

Doughty Centre



Corporate Responsibility

Cranfield
UNIVERSITY
School of Management



Teaching Business and Human Rights:
A teaching module for business school tutors
by Chris Marsden

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FOREWORD BY PROFESSOR DAVID GRAYSON, DIRECTOR OF THE DOUGHTY CENTRE FOR CORPORATE RESPONSIBILITY AND JOHN MORRISON, EXECUTIVE DIRECTOR OF THE INSTITUTE FOR HUMAN RIGHTS AND BUSINESS

Multi-billion dollar investments by global mining companies derailed by community protests over perceived threats to traditional water rights. Debates about whether international companies should invest in Burma (Myanmar). Controversy surrounding how communications technology companies should act when ordered by authoritarian governments to hand over customer data or restrict services. Nowadays, businesses across the world are confronted with a growing number of human rights issues they cannot ignore.

Business school students need to understand what responsibilities businesses have when it comes to human rights. Yet the emerging Business & Human Rights field is not yet widely taught in the world's 13,000+ business schools. This teaching resource, a joint initiative of the Doughty Centre and the Institute for Human Rights and Business, is intended to help equip faculty. It is written by Chris Marsden, who is affiliated with both our organisations, and draws on Chris's experience both as a guest lecturer in international business schools and his work as a campaigner for business and human rights.

This teaching pack is designed to give business school faculty sufficient material and teaching resources to enable non-specialists to introduce the subject. The brief to Chris was to design a module that could be taught in just two seventy-minute classes. After initial protests that the subject requires much more time, Chris – as always – delivered on his brief. Ideally, of course, there will be more time for discussion of these critical issues. At various points in the pack we highlight where additional material could be introduced if more time were available or how existing materials may be presented in a less rushed way.

We hope this introduction to the subject will encourage more schools and faculty members to include business and human rights issues within their courses – and preferably as part of core (required) classes. We also hope this teaching pack will be the catalyst for more (formal) teaching cases exploring different aspects of business and human rights – and even the establishment of a category for “best teaching case on business and human rights” as part of one or more of the annual, international case-writing competitions. Whilst written primarily for business schools, we would also like to see the material taken up and used in Schools of Public Policy. Meantime, our thanks to Chris Marsden for this valuable resource and also to those who have commented on earlier drafts, especially Scott Jerbi.

David Grayson

John Morrison

Teaching Method

It is assumed that this module is being taught as part of a broader MBA course on subjects such as globalisation, business ethics, corporate social responsibility or sustainability. It is also assumed that some of the students taking the course will not have previously been introduced to the debate about the evolving role of business in society, particularly about corporate involvement in the governance of issues that were previously thought to be the preserve of governments. It is designed to be taught in just two 70 minute sessions. It should, however, be noted that this is a very short time to cover both the introduction to this debate and to provide students with the basics of what they need to know and understand about the responsibility of business with regard to human rights.

The teaching method is designed for a traditional MBA class with a well informed but non-specialist tutor who will provide the usual mix of lecture and discussion as interventions from the students occur, with the occasional video or audio clip to provide further stimulus. In addition, a number of case vignettes are provided for ‘buzz group’ discussion. These are informal groups of two to four people who are sitting close together, thereby requiring minimum movement. The buzz groups should be allowed no more than about three minutes for discussion on each case, before a different group each time presents their thoughts briefly to the class, leading to a wider class discussion. Each case vignette should last about six minutes in total. Obviously, these timings can be extended if the teacher has more time available overall.

The teaching notes below are a commentary on the subject matter of the module. The accompanying powerpoint slides are aligned with this commentary and are designed to provide tutors with speaking notes and students with notes of the key points covered. It is suggested that the slides are printed and distributed beforehand so that students have them in front of them in the class. The timings suggested below are cumulative and very approximate. It is understood that MBA students often provoke valuable debate and it is worth allowing such discussion freedom to develop for a time, which can render any strict timetable unmanageable. The accompanying slides have been designed such that if a tutor must cover the material quickly, they do provide the basic learning points and can be followed up in the students’ own time by using the references given at the end of the teaching note.

Suggested class outline: Total time 140 minutes.

Module learning objectives

0-2 mins

Slide 1

Main aim: To give students the essentials of what they need to know & understand about Business and Human Rights.

Specifically to give them:

1. Awareness of business impact on human rights, which often extend beyond more commonly understood corporate responsibility or sustainability impacts.
2. The rationale for human rights’ impacts being part of a company director’s responsibility.
3. An appreciation of the implications of this responsibility.

4. Knowledge of international human rights standards and developments in this field relevant to business.
5. Knowledge of the main strategic & management issues for companies, including legal risks regarding human rights.
6. Follow-up information sources.

Having presented these objectives, it is suggested that students are given a case vignette to get them thinking about some of the issues involved. The following is suggested:

3-10 mins

Slide 2

A company plans to move its components manufacturing operations from its home (rich) country to a 'poor' country, where the government is negligent in its protection of the human rights of its citizens. The company is attracted by lower labour costs and lower employment, environmental and health & safety standards.

Assignment: You are with a strategic management consultancy invited in to advise on risks of relocating overseas. What due diligence or risk analysis should you advise the company to do and what issues should you raise with them?

Avoid trying to teach the whole module around this one case but encourage students to consider the following issues:

1. Is it legitimate for a company to take advantage of lower labour costs by moving its operations to a country with cheaper labour?
2. What should be its attitude to wage levels, working hours and employment of children?
3. Should companies accept different health and safety standards in different parts of the world depending on local regulations and norms?
4. What responsibility does a company have towards its employees in one country made redundant by the move to another country?

It is recommended that the tutor simply provokes argument at this stage rather than intervening with 'answers', which are better left until later in the module.

Introductory Debate: What is a company for?

11-17mins

All of us have our own ways of introducing the topics we teach. However, when it comes to corporate responsibility, and more specifically business and human rights, there are two fundamental questions, which students need to have considered before they can begin to explore the issues involved.

(See slide 3) The first is the question: What is the purpose of a company? What is a company for? When questioned many students will still use the traditional business school response that it is to maximise value for its owners, that is to maximise a combination of rising stock value and dividend income.

The second question is to whom and for what are a company and its managers responsible? Again, if the traditional answer is made to the first, then the logical answer to the second question is that the managers of a company are agents for and responsible to its owners and for delivering whatever the owners' objectives might be. These are presumed to be primarily financial. The only debate might be over the time period: short- or long-term

shareholder value. Given the bonus contracts of senior executives, quarterly financial performance reporting and pressures from asset managers in recent years, that time period has become progressively shorter.

It well may be that this commonly held attitude has already been challenged earlier in the students' programme. In which case students will be aware of the growing interest in corporate responsibility, ethical trade, sustainability, etc. and increasingly common views that the purpose of a company, if it is to have long-term legitimacy in the eyes of society as a whole, is to create value for a wide range of stakeholders. These include, of course shareholders, but also employees, customers and communities affected by the company's operations. That means that if a company's operations have adverse impact on any stakeholders, which for any reason is not adequately compensated for by tax or regulation, a company may assume some responsibility for addressing the issue.

So the question 'what is a company responsible for?' becomes one of governance, that is, to what extent is it a company's business to get involved in the direction and management of public interest issues? Where public interest issues are inadequately 'governed' by the usual authorities, companies which impact such issues, have to decide to what extent, if any, they want to get involved in their 'governance'. As very few, if any, countries are governed such that the human rights of all its citizens are fully protected and in many cases are not protected at all, a company will often be involved in issues concerning their impact on human rights whether they like it or not. For example a government may have labour laws in place consistent with international standards but inadequate capacity or will to enforce them. What does a company do in such a case? – choose to violate the law in its workplace practices knowing that it is unlikely to face consequences or take responsibility for ensuring that labour rights are protected according to international law. What are the costs and benefits of choosing the second option? Either way it is a governance decision: what responsibility does a company accept for its social, environmental, and economic impacts? This is likely to be subject to a variety of internal and external pressures.

Slide 4 Business case for managing human rights impact

18-30mins

Class discussion and inputs. Teachers may wish to begin this segment by showing a 4-minute interview with Prof John Ruggie, Kennedy School of Government, Harvard University¹ see <http://www.youtube.com/watch?v=ZLnF4qIL9Ik&feature=related>) and then elicit debate; or seek initial ideas from students about the business case, and then show the film.

The pressures discussed in the video could come from any combinations of the following:

1. Market opportunities
2. Reputation or brand risk analysis
3. Social licence to operate; keeping ahead of the game in terms of regulation
4. Successful NGO campaigns against the company or competitor companies
5. Pressure from the increasingly influential responsible investment lobby
6. Internal staff attitudes and concern regarding motivation, recruitment and retention

¹From 2005-2011 Ruggie served as the United Nations Secretary-General's Special Representative for Business and Human Rights. In that capacity, he produced the UN Guiding Principles on Business and Human Rights. This soft-law instrument was "endorsed" unanimously by the UN Human Rights Council. Its core provisions on the corporate responsibility to respect human rights were also incorporated into a new human rights chapter in the OECD Guidelines for Multinational Enterprises, ISO 26000, the new Sustainability Policy of the International Finance Corporation, and the European Commission's new Corporate Social Responsibility Strategy. The Guiding Principles also enjoyed the strong support of international businesses and civil society organizations. As a result, the international community has reached unprecedented convergence on normative standards for the human rights conduct of corporations

7. Leadership by enlightened senior management with a long term sustainable business model in view

Market opportunities have been famously exploited by companies such as the Body Shop, Ben and Jerry's ice cream and innocent drinks, each of which made sustainability the major plank of their marketing. Marks and Spencer with its 'Plan A' and Unilever with their Sustainable Living Plan are recent examples of major companies committing themselves to this end of the market.

Analysing the potential risks to reputation of environmental and social impacts of investments and supplier contracts is an increasingly common ingredient of mainstream business risk analysis, especially for companies with well known brands and high street profile. However, companies also need to consider reputation risks with other stakeholders, such as investors, joint-venture partners, employees and also with governments of countries where they might want to do business in the future. Social licence to operate is particularly important for extractive companies, which have little option as to where they invest and where adverse business impacts on indigenous communities are most likely. Having a strategy of keeping ahead of the game by leading good practice and being able to shape policy in collaboration with government and other agencies or holding back, trying to keep your head down and waiting for others to lead and influence regulation is a key decision for such companies. The 'keeping your head down' option is becoming much more risky with modern communications and increased sophistication of campaigning NGOs.

The Socially Responsible Investment (SRI) movement now makes up about 15% of the market and is growing. Even traditional (non SRI) funds managers are increasingly being asked questions about good governance and sustainability issues as these are becoming more significant risk factors affecting financial performance. The higher profile given to managing business impact on human rights by the work of the Special Representative of the UN Secretary General, John Ruggie (see below for further details) has raised public expectations and the potential downside risk for companies implicated in the abuse of human rights.

Fundamentally, the case for respecting human rights rests on the conviction that respecting the inherent dignity and equal rights of all people is expected in ethical or moral terms. Few company directors or their employees would consciously make decisions which, for instance, threatened to harm or even kill people impacted by their business. Nevertheless decisions made by business leaders, even if taken without intention to cause harm, can have negative impacts on the rights of individuals and communities. When such decisions come to light, they may cause considerable legal, financial or reputational damage, to say nothing of the damage to the morale of many people working for the company and its ability to attract and retain new staff. A small but growing number of companies have developed human rights policies and implementation strategies, and are involved in efforts to integrate these policies throughout their organisations. As preparation for the class or as follow-up, students might be encouraged to look at company web sites to see what they have to say about human rights. Examples include Novo Nordisk, GSK, Shell, Anglo American, Marks & Spencer, Vodafone among many others.

Each company will have a unique 'business case' for the extent to which it engages with human rights issues, depending on its product, service, operating externalities, areas of operation and value chain. A question which can be put to a student who is still sceptical of

this rationale is ‘if you had the opportunity to make profit at the expense of someone’s or a group of people’s human rights would you do so?’ If the answer is still ‘yes’, encourage others in the class to put alternative views.

Refer to first part of Bob Corcoran recording, vice president of corporate citizenship for General Electric and president of the GE Foundation, description of why GE manages Human Rights.

Having established that human rights are a proper concern for business, the module then provides basic information, reinforced by discussion opportunities, to give students a minimum knowledge base on the subject. The following areas are covered:

1. What are Human Rights?
2. What is expected of company behaviour regarding human rights due diligence?
3. What are the implications of international standards in this area for company management?

Slides 5 – 13 are mainly information-giving; and are, therefore, suited to lecture format with questions/answers as the teacher feels appropriate.

31-45mins

1. What are Human Rights?

According to the United Nations, human rights are defined as:

“rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination.”

Human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights of individuals or groups.

(See slide 5) International human rights law derives from the Universal Declaration of Human Rights (UDHR) agreed by the United Nations in 1948. This was reinforced in 1966 by two international covenants on civil and political rights and economic, social and cultural rights. In addition there are a number of Core Conventions agreed by the International Labour Organisation (ILO) specifically relating to the workplace.

International human rights treaties were adopted by states and refer primarily to state obligations. However, in its preamble, the UDHR also calls on ‘every individual and every organ of society’ to play their part in securing the observance of the rights contained within it. This phrase is often used as justification for expecting companies to respect human rights as important ‘organs of society’. If there are any lawyers in the class it is worth asking them to comment on what they understand in terms of the responsibilities of non-state actors such as companies under international law. Given the lack of international enforcement mechanisms, international human rights law is only effective in as much as it is adopted and enforced by nation states. All but a handful of states have ratified the 1966 covenants but they are often neglected in practice.

The terms ‘soft law’ and ‘hard law’ are often discussed in the context of human rights. Soft law refers to quasi-legal instruments which do not have legally binding force, or whose binding force is somewhat weaker than the binding force of traditional national ‘hard law’, which is enforced by state authorities and courts of law. Traditionally, the term "soft law" is associated with Resolutions and Declarations of the UN General Assembly, for example the UDHR, together with a wide range of principles, codes of conduct, codes of practice etc. It should be noted, however, that compliance or non-compliance with ‘soft law’ may be taken into account in a legal suit against a company.

The following is a summary of the main human rights (for a full listing see the UN Universal Declaration of Human Rights, the International Covenants on civil and political rights and on economic, social and cultural rights as well as the core ILO Conventions in the information sources below):

Slide 6

Civil & Political Rights	Economic, Social & Cultural Rights
<ul style="list-style-type: none"> • right to life, liberty, security • freedom from slavery, torture • equality before the law • protection arbitrary arrest • right to a fair trial • freedom of thought, opinion • freedom of association • political participation 	<ul style="list-style-type: none"> • right to work • just & favourable conditions • rest & leisure • equal pay for equal work • right to join & form unions • right to education • right to social security • adequate standard of living

All companies face public interest issues to one degree or another and most of them will include aspects of human rights. Consider the following list and the human rights involved:

Slide 7

Environmental footprint	Social impact	Ethical business practices
<ul style="list-style-type: none"> • Sustainable sourcing • Emissions • Energy use • Product life-cycle • Bio-technology • Plant safety • Product safety 	<ul style="list-style-type: none"> • Public welfare impact • Community impact • Workplace practices • Discrimination • Cultural impact • Indigenous tribes • Social exclusion • Product access to poor • Product abuse • Security issues 	<ul style="list-style-type: none"> • Location issues • Restructuring • Conflict of interest • Bribery • Fair trade • Director’s pay • Money laundering

A growing number of ‘voluntary’ and ‘soft law’ initiatives have been created to address business responsibilities in the human rights field and help fill the gap between internationally agreed standards and inconsistencies or lack of implementation of national legislation. These include:

Slide 8

- The Voluntary Principles on Security and Human Rights
- The Extractive Industries Transparency Initiative
- The Global Reporting Initiative
- The Global Network Initiative (concerning IT issues)
- The Global Compact
- OECD Guidelines for Multinational Enterprises

(See their web sites in the information sources below.)

(If the teacher has longer than the 140 minutes for which this content is designed, there would be the option here to show two short film interviews with Edward Bickham, former Vice President of the mining company Anglo-American discussing voluntary or 'soft law' initiatives like The Voluntary Principles on Security and Human Rights and The Extractive Industries Transparency Initiative:

www.som.cranfield.ac.uk/som/p14362/Research/Research-Centres/Doughty-Centre-Home/Knowledge-Dissemination/Points-of-view)

In 1999 Kofi Annan, then UN Secretary General, launched the Global Compact, which was a list of nine (now ten) key principles to which companies joining the Compact would sign up to and agree to promote throughout their operations. This was widely perceived as a brave act because it was the first time that a UN Secretary General publicly asserted the importance of non state actors, in this case companies, being involved de facto in public interest issues. The Global Compact principles cover Environment, Human Rights Labour Standards and Corruption. (see slide 9),

Separately from the Global Compact, over the course of the next decade, the UN Human Rights system (led by governments as opposed to the Secretary General as head of the UN secretariat) became increasingly involved in clarifying business responsibilities for human rights.

In 2005, the UN Human Rights Commission (replaced by the UN Human Rights Council) created a new mandate to address business and human rights and requested the Secretary General to appoint a Special Representative to study and produce recommendations on these matters for consideration by governments. Professor John Ruggie from Harvard University was appointed by Kofi Annan as Special Representative. Three years later, after exhaustive consultations, he presented his 'Protect, Respect, Remedy' framework (see below) which was unanimously accepted by the Council. Three years after that, in 2011, he presented Guiding Principles designed to provide further clarification on how the framework should be implemented by governments, business and other stakeholders. These were unanimously endorsed by the Human Rights Council in June 2011. With their adoption, they became a comprehensive set of expected behaviours for companies, which are likely to supersede other existing codes and voluntary initiatives.

With respect to the second pillar of the UN framework concerning the corporate responsibility to respect human rights, the Guiding Principles focus on the concept of human rights 'due diligence'. This new 'soft law' instrument, including the human rights due diligence process set out as baseline expectations for all companies, is now being followed up at the UN level by an expert working group responsible for global dissemination and implementation. The implications and precise meanings of concepts set

out in the Guiding Principles will undoubtedly ‘harden up’ over the years to come as nation states and courts of law refer to this framework in their own regulations and judgements respectively.

2. Expectation of company behaviour regarding human rights due diligence

Until June 2008 companies could argue that their responsibilities regarding human rights simply involved obeying the law of the country in which they were operating. Following agreement in 2008 by the UN Human Rights Council to the ‘Protect, Respect, Remedy’ Framework and especially in 2011 to the UN Guiding Principles, the Council effectively clarified the corporate responsibility to ‘respect’ all human rights as laid down in the Universal Declaration of Human Rights and subsequent conventions.

Guiding Principle 11 states ‘ *The responsibility to respect human rights is a global standard of expected conduct of all business enterprises wherever they operate. It exists independently of states’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.* ’

The UN Framework; Protect, Respect, Remedy

See slide 10

1. Duty of states to **protect** against human rights abuses by any third party within their jurisdiction, including abuses by business
2. Duty of companies to **respect** human rights by ‘knowing and showing’:
 - A policy commitment by the company to respect rights that is *approved* by senior management; *informed* by engagement with affected individuals and communities; *communicated* to personnel and business partners; and *reflected* in operational policies and procedures;
 - A human rights due diligence process to identify and address impacts on human rights posed by the company’s own activities and by business partners associated with those activities;
3. Access to **remedies**: states as part of their duty to protect against business-related human rights abuse, must take appropriate steps to ensure access to effective remedies through judicial, administrative, legislative or other appropriate means & companies to create and ensure access to effective non-judicial grievance mechanisms.

The significance of this Framework cannot be overstated. Previous UN attempts to create a set of ‘norms’ to govern business responsibility for its human rights impacts were unsuccessful due to a range of disagreements amongst governments, companies and other key stakeholders. Professor Ruggie’s achievement in getting all stakeholders on board through a process of painstaking consultation and then getting the 47 country members of the UN Human Rights Council to adopt his proposals is widely perceived to have been masterful.

Full details of the report: ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ can be

found at <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

See slide 11

The corporate responsibility to respect human rights

Foundational principles

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Commentary

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.

Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

Commentary

Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review.

An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.

13. The responsibility to respect human rights requires that business enterprises:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business

relationships, even if they have not contributed to those impacts.

Commentary

Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. For the purpose of these Guiding Principles a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

Commentary

The means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size. Severity of impacts will be judged by their scale, scope and irremediable character. The means through which a business enterprise meets its responsibility to respect human rights may also vary depending on whether, and the extent to which, it conducts business through a corporate group or individually. However, the responsibility to respect human rights applies fully and equally to all business enterprises.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;**
- (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;**
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.**

A central concept in the UN Guiding Principles is that of 'due diligence'. Most companies are aware that conducting proper due diligence is essential in eliminating fraud, managing risk and maintaining compliance with regulations such as the US Foreign Corrupt Practices Act, the Sarbanes-Oxley Act (also US), the UK Bribery Act, etc. The principle for managing human rights impact risk (risk for the company and risk for the impacted stakeholder) is exactly the same.

Slide 12

Corporate human rights due diligence includes (summary of UN Guiding Principles 17 - 21):

1. **Assessing** actual and potential adverse impacts: e.g. engagement with affected rights holders & other sources of expertise
2. **Integrating** the findings of those impact assessments across relevant internal functions and processes
3. **Acting** upon the findings: i.e. preventing or mitigating potential adverse impacts, and participating in the remediation of impacts that have already taken place
4. A company should **track the effectiveness** of its systems and responses, and be prepared to communicate the results to impacted individuals and communities, as well as to other legitimate stakeholders.

Slide 13 Complicity discussion issues

This slide enable students to discuss the extent of a company's actual and perceived complicity in human rights abuses committed by other actors in different circumstances.

- Legal definition (knowingly providing practical assistance or encouragement) may be more restrictive than public perception which may matter more
- Should a company be held to be **complicit** in abuses
 - (i) through its mere presence in country, paying taxes?
 - (ii) if it is silent in face of abuses?
 - (ii) if it appears to derive benefit?
 - (iii) if it should have known?
- Is it acceptable for companies to compensate harm done by doing good elsewhere?

Short Case Vignettes

46-70mins

At this stage it is suggested that students should be divided into small 'buzz groups' of two to four people who are sitting close together, thereby requiring minimum movement. The first of a series of short cases can then be introduced, either from the examples given here or from the tutor's own experience or, even better, from some of the students' own business experiences. In each case, student groups are asked to identify:

Slide 14

1. the human rights issues involved,
2. the company's responsibilities and
3. the actions the company should take.

Allow no more than about five minutes for group discussion on each case, then get a different group each time to present their thoughts briefly to the class before opening it up to wider discussion. Other short cases can be introduced to add variety to the learning process at various stages as indicated below. There are no absolute right or wrong answers to these cases but suggested things a company might reasonably be expected to do are in given in italics.

Slide 15

Buzz group cases:

1. A clothing and footwear retail chain discovers manufacturers in its supply chain that are using child labour and forcing employees to work long hours in order to earn subsistence wages.
Human Rights Issues: rights of the child and just and favourable working conditions. The company should not immediately withdraw its contracts. It should negotiate with the manufacturers involved to consider ways forward which would not deprive the families concerned of their livelihoods, however meagre. This might include offering the supply companies a higher price and longer-term contracts if they provide educational opportunities for the children and shifts for workers in line with international standards. Only if the manufacturers continue to abuse human rights should an ultimatum on contract withdrawal be given.
2. A bank discovers that it is financing directly and also indirectly through client accounts a manufacturing company in a country that is using forced prison labour.
Human Rights issue: Forced Labour. The bank presumably has a human rights policy so once discovered, if the company will not or cannot change, funding should be withdrawn and clients advised to do likewise.

3. A steel company operating in a traditional ‘company town’ which largely depends on its employment and service contracts faces need to make major cutbacks during economic downturn. *Human Rights Issues: right to work and just and favourable conditions. The company should do all it reasonably can to help redundant employees with finding new jobs and training opportunities. This might include funding professional out-placement services, sponsoring enterprise promotion and small business advisory services, converting redundant buildings into small business incubators etc*

Where the teacher has more time available a full teaching case could be used here to enable students to explore the issues in more depth. One suitable example would be the Vodafone Egypt case where Vodafone and other mobile phone providers were ordered by the Mubarak regime at the height of the democracy protests first to take down their networks, and subsequently to restore them and transmit pro-regime messages.

Coffee Break

4. Managing a company’s respect for Human Rights

Slides 16-19 provide useful guidance for managing relevant human rights issues. It is suggested that the tutor reviews these points, allowing for spontaneous questions and discussion. Illustrations of some of the key points made could be elicited from the students’ own personal experiences and/or that of the tutor.

71-84mins including buzz case

Slide 16

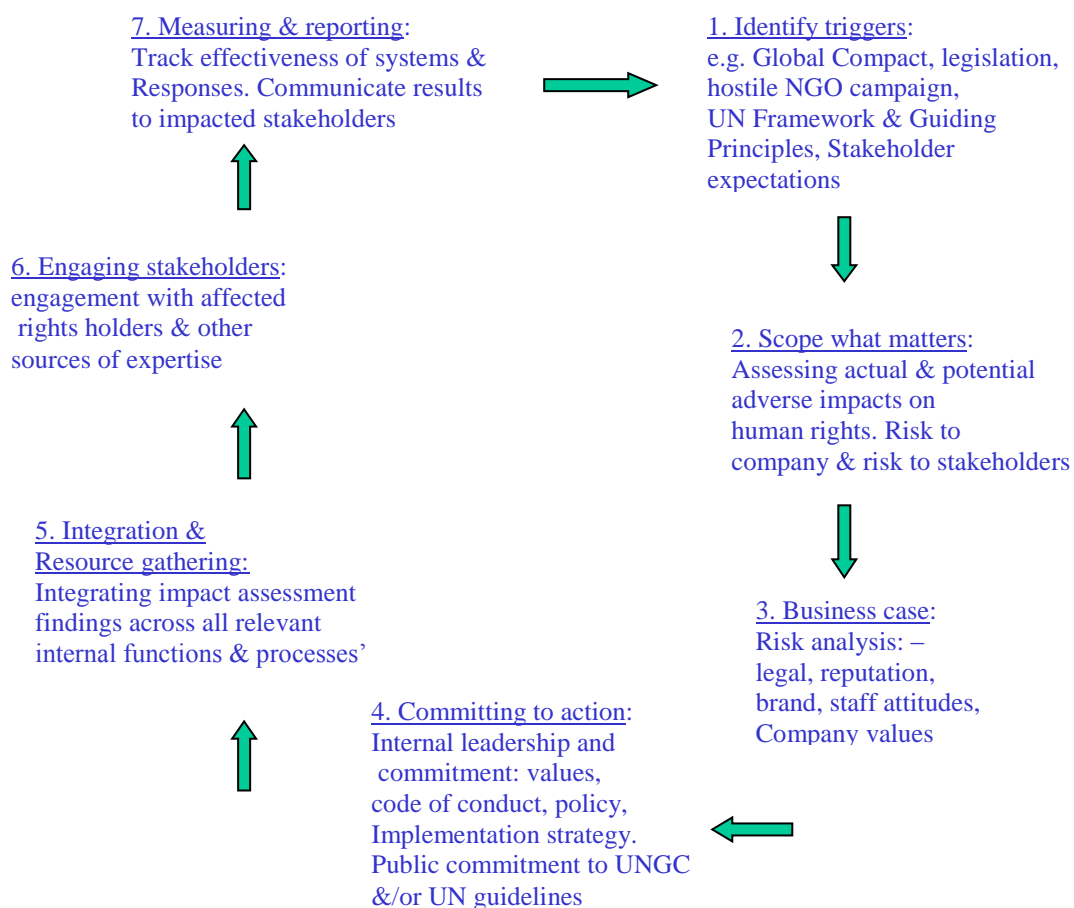
Effective management of Human Rights impact requires:

- Internal leadership and commitment
- A clear statement of company values, code of conduct and policy
- Implementation integrated into mainstream management systems
- Issue analysis & stakeholder engagement
- Partnership and alliance building
- Local ownership
- Grievance mechanisms
- Measuring and reporting

The following seven-step model indicates a likely management process from identifying the reasons for taking action in the first place to measuring and reporting on outcomes. It is important to emphasise that this is a continuous process. Pre-investment impact analysis needs to be followed up with ongoing human rights due diligence throughout the life-time of the project, including managing the end process. It is easy to list these management requirements but much more difficult to carry them out in practice. Stakeholder engagement is an often repeated phrase but with sometimes limited value due to lack of understanding of its importance and inadequate training of staff. The community engagement key success factors, listed below the seven-step model, require considerable skill and resource allocation. Done properly as part of a company’s risk management system they can pre-empt negative impacts and manage such risks before they become human rights violations. Good grievance mechanisms are also an essential part of this risk management process.

Slide 17

Seven Step Model for Managing Human Rights Impact



Respecting human rights implies that companies should not infringe the rights of others and should address adverse impacts of their activity.

Slide 18

A Company's responsibility for human rights depends on:

- Its actual and potential direct HR impacts
- Its indirect HR impacts due to its relationships with business partners, governments & customers
- Its sphere of influence; a company's ability to affect the behaviour of others

Understanding and managing the first of these is at least a clear, if difficult, obligation. It requires painstaking analysis and above all engagement with those whose human rights are impacted, most notably local communities. Whereas specialist help and advice may be useful, this job should not be outsourced to consultants. The underlying principle of the 'Respect' framework is to bring human rights into the mainstream of business activity. Like health, safety and environment issues, if human rights are not understood as part of everyone's responsibility, they will not be anyone's.

Refer to second part of GE's Bob Corcoran's recorded, description of how GE manages Human Rights.

Slide 19

Key aspects of successful engagement with local communities:

- Understand local cultures & traditions
- Understand differing perceptions of rights
- Develop a genuine relationship with affected communities
- Show respect and simple courtesy
- Enable people to communicate ideas and concerns in their own terms
- Ensure women and other disadvantaged groups are properly included
- Assess how company impacts will affect groups differently
- Develop tailored strategies for mitigating negative impacts.

N.B. When engagement is genuine, companies will also find it easier to manage expectations².

Slide 20

Buzz group case

A hotel chain is building a new development on a game park. The land where the park will be constructed was originally populated by an indigenous community. The community has been forcibly moved to less suitable land with inadequate compensation by a government determined to increase foreign exchange earnings through tourism.

Human Rights Issues: rights to property and adequate standard of living. The company should have done a human rights impact assessment before it bid for the government's contract to build and operate a hotel. Having decided to go in, the company should do all it can to engage with the local indigenous community - both the men and women. The company might create an inclusive forum for regular dialogue and the airing of grievances. It should provide as much access to grazing and water as possible and be sensitive to sites of particular significance. Opportunities for training and employment in the hotel and related tourist industry should be explored. It is also important to manage realistic expectations and to make sure that any benefits given are done so transparently. The company could also try putting pressure on the government to provide adequate compensation to the local community.

² for further information on engaging with local community stakeholders, see: Stakeholder Engagement: A Road Map to Meaningful Engagement, by Neil Jeffery.

#2 in the Doughty Centre 'How to do Corporate Responsibility' Series. July 2009

www.networkedcranfield.com/doughty/Document%20Library/How%20To%20Guides/Stakeholder%20engagement%20A%20road%20map%20to%20meaningful%20engagement.pdf

Slides 21 – 23 cover some of the difficulties facing companies operating in countries whose governments do not fulfil their obligation to protect human rights, whether through weakness, wilful neglect or fundamental principle.

85-99mins

Slide 21

A company's less direct human rights impacts, primarily caused by business partners and governments, create significant dilemmas, e.g.

- How to respect human rights when the state does not fulfil its obligations?
- How to avoid infringing the rights of others when some impacts are outside its control?
- How to mitigate negative impacts when it cannot do so alone

Perceived complicity in the human rights abuses of others, or exercise of due diligence, depends on a company's understanding and use of its sphere of influence. This is clearly the case regarding managing human rights issues in a company's value chain, as in the last short case vignette above. It also applies to the trickier problem of engagement with governments. This engagement has three principal dimensions: capacity building, advocacy and partnerships with others to strengthen the first two. It involves:

Slide 22

- Assessing government's capacity, authority, legitimacy and will to protect human rights
- Considering the risk associated with deficiencies in government
- Providing technical support to increase government capacity, particularly at local level
- Advocating for a stronger state role in socio-economic development
- Identifying partnerships and alliances with international organisations to support and encourage government
- Being transparent when it is possible; when it is not, discussing measures confidentially.

The previous buzz group and discussion of slides 21 & 22 may lead to some students challenging the universality of human rights on the basis that the values and customs of countries where they come from or know well are directed more towards the well-being of the society as a whole rather than of each and every individual in the society.

The essence of the argument boils down to the age-old conflict between the 'absolutist' universal rights ethical approach and the 'utilitarian' greatest good for the greatest number approach. Both ethical reasoning philosophies have their problems. (See slide 23.) Human rights standards provide no clear guidance as to how to prioritise between rights which may be in conflict or can only be realized progressively. For example, in the case of economic and social rights to adequate health care and education which depend on availability of resources, governments will have to make decisions about how limited budgets will be allocated in order to progressively improve access to these public services for the entire population.

In other cases, long held customs in some countries may be inconsistent with individual rights as for example on issues relating to freedom of expression or belief. The utilitarian

approach seems to have much to commend it as a pragmatic political way of operating but it is subject to two major problems in human rights terms. The first is the legitimacy and integrity of whoever decides what is to be the greatest good for the greatest number, often employing an ‘ends justify the means’ strategy. The second problem is a tendency to neglect the welfare and rights of minorities or other vulnerable groups within a society who are not part of the greatest number.

This matters today more than ever because of the increased globalisation of economic activity. Few MBA students will not encounter dilemmas involving conflicts between these two ethical approaches. But companies will have to deal with a whole host of culturally sensitive contexts.

The reality is, that there is no culture and no religion that does not value the underpinning principles of human rights and so the trend to universal values is arguably irreversible. However, there are many who will resist (for reasons of protecting their own power) citing political, religious and cultural exceptionalisms. There are of course ongoing debates in many countries between international human rights standards and issues of gender, religious freedom or sexuality. The apparently easy solution for business is to take the cultural relativist approach, or ‘when in Rome do as the Romans do’. But this is also highly problematic. To a limited extent a strategy of working together while openly accepting differing and even conflicting values can work, where these differences are relatively minor or a matter of being addressed over time. However, the relativist approach runs into difficulties if those values conflict with a company’s stated corporate values or if some of the customs of a country in which the company is operating are so abhorrent to the advocates of the universal rights approach that they are simply unacceptable.

Question for discussion: *What overall policies should a company adopt concerning operating in countries where local customs, sanctioned by law, are contrary to the stated values of the company itself? Would these policies differ according to the industry in which the company operated, e.g. extractive, tourism, IT, apparel?*

Students could be encouraged to consider the dilemmas that faced Google, a company which embodies the principles of free speech and access to information, when it considered developing its business in China³.

(If the teacher has more time available, a fuller teaching case could be introduced here such as the F1 Bahrain Grand Prix case – (available from European Case clearing House : <http://www.ecch.com/educators/search/results?s=6235BEF8C810F93B5CC51409E18E38FB>)

The role of Non-Governmental Organisations (NGOs)

100-111mins (including buzz case)

Partly because of the governance deficit in many countries and regarding global issues such as climate change and poverty, the last twenty years has seen a rapid growth in NGOs, as activists motivated by particular causes have, with varying degrees of success, tried to step into the breach. NGOs vary considerably in their attitudes to the private sector and their methods of operating. As companies, which have significant impact on human rights, are bound to come across concerned NGOs, it is important that company managers understand

³ A new approach to China, Google Official Blog, Jan 12th 2010:<http://googleblog.blogspot.co.uk/2010/01/new-approach-to-china.html>

the nature of the organisations they are dealing with. A good way of looking at NGOs is through the following matrix which, using variety of sea creatures, divides NGOs according to the degree to which they have a polarised ‘us and them’ attitude towards private sector companies and the extent to which they discriminate between the relative performance of such companies in their approach towards them.

Slide 24

	Polariser	Integrator
Discriminator	ORCA: scrutinises relative performance and attacks selected targets	DOLPHIN: scrutinises relative performance and selects appropriate partners
Non-discriminator	SHARK: ignores relative performance and attacks most targets	SEA LION: ignores relative performance and works with anyone

Source: John Elkington⁴

So a NGO displaying Shark characteristics will attack all companies on principles of anti-capitalism and anti-globalisation. NGOs, which took part in the Seattle demonstrations and subsequent actions against international organisations like the World Bank, would come into this category. Greenpeace, who ran such a successful campaign against the dumping of Shell’s Brent Spar oil facility in the North Atlantic in 1995, is a classic example of an Orca. Amnesty International would also fit into this category. The World Wide Fund for Nature (WWF) is a good example of a Dolphin with its partnership approach to solution seeking, such as the Marine Stewardship Council and the Forestry Stewardship Council. Finally, the Sea Lion category includes all those NGOs more concerned about their cause than the source of their funding and will on the whole take money from wherever they can get it.

The company manager needs to be aware of the Sharks. They serve a useful purpose in alerting public opinion to global issues but there is not much point in a company trying to build a close relationship with them. It is the Orca-Dolphin spectrum which is the most fertile ground for dialogue and potential partnership. Companies can and do build relationships with Orcas. Following the Brent Spar incident, the major oil companies set up communication channels with Greenpeace. Amnesty International has since the early 1990s been prepared to talk to companies about developing a policy toward human rights. Amnesty has not, however, been prepared to venture any further into Dolphin territory. The NGO is unwilling to risk its hard-won reputation by seeming to support a company which at any moment might be found to be abusing human rights somewhere in its organisation. Amnesty remains firmly a campaigning NGO. It has, however, participated in the Voluntary Principles on Security and Human Rights which is a multi-stakeholder cooperation with business, governments and Civil Society. Arguably Oxfam, on the other hand, has managed to cross the boundary while remaining a strong campaigning organisation. Oxfam’s pioneering work with Unilever in mapping the costs and benefits to the people of Indonesia of Unilever’s operations⁵ is a good example.

Slide 25

⁴ SBN 0952190486. 1997. Strange Attractor: The Business-ENGO partnership. A Strategic Review of BP’s Relationships with Environmental NGOs

⁵ www.unilever.com/sustainable-living/betterlivelihoods/impact-studies/indonesia/

Buzz group case

A pipeline company, with an otherwise good human rights record, is criticised by a human rights NGO for its host government agreement (HGA) with a state, well known for its abuse of human rights. Specifically, the NGO alleges that the HGA has inadequate safeguards to protect the rights of those living near the pipeline route. The NGO feared that financial penalties built into the agreement if any disruption occurred might provoke the state to take heavy handed action.

HR Issues: right to adequate standard of living and potentially the civil and political rights of those living near the pipeline. What should the company do? What should the NGO do? In reality following a meeting between the company and the NGO, the company held to its strong HR record and refused to review the HGA. The NGO then commissioned a report, which got good publicity. The company then agreed to further talks and ultimately signed a legal agreement which ensured it would take no action that might provoke the state to abuse the human rights of those living near the pipeline.

(if the teacher has more time available, the Helica Gold simulation game also available from ECCH, could be used here. (available from european Case Clearing House: <http://www.ecch.com/educators/search/results?s=623763B6D51543040E17E73A7F03E56D>)

Partnership Building

112-120mins including buzz case

In many cases human rights impacts can best be addressed in partnership with others; other companies and also, often, NGOs and local community organisations. These partnerships should be viewed with the same professionalism as commercial joint ventures, with which the business manager will be more familiar. Prerequisites of a successful partnership include the following:

Slide 26

- Common purpose: common agenda & two way benefits
- Mutual respect: no ‘deficit model’ or philanthropic approach
- Shared investment of money, in-kind resources and time
- Clear balance of responsibilities
- Shared commitment: long term commitment to sharing problems and opportunities

Slide 27

Buzz group case

A recently privatised energy company faced with problem of what to do with customers not paying their bills during a harsh winter, which threatens to cause the deaths of substantial numbers of poor people.

Human Rights Issues: Right to life and adequate standard of living. The company should seek assistance of government probably in partnership with other companies in similar positions. Failing that it should seek all measures possible, including partnership with appropriate NGOs to protect their poorest customers.

(if the teacher has more time available, a short video about cross-sector partnerships can be shown, featuring Ros Tennyson, founder of the Partnering Initiative of the International Business Leaders Forum, explaining: “What are cross-sector partnerships?”⁶

⁶ www.networkedcranfield.com/doughty/Document%20Library/Points%20of%20View/Ros%20Tennyson.%20International%20Business%20Leaders%20Forum%20-%20What%20are%20cross-sector%20partnerships.aspx

There are four further videos about cross-sectoral partnerships featuring Ros Tennyson in the same Points of View series:

Managing Human Rights impact in areas of conflict and post-conflict

121-139mins including buzz cases

Slide 28

Characteristics:

- Authority failure: organised political violence, areas with no effective authority, high levels of criminality
- Service failures: inadequate health, basic education, water & sanitation, poor infrastructure, no poverty support
- Legitimacy failure: no democracy, high military influence, suppression of opposition, media restrictions, denial of civil & political liberties

Slide 29

Challenges for companies:

- Absence of state control; lawlessness
- Potential abuse by state and non-state forces
- Risk of being accused of complicity in such abuses
- Risk of becoming a target or opportunity: exposure to threats of sabotage, kidnapping & extortion
- Threats to surrounding communities (which company's presence may make worse)
- Obstacles to sound and transparent community engagement
- Revenue mismanagement
- Systematic corruption
- Ethnic, religious or gender discrimination
- 'Conflict' minerals

There are no easy answers in responding to these challenges. The risks relating to each situation need to be carefully analysed. Suspending or postponing investment may be necessary if impacts might credibly lead to grave human rights abuses. The decision not to go in, in⁷ the first place is easier than the decision to stay or pull out. Both have significant cost implications for the company and for the community. It is important to extend these considerations to post-conflict situations because tensions bubbling beneath the surface can easily be exacerbated by a company's presence and thus re-ignited.

If a company elects to stay, due diligence would require:

- Full analysis of the company's impacts
- Understanding the agendas of all parties in the conflict
- Avoidance of paying off or otherwise benefiting armed groups as far as possible
- If part of the company's security structure, supporting the capacity of legitimate state forces with human rights training consistent with company values
- Doing all it can to address community grievances relating to company impacts
- Developing joint approaches with other companies
- Discussing risks and mitigation measures with trusted international bodies

An example of a partnership in practice; Partnership brokering; The enabling environment for partnership; and Known Unknowns.: www.som.cranfield.ac.uk/som/p14362/Research/Research-Centres/Doughty-Centre-Home/Knowledge-Dissemination/Points-of-view

⁷ The Red Flags website and pamphlet are the result of a collaborative effort by an informal group of lawyers, researchers and diplomats from several countries, funded by the Canadian Government and the Ford Foundation: www.redflags.info/index.php?page_id=16&style_id=0

‘Red Flags’: avoid the following at the risk of eventual legal consequences:

Slide 31

- Expelling people from their communities by force
- Forcing people to work
- Handling questionable assets
- Making illicit payments
- Engaging abusive security forces
- Trading goods in violation of international sanctions
- Providing the means to kill
- Allowing use of company assets for abuses
- Financing international crimes.

Slide 32

Buzz group case

A mining company, operating in a part of a country where government control is being challenged by armed insurgents, is subject to threats of kidnapping and infrastructure destruction. Security is provided by government armed forces. The company is accused in media reports in its home country of complicity in the killing of local villagers accused of supporting the insurgents by local paramilitaries, who are supported unofficially by the army.

Human Rights issues: right to life, liberty and security of the villagers, right to safe and secure working environment of company workers. Company should have done a full risk pre-investment risk analysis, so that the licence agreement included company control over and training of security forces used and other recommendations made in the Voluntary Principles on Security and Human Rights⁸. Actions needed: continued, forceful dialogue with the government, as much engagement with local community as possible, invitation to media and relevant NGOs to visit and engage in open discussion with the company.

Buzz group case

A mobile phone company is told to close its operations down by a dictatorial government under pressure from a popular protest by its citizens and later to pass on messages by the government to incite action against the protestors.

Human Rights Issues: the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. If no previous experience, the company probably has no option in the short term but to comply with the government's dictat but should clearly try to push back on the second demand. Now this has happened, the company should anticipate future problems by working in conjunction with other similar companies and co-operative NGOs and governments to produce a set of basic principles, which could be presented to another dictating government as part of its resistance to such demands in future.

⁸ www.voluntaryprinciples.org/files/voluntary_principles_english.pdf

Summary slide (repeated) to end with:

140min

Slide 33

Key Success Factors for managing human rights impact

- Internal leadership and commitment
- A clear statement of company values, code of conduct and policy
- Implementation integrated into mainstream management systems
- Issue analysis & stakeholder engagement
- Partnership and alliance building
- Local ownership
- Grievance mechanisms
- Measuring and reporting

References for further information and study

- Universal Declaration of Human Rights see <http://www.un.org/en/documents/udhr/>
- International Covenant on Civil and Political Rights
International Covenant on Economic, Social and Cultural Rights
ILO Conventions
See: <http://www2.ohchr.org/english/law/>
- Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, ‘*Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*’, 21st March 2011.
See <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples>

Keynote speech on the ‘Guiding Principles’ by Professor John Ruggie, Special representative of the UN Secretary General on Business and Human Rights at the Sir Geoffrey Chandler Speaker Series (January 2011), see http://www.youtube.com/watch?v=__fhV3j4hlE&lr=1

- Institute for Human Rights and Business see www.ihrb.org
Publications section: See reports on water and land rights and business and migration. See especially ‘From Red to Green Flags – The corporate responsibility to respect human rights in high risk countries’, May 2011. *Companies operating in weak governance zones or dysfunctional states face multiple human rights risks, and their actions may pose risks to others. Building on the UN endorsed Protect, Respect, Remedy framework*

on business and human rights, this report explores the specific human rights dilemmas and challenges facing companies operating in such contexts and provides detailed guidance for business leaders in meeting their human rights responsibilities.

- Business and Human Rights Resource Centre see www.business-humanrights.org

This site provides u- to-date news on current business and human rights events. It contains an online library of articles and reports covering over 5000 companies and 180 countries. These can be searched by company, country or issue.

- ‘Consent of the Networked – The worldwide struggle for internet freedom’ by Rebecca MacKinnon, published by Basic Books in 2012. See 20 minute video interview of Rebecca Mackinnon by Chris Avery, Director of the Business and Human Rights Resource Centre available at www.business-humanrights.org. This interview covers human rights issues associated with the internet, especially relating to doing business in China and events surrounding the ‘Arab Spring’. It also provides a useful perspective on the IT businesses Global Network Initiative.
- Inside Power, inc. Taking stock of big business vs big government
By David Rothkopf in *foreignpolicy.com* March/April 2012
Useful general background to the whole ‘governance’ issue see
http://www.foreignpolicy.com/articles/2012/02/27/inside_big_power_inc?page=0,0
- *Forthcoming: Just Business: Multinational Corporations and Human Rights* (Amnesty International Global Ethics Series) by John Ruggie (14 Feb 2013)

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Since gaining an Economics degree at King's College, Cambridge, Chris Marsden has worked as a schoolteacher, deputy head, and then joined British Petroleum as Educational Liaison manager before becoming Head of BP's Community Affairs from 1990 to 1996. From 1996 - 1999, he worked at Warwick Business School setting up the Corporate Citizenship Unit. From 2000 to 2007 he chaired the Business Group of Amnesty International UK. He was awarded the OBE in 1989 for services to Industry and Education.