

# BUSINESS LEADERS DIALOGUE ON CORPORATE RESPECT FOR HUMAN RIGHTS

## ADDRESSING COMPLEX CHALLENGES, BUSINESS RISK AND THE TRUST DEFICIT



Thursday 26 May 2016, 8.30am-5.30pm

### INTRODUCTION

This event will be a business-to-business dialogue about how companies are navigating and managing human rights risks in the South African context. Many of the business and human rights issues in South Africa today have their origins in the country's apartheid history. Racially-based disparities in wealth, income and opportunity all have their roots in that history. At the same time, there are a range of other human rights issues that have arisen in South Africa's more recent economic and business activities that provide social license to operate challenges over and above ongoing efforts to deal with the legacies of the country's history. The dialogue will consider how human rights in democratic South Africa are being integrated into the economic sphere, and how the realisation of rights leads to resilient economies and well-functioning companies.

### KEY AREAS OF FOCUS

Through a focus on **current business practice plus local and international case studies**, the dialogue will explore various questions including:

- What does corporate respect for human rights look like in practice and how does this deliver positive outcomes for business and rights-holders?
- How can the South African and global business community learn from recent good practice case studies and instances where things have gone wrong?
- Are there capacity and capability gaps when it comes to operating with respect for human rights? If so, how can these be addressed?
- Does the international Business and Human Rights agenda – in particular the UN Guiding Principles on Business and Human Rights – help when thinking about South Africa's post-apartheid economic transformation?
- How do companies sustain the imperative to address social license to operate issues during times of economic and financial stress – as South Africa and economies around the world are experiencing right now?

The event will be invitation-only and conducted under the Chatham House Rule. The event is being co-hosted by the Global Compact Network South Africa (GCNSA), the National Business Initiative (NBI) and the Global Business Initiative on Human Rights (GBI).

## WHO WILL PARTICIPATE?

- Representatives from **leading South African businesses**, and representatives from **corporate head offices of GBI member companies**
- Business leaders from a **range of different industries, and corporate departments** – including risk management, sustainability, legal, human resources, procurement, security, and corporate responsibility
- Individuals with **varying levels of familiarity with the business and human rights agenda** – from companies interested in how to get started looking at human rights to companies with sophisticated and established policies and processes addressing their human rights impacts
- Speakers will also include select business and human rights experts from outside the business community

## BENEFITS OF PARTICIPATION

- Gain practical insight into how companies in diverse sectors seek to establish social license to operate in complex operating environments
- Learn about company policies, processes and practices to address human rights-related risks
- Learn from peers about their responses and ongoing challenges around specific incidents and cases - covering issues such as land, community consultation and engagement, labour rights in the supply chain
- Access approaches to embedding and integrating human rights due diligence and remediation into governance and business processes
- Explore successful strategies where multiple stakeholders collaborate to solve complex social risk challenges at a local level

## AGENDA AT A GLANCE

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| <ul style="list-style-type: none"><li>• Welcome and Keynote</li><li>• <b>Session One:</b> Context, evolving expectations and strategic responses</li><li>• <b>Session Two:</b> Case study peer learning groups: addressing specific human rights impacts</li><li>• <b>Session Three:</b> Deep dive discussion on case studies<ul style="list-style-type: none"><li>› Part one: Marikana – contextual analysis, Lonmin's response and lessons</li><li>› Part two: Multi-stakeholder collaboration to solve complex problems</li></ul></li><li>• <b>Session Four:</b> Corporate respect for human rights-implementation and integration</li><li>• Ways forward and next steps</li></ul> | <ul style="list-style-type: none"><li>• <b>Confirmed speakers and case study companies include:</b><ul style="list-style-type: none"><li>• Judge Dennis Davis, keynote speaker</li><li>• Senior representatives from companies including:<ul style="list-style-type: none"><li>› The Coca-Cola Company</li><li>› Lonmin</li><li>› Total SA</li><li>› Anglo American Platinum</li><li>› Illovo Sugar</li></ul></li></ul></li></ul> | <ul style="list-style-type: none"><li>• <b>Confirmed business participants include:</b><ul style="list-style-type: none"><li>• ABB</li><li>• BASF</li><li>• General Electric</li><li>• Syngenta</li><li>• Novo Nordisk</li></ul></li></ul> |
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# AGENDA

08:00

Arrivals, Registration and Light Breakfast

08:30

Welcome, Context and Keynote



The day will begin with a welcome from the organisers of the event, Joanne Yawitch, CEO, National Business Initiative and Katryn Wright, Director, Global Business Initiative on Human Rights. They will provide brief contextual remarks to set the scene for the day and explain what to expect from the dialogue.

Judge Dennis Davis will provide the keynote “state of the nation” address. His remarks will contextualise the day’s proceedings in the wider socio-economic environment relating to South Africa’s post-apartheid transition and current realities. He will touch on South Africa’s strong human rights and democratic framework, the (actual and perceived) role of business in society, businesses’ role in addressing poverty and inequality and the legacy of business and apartheid as pertinent issues for companies in South Africa grappling with social license to operate, unrest and risk.

09:00

Session One



## Context, evolving expectations and strategic responses

This session will explore the relationship between business and human rights in the South African social and economic context, and how leading companies are responding to emerging expectations and standards.

Panelists will discuss:

- What responsibilities does business have vis-a-vis human rights?
- What are some of the ways in which companies have an impact on human rights, whether positively or negatively?
- What are the risks to business of not paying attention to human rights?
- How do South African legislative and policy frameworks help companies meet their human rights responsibilities (e.g. B-BBE Codes, King Reports, mandatory social and ethics committees, social and labour plans for extractive companies)? Does compliance really lead to societal transformation?
- What frameworks and tools exist that can guide how business should respond to these evolving expectations? What do the UN Guiding Principles on Business and Human Rights (UNGPs) say business should do?
- How are companies responding to evolving human rights expectations and standards, including the UNGPs? What does respecting human rights mean in practice?
- What are the impacts in times of economic and financial stress on implementing corporate respect for human rights?

Panellists:

- Siphon Pityana, Chair, AngloGold Ashanti
- Arnold Kanyangarara, Workplace Accountability Manager, The Coca-Cola Company
- Josua Loots, Project Manager, Business and Human Rights, Centre for Human Rights, University of Pretoria
- Katherine Liao, Deputy Regional Representative, UN Office of the High Commissioner for Human Rights
- Philip Jordan, Chairman of the Ethics Committee, Total (formerly CEO, Total South Africa)

Moderator: Alan Fine, Associate, Russell & Associates

10:30



Break

10:45



Session Two



### Case study peer learning groups: addressing specific human rights impacts

In breakout groups, participants will explore real case studies and lessons learned presented by prominent businesses. The case studies will outline a recent/current business and human rights case, and then describe how the company has responded, lessons learned, ongoing challenges and next steps. There will then be a facilitated dialogue with the company dealing with challenges and the opportunity for participants to share their experiences in responding to similar human rights issues. Relevant experts will also provide reflections on the cases and discussions.

The different peer learning groups will focus on:

- **Group one:** community engagement, consultation and natural resources
- Case study one: Anglo American Platinum
- Case study two: Illovo Sugar
- Case study three: BASF

Expert Reflections: Professor Danny Bradlow, University of Pretoria

Moderator: Paul Kapelus, Chair of Human Rights and Business Working Group, Global Compact Network South Africa and Director, Synergy

- **Group two:** human and labour rights in business relationships
- Case study one: AngloGold Ashanti
- Case study two: The Coca-Cola Company

Expert Reflections: Andrea Shemberg, Lead, LSE Investment and Human Rights Project

Moderator: Achieng Ojwang, Project Manager, Global Compact Network South Africa

12:15



Lunch

13:00



## Session Three



### Deep dive discussions on case studies

This two part session will explore case studies from the mining industry (platinum and gold) but will share relevant lessons for businesses in other industries – particularly around corporate governance, worker and community engagement, working with third parties, and engaging with civil society.

13:00



## Part one

### Marikana – contextual analysis, Lonmin’s response and lessons learned

This session will explore the circumstances that led to the events at Marikana in August 2012, Lonmin’s response and lessons learned. This will be a unique opportunity to hear Lonmin’s analysis of what happened during that week and why, and how the company has responded.

Contextual analysis will be provided using media coverage from the time and interviews with key experts. Lonmin will then share their immediate, medium- and long-term responses to how they dealt with the developments at Marikana. Lonmin will share lessons learned from the crisis and describe steps they have taken to prevent future such tragedies and implement respect for human rights. Participants will have the opportunity to raise questions and share reflections and experiences.

- Speaker
  - Lerato Molebatsi, Executive Vice President, Communications and Public Affairs, Lonmin
- Reflections by:
  - Gerald Pachoud, Manager Partner, Pluto Advisory, formerly Special Adviser to Professor John Ruggie (author of the UN Guiding Principles)

Moderated by: Katryn Wright, Director, GBI

14:15

## Part two

### Multi-stakeholder collaboration to solve complex problems

This session will explore an innovative response between multiple stakeholders to address complex local-level human rights issues. This in-depth case study exploration will focus on how companies, communities, local government and an independent third party have worked together. The case involves an alliance between two gold mining companies and other stakeholders to resolve structural challenges, reduce conflict and build a sustainable local economy and business operating environment for the benefit of all stakeholders. Experiences will be shared by Gavin Andersson, Seriti Institute who convened these actors as well as the companies engaged, a local government representative and a community representative – with opportunities for questions and to hear experiences and perspectives from the floor.

- Multi-stakeholder example
  - › Gavin Andersson, Executive Director, Seriti Institute
  - › Phillip Jacobs, Vice President Corporate Affairs, Sibanye Gold
  - › Lusindiso Mxutu, Community Representative, Mines and Community Development Enterprise
  - › Thabo Ndlovu, Municipal Manager, Westonia Municipality
- Reflections by:
  - › Sayi Nindi, Attorney, Legal Resources Centre
  - › Salil Tripathi, Senior Advisor, Institute for Human Rights and Business

Moderator: Paul Kapelus, Chair of Human Rights and Business Working Group, Global Compact Network South Africa and Director, Synergy

15:30

## Break

15:45

## Session Four



### Corporate respect for human rights – implementation and integration

This session will address the practical ways in which companies can and do implement respect for human rights throughout their operations, products and services. The focus will be on different ways that companies are setting strategy and priorities to enable them to implement respect for human rights. The session will address how companies can and do:

- **Understand, identify and address human rights impacts**, including through mapping and impact assessments, and remedy and grievance mechanisms
- **Integrate and embed respect for human rights** through the business, including through training and capacity building
- **Internal organisation and governance** for accounting for human rights in the business system

Panellists:

- Jan Klawitter, Government Relations Manager, Anglo American
- Adebola Ogunlade, Legal Counsel, Group Legal Department, Compliance and Corporate Social Responsibility, Total
- Anders Nordstrom, Group Head of Environment, ABB
- Kasumi Blessing, Global Manager, Corporate Sustainability, Novo Nordisk A/S
- Liesel Filgueiras, General Manager of Human Rights and Sustainability Themes, Vale

Moderated by: Catie Shavin, Director, GBI

17:15

## Ways forward and next steps

- Paul Kapelus, Chair of Human Rights and Business Working Group, Global Compact Network South Africa and Director, Synergy
- Achieng Ojwang, Programme Manager, Global Compact Network South Africa

17:30

Close

## CONTEXT

### The South African Context

Many of the business and human rights issues in South Africa today have their origins in the country's apartheid history. Racially-based disparities in wealth, income and opportunity all have their roots in that history. The country's constitution and Bill of Rights deal with the need to address these inequalities, particularly the equality clause which permits and even encourages 'measures designed to protect or advance persons disadvantaged by unfair discrimination.' The second and third generation rights (dealing with social, economic and cultural rights) from clause 26 onwards are designed, among other things, to reinforce this approach of redressing the wrongs of the past.

Much legislation and regulation has developed in this regard, in particular socio-economic charters in various sectors and the overarching Broad Based Black Economic Empowerment codes. Remediation of these legacies is a big ticket item for much of South Africa's business community. In addition, the Companies Act requires companies to establish social and ethics committees to oversee company performance not only on these areas but also matters of the environment and health and safety, and performance in respect of the principles of the UN Global Compact (the Act preceded the approval of the UNGPs). And of course successive King reports on corporate governance have addressed such issues.

The existence of a high quality constitution, Bill of Rights and quite comprehensive set of legislation does not, however, mean that contemporary issues are devoid of human rights concerns. The most stark recent example of this were the events at Marikana in 2012. Questions on the lessons business can learn from this will be one of the highlights of the day.

There is a range of other human rights issues that have arisen in South Africa's more recent business activities that provide challenges over and above ongoing efforts to deal with the legacies of the country's history. These are often dealt with in companies' risk registers. The challenge is for companies to view these not only as risks to the company but also from the perspective of risk to the external stakeholder.

The dialogue will also include consideration of pursuing corporate efforts to respect human rights during times of economic and financial stress as South Africa's and economies around the world are experiencing right now.

### About Business and Human Rights

The late 1990s and early 2000s saw an upsurge of protest against business, particularly multinational companies, following a series of serious industrial accidents affecting communities and workers (e.g. the Bhopal disaster) and suppression of community and labour leaders linked to anti-corporate protests in Africa and Latin America. That gave rise to animated though somewhat confused debate over the human rights responsibilities of business – where previously human rights had been perceived an issue simply for governments.

In 2006 the then UN Secretary General Kofi Annan appointed Harvard professor John Ruggie as a Special Representative on Business and Human Rights to develop a coherent perspective on this. The outcome was the UN 'Protect, Respect and Remedy' Framework and associated Guiding Principles (UNGPs) for their implementation. The UNGPs today form the basis of other sets of standards dealing with these issues including the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the ISO 26000 guidance standard on social responsibility, among others. Increasingly, civil society organisations are referring to the UNGPs as they approach companies with allegations of wrong doing and calling for their implementation.

## THE UN THREE-PILLAR PROTECT, RESPECT AND REMEDY FRAMEWORK

### STATE DUTY TO PROTECT



States have a duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication.

### CORPORATE RESPONSIBILITY TO RESPECT



Corporations have a responsibility to respect human rights, which means acting with due diligence to avoid infringing on the rights of others.

### ACCESS TO REMEDY



Victims should have access to effective remedies. This encompasses both judicial and on-judicial remedies.

The UNGPs outline that the *duty to protect* human rights rests with States. They also assert that companies have a *responsibility to respect human rights* which means to act with due diligence to prevent human rights harms. The UNGPs hold that corporate respect for human rights requires an appropriate policy statement, a systematic and ongoing process of human rights due diligence and a process to remediate harm if things go wrong.

### POLICY COMMITMENT



A policy commitment to meet the responsibility to respect human rights. This sends the right messages and sets the right tone. It should emanate from the leadership to all functions, business units, business partners and relevant stakeholders.

### HUMAN RIGHTS DUE DILIGENCE



A human rights due-diligence process to identify, prevent, mitigate and account for human rights impacts. This is a process of continuous learning and action that can build on, and enhance, existing management systems.

### REMEDIATION



Process to enable the remediation of any adverse human rights impacts that the business causes or contributes. This can be via existing third party processes (including courts), and company mechanisms.

An increasing number of prominent companies have embraced the UNGPs, both in recognition of this being 'the right thing to do' and through developing an awareness of the costs (litigation, disruption of business, reputational impact, consumer boycotts etc.) of failures to respect human rights.

71% of business respondents now agree that respect for human rights requires going beyond national law, according to a recent Economist Intelligence Unit report .

63% of business respondents say discussions on human rights have become more prevalent in their companies over the last 5 years

However, as all would acknowledge, there remain many areas where implementation of respect for human rights is clouded with uncertainty, where progress is incremental and where companies are learning by doing.

Given this, the opportunity this conference presents to learn from and share experiences with other companies is too good to miss.

Among the international companies that will be participating in this event ready to share experiences and (given that many have South African subsidiaries or operations) hoping to learn from South African-based business and business organisations, include: BASF; Coca-Cola South Africa; Total SA; Lonmin; General Electric and many more.

*71% of business respondents now agree that respect for human rights requires going beyond national law, according to a recent Economist Intelligence Unit report<sup>1</sup>.*

*63% of business respondents say discussions on human rights have become more prevalent in their companies over the last 5 years.*

*"Someone who leads an organisation, like the one I have the privilege of leading, has an obligation and responsibility to be outspoken about this, to show full commitment and leadership on the human rights agenda; not out of convenience but out of conviction."<sup>2</sup>*

**Paul Bulcke, CEO, Nestlé**

*"We created a statement of principles on human rights... We have a lot of policies and practices that focus on human rights. But we needed to overlay a specific human rights lens to bring this into focus ... We didn't want to start a new endeavour or process – rather, we started with what we had and then created champions in each of the businesses to look at the most salient human rights issues for each particular business."*

**Mark Nordstrom, Senior Labor and Employment Counsel, GE**

*"Our journey started in 1999 with the first human rights review and found 3 areas: provide affirmative access to care; ensure responsible supply chain; and provide equal opportunity in the work place. Now we are following the UN Guiding Principles, doing our due diligence to "know and show" and we have found a number of potential adverse impacts where we should and can enhance respect for people's rights. Managing human rights is a journey, and you're never done!"*

**Susanne Stormer, Vice President, Corporate Sustainability, Novo Nordisk**

*"In our company we develop training activities and relationships with our employees and affected communities to implement effective actions to promote and respect human rights among these stakeholders ... This should not be just a legal or risk topic – it goes beyond that ..."*

**Carlos Franco, Manager of Social Standards and International Engagement, Cerrejón**

<sup>1</sup> [http://www.economistinsights.com/sites/default/files/EIU-URG%20-%20Challenges%20for%20business%20in%20respecting%20human%20rights%20WEB\\_corrected%20logos%20and%20UNWG%20thx.pdf](http://www.economistinsights.com/sites/default/files/EIU-URG%20-%20Challenges%20for%20business%20in%20respecting%20human%20rights%20WEB_corrected%20logos%20and%20UNWG%20thx.pdf)

<sup>2</sup> <http://www.nestle.com/asset-library/documents/media/news-feed/paul-bulcke-un-forum-business-human-rights-2014.pdf>

## ABOUT THE PARTNERS



### Global Compact Network South Africa

#### Global Compact Network South Africa (GCNSA)

The Global Compact Network South Africa (GCNSA) was launched in 2007 and is governed by a business-led, multi-stakeholder Advisory Committee. The GCNSA has 79 South African signatories and over 25 multi-nationals that are part of the Local Network. The mission of the GCNSA is to: engage proactively with all stakeholders locally and in the rest of the region for a more inclusive economy; facilitate business relations with other societal actors; support and encourage best practice, learning and capacity building on how to implement the 10 Principles.

The GCNSA is hosted by the National Business Initiative (NBI), a voluntary coalition of over 104 national and multi-national companies working towards sustainable development. The Global Compact is an integral part of the NBI's Strategic Framework.

<https://www.unglobalcompact.org/engage-locally/africa/south%20africa>

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#### The National Business Initiative (NBI)

The National Business Initiative is a voluntary coalition of South African and multinational companies, working towards sustainable growth and development in South Africa and the shaping of a sustainable future through responsible business action. Since our inception in 1995, the NBI has made a distinct impact in the spheres of housing delivery, crime prevention, local economic development, public sector capacity building, Further Education and Training, schooling, public private partnerships, energy efficiency and climate change.

The NBI is a global network partner of the World Business Council for Sustainable Development (WBCSD), the focal point of the United Nations Global Compact (UNGC) Local Network in South Africa and an implementation partner of the CEO Water Mandate, the CDP and We Mean Business.

<http://www.nbi.org.za>



GLOBAL BUSINESS INITIATIVE  
ON HUMAN RIGHTS

## The Global Business Initiative on Human Rights (GBI)

The Global Business Initiative on Human Rights (GBI) exists to advance human rights in a business context around the world. The underlying vision is a global community of corporations from all sectors knowing and showing that they respect the dignity and rights of the people they impact and interact with. From a business perspective this supports an enhanced approach to global leadership and risk management, and can provide access to markets, customers and capital. GBI is led by a core group of major corporations (below) headquartered in Asia, Europe, Latin America, Middle East, North Africa and North America. The GBI work plan is organised into two parallel tracks: First, Member Peer Learning creates a safe space for GBI members to share practices, challenges and innovations with peers focused on respecting human rights in practice and implementation of the UN Guiding Principles on Business and Human Rights. Second, Global Business Outreach focuses on awareness-raising and capacity building for business in diverse regions of the world, particularly in emerging and developing markets.

[www.global-business-initiative.org](http://www.global-business-initiative.org)



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To express your interest in attending please email [jo.reyes@global-business-initiative.org](mailto:jo.reyes@global-business-initiative.org)  
or register at [www.global-business-initiative.org/southafricaconference2016](http://www.global-business-initiative.org/southafricaconference2016)