

# business & human rights

the relationship between corporate responsibility  
and human Rights – theory and practice

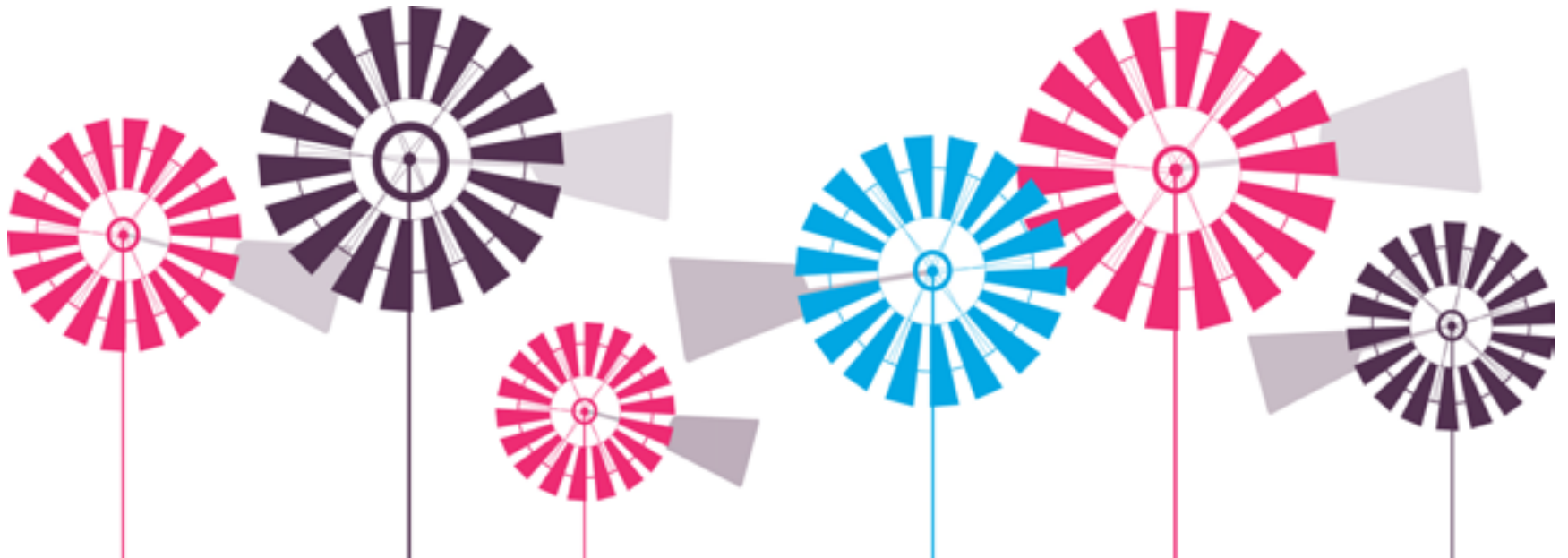
Ulrike Schuermann

Workshop 03  
Business and Human Rights

05 March 2008

# understanding

- o **underlying global trends**
- o business context
- o recent developments in human rights
- o advantages of using a human rights framework
- o complicity
- o sphere of influence
- o way forward



# underlying trends

- population growth
- poverty and inequality
- globalisation
- technological change and
- the newest issue to hit the main stream: sustainability

6.7billion in 2007  
9.2 billion in 2050



# underlying trends

## poverty & inequality

- At the present rate of progress we will not meet the MDG's in 2015.
- The projected results indicate that the number of people living on less than 1\$ a day will have increased by 380 million from 1000 million.

- The world's 500 wealthiest people have a combined income larger than the world's 416 million poorest people.
- 2.5 billion people (40% of the world's population) live on less than \$2 a day and account for 5% of global income
- The wealthiest 670 million (10% of the world's population) represent 54% of global income.

<sup>1</sup> UNDP's Human Development Report 2005 evaluating the progress of the MDG's.



# underlying trends

- population growth
- poverty and inequality
- globalisation
- technological change and
- the latest trend: **sustainability**

“Meeting the needs of the present without compromising the ability of future generations to meet their own needs.”

Gro Harlem Brundtland Commission report, “Our Common Future” 1987



# underlying trends sustainability

Around 1.7 billion people worldwide—more than a quarter of humanity—have entered the "consumer class," adopting the diets, transportation systems, and lifestyles that were limited to the rich nations of Europe, North America, and Japan during most of the last century.

In 2005 the world economy produced goods and services worth almost US \$55 trillion.

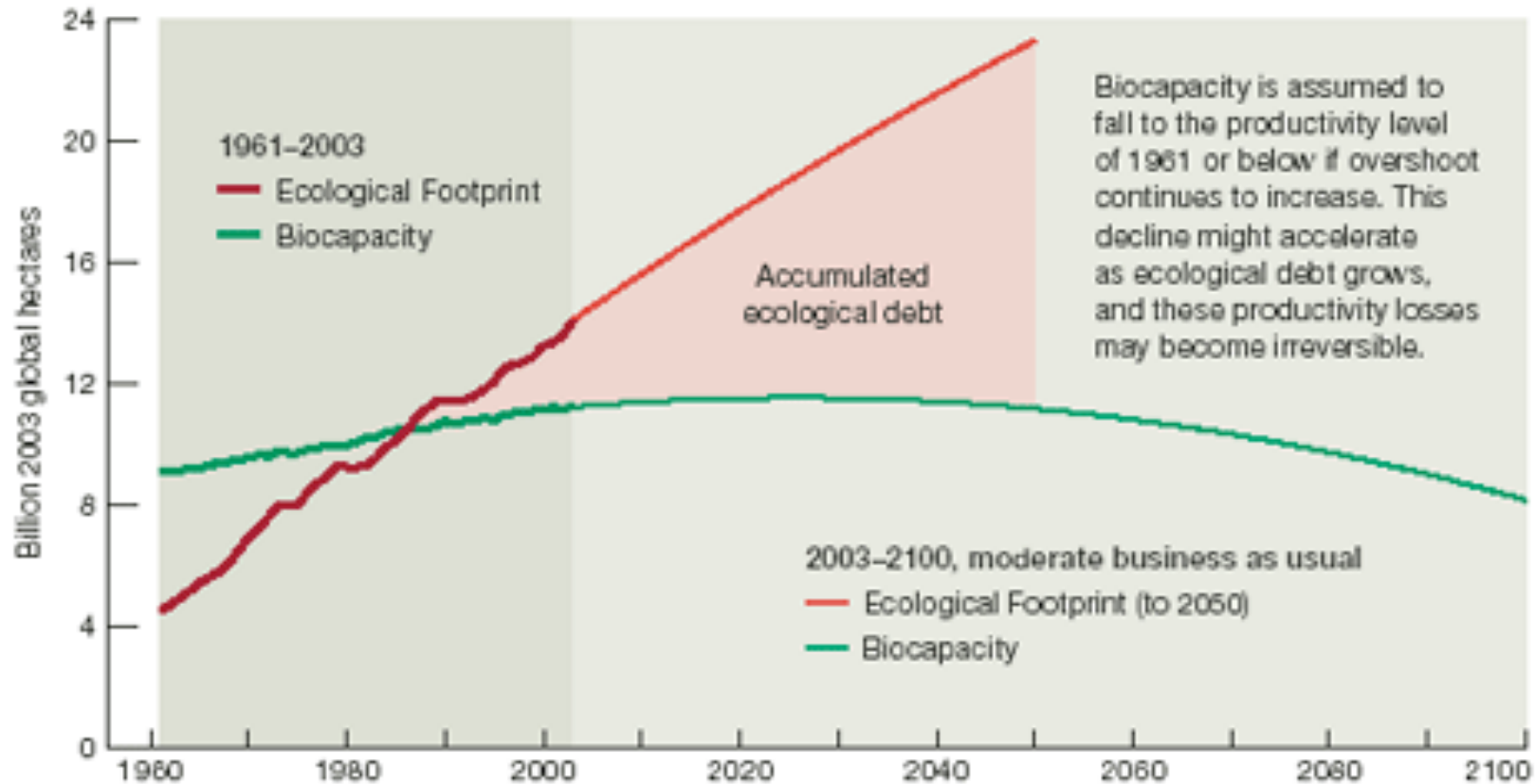
At the same time, the 12 percent of the world's people living in North America and Western Europe account for 60 percent of this consumption, while the one-third living in South Asia and sub-Saharan Africa account for only 3.2 percent.

<sup>1</sup> State of the World, Worldwatch 2004



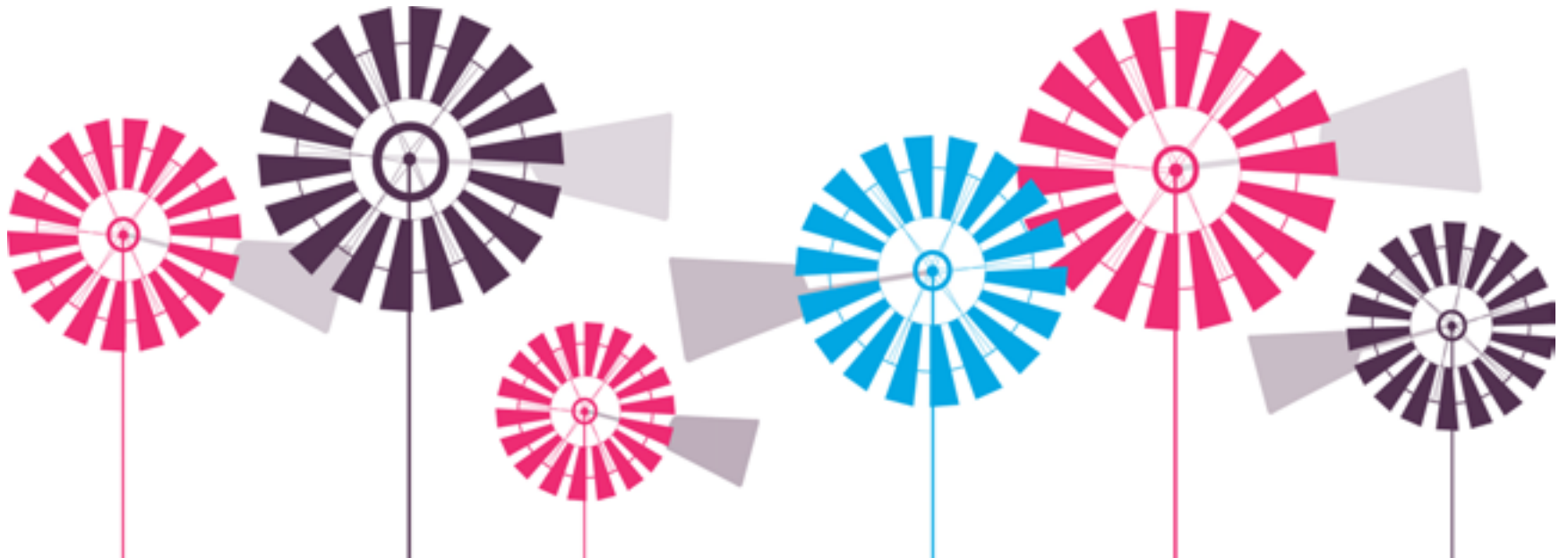
# World Ecological Footprint

## BUSINESS-AS-USUAL SCENARIO AND ECOLOGICAL DEBT



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# business context

- the annual revenue of the five largest corporations is more than double the GDP of the poorest 100 countries in the world and
- of the world's 100 largest economic entities, 51 are companies and 49 are countries. (2003)

# business context

Emerging markets & the fortune at the bottom of the pyramid:

- Nokia's sales in China, Hong Kong and Taiwan jumped 28% in 2006 making the region its biggest market.
- Developing markets represented 35% of sales for Unilever in 2007.
- Australian banks currently earn about 1% of their profits from Asia. ANZ predicts it will earn 20% of its profits from Asia by 2012.
- GE expects that 60% of its growth will come from these countries in the next decade compared to 20% for the past decade.[1]
- Unilever, Vodafone, Phillips and Procter & Gamble have already begun to develop products to benefit from the fortune at the bottom of the pyramid.

[1] Ethical Corporation Conferences, Responsible business in Emerging Markets Summit flyer 2007.

# business and human rights

There are many intersections between human rights and corporate activities:

- Potential health impacts of products such as fast food, building materials, tobacco and environmental damage;
- The price and availability of important pharmaceuticals and issues related to the right to health and the right to life
- The potential human rights impact of supply chains (ethical sourcing)
- The mining of so called conflict diamonds and many others.

While human rights are now on the corporate agenda they are managed largely in an ad hoc manner.

There is little to no industry consensus on how to tackle the challenges they pose.



# business and human rights

Several international institutions including the ILO; the OECD and the UN have identified human rights obligations specific to private companies.

The International Labour Organisation (ILO) through many Labour Conventions

The Organisation for Economic Cooperation and Development (OECD) through the Guidelines for Multinational Enterprises

The United Nations through:

- The Global Compact, and
- The draft United Nations Norms on Transnational Business and Human Rights

# corporate responsibility & human rights

- However, most, while voluntary and therefore very business friendly to entice participation - like the Global Compact for example - are difficult to use for managers without human rights experience.
- All have in common the attempt to define what exactly the human rights obligations of business are and to provide practical guidance in translating the obligations into activities.
- A very small group of trans-national businesses have collaborated under the Business Leaders Initiative on Human Rights (BLIHR) and 'road-tested' the most authoritative of these instruments, the UN Norms, as well as published a Guide for Integrating Human Rights into Business Management to address this issue.

# voluntary versus legally binding

- the prevailing view by business and governments is that codes of conduct and other voluntary initiatives by companies are a more effective tool for changing company behaviour than legally binding obligations.
- the biggest gap in the current approach is the continuing absence of detail on what is expected from companies on human rights – an issue which the UN Norms were intended to address.
- in the absence of regulation it is important to maximise the current voluntary code of conduct approach and due to the plethora of different indices, reporting frameworks and guidelines business increasingly looks towards internationally agreed to frameworks to embed corporate responsibility activities.

# progress to date

- increasing collaboration between often mutually suspicious groups
- recognition that together, the business, government and civil society sectors can deliver results that none of them could achieve on their own
- blurring of traditional definitions and divisions between business and civil society groups, and between corporate responsibility and enlightened philanthropy

# from the periphery to core business

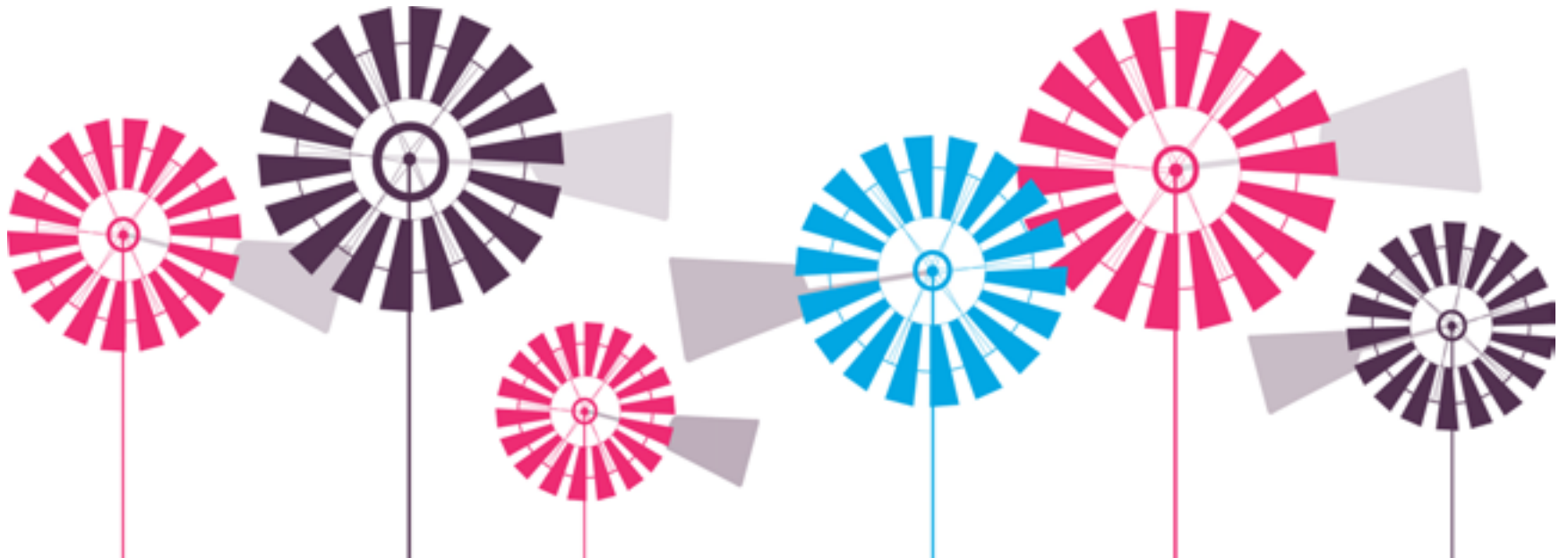
issues such as the fight against diseases like HIV and diabetes, strategies to combat the effects of global warming, or the efforts to support fair trade and just labour practices – have become mainstream.

participating in the fight against Aids is an example of business-aligned corporate social responsibility in the case of a pharmaceutical company involved in producing the relevant drugs.

for businesses operating in sub-Saharan Africa, or in India, with large workforces heavily affected by Aids it is central to core needs.

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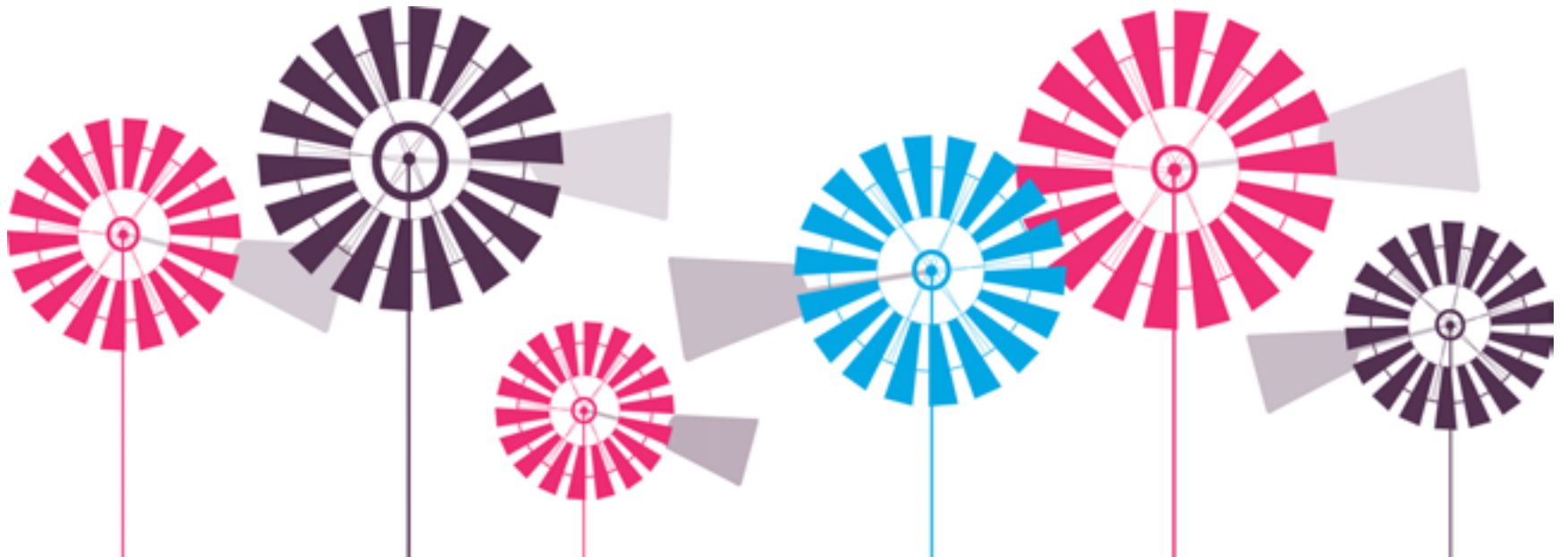
# recent developments in human rights

- o 60th anniversary of the adoption of the Universal Declaration of Human Rights
- o Beijing Olympics
- o focus on the winners and losers of the climate change impact
- o The imminent release of the next Ruedge report



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# advantages of the human rights framework

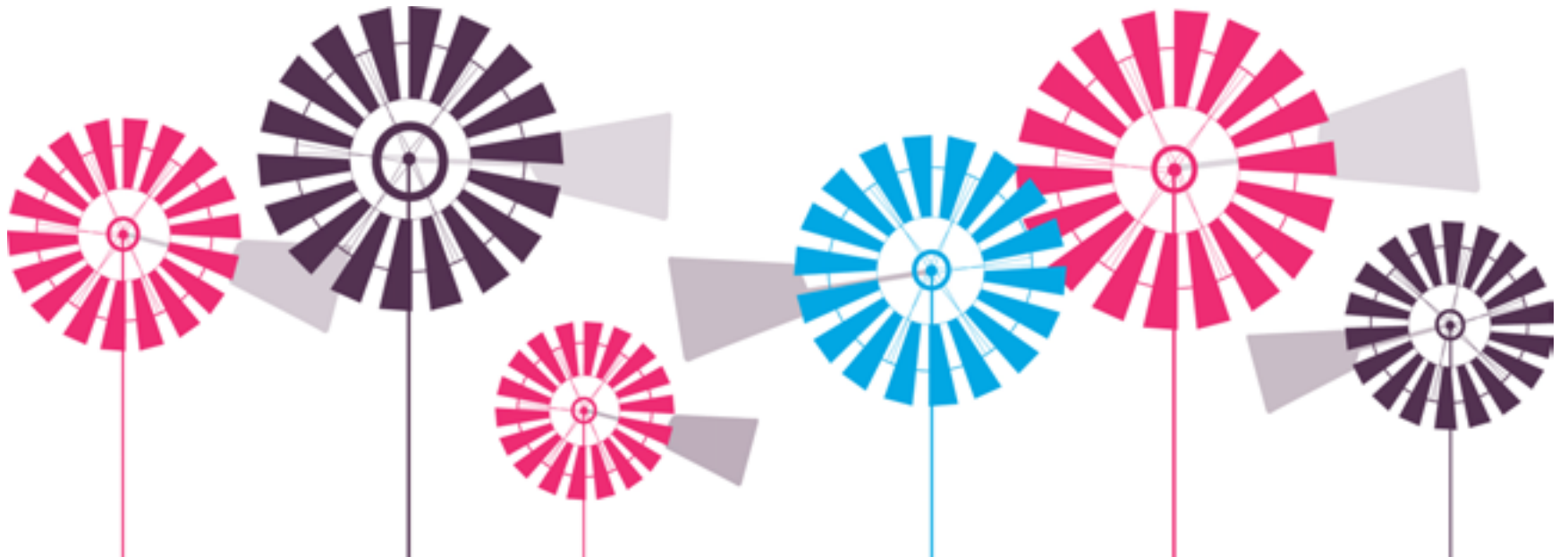
- It can provide a common and universal standard. This will assist efforts to judge company practices across national boundaries.
- International law can act as a benchmark where national law is being developed or weak and can be used to judge national laws and regulations.
- **International human rights framework is the only existing internationally agreed expression of the minimum conditions that everyone should enjoy if they are to live with dignity as human beings.**

# advantages of the human rights framework

- Corporate social responsibility needs a framework of values that are agreed and authoritative such as the human rights framework of the major conventions and treaties negotiated, exhaustively, over the last 60 years.
- The human rights framework entailed in the UN Norms converts rights into obligations for businesses not only to respect and protect but also to fulfil human rights by taking positive steps.
- The human rights framework provides principles of management consistent with minimising a company's risk of infringing the human rights of individuals and communities within their sphere of influence.

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# complicity

Assisting directly or indirectly in human rights violations committed by others:

- When a company actively assists, directly or indirectly, in human rights violations committed by others;
- When a company is in a partnership with a government and knows, or should have known before agreeing to the partnership, that the government is likely to commit abuses in carrying out its part of the agreement
- When the company benefits from human rights violations even if it does not positively assist or cause them e.g. abuses committed by security forces, such as the suppression of a peaceful protest against business activities or the use of repressive measures while guarding company facilities; and
- When the company is silent or inactive in the face of systematic or continuous human rights violations e.g. inaction or acceptance by companies of systematic discrimination in employment.

# complicity

**Rolls Royce** has decided not to deliver any engines to companies operating in Sudan due to concern about the humanitarian crisis and will not seek new business in Sudan until the situation has been addressed.

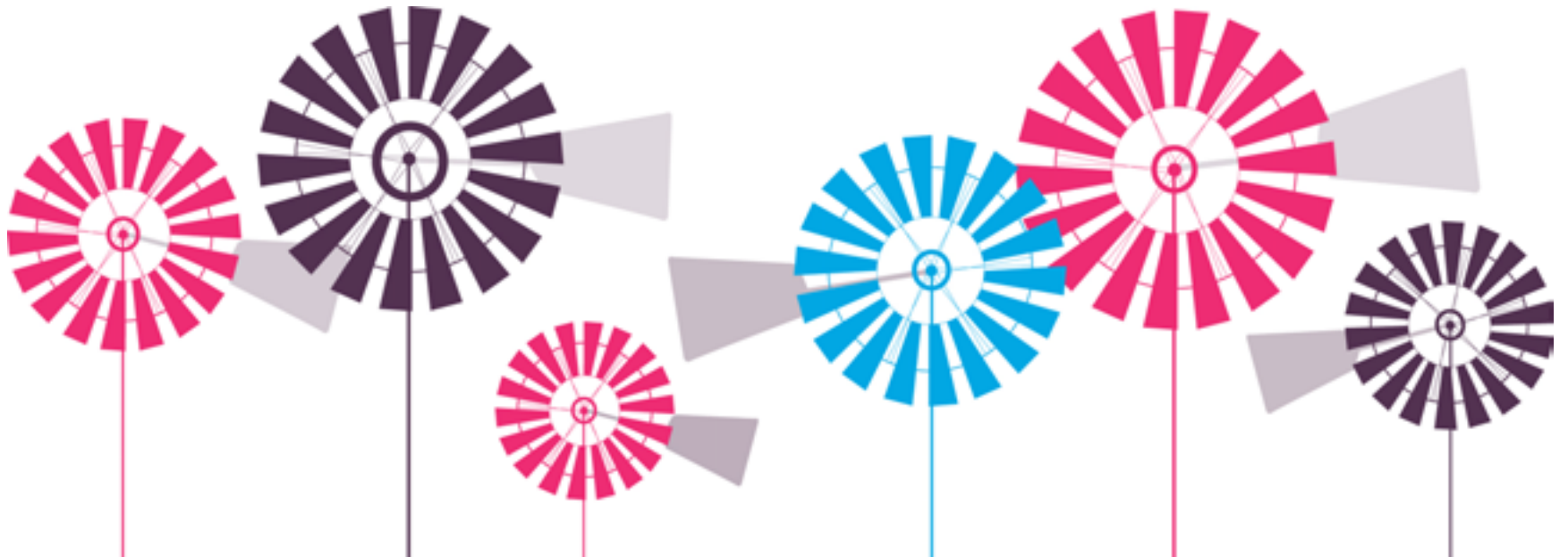
In May 2007 **Ford** decided to stop exporting Land Rovers to Sudan over concerns about their use by military or paramilitary groups.

At **Google's** AGM in May 2007 a shareholder resolution on human rights and internet censorship was presented by one of its major shareholders, a superannuation company. Amnesty International is also calling on Google to stop internet repression in countries such as China. Google's board of directors recommended that shareholders vote against the proposal and most did. **Microsoft, Cisco and particularly Yahoo!** have been singled out for similar 'collaboration' on internet repression in recent years with regard to the Chinese government.

In response to these concerns and to the shareholder and NGO activism, a multi-stakeholder forum has been formed by Amnesty International and

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# 'sphere of influence'

“ While the concept [of sphere of influence] is not defined in detail by international human rights standards, it will tend to include the individuals to whom the company has a certain political, contractual, economic or geographic proximity. Every company, both large and small, has a sphere of influence, though obviously the larger or more strategically significant the company, the larger the company's sphere of influence is likely to be.” (*The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity OHCHR Briefing Paper* “*Embedding Human Rights in Business Practice*” .

Within its 'sphere of influence' the company has a moral, if not legal responsibility, not to be complicit in human rights violations.

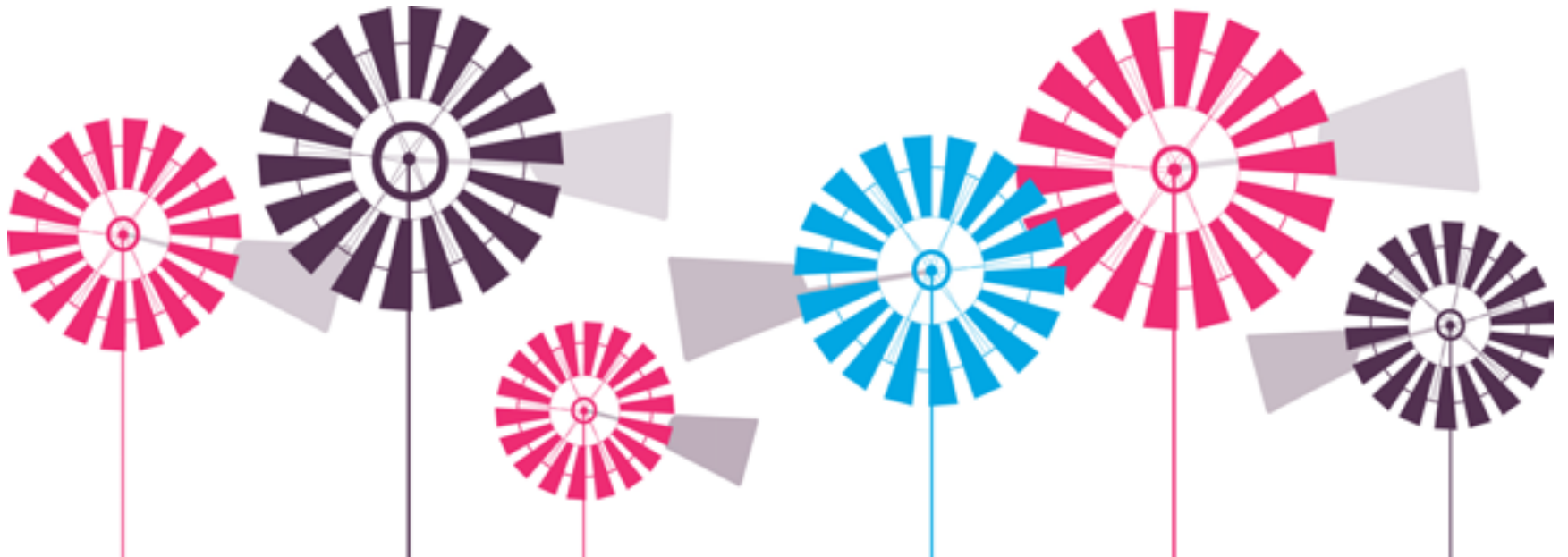
# relevance to Australia

The significance of human rights has been recognised in relation to business activity in developing countries but also has application to businesses operating in Australia including in areas such as:

- Improving workplace conditions;
- Health & Safety;
- Preventing racial, religious and gender discrimination;
- Guaranteeing freedom of association;
- Ensuring responsible marketing and product testing; and
- Promoting human rights by engaging with stakeholders and governments;
- Ethical supply chain management.

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# the way forward

business as usual - which means fragmented efforts and concentration on past abuses rather than the elimination of future abuse

**or**

recognising that without the positive involvement of the corporate sector there can't be adequate protection of human rights;

recognising responsibility for business impact on human rights – the clear expectation that companies conduct their business in a manner that assists solutions and does not exacerbate problems;

ending the controversy between voluntarism and regulation and move forward with a sensible mix of both approaches.

# the way forward – practical suggestions

- Understand concerns and expectations of key stakeholders
- Identify the company's key human rights risks
- Recognise the company's sphere's of influence
- Define and publish clear policies on human rights
- Assign management responsibility and devise implementation procedures
- Conduct human rights impact assessments
- Establish monitoring mechanisms
- Be transparent.

# broader implications

A new sustainable society – conventional growth is untenable  
Success re-defined - based on long term sustainability, not short term consumption  
Markets re-designed to enhance the local and global “Commons” and reduce materialism

Business and Governance models redesigned – local production, short supply lines, wider corporate responsibilities  
Incentives rethought extremes reduced, less focus on “me” more focus on “us”

<sup>1</sup>Achieving excellence in fundraising and building endowment, P104.



# pro voluntary codes

1. Companies are more likely to respect rules they themselves design;
2. External regulation by governments is counterproductive and compliance procedures are expensive;
3. Market forces will ensure companies adopt best practices with regard to human rights and other issues;
4. It is premature to draft binding international rules as the area is relatively new and needs time to mature and spread;
5. Legally binding codes could impose possible litigation;
6. Sometimes penalties are so low, they are cheaper than implementing required changes;
7. Companies will cease to cooperate with the UN and NGO initiatives;
8. Legal norms, especially at the international level, are notoriously abstract and difficult to apply in practice to varied business operations; and in contrast
9. Voluntary codes are highly flexible and adaptable to individual circumstances.

# pro legally binding

1. Voluntary initiatives might clash with other, more powerful commercial interest, there is a clear role for international law to provide a framework for improvements and accountability in human rights.
2. It is not self-evident that human rights norms are 'good for business' and therefore make commercial sense.
3. Voluntary codes are an ideal 'testing ground' for new regulation.
4. History demonstrates that voluntarism alone has rarely caused states to respect human rights, human rights abuses during WWII gave the impetus for international human rights legislation.
5. Voluntary codes rely on good intentions and create a 'free-rider' phenomenon.
6. The role of law is to balance power and obligations by establishing enforceable rights and corresponding duties. Large companies are beginning to challenge the dominance of governments, hence their power should be 'regulated'.
7. International law evolves slowly, it might take years of complex negotiations and there is a need now to build an international consensus around binding regulation.
8. If a cause of action is deemed 'illegal' it creates a deterrence.
9. International standards create a level playing field.
10. Replaces confusion with obligation and clarity – the human rights framework complements corporate responsibility initiatives.

# voluntary versus legally binding

- Beyond voluntarism towards legally binding instruments.  
(There are currently four countries in Europe with mandatory social and environmental reporting laws).
- Not either or – both regulation and voluntary initiatives beyond compliance are needed to move the agenda forward.
- Voluntary initiatives have paved the way for legally binding instruments.
- Human rights should form a core part of and offer a framework for corporate social responsibility activities.

# Barriers

- The belief that money to shareholders is the purpose of corporate activity - measuring success by financial criteria only;
- The adversarial modus operandi of some NGO's derived from a focus on human rights abuses; (protest can raise issues, it takes engagement to win the argument).
- The lack of commitment by many national governments.