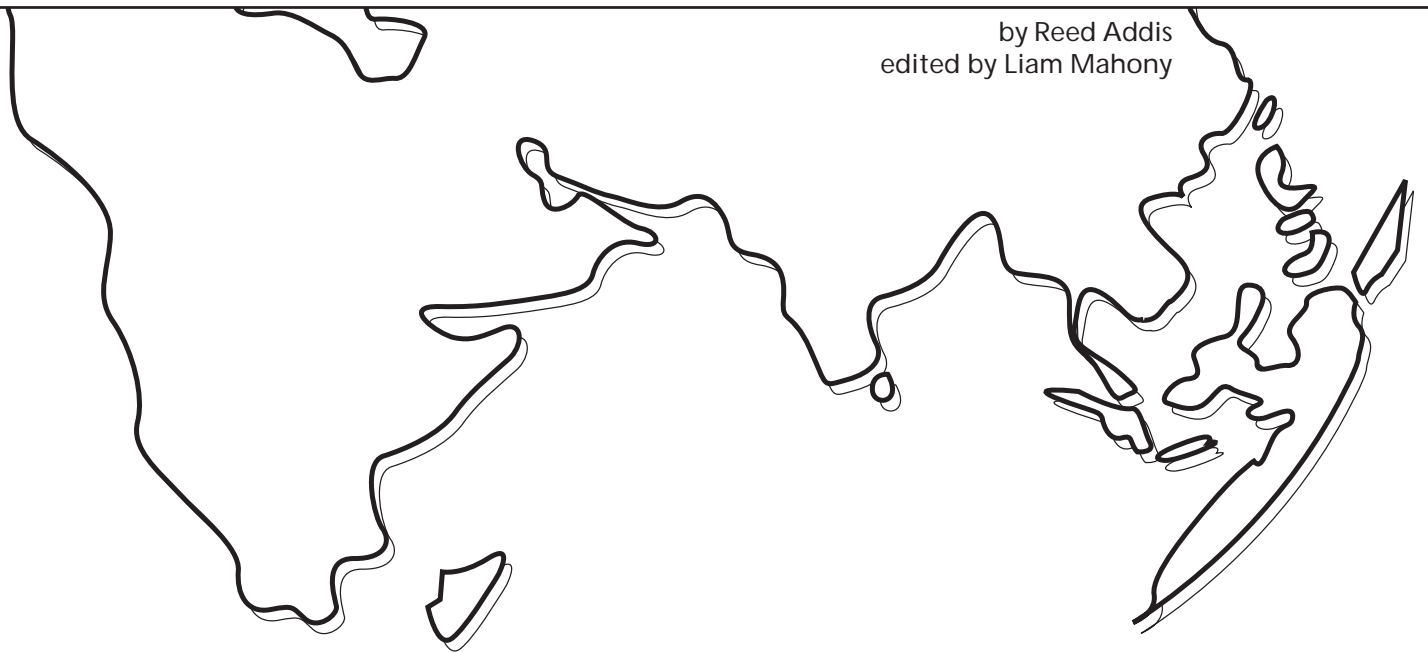


Human Rights and the Corporation

The development of the Human Rights Compliance Assessment

by Reed Addis
edited by Liam Mahony



A Tactical Notebook published by
the New Tactics Project
of the Center for Victims of Torture

Published by
The Center for Victims of Torture
New Tactics in Human Rights Project
717 East River Road
Minneapolis, MN 55455 USA
www.cvt.org, www.newtactics.org

Notebook Series Editor
Liam Mahony

Copyediting
Ruth Newman

The Danish Institute for Human Rights and The Center for Victims of Torture wish to acknowledge the following institutions that provided support for the New Tactics in Human Rights West Group regional training workshop, of which this and other tactical notebooks are a product:

- The Paul & Phyllis Fireman Charitable Foundation,
- The United States Department of State,
- The United States Institute of Peace,
- The European Master's Programme in Human Rights and Democratization
- Donors who wish to remain anonymous.

We are also greatly indebted to the work of numerous interns and volunteers who have contributed their time and expertise to the advancement of the project and of human rights.

The New Tactics project has also benefited from more than 2000 hours of work from individual volunteers and interns as well as donations of in-kind support. Some of the institutional sponsors of this work include Macalester College, the University of Minnesota, the Higher Education Consortium for Urban Affairs, the Minnesota Justice Foundation and the public relations firm of Padilla Speer Beardsley.

The opinions, findings and conclusions or recommendations expressed on this site are those of the New Tactics project and do not necessarily reflect the views of our funders For a full list of project sponsors see www.newtactics.org.

The views expressed in this report do not necessarily reflect those of the New Tactics in Human Rights Project. The project does not advocate specific tactics or policies.

© 2004 Center for Victims of Torture

This publication may be freely reproduced in print and in electronic form as long as this copyright notice appears on all copies.

| | |
|----|------------------------------------------|
| 4 | Author biography |
| 5 | Letter from New Tactics Project Director |
| 6 | Introduction |
| 6 | The company problem with human rights |
| 7 | What is the HRCA? |
| 7 | Using the HRCA |
| 9 | How the HRCA was developed |
| 11 | Next steps |
| 11 | The HRCA and advocacy |
| 12 | Lessons learned |
| 13 | Conclusion |



The Center for Victims of Torture
New Tactics in Human Rights Project
717 East River Road
Minneapolis, MN 55455 USA
www.cvt.org, www.newtactics.org

Reed Addis

Reed Addis is an independent consultant to NGOs, business and governments. From 2002 to 2004, Mr. Addis provided strategic support for the business program of the Danish Institute for Human Rights. He managed the EU consultation process for the Institute, traveling to 13 countries and working with human rights advocates and company managers to assess the practicality of the Human Rights Compliance Assessment tool.

Mr. Addis brought his experience with environmental and social justice work from his career in the United States where he worked for Congress and the California State Assembly. Mr. Addis currently consults for the Planning and Conservation League and the California Assembly. He can be contacted at: reed_addis@rkastrategies.com.

Danish Institute for Human Rights

The Danish Institute for Human Rights is a national human rights institution in accordance with the UN Paris Principles. It became part of the Danish Centre for International Studies and Human Rights on January 1, 2003.

The work of the DIHR includes research, analysis, information, education, documentation and complaints handling, as well as a large number of national and international programs. DIHR takes a multidisciplinary approach to human rights and the DIHR employ staff in the areas of law, political science, economics and others.



Contact Information

Morten Kjærøum, Executive Director
Danish Institute for Human Rights
56 Standgade
1401 Copenhagen K
Denmark
+45 32698888
www.humanrights.dk



September 2004

Dear Friend,

Welcome to the New Tactics in Human Rights Tactical Notebook Series. In each notebook a human rights practitioner describes an innovative tactic that was used successfully in advancing human rights. The authors are part of the broad and diverse human rights movement, including nongovernment and government perspectives, educators, law enforcement personnel, truth and reconciliation processes, women's rights and mental health advocates. They have both adapted and pioneered tactics that have contributed to human rights in their home countries. In addition, they have used tactics that, when adapted, can be applied in other countries and other situations to address a variety of issues.

Each notebook contains detailed information on how the author and his or her organization achieved what they did. We want to inspire other human rights practitioners to think tactically — and to broaden the realm of tactics considered to effectively advance human rights.

In this notebook Reed Addis describes the development of the Human Rights Compliance Assessment by the Danish Institute for Human Rights. The Compliance Assessment, based somewhat on the model of an Environmental Impact Assessment, was developed through a long process of consultation with businesses from many different industrial sectors, and provides a framework through which businesses can assess their human rights obligations and measure the liabilities and human rights risks in countries where they operate or plan to locate. The tool helps companies understand human rights law, but can also help human rights groups understand companies and learn to communicate with the corporate world about human rights questions in a more constructive way.

The entire series of Tactical Notebooks is available online at www.newtactics.org. Additional notebooks are already available and others will continue to be added over time. On our web site you will also find other tools, including a searchable database of tactics, a discussion forum for human rights practitioners and information about our workshops and symposium. To subscribe to the New Tactics newsletter, please send an e-mail to newtactics@cvt.org.

The New Tactics in Human Rights Project is an international initiative led by a diverse group of organizations and practitioners from around the world. The project is coordinated by the Center for Victims of Torture and grew out of our experiences as a creator of new tactics and as a treatment center that also advocates for the protection of human rights from a unique position — one of healing and reclaiming civic leadership.

We hope that you will find these notebooks informational and thought-provoking.

Sincerely,

A handwritten signature in cursive script that reads "Kate Kelsch".

Kate Kelsch
New Tactics Project Manager

Introduction

In 1999, a small project was initiated between the Danish Institute for Human Rights and the Danish Confederation of Industries. Their goal was to create an assessment tool companies could use to evaluate potential violations of human rights in their operations. Up until that point, businesses who were looking for human rights guidance in most cases found only information about labor law, for example via the International Labor Organization.

The Human Rights Compliance Assessment was designed to fill this void. It has several sections, with the bulk of the document made up of 350 questions a company needs to ask itself. The questions were designed to cover the entire breadth of the Universal Declaration of Human Rights.

While governments are ultimately responsible for upholding the human rights afforded us by various international treaties, businesses can have a disproportionate impact on the activities of governments, either supporting or undercutting government actions. Over the last 20 to 30 years, a wealth of examples have been collected that demonstrate that companies can help protect the rights of individuals, or they can deal them devastating blows. Human rights advocates have accordingly begun to invest energy in focusing attention on the conduct of corporations, to push them to behave better, on occasion pulling them along to better human rights in their operations. This developing focus has been critical to adding protections for our human rights. But why this focus now?

Over the last 50 years, corporations have increasingly extended their operations beyond the country where they are headquartered. This means a corporation with headquarters in one country may sell their products in several countries, while the products they sell may be made in yet another country thousands of miles away. Many factors have contributed to this dynamic, but it is obvious that the production and marketing strategies of today are fundamentally different than they were a half century ago.

Numerous international treaties, conventions and declarations identify human rights that governments and all members of society should uphold. Several international organizations, such as the International Labor Organization, the Organization for Economic Cooperation and Development and the United Nations Global Compact, have also spelled out human rights obligations specific to private companies.

However, if an advocacy group wishes to engage a corporation in a constructive dialogue on the issue of human rights, they must know both "languages": the language of the business world and that of international human rights law. Without this capacity, advocates are left discussing what seem to their corporate

contacts like very vague concepts. These discussions may or may not lead to agreements and often refer to rather ambiguous changes for business operations or structure. It is clear to me after many meetings with human rights advocates that they often struggle to identify concrete changes they can offer to a corporation for improving human rights protections.

This paper will outline how a new assessment tool, the Human Rights Compliance Assessment, designed at the Danish Institute for Human Rights, can help advocacy organizations confront human rights abuses linked to corporate activities and help corporations assess their own human rights performance.

To understand the importance of this tool, we need to reframe human rights issues as "the company problem" and look for windows of opportunity to help corporations address these issues more productively. Taking advantage of these opportunities requires a willingness to see the problems through the business lens and to build alliances that will be credible in the eyes of the business community. NGOs who get involved in this task need to establish their own credibility and build trust, so that businesses can engage in dialogue and implement changes without the fear that their efforts will be used against them.

The company problem with human rights

Every day, businesses must juggle the economic demands of customers and other financial stakeholders along with the human needs of their employees and the local community, while at the same time remaining competitive in a fierce global market. They need mechanisms nuanced enough to apply in their own complex system, yet simple enough to be used by managers with no human rights experience.

From 1995 to 1997, some very high-profile media stories came out in the Danish national media covering possible human rights violations by Danish companies, some of them very large and well recognized organizations. These stories had a great impact on the public and forced several companies to evaluate their operations abroad. It appeared they needed better company policies to reduce the risk of further human rights violations, but they faced an absence of appropriate business guidelines and tools. This opened a window of opportunity for Denmark's industrial association, which itself was under pressure from its members to help find solutions, to collaborate with the national human rights watchdog on solutions to problems identified both by human rights advocates and by business professionals.

Corporations were willing to change their operations to avoid human rights violations, but weren't sure how to do this. At the same time, advocates were equally challenged to help these corporations make the right

kinds of changes. So DIHR's collaboration with Danish companies focused on taking the principles outlined in law and "operationalizing" them within a corporate institutional setting. This cooperative venture met two needs: To research the problem, a small new project, the Human Rights and Business Project, was created with funding from Danish Industries, while companies made themselves available for the project to carry out the research, testing and development required. Without this support, the research project would not exist, nor would it have been as successful. As the research project developed, DIHR was also able to also enjoy the support of the Industrialization Fund for Developing Countries, which has been critical to promoting the assessment tool within the Development Finance Institute community.

What is the HRCA?

The Human Rights Compliance Assessment is modeled on the Environmental Impact Assessment, which is already familiar to most business organizations. This tool is the first comprehensive human rights impact assessment designed for corporations and is intended to help corporations assess the impact of their operations on the rights of both employees and inhabitants where they operate. The tool is a database containing over 300 questions and 1000 human rights indicators, based on the Universal Declaration of Human Rights, the Dual Covenants of 1966 and the International Labor Organization's Core Conventions.

The aim of the HRCA is to provide companies with a tool to audit their practices, to identify areas where violations are likely so that these areas can be monitored and to make it easier to mitigate existing breaches and prevent future ones. Large, small and medium-sized enterprises are often unable to find standardized ways in which to evaluate their corporate policies. This leads to confused and sometimes conflicting policies that do little to help the corporation meet its goals, either financial or rights-related. The HRCA allows a corporation to comprehensively assess its human rights record with a formal and standardized methodology.

The assessment tool includes several features: It describes international law in everyday terms, not legal language; it outlines almost 350 questions that a company should ask itself about its operations; and it provides resources on related cultural and legal questions. It currently exists as a Microsoft Word document that should shortly be translated to a portable document format (PDF) file. In the future, it would be valuable to translate it into a user-friendly software program.

The questions are designed to help a manager with limited knowledge of human rights identify contradictory company policies, or whether the institution even has policies in place. A corporation will clearly have a higher level of assurance that it has reduced its

liability vis-à-vis international human rights law if it works with an advocacy group to answer the questions.

Why do human rights matter to businesses?

Of the 500 largest corporations in the world in the year 2000:

36 percent had to abandon a proposed investment project, and 19% to disinvest from a country because of human rights issues.

At the same time, only 44 percent of corporations' codes of conduct currently make explicit reference to human rights.

With the HRCA in hand, a manager can:

- 1.) Better understand the underlying reasons that a particular item was written into international law.
- 2.) Analyze the company's activities by answering the 350 questions.
- 3.) Identify potential pitfalls related to implementing human rights policies.
- 4.) Identify cultural conflicts that arise with the implementation of company policies throughout its operations.
- 5.) Find further resources on international law.

Using the HRCA

The questions are the most important part of this assessment tool. The following examples show how a corporation might put it to use.

EXAMPLE 1

As Company A begins to use the tool, its staff will come across the following question:

Has the company implemented a policy of nondiscrimination ensuring that employees' and job applicants' family status is not considered in the hiring, promotion, transferring and firing practices?

At first glance, they may answer yes. After all, for some time Company A's human resources department has been promoting a diversity program and recently it initiated a special outreach project targeting female recruits. When the staff read the question description in the HRCA, they are further convinced they don't have a problem:

Sometimes employees have families that place higher demands on them than usual, such as single parents and children with disabilities. Managers might assume that the individual in question is unable to fulfill the requirements of a full-time job as a result. The decision, however, is for the employee, not the company. The company's responsibility is to provide employees with full advance details of their



employment responsibilities and to ensure that no large-scale changes in the demands of the job are made without the employees' consent.

Proceeding to the legal references, the staff can see that a number of international instruments form the basis of this question:

[The above question is based on general principles contained in the following: *Universal Declaration of Human Rights (1948), Article 16; International Covenant on Civil and Political Rights (1966), Article 26; International Covenant on Economic, Social and Cultural Rights (1966), Articles 2 (2), 3 and 7 ©; Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 11 (1 and 2a and c); Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5 (1) ILO Convention on the Rights of the Child, Article 18; ILO Discrimination Employment and Occupation Convention (C111, 1958), Article 1; ILO Workers with Family Responsibilities Convention (C156, 1981), Article 3 (2); Equal Remuneration Convention (C100, 1951), Article 1]*

However, when they go on to look at the section for "Areas of Investigation," they immediately recognise that they actually have a two-fold problem:

Areas for investigation:

- 1. Job applications and initial interviews do not include questions regarding the applicant's marital status or family responsibilities.*
- 2. During the interview for a position, the candidate is fully informed of the amount of travelling required and any excessive or sporadic work hours that the successful applicant will be expected to meet.*
- 3. Employees confirm that their family status is not being considered in the hiring, promotion, transferring or firing practices of the corporation.*

In their job announcements, the Company A lists a requirement that applicants include personal information in their resumes. This includes marital status, which applicants could furthermore interpret as prejudicial. In addition, the company does not have interview guidelines that would restrict questions on these topics during the interview process.

Therefore, using this HRCA question with related information, the Company A can now identify a weakness in its operations that has the potential to lead to violation of a specific human right. The company may then decide it should fix the problem itself, or it may work with a third party to design a system that eliminates this problem in future recruitment.

EXAMPLE 2

Some corporations have large complex operations that span many countries. This means that they may encounter human rights issues in distant corporate operations related, say, to housing or religion, that they haven't given thought to at the management level. One such HCRA item that could come into play:

Does the corporation refrain from compelling or coercing its employees to purchase basic goods and supplies from the corporation?

Let's say that Corporation B operates facilities at a foreign subsidiary for staff housing and consumer needs. They have a procedure in place that requires the employees to use the facilities, and they deduct a fee from employee wages to run these facilities.

Staff at Corporation B looking at this HCRA question would immediately identify that it applies to their subsidiary's operations. They can then analyze corporate policy and assess whether the corporation "compels" or "coerces" such purchases. Without the use of the tool, the corporation might never be aware that their policy potentially contravenes the rights of their employees.

The corporation's manager looking at this question also gets a description of why it was asked:

Employees should not be expected to use stores and housing facilities owned by or related to the company for which they work, as this places them in a position of dependency. Employees must be able to use the other market options available in the area, so their salaries can be managed in the best way possible to ensure their basic needs. In cases where no other alternatives exist in the area where the corporation operates, the corporation ensures that all prices on basic necessities remain at or below market value.

If Corporation B's manager wonders how this question relates to international law, the tool will provide him the following references:

International Covenant on Economic, Social and Cultural Rights (1966), Article 11 (1); ILO Social Policy (Basic Aims and Standards) Convention (C117, 1962), Article 11; and the ILO Protection of Wages Convention (C95, 1949), Article 7]

However, the manager may not be sure whether corporate practices constitute "compelling" or "coercing" as referred to in the question. Therefore, the "Areas to Investigate" for each question include specific practices to clarify the manager's inquiry:

- 1. Employees' wages are not withheld without the workers' consent to cover food and living expenses.*

2. Company employees are not coerced, compelled or otherwise made to feel disloyal for purchasing goods from non-company suppliers.

3. If the company is the only provider of basic necessities in the area, prices are kept at or below market value.

4. Employees do not report being forced or coerced into purchasing goods from the company.

EXAMPLE 3

Another HCRA question for managers to answer:

Does the corporation make workplace accommodations for newly established beliefs and religions as well as for those that are well-established?

Corporation C's manager has probably never discussed this concern within the corporation. Therefore, he or she may immediately go on to the question's expanded description.

Even if a religion or belief system is of recent vintage, it can still be an important part of a person's value system and newly established movements can constitute a "religion" for the purposes of international human rights protection (International Covenant on Civil and Political Rights, General Comments on Article 18, s. 2). If, however, the new religion is based on a belief consisting primarily or exclusively in the worship, use or distribution of a narcotic drug, it is not owed protection under international law (M.A.B. v. Canada (570/93), decision of the United Nations Human Rights Committee). Other non-drug-related religious activities and ceremonies, which may be considered "odd" by the observer, must not be denied protection simply because of the peculiar nature of its practices. Instead, the corporation must have legitimate reasons for restricting the activity. In general, legitimate limitations include those prescribed by law, which are necessary to "protect public safety, order, health or morals, or the fundamental rights and freedoms of others" (International Covenant on Civil and Political Rights (1966), Article 18 (3)). All restrictions on the right of expression should be reasonable time, place and manner restrictions.

However, since the manager hasn't considered the issue before, they can also look at the "Areas to Investigate" guidelines to learn how to determine whether the Corporation C has a policy on this issue:

1. *There are clear, written guidelines in the corporation manual, establishing under what circumstances expressive and religious conduct will be accommodated, and under what circumstances it will be precluded.*

2. *The corporation trains its managers regarding the appropriate preclusion of expressive and religious conduct on the work premises.*

3. *Prohibitions against expressive or religious activity are narrowly tailored to meet important workplace needs. Prohibition guidelines are not so overbroad as to restrict the exercise of harmless activity.*

In this case, the manager may find that Corporation C needs to spend some time investigating its policies.

It should be noted that the HRCA provides valuable first steps in helping a corporation assess potential weaknesses in its operations. It is then up to the corporation to develop a strategy and to remedy the situation. The corporation may want to bring in an outside consultant to help in the process or to engage in a stakeholder dialogue to develop effective countermeasures. The HRCA doesn't provide solutions, only an assessment tool.

How the HRCA was developed

The final product—the Human Rights Compliance Assessment—is in essence a translation of international law into language and specifics understandable to a business organization. However, the development of this human rights "translation" did not take place in a vacuum. Had it done so, it would not meet the needs of the corporations and the human rights advocates that rely on its use.

At the outset of the Human Rights and Business Project, a staff person was hired to manage the various interests of the DIHR and corporations. Regular board meetings were held to determine project scope and funding needs. The first step was to develop a brochure or set of guidelines to help companies understand their role related to established international law on human rights. This was a first small step to providing companies a basic human rights course on various legal instruments and on their responsibilities as seen by the international community.

As the Danish companies began to realize that human rights consisted of more than just child labor violations (most of the press stories had revolved around this specific problem), they began to demand more information. With the continued support of the Danish foreign ministry, funding for the staff position at the HRBP project was maintained and more research was scheduled. Such research was needed to help companies understand international human rights law, as these laws were written for states and were not designed for easy comprehension by business managers.



It was decided that this research would not only include a review of applicable international law (using the Universal Declaration of Human Rights as a foundation), but would need to be formatted in such a way as to maximize use by the business community.

Ten Danish companies, representing a range of industrial sectors and with operations covering diverse parts of the world, willingly participated in the research. For example, ensuring a representative range of business or industry types was achieved by including companies who represented manufacturing, extraction, retail and services. An initial seminar was conducted at the Confederation of Danish Industries to introduce the research project to participating businesses. This was followed by a series of interviews with companies to establish and clarify the human rights issues businesses face in different political, economic and social environments abroad.

This phase consisted of more than a year of meetings with Danish companies to understand their needs and their operations. The DIHR had excellent access to these companies through its partnership with Danish Industries, which permitted the project to review and examine a great deal of information that usually would not be shared with outside parties.

What allowed us to create such a partnership? It was timing, and a little bit of luck thrown in as well. Not every organization or national human rights institute can duplicate this process in their own backyards. Nor would we want them to expend resources on creating another tool like ours, as we have spent a great deal of energy in a careful consultative process to make the tool universal. However, this kind of partnership in itself is a useful mechanism or forum and can go a long way toward fostering education and reducing misperceptions.

Several factors facilitated this collaboration in late 1990s Denmark: a lack of human rights policies in business operations, media coverage of human rights violations implicating companies, a human rights organization with a national status, plus the business association's willingness to participate. Without this confluence of factors, the Human Rights and Business Project would not exist.

Companies responded to the situation by making it clear they wanted to understand human rights, which could best be facilitated by a set of tools set forth in terms that were familiar to the industry, that could be applied inside the company to assess its own operations. So DIHR and Danish Industries launched a long-term research project to develop the tool that came to be known as the Human Rights Compliance Assessment.

When the HRCA development in Denmark was complete, the European Union sponsored a peer review process. This review allowed DIHR to take the HRCA draft to 13 countries in the EU to identify any major flaws. We disseminated the tool to the business community, trade unions, research institutes, human rights advocacy organizations and various other civil society actors. We were able to further specify human rights standards acceptable to both the business and the human rights communities. In all, we approached 95 different participants. We were able to get input from corporations like Shell and Carrefour and organizations like Amnesty International and the Dutch group HOM.

As a part of the peer review process, corporations and human rights representatives were identified and then paired. Each pair was allocated particular components of the assessment tool and each participant was asked to spend a few hours reviewing these rights individually, marking any areas where they would like changes made. Each sample consisted of about 20 pages of draft text. All participants were asked to review the information generally, but to focus in particular on whether the standards and indicators were understandable, straightforward and comprehensive, and whether they demanded a reasonable level of responsibility from the business community. The suggestions resulting from this process are currently being incorporated into the final version of the HRCA before it is released to the public.

INITIAL REACTION

The process that brought together companies and the DIHR was unique and created a new and untested partnership. Some of the companies still didn't understand what human rights were or how they affected company operations, even after having problems exposed in the media.

One company approached by our research organization initially responded, *"Human rights are based on feelings and how on earth could a business address feelings?!"*

Another company described human rights as a *"public relations issue, with little that could be measured by outside organizations."*

On becoming involved in developing the HRCA, these two companies immediately realized the breadth of human rights issues and how many of their existing policies were at odds with international law.

After working with us and developing the tool, they were both able to appreciate human rights differently: *"I didn't realize that there was so much law on the matter... this really helps us to get our arms around this issue."*

And, *“The project’s approach will allow us to have auditors review our business operations using actual standards that can be identified and reviewed.”*

While this is a good start, the real test will come over the upcoming years as corporations and advocates put the tool to use in real-life scenarios.

Next steps

As of this writing, the HRCA has only just reached its completed form, so it has not yet been tested. It should go through the first test phases by the end of 2004 or early 2005, after which it will be released to the general public.

We may learn a great deal from other companies and human rights organizations who choose to use the tool. One challenge in the coming years is to adapt it to work in a variety of corporate settings. While the testing is ongoing and the assessment is confidential, the final results of this process will be made public at some point in the not-so-distant future. For example, Shell International has incorporated the HRCA into a comprehensive six-step program that it has tested in South Africa. Shell’s application of the tool will be very helpful to other companies who will wish to test the HRCA.

Furthermore, the Dutch human rights organization HOM will be using the tool in the Netherlands, working with other large Dutch corporations who wish to develop human rights policies. Their work will begin later this year when the HRCA is released publicly and may eventually serve as a model for how business and advocates can cooperate in using the tool.

Companies will eventually recognize the value of human rights assessment products. Acceptance may be difficult at first, especially if a company has not yet experienced problems related to human rights. However, any compliance officer, legal department or human resources department concerned about corporate risk levels should immediately see the benefit in this tool.

Without the HRCA, companies may well continue to view human rights as “fluffy,” a vague subject area too difficult to understand in a business setting. A tool like the HRCA will allow them to see concrete ways in which human rights can be assessed and then incorporated into their daily operations. During the next few years, it may be up to nonbusiness organizations to promote this tool within the business community.

Consider an example of how such acceptance might be gained, where Corporation D chooses to use the HRCA after being pressured by media stories on employees at its operations in a distant country. Without needing to communicate directly with NGOs who

flagged the issue, it can use this tool to assess and understand the problem it is confronting.

Let’s say this EU corporation has operations overseas where most of its final products are assembled. The corporate manager in public affairs, or maybe the legal department, pulls up the HRCA files and scrolls through the tool to identify the questions related to manufacturing. After the manager has responded to the 30 to 40 questions in the relevant sections of the HRCA, he or she might identify weaknesses related to issues of “health and safety” and “employee freedoms to move freely” in some operations.

As the manager compares the media story, the press release from the NGO who flagged the problem and the HRCA items, it becomes clear that all are related to the complaints leveled against the corporation. Now, the manager has used the tool to identify specific unacceptable practices that need to be corrected. At this point the manager can develop a plan of action for the corporation to correct the problem or (as I would advise) reach out to the NGOs involved and work on the solutions together.

The HRCA and advocacy

This leads me to discuss the potential of the HRCA for advocacy groups. Even if the tool starts slowly in the corporate world, I believe advocacy groups for their part would also do well to use the tool in their dialogue with corporations.

For example, suppose Corporation E produces furniture for the retail market. To maximize its competitive edge, it employs direct purchasing offices in countries where timber is harvested, and its purchasing agent searches for the cheapest timber contracts. Recently, the parent corporation has set up some policies for timber purchasing to conform with requirements for environmental certification. However, those policies don’t cover human rights aspects of the timber-harvesting relationship.

Let’s say that NGO A is an organized membership group representing environmental protection and indigenous rights. It wants to discuss practices related to harvesting and purchasing with the corporation because it has identified potential problems related to the corporation’s purchase of environmentally certified timber originating in conflict zones. Following company policy, local purchasing agents have addressed the environmental concerns but have not taken into account factors related to the labor force or the land that was used for the harvest.

While NGO A wants to address specific human rights violations related to indigenous food production, in discussions with corporate representatives it may want to couch this discussion in terms that would additionally help foster corporate policies to avoid such



situations in the future. In this case, it could use the HRCA's comprehensive summary of the subject to identify appropriate questions and applications to bring to the corporation's attention—complete with citations of international human rights law—and to further identify areas to investigate within the corporation's operations and structure. Now, NGO A is actually able to confront the corporation with a real problem in language the corporation can hear and can offer an impartial method to help the corporation to assess the problem internally.

Using the HRCA tool in this way helps an NGO to be constructive in its dialogue, but also backs it up with context-specific information. This is very important, as many times such dialogues with corporations produce very vague assurances to do better, or result in a standoff where the corporation claims it cannot do anything concrete to correct the situation. The tool allows the advocate and the company to work together to correct the situation.

The HRCA is designed to be generic to make it apply to as many contexts and situations as possible. This provides opportunities for organizations dedicated to human rights in the business context to use the tool for joint projects with business associations in their own regions.

For example, let's say an Argentinean group has started to organize around corporate responsibility. It could approach its own national business or industrial associations and discuss a joint project to adapt the HRCA to that region. Such a relationship could be developed slowly and with minimal financial commitments from either party since the basic assessment tool already exists. Instead, they could begin with discussions of culture-specific adaptations to make the HRCA appropriate for use in Argentina.

A collaborative process like this helps both the NGO and the business association understand the fundamental place of human rights in their own business setting and allows the two parties to develop a working relationship to adapt the tool to their perceived needs.

Lessons learned

Any process or tool has its limitations or drawbacks. The Danish Institute for Human Rights found that its ability to find funding and general support for this project was limited by its function as an academic institution. The institute exercised a great deal of care to continually get buy-in from Danish companies and to design a mechanism that would translate international law into understandable terms.

However, given the broad terrain covered by international human rights law, the HRCA tool became much larger than the companies involved had wanted. While,

they argue that company staff shouldn't use more than 20 to 40 hours of time in assessing the company, the tool is currently designed to take longer. Companies have specifically noted that there are too many questions for a manager to answer quickly and that the size of the tool makes it difficult to use without an outside consultant's help.

It is unclear whether this factor will discourage use of the tool. I would argue that it only means that another step will be needed in the process to adapt the tool to corporate use—having someone or some group tailor the HRCA for a specific company's use. Using a consultant may be the most practical choice for a company. It will be up to DIHR and others to continue to analyze whether the HRCA can be further compressed to address this corporate concern.

Another potential problem with our process was not having tested the final version of the HRCA for company use. DIHR was in constant contact with companies to understand their needs. This brought a great deal of information for the staff to analyze and build into the HRCA. However, there hasn't been enough time built into the process to hand the tool off to our partner corporations to have them put the tool to use. Therefore, we don't have any initial reactions on how company managers actually use the tool.

This means we will need to follow up when corporations begin using the tool. We will need to help them understand how it works and to identify what stylistic changes will need to be made in order to improve the tool. However, this ongoing effort is similar to other human rights initiatives such as The Global Reporting Initiative, which spent several years and a great deal of energy refining their business tools. The HRCA will need to go through the same process once it is made public.

Even with some of these problems, one of the most promising possibilities for the HRCA is that it can provide a clear framework and basis for human rights dialogue among governments, businesses and NGOs. The HRCA is especially useful in this process in three important ways: It provides a legal translation, it establishes framework on which to base solutions and it facilitates an informed dialogue.

Legal translation. The DIHR believes that this is the first attempt to comprehensively translate the Universal Declaration of Human Rights into language that is understood by both NGOs and corporations. This represents a major investment of time and consultative development which does not need to be conducted again. This alone gives the HRCA its greatest value—universalism. Regardless of geography, any dialogue between businesses and/or NGOs that revolves around the Universal Declaration of Human Rights can call on the HRCA for guidance. And, given

the process to design the tool, both advocates and corporations should have confidence that their distinctive perspectives were used in its development. The HRCA goes a long way toward providing the legal translation needed to help any negotiation or dialogue related to this subject matter.

Framework. The HRCA goes beyond a simple legal translation by framing human rights issues as questions in a business context. This creates a comprehensive framework that enables both companies and NGOs to focus on the appropriate issues when discussing human rights violations. Too many times businesses plead ignorance to the connection between violations and their own operations, pointing instead to governments as the guarantor of human rights. At the same time, NGOs may propose corporate remedies that undercut a company's purpose of operation (profit), or recommend actions that do not truly fix the problem. Without an established framework and a set of parameters to operate by, both parties tend to have uninformed and unrealistic expectations or suggestions to solve one another's problems. The 300+ questions in the HRCA help build the foundation for these discussions. In this way, discussions in conflict situations can be focused and can be aimed at practical interpretation of international law.

Informed Dialogue. Many negotiations fail due to the inability of the parties to communicate with one another. This effect is usually intensified when discussing international human rights instruments that are difficult to understand and are not used on a daily basis either by businesses or by NGOs. Companies and advocates tend to speak past each other, since neither are experts on the subject. The tool can provide the opportunity for all parties to become quasi-experts on human rights in the business setting, creating more informed dialogue and enhancing outcomes of protecting human rights around the globe.

Conclusion

The world is made up of different people with different perceptions of what is right and wrong. To create policies within a corporation that address everyone's needs is virtually impossible. However, we as a society will be hard-pressed to find solutions to these problems if companies do not recognize or respond to the basic human rights problems they encounter, or an NGO confronting such a corporation cannot articulate their concerns in the corporate context. The HRCA is an important new human rights assessment tool that helps both businesses and human rights advocates begin the crucial work of correcting and averting human rights violations in corporate operations. In particular, rather than arguing over the *what* and *how* of a situation, our work can focus on solving the problems identified by the HRCA tool.

For NGOs to engage productively in this process, they need to access the language of the business community. They also need to keep an eye out for windows of opportunity for dialogue with companies. As mentioned above in "The company problem," corporations actually *need* to find better ways to address human rights problems, because these problems are bad for business in a variety of ways. When such an opportunity develops, it may also be crucial to build alliances with "bridge" organizations, such as business associations or federations that already have a mandate to assist companies in addressing problems shared within their community.

For further information on this research, contact the Danish Institute for Human Rights. When it becomes available, you may also download the HRCA at www.humanrights.dk

Further resources:

Office of the High Commissioner for Human Rights

www.ohchr.org

The UN Global Compact

www.unglobalcompact.org

Business for Social Responsibility

www.bsr.org

CSREurope

www.csreurope.org



Notes

Notes



To download this and other publications available in the Tactical Notebook Series,
go to www.newtactics.org.

Online you will also find a searchable database of tactics and
forums for discussion with other human rights practitioners.



The Center for Victims of Torture
New Tactics in Human Rights Project
717 East River Road
Minneapolis, MN 55455
www.cvt.org / cvt@cvt.org
www.newtactics.org / newtactics@cvt.org

