and standards for working conditions by establishing a code of conduct covering working conditions and environmental responsibility throughout the value chain.
- Promote these working conditions standards in its wholly-owned facilities, with joint venture partners and with suppliers throughout its value chain through training and compliance processes.
- Drive environmental performance in its wholly owned facilities, joint venture partners and with suppliers throughout its value chain through responsible environmental management systems.

Each supplier identifies an executive to lead the development of its code and supporting processes. It is the responsibility of the executive lead to report corporate progress against established metrics to Ford. Since the ABF programme began in 2005, Ford has approved a total of 65 ABF suppliers, ten of which are owned by minorities or women.

In order to facilitate Tier 1 supplier ownership for responsible supply chain management, Ford has committed to providing suppliers with a range of support and assistance based on its experience in this area. Ford has developed an in-depth resource guide to give suppliers information and background on human rights generally and on the development of their own codes specifically. It is sharing

the developed training materials, as well as information and developmental guidance on its compliance and training processes. Finally, Ford has committed to working with suppliers to help resolve issues and concerns.

The ABF agreement enables Ford's strategic suppliers to take greater responsibility in ensuring proper working conditions. It is an evolutionary step from "encouraging" to "expecting" suppliers to adopt a working conditions code similar to Ford's and to develop training and compliance systems for their internal facilities and supply chains. For Ford, the advantage of entering into arrangements based on shared commitments is a reduction in the number of suppliers and an improvement in the overall management of the supply chain since the supplier's working conditions programmes can be managed in a resource-effective fashion, rather than Ford micro-managing supplier performance by conducting assessments at all the individual supplier sites to verify compliance. The consequence is a clearly arranged business model that increases mutual profitability, drives innovation and reduces the risk of operational or reputational problems through a robust sustainability management system. The ABF leverages Ford's efforts to manage human rights and environmental responsibility issues in its supply chain in a more collaborative, in-depth, integrated and aligned manner.

### **(c) Collaboration within the Automotive Industry**

Ford's work with supply chain working conditions has always been set in the context of a long-term vision inclusive of the automotive industry as a whole. This vision includes convergence on a set of common human rights expectations and collaborative action to ensure that these expectations are met throughout the supply chain. Both the work with Ford-specific suppliers and within an industry context has been proactive, without specific pressure from outside of the industry. This proactive position has enabled innovation and creative space for Ford and other automotive companies as well as the luxury of developmental time to benchmark progress in other industries to avoid common pitfalls.

Therefore, Ford has initiated a cooperative industry initiative on human rights and working conditions issues through AIAG, beginning in North America and now extending to global manufacturers. Ford wants to bring

together all the major automakers to adopt a strong, consistent approach to protecting human rights in the automotive supply chain.

The underlying idea is that all participants in the supply chain — from the original equipment manufacturers (OEMs), such as Ford to the suppliers themselves to the government agencies that set and enforce the regulations governing operations — must be involved to make these efforts sustainable. Such collective action will not only minimize costs and increase efficiency for OEMs and suppliers alike, but will lead to better results than if individual companies take steps in isolation. Especially important for this process is the dialogue to compare, learn and receive feedback about each company's own initiative.

Within the AIAG, Ford has approached collaboration with what would otherwise be known as competitors with an “open book” on human rights and working conditions issues — sharing strategy, rationale and implementation tools. Ford has placed a subject matter expert on loan to the AIAG offices to lead the work as well as share Ford learnings. Materials developed within Ford to promote responsible working conditions have been offered to the group as a platform for use and development. In 2005, Ford, General Motors, Chrysler and the North American offices of Honda and Toyota began work to explore a cooperative industry approach to promoting decent working conditions in the supply chain.

Participants in the initiative have created a set of guidance statements to establish a collective industry position on key human rights and working conditions issues. The statements are based upon the core elements of individual companies' codes and policies, joint codes created by other industries as well as key international standards, and they cover human rights issues such as child labour, forced labour, freedom of association, harassment and discrimination, health and safety, wages and benefits and working hours. These statements serve as a baseline agreed upon by all the participating OEMs and are used as a platform for common trainings.<sup>4</sup>

In 2006 and 2007, the sponsoring OEMs from the AIAG launched joint factory-level training workshops in China and Mexico respectively. All training materials were based upon Ford-developed trainings. With the support of the AIAG and endorsement from the China Association of Automobile Manu-

facturers (CAAM), the mandatory training in China reached 461 Tier 1 suppliers to date across three OEMs. In turn, the information and expectations from these training sessions were distributed to 21,799 people (managers and workers) at the Tier 1 supplier level and to more than 2,100 Tier 2 suppliers.

The OEMs participating in the AIAG engaged stakeholders and further developed training materials before the launch of a training programme in Mexico in 2007/2008. The work in Mexico was partially supported by an USD 185,000 grant from the U.S. State Department to Business for Social Responsibility (BSR), a non-profit group that works with companies to advance responsible business practices. This public-private partnership enabled the building of relationships with local industry associations, the Mexico national government and domestic suppliers in Mexico. As of the end of 2008, a total of 494 Tier 1 suppliers across five OEMs participated in the Mexico training. In turn, the information and expectations from these training sessions was distributed to 44,833 people (managers and workers) at the Tier 1 supplier level and to more than 5,600 Tier 2 suppliers.

In the process of conducting localized, factory-level training, the automotive companies came to the same realization collectively that Ford had found previously — engagement at the corporate level is required for systemic enhancement of supply chain working conditions. In December 2008, the AIAG and the five participating OEMs organized two pilot working conditions training sessions targeted at senior management from the procurement organizations of their top supplier companies. The AIAG is actively evaluating further opportunities to expand these corporate engagement offerings in 2009/2010 in a cost and resource-effective manner.

#### 4. Main Challenges and Solutions

After having described the main human rights initiatives, this section presents Ford's major challenges during the process of integrating human rights into its business. It shows how Ford dealt with (a) challenges at the beginning of establishing the Code of Basic Working Conditions (CBWC) and discloses how Ford currently handles struggles within (b) the Supply Chain Sustainability (SCS) group as well as within (c) the Automotive Industry Action Group (AIAG).

### (a) CBWC

#### Challenges

Implementing an initial Code of Basic Working Conditions (CBWC) which included all the main business practices relevant to human rights was a significant challenge. In the beginning of the process, there were several internal organizational issues around the governance and organization of the management systems requirement. Leaders in manufacturing, labour relations and purchasing all had valid reasons to “own” the policy. Of course, several argued whether the Code was needed at all since Ford was almost fully unionized, and cynics felt the Code would provide more power to the unions. Another concern was the real need of a Code for an automotive company that was under consistent scrutiny for its environmental footprint. The struggles were to find the right answers to critical questions from internal management and staff, such as: How does such a Code sell cars? Do we have the essential resources to implement it successfully? Does such a Code incur more costs than it generates benefits? Doesn't the increased transparency make Ford more vulnerable to critics? What are the legal consequences? Such questions were widespread amongst senior management at the beginning of Ford's proactive human rights engagement in 2000. In fact, derivations of the questions still emerge almost a decade later, as economic struggles dictate the need to evaluate all functions that are not “directly” connected to the business. Fortunately, the Code is integrated into the business practices, so the issues that may challenge do not linger, and management agrees that leadership in human rights is an important part of the overall sustainability strategy.

#### Solutions

Concerning the internal CBWC implementation, it was essential to stress the business case of human rights from the very beginning. The responsible persons in the Sustainable Business Strategies had to clearly point out that both traditional business values, such as risk management, cost efficiency and output effectiveness, and new business opportunities are directly linked to sustainable corporate citizenship engagement. It also was very useful to include the corporate legal team from the very beginning of the human rights implementation process to avoid getting stuck in small but important juridical

questions. Through intense and persistent work, Ford's senior management was convinced about the necessity and profitability of stronger alignment between Ford's business interests and human rights. Since abstract human rights terminology sometimes was an obstacle for intelligible communication, communication was improved by breaking down the term to their concrete meaning and placing them in the context of working conditions. It was important to explain the direct correlation between employee safety and product quality as well as the effect of trustworthiness to secure reputation and license to operate in low cost markets.

### (b) Supply Chain Implementation

#### Challenges

Another main challenge in Ford's implementation process was the division of roles, responsibilities and accountability between the newly established Supply Chain Sustainability (SCS) group and the more traditional roles of the Global Purchasing organization in which the SCS group was embedded. The SCS group objectives have been to engage with suppliers only on matters related to human rights, working conditions and environmental sustainability. The commercial aspects of supplier relations, such as purchasing decisions and supplier quality evaluations, remained separate with buyers and quality engineers. This separation of responsibilities limited SCS staff in their ability to integrate supply chain compliance consistently with other business considerations since they are removed from the day to day interactions between buyers and suppliers. Likewise, though buyers and quality engineers have the most contact with suppliers they were often not engaged in evaluation of a supplier's performance against working conditions expectations. The consequence of this division was a disconnect of company priorities and misaligned communication to suppliers. The lack of aligned objectives fostered an inability to see the relevance of working conditions performance metrics to the business relationship for both suppliers and buyers.

Working alone as individuals within an entire geographical region of suppliers, the SCS group of eight employees was understaffed for the task of systematically integrating human rights considerations within Ford's Global purchasing organization. The SCS group has oversight of a large population

of 5,500 production suppliers, approximately 2,000 of which are located in high-risk markets in terms of human rights and working conditions. This makes a rough ratio of about 500 sites per staff (four staff dedicated to site management). Thus, the group has faced internal challenges with capacity without optimal integration in business processes.

An even broader challenge exists concerning the implementation of aligned human rights objectives and corresponding activity across functional departments and regional offices within Ford's large international organization. Faced with regional business units operating somewhat autonomously in a global, decentralized environment, the challenge of integrating SCS objectives homogeneously into purchasing decisions is considerable.

### **Solutions**

The SCS group is working to overcome both geographic and functional barriers through internal alignment efforts such as internal training, evaluation tools, structural changes and reporting lines. Ford is currently trying to integrate SCS priorities into routine purchasing practices starting with aligning the CBWC objectives across the entire Purchasing structure and making sure that those objectives are translated to the regional business units. In this context, objective-setting is conceived as the first step towards determining the roles and impacts that individuals have in fulfilling human rights standards and ensuring that these are effectively communicated and incorporated into their daily responsibilities. Buyer and quality engineer attendance at supplier assessments and training is becoming an increasing occurrence and greatly increases supplier responsiveness. All communications with suppliers on human rights progress, training or assessments now also includes copies to business relationship contacts to reinforce the connection to the business and sourcing decisions. Their involvement also creates a more reasonable site-management workload for the SCS staff.

A concrete step towards integration is the modification of the already existing supplier quality evaluation. At the moment, all business units regularly evaluate suppliers based on quality, cost and delivery performance. These quality scorecards are reviewed regularly and are the basis upon which future buying decisions are made. Environmental criteria are already incorporated into this

evaluation. However, suppliers are currently evaluated separately on human rights and working conditions performance. In order to avoid two separate evaluations, Ford plans to use the supplier quality evaluation process as a tactical connection to SCS objectives. Establishment of two-way data feeds between quality and working conditions management systems is considered a potential solution to ensure ongoing, consistent integration of SCS and business objectives in supplier performance review and relationship management.

Ford's approach to greater internal alignment is a matched pairs system launched within its product development and purchasing departments. In this system, not only are the strategies of the two departments aligned, but members of each department are paired with members of the other so that decisions are made in tandem from the beginning. This system leads to an alignment of the two departments and shared cost objectives and supplier dialogue in order to improve interaction with suppliers by allowing them to directly engage at the right level. For example, supplier feedback on difficulties related to manufacturing certain parts or human rights specifications can go directly to the team that made those decisions and which has the ability to adjust them. This approach provides an ideal opportunity to ensure clear, consistent messaging to suppliers from all points of contact within Ford, including the Supply Chain Sustainability office. It may also provide an opportunity for Ford to internally align human rights objectives among Ford employees across two separate organizations (product development and purchasing).

In order to achieve ongoing impact on the local supplier level, the employees' attendance to working conditions training as well as the complete results of third-party assessments are reviewed regularly by the SCS regional managers and local business management. These established periodic reviews of regional supplier performance are essential to generate dialogue and awareness around major supplier human rights issues. The headquarter SCS team shares reports on high-risk human rights issues, specific supplier progress and trends observed with local management, as well as with overall executive management on a quarterly or as needed basis. Aggregate regional results are also reviewed by all executive management quarterly at the Global Purchasing Operating Committee review.

It should be noted that Ford is attempting to find solutions within existing and emergent business activity. Current times are full of change for the automotive company as the North American auto sector transforms itself to meet the needs of the future. Opportunities for integration of sustainability considerations to overall business restructuring plans are numerous. New and possibly tangential initiatives are likely to be viewed as a “flavour of the month” and less likely to find success.

### (c) Industry Collaboration

#### Challenges

A third main field of challenge lies within the efforts towards industry collaboration at the AIAG. As with any collaborative work with supply chains in the United States, Europe or other areas, antitrust considerations limit the type of information shared. Due to the AIAG’s extensive experience in dealing with these considerations, the collaborative automotive sector work has not suffered significantly. The challenge exists in the extra layer of confidentiality inserted into data management which does cause delays in response to suppliers and overall communication.

Another challenge currently faced is within the financial structure of the AIAG workgroup. All participating OEMs fund the common training offered in specific geographies so as to avoid financial burden on the suppliers. In addition, development and maintenance costs are carried by the OEMs. With the current economic stress and industry downturn, these monies are constrained.

Furthermore, the work of the AIAG is strongly marked by cultural differences in each of the OEMs (referring to both company and national cultures). These cultural differences affect the way that the individual companies communicate with suppliers and operate internally. Finally, broader participation by other automakers and eventually dominant Tier 1 suppliers will be needed to achieve an industry-wide approach to promote decent working conditions in the automotive supply chain.

#### Solutions

Ford expends considerable effort in the development of additional resources and networks that will ensure the successful communication of working conditions expectations throughout the automotive supply chain. Effective data management and overall organi-

zation by a third party, such as that provided by the AIAG, is crucial to the progress of work related to promotion of human rights in the automotive supply chain. Increasing supplier ownership of working conditions issues can be achieved through an expansion of engagement opportunities, — development of e-learning programmes and easier access to direct engagement in the AIAG.

Active outreach to others in the automotive supply chain, including global automakers and heavy truck manufacturers, industry associations, major automotive suppliers and cross-sectoral initiatives, can serve to expand the training programme both in scope and impact. Partnerships will be key to the AIAG effort going forward with the above mentioned parties. These partnerships will also provide creative funding solutions and less resource intensive training delivery mechanisms that will alleviate the financial constraints that may otherwise be placed upon the group. The evolution of public policy in both the US and Europe is also anticipated to instigate increased participation from diverse players in the automotive supply chain, including other global OEMs. It requires patience and compromise to find common ground upon which to base activity while still affording the individuals in the group the liberty to manage human rights issues in a way that is aligned with their companies’ process, procedures and culture.

## 5. Lessons Learned

Ford has learned much over the years from its human rights implementation process, and it continues to learn as their work evolves to meet the changing needs of the business and global communities. Important factors have enabled progress and integration of human rights in Ford’s supply chain and can be formulated as recommendations for others pursuing integration of human rights into company policy and procedure.

#### Secure Executive Support

Supplier’s senior management must be convinced of the importance and benefits of business integration of human rights considerations. Direct communication from top “customer” executives to top supplier executives on this issue during meetings and other engagement opportunities has been especially meaningful; often, incorporation of this

topic to standard business meetings can be especially effective at conveying importance on par with other business considerations.

#### **Establish Central Supplier Information Management**

A central database and consistent metrics for supplier compliance are key to ensuring the validity and accessibility of data. This reduces variable communications and potential internal inefficiency and ensures that the same level of scrutiny is being applied across the board. In order to provide constantly updated, consistent information, Ford has established central information management and will continue to develop this system internally and integrate with existing supplier information management systems.

#### **Build Individual Expertise**

The Ford purchasing structure encourages internal staff rotation so that individuals have the opportunity to develop new skills and share their expertise with other departments. The regional SCS and purchasing groups have staff members coming from and moving to different departments. This internal mobility allows for increased information sharing, communication and collaboration at both the individual and departmental levels.

#### **Empower Regional Managers**

Having regionally and centrally based SCS staff with reporting lines into the Global Purchasing headquarters enables the regional managers to communicate supplier issues from “bottom to top” in a direct and efficient fashion. Regional SCS managers are fully integrated in their business units and well-connected to the central SCS group. They offer a unique possibility for ensuring that SCS global objectives have local influence as well as able hands on the ground who can translate those objectives into purchasing practice. In turn, via the connection to headquarters, Ford ensures that the local concerns of the regional managers will not go unheard.

#### **Communicate Intelligibly**

The SCS department strives for consistent and clear communication about the programme, supply chain issues and overall importance to Ford’s strategy. This increases the strength of its message, allowing it to be better heard by both internal and external audiences. Both management support and possession

of a standardized, comprehensive source of information contribute to SCS’s long term success. All global staff uses the same centralized communication, assessment and training materials with local customization, including translation, as required for effectiveness.

A clear insight identified early during the implementation process was that it is better to speak in terms of working conditions instead of human rights when beginning internal and/or external dialogue within the industry and to make clear and practical remarks concerning the implementation of proper working conditions. Further discussions can explore the relationship between working conditions and human rights. Working conditions are an identifiable starting point for productive dialogue.

It was important to find a communication balance between Ford’s expectations and the suppliers’ local understandings of business. In this regard and others, Ford attempts to avoid paternalistic behaviour and rather puts focus on a supplier’s individual responsibility and accountability.

#### **Build Long-Term Supplier Relationships**

Ford establishes comparatively long-term relationships with suppliers and is taking this to a new level with ABF suppliers as described above. This leads to increased openness, dialogue and a partnership attitude. In the absence of a punitive approach, suppliers are more willing to collaboratively discuss challenges and solutions. The nature of supplier relationships found throughout Ford’s supply chain enabled a programme of social compliance based upon training and capability-building.

#### **Stress Connection Between Working Conditions and Economic Output**

There is increasing anecdotal evidence that a company’s efforts to address working conditions, environmental challenges and other sustainability issues are good indicators of its management’s leadership capabilities and overall long term success. Ford is beginning to see the same within those leadership companies involved in the Aligned Business Framework. To further their ability to quantify and communicate this connection, Ford is further exploring the correlation between quality and working conditions to demonstrate a stronger business case for supply chain sustainability management.

## 6. Outlook and Conclusion

True integration of human rights is a long-term process that requires patience and endurance. After starting discussions in 2000, the first implementation of the CBWC was achieved within the parent company in 2003. This code was then revised based on feedback in 2007. Meanwhile, the Code was integrated systematically into supplier terms and conditions, communications and purchasing practices. Finally, the industry collaboration within AIAG was and still is the overall pivotal success factor that will enable Ford's human rights work to sustainably impact the global automotive supply chain.

Throughout the implementation of human rights at Ford, it has been important to have a clear overall understanding of sustainability at a strategic level that is the same for both owned and operated sites as well as for the supply chain. Another major insight for Ford is the need to integrate human rights objectives into purchasing processes, decision making and evaluation so that the integration of sustainability policies to overall business strategy can be a meaningful exercise. The application of continual improvement processes is essential, including evaluation of programme impact and success. The resultant gap analysis must be addressed in a timely fashion, and it is anticipated by Ford that continual training and education – both internal and external – will be a primary vehicle for closing gaps identified.

Much of Ford's future efforts in the context of business and human rights will lie in further enhancement of the work within the AIAG. Ford will continue to conduct its own training and assessment programmes in countries not covered by AIAG programmes and will continue promoting accountability and leadership behaviours within the Tier 1 supply base through the ABF. Furthermore, Ford will seek ongoing opportunities to strategically leverage its assessment data and training processes to improve its overall approach to working conditions and environmental responsibility in the automotive supply chain. Clear, consistent communication that supports responsible working conditions will be a key component of Ford's continued work.

In addition, Ford constantly monitors approaches developed by other organizations and industries in order to incorporate what they have learned. This is also viewed as an

opportunity to avoid duplication in the development of tools and resources and to alleviate the burden that any one company or industry may carry for common supply chains. Ongoing information sharing and discussions are important in enabling further alignment in identifying cross-functional and cross-industry priorities and human rights objectives.

This case study has shown that the formal integration of the human rights dimension in business has contributed to an enhancement of business process within Ford and improved the ability of suppliers to address working conditions at both the policy and operational levels. Today, it is very unlikely to find a manager at Ford who would deny the meaningfulness of human rights in the context of business.

In spite of the economic slowdown, Ford's supply chain sustainability activities have not been affected by minimizing cost strategies, primarily because an integrated objective of the SCS work is the identification of cost-sharing and resource effective opportunities within the larger context of the automotive industry as well as other industries which intersect with the automotive, such as electronics, textiles, extractives, etc. Ford conceives its commitment to human rights not as an impediment to doing business but as a strengthening factor into be incorporated to new business frameworks.

Ford Motor Company benefits from its ethical business culture. If one considers the current situation of other automakers in the global economic slowdown, one recognizes that doing business in an ethical and transparent manner may contribute to economic viability. The attitudes of senior management exemplify Ford's commitment to sustainability: Ford recognizes that its products, "no matter where they are made, are manufactured under conditions that demonstrate respect for the people who make them", according to Tony Brown, Group Vice President of Global Purchasing, "This is just as important as quality, cost-competitiveness or timeliness of delivery."

## End Notes.

1. Cf. Ford's current Climate Change Report: <http://www.ford.com/doc/fordReptBusImpClimChg.pdf>.
2. These identified higher risk countries are the following: Americas: Argentina, Brazil, Colombia,

Mexico, Venezuela; Asia and Africa: China, India, Korea, Malaysia, the Philippines, South Africa, Taiwan, Thailand, Vietnam; Europe: Romania, Russia, Turkey. Locations were identified based on production and sourcing trends; sales trends; and relative perceived risks based on the input of human rights groups, companies' experience and other geopolitical analysis.

3. Among these are the above mentioned higher risk countries plus the three Central American countries Honduras, Dominican Republic and Nicaragua.
4. For further information, see the AIAG website: <http://cr.aiag.org/>.

# CADBURY AND HUMAN RIGHTS: Finding the Best Approach

By Lauren Gula and Ye Jin\*

## Human rights issues addressed

- Child labour
- Diversity and/or non-discrimination in employment
- Forced labour
- Human rights and environment
- Living wage
- Occupational health and safety
- Social investment and community development
- Standard of living
- Supply chain management
- Working conditions

## Human rights management practices discussed

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

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

- Harkin-Engel Protocol
- Human Rights Translated: A Business Reference Guide
- International Cocoa Initiative
- International Labour Organization conventions and standards
- OECD Guidelines for Multinational Enterprises
- Reports by the SRSB on business and human rights, Professor John Ruggie
- Universal Declaration of Human Rights

## Abstract

This case analyses and identifies key success factors and lessons learned from the development of Cadbury's Approach to Human Rights. By exploring how and why it was developed and its influence internally and across Cadbury's supply chain, this case study demonstrates that the articulation of Cadbury's Approach to Human Rights has clarified the company's underlying philosophy and overarching commitment to human rights and has provided a clear framework that links all relevant policies and standards which support Cadbury in delivering on its commitment to human rights.

## 1. Company Profile

Cadbury's confectionary portfolio consists of chocolate, gum and candy brands. Its origin dates back to the early 1800s when John Cadbury opened his first shop. Today, Cadbury is active in more than 60 countries and employs approximately 50,000 people. In 2008, Cadbury's revenue was almost £8 billion.

Dedication to corporate responsibility and sustainable business practices has helped define Cadbury and shape its evolution. When the company was first established, the Cadbury family believed its business should be "a force for good in troubled times".<sup>1</sup> Cadbury's core values have guided the company in making decisions on procurement strategies and supply sources, internal management and employee policies as well as community service and philanthropy. Cadbury was one of the first companies to recognize and uphold employee labour rights and created one of the first ever workers' committees in the early 1900s. The company also provided free medical care and paid sick leave to its employees well before it was common for business to do so.

Cadbury's concern for human rights also extends beyond its own sites to those of its suppliers. As stated by Sherilyn Brodersen, Ethical Sourcing Manager, "Cadbury's ethical trade practices have exemplified its long-standing determination to uphold human rights and have a positive impact on the livelihoods of those its business touch." For example, in 1908 Cadbury made the critical decision to move its source of supply of cocoa from São Tomé, where there were reports of forced and child labour, to Ghana, where Cadbury continues to source cocoa today. From providing food rationing support and product donations to the soldiers during World War II to building water wells in Ghana to provide clean drinking water for cocoa farmers' communities, Cadbury seeks to be a responsible member of the communities it impacts.

## 2. Keeping Up with the Times: Cadbury's Adoption of the Human Rights & Ethical Trade Policy and Ethical Sourcing Standards

By the 1990s, civil society was actively pressuring businesses to justify their practices and adopt policies that reflected international human rights and environmental standards. The demand for corporate and social policies became increasingly urgent for big business as NGOs and the media began to highlight instances of poor corporate conduct around the world, most famously exposing the issue of child labour in the garment industry during the mid-1990s.

To Cadbury's benefit, the company already had internal principles in place and was

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committed to upholding human rights and ethical trade practices as part of its core values. However, in the mid-1990s, Sir Dominic Cadbury, Chairman of Cadbury from 1993 to 2000, challenged the business to adopt a formal public position on human rights. In 2000, under the leadership of Neil Makin (former External Affairs Director, currently Chairman of the Cadbury Foundation), Cadbury published its Human Rights and Ethical Trade Policy, or The HRET Policy.

The HRET Policy upholds core labour rights, such as dignity at work, health and safety in the workplace, fair remuneration, diversity and respect for differences, and opportunity for development, and it is based upon key international human rights standards, including the International Labour Organization's conventions, the United Nations Global Compact's Labour Principles, the Universal Declaration of Human Rights and the OECD Guidelines on Multinational Enterprises. The Cadbury board sought the input of human rights organizations and subject-matter experts to ensure that the policy met the expectations of the external community and clearly communicated the expectations of the business in upholding human rights and ethical trade practices. The HRET Policy applies to all of Cadbury's business units, and, as a key company policy, all employees are required to uphold the HRET Policy upon joining Cadbury.

In order to make the human rights and labour principles embedded in the HRET applicable to Cadbury's supply base, the company created The Ethical Sourcing Standards (ESS) for its suppliers. The ESS is based on the HRET Policy and is included in all supplier agreements/contracts and purchase orders as a non-negotiable term of supply. Whereas the HRET Policy applies to all of Cadbury's business units, Cadbury's Ethical Sourcing Standards apply to all of Cadbury's supply chain partners. Ensuring that Cadbury's human rights standards are upheld throughout its supply chain is a top priority for the company. As David Croft, Cadbury's Conformance and Sustainability Director explained,

*"Increasingly people are questioning the working conditions and standards within the suppliers and on the farms that provide us with the ingredients and materials that we depend upon. Consumers are rightly concerned and want to know that brands they trust are working to protect and develop human rights within their supply chain. People want to*

*know what companies are doing to exert their influence to improve standards and ensure reasonable conditions. It's a challenging topic and one where Cadbury has developed its activity and works closely with others, including our suppliers, to improve those conditions."*

All of Cadbury's suppliers must read and acknowledge compliance to the Ethical Sourcing Standards, complete a self-assessment within an on-line database called SEDEX and, upon request, undergo an on-site audit. Cadbury seeks to work with its suppliers to identify potential risks and opportunities and will maintain relationships with suppliers who are willing to make necessary changes to guarantee that their business practices comply with Cadbury's ESS. Furthermore, Cadbury provides training programmes to educate its supply base on the importance of human rights and ethical trade standards and equips suppliers with the knowledge of management systems to help support tracking compliance within Cadbury's sites and with its suppliers.

At the same time, Cadbury recognized that creating transparency across the supply chain of the commodity sector can be difficult. As explained by Neil Makin:

*"Back in 2001 when we started this programme, we didn't know how many suppliers or tiers were involved across the supply chain from the origin of the raw materials to the finished ingredients. In prioritizing risks, for Cadbury, there were more obvious agricultural crops, such as cocoa, whose sustainability is critical to the brand. However, there are other commodities, such as palm oil, that although the relative spend and volume is not significant for Cadbury, the ingredient is a critical component in the end product, making it essential for Cadbury to assess the sustainability of the crop and work with stakeholders across the supply chain to ensure human rights and environmental practices are upheld."*

Cadbury has nevertheless managed to address some of these difficulties. Through agricultural sustainability assessments, Cadbury is able to identify socio-economic and environmental risks impacting the sustainability of key ingredients. Human rights violations are still considered the most critical risk, however, as they commonly occur outside a company's direct supply chain and often do not become apparent until a company takes responsibility for assessing their entire supply chain and tracks through each tier of the raw materials making up the ingredients sourced.

### 3. Cadbury's Approach to Human Rights: Aligning Cadbury's Policies

In recent years, the area of business and human rights has received more and more attention, resulting in the establishment of the United Nations Global Compact in 2000 and the appointment of Professor John Ruggie as the United Nations Special Representative of the Secretary General (SRSG) on human rights and transnational corporations and other business enterprises in 2005.

As an established industry leader in the area of human rights and ethical business, Cadbury was quick to recognize the significance of these measures and knew that it needed to be able to articulate its approach to human rights and make sure that all of its corporate policies were aligned with its existing human rights related policies, as well as increasing global expectations and a maturing understanding of how business can contribute positively to the realization of human rights. Thus, in commemoration of the 60th anniversary of the Universal Declaration of Human Rights, Cadbury commissioned the development of an overarching human rights policy document – Cadbury's Approach to Human Rights.<sup>2</sup>

Cadbury's Approach to Human Rights goes beyond current industry standards by establishing long-term objectives and goals with the commitment to continuous improvement and strives to go beyond meeting the minimal requirements of UN or international regulations. The language used is intentionally inspirational and aims to motivate stakeholders to continue raising the bar. Similarly, using the 60th anniversary of the Universal Declaration of Human Rights to launch Cadbury's Approach to Human Rights helped to allocate necessary resources and keep people motivated throughout the planning and implementation process.

Cadbury's development of an overarching human rights policy initially involved aligning the company's internal values with society's expectations of companies' responsibility with respect to upholding and contributing to the realization of human rights. Resources such as John Ruggie's reports and *Human Rights Translated: A Business Reference Guide*, published by IBLF, the Castan Centre for Human Rights Law, the Office of the UN High Commissioner for Human Rights and the UN Global Compact, helped Cadbury to develop its reporting methodologies and to

set goals for fulfilling its commitments to ensure that all Cadbury sites and supplier sites are in compliance with the human rights and ethical trade standards.

The next step in developing Cadbury's Approach to Human Rights involved evaluating existing company policies to ensure that they complied with internal company values and goals, and also that they met the expectations of external stakeholder groups, such as the supply chain, customers, consumers, investors, NGOs and government. The feedback received from these stakeholder groups contributed significantly to the development of all of Cadbury's policies, including Cadbury's Approach to Human Rights. Maintaining open communication and seeking to work with external stakeholder groups is an ongoing company priority and goal in maintaining its policies and ensuring that they fulfill their purpose.

Rather than create new policies and programmes, Cadbury looked to identify gaps in the existing policies and programmes and enhance or modify them as-needed. Cadbury's Approach to Human Rights is therefore a compendium of its pre-existing policies. These policies include:

- Human Rights and Ethical Trading (HRET) Policy
- Ethical Sourcing Standards
- Human Resources Standards and Guidelines
- Environment, Health & Safety Policy
- Our Community Commitments

Each of these standards and policies in turn further outline the delivery of Cadbury's human rights commitment. For example, the HRET Policy (discussed above) aims to address and secure:

- Core labour rights and dignity at work;
- Health and safety in the workplace;
- Fair remuneration;
- Diversity and respect for differences and
- Opportunity for development.

#### **Making Human Rights Applicable to Everyone, Everywhere**

Prior to the development of its Approach to Human Rights, Cadbury's employee induction and annual review programmes assessed employee understanding of the company's core values, principles and policies. Although employees showed a solid understanding of those policies and standards with a direct or obvious connection to their specific function,

a gap was identified in that many employees had trouble seeing how all of the company's human rights policies, principles and core values related to their roles.

Cadbury's Approach to Human Rights seeks to help fill this gap by providing an overarching, inclusive human rights document that shows the alignment across the policies and, in-turn, allows employees to assess their work through a human rights lens. As explained by the Cadbury's Corporate Affairs team, led by Alex Cole:

*“Even prior to developing our Approach to Human Rights, Cadbury's marketing department had decided to voluntarily and explicitly implement a policy of not targeting children in marketing campaigns but rather focus on adults as the ‘gatekeepers’ of children's consumption of confectionery products. While this decision was based on consideration for health and well-being of children in countries where increasingly sedentary lifestyles were leading to obesity, it has a human rights dimension as well. Cadbury's Approach to Human Rights sought to make this link explicit and in this way raise the understanding of how business decisions impact human rights.”*

Further, Kene Umeasiegbu, former Manager of Corporate Affairs and Cocoa Partnership and lead author of Cadbury's Approach to Human Rights, explained that, “while Cadbury's introduction of effective work-life balance practices remains a management decision, it also has important parallels to the human right to leisure.” Mr. Umeasiegbu noted, “Human rights implications may not be apparent in every job, but there is often a human rights dimension to be considered and day to day solutions to be found. Articulating our approach to human rights ensures we are alert to identifying those solutions.”

In addition to making sure that human rights are considered throughout all business areas, Cadbury's Approach to Human Rights helps ensure that human rights standards are being met throughout all of its operations worldwide and is especially relevant to its activities in parts of the world where human rights and labour standards fail to reflect existing international standards and/or where regulation of compliance is weak. Creating a clear vision and understanding of its human rights-related goals and objectives has helped Cadbury ensure that its operations in difficult environments do not infringe on the rights of its local stakeholders and also has helped ensure where their operations can contribute

to the realization of human rights.

Cadbury's efforts in Ghana reflect this overarching goal, articulated in Cadbury's Approach to Human Rights. With respect to refraining from infringing on the rights of stakeholders, Cadbury has taken a strong stance against enforced child labour. According to Cadbury, “one child being exploited is one too many.”<sup>3</sup> In this regard, Cadbury is a founding member and currently sits on the board of the International Cocoa Initiative (ICI), which was established following the signing of the Harkin-Engel Protocol<sup>4</sup> in 2001 and which seeks to address the underlying root causes of child labour practices.

Ultimately, Cadbury's Approach to Human Rights dovetails with the company's goal of contributing to the realization of human rights, a goal that has already produced a number of similar initiatives. In 2008, for example, the company teamed up with the United Nations Development Programme, local governments, farmers and communities to establish the Cadbury Cocoa Partnership (CCP). The CCP grew from concerns that cocoa farmer earnings were falling despite growing industry profits, making it difficult for them to support their families and communities and threatening the long-term development and sustainability of the cocoa industry, according to Anna Swaithe, Head of Development of Cadbury's Cocoa Partnership. Through the CCP, £45 million will be invested over ten years to address economic, social and environmental sustainability issues faced by cocoa farmers and their communities in Ghana as well as India, Indonesia and the Caribbean. In addition to its efforts to improve the livelihoods of cocoa farmers, the CCP is looking to increase the environmental sustainability of cocoa farming by exploring various carbon reduction techniques.

#### 4. Implementation: Challenges and Lessons Learned

Two versions of Cadbury's Approach to Human Rights were published in December 2008; one for internal use, consisting of internal policies and standards and how they align with Cadbury's Approach to Human Rights, and the other for external stakeholders, with the core supplier policies and standards. Internal implementation of Cadbury's Approach to Human Rights is currently being assessed. Presently, all Cadbury employees

receive a document titled *Our Business Principles*, which includes the company's policies, core values and standards. Employees must agree to uphold business principles and go through annual review sessions to reconfirm their understanding of and commitment to the principles. In addition, a confidential "Speaking Up Hotline" was established to encourage employees to report violations of the company's business principles.

In Cadbury's experience the establishment of a functioning internal governance structure with clear lines of authority to deal with unexpected challenges is essential to the successful implementation of human rights policies, standards, initiatives and goals. Cadbury's Chief Human Resources Officer has ultimate responsibility for the implementation of Cadbury's human rights policies and standards and reports to the chair of the Main Board CSR Committee. The company's human rights performance is reported internally to the executive board and CSR Committee biannually as well as externally as a Corporate Responsibility Report, which is available from the company website and as part of its Communication on Progress to the Global Compact.<sup>5</sup>

Successful implementation of Cadbury's Approach to Human Rights also depends heavily on its communication to all business units. Cadbury has learned that in order for policies to be successfully adopted, they must be presented in comprehensible language and support from the main board, with leadership representation from each function, must be highlighted. It is also critical to keep the momentum alive during implementation by setting demanding yet achievable deadlines. A key example is how Cadbury used the 60th anniversary of the Universal Declaration to motivate the development and launch of Cadbury's Approach to Human Rights.

Cadbury believes that it is imperative to work closely with a broad range of stakeholder groups throughout the development, implementation and review of all policies to assure the representation of the interests of all parties impacted and that the policies meet the needs of the changing times, whilst keeping to the constant values and principles of the company. Cadbury recognizes that it cannot achieve sustainable change alone and regularly consults stakeholders such as farmers, local government, non-governmental organizations, the United Nations Global Com-

pact and the United Nations Development Programme. For instance, Cadbury consulted with a number of stakeholders and experts to develop Cadbury's Approach to Human Rights, including Peter McAllister, Executive Director of the ICI. Mr. McAllister not only provided input to the document itself, but he also reviewed Cadbury's pre-existing policies and initiatives as part of his evaluation.

In light of the fact that Cadbury's Approach to Human Rights sought to bridge existing policies rather than recreate them, overall costs and resources required to develop and initiate the implementation of the document were relatively low. In addition, as explained by Alison Ward, Head of Global Corporate Responsibility, "Another advantage of using pre-existing resources is that this approach enhances the efficiency of the entire planning and integration process in that it allows tapping into departmental expertise when translating human rights into everyday business practices." The HRET task force also found that it was easier to mobilize support for Cadbury's Approach to Human Rights, as compared to other human rights related policies and documents, because it highlights pre-existing achievements and builds on existing policies.

However strong support for Cadbury's Approach to Human Rights was not immediate. For example, Cadbury's Corporate Affairs team found that the unclear relationship between specific roles and functions and human rights made it somewhat challenging to gain internal, cross-functional participation from leadership, who initially saw the Approach to Human Rights and the HRET Policy as falling under human resources and corporate affairs with some application for the procurement function. However, as the document also shows the alignment across the business policies, it did eventually prove easier to mobilize support. Additionally, the inspirational language used throughout the document helped motivate employees and stakeholders to show their support for the new vision.

Another challenge to creating an overarching human rights policy is that successful implementation requires behavioural changes, both internally, across functions and, when implemented externally, with suppliers. In fact, Cadbury is continually working on this issue, says David Croft, Global Director of Conformance and Sustainability:

*“Although processes are in place to ensure Human Rights and Ethical Trade practices are considered when reviewing purchasing and management practices, health and safety programmes, environmental stewardship programmes and more, it is still difficult for individuals not in traditional human resources or purchasing roles to understand how their actions impact the human rights. It is important to encourage education and awareness, and ensure that everyone understands their role in upholding human rights.”*

While the company has focused on internal implementation of its Approach to Human Rights thus far, it plans to focus on external implementation as a next step.

Despite these challenges and the fact that the document is only a year old, the contributions of Cadbury’s Approach to Human Rights can already be seen. Sherilyn Brodersen, Ethical Sourcing Manager, cites the example of a member of the company’s science and technology team who recently called her to verify if sourcing a particular ingredient from a country in Africa would pose any risks or potentially violate the company’s human rights and ethical sourcing policies. According to Ms. Brodersen, prior to the development of the overarching human rights document, phone calls of this nature only came from procurement managers. The fact that employees working in the company’s science and technology department are now viewing their work through a human rights lens indicates that Cadbury’s Approach to Human Rights is having far reaching impacts.

## 5. Conclusion and Next Steps:

Cadbury’s Approach to Human Rights is not a panacea. It articulates Cadbury’s vision and objectives, but further implementation is needed to ensure that human rights awareness continues to increase throughout all departments and areas of the company. Additional next steps already underway include creating mechanisms to further embed management systems that help to identify and address human rights gaps and dilemmas encountered as well as the ongoing annual review and update of a priority list of countries that require extra human rights analysis and consideration. Finally, the HRET Task Force is seeking to establish guidelines for frequency of evaluations of all company policies to ensure that human rights are captured. It is hoped that this will also help realize the

vision captured in Cadbury’s Approach to Human Rights.

Since the early 1800s, when John Cadbury opened his first store, Cadbury has sought to be a force for good in the world and to promote respect for human rights. This philosophy continues to be considered critical to the success of the business. Cadbury’s Approach to Human Rights captures this important component of the company’s heritage while also striving to keep up with the ever evolving international human rights and business environment. The inspirational language and tone of Cadbury’s Approach to Human Rights promotes continuous evaluation and development of the company’s human rights-related policies and practices. Cadbury’s Approach to Human Rights is now the driving force behind the company’s human rights agenda, and the vision it projects promises to help shape Cadbury’s future human rights efforts.

## End Notes.

1. Public letter from Todd Stitzer, CEO of Cadbury, available online: <http://www.dearcadbury.com/>.
2. “Our Approach to Human Rights”, available online: <http://cadbury.com/ourresponsibilities/Documents/OurApproachtoHumanRights.pdf>.
3. Responsible Cocoa Farming, Cadbury’s Position: <http://cadbury.com/ourresponsibilities/ethical-trading/cocoasourcing/Pages/responsiblecocoa-farming.aspx>.
4. Signatories of the Harkin-Engel protocol recognize, “...the urgent need to identify and eliminate child labour in violation of International Labour Organization (ILO) Convention 182 with respect to the growing and processing of cocoa beans and their derivative products”.
5. The Communication on Progress (COP) is a disclosure to stakeholders on progress made in implementing the ten principles of the UN Global Compact, and in supporting broad UN development goals. Business participants are required to annually submit a COP to the UN Global Compact and to share the COP widely with their stakeholders.

## INVESTING IN HUMAN RIGHTS: ASN Bank's Approach to Socially Responsible Banking *By Lauren Kurtz\**

### Human rights issues addressed

- Child labour
- Corruption and bribery
- Diversity and/or non-discrimination in employment
- Freedom of information
- Forced labour
- Human rights and environment
- Right to health
- Social investment and community development
- Sphere of influence
- Standard of living
- Torture
- War crimes
- Weapons

### Human rights management practices addressed

- Strategy
- Policy
- Processes and procedures
- Communications

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

- European Convention for Human Rights
- UN Norms on the Responsibilities of Transnational Corporations and Other Business Companies with Regards to Human Rights
- Universal Declaration of Human Rights

### Abstract

This case study examines ASN Bank, a Dutch bank committed to investing only in ways that promote human rights and the environment. Founded in 1960, it was established on the principle that a bank could be both socially responsible and financially successful. In the 49 years since, ASN Bank has continually strengthened its commitments to human rights and environmental issues while both becoming more profitable and increasing its client base. This case study aims to describe the methods that ASN Bank has used to produce financially attractive, socially responsible options to Dutch private investors as well as illustrating other methods the bank has used to achieve its mission, such as independently donating to charities.

### 1. Company Profile

ASN Bank is a subsidiary of SNS REAAL Group, a Dutch financial services conglomerate offering insurance and banking services within the Netherlands. However, ASN Bank has its own banking license and board and therefore takes an independent approach to choosing investments. The bank mainly invests its clients' savings in fixed-interest instruments issued by governments, companies and institutions. In addition, a quarter of the money it manages is held in eight different types of ASN investments funds, with higher risks than the savings investments but higher potential returns through variable interest rates. Depending on the type of fund, the money is invested in a mix of shares and bonds or loans.

While 2008 was a difficult year for banks

across the globe, ASN Bank's performance was on par with previous years. Asset funds were down 21.7% to €938 million, but bank assets rose 37% to €4.966 billion, and the number of clients rose 16% to a total of 420,000 clients. Overall, ASN Bank recorded profits of €16.9 million in 2008, compared to €17.1 million in 2007.

Moreover, in both 2007 and 2008, a Dutch services comparison website (Independer.nl) gave ASN Bank its highest rating in a survey of customer appreciation. In 2008, the FD Morningstar Award was given to ASN Bank's Groenprojectenfonds investment option. ASN Milieu & Waterfondos were also awarded, for the second time, the Gouden Stier ("Golden Bull") award, an initiative of Belegger.nl, in the Best Sustainable Product category.

The success of ASN Bank shows not only that socially responsible investment can be highly profitable but that the public enthusiastically supports such choices.

### 2. ASN Bank's Commitment to Human Rights and Sustainability

ASN Bank has always emphasized lending to companies that have good working conditions and countries that respect human rights. Historically, ASN Bank has relied on the 1948 Universal Declaration of Human Rights (UDHR), and related international standards in determining its human right standards. In the 1970s and 1980s, the bank expanded its policies to also include promoting nature and the environment, as well as taking a clear stance against nuclear

\* Lauren Kurtz is a J.D. Candidate 2010, University of Pennsylvania Law School. Peer review of the case study was provided by: Robert Tacon, Chair of the UNEP FI; Scott Jerbi, Senior Advisor, Realizing Rights: The Ethical Globalization Initiative; and Monique Oxender, Global Manager, Supply Chain Sustainability, Ford Motor Company.

weapons. In 1993, ASN Bank developed its first set of special investment criteria, based directly on the UNDR. Since then, ASN Bank has revised and expanded its special investment criteria twice, once in 2005 and once in 2007. These updates were partly prompted by the increased availability of human rights information, such as a country's labour rights or a company's human rights policies, and allowed ASN Bank to develop and refine better human rights criteria.

Currently, the bank's two key concerns are human rights and climate change. The bank signed the UN Global Compact in 2007 to "express its long-standing involvement with the 10 goals of this international UN initiative," as the bank's managing director, Ewoud Goudswaard, put it.<sup>1</sup> ASN Bank fulfills its commitment to human rights and sustainability in several ways: by requiring all investments to meet its special investment criteria for human rights and sustainability, by offering clients savings and investment options that directly contribute the client's accrued interest in the social or environmental cause of the client's choice, by independently donating to worthy charities and by ensuring that internal bank operations are conducted in socially responsible ways.

While ASN Bank's conduct is aimed at promoting a healthy society, it is aware that its investments and actions must make a profit in the long run to ensure continued existence. ASN Bank follows the Triple P concept of sustainable business management and requires its investments to perform in three areas: People, Planet and Profit.

To ensure that all of these requirements are met, the bank has developed a set of special investment criteria that allow it to choose the best options from a human rights and environmental perspective from a range of potential investments. Overall, the bank uses three tools to make sustainable investments: (1) special investment criteria used when selecting appropriate investments, (2) dialogue with the companies or institutions in which it invests and (3) when applicable, the exercise of voting rights associated with equity investments. The selection process is the most rigorous of the three and is discussed further below.

The bank offers 15 savings options, including the ASN Jeugdsparen, which saves for the investor's children or grandchildren and supports homeless children projects, and the

ASN Vrouwenspaardeposito, which donates the accrued interest to women's microcredit loans. Four other savings products offer the opportunity for clients to donate part or all of their interest to a maximum of three charities out of a possible ten, including Amnesty International and Astma Fonds (a Dutch group that subsidizes research for asthma and other pulmonary diseases). Over the past three years, almost 3,000 clients each year have chosen to do so.

Like the savings programmes, the bank's funds also offer opportunities to directly contribute to promoting sustainability and human rights. For example, the ASN Waterfond is invested in water technology companies, and the ASN Novib Fund is directed towards microcredit in developing countries.

ASN Bank also works to promote its human rights and environmental goals not only through its investments, but also through the internal workings of the bank. It purchases 100% green electricity and recycled paper, purchases offsets for 100% of its CO2 emissions and has steadily worked to reduce paper consumption per client. It also continually works to improve employee satisfaction, serves fair trade coffee and buys office gifts from a local fair trade shop.

### 3. Development of ASN Bank's Special Investment Criteria

Since its inception in 1960, the bank has focused on lending money to businesses that have good working conditions and countries that respect human rights. Over time, the standards of such loans have become both more exacting and more formalized. A general set of sustainability criteria was assembled in 1973 and has become increasingly specific over the years.

In 2005 and 2007, ASN Bank redrafted its investment criteria for improved clarity and consistency. Unlike most other banks, ASN Bank does not work solely with a "best in class" philosophy. Instead, it divides the criteria into "exclusion" and "acceptance" categories to determine whether a proposed investment would be in or out of the potential investment universe. The exclusion criteria are absolute conditions, which all investments must satisfy. The acceptance criteria are more relative, and only those investments which are among the best in their category or industry are included based on

the acceptance category. After the universe of potential investments is determined, the second step is to determine the best financial investment. Overall, about 70% of companies are excluded because of human rights or environmental issues. ASN Bank currently has about 300 companies and 11 countries within its investment universe of the funds.

Human rights issues are the cornerstone of the exclusion criteria. While ASN Bank identifies itself as a sustainability-driven bank, “human rights play a huge role in the assessment of sustainability.”<sup>2</sup> ASN Bank believes sustainability is not specifically about the environment and that sustainability is also “about the way welfare is distributed fairly among generations and over the world. That is a human rights issue.”<sup>3</sup> The current foundation is the 2003 UN document, Norms on the Responsibilities of Transnational Corporations and Other Business Companies with Regards to Human Rights (based on the Universal Declaration of Human Rights). After this, ASN Bank also looks to various regional and global standards as set out in resolutions and conventions, such as UN resolutions and treaties, ILO declarations, recommendations and conventions and the European Convention for Human Rights. If there is a conflict between standards, ASN Bank applies the standard that gives the most protection to the individual. ASN Bank applies these standards to both actions and products, such as weapons, pornography, tobacco and gambling.

A company will be excluded from the investment universe if it does not respect human rights in all of the countries in which it is active, including with companies in its supply chain, and wherever it is capable of exerting any significant influence or management control. The level of possible influence is obviously variable, but ASN Bank believes that certain industries can have high levels of influence. For example, clothing companies often deal closely with their production facilities and can exert substantial control over issues such as the use of child labour. Consequently, some companies that neglectfully or indirectly contribute to human rights abuses may be excluded. The human rights exclusion criteria specifically exclude companies that:

- Do not guarantee equal opportunity and non-discrimination<sup>4</sup> to their own employees and others within the activities and spheres of influence of the company;
- Engage in or benefit from war crimes, including the manufacture or sale of weapons, even if primarily for civil application;
- Have corporate security practices that do not respect human rights;
- Do not offer safeguards against the exploitation of children, including prohibiting child labour;
- Violate employee rights, through such methods as:
  - Using forced labour;
  - Not paying fair wages;
  - Not respecting freedom for trade unions, including impeding freedom of association for employees;
  - Not providing safe, healthy working conditions, including companies that are involved in sexual exploitation and/or the commercial exploitation of pornography;
- Do not respect national sovereignty and human rights because they:
  - Fail to comply with legislation
  - Are involved in corruption, including financial, environmental or social scandals, such as the payment of bribes.
  - Have a deleterious effect on health or living conditions or increase poverty, usually relating to the immediate surroundings;
  - Violate social, cultural or economic rights, including activities that lead to social disruption, harm to cultural heritage or violate civil or political rights;
- Violate consumer rights by supplying products that are unsafe, of inferior quality or inherently harmful, such as tobacco and gambling;
- Violate national and international environmental guidelines.<sup>5</sup>

However, the bank recognizes that in practice, no company will be able to fully guarantee that a violation of the ASN criteria will never happen. Consequently, the bank’s screening process focuses on systematic violations, although a gross single violation can be sufficient to exclude a company.

ASN Bank makes a distinction between criteria for selecting companies and criteria for selecting government bonds. Many countries are excluded for investment in their government bonds as they have a high risk for participating in torture, genocide, crimes against humanity and war crimes under any circumstance, including a war situation or

other emergency.<sup>6</sup> However companies active in these countries could be approved but only if they do apply to the human rights criteria of ASN Bank for companies. So ASN Bank recognizes that a company can theoretically conduct acceptable business practices in such a country.

ASN Bank also recognizes that local habits or local laws may make it impossible for a company to comply with international human rights standards for legal, cultural, or social reasons when operating in a specific country. In such a situation, the ASN Selection Committee will not approve an investment in that company; a presence in such a country will result in exclusion of the company because the country does not permit the company to adhere to the necessary human rights standards, and the company still has chosen to be active there.

Even a potential investment that passes the exclusion criteria still must be appraised by the acceptance criteria, which evaluate potential investments relative to others in the industry or category. In order to score well on the human rights based acceptance criteria, a company must:

- Make an active contribution towards protecting and promoting human rights as defined by the UDHR
- Implement standards that ensure protection of human rights in internal policies, codes of conduct, and contracts
- Arrange for internal and external monitoring and verification of compliance with standards
- Have a policy and mechanism to compensate victims whose human rights may have been violated

While the acceptance criteria generally apply in full to the majority of the bank's investments, they may not apply to every investment, such as commercial loans, due to the nature of the transaction. Namely, ASN Bank's commercial loans are given to Dutch corporations, which have already have passed rigorous governmental standards compatible with ASN Bank's acceptance criteria. (However, the exclusion criteria, such as the ban on investments in weapons production, do still apply.)

Overall, the bank does not believe it is possible to have a comprehensive list of the ethical and sustainable criteria that an invest-

ment must meet. In addition to the specific criteria that allow for quantitative analyses, the bank also uses qualitative judgments regarding ethical aspects and sustainable development. Nonetheless, ASN Bank continually updates and refines the metrics it uses to evaluate potential investments. In 2007, for example, ASN Bank consulted with its partner Amnesty International, among others, to tighten the human rights section of ASN Bank's special investment criteria. As a result, the bank now applies even stricter definitions for such terms as child labour, workers' rights and weapons.

To determine if a proposed investment meets the bank's requirements, a team of analysts first investigates the investment. The full-time analysts rely on information provided by several CSR rating agencies, information from the company itself as well as information from the media and non-governmental sources such as Amnesty International, trade unions and rating agencies. Once the analysts have formulated an advisory opinion, their findings about approvals and disapprovals are submitted to the ASN Selection Committee, which has full power to approve or reject an investment. The Committee includes members of ASN Bank's management board and met seven times in 2008.

The investments and countries (for state bonds) that are included in the investment universe are re-reviewed by the Selection Committee every three years unless new information surfaces that reveals that an investment should be reviewed sooner.

#### 4. Expulsions from the Investment Universe

ASN Bank recognizes that, in light of new information, an investment may no longer meet the Special Investment Criteria. If there are indications that portfolio investments no longer comply with ASN Bank's requirements, the bank reexamines these investments. Usually the reassessment process involves a dialogue process, where specific questions are formulated and sent to the company.<sup>7</sup> Based on the answers, the bank may choose to contact the company again. If the answers or arrangements for subsequent conduct are unsatisfactory, the investment will be removed. The most important reasons for expulsion relate to weapons or sluggish performance.

Expulsions may be for both direct and indirect violations of the special investment criteria. For example, in 2007, the bank expelled the American company Cisco Systems from its investment universe because of Cisco's indifference in supplying routers to the Chinese government, routers which were then used to censor the internet. After revising its human rights criteria earlier that year, reading reports from various sources, including Amnesty International, and contacting Cisco Systems, the Selection Committee concluded that Cisco no longer met the bank's special investment criteria.

ASN Bank also excluded the French transportation company Veolia in 2006, after discovering that Veolia was developing a light rail system to connect settlements in the occupied territory in East Jerusalem in Israel. As these settlements are in conflict with several UN resolutions, ASN Bank decided it could no longer invest in Veolia. Similarly, in 2008, ASN Bank excluded the Irish building materials producer CRH because of its involvement in the construction of the wall on the West Bank of the Jordan River, a barrier that has been condemned by the United Nations. In addition to ensuring that ASN Bank offers its customers only investments that meet environmental and human rights standards, the press coverage of exclusion can help spur companies into acting more responsibly.

## 5. Other Challenges

The bank acknowledges that all criteria cannot be the same for all investment categories. In particular, ASN Bank has found that it is much more difficult to evaluate countries against the same strict criteria as companies. Consequently, ASN bank uses different sets of criteria for these categories. If a company does not satisfy the special investment criteria, the bank can enter into dialogue with it and attempt to agree on steps forward, but this is not feasible for dealing with countries. This has been a particular problem in regards to nuclear energy and defence spending. While ASN Bank opposes investing directly in the nuclear and defence industries, regulatory authorities require ASN Bank to invest part of its funds in risk-free government bonds. However, there are no countries that do not have some interest in nuclear energy as either a producer or a consumer, nor are there any states that do not invest in mili-

tary and defence spending. While ASN Bank remains engaged in promoting and investing in more environmentally sustainable energy sources and avoiding weapons productions, it is unable to avoid either when selecting government bonds.

The bank has also found that sometimes excluding an otherwise compliant company because it is active in a country with gross human rights violations can sometimes create conflicts with human-rights. For example, excluding medical companies active in delivering medicines to countries with human rights abuses would be in conflict with human rights issues on the right to medical care. Similarly, smaller and high tech solar companies often do not have human rights policies despite operating in risk countries. Given such risks, after choosing potential companies based on internal research and outside consultants, ASN Bank engages these companies in a dialogue aimed at strengthening their commitments to human rights, for example, by signing the Global Compact. So far this has shown some success, but if the ultimate progress is too little, ASN Bank will communicate to these companies that they can be removed from the investment universe.

ASN Bank believes that engagement is a powerful tool for promoting human rights and sustainability within companies, but it also recognizes that there comes a point where exclusion may be necessary. ASN Bank also looks for ways to encourage companies to adhere to the Bank's human rights criteria. For example, on 10 December 2008, ASN bank informed about 200 companies on the 60th anniversary of the UDHR and congratulated them for adhering to ASN Bank's human rights criteria.

The bank recognizes that it eliminates many financially profitable investments because of its dedication to human rights and sustainability. For example, weapons companies are often very profitable, but ASN Bank has declined to invest in them because of the obvious human rights implications. The bank has also refrained from investing in mining and the oil and gas sector, since such industries often involve high risks of violating human rights. Likewise, it refuses to invest in other financial institutions because only very few institutions are fully transparent on their own investments in sensitive human rights categories. Yet the bank remains convinced that its commitment to human rights and the environment is not

a financial detriment, a sentiment supported by the bank's steady growth and returns on its savings and investment products.

## 6. Projects

ASN Bank also donates about €300,000 – 400,000 (about 2% of total profits) each year to projects and organizations that help to further the bank's mission. Established in 2004, the ASN Foundation formalizes the bank's donation policy and contributes funding to a wide spectrum of projects allied with the bank's overall mission. For example, the foundation donates to the "Paint a Future Project, where disadvantaged children paint their dreams, and these paintings are incorporated into professional paintings and sold. The profits from the paintings go directly back to the child.

The bank also participates in Triple Jump, a joint enterprise between ASN Bank, Oxfam Novib, NOTS Foundation and Stichting Doen. The enterprise aims to invest available capital from developed countries into fighting poverty in developing countries, primarily through microfinancing.

In addition, ASN Bank also uses its investment schemes to directly initiate socially responsible developments by its clients. For example, those who choose to invest in ASN Jeugdsparen donate the interest earned to homeless children in other countries. The interest goes to projects such as La Chaîne des Foyers St- Nicodeme, a chain of centres in Cameroon that accommodates, supports, educates and trains homeless children (roughly 90%) and very poor children (roughly 10%) with recreation and education, including professional handicrafts.

## 7. The Road Ahead

Despite its success so far, ASN Bank is determined to continue to look for ways in which it can positively contribute. The bank is implementing a sustainable (including human rights issues) voting policy for all the investments of the various funds, enlarging its opportunities for client engagement and improving the already-high staff satisfaction levels. It will continue to evaluate and periodically re-evaluate its investments, expelling investments if necessary. And it is also working on a pilot study for measuring the human

rights performance of its investment funds in order to guarantee to ASN Bank's clients that its commitments lead to real investments in better human rights.

## End Notes.

1. ASN Bank Annual Report for 2007, pg 9.
2. Piet Sprengers, Head of Sustainability of ASN Bank, available at <http://www.aimforhumanrights.org/about-us/partners-in-view/piet-sprengers-of-asn-bank/>.
3. Piet Sprengers, personal communication, May 2009.
4. ASN Bank uses this to mean any discrimination based on gender, race, religion, political beliefs, age, handicap and sexual orientation.
5. ASN Bank recognizes that environmental protection is also a human right, although it generally evaluates environmental and human rights criteria separately.
6. There is no formal list of countries that leads ASN Bank to exclude companies active in these countries, as ASN Bank's evaluation of a company's involvement in a high-risk country ultimately depends on the company's own actions. Countries considered particularly risky include, but are not limited to: Afghanistan, Burma, Sudan and Syria. However, ASN Bank does explicitly limit its government bond investments to countries that both apply to its human rights criteria and issue Euro-bonds. These countries are: Austria, Belgium, Denmark, Germany, Finland, France, Ireland, Italy, the Netherlands, Portugal and Spain. Nonetheless, if ASN Bank did not take currency into account, it estimates it would still exclude almost 50% of countries due to the use of the death penalty and roughly another 30% due to other human rights issues.
7. Dialogue has been shown to be an effective way for ASN Bank to share potential human rights issues, and to implement change on a corporate level. Consequently, ASN Bank will not always exclude a company immediately, as exclusion may not be necessary. For instance, in October 2007, ASN Bank learned that the American clothing company The Gap had a facility in its supply chain that used child labour. ASN Bank contacted The Gap, and strength of The Gap's reaction clearly indicated that the company wanted to prevent similar issues from happening again.

# FROM SUSTAINABILITY TO HUMAN RIGHTS: A Case Study on Endesa/Endesa Brasil

By Marsha Chien \*

## Human rights issues addressed

- Human rights and environment
- Right to health
- Standard of living

## Human rights management practices discussed

- Strategy
- Policy
- Processes and procedures
- Communications

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

- Millennium Development Goals
- Universal Declaration of Human Rights

## Abstract

This case study describes how Endesa developed and implemented a profitable business model in one of the poorest regions of Brazil.

Endesa is a Spanish utility company that provides electricity to the state of Ceará, a state that has one of the largest concentrations of rural poor in Brazil. In responding to the basic demands of their clients, Endesa adopted a waste management project usually led by governments and turned it into a profitable business venture. The Ecoelce Program (or the Program) introduced by Endesa allows rural Brazilians to trade recycled waste for credits toward their electricity bill. Reflecting Global Compact Principles 7 and 8, the program demonstrates Endesa's support for a precautionary approach to environmental challenges and its dedication to greater environmental responsibility. In addition, the program actualizes important human rights enshrined in the Universal Declaration, namely the realization of economic rights and the right to an adequate standard of living. This case study will consider the process Endesa undertook to ensure complete integration of human rights principles into its business practices.

## 1. Company Profile

Established in 1944 and headquartered in Spain, Endesa is one of the largest electricity companies in the world. Operating in ten different countries, over 50% of the electricity Endesa produces is generated outside of Spain, and the company has been publicly traded on the New York Stock Exchange since 1988. Endesa expanded its operations to Latin America in 1996. With a controlling interest in Latin America's largest private electricity group, Endesa operates in Chile, Argentina, Colombia, Peru and Brazil.

This case study focuses on Endesa's activities in Brazil. Incorporated in 2005, Endesa Brasil is engaged in the distribution, generation, transition and commercialization of energy. Importantly, 25% of Endesa's consolidated assets are located in Brazil. Endesa Brasil provides service to 5.1 million clients and operates in four Brazilian states: Rio de Janeiro, Ceará, Goiás and Rio Grande do Sul. Through these activities, Endesa Brasil creates 18,000 direct and indirect jobs and has an installed potency of 1004.6 megawatts.

Endesa Brasil's business lines are conducted through five entities: Ampla, Coelce, Endesa Cachoeira, Endesa Fortaleza and Endesa Cien. Together, Ampla and Coelce distribute electricity to over 240 cities in an area covering approximately 95,000 square kilometers. Endesa Cachoeira and Endesa Fortaleza operate a hydroelectric plant and thermoelectric plant, respectively, and are responsible for energy generation. Endesa Cien operates a converter and facilitates the import and export of energy between Argentina and Brazil.

## 2. Case Study

### (a) From Sustainability to Human Rights: Endesa's Core Commitments

Endesa's first step toward incorporating human rights into its business practice was to establish a broad commitment to sustainability. Recognizing that its long-run profitability depended on responsible growth, Endesa's Executive Management Committee established the company's Sustainability Policy, through Seven Commitments to Sustainable Development, which serve as a guide for Endesa's business operations worldwide.

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This case study focuses on one of those Seven Commitments — the commitment to the development of the communities in which Endesa operates. In the utilities industry, there is often significant community opposition to the building of infrastructure related to electricity generation because of its large scale and significant impact on social and natural environments. Sometimes the complaint is that to build the necessary infrastructure; there is too much displacement of local populations.

Recognizing the need for greater community buy-in, Endesa in recent years stepped up its commitment to developing local ties. After analyzing stakeholder expectations, the company determined that in order to be a sustainable and profitable business, it needed to become an even more integrated player in the local community.

The ethos extends to Endesa's individual subsidiaries and its employees. Each and every Endesa subsidiary has joined, separately and on its own behalf, in support of the Seven Commitments. As such, each Endesa entity has developed its own strategic plans carefully crafted to local conditions. All of the plans are subject to an external audit system which assesses their viability as an environmental management programme. In Latin America, for example, each subsidiary is audited through annual sustainability reports, which are publicly available on the internet.

Additionally, each subsidiary has established sustainable development committees alongside local partnering organizations to ensure the company meets its global commitments. Amplifying these benefits is the fact that the standards required by the Commitments are also applied to Endesa's third party contractors and suppliers.

Importantly, this worldwide commitment to building local ties has led Endesa to effectively translate its original pledge of sustainable development to a deeper pledge in support of human rights and the Global Compact. Endesa's core business is to provide electricity, an essential component of the basic human right to an adequate standard of living. By including in its business plan the concerns of local communities, Endesa identifies both the business advantage of expanding its market reach to people of all income levels and its role in ensuring a fundamental human right.

With respect to human rights, the impor-

tance of electricity in societal development is clear. Many civil and business structures require a safe and continuous supply of electricity. On a community level, electricity enables the development of essential infrastructure, such as hospitals, schools and public lighting, and, on an individual level, electricity allows people to refrigerate foods as well as develop tasks such as reading and studying for school at night.

Therefore, it is Endesa's original commitment to sustainable business growth that evolved into a more targeted commitment to local communities and, eventually, recognition of the company's role in supporting the basic human right to an adequate standard of living. The result is that the company's long-term strategic plan of sustainability and building local ties mutually reinforces its pledge to support human rights and the Global Compact. And Endesa is soundly committed to the Global Compact Ten Principles, with each and every subsidiary, separately and on its own behalf, also committed to the Global Compact.

#### **(b) Specific Projects: Endesa Brasil's Ecoelce Program**

Endesa Brasil signed on to the Global Compact on 30 March 2005. Additionally, it supports the Millenium Development Goals (MDGs),<sup>1</sup> which seek to move beyond ideas to a results-oriented approach to sustainable development. Endesa Brasil's Ecoelce Program embodies these goals by expanding access to electricity as much as possible while pursuing innovative business strategies.

Endesa Brasil distributes electricity to 2.5 million clients in the state of Ceará. Located in the northeast region, Ceará is home to one of the largest concentrations of rural poor in Brazil and is often the target of development projects. In 2001, for example, the World Bank granted the Brazilian government a \$37.5 million loan in support of rural poverty reduction projects in Ceará.<sup>2</sup>

Endesa Brasil recognized an equally important role for the private sector in combating rural poverty and implemented the Ecoelce program in Ceará. Based on research carried out in 184 communities, Endesa Brasil observed systematic yet independent problems for both the corporation and the community:

- From the company's perspective, the rural population was most likely to be insolvent

and most likely to engage in theft of electric energy.

- From the community's perspective, the rural population suffered from high incidences of disease which was related to inadequate waste collection systems.

Faced with this reality, Endesa Brasil developed the Ecoelce Program. Under the Ecoelce Program, clients with reduced purchasing power are allowed to recycle their trash in exchange for discounts on electricity. The objective is to provide the population with an alternative way of generating income and reducing the population's reliance on clandestine (and inefficient) sources of electricity.

Ecoelce operates by means of a management system where each low-income client need only present a bill to receive an electronic Ecoelce Card with their identification data. The client gathers waste and brings it to either a fixed or mobile collection point. Each point is managed in collaboration with or in partnership with local community associations. Fixed points generally function Monday through Saturday at easy access locations, and mobile points generally function weekly or biweekly. Later, a private company that specializes in recyclables arrives at the collection points and transports the materials to its processing facilities.

For the clients, each class of waste is weighed and valued depending on the prevailing price for each material. Each client is responsible for separating the materials. Underpinning the programme is a series of information sessions meant to guide participants on recycling and environmental awareness. Generally, a kilo of bottles is worth more than a kilo of plastic containers, which is worth more than a kilo of cardboard. The value is immediately recorded on the client's card and the discounts are transmitted to Endesa Brasil's billing system for incorporation into the client's bill. The equivalence in terms of energy saved or carbon emissions avoided is also internally calculated based on accepted scientific standards by Endesa Brasil for inclusion in its annual sustainability report.

The computer programme supporting this billing system was built in partnership with the University of Fortaleza, Knowledge Networks and Business Solutions and the waste collection company Goncales. Additionally, all of the information — the location of collection points, the individually-registered customers

and the total amount of credits obtained per client — are accessible via the internet.

Notably, in addition to individual clients, restaurants and hotels have participated in the initiative. Many times, these commercial entities donate their credits to non-profits. Since 2007, over 125,000 customers have benefited from the programme, exchanging 5,700 tons of waste for 750,000 Brazilian reais (approximately USD 327,510) in discounts on their electricity bills.

## 2. Analyses

In discussing the company's commitments to the Global Compact, Endesa's Sustainability Development Manager, Angel Fraile, sometimes refers to a quote by Albert Einstein: "In the middle of difficulty lies opportunity." As the quote suggests, there was significant "difficulty" facing Endesa in its operations in some regions of Brazil. Clients were often unable to pay their electricity bills, and, as a result, clients sometimes resorted to illicit means of obtaining electricity. These inefficiencies directly affected Endesa's bottom line. The solution, however, was at the intersection of a larger societal problem — the extremely poor rates of recycling. It was from this confluence of problems that an "opportunity" was created.

For Endesa Brasil, the "opportunity" was the fact that 36% of the trash being discarded in rural communities was recyclable. To address both the corporations need for solvent customers and community need for proper waste collection systems, Endesa Brasil developed the Ecoelce Program. According to its coordinator, Vinicius de Lima Cunha, the Ecoelce Program is a simple initiative but it produces significant results. The benefits of the Ecoelce Program are threefold.

First, it results in economic benefits for both the company and its low-income clients. For the company, the programme's potential long-term rewards dwarf its costs. Endesa Brasil's major expenditure was the one-time cost, approximately €150,000 of developing the software, computer system and internet databases. The variable cost is minimal and limited to the marketing materials required for the collection points.

The company, however, benefits from both the increased consumption as well as the significant reduction in losses it previously bore from clients siphoning electricity illegally and/or failing to pay their electric-

ity bill. Specifically, the company calculates that there has been a 30% reduction on its distribution net losses ratio and a 60% reduction on its failure to pay rate. In its first year of operation, and not considering gains from increased consumption due to electricity's greater affordability, the Ecoelce Program translated into a benefit of €98,000. After three years, Endesa Brasil received its first returns on the investment, rendering the Program not only self-sustainable but profitable into the future.

Additionally, as a corollary economic benefit, the Ecoelce Program fulfills Endesa Brasil's obligations to the government. Under concession agreements, the Brazilian Electricity Regulatory Agency, ANEEL, requires Endesa to invest 1% of its net operational revenue to research and development. While it is considered by the company to be a long-term sustainable project, the Ecoelce Program fulfills this requirement in the short-term.

Equally important is the economic benefit to the local population. For the community, the programme allows low-income clients to save their money and/or spend their money elsewhere. The president of a neighbourhood association in one of the communities, Haroldo Pio de Oliveira, noted some 30% of association members who are registered for the programme have not paid anything toward their electric bill in months. A cabinetmaker, Pio de Oliveria's own bill decreased from 40 to 8 Brazilian reais per month. Moreover, Ecoelce contributes to the economic development of the community. By providing a private sector solution to waste management, Ecoelce alleviates the burden on municipalities while also generating 52 direct jobs and 200 indirect jobs related to the recycling industry.

Second, the programme benefits the environment. The programme encourages intensive recycling by low-income clients and fosters greater environmental awareness. It protects local and global environments respectively by ensuring less garbage is put into landfills and decreasing the need for extracting raw materials. The materials recycled have resulted in over 1,300 tons of iron ore, over 5.5 tons of petroleum, and over 560 tons of new glass, being saved from consumption. Similarly, of the materials recycled, there were 920,000 kilos of paper collected, which saved 69,000 trees.

Third, Ecoelce strengthens the company's ties to the community and provides a number

of social and health benefits to the company's customers. For the company, the programme provides Endesa Brasil with intangible benefits such as increased legitimacy to operate in its concession area and a positive perception by the public. For the community, Endesa ensures a better standard of living for the people in allowing payment via recycled materials. Notably, the numbers of waste-related diseases that occur in each community have declined. Waste is often a breeding ground for dengue fever. There is strong anecdotal evidence that, with the reduction of waste on the streets, the incidences of dengue have likewise declined.

### 3. Lessons Learned

Given its success, it is even more important to note that there were several difficulties in launching the Ecoelce Program. In fact, the original idea was not formed in the rural communities of Ceará. It was originally proposed for implementation in Rio de Janeiro by Ampla, one of Endesa Brazil's other business entities. As the second largest city in Brazil, however, Rio de Janeiro was too large of a city to tackle for a pilot programme.

The project idea was left idle until Coelce, Endesa Brazil's entity in Ceará, picked up the reins. Led by the manager Odailton Arruda, an innovation team from Coelce developed the Ecoelce Program in Ceará. With the strong support of the communities, especially local associations, the Ecoelce Program was finally born.

While it was a relatively straightforward programme, it was a challenge to design the pilot in a way that benefited all those involved: the clients, the company, the recycling plants and the environment. There were several factors important to its success:

First, Endesa Brasil introduced the programme in communities where it already had built successful relationships with local associations. Many of the first local associations involved with Ecoelce were in fact Endesa Brasil's partners in other social projects. This allowed Endesa Brasil to build credibility and later attracted other local associations to request similar programmes in their communities. In developing new relationships, Endesa Brasil considered the associations' structure, history and their capacity to mobilize the local community.

The alliances developed were critical

in gaining trust in the community. At the beginning of the Program, representatives of Endesa Brasil were often seen by the community as distant agents who sought to collect on unpaid electricity bills or increase the cost of electricity. This fear required a number of town-hall meetings with community leaders and associations to explain the Ecoelce Program.

Importantly, Endesa Brasil relied on this network of carefully identified partners in both the private and public sectors (as well as academic and institutional actors) in order to implement the project. For example, to establish collection points, Endesa relied on local leaders which facilitated the local population's acceptance and involvement in the initiative. While red tape and limited financial resources sometimes hindered the project's development, joint ventures with local leaders facilitated the process.

Second, Endesa Brasil was meticulous in its partnerships and negotiations with recycling companies. While it reached out to many recycling companies, the challenge was that many companies operate informally. In order to minimize the costs of intermediaries and other risks, Endesa Brasil partnered with recyclers who operated at the final step of the collection chain, were registered with the government and obtained environmental certifications.

Additionally, to ensure the Ecoelce Program was economically sound, the company had to negotiate a fair price from its recycling partners. Today, the prices recycling companies pay for waste collected by Ecoelce is the same as any other agent operating in the respective areas. In the end, the support of legalized recycling companies greatly facilitated the installation of collection points throughout Ceará.

Third, the Ecoelce Program includes an environmental education component. One of the challenges Endesa Brasil initially faced was the population's limited experience with recycling. As a result, Endesa Brasil dedicated a portion of its community presentations to trainings on the environment. Additionally, the people are educated via informational materials located at collection points and publicity materials for the Ecoelce Program on the internet, television and radio.

Fourth, Endesa Brasil identified a programme with innovative touches to simplify waste management systems:

- **Mobile Collection Points.** The Program utilizes mobile collection points. In fact, the Ecoelce Program allows clients to request new collection points in their neighbourhood.
- **More than Traditional Recycling.** The Program accepts more than used packaging. They accept used lead-acid batteries and used cooking oil, which are sold to companies making soap and biodiesel.
- **Flexibility in Billing.** The Program allows clients flexibility and control with respect to their electricity bills. In other words, when a client chooses to recycle the client has control over their electricity bill. Additionally, clients can follow his or her account movements online.

Together, these innovations ensure the Ecoelce program is responsive to the rural community's specific-needs.

Fifth, the Ecoelce Program started on a small scale. Launched initially on 18 August 2006 as a six-month pilot, the Ecoelce Program operated in Pacajus and three other low-income communities in the Metropolitan Region of Fortaleza, the capital of Ceará. The company partnered with Rigesa, Pacajus City Hall and Ultrambiental, and it visited each community on an ad-hoc basis for waste collection purposes. In addition to mobile collection points, there was one fixed collection point in Fortaleza for clients living outside those communities to drop off their waste. It was only after the success of this pilot and the development of a solid business model did the Ecoelce Program expand. In 2008, the Ecoelce Program was present in 59 communities with 32 fixed collection points and 27 mobile collection points. Each point operates weekly or biweekly either in the Fortaleza metropolitan area or in interior cities. Additionally, Endesa had come full circle. It started EcoAmpla, a similar programme, through its subsidiary in Rio de Janeiro, where the idea was originally rejected.

Sixth, Endesa Brasil responded to unforeseen challenges by being sensitive to all stakeholders involved. Many difficulties arose during implementation and required an ad-hoc, if calculated, response by Endesa Brasil. For example, in implementing the Ecoelce Program, the company initially overlooked the interests of the homeless population in Ceará, many of whom depended on picking trash as a means of income. The company

was unaware of the homeless' frustrations with the Program until a representative from the Instituto de Formação Empreendedora e Educação Permanente, who worked with the homeless, called to schedule a meeting. At the meeting, Endesa Brasil's Institutional Relations Director, head of the Innovation Management Department and representatives from the association of homeless trash pickers discussed how best to incorporate the involvement of homeless trash pickers into the Program's operations. The result was not only the amelioration of stakeholder concerns and uptick in received recyclable materials, but also the creation of jobs for a vulnerable segment of the population.

Seventh, Endesa Brasil is continually improving the Ecoelce Program as it recognizes recycling is most effective when done on a large scale. Industrial consumers often prefer virgin raw materials because recycled products cannot be purchased in mass quantities. In response, Endesa Brasil has 1) expanded the programme to meet large scale demands and 2) sought new relationships with industry partners in order to increase the variety of recycled materials accepted at collection points. For example, Endesa Brasil is currently working with cosmetics companies in the hope that the Ecoelce Program may soon add discarded packaging from cosmetics to its list of accepted materials.

Finally, it is important to note that one of Endesa's priorities is to fully document all of the Program's benefits. While Endesa's economic gains to the company are quantifiable, other benefits are not easily captured. For example, there is a perception in the communities that disease has declined due to the programme but no hard evidence. The company continually seeks ways of evaluating the improvements gained in these human development indicators.

#### 4. Conclusion

For Endesa, the Ecoelce Program is not considered a charitable activity. It is an integral part of the company's business plan. While it supports values enshrined in the Global Compact, the purpose of the programme is to strengthen the company's relationship within the communities in which it operates. As such, the Ecoelce Program remains directly tied to the company's overall strategic plan.

The expansion of electricity to new markets

clearly supports Endesa's long-run business plan. Notably, however, not only do Endesa's returns improve, but so does the quality of life as the community develops. The programme is a model of how to identify opportunities when a company's business interest overlaps with society's interest in ensuring the basic human rights of its population.

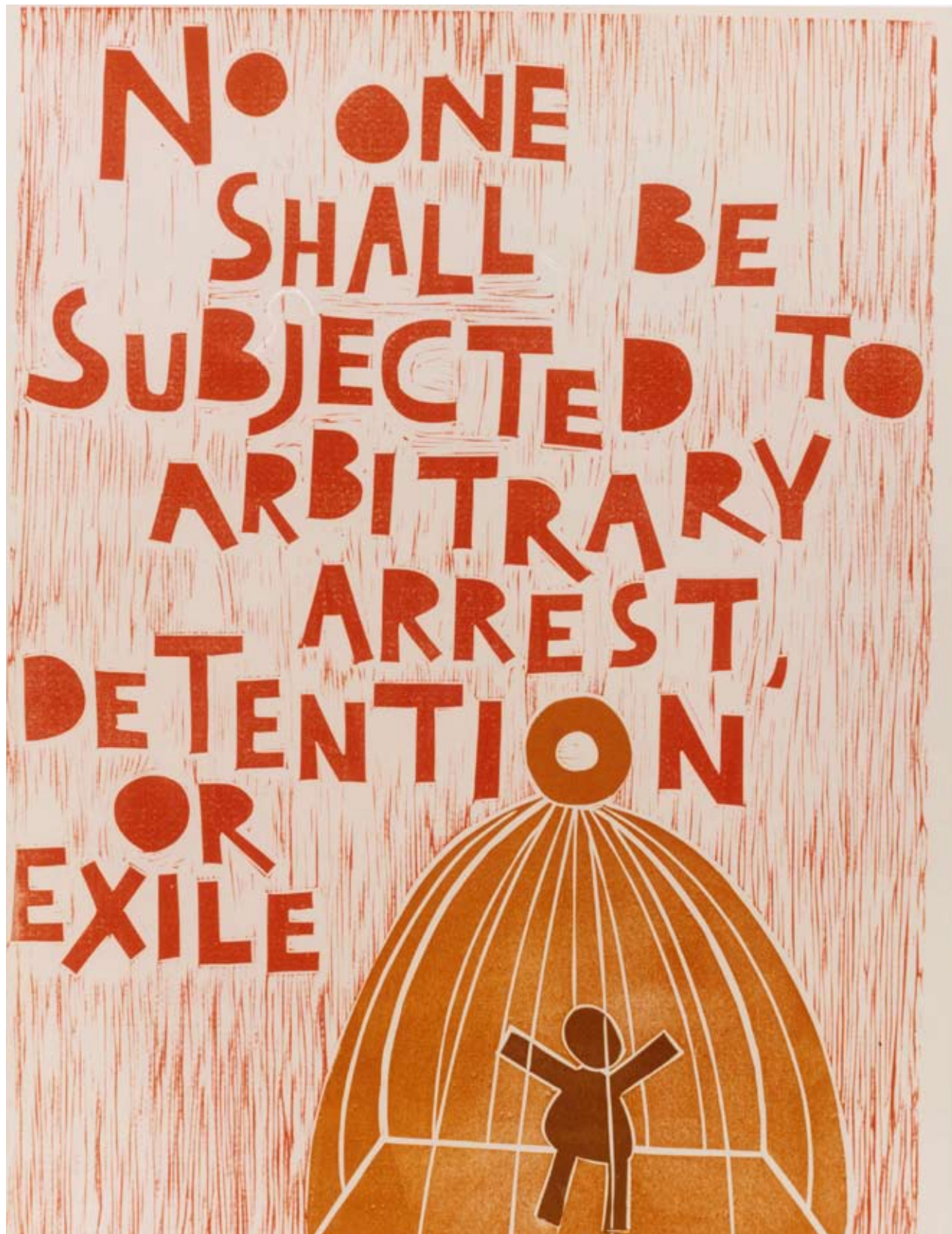
The greater consumption associated with more people attending school and relying on basic infrastructure translates into higher profitability for Endesa. Additionally, company managers are quick to point out that this is true even when the community's need changes from mere consumption of electricity to a demand for "efficient" energy. When a country prospers, Endesa is able to develop and sell products and services related to "green" energy.

Understanding, as an electricity company, Endesa's business model is focused on sustainability. As Angel Fraile states, "sustainability is part of our DNA." However, this focus on sustainability should not overshadow an important corollary – the company's commitment to human rights and that commitment's relationship to economic opportunities. Establishing closer connections with the community through social action projects is part of Endesa's strategy of both ensuring customers are aware of this commitment and developing future business lines. Endesa Brasil's Sustainability Manager, Bonança Mouteira, noted the community alliances forged in the creation of Ecoelce have proven to be valuable in developing additional joint ventures between Endesa Brasil and the government. As a result, the Ecoelce Program has repeatedly been recognized internationally. In 2008, the Ecoelce Program won the World Business and Development Award (WBDA). Organized by the United Nations, the WBDA rewards business-led initiatives to alleviate poverty and further sustainable development.

While not without its challenges, the Ecoelce Program clearly demonstrates the value of links between core business practices and the Global Compact, MDGs and the Universal Declaration on Human Rights. In addressing the problem of insolvent clients and rampant energy theft, Endesa Brasil implemented a programme that addresses the company's business needs, fosters environmental sustainability and provides a source of income to low-income clients.

### End Notes.

1. The Millenium Development Goals are as follows: end poverty and hunger, achieve universal education, promote gender equality, reduce child mortality, improve maternal health, fight against HIV/AIDS, ensure environmental sustainability, and develop global partnerships.
2. The World Bank, Press Release No. 2001/405/LAC, "Brazil: World Bank Approves \$144 Million for Rural Poverty Reduction" (June 26, 2001).



## LEXMARK:

# Creating Advantage from Difference

By Mary Kate Johnson and Christopher P. DeNicola\*

### Human rights issues addressed

- Diversity and/or non-discrimination in employment
- Human rights, sexual orientation and gender identity
- Social investment and community development

### Human rights management practices discussed

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

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

- Electronics Industry Citizenship Coalition
- Ethical Trading Initiative
- HRC Corporate Equality Index
- International Covenant on Economic, Social and Cultural Rights
- Social Accountability International
- Universal Declaration of Human Rights

### Abstract

This case study explores Lexmark's progressive approach to human rights in the context of workplace diversity, with a particular emphasis on its policies and programmes related to LGBT employees.

Lexmark's response to workplace discrimination expands the typically recognized human rights protections of Global Compact Principle 6. Lexmark's Code of Business Conduct cites the Universal Declaration of Human Rights (UDHR), but the UDHR neither mentions nor makes a meaningful distinction between discrimination on the basis of sexual orientation or gender identity. Lexmark's Code, by contrast, prohibits both. This case study addresses how Lexmark has leveraged its human resources — or, how Lexmark's employees have leveraged company resources — to create a three-tier diversity management structure and a worldwide supply chain sensitive to the needs of lesbian, gay, bisexual, transgendered (LGBT) and otherwise affiliated employees. The case study also makes the business case for workplace diversity, not only as a driver of customer and employee satisfaction, but also as a creator of competitive advantage from a diversified talent pool. Lastly, the case study illustrates how Lexmark's internal commitment to diversity spills over into the general Lexington, Kentucky community. Lexmark's support for volunteerism among its employees has forged important links between corporate and community values. Lexmark's sponsorship of business diversity forums has spread best practices among local enterprises and generated stakeholder dialogue over progressive workplace norms. Finally, Lexmark's hosting of internal, diversity-themed events and public pride festivals has sparked dialogue among

traditionally divergent interest groups in the community.

### 1. Company Profile

Lexmark International, Inc., is a leading developer, producer and distributor of print and image solutions in the office products industry. Lexmark incorporated in Delaware in 1991 as a spin-off of IBM's Information Products Division, and it developed a product line of laser printers, inkjet printers, multi-function products and associated services, supplies and solutions. It inherited IBM's global distribution network and sells its products in over 150 countries in North and South America, Europe, the Middle East, Africa, Asia, the Pacific Rim, and the Caribbean. International sales account for 59% of consolidated revenue, and revenue surpassed USD 5 billion in 2006. Lexmark has weathered the economic downturn relatively well, with revenue totaling USD 4.5 billion in 2008. Lexmark operates divisions based on product type: the Printing Solutions and Services Division and the Imaging Solutions Division. It operates manufacturing control centres in Lexington, Kentucky; Shenzhen, China; and Geneva, Switzerland. Other manufacturing sites include Boulder, Colorado; Juarez, Mexico; and Lapu-Lapu City in the Philippines. Lexmark employs 14,000 people: 3,800 in the U.S. and another 10,200 in Europe, Canada, Latin America, Asia Pacific, the Middle East and Africa. Lexmark's business strategy is to capture pages in high usage market segments by developing high-volume products for high-volume customers. Lexmark therefore

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depends heavily on customer preferences. It also depends on preferred supplier relationships — in particular, supplier managed inventory agreements — to streamline its supply chain and meet its standards for quality, cost and delivery. Lexmark recruits internationally for its global headquarters in Kentucky and has a vested interest in diversifying the Lexington community to attract and retain international talent.

## 2. Corporate Vision and Values

Lexmark sums up its corporate vision in the phrase “Customers for Life”. Lexmark’s top two corporate values — Customer Commitment and Employee Satisfaction — make it clear that customers and employees are the most critical drivers of innovation within the company. High-volume customers, particularly in Europe, demand a commitment to social progressivism and diversity. Lexmark employees, particularly at Lexmark’s global headquarters in Lexington, Kentucky, know they can articulate their individual differences, talents and needs to a responsive management. Respect and support for difference is in large part what allows Lexmark to attract, retain and promote the most creative candidates and to maintain a globally competitive talent pool. And importantly, mutual respect is the hallmark of Lexmark’s corporate culture. Lexmark managers have worked diligently to cultivate a respectful corporate culture since the company’s incorporation in 1991.

## 3. Linkage with International Human Rights

Although the major human rights instruments that prohibit workplace discrimination do not specifically prevent discrimination based on sexual orientation, some contain catch-all provisions that cover sexual minorities. For example, the UDHR states in Article 23(2) that “[e]veryone, without any discrimination, has the right to equal pay for equal work.” Similarly, the International Covenant on Economic, Social, and Cultural Rights recognizes in Articles 2 and 6 individuals’ “right to work...without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*” (emphasis added). Indeed, the United Nations Committee on Economic, Social and Cultural

Rights, as well as the Committees on Torture, on the Elimination of Discrimination against Women, and on the Rights of the Child, have officially stated that discrimination on the basis of sexual orientation violates the treaties that they respectively administer. The European Council also adopted a regional directive in 2000 that bans employment discrimination against sexual minorities.

## 4. Local Political Context

The Lexington LGBT community largely swims against the tide of public sentiment in Kentucky. Extreme religious and political groups—and hate groups beyond the pale of the law—routinely discriminate on the basis of sexual orientation and gender identity. For example, protestors from Westboro Baptist Church in Topeka, Kansas picket public and private events, from the baptism of a gay couple’s babies in 2002 to the University of Kentucky commencement ceremony in 2007, with placards reading “God hates fags.” In 2004, the Kentucky legislature voted an anti-gay-marriage amendment into the state constitution. It forbids both gay marriage and civil unions.

In April 2006, the University of the Cumberland in Williamsburg, Kentucky expelled and downgraded a dean’s list student who publicized his sexual orientation on his MySpace.com profile. Pursuant to settlement negotiations, the Baptist university reinstated the student’s grades and permitted him to complete his coursework for that semester from home. The revised version of the student handbook requires students to be removed from campus if they participate in pre-marital sexual, or homosexual, activity. The Kentucky Fairness Alliance, in partnership with the Jefferson County Teachers Association and others supporting the separation of church and state, sued the Kentucky government for earmarking USD 11 million in public grants to this private, sectarian institution. The district judge ruled the public grant unconstitutional, and the defendants appealed to the Kentucky Supreme Court, where the case is pending.

Most recently, in July 2009, the Kentucky Statistical Analysis Center released its 2007 report on Hate Crime and Hate Incidents in the Commonwealth. The report incorporates both hard data from the FBI and the Kentucky State Police and anecdotal evidence from newspapers and human rights groups,

including the Kentucky Commission on Human Rights, the Southern Poverty Law Center (SPLC) and the Anti-Defamation League (ADL). In 2007 the SPLC documented 13 hate groups operating in Kentucky, up from 11 in the previous year, and 56 incidents of violence, down from 64 the previous year. The ADL documented multiple white supremacist demonstrations in 2007. In Kentucky, sexual orientation was the second most common motivator of hate crimes in 2007, after race. Of the total number of hate crimes targeting LGBT individuals in Kentucky, 67% of hate crimes targeted gay males, whereas 22% targeted gay females.

Adversity breeds determination, and advocacy groups—including the Kentucky Equality Federation, the Kentucky Fairness Alliance and the Kentucky Fairness Campaign—have agitated successfully for legal and political protections. In January 1999, the Jefferson County Fiscal Court adopted a Fairness Ordinance, protecting local Louisville residents from discrimination, based on sexual orientation and gender identity, related to employment, housing and public accommodations. In May 2003, former governor Paul Patton issued an executive order protecting over 30,000 government employees from discrimination based on sexual orientation and gender identity in government employment.

Nationally, despite the lack of a federal statute rendering LGBT individuals a protected class, private corporations have adopted non-discrimination policies and diversity initiatives in order to reduce stress on LGBT employees and boost productivity. The Human Rights Campaign's (HRC) Corporate Equality Index—which scores corporations based on whether, and how comprehensively, they adopt non-discrimination policies—suggests that this strategy has largely worked. First, the number of corporations scoring 100% has climbed from 13 in 2002 to 305 in 2010. Second, the global economic slowdown has not reduced corporations' adoption of non-discrimination policies. In fact, the largest jump in the number of corporations scoring 100% occurred from 2008 to 2009. Despite these friendly corporate policies, national studies confirm that atmospheric prejudice still cuts into the productivity, retention and professional relationships of LGBT employees. The implication is that the corporations with the highest LGBT productivity and retention rates will be the corporations that not only

implement top-down non-discrimination policies, but also sponsor bottom-up community engagement activities that inspire employee feedback and activism.

## 5. Key Events

Lexmark started its Corporate Social Responsibility (CSR) initiatives “without much fanfare” or description on its corporate website. When it established its CSR programmes in 1991, Lexmark promulgated a Code of Business Conduct, and in 1999, when the Fayette County Fiscal Court adopted its Fairness Ordinance, Lexmark incorporated sexual orientation and gender discrimination into the Code's non-discrimination language. In 2003, when the HRC urged corporations to consider offering domestic partner benefits, Lexmark management hosted an employee share session and promptly offered the desired benefits. When customers requested more public communications with stakeholders, Lexmark responded with comprehensive reports on human rights and labour, diversity, the environment, suppliers, community development and philanthropy. To express its CSR commitment in terms of internationally recognized standards, Lexmark joined the Electronics Industry Citizenship Coalition (EICC) in 2007 and adopted the Electronic Industry Code of Conduct for its worldwide supply chain. In June 2008, Lexmark signed the UN Global Compact, clinching its commitment to visible CSR initiatives. Most recently, in 2009, Lexmark produced its first CSR Report to evaluate its ongoing policies and programmes.

## 6. Policies and Programmes

To attract and retain top international talent for its global headquarters in Lexington, Kentucky, Lexmark has implemented policies and programmes designed to create a work environment where LGBT and other minority employees can thrive. Lexmark's corporate governance policies, its diversity initiatives, its community engagement efforts and its supplier partnerships all demonstrate Lexmark's commitment to supporting LGBT individuals at work and in the community.

### Corporate Governance

Among the policies articulated in the Code of Business Conduct, the work environment comes first. Under the Code, the work envi-

ronment consists of three key components: equal opportunity, prohibitions on discrimination and harassment and employee privacy. First, the Code safeguards equal employment-related opportunities “without regard to race, color, age, gender, sexual orientation, gender identity, religion, national origin, disability, veteran’s status, or any other characteristic or factor protected by applicable law.” Second, the Code protects employees from discrimination or harassment based on these factors. The Code requires employees to report any observed harassment or discrimination to Human Resources, and it stipulates protections for whistleblowers from retaliation or disciplinary action. Third, the Code protects employee privacy and restricts Lexmark from data collection unrelated to employment. In terms of personal conduct related to mutual respect, the Code broadly prohibits offensive behaviour, including language, slurs or other remarks, jokes and conduct that “permit an offensive work environment or diminish the worth of another person.”

To address complaints about violations of this Code, Lexmark maintains an Ethics Line. If employees witness or experience behaviour that makes them uncomfortable, they may confidentially report it via this hotline. Lexmark employees also have informal mechanisms for submitting grievances, such as contacting Juli Gaworski, Lexmark’s Corporate Citizenship Director.

## Diversity

Lexmark’s main innovation is its three-tier diversity management structure. The structure consists of the Lexmark Diversity Council, a number of Diversity Action Teams and eight Diversity Network Groups. The Diversity Council is responsible for articulating local and global diversity initiatives that division leaders draft into action plans. The Council’s main goal is “to help create a workplace environment where all employees feel respected and included and have an opportunity to use their talents”. The Diversity Action Teams monitor implementation of the Council’s initiatives. They also measure the efficacy of each diversity plan against Lexmark’s overall business strategy to identify best practices. The Diversity Network Groups are voluntary employee groups representing particular ethnicities and interests. Lexmark management urged these groups to embrace not only human resources but also business-related

issues. So the volunteer employees who run these groups provide other employees with informal networking and mentoring opportunities for personal and professional development. The Diversity Network Groups include: the Gay/Straight Alliance of Lexmark Employees (GALE); the Asian Network Diversity Association; Christian Business Persons; the Hispanic Diversity Network Group; LexNew for new hires; the Network Alliance of Black Lexmark Employees; Women Empowering, Equipping, and Encouraging; and Veteran’s Friends and Families.

In particular, GALE has fostered internal dialogue between gay and straight people on issues related to members of the LGBT community. It has done so by holding regular meetings, posting notices about cultural events and by inviting speakers to educate Lexmark’s employees on issues such as how LGBT people can safeguard their civil rights, often by drawing parallels with the experiences of other minority groups. Leea Haarz, the current Chair of GALE, reports that as a long term, 15-year employee of the company, the presence and activities of this organization make her feel truly appreciated and valued at work.

The Diversity Council also runs Cultural Days, where Kentucky employees learn about the global, cross-cultural nature of Lexmark’s operations and supply chain. In particular, the Kentucky and Colorado offices sponsor Diversity and Inclusion Days to celebrate the progressive pace of change in the company and surrounding community. Lexmark also hosts Diversity Share Sessions, where employees learn to consider the subtler dimensions of diversity and engage each other in conversation. The Diversity Network Groups recently hosted Taste of Lexmark, where each network group presented a booth with representative food and entertainment. The Asian Network Diversity Association had Chinese and Indian food, with Chinese and Mongolian dancing, and the Hispanic Diversity Network Group had a country-specific sampling of Latin American fare, with merengue and salsa dancing. The booth set-up prompted mingling, and one employee with more traditional values approached the Gay/Straight Alliance booth to see what food the gays would have to represent themselves. “Rainbow lollipops, of course,” they smiled. “Of course,” he replied, returning the smile. The proof of acceptance was in the pudding, so to speak.

## Community Engagement

Lexmark expresses its public support for diversity with innovative business forums on LGBT issues and community pride parades. Lexmark also sponsors more traditional activities, including civil rights commemoration events and women's recruitment programmes.

Lexmark openly supports diversity programmes related to sexual orientation and gender identity. In particular, Lexmark formed the Business Diversity Network, in partnership with the Louisville Water Co., ADP Inc., LG&E Energy Corp., Toyota Motor Manufacturing Inc. and the University of Louisville. In November 2008, these organizations hosted a public forum in Lexington called "Pride in the Community, Opening Doors and Keeping Them Open", to articulate for local companies best practices related to human resource policies and benefits for LGBT employees. Lexmark was a key participant in this forum because it was one of the first companies in Kentucky to encourage LGBT networking and to offer full domestic partner benefits. In fact, GALE helped organize the event and invite speakers, including Jim Gray, Lexington's first openly gay Vice Mayor. After the forum, one participant responded: "Lexmark has set the bar for the rest of the Business Diversity Network panel discussion .... It is clear that you have a sincere and genuine desire for everyone to benefit from an inclusive workplace and community." In June 2009, on the 40<sup>th</sup> anniversary of the Stonewall riots that defined the modern LGBT rights movement, Lexmark sponsored the Lexington Pride Festival as a commercial vendor of personalized photos.

Lexmark is also a long-standing sponsor of Martin Luther King, Jr. Day, a U.S. holiday that promotes civil and human rights. In January 2009, the Kentucky Office sponsored the Unity Breakfast, and the Colorado Office sponsored "The Fierce Urgency of Now" at the Boulder public library, complete with speeches, workshops, children's activities, an essay contest and a human rights fair.

Moreover, Lexmark provides support for women's recruitment, retention and promotion in the technology industry. In May 2008, the Kentucky Office was a platinum sponsor of the Women Leading Kentucky Women's Business and Leadership Conference, with over 400 in attendance. The Kentucky Office sponsors programmes to recruit girls

in graduate school, high school and middle school for engineering careers. For graduate students, it sponsors the Graduate Degrees for Minorities in Engineering and Science (GEM) Fellowship programme, where it provides programme participants with summer internships and a USD 15,000 stipend to complete their master's degrees. For high school students, it co-sponsors annual Women in Engineering Career Days with Fayette County Public Schools, where approximately 100 high school girls and their families spend a day interacting with Lexmark engineers. For middle-schoolers, the Kentucky Office collaborates yearly with the University of Kentucky and the Bluegrass Society of Women Engineers to hold three science workshops for the Girls Enjoying Math and Science (GEMS) Project, where middle-school Girl Scouts discover engineering career opportunities.

## 7. Suppliers

Lexmark engages suppliers in the same way that it retains and promotes employees. Recognizing that diversity is key to competitive advantage, Lexmark has selected a supplier base with diverse perspectives and methods for quality control, pricing, and delivery. Candidates for supply contracts can self-identify as, among other things, minority-owned, women-owned, veteran-owned or disabled-owned businesses. Periodic Supplier Performance Reviews provide feedback in the following categories: Cost, Quality, Delivery and Support, Flexibility and Ease of Doing Business, and Partnership and Technology. Lexmark identifies best practices and innovations from the feedback and enters into preferred supplier relationships on that basis.

Lexmark also holds suppliers to the same behavioural standards that it demands of its management and employees. Lexmark's Supplier Code of Conduct is the EICC Code of Conduct for contractors and suppliers. This Code requires compliance with local standards in states of operation and with international human rights standards related to labour, health and safety and the environment. For the content of these standards, the Code requires suppliers to refer to multiple sources, specifically, the UDHR, Social Accountability International, and the Ethical Trading Initiative. Labour standards related to diversity include humane treatment and non-discrimination clauses that prohibit

harassment, threats, physical or verbal abuse and discrimination based on race, color, age, gender, sexual orientation, ethnicity, disability, pregnancy, religion, political affiliation, union membership or marital status. In terms of management, the Supplier Code requires suppliers to formulate policy statements and implementation plans for compliance with local and international standards, to identify personnel responsible for compliance and to train workers in accordance with these norms. Since 2008, Lexmark has conducted third party audits for many of its suppliers to gauge companies' compliance with these standards. Lexmark has published its Supplier Code in four languages: Chinese, English, Japanese, and Spanish.

## 8. Recognition

Lexmark's respect for employee differences, talents and needs has earned it various accolades. For the fourth consecutive year in 2009, Lexmark earned a perfect score on the HRC's Corporate Equality Index, ranking it among the "Best Places to work for Lesbian, Gay, Bisexual and Transgender Equality". Lexmark's rankings for CSR parallel its rankings for revenue, making a compelling business case for the company's commitment to human rights and diversity. Lexmark currently ranks #470 on the Fortune 500, #1923 on Forbes' Global 2000, #459 on Barron's 500 List and #189 on the Industry Week U.S. 500.

## 9. Conclusion

Lexmark's diversity strategy has centred on policies and programmes that support individual differences, talents and needs and boost comfort, confidence and productivity among LGBT and other minority employees. Despite the potential hostility of local extremists, the company has empowered these historically marginalized groups with networking and volunteer opportunities at the individual level and with sponsorship of business diversity forums and other public events at the company level.

To build on these achievements, Lexmark should endeavour to expand its diversity programmes to its international offices. Although Lexmark's diversity strategy is now entrenched in its U.S. offices, the company acknowledges that its efforts have gained less traction internationally due to the difficul-

ties of implementing diversity programmes in deeply patriarchal and religious societies. Lexmark's ongoing challenge is to engage its international employees in a global dialogue to gain their buy-in and support for the extension of its diversity programmes abroad.

Lexmark should also consider implementing more robust grievance mechanisms in its U.S. and international offices. Although Lexmark's Ethics Line is a significant tool for addressing complaints, the company could introduce even more vigorous human rights enforcement mechanisms such as ombudsmen and mediation procedures.

In taking a firm stand on corporate values – and in translating corporate values into community values – Lexmark has signaled its appreciation for difference and has inspired the respect and admiration of its employees, particularly those at its global headquarters. Lexmark's activities have also satisfied the demands of high-volume customers for progressive non-discrimination policies, giving Lexmark a competitive edge in the market for printing and imaging solutions. Ultimately, Lexmark's journey toward evolving workplace norms reveals the mutually reinforcing relationship between human rights and corporate innovation.

## XSTRATA IN THE DOMINICAN REPUBLIC: Integrating Security and Human Rights Principles into Business Practice\*

By Anna Murray\*\*

### Human rights issues addressed

- Right to education
- Right to food
- Right to health
- Security and conflict
- Social investment and community development
- Women's and children's rights

### Human rights management practices discussed

- Strategy
- Processes and procedures
- Communications
- Training

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

- Voluntary Principles on Security and Human Rights

### Abstract

This study seeks to contribute to an improved understanding of how an extractive company can successfully integrate security and human rights principles into core business strategy, constructively build its social license to operate and effectively stabilize community human rights concerns, particularly throughout unstable periods. In the Dominican Republic, home of Xstrata Nickel's Falcondo ferronickel mining operation, there are human rights challenges such as extreme poverty, lack of access to adequate education, health care and local economic development. At the end of 2008 a temporary shutdown of Falcondo's ferronickel operation and the layoffs of more than 900 employees were announced in response to global market volatility — a potentially detrimental situation with respect to human rights and security issues.

This case study will examine the initiatives Falcondo put in place at the time of the shutdown that support and respect the protection of internationally proclaimed human rights consistent with Principle One of the UN Global Compact. Focus will be placed on the development and functioning of the Falcondo Foundation — the non-profit foundation established by Falcondo in 1989 to encourage local development in health, education, environment and culture — and the successful execution of the mine's suspension. This study will highlight:

- Xstrata's sustainable approach to addressing human rights concerns: how the business has moved away from a philanthropic "good-works" model to a collaborative capacity-building strategy;
- Key actions taken by Xstrata throughout

the Falcondo shutdown: how the operation's shutdown and layoffs were successfully achieved without security or human rights violations.

Operating successfully in developing countries has historically been a major challenge for the extractive industry and is a challenge faced by Xstrata Nickel, the fifth largest global nickel producer in the world. If not managed properly, mining in sensitive environments can reveal or further contribute to community instability, with consequent human rights and security implications.

### 1. Company Profile

Xstrata Nickel is a commodity business unit of Xstrata plc, a global diversified mining group listed on the London and Swiss Stock Exchanges, with its headquarters in Zug, Switzerland. Xstrata's businesses maintain a meaningful position in seven major international commodity markets: copper, coking coal, thermal coal, ferrochrome, nickel, vanadium and zinc, with a growing platinum group metals business, additional exposures to gold, cobalt, lead and silver, recycling facilities and a suite of global technology products, many of which are industry leaders. The Group's operations and projects span nineteen countries.

Xstrata Nickel, headquartered in Toronto, Canada is one of the five largest producers of nickel. Xstrata Nickel's operations include

\* NB: Appendices and figures are available for this case study in the online version, found here: [www.unglobalcompact.org/Issues/human\\_rights/Business\\_Practice.html](http://www.unglobalcompact.org/Issues/human_rights/Business_Practice.html).

\*\* Anna Murray is a Senior Advisor, Sustainability and Corporate Affairs, at Xstrata Nickel. Peer review of the case study was provided by: Ron Popper, Head of Corporate Social Responsibility, ABB; Jo Rander, Manager, Environmental and Social Responsibility, Newmont Mining Corporation; and Paul Hollesen, Vice President, Environment and Community Affairs, AngloGold Ashanti.

mines and processing facilities in Canada, the Dominican Republic and Australia and a refinery in Norway. Xstrata Nickel has a portfolio of growth projects in Canada, Tanzania and New Caledonia.

Falcondo is a surface mining operation that has the capacity to annually produce 29,000 tonnes of nickel contained in ferronickel. Ferronickel is a combination of iron and nickel used almost exclusively by the stainless steel industry. The property is situated in the Dominican Republic, in the town of Bona0, 80 kilometers north of Santo Domingo. The facilities include a metallurgical treatment plant, a crude oil refinery and a 200 megawatt thermal power plant.

Faced with the confluence of depressed nickel prices and record oil prices during 2008, Xstrata Nickel acted swiftly to suspend its Falcondo ferronickel operation in the Dominican Republic in August before placing the operation under care and maintenance in early December. Falcondo has traditionally been a swing producer, where, due to unfavourable nickel and oil prices, the operation has gone through shutdown periods. While the decision to suspend an operation is never taken lightly, ceasing production in a timely manner avoided more than USD 85 million of operating cash losses at this operation in the second half of 2008. The value of Xstrata Nickel's Falcondo assets in the Dominican Republic was impaired by USD 455 million including goodwill of USD 176 million, following the decision to place the operation on prolonged care and maintenance. Falcondo's 2008 EBITDA was USD 119 million.

## 2. Key Players

### **Ian Pearce: Chief Executive Officer, Xstrata Nickel**

Ian Pearce was appointed Chief Executive Officer of Xstrata Nickel in August 2006 and is responsible for global nickel and ferronickel operations and projects in North and South America, Europe, Africa and the South Pacific. Mr. Pearce has more than 27 years of professional experience in metallurgy and mining.

### **Shaun Usmar: Chief Financial Officer, Xstrata Nickel**

Shaun Usmar was appointed Chief Financial Officer of Xstrata Nickel in August 2006 and is responsible for ensuring the financial

stability of the corporation's global operations and projects.

### **Lee Nehring: Vice President Sustainability and Human Resources, Xstrata Nickel**

Lee Nehring was appointed Vice President, Sustainability and Human Resources of Xstrata Nickel in May 2008. She is responsible for supporting all Xstrata Nickel sites with practices and approaches to ensure the company continues to lead the industry in health, safety and environmental performance and community engagement practices.

### **Dominique Dionne: Vice President Corporate Affairs, Xstrata Nickel**

Dominique Dionne was appointed Vice President, Corporate Affairs of Xstrata Nickel in August 2006. She is responsible for the corporation's overall public and government relations strategy and its internal communications for operations and development projects around the world.

### **Ernest Mast: Former President and General Manager of Falcondo**

Ernest Mast was President and General Manager of Falcondo from September 2006 - May 2009. He was also President of the Board of the Falcondo Foundation, a non-profit organization that invests in sustainable development in the Dominican Republic.

### **Arelis M. Rodriguez: Executive Director of the Falcondo Foundation**

Arelis Rodriguez has more than fifteen years experience developing and managing a portfolio of grants and engaging in asset building and community development with the goal of reducing poverty and improving the quality of life and opportunities of poor and marginalized communities in the Dominican Republic. She has served as the Executive Director of the Falcondo Foundation since 1989.

## 3. Case Study

### **(a) Falcondo's Security and Human Rights Concerns: Unrest in Impoverished Communities**

A key challenge for mining companies, particularly when operating in developing and/or unstable regions, is to gain and maintain community support. Without community support, operations may be at risk of inter-

ruption, violent protests and/or reputation damage. Organizations face significant challenges when determining which best practices to employ in order to build and maintain a social license to operate.

After a series of violent local acts against Falcondo in the late 1980s, management saw an opportunity to change the nature of their community relations and address the various root causes at the heart of this civil unrest. Repeated attempts to deal with the situation via philanthropy were unsuccessful in building constructive relationships with the communities.

The communities surrounding Falcondo resented the absence of company-sponsored social programming (including electricity supply), the large discrepancy between the wealthy mining executives versus local communities and daily disruptions such as truck traffic and smoke-stack emissions. Conflict was further exacerbated by (unproven) accusations of company-inflicted damages to local agriculture and resulting health issues. Large and frequent demonstrations against the company in Bonao and La Vega increased after the government began to renegotiate the contract between the state and the company (after the price of nickel increased).

Further concern for public security was a result of the Dominican being neighbours with Haiti. The physical proximity of the two countries created illegal immigration issues and payscale discrepancies between Haitian and Dominican labourers. This led to significant tension between Haitian workers and the local Dominican communities.

The company responded to the security and human rights concerns by creating the Falcondo Foundation in 1989. Designed as a collaborative, grass-roots initiative led by the community for the community, the Foundation's mission continues to be the promotion of equitable, responsive and participatory self-help development in the provinces of Monsenor Nouel and La Vega, the home provinces of Falcondo's operations.

### **(b) Development of the Falcondo Foundation: Supporting Human Rights in the Dominican Republic**

The Falcondo Foundation focuses on several methods of supporting human rights, specifically for marginalized citizens who have traditionally had less opportunity to assert their individual rights, including women and

children. Through local collaboration with these stakeholders, community members are actively able to identify and direct Falcondo Foundation's programming without undue company interference. This collaborative model decreases barriers while building capacity through education, health, credit and natural resource programming, as well as developing the economy through local procurement and local employment (Falcondo's workforce is nearly 100% sourced from local communities).

The multi-stakeholder dynamic of the Falcondo Foundation that works in concert with government and local communities helps to create credible and effective results. The Falcondo Foundation acts as a change-agent in the community by enhancing access to basic human rights necessities and by giving a continuous voice with which to address concerns.

Traditionally, industry has adopted company-directed philanthropic initiatives to engage communities. However, history has demonstrated that this one-dimensional model may not be the most effective way to maintain community support or address human rights concerns in a sustainable manner. Philanthropic driven models, although helpful as one-off initiatives, can lead to economic community imbalance, inflation and even conflict. Philanthropic initiatives do not necessarily constitute sustainable engagement with communities and can lead to capital need-dependency.

For companies, the challenge lies in relinquishing control associated with these "good-works" models and, instead, developing more independent, multi-stakeholder driven initiatives characterized by capacity-building programming.

The Falcondo Foundation model demonstrates the value of companies initiating a capacity-building human rights model. When moving away from corporate-managed philanthropy, direct control is replaced by more effective stabilization of human rights concerns at the community level. Recognizing that individual communities are well acquainted with their own issues and that their direct participation will more effectively stabilize, if not ameliorate, human rights concerns, the Falcondo Foundation strategy improves ongoing community relations. As the socio-economic fabric of the Dominican Republic changes and strengthens at the local

level, the Falcondo Foundation offers the Falcondo operation the ability to change and grow in unison with these communities to effectively tackle human rights concerns.

Through the Foundation's community rights-focused programming and Xstrata's Sustainable Development Policy, employees and community members alike are given the opportunity to integrate human rights principles into their day to day life — making a connection between rights in the workplace and rights in the community. This connection is also supported through school-sponsored programmes where children are able to incorporate school teachings (i.e. responsible citizenship) into their home life. The Foundation orients its educational programming towards improving quality of life and supporting social growth.

The Falcondo Foundation is based in Santo Domingo. The Foundation is governed by an independent board of directors comprising ten members. The board includes nationally influential individuals knowledgeable about community development, representatives of Falcondo Xstrata Nickel management and is presided by Falcondo's President and General Manager. The Foundation's Executive Director sits on international philanthropic boards, national social development organizations and is a member of the Advisory Committee for the Minister of Education. Falcondo's traditional support to the Foundation of USD 850,000 annually was increased in 2007 to USD 1,468,000. The Foundation administers another USD 400,000 of funding from third party donors such as USAID, World Bank, Inter-American Development Bank and Hispanics in Philanthropy among others.

### **(c) Falcondo Foundation Program Focus**

As one of the largest employers in the area, Falcondo's community efforts have two different targets: the town of Bonao (home to the majority of Falcondo's employees) and the surrounding rural communities. Mining vehicles pass close to the rural communities within ten kilometers of the site, and these communities are within view of the site's infrastructure. The Foundation has also developed a model of intervention in the area of natural resources to protect important watersheds in the Cibao region (an area of significant national interest), Los Dajaos, Plan Sierra and Blanco.

The Foundation's school and community

business programmes have had a number of successes. These communities around Falcondo have demonstrated increased economic and educational success compared to similar communities elsewhere in the area. The most notable recent success has been improved income for local people from increased exports of coffee from the coffee growing region and the promotion of greenhouse vegetable production at low altitude, with new exports from the greenhouses to Miami and Puerto Rico.<sup>1</sup>

The School Sponsorship Program is the Foundation's single largest programme and reaches the largest number of communities and people. It was created to find an effective model for participation of the private sector in the public education system and to support the national efforts for basic education reform. The Foundation activities are intended to complement the efforts of the Ministry of Education and not to substitute for them. The School Sponsorship Program is focused entirely on community-level activities.

The School Sponsorship Program is designed to improve the quality, effectiveness and access to formal and non-formal elementary and secondary education and alleviate the risk of child labour. The Program is built on local community involvement and responsibility with a view toward long-term community development. The Foundation's education programme has been an enduring example of public-private partnerships in support of traditional public education, with clear benefits to the private firm, school system and the local communities. In 2001, USAID carried out an evaluation of the Foundation's education programme and deemed key elements of the sponsorship's model programme credible for replication elsewhere in the Dominican Republic and having potential applications for other countries.<sup>2</sup>

Since its inception, the Foundation has built or rebuilt 129 schools, to date benefiting approximately 77,000 students and close to 2,000 teachers. Ninety per cent of the total student population of the province of Monseñor Nouel attends a Foundation-sponsored school. Foundation sponsorship involves providing training to teachers, helping establish a classroom atmosphere and establishing a student council and parent-teacher dialogue. These basic educational tools have enhanced the educational environment in the rural and urban poor areas where Falcondo operates.

Other programmes in education include the scholarship and adult education programmes. Since 1990, the Foundation has supported a programme of scholarships and loans for students from the region to attend universities, technical and professional schools after high school graduation. To date, approximately 900 students have benefited from this programme.

The Foundation has also carried for more than 15 years an adult literacy programme for young adults in the remote rural communities of Monseñor Nouel and la Vega. These programmes are very popular and support not only income generation but also community change through its teachings of the democratic participation model.

The Foundation, in collaboration with the National Cancer Institute, also has a programme for early cancer detection in women in rural areas. This programme was established as a result of the lack of rural health centres coupled with the spike in cervical and breast cancer rates in the Dominican Republic. As a result of the programme, more than 2000 women in Monseñor Nouel have been screened for cancer. Treatment costs have also been partially covered for more than 500 women in the local oncology hospital.

The Foundation is also working with women's groups to promote business initiatives to help women generate job opportunities and additional income such as agricultural co-operatives and micro-businesses.

Social initiatives are also run through Falcondo's Human Resources and Public Relations functions, as well as its "Satellite" Operations, including the Falcondo Foundation, Centro Educacional Bonao, Club Falcondo, and Falcondo Sports and Social Club. Falcondo's goal for satellite operations is to make them self-sufficient. This strategy has been imperative when market conditions have led to the shutdown of Falcondo in the past. The strategy has been largely successful with Centro Educacional Bonao (86% self-sufficiency for funding), Club Falcondo (90%), Falcondo Sports and Social Club (67%) and Falcondo Foundation (11%).

The Falcondo Foundation has undertaken broad need-based consultations with all the communities in the province of Monseñor Nouel. This led to the publication of the book *Las Comunidades Saben lo que Necesitan* that is used as a reference tool for other organizations throughout the country on how to

design and execute development programmes based on active participation by society.

The Foundation, with the help of a group of its sponsored schools and surrounding communities, also conducted a study to capture the essence of their School Sponsorship Program, specifically the Educating for Democracy Program. This led to the publication of the book entitled *Ojalá que los Niños Gobernaran el Mundo*. The book is used to facilitate the replication of this programme to other public and private schools and details how to form student councils, how to get the community to participate actively in the decision making process of the school and how to improve relationships between students, teachers and parents.

"The Falcondo Foundation has replaced social assistance programmes with true capacity-building initiatives as a vehicle to promote empowerment, sustainable development and reduce the vulnerability of disadvantaged communities," said Arelis Rodriguez, Falcondo Foundation Executive Director.

#### **(d) Aligning Shutdown Actions with Voluntary Principles on Security and Human Rights**

As a result of falling nickel prices and the high cost of oil, which represented approximately two-thirds of Falcondo's operating costs, Falcondo initiated a temporary three-month suspension in August 2008. On 4 December 2008, following three months of severely deteriorating global economic and market conditions, Falcondo announced the continued shutdown of its operations and placed it into care and maintenance. As a result, Falcondo had to lay-off approximately 900 employees out of a total workforce of approximately 1,800, creating a highly risky situation in a historically unstable community.

In view of the area's history, Xstrata Nickel management was aware that suspending operations could pose significant human rights concerns both in terms of short-term security risks as well as long-term social effects in the community. Management understood that the decision to shutdown Falcondo was not going to be business-as-usual and that careful planning would be required in order to address potential adverse effects.

Possible layoff impacts could include higher poverty levels and social unrest in the already impoverished communities of Mon-

señor Nouel and La Vega. Social unrest could take the form of increased criminal rates, domestic violence, drug abuse, child labour and school dropout rates. These issues would inevitably be exacerbated by the global crisis and other impacts from the global economic downturn on the Dominican Republic economy. For example, social services are subject to potential reductions in funding.

The challenge was to place the facility under care and maintenance responsibly, respecting human rights principles and mitigating potential risks to Falcondo employees and the community at large.

#### 4. Analysis

The following analysis will demonstrate how Xstrata Nickel and its Falcondo operation respected and supported human rights throughout an extremely sensitive situation and, in doing so, successfully shutdown the operations while avoiding civil unrest. The case will examine the detailed plan that was implemented to address areas of risk in accordance with the UN Global Compact principles and the Voluntary Principles on Security and Human Rights (VPSHR). Specific focus will be placed on the plan's security planning, including preparation, practical training, close-out process and community investment plans.

While not a formal participant in the VPSHR plenary group, Xstrata continues to demonstrate support for the doctrine through its Sustainable Development Policy and Standards and site-level training.

##### (a) Ensuring Ample Planning Time

Taking the time to carefully plan and develop a sound strategy was one of the key factors behind the successful execution of the Falcondo suspension. By allocating sufficient time to properly align shutdown actions to support and respect the protection of internationally proclaimed human rights, Xstrata Nickel was able to place a heavy focus on the Global Compact Principle One and the Voluntary Principles.

Falcondo's management extended the originally planned date of the shutdown by approximately one month — a move that prolonged the losses realized from operating but which management deemed necessary to properly prepare employees and the communities for the suspension of operations.

This allowed for further strategy preparation, programme implementation and a deeper understanding of security and human rights risks and opportunities.

##### (b) In-Depth Security Risk Assessment

To ensure the lay-off notifications were executed without incident, Falcondo underwent security risk assessments in alignment with the Voluntary Principles to, “understand the potential for violent conflict in the area of operations” and “assess risks to the community related to the company's presence”. Falcondo chose to undertake security assessments in order to develop baseline understandings of the current security situation, gauge risks and monitor any changes in security “temperature”.

To aid in the execution of the plan, Falcondo engaged Monkey Forest Consulting, an internationally reputed consulting firm focused on social development, security and human rights protection.

Employee-specific risk assessments were carried out to determine problematic responses that could arise during the shutdown process. Assessments were also undertaken for the broader community and local leadership. The evaluations examined how community members could react to the shutdown and, specifically, whether there was the possibility for increased crime or violent political activism that could cause increased security risks in the communities. The team engaged with local government, police and other local stakeholders to gain a deeper understanding for potential issues that could arise during the layoffs.

##### (c) Developing Scenario Analysis and Response Planning

Security risk assessments enabled Xstrata Nickel and Falcondo management to develop hypothetical scenario analyses based on potential risks during the shutdown. In developing the scenario analyses, the team referred to cases with similar notification processes and identified common risk areas and reactions (e.g., disgruntled employees hijacking heavy equipment, security risks for the company and Foundation's personnel, etc.).

The security assessments and scenario analysis estimated that the potential for problems in the workforce were not immense, however, “spill-over” chances were greater in the community. Specifically, the potential

involvement of external security forces in the community caused concern for the team. If public security forces were taken by surprise from events precipitated on site, there existed the possibility for the situation to lead to unnecessary use of force off-site.

Based on the results of the scenario analyses, Falcondo undertook planning based on the Voluntary Principles to eliminate or minimize and manage potential incidences.

#### **(d) Setting-Up and Training Teams in Accordance with VPSHR**

Scenarios were used to develop training programmes that would prepare teams to address problems in accordance with human rights principles. Building scenarios involved assessing worst case circumstances and planning response strategies in accordance with internationally-proclaimed human rights. Specifically, the team ran through how Falcondo was going to manage the notification and what processes they would follow, including the details of management to staff ratio, work structure, leadership presence and time of day.

As an alternative to using contract security forces, Falcondo chose to organize and train internal teams as an effective way to help control the atmosphere and maintain a non-aggressive environment. In total, the company created an intervention team, a monitoring team, a command post and plain clothed-police liaisons, made up of local members of the national police force.

#### **Crisis Intervention Team**

A Crisis Intervention Team was set up to act as a guard force in the event of a flare-up on the day the suspension of operations and resulting layoffs were announced. In selecting the team, Falcondo screened the workforce for trustworthy and reliable employees. These individuals were selected on the basis that they could get in the middle of a tough situation without losing control. This team was comprised of those employees that management had the most confidence in, including individuals from Falcondo's Safety Department and Management and Security Advisory teams.

Members on the teams were neither given uniforms nor weapons. A key initiative was to ensure that teams were properly instructed and given special training relating to the Voluntary Principles. Over a period of several days, team members participated in role

playing and practical exercises in six critical scenarios based on the security assessments.

#### **Monitoring Team**

The Monitoring Team was formed to observe the environment on the days prior to and including announcement day. This team was to address immediate resolution of any potential incidents. Based on the Voluntary Principles, the team was given explicit instructions regarding appropriate rules of engagement and how to approach the various situations.

Falcondo decided to minimize visible forces on-site to avoid further aggravating employees in what would already be a tense environment. Low visibility monitoring systems were implemented, equipping teams with radios to report incidents, feedback and general notifications to the command post. Command posts were set up one week before the announcement was made.

#### **Centre of Operations for Emergency Response**

A Centre of Operations for Emergency Response was set up in the site's central operation building. The centre was equipped with: communications radio, fixed and mobile phones, map of facilities, Bonaio city map, compound map, speaker, videoconferencing installations, list and location of support staff, list of cell phone numbers of key members of the National Police, emergency response personnel employed by Falcondo and transportation. An adviser with Monkey Forest, with ample experience in crowd control, the police and military, assisted the Falcondo team.

#### **Anti-riot Police Team**

In conjunction with the Colonel, who is in charge of the Bonaio police force, a special anti-riot police team was created and posted to the military station set up outside the facilities to quickly respond to any incident. The anti-riot police team was to enter the facilities only in cases where Falcondo's internal teams were not able to resolve a situation. To keep visible forces to a minimum, Falcondo instructed security forces to remain off-site on standby. All team members were trained on use-of-force procedures.

#### **(e) Early Stakeholder Engagement: Aligning Public Security Force Training with the Voluntary Principles of Security and Human Rights**

Early stakeholder engagement is critical

in the context of preventing human rights violations. Falcondo wanted to ensure that the Dominican public security forces had the opportunity to establish an appropriate response framework via early engagement. With proper training, organization and equipment, security forces could play an instrumental role in minimizing, if not eliminating potential human rights violations throughout the layoff notification period.

Involving public security forces in early joint planning also allowed for knowledge transfer, particularly with regard to how to manage precarious circumstances in accordance with human rights principles. Joint planning enabled transparency, clear direct messaging and training for the security forces and provided tools for the management of contentious situations.

All engagement was done using the Voluntary Principles of Security and Human Rights as a framework. When the company met with security forces, they would review the principles of human rights and the proper and appropriate uses of force. Specifically they would go over the various levels and standards, trigger points and circumstances requiring intervention.

Falcondo felt it was imperative to keep security forces informed throughout the initiation of the shutdown period. It was crucial to note that should a significant conflict occur, the security forces would come on their own accord, regardless of whether they were summoned or not. Falcondo kept security forces informed, and engaged them in intense planning so that, should intervention be necessary, they had agreed to do so in accordance with human rights principles. For example, in addition to relevant training, human rights principles were given to the teams (translated into Spanish).

Security forces were given training to ensure the right force was in place with adequate training and appropriate equipment — forces were equipped for non-lethal control only with shields. Training covered the rules of engagement in relation to human rights so that the forces would become familiar with potential incidences and comfortable with the correct actions to take. An emphasis was placed on joint planning and clarifying lines of responsibility and authority. Specifically, this involved detailing a joint decision-making process and determining at what point forces would be utilized. For example,

a policy was adopted that in no case were firearms to be used inside the Falcondo facilities.

As part of the training, the police riot control team leader, police liaison officer and the Colonel reviewed the “rules of engagement” and were given a terrain familiarization tour of the plant to minimize confusion should they need to enter the site. Evacuation contingencies were also implemented to increase security in residential areas.

Early engagement involved identifying all key stakeholders including Dominican government officials (President, Vice President, Minister of Labour, Minister of Environment and Minister of Energy), Canadian government officials, union leaders, community leaders and the Chief of Police and other public security forces.

Additional initiatives were taken to maintain transparency throughout the suspension when engaging the local security forces. Ernest Mast, former President and General Manager of Falcondo sent a letter to the Chief of Police as a follow-up to several meetings they had. The letter referred specifically to appropriate levels of force throughout the notification period as well as related human rights concerns. In engaging various levels of authority in strategy planning ahead of time, Falcondo anticipated minimizing potential incidences. In documenting their strategy, Falcondo formalized an on-going dialogue with the police and government officials.

#### **(f) Implementing the Plan: No Detail is Too Small to Be Overlooked**

In structuring the layoffs and keeping potential security incidences to a minimum, Falcondo decided to make the layoff notifications on site. This decision was based on the idea that holding the meetings off site may cause further volatility in the community.

On the day of the announcement, before notification was given, the Falcondo team physically checked the off-site security forces to ensure proper equipment was being used as well as answering any questions they had. Management verified that the team had undergone proper training and understood aspects of human rights regarding proper use of force.

Falcondo staff also ensured that the day of layoff notifications was captured via still and video camera to allow for accurate documentation of all events.

## 5. Post-Suspension Mitigation Strategy

### (a) Long-Term Security Initiatives

Falcondo maintained a security focus by incorporating it into day-to-day business functioning. Management implemented a security and safety awareness programme and retooled evacuation plans and training for all staff so they could avoid being victims of crime in the event of public order breakdown.

Perimeter security initiatives were addressed with the Chief of Police, including physical barriers, fencing and surveillance that could minimize the risk of future issues. Part of Falcondo's strategy involved the continued relationship with police to ensure access and influence. This included providing special skills and training to the security force with emphasis on human rights.

### (b) Gaining (and Maintaining) Community Support throughout the Shutdown Process

Community involvement and engagement with all stakeholders is crucial to guarantee Falcondo's long-term future in the Dominican Republic and has always been bedrock to Falcondo's operational strategy. In acknowledging the socioeconomic implications the shutdown would have on the communities, Falcondo implemented a Corporate Social Investment Plan through the Falcondo Foundation designed to play a predominant role in structuring and implementing development programmes to help mitigate the impact on the local economy.

Bonao is home to almost 70% of the Monseñor Nouel population and more than 61% of these people live in urban areas; according to the World Bank and the Inter-American Development Bank 41% live below the poverty line and 8.5% live in extreme poverty conditions. Seventeen per cent of the economically active population is currently unemployed; one of the lowest rates in the country. Thus, Falcondo's shutdown was determined to have the greatest impact in Bonao, particularly in marginalized urban areas. The Foundation placed emphasis on minimizing the economic implications for these areas by implementing a Corporate Social Investment Plan. Falcondo undertook an assessment of what the potential regional economic impacts would be post-shutdown in order to determine the strategy for the Corporate Social Investment plan.

### (c) Corporate Social Investment Plan

In light of the Falcondo Foundation's importance in the local communities and its history of effective community engagement, Xstrata Nickel injected an additional USD 1.6 million of funding into the Foundation. The additional funds are intended to address the destabilizing features of the mine suspension on a medium to long-term basis.

A targeted three-year strategic plan was defined by the Falcondo Foundation to bring relief to affected communities and employees by creating job opportunities and generating income. The shutdown was expected to result in a 75% reduction of wages and benefits that had been the main source of stability in the region. The cumulative impact of the loss of these contributions may create a destabilizing effect on the local region and directly on the quality of life indicators for community members.

The increase in financial support for the Falcondo Foundation would enable Falcondo to work closely with unions, community leaders and development organizations to address these issues. The proposed post-suspension mitigation strategy included a Community Involvement Plan, an Infrastructure Support Plan, Third Party Engagement, Employee and Community Business Initiatives, Training Initiatives for Ex-Employees and Community Members as well as an extensive Communications Plan. Social, economic, environmental and health considerations were also addressed in the plan to include:

- Mitigating the social and economic impact of the shutdown in the communities of Monseñor Nouel and La Vega;
- Creating job opportunities and income generation;
- Identifying and addressing potential risks and outcomes in a timely manner;
- Identifying opportunities to help secure the future of Falcondo;
- Ongoing contribution to the creation of sustainable and viable communities that can function effectively without relying on Falcondo;
- Providing consistent and transparent communication;
- Reducing social unrest and related violent manifestations;
- Strengthening health services and counselling services;
- Partnerships with private and public organizations.

By pushing back the shutdown date by one month, the management team ensured that ample time was made available to develop an effective plan and execute economic appraisals (refer to Timing section for further detail).

#### **(d) Community Involvement Program Focus**

The Falcondo Foundation identified communities where employees lived to determine the direct impact that the layoff would have in these communities. Economic appraisals were undertaken to determine existing living conditions and possible short-term effects.

The Foundation prepared a list of the formal businesses established in Monseñor Nouel through the local Chambers of Commerce and different business associations to determine which ones could be expanded and which ones were likely to be severely affected by the shutdown. The evaluation also included determining the nature of the business, number of employees, main source of financing and their markets. The list was then used as a reference tool for the Community for the Corporate Social Investment Plan details.

The plan was designed to improve general living conditions in rural areas around the plant to facilitate the return of many families that had migrated to Bonaio in search of opportunities.

The team established a committee of community leaders and entrepreneurs to design a sustainable development plan for the province. This committee includes Falcondo Union leaders, local business people, church representatives and local authorities, among others. Focus was also placed on access to funding from both local and international organizations.

To address the mental health and emotional needs of the community after the suspension, the Foundation, in an effort to promote governance and create stability in marginalized urban communities, implemented the Peacemakers Program in conjunction with the Ministry of Education. This programme was designed to help community members become positive leaders and acquire skills for conflict resolution.

Other initiatives included strengthening mental health support programmes and counselling, enhancing parent engagement strategies through effective community outreach and parent education programmes to

reduce violence and drug abuse, and extending the Health Promoters Program to urban marginalized communities while strengthen the core programme.

## **6. Actions and Impacts Post-Suspension**

### **(a) Short-Term**

When the suspension was announced, there were no security or human rights incidents, and employees and their respective communities remained calm, accepting the immediate reality of the situation. The news received intense local coverage and on the day of the lay-offs, Ernest Mast, Arelis Rodriguez and Luis Rosado (Falcondo's Public Relations Director) held a two-hour press conference detailing aspects of the market, the lay-off process and the package being given to the laid off workers.

The union executive members who had been kept up-to-date during the entire decision-making process participated in numerous local talk shows in order to further explain the situation. Further, in cooperation with Falcondo's management, government representatives met with Falcondo employees to offer further explanation of the shutdown and detail the government's economic plan moving forward.

The compensation packages given to the laid-off employees went beyond what was legally required, and the additional services given to employees provided for an optimal lay-off process.

The layoff of approximately 900 employees in a developing country can generally be considered to be a potential flashpoint for violent retaliation. Falcondo's careful planning and preparation, in advance of the announcement resulted in downsizing without incident.

### **(b) Long-Term**

Implementing a business plan that has the potential to significantly alter a community's fabric is a dynamic process; it is particularly difficult when it comes to measuring long-term "success". Unlike the short-term, long-term developments tend to be retrospective and can be influenced by various realities such as global economics, national politics and existing local instability.

At this point, measuring the impact of placing Falcondo under care and maintenance is complicated as indicators are often

lagging, some beyond Falcondo's control, such as the global economic meltdown. To tackle this difficulty, Falcondo has applied business risk management techniques such as scenario analysis and monitoring systems (health, security, school drop-out rate, etc.) through the Foundation where indirect impacts can be mitigated.

Since the mine suspension, the communities have responded positively to the Falcondo Foundation's projects. Increasing numbers of community members have been eager to participate in new grassroots initiatives such as the Greenhouse Project and the Quality of Cacao Project.

Further, the associations that manage the Micro Credit Programs have evaluated the possibility of expanding credits to more communities, taking into consideration the economic crisis. Nonetheless, they have decided to ask for more guarantees and will monitor the loans more closely to ensure the return of these loans and make credit available to the communities.

Another positive sign is that the municipal governments and the Development Commission of Monseñor Nouel have asked the Foundation to provide technical assistance to elaborate a long-term Strategic Development Plan. For the first time in the Dominican Republic's history, they are promoting plebiscites in order to obtain the approval of the majority of the population for the implementation of these plans. These are being rehearsed with support from the Canadian Embassy and the Foundation.

## 7. Lessons Learned

### (a) Early Stakeholder Engagement

There is a clear business case to build relationships with stakeholders before the business "needs" them. Early engagement is a proactive method to build cooperative and constructive relationships without the panic and defensiveness commonly seen in crises situations. Strong stakeholder relationships allow for comprehensive issue management, decreasing and sometimes even eliminating incidences.

"The shutdown process has reaffirmed that taking the time to engage public security forces and making the assumption that they too want to protect community enables you to have quality 'real risk' discussions," said Nehring. "This is crucial for effective prevention work."

Stakeholder engagement is part of Xstrata's Sustainable Development Standards (XSDS). This formal framework for engagement addresses community concerns and needs and is linked to Xstrata's Assurance Processes. As per the XSDS intent:

*"The social impact of our activities, community concerns, needs and the social risks to our operations are identified and addressed through the effective implementation of community relations strategies which uphold and promote human rights and respect cultural considerations and heritage.*

*"Social involvement plans aim to enhance the socio-economic capacity and well-being of the communities associated with the Group's activities, avoiding dependency and contributing to the development of sustainable livelihoods. Plans are established through engagement with communities and relevant organizations and are coordinated between the different levels of the organization and with external governmental or development organizations."*

### (b) Timing

Allowing for ample timing is essential to proper planning and implementation in accordance with human rights principles. "Extending the shutdown date was a strategic decision to ensure proper planning was in place and not rushed," said CEO Ian Pearce. "It was important for us to take adequate time to allow management to thoroughly think through scenarios and prepare properly to handle these difficult situations."

Relying on minimalist plans simply will not equip individuals with the adequate means to handle even a low level of disruption.

### (c) Role of Observers

Organizing internal observers to assist during the shutdown was a non-threatening method to keep the peace and acted as a calming factor in an otherwise chaotic circumstance. Having observers throughout the notification period was similar to using peacekeeping observers in wartime as they are able to instill precautionary principles without the hostility factor.

### (d) Communication

Transparent communication with all affected stakeholders throughout the planning and implementation stages of Falcondo's suspension announcement was critical to effective engagement and developing trustworthy relationships. For example, although not re-

quired, Falcondo informed the union before the actual layoff notifications took place. Government officials and union representatives were also alerted ahead of the announcement. This worked to minimize confusion and misinterpretation that could lead to violent retaliation. It also helped to balance the government's role as protector of the economy through encouraging proactive thinking and solution methodology. For example, early government engagement allowed for the opportunity for government to make changes in the severance packages of laid-off employees during the shutdown, resulting in an easier financial transition for the employees and minimal shock to the local economy.

A further example of the positive benefits resulting from transparent communications throughout the shutdown planning were seen when union executives took it upon themselves to participate in numerous local talk shows to help further explain the challenge and decision making process to the general public.

An intelligence system was also necessary for the timely detection of the start of any event. "Transparent communication helped us to develop key relationships with our Dominican Republic stakeholders," said Dionne. "Keeping government officials and community members informed well ahead and throughout the shutdown process was an effective method in building trust, increasing engagement and gaining perspective."

Quality communication involves the ongoing management and implementation of the VPSHR at the site level. Specifically, management should treat potential incidences as "near misses" that allow for the opportunity to further reinforce VPSHR by building on understanding and training.

### **(e) Financial and Economic Viability of the Business**

The biggest threat facing Falcondo, its team and local stakeholders is the financial and economic viability of this business going forward and the ability of the business to compete on a cost basis during subdued points in the commodity cycle. The financial sustainability and feasibility of the business created the oxygen necessary for all of the other initiatives. In reality, if Falcondo did not have an economic future, the ability to resource the activities and functions referenced would be limited — an issue of resource and funding allocation that

faces all corporations. While working on the sustainability and security of the operations, it is of key importance to focus on value creation and the business as a whole. "Operating in an ethical and safe manner is necessary as a license to operate and is simply good business," said Usmar. "It can also differentiate the 'good' players from the 'bad' and provide preferential access to lucrative future growth opportunities in some instances."

## **8. Would the Company Do Anything Differently?**

### **Long-term Security Planning**

Setting up long-term security indicators as early as possible is crucial when involving communities on a proactive basis. This should be done collaboratively, allowing communities to participate in identifying and articulating baseline security and human rights indicators (both within the communities and at the workplace).

Early consultation with employees and community members is important to effective security planning. This reinforces that it is a "we" and not an "us versus them" issue and creates a constructive feedback mechanism. Long-term security planning avoids last minute security and human rights assessments that can leave room for uncertainty regarding high-risk situations. Community identified security indicators allow for robust engagement opportunities and the relevant community perspective.

Good practice for responsible companies includes placing increased focus on third party/NGO engagement. There is a clear business case for establishing relationships with NGOs that maximizes engagement, learning exchange and transparency.

## **9. Conclusion**

*"Falcondo took it from the perspective of wanting to do the right thing by their employees and took a bit of risk doing it the 'right' way. I believe they were truly concerned with handling things correctly — this played a major role in their planning."*

— Gary Macdonald, Monkey Forest Consulting

Effective security is an aggregate of robust community engagement and physical security. Operating according to security and human rights principles helps to manage risk, emphasizing the business case.

The key to embedding human rights principles into business practice and preventing incidents before, during and after the shutdown period includes comprehensive stakeholder engagement, solid planning, effective communication, adequate supervision and an effective response plan.

Particularly in the context of a temporary mine and metallurgical operation suspension, supporting and respecting human rights throughout a layoff scenario is crucial to positioning for a successful operations restart. Simply put, abiding by Global Compact Principle One enables for company self preservation and positioning for long-term success, both for communities and the business.

“Mine sites are not sustainable over the long-term due to the finite nature of the resource,” said Nehring. “However, if done properly, the value of the net impact can be.”

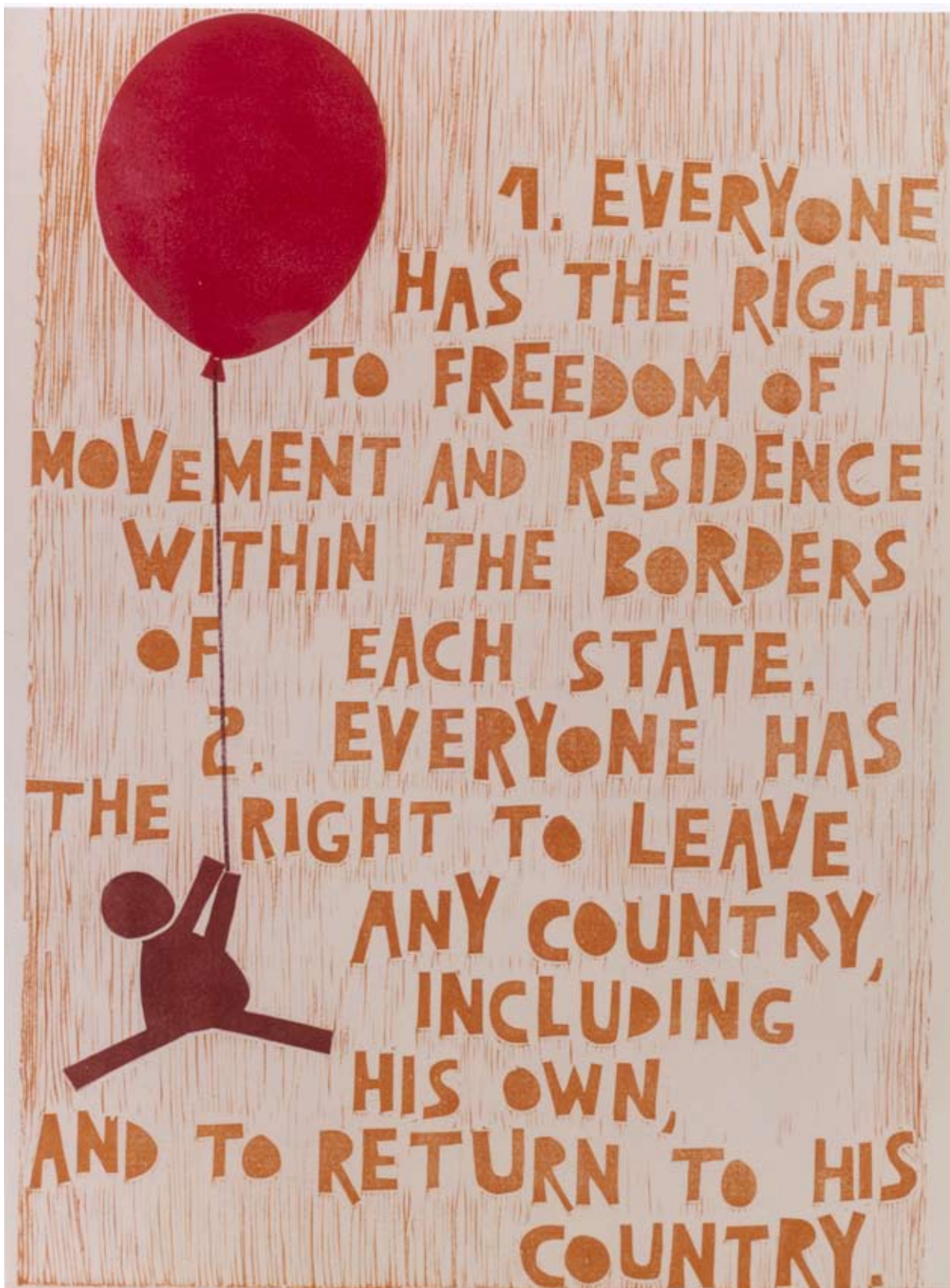
dation has produced significant results, recognized and valued by a wide range of participants in this process within the school community, the regional community, the Teachers’ Association and the Ministry of Education.”

## Appendix

- Voluntary Principles on Security and Human Rights (<http://www.voluntaryprinciples.org/principles/index.php>)
- Xstrata’s Sustainable Development Standards ([http://www.xstrata.com/assets/pdf/x\\_sus\\_sdstandards2008.en.pdf](http://www.xstrata.com/assets/pdf/x_sus_sdstandards2008.en.pdf))
- Xstrata’s Sustainable Development Policies ([http://www.xstrata.com/assets/pdf/x\\_sus\\_sdpolicy2008.en.pdf](http://www.xstrata.com/assets/pdf/x_sus_sdpolicy2008.en.pdf))

## End Notes.

1. Before the introduction of the Foundation’s Greenhouse Project, the Ministry of Agricultural was promoting that greenhouses were only productive if built 500 meters above sea level. Through the Foundation’s work, it was demonstrated that, if appropriately managed, excellent results could be achieved in lower altitudes. After the success of the projects Peñaló and Los Jengibres, producing at low altitudes has become a viable production alternative for farmers that have limited land access. It has also become a new production system for large scale vegetable producers in the region.
2. The central purpose of the evaluation was to (1) measure the achievements of the Foundation in terms of its objectives and (2) identify key elements of the sponsorship model in order to reproduce it in other areas of the Dominican Republic and, potentially, in other countries. The evaluation report emphasizes that “the Program of Sponsorship of Schools of the Falcondo Foun-



1. EVERYONE HAS THE RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE WITHIN THE BORDERS OF EACH STATE.

2. EVERYONE HAS THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY.

# HEALTH AND SAFETY AT A FERTILIZER COMPANY IN PAKISTAN A Case Study of Engro Chemical\*

By Sabina Appelt\*\*

## Human rights issues addressed

- Occupational health and safety

## Human rights management practices discussed

- Strategy
- Processes and procedures
- Training

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

- DuPont Best Practices
- ISO-14001
- OSHAS-18000
- SA-8000

## Abstract

This case study focuses on the efforts undertaken by Engro, a chemical manufacturing and marketing corporation, to improve occupational health and safety standards in their core business practice. The rights to health and the enjoyment of just and favourable conditions of work — including safe and healthy working conditions — are recognized by international human rights treaties. Thus, efforts to implement these rights directly contribute to the advancement of Global Compact Principle 1: businesses should support and respect the protection of internationally proclaimed human rights. This case study examines the implementation of new health and safety standards (the so-called DuPont Best Practices) aimed at improving the health and safety of Engro's employees. Particular focus will be on the implementation of the new standards into the day-to-day behaviour of employees.

## 1. Company Profile

Engro Chemical Pakistan Limited (Engro) is based in Pakistan and primarily focuses on the manufacturing and marketing of fertilizer. Its urea fertilizer manufacturing site is situated in Daharki in the province of Sindh. Engro was established when Exxon (Esso until 1978) divested its business in 1991. The employees of Exxon Chemical Pakistan Limited decided to buy out Exxon's share and renamed it Engro, which stands for "Energy for Growth". At the time of writing, Engro is expanding its production capacity of urea through the creation of a new plant in Daharki which will be the world's biggest single train ammonia-urea complex upon completion. The company expects to reach a capacity of around 2.3 MMET Urea per annum by mid-2010. Engro has 130 management employees

and 350 non-management staff at the plant in Daharki. These numbers are expected to increase to 195 management and 555 non-management before new projects commissioning at the enlarged plant. In addition, Engro employs 72 contractors and around 5000 contract employees on a daily basis. The latter number will decrease to around 1000-1200 as the plant extension nears completion.

The commitment to health and safety is an explicit part of the core values stated in Engro's corporate responsibility report.<sup>1</sup> A corporate health, safety and environment (HSE) committee has been in place since 2004. This committee has been headed by the company president, Asad Umar, as the DuPont assessment suggested that a commitment to safety, health and environment would have to come from the very top of the company. There is also a section dedicated to the safety of the manufacturing site, headed by a safety unit manager and staffed with a senior safety engineer, a process safety engineer, a safety supervisor and a safety technician. These five people are exclusively employed to improve Engro's safety and report to the health, safety and environment manager. Safe Operating Committees at the divisional level entrench commitment to these values throughout the hierarchy of Engro (see Appendix 1 for further information on safety organization). Since 2004, Engro has won awards by the National Forum for Environment and Health on an annual basis.<sup>2</sup>

\*NB: Appendices and figures are available for this case study in the online version, found here: [http://www.unglobalcompact.org/Issues/human\\_rights/Business\\_Practice.html](http://www.unglobalcompact.org/Issues/human_rights/Business_Practice.html).

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Engro has been a participant of the Global Compact since June 2006 and thus committed itself under Principle 1 to support and respect the protection of internationally proclaimed human rights. The rights to health and the enjoyment of just and favourable conditions of work are part of these rights as they are recognized in a number of international human rights treaties.<sup>3</sup> The right to work explicitly includes, among other things, the right to safe and healthy working conditions, and so Engro's efforts to improve the health and safety standards at their plant are fully in line with a commitment to support and respect internationally proclaimed human rights.

## 2. Improving Health and Safety – From Initial Audit to Implementation

In 2000, Engro decided to update its health and safety standards. The standards in place at Engro at the time dated from the 1980s. They had been adopted by Exxon after the disaster at the Union Carbide pesticide plant in the Indian city of Bhopal. The disaster was later found to have been caused by substandard safety procedures. Even after Engro became independent in 1991, until 1998, Exxon experts were called in every two years to audit Engro's health and safety procedures in line with Exxon standards.

The decision in 2000 to bring Engro's health and safety standards up to international standards was motivated by the perception that both existing standards at the company and laws and regulations in Pakistan were inadequate to prevent injuries or ensure employee health and safety at the Engro plant. In particular, existing standards as well as local laws were identified as lacking the behavioural aspect on safety. As the company believes that it will take decades until local laws and regulations will match international best practices, the decision was taken to go beyond local laws and consult international sources.

The main hazards employees are exposed to at Engro are the risks of large-scale ammonia gas or chlorine gas release, as well as fires and explosions caused by hydrogen handling at the ammonia plant. The main type of injuries workers experienced were cuts and bruises as well as, to a lesser degree, fractures and burns. It was hoped that these injuries could be reduced through the imple-

mentation of internationally recognized best practices. In the same year, then president of the company Zafar Ahmad Khan decided to have the existing safety standards examined by the company DuPont. A first audit was carried out by DuPont in which the company practices were benchmarked with DuPont's best practices.

### (a) Initial Findings

The first report noted that particular problems were in the area of behaviour safety (relating to the day-to-day behaviour of employees), as Engro's existing safety standards mainly focused on process safety (i.e. technology and equipment related aspects of safety). Both behaviour and process safety were found to be at the lower end of DuPont's best practices. This initial report has been described by Engro management as an "eye opener". In the following months, the safety professionals (those individuals in charge of safety inside the company) presented the findings to the top management in order to achieve approval to align Engro with the health and safety standards developed by DuPont. Approval of the management was given in 2003 and an audit conducted to establish the baseline.

### (b) Changing Processes – Incident Analysis and Leading Indicators

Incident analysis has been an important part of improving process safety (i.e. technology and equipment-related aspects of safety). Initially, safety incidents are declared and classified according to severity. For severe incidents, team investigations are carried out. The investigation protocol then covers the identification of the primary or root cause of the incident and analyses which Process Safety Risk Management (PSRM) element was violated. In order to avoid recurrence of the incident, specific recommendations are generated, and the quality of the incident report is assessed by the Incident Reports Review Committee (IRRC). This committee is headed by departmental managers, and the review takes place on a quarter-yearly basis. Twice a year, a detailed incident analysis is carried out by the safety section and discussed in Safe Operations Committee meetings headed by the general manager of the plant. The general manager then reports back to the Vice-President of the company.

Another important concept introduced by DuPont was the concept of "leading indica-

tors” – rather than just generating recommendations and reports after the occurrence of accidents (“lagging indicators”), it is considered crucial for an effective safety strategy to also pro-actively identify risks and develop solutions to minimize risks before accidents happen. In other words, a forward, rather than a backward-looking way to develop safety leading indicators is recommended.

In the process of identifying leading indicators, Engro management, among others, benefited from reading the Baker panel report written to investigate the safety culture and management systems at BP North America in the aftermath of the Texas City Refinery explosion on 23 March 2005. The Baker panel report was released on 16 January 2007, and the principal finding was that BP management had not sufficiently distinguished between occupational (behavioural) safety and process safety. Engro management found this report very helpful in developing their leading indicators in particular in the area of process safety.

### **(c) Changing Behaviour – Towards Greater Independence and Responsibility**

The main challenge in implementing the new standards has concerned the training of employees as the day-to-day behaviour of employees has had to be altered fundamentally in some areas. One main aspect has been the introduction of self-audit: DuPont introduced the idea that individual workers should be encouraged to consciously carry out audits of the safety of their own work on a day-to-day basis. Self-audit is based on the idea that in order to effectively improve safety, workers have to be encouraged to take greater responsibility for their own behaviour. In general, DuPont behavioural standards aim to achieve independence and ultimately interdependence of workers. In other words, the aim is to first achieve that workers do not have to be monitored continuously to ensure safety procedures are followed (independence). The next stage will then be to encourage workers not only to take responsibility for their own actions but also to watch out for and help co-workers as needed (interdependence). The underlying rationale of the DuPont model is that it will lead to increased efficiency of safety standards if workers are not only prevented from doing the wrong thing, but that they actively seek to do the right thing and thus positively contribute to safety.

### **(d) Setting Objectives**

To motivate employees to take such increased responsibility, safety objectives or goals are set for each employee, from management to non-management. These objectives vary depending on the position of the employee inside the company. So for instance, managers are given a target injury rate to achieve in their division, whilst individual workers are asked to develop action plans on how to achieve this target. On an annual basis, a review of the objectives takes place, and the HSE performance of each employee is included in their annual appraisal. Safety performance is thus a factor taken into account when promotions (or dismissals) are decided upon. The annual appraisals of non-management employees are based on reports by their supervising managers.

There are also reward and recognition programmes which are based upon HSE performance. Employees may, for instance, be awarded certificates or receive material safety rewards like watches. In addition, “emergency squad awards” have recently been introduced (currently in the range of 2500-3000 rupees).

### **(e) Training**

In order to train employees in improved process and behaviour safety, DuPont experts carry out classroom teaching for those employees considered as critical mass (e.g. managers, unit managers, section heads), who have the role of imparting the training down the line. Classroom trainings are also organized for newcomers (as soon as a sizeable number of newcomers has accumulated). Furthermore, Engro runs a programme for the safety training of employees, the most important component of which is the so-called “D-level committee” (i.e. a committee at shop floor level), which meets once a week for two hours (including contractors and day workers). In each session, discussions on mandatory safety topics and any HSE related issues are held.

There is a complete programme on the safety management of contractors, and the PSRM ratings as well as the Personnel Safety and Management ratings specifically include the safety of contractors (see Appendices 5 and 6). As for other employees, the contracts of contractors include reward and penalty clauses, and the rating of contractors encompasses their safety performance. So Engro is committed to having contractor safety on a par with its company safety, and workers and

contractors of all levels of the company belong to D-level safety committees and thus play a part in site safety.

Per year, approximately 18,000 man-hours are invested in such training. The HSE committee headed by the company president Asad Umar meets each quarter to develop HSE strategies and set targets for future performance. All managers and line organization personnel have to do two management safety audits per month in which they visit the plant, meet workers and establish contact with them to discuss unsafe behaviour and situations at the shop floor level. These internal audits are not announced beforehand and are based on training done by DuPont. In addition to these safety audits, company executives also sporadically carry out safety visits.

#### (f) External Monitoring

Apart from the DuPont external audits, which take place every two years, various other forms of external safety monitoring take place in addition to Engro's internal monitoring. On an annual basis, the Government of Pakistan Ministry of Industries and Production checks the safety of the boilers. Twice a year (lasting for around two to three days each time), the site is assessed for compliance with ISO-9000, ISO-14001, OSHAS-18000 and SA-8000 standards by auditors from SGS Pakistan. The insurance auditor of Marsh International examines the plant with regard to stringent safety criteria once every three years. In 2009, the British Safety Council was also asked to audit the environment management system against a 5-star audit programme.<sup>4</sup>

### 3. Analyses

The reason Engro decided to align their systems with the DuPont management system was that this particular system is known among petrochemical companies as the "gold standard" and was perceived as the most efficient system available in order to reduce injury. As DuPont generally expects a transition period of four to five years to be necessary for behavioural patterns of employees to be changed effectively, no conclusive numbers are available yet to testify to a reduction in injury numbers. However, serious injury rates in 2007 and 2008 were lower than in 2005 and 2006 (see Appendix 3) — they were reduced from 14 injuries in 2005 and

17 injuries in 2006 (including LWI) to seven injuries in 2007 and four injuries in 2008 (including LWI). The fact that the number of first aid injuries went up during that period is considered as a positive development as it means that injuries are captured at a first aid stage. Compliance with behavioural management safety audits increased from 57% in early 2006 to between 98-100% in 2008/2009 (see Appendix 2). Behavioural safety audit compliance went up from 53% in 2006 to 95% in 2009 (see Appendix 4). DuPont audits have also found a general improvement in all areas (e.g. management commitment, safety policy, supportive safety personnel, line organization, progressive motivation) since 2003. The overall average of performance according to DuPont ratings has risen from 1.4 (out of 5) in 2003 to 3.1 (out of 5) in 2008 (see Appendix 6). Process safety and risk management ratings have gone up from an average of 2.0 in 2003 to an average of ~3.9 (4.0 being "excellent") in 2009 (see Appendix 5).

Engro management has further reported a visible change in the factory climate and reported that employees seem to generally take health and safety more seriously than before 2003. Engro has affirmed its commitment to further train employees and monitor changes and hopes to be able to report improved numbers in the coming years.

### 4. Lessons Learned and Challenges Ahead

The implementation of improved working conditions has not had any adverse financial effects — on the contrary, Engro has continued to increase profits and achieve growth for stakeholders (see Appendix 7). Presently, Engro does not have any data available on the exact financial benefits of increased safety; however, Engro management has affirmed their conviction that the cost of accident is very high and that increased safety pays off not only for employees but for the company as a whole. Engro is planning to do further work to quantify these benefits in the future.

The main lesson learned throughout the alignment with the new standards has been that a positive approach to safety which engages workers and teaches them to take responsibility for their actions is more effective than mere "policing" of employee behaviour. Engro management have said that they experienced the first audits by an external

company as “eye opening” and found them to give valuable new perspectives on problem areas. Both managerial and non-managerial staff have reported that the introduction of improved safety standards has not only had a positive impact on their job but that they have shared the learning benefits with their spouses and families. The emphasis on safety finds expression in the following slogans which were submitted by employees as part of a slogan competition organized by Engro in 2009.<sup>5</sup> This slogan competition takes place on an annual basis and encourages employees to submit slogans on issues related to safety and the environment. Even though it was established before the introduction of DuPont best practices, it has since gained in importance and prominence in the company.

An important lesson has been that behaviour has to be changed over the medium and long run, as entrenched unsafe behaviour will not be eradicated over night. However, it is believed that through education and training, a thorough change in the work culture – such as to increase individual responsibility – can be achieved and will be sustainable in the long run. Engro further commits itself to continuously re-assess performance and plans to raise standards over time.

The immediate challenges ahead perceived by Engro are that the safety department should play less and less of a role in monitoring as the line organization should take more of a lead. This will be necessary to move to the next stage as described above, the stage of “interdependence” where employees take up responsibility not only for their own behaviour but also for others around them. The culture of responsibility has to “trickle down” and employees need to further internalize the new standards. In order to do this, Engro plans to continue weekly classroom teaching as well as monitoring developments of standards globally to continually keep up to date with improvements. Employees feel that networking and benchmarking with the best practices across the world is the most efficient way to continuously improve safety, and there is a strong conviction that it will be possible to completely prevent all injuries in the future.

Engro considers the changes undertaken at its plant as replicable by other companies. A recommendation to other companies planning to improve their health and safety procedures would be to undertake plant visits to

other companies which are already operating at higher standards as this may help managers to better understand new processes more quickly. This may reduce the period it takes to implement new standards.

### End Notes.

1. [http://www.engro.com/about\\_engro/core\\_values/index.php](http://www.engro.com/about_engro/core_values/index.php). In this report Engro also affirms its commitment to environmental protection which will not be focus of this case study however.
2. NFEH 1st award 30 June 2004; NFEH 2nd award 30 June 2005; NFEH 3rd award 25 July 2006; NFEH 4th award 4 July 2007; NFEH 5th award 2 July 2008; NFEH 6th award 9 July 2009. For further information on the National Forum for Environment and Health, see <http://www.nfeh.org>.
3. See, for instance, Universal Declaration of Human Rights Articles 23 and 25(1), International Covenant on Economic, Social and Cultural Rights Articles 7 (b) and 12.
4. For more information, see <http://www.britsafe.org/audit/index.aspx>.
5. Examples of some of the submitted slogans are available in the online version of this case study, found here: [http://www.unglobalcompact.org/Issues/human\\_rights/Business\\_Practice.html](http://www.unglobalcompact.org/Issues/human_rights/Business_Practice.html).



1) EVERYONE  
HAS THE RIGHT TO  
FREEDOM OF PEACEFUL  
ASSEMBLY AND  
ASSOCIATION.

2) NO ONE MAY BE  
COMPELLED TO BELONG  
TO AN ASSOCIATION

## Table of human rights issues addressed

Human rights issues addressed	Case Study
Child labour	ASN, Cadbury, OMV
Complicity	OMV
Corruption and bribery	ASN
Diversity and/or non-discrimination in employment	ASN, Cadbury, Lexmark, OMV
Forced labour	ASN, Cadbury, OMV
Freedom of association/collective bargaining	OMV
Freedom of information	ASN
Human rights and environment	ASN, Cadbury, Endesa
Human rights, sexual orientation and gender identity	Lexmark
Living wage	Cadbury
Occupational health and safety	Cadbury, Engro
Resettlement and compensation of affected communities	OMV
Right to education	OMV, Xstrata
Right to food	Xstrata
Right to health	ASN, Endesa, Xstrata
Security and conflict	Xstrata
Social investment and community development	ASN, Cadbury, Lexmark, Xstrata
Social security and social insurance	OMV
Sphere of influence	ASN, Ford, OMV
Standard of living	ASN, Cadbury, Endesa, OMV
Supply chain management	Cadbury, Ford, OMV
Torture	ASN
War crimes	ASN
Weapons	ASN
Women's and children's rights	Xstrata
Working conditions	Cadbury, Ford

## Table of human rights management practices discussed

Human rights management practices discussed	Case Study
Getting Started	Cadbury, Ford, Lexmark, OMV
Strategy	ASN, Cadbury, Endesa, Engro, Ford, OMV, Xstrata
Policy	ASN, Cadbury, Endesa, Ford, Lexmark, OMV
Processes and procedures	ASN, Cadbury, Endesa, Engro, Ford, Lexmark, OMV, Xstrata
Communications	ASN, Cadbury, Endesa, Ford, Lexmark, OMV, Xstrata
Training	Cadbury, Engro, Ford, Lexmark, OMV, Xstrata
Measuring impact and auditing	Cadbury, Ford, Lexmark, OMV
Reporting	Cadbury, Ford, OMV

## Table of human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)	Case Study
Automotive Industry Action Group (AIAG)	Ford
Business Leaders Initiative on Human Rights Matrix	OMV
Danish Institute for Human Rights Quick Check	OMV
DuPont Best Practices	Engro
Electronic Industry Code of Conduct	Lexmark
Electronics Industry Citizenship Coalition	Lexmark
Ethical Trading Initiative	Lexmark
European Convention on Human Rights	ASN
Extractive Industries Transparency Initiative	OMV
Global Reporting Initiative	OMV
Global Sullivan Principles of Social Responsibility	Ford
Harkin-Engel Protocol	Cadbury
HRC Corporate Equality Index	Lexmark
Human Rights Translated: A Business Reference Guide	Cadbury
ILO conventions and standards	Cadbury
ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	Ford
International Cocoa Initiative	Cadbury
International Covenant on Economic, Social and Cultural Rights	Lexmark
OSHAS-18000	Engro
Millennium Development Goals	Endesa, OMV
OECD Guidelines for Multinational Enterprises	Cadbury, Ford
Reports by the SRSG on Business and Human Rights	Cadbury
SA-8000	Engro
Social Accountability International	Lexmark
Standards of the Fair Labour Association and International Metalworkers' Federation	Ford
UN Norms on the Responsibilities of Transnational Corporations and Other Business Companies with Regards to Human Rights	ASN
Universal Declaration of Human Rights	ASN, Cadbury, Endesa, Ford, Lexmark
Voluntary Principles on Security and Human Rights	Xstrata, OMV



# The Ten Principles of the United Nations Global Compact

## HUMAN RIGHTS

- Principle 1 Businesses should support and respect the protection of internationally proclaimed human rights; and  
Principle 2 make sure that they are not complicit in human rights abuses.

## LABOUR

- Principle 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;  
Principle 4 the elimination of all forms of forced and compulsory labour;  
Principle 5 the effective abolition of child labour; and  
Principle 6 the elimination of discrimination in respect of employment and occupation.

## ENVIRONMENT

- Principle 7 Businesses are asked to support a precautionary approach to environmental challenges;  
Principle 8 undertake initiatives to promote greater environmental responsibility; and  
Principle 9 encourage the development and diffusion of environmentally friendly technologies.

## ANTI-CORRUPTION

- Principle 10 Businesses should work against corruption in all its forms, including extortion and bribery.

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ISBN 978-92-1-104598-7



Printed at the United Nations, New York