

# Promoting Religious Freedom: A Corporate Social Responsibility

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## Introduction

New research highlights a significant upside to businesses from a focus on religious freedom. Making religious freedom a part of corporate social responsibility (“CSR”) can produce direct, positive benefits to company operations, improve economic markets, and lead to lasting changes in communities where the human right of religious freedom traditionally lacks roots.

Although states traditionally held the responsibility for the protection of human rights, they have encouraged organizations to assume responsibility for human rights within their sphere of influence. The Secretary-General’s Special Representative for Business and Human Rights, Professor John Ruggie, wrote in a report to the Human Rights Council that “[b]ecause companies can affect virtually the entire spectrum of internationally recognized rights, the corporate responsibility to respect applies to all such rights.”<sup>1</sup> CSR policies based on human rights allow corporations to fill an important vacuum<sup>2</sup> in states that abuse,

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<sup>1</sup> U.N. Human Rights Council, U.N. General Assembly, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, 14th Session, §4 ¶ 59 (2010). Available at <http://198.170.85.29/Ruggie-report-2010.pdf>.

<sup>2</sup> “[F]rom mid-2006 to mid-2009 [...], government and/or social harassment or intimidation of religious groups was reported in nearly nine-in-ten countries (89%). National or local government actors harassed or intimidated religious groups in 143 countries (72%), while private actors, including individuals and social groups, harassed or intimidated religious groups in an even greater number of countries – 157 (79%).” Brian J. Grim, *Religious Persecution and Discrimination against Christians and Members of Other Religions*. Seminar to the European Parliament (Oct. 5, 2010). Available at <http://www.eppgroup.eu/Press/peve10/docs/101006grim-speech.pdf>.

neglect, or lack adequate resources to protect human rights.<sup>3</sup> CSR is the idea that businesses have a responsibility to a wider range of stakeholders in society than their shareholders.<sup>4</sup> Conceptually, CSR has evolved from businesses defensively attempting to minimize their negative impacts on society to now recognizing a their responsibility to actively improve societies.<sup>5</sup>

This white paper examines the human right of religious freedom as a CSR initiative. In particular, the paper discusses international standard-setting instruments' recognition of religious freedom as a part of CSR policy, benefits to businesses of preserving and promoting religious freedom, and the corporate role in establishing and maintaining religious freedom.

## Religious freedom in international CSR instruments

Given the potential influence of business on communities, the United Nations Global Compact, the Organisation for Economic Co-operation and Development's ("OECD") Guidelines for Multinational Enterprises ("OECD Guidelines"), the ISO 26000, and other standard-setting documents recognize religious freedom as a part of business' CSR. These international instruments recognize the protection and promotion of religious freedom as important to CSR policy by reference to international human right standards.

Businesses that join the Global Compact commit to "support and respect the protection of internationally proclaimed human rights; and make sure that they are not complicit in human rights abuses."<sup>6</sup> The Global Compact is the largest

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<sup>3</sup> See Int'l Org. for Standardization, *Guidance on Social Responsibility*, at § 6.3.2.2 "Considerations," ISO 26000 (2010) [hereinafter ISO 26000]. U.N. Human Rights Council, U.N. General Assembly, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, 14th Session, §3 ¶ 18. Available at <http://198.170.85.29/Ruggie-report-2010.pdf>.

<sup>4</sup> Wayne Visser et al., *The A-Z of Corporate Social Responsibility* 106 (2010) [hereinafter the A-Z of Corporate Social Responsibility].

<sup>5</sup> *Id.* at 106-7.

<sup>6</sup> U.N. Global Compact, *The Ten Principles*. Available at <http://www.unglobalcompact.org/aboutTheGC/TheTenPrinciples/index.html> (last visited Aug. 3, 2011).

of CSR initiatives with over 7,300 business and non-business participants that formally commit to abide by its principles.<sup>7</sup> Under the OECD Guidelines, businesses should respect and protect human rights within their sphere of influence.<sup>8</sup> The guidelines carry weight with all of OECD's member states, including thirty-four of the wealthiest nations in the world as well as eight others providing the recommendations.<sup>9</sup> With ISO 26000, organizations should "respect and foster the rights set out in the International Bill of Human Rights."<sup>10</sup> Eighty-three countries, forty-two organizations, and 450 experts participated in the creation of ISO 26000.<sup>11</sup>

Rather than recount the human rights norms with which business should comply, most CSR standards refer to recognized international compacts, such as the International Bill of Human Rights.<sup>12</sup> For example, in section 6.3.1, ISO 2600 devotes several paragraphs to explaining the International Bill of Human Rights<sup>13</sup> and several other important human rights instruments before stating in section 6.3.2 that:

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<sup>7</sup> *The United Nations Global Compact: Achievements, Trends and Challenges*, xxix (Andreas Rasche & Georg Kell eds., 2010).

<sup>8</sup> OECD, *Guidelines for Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Context*, § IV (3) (Apr. 6, 2012), <http://www.oecd.org/dataoecd/43/29/48004323.pdf> [hereinafter OECD Guidelines]; ISO 2600, § 6.3.1.2; U.N. Global Compact, Principle One, <http://www.unglobalcompact.org/aboutTheGC/TheTenPrinciples/principle1.html> (last visited Apr. 6, 2012).

<sup>9</sup> OECD Guidelines, 5 n.1 (last visited Apr. 6, 2012).

<sup>10</sup> ISO 2600; § 4.8.

<sup>11</sup> ISO 26000 – *Social Responsibility: ISO/WG SR participation* (last visited Sept. 2, 2010), [http://www.iso.org/iso/iso\\_catalogue/management\\_and\\_leadership\\_standards/social\\_responsibility/sr\\_participation.htm#p-members](http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/social_responsibility/sr_participation.htm#p-members).

<sup>12</sup> ISO 2600, § 6.3; OECD Guidelines, § 4.8; U.N. Global Compact, *Human Rights*, <http://www.unglobalcompact.org/aboutTheGC/TheTenPrinciples/humanRights.html> (last visited Aug. 9, 2011). The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

<sup>13</sup> The term "International Bill of Human Rights" refers to a set of United Nations' human rights instruments. These instruments include the Universal Declaration of Human Rights, 1948; International Covenant on Economic, Social and Cultural Rights, 1966; International Covenant on Civil and Political Rights, 1966; Optional Protocol to the International Covenant on Civil and Political Rights; and Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/english/law/> (last visited Apr. 6, 2012).

States have a duty and responsibility to respect, protect, fulfill and realize human rights. An organization has the responsibility to respect human rights, including in its sphere of influence.

Likewise, the OECD Guidelines indicate in its comment section on human rights that regardless of the country or specific context of the organizations' operations, organizations should at a minimum refer to the International Bill of Human Rights.<sup>14</sup> As further evidence of the importance of human rights in CSR, the Global Compact states that "businesses should support and respect the protection of internationally proclaimed human rights."<sup>15</sup>

CSR instruments include a wide scope of human rights because the CSR instruments refer to already existing international human rights standards. Among the most common human rights instruments referred to is the Universal Declaration of Human Rights. Article 18 states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>16</sup>

The Universal Declaration of Human Rights and all major human rights instruments protect the right to religious freedom. Acknowledging this component of social responsibility, businesses such as Ford Motor Company have begun to integrate religious freedom into their CSR initiatives.<sup>17</sup> At a minimum, businesses must respect human rights such as religious freedom.

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<sup>14</sup> OECD Guidelines, at 31.

<sup>15</sup> U.N. Global Compact, *The Ten Principles*.

<sup>16</sup> Universal Declaration on Human Rights, art. 18, G.A. Res. 217A, at 74, U.N. GAOR, 3d Sess., 1st plen. mtg. U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

<sup>17</sup> Danny Hakim, *A Nation Challenged: Islam; Ford Motor Workers Get on the Job Training in Religious Tolerance*, N.Y. Times, Nov. 19, 2001. Available at <http://www.nytimes.com/2001/11/19/business/nation-challenged-islam-ford-motor-workers-get-job-training-religious-tolerance.html>.

On the other hand, “an organization may face stakeholder expectations that it go beyond respect, or it may want to go further and contribute to the fulfillment of human rights.”<sup>18</sup>

## Benefits of preserving and promoting religious freedom

Business stands to benefit from supporting the right of religious freedom through CSR programs. The promotion of religious freedom facilitates other beneficial conditions in society:<sup>19</sup>

1. *Improved Human and Social Development* – religion improves a community’s access to healthcare, education, and facilitates greater economic equality. A healthy, well educated populace results in a more efficient workforce. Economic equality reduces societal pressures that may result in riots or other conflicts.
2. *Reduced Corruption* – religious freedom reduces corruption. Corruption steals from a business’s bottom line, weakens competitive markets, and erodes the moral fabric of society.
3. *Stronger Democratic Institutions* – religious freedom strengthens legal, judicial, and other democratic institutions. Strong democratic institutions provide order to society and protect property rights.
4. *Fewer Conflicts and Wars* – religious freedom reduces conflict and war. Violence can bring a community to a standstill, threaten investment, and impair markets.
5. *Economic Growth* – religious freedom facilitates economic expansion, which allows communities to grow and provides businesses with opportunity to improve profitability.

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<sup>18</sup> ISO 2600, § 6.3.2.2; see Human Rights Council, United Nations General Assembly, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, 14th Session, §4 ¶¶ 62-63 (2010). Available at <http://198.170.85.29/Ruggie-report-2010.pdf>.

<sup>19</sup> The relationship between religious freedoms and other freedoms is so close that they have been referred to as a “commodity of goods.” Brian Grim, *Religious Freedom and Social Well-Being: A critical appraisal*, 2 Int’l J. Religious Freedom 1, 40 (2009).

6. *Favorable Employment Environment* – religious freedom creates a better employment environment. Healthy, happy, and well educated employees are more productive and generate better results for businesses.

Businesses increase the likelihood that these favorable six conditions will exist where they operate by promoting religious freedom. These six conditions as well as a business's brand recognition as ethically sensitive should improve a business's bottom line. The ensuing sections explain how religious freedom improves the likelihood that these benefits will exist where businesses engage in CSR programs involving religious freedom.

### *Improved human and social development*

Religion often plays a major role in the human and social development of a country. Alexis de Tocqueville recognized that religious associations (as well as other associations) establish seminaries, construct inns, create churches, disseminate books, and “found hospitals, prisons, and schools.”<sup>20</sup> Religious efforts, such as those recognized by Tocqueville, result in “better health outcomes, higher levels of earned income, prolonged democracy, and better educational opportunities for women. Moreover, religious freedom is associated with higher overall human development.”<sup>21</sup> A director at the World Bank, Katherine Marshall,<sup>22</sup> also recognized that: “[faith communities] are major actors in education and health but also provide [...] social safety nets for people who fall behind, support for orphans, support of disabled people [...]”<sup>23</sup> Among the many positive outcomes that religious diversity provides communities and businesses, this paper focuses on only a few: healthcare and education, and economic equality.

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<sup>20</sup> Alexis de Tocqueville, *Democracy in America*, Vol. 2, 114 (N.Y., Vintage Books 1955).

<sup>21</sup> Brian Grim, *Religious Freedom: Good for What Ails Us?* Review of Faith and Int'l Affairs, 4 (2008).

<sup>22</sup> Director of the Development Dialogue on Values and Ethics at the World Bank and former director in the World Bank's Africa and East Asia regions.

<sup>23</sup> Pew Forum, *Religion and International Development*, Interview with Katherine Marshall, 1 (Mar. 2006), <http://www.pewforum.org/Government/Religion-and-International-Development.aspx>.

## 1. Healthcare and Education

Religious institutions assist in difficult healthcare and educational problems throughout the world. The World Health Organization estimates that over 1.3 billion people lack access to basic healthcare.<sup>24</sup> Small companies consider local educational limitations as one of the most critical concerns to address.<sup>25</sup>

Religious organizations are major healthcare and education<sup>26</sup> providers. Knowing religious organizations' role in education and health, former World Bank President James Wolfensohn made special efforts to include faith-based organizations in these areas.<sup>27</sup> In China, Catholic faith-based organizations opened over 100 clinics and hospitals by 2004.<sup>28</sup> In Taiwan, after a disaster more devastating than the U.S.'s Hurricane Katrina, a Buddhist organization, Ciji Gongdehui, built fifty new schools to replace schools that had been destroyed. Ciji donated the schools to the government. In the United States, religious organizations are responsible for over 28,996<sup>29</sup> educational facilities and over 20 percent of hospitals.<sup>30</sup> If healthcare or educational facilities with religious origin were included, these numbers would substantially increase.<sup>31</sup>

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<sup>24</sup> Jeremy Oppenheim et al., McKinsey & Company, *Shaping the New Rules of Competition: UN Global Compact Participant Mirror*, 15 (July 2007) [hereinafter McKinsey Report], [http://www.unglobalcompact.org/docs/summit2007/mckinsey\\_embargoed\\_until020707.pdf](http://www.unglobalcompact.org/docs/summit2007/mckinsey_embargoed_until020707.pdf).

<sup>25</sup> *McKinsey Report* at 16.

<sup>26</sup> By the term education, we mean vocational training, technical training, university studies and any other programs that enhance an employee's knowledge and skill base.

<sup>27</sup> Pew Forum, *Religion and International Development*. Interview with Katherine Marshall, 3 (Mar. 6, 2006).

<sup>28</sup> The Catholic institutions had also opened 38 senior centers, 14 child care centers, and 10 centers for orphans. Pew Forum Foundation, *Building a 'Harmonious Society' in China* (Sept. 26, 2005). Available at <http://www.pewforum.org/Government/Building-a-Harmonious-Society-in-China.aspx>.

<sup>29</sup> U.S. Department of Education, National Center for Education Statistics, Private School Universe Survey (PSS), 1989–90 through 2005–06. Available at [http://nces.ed.gov/surveys/pss/tables/table\\_whs\\_01.asp](http://nces.ed.gov/surveys/pss/tables/table_whs_01.asp).

<sup>30</sup> Peter Lipson, *How do religious based hospitals affect physician behavior?*, Science-Based Medicine (May 6, 2010). Available at <http://www.sciencebasedmedicine.org/index.php/how-do-religious-based-hospitals-affect-physician-behavior/>.

<sup>31</sup> For example, Yale and Princeton universities have religious origins. Yale University, *About Yale: History*. Available at <http://www.yale.edu/about/history.html>; Princeton University, *Princeton Timeline*. Available at <http://www.princeton.edu/main/about/history/timeline/>.

Religions also provide other forms of health-related and educational-related benefits. For example, as part of their ecclesiastical function, religions often provide marital and bereavement counseling.<sup>32</sup> Certain religious programs also motivate people to live healthier lives and to obtain additional education. A Harvard empirical study found that a 10 percent increase in monthly church attendance corresponded with an extra 2.1 years of average schooling.<sup>33</sup> Religion provides a number of societal benefits involving education and healthcare.

An increased religious presence in countries where they are otherwise restricted would increase the number and quality of these services. Faith-based organizations could build healthcare or educational facilities, send educational or medical volunteers, and engage in activities such as donating humanitarian aid. In locations where the government and religious organizations (due to their absence) failed to provide public goods, radical religious groups fulfilled the demand.<sup>34</sup>

## 2. *Economic Equality*

Religious freedom also reduces economic inequality. A Boston University study found that religion has a significantly positive effect on the “working lives of the poor.”<sup>35</sup> This positive impact largely comes from the healthcare and educational benefits discussed in a previous section. However, religion also provides technical training opportunities, an outlet for stress, and a social support network. These benefits, the study finds, enhance the productive capacity of the poor.<sup>36</sup>

Better poverty assistance will come with religious freedom. Religious freedom fosters religious diversity, which will lead to various approaches to reduce poverty. For example, the Catholic

<sup>32</sup> Brian Grim, *Religious Freedom: Good for What Ails Us?* The Review of Faith and International Affairs, 4-5 (2008).

<sup>33</sup> Barro & McCleary, *Religion and Economic Growth*, Harvard University, 14 (Apr. 8, 2003).

<sup>34</sup> Eli Berman; National Bureau of Economic Research; *Hamas, Taliban and the Jewish Underground: An Economist's View of Radical Religious Militias*; Working Paper (Sept. 2003), [http://www.nber.org/papers/w10004.pdf?new\\_window=1](http://www.nber.org/papers/w10004.pdf?new_window=1).

<sup>35</sup> Keith N. Hylton et al., *Church and State: An Economic Analysis*, Boston University School of Law Working Paper, 23 (May 2008). Available at <http://www.bu.edu/law/faculty/scholarship/workingpapers/HyltonRodionovaDeng-ChurchState.html>.

<sup>36</sup> *Id.* at 23.



tradition encourages a generous and communitarian approach to helping the poor. The Protestant view places greater emphasis on individual responsibility to achieve financial independence.<sup>37</sup> The different methods used by religious organizations create a more holistic approach to reducing poverty. Hence, it should be of little surprise that the Boston University study finds that restrictions on religious freedom enhance inequality<sup>38</sup> by reducing religious diversity.

Greater economic equality encourages greater societal stability. Fewer riots and conflict allow business operations to proceed with fewer hindrances. More people will have the means to participate in the market. The reduction in economic inequality provided by religious freedom provides society and businesses with a more stable, prosperous environment.

### *Reduced corruption*

In addition to the social and human development benefits just discussed, religious freedom reduces corruption. A simple comparison between the Pew Forum on Religion & Public Life's Global Restrictions on Religion Index with the 2011 Corruption Perceptions Index shows that eight of the ten most corrupt countries<sup>39</sup> have high or very high governmental restrictions on religious liberty.<sup>40</sup> Empirical studies also confirm that laws

<sup>37</sup> See Mary Jo Bane & Lawrence M. Mead, Pew Forum, *Lifting Up the Poor: A Dialogue on Religion, Poverty and Welfare Reform*, Executive Summary. Available at [http://www.pewforum.org/uploadedfiles/Topics/Issues/Social\\_Welfare/lifting-execsum.pdf](http://www.pewforum.org/uploadedfiles/Topics/Issues/Social_Welfare/lifting-execsum.pdf).

<sup>38</sup> Hylton, Church and State: *An Economic Analysis*, 2, 22 (the results of the study were statistically significant).

<sup>39</sup> The ten countries listed as the most corrupt on the Corruption Perceptions Index are: (1) Somalia, (2) North Korea, (3) Myanmar, (4) Afghanistan, (5) Uzbekistan, (6) Turkmenistan, (7) Sudan, (8) Iraq, (9) Haiti, and (10) Venezuela. Transparency International, Corruption Perceptions Index 2011. Available at <http://cpi.transparency.org/cpi2011/results/>.

<sup>40</sup> The countries with "very high" governmental restrictions on religion are: Uzbekistan and Burma (Myanmar). The countries with "high" governmental restrictions on religion are: Turkmenistan, Sudan, Afghanistan, Iraq, and Somalia. Although North Korea is technically not classified as a "very high" or "high" restriction country, it is due to lack of information that it has not been categorized. We consider the following note by the Pew Forum sufficient to classify North Korea as "very high" or "high restriction" country for our purposes: "The sources clearly indicate that

and practices that burden religion increase corruption.<sup>41</sup> Several possible explanations exist for these findings.

First, burdensome regulations establish relationships that foster corruption. Religions favored under the nation's regulatory system have incentives to use the legal system to impede competition.<sup>42</sup> The favored religious groups use their enhanced position to obtain advantages vis-à-vis other religions and force public support. The religious group may even use their relationship with the state to expropriate wealth from other subpopulations.<sup>43</sup> These favored groups seek to maintain corrupt laws and promote their expansion.<sup>44</sup> To maintain power, government leaders may bestow benefits on religions preferred under the legal system and burden groups that threaten the ruler's power. Obvious forms of corruption include laws and enforcement that benefits certain religions; less visible corruption includes bribes.<sup>45</sup>

Another underlying reason for the empirical findings is religion's role in creating a moral society. Religion strengthens a country in terms of honesty and integrity.<sup>46</sup> "Standards and practices of honesty and integrity rest, ultimately, on [...] ideas

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the government of North Korea is among the most repressive in the world with respect to religion as well as other civil liberties. But because North Korean society is effectively close to outsiders, the sources are unable to provide the kind of specific and timely information that the Pew Forum coded in this quantitative study. Therefore, the report does not include a score for North Korea on either index." Pew Forum on Religion & Public Life, *Global Restrictions on Religion*, (Dec. 2009). Available at <http://www.pewforum.org/uploadedFiles/Topics/Issues/Government/restrictions-fullreport.pdf>.

<sup>41</sup> Keith N. Hylton, *Church and State: An Economic Analysis*, 2; Lipset, Seymour Martin and Gabriel Salman Lenz; *Corruption, Culture, and Markets, in Culture Matters: How Values Shape Human Progress*, 112-24 (Lawrence E. Harrison and Samuel P. Huntington, eds., N.Y Basic Books, 2000).

<sup>42</sup> Hylton, *Church and State: An Economic Analysis*, at 7.

<sup>43</sup> *Id.* at 12.

<sup>44</sup> *Id.* at 13.

<sup>45</sup> *Id.* at 7.

<sup>46</sup> It is interesting to note that "[l]iteracy and urbanization (both elements of economic development) have an inverse relationship with corruption. As corruption increases, literacy and urbanization decrease. As corruption decreases, literacy and urbanization increases. Literacy and urbanization increase information flows and as a result make discovering corruption more likely." *Id.* at 18.

of right and wrong, which for most [...], are grounded in principles of religion and the teachings of religious leaders.”<sup>47</sup> John Adams recognized the important role of a moral and religious people in the governance of the United States: “[We] have no government armed with power capable of contending with human passions unbridled by morality and religion.”<sup>48</sup> Similar to the United States, other countries’ governments will struggle to govern in an amoral and irreligious society.

Religious competition strengthens religious participation which will strengthen the moral values in a society. Moreover, religious freedom curtails relationships that intrinsically lead to corruption. Lower levels of corruption will reduce costs imposed on businesses such as lost opportunities or increased transaction costs.

### *Stronger democratic institutions*

Corruption and lack of religious freedom weaken democratic institutions. Democracy has an inverse relationship with corruption.<sup>49</sup> Voters hurt by corruption likely will vote against the corrupt government. To maintain power, the corrupt government will subvert democratic processes. Moreover, democratic elements such as economic freedom, civil and political liberty, and press freedom strongly correlate with religious freedom.<sup>50</sup> The European Court of Human Rights has recognized religious freedom as “one of the foundations of a ‘democratic society.’”<sup>51</sup>

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<sup>47</sup> Transcript of Elder Dallin H. Oaks’ Speech Given at Chapman University School of Law, 2 (Feb. 4, 2011). Available at <http://www.mormonnewsroom.org/article/elder-oaks-religious-freedom-Chapman-University>.

<sup>48</sup> Charles Francis Adams, *The Works of John Adams*, Second President of the United States, 228-29 (Books for Libraries Press 1969).

<sup>49</sup> Hylton, at 13-14.

<sup>50</sup> Brian Grim, *Religious Freedom: Good for What Ails Us?* The Review of Faith and Intrnl Affairs, 4 (2008).

<sup>51</sup> “It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.” *Kokkinakis* (n 48) 36; *Larissis* (n 589 38; *Nolan* (n 64) 61; see also *Serif v. Greece* (App no 38178/97) ECHR 14 December 1999, 39.

Adam Smith may have explained the underlying rationale for the correlation between religious freedom and democratic institutions when he stated that “justice [...] is the main pillar that upholds the whole edifice” of society.<sup>52</sup> A society that unjustly restricts the religious practices of one group likely will subvert justice for other groups, including business. Harvard Economist and Nobel Laureate Amartya Sen supported this assertion by tying freedom of conscience (a form of religious freedom) to free agency and then stating that free agency “contributes to the strengthening of free agencies of other kinds.”<sup>53</sup> According to Sen, societal development “requires the removal of sources of unfreedom: [...] tyranny, [...] systematic social deprivation, [...] intolerance or over-activity of repressive states.”<sup>54</sup> Under Amartya Sen’s reasoning, religious restrictions are a source of “unfreedom.” Removing impediments to religious freedom facilitates freedom of other kinds.

To be more concrete, the protection of individual freedoms comes from more than laws and their enforcement. The protection of many individual freedoms depends on the voluntary compliance of a nation’s citizenry. Such compliance to societal norms stems from an individual’s belief in right and wrong, which is often influenced by religion.<sup>55</sup> An empirical study of 143 countries supports this extension of Sen’s reasoning: “countries with no restrictions on conversion, in particular, tend to have higher levels of fundamental freedoms, live better lives for women, and less overall armed conflict.”<sup>56</sup> Greater levels of religious freedom strengthen other forms of freedom important to the functioning of a democratic society.

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<sup>52</sup> Adam Smith, Editions of the Works and Correspondence of Adam Smith *The Theory of Moral Sentiments*, II.ii.3.4, 86; (trans. D. D. Raphael and A. L. Macfie Glasgow, N.Y. Oxford University Press, 1976).

<sup>53</sup> Amartya Sen, *Development as Freedom*, 4 (Oxford Press, 1999).

<sup>54</sup> *Id.* at 3.

<sup>55</sup> Transcript of Elder Dallin H. Oaks’ Speech Given at Chapman University School of Law, 2.

<sup>56</sup> Brian J. Grim, *Religious Freedom and Social Well-being: A Critical Appraisal*, 2 IJRF 1, 44 (2009).

In fact, where a government has failed at certain public functions, religion may provide viable substitutes. Katherine Marshall, a director at the World Bank, has stated: “Faith organizations are widely present almost throughout the world, and they are, in a sense, the ultimate community organizations, particularly in places with the weakest-level government structure or with the weakest infrastructure.”<sup>57</sup> For example, American inner-cities have struggled to adequately address problems involving drugs, crime, and dependence on welfare. In these American cities, Muslim sects have increased and begun to address these social problems.<sup>58</sup> Religion can have an organizing and stabilizing affect on areas of the world without strong governments. Andrew Natsios, a former administrator for USAID, recognized that people and other civil society actors will often turn to religious organizations in areas where the government is not functional.<sup>59</sup> To address societal weaknesses, citizens need interpersonal trust and a set of moral values that unify them.<sup>60</sup> Religious restrictions diminish trust whereas religious freedom fosters trust and dialogue.

Business has an interest in the stabilizing affect that religious freedom brings to democratic institutions. Strong democratic institutions enforce the law and protect property interests. Religious freedom advances<sup>61</sup> important underpinnings of society such as the rule of law, social justice, and fairness.<sup>62</sup>

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<sup>57</sup> Pew Forum, *Religion and International Development*. Interview with Katherine Marshall, 2 (Mar. 2006).

<sup>58</sup> Hylton, *Church and State: An Economic Analysis*, 6 (May 2008).

<sup>59</sup> Pew Forum, *Religion and International Development: A Conversation with Andrew Natsios*, Event Transcript, Andrew Natsios, 3 (Mar. 2006). Available at <http://www.pewforum.org/Government/Religion-and-International-Development-A-Conversation-with-Andrew-Natsios.aspx>.

<sup>60</sup> Eric M. Uslaner, *Religion and Civic Engagement in Canada and the United States*, 8, Department of Government and Politics, University of Maryland – College Parks. Available at <http://www.bsos.umd.edu/gvpt/uslaner/uslanerjssr.pdf> (noting that “Americans are famous for their participation in civic life, but the ‘big’ American advantage is civic groups stems entirely from their overwhelming edge in religious activity.”).

<sup>61</sup> See ISO 2600, section 6.3.1.2.

<sup>62</sup> Benjamin K Leisinger & Marc Probst, Human Security and Business, *Walking the Talk: How to Create Business Value While Delivering Stakeholder Value* 82 (Rüffer & Rub, 2007).

## *Reduced conflict and war*

In addition to creating stronger democratic institutions, religious freedom reduces religiously related conflict.<sup>63</sup> Religious conflict killed millions of people in the “first years of the 21<sup>st</sup> century alone.”<sup>64</sup> In an empirical study of 143 countries, Brian Grimm found that “when governments and religious groups in society do not erect barriers to religious competition but respect and protect such activities as conversion and proselytism, religious violence is less.”<sup>65</sup> Restrictions on religious freedom may increase the likelihood of conflict and violence for several reasons.<sup>66</sup>

First, a favored religion sometimes will use the state’s powers to persecute religious competitors.<sup>67</sup> Iraq serves as an appropriate example. After the invasion of Iraq, the Shi’a acquired significant political control. The Shi’a successfully inserted a clause in the Iraqi constitution that allowed them to veto any law. This provision significantly depleted other religious groups’ influence. Democracy no longer worked and the Iraqi economy suffered. The resulting political environment led to violence and the targeting of minority religions.<sup>68</sup> Unlike the Iraqi situation, religious freedom reduces a religion’s access to state power and provides all religious groups with the same privileges.<sup>69</sup> Religious freedom also reduces the likelihood of a religion rebelling against the state if no longer provided with certain benefits.<sup>70</sup>

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<sup>63</sup> “[T]he attempt to restrict fair religious competition results in more violence and conflict, not less. Specifically, we found that the attempt to restrict fair religious competition results in more violence and conflict, not less.” Brian J. Grim, *Religious Freedom and Social Well-being: A Critical Appraisal*, 2 IJRF1, 43 (2009).

<sup>64</sup> Brian J. Grim, *Religious Freedom: Good for What Ails Us*, *The Review of Faith & Int’l Affairs*, 3 (Summer 2008); Brian J. Grim and Roger Fink, *International Religion Indexes: Government Regulation, Government Favoritism, and Social Regulation of Religion*, *Interdisciplinary J. Research on Religion* (2006).

<sup>65</sup> Brian J. Grim, *Religious Freedom and Social Well-being: A Critical Appraisal*, 2 IJRF 1, 44 (2009).

<sup>66</sup> Grim, *Religious Freedom: Good for What Ails Us?*, 5.

<sup>67</sup> Brian J. Grim & Roger Finke, *The Price of Freedom Denied*, 8, 40-45, 70 (Cambridge Univ. Press, 2011) [hereinafter Grim, *Freedom Denied*].

<sup>68</sup> Grim, *Religious Freedom and Social Well-being: A Critical Appraisal*, 2 IJRF 1, at 45.

<sup>69</sup> Grim, *Freedom Denied*, at 70.

<sup>70</sup> Keith N. Hylton, *Church and State: An Economic Analysis*, 5 (May 2008).

Second, religious freedom reduces the state's incentive and power to persecute religions.<sup>71</sup> Laws and regulations provide the state with the power to control the profession and practice of religion. States primarily persecute religion to reduce perceived threats to the country's culture, traditions, or security. Religious freedom eliminates or reduces the magnitude of these threats by facilitating an environment where an established religion can splinter into multiple groups and new religious groups can form.<sup>72</sup> This proliferation of religious groups diffuses religious allegiance to any single religious group and as a result diminishes the power and threat any one religious group can pose to the state.<sup>73</sup> The state has less of an incentive to persecute religion.<sup>74</sup>

Third, state power over religion creates incentives for religious groups to use state power to suppress other faiths. Religious freedom removes the state as a tool for the persecution of minorities.<sup>75</sup> A state that protects religious freedom does not accept the "vigilante 'policing actions'" of individuals. Vigilantes are less likely to act violently in the face of social norms and expectations against religious persecution backed by enforcement. Religious freedom tames the "tyranny of the majority."<sup>76</sup> As explained by Adam Smith, a plurality of religions forces religious leaders to learn candor and moderation as they are "surrounded on all sides with more adversaries than friends." A deficit of religious pluralism where only two or three major sects exist exacerbates religious zeal.<sup>77</sup>

Religious freedom reduces the likelihood of conflict. Lower levels of conflict will create an environment more favorable to business investment. Moreover, less conflict allows societies to become more prosperous and devote their resources to activities that are more beneficial to businesses.

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<sup>71</sup> Grim, *Freedom Denied*, at 70-71.

<sup>72</sup> *Id.* at 71.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Minorities often lack cultural and social support and as a result are often the people most frequently persecuted. *Id.* at 71-74

<sup>76</sup> Alexis de Tocqueville, *Democracy in America*, Volume I, 162 (1945).

<sup>77</sup> Adam Smith, *The Wealth of Nations*, 793 (Glasgow Edition).

## *Economic growth*

Improved human and social development, reduced corruption, strong democratic institutions, and reduced conflict contribute to economic growth. As already discussed, social development, such as education and health, increases the human capital for an economy to grow. Reduced levels of corruption, conflict, and war enhance economic performance. Democratic institutions provide the framework to operate a free market economy. Given the beneficial social outcomes that religious liberty promotes and their ties to the economy, empirical studies finding that religious freedom has an impact on economic growth should not come as a surprise.<sup>78</sup>

A Boston University empirical study<sup>79</sup> found that laws burdening religion harm economic growth.<sup>80</sup> In support of the empirical findings, the authors reasoned that religious restrictions create an environment prone to corruption and that<sup>81</sup> corruption reduces wealth.<sup>82</sup> The authors also attributed economic growth to certain religious by-products. These by-products include primary education and population growth.<sup>83</sup> Religious families tend to have more children which increase the population size and rejuvenate the economy with young workers.

An empirical study done by Harvard also supports the positive effect of religion and religious pluralism<sup>84</sup> on economic growth. The study emphasized economic development is multifaceted and includes factors “beyond narrow measures

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<sup>78</sup> Freedom is critical to the process of development, including economic factors such as Gross National Product, increase in personal incomes, industrialization, technological advance, and social modernization. Amartya Sen, *Development as Freedom*, 1, 4 (Oxford Press, 1999).

<sup>79</sup> Individuals from UCL School of Slavonic and East European Studies and from NERA Economic Consulting also contributed to the study.

<sup>80</sup> Hylton, *Church and State: An Economic Analysis*, 2, 20 (May 2008).

<sup>81</sup> See section III.B, for a summary of the authors’ analysis. Hylton, *Church and State: An Economic Analysis*, 13 (May 2008).

<sup>82</sup> *Id.* at 13.

<sup>83</sup> *Id.* at 21.

<sup>84</sup> Robert J. Barro & Rachel M. McCleary, *Religion and Economic Growth*, Harvard University, 34-37 (Apr. 8, 2003).



of economic variables.”<sup>85</sup> To obtain a complete understanding of economic growth social and political forces need to be understood, including religion.<sup>86</sup> The authors provided their own hypotheses for why the empirical data indicated that religion has a positive impact on economic growth.

First, religion influences “individual traits that enhance economic performance.”<sup>87</sup> Such individual traits may include honesty, work ethic, thrift, and openness to strangers.<sup>88</sup> Individual traits make up a country’s culture and political forces. The positive traits fostered by religion create a cultural and political environment more favorable to business. As a result, economic growth responds positively when people hold religious beliefs that inculcate economically favorable individual traits.<sup>89</sup>

Second, religion positively impacts economic growth through its positive influence on social capital.<sup>90</sup> As discussed previously, active participation in religion allows religious groups to provide tangible benefits that spill over in the real economy such as “literacy, vocational and health training, marital and bereavement counseling, poverty relieve, and more.”<sup>91</sup> In addition to these societal benefits, religion creates contacts among individuals that develop into relationships that may be economic as well as religious in nature. Religious pluralism may also have a positive impact on the laws and regulations that affect economic growth by offering multidimensional approaches to societal issues.<sup>92</sup>

In a different empirical study that supported the role of religion in fostering economic growth, Brian Grim provided

<sup>85</sup> Barro & McCleary, *Religion and Economic Growth*, Harvard University, 2, 3 (Apr. 8, 2003).

<sup>86</sup> “For example, development typically features not only rising *per capita* incomes but also higher levels of education, urbanization, and life expectancy, and lower levels of fertility.” Barro & McCleary, *Religion and Economic Growth*, 2 (Apr. 8, 2003).

<sup>87</sup> Barro & McCleary, *Religion and Economic Growth*, 1-2.

<sup>88</sup> *Id.* at 23.

<sup>89</sup> *Id.* at 1.

<sup>90</sup> *Id.* at 38. See also section III.A, for a discussion of the positive influences religion has on human development.

<sup>91</sup> Brian J. Grim, *Religious freedom and social well-being: A critical appraisal*, 2 IJRF 1, 42 (2009).

<sup>92</sup> Barro & McCleary, *Religion and Economic Growth*, Harvard University, 38 (Apr. 8, 2003).

anecdotal evidence for the results of the study. Grim related his own experience of living in a country with high levels of religious liberty (the United Arab Emirates) as compared to a country with low levels of religious liberty (the Kingdom of Saudi Arabia). He noticed that he felt motivated to work and contribute to society while living in the Emirates where Catholicism was legal. In Saudi Arabia, where his religion was illegal, he did not work as hard or feel a desire to contribute to society.<sup>93</sup> He later learned that the per capita income in the Emirates was \$55,200. In Saudi Arabia it was \$20,700.<sup>94</sup>

Religious freedom has an impact on a country's economic performance. Many reasons potentially explain the reasons for such an impact. Even if the actual underlying cause cannot be identified, several empirical studies have found that religious freedom positively influences economic growth.<sup>95</sup> Economic growth is the engine that allows businesses to increase their profitability.

### *Favorable employment environment*

Religious freedom also has a positive impact on an organization's employees. As discussed in previous sections, religious freedom can increase employees' productivity through education, healthcare, and by providing a social outlet as well as enhancing desirable individual traits in an employee. Apart from these benefits, a CSR policy that includes religious freedom provides a more hospitable work environment for employees, reduces conflict in the workplace, and may increase employee productivity.

Appropriate CSR policies regarding religion create a more comfortable workplace for employees.<sup>96</sup> Religious or spiritual beliefs often form an inseparable part of an individual's life. Given the amount of time people spend at work, the office becomes part of their community and a focal point for social

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<sup>93</sup> Grim, *Religious Freedom: Good For What Ails Us?*, 4.

<sup>94</sup> *Id.* at 4.

<sup>95</sup> See Brian Grim, *Religious Freedom: Good For What Ails Us?*; Hylton, *Church and State: An Economic Analysis*; Barro, *Religion and Economic Growth*.

<sup>96</sup> Dr. Keyur Thaker, *Approaches to Implement Spirituality in Business*, 4-5 (Jan. 2009).

interaction.<sup>97</sup> Permitting the appropriate expressions of an individual's spirituality provides employees with a mechanism to satisfy their emotional needs.<sup>98</sup>

The protection of religious pluralism through CSR policies also reduces religious discrimination, harassment, and conflict in the workplace.<sup>99</sup> Anchoring CSR employment initiatives to human rights provides legitimacy and is more effective in an increasingly pluralistic world. Inevitably, CSR programs touch on areas of potential controversy, as cultural differences arise among employees or with the wider community. Relying on established human rights helps businesses navigate controversies with credibility and consistency. Moreover, the clear delineation of norms establishes expectations and molds corporate culture so that greater respect and tolerance exists among people of different backgrounds. People are more willing to tolerate the religious "peculiarities" of their co-workers when their own religious peculiarities are protected. Openness between employees allows them to learn more about each other in a way that can unify the company.<sup>100</sup> By contrast, corporate initiatives that are inconsistent with fundamental rights, while perhaps politically expedient in the short term, are ultimately unhelpful to conflict resolution and may in fact exacerbate controversies.<sup>101</sup>

Greater employee unity and self-fulfillment increases employee morale<sup>102</sup> and will often result in better job performance,<sup>103</sup> customer-oriented focus and higher producti-

<sup>97</sup> Charles Mitchell, *Faith at Work: What Does it Mean to Be a 'Faith-Friendly' Company*, 2 (Nov. 2006).

<sup>98</sup> *Id.* at 2.

<sup>99</sup> The underlying reasoning is similar to how a government's protection of religious freedom reduces religious conflict. See section III.D.

<sup>100</sup> Douglas A. Hicks; Institute of Business Ethics; *Religion and the Workplace: Pluralism, Spirituality, Leadership*; 53 (Cambridge University Press, 2003).

<sup>101</sup> Mathew K. Richards, Are L. Svendsen, Rainer O. Bless; *Voluntary Codes of Conduct for Religious Persuasion: Effective Tools for Balancing Human Rights and Resolving Conflicts?*; Religion and Hum. Rights 6; 173 (2011).

<sup>102</sup> Simon Webley, *Religious Practices in the Workplace*, 10. Available at <http://www.efbelief.org.uk/data/files/publications/660/Institute-of-Business-Ethics-Religious-Practices-in-the-Workplace.pdf>.

<sup>103</sup> Dr. Keyur Thaker, *Approaches to Implement Spirituality in Business*, 4-5 (Jan 2009).

vity.<sup>104</sup> An open environment influences “a person’s potential and actual contribution to a productions process” and allows the employer to address employee concerns more efficiently.<sup>105</sup> On the other hand, hostility or even neglect to a worker’s spiritual needs can cause job performance to suffer.<sup>106</sup> The more content people are in their personal lives, the happier, healthier, and more industrious they will be at work.<sup>107</sup> In turn, the firm’s recruitment and retention will improve.<sup>108</sup>

### *Improve business results*

Enhanced employee performance as well as the other social and macro-economic factors discussed previously may improve a business’ bottom line. Yet, additional profitable opportunities exist with the promotion of religious freedom. Businesses may gain competitive advantage by engaging stakeholder expectations that they assist in complex environmental, social and governance (“ESG”) challenges.<sup>109</sup> As recognized by business consulting group McKinsey & Company, the ethical stakeholder “has clearly emerged and is on the rise.”<sup>110</sup> Important business stakeholders include consumers, business partners, and investors.

Some consumers are often as concerned with ethical issues as with the market price, convenience and product quality.<sup>111</sup> Ethically sensitive customers tend to prefer companies that are

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<sup>104</sup> Charles Mitchell, *Faith at Work: What Does it Mean to Be a ‘Faith-Friendly’ Company*, 2 (Nov. 2006).

<sup>105</sup> Douglas A. Hicks; *Religion and the Workplace: Pluralism, Spirituality, Leadership*; 40 (Cambridge University Press, 2003).

<sup>106</sup> Charles Mitchell, *Faith at Work: What Does it Mean to Be a ‘Faith-Friendly’ Company*, 2 (Nov. 2006).

<sup>107</sup> Charles Mitchell, *Faith at Work: What Does it Mean to Be a ‘Faith-Friendly’ Company*, 2 (Nov. 2006).

<sup>108</sup> Wayne Visser, Dirk Matten, Manfred Pohl & Nick Tolhurst, *The A-Z of Corporate Social Responsibility* 338 (2010) [hereinafter the A-Z of Corporate Social Responsibility]; Simon Webley, *Religious Practices in the Workplace*, 10.

<sup>109</sup> McKinsey Report at 6.

<sup>110</sup> McKinsey Report, at 9.

<sup>111</sup> Mark J. Smith & Piya Pangsap; *The Business of Human Rights: An Evolving Agenda for Corporate Responsibility*, Clusters of Injustice: Human Rights, Labour Standards and Environmental Sustainability, 226 (Eds. Aurora Voiculescu and Helen Yanacopoulos, 2011).

responsive to human rights.<sup>112</sup> The preference given to human-rights-sensitive companies may give a company an advantage in competitive markets<sup>113</sup> and enable it to charge premium prices.<sup>114</sup> Recognizing human rights' impact on branding, companies such as Gap, Inc. have assumed shared responsibility for the conditions under which its goods are manufactured.<sup>115</sup>

In addition to ethically sensitive customers, potential business partners and ethical investment funds tend to prefer companies that are responsive to human rights.<sup>116</sup> Responsible corporate performance makes a company more attractive for collaboration with potential partners (business partners, joint ventures, and mergers and acquisitions) by creating an image of greater reliability.<sup>117</sup> This preference may give a company an advantage in its valuation.<sup>118</sup> When investing, socially responsible investors consider factors in addition to the company's income, wealth creation, or yield.<sup>119</sup> They look at social, ethical, or environmental factors. Socially responsible investments have gained wide-spread popularity in countries such as the U.S. and United Kingdom.

Goldman Sachs found that “[i]nvestors focused on quality of management over the long term cannot separate corporate governance issues from social and environmental issues.”<sup>120</sup> Good governance considers all stakeholders' interests in addition to shareholders'. To successfully balance economic efficiency with social benefits, companies “need to apply an inclusive

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<sup>112</sup> Klaus Schwab *foreword* to Tania Ellis, *The New Pioneers* 71 (2010).

<sup>113</sup> *Id.* at 71.

<sup>114</sup> *Id.* at 40.

<sup>115</sup> *Id.* at 36.

<sup>116</sup> *Id.* at 39.

<sup>117</sup> Klaus M. Leisinger, at 70; Fiona Harris, *The Business of Human Rights: An Evolving Agenda for Corporate Responsibility*, *Brands Corporate Social Responsibility and Reputation Management* 40 (eds. Aurora Voiculescu and Helen Yanacopoulos, 2011).

<sup>118</sup> Klaus M. Leisinger, at 71.

<sup>119</sup> Benjamin K. Leisinger & Marc Probst, *Human Security & Business*, 26 (Rüffer & Rub 2007); Fiona Harris, at 39.

<sup>120</sup> Goldman Sachs, *Global, Introducing GS Sustain*, 48 (June 2007). Available at [http://www.unglobalcompact.org/docs/summit2007/g\\_s\\_esg\\_embargoed\\_until030707.pdf](http://www.unglobalcompact.org/docs/summit2007/g_s_esg_embargoed_until030707.pdf).

approach, recognizing that business coexists with the citizenry it serves.”<sup>121</sup> DuPont recognized stakeholders’ interests by building a Thai spirit house. Thai culture believes that without such a house the spirits would haunt the chemical factory that DuPont had built. DuPont honored these concerns by building the spirit house and as a result fostered good relations with the community.<sup>122</sup> Businesses that follow DuPont’s example and consider all stakeholders’ interests in their CSR policies, including religious interests, will financially perform better.<sup>123</sup>

Despite some businesses’ current CSR efforts, many stakeholders still believe that “large, global companies act in the best interest of society” only some of the time.<sup>124</sup> In their CSR efforts, businesses typically address issues such as environmental sustainability, HIV/Aids, and child labor.<sup>125</sup> That religious freedom is less common among CSR initiatives creates a unique opportunity for business to reach a large, yet untouched segment of the market. Moreover, facilitating the protection of an individual’s religious rights is a very personal way to build trust. CSR initiatives involving religious freedom can be done without controversy and in such a way that appeals to a broad spectrum of religiously sensitive stakeholders.<sup>126</sup>

## Summary

Business organizations only stand to benefit by adopting CSR programs that include the human right of religious freedom. Religious participation fosters literacy, poverty relief, vocational and health training, as well as marital and bereave-

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<sup>121</sup> Allen L. White, *Culture Matters: The Soul of CSR in Emerging Economies*, 10 (July 2008).

<sup>122</sup> *Id.* at 3.

<sup>123</sup> Goldman Sachs’ research has shown that “companies that are leaders in [...] social and governance policies have outperformed the general stock market by 25% since August 2005.” Marc Probst, *Human Security and Business – A Contradiction in Terms?* 26 (Eds. Benjamin K. Leisinger & Marc Probst, Rüffer & Rub 2007); see Goldman Sachs, *Global, Introducing GS Sustain* (June 2007).

<sup>124</sup> McKinsey Report, at 8.

<sup>125</sup> See McKinsey Report, at 9.

<sup>126</sup> Section IV provides guidance on some of the CSR religious freedom initiatives that businesses can engage in.

ment counseling.<sup>127</sup> Other benefits may include increased health, improvement of women's lives, and greater civic participation.<sup>128</sup> Sufficient involvement of the business community in promoting religious liberty as part of their CSR programs can create a favorable social and economic climate. All these benefits create a more stable, prosperous society that benefits business.

Within the organization itself, employees will be happier and more productive than they otherwise would be. More of the businesses' employees will be willing to work in foreign countries if they can practice their faith there. Ultimately, a well crafted program that protects and promotes religious freedom inside of corporation's own walls and in the community it services may bring it financial rewards.

## Corporate role in religious liberty

The CSR policies of individual businesses that promote religious liberty can derive from many sources.<sup>129</sup> Businesses may establish their own internal codes of conduct, may enter bilateral agreements with suppliers or distributors on particular CSR initiatives, or may formally subscribe to international CSR standards or compacts.<sup>130</sup> This section focuses primarily on this last source of standards because – regardless of a company's formal affiliations – the international standards or compacts set a best-practices baseline for CSR programs, especially among multinational corporations and other businesses that participate in international markets. This section briefly outlines the most influential standards and compacts, including the United Nations Global Compact (“the Global Compact”), ISO 26000,

<sup>127</sup> Grim, *Religious Freedom: Good For What Ails Us?*, 4-5.

<sup>128</sup> *Id.*

<sup>129</sup> We note that some countries have begun imposing mandatory reporting requirements for corporate social responsibility. Tania Ellis, *The New Pioneers* 9-10 (2010) (noting that recently passed financial reporting laws in Denmark include requirements to report on corporate social responsibility. Additionally, the U.K. 2006 Companies Act includes in its outline of company directors' duties an obligation to regard the company's impact on the community and environment.).

<sup>130</sup> See generally Wayne Visser & Nick Tolhurst, *The world guide to CSR, A Country-by-Country Analysis of Corporate Sustainability and Responsibility* (2010) [hereinafter *The world guide to CSR*]; See also Wayne Visser et al., *The A-Z of Corporate Social Responsibility* (2010).

and the Guidelines for Multinational Enterprises produced by the Organisation for Economic Co-operation and Development.

The Global Compact: The Global Compact is one of the United Nation's significant developments. It encourages companies to adhere to – and to advocate in their spheres of influence – ten principles relating to human rights, labor standards, environmental protection, and anti-corruption. Specifically, the ten principles derive from the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the U.N. Convention Against Corruption.<sup>131</sup> Because the Global Compact draws these principles from internationally accepted agreements they have immediate credibility and stature.<sup>132</sup> If not legally binding in themselves, the source agreements “reflect, to a large extent, customary law as recognized by a majority of the international community.”<sup>133</sup>

While the compact is voluntary and does not hold the weight of law, participants must submit an annual report on progress in achieving the ten principles.<sup>134</sup> Companies that fail to report are listed as non-active for one year and then expelled if they continue to fail to report. The Global Compact posts the names of all companies that have lost their registration status.<sup>135</sup>

<sup>131</sup> *The A-Z to corporate social responsibility*, at 408; see also Deborah Leipziger, *The Corporate Responsibility Code Book* 79 (2d ed. 2010).

<sup>132</sup> *The A-Z to corporate social responsibility*, at 408.

<sup>133</sup> Natan Lerner, *Proselytism, Change of Religion, and International Human Rights*, 12 *Emory Int'l L. Rev.* 477, 478, 556-57 (1998); Carolyn Evans, *Time for a Treaty? The Legal Sufficiency of the Declaration on the Elimination of All Forms of Intolerance and Discrimination*, 3 *BYU L. Rev.* 617, 627-36 (2007). As evidence of its ubiquity, the UDHR is one of the most frequently translated secular documents in the world in 370 languages and dialects. Office of the High Commissioner for Human Rights, “The Universal Declaration of Human Rights is the Most Universal Document in the World. Available at <http://www.ohchr.org/EN/UDHR/Pages/WorldRecord.aspx> (last visited Oct.13, 2010). Of course, some states reject these international norms. See Felix Corley, *The Former Soviet Union in Religious Freedom in the World* (Paul Marshall ed., 2007) 37, 41 (quoting a Kazakh jurist stating that “international agreements are nothing to us”).

<sup>134</sup> *The United Nations Global Compact: Achievements, Trends and Challenges*, xxix (Andreas Rasche & Georg Kell eds., 2010).

<sup>135</sup> Frequently Asked Questions, U.N. Global Compact, <http://www.unglobalcompact.org/AboutTheGC/faq.html> (last visited Sept. 15, 2011).



ISO 26000: The International Organization for Standardization (“ISO”) creates international business management standards, and in November 2010, the ISO introduced ISO 26000 to provide guidance on CSR.<sup>136</sup> ISO 26000 is a voluntary guidance standard and does not require certification.<sup>137</sup> Certification involves a third party that provides independent confirmation that the organization meets the requirements of the relevant standard.<sup>138</sup> ISO 26000 encourages corporations to go beyond mere compliance with the law in their social responsibilities.<sup>139</sup>

ISO 26000 “promote[s] common understanding in the field of social responsibility” and complements other international standards. Six principal areas receive attention in ISO 26000: human rights, labor practices, the environment, fair operating practices, consumer issues, and community involvement and development.<sup>140</sup> To expand the influence of these CSR initiatives, ISO has agreed to collaborate with several international organizations. ISO and the International Labour Organization have a Memorandum of Understanding (MoU) to ensure consistency between international labor standards and ISO 26000. The United Nations Global Compact Office and the OECD have also signed MoUs with ISO to enhance cooperation on the development of CSR initiatives.<sup>141</sup> Because of ISO’s brand

<sup>136</sup> ISO 26000 at 1. For a general review of the process from Draft International Standard to final ISO 26000 and a discussion on the implications of this new standard see Halina Ward, *The ISO 26000 International Guidance Standard on Social Responsibility: Implications for Public Policy and Transnational Democracy*, 12 *Theoretical Inquiries L.* 665 (2011); See also Mahesh Chandra, D.Sc., *ISO Standards from Quality to Environment to Corporate Social Responsibility and Their Implications for Global Companies*, 10 *J. Int’l Bus. & L.* 107 (2011).

<sup>137</sup> International Organization for Standardization, 1 November Launch of ISO 26000 Guidance Standard on Social Responsibility (Nov. 27, 2010). Available at <http://www.iso.org/iso/pressrelease.htm?refid=Ref1366>.

<sup>138</sup> International Organization for Standardization, Frequently Asked Questions, available at [http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/07\\_gen\\_info/faq.html](http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/07_gen_info/faq.html).

<sup>139</sup> *Id.*

<sup>140</sup> International Organization for Standardization, Schematic Overview of ISO 26000, available at [http://www.iso.org/iso/sr\\_schematic-overview.pdf](http://www.iso.org/iso/sr_schematic-overview.pdf).

<sup>141</sup> See Roger Foster, *ISO 2600 Social Responsibility: The Essentials*, 2 *ISO Focus+ 3*, p. 12 (Mar. 2011). Available at [http://www.iso.org/iso/iso\\_focusplus\\_march\\_2011\\_social-responsibility.pdf](http://www.iso.org/iso/iso_focusplus_march_2011_social-responsibility.pdf).

recognition and wide acceptance, experts expect ISO 26000 to significantly influence the field of CSR, notwithstanding that compliance with ISO 26000 is voluntary.<sup>142</sup>

OECD Guidelines for Multinational Enterprises: The OECD has also created voluntary Guidelines for Multinational Enterprises. Updated May 2011,<sup>143</sup> the guidelines constitute government recommendations for responsible business conduct to multinational enterprises operating in or from adhering countries.<sup>144</sup> OECD Guidelines set standards and principles and intend to strengthen subscribing corporations with added credibility, strengthening the confidence with which they are viewed by other corporations and by the societies in which they operate.

Significantly, with the May 2011 revision, the OECD Guidelines added recommendations on human rights and on CSR for supply chains.<sup>145</sup> Although the OECD Guidelines do not have mandatory enforcement mechanisms, a National Contact Point for each country encourages adherence to the Guidelines and ensures that businesses, governments and other interested stakeholders understand them.<sup>146</sup> Moreover, the OECD

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<sup>142</sup> See Halina Ward, *supra* note 14 at 666-67 (noting that “ISO’s brand recognition gives it real potential to make a positive contribution to social responsibility. ISO standards frequently become benchmarks for good practice among businesses; they are often referenced in supply chain requirements; and many are absorbed into national government regulations and standards. An ISO social responsibility standard could potentially matter a great deal to the uptake of social responsibility.”).

<sup>143</sup> OECD, 2011 *Update of the OECD Guidelines for Multinational Enterprises* (May 25, 2011), [http://www.oecd.org/document/33/0,3746,en\\_2649\\_34889\\_44086753\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/33/0,3746,en_2649_34889_44086753_1_1_1_1,00.html)

<sup>144</sup> OECD, *About Guidelines for Multinational Enterprises* (May 2011) [http://www.oecd.org/department/0,3355,en\\_2649\\_34889\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1,00.html)

<sup>145</sup> OECD, *New OECD guidelines to protect human rights and social development* (May 25, 2011), [http://www.oecd.org/document/19/0,3746,en\\_21571361\\_44315115\\_48029523\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1,00.html)

<sup>146</sup> *National Contact Points for the OECD Guidelines for Multinational Enterprises* (May 25, 2011) [http://www.oecd.org/document/60/0,3746,en\\_2649\\_34889\\_1933116\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/60/0,3746,en_2649_34889_1933116_1_1_1_1,00.html)

Guidelines empower the National Contact Point to handle complaints and even mediate the dispute if so agreed by the parties.<sup>147</sup>

These three instruments constitute some of the most influential CSR standards internationally. All three instruments come from prominent organizations that carry significant influence. Moreover, they have enjoyed significant support from important stakeholders such as nation-states, technical professionals, and the business community. Adherences to human rights protections – including the right to religious freedom – form an important part of these three codes. They provide legitimate guidelines of what a business should include in its CSR program.

When considering the extent to which an organization should support and promote certain human rights such as religious freedom, “the concept of sphere of influence” should help guide an organization on its involvement with that human right.<sup>148</sup> The specific circumstances (whether particular to the business or to the environment in which it operates) will determine the opportunities for action on the right to religious freedom.<sup>149</sup> The best opportunities to support human rights will occur among an organization’s employees and within its supply chain.

### *Religious freedom in employment*

Perhaps, the single greatest area where businesses can exercise influence on the human right of religious freedom is in the employment context. Demographics, an increased role of religion in public life, globalization of operations, the internet, and outsourcing have all contributed to making religion in the workplace a pressing concern for companies.<sup>150</sup> Moreover, local laws,

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<sup>147</sup> OECD *Guidelines for Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Context*, 69-70 (May 25, 2011), <http://www.oecd.org/dataoecd/43/29/48004323.pdf>. OECD, New OECD guidelines to protect human rights and social development (May 25, 2011), [http://www.oecd.org/document/19/0,3746,en\\_21571361\\_44315115\\_48029523\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1,00.html).

<sup>148</sup> ISO 2600, § 6.3.2.2.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

the political environment, and the culture may create additional obstacles if businesses do not respect the freedom of religion or do not appropriately handle conflicts between religious rights and other human rights.<sup>151</sup> To address religious freedom issues in the employment context, businesses should eliminate religious discrimination in the workplace as well as develop policies to accommodate religious practices in the workplace.

## 1. *Prevention of Discrimination Against Religion*

The 1998 ILO Declaration on Fundamental Principles and Rights at Work recognized freedom from discrimination as a fundamental principle and right at work.<sup>152</sup> Even before the ILO Declaration, the ILO recognized employees should be free from religious discrimination.<sup>153</sup> Indeed, anti-discrimination provisions are common in many nations of the world.<sup>154</sup> All three international CSR instruments (ISO 26000, Global Compact, and OECD Guidelines) follow this world-wide consensus and address religious discrimination.

The most significant provisions on religious discrimination come from ISO 26000. Section 6.3.7.1 defines the human rights issue of discrimination and the gamut of individuals or groups which could be affected:

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<sup>151</sup> *Id.* (Noting that Islam and other religions maintain beliefs that could create gender intolerance, religious persuasion with a duty to encourage conversions within the workplace could constitute harassment, and orthodox religious views toward alternative lifestyles could lead to intolerance and compromise other's rights to freedom of thought, conscious, religion, and the right to privacy.)

<sup>152</sup> **ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva** (15 June 2010). Available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

<sup>153</sup> C111 Discrimination (Employment and Occupation) Convention, 1958, **adopted by the International Labour Conference at its Forty-second Session, Geneva** (25 June 1958), available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>.

<sup>154</sup> For a couple of examples see the European Union's Council Directive 2000/78/EC for "establishing a general framework for equal treatment in employment and occupation" as well as the United States' Title VII, subchapter VI on "Equal Employment Opportunities (42 U.S.C. § 2000e-2).

Discrimination involves any distinction, exclusion, or preference that has the effect of nullifying equality of treatment or opportunity, where that consideration is based on prejudice rather than a legitimate ground. Illegitimate grounds for discrimination include but are not limited to: race, [...] religion, ethnic or social origin, [...] political or other opinion. The prohibition of discrimination is one of the most fundamental principles of international human rights law.<sup>155</sup>

In addition to direct discrimination, ISO 26000 also addresses indirect discrimination:

[Indirect discrimination] occurs when an apparently neutral provision, criterion or practice would put persons with a particular attribute, for example a particular religion or belief [...] at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.<sup>156</sup>

Examples of discrimination include dress and grooming standards, inflexible break times that do not accommodate religious practices, or work shifts that force employees to work on their holy days. In 2008, a Jewish police officer protested that a no-beard or head-gear policy discriminated against his orthodox Jewish practices. The federal court in Nevada required the police department to allow the beard because the police department already had a policy that provided exceptions to the rule. However, the court permitted the yarmulke ban to continue because all officers were prohibited from wearing head-gear.<sup>157</sup> In 2007, a meat packing plant in Nebraska fired several hundred Muslims after protesting that work shifts did not allow them five minutes for their sunset prayers.<sup>158</sup> In Israel, because of pressure from the local orthodox Jewish community, Intel

<sup>155</sup> ISO 26000, at 27.

<sup>156</sup> *Id.* at 28.

<sup>157</sup> Phred Dvorak, *Religious-Bias Filings Up*, Wall Street Journal, Oct. 16, 2008. Available at <http://online.wsj.com/article/SB122411562348138619.html>.

<sup>158</sup> *Id.*

implemented a policy restricting Jewish workers from working on the Jewish Sabbath, even though those who had worked on the Sabbath were not as devout in their religious observance.<sup>159</sup> Although international standards and local laws clearly prohibit discrimination, companies clearly can do better in creating a non-discriminatory environment in the workplace.

## 2. *Accommodation of Religious Practices*

Avoiding discriminatory practices has been the primary focus of corporations seeking to adhere to international religious freedom standards. However, a growing number of organizations recognize the responsibility to promote religious freedom beyond the bounds of non-discrimination. The ISO 26000 and the Global Compact include additional expectations for accommodating religious groups.

ISO 26000 encourages organizations “wherever possible [to] allow observance of national or religious traditions and customs with respect to weekly rest.”<sup>160</sup> The Global Compact states that companies support and respect “human rights through their daily activities: [...] by making reasonable accommodations for all employees’ religious observance and practices.”<sup>161</sup> Tyson Foods’ situation in Tennessee provides an example of how organizations can be more flexible in handling the religious practices of their employees. Tyson Foods faced challenges in trying to accommodate Muslims for the holy day of Eid al-Fitr marking the end of Ramadan. Originally, Tyson Foods had its employees claim holiday pay for the Muslim holiday instead of Labor Day. However, Non-Muslims protested the policy as un-American. The company adjusted its policy by switching “a paid birthday to a personal day that could be used for religious

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<sup>159</sup> *Intel in Jerusalem “Sabbath Deal”*, BBC News, Nov. 16, 2009. Available at <http://news.bbc.co.uk/2/hi/8365923.stm>; See also *‘Sabbath’ protest targets Intel*, BBC News, 14 November 2009. Available at [http://news.bbc.co.uk/2/hi/middle\\_east/8360429.stm](http://news.bbc.co.uk/2/hi/middle_east/8360429.stm).

<sup>160</sup> ISO 26000, *supra* note 14, at 36.

<sup>161</sup> The Global Compact, *Ten Principles*. Available at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html>

observances.”<sup>162</sup> The Tyson Foods’ example shows that with some creativity companies can create solutions that accommodate its religious employees while maintaining the interests of the other employees.

### *Religious freedom in the supply chain*

At times, organizations exert tremendous influence over their supply chain. Where appropriate, this influence can be used to promote the right to religious freedom. As in ISO 26000 and the UN Global Compact, the OECD has identified religious freedom as one of the rights that should fall within an organization’s CSR policy:

Enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights. [...] [A]ll rights should be the focus of periodic review. Depending on circumstances, enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of [...] persons belonging to national or ethnic, religious and linguistic minorities.<sup>163</sup>

The OECD has explicitly extended CSR considerations beyond a corporation’s own operations to its supply chain. Under the OECD Guidelines and within the framework of internationally recognized human rights, enterprises should:

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<sup>162</sup> Phred Dvorak, *Religious-Bias Filings Up*, The Wall Street Journal (Oct. 16, 2008), <http://online.wsj.com/article/SB122411562348138619.html>; Tyson Foods, Inc., Press Releases, *Labor Day Reinstated as Paid Holiday at Shelbyville*, TN, Plan (Aug. 8, 2008). Available at <http://www.tysonfoods.com/Media-Room/News-Releases/2008/08/Labor-Day-Reinstated-as-Paid-Holiday-at-Shelbyville--TN--Plant.aspx>.

<sup>163</sup> Org. for Econ. Co-operation & Dev. [OECD], *The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications*, OECD Doc. DAFPE/IME/WPG(2000)15/FINAL (Oct. 31, 2001).

[...]

3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

[...]

6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.<sup>164</sup>

The OECD Guidelines also persuade corporations to encourage “business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.”<sup>165</sup> Corporations can influence their suppliers to respect the right of religious freedom through a variety of different means.

These means may include contractual arrangements granting certain protections or accommodations for religious minorities in the supplier’s workplace. These contractual arrangements could include “management contracts, pre-qualification requirements for potential suppliers, voting trusts, and license or franchise agreements.”<sup>166</sup> Companies also may work with its supply chain to improve respect of religious freedom through capacity building and personnel training.<sup>167</sup> The OECD Guidelines’ commentary even encourages Enterprises to “participate in private or multi-stakeholder initiatives and social dialogue on responsible supply chain management.”<sup>168</sup> If a member of the supply chain violates an individual’s religious rights, the corporation could take a number of different steps. For example,

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<sup>164</sup> Org. for Econ. Co-operation & Dev. [OECD], *The OECD Guidelines for Multinational Enterprises*, 29, OECD Doc. DAFPE/IME/WPG(2000)15/FINAL (Oct. 31, 2001).

<sup>165</sup> Org. for Econ. Co-operation & Dev. [OECD], *The OECD Guidelines for Multinational Enterprises*, § II, 17, OECD Doc. DAFPE/IME/WPG(2000)15/FINAL (Oct. 31, 2001).

<sup>166</sup> Org. for Econ. Co-operation & Dev. [OECD], *The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications*, § II, p. 23, OECD Doc. DAFPE/IME/WPG(2000)15/FINAL (Oct. 31, 2001).

<sup>167</sup> *OECD Guidelines*, 23.

<sup>168</sup> *OECD Guidelines*, 23.



the business relationship could continue while the supply-chain member undergoes mitigation efforts. Stronger actions could include suspension of the relationship or even termination.<sup>169</sup>

IMS Entreprendre pour La Cité has implemented some of these recommendations. In IMS's agreements with suppliers, it requires its suppliers to respect the principle of non-discrimination. IMS evaluates whether the suppliers follow through with their agreements and ends its relationship with any organization that discriminates.<sup>170</sup> Although practical limitations exist on a corporation's ability to adjust the behavior of its suppliers, clearly business could take many more steps to develop religious freedom by taking positive steps with its supply chain.

### *Religious freedom in the community*

Businesses should engage in religious freedom initiatives beyond those matters concerning employment or its supply chain. Corporate influence reaches beyond the brick and mortar that surrounds its operations and those of its suppliers. Recognizing this fact, ISO 26000 and the Global Compact both address human rights concerns that businesses should consider in their interaction with the broader community.

ISO 26000 provides several suggestions on how enterprises can reinforce religious liberty in the broader community. For example, ISO 26000 suggests that companies be religiously sensitive in their marketing campaigns and relations with customers. Specifically, ISO 26000 states: “[w]hen communicating with consumers, an organization should: not use text or images that perpetuate stereotyping with respect to, for example, gender, religion, race and sexual orientation.”<sup>171</sup> ISO 26000 even urges organizations to encourage awareness of human rights and facilitate human rights education “among rights holders and those with the potential to have an impact on them.”<sup>172</sup>

<sup>169</sup> OECD *Guidelines*, 23.

<sup>170</sup> CSR Europe, *IMS Entreprendre pour la Cité - Measuring and managing social policies*. Available at [http://www.csreurope.org/solutions.php?action=show\\_solution&solution\\_id=143](http://www.csreurope.org/solutions.php?action=show_solution&solution_id=143) (last accessed Apr. 6, 2012).

<sup>171</sup> ISO 2600, § 6.7.3.2.

<sup>172</sup> ISO 2600, § 6.3.2.2.

With regard to companies' obligations in the face of a host country's restrictive practices, the UN Global Compact states:

Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part.<sup>173</sup>

The Global Compact asks businesses to approach governments about addressing their human rights violations, such as violations of the right to religious freedom. Companies addressing these issues with foreign governments can have particularly significant impact such as in the area of employment.

With globalization, employees come from increasingly diverse ethnic and religious backgrounds. "IBM, among others, sees the world as its talent base, using experts from every continent, whether as employees or ad hoc collaborators, to solve problems and advance technological know-how."<sup>174</sup> Businesses often need their employees to live and work in different countries. At times, these countries have hostile policies toward an individual being able to freely practice his or her religion.

In 2007, a survey of 34 countries revealed that on average 93 percent of those surveyed desire to live in a country where they can practice religion freely.<sup>175</sup> Employees do not want to work in an environment where their religion is illegal or subject to strict regulation. A good corporate CSR policy would have business leaders approach these governments about the employees being able to practice their respective faiths while in the country. This approach would increase the pool of talented employees willing to work in various countries throughout the world. Clearly, a business' CSR initiative can and should extend beyond the realm of preventing religious discrimination to a more proactive

<sup>173</sup> United Nations Global Compact, About Us, *Principle 1*. Available at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html>.

<sup>174</sup> Allen L. White, *Culture Matters: The Soul of CSR in Emerging Economies*, 13 (July 2008).

<sup>175</sup> Pew Global Attitudes Project: Spring 2007 Survey, Survey of 47 Publics, 51. Available at <http://pewglobal.org/files/pdf/258topline.pdf>.

policy such as approaching governments to ensure the human rights of its employees, including the human right of religious freedom, are not impinged, curtailed or violated.

### *Self-regulation versus government regulation*

All of these standards rely on voluntary self-regulation by businesses. Questions may arise as to the effectiveness of voluntary self-regulation as compared to mandatory regulations imposed by the state. Although voluntary self-regulation may have some weaknesses, voluntary self-regulation has significant strengths that make it a viable and strong alternative to mandatory regulation in the field of CSR.

“Many feel that more legislation and regulation is the key to dealing with deficient social responsibility.”<sup>176</sup> Although sometimes justified, state legislative and regulative solutions can have downfalls. First, states often lack knowledge of corporate actions that have CSR implications. This lack of knowledge makes identifying the source of the problem and potential solutions difficult for governments. Second, governments often lack the expertise to draft laws or regulations that can adequately address the complex problems involved in CSR. Even if the law or regulation is appropriately drafted, states may fail to appropriately implement the measure. Third, as regulation comes from the top down, regulation can be static and unresponsive to those that it affects the most.<sup>177</sup> Finally, top-down, centralized regulation does not always foster compliance.<sup>178</sup> Although these observations somewhat simplify the process of state regulation (especially processes that involve both state and private actors),

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<sup>176</sup> ISO 2600 – *Social responsibility: FAQs*. Available at [http://www.iso.org/iso/iso\\_catalogue/management\\_and\\_leadership\\_standards/social\\_responsibility/sr\\_faqs.htm](http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/social_responsibility/sr_faqs.htm).

<sup>177</sup> U.N. Human Rights Council, U.N. General Assembly, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, 14th Session, §3 ¶ 18. Available at <http://198.170.85.29/Ruggie-report-2010.pdf>; ISO 2600 – *Social responsibility: FAQs*. Available at [http://www.iso.org/iso/iso\\_catalogue/management\\_and\\_leadership\\_standards/social\\_responsibility/sr\\_faqs.htm](http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/social_responsibility/sr_faqs.htm).

<sup>178</sup> Saule T. Omarova, *Rethinking the Future of Self-Regulation in the Financial Industry*, 35 Brook J. Int'l L. 665, 672-73 (2010).

they emphasize that state regulations suffer from “informational asymmetry and an expertise deficit.”<sup>179</sup>

In certain areas of CSR, especially the area of human rights, voluntary self-regulation has advantages over government regulation. First, voluntary self-regulation creates greater stakeholder buy-in than otherwise might exist with government imposed regulation.<sup>180</sup> Stakeholders bring their collective judgment and experience to bear on difficult issues that are particularly difficult to crystallize in law.<sup>181</sup> Moreover, voluntary self-regulation allows for adaptability and flexibility that otherwise might not exist with government regulation.<sup>182</sup> Second, voluntary self-regulation reduces resistance that often occurs with top-down government regulation.<sup>183</sup> Standardization works from the bottom up and is dynamic in nature.<sup>184</sup> Finally, because the standards discussed are based on consensus, voluntariness, and openness, voluntary self-regulation creates reputational leverage over organizations. Some consider voluntary self-regulation toothless because it lacks the state’s enforcement power.<sup>185</sup> These detractors underestimate the reputational value organizations derive from adhering to CSR standards.<sup>186</sup> The organization can

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<sup>179</sup> Saule T. Omarova, *Rethinking the Future of Self-Regulation in the Financial Industry*, 35 Brook J. Int’l L. 665, 673 (2010).

<sup>180</sup> See Matthew K. Richards, Are L. Svendsen, & Rainer O. Bless; *Voluntary Codes of Conduct for Religious Persuasion: Effective Tools for Balancing Human Rights and Resolving Conflicts?*, 6 Religion and Human Rights 151, 156 (2011).

<sup>181</sup> Matthew K. Richards, Are L. Svendsen, & Rainer O. Bless; *Codes of Conduct for Religious Persuasion: The Legal Framework and Best Practices*; 3:2 Int’l Journal of Religious Freedom 65, 71 (2010).

<sup>182</sup> See Richards, Svendsen, & Bless; *Voluntary Codes of Conduct for Religious Persuasion: Effective Tools for Balancing Human Rights and Resolving Conflicts?*, *supra* note 33, at 157.

<sup>183</sup> *Id.*

<sup>184</sup> ISO 2600 – Social responsibility: FAQs, *supra* note 29.

<sup>185</sup> David Brereton, Director of the Centre for Social Responsibility in Mining University of Queensland, *The Role of Self-Regulation in Improving Corporate Social Performance: The Case of the Mining Industry* 14 (Sept. 2002). Available at [http://www.csr.m.uq.edu.au/docs/brereton\\_2002\\_1.pdf](http://www.csr.m.uq.edu.au/docs/brereton_2002_1.pdf); Mark Sidel, *The Guardians Guarding Themselves: A Comparative Perspective on Nonprofit Self-Regulation*, 80 Chi.-Kent L. Rev. 803, 829 (2005).

<sup>186</sup> Richards, Svendsen, & Bless, *Codes of Conduct for Religious Persuasion: The Legal Framework and Best Practices*; 3 *supra* note 34, at 73.

enhance its reputation for ethical conduct or tarnish its image by failing to keep its commitments.

The voluntary nature of the standards discussed does not diminish their weight and moral authority in the field of CSR. These standards create a “greater awareness and wider observance of existing legislation and regulation”<sup>187</sup> while at the same time facilitating ethical action by organizations beyond that mandated by law. Moreover, at some level the three standards discussed do enjoy enforcement. The OECD Guidelines empowers National Contact Points to address complaints and in some cases mediate disputes. All three standards have human rights elements to them which if violated may enjoy enforcement by the relevant human rights body.

## Opportunities to participate

Various organizations have become involved in promoting religious freedom as part of their CSR policy. For example, Ford successfully encouraged religious freedom by managing the attitudes of its employees toward Muslims following the September 11, 2001 terrorist attacks in the United States.<sup>188</sup> Before September 11, Ford had created an interfaith forum aimed at increasing dialogue and understanding between employees of different faiths.<sup>189</sup> Following the terrorist attacks, Ford managers used this forum to let employees learn more about Muslim beliefs. Employees asked questions of their Muslim co-workers on a range of topics including Fatwa, divine revelation, and Ramadan.<sup>190</sup>

Businesses may be concerned that in promoting religious freedom they could overstep their bounds and create conflict with local authorities or even with the majority religious group in the area. The Global Compact forum on religious freedom noted this concern:

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<sup>187</sup> ISO 2600 – *Social responsibility: FAQs*, *supra* note 29.

<sup>188</sup> Danny Hakim, *A NATION CHALLENGED: ISLAM; Ford Motor Workers Get on the Job Training in Religious Tolerance*, N.Y. Times, <http://www.nytimes.com/2001/11/19/business/19FORD.html?todaysh headlines>.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

More proactive efforts to respect freedom of religion or belief in the workplace are likely to prove – at least from a corporate point of view – more problematic. It is common within international corporate culture for religion or belief to be considered an essentially ‘private’ matter that should neither be actively promoted nor discouraged by employers. Likewise, the proactive accommodation of any one religion or belief within the workplace potentially leaves employers open to accusations of favouritism and/or discrimination [...] and also risks undermining workplace unity. Even in jurisdictions where the legal regime protecting religious rights in the workplace is highly articulated, businesses are generally not obliged to accommodate religious freedoms to the extent that their commercial viability is compromised.<sup>191</sup>

Nonetheless, several organizations provide suggestions for how businesses can get involved without overstepping their bounds. The following list is not exhaustive and many of the ideas are adapted from suggestions given by the Norwegian checklist and by The Castan Centre for Human Rights Law:<sup>192</sup>

- Join the Global Compact and openly support international standards on religious freedom;
- Support educational projects related to religious freedom and tolerance;
- Engage in dialogue with other companies, nongovernmental organizations, and local and national authorities on preventing religious discrimination and promoting religious freedom;
- Train management and employees on international religious freedom standards;
- Ensure that religious freedom is an integral part of the company’s strategic planning;

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<sup>191</sup> The Global Compact, Human Rights and Business Dilemmas Forum. /Available at <http://human-rights.unglobalcompact.org/dilemmas/freedom-religion/>.

<sup>192</sup> NHO Checklist, *supra* note 21; Monash University Castan Centre for Human Rights Law, *Human Rights Translated: A Business Reference Guide* 52 (2008). Available at [http://human-rights.unglobalcompact.org/doc/human\\_rights\\_translated.pdf](http://human-rights.unglobalcompact.org/doc/human_rights_translated.pdf).

- Establish clear corporate policies on religious discrimination including restrictions on religious clothing, prayers, and holy days;
- Require business partners, supply chain, sub-contractors etc. to implement specific policies prohibiting religious discrimination;
- Promote a culture of religious understanding within the workplace;
- Recruit more from disadvantaged religious groups;
- Support local organizations engaged in projects that bridge community differences;
- As occasion permits, speak out publicly or in private to relevant authorities in areas where governments are guilty of restricting religious freedom;
- Following the example of the WEF, host cooperative forums on religious freedom and tolerance that help business, political, and religious leaders engage in dialogue on how to improve religious freedom.

Engaging in these types of initiatives can promote religious freedom while not creating unnecessary conflict. As the company's employees and those that the company can influence learn to understand and tolerate the religious views of others, they carry that understanding with them to their homes and communities. Corporations can encourage grassroots change by teaching tolerance and respect within their sphere of influence.

## Conclusion

Unfortunately, despite the emphasis in CSR standards-setting instruments on human rights, there is a compliance gap. A 2009 report noted that with human rights Global Compact members had made the least progress since the creation of the compact.<sup>193</sup> Many reasons likely exist for this lack of progress. Business leaders do not see how human rights relate to their business or what actions they can take to address human rights problems. Additional barriers arise when the laws themselves within countries of operation discriminate against certain groups

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<sup>193</sup> *Note on the United Nations Global Compact and Human Rights*, *supra* note 13, at 2.

such as women, or where they prohibit unions, the right to assemble, and restrict free speech.<sup>194</sup> The Global Compact has tried to overcome these barriers through initiatives that both raise awareness of what business responsibilities are toward human rights and give practical ideas that businesses can implement within their sphere of influence.<sup>195</sup>

Much greater emphasis is needed. Finding the correct balance of activities to engage in may be difficult and requires strategic planning on the part of corporations to promote religious freedom without compromising commercial viability. The economic power corporations exert in communities and governments can serve as a strong impetus for change where religious freedom is being denied or is not fully protected. Businesses can become one the most influential catalysts for change in protecting and fostering religious freedom on a global basis, and it is in their economic interest to become so engaged.

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<sup>194</sup> *Id* at 1.

<sup>195</sup> *Id.*