

Consultation on operationalising the Ruggie framework

Geneva 5-6 October 2009

Submission with respect to the session on 'Human Rights Due Diligence'

Maplecroft would like to thank UN Special Rapporteur for Human Rights and Business John Ruggie for holding the October 2009 consultation on operationalising the 'Protect, Respect, Remedy' framework ('the Framework'). In particular, it was with great interest that we followed the session on human rights due diligence, which is based on the following core elements:

- Human rights policy
- Undertaking risk assessments
- Integrating human rights
- Tracking performance

The session was primarily focused on the role of stakeholder consultation and engagement with impacted communities as part of the risk assessment phase. We consider these activities vital for any comprehensive human rights due diligence programme.

In addition to this, we would stress the importance of detailed, evidence-based risk research, assessment and monitoring as a starting point for any due diligence process. In particular, we recommend that a key way in which to operationalise the Framework is to establish the human rights context in which businesses are operating. Our own research and experience suggests that this requires two key steps:

Recommendation 1: Map latent risks

By 'mapping' (i.e. identifying and assessing) human rights risks from the start, companies can compare the latent risks posed by any particular operating location against their ability to manage such risks. Latent risks can be identified through a wide variety of means, including sources such as:

- The US State Department
- Amnesty International
- Human Rights Watch.

Although such sources are generally of a qualitative nature, methodologies exist whereby this data can be converted into and combined with, index data. This offers significant advantages in terms of:

- Comparability (in terms of time and location)
- Consistency
- Trend identification

Whilst combining quantitative and qualitative elements can present significant methodological challenges, we have done extensive work to integrate these into a comprehensive yet flexible index (the Human Rights Risk Index ('[HRRRI](#)'))¹ covering a total of 196 countries and organised into the following groups:

- Human security
- Labour rights and protection
- Civil and political rights
- Access to remedy

¹ http://www.global-risks.com/human_rights/report_2009/

The HRRI methodology is also aligned with the Framework. For example, our weighting of risks reflects the primary duty of the state to protect all internationally recognised human rights, as well as the secondary duty of business to respect internationally recognised rights. Furthermore, the 'Access to Remedy' group of indices directly reflects the 'remedy' element of the Framework.

Nonetheless, there is still a great deal of room for improvement in terms of information sources upon which to base an index of this nature. Whilst the sources outlined above provide a good overall picture of the types and frequency of human rights violations occurring in a particular place, their centralised nature and annual timelines mean that there is likely to be a significant amount of additional data that is not being captured and patterns that are not necessarily being identified. For example, this includes:

- Sub-national variations and dynamics
- Sector-specific human rights risks and dynamics
- The different nature of types of human rights violations
- Short-term variations in human rights risk

This is an area in which businesses can play a significant role, in terms of:

- Sharing primary human rights data collected via their own international operations
- Funding research by expert third parties at both a local and international level

We believe that both activities – including ongoing monitoring – would do much to help enhance the operationalisation of the Framework by helping establish a more accurate picture of the contexts in which business is operating.

Recommendation 2: Establish risk management proficiency

Our experience and research suggests that in order to establish a complete picture of a company's human rights context, latent risks need to be compared to a company's ability to manage those risks ('Risk Management Proficiency'). Risk Management Proficiency can be identified through a variety of means – ranging from percentage of personnel training in human rights to human rights spending. We specifically advocate the use of indicators that provide insight into the company's longer-term, systemic ability to avoid, manage and mitigate risks. These might include, for example, the existence or quality of:

- Human rights policies
- External human rights commitments
- Human rights management systems
- Stakeholder engagement mechanisms
- Participation in external human rights initiatives

As with risk assessment, methodologies can be put in place to convert what is often qualitative data into quantitative form. Risk Management Proficiency can thus be directly related to latent risk, producing a 'residual risk' measure that offers a detailed picture of the company's specific human rights context.

Because of the unique nature of different companies, as well as their specific strategic and operational contexts, Risk Management Proficiency is not necessarily as amenable to the application of a standard index methodology by third parties.

Nonetheless, there is again an opportunity for business to share information and collectively establish the most important common components of human rights Risk Management Proficiency. This would do much to enhance the ability of business to assess risk, to strengthen the methodological credibility of all participating companies and to establish more concrete basis for detailed contextualisation within the Framework.



Implications for the Framework

These recommendations have implications at two levels: First, is to encourage the use of similar risk assessment methodologies by companies as an integral part of their due diligence process. The second is for business to play a greater role in broader collective research of the latent human rights risks facing companies operating in a range of emerging markets and areas of weak governance.

Together, these are likely to help put companies in a strong position to prioritise spending, time and effort on those areas already identified as high risk. This is likely to result in dynamic, flexible and 'intelligent' risk management, instead of the application of a blanket approach to different contexts and human rights issues. This can help ensure the best possible human rights outcome from the resources available to business – and contribute to the optimal operationalisation of the Framework.

We would very much encourage companies to take up this opportunity in order to play a proactive part in the enhancement of due diligence within the Framework.

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