



## NEWSLETTER

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## Corporate Social Responsibility

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I want to focus on the latest developments within the CSR movement, including the concept of corporate social opportunity (CSO). Human rights, as defined in the UN Bill of human rights, provide business with an effective and simple approach to devising a CSR strategy.

Not only do human rights provide an encompassing framework for risk management, the UN Bill of human rights can also form the basis of a proactive approach, providing companies with a competitive edge.

### Corporate responsibilities

Over the past thirty years the responsibilities of companies have been intensely debated. During the 1970's and 1980's, attention was primarily focused on the impact on the external environment. However, since the 1990's the focus has been expanded to embrace social responsibility and a widened economic responsibility.



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Despite small nuances concerning the way various terms conform to 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 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.

*Social responsibility* encompasses rights such as: labour rights (e.g. no child or slave labour, freedom of association, collective bargaining, non-discrimination, equal opportunities, minimum wages, health and safety); the right to work (e.g. protection against unjustified dismissals and technical/vocational guidance and training); the right to life; freedom of expression; development rights such as the rights to education, health, adequate food, clothing, housing, and social security; the right to a family life and the right to privacy; minority rights to culture, religious practise and language; the right to peaceful assembly and the right to take part in political life; informed consent to medical / biological trials; intellectual property rights and the right to enjoy technological development.

*Environmental responsibility* requires corporations taking account of factors such as: the UN Convention on Bio-Diversity (including in-situ and ex-situ conservation, impact on diversity, use of genetic material, technology transfer); the Precautionary Principle (i.e. when in doubt about negative environmental impact of a given action, abstain); the use and handling of Genetically Modified Organisms; greenhouse gases; the impact of activities on the ozone layer (Montreal Protocol Annexes); the prohibition on the use of certain materials and substances; the distance of residential neighbourhoods from production sites; soil, ground water and surface water contamination and the treatment and reduction of waste water; ‘Eco-efficiency’ in the consumption of raw materials energy; the export of waste and re-use of material; animal welfare.

*Economic responsibility* imposes on corporations the need to pay heed to factors such as: financial profit, economic growth and asset creation; 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; monetary support for political parties, lobbying, and other ‘political’ activities; external economic impact from pollution, as well as internalisation of economic ‘externalities’; stock exchange behaviour, including insider trading; economic regulation through tax incentives and redistribution; state contracts and state subsidies; intellectual property rights; anti-trust requirements; board and executive remuneration and the role of accountants; donations, and taxes, including ‘transfer pricing’.

Companies are compelled to find sustainable solutions for their relation to *human beings* (through CSR), the *external environment* (including biodiversity and animal welfare), and to the *economy* (including the economy of the community). In practice, however, these pillars are not entirely separate. For example, corruption and bribery have, at a first glance, 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. Consequently, reporting strives towards a holistic approach embracing all three pillars in one report. Such reports are often referred to as ‘Sustainability Reports’.

### **Corporate risks and opportunities**

Companies involve themselves in CSR from many motivations — personal, moral, economic and legal. — and in so doing expose themselves to both risks and opportunities. Companies that choose to ignore CSR may encounter consequences along the lines of increased civil and criminal litigation, loss of talented managers, exposure to NGO campaigns, loss of investors, increased cost of capital, a decline in stock value and the loss of customers and business partners. In some cases they may also be cutting off their access to public contracts and public procurement procedures such as those run by the World Bank, the European Union, and the European Bank for Reconstruction and Development.

Conversely, there are many opportunities available to companies that implement CSR strategies and policies. They may be able to enhance their corporate image and add brand value, and also enhance the job satisfaction, loyalty and identification of current and future employees. Other opportunities include increasing access to quality business partners, obtaining the status of a ‘preferred partner’, improving customer satisfaction and loyalty, and improving risk management and lowering insurance fees. Favourable access to capital markets can be opened up, as can access to Socially Responsible Investment (SRI) and public contracts. Last, but not least, there are also clear public relations benefits to be gained from CSR.

## Why are human rights relevant to business?

To give a clear picture on why and how the various human rights are relevant to business, I want to go into detail on the implications of a few specific rights.

The *right to non-discrimination and equal opportunities* (ICESCR Art. 2) has in recent years increasingly become an issue for companies 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. Companies that have not provided equal opportunities have experienced huge costs due to penalties, compensation and loss of reputation. Legislation relating to this right has been strengthened in Europe following the example from the US. Moreover, globalisation, prospective 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. In short, companies have to pay attention to non-discrimination in recruitment, promotion, training, sanctions, and lay-offs.

The *right to moral & material interests from inventions and to participate in the technological development* (CESCR Art 15) 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. The internet, new technologies, new foods etcetera 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: the moral and material rights of employees as authors; the rights of the inventor to participate in the material gain from the invention should be protected by the employer; the Patents/TRIPS agreement is generally seen by NGOs as an obstacle to the development of Third World countries hindering access to the benefit from scientific and technological discovery, and claiming intellectual property rights for existing genetic combinations is an issue for companies, Basmati rice being a case in point.

Corporations also have to take the *right to life* 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 is littered with tragic incidences where corporations did not respond adequately to their responsibilities in relation to this right. From the Bhopal disaster, to the Ogoni people in Nigeria, to the lives of

HIV/AIDS victims in South Africa, the corporate world has a responsibility for ensuring the right to life.

## A competitive edge — a proactive approach

Most rights have a compliance side and a proactive/opportunity side. Compliance is related to risk management, while a more proactive attitude may give a company a competitive edge. The above discussion of rights and business mainly deals with the compliance side by describing the minimum responsibilities of the companies. Proactive companies go beyond simple compliance and use their CSR strategy to brand themselves and so establish a competitive advantage in the marketplace.

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.

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

Finally, many Companies provide funds or give subsidies to various purposes locally or abroad without a specific purpose beyond the creation of an improved image. 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.



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