

BLIHR #3

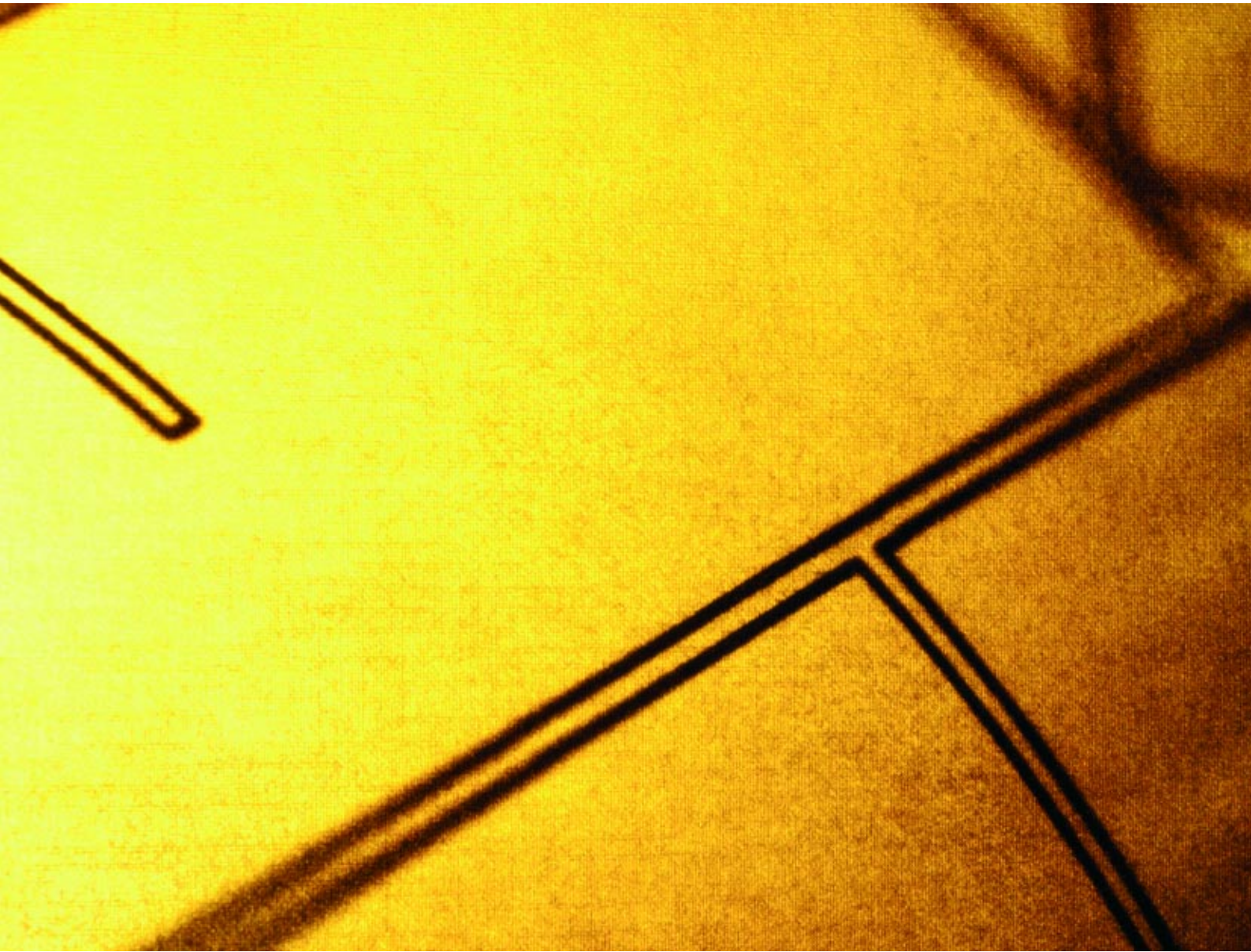


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Business Leaders Initiative on Human Rights

Report 3: Towards a 'Common Framework'
on Business and Human Rights:
Identifying Components

Business Leaders Initiative on Human Rights

Honorary Chair

Mary Robinson

Realizing Rights: The Ethical Globalization Initiative

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Ilse Castellanos	Statoil ASA
Rikke Jarvad Netterstrom	The Body Shop International plc

Organisers

TwentyFifty Ltd on behalf of Respect Europe

John Morrison	john.morrison@twentyfifty.co.uk
Kathryn Dovey	kathryn.dovey@twentyfifty.co.uk
Lauren Groch	lauren.groch@twentyfifty.co.uk

Programme Advisors

Scott Jerbi	Realizing Rights: The Ethical Globalization Initiative
Professor Alan Miller	McGrigors Rights
Sune Skadegard Thorsen	Lawhouse
Luke Wilde	TwentyFifty Ltd

Layout

Maria Lewander	Grön idé
Steve Grimwade	Maldon Printing Company Ltd

The third report of the Business Leaders Initiative on Human Rights (BLIHR) makes the case for a common framework on business and human rights. We have spent the last three years engaging with a wide variety of NGOs, government representatives and businesses. We have worked together to develop our understanding of human rights within a business context and we have taken this learning back to our businesses. Our efforts thus far have convinced us that there remains the need for much greater clarity on the nature and scope of the human rights responsibilities of all businesses, regardless of where in the world they are operating and regardless of their sector. BLIHR is a programme initiated by Respect in 2003 in partnership with Realizing Rights: The Ethical Globalization Initiative and managed by TwentyFifty Ltd from 1 April 2006.

LONDON, JUNE 2006

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Foreword



This, the third report of the Business Leaders Initiative on Human Rights seeks to capture the main conclusions and lessons learned over the past three years as the initiative completes its original mandate and moves forward into its second phase. BLIHR was initially formed to explore how international human rights principles and standards could be used to inform corporate policies and practices. Equally important, it aimed to demonstrate how business leadership could support global efforts to realise fundamental rights for all people.

Looking back on the past three years, I believe BLIHR has helped enormously in taking what for too long had been a polarised debate between business groups and civil society actors and shifting it to a more productive discussion on what good business practice on human rights can and does look like and where future action is needed.

Today there is broad agreement around the need for greater clarity at the international level, as well as nationally and locally, on the nature and extent of business responsibilities for respecting, promoting and protecting human rights. Few now question that the activities of business can provide an enabling environment for the enjoyment of human rights. Equally, it is difficult to still find voices who would argue against the reality that corporate policies and practices can have serious negative impacts on human rights when not carried out in a responsible manner.

I am convinced that the ten companies which have participated in BLIHR have helped move this debate in a more positive direction by taking a leadership stand early in their work. The overarching conclusion of their experience is a shared view that businesses, particularly those operating in multiple countries around the world, would benefit from the development of a common framework made up of principles and standards that would clearly articulate the nature and extent of business responsibilities concerning human rights.

The willingness of the BLIHR companies to give careful consideration to the 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights', adopted by the UN Sub-Commission on Human Rights in 2003 and the first effort within the UN human rights system to establish a base for identifying the human rights responsibilities of corporate actors, sent an important message about positive business engagement on international human rights issues.

The BLIHR companies recognised the importance of moving beyond the divisive debates over the draft Norms which had developed during their drafting and chose to focus instead on the value of testing them in their own operations. As this report makes clear, the BLIHR companies found much in the draft Norms that was helpful within their respective companies as a benchmark to check and develop their own policies and practices. At the same time, as the conclusions of their ‘road-testing’ point out, a number of important questions still require answers not provided by the draft Norms and there is a recognition that the debate must now move on.

The appointment of a Special Representative of the Secretary-General on business and human rights to take this agenda forward is an important opportunity and I have been encouraged by the level of support on all sides for Professor John Ruggie in his mandate. He reflects in his interim report that:

"...securing respect for human rights must be a central aim of governance at all levels, from the local to the global, and in the private sectors no less than in the public." ¹

His work, which includes the task of addressing complex questions such as the issue of defining more precisely the concept of ‘complicity’ in human rights abuses, will require the support of civil society and business representatives alike. It is my hope that this report will contribute to Professor Ruggie’s work and inform ongoing multi-stakeholder discussions.

The Special Representative’s mandate represents an important step forward in the work of the UN human rights system, now led by the newly established Human Rights Council. It acknowledges the importance of involving more actors in a sustained multi-stakeholder dialogue, and a greater willingness to think again about how human rights can be more effectively protected in today’s world – a world where the challenges to human rights are as great as at any time since the UN system was established more than half a century ago; a world where business and civil society in particular have become more important in every respect, from policy formulation to practical implementation.

We must continue to be clear about the primacy of Governments as the duty-bearer for ensuring the fulfilment for human rights. That means putting the role of business and other actors in the proper context. The challenge is in determining how accountability can be ensured, not only in States where governance is weak or corrupt, but also in nations where the changing role of the State, such as through increased privatisation of public services, put questions of accountability in a new light. These are the challenges the companies participating in BLIHR remain committed to addressing in the years ahead.

This report is not just about what has been done but also about the work that lies ahead. I am pleased that a second phase of the Business Leaders Initiative on Human Rights has been launched. This not only involves most of the current participating companies but also a number of new members from different industry sectors and from diverse geographic regions.

My colleagues and I from Realizing Rights: The Ethical Globalization Initiative are pleased that we will be able to continue our collaboration with companies committed to providing leadership on human rights in the years ahead.



MARY ROBINSON
PRESIDENT, REALIZING RIGHTS: THE ETHICAL GLOBALIZATION INITIATIVE
HONORARY CHAIR, BUSINESS LEADERS INITIATIVE ON HUMAN RIGHTS

¹ Interim Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Paragraph 19, E/CN.4/2006/97





Introduction

When the Business Leaders Initiative on Human Rights (BLIHR) was created in May 2003, we set ourselves the objective of finding "practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context and to inspire other businesses to do likewise"².

Shortly thereafter the 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' were adopted by the United Nations Sub-Commission on Human Rights (referred to as the 'draft Norms' in this report). Given our stated objective, it was helpful for us to 'road-test' the content of the draft Norms as part of our work. The road-testing has been undertaken through a series of projects which were set out in our second report³ and have been supplemented by extensive dialogue with experts, Non-Governmental Organisations (NGOs) and Governments. Details of these projects can be found on www.blihr.org.

We have spent the last three years engaging with a wide variety of NGOs, Government representatives and businesses. We have worked together to develop our understanding of human rights within a business context and we have taken this learning back to our businesses. Our efforts thus far have convinced us that there remains the need for much greater clarity on the nature and scope of the human rights responsibilities of all businesses, regardless of where in the world they are operating and regardless of their sector.

Now, as we move forward into our second phase and welcome new companies to the initiative we are keen to continue to play a key role in this debate.

The purpose of this report is to draw on our experiences and to make some conclusions on what the content of a 'common framework' on business and human rights might look like, taking into account the content of the draft Norms and other relevant work. When making the case on what the content should include, we draw conclusions that are in some areas contrary to the content of the draft Norms and we summarise our position at the end of this report.

Our position is that, from a business perspective, the case for a common framework on business and human rights is strong and some aspects of its content are becoming clearer whilst others will require more work. This framework would ideally be made up of three components:

1. *Concepts to clarify the role of business in the area of human rights*
2. *The range of relevant standards drawn from international human rights law*

3. *Processes for applying the concepts and standards in a business context*

We feel that a framework would offer all businesses greater clarity and certainty about their responsibilities and point towards opportunities relating to human rights. As we set out in this report, this framework would need to be clear about establishing the legal minimum for business behaviour (the ‘level playing field’). We acknowledge that Governments will need to look closely (possibly multilaterally) at the best way of focusing existing human rights law in ways that best clarify each Government’s responsibility for holding business to account. However, the framework needs also to offer business greater clarity about how it might meet society’s expectations of it beyond the legal minimum and how it may see human rights as a positive opportunity and not just an issue of compliance.

We believe that mandatory and voluntary approaches to this issue are not mutually exclusive since there is a need in society for both. Indeed, they may be seen as complementary since voluntary approaches are designed to raise the bar whereas the starting position for mandatory approaches is the legally enforceable minimum.

The central role of BLIHR has focused on the third component of the common framework and developing practical tools to assist businesses in implementing human rights relevant policies and practices into their operations. Our learning to date on the practical application of human rights within a business context was compiled into a joint publication with the UN Global Compact and the Office of the United Nations High Commissioner for Human Rights: ‘A Guide for Integrating Human Rights into Business Management’. The Guide incorporates the Human Rights Matrix developed during the first year of BLIHR and published as part of our first report. The Guide was initially published as a consultation draft and the final version is available on the websites of the Global Compact (www.unglobalcompact.org), BLIHR (www.blihr.org) and the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org).

As we move forward into our second phase and welcome new companies into the initiative, we are keen to expand our understanding of how best practice in this area can be developed to address some of the present difficulties in building and implementing a common framework on business and human rights. We are also well positioned to discuss our work in progress with other companies and encourage more businesses to engage in this debate. We recognise that there is still much work to be done and we look forward to reaching out to more businesses during the second phase of this initiative to broaden further the human rights discussion.

² Business Leaders Initiative on Human Rights: Report 1: Building Understanding, BLIHR, London, New York and Stockholm: 2003

³ Business Leaders Initiative on Human Rights: Report 2: Work in Progress, BLIHR, London, New York and Stockholm: 2004



Part One: Making the case for a common framework on Business and Human Rights

Benefits a common framework could bring:

- *A more holistic view of human rights and business*
- *A level playing field for business*
- *Greater clarity - in terms of the expectations of business and the benefits for action beyond the legal minimum*
- *Greater objective clarity to shareholders, investors and other stakeholders for making comparisons between businesses*
- *Added value to sector-specific approaches*

The context

Whilst there is wide acceptance from most businesses, Governments and NGOs that the primary responsibility for human rights rests with national Governments, there is an emerging realisation that business also has an important role to play. However, the international community has yet to agree on a common approach to the issue. The boundaries around what should be required and expected of business remain unclear and contested.

The draft Norms

This report makes the case for a common framework; however it also signals that there is much work still to be done to develop the instruments required to translate the human rights content of such a framework into a business sphere. The work of BLIHR towards supporting a common framework has included the road-testing of the content of the draft Norms as produced by the UN Human Rights Sub-Commission in 2003. The draft Norms could be seen as a first attempt to illustrate what the ‘minimum’ standards within a common framework might include. The work of the Sub-Commission has since been open to a lot of criticism but this does not deny the case for a common framework.

A level playing field

The experience of the BLIHR companies is that the commitment of an increasing number of companies to

human rights will continue to broaden and deepen, provided that progressive companies do not suffer sustained competitive disadvantage as a result of their commitment. This awareness is drawn from the application of human rights in operations in many parts of the world, including countries where national regulation falls short of internationally recognised minimum standards or where Governments are ‘unwilling’ or ‘unable’ to enforce existing obligations. Such inconsistency in the application of international human rights standards discourages a sustainable and progressive approach to business.

Each of the companies within BLIHR shares the view that the interests of both business and society would be best served by greater international clarity concerning the responsibilities of business for respecting, protecting, promoting and, in certain cases, fulfilling human rights. This clarity would be key not only for business but also for shareholders, investors and other stakeholders. A common framework would respond to this need for clarity. It would need to be universal in its application yet specific enough to help guide an individual corporation. It should be applicable within business sectors with different backgrounds of encountering human rights challenges and within countries at different stages of economic and social development.

Minimum and above

We believe that a common framework that identifies the responsibilities of business should embody minimum

standards (what we refer to as ‘essential’ business behaviour) but also examples of performance that are increasingly expected by wider society and can be categorised as ‘expected’ or ‘desirable’. This reflects two important points: firstly, some of the most effective and proactive contributions business can make should not be limited or enforced through regulation and secondly, over the years to come, societal expectations of business will continue to change thus raising the bar. ‘Expected’ behaviour today could become ‘essential’ behaviour tomorrow. Companies which go beyond the legal minimum and make a positive contribution to human rights should also see some form of competitive advantage for their actions.

In terms of the essential behaviour, there remains a strong case for the greater enforcement of human rights law across all national jurisdictions, ie the application of minimum standards by national Governments towards business. Much more needs to be done to support or pressure Governments that are falling short of their international commitments and we hope that recent reforms at the United Nations and the creation of the Human Rights Council might help expedite this. No business should be allowed to exploit particular locations and all should fulfil the minimum requirements of international human rights law regardless of where they are operating. Clarity on the minimum human rights standards applicable to business would be of assistance to companies in analysing particular human rights challenges and would lend legitimacy and greater assurance to businesses and their stakeholders.

Sector specific

It is important to note that a common framework does not detract from the need for more in-depth work at the sector-specific level, indeed such work is essential to begin to define the specific ‘sphere of influence’ of each sector and the expected and desirable actions a business might take. The experience of BLIHR companies working within the context of the Oil and Gas Sector, Finance, IT, Pharmaceuticals and Retail sectors has revealed expertise and insights that may enlighten particular corporate responsibilities in these sectors and assist in facing sector-specific dilemmas. Sharing these experiences has helped map out responsibilities (for example by employing the Human Rights Matrix) and helped inspire new initiatives in other sectors, such as the Utilities and Media sectors.

Examples of sector-specific initiatives with expertise in human rights codes and procedures

BUSINESS SECTOR	RELEVANT INITIATIVES
Retail	<ul style="list-style-type: none"> ● Ethical Training Initiative ● Fair Labor Association ● Social Accountability 8000 ● Clean Clothes Campaign: Model Code
Mining	<ul style="list-style-type: none"> ● The Voluntary Principles on Security and Human Rights ● Kimberley Process (indirect human rights protection) ● The Extractive Industries Transparency Initiative (indirect human rights protection)
Financial Services	<ul style="list-style-type: none"> ● The Equator Principles
Oil and Gas companies	<ul style="list-style-type: none"> ● The Voluntary Principles on Security and Human Rights ● The Extractive Industries Transparency Initiative (indirect human rights protection)
Information Technology	<ul style="list-style-type: none"> ● Electronic Industry Code of Conduct ● Global e-Sustainability Initiative (GeSI)

Conclusion

In conclusion the case for a common framework is derived as much from the competitive demands placed on a business as its desire to develop sustainable business relationships in any specific market. There is also a symbiosis between the need for more detailed and applied work with companies in any particular sector and that of a common cross-sectoral framework which involves all business. It is important, however that such an approach does not remain the preserve of the world’s 70,000 transnational corporations, or even a percentage of them, but rather that mechanisms are found to incorporate the millions more small and medium-sized enterprises that represent the larger constituency of employment and economic activity around the world. There is much work to be done to demonstrate how a common framework might be applied by businesses of all sizes, and the remainder of this report is an initial contribution towards what will represent several years’ work by a range of stakeholders.

Part Two: The content of a common framework on Business and Human Rights

A common framework will need to encompass a number of features if it is to be fit for purpose. These can be divided in three parts and are dealt with below as follows:

- A. CONCEPTS to clarify the role of business** in the area of human rights;
- B. Human Rights STANDARDS** drawn from existing international human rights law; and
- C. PROCESSES for applying human rights within a business context.**

A. Concepts to clarify the role of business in the area of human rights

In this section, we examine the concepts that may enable human rights to be applied in a business context.

This can be divided into three parts: (1) the main concepts used when understanding State obligations with regard to human rights, (2) the concepts that might be needed in addition to translate human rights into a business context and (3) the concepts that might be needed for business to apply human rights.

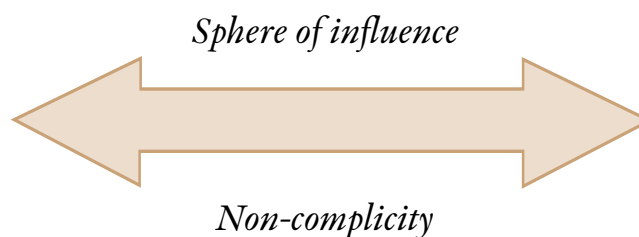
Three categories of concepts relating to business and human rights.

1. Concepts relating to States

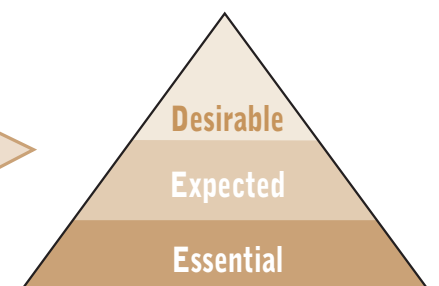


“Rights-based approach”

2. Concepts for translating human rights into a business context



3. Concepts for Business



“Rights-aware approach”

1. Concepts relating to States

‘Respect’, ‘Protect’, ‘Fulfil’ and ‘Promote’

The terms ‘respect’, ‘protect’, ‘fulfil’ and ‘promote’ are used in relation to the responsibilities of States (ie Governments) as the primary duty bearer for individual human rights. The generally accepted definitions of these four generic obligations can be summarised as follows⁴:

Respect means Governments must "*refrain from interfering directly or indirectly with the right*"

Protect means Governments must "*prevent third parties from interfering with or violating the right*"

Fulfil means Governments must "*adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right*"

The fourth term of ‘**Promote**’ has been used to recognise the obligation upon States to make citizens aware of their own human rights, for instance through human rights education and public information.

Although these duties are generally accepted terminology for categorising States’ obligations to abide by their international human rights obligations, the application of these terms in the private sector context is still very much in its infancy.

The work of the BLIHR companies collectively has not concentrated on defining these terms in the context of corporate operations. Nevertheless, we would welcome further studies in this area to expand upon and define these terms as they apply to the private sector.

The Novartis Foundation for Sustainable Development has considered the three concepts specifically in relation to the right to health as follows:

- Obligations to **respect** include, among other considerations, refraining from denying or limiting equal access for all persons to preventive, curative and palliative health services but also "to refrain from prohibiting or impeding traditional preventive care, healing practices and medicines" – the primary duty bearer here is the State, but corporations as ‘organs of society’ have supplementary obligations.
- Obligations to **protect** include, among other considerations, the duties of States to ensure that privatisation of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services.
- Obligations to **fulfil** require States parties to, among other things, adopt a national health policy with a detailed plan for realizing the right to health; to ensure provision of health care, including immunisation programmes against the major infectious diseases; to ensure equal access to all the underlying determinants of health (safe food, potable water, basic sanitation, and so on); and to ensure the provision of a sufficient number of hospitals, clinics, and other health-related facilities as well as the provision of a public, private, or mixed health insurance system that is affordable for all.⁵

Within the context of the common framework, these four terms could be explored in relation to applying human rights within a company’s spheres of influence. This should in no way diminish the central role of States, but rather build on the recognition that human rights are central in both the public and the private sphere.

2. Concepts for translating human rights into a business context

There are several concepts, which have been developed to try to translate human rights into a business context and to help define the boundaries of responsibility. Perhaps the two best known are embodied in the Global Compact principles, those of ‘sphere of influence’ and ‘complicity’. We are considering a third item in this category, that of a ‘rights-aware approach’, which has some parallels with the ‘rights-based approach’ developed by Governments, inter-governmental and development agencies. This list of concepts is not finite, but these listed are those best understood by the BLIHR companies in the context of our own work.

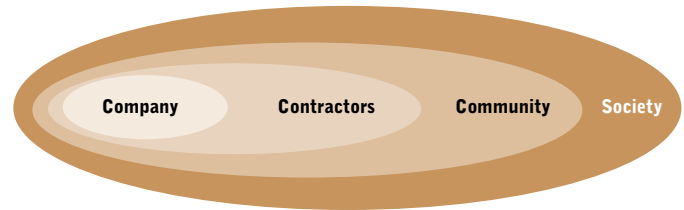
⁴ See www.ohchr.org

⁵ The Right to Health: A duty for whom – Klaus Leisinger available at www.novartisfoundation.com



2.1 'Sphere of Influence'

The concept of sphere of influence was introduced to the business and human rights agenda in the form of the popular concentric circles diagram (see picture) in the Amnesty International and Prince of Wales International Business Leaders Forum publication 'Human Rights: Is it any of your business?'.⁶



The report of the United Nations High Commissioner for Human Rights in February 2005 to the Commission on Human Rights states⁶:

"The 'sphere of influence' of a business entity tends to include the individuals to whom it has a certain political, contractual, economic or geographic proximity. Every business entity, whatever its size, will have a sphere of influence; the larger it is, the larger the sphere of influence is likely to be."

The application of sphere of influence to business responsibility has no international legal basis, though greater understanding of it may inform the development of the legal understanding of complicity, business accountability and appropriate boundaries for corporate reporting activities. Its application may also enhance the understanding of how to put to practical effect a company's commitment towards human rights.

In considering spheres of influence the following observations may add value:

- Stakeholders often perceive the sphere of influence of a company to be both broader and deeper than a company's own assessment of its influence.
- Each and every company has a different sphere of influence. While some understandings can be reached across an industry sector, the individual characteristics of every company, its location, product range, resources and relationships change the nature of its sphere of influence.
- To meet stakeholder expectations of their impact within their sphere of influence, companies often find that they have to engage with peers within their industrial sector.

Some examples of sphere of influence in action:

- National Grid is one of a few companies to acknowledge that part of its corporate responsibility is to encourage its peers and the business community at large to follow suit. National Grid and other members of BLIHR, are doing so in part through their participation in and convening of sector networks and also through their willingness to speak with other businesses at conferences and other events.

⁶ Report of the United Nations High Commissioner on Human rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights, E/CN.4/2005/91

National Grid is a founding member of the Basic Services Human Rights Network⁷. The Network was established in the UK in May 2004 and includes National Grid, Severn Trent, RWE npower, Thames Water E.on UK and EDF Energy. Its purpose is to develop sector specific expertise on corporate responsibility for human rights.

- MTV is exploring its sphere of influence both as a company - with relationships like any other to its employees, suppliers, partners and the local community - and as a broadcaster. As a broadcaster it has relationships with the rest of the music and broadcasting industry, regulators and a particular relationship and responsibility towards its audience. Given that a significant portion of its audience would be regarded as children under international human rights standards, children's rights are of particular significance to MTV. The company makes it a priority to fulfil particular aspects of those rights, for example by empowering its youth audience through awareness and prevention campaigns on such critical human rights issues as human trafficking and HIV/AIDS, and by providing opportunities for its audience to express their opinions⁸.
- Banks face the challenge of assessing and addressing the indirect human rights impact inherent in supporting their client base. Through the adoption of the Equator Principles, social and environmental criteria applicable to project finance transactions, Barclays and many of its peers in the financial sector have sought to combine their influence to raise standards employed in the planning and construction of major projects worldwide. Such has been the take-up amongst major banks that it is now difficult for a major project to secure syndicated cross-border finance without at least one Equator bank being involved⁹.
- Another area where collaboration by major industry players has become established best practice is in the promotion of good labour practices in supply chains. Hewlett-Packard works with many of its industry peers in the electronics industry through the Global E-Sustainability Initiative (facilitated by the United Nations Environmental Program) and Electronics Industry Code of Conduct (facilitated by Business for Social Responsibility). The electronics industry has complex global supply chains in which assemblers and component and contract manufacturers often supply several of the major brands. Without harmonised standards, suppliers often get conflicting messages about the standards they should meet and the processes they should undergo to meet these standards. The industry is seeking to tackle one of the most challenging problems in this area - that of achieving influence beyond the first tier suppliers by developing an e-tool to support risk assessment, registration, self-assessment, audit and corrective plans for suppliers throughout the supply chain¹⁰.

In summary, sphere of influence analysis can help map business responsibility for human rights. It challenges businesses to continuously ask questions about where their influence lies, where it can be taken and whether they are doing enough. Further work in this area through the mandate of the Special Representative and others would be welcomed, in particular to determine whether this is the most appropriate and effective concept for determining essential business responsibilities or whether other concepts should also be applied.

2.2 'Complicity and Non-Complicity'

The question of 'non-complicity' has come to be a preoccupation of not only the BLIHR companies but also of the debate on business and human rights. The starting point for many companies is the definition offered by the Global Compact and the Office of the High Commissioner for Human Rights:

"A company is complicit in human rights abuses if it authorises, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical *assistance* or *encouragement* that has a substantial effect on the perpetration of human rights abuse. The participation of the company need not actually cause the abuse. Rather the company's assistance or encouragement has to be to a degree that, without such participation, the abuses most probably would not have occurred to the same extent or in the same way." ¹¹

Over the last three years, the BLIHR companies have invited a wide range of academic and legal experts, leading NGOs, Government and UN representatives as well as other companies to explore the issue of complicity. Despite this, no clear definition has yet been identified and it is important to ask whether it translates adequately into the business sphere.

It is clear that managing risk to limit allegations of corporate complicity is vital. Among the BLIHR companies, ABB has over the past year, provided most insight into the issue of 'non-complicity' in relation to its operations in Sudan. ABB has been among several transnational companies facing a divestment campaign, originated by certain State pension funds in the US, threatening to withdraw investment unless ABB pulls out of Sudan due to the systemic and wide-scale human rights abuses that are taking place within the country. Due principally to the ongoing conflict within Darfur, and although it is not present in the area, ABB has been criticised for being complicit in such abuses due to its presence in the country.

⁷ See www.nationalgrid.com

⁸ See www.mtvfreemyourmind.com

⁹ See www.barclays.com

¹⁰ See www.hp.com

¹¹ The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity: OHCHR Briefing Paper, in 'Embedding Human Rights in Business Practice'

ABB has developed a 'human rights-aware' approach to the problem. Although pulling out of Sudan would not significantly have harmed ABB in strict global commercial terms, the company had no desire to leave or be forced out of the country for what it considered the wrong reasons or suffer reputational damage. ABB believes it is a positive influence and can make a contribution to the continuing development of Sudan through promoting human rights standards within its spheres of influence and by providing power and automation technologies to assist economic and social development. ABB is working with local stakeholders to determine the best way forward.

ABB is integrating its lessons learned in Sudan within its global risk management system for all projects, it is designing and delivering human rights training for managers and it is of course engaged within BLIHR to share its learning experience with the other member companies, as well as through BLIHR to the broader business community¹².

2.3 'Rights-aware/Rights-based approach'

A range of public bodies – from public service providers to UN agencies – are increasingly adopting a 'rights-based' approach so as to better meet their objectives of serving the public interest. One example would be the 'rights-based approach to development', agreed between United Nations agencies in May 2003, as including the following principles: universality, inalienability, indivisibility, interdependence and inter-relatedness, equality and non-discrimination, participation and inclusion, accountability and the rule of law. The definition includes:

- *The requirement for development assistance to contribute to the realisation of human rights as laid down in international law and international instruments;*
- *The use of human rights standards and principles in all levels of programming; and*
- *The provision of assistance to both those claiming rights (rights-holders) and those with rights obligations (duty-bearers).¹³*

It is as yet unclear how much of this approach can be transferred directly to business. Within BLIHR, ABB has been working with an international human rights lawyer to consider its business operations from a 'rights-aware approach'. This approach enables business to increase its awareness of its role in society – both the extent and the boundaries of its responsibilities and its relationship with stakeholders.

A 'rights-aware approach' means that a business is willing to accept that its stakeholders have universal rights and that any decisions made by the business should strive to respect these. Clearly, there are still many dilemmas and also 'competing rights' in which the interests of one stakeholder group might oppose another. A 'rights-aware approach' in practice would mean that a business would:

1. Identify the rights at issue,
2. Identify its responsibilities in terms of international human rights standards, and
3. Determine the appropriate action.

A 'rights-aware approach' is dependent upon an increased business understanding of international human rights law. Accordingly, a programme of training and awareness-raising drawing on practical day-to-day business applications is one way to appreciate the benefits of this approach. Such an increased practical understanding would also enable business to influence more effectively the progress towards a common framework of human rights standards for business so as to ensure that it is fit for purpose.

This is an area that we will continue to look at and develop to an operational level if general conclusions are reached that the concept is of value in moving towards a common framework on business and human rights.

3. Concepts for business management

The experience of the BLIHR companies suggests that there is a third category of concepts which need to be developed within a common framework - those which can be used by business itself in order to operationalise human rights concepts and standards. It is here that we have developed the categorisation of 'essential', 'expected' and 'desirable' actions. This categorisation was set out in the first two BLIHR reports and has remained of use during the period of road-testing the draft Norms. It is hoped this approach of BLIHR encompasses some of the 'principled pragmatism' encouraged by Professor John Ruggie in his interim report:

"It is essential to achieve greater conceptual clarity with regard to the respective responsibilities of States and corporations... In doing so, we should bear in mind that companies are constrained not only by legal standards, but also by social norms and moral considerations – in the terminology of the BLIHR group, distinguishing what companies must do, what their internal and external stakeholders expect of them, and what is desirable."¹⁴

Essential

We use the term 'essential' to refer to the minimum standards all businesses need to abide by to ensure compliance with human rights law. At present, States are required to abide by international human rights law and comply with their obligations. States clearly have obligations under international law to prevent and respond to corporate human rights abuses. Governments are expected under international law to set out minimum standards applicable to businesses, some of which are already in place. Particular challenges arise to ensure that these minimum standards are met in countries where Governments, for whatever reason, are unwilling or unable to meet their commitments to enforce human rights law

¹² See www.abb.com

¹³ Definition cited in Piron and Watkins (2004) 'A Human Rights Review', Department for International Development, London, UK

¹⁴ Interim Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Paragraph 70, E/CN.4/2006/97

There is work required to develop general guidelines for business, as well as mechanisms for holding business accountable when the Government concerned does not do so. Greater clarity on what the minimum universal human rights standards are for business across the full arena of civil, political, economic, social and cultural rights is required to develop a level playing field for business and greater certainty in terms of what any company must or must not do. It is important for the business community as a whole for companies which fail to meet the essential standards of behaviour with respect to human rights to be held accountable for their actions. Business should work with Governments in the development of these essential standards.

Expected

Above the level of essential expectations, comes what we have referred to as ‘expected’ behaviour, driven by the additional expectations of key stakeholders such as investors, employees, customers, suppliers as well as communities and NGOs in the wider community. These expectations are likely to serve the long-term best interests of shareholders and are above what would be considered legally required (some might be referred to as ‘moral’ or ‘reputational’ expectations); it is accepted that some of the expectations today could become essential requirements tomorrow. Often the expectations of key stakeholder groups differ. What remains to be shown is which aspects of ‘expected’ business behaviour belong in a common framework applicable to all businesses, and which should more properly exist in sector-specific codes where the shared ‘sphere of influence’ can be more clearly mapped.

Desirable

The final level we have proposed is that of ‘desirable’ expectations which are by definition examples of voluntary steps. These may help to attract and retain the best talent and strengthen a company’s license to operate in the communities it serves. However, it is not enough for companies to engage in ‘desirable’ actions only, rather it is key for companies to engage with and revisit their essential and expected actions. As many ‘desirable’ actions will be company-specific, a common framework is unlikely to be prescriptive in relation to such efforts. However, there may be added value for principles and guidelines to help ensure that various philanthropic and community-based activities are not only carried out in accordance with human rights and the wider interests of society, but add effectively and efficiently to the aspirations of universal human rights standards.

Conclusion on concepts

In conclusion, the experience of the BLIHR companies suggests that the first part of a common framework on business and human rights should clarify the conceptual relationship between business and human rights. In our experience, these concepts can be divided into three

categories, and it is the relationship between these types of concepts (some developed with States in mind, others more business-specific), which will help to define the limits of responsibility of business in a given situation.

B. Human rights standards

A common framework will need to cover the full range of international human rights standards, setting out those defined as civil, political, economic, social and cultural rights.

There is recognition that human rights are interdependent and indivisible and that any categorisation of these human rights into ‘types of rights’ might not reflect these two principles. However, the categorisations which follow are those widely used by Governments and civil society and are employed here for sake of brevity. For specific details on how each BLIHR company is using different human rights standards, please refer to the relevant websites. The examples offered do not attempt to be exhaustive nor do they claim to represent the best practice available, rather they seek to illustrate the broad relevance of human rights across a number of business sectors.

The BLIHR companies have drawn on their own experience to recommend that the following standards are a necessary part of a common framework on business and human rights. An overview of the main human rights standards referenced in this section is available in the appendix.

1. Civil and political rights

Internationally recognised civil and political rights are embodied by the International Covenant on Civil and Political Rights 1966 (ICCPR) and were drawn from the Universal Declaration of Human Rights 1948 (UDHR). Among the key rights incorporated are the right to life, equality, liberty, a fair trial, privacy, property and participation in public affairs. In addition, the key freedoms of thought, religion, expression, assembly, association and freedom from torture, inhuman and degrading treatment are included.

Several of the BLIHR companies have found such standards useful in their work and in the development of business tools. For example, civil and political rights are referred to specifically in the following:

- ABB's checklist for Country Managers ¹⁵
- The Novartis commitment to the ethical principles of the World Medical Association's Declaration of Helsinki ¹⁶
- MTV UK and Ireland 'On-Air and Off-Air' guidelines (freedom of expression balanced by the principles of protection and participation) ¹⁷
- Statoil's country risk-assessment and procedures ¹⁸

More details of these can be found on the relevant company websites.

2. Economic, social and cultural rights

Economic, Social and Cultural (ESC) rights are less developed in terms of definitions when compared to Civil and Political rights but they are key for a business audience and many of the rights listed will resonate with companies. Examples of the most developed ESC rights include labour rights (these are dealt with separately below), the right to family life, the right to an adequate standard of living, the right to the highest attainable standard of health, the right to education, the right to adequate food, clothing, housing and fair distribution of food. The main international standard is the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). We agree that being economic structures, corporations should give particular attention to their role in promoting the realisation of ESC rights. By their mere existence, companies influence the right to work and all companies have to relate to the labour rights described in ICESCR as further developed by the International Labor Organisation (ILO). However, it is unclear what the exact responsibilities are vis à vis the protection of rights such as the right to health, food, education, adequate housing and social security among others. In the International Covenant, the primary duty of Governments is qualified by the notion of 'progressive realisation', which means that the steps Governments can take towards the full realisation of ESC rights correlate directly with the resources they have available.

Through our experience, the realisation of ESC rights is a question of compliance at the 'essential' level of the pyramid. However there are also many examples of the role that business can play through strategic interventions, which may not become legally required but are increasingly expected by society. One example is the work of National Grid in

the UK and USA with regard to the rights of the 'vulnerable customer' particularly in the area of fuel poverty. This recognises that an energy network utility has an enhanced responsibility for customers that might be elderly, disabled or in other ways more vulnerable members of society¹⁹. Other examples of this are the rural electrification work undertaken by ABB in Sub-Saharan Africa²⁰ and the work on financial inclusion that Barclays undertakes in the UK. Barclays recognises that they have an important role to play in supporting improved access to banking, affordable credit, debt advice and financial education- all important elements in supporting wider social inclusion and stability. Barclays has also launched a pioneering microbanking initiative in Ghana which connects modern finance with Susu collection, one of Africa's most ancient forms of banking²¹.

One of the most challenging and contested areas is with regard to the role of the pharmaceutical industry and the realisation of the right to health. Both Novartis and Novo Nordisk recognise the importance of this right and are exploring their role in relation to it²². The obligation to fulfil the right to health remains with Governments. However, there are now expectations from society that the pharmaceutical industry plays a more strategic role in securing the provision of essential medicines (as defined by the World Health Organisation). There is also a recognition that the rights of the company to make a return on investment and to invest in new research and development need to be balanced against the needs of the world's most vulnerable.

A final example relates to the wider arena of trade and investment, again linked to the provision of work and therefore the realisation of other rights. In 2003, Gap Inc. joined the 'Multifibre Alliance Forum' (MFA Forum) to work towards protecting the economic and social welfare of workers in a post-quota world²³.

3. Labour rights

Given their undisputable relevance to business activities, labour rights were considered by corporations before corporate responsibility came on the agenda. Most codes of conduct for corporations or their supply chain refer to minimum standards. The tripartite development of conventions and recommendations by the ILO in relation to labour rights has made the application of the rights to a business setting far more elaborate than the application of other human rights standards. The ILO chose to promote four rights as the absolute core labour rights; freedom from child labour, from forced labour, from discrimination and freedom of association. In addition, the ICESCR includes provisions on a safe and healthy working environment, rest, leisure and paid holidays, minimum pay, and vocational training.

¹⁵ See www.abb.com

¹⁶ See www.blihr.org

¹⁷ See www.blihr.org

¹⁸ See www.blihr.org

¹⁹ See www.nationalgrid.com

²⁰ See www.abb.com

²¹ See www.barclays.com

²² See www.novartisfoundation.com and www.novonordisk.com

²³ See www.gapinc.com

BLIHR recognises that the benchmarks for essential behaviour on labour rights can be found in standards such as the base code of the Ethical Trading Initiative (based on the ILO Core Conventions) of which both The Body Shop²⁴ and Gap Inc.²⁵ are members. This approach towards minimum standards for all suppliers, regardless of locality, leads to expectations of suppliers in countries even where national law falls short of international standards, such as around the involvement of independent trade unions in collective bargaining arrangements. This congruence towards a more level playing field on supplier codes is recognised in the current work towards a common code for the retail sector involving the Ethical Trading Initiative and the Fair Labor Association amongst others. The BLIHR companies also recognise that applying a common basis for reporting such as that provided by the Global Reporting Initiative is becoming increasingly essential to demonstrate consistency. Some sectors have been able to move directly into a common code involving most of their industry peers, such as the Electronic Industry Supplier Code in which Hewlett-Packard played one of the leading roles²⁶.

Another topic of interest is that of the ‘living wage’. Not all sector-specific codes make reference to a ‘living wage’, as opposed to a ‘minimum wage’, but we see this as something to be investigated further. Some companies have taken important steps to integrate this into their work. For example, in 2002 Novartis started a process of globally implementing a ‘living wage’ in order to enable employees to meet their basic material needs, plus some discretionary spending, regardless of the legal minimum wage in a country. This concept will now be extended to on-site third parties as well. As one of the first major international industrial companies to implement such a commitment, Novartis has to commission special studies and meet considerable methodological challenges, since the concept of a living wage remains poorly defined and no international consensus about methods of calculation has been established so far²⁷. For the cleaning staff in their UK branch network, Barclays has also implemented a ‘fair wage’ package including a new minimum pay threshold, pension contributions, sick pay, bonuses, an increased holiday entitlement and training to an industry recognised standard.²⁸

There is a need for more guidance in this area and we would welcome clarity as to the appropriate methodologies.

4. Focus on particular groups

There are several international human rights conventions relating to groups in need of particular attention in order to ensure all people fully enjoy their human rights. The identified groups include women, children, ethnic minorities, refugees, immigrants and indigenous peoples. These specific conventions further elaborate the rights contained in the Universal Declaration and the two Covenants as they relate to these particular groups. The experience of the BLIHR companies indicates that it is important that some of these standards are referred to in the context of a common framework on business and human rights. This would include the Convention on the Elimination of All Forms of Discrimination Against Women in relation to issues as diverse as Women in Management²⁹ and the empowerment of women via the company product, for example the on-air, online, and on-the-ground work of MTV Networks Europe on trafficking for sexual exploitation³⁰. Given the age of some of these young female and male viewers, the Convention on the Rights of the Child also represents a relevant standard for MTV, as set out in the work of MTV in the UK and Ireland.

Another relevant standard is that which protects the rights of Indigenous Peoples, such as the ILO Indigenous and Tribal Peoples Convention. This standard is relevant as a benchmark for engaging with indigenous communities in the course of specific business projects, such as National Grid’s work in Australia³¹.

5. Other related standards

International Criminal Law and Humanitarian Law

Human Rights instruments such as the Convention on the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment and the Rome Statute of the International Criminal Court which defines those ‘international crimes’ that the Court may deal with, are clearly of concern to business in countries where Governments are unwilling or unable to fulfil their commitments to the most basic civil or political rights. In addition, International Humanitarian Law represents a key body of law, which applies during situations of conflict.

Although this issue must represent a priority for businesses engaged within the security sector in such activities as the production of weapons, see for example the wording of the Voluntary Principles on Security and Human Rights³², it is of wider relevance to business beyond the issue of security forces. A critical point relating to situations of armed conflict or other instances of public emergency is that fundamental human rights do not cease to have legal effect. There are safeguards and continued protection against State abuses even during such periods. In fact, it is precisely during these periods that such protection is most needed. It is also during such periods that the role and responsibility of business comes under scrutiny and poses particular challenges and dilemmas. It is here that the Geneva Conventions have direct relevance to business as part of a common framework.

²⁴ See www.thebodyshop.com

²⁷ See www.novartis.com

³⁰ See www.mtvexit.org

²⁵ See www.gapinc.com

²⁸ See www.barclays.com

³¹ See www.nationalgrid.com

²⁶ See www.hp.com

²⁹ See www.novonordisk.com

³² See www.voluntaryprinciples.org

Environmental Protection

The protection of the environment and the protection of human rights are closely related topics and therefore a reference to environmental standards has a place within a common framework but it is misleading to contend that all environmental issues are best approached through the lens of human rights. In fact some issues, such as biodiversity, are best understood from a purely ecological perspective and human needs, whilst not irrelevant, do not necessarily determine the response of a business to all areas of its environmental commitments. This is not to devalue environmental protection, rather to give it the full credence it deserves as the other major building block of corporate responsibility and not one that necessarily shares the same premises as human rights.

In a common framework on business and human rights it seems appropriate for some reference to biodiversity and climate change to be made, in particular when there might be tensions or ‘competing obligations’ between a Government’s obligation to fulfil the human rights of any community and its claim on natural resources. National Grid and the other companies in the Human Rights Basic Services Network have started to look at the relationship between climate change and human rights³³. The Body Shop International has also been active in the Roundtable on Sustainable Palm Oil which addresses the interdependency of environmental protection and human rights. The Roundtable has developed standards which protect the human rights of local communities, smallholders and workers, for example through promoting sustainable forestry practices, safe use of pesticides and clearer mechanisms for solving land disputes³⁴.

C. Processes for applying human rights within a business context

In terms of the application of a common framework in practice, there is still progress to be made. There is valuable work underway on risk analysis (such as the Human Rights Compliance Assessment tool of the Danish Institute for Human Rights), impact assessment (such as the work of the International Finance Corporation (IFC) and The Prince of Wales International Business Leaders Forum (IBLF)), management (such as the Guide for Integrating Human Rights into Business Management – see below) and reporting (such as the third generation of indicators of the Global Reporting Initiative). However, these initiatives at present seem too isolated from each other and also require additional time, resources and energy to create the beginning of what might be seen as a set of tools for integrating human rights into business globally.

1. Human rights and business management

The BLIHR companies have taken a systemic approach to human rights aiming to integrate human rights into existing management systems across the business. Drawing on experience from across a range of business and geographic sectors, we have worked to start to fill this gap by applying the Performance Model of the United Nations Global Compact to the broad spectrum of human rights embodied in a single common framework for business. This follows seven key aspects of business management: strategy, policy, processes and procedures, communications, training, measuring impact and auditing, and reporting, and encourages businesses to integrate ‘human rights awareness’ into their existing management systems. This work culminated in the Guide for Integrating Human Rights into Business Management, a joint effort of BLIHR, the Office of the UN High Commissioner for Human Rights and the Global Compact.

³³ See www.nationalgrid.com

³⁴ See www.thebodyshop.com



The BLIHR companies are finding it useful to continue to develop this Guide as it provides a useful introduction to incorporating human rights into business practices and may develop into a useful exemplar model for companies attempting to apply the content of a common framework in practice. It is important to note that while a generic approach to application cannot reflect the diversity of management systems around the globe, it may provide inspiration to business. It may also be complemented by sector-specific approaches, which are already in use in some business sectors.

Overview of the management components required for integrating human rights into business management, from A Guide for Integrating Human Rights into Business Management

1. Human rights in STRATEGY
<ul style="list-style-type: none"> 1.1 Find out what you are already doing 1.2 Identify risks and opportunities and then the priorities for action 1.3 Develop a human rights strategy for your business 1.4 Define and embed appropriate management responsibilities 1.5 Integrate human rights into your company’s activities 1.6 Develop your strategy through a circle of continuous improvement
2. Human rights in POLICIES
<ul style="list-style-type: none"> 2.1 Include human rights in your existing policies 2.2 Develop specific human rights policies where appropriate 2.3 Develop local policies to meet local situations 2.4 Ensure full implementation of your policies and review their outcomes
3. Human rights in PROCESSES and PROCEDURES
<ul style="list-style-type: none"> 3.1 Consider the full scope of your business activities and functions 3.2 Establish procedures for identifying your human rights-related risks and opportunities 3.3 Establish control systems for managing human rights in your business 3.4 Learn from sector-wide business initiatives 3.5 Expect the unexpected – how to react when procedures are not enough
4. Human rights in COMMUNICATIONS
<ul style="list-style-type: none"> 4.1 Share understanding of why human rights are important to business communications 4.2 Integrate human rights into your internal communications 4.3 Integrate human rights into your external communications
5. Human rights in TRAINING
<ul style="list-style-type: none"> 5.1 Identify target groups in your business to receive human rights training 5.2 Review the different types of training materials available 5.3 Select, organise and evaluate the training program for target groups
6. Human rights in MEASURING IMPACT AND AUDITING
<ul style="list-style-type: none"> 6.1 Set relevant performance indicators for measuring human rights impact across the different functions of your business 6.2 Undertake human rights based audits 6.3 Analyse the results of audits and use the results to inform the strategic development of your business
7. Human rights in REPORTING
<ul style="list-style-type: none"> 7.1 Decide which human rights impacts are priorities for you to report on 7.2 Consider who your main target audiences are 7.3 Develop an effective reporting format 7.4 Publish this information on its own or as part of a regular business report 7.5 Submit a link/description to the Global Compact website (Global Compact participants)

2. Human rights and business accountability

For human rights to be effective, it is implicit that those involved in violations need to be held accountable for their actions. The overarching principle remains that States are primarily accountable to victims of human rights abuses and that businesses are accountable to States.

However, there are steps that businesses can take independently, not least the monitoring, auditing and reporting on their human rights performance. For example, Gap Inc moved from a position of limited reporting on their human rights performance to one of open disclosure through their CSR report³⁵. Other important aspects of business accountability are clear procedures for corporate governance and ethics, which include mechanisms for complaints and adequate redress for staff and other key stakeholders. One example is the current Novartis policy:

Novartis has a strict policy guaranteeing non-retaliation against associates who make reports under the ‘whistleblower’ policy – and violations of this right are not tolerated. During 2006, a global network of telephone help lines will be rolled out to allow all associates to report incidents of misconduct locally, in their native language, on a confidential basis. This serves both to safeguard good corporate governance and key human rights, such as the ‘right to privacy’³⁶

In addition, on 1 November 2002, Statoil launched a group-wide ethics helpline which employees can use to report ethical concerns. This is staffed by experts who collect the relevant information relating to cases raised by the users. The helpline is available in a number of languages and runs 24 hours every day of the year. Anonymity is assured if desirable.³⁷

However, since in theory the primary mechanism for accountability relating to business and human rights are local laws, regulations and legal systems of the countries in which a business operates, the difficult question is, what is the appropriate role for business when the basic laws implementing basic State human rights responsibilities or enforcement mechanisms are absent? This is why a common framework on business and human rights is necessary.

There are situations where the normal division of responsibilities between Governments and business on issues of accountability might not be adequate:

1. Not all Governments impose the same laws on businesses and therefore businesses may be more readily held to account on human rights actions in some countries than others. This is either because the Government has yet to incorporate some of the key components of international human rights law or because there are a lack of effective enforcement mechanisms within the country to apply the standards;

2. There are some countries where Governments are clearly unwilling or unable to fulfil their human rights obligations to all populations and minorities in the country where a business might operate;
3. Within any business itself, the senior management and directors need to be accountable to their shareholders and other key stakeholder groups such as employees. These internal accountability mechanisms need to reflect the wider commitments or obligations a business might have to human rights.

A common framework that is premised on the universality of human rights needs to be able to assist a business in navigating the three scenarios above. This might include co-operation with multinational or bilateral Governmental approaches, such as the development of the complaints mechanism of the OECD Guidelines for Multinational Enterprises or those of the ILO, ranging to internal mechanisms for business such as collective bargaining arrangements, whistleblower protection, transparency and anti-corruption practices and full reporting on human rights performance. BLIHR notes with interest and anticipation that Professor John Ruggie has requested support for developing such guidance for ‘Weak Governance Zones’ from the International Organisation of Employers and the International Chamber of Commerce.

BLIHR believes that our work with the United Nations on the Guide for Integrating Human Rights into Business Management is a useful contribution to this third and final area of a common framework on business and human rights. We will continue to develop the content of this Guide as our experiences of working together provide further clarity in the integration of human rights.



³⁵ See www.gapinc.com

³⁷ See www.statoil.com

³⁶ See www.novartis.com

Part Three: Moving Forward

A. Learning from the content of the draft Norms

In 2003, when we were developing projects to consider the role the draft Norms might play in our work, we recognised that road-testing the content of the norms would be a useful exercise, albeit not a controlled experiment. On our website, there is a summary of the road-testing projects and conclusions reached.

In our experience through these individual projects and through learning from a variety of stakeholders, there is much in the content of the draft Norms that is of practical use. They represent an example of how some of the key aspects of international human rights law might be translated into business contexts. In this overview of our conclusions on the draft Norms, we have taken the three components that we think are essential to any common framework:

- **Concepts to clarify the role of business** in the area of human rights
- **Standards of human rights** drawn from existing international human rights law;
- **Processes for applying human rights within a business context**

Concepts

Two key concepts that the companies consider to be of utility in a common framework on business and human rights are those of ‘sphere of influence’ and ‘complicity’. Whilst references to ‘spheres of activity and influence’ in the content of the draft Norms is helpful, there is very little reference to clarifying the concept of ‘complicity’. It is interesting to note that in this regard, there is a stronger reference to ‘complicity’ in the Second Principle of the Global Compact (which, due to its voluntary nature, has been seen as much less contentious) than the draft Norms.

Other concepts considered by BLIHR such as the ‘rights-aware approach’ or the gradations between ‘essential’, ‘expected’ and ‘desirable’ business actions find no equivalent in the content of the draft Norms. Rather the Norms are framed more closely within the language of State obligation, in particular those obligations to ‘respect’, ‘protect’ and ‘promote’. Whilst BLIHR sees utility in applying these concepts to business, they cannot be applied directly and in all situations within a common framework without understanding the business context through some of the other concepts listed above. A common framework will need to be clear about the increased responsibilities which fall to business in situations where Governments are unwilling or unable to meet their human rights obligations.

Human rights standards

In the experience of the BLIHR companies, the relevant standards within a common framework should include the 1948 Universal Declaration of Human Rights, the civil, political, economic, social and cultural rights set out in the two UN Covenants and other key UN human rights treaties, including the labour rights set out in the core ILO Conventions. A focus on humanitarian standards is also important for any business activity within the context of conflict or near-conflict situations.

Generally, the content of the draft Norms covers most of this territory well, although possibly lacking enough explicit focus on some human rights. Less clear, and perhaps unnecessary, were all the references to environmental (specifically the ‘precautionary principle’) and consumer protection. A case can be made for both of these aspects being included in a common framework, but we suggest that the references should be more cross-cutting given that environmental protection relates to a number of human rights (but not all environmental issues can be defined as having human rights impact) and that consumers are indeed an important stakeholder group to business but business responsibilities must be defined with regard to all stakeholders.

Processes

It is perhaps in this third area, that the BLIHR companies have found the content of the draft Norms most wanting. In terms of the implementation of human rights into business practice, the content of the draft Norms makes reference to the need for applying the standards and concepts in companies' 'internal rules of operation' as well as in all contracts with suppliers, contractors, licensees, distributors and all other contractual relationships. There is also direct reference to the need for businesses to monitor their progress and to report on their progress in these measures.

In our experience, the content of the draft Norms lacks clear explanations of best practice methodology for applying human rights in business contexts. This applies to both the specific tools for business to use and the mechanisms by which Governments might hold business accountable. It is our experience that a range of tools needs to be developed to allow businesses to start to integrate human rights into the full spectrum of a given business management system. The content of the draft Norms makes reference to some of the components of a business management system, but the approach needs to be much more comprehensive and holistic. Considering the wide variety of management systems available and the ongoing development of new systems, it would not be possible to prescribe a specific model. Rather, guidelines and best practices developed may inspire other businesses in this area. We hope the Guide for Integrating Human Rights into Business Management provides an important contribution in this regard.

On the broader issue of business accountability, the draft Norms do make reference to a possible role for UN bodies to monitor the behaviour of specific companies. Our initial position would be that this is not a workable solution. However, as detailed below, one of the areas for deeper practical consideration by BLIHR over the next three years is the question of accountability. At this stage, we note that for some of the very worst human rights abuses, the work of the International Criminal Court might include the indictment of business leaders. We also note that one particular type of accountability mechanism has begun to develop under the OECD Guidelines for Multinational Enterprises.

Conclusion

In the view of BLIHR, the content of the draft Norms were a useful first step towards establishing minimum standards on business and human rights. This has helped the BLIHR companies develop a more comprehensive understanding of what a common framework on business and human rights might include. In particular, the content of the draft Norms provides a good overview of many of the human rights standards that are most relevant to business.

However, the draft Norms were not written in a way which allows businesses to implement them fully into their business operations. Nor does the content of the Norms deal adequately with the underpinning concepts that will enable business to understand the limits of their responsibility in a range of social and political situations. There is obviously a need for ongoing thought, dialogue and debate over the coming years to increase consensus and understanding about what the common framework should contain, including the mechanisms through which it should be applied.

B. Future developments in business and human rights

Human rights, whilst facing ever increasing challenges in many parts of the world, have not lost their central place in discussions about how all ‘organs of society’ (in the wording of the 1948 Universal Declaration) should play their role. Arguably, human rights have risen to greater prominence in recent years, as Governments have had to balance their duty to protect their own people from violence, insecurity or poverty with the need to allow for greater social and economic development. We are reminded that human rights are not just an essential tool for business but also an essential building block for sustainable societies in which Governments must continue to play the primary role to respect, protect, fulfil and promote human rights.

BLIHR supports the work of the UN Special Representative, Professor John Ruggie, in attempting to map out some of the principles or guidelines in order to build a common approach for all businesses around the world. We hope that all the specialists and organisations working to support his mandate might collectively be able to arrive at a consensus about the necessary standards that need to underpin such an approach.

There is currently important ongoing work by a range of organisations on key concepts such as ‘sphere of influence’ and ‘complicity’ (we note the work of the International Commission of Jurists as well as key human rights NGOs such as Amnesty International, Human Rights Watch and the International Federation for Human Rights (FIDH)). In addition we note the ongoing important work on risk assessment, impact assessment and reporting highlighted earlier. The reform of the United Nations human rights apparatus and the creation of a new Human Rights Council offer an opportunity for more focused international attention on the challenges of implementing human rights within different contexts around the world.



C. Next steps for BLIHR

The Business Leaders Initiative on Human Rights has decided to continue its work for a further three years until 2009, by which time we hope human rights will be part of mainstream business consciousness and a natural component of business practice. In order to help achieve this, we will focus on how the content of the common framework can be tested in a number of demanding situations. In particular we are interested in how a level playing field of 'minimum standards' (the 'essential' actions of business) can be developed across the full range of business sectors and with universal applicability.

We will also examine the policies and procedures required to develop 'good governance in sensitive countries', where Governments for a variety of reasons might be particularly unwilling or unable to fulfill their human rights responsibilities. We are working across a number of business sectors in order to better understand what one or more companies must, can or should do in order to avoid complicity in the abuse of human rights as well as acting to help respect, protect and promote rights.

We are very interested in extending our initial work on the Guide for Integrating Human Rights into Business Management through three areas:

- a. *How to integrate human rights effectively into general risk assessment procedures and what works best for business in this area;*
- b. *How to take the range of human rights-related indicators, impact assessment and risk assessment tools currently being developed and best integrate them into business monitoring and reporting systems;*
- c. *How to develop standards in business training and coaching in the arena of human rights, to share best practice across sectors and through other branches of human rights educations and promotion.*

BLIHR also recognises that a human rights approach needs clear accountability mechanisms. Some of these can be developed by business for the internal use of companies, but some mechanisms must be developed by Governments for holding rogue businesses to account. We feel that business should be playing a proactive role now in investigating which accountability mechanisms might be most effective.

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In summary, BLIHR will continue to work towards a common framework, through learning, through the development of practical tools and through dialogue with a wider group of stakeholders. We are aware that a more global audience of business, Governments, trade unions, civil society and other stakeholders needs to be fully engaged in this process in order for progress to be made. BLIHR will continue to play its role and our aim throughout 2006-2009 remains that of the first three years:

"To find practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context and to inspire other businesses to do likewise"

We look forward to continuing to work with a wide range of stakeholders in order to achieve this.

Appendix 1: Some key components relating to a common framework on Business and Human Rights

	MAIN CONTENT	SUGGESTED RELEVANT BENCHMARKS OR PRINCIPLES
1. CONCEPTS	The Respect, Promotion, Protection and Fulfilment of human rights	Universal Declaration and all related human rights standards; Global Compact Principle One
	Sphere of influence	Global Compact Principles
	Non-complicity	Global Compact Principles One and Two
	Rights-aware/Rights-based approach	Wider use of ‘rights-based’ approaches to development; a ‘rights-aware’ approach as suggested to business and explored by some BLIHR companies ³⁸
	Essential, Expected and Desirable business actions	These concepts are new and have been developed by the BLIHR companies in their first two reports. ³⁹
2. HUMAN RIGHTS STANDARDS	Civil and political rights	International Covenant on Civil and Political Rights; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
	Economic, Social and Cultural rights	International Covenant on Economic, Social and Cultural Rights
	Labour rights	Relevant International Labour Organisation Conventions, in particular ILO Conventions 29, 105, 138, 146, 182, 190 and others
	Rights relating to particular groups	Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racial Discrimination; ILO Indigenous and Tribal Peoples Convention; ILO Conventions
	Other standards - International Criminal Law and Humanitarian standards - Environmental standards	Geneva Conventions International Criminal Law – the Rome Statute of the International Criminal Court
3. PROCESSES	Business management	Guide for Integrating Human Rights into Business Management; Global Reporting Initiative; Danish Institute for Human Rights Compliance Assessment Tool;
	Business accountability	SA 8000, ISO, Sarbanes-Oxley, Global Accountability Report; OECD Guidelines for Multinational Enterprises; Global Compact Principle Ten

³⁸ Based on the work of Professor Alan Miller of McGrigors, advisor to BLIHR

³⁹ Based on the work of Professor Klaus Leisinger of the Novartis Foundation for Sustainable Development

African Institute for Corporate Citizenship

www.aiccafrica.com

Amnesty International Business Groups

www.amnesty.org.uk/business

Business & Human Rights Resource Centre

www.business-humanrights.org

Business for Social Responsibility (BSR)

www.bsr.org

CAFOD

www.cafod.org.uk

Christian Aid

www.christian-aid.org.uk

Ethos Institute

www.ethos.org.br

Friends of the Earth

www.foe.org.uk

Fund for Peace Human Rights and Business Roundtable

www.fundforpeace.org/programs/hrbrt/hrbrt.php

GeSI - Global E-Sustainability Initiative

www.gesi.org

Global Reporting Initiative

www.globalreporting.org

Human Rights Watch

www.hrw.org

International Chamber of Commerce (ICC)

www.iccwbo.org

International Commission of Jurists

www.icj.org

International Committee of the Red Cross

www.icrc.org

International Federation for Human Rights

www.fidh.org

International Financial Corporation

www.ifc.org

International Labour Organization (ILO)

www.ilo.org

MFA Forum

www.mfa-forum.net

Office of the United Nations High Commissioner for Human Rights

www.ohchr.org

Organisation for Economic Co-operation and Development

www.oecd.org

Social Accountability International (SAI)

www.sa-intl.org

The Danish Institute for Human Rights

www.humanrights.dk

The International Confederation of Free Trade Unions

www.icftu.org

The Prince of Wales International Business Leaders Forum

www.iblff.org

United Nations Development Programme (UNDP)

www.undp.org

UN Global Compact

www.unglobalcompact.org

Social Venture Network

www.svn.org

World Business Council for Sustainable Development

www.wbcsd.org

World Health Organization (WHO)

www.who.int

AccountAbility's AA1000 Framework and series standards

www.accountability.org.uk/aa1000/default.asp

Amnesty International Human Rights Principles for Companies

www.amnesty.org.uk/business/pubs/hrgc.shtml

The Caux Round Table Principles for Business

www.cauxroundtable.org/index.html

Clean Clothes Campaign: Model code

www.cleanclothes.org/codes/ccccode.htm

Dow Jones Sustainability Index (DJSI)

www.sustainability-index.com/

Ethical Trading Initiative

www.ethicaltrade.org/Z/home/index.shtml

Electronic Industry Code of Conduct

www.hp.com/hpinfo/globalcitizenship/environment/pdf/supcode.pdf

Equator Principles

www.equator-principles.com

Extractive Industries Transparency Initiative – Source book

www.eitransparency.org/keydocuments.htm

Fair Labor Association – Code of conduct

www.fairlabor.org/all/code/index.html

FTSE4Good

www.ftse.com/ftse4good/index.jsp

Global e-Sustainable Initiative (GeSI)

www.gesi.org

Global Reporting Initiative

www.globalreporting.org

The Global Sullivan Principles

www.thesullivanfoundation.org/gsp/default.asp

Human Rights Compliance Assessment Tool (HRCA)

www.humanrightsbusiness.org/

ILO's Declaration on Fundamental Principles and Rights at Work

www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE

ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

www.ilo.org/public/english/employment/multi/overview.htm

ISO Standard on CSR

www.iso.org/iso/en/ISOOnline.frontpage

Kimberly Process

www.kimberleyprocess.com

The OECD Guidelines for Multinational Enterprises

www.oecd.org/

Social Accountability 8000

www.sa-intl.org

Voluntary Principles on Security and Human Rights

www.voluntaryprinciples.org/

BLIHR

Business Leaders Initiative on Human Rights

www.blihr.org

ABB Ltd

www.abb.com

Barclays PLC

www.barclays.com

Gap Inc

www.gapinc.com

Hewlett-Packard Company

www.hp.com

MTV Networks Europe

www.mtvexit.org

www.mtvfreeyourmind.com

National Grid plc

www.nationalgrid.com

Novartis Foundation for Sustainable Development

www.novartisfoundation.com

www.novartis.com

Novo Nordisk A/S

www.novonordisk.com

Statoil ASA

www.statoil.com

The Body Shop International plc

www.thebodyshop.com

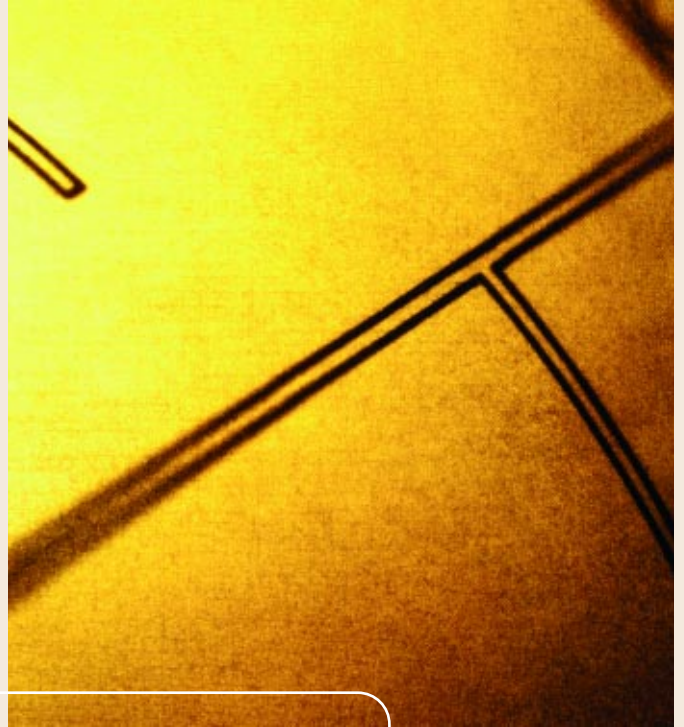
Realizing Rights: The Ethical Globalization Initiative

www.eginitiative.org

For further information on BLIHR please contact:**Kathryn Dovey**

Tel: +44 (0) 207 841 8925

kathryn.dovey@twentyfifty.co.uk



"...We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights...
States cannot do the job alone.
We need an active civil society and a dynamic private sector"

KOFI ANNAN (2005)

respect

SUSTAINABLE BUSINESS

Respect is a values-driven consultancy firm that inspires the business community and assists businesses in becoming responsible corporate citizens. It is Respect's strong belief that sustainable business is a prerequisite for business success. A systematic strategy for environmental issues, social awareness and ethics is crucial for a long-term profitable company today.

www.respecteurope.com



TwentyFifty Ltd provides consultancy, training and leadership on Human Rights to major multinationals and other companies. TwentyFifty is currently working with board members, senior managers and key staff in a range of sectors to find practical ways of implementing a commitment to human rights. The work blends strategy and organisational change expertise with leading-edge knowledge of the business, human rights and sustainability agendas.

www.twentyfifty.co.uk

www.blihr.org

The logo for ABB, consisting of the letters 'ABB' in a bold, red, sans-serif font.

The logo for Barclays, featuring a blue shield with a white eagle and the word 'BARCLAYS' in a blue, sans-serif font.

The logo for Gap Inc., consisting of the words 'Gap Inc.' in a black, serif font.

The logo for HP, featuring the letters 'hp' in a white, lowercase font inside a blue square, with the word 'invent' in a smaller, lowercase font below it.

The logo for MTV, featuring the letters 'M' and 'TV' in a stylized, yellow font with a green outline, and the words 'MUSIC TELEVISION' in a smaller font below.

The logo for National Grid, featuring the word 'nationalgrid' in a blue, sans-serif font.

The logo for Novartis, featuring a stylized orange and blue flame-like symbol followed by the word 'NOVARTIS' in a blue, sans-serif font.

Novartis Foundation
for Sustainable Development

The logo for Novo Nordisk, featuring a blue silhouette of a cow and the words 'novo nordisk' in a blue, sans-serif font.

The logo for Statoil, featuring a blue flame-like symbol followed by the word 'STATOIL' in a white, sans-serif font on a dark blue background.

The logo for The Body Shop, featuring a circular icon with a globe and the words 'THE BODY SHOP' in a black, serif font.