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Advice: Unfold Human Rights

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by

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1. Abstract

The article focuses on the latest developments within the CSR movement, introducing the concept of corporate social opportunity (CSO) to the CSR framework. The underlying argument is that human rights provide business with an effective, trustworthy and simple approach. It is in other words advantageous for business to use human rights, as defined in the UN Bill of human rights, as the core of their CSR strategy. The unfolding of human rights' relevance to business substantiates this argument. Not only do human rights provide for an encompassing framework for risk management; the article shows how the UN Bill of human rights can form the basis of a proactive approach, providing companies with a competitive edge.

2. CSR Context - Corporate responsibilities

The past thirty years the responsibilities of companies have been intensely debated. During the 70's and 80's the attention was primarily focused on the impact on the external environment. However, in the 90's focus has been expanded to embrace social responsibility and a widened economic responsibility.

Despite small nuances concerning the way various terms conform into the discourse, the following concepts appear to have gained consensus as corporate responsibilities amongst leading actors in the field:

The main concept is Sustainable Development. Sustainable Development for business is defined by the Triple Bottom Line, popularly described by the three Ps; *People, Planet, Profit*, describing how business can assist contributing to sustainable development. As a common appellation the concept can be framed as Corporate Responsibilities, consisting of social, environmental and economic responsibilities.

The content in relation to the triple bottom line has developed over time. As suggested in the CCBE publication "A GUIDE FOR EUROPEAN LAWYERS ADVISING ON CORPORATE SOCIAL RESPONSIBILITY ISSUES, SEPTEMBER 2003" the issues to be covered under the sustainability considerations are multifarious. This paper supports the proposed delineation of the 'social bottom line' in accordance with the International Bill of Human Rights. The areas that companies can expect to be held accountable against in relation to Corporate Responsibilities may be described as follows:

2.1. Social Responsibility (People)

- Labour rights: Slave, forced or compulsory labour; child labour; freedom of association/collective bargaining; non-discrimination/equal opportunities; rest, leisure and holidays; minimum wages; health and safety;
- Right to work: Protection against unjustified dismissals and technical/vocational guidance and training
- Right to life
- Development rights: Right to education; to health; to adequate food and fair distribution of food; to clothing; to housing; to social security; to enjoy technological development;
- Right to hold opinions & freedom of expression, thought, conscience and religion
- Right to a family life
- Right to privacy, e.g. surveillance, personal information, drug testing
- Minority rights to culture, religious practise & language and cultural rights (indigenous peoples)
- Right to peaceful assembly
- Right to take part in political life
- Informed consent to medical / biological trials
- Intellectual property rights and the right to enjoy technological development[1]

2.2. Environmental Responsibility (Planet)

- UN Convention on Bio-Diversity: in-situ and ex-situ conservation, impact on diversity, use of genetic material, technology transfer;
- The Precautionary Principle (In doubt about negative environmental impact of a given action – abstain);
- Use and handling of GMOs (Genetically Modified Organisms);
- Air emissions and impact on global warming (greenhouse gases);
- Impact on the ozone layer (Montreal Protocol Annexes);
- Prohibition of use of certain materials and substances, hereunder safe handling/transport of dangerous substances;
- Distance to residential neighbourhoods for production sites;
- Soil, ground water and surface water contamination;
- Treatment and reduction of waste water;
- Water consumption and leakage;
- 'Eco-efficiency', consumption of raw materials, and consumption of energy;
- Export of waste and re-use of material;
- Animal welfare

2.3. Economic Responsibility (Profit):

- Financial profit, economic growth and asset creation;

[1] The listing only includes the rights, which are directly relevant to all business and leaves out those rights with a mere indirect effect. The rights listed are the rights drawn from the Covenant on Civil and Political Rights (CCPR) and the Covenant on Economic, Social and Cultural Rights (CESCR). These covenants include all relevant human rights on a general level. They have been followed up by more specific conventions on torture, racial discrimination, woman and children, etc. that can give value to the interpretation of the various articles included in the covenants. Other rights may be of specific relevance to certain industries such as companies providing security or detention facilities.

- Business ethics, corruption and bribery;
- Direct and indirect economic impact on communities through spending power (suppliers, consumers, investors, tax payments and investments), and geographic economic impact;
- Economic impact through business process: outsourcing, knowledge, innovation, social investments in employees and consumers;
- Monetary support for political parties, lobbying, and other 'political' activities;
- External economic impact from pollution, internalisation of externalities, value of consuming products;
- Stock exchange behaviour, including insider trading;
- Economic regulation, tax incentives, redistribution;
- State contracts and state subsidies;
- Intellectual property rights, hereunder patents, pricing and the impact on economic and societal development potential;
- Anti-trust & competition, including market impact and 'alliances';
- Board and executive remuneration and role of accountants;
- Donations;
- Taxes, including 'transfer pricing'.

Companies are compelled to find sustainable solutions for their relation to *human beings* (CSR, hereunder the relationship to employees, suppliers, customers, local communities and other stakeholders), to the *external environment* (including biodiversity and animal welfare), and to *economy* (including the economy of the community).

In practice it is not possible to describe each pillar as simple as illustrated. Shear zones exist between the pillars. For example, corruption and bribery will at a first glance belong to the expanded understanding of the 'profit'-pillar as having an immediate impact on the economy of the community, notwithstanding that the practice has human rights implications (in the form of economic discrimination and denying equal access to the law) as well.

The 'planet'-pillar describes the impact on the external environment, notwithstanding that the environment has great impact on the right to health, a basic human right. Consequently, reporting strives towards a holistic approach embracing all three pillars in one report. Such reports are often referred to as 'Sustainability Reports'.

3. Why CSR? - Corporate risks and opportunities

Companies involve themselves in CSR from many motivations, personal, morally, economic, legal etc. Across the various motivations there exists certain risks and opportunities. Companies that choose to ignore CSR may encounter consequences. As pointed out by the CCBE publication mentioned above, the risks might be summarised as follows:

- Increased civil and criminal litigation against companies and management;
- Loss of top talents;
- Loss of investors;
- Increased cost of capital;
- Decline in stock value;
- Loss of customers and business partners;

- Loss of public contracts and public procurement procedures e.g. Word Bank, European Union, European Bank for Reconstruction and Development;
- Exposure to naming and shaming campaigns and blacklisting campaigns;
- Loss of brand value.

On the other hand, there are many opportunities available to companies that implement CSR strategies and policies:

- Enhanced corporate image and added brand value;
- Attract and retain top talents;
- Enhancing job satisfaction, loyalty and identification;
- Access to quality business partners;
- Obtaining the status of a “preferred partner”;
- Customer satisfaction and loyalty;
- Improving risk management;
- Lower insurance fees;
- Favourable access to capital markets;
- Attracting Socially Responsible Investment (SRI), which is mushrooming;
- Establishing a good footing with public authorities and the general public;
- Creating a basic reference point and language for partnerships;
- Public relations opportunities;
- Contribution to the development of stable global markets.

The opportunities listed above are relevant for every company adopting a CSR strategy. In section 6, the article will touch upon the opportunities of companies adopting a proactive strategy based on human rights. It shall be noted that the foremost argument that the author have met from companies during the past ten years of practising CSR is that of attracting and retaining top talent.

4. How CSR? - UN International Bill of Human Rights as the core of CSR

This section describes the motivation for placing universal human rights standards at the core of CSR. Corporate ethics is a term often used to cover the standards of "good corporate behaviour" with regard to the "people" and "planet" bottom lines. But defining ‘ethics’ is in itself a task that has occupied philosophers for centuries. Corporate ethics should be based on social values that have bearing from culture to culture. Identifying such values is of paramount importance. International Human Rights represent a set of values with a uniquely attractive feature: The Universal Declaration of Human Rights and the two covenants that followed in 1966, (in all referred to as the International Bill of Human Rights), represent the only values politically agreed, accepted and recognized by the vast majority of nations in this world. Human rights are the only well-defined principles that can claim status as an international reference for responsible corporate behaviour.
Arguments can be summarized as follows:

- There is a general support to Human Rights as contributing to sustainable development,
- They are globally recognised and accepted,
- They provide a good basis for making values operational

- Most NGOs addressing the problematic parts of globalisation base their arguments on human rights issues and understanding.

Relatively few leading companies mention human rights principles explicitly. However, most codes of conduct include core labour rights, although some are restricted to the human right described as safety and health for workers. Such limited approaches will not benefit the company that wishes to avoid risks (challenges) or explore opportunities.

It is proposed that any corporation may minimize risks of loss, find new opportunities and sources of profit, while at the same time promoting human rights by applying to their operations a CSR policy based on international human rights standards as the globally recognised yardstick, and implemented by a multi dimensional approach using stakeholder cooperation and dialogue.

The ultimate precondition for exploring and deciding a company's position in relation to CSR is a commitment by owners and top management, not only to a vague notion of CSR, but to international human rights. Commitment requires that persons possessing power in the company are, or become, motivated to this commitment. At first glance, a rights based approach may appear difficult for persons holding power. It is a well-known dilemma within the practice of promoting human rights with states, that granting rights to individual stakeholders sets certain limits for those holding power. The same dilemma is relevant to business. Furthermore, many businesses live by the paradigms of the industrial age whereby shareholder value optimisation is the only relevant parameter. To overcome resistance to letting go of power, relevant challenges and opportunities need to be considered. The first step will be to unfold human rights and explore their relevance to business.

5. Why are human rights relevant to business?

To give a clear picture on why and how the various human rights are relevant to business, this section goes into detail with a few specific rights. Similar descriptions can be applied to all the rights mentioned under 2.1 'Social Responsibility (People)' above, however space does not permit such exercise. The rights below were chosen based on their relevance to the cases described in paragraph 7 and serve as an illustration of how the rights appear unfolded.

5.1 Right to non-discrimination and equal opportunities (CESCR art. 2)

The issue has in recent years increasingly become an issue for companies worldwide. Companies that have not provided equal opportunities have experienced huge costs due to penalties, compensations and loss of reputation. Legislation is strengthened in Europe following the example from the US. Moreover, globalisation, prospected skills shortages and demographic development have led to a focus on the needs and advantages of a diverse workforce. Finally, as a sustainability issue, discrimination appears to be the main root cause for conflicts and hindrance to sustainable social development worldwide.

Discrimination can be defined as any distinction, exclusion or preference made on basis of race, colour, sex, sexual orientation, marital status, medical condition, pregnancy, family planning, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The companies will

have to pay attention to non-discrimination in recruitment, promotion, training, sanctions, lay-offs etc. Further, they should monitor the development in the company.

5.2 Right to Health (CESCR art 12)

The right to health is of paramount importance to pharmaceutical companies and it will be expected that they have considered their impact on the right to health, also on a global scale. A series of issues can be identified under each aspect of the right to health

Availability • Administration of patents • Decision to invest in research to develop new medicines • Medicine testing • Authorisation of new products • Market access constraints • Shortage of pharmaceutical supplies • Shortage of trained medical staff • Shortage of health infrastructure	**Accessibility** • Repressive distribution/vulnerable groups • Selective territorial distribution • Selective promotion • Rural communities • Self-medication • Ineffective distribution • Access to information and health education • Training of health professionals and patients Affordability • Pricing • Insurance • Alternative products • Health financing • Cost effective packaging and distribution
Acceptability • Medical ethics especially testing • Religious conviction, i.e. use of animal parts for medicine or treatments requiring religiously prohibited behaviour • Treatment that violates right to privacy • Off label use of medicine • Services, treatment or preventive actions favouring men or majority groups in society	**Quality** • Withdrawal of a product • Misuse of product • Sub-standard and counterfeit drugs • Expired medicines • Drug formulation and label • Product upgrading • Badly trained medical staff

5.3 The right to moral & material interests from inventions and to participate in the technological development (CESCR Art 15)

The right to enjoy the benefits of scientific progress and its applications has an enormous potential for development in societies. Since material progress is often the result of scientific progress, it implies that everybody has access to these results. Internet, new technologies, new foods etc. must not be restricted to the few. Access must be kept as cheap, easy and non-discriminatory as possible. It shall, on the other hand, not be understood as a duty to reveal scientific inventions. Issues relevant to business in general are:

- Moral and material rights of employees as authors
- Scientific production may result in a patent ensuring the commercial exploitation of the discovery. The rights of the inventor to participate in the material gain from the invention should be protected by the employer.

- Patents/TRIPS agreement is generally by NGOs seen as an obstacle to the development of third world countries hindering access to the benefit from scientific and technological discovery.
- Claiming intellectual property rights for existing genetic combinations is an issue for companies; e.g. Basmati rice.

5.4 Right to life (CCPR art. 6)

Corporations has to take the right into consideration and refrain from activities that lead to the loss of life, be it from polluting the environment or through the use of armed security personnel. Further companies will have to ensure that other actors, which the company influences, do not violate this basic right. Corporate history displays a series of very tragic incidences where corporations did not respond adequately to its responsibilities in relation to the right to life. From the Bhopal disaster, over the Ogoni people in Nigeria, to the lives of HIV/AIDS victims in South Africa the corporate world will continuously be held responsible for ensuring the right to life.

5.5 Informed consent (CCPR art. 7)

Medical experimentation represents an issue of special importance to pharmaceutical and other life science companies. Medical experiments shall be carried out with the informed consent of the individual and should not lead to severe physical or mental suffering. Under normal conditions experiments shall be guided by professional ethical standards ensuring that sufficient information is given and informed consent obtained. Experience shows that the following issues may arise:

- Trials under abusive conditions (especially in economically developing countries)
- Unclear distinction between experiment and treatment when new products are introduced
- Premature introduction in countries of permissive regulation or weak enforcement
- The accuracy of the information provided and the ability of the patients to understand it
- Conflicts between considerations of best treatment of the individual and considerations of experiments in which the patient participate
- Unforeseen properties of products/consequences of treatment
- The judgement of risks against perspective of improvement in the condition of the participants

5.6 Right to privacy (CCPR art. 17)

Companies must be particularly cautious regarding the right to privacy of the employees and costumers. The companies must consider how they handle private mails of the employees, personal information of costumers etc.

Dealing correctly with the right to privacy may be viewed as an obstacle for the company to exploit business advantages such as improvement of workplace safety, increased accuracy and efficiency, transparency in individual performance, marketing/resale opportunities, communication opportunities, improving products' quality, rationalization gains of new technology, B2B opportunities, knowledge and learning opportunities, and preventive measures opportunities. However, apart from violating a basic human rights principle, non-compliance may lead to a feeling of reduced respect for employees' independence, dignity and integrity, the feeling of being watched,

a change in psychological environment, e.g. more competitiveness, more stress and stress-related illnesses and potentially a detrimental loss of trust with stakeholders.

The growing concern over the impact of this information revolution on the right to privacy has led to national as well as international regulations enacted in an attempt to protect personal data. National laws have been passed in the US and in the UK to regulate workplace monitoring and international agreements to regulate trans-border data flows. Consumers and employees have lodged several high profile lawsuits against companies for violations of their right to privacy.

5.7 Freedom to hold opinions and freedom of expression (CCPR art. 19)

When dealing with the right to hold opinions and freedom of expression in a business perspective it is important to underline that there are differences between public and private companies. Whereas freedom of expression in public entities is regulated by public law, the same freedom is primarily rooted in labour law and collective agreements in the private sector. However, a set of general business issues may be extracted from a series of sources including international and national literature, legislation and case law:

- The right of the employees to have an opinion and express themselves freely.
- The right of access to business information. Transparency and access to information for employees may be seen as positive signs encouraging openness and sharing of concerns. This includes sharing of information of general importance to the company, e.g. with regard to health and security at work.
- Disclosure of business information. Normally, a good relationship between two entities is based on a duty of loyalty. Although having a duty of loyalty to the company employees have the right to criticise the management and company in relation to issues linked to their employment. The right extends to the level where the criticism is unlikely to harm the company
- Professional secrecy. Contractual obligations may be imposed on the employee for business reasons in order to ensure confidentiality. In order to provide equal and foreseeable terms for all the conditions should follow the three-part test described above.
- Criticism of management/company. An employee has a right to criticism and to take action against an illegal or abusive order. In order not to harm the company it is a main rule that criticism should firstly be taken within the company.
- Criticism of general nature, outside working time. An employee has a right to criticism and to take action against an illegal or abusive order. In order not to harm the company it is a main rule that criticism should firstly be taken within the company.

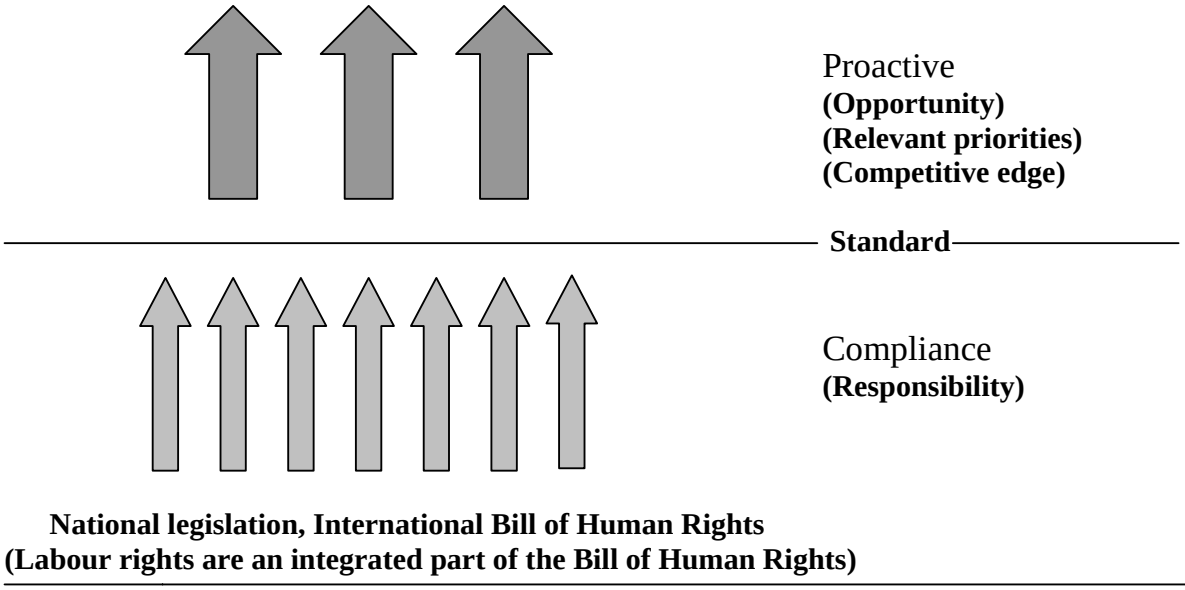
If a company restricts freedom of opinion and expression this should be done according to clearly defined principles and on the basis of objectively necessary grounds in order not to encourage arbitrary decisions and in order to provide clear and foreseeable rules for all. This also regards any kind of hate speech. Any dismissal of an employee on the ground of a manifestation of some kind can only be made on the basis of a business related manifestation and following clear and foreseeable principles accessible to the employee.

6. A competitive edge – A proactive approach

Most of the rights have a compliance side and a proactive opportunity side. The compliance part is related to risk management, while the proactive part gives the companies a competitive edge. The section above mainly deals with the compliance side, by describing the minimum responsibilities of the companies.

In the proactive approach the companies go beyond the compliance side and use their CSR strategy to brand themselves and create a competitive edge. This can only be done by passing the line of compliance and adopting a proactive strategy.

Fig. 2 CSO



Taking a proactive approach, means choosing some rights that the company actively promote, beyond what they are obliged to do. Experience from companies, adopting this approach, has shown that it can be valuable to formulate the proactive strategies in line with the International Bill of Human Rights referring to the arguments outlined above in section 4.

Not many companies have yet integrated a proactive approach, but those who have can brand themselves on their CSR strategies in ways that are impossible for companies only working with the compliance side. Initiatives under a proactive human rights strategy are unlimited. A company in compliance with human rights, which by now will be expected as a must, though seldom fulfilled, no longer impresses stakeholders.

When choosing a proactive strategy it is important that the values are relevant to the specific sector. It will be expected of the food industry to have a strategy regarding the right to food, for the pharmaceutical industry to pay specific attention on the right to health etc. An illustrative example was McDonalds' first CSR report that in length described its HIV/Aids program in Africa. Notwithstanding the undisputable positive aspects of the initiative, McDonalds was criticised for

not addressing the problem of scarcity of food in some of the African countries or the issue of quality of its products as defined under the right to food.

Sponsorships and donations should be an integrated part of such proactive approach. Many Companies provide funds or give subsidies to various purposes locally or abroad without a specific purpose beyond the creation of an improved image. However, there is a risk that random activities, such as supporting elderly in a region or supporting a music festival, will be perceived as mere diversion of attention from the core activities of the company. It becomes important that sponsorships and donations are streamlined into supporting the proactive goals defined in the sustainability strategy of the company. This will further enhance synergies between the more traditional corporate giving and the contemporary approach of enhancing sustainability issues in the core business strategies.

7. Case-studies

The following two cases will briefly describe how two companies have adopted a proactive human rights based approach, focusing on CSOs.

7.1. Case: Novo Nordisk - International Pharmaceutical Company

Novo Nordisk (NN) is a focused health care company and world leading within the diabetes and insulin delivery systems. NN reaches out to more than 180 countries around the world.

Regarding CSR NN supports a proactive strategy, creating a competitive edge on the CSOs. It is committed to the trible bottom line and supports the Universal Declaration on Human Rights. The commitments are integrated in the organisation and they use five different follow-up methods to provide ongoing systematic and validated documentation of their performance: Financial follow-up and reporting, environmental & social reporting, organisational audit, facilitations, succession management.
Human rights standards inform and guide NN in its socially responsible initiatives. To date NN has chosen to be proactive on two main human rights areas identified during an analysis of challenges and opportunities; the right to health, including access to health, and equal opportunities.

From reading the CSR and sustainability reports of the company over the past five years an in depth understanding of the approach can be achieved, confer www.novonordisk.com.

7.2. Case: Sonofon - National Based Mobile Telephone Company

Sonofon is a Danish company with a turnover of more than 530 mio. Euro and a workforce of 1.300 employees. Sonofon offers mobile telephony with a special emphasis on flexible, useful and simple solutions. The company was incorporated in 1991 and has enjoyed continuous growth over the past ten years. Today Sonofon is the second largest telecommunication company in Denmark with more than a million mobile subscribers. What is interesting about Sonofon, in a CSR context, is that it is only operating in Denmark, but nevertheless has adopted a proactive human rights approach to their CSR strategy. The motivation was to have a strategy that, in accordance with the values of the company, is challenging, attentive and simple. Further they wanted to base their CSR strategy on values tha are sustainable and internationally comparable.

Sonofon runs a dual process where compliance to a broader range of rights are secured and where, on the proactive side, the right to privacy, the freedom of information and speech and the right to take part in the technological development are considered. These rights are core to the activities of the telecommunication industry.

More details on the programs can be studied on www.sonofon.dk

8. Concluding remarks

It is evident that companies should start working with CSR based on human rights, and that such approach has clear win-win possibilities vis á vis the individual and the society. Most of the human rights have relevance to business, either on the compliance side or proactively. With the unfolding of human rights the article has stressed that working with human rights, as the core of CSR, is not a complicated process, but something that every company should and could do. As something new, the article has shown how a proactive approach, focussing on the corporate social opportunities, (CSO) can push the development one step further, creating a competitive edge.