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FROM OUR DESK

DEMOCRACY, HUMAN RIGHTS, GOOD GOVERNANCE AND GENDER IN AFGHANISTAN

Lawhouse.dk has been providing services to international institutions and organisations for years. Recently, Danida (the Danish development aid agency) assigned Lawhouse.dk to provide legal expertise on the November 2005 follow-up appraisal mission to Afghanistan.

The objective of the mission was to plan in further detail the allocation of Danish support to the sector of democracy, human rights, good governance and gender.

The outcome of the mission was assessment and subsequent recommendations on which projects to support and fund in a country with large human rights challenges.

The team additionally pinpointed several dilemmas identified during the mission, which were of significance to future planning; namely in relation to human rights promotion, human rights capacity building, law reform and the capacity for strategic planning.

THE GHANA BUSINESS CODE

In April 2006, COWI A/S subcontracted Lawhouse.dk on an assignment from Danida to prepare a Ghana Business Code with guidelines specifically aimed at small and medium-sized business.

The Ghanaian Government has launched its 'golden age' vision for private sector development. The vision is for Ghana to have a world-class business environment. In this context the creation of a nationally endorsed code will become an important message from Ghana indicating its willingness to promote responsible business practice. The private sector and indeed SMEs are by many seen as the engine of growth in accomplishing the Millennium Development Goal of reduced poverty. Hence, many donor agencies are focusing their attention on SME management training. In response, Danida has engaged in a parallel initiative meant to complement management training efforts. As an expert on CSR & Human Rights, Sune Skadegaard Thorsen from Lawhouse.dk was central to the process of development of a draft Ghana Business Code.

The code of conduct is based on universal principles related to human rights, including labor issues, the environment, and anti-corruption. The design of this national code of best business practice is based directly on the principles as described in the United Nations Global Compact. It further relates to the Millennium Development Goals. As such it reflects the rising expectations for business to participate in enabling sustainable development. The intention of the code is to serve as guidance internally in any size company, and it is not as such primarily aimed at SMEs. It is expected that business complies with the laws of Ghana; where law or specific industry codes provide better protection than prescribed in the Ghana Code the tougher requirements should be used.

Sune Skadegaard Thorsen will return to Ghana in July 2006 to complete the work on the final version of The Ghana Business Code and to engage key stakeholders in the process.

NEWS

A EUROPEAN ALLIANCE FOR CSR

To mobilise the resources and capacities of European enterprises and to make Europe a pole of excellence on CSR, the European Commission has announced its backing of the launch of a "European Alliance for Corporate Social Responsibility". The Alliance lays the foundations for partners to promote CSR in the future. It evolves around the following three areas of activities:

- Raising awareness and improving knowledge on CSR and reporting on its achievements
- Helping to mainstream and develop open coalition of cooperation
- Ensuring an enabling environment for CSR

The Alliance will explore and support creative ways to exchange and disseminate CSR best practice, initiatives and tools with a view to making them relevant to business practitioners, policy leaders, consumers, investors and the wider public at all appropriate levels across Europe and abroad. Closer integration with universities and scientific experts as well as continuous dialogue and cooperation with civil society are essential in this respect. The partners of the Alliance have identified several priority areas for action, including addressing the transparency and communication challenge to make the non-financial performance of companies and organisations more understandable for all stakeholders and better integrated with their financial performance.

<http://europa.eu.int/comm/enterprise/csr/policy.htm>

A NEW AGENDA ON CSR IN THE EUROPEAN UNION

On March 22nd 2006, The European Commission finally published the long-awaited communication on their approach towards Corporate Social Responsibility (CSR) : "Making Europe a pole of excellence on CSR". The intention is to establish Europe as a frontrunner in relation to CSR, but critical voices are already questioning whether the vision can be fulfilled in relation to the conditions described in the report.

The report is published after many years of focus on CSR. In July 2001, the Commission issued a Green Paper aimed at business, containing a wide interpretation of CSR and implications implementing CSR can insert on EU business environment. As a follow-up to the Green Paper, the Commission issued a communiqué; "*Corporate Social Responsibility: A business contribution to Sustainable Development*". The Communiqué from 2002 pleased the industry but disappointed many NGOs by not including any calls for mandatory regulation in the field of CSR. Another follow-up took place when the Commission launched the European Multi-stakeholder Forum in October 2002, and produced a final report in July 2004.

The latest report centres on four main subjects: improving knowledge about CSR, promoting CSR among SME's, to make CSR coherent, diverse and transparent in practice and finally, to develop CSR.

Business has welcomed the report, while NGOs, trade unions and the members of the European Parliament reject both the point of departure in the report as well as the prospect of a continuing "laissez-faire" approach from the Commission. The Commission seems to be ignoring five years of European debate and is accused of simply repeating generalisations.

<http://www.euractiv.com/Article?tcaturi=tcm:29-153515-16&type=LinksDossier>.

GOVERNMENT SUPPORTERS BLOCK LAW AIMED AT PREVENTING A REPEAT OF THE MORECAMBE BAY TRAGEDY

A new survey of 164 gangmasters providing casual labour to the food and farming industry in Britain reveal several instances of bonded and forced labour; examples of illegal employment of children and young workers; cases of illegal deductions from pay; offences concerning the employment of foreign workers; and numerous incidents of excessive time abuse. The survey conducted by the "Temporary Labour Working Group" only covered gangmasters who had volunteered themselves for inspection and is therefore likely only to reveal the tip of the iceberg.

Migrants employed in the food industry in Britain apparently suffer from extreme exploitation involving trafficking and violence, however surprisingly few prosecutions take place. The government now has compelling first-hand evidence of ongoing serious abuses of agency workers in the entire food industry, but government is still reluctant to take action.

In connection with the Morecambe Bay tragedy, where 23 illegal Chinese workers lost their lives, new legislation was rushed through as a private member's bill, however the discussion in Whitehall centres on whether or not to cover the entire food industry with the new licensing law. The new Gangmaster Act runs counter to the Labour policy of easing the burdens for the different actors in the industry, which explains the government frustration in relation to the law.

www.ethicaltrade.org/Z/actvts/exproj/ukaqr/index.shtml

ATCA (ALIEN TORT CLAIMS ACT) LEGAL PROCEEDINGS CONTAINING ALLEGATIONS OF SLAVERY AND ABUSE OF CHILD LABOUR AT LIBERIAN FIRESTONE PLANTATION

ILRF (The International Labour Right Fund) calls the case the strongest ATCA case ever, since evidence of forced labour is evident. The plaintiffs are 12 Liberians and their 23 children, who have been subjected to inhuman conditions at the plantation. The legal

proceedings have been taken by Californian district court. All plaintiffs are anonymous to avoid reprisals.

<http://www.socialfunds.com/new/article.cgi/article1897.html>

UNWTO (THE WORLD TOURISM ORGANISATION) AND THE IBLF (INTERNATIONAL BUSINESS LEADERS FORUM) ANNOUNCE NEW HUMAN RIGHTS INITIATIVE FOR THE UK TOURISM INDUSTRY

To help the tourism industry in the UK address human rights within their business operations, the initiative was launched with UNWTO Global Code of Ethics for Tourism as the overarching standard to guide the global initiatives of the project.

According to Dawid de Villiers, Special Advisor to UNWTO on

ethical matters, "to be truly effective, the tourism industry needs to take a comprehensive approach to human rights, encompassing a wide spectrum of human rights issues, including, but not limited to, concerns around child and bonded labour, workplace health and safety, commercial exploitation of children, the exploitation of migrant workers, discrimination and the displacement of indigenous people and other vulnerable groups".

The process of creating a set of human rights principles for the industry will be inclusive, and will involve broad consultations to

ensure accuracy and transparency, engaging with expert representatives from organisations such as the International Labour Organization (ILO), the UN Global Compact, the International Finance Corporation (IFC), UNDP, UNICEF, bilateral development agencies and civil society groups such as Amnesty International, Human Rights Watch and Save the Children.

<http://www.world-tourism.org/newsroom/Releases/2006/march/forum.htm>

CASE STORIES

YAHOO! AND CORPORATE ACCOUNTABILITY

On April 20, 2004, Mr. Shi Tao, a Chinese Journalist, sent information about a Communist Party decision through his Yahoo! Email account to a website based in the United States. On April 27, 2005, the People's Republic of China (PRC) sentenced Mr. Shi to a ten-year prison term.

According to the court transcript of the *Changsha Intermediate People's Court of Hunan Province Criminal Verdict*, evidence presented by the prosecutor that led to the sentencing of Mr. Shi included account-holder information provided by Yahoo!

Yahoo! has signed the Public Pledge on Self-Discipline for the Internet Industry, which, in effect, agrees to implement China's system of censorship and control that is far beyond what is reasonable according to international human rights standards. Even though the PRC

has signed the International Covenant on Civil and Political Rights (ICCPR), including Art. 19; the right to hold opinion and freedom of expression, Mr. Shi was still imprisoned for peacefully exercising this right. Moreover, Article 35 of the Constitution of the PRC establishes that citizens enjoy freedom of speech, of the press, of assembly, of association and of demonstration. Yahoo! indicates that it was obligated to comply with the laws of the countries in which they do business, so the choice in China is not whether to comply with law enforcement demands for information, but rather whether or not to remain in a country that violates human rights.

Corporate responsibility

The topics in this case; globalization, national legislation and human rights clearly highlight the necessity for companies to actively engage in CSR. The protection of human rights cannot, and should not be the sole responsibility of governments - as this case

illustrates companies are at risk at becoming complicit if no developed and proactive human rights policy exist. Could Yahoo! have been better guided? And consequently, avoided becoming complicit in human rights violations?

The UN Norms on Business and human rights endeavored to describe the human rights responsibilities of companies. The Norms state that companies shall refrain from activities, which might contribute to human rights violations. However, the UN Norms were not passed as binding and are currently undergoing review. This case may contribute to mature the public debate on corporate accountability vs. voluntary approaches? Are voluntary initiatives by companies in relation to business & human rights sufficient or will legal obligations be needed?

The case in question will appear in similar forms all over the world in coming years. With anti-terror initiatives ICT sector firms will be

under pressure to store and supply information to the authorities and increasingly without adequate legal checks and balances. How should the ICTs react? It should be obvious that Yahoo! would have appreciated some international guidelines on its minimum responsibilities. These are not established yet. Before such an instrument has been fully developed the ICT corporations should be very observant on the challenges that restrictions in freedom of expression and the violations of right to privacy may pose for their reputation. In general, timely and open acknowledgement of the dilemmas and a frank discussion on the options may considerably reduce the criticism that will arise

from accepting violations covertly. If the corporation further dares to raise the issue with the authorities this will constitute a proactive contribution to human rights. However, it is likely that Yahoo! like the vast majority of firms worldwide, had little or no idea that human rights were violated, when the information was passed on and even less so when the agreements were drawn up.

Comments

Based on the Yahoo! case, it is evident that if no legally binding rules or international minimum standards exist in the area of business & human rights, it will be difficult for companies to choose a direction. Should one stay and contribute to enhance

economic development, and ultimately human rights, through the advancement of communications, commerce and access to information even though other human rights are compromised?

It is argued, that if only voluntary measures exist, clashes between hard commercial interests and the protection of human rights are likely to occur. In this case, critics allege that commercial interests have compromised the right to privacy and the freedom of opinion and expression. A balancing act that Yahoo!, judging from the solid attacks from NGOs, did not manage particularly timely or well.

CHANGES TO THE DANISH ANTI-TERROR LEGISLATION

The former Danish Social Democratic government introduced the first draft on the anti-terror legislation in order to meet the requirements of the United Nations' initiative on Terrorism (UN resolution 1373) and the common requirements of the EU. The anti-terror package has recently been adopted and modified by the current Liberal Conservative government who emphasises the point of departure in the UN resolution 1373, the UN Convention against financing terrorism and the newly adopted EU Data Retention Directive. However, modifications are not all internationally determined.

Changes are primarily introduced to the Danish penal and penal procedural code. Central to the changes is the definition of terrorism, which was broadened in Art. 114, encompassing an extended definition of terrorism. More activities are now deemed acts of terrorism. Other important changes include the immigration law, giving increased possibilities of denying residence permits to persons who have committed serious crimes. Additionally, and of vital importance to the human rights environment, is the increased possibility of the immigration authorities, the prosecutor, as well as the Intelligence Services of the Police (PET) and the

Defence (FE) to gather and exchange information on citizens.

Criticism raised by a range of stakeholders centres on the enhanced surveillance of citizens, posing obvious infringements of basic human rights, primarily the right to privacy. The supervision of the surveillance performed by the police, the PET and FE will become weakened as a consequence of the increased possibilities of these authorities. This makes it difficult or even impossible to control which data are gathered, the necessity and employment of these. Consequently, transparency will be at stake.

In addition, surveillance involves risks of affecting people who are not directly associated with a suspected terrorist, with no or limited control by the courts. Opponents argue that the basis for a democratic state based on the rule of law will be seriously impaired. Critics have also pointed to the fact that some of measures are outright unworkable in practice, also questioning the necessity and proportionality of the increased measures.

Implications for business

For the ICT industry, the new legislation requires that telephone and internet tenders register and save all data of the users both with regard to telephone and internet use for one year. The measures proposed in the first draft

legislation was not passed during the first changes, but is expected to be enacted in autumn 2006. The proposed measures clearly supersede the demands from the EU directive thus placing the Danish ICT industry in a position with increased costs compared to their European competitors. This will of course reduce the opportunities of ICT business operating in Denmark to accrue necessary means to expand their business in other markets. Since the state, public institutions and associations with less than 100 members are exempted from storing such information, and technological advancements make it possible to easily cover or even destroy such tracks, criticism primarily relates to the fact that it is too easy to circumvent such proposed measures.

Challenges

In general the development highlights several important and obvious questions: Is compromising basic civil rights the only way forward in combating terrorism? Will increased surveillance and information lead to a lowered risk of acts of terrorism (bearing in mind that the much higher level of surveillance in London did not prevent terrorist attacks)? And, perhaps most importantly, are the policy measures in reality encroaching on the very foundation and values, which the measures aim to protect? For ICT business in particular the changes and proposed changes

raise other important questions. Apart from 'normal' lobbying addressing economic consequences, should ICTS lobby a lot harder to ensure protection of the rights of their core stakeholders – their customers? Considering the tight legislation and control of the ICT sector, will it be damaging for ICTS to oppose government; or in other words do state interests carry more weight than the interests of customers? Should ICTS team up with civil society organisations to campaign against changes that are apparently both flawed, unnecessary and out of

proportion? Should the industry refrain from intervening with government policies, keeping in mind NGOs call on Yahoo and other actors in China?

Comments

As highlighted, the case of anti-terrorism raises a lot of challenges to business at the edge of knowledge technology. It could be argued that the industry has an obligation to ensure the best possible protection of its close stakeholders' rights; here primarily the customers' right to privacy. In varying degrees from high proximity to more distant

relationships such dilemmas will occur for business wherever basic human rights are challenged in national contexts. From the Danish debate, it was obvious that the Industry was not prepared to take on the debate in relation to a rights' basis. Arguments were primarily of economic nature. It is the editor's opinion that moving the debate to a rights' based sphere would both enhance public interest and demonstrate true commitment to corporate social responsibility.

UP-COMING EVENTS

- June 19-20, 2006 Vienna, Conference on "Business and the Millenium Development Goals" organised by UNDP, CIS and the Austrian Development Agency/the Government of Austria
www.unglobalcompact.org/docs/news_events/upcoming/Responsible_Investing_AGENDA.pdf
- June 19-22, 2006 Sao Paulo, Conference on "The Role of a Socially Responsible Company in a Sustainable Society" www.ethos.org.br
- July 2006 Delhi, Global Compact India Network Event www.unglobalcompact.org
- September 2006 New York, "Who Cares Wins" Annual Meeting, Global Compact, IFC and the Government of Switzerland
www.unglobalcompact.org
- November 7-10, 2006 New York, BSR Annual Conference; "Innovative strategies – Measurable impacts" www.bsr.org
- November 21-22, 2006 Accra, Ghana, International Research Symposium on Corporate Citizenship: "Towards Innovation, Principles-Based Management, and Collaboration for Sustainable Development" www.unisa.ac.za

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