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Case Study: Understanding the implications of the Global Compact Human Rights Principles for petrochemical investment activities in developing countries: A case study of Sasol

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Human rights issues addressed

- Complicity
- Diversity and/or non-discrimination in employment
- HIV/AIDS
- Privacy
- Resettlement and compensation of affected communities
- Social investment and community development
- Sphere of influence

Human rights management practices discussed

- Getting started
- Strategy
- Policy
- Processes and procedures
- Communications
- Training
- Measuring impact and auditing

Human rights standards, tools and initiatives mentioned (beyond the UN Global Compact)

- International Bill of Human Rights
- Danish Institute for Human Rights Compliance Assessment
- Business and human rights: A geography of corporate risk
- Equator principles
- World Bank policies and procedures
- OHCHR, Briefing Paper, The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity

Abstract

The aim of this case study is to identify some of the critical dilemmas that a large resources and petrochemicals company might face when it considers investing in countries where there may be concerns relating to human rights abuses and where it seeks to do so in a manner consistent with Principles 1 and 2 of the UN Global Compact (UNGC).

Using Sasol–a South African-based multinational petrochemicals company–as the basis for the review, it analyses recent thinking and best practice regarding the interpretation and application of the UNGC Principles. It identifies approaches for assessing the potential human rights violation/abuse risks of particular countries and for guiding investment decisions in these countries.

Sasol's experience with the Mozambique Natural Gas Project provides a broad background for this case study, with consideration given also to Sasol's current and proposed investments and other interests in countries such as Iran, China and Nigeria. Against this backdrop, the case study evaluates the nature and extent of Sasol's current policies, procedures and practices related to safeguarding and promoting human rights, comparing these with the experience and approach of other companies in similar sectors.

On the basis of a literature review and interviews with some of Sasol's internal and external stakeholders, the case study identifies some of the activities and dilemmas associated with developing and implementing policies and procedures consistent with the UNGC Principles. In so doing, the case study seeks to contribute to an improved understanding of some of the issues associated with the interpretation and application of the UNGC Principles, to identify some of the possible associated dilemmas, and to share experiences on the lessons learnt for traditional decision-making processes in the corporate sector.

Sasol recognizes that as it expands its operations into countries that have been the subject of criticism for their human rights records, and in light of the increasingly blurred dividing line between the responsibilities of companies and the responsibilities of host country governments, there is a need for more systematic management of human rights within the company. Five elements have been identified as key to Sasol's structured human rights risk management process:

- Providing human rights awareness and training programmes for specifically targeted staff, with the aim of increasing understanding of the nature of international human rights obligations, the risks and opportunities these rights present, and the human rights situation in countries in which the company has, or is planning, investments.
- Integrating human rights issues more formally in project and country risk assessments; in certain defined instances a country's human rights record will constitute a sufficient basis for choosing not to invest in that country.
- Ensuring further integration of human rights concerns in company policies and procedures, formalising lines of responsibility for human rights, providing for human rights in procurement and supplier audits, and developing appropriate security procedures, including screening and training of security staff.
- Ensuring appropriate consultation and communication on human rights issues, both internally and externally.
- Developing appropriate monitoring and assurance mechanisms, by making use, for example, of the Human Rights Compliance Assessment (HRCA).

Company profile

Sasol is an integrated oil and gas company with complementary interests in coal extraction, chemicals and the international development of synthetic-fuel ventures based on its proprietary Fischer-Tropsch (FT) technology. Formed in 1950, Sasol commenced FT-based production in 1955. They employ more than 30,000 people and remain one of South Africa's largest investors in capital projects and skills training. Sasol is listed on the Johannesburg Securities Exchange in South Africa and the New York Stock Exchange in the USA.

Sasol mines coal in South Africa and converts this coal, along with Mozambican natural gas, into fuels and chemical feedstock through its FT technology. The company has significant chemical manufacturing and marketing operations in South Africa, Europe, the United States and Asia. Its chemical portfolios include monomers, polymers, solvents, comonomers, surfactants and their intermediates, waxes, phenolics, ammonia, fertilizers and commercial explosives.
In South Africa, Sasol refines imported oil into liquid fuels and retails liquid fuels and lubricants through Sasol convenience centres and Exel service stations. Sasol also wholesales fuels in South Africa and exports fuels to sub-Saharan Africa. The company produces gas in Mozambique for supply

to customers and as feedstock for some of its South African fuel and chemical production. Sasol also produces oil in Gabon.

Sasol has recently embarked on an ambitious programme of international growth, with plans to roll out new gas-to-liquid (GTL) and coal-to-liquids (CTL) projects. In June 2006, Sasol's first international GTL plant, the US$1 billion ORYX GTL joint venture, was inaugurated at Ras Laffan in Qatar. With a second GTL plant under construction in Nigeria, discussion under way regarding possible GTL ventures in Algeria and Australia, and feasibility studies of two CTL plants in China being conducted in the next decade, Sasol is set to become a more significant player in the global energy sector.
As part of its global growth strategy, the company has a 50:50 joint venture project with the National Petrochemical Company of Iran to develop new monomer and polymer production facilities at Bandar Assaluyeh in Iran. Sasol Polymers is also a significant partner in the Optimal Olefins and Petlin plants at Kertih, Malaysia.

Human rights and Sasol's global investment strategy

Stiaan Wandrag, Sasol's recently appointed corporate sustainable development manager, put down the first proofs of the company's 2006 sustainability report and looked out of his window at the Johannesburg skyline. With the sustainability report almost completed, he was looking forward to focusing his efforts on one of his other key responsibilities: ensuring effective implementation of Sasol's commitment to the Principles of the UN Global Compact.

While he felt confident that Sasol had the resources, capacity and focus to address the labour and environmental Principles of the UNGC, and believed that Sasol was doing an effective job in adhering to these Principles, Stiaan was concerned as to whether the company had a sufficiently systematic approach to safeguarding and promoting human rights. With the company rapidly expanding its investments internationally, including into countries that had received negative press coverage on their performance on human rights issues, he recognized that this would become an increasingly material issue for Sasol.

On his desk, on a pile of newspaper clippings, lay a 160-page report by Human Rights Watch1 that was highly critical of the activities of a South African listed gold mining company in the Democratic Republic of Congo. Next to this was a map of the world summarising the human rights risk profiles of different countries2 on which he had circled countries–including China, India, Iran, Malaysia and Nigeria–in which Sasol had, or was planning, significant capital investments and technology deployments, in most instances in some form of partnership with government agencies from these countries.

Against the background of a shifting understanding of the role and responsibilities of companies in upholding human rights, and Sasol's rapid programme of international investment, was the recent commitment of Sasol's new leadership team to promoting a culture and style of "values-driven leadership" as part of its vision of being a globally respected, world-class company.
Stiaan swivelled in his chair and looked at what he had written on the white board a few weeks earlier when he had first undertaken to review and assess Sasol's approach to safeguarding human rights. In a column on the left were the three tasks that he had set himself:

1. Understand the practical implications of Principles 1 and 2 of the Global Compact.
2. Review how these Principles currently inform Sasol's foreign investment decisions.
3. Identify elements of a more systematic approach to safeguarding human rights.

In a column on the right–under the heading Potential Dilemmas–was a list of some of the comments and opinions that he had subsequently received in his discussions with colleagues:

- It's difficult for us to identify the "universally applicable" human rights that we should be safeguarding in different countries. Can we go around imposing Western values on everyone?"
- Surely our responsibility is mainly to comply with the law of the country in which we invest; by doing that we respect the local social, cultural and economic context. Is it our job to tell the government what they should be doing?
- It's better for us to be investing in countries rather than not investing in them. By being there, and implementing our human resource policies and practices, we expose others to our way of doing things. And of course we create jobs and promote economic development, which has to be positive for human rights.
- Human rights issues have not traditionally been considered as a potential "show-stopper" in our risk assessment processes. But perhaps they should be?

As he reflected on these dilemmas, he looked forward to the challenge of taking these issues further within the company. And he welcomed the chance of presenting and discussing his thoughts on these challenges and listening to the experiences of other companies at the imminent Global Compact Learning Forum in Ghana. Stiaan turned back to his computer and began to write up his findings of the last few weeks.

Understanding UNGC Principles 1 and 2–Three critical questions

Principles 1 and 2 of the Global Compact call on businesses to support and respect the protection of internationally proclaimed human rights within their sphere of influence and to ensure that they are not complicit in human rights abuses. Reflecting on the possible practical implications of these Principles, Stiaan identified three questions that he sought to answer:

- What "internationally proclaimed human rights" are relevant to Sasol's activities?
- What is the extent of Sasol's "sphere of influence"?
- Under what conditions might the company be deemed "complicit" in human rights abuses?

On the basis of his review of current literature on the subject, and following a series of interviews with relevant colleagues within Sasol, Stiaan identified what he saw as being the main implications–and some of the key internal dilemmas–associated with each of these questions. His perspective on the implications and dilemmas arising from these questions is provided below.

What are the "internationally proclaimed human rights"?

> *It's difficult for us to identify the "universally applicable" human rights that we should be safeguarding in different countries. Can we go around imposing Western values on everyone?*
> *– Sasol Project Manager*

The International Bill of Human Rights provides a useful starting point for understanding the nature of internationally proclaimed human rights. Some specific practical examples of these rights are provided in Box 1. Although governments have the primary responsibility to promote, protect and fulfil human rights, the Universal Declaration of Human Rights calls on "every individual and every organ of society" (which includes business) to strive to protect and respect these rights. The exact nature of the responsibility of companies to safeguard these rights remains the subject of some debate.

In addition to seeking to support and respect the protection of internationally proclaimed human rights, companies also need to ensure that they respect and comply with existing national laws in the countries where they operate. The challenge of respecting universally applicable human rights, while at the same time providing for the social, cultural and economic context of the affected country, raises some significant potential dilemmas for companies:

- How does one balance what may appear to be a country's cultural prerogative with what some may see as constituting an international norm of behaviour?
- Is it within the remit of the company to get actively involved in contributing to an improved human rights governance framework, or could this be construed as undue intervention and influence by the private sector in the policy decisions of the host country government?

What is the extent of the company's "sphere of influence"?

While the concept of "sphere of influence" is not defined in detail by international human rights standards, it is seen by experts to refer to those individuals or organizations that have a certain contractual, political, economic or geographic proximity to the company. Typically this includes the company's employees, neighbouring communities, business partners (including suppliers and contractors), and relevant authorities of the company's host government. The extent of the company's ability to exert influence on the human rights activities of these groups will vary depending on its size and the nature of the relationship. Clearly the larger and more strategically significant the company, the broader its sphere of influence is likely to be. This has important implications for large petrochemical companies such as Sasol.

Case studies – Strategy

Box 1–Specific human rights issues within Sasol's sphere of influence
Following are some examples of actions that Sasol can take (and in almost all cases already is taking) as a means of promoting and safeguarding human rights within its sphere of influence:

Employees:

- Implement measures to provide safe and healthy working conditions and environments.
- Provide employees with freedom of association and the right to collective bargaining.
- Promote non-discrimination in personnel management practices.
- Ensure that the company does not directly or indirectly use forced labour or child labour, and undertake appropriate screening and monitoring of suppliers on these issues.
- Pay at least a living wage in countries of operation.

Communities:

- Prevent the forcible displacement of individuals, groups or communities, and compensate accordingly in instances of voluntary resettlement.
- Provide work to protect the economic livelihood of local communities.
- Respect the rights of indigenous people and communities.
- Work with local police or security service providers to ensure a common understanding of human rights requirements relating to the use of force, and provide training to security personnel on appropriate practices.
- Provide access to basic health, education and housing for employees and their families, if these are not provided elsewhere.

Environment:
- Implement measures to minimize the company's potential environmental impacts.

Host government: Respect national sovereignty
- Be committed to political neutrality.
- Implement training, monitoring and related procedures to prevent bribery and corruption.

When is a company "complicit" in human rights abuse?

While recognizing the ultimate responsibility of governments in ensuring respect for human rights, the changing operating context for business has prompted the Office of the High Commissioner for Human Rights (OHCHR) to lead efforts to understand and define the nature of corporate complicity in human rights abuses. A recent OHCHR briefing paper on human rights suggests that a company is complicit in human rights abuses "if it authorises, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse." Citing a recent court case in the United States, the OHCHR goes on to suggest that "the participation of the company need not actually cause the abuse; rather, the company's assistance or encouragement has to be to a degree that, without such participation, the abuses most probably would not have occurred to the same extent or in the same way."

In a business context, the notion of complicity can occur in various forms:

- Direct complicity: This occurs when the company knowingly assists in the violation of human rights–for example, by assisting in the forced relocation of people in circumstances related to a business activity.
- Beneficial complicity: This refers to the case when a company benefits directly from the human rights abuses committed by someone else–for example, benefiting by the use of repressive measures committed by security forces guarding company facilities.
- Silent complicity: This relates to the failure of a company to question systematic or continuous human rights violations in its interactions with the appropriate authorities. This could include, for example, acceptance by the company of systematic discrimination in employment law against a particular group on the grounds of ethnicity or gender.

Although in some instances it might not be possible to prove complicity in a strictly legal sense, the court of public opinion may deem the company morally responsible. Such moral complicity can have significant implications for the company's reputation and brand value. In light of the low levels of trust typically vested in business, and the significantly higher levels of trust generally enjoyed by NGOs, this can place a particularly strong burden on the company to demonstrate that it acted in an appropriate manner. This underlines the importance of being open and transparent, and of building constructive relationships with NGOs and other civil society organizations.

Evaluating the risks of doing business in a controversial state

Building on his response to the questions he had identified, Stiaan turned to consider what the implications of his assessment would be in terms of managing risks to the company, including in particular reputational and liability risks. In doing so, he identified three key considerations that should inform the company's decision on the nature of its investment in a controversial country, and that will assist in identifying which of its activities might be most at risk of being associated with possible human right violations:

- Is the country of such high risk that no investment should be undertaken (a “no go” country)?
- Assuming the country isn’t screened on this basis, what is the proximity of the host government to possible human rights violations?
- What is the proximity of the company’s operations to potential human rights violations?

Screening “no go” countries

The first step is to identify those countries where the act of investing in that country will be sufficient, of itself, to raise the risk of being complicit in human rights violations. On the basis of literature on the subject, criteria for identifying possible “no go” states include governments that:

- are subject to international sanctions;
- have been accused of genocide, war crimes and/or crimes against humanity;
- refuse access to a neutral body such as the International Committee of the Red Cross; or
- do not respect popular sovereignty and where there has been a clear expression of popular sentiment against any foreign commercial activities.

Guidance on the identification of such countries is typically available from human rights NGOs and governmental and intergovernmental agencies.

As very few countries would typically be screened on the basis of the above criteria, a more sophisticated assessment is usually required. This involves assessing the proximity of the host government to possible human rights violations, as well as the proximity of the company’s operations to these violations.

Government proximity to human rights abuses

In evaluating the proximity of the host government to breaches of human rights obligations, the company should assess the extent to which the host government is oppressive (i.e., does it actively endorse the human rights violations), or ineffective (i.e., is it simply incapable of preventing them). This assessment can be informed by the advice of relevant UN agencies and non-governmental organizations such as Amnesty International or Human Rights Watch. Companies are less likely to be found complicit in state breaches of human rights where the breach is a result of ineffective enforcement rather than deliberate government oppression

Company proximity to human rights abuses

In addition to assessing the role of the state, the company should also evaluate the proximity of its operations to the alleged violations. In those countries where the government is seen to be actively committing the human rights abuse, it is critical to ensure that the company’s activities are not sufficiently linked to these abuses. This involves a consideration of the following questions:

- Will the company be operating in the region within the country where the abuses occur?
- Is there potential for the company’s products to be used in committing the violation?
- Does the company deal in a strategic commodity–such as oil or a natural resource–that may be the subject of power conflicts in the region?
- If the company is complying with local legislation that may be seen to be in conflict with human rights obligations, do the company’s activities violate the principle of the human right or the standard associated with that right?

• Through its activities and operations, does the company contribute to strengthening the role of civil society, or is it strengthening the role of the host government?

Sasol's current approach to safeguarding human rights

This section provides a brief independent review (by the case study author) of the nature of Sasol's current approach to safeguarding human rights, based on company interviews and documentation.

Sasol currently has no separate policy specifically addressing human rights. The only stated policy commitment at group level that refers specifically to the protection of human rights is in the Sasol Code of Ethics, with which all Sasol businesses are required to comply. In addition to the code, many human rights issues are also addressed–even if they are not expressly defined as human rights issues–through the company's existing policies and procedures relating, for example, to human resource management, occupational health and safety, environmental issues and the nature of the company's corporate social investment initiatives. Sasol's strategic growth drivers and daily business operations are founded on, and inspired by, Sasol's six shared values.

The Sasol Code of Ethics

The Sasol Code of Ethics consists of four fundamental ethical principles–responsibility, honesty, fairness and respect–and 15 ethical behavioural standards. In terms of one of these behavioural standards (respect), all Sasol employees are required to "respect human rights and dignity." The Code of Ethics, which was adopted in March 2004, was developed and approved after extensive consultation and workshops throughout the group. The code is based on a set of key principles, rather than detailed rules, in the belief that it is impractical to provide detailed rules for every conceivable situation where ethical considerations may be relevant. All Sasol decisions and conduct are required to be guided by these principles.

A separate Guide to the Application of the Code of Ethics has been developed to assist employees in making ethical decisions by exposing them to the thinking behind the principles, suggesting processes to guide ethical decision making, and communicating Sasol's policy on certain specific ethical dilemmas (Annex 1). The code and the guidance document have been communicated to all employees, including employees of subsidiaries, as well as to suppliers, service providers and customers. In addition to adherence to its Code of Ethics, Sasol requires full compliance with the United States Foreign Corrupt Practices Act and similar legislation in other jurisdictions.

The Sasol Limited Board of Directors, which is ultimately accountable for ethical business conduct in the company, has mandated the Nomination and Governance Committee to ensure that the group has effective policies, structures and programmes to institutionalise and monitor ethics in Sasol. Specific provision is made for the Group Executive Committee (GEC) to issue practice notes on the practical implementation of parts of the Code of Ethics if such a need arises. Sasol's Corporate Ethics Officer manages the monitoring and implementation of the code.
An ethics forum has been established to monitor and report on ethics practice and compliance requirements, and to recommend amendments to the code and guide. Employee performance against Sasol's values, which incorporate the Code of Ethics, is assessed as part of the company's mandatory employee performance management system. Sasol has been operating an independent ethics reporting telephone line through external advisors since 2001. This confidential and anonymous ethics hotline provides an impartial facility for stakeholders to report fraud and other deviations from ethical behaviour.

Sasol's policies and procedures on human resources and safety, health and the environment

In addition to the specific provision in the Code of Ethics, many human rights-related issues are also addressed through the company's policies and procedures relating to human resources and safety, health and the environment. These include, for example, provisions relating to:

- labour and trade union rights;
- protection of employee safety and health, including the company's initiatives on HIV/AIDS;
- environmental management activities; and
- community engagement andcorporate social investment activities.

Sasol has recently approved a set of minimum requirements relating to safety, health and environmental performance that default to the safeguard policies of the International Finance Corporation. Many of these safeguard policies specifically address various human rights issues

Sasol is a signatory to the international chemical industry's Responsible Care initiative, and has been active in terms of implementing accredited environmental and safety management systems and undertaking sustainability reporting. Due to the nature of its activities, and its historical legacy (associated, for example, with its establishment by the Apartheid government), the company is under regular scrutiny by the media and local and international NGOs. In 2000, the Group Executive Committee adopted sustainable development as a strategic business philosophy. An overview of the company's sustainability performance is provided in their latest GRI (Global Reporting Initiative)-based sustainable development report available from the company website: www.sasol.com.

Country and project risk assessments

> *As Sasol gains experience in the international arena, it is moving up the maturity scale. It is no longer focusing predominantly on pure commercial viability, but is also now beginning to consider issues relating to reputation and image. – Sasol Project Manager*

All new investment decisions and projects are subject to Sasol's Business Development and Implementation Model (BD&I) that comprises a series of "decision gates." At each gate, the various risks associated with that project are reviewed. For projects that entail investments in new countries, a country specific risk assessment process is undertaken that includes a review of potential financial, technical, socio-economic, political and legal risks. This assessment is undertaken using a detailed database of around 3,000 potential risks. The final decision on whether or not to invest is informed by the company's risk-bearing capacity. This process of risk assessment is complex and entails both quantitative and qualitative aspects. Sasol is in the process of further refining this risk management model, as part of a general global trend that is moving away from a traditional focus on the quantifiable technological and financial risks, to provide for some of the more intangible issues associated with the company's reputation.

It has been suggested by some project managers that in the earlier days of its expansion into new regions, the focus of Sasol's risk assessment process was predominantly on assessing the project's commercial and technical viability, with limited provision being made for a sufficiently thorough assessment of some of the more intangible issues. However, as Sasol has gained greater experience in the international arena and improved its understanding of the expectations on global companies, there has come to be a greater awareness of the need to manage some of the so-called "non-financial" risks. This awareness complements Sasol's commitment to sustainable development as a strategic priority.

As the only large African non-state oil and gas company, Sasol recognizes that it has the potential to play a particularly important role on these issues, both within the region and as a member of the oil and gas sector. Although it is acknowledged that Sasol could potentially make a greater contribution to the development of certain international initiatives–such as the Extractive Industries' Transparency Initiative or the Voluntary Principles on Security and Human Rights–there is a sense that the company should seek first to address some of the challenges it faces in South Africa, its country of domicile. The experiences gained here–including, for example, implementing policies and procedures that comply with South Africa's progressive Constitution and Bill of Rights–will be useful in informing its expanding international activities.

Investing in countries with recognized human rights concerns

As Sasol expands its operations into countries that have been the subject of criticism for their human rights records (see Box 2), and in light of the increasingly blurred dividing line between the responsibilities of companies and the responsibilities of host countries, there is an acknowledged need for a more structured review of the risks and opportunities associated with human rights. This is particularly the case as in many instances Sasol is considering entering into JV partnerships with state-owned companies from these countries.

Although many of these human rights issues in these countries may be beyond Sasol's sphere of influence (and not within its locus of control), and are issues for which it might be difficult to prove complicity, there are some anticipated activities where the nexus between the company and the potential breach of a human rights obligation is sufficiently close as to warrant proactive risk management practices.

On the basis of interviews with Sasol management, and an independent assessment of its proposed investment activities, following are examples of specific human rights concerns that Sasol should be cognisant of:

- managing issues relating to human resources, collective bargaining, and political and religious freedom in Iran and China;
- the possibility that voluntary community relocation may be required in India as a result of the implementation of a possible petrochemical venture;
- ensuring appropriate protection of its petroleum interests in Nigeria, without precipitating any human rights abuses (associated, for example, with the management of security forces);
- addressing concerns relating to rights to privacy and non-discrimination in Qatar; and
- managing concerns relating to the role and status of women in Islamic countries.

The recent stated commitment of Sasol's executive team to the promo tion of "values-driven" leadership will present some interesting challenges ahead as it seeks to find an appropriate balance between respecting the law, culture and religious values of the country in which it is operating, with-out undermining the company's stated values and commitments. Examples of specific potential challenges facing the company include:

- acting on a commitment to employee share-ownership in countries that do not permit this;
- operating in countries where the state may screen personnel on the basis of their religious belief, gender, or HIV/AIDS status;
- providing company pensions to employees in countries that have only state pensions;
- ensuring suitable provision and respect for different religious customs and holidays; and
- fulfilling a stated commitment to recognizing collective bargaining in countries where union activity is restricted.

It is important to acknowledge the potentially positive role that a company such as Sasol can play through its investments, and the manner in which it acts as an agent for positive change. One area where this may occur, for example, is through the company's current explicit focus on promoting improved behavioural-based safety performance according to a core set of minimum standards. This potential for improved performance should not however be overstated, as there may still be times when there is a direct conflict between the company's stated values and the requirements of the country in which it is or will be operating. Management of these potential conflicts will require discretion and a certain degree of flexibility, with the aim as far as possible of maintaining conformance with the underlying principle of the human right, if not the traditionally imposed standard associated with that right.16 How this is done will require judgement and integrity.

A recent example of Sasol's approach to flexibility is evidenced in its response to the locally imposed requirement that all prospective visitors to Qatar undertake an HIV/AIDS test, the result of which forms a precondition for entry. Sasol's response to this requirement was to ensure that all prospective employees considering this posting were provided with ample notification of this requirement and given full flexibility in deciding whether or not to pursue this posting, with no pre-judgement taken or further career discrimination on the basis of their decision. In so doing, the rights relating to privacy and freedom of choice are protected.

Box 2–Human rights risks of current and potential countries for investment

On the basis of the investigations and reports of organizations that undertake human rights assessments of countries, some or all of the following human rights concerns have been identified as occurring in some of the countries in which Sasol has, or is seeking to have, operations:

- restriction of labour rights, including freedom of association, the right to organize and bargain collectively, and worker health and safety;
- the use of child labour and forced labour, including prison labour;
- the forcible relocation of communities;
- restrictions on freedom of assembly, including detention and abuse of demonstrators and petitioners;
- restrictions on religious freedom, control of religious groups, and harassment and detention of unregistered religious groups;
- unlawful monitoring of citizens' mail, telephone and electronic communications;
- arbitrary arrest and detention, and the harassment, detention, and imprisonment of those perceived as threatening to government;
- torture and coerced confessions of prisoners;
- systematic suppression of freedom of expression and opinion, including the closure of newspapers, the harassment and detention of journalists and editors, the blocking of Internet sites, and the jamming of broadcast signals; and
- restrictions on freedom of travel, especially for politically sensitive and underground religious figures.

The Mozambique Natural Gas Project: Selected human rights experience

Sasol's experience following its recent investment in the Mozambique Natural Gas Project (NGP), provides a useful basis for reviewing how Sasol's current approach to safeguarding and promoting respect for human rights has been applied at a practical level, and for assessing the extent to which the Principles of the UN Global Compact have been applied.

Project background and overview

The economic potential of utilising Mozambique's natural gas resources has been under investigation for many years. Following the conclusion of an Exploration Agreement and a Petroleum Production Agreement covering the Temane and Pande Gas Fields, Sasol, along with its Mozambican affiliate companies, was granted exploration rights in the northern parts of Mozambique's Inhambane Province. In November 2001, Sasol obtained formal approval from the Government of Mozambique to commence implementation of the NGP. As a result of the fact that the World Bank Group provided project financing, compliance was required with safeguard requirements policies, guidelines and standards relating to the project's safety, health, environmental and social impacts.

The project involves the phased extraction, processing, transportation and utilisation of the natural gas reserves in the Pande and Temane field reservoirs. To date, the project has included the first phase of exploration and development of these gas fields, the establishment of a Central Processing Facility at Temane, and the construction of an 865-km cross-border pipeline between Temane in Mozambique and Secunda in South Africa. It has also entailed the conversion of the Sasol Gas pipeline network supplying customers in South Africa, the conversion of the Sasolburg factory to process gas as its hydrocarbon feedstock, and the conversion of Sasol's Secunda factory to process gas as a supplementary feedstock. Construction of the Central Processing Facility and the 865-km cross-border pipeline to transport gas to South Africa began in 2002. The first supply of natural gas reached Secunda in February 2004, and the project became commercially operational on 26 March 2004. The second phase of exploration work for the project is ongoing. An onshore seismic programme was completed during the course of 2005 and exploration drilling will follow in 2006/2007.

The Natural Gas Project: Identifying human rights issues

The Natural Gas Project (NGP) is a large undertaking comprising many infrastructural elements covering a large proportion of Central and Southern Mozambique. While the project holds significant potential for stimulating economic development in Mozambique and South Africa, it has some unavoidable impacts on the social and socio-economic environments of the region.

Some of the specific human rights issues associated with the project included:

- ensuring non-discrimination in employment practices;
- ensuring that appropriate benefits from the project accrue to affected communities, for example, by promoting localization of labour and local procurement, providing skills development and training opportunities, and implementing focused corporate social investment initiatives;
- minimizing any potential negative environmental and occupational health impacts;
- addressing concerns relating to HIV/AIDS; and
- managing issues relating to resettlement and compensation.

Arguably one of the most significant of these issues from a human rights perspective related to the resettlement and compensation of individuals affected by the project activities. Sasol's approach to managing this issue within Mozambique is briefly reviewed below.

Resettlement: Managing a potential human rights dilemma

Within Mozambique, the Natural Gas Project comprised three primary activities: exploration, gas field development and operation, and pipeline construction and operation. Each of these three activities had its own unique resettlement requirements that had to be managed (Annex 2). To meet the financing requirements of the World Bank, Sasol adapted its initial Resettlement Action Plan into a more comprehensive Resettlement Planning and Implementation Programme (RPIP) that complies with relevant World Bank procedures, policies and directives.

All of the resettlement for the project was completed in accordance with the RPIP, with the aim of ensuring the equitable and fair treatment of all people as regards the resettlement, compensation and related aspects (such as property rights infringements) associated with the Natural Gas Project. The RPIP included a commitment to the following primary objectives (see also Annex 3):

- Involuntary resettlement should be avoided where feasible, or minimised, with all viable alternatives explored;
- Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed in a sustainable manner, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits;
- Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programmes; and
- Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

To ensure effective implementation of the RPIP, consultation was undertaken with government authorities at all levels, from the national Government of Mozambique to local traditional authorities. Two key features of the consultation and participation of the authorities were the establishment of a representative Joint Task Force and the accompaniment of Resettlement Team members by government representatives. In addition, Sasol deployed a full-time Community Liaison Team that had ongoing discussions with the government and affected communities.

The Mozambique section of the pipeline and the flow lines from the wellheads to the central processing facility have development exclusion zones around them for safety and maintenance reasons. While there is little restriction on agricultural development, settlement within the exclusion zones, over and above a small agreed increase, is prohibited. In terms of the independent assessments that have been undertaken in accordance with International Finance Corporation (IFC) requirements, it is suggested that in practice, unnecessary restrictions on the use of land in the exclusion zones have been largely avoided and, for the most part, people who were temporarily affected by construction activities have been able to return to their lands and agricultural practices. In those instances where they not been able to do so, they have been fairly compensated in accordance with the RPIP.

Monitoring and evaluation programme

In accordance with the financing agreements, monitoring and evaluation (M&E) reports were submitted quarterly for the first two years and twice a year for the following two years. In addition, regular internal audits were conducted. One external audit per annum is required for a period of five years following the start of the monitoring programme. The outcomes of the M&E programme and the findings of the internal and external audits constitute an important barometer for assessing the integrity of the implementation of the RPIP, and for evaluating the impact of the project on resettlement and human rights issues.

The stated objectives of the M&E programme–which covered homesteads, graves and machambas (subsistence farming plots)–were to assess compliance with the following resettlement objectives:

- to assist re-settlers in adapting to their new environment;
- to monitor the effects of resettlement for a period of four years and to take the necessary actions to address resettlement related problems should they arise; and

- to continuously assess the re-establishment of comparable sustainable livelihoods of persons affected by resettlement.

During the M&E assessments, all of the households that were provided with replacement housing were visited, together with a selection of the households provided with replacement machambas. On the basis of these audits, the auditors confirmed that there had been a generally consistent and correct application of the M&E procedures required by the RPIP. In addition:

- Sasol's M&E staff were found to be competent, considerate of the affected households that were visited and professional in their approach to affected households.
- Although the auditor found that replacement houses were built according to a specification agreed with the Mozambican government, it was recommended that Sasol consider improving the insulation and/or ventilation in the houses; Sasol agreed to undertake this action.
- A change in procedures was agreed to in order to facilitate better participation of the owners of the replacement machambas during the M&E visits.

Development of a communications plan

Transparency and effective communication form an important part of an initiative of this nature. As the operator of the pipeline, Sasol developed a communications plan that was intended to serve as a preventative management tool. In Mozambique, the plan communicated to people the safety aspects of gas transmission and the risks caused by unauthorized activities in the partial protection zone around the pipeline. All relevant authorities and government departments were issued with letters to reinforce awareness of the pipeline. In addition, as an aid to the planning of agricultural and agro-industrial developments, local authorities were supplied with GIS documents to illustrate the exact location of the pipeline in relation to other land uses. Colour posters in Portuguese and Tsetswa were prepared to help communicate the message at village level.

From 2005, Sasol implemented the plan at various levels including national, provincial and local government, village chiefs and community forums. Five route inspectors were appointed, who were responsible for monitoring the integrity of the pipeline and for reinforcing local community awareness about the pipeline. This team communicated with local authorities, traditional leaders and members of local communities along the route as part of their routine pipeline inspections. The community liaison manager visited the district authorities along the route once every two months to discuss any issues relating to the pipeline and the surrounding partial protection zone. This was supplemented by communication campaigns focusing mainly on community groups and schools during the school holiday camps.

Implementation of a focused social investment programme

To give effect to Sasol's commitment to strategic corporate social investment, a social development policy and strategy was developed in 2002 and subsequently updated. A rigorous method has been developed on the basis of which Sasol identifies, approves, implements and monitors projects that are funded by its Social Development Fund (SDF).

The SDF management team has developed a five-step, project-specific work methodology aimed at delivering sustainable community development projects. This comprises:

- defining real needs in consultation with members of the affected community;
- generating efficient solutions that involve the community and provide for environmental issues;
- approving projects in a manner that ensures good corporate governance;

• implementing the projects using Sasol's project management experience; and
• undertaking monitoring and evaluation programmes aimed at ensuring project sustainability.

In Mozambique, Sasol approved an amount of US$800,000 for the 2006 financial year for use in social investment programmes. Approved projects include the provision of water supplies, craft training, electrification of a primary school, rehabilitation of cattle dipping facilities and the construction of a water supply dam. Involvement in the management of HIV/AIDS issues in Mozambique has been taken over by Sasol's Social Development Fund. A decision has been taken to support existing NGO initiatives in this regard in preference to designing and implementing stand alone HIV/AIDS programmes. A joint SDF and NGO programme is located in Maputo Province (Magude), and funds have already been allocated for this purpose.

Lessons learnt from the Mozambican experience

The following general observations and lessons learnt arise from the Mozambique project:

- As with many of Sasol's current and planned investments, the project was a partnership with the host country government. Furthermore, it was a significant investment in a strategic commodity having an important impact on the local economy. The significance of the investment and the nature of the partnership with the host government increase Sasol's sphere of influence and raise the potential of being deemed complicit in possible government human rights abuses directly or indirectly associated with the project.
- This increased risk profile underlines the importance of human rights considerations forming an important part of Sasol's BD&I project assessment process, particularly as Sasol extends its activities into countries with more visible human rights concerns. The experience in Mozambique is sufficient to demonstrate the need to consider more than commercial and technical viability within the project feasibility assessment process.
- Although management of many of the safety, health, environmental and human resource aspects of the project were addressed as part of Sasol's existing policies and practices, the need to comply with World Bank policies and procedures as a financing requirement formed an important additional consideration. As a result of the Equator Principles, in terms of which many private sector project financiers now require compliance with World Bank and IFC safeguard policies and guidelines, these are increasingly being seen as the norm for projects of this nature. Sasol's recent commitment to a set of minimum safety, health and environmental requirements (based on the IFC's recently updated environmental and social policies and procedures)20 reflects this understanding. To promote effective adoption of these requirements they should be formally integrated in the project feasibility and development process; provision should also be made for increasing the awareness and understanding of project managers of the implications of these requirements.
- Some of the important positive features associated with the Mozambique project include:
  › having a clearly defined set of project commitments;
  › promoting transparency and engagement though a structured communications plan;
  › implementing a strategic corporate social investment programme that seeks to address specific needs identified in consultation with members of the affected community; and
  › ensuring provision for a formalised monitoring and evaluation programme that includes periodic assessments and audits with both internal and external auditors.

Notwithstanding the fact that the human rights aspects of the Mozambican project have been managed in a sufficient manner, Sasol has recognized that there is scope for a more structured approach to human rights relating to the company's potential investments in countries with human rights concerns. A recent report by an NGO team that had interviewed some of the resettled Mozambican villagers highlights the increased scrutiny that large companies are facing.21

Sasol and human rights: Elements of a more systematic approach

Recognizing the challenges associated with more systematic management of the potential human rights risks associated with Sasol's investment into countries with human rights concerns, Stiaan has identified the following six elements as key to the company's structured human rights risk management process:

1. providing human rights awareness and training programmes for specifically targeted staff;
2. integrating human rights issues more formally in project and country risk assessments;
3. providing for human rights concerns in relevant company policies and procedures;
4. developing structured strategies to respond to allegations of human rights violations;
5. ensuring appropriate consultation and communication on human rights issues; and
6. implementing human rights monitoring and assurance mechanisms.

Stiaan's assessment of the implications of these activities is briefly reviewed below.

Human rights training and awareness programmes

Recognizing the need to increase the awareness within Sasol of the implications of the human rights agenda for the company's growing international investments, appropriate awareness and/or training programmes are anticipated for targeted staff, including project managers, human resource personnel, security staff, and procurement employees. The aim of these programmes, tailored to suit the nature and level of staff responsibility, would be to increase awareness and understanding of:

- the nature of international human rights obligations, including in particular the "non-derogable" provisions of the International Bill of Human Rights;
- the risks and opportunities that these rights present for the company as it expands its activities;22
- the human rights situation in countries in which Sasol has, or is planning, operations;23
- possible human rights concerns within Sasol's sphere of influence and for which it may be deemed complicit; and
- the opportunities presented by international initiatives and standards on human rights.24

Country and project risk assessments

Sasol has recognized that as it expands its operations into countries where there are human rights concerns, there is a need to ensure that human rights considerations are integrated effectively within the company's current political risks assessment process. On Stiaan's recommendation, this process should include provision for:

- accessing regularly updated information to assess the human rights situation in the countries in which Sasol is planning operations, where necessary using the advice and input of expert service providers, research bodies and/or relevant NGOs;25
- formally integrating Sasol's minimum requirements and the updated International Finance Corporation (IFC) safeguard guidelines in the risk management process; and
- identifying the activities of the company most at risk of being deemed complicit in possible rights abuses.

In certain instances, a country's human rights record should constitute a sufficient basis for choosing not to invest in that country. It should be recognized that when a particular business unit does choose to undertake activities in a potentially high-risk country, any resulting reputational damage will affect the group as a whole and not just that business unit.

Integration in company policies and procedures

To ensure appropriate "support and respect" for human rights throughout its activities, and to minimise the potential for complicity in possible abuses, provision has been made for the integration of human rights issues within relevant company policies and procedures. The primary focus within Sasol has traditionally been on addressing the human rights elements relating to:

- the health and safety of employees and service providers;
- employment equity and non-discrimination;
- human resource issues such as skills development, freedom of association and collective bargaining, and employee remuneration; and
- environmental and social management issues.

To provide for the potential new risks associated with the company's growing global activities, as well as for the changing expectations relating to the boundaries of corporate responsibility, Sasol has recognized that there is scope for further integrating human rights concerns within existing policies and procedures. This includes:

- formalizing appropriate functional lines of responsibility for human rights;
- integrating human rights issues into procurement and supplier auditing procedures and where appropriate making use of recognized international standards (such as the Social Accountability 8000 (SA8000) Standard);26
- providing for human rights concerns within the company's current activities relating to the global harmonisation of human resources policies;
- including human rights training as part of cultural awareness programmes prior to foreign posting; and
- developing appropriate security procedures, including screening and training of security staff

As Sasol increasingly becomes a global player in the energy sector, Stiaan has identified that there may be opportunities for the company to engage more actively in discussions relating to the development and implementation of international initiatives such as the Extractive Industries' Transparency Initiative and the Voluntary Principles on Security and Human Rights.

Human rights response strategies

In the same way that Sasol has structured response plans in place for safety and environmental incidents, so measures should be in place to respond to allegations of human rights violations. As with safety and environmental incidents, these plans should provide for:

- recording and reporting all allegations and possible incidents of human rights abuses within Sasol's area of operations;
- undertaking internal investigations into the root cause of any incidents that might credibly be seen to be a result of an action or omission by Sasol;
- communicating with internal and external parties on the findings; and
- implementing appropriate measures aimed at reducing the potential for future incidents.

Consultation and communication on human rights

As Sasol's experience in Mozambique has highlighted, communication and consultation with all stakeholders during the various phases of the project cycle is an essential component of an effective response to human rights issues. In addition to the reputational and risk management benefits associated with appropriate stakeholder consultation, there are important potential advantages associated with internal and external communication processes on human rights. While Sasol has received local and international recognition for its sustainability reporting practices,31 the company recognizes that there are opportunities for further disclosure on the potential human rights implications of its activities.

Anticipated activities relating to internal communication on these issues include:

- sharing experiences on the business implications of human rights (including, for example, partaking in Global Compact dialogues, as this case study does);
- encouraging internal dialogue on some of the challenges associated with human rights;
- facilitating effective non-compliance reporting and whistle-blowing; and
- providing a regular account of the company's human rights performance.

External engagement and communication–with the host government, the foreign offices of the country of domicile, local business peers and/or civil society organizations–often forms the most feasible and effective response to possible human rights infringements by the host country's government, typically best undertaken in the form of private conversations.
When communicating with the host government, this dialogue might seek to build on the government's existing initiatives to promote human rights, before highlighting possible benefits to the government (such as increased investor confidence) for further upholding human rights. Should this "respectful dialogue"32 fail, there may be scope to work in a subtle manner–for example with the diplomatic offices of the country of domicile, or appropriate intergovernmental agencies–to encourage bilateral or multilateral initiatives aimed at promoting improved behaviour. As a last resort–though this is seldom seen to be the most appropriate or effective response–the company may choose to speak out publicly against the government agencies that are alleged to have committed the abuse.

Human rights monitoring and assurance mechanisms

A final element in the more systematic approach relates to the development of appropriate monitoring and assurance mechanisms. A useful tool that Sasol has identified for assessing and reviewing its human rights performance is the Human Rights Compliance Assessment (HRCA). Developed by the Danish Institute for Human Rights, the HRCA contains approximately 350 questions and more than 1,000 human rights indicators drawn from the Universal Declaration of Human Rights and other major treaties. The tool has been developed to assist companies to identify and assess their response to human rights dilemmas, and to detect possible human rights violations within their field of operation.

Although Sasol has not yet formally evaluated its performance using this tool, it has co-operated with an independent project being undertaken as part of the Human Rights and Business South Africa Project that is reviewing the application of the HRCA to South African business and that is investigating the possibility of developing a South Africa-specific HRCA.34 The findings of this assessment will form an important input into the further development of a co-ordinated response to human rights issues within Sasol.

Concluding comments

Reflecting on the outcomes of his brief review and assessment of the practical implications of the human rights Principles of the Global Compact, Stiaan looked forward to continuing his dialogue with relevant decision makers within Sasol, with the aim of developing and implementing a structured risk management process relating to human rights issues. He wondered what progress regarding Sasol's human rights activities he would be able to report on in the company's next sustainable development report.

(See source for additional annexes)