

6. Embedding human rights mechanisms within six existing and new Shell subsidiaries and/or joint ventures

This chapter deepens the level of analysis of the previous chapter: it provides a more in-depth analysis of six subsidiaries and/or joint ventures of Shell regarding the management mechanisms that these companies use, the degree of implementation of internalisation of these mechanisms and its explanations. The first section explains how the data is used, after which the individual subsidiaries and/or joint ventures are discussed based in different regions (section 6.2 and 6.3). Following this, four new Shell subsidiaries and/or joint ventures are discussed in section 6.4. The final section 6.5 compares the data and analysis of each case with each other and the research model and draws conclusions from that cross-case analysis.

6.1 Use of data

As described in section 3.5.3, this chapter uses the data obtained through the application of the Human Rights Compliance Assessment (HRCA) tools to six subsidiaries. The tools are explained in detail in appendix 6 and the protocol for obtaining the data and its limitations are explained in section 3.5.3 and appendix 8. The period of research of these subsidiaries was 1,5 years (beginning 2005 to mid-2006). Table 1 shows the use of the HRCA tools in this period:

Nr country	Shell subsidiary or joint venture ¹	Country Risk Assessment	Company assessment	Audit Plan based on CRA
Country 1 (test)	Subsidiary	1	1	-
Country 2 (test)	Joint venture	1	1	-
Country 3	Subsidiary and joint venture	1	-	1
Country 4	Subsidiary	1	-	1
Country 5	Subsidiary	1	-	1
Country 6	Subsidiary and Joint venture	1	-	1

Table 1 Use HRCA tools within Shell subsidiaries and/or joint ventures research 2004-2006

These subsidiaries or joint ventures include all companies that either worked with the tool or were approached to do so in the specific research period, forming the selection. As described in chapter 3, some parts have been indicated as confidential for different reasons. In this chapter, this is valid for certain internal guidelines and assurance mechanisms that are not in the public domain, quotes and security forces. The confidential parts have been disclosed to the committees that had to assess this PhD thesis. Besides, the analysis from these confidential parts is drawn into the public conclusions at the end of this chapter and chapter 8 and has been shared within Shell for policy analysis.

¹ As stated earlier, the companies in which Royal Dutch Shell plc directly and indirectly owns investments are separate entities. The word 'subsidiary' refers to companies in which Royal Dutch Shell either directly or indirectly has control, by having either a majority of the voting rights or the right to exercise a controlling influence. However, some companies discussed in this chapter may be companies in which Shell has significant influence but not control. These companies will be indicated as 'joint ventures'. The subsidiaries in countries 3 to 6 relate to the local Shell representative companies that were set up to coordinate Shell's activities within a particular country.

The Danish Institute for Human Rights (DIHR), the owner of the tools, produced the six Country Risk Assessments (CRA). The CRA builds on twenty rights drawn from the Universal Declaration of Human Rights (see box 1 in chapter 1) and other international human rights conventions and instruments. The CRA evaluates how formal law and the social and cultural practices of a specific country compare with human rights norms. Based on the CRA, subsidiaries or joint ventures can use the information provided in two ways:

1. Conduct a Company assessment

The DIHR selects the questions and indicators from the HRCA database, based on the business risk identified in the CRA as well as considering the human rights risks related to the type of business operations in the country. 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 the two companies in countries 1 and 2, such a company assessment was performed as a means of testing the benefits and limitations of the tools. The researcher performed the test in the company in country 1 by visiting the location, conducting interviews (25 in total), reviewing documents, performing the analysis, reporting and discussing the results². For the company based in country 2, the company assessment was done earlier (2002/2003) by the DIHR based on a desktop study. The researcher studied the results and made an effort to re-conduct the company assessment.

As described in section 3.5.3, mostly secondary data collection methods are applied to assess the influence of the local contexts in these two countries. The secondary data collection methods exist of interviews with employees based in Shell Headquarters³ and external country experts, review of internal and external reports, surveys and literature available in the public domain. In addition, the results of the Reputation Tracker are reviewed for these countries.

2. Implement an Audit Plan

The CRA allows for the selection of a number of focal areas for companies, based on the high business risk areas identified (see appendix 6). The selected focal areas are complemented with recommendations for companies to preventively mitigate the identified human rights risks. These recommendations are then put into an Audit Plan for mitigating risks, specific to the company's structure.

In the research period, the researcher designed an Audit Plan for four new Shell subsidiaries or joint ventures in countries 3 to 6 and worked with these companies to implement the plan (see section 6.4). The subsidiaries relate to the local Shell representative companies that were set up to coordinate Shell's activities within a particular country. The possibilities to implement the findings of the audit plans depend on the level of influence or control these companies have over the business activities. Making an Audit Plan based on the recommendations of the CRA only was not originally how the Danish Institute for Human Rights designed the tool. However, since policies and procedures had to be designed, a Company assessment could not be conducted. The researcher therefore thought that this would be a good way for the application of the tool for Shell companies that were set up in countries where the company did not have experience before, the so called 'new country entries'.

² Although the main purpose of applying the tool was testing the tool itself, the data obtained through the application is used for a different purpose here, namely to answer the research questions.

³ As stated in chapter 4, 'Headquarters' is the compilation of the support functions to Shell International, such as Finance, Human Resources, Corporate Affairs, etc.

The approach between existing and new Shell subsidiaries and/or joint ventures differs substantially; applying the tools forms an evaluation in existing companies but more a planning step in new companies. This difference will therefore be discussed in separate sections (sections 6.2 and 6.3 for existing and section 6.4 for new companies). Furthermore, based on the testing of the tools and working with the tools in the new companies, the researcher and the Shell policy team at Corporate Affairs developed a specific way to work with the tools. This will become clear during the chapter and section 6.5.1 when conclusions are drawn on the use of the tools.

6.2 Embedding human rights mechanisms within Shell subsidiary in country 1

This section deals with the case study results of how human rights mechanisms are embedded within the Shell subsidiary based in Country 1. The first sub-section 6.2.1 gives a summary of the Country Risk Assessment after which sub-section 6.2.2 briefly describes the presence of Shell within the country and the main human rights issues the company faces. Following this, sub-section 6.2.3 starts with analysing the use of Group and local Standards by the subsidiary. Sub-section 6.2.4 continues by analysing the application of these standards within the subsidiary and the resulting dilemmas it faces. Finally, sub-section 6.2.5 gives an overview of the results of the company assessment and discusses the follow-up that was given to the assessment.

6.2.1 Country Risk Assessment results

The World Map of Risks and Opportunities assesses the overall human rights risk as 'extreme' for this country. The Danish Institute conducted the Country Risk Assessment of country 1 in December 2004 and January 2005. This section summarises the results.

Formal law

Of the twenty human rights, one right has been indicated as high risk (right to peaceful assembly and freedom of association), thirteen as medium risk and six as low risk regarding integration into law. In the past decades, the country has started to incorporate human rights into its legal system and has begun a constructive dialogue with the international society on human rights and became a member of UN and the Human Rights Commission. More than 3000 laws and regulations have since been introduced and legal reform has been a top priority for the national government since the mid 1990s. The constitution and laws have been amended and a vast number of additional human rights provisions have been introduced.

Practice

Of the twenty human rights, nineteen rights have been indicated as high risk and one as medium risk regarding integration into social and cultural practices. In theory, the integration of human rights into law should lead to more human rights protection for the citizens. However, in practice, citizens still lack a legal mechanism through which they can enforce their constitutional rights and the government is unlikely to create such a mechanism in the nearest future.

The economic reform has improved some of the basic civil and political rights such as the right to movement, freedom of choice etc. Oppositely, the social rights and the right to work, health care, housing etc. have been reduced. The transition to another form of production has caused the emergence of uncontrolled market mechanisms, which means longer working hours for less pay, increasing health hazards, exploitation of vulnerable groups such as

migrants, women and children and incidences of bonded labour and slave-like conditions are reported to occur. In sum, country 1 is still engaged in a wide range of very serious human rights violations.

Hence, the CRA scores for country 1 show that while the formal legislation regulates human rights to a reasonable degree, this is not reflected at the practice level. A relatively high number of risk areas for business and their business partners are therefore identified (twelve), as the next table shows:

CRA risk country 1 'extreme'	High	Medium	Low
Non-compliance with formal law	1	13	6
Non-compliance with practices	19	1	0
Business risk	12	8	0

Table 2 CRA risk country 1

This business risk assessment then allows for the selection of a number of focal areas for companies. The DIHR selected the focal areas in a two-stage process (see appendix 6): 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.

Focal areas

Seven key human rights focal areas for business are identified based on the analysis of the country. The company needs to pay particular attention not to violate the following human rights issues:

1. Working conditions: provide adequate working conditions (such as formal labour contracts, respecting work hours and rest, providing living wage and no harassment or discrimination), especially regarding local migrants, children and women.
2. Trade unions: seek alternative measures that enable workers to discuss work related issues.
3. Forced labour: prevent the use of forced labour (not compelling overtime, retain wages, require loans), especially regarding migrant workers.
4. Health and safety: provide healthy and safe working conditions, including health insurance, and provide workers ways to be informed and discuss issues.
5. Salaries and terms of employment: provide a living wage, participate in social security funds and adequate housing (if needed).
6. Relocations: respect international standards in terms of relocating people (warning, compensation, etc) when buying land.
7. Privacy and family life: protect the privacy of their employees, including with health checkups and not discriminate employees with family benefits.

6.2.2 Shell in country 1

Shell's business relationship with the country dates back more than a century. After a period of war and political turmoil, the presence of Shell in the country substantially reduced or became non-existent briefly, but Shell maintained to have long-term aims in the country. Currently, all Shell's core businesses are represented in the country. Shell has partnerships with all of the country's major oil and gas companies (www.shell.com, June 2007).

The specific subsidiary to which the Company assessment was applied concerned the Oil Products Lubricants Sales & Marketing organisation, because it was regarded as the organisation with the highest exposure to human rights risks and subject to profound growth in the future. The organisation exists of three Shell lubricants blending plants (two wholly-owned and one a joint venture) and a nationwide distribution network. This means that distributors are spread all over

the country, including where Non-Governmental Organisations (NGOs) indicate human rights are systematically violated by the government.

According to Shell's local external Affairs (EA) manager, human rights had been especially an issue of concern for Shell in early 2000s when it was involved in a large development project covering an ethnic minority area that was regarded internationally as a way of exploiting the mineral wealth of the area, increasing state control and further marginalising ethnic minorities. One of Shell's main competitors had been targeted by a coalition of several dozen NGOs for its support of the same project and was therefore alleged by the NGOs to be complicit in human rights abuses.

6.2.3 Shell company assessment: use of Group and local standards

Based on the outcomes of the CRA and type of business operations in the country, the DIHR selected 47 questions out of the total of 350 questions with corresponding indicators. Early 2005, the researcher assessed the existing policies and procedures of the Shell subsidiary in country 1, interviewed around 25 employees working in the relevant functions and two distributors of Shell products in order to assess the practice level.

All the information obtained through document study and interviews were assessed based on the following criteria: a) whether the policy or procedure is present; b) whether the policy or procedure covers the content of the indicators; c) whether there are sufficient controls for assurance; d) whether practices confirm the implementation of the policies and procedures.

The analysis shows that employment practices are covered by local as well as some Group policies and procedures. However, the area of community impact, especially in terms of government relations, and product/market practices are either covered by Group policies and procedures or more dealt with on a case-by-case basis. The next section describes how these policies and procedures are applied within the company and which dilemmas the company faces.

Most employees interviewed indicated that the Business Principles and Group Standards and guidelines are reasonable and feel that they have sufficient freedom to implement the standards according to the local context. Shell's principles are regarded as 'culture neutral'; they allow for minor adaptations to the local context, but employees stipulate that the Business Principles cannot be compromised. However, not all managers interviewed read the management primers on human rights, bribery and corruption and child labour developed by Shell Group. The people that have read the primers found the documents too abstract (except for the dilemma booklet) and therefore these have limited impact on the day-to-day business. If dilemmas are faced, the management team asks advice at Shell Group. The primers could be helpful for countries with less awareness on human rights.

The managers interviewed indicate that it is important that the mindset of local people needs to be changed in order to implement the guidelines, which relates to the degree of internalisation. Although a lot of effort is put in trying to make the people understand the standards and to show why they are important, managers feel that a lot of cynicism regarding the standards still exists. On the other hand, the company will not be effective in telling people what to do all the time. Awareness on topics such as safety, diversity, business integrity and human rights is running behind the levels in Europe, so the managers interviewed feel it is difficult to make employees and business partners understand the high standards of Shell.

According to many employees interviewed, some of the Group standards are difficult to implement in the local context. However, in the local context, sales staff does not have their own cars and need to use taxis that are not according to these standards. Another example provided by another employee interviewed is the implementation of on-line bidding for contractors, which is not allowed by the local government yet. In addition, according to the EA manager, the Group Reputation Standard and stakeholder management guidelines sometimes need localisation. For example, the Reputation Standard cannot be applied within non-operated or minority share joint ventures one on one, since these types of joint ventures may not always see the point of adopting Shell's global reputation standards and practices. Issues are dealt with on a case-by-case basis and employees interviewed wonder whether there could ever be any guidance developed that would be practical. An expatriate manager feels that Shell Headquarters has a more Western perspective. The manager suggests that Shell Headquarters would be more effective if it provides more advice on how things should be handled in the local context. It would also help if Shell Headquarters assessed the possible dilemmas on the ground before developing a new standard.

What would make it even harder to implement Group standards is that Shell wants to localise senior recruitment as well in order to build local managerial capacity, according to an expatriate manager. Expatriates see the dilemmas, local people may not. If a local manager would take the decision, it would result in different decisions. Decisions are dependent on the norms and values of people and it is hard to transfer Shell norms and values to local people, especially if they have never been outside the country. It would therefore be good if Shell would send highly potential local people to Shell Headquarters to gain more experience with Shell standards, which is beginning to take place.

In some functions, however, managers experience fewer problems with Group standards, such as Human Resources (HR); this function is more decentralised than e.g. Health, Safety, Security & Environment (HSE) and based on local legislation. Another area is the legal function, because the function ensures complying with local legislation and does not have international guidance (see chapter 4). Furthermore, no Standard⁴ has been developed in Social Performance (SP) up to the time of writing (2007), except for the guidance notes. However, as will be described in the next section, the subsidiary preferred to have had more guidance from Headquarters (experiences from the subsidiary were integrated as best practices in the SP guidance notes).

In terms of communication between Shell Headquarters and the subsidiary, employees of the Shell subsidiary would like to see that local people are more involved in global communications and receive more support from Shell Headquarters. Guidelines on communications are usually in general terms and are subject to different ways of interpretation. The Oil Products (OP) External Affairs (EA)⁵ focal point also finds that global communications should put more attention to the context of a developing country and centrally organised government situation. Firstly, communication from OP Business is not always translated in the local language and to send messages in English only is far from enough to really get the message across. Secondly, the two hundred Sales staff are scattered across the country in remote locations. Staff based close to local headquarters is also close to the Shell culture, but staff based in remote locations do not have the chance to be influenced by the local headquarters or Shell's standards. The solution would be to put much more emphasis on management commitment of

⁴ See chapter 4 for definition of Standard and guidelines.

⁵ The function 'External Affairs' changed later within Shell to 'Communications' (see chapter 5 as well), but at the time of research, this was still called 'EA'.

HSSE standards and the Shell General Business principles (SGBP) to have a system to strengthen communication between the remote areas and local headquarters.

In addition, employees indicate they would like to share more experiences with other countries; how to deal with issues, lessons learned, etc. This has been improved recently with the set up of an OP global issue network. This initiative is about standardising and simplifying Shell OP business practices and standards across the world. It also relates to aligning behaviour and cultural changes towards 'Enterprise First' behaviour (see chapter 5). The OP EA focal point also feels that contact with the OP Business in London has been closer recently, because of the Downstream One initiative. However, others, such as the OP Contracting & Procurement (C&P) manager, fears that the Downstream One initiative will lead to very rigid guidelines and less flexibility to adapt thing to the local culture, because everything will be implemented from the top.

The same problems also occur with e.g. social investment that OP is involved in agreeing the corporate social investment programme for the country but then is unable to pay its share because of targets from Shell Headquarters. These targets connect to the country's needs, sensitivity, reputation risk, or sustainable development commitments to a limited extent. As several employees indicate, the need therefore exists for some Group guidelines to solve this disconnect and link reputation and managing social issues to the scorecard (which was also suggested by others).

6.2.4 Shell company assessment: application of policies and procedures and its dilemmas

This sub-section analyses the results of the interviews and assesses how policies and procedures that cover human rights issues are applied with the company and which dilemmas are faced. It will be described according to the spheres of influence (see section 2.3): employees, contractors, communities, government and international society.

A. Employees

All employees have a formal contract and identification documents are photocopied and immediately handed back to the employee. A medical check in a public hospital is obligated before somebody is employed, but in Shell's experience, this never led to somebody being refused employment. In addition, the country's registration system requires a working permit for local migrant workers and labour benefits are bound to these permits. The Shell subsidiary helps to get a permit when employees are transferred, but not for newly hired employees (it is rather easy to get a permit as a highly educated worker). The employee information that is registered is kept strictly confidential, is accessible for the employee and is provided to the authorities on an agreement basis with the employee only.

In terms of working hours, operators cannot make overtime easily, because of the eight hour shift working system in the lubricant plants. The office personnel only receive pay for overtime on public holidays but they can get time off in lieu for any overtime they made. In practice, office employees usually work many hours, including weekends out of their own choice. The company therefore raises awareness of having a proper 'work/life balance'.

Pay and benefits are determined based on benchmarking and a 'city index' that indicates what the local living costs are. Benefits are provided to a limited number of dependants of a local employee, by decree of government regulations. This

posed a dilemma for the company. As the commitment to human rights asks not to discriminate, the company was compelled to apply penalties stipulated by the government for breach of the policy⁶. However, according to human rights, this would discriminate the particular employee. Furthermore, paid maternity and paternity leave are provided from a certain age, according to local law, which could also lead to potential discrimination. However, this particular law was adapted right after this research was done and therefore did not pose a dilemma anymore.

Health and Safety (HSE) is a high priority for the Shell subsidiary. The global guidelines on HSE-Management System, including the yellow guides, and the Global Environmental Standard (e.g. concerning reporting of oil spills) are used. The guidelines from Shell Headquarters are not changed by the Shell subsidiary; only the most important aspects for Shell Sales staff are translated into the local language. The employees can access these online. Every year, Shell performs emergency exercises with the employees, including Sales teams. First aid boxes are provided everywhere and some first aiders are trained in the company. A Shell SOS service is provided, covering the whole country. Sales staff has to report monthly on HSE performance and give information about their personal security. In the on-boarding training (within three months of their starting date), Shell provides a HSE induction course. In the plant, offices and in the Sales team, the supervisor closely trains and monitors their staff daily and machines and equipment are reviewed monthly. The Hearts & Minds program has been launched through a global communication pack.

Several employees interviewed feel that HSE is challenging because of the very competitive business environment and the pressure on profitability. In addition, appropriate health and safety standards and/or appropriate support from local authorities in case of emergency, may not always be available in remote areas. Finally, it was found that local (sales) employees are not highly aware of the risks and dangers in HSE and local values require a strong hierarchical and disciplined approach of management to be effective (De Wit, 2006). De Wit stipulates that Shell wasted a lot of money on HSE awareness training in the country, which did not help; performance was only improved when fines were handed out and made part of the annual employee assessment. And, if violations of HSE standards are found, a warning is given, but the second time it can lead to possible dismissal.

SGBP is referenced in the context of bribery and corruption, because this is regarded as high priority in the local context. It is quite common to exchange gifts or souvenirs or pay commissions, so SGBP can be easily undermined. Efforts have been made internally into promoting business principles among staff, especially those interfacing with customers and other external parties, through training sessions, face-to-face meetings and annual questionnaires to reinforce messages. Employees receive training once or twice a year in formal meetings and senior staff interprets the SGBP standards in the local context. Several managers indicated that leadership is key, but it also depends on the personal background of employees and how they feel valued in the Shell system. Employees indicate that the company loses business opportunities because of their stricter standards, but also wins because it gains a good reputation. In the country, Shell is regarded as clean and honest company and the government supports the company's efforts.

In terms of employee relations, internal meetings between the management and employees are organised about their working conditions and benefits. In addition,

⁶ Penalties include no paid maternity leave, the employee is not to get promotion within three years, should be skipped once for salary increase and hospital costs are for own account.

Human Resources travel to the plant regularly to talk to the staff directly. Another way for employees to raise their concerns is to make notes in a notebook, which is reviewed by management. All operators have computer access and they can make book a room anytime to discuss working conditions without the presence of management. In addition, employees can discuss any issues through informal gatherings in which they meet informally and where they can directly communicate with the management team. Grievances procedures are not used very often. A local employee indicated that this was because Shell is quite a reputable company in the country, but an expatriate manager indicated that people do not feel there is any issue or dilemma and/or they are very suspicious about possible repercussions, especially to complain about somebody higher in the organization.

The subsidiary leaves the decision to establish a labour union up to the employees; it does not encourage employees to establish a labour union. The expatriate HR director's indicated that it would be a dilemma, if employees wanted to start an independent labour union, because the company would then be found in non-compliance with the law. Another concern was the consequences of government action over an imminent strike.

The company follows the global Diversity & Inclusiveness standard and all employees are trained on both these policies. Special attention is paid to gender balance and disabled persons. The company recently conducted a study in order to assess any bias in performance ranking between men and women (and possible organisational barriers for women), between expatriates and local employees and ages. No significant bias was found. Additionally, HR managers are trained how to handle Harassment & Discrimination (H&D) through policy communication sessions and on the job training (although some interviewees were not aware of the policy). Specific attention is paid to check job advertisements and mitigate the common practice in the country to ask women about their family plans in a job interview (as identified by the DIHR). In terms of respecting freedom of religion, religious gatherings are prohibited, which would make the company break the local law if it would stimulate freedom of religion amongst local staff. The company therefore gives information to all employees on religious festivity days about these religions. The main challenge is making local headhunting agencies aware of Shell non-discrimination standards, because they cannot understand why it is necessary.

Finally, an employee can always resign with 30 days notice. When people are redundant, they receive a package with one-month notice, according to the law. Employees can only be dismissed without compensation if they severely violate the Shell General Business principles (SGBP), but this is very unusual. If it appears to be a criminal act, Shell needs to report it with the government. Besides, when the company reports any incidents to the police, they are usually too busy to handle such cases. The subsidiary prefers to settle any disputes out of court, because that fits the local culture more in terms of informal communication. The company only had a few commercial disputes so far in which due debt had to be collected. In the hypothetical case that an employee would face the death penalty for e.g. criticising the government (violations of right to life and right to freedom of expression), the Legal manager indicates that it would be very difficult for a company to avoid. However, for every potential lawsuit, the legal service investigates whether this can lead to the death penalty.

B. Contractors and business partners

For Shell Oil Products, human rights are not a key issue, according to the issue manager. The only human rights concern is that the company works with distributors in a minority area, where human rights violations are committed

according to international organisations. The company would like to contract more distributors from the minority group, but this is very difficult because their traditional lifestyle does not fit the type of distributor work. The company therefore asks the current distributors to commit in the contract to provide employment opportunities for the ethnic minority group and treat them equally, apart from the requirements for distributors to agree with the SGBP and HSSE standards in their contracts with Shell. More importantly, distributors are asked to provide training to build the business capacities of the ethnic minorities with the aim that they could run lubricants business by their own in the future. Shell's sales staff monitors their performance on these standards and commitment regularly.

The distributors are contracted and the subsidiary requires them to only sell the Shell brand. However, in many areas it is difficult to survive as distributors, so they also sell local brands. The distributors are selected on their financial capabilities and potential for growth rather than on SGBP or HSSE performance. After both parties (Shell and distributors) agree to be partners, the company raises understanding about the SGBP and HSSE standards through training and regular (three or four times a month) monitoring. The focus lies on business integrity and health and safety; distributors are required to report any concern related to these issues to Shell. When visiting the distributor, sales staff also communicates with the employees, especially on their health and safety conditions. However, influencing the distributors is the only thing the company can do, they cannot force anything. All sales staff expressed concerns over business integrity (used as a synonym to 'SGBP') of distributors; bribery and corruption is quite common in the local context and is hard to change. According to the regional Sales manager, the way the distributors treat their employees is beyond the control of the Sales staff. Distributors will be 'phased out', when the company continuously find violations of Shell standards.

A slightly different approach is taken with suppliers. In terms of volume, 30% are local suppliers (the rest are Shell companies abroad supplying oil), but in terms of numbers, about 90% are local suppliers. The range of procurement is very wide: from oil to office supplies. Instead of discussing the SGBP (used as a synonym to bribery and corruption issues) and HSSE standards after the contract is set up, HSSE is used to select suppliers and formalised in the contract. The contract also includes a condition that they have to report any subcontractors they use in advance. For key suppliers, annual trainings are run, in which business integrity raises to most discussions. Contractors and suppliers are subject to a contractor performance review, but this happens in a re-active manner; when something happens or the contract expires. Contractors need to report any issues related to the quality of the product, late payments and competitors cheating products.

HSSE performance is a concern, because the competencies, awareness and HSSE management systems are very poor in the local context (although more attention is paid to HSSE in the media because the media is becoming more powerful and open). It requires the company to be very strict in requiring their suppliers to comply with these standards, even when suppliers do not understand the need for these standards. Contracts are terminated where there is a violation of SGBP or HSSE violations (two in 2004). If the suppliers perform well on HSSE, the assumption is that these companies care for their employees and will treat them reasonably in terms of labour conditions and benefits. However, the Shell company in country 1 does check the bills monthly to see whether the contracting companies properly pay social welfare and salary to their employees. The remuneration is above the level of a living wage. Suppliers with the highest risk to violate labour standards (small and produce promotion material) are based in

the capital, which means that this risk is low because it is a highly controlled area, according to the contracting and procurement manager.

Finally, Shell maintains close relationships with state owned companies through joint ventures. According to the expatriate External Affairs (EA) manager, when the joint venture is negotiated, Shell communicates the SGBP and ensures that it is taken up into the contract. This is not always easy, because the joint venture partner does not always understand its purpose. The local EA manager further stipulated that Shell is not going to sign if the other party does not adhere to the SGBP or equivalent principles⁷. All partners in joint ventures have signed up to Shell's business principles and discussions are held at high levels to ensure there is understanding of these principles in action.

The joint venture has to take care of the enforcement through governance and reporting, which includes training of employees. Shell sometimes insists with their partner to recruit a qualified EA professional, who can guard the reputation of the company and influence the process internally. SGBP is used on a daily basis, when it fits the purpose. This may involve the senior management of Shell Group to talk with the Prime Minister or it may involve low-level talks with employees of the company. Especially maintaining high HSE standards in joint ventures seems to be problematic, given the relatively lower awareness amongst local people and the tendency to follow local standards instead of higher global standards.

C. Community

The subsidiary of Shell has regular engagements with its stakeholders and generally the relationship with these stakeholders, including communities, is good. Social investment in Oil Products started a couple of years ago and mainly focuses on road safety programs, which targets to raise public awareness of road safety by conducting driving and safety knowledge competitions amongst motorists in big cities, involving local authorities and through radio programmes. According to the issue manager, the company's image on social performance is fairly good and the message of sustainable development is always coming forward in corporate branding.

Nevertheless, there are large challenges in the country related to Social Performance, as the local awareness and capacity to deal with these issues is limited in general. The interviewees mentioned two major projects with large impacts on communities, which were lead by the expatriate EA manager, who has working experience in other challenging locations. One project could have potentially led to major impacts on the communities, because of construction, maintenance, environmental pollution or resettlement. In negotiating with the state-owned oil companies and the government, Shell wanted to include these social issues before signing the contract⁸. After Shell signed, Shell did a post-resettlement survey together with a UN organisation and found that the state company was very consultative with the affected communities. In the end, the deal was cancelled primarily for economic reasons and because of government changes.

Constructing these projects involved resettling eight thousand people to newly constructed resettlement sites. The company assisted the government to develop a Resettlement Action Plan, designed to meet national and international

⁷ Shell Headquarters defines 'Equivalent' principles as 'the JV adopts business principles that are not materially different from SGBP, which properly applied, will result in no significant increase in material risk'.

⁸ The other oil company had already withdrawn from the bidding process of this project as a result of a NGO resolution that it would be complicit of marginalising ethnic minorities. 'We want to make this issue for you what Nigeria is for Shell', a campaigning NGO had said to the oil company.

standards according to the World Bank. A social baseline survey has been conducted before the relocation, and formal monitoring of the resettlement after the event was also being conducted. Locations were chosen with input from villagers who were also involved in the design of their new houses. The company commissioned an independent consultant to monitor the resettlement process every six months and is following up on the recommendations. Between 1500 and 2000 resettlers were expected to have to look for new employment as a result of the relocation. The company therefore tried to restore livelihoods through providing employment opportunities, training and small business support, working together with the local government.

The main challenge with this project was that international standard demand transparency, which is not common in the local context. The government did consult with local stakeholders, but did not document the process. This was eventually done by the independent consultant and accepted by the government. Since Shell did not have prior experience with resettlement and it turned out to be a success (the company exceeded the World Bank's expectation to realise 50% of standards), the experiences of the Shell subsidiary were used for the development of Shell Headquarters' SP guidance note on resettlement.

Any community concerns can be reported through a customer service system of Oil Products (OP). People can call a number or approach the distributors and Shell then logs the complaints and handles them. The distributors already handle about 50% of the complaints. Most complaints concern product quality. In the recent past, the Shell subsidiary received penalties because of a bad product quality. The company immediately tested and recalled the products, following the OP procedure worldwide. However, the cause of these complaints is mostly little knowledge about how to use the products properly. All the potential product dangers for health and safety are put on the product labels (in English and the local language) and a product sheet is provided to educate the people how to use products, how to store and deliver and what to do when there is an emergency. If the customer is qualified and professional, they will provide this information to the technicians who actually use the product, but sometimes this is not well communicated.

D. Government

Shell's main contacts with the government are through the company's joint ventures with the national oil companies. The government owns 90% of these companies. For Shell, this means that it is highly unclear to assess if they talk to the companies (and competitors) or to the government.

Opportunities are taken to highlight Shell's commitment to business principles and sustainable development in meetings with government and state owned enterprises. Shell also assists with seminars and workshops with partners and government to increase understanding of safety and environmental standards expected internationally. With the rising profile that the country has on human rights and its increasing importance in the global economic and political arena, it was felt by Shell that it needed to seek a more significant contribution to reinforce its commitment with more than words. The plan to support an international organisation in collaboration with one of the Ministries to promote democratic village elections was unfortunately turned down.

According to people interviewed in the Shell Headquarters and the subsidiary, human rights are a political and sensitive issue in the country, because primarily Western governments accused the country of its human rights record. The basic understanding of human rights is present; only the mindset is different. The Western (Shell) view is more pro-active; the national view is more reactive. The

people interviewed feel that they can talk to government officials and universities openly about human rights and social issues in one-to-one conversations. The key factor is to have mutual respect and develop trust in these relationships, so to say 'let's talk how we are going to do this' and not 'we want you to do this'. This worked well in establishing a partnership with the local government to address the social issues with the two major projects.

The legal manager and others in the Shell subsidiary state that the local law is formulated at a very high level; it upholds a very high standard (e.g. in protecting employees) but it is also very abstract. The local government who provide guidelines to businesses does the actual implementation and interpretation, but the central government can have another view on the implementation than the local government. This makes the situation for the Shell subsidiary complicated, because some laws may be interpreted differently, sometimes revoked or not implemented. The company therefore consults the Labour Bureau of the government regularly on how to interpret the laws.

From legal point of view, the department does not monitor international law. The legal manager stipulates that it is not feasible for the legal department to do something about some abuses of human rights in the country, e.g. the right to a fair trial. Only in very grave cases of fraud or theft, the company tries to arbitrate. In those cases, the company hears all witnesses and raises awareness of a fair hearing. The legal manager feels, however, that the justice system favours local companies over international companies in its decisions. The only way to raise human rights abuses in the justice system is to gently try to raise it in forums and in cooperation with EU and US governments.

Finally, the subsidiary faces a dilemma in terms of protecting its organisation and employees from government monitoring. Most communication, whether electronically or by phone, is monitored and the company is aware of this issue. This violates the right to privacy. Visiting a website that is critical of the government can even lead to the detention of employees. Access to international news is therefore limited to expatriates, because they cannot be tried according to national law.

E. International society

According to the EA manager of the Shell subsidiary, the United Nations and its agencies are in general positively regarded in the country. UNCHR, UNDP and ILO are in close contact with the central government on human rights and labour rights issues in general. The Shell subsidiary recognised opportunities to partner with these agencies in capacity building projects with government involvement, although the downside according to Shell is that UN organisation projects do not have the business experience to develop projects effectively. The company made contact with several UN organisations and NGOs. The Shell subsidiary sponsored an annual UN report in human rights, which goes to the government and has worked together with the agency on one of the projects.

According to an expatriate manager, it depends on the project and the context which NGOs to engage. The main difference in NGOs is how the human rights situation is perceived between international NGOs and national organisations. For example, the most sensitive issue from an outside perspective is operating in an ethnic minority area and Shell receives many questions about how it can uphold its human rights commitment. However, Shell barely operates in that area (see contractors). The Oil Products issue manager indicates that NGOs for OP are not highly involved; one of the reasons is that NGOs in the country are relatively young.

Furthermore, in 2007, Shell was invited by external stakeholders to respond to concerns raised about opposition by industry associations (of which Shell was a member) to proposed reforms to the labour law in the country. Shell did publicly respond with the main message that the association's views did not necessarily represent those of its individual members. Internally, the HR director of the Shell subsidiary did say she signed a joint letter of the industry association because she was concerned of the application of the current labour laws, but she never wanted to be seen as to lobby against the new labour laws. In sum, this shows that the Shell subsidiary is sensitive to the concerns from the international society, with the condition that these concerns are legitimate.

6.2.5 Results Shell company assessment and follow-up

The researcher then assessed the policies and procedures that cover human rights of the Shell subsidiary and its application. Table 4 below shows the findings on coverage of human rights for the 47 questions.

Company assessment of 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 Findings company assessment for Shell subsidiary in country 1 per question

Based on the HRCA results and following the methodology of the tools, the researcher performed a SWOT analysis. According to the researcher, major strengths include health, safety and product stewardship, which promote the right to health and the right to food. In addition, the company has comprehensive policies in place to regarding harassment & discrimination, which relates to the right to freedom from discrimination and right to just and favourable conditions of work. The company also has good practices in employee wages and respecting and protecting employee privacy. Furthermore, the company informally respects the right to freedom of expression of employees to improve their labour conditions through the local company Club. Moving to contractors, the Group standards on health, safety and security are strictly followed by the company. What's more, extensive and comprehensive policy and procedures against unjustly influencing and bribing public officials are issued, which positively influence the right to a fair trial and right to take part in government. Finally, one of the large projects executed by the Shell subsidiary demonstrated good practices in terms of following World Bank standards in relocation of families, especially in maintaining good relations with local government.

According to the researcher, the major attention areas of the Shell subsidiary in country 1 that follow from the assessment related first of all to some aspects of Human Resources. Employee benefits were found not to be according to ILO standards in the areas of leave or overtime to the right to family life. Secondly, employees are not represented in committees dealing with grievances. Thirdly, the company screens and monitors all major suppliers, contractors and sub-suppliers for commitment on Health, Safety and Environment (HSE) issues, but not on other human rights or labour issues. Fourthly, in the area of government relations, many issues are detected where national legislation seems to conflict with international laws and the legal department finds itself in difficult dilemmas because of that. However, the department does not monitor particular aspects of the state legal system that may be in violation with international human rights. Finally, although one of the large projects demonstrates that the communities have access to a grievance procedure, no fair hearing requirements are established explicitly or a neutral mechanism exists responsible for hearing, processing and settling disputes.

In sum, the following table represents the findings regarding the strengths and major focal areas of the Shell subsidiary in country 1, assessed according to the methodology of the tool:

Strong	Areas for improvement
Health, Safety and Environment (HSE)	Human Resources (benefits)
Product Stewardship	Harassment & Discrimination
Diversity & Inclusiveness	Employee relations (grievance procedure)
Human Resources	Contracting & Procurement (other than HSE)
Employee Relations	Legal (monitoring international law)
Social Performance	Social Performance (grievance procedure)
Business Integrity Services	
Data Privacy	

Table 4 Findings company assessment per function

The researcher provided recommendations to the company to mitigate the found gaps, according to the standard procedure of the tool. The report was first sent to the expatriate External Affairs manager for an initial review and he found the report not easy to translate to concrete actions for the different Shell functions, because of the format of the report and non-practicality of some recommendations. The researcher therefore transformed the format of the report to an action plan per function.

The EA manager then sent the recommendations around to the different functional focal points within the subsidiary. The focal points agreed with some of the gaps identified, but did not agree with the assessment of others or some of the recommendations. They found that the assessment was too strict in failing some of the existing procedures and practices of the subsidiary, because of a) cultural sensitivities, b) efforts required would be much higher than the real risks issues posed for the business operations in the country, c) it was covered by internalisation checks and/or d) they felt they could not go beyond following Group procedures. They therefore also questioned the corresponding recommendations.

Examples showing concerns about Group requirements included the recommendation to extend period of maternity leave from the legal requirement of 90 days to 98 days according to ILO standards. This was found to be prudent, because no guidance from HR at Shell Headquarters was provided. Besides, the Contracting & Procurement (C&P) manager also stipulated that Group guidance was needed first before the subsidiary would start with explicitly pre-qualifying and monitoring contractors and suppliers on labour conditions.

Another example included the recommendation to establish and maintain an effective grievance process whereby members of the local community can lodge company-related complaints. This was not found a realistic approach for the Oil Products business in the country, because no real local communities were affected by the OP business given Retail has a very small presence and human rights is a sensitive topic and it would not be wise to talk about it in public in generic term. However, the respective focal point did think that it might work well on a project driven approach concerning a specific area. This ad-hoc approach instead of embedding it permanently in procedures was also suggested for other areas e.g. to develop binding policy and procedures to avoid forced/prison labour within company and contractors. A final example showing the cultural sensitivity covers the recommendation that management encourages workers to engage in

workers' meetings and ensuring workers that such engagement does not lead to any kind of disciplinary acts. Given the little experience that local employees have with the principles of collective bargaining or freedom of association, this action would only do harm instead of good.

Thus, the subsidiary had particular concerns about areas where human rights standards did not correspond with national laws, cultural practices or Group requirements as well as the cost-benefit balance of implementing some of the recommendations. The Policy & External Affairs and Social Performance teams in Shell Headquarters, who concluded that the gaps and recommendations should have been sent to the subsidiary focal points after discussion and building more mutual understanding, also shared these concerns. The Social Performance focal point at Shell Headquarters found that the recommendations coming out of the Danish methodology of the tools needed a translation to the Shell business environment. However, a policy adviser who had worked in the particular Shell subsidiary preferred to ask the subsidiary to formulate actions themselves. In discussion with the EA manager of the Shell subsidiary, the researcher therefore decided that the gaps and recommendations would be discussed with the focal points of the subsidiary as well as the relevant Group focal points in order to mutually formulate and prioritise practical actions. The researcher consequently added a column to the initial action plan covering 'Shell subsidiary way forward'.

The researcher performed the discussions accordingly and produced a final action plan. The challenge for the researcher was to formulate and prioritise practical actions and not compromise on human rights standards. This was especially difficult, because the researcher had little knowledge of the local context in order to assess which issues posed a real risk and what actions would be feasible to implement in the local context. Working together with a focal point in the Shell subsidiary in assessing any gaps and formulating recommendations therefore would have been beneficial in order to ensure feasibility of the action plan⁹. It also would have been beneficial to ensure the ownership of the action plan within the subsidiary. When the researcher discussed the final action plan with the EA manager, he questioned the level of importance of some of the findings and asked whether it had been signed off and agreed by the subsidiary. This remark illustrates that, in testing this tool, the ownership of the action plan was not clear and therefore the role to drive the plan forward with the functional focal points was unclear as well. It was felt that driving the results from Shell Group would not be effective, because the actions needed to be implemented within the subsidiary.

The final result was that some actions were implemented and others were not. For example, the dilemma of penalising employees with more than one child according to national laws was extensively researched (practices of peer companies in the country, advice of internal and external lawyers) and discussed with Group Human Resources and a practical compromise was reached. However, other actions were never followed up.

Another important reason for the low level of ownership of the initiative can be found in the set up. When the subsidiary was first approached by Headquarters, the company did not see the benefit for applying the tool within its organisation, because knowledge on human rights risks and experience how to deal with those risks has already been built up within the organisation. The country chair indicated that he did not see the direct benefit measured against the effort to be put in. Hence, the subsidiary regarded its knowledge and implementation of human rights as sufficient. The reasons for finally agreeing with the application of

⁹ A local focal point was initially identified, but was cancelled because of the timing of the project.

the tool in the subsidiary were to a) test the effectiveness of the tool for Shell Group, b) costs would be paid by Shell Group and man-hours to be put in by the subsidiary would be minimal. These reasons do not facilitate the subsidiary taking ownership of the final results.

Another issue concerned the external communication about the pilot study, which impacted the relationship between Shell Group, the Danish Institute and the subsidiary. The subsidiary did not want any communication in the public domain that would link Shell to the testing of the human rights tool in the country, because that could potentially impact the relationship with the national government negatively, given the sensitivity of human rights in its local context. However, Shell Group would have liked to use the pilot as an example to illustrate its commitment to human rights with regard to its international stakeholders. Moreover, the subsidiary was also concerned about potential exposure if the Danish Institute would present the country risk assessment of the particular country, whilst it was publicly known that Shell was one of the few companies working with them. That way, the government could still be able to find out that Shell conducted the human rights study in the country. However, the Danish Institute wanted to use the country risk assessment as a way to attract new members for its project. After internal discussion and clarifying that Shell was part of a corporate membership programme of the Danish Institute that would objectify the use of the tools, it was finally agreed that the Danish Institute could use the CRA in public settings (but not link it to Shell) and Shell Group could use the study in private discussions with contacts or other companies.

Here ends the analysis of the case study of the Shell subsidiary in country 1. The next section will analyse another Shell subsidiary, based in country 2.

6.3 Embedding human rights mechanisms within a Shell joint venture in country 2

This section deals with the case study results of how human rights mechanisms are embedded in a joint venture based in country 2. The first sub-section 6.3.1 gives a summary of the Country Risk Assessment (CRA), after which sub-section 6.3.2 briefly describes the presence of Shell within the country. Following this, sub-section 6.3.3 analyses the use of Group and local standards within the company, their application and several dilemmas that the company faces in this application. The final sub-section 6.3.4 explains the results of the company assessment and it's follow-up.

6.3.1 Country risk assessment results

The World Map of Risks and Opportunities assesses the overall human rights risk as 'moderate' for this country. The Danish Institute conducted the Country Risk Assessment of the country in 2002 and revised it in 2006. This section summarises the results.

The country is a monarchy that has been ruled by one family since the middle of the 18th century. Since the 1970s, an extensive modernisation process has taken place where a number of judicial reforms have been implemented. The monarchy maintains firm control over all essential policy issues, but a number of tribal leaders have been brought into the Government, and much decision-making is by consensus among these leaders.

Formal law

Of the nineteen human rights¹⁰, three rights have been indicated as high risk, eight as medium risk and eight as low risk regarding integration into law. Human rights protections in the country are codified in the main bodies of law. The country is an Islamic State with the Islamic Sharia law forming the basis of legislation together with English common law. However, the jurisdiction of the Sharia courts has increasingly been limited since the 1970s, and traditional Islamic law now only governs in certain restricted areas, such as personal/family matters. The law offers protection to a wide number of human rights in writing for the first time. The labour law was revised recently and generally provides good protection to workers. However, some areas within labour law are still highly restricted, in particular, forming unions is strictly forbidden.

Practice

Of the nineteen human rights, four rights have been indicated as high risk, seven as medium risk and eight as low risk regarding integration into social and cultural practices. High-risk areas include right to freedom of expression and religion, right to take part in government, right to freedom of association and the right to participate in cultural life. Many of the law articles have not yet been implemented adequately, and there has been no public statement by the government announcing a new target date for the implementation. Nevertheless, the Basic Law is formally in force, and is being implemented in an incremental manner, especially provisions pertaining to the legal code for family and interpersonal relationship, judicial reform, and aspects of the Finance Ministry. Furthermore, there are no human rights institutions, trade unions, women's rights groups or any kind of non-governmental organizations operating in the country. The only type of organisation allowed by the government are associations regulated by the government, which mainly consist of organisations concerned with cultural, social or charitable affairs. Any association formed for political or lobbying purposes is explicitly prohibited. Nevertheless, the government has begun to establish a variety of civil associations and authorisation has been granted for the establishment of such associations. Still, any kind of organisation or association has to be authorised by the government, which restricts the formation and activities of civil society.

Human rights issues are considered potentially inflammatory to the government that makes communications with any groups or individuals in the country on these issues very sensitive. According to external sources, the information supplied by researchers and human rights advocates may be constrained by being surveyed by the government. Hence, the CRA scores for this country show that formal law and practices substantially cover human rights, leaving a limited number of risks for business (three):

CRA risk country 2 'moderate'	High	Medium	Low
Non-compliance with formal law	3	8	8
Non-compliance with practices	4	7	8
Business risk	3	5	11

Table 5 CRA risk country 2

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.

¹⁰ The Danish Institute only assessed nineteen human rights instead of twenty rights.

Focal areas

Five key human rights focal areas for business are identified based on the analysis of country 2. The company needs to pay particular attention not to violate the following human rights issues:

1. Wages: provide the following categories with a living wage when relevant to the operations: foreign workers¹¹, small businesses (five employees or fewer), the self-employed, domestic servants, dependent family members working for a family firm, and some categories of manual labour.
2. Forced labour: not retain employees' identity papers and grant letters of release immediately after termination of employment, especially of foreign workers.
3. Privacy: inform employees about and have access to their personal information detained by the company and the company should not convey any political beliefs or expressions of an employee to the government.
4. Working conditions: provide foreign workers with the same rights and benefits as national workers.
5. Discrimination: respect all religions in the workplace and take precautions to avoid implicitly supporting, endorsing, or condoning particular faiths.

6.3.2 Shell in country 2

Shell's activities in country 2 include oil exploration, lubricants and exploitation of Liquefied Natural Gas. Shell first came to the country in the field of oil exploration in the beginning of the last century, but due to logistical problems and periods of war, first activities only started fifty years later and oil was found. Until this day, the government holds a majority share and Shell holds a minority share. The exploration and production company is the largest in the country and accounts for more than 90% of the country's crude-oil production and nearly all of its natural gas supply (www.shell.com, June 2007).

The specific joint venture to which the company assessment was applied concerned the oil development joint venture, because it is the largest Shell operated joint venture in the country. The application of the tool to the Shell joint venture had the objective to perform a proper test of the tool, after an initial test in South Africa in 2001. Country 2 was selected because the Sustainable Development adviser based in Shell Headquarters initiated the use of the tools within Shell (see chapter 5) and worked within the country before.

6.3.3 Shell company assessment: use and application of Group and local standards and its dilemmas

Based on the outcomes of the CRA, the DIHR selected 48 questions out of the total of 350 questions with corresponding indicators. As described before, the Danish Institute conducted the company assessment for Human Rights in order to test the tool, based on secondary data only (desk top review) in 2002/2003. In addition, the researcher also gathered more relevant documentation after the review, such as a Social Performance review, the Country Chair Questionnaire (CCQ, later changed to DCQ), People Survey, annual communications between country chairs and ID and the Reputation Tracker. Due to the sensitivities surrounding sharing of internal data, this data is confidential.

¹¹ Foreign workers are migrant workers from neighbouring countries, who tend to work in lower paid jobs, and generally are left with fewer rights and benefits.

All the information obtained through document study was assessed based on the following criteria: a) whether the policy or procedure is present; b) whether the policy or procedure covers the content of the indicators; c) whether there are sufficient controls for assurance.

The analysis showed that local procedures are mainly used for employee practices, supplemented with Group specific procedures in order to prevent discrimination, child labour and protect employee privacy. However, whether these Group procedures are actually applied is not included in the scope, as it has solely been a desktop research. Furthermore, only local procedures are used to provide sufficient employee housing and water to communities (utilities and services). In contrary, the joint venture seems to implement the HSE management system and Group Security Standard for respecting the environment and security of communities. In terms of government relations, no local procedures that prevent complicity in abuses of a fair trial or freedom of expression and religion were found, but the company did indicate that it developed local procedures to combat bribery and corruption. Finally, the company seems to have comprehensive local procedures for land usage and mitigate any negative impact on communities. Assessing how the joint venture applies these standards is limited to analysing the results from secondary sources, as explained in section 6.1.

A. Employees

As described before, the country does not allow independent trade unions. However, the company does have a 'staff committee' (allowed by law) through which labour conditions are sometimes discussed. The remainder of this section has been indicated as confidential, but conclusions will be integrated into general, public, conclusions of this thesis.

B. Contractors and business partners

The company actively promotes the use of local contractors and suppliers. As an illustration, in 2005, 2 billion U\$ was spent on goods and services inside the country using locals. The Shell subsidiaries make sure that contractors operate a procedure to prevent child labour, but it is indicated that subcontractors and suppliers are not actively screened. According to the company, the use of child labour is technically impossible as national law forbids the use of children as labourers and a screening via the government agencies takes place based on registration of labourers. Furthermore, the same national law requirement regarding retaining of staff travel documents is applicable with (sub)contractors and suppliers. The remainder of this section has been indicated as confidential, but conclusions will be integrated into general, public, conclusions of this thesis.

C. Communities

Especially local communities are pro-actively engaged, as appears from a case study on sustainable development in the country (see box 9 for a summary). Another project that Shell executes in the country relates to hiring women patrol guards from the local community during the construction of a large pipeline. These women are camel herders and they were hired to guide camels through the construction area, to prevent injury to camels due to open trenches etc. This provided employment for women along the pipeline route and also was an effective way to manage the impacts of construction. Other projects include a partnership with the traffic department of the national police in raising awareness on road safety.

Box 9 Working with nomadic tribes in country 2

For hundreds of years, nomadic tribes wandered across the deserts of the country, but over the last 40 or so years, some have settled alongside the operations of the country's largest oil and gas operator and one of Shell's joint-venture associated companies. By so doing, these tribes derived benefits from employment as well as the company's provision of water and other services. Yet the growth of their population, coupled with the scarcity of employment opportunities in recent years, raised some questions from both the tribes and the company as to how best to improve their way of life and share the benefits of the oil and gas industry. In 1998, the company revisited its policies of helping communities and saw an opportunity to help communities become more self-sufficient. The company decided to encourage communities living in and around its areas of operations to take up business opportunities with the company through the setting up of Local Community Companies. These companies must be owned, managed and manned by the residents of the local communities. The program has seen considerable success. By the end of 2001, 79 contracts with a total value of US\$86 million were awarded to 34 of these local companies, creating some 700 jobs. In addition, the company sponsored more than 200 students from within these communities to attend vocational training in the capital, thus making them more employable.

Not every community programme was managed well from the start, however. After an internal evaluation of the LNG facility, the local community manager said that the job expectations of local communities were raised when the project came to the area with a potential to recruit thousands of people, but during construction only 15% of contractors used came from the country and only a couple of those from the area itself.

A Social Performance adviser who worked in the country explains that it is a country where respect for the existing hierarchy and norms are very important. Shell operates for many years now in the country and tries to respect local values and traditions in its social investment programme. A social investment committee was established based on local traditions. However, groups such as fishermen and youths did not feel represented in this committee. The fishermen started to complain that Shell affected their livelihoods because Shell needed a safety exclusion zone for their operations including their fishing areas. Consultation with fishermen revealed that this exclusion zone represented almost a third of one of the community's fishing areas. The LNG company therefore developed a series of compensation related measures.

D. Government

The government is the main shareholder of the joint ventures in the country and through its joint ventures, the Shell representative office engages the government regularly. Through these experiences, Shell in the country found out that they find it difficult to interpret the relationship between the government and Shell, as a senior government relations employee stated. He explained that many employees working in the joint ventures have worked in different Ministries before and have direct (informal) channels to the government. This uncertainty in the relationship between Shell and the government also played a role in following up the human rights company assessment (see next sub-section).

E. International society

A review of stakeholder reports showed that the international society does not seem to take an active interest in Shell's activities in the country. The joint venture does not report any active engagement with international stakeholders or any issues either.

6.3.4 Results company assessment and follow-up

The researcher assessed the policies and procedures that cover human rights of the joint venture and its application. Table 8 below shows the findings on coverage of human rights for the 48 questions:

Company assessment of coverage human rights in policies, procedures and practices	Strong coverage	More attention needed	Weak coverage	More information needed
48 human rights questions selected based on CRA focal areas	20	5	15	9

Table 6 Findings company assessment for joint venture in country 2 per question

Based on the HRCA results, the DIHR performed a SWOT analysis. The results achieved illustrate that the human rights record of this particular joint venture in general is reasonable, although the HRCA also identifies a number of issues that need to be addressed further.

According to the DIHR, the joint venture demonstrates good practices in the right to an adequate standard of living by providing a living wage and pension to all employees, including foreign workers who are not sufficiently covered by legislation. The company also has well-developed land management policies and health and safety coverage, which promote the right to health and the right to food. Furthermore, by following the Group security guidelines, the company protects the right to liberty and security of person. Additionally, the company has comprehensive policies in place against unjustly influencing and bribing public officials, which positively influence the right to a fair trial and right to take part in government. The right to freedom of assembly and association may be considered both a strength and weakness of Shell's operations. Although a prohibition on unions and collective bargaining exists, working conditions can be discussed informally with management through the (legal) staff committee. However, the committee only appears to include national workers, leaving foreign workers without any means to influence their work conditions. Finally, the joint venture demonstrates good practices in community relations in terms of providing water and vocational training.

The DIHR further found that the major focal areas of the joint venture include first of all the right to privacy and the right to freedom from forced labour. There are no procedures in place in the area of gathering, treatment and disposal of personal employee information. As foreign workers are highly dependent upon their papers in order to travel in the country, the processing of employee documents needs better guidelines to ensure their freedom of movement. Another issue includes that labour inspectors have the right to enter a company at any time and access private information, which may put employee privacy at risk. Another human right that is at risk is the right to family life and the right to freedom from discrimination; by following the labour law only, the company does not provide benefits to non-married couples and their children, ILO norms for maternity leave are not fully complied with and following Sharia law when distributing pension discriminates against women. Non-married couples are common, because it is illegal for Muslims to marry non-Muslims. In addition, a process could be developed regarding the protection of the right to a fair trial should a national court ruling on a particular issue be expected to counter international human rights norms. Finally, with regard to the right to work and to just and favourable conditions at work, clearer guidelines are needed on the existing grievance procedure, and provisions for prayer time for non-Muslim employees should be established to ensure employees right to practice their religion.

The area for improvement that emerged as being of greatest priority from the HRCA analysis relates to the protection of foreign workers. The company employs approximately 80 percent national and 20 percent foreign employees who are covered by separate Shell policies. Although the labour law provides extensive protection to workers, this law does not cover foreign workers who are

consequently left in a vulnerable position⁹. The company therefore needs to take special caution in protecting these workers.

In sum, the following table represents the findings regarding the strengths and major focal areas of the joint venture in country 2, assessed according to the methodology of the tool:

Strong	Areas for improvement
Health, Safety and Environment (HSE)	Human Resources (retaining ID papers)
Product Stewardship	Employee relations (foreign workers)
Human Resources	Contracting & Procurement (foreign workers)
Employee Relations	Legal
Social Performance	Harassment & Discrimination (benefits)
Business Integrity Services	Data Privacy

Table 7 Results company assessment per function

The next step was to engage the oil development joint venture in order to verify the results and address the gaps identified. This verification could also contribute to the understanding of the value of the tool, e.g. whether it identified the proper gaps. The SP adviser based in Shell Headquarters and head of EP Sustainable Development manager (who worked in the country together) approached the country chair. Despite the fact that the country chair came from the United Kingdom, he thought that the country risk assessment and the company assessment were very Western orientated. Especially the recommendations concerned him, as these would be insulting to the employees and government. Thus, the sensitivity of human rights in international relations would be a substantial obstacle to implement these recommendations into the company.

Additionally, the joint venture was never involved in the decision to test the tools in its company and was virtually unaware of the test ever being conducted; only the Shell representative office approved the test at the time. Directly going to the joint venture to verify the results would then potentially lead to defensive reactions because the joint venture was not involved in the original test. Hence, the human rights policy adviser in Shell Headquarters was concerned about the ownership of the results, also because of the experiences in applying the tool in the country 1 (see section 6.2). If the joint venture would not fully agree with applying the tool, the results would not be owned and it would not be likely to do something with the outcome.

Another complication included that the country chair changed, who then needed to be re-informed about the test and obtain his approval of verifying the results. After visiting the Shell office in the country, the SP adviser reported that the new country chair would be keen to complete the study for internal learning and understanding of possible other human rights issues and for assurance statement purposes. The country chair indicated that he agreed with a few human rights issues as mentioned in the DIHR report, especially regarding labour conditions of migrant contractor workers. To deal with the sensitivity of the words 'human rights', the Shell country office would then try to influence the joint venture to follow up on actions without calling it human rights. However, the new country chair also challenged the timing of applying the tool, the accuracy of the report and potential risk of leakage to the media. The SP adviser was also not sure that the office had a good record of what they agreed with of the country risk assessment or the test and those they felt they needed to put in a lot of time to give proper feedback.

The country chair and SP adviser therefore proposed to start from fresh, which meant that the Danish Institute would revise the country risk assessment and the selection of company questions and indicators. After this would be completed, the researcher would visit the office to assist with the company assessment and formulate practical recommendations together with the local joint venture liaison officer. The joint venture liaison officer also advised to approach the regional EP organisation to obtain their commitment and align with any previous assessments performed. The researcher approached the regional EP organisation and the organisation pushed back substantially on applying the tool to the joint venture because of the same reasons. They were also concerned about the unclear objectives and ownership (they were unclear who was asking for this assessment; an external researcher or Shell corporate affairs in Headquarters or the Shell country office), especially as it would involve a PhD researcher that would publish the results¹². The regional organisation suggested postponing the initiative, since the country was not one of the high risk countries¹³.

The SP adviser and the EP Sustainable Development manager did not agree with this outcome, especially since the commitment of the new country chair was already obtained. After the Danish Institute completed the revision, the Policy team therefore decided that the head of Sustainable Development based in Shell Headquarters would approach the country one last time to offer its resources to re-perform the assessment. Before this was done, the human rights policy adviser wanted to ensure that the relevant advisers within Shell Headquarters all agreed with the approach taken. A key person that needed to be approached included Shell's head of government relations and former country chair of the country (who also agreed on testing the tools in the country). The researcher approached him to obtain his final approval.

Although it would be an advantage to obtain an understanding of human rights compliance, he advised against the application of the tools because the timing was not right. As described in sub-section 6.3.3, the relationship with the government was constrained and sensitive. Applying the tool within the joint venture would certainly leak to the government and it would appear that Shell would criticise the government for not implementing their international human rights obligations well. Besides, the fact that the tool originates in Denmark did not help either, because of the international debate and boycotts of Danish companies surrounding the cartoons of Mohammed in 2005 and 2006 (see e.g. Munter, 2006). Obtaining his approval was crucial to the initiative and the Policy team therefore decided to postpone it. Until the time of writing this PhD, nothing had been done with the company assessment.

This ends the analysis of the case study of the joint venture in country 2. The next section will analyse the use of the human rights assessment in four new Shell subsidiaries based in different regions in the world.

6.4 Embedding human rights mechanisms within new Shell subsidiaries and/or joint ventures

This section describes the analysis of how human rights mechanisms are embedded within four new Shell subsidiaries and/or joint ventures based in different regions in the world. The reason for combining the discussion of these

¹² Refer to chapter 3 on the roles of the researcher.

¹³ The country chair did not participate in the discussion with the regional EP organisation, but the local joint venture liaison officer was the main person that substantially pushed back. This shows that he actually was not convinced of the need for this study, despite earlier engagements.

countries is that these countries involve new country entries and a company assessment has therefore not been performed. The first sub-section 6.4.1 provides an overview of the Country Risk Assessments, after which sub-section 6.4.2 briefly describes the presence of Shell within these countries. The final sub-section 6.4.3 analyses how the human rights audit plan was initiated and the follow-up given to these plans.

6.4.1 Country risk assessments results

The World Map of Risks and Opportunities assesses the overall human rights risk of these countries as 'high' (countries 3, 5 and 6) and country 4 as 'moderate'. The Danish Institute conducted the Country Risk Assessment for these countries in the period 2005-2006 and this section summarises the results. The CRA risk scores for these countries are displayed in the following table:

Country and overall human rights risk	Country 3 'High'			Country 4 'Moderate'			Country 5 'High'			Country 6 'High'		
	H	M	L	H	M	L	H	M	L	H	M	L
Non-compliance with formal law	3	10	7	2	11	7	3	6	11	0	8	12
Non-compliance with practices	11	7	2	8	12	0	16	4	0	16	3	1
Business risk	5	11	4	5	14	1	11	7	2	9	8	3

Table 8 CRA risks per country where new Shell subsidiaries and/or joint ventures are being set up

This table shows that the countries 5 and 6 cover human rights well in formal law (and better than countries 3 and 4), but the picture is totally different in terms of human rights practices. In terms of human rights practices, formal legislation seems to be poorly implemented in all countries. The resulting number of business risks is limited to five for countries 3 and 4, despite that their overall human rights risk differs, and is relatively high in the countries in country 5 (eleven) and country 6 (nine). A short description of the local context and key human rights focal areas for business resulting from the CRAs are described below.

Country 3

In recent years, the authorities have only taken limited steps to address the human rights situation in the country. Provisions of national law guarantee to a certain degree fundamental human rights. However, other laws continue to criminalize many activities constituting basic human rights. Consequently, nationals in reality enjoy only very limited protection, and the country's human rights record remains poor. The extensive security apparatus are reported to commit serious human rights abuses, including arbitrary arrest and detention and torture. The country also continues to issue very harsh punishment for a number of activities, such as undertaking any peaceful social or political activity. Citizens are systematically denied their right to a fair trial, right to choose their own Government, and their right to freedom of opinion and expression as well as a number of other rights. No independent human rights organisations are allowed to develop and as a result there has been limited work done to address human rights violations in the country.

Country 4

This country faces a multitude of challenges despite the many positive developments and expressions of readiness to engage seriously in the human rights situation that have taken place over the past few years. The recent civil war brought about the challenges of a post-conflict situation, such as the

presence of many security forces and sensitive relationships between certain groups. Human rights groups report that security forces continue to be involved in extra-judicial killings, torture, beatings and other types of harassment and abuse. Corruption and nepotism are a great problem, a consequence of the strong position of the family clan in the society and of the socialist system, which makes the existence of an independent legal system or organisations to secure the rights of the people an unwieldy challenge. As a result, citizens persistently mobilize relatives or clan members to carry out any public activity. In spite of efforts to diversify the economy and encourage private sector participation, arbitrary investment laws, restrictions on foreign ownership of property, state domination of the economy and continuing corruption still constrain growth. The country faces a long road ahead to liberalize the socialist-oriented economy, but initial steps are laying the groundwork for a transition to a more market-based economy. Oil money remains the single source for the country's wealth and remains most unevenly distributed.

Country 5

The human rights situation is poor, even though there have been improvements in some areas. The revolution had a positive impact of the right to peacefully change government. Prison conditions remain harsh; the police and prison authorities used torture and there were reports about suspicious deaths in detention and politically motivated arrests, searches and detentions. Freedoms of assembly, association and movement are limited or restricted. Nomadic people experience discrimination and harassment, asylum seekers and migrants are returned to countries where they might be subjected to torture, and anti-Semitic attacks and propaganda take place or are allowed to persist. Women suffer violence and discrimination including sexual harassment in the workplace and trafficking for commercial sexual exploitation. Children suffer trafficking and forms of violence.

Country 6

The constitution guarantees human rights, and freedom of conscience and social justice, and the human rights situation is generally better than that of other countries in the region. Civil rights, however, are fragile. Police harassment and brutality occur regularly, especially in prisons. Security forces put constant pressure on opposition groups and independent media. Freedom of the press is endangered by a considerable degree of censorship, as well as harassment of journalists. Thus the expression of meaningful political opposition is almost impossible. Additionally, the police and judiciary are often corrupt and bureaucratic neglect, bribery, or politically contaminated judges routinely derail the right to a free trial. Unemployment is widespread in the country and social services are often very expensive or simply unavailable. A relatively large part of the population lives below the poverty line. Many families can only afford education for a few of their children to go to school, most often their sons. Current challenges also include building a cohesive national identity. Furthermore, the country has major environmental problems, including the aftermath of nuclear testing and dumping of toxic waste. No particular social, ethnic or religious group is at special risk of human rights violations. Finally, corruption is a major problem.

Based on this analysis, the Danish Institute formulated the following focal areas for these countries:

Focal areas per country	Country 3 'High'	Country 4 'Moderate'	Country 5 'High'	Country 6 'High'
Child and forced labour			X	X
Freedom of association	X		X	X
Freedom of expression	X	X		X
Wages and benefits	X	X	X	X
Health and safety		X	X	X
Discrimination	Foreign workers, women, ethnic minorities, religious dissidents	Ethnic and religious minorities, women, homosexuals	women, people with HIV/Aids, indigenous people, nomadic, homosexuals, migrants and the disabled	women, people with HIV/Aids, homosexuals, migrants and the disabled
Community access to safe food and water		X	X	X
Resettlement		Women and ethnic minorities	Ethnic minorities	
Security forces	X	X	X	X
Corruption		X	X	X

Table 9 Human rights focal areas per country where new Shell subsidiaries and/or joint ventures are being set up

This table shows that human rights focal areas vary across different countries and companies need to focus their attention accordingly. Discrimination, providing wages and benefits that ensures and adequate standard of living and the conduct of security forces are the only focal areas that all countries share, although the vulnerable groups may differ. Ensuring adequate health and safety standards for employees as well as communities and corruption are important human rights issues in the countries 3, 5 and 6. For country 6, the right to freedom of expression is not an important risk, but for the other countries it is. Then, child labour, forced labour and freedom of association are especially important in the countries 5 and 6. Finally, following international standards in resettlement of communities when purchasing or leasing land are significant attention points for a company operating in the countries 4 and 5.

6.4.2 Shell activities in new countries

Table 12 indicates the main characteristics of the Shell activities in the four new countries. This table shows that Shell operations in country 6 has progressed the most in terms of actual production of oil and number of employees. The activities in country 4 have been rather slow and so far only involved seismic activities (exploration).

Characteristics of Shell activities in new countries	Country 3 'High'	Country 4 'Moderate'	Country 5 'High'	Country 6 'High'
Time (re-) start activities	2004	2005	2005	2004
Shell stake	Contractor to & investor in the national oil company	Contractor to the national oil company	51% in retail, joint MoUs in gas exploration	16,7%, 100% and 50% stakes in joint ventures
Activities	Gas exploration and production (2005), revamp existing gas processing facilities (2005)	Oil and gas exploration (2005)	Gas exploration (2006), Retail (2007)	Oil production field (2004), Retail (2002)
Operator (at the time of research)	Shell (exploration), National oil company (gas)	Shell	Shell	Other international oil company
Employees¹⁴	30	10	15	69

Table 10 Characteristics of Shell activities in new countries

Shell had been active before in countries 3 and 4. The company had upstream activities from the 1950s until mid 1970s in country 3, and conducted exploration in the country in the late 1980s. Shell finally had to leave as relations between the West and the country deteriorated and oil production was cut by the government that took over after a coup. In country 4, Shell held a 40% interest in a company and delivered LNG to Europe from the country for the first time in the 1960s, but sold its interest later.

6.4.3 Human rights audit plans and follow-up for new activities

This sub-section discusses per country how the CRAs were initiated in Shell corporate Headquarters, how the local Shell subsidiaries received the resulting audit plans and the follow-up that was given to these plans. These subsidiaries relate to the local Shell representative companies that were set up to coordinate Shell's activities within a particular country. The possibilities to implement the findings of the audit plans depend on the level of influence or control these companies have over the business activities.

Country 3

The CRA on this country was initiated through the Social Performance adviser working in Shell Headquarters and an adviser in the New Business Development (NBD) department of Shell Exploration and Production. It was suggested to approach the new country chair of the country. The Head of Sustainable Development in Exploration & Production (SD/EP) that initiated the use of the tools within Shell in his previous position at Shell corporate affairs in Headquarters (see chapter 4) then approached the new country chair. The country chair agreed, because the systematic assessment would identify the critical human rights risks for business to address when doing business in the country.

The Danish Institute delivered the first version of the CRA mid-2005, but notified Shell Headquarters that many relevant laws are currently in the process of being reviewed and that people risk serious harassment if they supply information that criticizes the regime. Shell Headquarters therefore asked the Danish Institute to integrate any update of the CRA and use a copy of the report excluding the names of national contacts that were consulted. When the second version of the CRA was delivered, the researcher compiled an audit plan from the

¹⁴ According to the 2005 Country Chair Questionnaire and excluding joint venture employees.

recommendations mentioned in the report. After a visit of the Head of SD/EP to the country, the local Shell subsidiary started to become more actively engaged in discussing the plan. The newly recruited expatriate SD adviser of the Shell subsidiary, which was recruited from the Group Sustainable Development team, actively took the audit plan up. The first response after reading the report and audit plan was that many issues could be recognised, especially regarding the vulnerability of migrant contractors, and a way forward would be developed.

Since many of the recommendations related to labour issues, the SD adviser involved the expatriate Human Resources director. He acknowledged most of the recommendations and committed to e.g. adopting the Harassment & Discrimination policy of the EP regional organisation. He also agreed with the SD adviser that most of the real risks for the company concerned contractors and suppliers of the company. From the risk analysis of his employees, the (national) country chair concluded that the new subsidiary complied with human rights in its core operations, but that the main human rights risk involved third parties.

A mutual discussion was set up between Shell Headquarters and the Shell subsidiary to formulate and follow up concrete actions in the company. In that discussion, it became apparent that the country chair actually did not agree with the results of the CRA, as he did not believe that the CRA reflected reality as he experienced this in the last three years. Nevertheless, the Head of SD/EP and the researcher clarified that the CRA constituted an important external view of the human rights situation and would allow Shell to demonstrate that it complied with human rights in the country.

Amongst the actions agreed was to include a clause into contracts that would cover most international standards. Since this was not a standard procedure, the assistance of Shell Headquarters was requested. The researcher consulted with Group Contracting & Procurement (C&P) and the Danish Institute and drafted such a clause. The SD adviser received resistance within the EP and Gas & Power business, as it was not required by the Group Standards (yet) and therefore not a priority. Nevertheless, the subsidiary's SD adviser successfully engaged the C&P manager of the subsidiary and the clauses were included into the contracts, the company planned to build capacity with contractors to address labour standards.

Another action agreed related to roll out the Global Help Line (see chapter 5) that would allow anonymous reporting of grievances, especially because contractors would not be aware of the current facilities with the Shell subsidiary. In addition to the Global Helpline, the subsidiary also decided to install a confidentiality person, because reporting grievances through such a mechanism would be very unusual in the country. Furthermore, the HR director of the Shell subsidiary would discuss with Shell Group HR whether Shell would have the responsibility under international standards to supplement government provision for pensions in order to ensure an adequate standard of living. Finally, it was agreed that issues such as a strike of employees (forbidden in the country) as well as the death penalty would be managed on a case-by-case basis.

The implementation of the audit plan suffered some delays as a result of a change of country chairs to an expatriate country chair. However, after the new country chair was informed about the study, the SD adviser was keen to discuss progress each three months, which was subsequently done¹⁵.

¹⁵ However, frequency of engagements with the Shell subsidiary on human rights slowed down considerably after the expatriate SD adviser returned to Shell headquarters and the implementation of the action plan was taken over by a national SD adviser.

Country 4

Again, the Head of SD/EP approached the New Business Development department of EP, after an announcement that Shell successfully a Memorandum of Understanding to explore for oil in country 4. The NBD department was keen to commission a CRA, because of the positive experience with country 3 in systematically identifying the human rights risks in a country that was relatively new for Shell. Besides, the announcement also raised the attention to Shell of the NGO Amnesty International, which highlighted the importance of a CRA for this particular country.

The Danish Institute delivered the CRA in the latter half of 2005 and the researcher gathered the audit plan based on the recommendations in the report. An expatriate country chair was later appointed and involved in the process. The researcher then discussed this audit plan with the relevant focal points in the NBD department. After visiting the country several times, the expatriate External Affairs (EA) focal point for the country indicated that crucial issues included the limitations of free press, political instability, the security situation, ensuring no damage to the environment, good social investment and compliance of contractors. According to the EA focal point, the South of the country, where Shell will operate, is highly religious and traditional. There are no ethnic minorities, but mostly nomadic tribes, who are concerned about the available water and potential pollution of land. Besides, the EA focal point indicated that bribery and corruption is part of the business culture and Shell is not appreciated locally because it does not take part in this. Labour issues in core operations are regarded as a medium risk, since it falls within the company's control.

Concerning the point of verifiable compliance, the EA focal point suggested striving to embed the recommendations as much as possible into the existing functions, such as Human Resources and Contracting & Procurement. This would enhance ownership within the company, since verifying the audit plan is not the role of External Affairs or the Country Chair. Nevertheless, the EA focal point was concerned whether the functional employees would have the knowledge to conduct some of the actions or to assess priorities.

After a couple of months, the researcher approached the EA focal point again to hear about progress on the plan. It appeared that the company was still in the planning stage so many recommendations were postponed until the company became more established. He explained that the company did not have sufficient resources to follow it up as yet. Apparently, the company experienced many problems recruiting people that were able to speak English and to transfer the expatriates to the country. As a result of this under-resourcing, progress made could not be compared with country 3, since the other subsidiary had a full time SD person, an HSE team and a corporate affairs department of whom many were expatriates.

Almost a year later, the Group VPs focal point reported that little had happened. The researcher approached the EA focal point again and he reported that the above situation did not change substantially; the company was still small and no gas or oil was found yet. Until this occurs, it remains a lower priority and the company would not get the resourcing or support that, for example, the Shell subsidiary in country 3 receives. For example, no official Human Resources person was appointed as yet and the relevant recommendations were therefore postponed but unofficially monitored until this person would be recruited. Additionally, a Social Performance Plan had not been produced as a result of a lack of resources.

Other issues that influence the slow progress of implementing recommendations included e.g. a double fatality as a result of a road accident. Additionally, one of Shell's competitors in the country, British Petroleum, was also viewed as not actively implementing human rights aspects. Thus, the focal point for External Affairs in country 4 asked for focussing on embedding human rights into central Shell standards and policies (see chapter 5) instead of focussing on individual countries.

Nevertheless, the EA focal point also indicated that progress was made on many recommendations, despite the under-resourcing. Hence, he indicates to be confident that the subsidiary employees possess sufficient awareness and have corresponding behaviours to recognise and deal with human rights issues. For example, the subsidiary found out that its contractors did not fully respect the minimum labour standards. The Shell Company then asked this contractor to change their practice, which was consequently done. Minimum working standards are mentioned in the contract and consistently monitored, although this is not explicitly required from Group. Finally, employee training of the Shell General Business Principles (SGBP) focussed on anti-bribery and corruption practices in the local languages had been conducted, which also presented a risk according to the human rights audit plan for the country.

Country 5

After the positive experiences with countries 3 and 4, the New Business Development department of EP approached the researcher end of 2005 to commission a CRA for country 5, without prior engagement from SD EP. The report would facilitate the identification of company risks to violate human rights in the new country, especially because the deal had not been signed. In the other countries, the CRA had been commissioned after a deal had already been concluded. In the case of country 5, the early request would inform the risk assessment before the deal was closed and would therefore allow embedding certain mitigation measures into the deal itself. However, the Danish Institute was only able to deliver the CRA mid-2006 and the NBD manager therefore anticipated that the CRA would be most useful in adding the relevant detail to processes when executing them. After the Danish Institute delivered the CRA, the researcher again compiled a supplementing audit plan based on the recommendations of the CRA.

After the deal was officially signed, the researcher approached the newly appointed expatriate Country Chair to discuss the recommendations. Since the country chair had worked in other sensitive countries, his awareness of human rights appeared to be above average. Nevertheless, he was surprised to see the high number of business risks identified for the country¹⁶. The country chair primarily anticipated problems with the high level of corruption, alcohol abuse and HIV/Aids, the low availability of young professionals that speak English and health and safety. He was especially concerned about applying the Group standards in contracting and procurement, such as fair competition and health and safety. In addition, the company was set up as a 'Joint Activity' with the national oil company, which is not the same as a joint venture. In practice, it means that the company has to implement every standard via influencing, including SGBP. For example, the company was not able to start drilling activities as yet, because the standards for drilling in the country were too low.

¹⁶ An informal conversation with a Business Compliance Officer of EP, who comes from the country and graduated on its current human rights situation, pointed out that the CRA represented reality in the country, although it may be offensive to government or others within the country.

Since there would be a high pressure on the few employees of the new company, the country chair required to prioritise recommendations related to human rights. These priorities were decided based on a mutual discussion about the actual impacts of the operation and planned functional activities, such as a security review. The country chair and the researcher decided to focus on issues related to Human Resources, HSE, Contracting & Procurement and Social Performance.

Furthermore, after the experiences with other Shell companies, the researcher requested the country chair to appoint a local focal point and owner of the plan within the company, who also served as the principle local focal point for Shell Group to report progress. The country chair decided to appoint the HR adviser in the company as the focal point instead of the local External Affairs manager.

The recommendations related to HSE and Social Performance were communicated to an SD/EP adviser that was planning to conduct a baseline survey and an 'integrated impact assessment' (see chapter 4 for descriptions of these procedures) for the Joint Activity to assess its environmental, social and health impacts. This adviser reported that the outcomes of the CRA would greatly inform the planned activities. Although the country chair did not deny the potential for the CRA to be a source for the impact assessment, he was very concerned that the CRA findings would reach the national oil company through the integration of both studies and negatively influence the relationship between Shell and the government. The government could easily interpret the CRA as Shell's criticism on how the government had implemented its international obligations on human rights. The country chair and the SP adviser therefore decided that the CRA would not be named as a key source for the planned HSE/SP activities and only kept as an informal source used only within Shell. Any human rights follow-up actions can only be influenced via the Management Committee, the Board of Directors or Shell secondees. Besides, some of the findings (e.g. HSE) could already be covered by effective implementation of Shell Standards, according to the country chair.

The company was also developing a strategy in terms of social investment. In country 5, companies are expected to spend a certain percentage of their profit on social investment. Part of the Shell's Joint Activity deal with the national oil company was to take over a number of social investment projects already agreed with the government, including community gas installations, building a school and repairing a hospital. The country chair, however, had some concerns about the sustainability related to these projects (whether these social projects would really benefit the communities). The researcher therefore requested Group Social Performance to provide their advice.

In terms of Human Resources recommendations, the country chair planned to integrate those into the new employee handbook, which would be based on a comprehensive manual that he used as the country chair of a country in another region. He forwarded the recommendations to the HR adviser in the local Shell Company. After reviewing the audit plan, the HR adviser responded that some issues are more relevant to Shell's activities in the country than others and some are further removed from the daily reality than others. The HR adviser would integrate the relevant actions into an employee handbook with the support of the researcher. Nevertheless, the researcher was not able to maintain contact with the HR adviser after this initial review, because of other priorities.

Country 6

At the end of 2004, the researcher presented the HRCA tools to regional EP External Affairs representatives, after which the regional EA adviser became interested in applying the tools in the region. However, he indicated *'to hold off*

until business ambitions for the country became clearer'. In other words, when Shell would go ahead with building its business activities in the region, applying the tools could become useful. The policy team therefore decided to postpone any pursuit of applying the tools in the region until the EA adviser indicated otherwise. Totally separately from this, at the end of 2005, a Shell country representative of three neighbouring countries approached the Policy team at Shell Group responsible for SGBP, including human rights (see chapter 4). He had the task to find business in these countries and wanted to become better familiar with the requirements of the implementation of SGBP from Shell Group. The policy team provided information on the HRCA tools as well and he passed this information on to the main business strategist (other than the EA regional adviser) of the region.

The researcher then approached the business strategist of the region, who was in the process to organise a high profile workshop with external experts on the region and Shell senior management in terms of its economical, political, social situation and its energy strategy. Since the workshop would present an opportunity to learn more about the region and to bring human rights forward with senior Shell management present at the workshop, the researcher was invited as an observer. The business strategist also facilitated the researcher to talk with the expatriate country chair of the largest country in the region individually just before the workshop about human rights in the context of the interviews conducted for the human rights practice assessment (see chapter 5), which highlighted the topic to the country chair.

The workshop indicated that the energy strategy of this large country in the region recently changed from a focus on serving the West and awarding contracts to Western countries to the East as result of political problems. Furthermore, the country in the region runs the risk to have an 'oil curse' (see chapter 7 for example) as a result of an overflow of money and economic growth from oil production. The strong socialist and centrally organised government is dominated by a few families and the fragile financial sector, poor infrastructure, unskilled labour force and the high corruption levels are barriers to manage a strong growth properly. Furthermore, religious, ethnic and regional tensions and the persecution of the opposition concerned the external experts. The human rights situation was regarded as slightly better than the other countries in the region, because the economy was further developed and violations were not systematic. Nevertheless, the experts did indicate that human rights violations could increase as a result of the influence of Russia and the growing economy.

Next to the workshop, Shell already faced a number of human rights related issues with the joint venture. Several NGOs in the region publicly raised concerns about environmental, social, health and labour impacts of the oil joint venture. For example, communities were not consulted or employed and did not have any access to information. Shell reported that the joint venture operator's standards on Social Performance were not 'on par' with Shell standards, which presented a reputational risk. In addition, the safety of some of the facilities could not be ensured without major reconfiguration. Shell was also confronted with fraudulent practices of a finance manager of one of its other operations in the country.

Based on the results of the workshop, the researcher approached the business strategist again and he decided to approach the country chair of the country with the request to commission a CRA. The country chair agreed, because it would clarify the particular business risks to violate human rights in the country. The Danish Institute delivered the CRA around August 2006 and the researcher forwarded the report to the country chair and the business strategist with the advice to apply the company assessment to the existing joint venture. The

business strategist first wanted to study the contents of the report before discussing it with Shell's management team in the country. He found the report 'pretty idealistic', which meant that many of the recommendations in the report would be difficult to implement for Shell in the local context. Since Shell is not the operator of the joint venture (and therefore not recruiting people or handing out contracts) and a minority shareholder, the question would be whether Shell would be able to influence any changes.

Despite his concerns, the strategist decided to discuss the possibility to check the operator's policies, procedures and practices against any human rights concern and therefore asked the researcher to compile an audit plan based on the CRA and to provide information about the activities on human rights of Shell's main competitors. Shell's management team of the country agreed that it was a valuable report, but it required staff time to address the recommendations, which would be difficult. When Shell would have more business activities in the country (which was anticipated), and more people would be recruited, the audit plan would be pro-actively implemented.

The researcher proposed to share the CRA with the operator of the joint venture, since its European Headquarters also expressed its commitment to human rights. The Danish Institute, however, did not approve that Shell would share the report with others without costs. If the operator would be interested in the report, the company had to purchase access to the report from the Danish Institute. Moreover, the business strategist feared that the operator would not be very interested in the CRA, based on his previous experiences with the operator on the ground. Hence, this proposal was not pursued.

This concludes the analysis of the implementation of the human rights audit plans in the four. The next section draws conclusions from these case studies.

6.5 Summary and conclusions

This chapter has described the process of embedding human rights into six Shell subsidiaries and/or joint ventures. Purposely, this previous sections are of a detailed descriptive nature and did not analyse the data to a great extent, because this allows others to have a good insight into the data available. This section draws conclusions from the data and analysis presented in the previous sections. This will be done in two separate sections; the first sub-section 6.5.1 draws conclusions about the benefits and limitations of the HRCA tools and its application within Shell, the second sub-section 6.5.2 concludes from the actual data using the theoretical framework, as presented in chapter 2.

6.5.1 Conclusions regarding the HRCA tools and their application¹⁷

From the internal feedback on the tools, the reasons for a company to use the HRCA tools can be derived and include identifying business risks to violate human rights and providing assurance against these risks. Country chairs of new subsidiaries have mentioned these reasons as well. Besides these observations, the researcher experienced two other benefits of the application of the HRCA tools. Firstly, managers and employees were better able to make the link between human rights and their own work after applying the audit plans or the company assessments. Secondly, country chairs also said to want to use the results of the application of the tools to be better able to respond to questions from external stakeholders, such as human rights organisations. Thus, based on

¹⁷ The researcher presented some of these conclusions earlier in an UN Global Compact publication (2007) on behalf of Shell.

the experiences of the researcher and the feedback received from Shell subsidiaries, the following benefits can be identified from the application of the HRCA tools:

- 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. This way, 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 by complementing e.g. impact assessment, baseline surveys, etc.
- 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).

Next to the benefits of the tools, they also have a number of limitations. Ruggie (2006a), for example, indicates that the tools *'do not actually relate the impact of the company's existing or proposed activities to the human rights situation on the ground, or vice versa'*. Morrison (2006) states that *'the tool does not make a clear distinction between the company's responsibilities and the states responsibilities'*. The researcher also experienced during the application of the HRCA tools that the language as prescribed by the tools does not always fit the local context and sometimes needed to be adapted, particularly in non-Western contexts. Many interview questions needed to be rephrased so that the interviewees understood the questions and were not offended by them. Talking with employees about human rights within some countries may even have negative consequences for themselves or for the company.

This sensitive nature of the words of 'human rights' also became clear through the concerns of every country chair involved about the potential negative impact on government and joint venture relations. Some governments might interpret Shell's use of a Country Risk Assessment as political criticism (and therefore 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. Many governments would think that it is not Shell's place to criticise them on their human rights performance and may reconsider Shell's presence in the country. This is apparently especially relevant in Islamic oriented countries, where 'human rights' are seen as a Western way to impose its values. In these countries, Shell finds itself in a delicate balance between building and continuing business operations on the one hand and meeting the international expectations regarding human rights by applying the HRCA tools on the other hand. This confirms the assumed influence of the local context on stakeholder management, as described in section 2.12.1.

Furthermore, as became clear from the case studies, some recommendations in the audit plans or company assessments did not fit the local culture and therefore had less effect in implementation. The researcher experienced that especially the assessment as to what extent the company's policies, procedures and practices cover human rights tends to be subjective. A diverse assessment team with members from both Shell Headquarters as well as Shell subsidiaries would ensure alignment with international human rights principles, as well as securing pragmatic follow-up actions that fit the local context. Moreover, as can be seen in the new subsidiary based in country 3, the implementation of the human rights recommendations are most likely to take place if the local company feels that it 'owns' the outcomes¹⁸. However, it requires that a competent resource is involved that is a) 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) connected within the local company in such a way that implementation of the plans is ensured.

As a result of these conclusions, the researcher developed a particular way of applying the tools within Shell that takes the points mentioned above into account. For example, an audit plan is made based on the recommendations of the CRAs for existing subsidiaries and/or joint ventures instead of applying the company assessments, which limits the scope of work. Future applications of the tools are performed by the subsidiary and/or joint venture itself with minimum support of Shell Headquarters. At the time of writing of this thesis, the tool is applied by Shell subsidiaries and/or joint ventures in countries in other regions in which Shell Headquarters asks the subsidiary and/or joint venture to share the outcomes, monitor progress and to offer assistance when necessary.

The nature of the business also influences this ownership of the results. The CRAs are designed for all types of business, but not all the indicators are relevant to the activities of energy companies, such as Shell. 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. The company thus needs to prioritise the human rights risks according to its type of business, which only a person that understands the human rights principles as well as the impacts of business activities can do. Next to the nature of the business, the size of the company and the timing of the assessment also affect the relevance of indicators and degree of implementation. When a business is just starting up in a country, as can be seen in the case of country 4, 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. The same counts for very small existing Shell companies; during the research period, other Shell subsidiaries were approached to use the available CRAs, but were deemed to have too little impact for the application to be valuable. 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.

6.5.2 Conclusions regarding the research questions

This chapter aimed to provide an answer to the three different research questions (see section 1.7) on subsidiary and/or joint venture level, namely to a) identify the ways human rights is managed, b) assess the degree of implementation and internalisation of human rights mechanisms and c) explaining this from internal and external contexts. The approach between existing and new Shell subsidiaries and/or joint ventures differs. As described before, applying the tools forms an

¹⁸ This confirms that the degree of internalisation is crucial for acceptance of practices in multinational companies, as defined by Kostova (see section 2.6).

evaluation in existing subsidiaries and/or joint ventures but more a planning step in new subsidiaries. This distinction is made in the conclusions, where relevant.

Ways of embedding human rights mechanisms

The same conclusion in terms of the use of human rights mechanisms can be drawn from the case studies discussed in this chapter as in chapter 6. The analysis of all case studies strengthens the conclusion that Shell subsidiaries and/or joint ventures manage human rights by aiming to implement and internalise the Shell Group policies and standards, such as Diversity & Inclusiveness, HSE standard, Security Standard, Contracting & Procurement procedures and Social Performance guidelines. The conclusion regarding government relations does not differ from the previous chapter either, because the Shell subsidiaries and/or joint ventures prefer to handle government relations on a case-by-case basis.

However, this chapter also shows that the focus of implementation of these Standards may differ per country as a result of the local context. For example, promoting human rights of communities through social investment projects are not the same everywhere; the subsidiary in country 1 targets mostly environment, education, and road safety projects for deprived communities, the joint venture in country 2 specifically targets women and fishermen and the Shell subsidiary based in country 4 deals mostly with nomadic tribes. In addition, the companies need to focus on different vulnerable groups, as e.g. table 11 shows. These vulnerable groups have a link to the history of these countries, such as the ethnic minority groups in the West of country 1 or the ethnic minorities in the country 5 or religious dissidents in countries 2, 3 and 4, with whom the Shell operating companies are now confronted with. Besides, the results of the company assessments and audit plans indicate that Shell companies need to pay attention to different priorities, such as foreign workers in countries 2 and 3 or security forces in the country 4.

Despite these differences, the way these Standards are implemented can be the same as indicated in chapter 5, which can be analysed from the cases of the existing subsidiaries and/or joint ventures. These Standards are implemented through procedures and manuals, but also through internalisation checks and through workshops, trainings, surveys, conferences, management visits and exercises. An example of this is freedom of religion. Islam is the national religion of country 2, while the government of country 1 discourages any form of religion. This clear difference can, however, result in the same violation, namely discrimination based on religion. Shell's basic principle in such cases seems to be that the subsidiaries and/or joint ventures must have the company process set up in a way that employees are not discriminated against. How a subsidiary and/or joint venture then solves a specific dilemma in practice (in this case, the type of religion) is left to the local management after consultation at the corporate level. Thus, despite the differences in local context, the *process requirements* of implementing the Group standards can be the same.

What the cases of existing subsidiaries and/or joint ventures based in countries 1 and 2 also show is that not Group, but local policies and procedures are followed in terms of Human Resources. These local policies are based on national laws and practices, which confirms the influence of the local context on management system practices, as described in section 2.12.1. It also validates the strong extent of decentralisation of the HR function identified in chapters 4 and 5. As a result, managers experience fewer tensions between local contexts and Group standards. However, an important conclusion is that many of the subsidiaries and/or joint ventures discussed in this chapter *ask for more* integrating of human rights into Group standards, especially in Human Resources. This became very

clear in the case of the subsidiary in country 1 (section 6.2). Next to these existing subsidiaries/joint ventures, the new subsidiaries in countries 3 and 4 made the same point. And, to a certain degree, the needed standardisation of HR processes is already taking place bottom-up, e.g. the country chair of the subsidiary based in country 5 indicated to copy its employee manual from a different Shell company.

To some degree (as discussed in chapter 4), the cases of the existing subsidiaries and/or joint ventures demonstrate that the Shell Group is developing more centralised policies in some areas. The resulting centralisation initiatives also appear in this chapter, such as 'Downstream One' (see section 6.2.3) and the 'Global EP Business Model' (see section 6.3.3). Nevertheless, these cases also illustrate that this centralisation per Business can also lead to country coordination problems as well as concerns over the flexibility to adapt standards to the local context. This can affect the degree of implementation and internalisation, because standards may not be consistently applied within the country.

Degree of implementation and explanation

The degree of implementation means the state in which the subsidiary and/or joint ventures and Headquarters follow the formal rules implied by the practice of human rights mechanisms. This can only be determined for the Shell subsidiary in country 1 (see section 6.2.4) and the joint venture in country 2 (see section 6.3.4), since this is not valid for the new subsidiaries. When the results of the two company assessments are compared, a clear pattern can be distinguished. Table 13 shows the overlap of the two subsidiaries and/or joint ventures.

Sphere of influence	Strong	Areas for improvement
Core operations	HSE	Human Resources (benefits)
	Employee Relations	
	Human Resources, incl. child/forced labour	
Contractors and business partners	HSE, Business Integrity Services	Labour standards
Security forces	Confidential (but integrated in general conclusions)	
Communities	Social Performance	
Government	HSE, Integrity	Legal

Table 11 Degree of implementation human rights mechanisms by existing subsidiary/joint ventures at the time of research

In the core operations, both companies are strong in covering human rights by strictly following the Group Health, Safety and Environment (HSE) procedures and practices. Both countries do not allow independent trade unions, but the subsidiary/joint venture provides their employees with opportunities to discuss their labour conditions independent from management. Furthermore, wages and benefits provide an adequate standard of living, despite local practices may differ. Nevertheless, both companies need to align their employee benefits according to international ILO standards. Differences between these countries include enforcing anti harassment & discrimination practices in country 1 and mitigating the risk of forced labour in country 2. The implementation of data privacy also differs per subsidiary/joint venture; whilst the subsidiary in country 1 is careful in protecting the privacy of its employees, the joint venture in country 2 could strengthen this.

Health and safety standards and bribery and corruption are closely monitored for contractors and business partners by both companies, but monitoring of labour standards need to be strengthened. Ensuring adequate labour standards with foreign workers deserves more attention in country 2 (which is also an important focus of the subsidiary based in country 3). Regarding business partners, both

companies as well as the new subsidiaries indicate to aim to influence its joint venture partners in urging them to adopt the same standards.

Moving to the two outer spheres of influence, both companies display a strong focus on managing their impacts on and building relationships with communities through substantial social investment programmes and impact assessments. The subsidiary in country 1 has even taken a leading and pioneering role within the Shell Group in terms of e.g. resettlement of communities. Despite this strong performance, some areas need to be strengthened in both countries, such as a clear grievance procedure for communities. In the most outer sphere of influence of government relations, both companies address health and safety standards as well as business integrity standards with government. However, both legal departments did show room for improvement in following international standards in legal procedures.

A similar picture emerges when this table is compared with table 2 in section 5.9 and table 6 in section 4.11, which again supports the conclusion that human rights are implemented in subsidiaries and/or joint ventures through the implementation of Group standards. Nevertheless, a tension between Group and local implementation does exist. This became especially apparent through the company assessment of the existing subsidiary in country 1 and the joint venture in country 2. Some policy developers in Headquarters are seen by subsidiaries and/or joint ventures as unaware of the local contexts in which the companies are embedded. Shell Group would be more effective if it provides more advice how implementation of the standards should be handled in the local context. This means that the subsidiaries and/or joint ventures are willing to follow the formal rules implied by the practice of these standards, but that the local context sometimes prevents them from doing this. This is an indication of the dependency relationship between Shell Headquarters and subsidiaries and/or joint ventures as identified in the theoretical framework, because subsidiaries and/or joint ventures try to legitimise their degree of implementation of global policies by stipulating the restraints of the local context.

The cases of existing as well as new subsidiaries and/or joint ventures provided more insight in these tensions between human rights principles and the local contexts, which could not be easily resolved. Table 14 aims to map these issues per country.

Spheres of influence that causes the issue	Core operations	Contractors and business partners	Communities	Government
Country 1 (extreme)	Health and safety; bribery and corruption	Discrimination; labour standards; health and safety; bribery and corruption	Discrimination against minority groups	Discrimination; freedom of expression and association; health and safety standards; public advocacy; data privacy; resettlement; implementation local law; bribery and corruption
Country 2 (moderate)	Discrimination	Labour standards foreign workers; bribery and corruption	Discrimination	Discrimination; freedom of association; bribery and corruption; security forces; data privacy

Country 3 (high)	Freedom of expression	Labour standards; foreign workers; health and safety; security forces		
Country 4 (moderate)		Security forces; bribery and corruption		Security forces; Advocacy
Country 5 (high)	Health and safety	Bribery and corruption; health and safety	Health; social investment	Advocacy; bribery and corruption
Country 6 (high)	Bribery and corruption; harassment	Bribery and corruption; health and safety	Freedom of expression; discrimination	Advocacy; bribery and corruption; freedom of association

Table 12 Human rights issues per sphere of influence and country

When this table is analysed, it appears that the number of issues faced by Shell (existing or new) subsidiaries and/or joint ventures increase when moving further away from a company's core operations towards the outer spheres of influence. Shell companies especially experience human rights issues in relation to its contractors and business partners and government. This confirms the assumption of section 2.3 that the wider the spheres of influence, the less control the company can exercise over the situation. In addition, this table indicates that issues related to bribery and corruption, discrimination and health and safety are most commonly faced. And, all companies researched, including the new subsidiaries, were concerned about advocacy with government about human rights, which has been discussed in section 6.5.1.

An interesting question is then how the local context influences these human rights issues to occur. For example, the subsidiary in country 1 and joint venture in country 2 deal with a strongly centralised government in which local people cannot easily take part in. These governments also prevent their people to become politically organised by e.g. banning independent labour unions. The subsidiaries and/or joint ventures based in these countries therefore face issues with the right to freedom of association. Another example is that the subsidiary based in country 4 faces poor conduct of security forces, because the country just came out of a national conflict situation. Other examples can be mentioned. However, although the question how the local context influences the human rights issues that companies face is interesting, this is not part of this thesis and requires further research.

Degree of internalisation and explanation

The degree of internalisation means the state in which the employees at the subsidiary/joint venture and Headquarters are committed to, are satisfied with and have psychological ownership of the practice (see section 2.6). In contrast to the degree of implementation, the degree of internalisation can be analysed for all subsidiaries and/or joint ventures, not only for the existing ones. The degree of internalisation relates both to the audit plan as well as the outcomes of the company assessment. As can be analysed from all case studies, the degree of internalisation is relatively low. Firstly, subsidiaries and/or joint ventures display a low level of ownership, as has been explained in section 6.5.1. Secondly, the level of commitment differs substantially per subsidiary/joint venture. According to Kostova, commitment means that the 'transfer coalition members' are willing to exert considerable effort on behalf of the parent company. This coalition exists of a core group of key subsidiary managers and focal points (the country chair and the relevant focal points in the subsidiaries) and an expert group (the researcher, the Head of SD/EP and the SP adviser). In the case of the subsidiary in country 1, the EA manager did want to contribute to testing the HRCA tools, despite the country chair and others in the subsidiary had major objections. In

the subsidiary based in country 3, the SD manager committed fully to implementing the audit plan, but the country chair had a defensive attitude. The same occurred in the joint venture in country 2, where the joint venture focal point opposed the application of the HRCA tool, whilst the country chair and the Head of SD/EP were fully committed.

For a large part, this can be explained by the emerging pattern of the influence of expatriates. All the members of the transfer coalition who were willing to exert considerable effort on behalf of the parent company included expatriates, without any exception. It appears that expatriates display more commitment to the practices of the parent company, which may result from a higher experience of identity with and trust in the parent company since these expatriates have worked in Shell Headquarters. Additionally, the expatriate HR director of the subsidiary in country 1 also indicated that local managers do not share the same norms and values as the underlying values of the practice, which may lead to decisions that are not consistent with the company's Standards. Hence, expatriates may also ensure consistency of company values across subsidiaries/joint ventures.

On the other hand, local individuals that are fully embedded into the local context are also needed to further embed the human rights practices into the subsidiaries and/or joint ventures. For example, the joint venture liaison focal point of the joint venture in country 2 had the clear task to embed the practices into the joint venture. An expatriate manager may not be able to make the 'translation' necessary in order to let local employees understand and accept the importance and the contents of the practice, which leads to low degree of internalisation. Thus, creating both competencies (implementing Group Standards as well as embedding into local companies) with particular key individuals may be the best way to transfer human rights practices, not only top-down (expatriates), but also bottom-up (job rotation and assignments abroad of subsidiary/joint venture employees).

The specific local context also determines the degree of internalisation, as assumed in section 2.12. Several subsidiaries and/or joint ventures indicated that the low local awareness and understanding of Shell's standards, especially regarding bribery and corruption and health and safety, led to difficulties in implementation. In addition, the emphasis on certain implementation instruments differed per local context, e.g. the Shell subsidiary in country 1 uses disciplinary measures instead of continuous trainings to increase its HSE performance in order to be more effective in its local context. However, following the local structures is not always the right way to follow, as the social investment programme in the joint venture in country 2 points out. The company adjusted its programme after it found out that respecting local values and traditions left out and angered certain disadvantaged groups. Hence, subsidiaries and/or joint ventures adapt the ways of internalisation (and implementation) to the local contexts in which they operate.

However, this does not necessarily mean that the values implied by the practice of human rights do not match the values underlying the culture of the subsidiary and/or joint venture (practice specific factor in the organisational context, as defined by Kostova). Human rights are a sensitive topic in many countries because it is used as a political pressure mechanism in international relations, but that does not mean that many people are against the contents of human rights (see chapter 1). This is also confirmed in this chapter, because nobody contested the values underlying human rights. Hence, the adoption of human rights practices is more affected by the relational context (attitudes and power

relationships between individuals) than the organisational context (general and practice specific organisational culture).

The importance of the relational context also became apparent through the driving role of key individuals. As described in chapter 4, the Head of SD/EP and the SP adviser had pro-actively addressed the implementation of human rights by just starting to test the tools in a company they had both worked in (the joint venture in country 2). They also played a key role in driving the use of the tools in other subsidiaries/joint ventures and embedding it further into the organisation. This role was later taken over by the Policy department at Shell Headquarters that used more channels to implement human rights principles into subsidiaries and/or joint ventures, such as the business strategy department or annual talks with country chairs.

Thirdly, the satisfaction of the practice is relatively low across all subsidiaries and/or joint ventures. The subsidiary in country 1 and the joint venture in country 2 indicate that the tools give a good overview of the human rights risks, but do not point to a lot of issues that they did not know before. In general, the new subsidiaries find the tools idealistic. Hence, the subsidiaries feel that the human rights situation as perceived from the international perspective is different from how they experience reality. Somehow, the subsidiaries also give the impression that they feel 'powerless' as a company to change it or even to impact the situation.

This powerless feeling may relate to the structure of these subsidiaries and/or joint ventures. The degree of implementation and internalisation are substantially affected when the Shell share is smaller. Although it is difficult to determine a direct relationship because the degrees cannot be determined within new subsidiaries, all subsidiaries experience some degree of difficulty in implementing their standards in joint ventures. All subsidiaries and/or joint ventures have a joint activity with the government or a national oil company owned or closely linked to the government. In almost all subsidiaries and/or joint ventures, the application of the tools could not be done out of a concern that the government would find out. This confirms the theoretical assumption of the research model that the more influence the joint venture partner has, the more difficult it will be to fully implement and internalise human rights practices of Shell (see section 2.7).

The history that Shell has in the country does not seem to influence this 'powerless feeling' in government relations much, which may be contributed to the loss of institutional memory. What seems to be the key in building good relationships with government is mutual respect and developing trust in order to learn from each other.

This concludes the analysis of the implementation and internalisation of the six Shell subsidiaries and/or joint ventures in different contexts. The next chapter will research another Shell subsidiary in depth, which faces many human rights issues, i.e. the subsidiary in Nigeria.