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| | |
|---------------|---|
| Item Type | Preprint |
| Authors | Schouten, Esther |
| Publisher | Shell / Global Compact |
| Rights | With permission of the license/copyright holder |
| Download date | 2026-05-16 03:14:07 |
| Link to Item | http://hdl.handle.net/20.500.12424/173335 |

Road testing the Human Rights Compliance Assessment tools

**Prepared for UN Global Compact
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Introduction

Although human rights are primarily the responsibility of governments, Shell supports the Universal Declaration of Human Rights. Shell has integrated human rights into the Shell General Business Principles in order to conduct business in a way that respects the rights of employees and supports human rights in line with the legitimate role of business.

Beginning 2001, Shell International BV has been roadtesting the Human Rights Compliance Assessment (HRCA) tools, as developed by the Danish Institute for Human Rights.

This case study endeavours to share lessons learnt in roadtesting the HRCA tools that may be beneficial to other companies. The case study provides a description of the tools, outlines their application within the Shell Group, and gives an analysis on their applicability and usefulness. The case study does not, however, examine in detail how the HRCA tools have impacted Shell policy, but instead focuses on lessons learnt from their implementation.

Contributions have been sought from the Danish Institute for Human Rights (DIHR) and the Dutch Humanist Committee on Human Rights (HOM)¹. The results of these inputs have been incorporated in this paper.

More general information about Shell's approach to human rights can be found on www.shell.com/humanrights.

Background

Multinational energy companies, such as Royal Dutch Shell, can play an important role in development by finding and producing oil and gas and supplying energy-related products and services. However, political unrest exists in some of the world's most resource-rich countries. In certain countries, daily life includes civil unrest, oppressive rule, armed insurgency, and terrorist or guerrilla activity.

¹ For more information, refer to www.humanrightsbusiness.org and www.hom.nl

Operating on a day-to-day basis in politically sensitive countries raises a number of challenges. These vary depending on the country, but frequently the challenges are in relation to human rights, security and environmental issues; but they also include bribery, corruption, standards of governance and application of international law.

Shortly after the Shell Group explicitly expressed its support for human rights in 1997, the need arose to understand and address the human rights risks faced when entering or operating in such politically sensitive countries and regions. At the time, the company found little information available on how private corporations should address or manage human rights. The company faced difficult challenges, such as how to translate the human rights conventions drafted for states to measurable indicators that are relevant to the business context. Shell started to proactively look for solutions and came across the DIHR.

At that time, the DIHR had a Human Rights & Business project that sought to combine the expertise of the human rights community with the experience of business to develop practical and efficient human rights tools for companies. The ultimate aim was to assist business develop while maintaining good human rights practices.

To that end, the DIHR developed the Human Rights Compliance Assessment (HRCA) tools. One of these tools, the Country Risk Assessment, compares local laws and practices against the Universal Declaration of Human Rights in addition to more than 80 other international treaties. It identifies the main risk areas in a country, like labour rights for foreign labourers or the behaviour of security forces. Companies can use the tool to test the procedures and practices they have in place for respecting these rights and work to close any gaps.

Spurred by this mutual interest in connecting business and human rights, Shell International B.V. and the DIHR began collaborating in 2001 to road

test these HRCA tools and deepen the understanding about what human rights means in practice for companies.

What is the HRCA?

The HRCA is a database of 350 questions and 1,500 indicators. These questions and indicators have been developed based on the minimum responsibilities of companies with regard to human rights, as defined by the DIHR, towards its employees, business partners and the wider communities in which they operate.

The HRCA uses the Universal Declaration of Human Rights (UDHR) as an overall framework and refers to the dual Covenants (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). In addition, more than 80 major human rights conventions and treaties, as well as the major ILO (International Labour Organisation) conventions are taken into account.

The HRCA was developed by the DIHR through extensive consultation with companies and NGOs all over Europe, with the goal of including necessary input from both audiences.

The HRCA consists of several tools that provide a practical step-by-step approach to assess all potential risks to violate human rights.

What are the HRCA tools?

The following HRCA tools are discussed below: the Country Risk Assessment, the Company Assessment, the Action Plan and the Quick Check.

1. Country Risk Assessment (CRA):

The CRA builds on twenty human rights drawn from the UDHR. The CRA is performed by the DIHR and evaluates how formal law and the social and cultural practices of a specific country compare with human rights norms.

Based on this assessment, the level of risk for a company operating in a specific country, with regards to the potential violation of human rights, is determined in terms of high, medium and low. This business risk evaluation is based on the risk ratings in law and practice for each right, combined with an assessment of the relevance, link and proximity to company operations in general. The proximity of company operations includes relations with suppliers, contractors, security forces, communities and government.

Table 1 shows the outcomes of a Country Risk Assessment (CRA) performed for a country in North Africa, indicating the compliance level (high, medium or low) of formal law and social and cultural practices with human rights norms and the business risk level (high, medium or low) for twenty human rights:

| CRA Score North African country | High | Medium | Low |
|--|-------------|---------------|------------|
| Non-compliance with formal law | 7 | 10 | 3 |
| Non-compliance with practices | 11 | 7 | 2 |
| Business risk | 5 | 11 | 4 |

Table 1: CRA scores for country in North Africa

The CRA scores for the North African country shows that the formal legislation regulates human rights to a reasonable degree (3 human rights have strong compliance and 10 have medium compliance in formal law), but the balance shifts when looking at the practice level (11 human rights are in high non-compliance with human rights). For example, formal law regulates the right to privacy, but this right is sometimes violated by various arms of the state.

Based on the formal law and practices check, five human rights are identified to be high risk for business and their operations (across all

sectors). For example, the country in North Africa does not have a national minimum wage system, which may lead to employees not being able to obtain an adequate standard of living.

Focal areas

This business risk assessment then allows for the selection of a number of focal areas for companies. The focal areas are selected in a two-stage process: 1) according to the status of the particular human right and the severity of the human rights violation; and 2) the company risk of human rights.

For the North African country, five focal areas have been identified for all companies and their business partners working in that country: working conditions, trade unions, discrimination, salary and government relations.

The selected focal areas are complemented with recommendations for companies to help mitigate the identified human rights risks. For example, a company operating in the North African country is recommended to focus on working conditions of especially foreign workers because those workers are the most vulnerable group. A sample recommendation for foreign workers in this country is to ensure that such workers are provided with labour contracts and valid work permits.

Available CRAs

CRAs are developed based on the preferences of the member companies of the DIHR and/or the DIHR itself. CRAs are currently available for: Algeria, Brazil, China, India, Kazakhstan, Libya, Oman, South Africa, Tanzania, Ukraine and Vietnam. Expected CRAs include Russia and Kenya.

2. Company Assessment:

The second step is to create a customized HRCA check with the purpose of evaluating how company policy, procedures and practices cover human rights risks.

The DIHR selects the questions and indicators from the HRCA database, based on the business risk identified in the CRA, as well as consider taking into account the human rights risks related to the type of business operations in the country. In practice, this usually means that approximately 15% of the questions and corresponding indicators are selected.

For instance, based on the focal area of working conditions identified as a high risk area for business in the North African country, questions and corresponding indicators are selected for the company assessment. The following is an example of such a question and indicators:

Q: Does the company ensure that its employment-related decisions are based on relevant and objective criteria?

- Employment advertisements do not reference irrelevant characteristics, such as race, unless listed as part of an equal opportunities promotion.
- Hiring managers receive training regarding the company's non-discrimination policies.
- An individual or department in the company is responsible for monitoring company compliance with the company's non-discrimination standards and policies.

Then, in the form of a self-assessment, companies can assess coverage of human rights risks for the selected indicators at policy, procedure and performance levels. For example, a company checks whether there is a procedure in place that ensures all employment advertisements are non-discriminatory.

3. Action Plan:

After the company assesses its policies, procedures and performance on coverage of human rights risks, an overview will arise where the company has strong and weak coverage. This may result in a plan of action for mitigation. The company may choose to invite key stakeholders to discuss the plan of action.

4. Quick Check

Besides this step-by-step plan, a short version of the company assessment, called the 'Quick Check', can also be used. This check comprises of approximately 10% of the questions and indicators (28 and 230 respectively) from the full HRCA database. The Quick Check contains the most essential human rights issues, determined by the DIHR, for a company to consider in relation to its business operations. These fall into the following three categories:

1. Employment practices: forced labour, child labour, non-discrimination, workplace health and safety, freedom of association, conditions of employment and work;
2. Community impact: security, environmental health and safety, corruption and bribery, company products;
3. Supply chain management: relationship with suppliers.

The advantage of the Quick Check is that it takes considerably less time than the full HRCA and can therefore be used to quickly gain an insight into the human rights issues facing a particular company. The disadvantage is that it does not include the full pallet of human rights and it is not country-specific (although it can be made country specific in combination with the other tools). The Quick Check is freely available and can be found along with the other HRCA tools at <https://hrca.humanrightsbusiness.org>.

A dialogue between the DIHR and its corporate members allows for a continuous adaptation of the tools that fit business needs. Future projects include sector specific and country specific HRCA checks.

Use of the HRCA tools by Shell International BV

First test

Before the development of the tools, the Human Rights Compliance Assessment (HRCA) was first tested in a Shell company in Southern Africa² in 2001/2002 on four areas:

1. Does the HRCA identify the major human rights issues that the company is most likely to encounter?
2. Can the HRCA be conducted in a reasonable amount of time by the company?
3. Does the HRCA fit with the company structure and existing methods of addressing human rights?
4. Is the proposed HRCA method of checking suppliers/contractors viable?

The test proved useful in several ways and the questions all answered positively. In addition, the test also pointed to areas where the HRCA tools could be further streamlined, creating greater effectiveness. One issue, related to the first question, was that the HRCA was found to be strong on political rights, but weaker on labour rights. To address this imbalance, the DIHR decided to contract a labour law specialist.

Another issue found that relates to the third question included managers being unclear about human rights/legal terms used in the HRCA, such as 'traditional knowledge holder' and 'disenfranchised group'. The DIHR decided to address this by adding a glossary of terms and tone down the number of legal terms.

Developing step-by-step approach

As a result of the test, the step-by-step approach was developed (as earlier described) and tested in a Shell company in the Middle East in 2002/2003 as a desktop exercise. This test proved that using a Country Risk Assessment in conjunction with the HRCA resulted in a more efficient

² No country names are mentioned for confidentiality reasons.

tool that focused on the high risk areas for companies in that specific country.

For example, the test picked up that employees, particularly of a non-Muslim faith, would be especially vulnerable to discrimination based on the country's laws and practices. A company operating in that environment is recommended to design explicit non-discriminatory policies to ensure that the hiring, firing, promotion and benefits are not subject to influence based on religious grounds and to establish an independent and anonymous complaints system. Focusing on implementing these high risk and country specific recommendations would lead to a reduction of potential risks to violate human rights.

Shell Group assessment

Another issue that appeared from the tests with the HRCA was that Shell Group standards sometimes covered human rights risks in cases where human rights risks were not covered by local standards. However, no clear understanding existed as to what extent human rights risks were addressed in policies, standards and guidelines on Shell Group level. Shell International B.V., therefore, decided to apply the Quick Check on Shell Group level in 2004/2005 to assess the extent in which policies and procedures on a corporate level address human rights.

To that end, Shell International B.V. performed this assessment by interviewing employees working within the different functional areas (such as Human Resources, Security, Contracting & Procurement) that related to the Quick Check areas (see section 'Quick Check') as well as reviewing all existing policies and procedures. The DIHR reviewed the results, performed an analysis of how company procedures addressed human rights and provided recommendations.

The results showed that Health, Safety and Environment (HSE), Security and Product Stewardship have well-developed policies and procedures that also address human rights. It also showed that many other functional

areas did have policies and procedures in place covering human rights elements, but that these policies and procedures could be improved. Shell International B.V. has since worked with the different functional areas to develop an action plan to address the findings.

Further testing the tool

The HRCA tools were further tested. The DIHR conducted a Country Risk Assessment for a particular country in Asia, of which table 2 present the outcomes.

| CRA Score Asian country | High | Medium | Low |
|--------------------------------|-------------|---------------|------------|
| Non-compliance with formal law | 4 | 11 | 5 |
| Non-compliance with practices | 19 | 1 | 0 |
| Business risk | 13 | 7 | 0 |

Table 2 CRA Scores Asian country

The CRA scores for the Asian country shows that while the formal legislation regulates human rights to a reasonable degree (4 human rights have strong and 11 medium compliance in formal law), this is not reflected in practice given 19 human rights are in high non-compliance. This is why a relatively high number of risk areas for business in general and their business partners are identified (13).

Based on the outcomes of the CRA and the business operations in the country, the DIHR selected 47 questions out of the total of 350 questions with corresponding indicators. These 47 questions related to the following focal areas: working conditions, trade unions, forced labour, health, salaries and terms of employment, relocations and privacy and family life. For example, this means that companies who operate in this country need to pay specific attention to preventing the use of forced labour in their operations.

In early 2005, Shell International B.V. tested the Company Assessment for a Shell company operating in the Asian country to review the existing policy, procedures and practices with respect to human rights. Employees

of the local Shell company were interviewed, policies and procedures were reviewed and practices were assessed. Table 3 below shows the consequent outcome on coverage of human rights for the 47 questions.

| HRCA Asian country – coverage human rights in policies, procedures and practices | Strong coverage | More attention needed | Weak coverage | Not applicable |
|---|------------------------|------------------------------|----------------------|-----------------------|
| 47 human rights questions selected based on CRA focal areas | 13 | 23 | 9 | 2 |

Table 3: HCRA scores for Asian country

The HRCA assessment showed that the company in question had strict and clear guidelines and control mechanisms and practices with regard to health and safety, as well as bribery and corruption. The company also maintained a good relationship with local government institutions in regards to dealing with human rights related issues. The results also showed that the company could improve their policies, procedures and practices in a number of areas to deal with human rights risks. These areas include: Contracting & Procurement, Legal and Harassment & Discrimination. An Action Plan was formulated with actions for the Shell company in Asia that are relevant to and feasible to execute in the local context. One action was to raise awareness regarding the Voluntary Principles on Security and Human Rights to which Shell Group signed up to in 2000 (see [www.shell.com/human rights](http://www.shell.com/human%20rights)).

Applying Country Risk Assessments in new country entries

The testing of the HRCA tools demonstrated the value of the tools, especially the in-depth analysis of human rights risks enclosed in the Country Risk Assessments.

It was therefore decided to start applying these tools in new country entries. Since 2005, three CRAs have been used to identify human rights risks for new country entries in North Africa and Eastern Europe. The CRA

has been supplemented with a Shell specific action plan based on the recommendations made in the CRA. This action plan is then taken forward within these respective Shell companies when designing the new policies and procedures.

Although the implementation of the action plan is a continuing process, concrete outcomes so far include additional clauses in contracts and training for contractors to ensure protection of labour rights of foreign workers in particular.

Summary application of the tools within Shell Group

Table 4 shows the use of the HRCA tools from 2004-2006.

| Level | CRA (DIHR) | HRCA (Shell) | Quick Check (Shell) |
|---------------------------------|-------------------|---------------------|----------------------------|
| Shell Group | | | X |
| Shell companies in North Africa | XX | | |
| Shell companies in Asia | XX | X | |
| Shell company in Eastern Europe | X | | |

Table 4 Use of HRCA tools within Shell

Reflecting on the HRCA tools

What are the benefits and current limitations of the HRCA tools?

Benefits of the HRCA tools

In general, Shell International B.V. considers the HRCA tools provide the following benefits listed below:

- Systematic monitoring and mitigating of human rights risks on a wide spectrum. Applying the tools make human rights intelligible, as they focus on country and business specific high risk areas and indicators that allows efficient monitoring. A company is better enabled to assess its performance on addressing human rights risks. In addition, the

tools provide recommendations on how to mitigate the risks identified and improve performance.

- Complementing the standard process of risk assessment processes for joint ventures and investments in new countries. The Country Risk Assessments can inform the decision-making process for new countries or joint ventures. Furthermore, a consultancy team is considering the integration of the HRCA tools in Shell's 'integrated impact assessment' for projects. This process assesses the social, environmental, economic and health impacts that a new project may have on the local surroundings. The HRCA tools provide the human rights aspect to this process.
- Training and competency development of employees. Applying the tools enables employees to understand the link between human rights and their daily business activities. This raises employee awareness on human rights and therefore, contributes to embedding human rights into mainstream business activities.
- Sharing process, results and dilemmas utilizing the HRCA tools may facilitate stakeholder dialogue and may enhance reputation. Stakeholders expect companies to show how they have implemented their commitment to human rights. Choosing to share the process and/or results of the human rights compliance assessments may fulfil this expectation and it can bring more depth to stakeholder dialogues (since the subject of human rights is brought down to concrete actions).

Limitations HRCA tools

The limitations as experienced by Shell International B.V. are listed below.

- The indicators are formulated based on the minimum responsibilities of a business regarding human rights, as defined by the DIHR (and inter alia based on their consultation process with European companies and NGOs). Their definition includes respecting human rights (refraining

from blocking or impeding access to a right) and an additional four more positive areas (in relation to employees, use of products, people residing on company land and in some cases, where government services are absent). A company identifies the relevant indicators depending on the type of business and organisation, geographical locations, spheres of influence, etc. In this regard, Shell International B.V. chose to focus first on the level of respecting human rights, due to the global scope and impact of its operations. However, the distinction between the duty to respect human rights and more positive duties is not made explicit in the tools, which makes the selection more difficult.

- The language as prescribed by the HRCA tool does not always fit the local context and sometimes needs to be adapted, particularly in non-Western contexts. Some interview questions need to be rephrased so that the interviewee understands the questions and is not offended by them.
- No clear distinction exists between some policy and procedure indicators, which leads to some confusion regarding how to assess these indicators (whether it should be checked if there are policies in place or procedures that support these policies).

Shell International B.V. regards the tools useful in principle as they provide an innovative way to deepen our understanding on what human rights means at the operational level. However, the tools also contain a number of limitations. On the basis of discussions with the DIHR, the tools will be further refined, such as developing a sector specific approach.

Reflecting on application HRCA tools

Through trial and error, Shell International B.V. has learned a great deal about finding a suitable way to apply the HRCA tools. The listed aspects below include some of Shell International B.V.'s main findings.

- Start at the global level. Start the integration of human rights within global policies and procedures. Integration at a global level ensures consistency in the approach to human rights across individual country operations.
- Focus on relevant company issues. The tools are applied in such a way that the focus is on the relevant issues for an energy company.
 - Even though the indicators are selected taking a risk-based approach, not all the indicators are relevant to energy companies. For example, energy companies will generally be confronted more with issues of relocation and indigenous people than with issues regarding child labour. This is also the case within the energy sector itself; refining and drilling activities face a different set of issues and priorities. Therefore, the company may need to prioritise the human rights risks according to its type of business. The option of prioritising the questions according to relevancy of the company exists within the HRCA.
 - The size of the group of companies assessed and the timing of the assessment affects the relevance of indicators and efforts related to the application of the HRCA tools. When a business is just starting up in a country, a lack of people and an insufficient amount of resources may be present to allow for the application and follow-up of the HRCA tools and priorities. It is therefore crucial to consider when is the best timing to use the HRCA tools according to the size and maturity of the business.
- Take into account the political realities and sensitivities. The tools should be applied in such a way that it takes into consideration the political realities and sensitivities of the country.
 - Because of the politicised nature of human rights, talking with employees about human rights within some countries may have negative consequences for themselves or for the company. This

may require the use of different words whilst applying the HRCA tools. For example, terms used include 'business principles study' instead of human rights assessment.

- Some governments might find a Country Risk Assessment performed for their country offensive as the conclusions of the report shows how much progress is required to achieve their international responsibilities of embedding human rights in national laws and practices. Where the government is a joint venture partners of the company making the assessment, such company needs to be very careful marketing the use of the tool.
- The fact that the tool originates in Denmark does not help market the tool either, especially in the Middle East because of the international debate surrounding the cartoons of Mohammed in 2005. Hence, prior to introducing the HRCA tools, discussing the sensitivity and thinking about ways to mitigate the risks involved is recommended.
- Take into account cultural differences. Adapt the application of the HRCA tools in order to the local setting to account for the cultural differences.
 - Some recommendations may not fit the local culture and therefore, may have little effect in improving conditions. In Asia, the outcomes of the HRCA tools brought out a number of human rights dilemmas that unfortunately cannot be easily resolved. For example, the question of how a company is to ensure employee privacy when government monitoring of communication is paramount. Nevertheless, the application of the HRCA tools uncovered these dilemmas and the information revealed may be valuable for policy purposes.
 - The assessment as to what extent the company's policies, procedures and practices cover human rights tends to be

subjective. It is Shell's experience that the assessment works best when the team conducting the study comprises of different people from the organisation. Diversity in this context ensures alignment with international human rights principles, as well as secures pragmatic follow-up actions that fit the local context.

- Check available tools with needs of local company. The check between the needs of the local company and the different tools available should be carried out regularly. It may be a better fit for the company to use other tools, e.g. human rights training.
- Put in place competent resources at local level. How can one ensure that the results that emanate from applying the HRCA tools are actually implemented and become normal practice? In other words, how can we prevent companies from using the HRCA as a 'ticking-the-box' exercise? It is therefore recommended that a competent resource for implementing the Action Plan is involved at the local level. A competent resource is somebody that a) is aware of the importance of respecting human rights, b) has the knowledge and understanding of human rights principles, c) has the motivation to move it forward, and d) is connected within the local company to ensure implementation of the desired outcomes. This way, the local company controls and monitors the outcomes and hence, is more likely to yield results.

Shell International BV is considering integrating the tools into several existing processes within the company, such as the integrated impact assessment process.