

The Business Case for Human Rights – Values, Expectations and Risk

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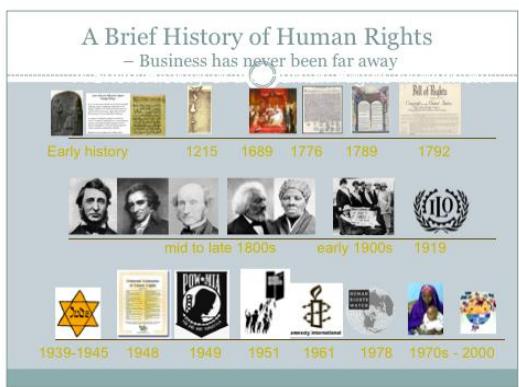
Slide One



It's great to be here in Atlanta today and I would like to thank The Coca-Cola Company and the convening organizations – USCIB, IOE and USCC - for the opportunity. This, I believe, is the fourth year that Ed Potter and his team have convened in such a way on business and human rights and it has become something of a bridgehead – bringing an international perspective to a mainly domestic audience. Congratulations Ed.

I am also pleased to be out of Britain this week due to a certain wedding taking place in London tomorrow – however I fear that the US media provides no safe haven.

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I have been asked to look at the business case for human rights and the associated values, expectations and risks. My presentation is in two parts:

First, I will **reflect** on the way the Business Case for Human Rights has developed in the eyes of businesses themselves and other stakeholders. I will also flag something of the anti-business case for human rights.

Second, I will pull out **5 trends** which I see as emerging in the way the business case might develop over the months and years ahead

We are still at the beginning of the **integration phase** but no longer are we at the beginning of the experimentation phase.

I will try and echo the experiences of business around the world – that were directly reported in our own research at the Institute for Human Rights and Business – including our work in key emerging economies where the business case, perhaps, matters most.

Before embarking on an analysis of the business case and some of the key dilemmas, challenges and opportunities it is associated with, it is best reminding ourselves of a few pieces of context:

(i) There is nothing new about business and human rights.

Some of the earliest clay tablets that are attributed to clarifying individual rights are those associated with trade and the market place. This has come full circle when we remind ourselves how very local trading frustrations in Tunisia opened the floodgate of human rights and political demands we have witnessed in that country and then more widely across North Africa and the Middle East over recent weeks.

The correlation between business and human rights has not always been as positive one, as the international slave trade was testimony too.

The International Labour Organization, founded after the First World War, brought employers, trade unions together with governments in relation to the application of international labour agreements.

And then in 1948, Eleanor Roosevelt called on ‘all organs of society’ to play their role in making the Universal Declaration of Human Rights a reality – including in the ‘factory’ and on the ‘farm’: in all the ‘small places’.

- (ii) However it is true, as John Ruggie has reminded us this morning, that until recently **international human rights standards were seen only as yardsticks for Governments and not for Businesses themselves** – this of course has started to change since the mid-1990s – a change which will become a permanent reality from June this year.
- (iii) A final point, which I hope will become clear over the minutes ahead, is that the business and human rights agenda is no longer one pushed exclusively by so called ‘developed world’ businesses, governments or civil society organizations. We see, in different ways and for different reasons, **proactive initiatives on business and human rights arising in countries such as India, Colombia, Brazil, South Africa, Egypt, Kenya** and to some extent China and the nature of the developing business case or cases reflects this reality.

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The Business Case for Human Rights

Why should corporations care about human rights?

Responses from business worldwide:

- Because the law requires it
- Because the state is sometimes unable to protect rights.
- Because the state is sometimes unwilling to protect rights.
- Because it helps companies anticipate and mitigate human rights risks.
- Because it helps manage reputation.
- Because it can help companies get local approval.
- Because external stakeholders ask for it – investors, civil society, prospective employees.
- Because internal stakeholders want it – unions, current employees.
- Because it is the right thing to do.
- Because it creates value or opportunity for the company.

This slide shows the different elements that make up the ‘Business Case for Human Rights’ when the question is asked to a business audience in different parts of the world.

Although the priority given to the different factors, and their relative ranking in list, varies – the factors themselves are familiar to business leaders - in Jordan as much as China or Denmark.

- **Risk-related factors then to be the most prevalent**, and issues of operational or reputational risk dominate – sometimes accompanied by legal risk.
- **The relationship with Governments, with the State**, is a key element in every business culture and represents a key area of human rights-related risk – particularly in contexts where Governments are weak, corrupt or oppressive. This might be in relation to the States Duty as a regulator and enforcer (or the absence of fair regulation or – more often - its poor application), but also – very often – as States are also business partners through policies such as public procurement, export-credit or public finance – or commercial entities such as state-owned enterprises, sovereign wealth funds and joint ventures between the public and private spheres.
- **It is probably true to say that value or opportunity driven business cases are less common.** They are there, and they represent a strand in the total package for many corporations, but the business case for human rights is still predominately driven by concerns about risk and how best to mitigate risk in social and financial terms.

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The case against human rights in business...



- Human Rights is the stuff of Governments and it deflects attention from the main duty-holder
- It is a concept alien to business – ‘human rights’ does not resonate in a management context
- Human Rights are in imposition on some other cultures.
- There are better ways of expressing social performance
- We already have a CSR policy for which we have won many awards – why change a successful formula?
- The ‘competing umbrellas’ syndrome. Human Rights is just the latest fashion – trying to be the umbrella under which CSR or Sustainability fit.

It is also worth considering **the case against**. Not to quote Milton Friedman or Adam Smith, both of whom have been adequately misquoted on the subject, but rather to set out some of the common retorts and private thoughts when the issue of human rights arises in a business context. There is, of course, more than a grain of truth in each of the following assertions:

- **Human Rights is the stuff of Governments** and it deflects attention from the main duty-holder – the very States who draw up these human rights conventions in the first place;
- It is a **concept alien to business** – ‘human rights’ does not resonate in a management context – it brings into mind very political issues or the causes of marginalized populations – and is not central to the way that employees, customers or any other stakeholder perceive the firm. Human Rights are in imposition on some other cultures. Rolling out a human rights work through our global business will be seen as us imposing western values on other cultures.
- There are **better ways of expressing social performance** – we are happy with our existing social indicators – they are what our stakeholders understand and expect.
- We already have a **CSR policy for which we have won many awards** – why change a successful formula?

- The ‘**competing umbrellas**’ syndrome. Human Rights is just the latest fashion – trying to be the umbrella under which CSR or Sustainability fit.

I will not attempt a response to each aspect of the ‘case against’ here – hopefully by the end of my presentation you will be making your own minds up – and for each business the balance weighs slightly differently - in ‘business case’ terms at least. Just then a couple of quick retorts I could not resist:

I think the work of **John Ruggie has done much to allay the first concern** – and he has clarified the essential conceptual difference between State duties and Corporate responsibilities.

Also, in relation to the second and third bullet points, it is true there is a variance in terms how people in business approach **‘human rights’ that mirrors attitudes in wider parts of society**. In some contexts, such as the USA, Europe or a country such as Brazil – whilst the business case for human rights is emerging – most managers and even workers see ‘human rights’ as something that effects ‘other’ people in their own societies (and not necessarily very popular groups) and not necessarily themselves. They might also claim that ‘human rights’ has been imposed by a specific political agenda in the country, or through external governments or even trade protectionism.

This is a classic challenge – it does not take away from the business case but makes it harder to communicate the need for full integration across every business function and every geography. It is interesting that when the question is asked to businesses in contexts of recent conflict, such as Colombia, Northern Ireland or to some extent South Africa, a higher percentage of management and workers immediately identify with the issues at hand as being relevant to them directly – making roll out a little easier perhaps.

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Human Rights Due Diligence: “State of Play” Report, June 2010

ABB	Merck
Anglo American	Nestle
Cairn Energy	Newmont
Cerrejon Coal	Novartis
Chevron	Novo Nordisk
ENI	Philips
Essent	Shell
ExxonMobil	Syngenta
Gap	The Coca-Cola Company
General Electric	Total
Hewlett Packard	Unilever
Levi Strauss	

Last year, the Institute for Human Rights and Business published a ‘state of play’ report based on where 23 companies had arrived applying human rights due diligence across their business. Once again thank you to these businesses, several of whom are here with us today. We are currently starting work on the next addition, to be published in June 2012, in partnership with the Global Business Initiative for Human Rights.

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Five trends in the evolving global business case

The evolving global business case for human rights includes the following five emerging trends:

- Convergence around the Common Framework
- Understanding ‘risk’ and ‘impact’ in human rights terms
- Tackling contradictions in international, national and local law/practice
- Better managing human rights risks in areas of ‘weak governance’
- Human rights due diligence in business-business and business-state relationships

The remainder of my presentation is some of the key messages from the original 2010 report – which will shed some light on some of the key trends in the developing business case.

The evolving global business case for human rights includes the following five emerging trends:

—**Convergence** around the Common Framework

- Understanding ‘risk’ and ‘impact’ in human rights terms
- Tackling **contradictions** in international, national and local law/practice
- Better managing human rights risks in areas of ‘**weak governance**’
- Human rights due diligence in business-business and business-state **relationships**

Slide Seven

first trend: Convergence around a Common Framework on business and human rights

We understand from the 'Protect, Respect and Remedy' framework:

- Applies to all 31 internationally recognized rights
- Applies in all geographies
- Relevant to all business units
- All sizes of corporate enterprise and legal form

Human Rights Due Diligence requires:

- Responsibility requires an understanding of risk and impact
- There are mitigations a business can take (depends on leverage)
- It is about the core business but also ‘direct’ relationships
- Businesses must ‘know and show’

The **first trend**, is the business case for engaging directly with the UN ‘Protect, Respect and Remedy’ framework itself and a human rights due diligence approach based on identifying risks and possible impacts and then taking all appropriate mitigations and remedies.

Although the ‘**competition of the umbrellas**’ is a concern for some businesses, the UN framework and the Guiding Principles is an **umbrella without which you will definitely get wet** and one designed to be both robust in windy weather but also light enough to take on any journey.

There will be convergence around this framework which embraces **all human rights, all geographies and all business sectors** and requires businesses to ‘know and show’ the nature of their human rights risks and possible impacts. Very importantly, business sees this convergence in other international processes which perhaps will play as great a role in the implementation of the framework in the years ahead, such as:

- The newly revised Guidelines of the **OECD** in relation to Multinational Enterprises and the role of national contact points;
- The revised Performance Standards of the **International Finance Corporation**.
- **ISO 26,000** and to a growing extent the **Global Reporting Initiative**.
- Moves within the **European Union** towards greater coherence on reporting, transparency and public procurement.

The **business case for the Common Framework** is essentially that, a common 'level playing field' for all business globally – one that can give greater certainty from States to Business, and an increased uniformity of expectation across borders. For transnational corporations, at least, there is a strong case for further progress at the UN level in maintain a parity of interpretation – and there is a danger in too many state specific business and human rights requirements if they are not coherent from the Common Framework itself. The **Business Case** is then essential one of the absence of such a framework creating higher and more subjective demands of corporations in some geographies above those in others.

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The second trend is to have a **holistic understanding** of what is really meant by '**impact**' and '**risk**'. For many years, and in too many rooms, we have seen business and civil society representatives talk past each other on this.

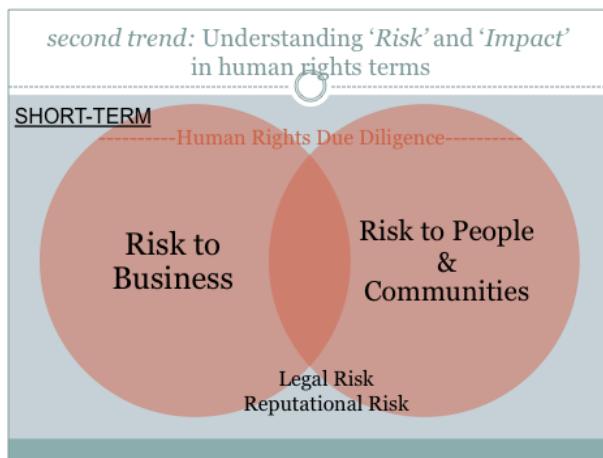
The classic '**sphere of influence**' model used to put a business at the centre of concentric circles – reinforcing the idea that a company's relationship with wider society could be understood with business at the centre of the equation.

The business case now tends to be shifting away from this, to a **more complex and relational understanding** of risk and impact. Fundamentally, this means seeing risk and impact not just in immediate business terms (i.e. the risk and impact to the Business itself) but also the **risk and impact faced by society** – by individual people and the communities of which they are part.

An interesting observation is that if we take a **long-term view** of risk or impact, then business and societal interests tend to **converge** – not always, but mostly. What is good for creating a healthy and sustainable society is also good for creating healthy and sustainable markets – there is a symbiosis between the two (with some exceptions that is).

If a business decides not to take the interests of the wider society into account (even some of its most marginalized populations), then it will – at some stage – start to **lose the social or even the legal licence to operate**. True, in some places change would be a long time coming, but it would come.

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The business case challenge often comes more in the **short-term**. Here there is a wider spread perception, both from the businesses involved in our research and also civil society observers, that what can be commonly understood as **business** 'risk' and 'impact', on the one hand, and **non-**

business 'risk' and 'impact, on the other, can be **divergent** in some key aspects over the shorter term.

Hence, pressures towards **short-term decision making** or profit reporting in business can create conditions in which human rights are put at higher risk – for example when **purchasing practices** repeatedly require last minute changes to products requiring suppliers to sub-contract at short notice or take on contract staff, or when **land** for a new commercial development is acquired at short notice resulting in a **lack of consultation** with the communities affected.

This trend of seeing risk and impact in truly human rights terms will perhaps start to throw up some interesting understanding about **how short-termism can negatively impact on human rights** and need for **careful due diligence** to ensure that it does not.

The emerging business case trend then is for **higher due diligence in decision-making** – with particular analysis of the **hitherto unforeseen consequences of short-term decisions**. We need look no further than the recent financial crisis to show us the importance of such an approach.

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The third trend driving the business case for human rights is that of the need of a much leveller playing field for international business. Now that a country such as **India**, for example, has more than **500 Transnational Corporations** of its own, the question that Indian business asks is whether

their social commitments to society (which remain largely philanthropic and rooted in the history and complex social hierarchy of Indian society) can be translated across international borders. This brings **Indian companies** directly into the **business and human rights discussion** – what are the international social norms by which an international corporation can do its business?

The **business case for focusing international human rights standards** becomes most evident when it is clear that **national social standards vary considerably** – and there are examples from every country on the planet of **local standards falling short of international norms**, both in terms of law, or more often the application of law.

It was the mis-match between international norms and local law and practice that brought Google, Yahoo and Microsoft together to form the **Global Network Initiative** in 2008 – based in Washington DC. Chinese national law required Yahoo to hand over the personal information of a journalist who was subsequently imprisoned for exercising no more than his freedom of expression, similarly **Google** attempt to resist Chinese law on curtailing the freedom of expression of its consumers in 2010.

HP and other IT companies have also had similar challenges with regard to defending the right to privacy of their consumers in China.

This is not to pick on China. We can find examples of such dilemmas for Information and Communication Technology companies all around the world, not least most recently three months ago in **Egypt** when a major British telecommunications company closed down the cell network for three whole days – at the behest of the **Joint Venture** partner (the former Egyptian Government) - without any prior warning to customers – many of whom were in state of high anxiety about events across the country.

Slide Thirteen

third trend: Tackling contradictions between international, national and local law/practice

The risks:

- Legal or other action by Home or Host state
- Business cost
- Ability to operate locally or regionally
- Safety of staff, workers and representatives

Mitigation:

- Country risk and project impact assessments
- Peer group/ sector-wide learning
- Trusted third parties: e.g. National Human Rights Institutions
- Multi-Stakeholder Initiatives

This trend then begins to **show business the value of understanding international human rights law** and that there will be potential risks for the business in situations where national law or practice might conflict with international expectations. Understanding these risks and undertaking comprehensive due diligence of possible negative human rights impacts is key to allow any business to take adequate '**reasonable measures**' in **mitigation**. This awareness will continue to drive the business case for human rights and the business case for corporations sitting down together, with their competitors and other stakeholders, to benchmark their human rights due diligence collectively.

There is a **clear business case** for tacking the dilemmas surrounding this mismatch between international and national standards or practice, and to do so in a **multi-stakeholder** way and to involve as many of your **sector peers** as possible. One of the best examples of the reputational safe haven this can provide is that of the **Gap Inc.** – comparing the international reaction to allegations of child labour in **Cambodia**, with those relating to **India** nearly ten years later.

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fourth trend: Better managing human rights risks
in areas of ‘weak governance’



The **fourth and penultimate trend** is that in contexts we might define as ‘**governance gaps**’ – where governments are unwilling or unable to protect the human rights of their citizens. Conflict zones or parts of the world ‘at risk’ of conflict are one example of this, so too perhaps situations of humanitarian disaster, acute poverty or rampant corruption.

Let take a look at the evidence around us to see what is really going on. In Ruggie framework terms – the question is: what particular precautions should a corporation undertake when doing business in context where the first pillar of the framework, the State Duty to Protect, is not fully functional.

Slide Fifteen

fourth trend: Better managing human rights risks
in areas of ‘weak governance’

The risks:

- Complicity in abuses
 - Inadequate due diligence to deal with absence of state protection
 - Investor and NGO demands
 - Political coercion - Divestment

Mitigation:

- Enhanced due diligence
 - Understanding extra-territorial accountabilities
 - Dialogue with 'home states' and intergovernmental community

Again, this **Fourth trend** suggests there is a business case for **understanding international law** (this time particularly **international humanitarian law** and **international criminal law** – or the “Red Flags” outlined earlier). Human rights due diligence needs to be undertaken with particular attention to **avoiding complicity** in human rights abuses perpetrated by the Government or other combatants.

There is a clear business case is for a **leveller playing field of international responses to the same context**.

An example in the **USA**, would be in **Title 15** of the **Dodd–Frank Wall Street Reform and Consumer Protection Act** in relation to the sourcing of metals and minerals from the Democratic Republic of Congo and activities in surrounding African states. This, in effect, puts a mandatory human rights due diligence requirement on **US companies, and others hoping to trade in the US**, in relation to supply chains relating to specific commodities and to a specific geography – regardless of how many steps down the supply chain this might be.

Beyond this example, is true also that many of the European businesses that have divested from very challenging markets in **Africa and Asia on ‘human rights grounds’** have done so due to **political and commercial pressure in the United States** more than as a result of their own due diligence on the ground in these countries.

Here is a **business case for understanding the nature of human rights risk and impact in conflict areas and other areas of weak governance**. All businesses would benefit from some **greater objectivity** here and this will continue to drive corporations to **engage with the Home States** on clarifying the **extraterritorial aspects of business and human rights** though **international cooperation** and not just **domestic politics**.

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fifth trend: Human rights due diligence in business-business and business-state relationships



The final trend is that of an increased focus on **business to business**, and **business to state** relationships. In our **2010 'State of Play' study**, most of the 23 corporations identified this issue specifically as a **key area of risk**.

There are some fundamental similarities and fundamental differences in how non-financial risk management is managed in the following contractual relationships:

- a. Suppliers
- b. Joint Ventures (minority and majority)
- c. Mergers
- d. Acquisitions
- e. Distributors
- f. Licensees and franchisees
- g. End-users
- h. Customers

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fifth trend: Human rights due diligence in business-business and business-state relationships

The risks:

- Contracts with States that 'freeze out' human rights
- Lack of control over non-financial issues in M&A and Joint Ventures
- Lack of control over product misuse or dual-use
- Ambiguity over control within consortia, state-owned enterprises
- Perceptions of 'brand' leverage in long value chains

Mitigation:

- Mapping existing approaches to human rights in relationships
- Human Rights due diligence through process
- Legal health checks of all key contractual relationships

This final trend is one my Institute will be working on over the two years ahead with several businesses in this room and in partnership with the **Global Business Initiative on Human Rights**. We will look across the different types of commercial relationship to understand how governance, leverage and control operate through the lifecycle of relationships up to and beyond the point of negotiating and agreeing **contracts**.

There is **self-evidently a strong business case** for understanding how human rights risk can be mitigating through the contractual processes – and to learn from work already understand in the fields of environmental, health and safety, as well as due diligence in relation to corruption and bribery.

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Conclusion

"We now have the popular concept of corporate social responsibility (CSR). It is a concept unique to business, implying that, unlike any other legal activity, social responsibility is not inherent in what it does. Yet providing good services and products is a social responsibility, so is making a profit. CSR ... too readily gets treated as a add-on, as charity or philanthropy, or even a marketing ploy, rather than something that should pervade the whole of a business and be embedded in the core of its thinking and practice."

- Sir Geoffrey Chandler (2001)

So in conclusion, we see a number of trends that would suggest that the business case for human rights will grow both in depth and global relevance.

My final comments this morning are dedicated to **Sir Geoffrey Chandler** – who passed away early this month at the age of 88 – and was an inspiration to many of us. A senior executive at Shell Oil for 30 years, and then the founder of the UK Amnesty International Business Group, he always pushed us to clear in both our thinking and our actions.

For example, in 2001, he wrote:

“We now have the popular concept of corporate social responsibility (CSR). It is a concept unique to business, implying that, unlike any other legal activity, social responsibility is not inherent in what it does. Yet providing good services and products is a social responsibility, so is making a profit. CSR ... too readily gets treated as a add-on, as charity or philanthropy, or even a marketing ploy, rather than something that should pervade the whole of a business and be embedded in the core of its thinking and practice.“

Geoffrey would tell us that the business case for human rights is bloody obvious and we should go on and get to work in applying it – each and every one of us.

Thank you for your attention.