

## “The Business Case for Decent Work and Human Rights”

### Key points of the LARRGE Panel Discussion



#### Panellists:

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**Janine Dortmund**, (Fairfood International)

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#### Dwight Justice (ITUC)

- **There is not always a business case for human rights!**  
I think there is a business case for child labour but you could have a much stronger business case with suppliers to stop child labour. However, the fact that it needs a business case for human rights is part of the problem. We don't live in a world where everything is so highly organised and self-reinforcing that bad things don't happen. There is a reason why you have violations of human rights and one of these reasons is you make money. So the existence of a business case cannot be a criteria for human rights protection.
- **There is still a big gap between responsible and efficient management.** Just like there is a problem between sustainable development and the sustainability of an enterprise, which is not the same thing. In some occasions there is a desirable case for voluntary activities, in some cases not. But is there always a business case for good performance in terms of responsibility? The answer is: sometimes. Not everything is win-win. If we start out saying there is no difference between this kind and that kind of sustainability we don't see the world as it is.

- **The law and its application are the most important factors to realise decent work.** Our experience is that certain things are very important for workers and producers: one is the law and the other one its application, that's probably the single most important factor expecting decent work. If you have a situation that's good for one company it might, however not be good for society as a whole or good for workers.
  1. You need to have laws in place in order to extract the good impact.
  2. Some workers do it themselves. Our experience is that it works very well if workers come together to bargain, so self help. However, the important thing there is some kind of independent partners, some kind of a framework, often a legal framework that sorts out the parties and provides a reason to get voluntary agreements. But the framework as such is not always voluntary in a sense that you involve human rights.
  3. The third option of self help of workers is by the kindness of strangers and foreign deputies. But it does not always happen and we don't think it's good policy. So our experience is to look to the first two.
- **CSR is very much related to issues of governance failures.** There are many reasons for people to be interested in CSR but all come down to one sort of general area: the interest in CSR is in some way related to problems of governance, either a failure to establish the right kind of governance institutions to relate to a global economy, or the failure of nationals to have the right kind of governance institutions. When I am talking about governance failures, I am not talking about just government but anything that relates to how we make decisions and decide things. Governance does not necessarily mean "government". I mentioned before collective bargaining, a very important institution, and general governance does involve institutions. With regard to CSR, I am getting the idea that maybe something that looks and focuses only on management decisions and human behaviour is going to get around not only to government problems but also the problem of governance institutions and that's what happens.
- **How do trade unions look at all these kinds of CSR tools?** The question is, to what extent do they contribute to solve the problem that we think exists? If a CSR tool is e.g. creating space for a government to fulfil its function in weak governance areas, helping governments to do their job would be a good thing; or if they help creating space for workers to form trade unions. If they are substituting governance on the contrary, that would be a bad thing.
- **Trade unions don't share the EU conception of CSR.** That is part of the problem. It is a very peculiar vision and it won't help on how responsibilities are understood. The public does not understand responsibility as something that is voluntary. It relates to whether you are held accountable for your decisions and impacts, that's what responsibility means. Most people understand CSR as a responsibility of companies to society for their actions and impact, regardless of whether there is a law or not. So, what we have is a governance crisis, nationally and internationally, which is causing concern – and therefore people are concerned about the impact of business activities.
- **We need to focus on the meaning of responsibility.** The EU means voluntary action that may be beyond and even completely optional. But because they are optional, they don't necessarily address what the problem is. What are you going to do with the public issues you need to deal with in the EU? We have been discussing for 4-5 years whether CSR should be regulated or not. If you define responsibility in a very unusual way, what is being done, and then you have a debate over whether you

should regulate what by definition is unregulated, it becomes nonsense. But the definition shifts away from what we should be discussing, which is the impact of business activity. Sometime this can be addressed by law but sometimes not. We need to focus on the meaning of responsibility.

- **A lot of CSR initiatives in the area of decent work did not work.** Over the last 15 years there has not been significant change in the labour practices or the conditions under which work is performed. We have to look at this in a context. There is a problem with CSR, because all this activity makes it seem that there is progress. But somebody has to point out that it's not working. Looking at Indonesia or China, working conditions are not being addressed there. There is another danger in CSR that gets me to my second way of evaluating initiatives. The first was whether it's a substitute to governance; the second is the social and society aspect: To what extent is CSR changing expectations or trying to change? A lot of initiatives try to redefine the expectations of business where they already exist. Are they trying to redefine expectations so that it's more comfortable for business? Some go one way and some go the other way but that would be a criteria to look at.
- **The business buy-in may put trade unions and their rights at stake.** One thing I most worry about in business and human rights initiatives is that when it comes to labour, they worry to get the business buy-in. They want to make sure that companies are on board, which is likely to have an adverse impact on trade unions and collective bargaining. CSR does not focus on institutions and governance problems and the real difficult questions on how to operate in countries where governments suppress trade unions; the reasons for suppression are not business related, they are policy related.
- **Comment on European values:** I think it is a mistake to take a sort of Europe centred view on what many people consider European values. Social dialogue is very much part of the EU institutions and for good reasons, but it's also embodied by the ILO on the global level. You can advance social dialogue as a European policy objective, without necessarily saying this is a EU value. If you look at all the other values that we argue as EU values you will find them also very conveniently in the Universal Declaration of Human Rights (UDHR). I think you don't have to go there saying it's European values.
- **Comment on CSR instruments:** What are the instruments? I don't agree with the conception that everything has the same authority. There are some instruments that are more important than others, such as UDHR. I think there is a difference if you work at some of the major CSR declarations, such as the ILO Tripartite Declaration or the OECD Guidelines but I would distinguish that from the Global compact, it's not an instrument, its principles are based on instruments but it doesn't have this authority.
- **Key criteria for ITUC to evaluate CSR initiatives:** The criteria that I would say are important for us are:
  - How do these instruments address the governance crisis?
  - Do they help governments to do what they are supposed to do or do they substitute them?
  - Do they help trade unions to get formed or do they substitute them?
  - Do they redefine societal values or do they reinforce societal values?

**Sarah Burke (NORMAPME)**

- **NORMAPME is the only institution representing the SME position in the international standardisation process ISO 26000.** ISO 26000 is a proposed draft guidance standard on social responsibility. There are 12 Mio SMEs across the European region, which is quite considerable. Some good work has been achieved by the drafting process.
- **ISO 26000 does not recognise SMEs as individual stakeholders.** NORMAPME is still critical of the standards because it does not recognise SMEs as individual stakeholders. Also it does not recognise that 99 % of them depend on foreign legislation.
- **The key criticisms includes the complexity of the standard and the one-fits-all approach.** For the moment ISO 26000 contains some 100 pages and is much too difficult to understand. The average SME does not have the qualified personnel available to interpret and to apply the standard. They don't have the time nor the finance to devote such an effort to the standard. This standard claims to be applicable to all organisations. In reality this is simply not the case. Micro-organisations in the current economic situation don't look at operations, they are struggling to survive. Overall, the standard is not a realistic option for SMEs, it is mainly directed towards large businesses. SMEs are concerned with other issues than large businesses. They are dependent on societies, so they interact with stakeholders and are, by their very nature, socially responsible.
- **There is a risk of potential misuse of the standard.** It is a guidance standard, which is not adequate for certification process. You cannot certify on the basis of the standard. However, this could become an issue for SMEs because they could be required to comply with the standard (as certification) and lack the resources. If you google "ISO 26000 certifications" you get 100 000 hits. So, NORMAPME will continue to promote ISO 26000 as a standard, not as a certification.

**Janine Dortmund (Fairfood Int.)**

- **Fairfood aims at reducing poverty and hunger world wide.** Fair food works with food and beverage brands and tries to increase responsibility in the supply chain. It looks at social economic and environmental sustainability. Fairfood's essential mission is to reduce hunger and poverty world wide by working with the food industry. This is also where the business case comes in. We try to make companies aware of the problems in the supply chain, work in different food sectors and identify priority issues in each sector. This makes it easier to start focusing on what is really needed. We try to approach companies constructively, by providing information and advice and linking them up with specific organisations that can support them, such as the Danish Institute. We look at brand owner companies that can range from multinational to very small companies.
- **Citizens are a very strong driver for CSR.** Consumers, employees and shareholders are expecting companies to comply with standards. It seems that for SMEs internal factors are more important than for large companies. Large companies might be confronted with more pressure from NGOs and the media. They might also act more out of a substantive approach and try to avoid risk and reputation damage, whereas SMEs might focus more on what is the additional value of addressing human rights, e.g. quality increase or supply chain.

- **There is much less awareness on CSR among SMEs than among large companies.** The agenda is very much on standards, sometimes this can be seen rather an angle rather than a way to improve. We are also trying to look into innovative practices to address the supply chain, or create more value by collaborating with all stakeholders. Overall, it needs a more pro-active and innovative approach towards the supply chain.

**Karin Lukas (BIM)**

- **Why do human rights and decent work matter for business? – The business case:** When we look back to the 1990s when CSR was gaining considerable momentum, it was primarily because human and labour rights were being violated and under scrutiny. E.g. in the case of Nike, where a shoe burning in front of the Nike head quarter took place after consumers had become aware due to NGO campaigns that their lifestyle sneakers were produced by women in South East Asian subsidiaries under exploitative working conditions. Nike reacted very quickly and today it is one of the most promising companies doing a lot of innovative projects promoting labour rights and decent working conditions, just as quite a few other companies (Levis, Adidas, GAP etc.) do.
- **A conceptual problem exists with regard to human rights and decent work.** Still, a major business case is good reputation / risk management. This is the external view. As to the internal view, many businesses have strategies that promote labour rights within the company but interestingly they don't call it decent work but diversity at the workplace, employee development or health and safety. The reason – and this is one of the findings of the LARRGE assessment – is that human rights are seen as something negative and very particular, like the prohibition of child labour. Promoting the health and safety of employees is however not perceived a human rights issue. A bit similar but for different reasons, the concept of decent work is hardly mentioned by companies. From today's presentations we all have a vague idea what decent work means, but due to its complexity it is hard to implement for companies. Therefore, they resort to other concepts and sort of translate the standards.
- **CSR can be a driver to respect human rights and decent working standards, but it has its limits.** A 3 years research on labour rights in global production networks, which looked at how labour rights are being secured in the supply chains of the Romanian apparel and electronic sectors, showed a certain progress in terms of specific rights. E.g. in cases of a win-win situation for both companies and workers (e.g. ironing women that works better and faster when they have good ventilation in the workplace). By contrast, other rights like having trade unions, decent wages or limitation of working hours which interfere with the business logic of making profits as well as with other industry dynamics (e.g. fast production cycles) are much more difficult to improve. Here, CSR faces natural limits and we need to look at other instruments such as global framework agreements between multinational corporations and international trade unions, global bargaining initiatives and instruments that aim to reach across the supply chain etc.
- **A binding legal framework that can be enforced internationally is in reach.** There are lot of proposals on the table concerning the shape of such a framework which could then be operated by the International Criminal Court. What is still missing is the political will of a couple of progressive states that would initiate the framework. There are a few attempts to sort of reward companies that are going in the right direction. A lot of potential lies in public procurement for instance, i.e.

governments giving an incentive to companies doing the right things. Another potential are the consumers that can reward companies for doing the right things. But with regard to companies not doing the right things there is still an accountability gap. We only have some vehicles that try to do something similar like the Alien Tort Claims Act. Some national governments that have respective legislation in place draw cases to their jurisdiction by interfering with other states' responsibility. This is politically highly sensitive but the applicators are accumulating and legal cases like Shell or Unocal will be coming up in Europe putting more pressure on the companies. At some stage we will have to cope with this accountability gap but there is still a lot of confusion how to do this.