



THE BUSINESS CASE FOR CIVIL SOCIETY

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EXECUTIVE **SUMMARY**

Now more than ever, businesses have strong incentives to take seriously their responsibility to respect human rights. Human rights developments can spark stock price fluctuations, negative consumer attitudes and loud employee demands to take action. CEOs want to know how they should respond to human rights issues, and company directors are grappling with the same question in boardrooms across the world.

In developing their human rights policies and processes, companies have come to depend upon civic freedoms that enable civil society — citizens acting both individually and collectively — to reveal human rights impacts and draw attention to them. Civic freedoms — such as the freedoms of expression, association, information and assembly — allow citizens to ask questions, express opinions, propose solutions to social problems, and press their own governments to keep commitments to protecting human rights.

Communication between companies and civil society organizations (CSOs) is sometimes hampered by their divergent perspectives, with shared interests sometimes obscured by differences in vocabulary. But business support for CSOs and civic freedoms is critical, and there is a growing number of positive examples, from the adoption of non-interference policies to CEO activism and policy engagement to financial and capacity-building assistance.

Companies are taking these actions because they have a responsibility to respect human rights, but also because it is in their business interest to support civil society and civic freedoms, even when they are not causing or contributing to specific harms. Specific elements of the business case to support civil society include:

CIVIC FREEDOMS ADVANCE ECONOMIC GROWTH

A growing body of research has demonstrated how greater respect for CSOs and civic freedoms increases financial investment, facilitates economic reform, reduces social unrest and allows both ideas and resources to spread at unprecedented rates.

THE PURPOSE OF THIS REPORT

This report explores reasons why it is in the best interest of companies to take action in support of civil society, especially when civil society is under pressure. It provides the arguments, together with data to back them up.

It is a companion report to “Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders,” published by the Business and Human Rights Resource Center and the International Service for Human Rights.



Business can only flourish in societies in which human rights are respected, upheld and advanced.

– Paul Polman CEO, Unilever

CIVIC FREEDOMS PRODUCE INNOVATION

Companies that promote creativity, open communication and shared values among their employees as a part of their organizational culture are likely to be better innovators than companies that adhere to strict bureaucracy and hierarchy. As a result, companies also benefit from an environment that is conducive to such management practices.

CIVIL SOCIETY REDUCES THE COST OF CORRUPTION

An open and transparent democracy — with unencumbered CSOs enjoying civic freedoms — plays an important role in reducing corruption, which negatively impacts economic growth.

CIVIL SOCIETY ORGANIZATIONS HELP BUSINESSES TO BE SUSTAINABLE

Companies tend to undervalue, and consequently underinvest in, the social resources and relationships — often referred to as “social capital” — upon which their success depends. As businesses begin to adopt a more holistic approach to investing in social and human capital, CSOs become important partners.

SUPPORTING CIVIL SOCIETY CAN HELP MANAGE RISKS RELATING TO OPERATIONAL COSTS

By providing information on potential harms, CSOs and social movements reduce the risk of significant operational costs due to work stoppages and other operational delays. CSOs can help companies secure a social license to operate from local communities.

SUPPORTING CIVIL SOCIETY CAN ENHANCE CUSTOMER RELATIONSHIPS

Respect for human rights is an increasingly important factor in building brand reputation for a product or service. Research suggests that consumers (especially younger consumers) are more likely to buy products

and services from a company that is socially responsible — one that demonstrates respect for the rights of its employees, consumers, and society at large.

SUPPORTING CIVIL SOCIETY CAN ENHANCE INVESTOR RELATIONSHIPS

Asset managers are increasingly incorporating social responsibility into their decision-making, providing a financial incentive to companies that improve their social performance. Tracking changes in investor sentiment, corporate governance is also evolving to require a more specific duty of corporate boards to provide risk oversight, including with respect to environmental, social and governance (ESG) risks. CSOs are important both to investor decision-making and the risk oversight function of corporate boards because they represent independent sources of information about material ESG risks.

SUPPORTING CIVIL SOCIETY CAN ENHANCE EMPLOYEE RELATIONSHIPS

Increasingly, employees perceive their workplace as not only a source of livelihood, but also a means to contribute to the well-being of society. As a result, companies that support CSOs and civic freedoms will engender pride and loyalty, helping to retain and recruit talented employees. Conversely, failing to live up to corporate values on social issues can cause employee backlash.

In the end, human rights are best served when the efforts of government, business and civil society align. But when those efforts are not aligned, and CSOs are defending human rights against a hostile government, it is particularly incumbent on companies to use their influence to support civil society. Indeed, it is in their business interest to do so.



INTRODUCTION

With the adoption of the UN Guiding Principles on Business and Human Rights¹ in 2011, the responsibility of business to respect human rights became widely accepted. The Guiding Principles clarified that business has a responsibility to undertake human rights due diligence in order to “identify, prevent, mitigate and account for how they address their impacts on human rights.”² As Unilever CEO Paul Polman noted in 2015, “Business can only flourish in societies in which human rights are respected, upheld and advanced.”³

In developing their human rights policies and processes, companies have come to depend upon civic freedoms that enable civil society — citizens acting both individually and collectively — to reveal human rights impacts and draw attention to them. Civic freedoms — such as the freedoms of expression, association, information and assembly — allow citizens to ask questions, express opinions, propose solutions to social problems, and press their own governments to keep commitments to protecting human rights. This information is essential to a company’s ability to exercise human rights due diligence.

Civil society refers to “the voluntary association of individuals in the public sphere beyond the realms of the state, the market and the family.”⁴ People associate informally online or in clubs or even within social movements, but they can also associate as formal legal entities. Once people have associated formally within a civil society organization (CSO),⁵ the CSO itself becomes a bearer of legal rights and responsibilities, just as a company does. This report refers to both formal and informal associations as CSOs, but as a practical matter, businesses generally interact with CSOs that have been formalized as legal entities.

There are many ways that CSOs work to ensure that human rights are respected:

- raise awareness about the full range of human rights;
- provide understanding about how human rights apply to particular contexts;
- inform about, and create accountability for, the human rights situation of specific communities;
- help ensure inclusive public participation in decision-making; and
- facilitate access to remedies when human rights have been violated.

Civil society, at both the national and international levels, expanded dramatically in the 1990s, driven by global trends in democratization and the adoption of market economies.⁶ In recent years, however, there has been a wave of government-sponsored efforts to undermine CSOs through propaganda efforts, regulatory controls and coercive measures in what the Washington Post has called a “global war on NGOs.”⁷ Governments have shut down a large number of groups, and violent attacks against individual human rights defenders are on the rise.⁸ In 2015 and 2016 alone, the International Center for Not-for-Profit Law (ICNL) tracked the adoption of 64 laws that restrict the ability of CSOs to register, protest or receive international financial support.⁹ As a result, the CSO sector across many countries is under threat; all CSOs have felt the pressure, even those that do not work explicitly on human rights.

Companies require independent sources of information to evaluate their human rights impacts, generally supplied to companies via proprietary databases, independent certifiers, consultancies, artificial intelligence (AI)-enabled data scrapers or international human rights groups with a global reach. That information originates locally, often generated by the grassroots organizations that are most under fire, and it is distributed through elaborate cross-border information networks. In short, human rights due diligence processes are reliant on a complex multi-national CSO ecosystem — an indispensable segment of which has come under enormous pressure.

At the same time, business incentives to take seriously the responsibility to respect human rights are increasing, as stock prices fluctuate, consumer behavior changes and employees make demands in response to human rights concerns connected either directly or indirectly to particular companies. CEOs want to know how they should respond to human rights issues, and directors are grappling with the same question in boardrooms across the world.

Therefore, it is in the interest of businesses to act — using their leverage not only to mitigate and prevent adverse human rights impacts they may cause or contribute to, but also using their leverage where and how they can to support CSOs and civic freedoms. When companies engage in that way, they make their human rights programs more effective; they enable stronger and more sustainable business practices in their respective industries; and they are rewarded by satisfied consumers, business partners, investors and employees who value that contribution.

Companies that support civic freedoms and civil society:

- make their human rights due diligence processes more effective;
- enable stronger and more sustainable business practices in their respective industries, and
- are rewarded by satisfied consumers, customers, business partners, investors and employees who value that contribution.

WHAT CAN BUSINESS DO TO HELP?

There is a growing number of positive examples of companies demonstrating their support for civic freedoms and CSOs. A typology of actions companies are taking is outlined below. A more in-depth analysis, with additional examples and a higher level of detail, is provided by the companion report “Shared Space Under Pressure: Business Support for Human Freedoms and Human Rights Defenders,”¹⁰ and the Business & Human Rights Resource Centre maintains a web portal recording new examples as they happen.¹¹

1. Adopt a non-interference policy

What is it? A company commitment not to interfere with the activities of human rights defenders, inhibit their lawful actions or restrict their freedom of expression, association or assembly.

Example: adidas,¹² Hanes Brands¹³ and Marks and Spencer¹⁴ have adopted such non-interference policies.

2. CEO activism and public statements

What is it? CEOs or other C-Suite executives speak out publicly about human rights issues not necessarily related to their core business and in doing so validate activism around that issue. CEO statements can provide critical support to CSOs that have been marginalized politically or represent weak and vulnerable populations.

Example: In recent years, CEOs have become increasingly vocal, supporting advocacy campaigns relating to issues such as immigration policy.¹⁵

3. Engagement in the policy process

What is it? Companies engage policy makers on public issues in support of human rights defenders. Large companies can deploy their government relations departments to support an enabling legal framework for CSOs and better protection of civic freedoms.

Example: Both Google and Starbucks have publicly campaigned in support of gay marriage legislation in the US and abroad.¹⁶ Over 20 CEOs partnered with UNAIDS in 2012 to call specifically for a repeal of laws and policies restricting freedom of movement of people with HIV.¹⁷

4. Engagement in the judicial process

What is it? When companies become aware of public authorities or private actors abusing legal proceedings to unfairly target human rights defenders or CSOs through meritless criminal prosecution or SLAPP lawsuits,¹⁸ they can use their influence to call attention to it. They might also submit amicus interventions in support of CSOs pursuing strategic litigation.

Example: In 2016, adidas wrote to Vietnamese government officials to request the release of detained labor rights advocates and to urge the local police to exercise restraint toward peaceful worker protests. In 2014 and 2015, adidas met with the Cambodia Garment Manufacturers Association to make the case that charges it brought against six independent trade union leaders alleging destruction of property during nationwide protests in 2014 were without merit and should be dropped.¹⁹

5. Quiet diplomacy

What is it? Businesses can also help civil society by deploying their influence quietly, complementing CSOs’ more public strategies.

Example: John Kamm, a US business man, former manager of business operations for Occidental Chemical Company in China and former President of

the American Chamber of Commerce in Hong Kong, has been quietly lobbying the Chinese government for decades to improve the treatment and facilitate the release of political prisoners.²⁰ In the early 2000s, Levi-Strauss also quietly lobbied the Guatemalan government to enhance and strengthen the country's labour laws and organized local suppliers to do the same.²¹

6. Collective private sector action

What is it? Companies act collectively through a trade association or ad hoc coalition — either independently or in collaboration with CSOs in multi-stakeholder initiatives (MSIs) — to support civil society and civic freedoms.

Example: In 2017 Nike joined the Fair Labor Association along with adidas and several other brands to advocate for legislative reforms regarding freedom of association and collective bargaining in Mexico.²²

7. Financial contributions to civil society

What is it? Companies provide funding to CSOs that defend human rights in vulnerable communities (typically, but not always, through corporate foundations).

Example: Apple made a grant to the Fund for Global Human Rights to underwrite financial and other support to grassroots CSOs in the Democratic Republic of Congo that are working to end abuses in mining communities within Apple's supply chain.²³

8. Civil society capacity building,

What is it? Companies provide goods or services to CSOs, either directly or through collaborations. For example, they may provide services in the form of in-kind support through pro bono and skilled volunteering programs, or they might donate hardware, software or other tangible goods.

Example: Microsoft provides software donations to CSOs around the world through its collaboration with TechSoup (a CSO that provides technical assistance to other CSOs).²⁴ Similarly, Salesforce works with CSOs to help them use its technology to better track and measure impact and engage more effectively with end beneficiaries.²⁵



WHY SHOULD COMPANIES CARE **ABOUT CIVIL SOCIETY?**

The United Nations Guiding Principles on Business and Human Rights provides a normative framework founded on three pillars: state duty to protect, business responsibility to respect and access to remedy.

Within that framework, businesses have the responsibility to avoid causing or contributing to adverse human rights impacts.²⁶ Businesses also have a duty to assess human rights impacts in meaningful consultation with affected groups and other stakeholders,²⁷ “including human rights defenders and others from civil society,”²⁸ and to use their considerable leverage to prevent adverse impacts and mitigate them when they occur.²⁹

The responsibility of businesses to respect human rights is independent of whether states are able or willing to fulfill their own duties.³⁰ So when governments are restricting civic freedoms and cracking down on CSOs, it is particularly critical and challenging to consider the responsibility of businesses to use their leverage where they can to improve the situation at hand.

Companies have a responsibility to respect civic freedoms, as they do all human rights. But civic freedoms are particularly important because they are prerequisites for the role that both individuals and CSOs play in a democratic society to ensure that all human rights are respected.

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We know that these freedoms require protection... Not just the forms of speech that entertain us, but the ones that challenge us. The ones that unnerve and even displease us. They’re the ones that need protection the most. It’s no accident that these freedoms are enshrined and protected in the First Amendment. They are the foundation to so many of our rights.

– Tim Cook, CEO, Apple³¹

Because of the key role of civil society in identifying human rights risks, supporting CSOs and civic freedoms can help businesses manage such risks. Supporting civil society also enables companies to secure a social license to operate, achieve long-term sustainability and create value through enhanced relationships with customers, investors and employees. These arguments comprise the business case for supporting civil society and are explored

in detail in this report. A companion report, “*Shared Space under Pressure*,”³² provides a practical framework to guide companies in assessing these factors as well as the more specific responsibilities that come into play when a company has caused or contributed to a specific harm.

SUPPORTING CIVIL SOCIETY HELPS TO:

- advance **economic growth**
- produce **innovation**
- reduce the **cost of corruption**
- improve **sustainability**
- manage risks relating to **operational costs**
- enhance **customer relationships**
- enhance **investor relationships**
- enhance **employee relationships**

A. CIVIC FREEDOMS ADVANCE ECONOMIC GROWTH

Civic freedoms play a critical role in promoting economic growth. Countries at the top of global business indexes — such as the Ease of Doing Business Index³³ and Forbes’ “Best Countries for Business” list³⁴ — and those at the top of prominent global human rights indexes that evaluate the protection of civic freedoms — such as the Human Development Index and the “Freedom in the World” report³⁵ — are nearly identical.³⁶

Countries that rank higher on protection of civic freedoms tend to rank higher in business activity. Conversely, countries that rank low in relation to civic freedoms often produce less conducive environments for business. In other words, where civic freedoms thrive, businesses thrive.

Empirical research bears out that observation. A growing body of research has demonstrated how greater respect for CSOs and civic freedoms increases financial investment, facilitates economic reform, reduces social unrest and allows both ideas and resources to spread at unprecedented rates.³⁷ A recent V-Dem study confirmed that the autonomy of political parties, freedom of speech, a free press and civil society autonomy in particular are positively correlated with economic growth rate. In fact, using the V-Dem model, when a country scores the maximum Civil Liberties Index value, its GDP is predicted to grow by 1.3 percent within five years.³⁸

According to another study: “A population that feels empowered by the freedom of speech, freedoms to assemble and to associate and by electoral self-determination may be more productive and motivated to contribute positively to the economy. Additionally, strong freedom and participation rights may promote predictability and transparency that encourage trade and investment that furthermore contribute to growth.”³⁹

There are a variety of explanations for the relationship between civic freedoms and economic growth, including studies demonstrating the causal link between civic freedoms and human capital, particularly through increased levels of education, higher life expectancy, and decreased child mortality.⁴⁰

B. CIVIC FREEDOMS PRODUCE INNOVATION

Countries that allow for freer exchange of information also produce more technological innovation, enhancing economic growth in the long run. An open and democratic society that respects the rights to freedom of expression, information, association and assembly allows for the free and independent flow of ideas, creativity, critical thought and innovation, all of which are critical factors for business success.⁴¹

FREE EXCHANGE OF INFORMATION

“Open societies” that allow for **freedoms of expression assembly, and association** promote learning and critical assessment of new ideas.



These freedoms are critical for enhancing productivity growth through technological change.

The relationship is partly explained by the role of civic freedoms, such as freedom of expression, within the company. Encouraging employees to speak up facilitates a more open working environment, enabling employees to develop and share new ideas and innovations with the confidence of being supported by their employer. Research has shown that companies that promote creativity, open communication and shared values among their employees as a part of their organizational culture are more likely to innovate than companies that adhere to strict bureaucracy and hierarchy.⁴²

Yet, studies have also shown that the influence of managerial practices on the organizational culture of a company is highly dependent on the broader environment in which the company operates.⁴³ When open managerial practices aimed at fostering creativity are at odds with an external environment that is repressive, they are less likely to succeed. As a result, companies aiming to promote innovation within their own business strategies have a pragmatic interest in promoting and protecting civic freedoms in the external environment.

C. CIVIL SOCIETY REDUCES THE COST OF CORRUPTION

An open and transparent democracy — with unencumbered CSOs enjoying civic freedoms — plays an important role in reducing corruption,⁴⁴ which negatively impacts economic growth.⁴⁵ Corruption undermines open and fair competition, which is key to stimulating entrepreneurship and innovation.⁴⁶ It also creates an uneven playing field for companies that effectively implement anti-corruption policies and comply with extra-territorial anti-corruption laws, such as the US Foreign Corrupt Practices or the UK Bribery Act.

Costs relating to corruption have been well documented:

- Corruption adds up to 10 percent to the total cost of doing business globally.⁴⁷
- Moving business from a country with a low level of corruption to a country with medium or high levels of corruption is found to be equivalent to a 20 percent tax on foreign business.⁴⁸
- Direct cost of corruption equals more than 5 percent of global GDP (US \$2.6 trillion), with over US \$1 trillion paid in bribes each year.⁴⁹

According to Philip Kinisu, the Kenyan anti-graft chief, Kenya loses about a third of its annual budget (equivalent to \$6 billion) to corruption yearly.⁵⁰

CORRUPTION FREE GOVERNANCE



- Corruption adds up to 10% to the total cost of doing business globally.
- Moving business from a country with a low level of corruption to a country with medium or high levels of corruption is found to be equivalent to a 20% tax on foreign business.

Source: UN Global Compact.

The most important antidote to corruption is transparency, and CSOs play an important role in promoting greater transparency, sometimes supported by businesses who understand the advantages of resisting corruption. Current efforts to draw attention to the pernicious role of anonymous shell companies in facilitating corruption provides one example. Seventy percent of the 213 biggest corruption cases between 1980 and 2010 involved such companies.⁵¹ In an effort to promote greater transparency about the ownership and control of shell companies, The B Team collaborated with the Bank of Montreal, Deloitte and Thomson Reuters to develop a business case for beneficial ownership transparency, which they have disseminated at workshops involving 250 companies in New York, Nairobi, Delhi, Paris, London, Beijing, Dubai, Panama City and Marrakech.⁵²

In exposing corruption, CSOs not only strengthen government institutions, but they also help create a level playing field for companies that effectively implement anti-corruption policies.

D. CIVIL SOCIETY HELPS BUSINESSES TO BE SUSTAINABLE

In a well-functioning democracy, businesses and CSOs inhabit a “shared space,” in which social, environmental and business sustainability are inter-connected and depend upon rule of law, good governance and accountable institutions.⁵³ Yet, there is evidence that operating in autocratic regimes can be both profitable for a company and beneficial to the regime, sometimes propping up the latter — even in the face of social unrest — by appeasing elites.⁵⁴ Further, foreign direct investment continues to flow to authoritarian countries with the backing of international guarantees provided by bilateral investment treaties despite poor governance and weak rule of law.⁵⁵

In choosing how to respond to (or ignore) authoritarian governance, companies are making a choice about how best to achieve sustainability. The proximity of business to social problems in a shared space is what led Porter and Kramer to conclude that a company’s success and social progress are interdependent and to develop the concept of shared value.⁵⁶ A premise of the concept is that companies are better off when they create economic value in ways that benefit both the business and society.⁵⁷



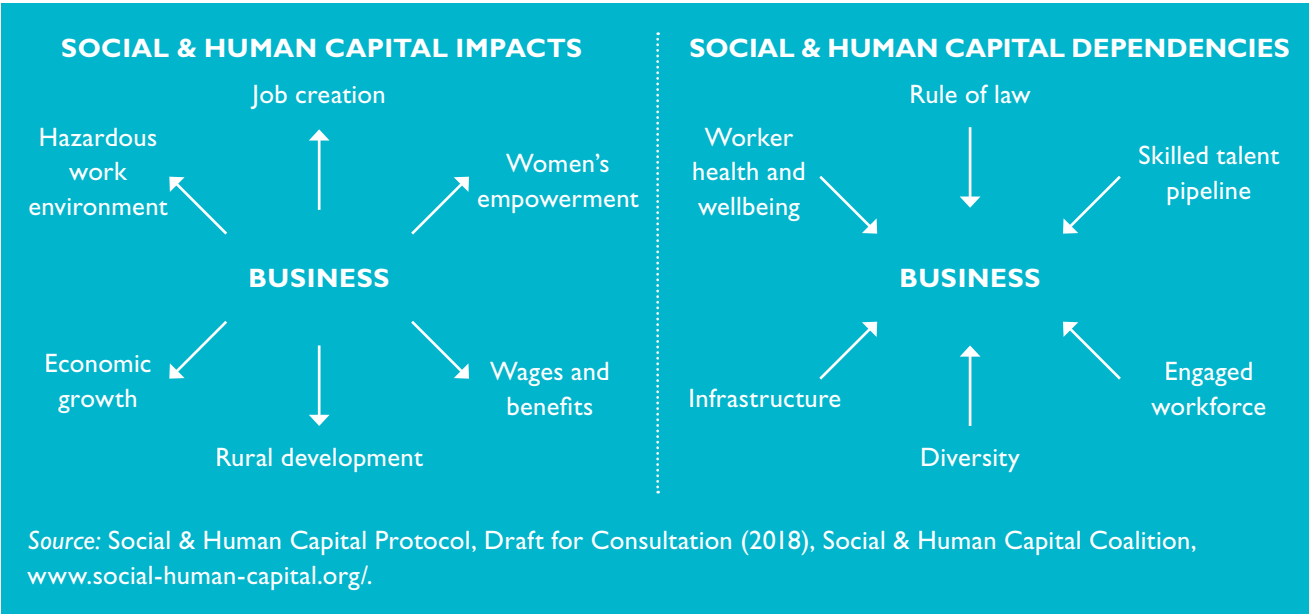
Nimble business leaders will recognize that in this new world they cannot operate with a top-down approach. Rather, a flatter, more participatory model is needed, one that isn’t just ‘for the people’ but ‘with the people.’ The best companies are already deeply listening to and strategically acting on insights from their employees, customers, and other stakeholders.

– **Matthew Harrington**, Global COO, Edelman⁵⁸

In addition to finding opportunities to create shared value, those businesses that are active in local communities and communicate openly with them are likely to be rewarded with a “social license to operate,” which dramatically reduces risk for the company.⁵⁹

Nevertheless, according to the World Business Council for Sustainable Development, companies tend to undervalue, and consequently under-invest in, the social resources and relationships — often referred to as

“social capital” — upon which their success depends.⁶⁰ To address that issue, WBCSD is developing a “Social & Human Capital Protocol” to support business strategies and operational systems that account for the impact that companies have on social and human capital (such as hazardous work environments and women’s empowerment) as well as business dependencies on such capital (such as worker health and rule of law). See figure below.



The focus of Mars, Inc. on “mutuality” is a good example of experimentation with a more socially sustainable approach. In developing its Maua pilot program in Kenya to create a socially sustainable, urban distribution network for its products in informal settlements, Mars collaborated with “un-conventional NGO and academic partners.”⁶² As a result, the program demonstrated that improvements to and investments in social and human capital will ultimately help to improve financial outcomes.⁶³

As businesses begin to adopt a more holistic approach to investing in social and human capital, CSOs become important partners. Companies can identify opportunities for civil society partnership, in which the company can offer its competitive advantage and unique business model to make a contribution that optimizes shared social and economic value.

E. SUPPORTING CIVIL SOCIETY CAN HELP MANAGE RISKS RELATING TO OPERATIONAL COSTS

Early Warning

By providing information on potential harms, CSOs and social movements reduce the risk of significant operational costs due to work stoppages and other operational delays. In the extractives sector, for example, a significant portion of the financial capital invested in new projects is expended during exploration, prior to operations. Accordingly, without CSO-generated information, community concerns may not become known until after sunken costs have made it more costly for companies to adjust their plans once conflict with the community manifests.

A seminal report produced by Shift and the University of Queensland estimates that extractive projects that get embroiled in conflict can result in as much as US \$20 million per week in lost revenues.⁶⁴

CSOs provide “early warning” about business risks connected to actual and potential human rights impacts for all sectors. For example, CSOs and other observers raised concerns about privacy and surveillance on the Internet for years before those issues suddenly materialized into costly business risk factors for tech companies — that were caught flat-footed by an unforeseen public outcry.⁶⁵ The plunge in Facebook’s

stock price by 19 percent in one day, representing market capital of US\$ 119 billion,⁶⁶ was a consequence that might have been averted had more priority been given to heeding voices from civil society.

“

I tell people: when someone has a complaint, it’s a gift to you... Because that person complaining is telling you what you’re doing wrong or what is making them unhappy.

– Jamie Dimon, CEO, JPMorganChase⁶⁷

The Cost of Legal Disputes with CSOs

CSOs can help companies secure a social license to operate from local communities. Without active, well-developed local CSOs, genuine community consultation is more difficult. Once a conflict has emerged, local and international CSOs may become involved in a different manner, resorting to the courts or to administrative mechanisms. A negative decision by a court or administrative body can lead to losses from suspended operations, fines, damage awards and share price declines.

Litigation costs

Legal costs can encompass more than just the legal fees involved in litigation. Prior to court action, companies may have to engage conflict resolution experts, mediators and negotiators. Existing staff may have to be re-allocated to manage the conflict. Interim injunctions may be issued, which can result in operations being idle or shut down, incurring loss of profit. For example, a nine-month delay at a Latin American mine in 2010 resulted in US\$750 million in additional project costs. The company may want to issue counter-claims against the claimant, or discuss compensation and out-of-court payments to expedite the process, though each of these options comes at a cost. Should the court find in favor of the claimant, there would be substantial fines, which can be imposed on both the company and its directors.

Tahoe Resources suffered a significant capital loss from suspension of its license by court order. In 2017, Tahoe Resources' share price plunged 40 percent in just a few days after the Guatemalan Constitutional Court provisionally suspended the license for its flagship Escobar silver mine. The lawsuit was brought by CALAS, a Guatemalan NGO supported by Oxfam,⁶⁸ which alleged that the Ministry of Energy and Mines had not consulted with the local community — specifically the Xinca indigenous people — before awarding the concession to Tahoe's local subsidiary. Subsequently, shareholders filed a class action lawsuit against Tahoe Resources, alleging false and misleading statements and failure to disclose to investors the details of its consultation obligations, entailing further legal costs.⁶⁹

REDUCED RISK



Tahoe Resources' share price plunged 40% in one week after the Guatemalan Constitutional Court ruled against it in a lawsuit brought by an NGO on behalf of a local community.

F. SUPPORTING CIVIL SOCIETY CAN ENHANCE CUSTOMER RELATIONSHIPS

Increasing value and reducing reputational risks

Respect for human rights is an increasingly important factor in building brand reputation for a product or service. Research suggests that consumers (especially younger consumers) are more likely to buy products and services from a company that is socially responsible — one that demonstrates respect for the rights of its employees, consumers, and society at large.⁷⁰

In conjunction with that trend, CEO activism is on the rise, demonstrating that companies are willing to use their leverage to positively influence human rights outcomes in increasingly broad ways.⁷¹ According to Salesforce's Mark Benioff: "Today CEOs need to stand up not just for their shareholders, but their employees, their customers, their partners, the community, the environment, schools, everybody."⁷² As described in more detail in section G below, the responsive leadership of Merck CEO Ken Frazier following the August 2017 white supremacist rally in Charlottesville, Virginia is an important example.

Elaborating on comments quoted earlier, Apple CEO Tim Cook has said: "For democracy to work, we are not just free to express ourselves, we are obligated to. If the public square falls silent, we are all at risk."⁷³ But as Chatterji and Toffel, professors at Harvard Business School, have pointed out: "Executives must balance the likelihood of having an effect and other potential benefits — such as pleasing employees and consumers — against the possibility of a backlash."⁷⁴ Yet, Apple's experience has demonstrated there can be a net benefit for companies to engage in social activism, at least in some circumstances. Chatterji and Toffel's study found that following Tim Cook's statement in support of LGBT rights, people had a "significantly higher intent to buy Apple products in the near future... Learning about Cook's activism increased intent to purchase among supporters of same-sex marriage but did not erode intent among its opponents."⁷⁵

Indeed, CEOs are increasingly willing to take a stand on critical social issues on behalf of their companies and themselves, even when they risk alienating some of their stakeholders. On the contentious issue of gun violence in the United States, Levi-Strauss & Co. CEO Chip Bergh has said: “as business leaders with power in the public and political arenas, we simply cannot stand by silently when it comes to the issues that threaten the very fabric of the communities where we live and work. While taking a stand can be unpopular with some, doing nothing is no longer an option.”⁷⁶

Companies that engage on social issues are meeting the expectations of a growing segment of consumers. A 2017 study from Cone Communications found that consumers are now looking for companies to assert leadership “across a wide range of social justice issues outside of the traditional business purview”⁷⁷ Seven-in-ten Americans believe companies have an obligation to improve issues that may not be relevant to everyday business operations.”⁷⁹



All the stakeholders are looking for companies to go beyond their transactional footprint and play a deeper role in society... Companies are expected to have an opinion, a voice, and to stand up for things not central to their responsibility efforts.

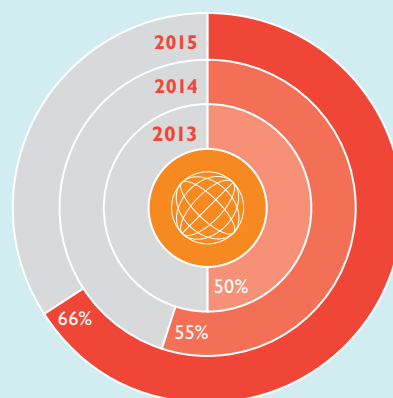
Alison Da Silva, Executive Vice President, Cone Communications⁷⁹

Further, consumers are willing to boycott if displeased by the position taken by a company. The study found that three-quarters of consumers said “they would stop purchasing from a company if it shared a different perspective on these social justice issues.”⁸⁰ Furthermore, consumers are looking for more than just superficial messages of support. Nearly two-thirds of consumers said “that when a company takes a stand on a social or environmental issue, they will do research to ensure it’s being authentic.”⁸¹

According to Cone Communications:

“Here presents both an opportunity and potential pitfall for companies. Companies must look inward at their values, beliefs and business practices to determine what issues they can genuinely advocate for. Yet, the more companies take the lead, the more they should be prepared for careful consumer scrutiny. However, companies that can effectively navigate the challenges and truly stand up for issues that matter will stand out in the hearts, minds and wallets of consumers.”⁸²

- 66 percent of consumers would be willing to pay more for sustainable goods, according to the 2015 Nielsen Global Corporate Sustainability Report, the most recent year for which data is available. That figure is up sharply from surveys taken in 2014 and 2013.⁸³



SIXTY-SIX PERCENT OF GLOBAL RESPONDENTS ARE WILLING TO PAY MORE FOR SUSTAINABLE FOODS, UP FROM 55% IN 2014 (AND 50% IN 2013).

Source: Nielsen Global Survey of Corporate Social Responsibility, Q1 2015.

- Consumer preferences for sustainable goods are increasing even more quickly among Millennials, with 73 percent willing to pay more in 2015 for sustainable products, compared to 50 percent in 2014.⁸⁴ And social and environmental concerns became even stronger among Millennial consumers in 2017.⁸⁵
- Generation Z consumers are even more likely to favor social action by companies. According to a 2017 study, 94 percent of Gen Z respondents believe companies should help address critical issues. That figure compares with 87 percent of Millennials, 83 percent of Gen X and 89 percent of Baby Boomers.⁸⁶

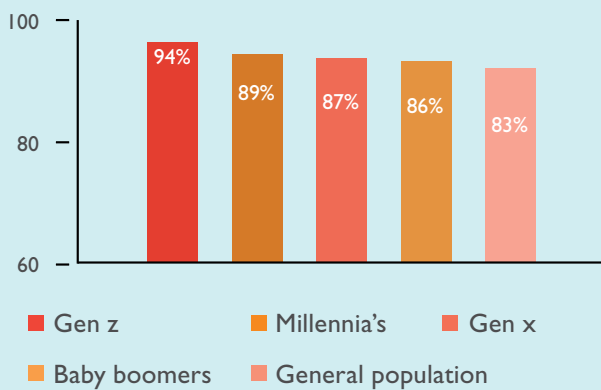
Gen z:

the next conscious group of consumers

KEY INSIGHTS FROM THE 2017 CONE GEN Z STUDY: HOW TO SPEAK Z

PUTTING THEIR FAITH IN COMPANIES

94% of Gen Z believe companies should help address critical issues



Source: 2017 Cone Gen Z CSR Study.

“

With possible sweeping changes in social programs and governmental subsidies in many countries, companies will increasingly be expected to take positions on social issues and to make their collective voices heard. Gone are the days that companies can hide from controversial issues in their markets. Someone is going to ask and everyone is going to watch.

– **Scott Beaudoin**, Group President, Actio⁸⁷

In short, companies are now expected to address social issues beyond their own operations. As they engage in public discourse on social issues, companies become important stakeholders in civic freedom, and CSOs become indispensable partners.

G. SUPPORTING CIVIL SOCIETY CAN ENHANCE INVESTOR RELATIONSHIPS

Improving competitive advantage, reducing reputational risks and lowering the cost of capital

It is better to engage with CSOs than to assume that their reports or campaigns may go unnoticed by investors. As trends in analysis of big data increasingly surface under-reported facts about the social impact of businesses, as socially-responsible investment continues to gain traction and as companies compete for attention on the basis of their social profile, it is prudent for businesses to support CSOs.

Indeed, companies that work in partnership with CSOs may be rewarded by investors seeking socially-responsible investments. Swedish insurance company Skandia, for example, incorporates the United Nations sustainable development goals (SDGs) into pension fund investment decision-making. According to Skandia CEO Frans Lindelow, the company's owners and customers alike expect a good return, but they also expect high moral and ethical standards, and they have moved beyond focusing solely on the bottom line for shareholders. As Lindelow puts it: "Responsible business has shifted focus from shareholder value to shared value."⁸⁸

Further, investors can assess the social responsibility of companies according to increasingly sophisticated and precise measures of environmental, social and governance (ESG) indicators. While socially-responsible investment funds may use ESG analytics to ensure their investments are in keeping with values-based preferences, investors of all stripes are starting to see the connection between ESG performance and investment risk more generally. According to ESG research agency Sustainalytics: "There is growing interest within the investment community in exploring the financial materiality of ESG incidents, partly because such incidents are on the rise ... and partly because investors' growing use of ESG information in investment decision making is raising awareness about the financial effects of ESG controversies."⁸⁹

In general, according to the Sustainalytics study, the occurrence of significant ESG incidents correlate with market price declines. Over two-thirds (69 percent) of

companies that experienced a high to severe incident also experienced a market cap decline during a ten-day incident window (five days before and five days after the incident). The average decline was 6 percent.⁹⁰

Indeed, negative publicity, if not properly addressed, can significantly raise the cost of capital. Research by Steel City Re, a reputational risk solution-provider, has shown that the cost of negative publicity has risen by more than 500 percent over the past six years, and a poor brand reputation can increase the cost of capital by 80 basis points.⁹¹

Charlottesville: A Case Study in Reputation Risk Management

It can be critical to the performance of a company to incorporate into risk management tools an assessment of how civil society and the general public will react to stakeholder conflicts as they unfold.

"Risk governance was also key to how Merck & Co.'s CEO, Ken Frazier, boosted his company's market cap in the aftermath of the white supremacist activities in Charlottesville, Va., in August 2017. Frazier was the first CEO to resign from President Trump's Manufacturing Advisory Council—a move supported by his board, company stakeholders, and the public at large. For about 10 weeks subsequently, Merck outperformed the S&P 500 pharmaceutical index by about 3.5 percent. Ultimately, Frazier's resignation produced almost \$6 billion in value. The speed with which he responded to the president's comments and distanced himself from the advisory council was made possible by Merck's enterprise risk management (ERM) apparatus, which enabled corporate leaders to process a weekend event and make a board-level decision by Monday morning."

Source: Nir Kossovsky, "Cultural Changes Can Upend Corporate Reputations," *Treasury & Risk*, 8 May 2018.⁹²

Conversely, when companies manage their stakeholder relationships well, decreasing the likelihood of ESG incidents, share prices increase. Investors valued mining companies with strong stakeholder relationships 46-87 percent higher than those with average or weak relationships.⁹³

Dakota Access Pipeline

In 2017, 120 investors led by CalPERS called on 16 banks to cease financing of the Dakota Access Pipeline after the project was revived without the consent of the local indigenous community and despite violating environmental law.⁹⁴ Excessive police force and legal harassment of peaceful protestors had galvanized widespread public outcry following clashes between the indigenous community and human rights defenders with law enforcement and private security.⁹⁵ Ultimately, institutional banking customers like the City Councils of Seattle, Davis and Santa Monica withdrew municipal funds of more than \$4 billion from banks supporting the Dakota Pipeline.⁹⁶

As investors focus more on risks relating to social issues, they are also paying specific attention to how companies meet their responsibilities toward human rights defenders. In August 2018, more than 90 institutional investors representing over US\$ 6.7 trillion in assets signed a letter pressing companies in the palm oil industry to:

“[Provide evidence of] the existence of procedures and mechanisms (not just policies) that ensure the protection of human rights defenders from threats, intimidation and/or violence, aligned with the UN Declaration on Human Rights Defenders;”⁹⁷

These investor practices are trending up, tracking a generational wealth transfer to Millennials and increasing numbers of women making decisions about investments.⁹⁸ In fact, within investment firms, women-owned or women-managed hedge funds are consistently outperforming industry standards.⁹⁹ Millennials are twice as likely as the general population to invest in companies or funds that target specific social/environmental outcomes. Women are 23 percent more likely than men to seek out sustainable investments.¹⁰⁰



Millennials are

2x

As likely to both invest in companies or funds that target **specific social/environmental** outcomes and divest because of objectionable corporate activity.



Women are

23%

More likely than man to **seek out sustainable investments** (76% to 62%)

Source: Casey O'Connor and Sarah Lebowitz, “12 leading ESG frameworks,” NYU Stern Center for Business and Human Rights.

Tracking changes in investor sentiment, corporate governance is also evolving to require a more specific duty of corporate boards to provide risk oversight, with potential legal liability attaching for failure to exercise that duty properly, including with respect to ESG risks.¹⁰¹ CSOs are important to the risk oversight function because they represent independent sources of information about material risks and because they are able to help companies assess the interests of a wider group of stakeholders.



According to prominent corporate lawyer Martin Lipton: “Today, boards are expected to . . . [r] ecognize the current focus of investors on “purpose” and an expanded notion of stakeholder interests that includes employees, customers, communities, and the economy and society as a whole.”

Martin Lipton, Partner, Wachtell, Lipton, Rosen & Katz¹⁰²

H. SUPPORTING CIVIL SOCIETY CAN ENHANCE EMPLOYEE RELATIONSHIPS

Increasing value, reducing reputational risks and maintaining employee morale.

Employees are a key asset of any company and their satisfaction and performance is crucial to the functioning of the company as a whole.¹⁰³ Increasingly, employees perceive their workplace as not only a source of livelihood, but also a means to contribute to the well-being of society.¹⁰⁴ As a result, companies that support CSOs and civic freedoms will engender pride and loyalty, helping to retain and recruit talented employees.¹⁰⁵



Richard Branson has said: “I think if the people who work for a business are proud of the business they work for, they’ll work that much harder, and therefore, I think turning your business into a real force for good is good business sense as well.”

Richard Branson, CEO, Virgin Group

Dan Pontrefact, “The Top 15 CEO Quotes About Operating with a Higher Purpose,” *Forbes*, May 3, 2016. “*Forbes*”. As one expert in purpose-driven careers points out:

“No one wants to work for a soulless corporation. We have heard the mandate before that the social sector should adopt more corporate practices. Well, the reverse is true as well. A real commitment to social good, not just for the purposes of brand enhancement or crisis mitigation, will pay dividends for the bottom line, employee productivity, and true community impact.”¹⁰⁶

The value of supporting CSOs can be seen in the value that has been generated by corporate responsibility programs, which often partner with and support CSOs. According to studies analyzed by IO Sustainability and Babson Social Innovation Lab, corporate responsibility programs reduce staff turnover rates by up to 50 percent, saving 90-200 percent of employees’ annual salary, and an improvement in corporate responsibility performance has the same effect on retention as an increase in annual salary of US\$ 3,700/year.¹⁰⁷ Corporate responsibility programs also translate to workers’ willingness to accept a 5 percent pay cut, increases productivity up to 13 percent, and increases employee engagement by up to 7.5 percent.¹⁰⁸

Potential value of corporate responsibility for human resources

Reduce the company's staff turnover rate by up to: 50%	Save per additional retained employee: 90-200% of the employee's annual salary	Improvements in CR performance has the same effect on retention as an increase in annual salary of: \$3,700/year
Workers willingness to accept variability in pay: 5% pay cut	Increase productivity by up to: 13%	Increase employee engagement up to: 7.5%

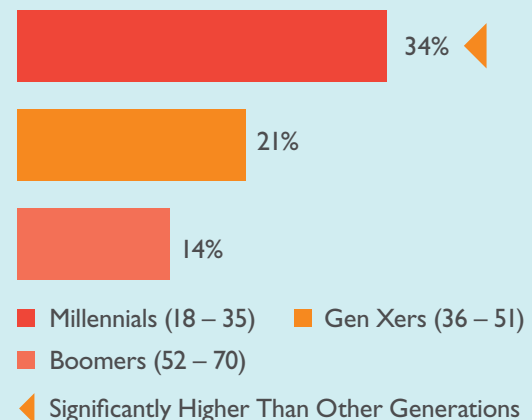
Source: Steve Rochlin, Richard Bliss, Stephen Jordan, and Cheryl Kiser, "Project ROI: Defining the Competitive and Financial Advantages of Corporate Responsibility and Sustainability." 2015: IO Sustainability.

Employees are also motivated when companies support them in enjoying their own civic freedoms. For instance, companies including Reddit, Etsy and Kickstarter supported protests against changing Net Neutrality rules in the US.¹⁰⁹ By allowing or even encouraging employees to engage with public policy issues they are passionate about, companies help employees to feel a stronger connection to their work. The UK Government's "Workplace Employee Relations Survey" found that open working cultures, in which employee involvement is prioritized, are likely to result in better workplace well-being and enhanced employee perceptions about the "psychological contract" between a company and an employee.¹¹⁰ Ways in which companies could promote civic freedoms at the workplace might include:

- making it clear to employees through internal policies that freedom of expression is permitted and encouraged;
- creating platforms for free expression (e.g. on the intranet) where employees can anonymously express their opinions;
- leading from the top to demonstrate an open and socially conscious organizational culture, e.g. through CEO activism;
- publicly or privately supporting employees who plan to engage in political protest;
- establishing corporate volunteering initiatives which allow employees to express their passion for particular causes; or
- establishing employee-led committees to engage in work-place dialogue on important political and social issues.

Engagement on social issues by the company as a whole can generate even more motivation for employees. A 2016 KRC Research and Weber Shandwick study found that employees feel more loyal to companies that take public positions on hotly contested issues.¹¹¹ That phenomenon is even more pronounced for younger generations, with 34 percent of Millennials expressing that view, compared to 21 percent of Gen Xers and 14 percent of Baby Boomers.¹¹²

Would increase loyalty to employer if own CEO took a public position on a hotly debated issue



Source: KRC Research & Weber Shandwick, The Dawn of CEO Activism (2016)

Conversely, failing to live up to corporate values on social issues can cause employee backlash. In August 2018, for example, hundreds of Google employees, disappointed by the company's plans to launch a censored version of its search engine in China, signed a letter demanding more transparency in order to make "ethically-informed decisions about our work, our projects, and our employment."¹¹³



SHARED INTERESTS; **DIVERGENT FRAMES**

Communication between companies and CSOs is sometimes hampered by their divergent perspectives, with shared interests sometimes obscured by differences in vocabulary.

CSOS SAY THEY DO . . .	COMPANIES WANT . . .
Monitoring and fact-finding (e.g. acting as “watchdogs” and “whistleblowers” to call attention to possible and actual human rights harms)	Information gathering and risk reduction (by systematically receiving critical and timely information for business decision-making)
Alliance building (to create leverage for achieving positive social change through greater protection of human rights)	Trust (from business stakeholders, including business partners, consumers, employees and local communities)
Standard Setting (to promote awareness of and respect for human rights)	Legitimacy (for business practices and ensuring a social license to operate)
Advocacy (to achieve positive social change through greater protection of human rights)	Constructive criticism (with a view to enhancement, modernization and reform of business processes)

CSOs are critical to company efforts to improve their human rights impact in a wide variety of ways. Key strategies include:

1. Gathering information on potential business partners or new markets

Companies can draw on the monitoring and fact-finding experience of human rights CSOs to vet potential business partners and avoid embarrassing revelations and news stories down the line.

2. Reviewing product sourcing arrangements and supply chains

Companies can collaborate with CSOs experienced with human rights fact-finding and embedded in local communities to identify and root out adverse human rights impacts in their supply chains.

3. Developing internal human rights policies or statements

Companies can work with CSOs to help determine which human rights risks are most pertinent to their industry, sector or business model and, on that basis, identify key focus areas and develop tailored and context-specific human rights policies.

4. Creating external standard setting or certification mechanisms

Companies can build trust and legitimacy by participating in existing independent standard setting or certification mechanisms (such as the Corporate Human Rights Benchmark established by, amongst others, the Business & Human Rights Resource Centre) or by working with CSOs to establish such mechanisms.

5. Creating sector wide agreements

Companies can team up with CSOs active in their sector and with other companies in their industry to develop sector-wide agreements signaling respect for human rights or promoting human rights respecting behavior among all signatories.

6. Establishing and adhering to reporting and monitoring mechanisms

Companies can partner with CSOs that have sector-specific or issue-specific expertise to draw upon their experience and ensure that they (the businesses) are effectively adhering to independent human rights monitoring and reporting requirements. Such partnerships build trust and legitimacy for companies while providing constructive criticism that enables the companies to prevent, mitigate or remediate adverse human rights impacts.

7. Developing trainings and workshops for business stakeholders (e.g. employees, business partners)

Companies can engage CSOs and leverage their expertise to build human rights awareness and know-how among their business partners and employees. Through human rights trainings and workshops, companies simultaneously decrease the risk of causing or contributing to adverse human rights impacts and build trust among key stakeholders.

8. Resolving disputes between business and local communities

Companies can work through CSOs acting as trusted third party intermediaries to help resolve disputes with local communities or other relevant stakeholders, establishing legitimacy for the outcome (and the business activity) and building trust among local stakeholders.

The Appendix, below, contrasts the business and CSO perspectives on these strategies. It is in the interest of business to bridge these differences.

Benefits of Business Engagement with Civil Society Organizations

STRATEGY	ROLE OF CSO	BENEFITS OF CSO ENGAGEMENT	CHALLENGES & LIMITATIONS	BUSINESS GAIN
Business assessment	Fact-finding	<ul style="list-style-type: none"> Enables businesses to avoid being connected with questionable or problematic business partners Ensures businesses provide their services only to those who share their values 	<ul style="list-style-type: none"> Information may be unreliable 	Information gathering and risk reduction
Market assessment	Fact-finding	<ul style="list-style-type: none"> Allows businesses to proactively identify markets or regions that pose particularly serious risks Allows businesses to fill important information gaps in order to make informed decisions 	<ul style="list-style-type: none"> Information may be unreliable CSOs may lack contextual understanding of the actual operations and structure of the company's supply chain 	Information gathering and risk reduction
Product sourcing	Fact-finding	<ul style="list-style-type: none"> Provides a better understanding of potential harms produced by business operations Allows businesses to proactively identify markets or regions that pose serious risks 	<ul style="list-style-type: none"> Information may be unreliable Lack of contextual understanding of the company's actual operations and supply chain 	Information gathering and risk reduction
Internal human rights policy / statement	Fact-finding + standard setting	<ul style="list-style-type: none"> Identifies salient issues and breaks down areas of concern into identifiable and manageable pieces CSO participation in external interviews and workshops can help businesses to identify areas with the greatest impact or potential concern 	<ul style="list-style-type: none"> There is often a lack of trust between CSOs and businesses, particularly at the local level For businesses with global operations, it is difficult to maintain systematic and reliable cooperation with local CSOs 	Information gathering and risk reduction + legitimacy

STRATEGY	ROLE OF CSO	BENEFITS OF CSO ENGAGEMENT	CHALLENGES & LIMITATIONS	BUSINESS GAIN
External standard or certification mechanism	Alliance building + standard setting + advocacy	<ul style="list-style-type: none"> Improves quality and legitimate standard-setting processes Provides an additional layer of transparency Enhances reputation and brand recognition 	<ul style="list-style-type: none"> CSOs standards may not accurately reflect the actual operations or activities of the business There may exist significant divergence between CSO standards and business standards 	Trust + legitimacy + constructive criticism
Sector agreement	Alliance building + standard setting + advocacy	<ul style="list-style-type: none"> Enables systematic dialogue between CSOs and businesses Establishes a formalized channel of cooperation Sets-out a concrete set of commitments and benchmarks 	<ul style="list-style-type: none"> There is often a lack of trust between CSOs and businesses, particularly at the local level For businesses with global operations, it is often difficult to maintain systematic and reliable cooperation with local CSOs 	Trust + legitimacy + constructive criticism
Reporting & monitoring mechanisms	Advocacy	<ul style="list-style-type: none"> Helps businesses to adhere to their commitments and identify key areas for improvement Ensures compliance with (international) legal standards 	<ul style="list-style-type: none"> Due to mistrust, CSOs are often adversarial, and it can be difficult to establish a relationship of critical but constructive engagement For businesses with global operations, it is often difficult to maintain systematic and reliable cooperation with local CSOs 	Constructive criticism

STRATEGY	ROLE OF CSO	BENEFITS OF CSO ENGAGEMENT	CHALLENGES & LIMITATIONS	BUSINESS GAIN
Training & workshops	Advocacy	<ul style="list-style-type: none"> Allows businesses to transform internal attitudes and organizational culture in a way that recognizes the value of protecting civic freedoms Provides unique expertise on civic freedoms and harmful business operations Allows businesses to translate standard-setting mechanisms into concrete programs 	<ul style="list-style-type: none"> Businesses often struggle with organizational cultures that don't recognize the importance and value of protecting human rights and civic freedoms Due to mistrust, CSOs are often adversarial, and it can be difficult to establish a relationship of critical but constructive engagement 	Constructive criticism
Conflict & Dispute Resolution	Advocacy	<ul style="list-style-type: none"> Allows businesses to avoid a full-blown conflict or dispute with local stakeholders (which can be costly) CSOs can operate as trusted, third-party intermediaries between business and local communities Allows businesses to better understand and tackle issues relating to distrust 	<ul style="list-style-type: none"> Due to mistrust, CSOs are often adversarial, and it can be difficult to establish a relationship of critical but constructive engagement For businesses with global operations, it is often difficult to maintain systematic and reliable cooperation with local CSOs 	Constructive criticism
Independent binding arbitration agreements	Advocacy	<ul style="list-style-type: none"> Allows for greater public participation in negotiations among unions, businesses and governments Provides robust and meaningful change, communicating that the business takes its commitments seriously 	<ul style="list-style-type: none"> Businesses are often unwilling to participate in binding dispute resolution mechanisms It is difficult to achieve the degree of cooperation necessary among CSOs, unions, governments and businesses to facilitate such agreements (the 2013 Bangladesh Accord on Fire and Building Safety is an important and notable exception) 	Constructive criticism



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