

2015 Australian Dialogue on Business and Human Rights
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“Business and human rights – do we have the right incentives?”

Keynote Speech by John Morrison

Executive Director of the Institute for Human Rights and Business

I would like to thank the Australian Human Rights Commission and the UN Global Compact Network Australia for inviting me to join you today. It's my first time visiting Sydney and I'm delighted to have the opportunity to share a few thoughts on the business and human rights agenda. I do so from my position at the Institute for Human Rights and Business. We're a global “think and do tank” with regional centres in Myanmar, Kenya and Colombia as well as a consortium in China. Our thematic research and policy activities focus on the connections between private sector activity and human rights across four global flows of workers, finance, commodities and information.

We should take a moment at the start to reflect on how far the business and human rights agenda has moved in recent years. You will recall that in 2011, the Australian Government supported the UN Human Rights Council resolution that unanimously endorsed the Guiding Principles on Business and Human Rights (GPs), the final outcome of John Ruggie's six-year mandate as the UN Secretary-General's Special Representative on Business and Human Rights. This was a historic achievement, not only in reaffirming states' duties to protect their citizens against human rights abuses in which business is implicated, but also in establishing for the first time that business itself has its own responsibility to respect these same rights. The Guiding Principles make clear that the corporate responsibility to respect human rights must be backed up with concrete action through ongoing due diligence processes. The GPs stress as well that both governments and businesses need to provide effective remedies for victims when abuses do occur.

In the years since their endorsement, the focus has rightly been on implementing the GPs in different contexts. This has included efforts by global institutions like the UN and OECD as well as regional bodies such as the European Union, African Union and ASEAN. It has also involved sector-specific initiatives by a range of industry groups and national action plan processes and other initiatives including dialogues like this one.

Four years later, business and human rights is slowly becoming a bigger part of the international policy agenda. We can see this in a number of contexts, but let me point to just a few examples over recent months. The families of the 1,100 victims of the Rana Plaza factory collapse two years ago in Bangladesh have finally received compensation owed them, thanks to the personal intervention of Chancellor Merkel of Germany whose leadership was also critical in the recent G7 statement on responsible business and supply chains. That statement included explicit references to the UN Guiding Principles and the OECD Guidelines on Multinational Enterprises. The International Labour Organization has made responsible business supply chains its focus for 2016. Even sporting bodies such as FIFA have come out with new human rights commitments.

At national level the debate has moved forward as well. For example, the China overseas mining guidelines, launched at the end of 2014, are more explicit in human rights terms than most OECD equivalents although it remains an open question how far China might move on such issues during its chairing of the G20 next year. The Asian Infrastructure Investment Bank has received a good deal of discussion although it is too soon to predict where it will emerge on standard setting. Here in Australia, it is encouraging that more and more companies are developing their own human rights policies and domestic and international supply chain issues have particularly been in the spotlight. An increasing number of companies are joining international multi-stakeholder initiatives like the Voluntary Principles on Security and Human Rights.

It is notable too that Australia is one of the first countries where the concept of “social license to operate” arose, largely in the mining sector. The subject of “The Social License” is one I was foolhardy enough to write a book about last year. My aim was to point out that social license is

an increasingly material concept that no longer just relates to mining activities, but to the activities of all businesses and – if we think in social contract terms – to government and civil society as well.

There is nothing new about the idea of social license but it is re-emerging today as a way of expressing new forms of social relationships between non-state actors principally. Don't take my word for it. Just read the recent Mansion House speech given by the Governor of the Bank of England, Mark Carney – a Canadian – in which he uses the term five times in relation to the need to reform financial markets. Carney is making our work much easier – he is connecting the dots and beginning to create space for much greater financial incentives for businesses that do the right thing. I should also add that Mark Carney chairs the G20 Finance Committee.

I think we would all agree that communities expect more of businesses today, indeed, society expects more. The idea that shareholders are the beginning and the end for incentivizing publicly listed companies is an increasingly redundant concept, as is the notion that shareholders do not see longer-term value in minimizing risk by acting responsibly. Some contend the short-term concept of shareholder value is actually destroying business. For me, the concept of “stakeholder” does not cut it as a replacement however. The people upon which businesses have their greatest impacts – workers, communities, consumers – they are not merely stakeholders. They are “rights-holders” to whom businesses have clear responsibilities as set out in the UN GPs.

What then is the nature of the social contract between business and the rights-holders upon which they have the most significant impacts? This is the fundamental social license question in my mind. And there will be big advantages for those businesses that can figure it out. Investors are important stakeholders for most companies, but if business can build greater trust, consent and legitimacy with all those whose rights they may affect – positively and negatively – then the rewards will be far greater still.

So there is much happening – perhaps more than at any time in the past 15-20 years when I first worked on these issues for Anita Roddick at The Body Shop. But will business and human

rights ever become a truly mainstream issue in the way that discussions about health and safety, climate change or anti-corruption have? I think it might, but for that to happen we need to be honest about the real incentives and disincentives at play, and how we might scale up from where we are today.

Let me turn briefly now to five business and human rights trends that in my view are key to determining how this agenda will unfold over the coming years.

(1) Aligning government policies and opening pre-competitive space for business to act responsibly

First to the role of government – fundamental in human rights terms and also as the first pillar of the UN’s “Protect, Respect, Remedy” framework – that is, the state duty to protect human rights. There are currently 19 governments that have undertaken or are undertaking National Action Plans on Business and Human Rights. These are no longer restricted to European Union member states, as the list now also includes countries such as the US, Colombia, Chile, Mexico, Mozambique and Kenya. These processes vary significantly in their ambition and scope. But what they have in common is a focus on implementation of the UN Guiding Principles including the need for policy coherence across government departments and also making business and human rights a permanent area of policy. They also, in my opinion, perform a deeper function – which is important to how seriously business can and should take this whole agenda: that of where the line can be drawn between competitive and pre-competitive action.

One example is the issue of Corporate Social Responsibility or CSR. CSR has many definitions around the world. Sometimes when I am teaching I challenge students to marry up national CSR definitions of G20 countries with their owners. CSR is generally seen as a competitive space – part of the way businesses can compete against each other through reputational benefits or in substantive terms (particularly when we consider climate change adaptations, or micro-finance for example). But does business and human rights fit here? Well yes to some extent above the baseline of the corporate responsibility to respect human rights (that is,

beyond the minimum requirement that businesses “do no harm”) and into activities aimed at supporting human rights – in other words - voluntary positive actions that advance and promote rights. In GPs terms, the corporate responsibility to respect is now an international norm of expected conduct and therefore should be understood as a pre-competitive issue for all businesses. Does business understand this? Some do. Do governments communicate this clearly? Not many.

So National Action Plans, and with them government policies relating to trade, development, investment, public procurement and different aspects of law are very important tools in signaling and creating pre-competitive space in which businesses can work together, with government and other stakeholders to find the best ways of responding to human rights dilemmas. The process of drafting these plans too can be helpful in and of itself to build networks and partnerships between different stakeholder groups.

Through its participation in the Voluntary Principles on Security and Human Rights, Australia is no stranger to multi-stakeholder dialogue in this area and the benefits of collaboration for government policy coherence, clarification for business and other stakeholders of government expectations and support for companies trying to do the right thing. I understand Australia does not yet have a national action plan though progress is being made in specific areas. I hope we can discuss today whether a more holistic approach through a national action plan type vehicle would help in further supporting all stakeholders in this area. And in particular, whether you think a National Action Plan on business and human rights for Australia could help signal other national priorities, at home and overseas, where business, governments, trade unions and civil society can and should collaborate for better human rights outcomes.

(2) Implementing the UN Sustainable Development Goals (SDGs)

The Sustainable Development Goals to be signed off at the UN in New York next month represent the pathway forward for us all over the next 15 years on some of the world's most pressing developmental and environmental concerns. The role of business has been factored in much more than for the Millennium Development Goals in 2000. Arguably many of the SDGs are unachievable without active business engagement. Take for example SDG 8 to ***“Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”***. There are very few economies where work can be provided for the majority without a vibrant and competitive private sector. But how will this be done? Full employment for all by 2030 is one heck of a goal in its own right. Ensuring these jobs meet the ILO's definition of decent work is even more ambitious. It is interesting how far debates on living wages have progressed over recent years in many parts of the world. Yes, it took the factory collapse in Rana Plaza for the Bangladeshi minimum wage to be increased by 60% and many would argue it is still far below what a decent wage should be. But interesting also that the right of centre new British Government also committed itself to a living wage a few weeks ago.

But decent work is about more than wages. It is also about the fundamental rights of workers themselves, to organize, assemble, bargain collectively and so on and also in a wider human rights context where trade unionists and human rights defenders are at risk, and where the families of workers can live with dignity. Perhaps the most widespread of business and human rights issues around the world is the use of third party labour providers – labour agencies have become a powerful adaptation to the flexible nature of global labour markets. Most of these agencies do a good job, but there is the unregulated bottom end of the market, which relies on coercion, exploitation and – at times – forced labour and human trafficking.

Whether it be berry pickers in Scandinavia, fruit and vegetable pickers in Florida, farm workers in the UK (or Australia), Burmese fisherman in Thailand, Serbian construction workers in Russia, internal migrants in China, domestic workers going to the Gulf – the issues

are remarkably the same. Anyone with a global supply chain should know these issues – and recent legislation in the USA and UK require full disclosure for business on this issue. I understand recent legislative changes create obligations on business here regarding the worst forms of labour exploitation and also that the Attorney-General’s department is convening an expert group to look at other policy responses including disclosure.

It is clear that SDG 8 will not be reached if we don’t understand how domestic labour markets respond to international pressures and global supply chains, not least through labour migration. It is also the case that economic growth no longer creates the same number of jobs and technology is intervening – therefore entrepreneurs are essential, in particular those that create local sustainable jobs within communities. We should also recognise that human rights are central to many more of the SDGs – ending poverty and hunger, addressing inequality, ensuring healthy lives, inclusive education, gender equality, access to water, sanitation, energy, making cities safe, peace and good governance. Human rights sit at the heart of these, and there are significant opportunities for businesses that contribute. Next month we at IHRB will be releasing our own take on the business role in fostering sustainable development and encouraging implementation of the SDGs as part of our ongoing State of Play report series. These reports look at how the business and human rights agenda is influencing different issues of policy and practice and we look forward to engaging on the important links between responsible business, sustainable development and respect for human rights.

(3) Shaping real market incentives for greater transparency

The UN Guiding Principles – in elaborating the second pillar of the “Protect, Respect, Remedy” framework - the corporate responsibility to respect human rights – ask companies to “know and show” in relation to their most salient human rights impacts. The question always comes then - well how much knowledge of potential adverse impacts should my company actively acquire? Gaining knowledge of human rights risks clearly takes time, resources and might embody short-term risk for the business. Likewise, just how transparent are companies expected to be about such information? On some issues, governments are starting to introduce much needed regulation, which moves us towards a more level playing field. For

example, the due diligence guidance in the US and elsewhere on conflict minerals, the US reporting requirements on Myanmar, that in the UK and US on trafficking and forced labour in global supply chains, the recently agreed EU reporting requirement for the largest 6,000 companies and due diligence legislation currently being debated in the French Parliament all point to new state action in this area. Added to this, the important work and public statements of National Contact Points within the OECD system. All of these examples suggest we are slowly getting to greater clarity on “knowing and showing”.

One important development in this area is the UN Guiding Principles Reporting Framework providing guidance to companies on how to report their salient human rights risks in line with the GPs. You will see a growing number of companies follow the lead of Unilever and Ericsson both of which are using this new reporting tool. Another important initiative we are involved in is developing a Corporate Human Rights Benchmark, eventually for the top 500 globally listed companies, which will rank companies not just on intent but also actual human rights performance. More locally, our Myanmar Centre for Responsible Business now ranks the 100 largest Myanmar companies on basic human rights practices and other criteria – an important tool for international companies seeking responsible local partners.

So slowly, and sometimes on the back of the anti-corruption movement, we are seeing the case for greater human rights transparency being made and won, partly on high impact human rights issues such as trafficking, forced labour or conflict and partly in the context of high human rights risk countries such as Myanmar. Let’s see what gets developed for the rush of international investment into Iran that we expect to see over the years ahead, and to a smaller extent in Cuba. My own organisation, through the Corporate Human Rights Benchmark project and other tools, believes this greater transparency should lead to firmer penalties for abusers but also greater rewards for companies trying to do the right thing, and sometimes succeeding. We hope the ranking of corporate human rights performance will start to move investors and eventually consumer behavior. We think governments, including the Government of Australia, might find such disclosure and comparison important in terms of its own public procurement decisions.

(4) “Striving for excellence” – Mega-Sporting Events and human rights

There is no better metaphor for human rights than sport. When sport has gotten behind particular human rights issues – be it the Para-Olympics, kicking racism out of football or gender equality in events – the results have been significant. Without equality of treatment on the field, sports do not work. This same understanding is now beginning to affect the way we think about sports off the field as well, in particular in relation to the tendering, delivery and legacy of Mega-Sporting Events. If you think about it, the 7-9 year life cycle of such an event is the microcosm for just about every business and human rights issue, from land acquisition and resettlement, to construction and infrastructure, security, supply chain to freedom of expression in relation to the event itself.

One of Australia’s next major international sporting events is the Commonwealth Games on the Gold Coast in 2018 and it is the Commonwealth Games Federation, more than any other international sports bodies, that has led the way on committing itself to human rights due diligence as we saw in Glasgow 2014. So we have high expectations for the Gold Coast and then for Durban in 2022.

We expect that by the end of 2015, many of the world’s major sporting bodies – including the International Olympic Committee and FIFA, will join the Commonwealth Games Federation in making human rights statements. Major sponsors and broadcast companies will need to do the same. We have a golden opportunity but only if we can show tangible results. This means more transparent and accountable processes in how Mega-Sporting Events are bid for and awarded, and events that deliver real value to the communities and societies in which they are hosted. There is much that needs to be done in relation to Qatar 2022 and Russia 2018 to rehabilitate the world’s trust in FIFA. You will all be aware of the significant human rights concerns that have surrounded both events. Similarly, the learning between London 2012 and then on to Rio 2016 and Tokyo 2020 has been stronger within the Olympic tradition but human rights concerns have all too easily been relegated to a less prominent position. For example, the role of an independent oversight committee, so important in London 2012, has not been replicated in Rio and has not yet been confirmed for Tokyo. We also hope the Gold

Coast Games in Australia will be one that many learn from including in human rights terms. Many of you in this room can help whether in the capacity of sponsors, investors, suppliers or civil society members encouraging greater accountability.

(5) Tracking the potential for new developments in international law

A final trend worth watching concerns UN discussions on the potential for a new international legal instrument on business and human rights. A range of governments led by Ecuador and South Africa met last month in Geneva to begin consideration of this question. Key so called “home country” governments including Australia, the US and the EU declined to participate, suggesting significant hurdles to implementation of any eventual outcome of this process.

The evidence suggests there might well be a need for binding international rules in this area. We are all aware of cases when businesses have operated with a sense of impunity, taking advantage of different legal jurisdictions to try and lessen the risk of being sued for alleged human rights abuses. This would be one driver for new international law – to try and control some of the perceived governance gaps associated with global business activity, in particular when operating in weaker jurisdictions. But this is not the same as a Treaty focused on what are already international crimes (the very worst forms of human rights violation), which is different again than focusing on the most widespread of negative impacts relating to business activity.

Until there is agreement on the governance gaps that need to be addressed at international level, it is hard to be specific about what the scope of a new instrument should be in terms of the type of company, range of human rights or even the category of law it targets. In our submission on the new UN process, we reiterated our support for binding rules that might really reduce human rights related harm. Of much greater concern to me, however, is how the focus on a proposed Treaty distracts from much more immediate legal opportunities. For example, how many civil society organisations are pressing for the effective ratification and implementation of the 2014 ILO Forced Labour Protocol, which looks to business to undertake human rights due diligence relating to forced labour, human trafficking and

modern day slavery? Where do countries currently stand on the ratification of this historic protocol? What forms of human rights due diligence could help businesses comply with the Protocol through their global operations and supply chains?

All of these debates matter because ongoing global attention concerning business and human rights issues can drive momentum for policy and regulatory changes at home. So I would encourage you to get involved in increasingly public consultations around these issues to ensure your views are heard.

Conclusion

I conclude by saying how much I welcome this opportunity for us all to take stock of what is happening here in Australia on the business and human rights front, and in relation to developments in other countries as well. I am particularly interested to hear from you about domestic business and human rights related issues including what I understand to be important work around indigenous reconciliation as well as issues concerning migrant workers. I hope we can also share ideas about what is working well and what more the Government of Australia, business, civil society, investors and trade unions can actually do to harness national opportunities for better human rights outcomes while engaging effectively in different partnerships aimed at creating real and lasting change.

Thank you again for the invitation to join you today. I look forward to our conversation.