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## **Empowering People in the Business Frontline: The Ruggie's Framework and the Capability Approach\*\***

This paper explains how the Ruggie's framework for corporate human rights performance may benefit from a relationship with the capability approach. The capability approach is found to fit nicely with both human rights and managerial perspectives. Among the many reciprocal contributions these perspectives can make to each other, this paper places a specific focus on how the capability approach can strengthen the case for the universality of human rights by means of Nussbaum's list of capabilities; as well as get the Ruggie's framework specified in business settings by accounting for different factors of variability and aspects of freedom. A manager-friendly 4-step flow chart of practical reasoning is suggested and tested on the issue of gender equality in the firm.

**Key words:** Ruggie's framework, capability approach, corporate responsibility, practical reasoning, gender equality (JEL: F23, J8, J24, M14, M50)

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## Justification of the research topic

The human rights situation in the current world and the new realities of globalization were since long calling for a new and urgent approach to corporate human rights performance. John Ruggie, a Berthold Beitz Harvard Professor in Human Rights and International Affairs, was appointed to develop a workable human rights framework in order to tackle this challenge (UN, 2008). As a result, Ruggie has definitively placed the discussion about corporate responsibility in the broader context of human rights. His framework “for transnational corporations and other business enterprises” was finally released on March 21, 2011 after a 3-year period of being open to the general public for study, testing, and suggestions.

Ruggie’s driving force was the consideration that “[t]he business and human rights agenda remains hampered because it has not been framed yet in a way that fully reflects the complexities and dynamics of globalization and provides governments and other social actors with effective guidance.” (UN, 2009, p. 57) Ruggie has achieved to deliver strong foundations for this enterprise and this paper is intent on helping to bring it to greater robustness and definition.

In particular, it attempts to clarify how a conceptual collaboration with the capability approach (CA) can strongly contribute to improve corporate discharge of human rights obligations. What is suggested here is a sort of ‘capability-mainstreaming’ of the RF, with business-related human rights being seen from the perspective the CA holds towards empowerment.<sup>1</sup> Among the number of contributions the CA can make to the RF, this paper focuses on the operationalization of the RF for businesses and the process of reasoning involved in that. Some others will be mentioned in the conclusions.

The idea of reading the RF, as a corporate responsibility approach, through the lenses of the CA, is inspired in previously related endeavours. One of them is a collection of works connecting human rights and CA in the study of human development (Sen, 1984, 2005; Nussbaum, 2000, 2011; Vizard, Fukuda-Parr, & Elson, 2011, p. 2; Burchardt & Vizard, 2011; Cecchini & Notti, 2011; Drydyk, 2011; Osmani, 2005). Second, and closely related, this is consistent with the shift in the human rights law and jurisprudence “from a paradigm based on non-interference and non-intervention, to a substantive understanding of human rights based on the notions of human flourishing and positive duty.” (Vizard, et al., 2011, p. 6; see also Osmani, 2005, p. 213). Finally,

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<sup>1</sup> Gender mainstreaming has been described as follows: it “promotes a new conception of equality policies between men and women, in which gender issues are not treated apart from other areas of decision, but in which they are permanently integrated in the decision-taking process, in all fields, at all levels and at all stages, by the actors normally involved in policymaking.” (EFILWC, 2007, p. 3) This generality and cross-cutting character is what is demanded here for the CA. Furthermore, the gender mainstreaming reference goes beyond the mere terms of a comparison. The connection between CA and gender mainstreaming is also stated by the report itself in respect to a broader understanding of economic development that would better accommodate acuter gender sensitivity (EFILWC, 2007, p. 6). The reason for that is that, as will be seen, almost each capability admits a gendered treatment.

there have already been some promising attempts to conceptualize corporate responsibility within the CA framework (Enderle, 2004; Parra, 2008; Wanderley, 2001; Palmer, 2007).

However, the CA's particular bearing on the RF has largely remained unexplored. This is all the most surprising given several relevant factors, such as the Sen's suggestion of broadening the human rights scope to non-State actors, such as corporations (Sen, 1999; cfr. Alkire, 2010, p. 59); the fact that transnational corporations are major drivers of economic and human development (Kumar & Graf, 1998, p. 129–132; Enderle, 2005); and, finally, also CA's particularly coherency with recent ethical propositions to businesses, such as the UN Millenium Development Goals (2000). Corporations enrolled in the promotion of these human development objectives will inevitably find themselves faced with a capability-based reading of development, which is prevalent among scholars.

In this paper it is argued, the CA is suitable for pinning down the RF because of:

- its capacity to make a case for cross-cultural values, and
- its high flexibility of adaptation to local settings, i.e., business situations.

This potential for adaptation is in phase with the idea, present in human development studies, that the “capability analysis also supplements traditional human rights analysis by providing an applied framework in which a range of factors that influences the realization of human rights in practice can be more fully investigated and better understood.” (cfr. Vizard, et al., 2011, p. 5; Nussbaum, 2011) The ideas developed in this paper are put to the test by examining the issue of gender equality in the firm—although obviously the same can be done for any business ethics issue, from child labor to collective rights. In this sense, it presents an unitary framework for corporate responsibility.

Thus, for the purpose of the ‘flesh-out’ of human rights in business settings, a manager-friendly 4-step decision-making chart flow is suggested. It is guided by the following question:

*How company-provided goods (such as pay, promotion, fringe benefits, etc.) must be provided to bring about a meaningful expansion of female employees' freedoms, within the limits of business specific responsibilities?*

The explication of the different elements in this question is this paper's objective. Along with it, an aspect of the Senian's notion of freedom (the moral freedom), that may have remained hidden to previous research, will emerge.

Some additional clarifications are due before continuing. First, this research is targeted, in principle, for any kind of business, from small and medium enterprises to corporate giants. However, the focus is on transnational corporations (TNC), because it makes it easier to show how the CA matches the alleged universality of human rights.

Second, the focus is placed on employees—albeit the framework presented here has the potential to be developed for other stakeholders, such as communities or customers, or the environment. To limit it to employees would obscure the true scope of both the RF and the CA, since these are meant to embrace all of the impacted by

economic and business activities—such as customers, suppliers, communities, or other business constituencies—within an unitary framework.

Furthermore, beyond particular constituencies, the connection between RF and CA goes well with the term ‘people’ in this paper’s title. It is attempted to highlight that the affected by business activities are persons—not just ‘workers’ or ‘employees’. The term ‘people’ bears on a broader and holistic view of employees intending to include all of their dimensions: reason, will, emotions, body, social relations, and so on. In this fashion, their intrinsic value and absolute dignity, suggested by Enderle’s qualification of the CA as “people-centered” (Enderle, 2004, p. 54; see also Vizard, et al., 2011, p. 1), is emphasized. Also Ruggie uses the term ‘people’ in the context of the demands, posed by the human rights perspective, for “treating people with dignity” (2010b, p. #3). This holistic approach to business constituencies ultimately detaches from other views on economic actors, such as the ‘economic citizen’, a view which implies some civil and political rights are contingent on the person’s ability to participate in the market (White, 2003).

### **The Ruggie’s framework as a model of corporate responsibility**

Until the recent termination of his mandate, Ruggie has been endeavouring to devise a threefold framework aimed at empowering States and other actors, as well as mapping out clear and well-defined responsibilities for business. The framework has been greatly successful in providing “a structure for the debate and action on business and human rights to be built on.” (Davis, 2011, p. 43)

To all of the actors involved, RF suggests “differentiated but complementary responsibilities. It comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies” (UN, 2008, p. #9), that both States and companies have to care for.

Business responsibilities derive from their ability to infringe on human rights, greatly enlarged by “the governance gaps created by globalization.” (UN, 2008, p. #11) The obligation for business to uphold human rights is further defined as avoidance of direct harm or being complicit on third parties’ harm (UN, 2008, p. #73).

Several reasons speak for choosing the Ruggie’s proposal in order to examine business responsibilities, instead of other existing corporate responsibility frameworks. Some of these reasons come from its human rights core, which are absent in the latter (cfr. Garriga & Melé, 2004); other reasons lie in the way business responsibilities are framed in it.

As to the first set of reasons, the idea of human rights is a powerful one, since it is about empowerment and recognition and “treating people with dignity” (UN, 2010b, p. #3). In this vein, Sen highlights ‘their *intrinsic* importance’ and “their constructive role in the genesis of values and priorities.” (Sen, 1999, p. 246) Therefore, the human rights perspective put corporations on the right track about what values are worth being preserved.

Second, and closely related to the previous one, “it reminds us that people have justified and urgent claims to certain types of treatment” (Nussbaum, 2000, p. 100)

and to their “absolute safeguard” (Alkire, 2010, p. 58). This is consistent with this paper’s detachment of the abovementioned ‘economic citizen’ view. This insight is not as clear in other theories of corporate responsibility. For instance, in the stakeholders theory the parties’ interests are strategically catered for as long as they can be put into play for the company’s benefit (cfr. Freeman, 2000).

Third, human rights are global or ‘near-universal’ standards, as Ruggie puts it, prestigious and subject to widespread agreement (UN, 2009, p. #47). They preserve “a sense of the terrain of agreement” (Nussbaum, 2000, p. 101) necessary for business to go international. There may not be another single set of values that draws agreement from as many parties as human rights.<sup>2</sup>

Apart from the aforementioned reasons, RF has its own merits. Ruggie seeks to define “the specific responsibilities of companies with regard to all rights” (UN, 2008, p. #51). The rationale behind it is that “business can affect virtually all internationally recognized rights. [...] At the same time, as economic actors, companies have unique responsibilities” (UN, 2008, p. #6), different from those of States which are not money-driven. Thus, the RF differs from other corporate responsibility frameworks in that it defines “a limited list of rights linked to imprecise and expansive responsibilities” (UN, 2008, p. #51). It obviously seems better to provide companies with defined expectations than to demand from them so little, as they might shirk some of their responsibilities (as in the agency theory (Jensen, 2001). However, demanding too much could result in these responsibilities getting stretched out to become philanthropy (as in social responsiveness theories (L. E. Preston & Post, 1975) or in a way that the firm becomes a proxy for governments (as in the extended view of corporate citizenship (Matten & Crane, 2003).

Finally, the RF can also be as responsive to calls for environmental care as any sustainability scheme can do, because environment protection can be derived from other human rights, such as the right to life or health.

### **The connection RF – CA: human rights, freedoms, and managerial applicability**

This paper draws on the CA’s basic tenets. Differences in the understanding of capabilities between authors such as Amartya Sen and Martha Nussbaum are solely discussed when necessary; otherwise, this paper does not go into those details.<sup>3</sup>

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<sup>2</sup> Ruggie explains that “the corporate responsibility to respect is acknowledged by virtually every company and industry CSR initiative, endorsed by the world’s largest business associations, affirmed in the Global Compact and its worldwide national networks, and enshrined in such soft law instruments as the ILO Tripartite Declaration and the OECD Guidelines. Second, violations of this social norm are routinely brought to public attention globally through mobilized local communities, networks of civil society, the media including blogs, complaints procedures such as the OECD NCPs, and if they involve alleged violations of the law, then possibly through the courts.” (UN, 2009, p. #47)

<sup>3</sup> For an overview of some of the differences and specific problems raised by Sen and Nussbaum’s conceptions, see Robeyns (2006, pp. 355–356).

As has been mentioned, the connection between capabilities and human rights had already been established through research on human development. As Vizard explains (2006, p. 241), the UN Independent Expert on the Right to Development set out a ‘human rights-based development’ framework (‘HRBD Framework’) that characterizes the ultimate objectives of development in terms of fostering of human rights, and this in turn in terms of ‘capability expansion’. Thus, human rights are to be seen as entitlements to capabilities (Nussbaum, 2000, p. 100). Since the CA’s essence is the notion of *empowerment* understood as expansion of freedom (both in number and extent), the CA helps to visualize freedom as the soul of the human rights perspective. Therefore, a first contribution of the CA to the RF would be of a conceptual kind and consist in supplementing human rights with its complex and rich view about human freedom.

However, since this paper is principally engaged with the practical embodiment of human rights in business settings, the implications for the RF at that conceptual level are not further dealt with. In the following, the Sen’s account of freedom is explored only as long as it is necessary for designing a guiding tool for business enterprises.

Sen (1985b) claims, for empowerment to deserve that name two aspects of freedom must be taken care of: opportunity freedom and process freedom. ‘*Opportunity freedom*’, also called ‘freedom of choice’, is described by Sen as “whether the person is free to achieve one outcome or another; whether his or her choices will be respected and the corresponding things will happen.” (1985b, p. 208) What is relevant here is the size and scope of the set of individual and collective options: the broader and larger it is, the greater the freedom.

The size of the set of options must not only be ‘formal’, but also ‘material’—i.e., what must be provided to individuals and collectives, together with a broad array of options, is the capacity to use them. This difference is illustrated by Sen as this: to give 100 USD each to a disabled and to an abled person is ‘formally’ the same thing but not ‘materially’, since the former is impaired in her or his ability to make use of the money to a degree the latter is not. For the impaired person to enjoy as much a set of options as the abled person, a larger amount of money or some other kind of measures would be needed (Sen, 2005, p. 154).

*Process freedom*, on the contrary, is not about the number of available options but “whether the person is himself exercising control over the process of choice.” (Sen, 1985b, p. 209)—that is, it is not about freedom of choice but freedom from coercion. Sen presents his readers with the example of Natasha, a woman forced by the police to go to the movies. Watching a film is exactly the way Natasha had wished to spend her afternoon, so the issue here is not a reduction in the number of her preferred options. Yet the fact that it has now turned into a coerced activity makes it less enjoyable and, ultimately, be perceived as an attack to her freedom—as serious as being prohibited to leave the house would have been (Sen, 2005, p. 152–153) Thereby, process freedom is about whether persons have the ‘freedom to achieve’ or not the options they are presented with and reveals the “intrinsic importance of freedom” (Sen, 1999, p. 37).



Expansion of freedom in these two directions would constitute the target of managerial efforts, as will be seen later on.

Besides framing human rights in terms of expansion of freedoms, it is worth mentioning a second aspect of the CA's suitability to underpin the human rights perspective. Following the last extension of human rights to the civil, economic and political ambits, it could be pretty much said that there is one human right for every aspect of individual and community life. In this sense, CA's remarkable multidisciplinary and rich view of human beings and societies positions it far ahead of other candidate approaches to accommodate human rights's demands. Sen has proved the CA's enormous flexibility of analysis in the fields of well-being and poverty, liberty and freedom, living standards and development, and justice and social ethics (Sen, 1993, pp. 30, note 31). Research conducted on gender and feminism (which is particularly relevant to this article) has also been carried out (Nussbaum, 1995b, 1995a, 2000; Sen, 1985c; Robeyns, 2003; Olson, 2002). Other very different topics have been widely scholarly researched from the capability perspective too.<sup>4</sup>

Focusing on RF and its managerial side, it can also be affirmed, CA's pluralism and applicability matches core elements in the understanding of management as a 'liberal art', in Drucker's beautiful depiction: 'liberal' because it draws "on all the knowledges and insights of the humanities and the social sciences" and 'art' "because it is also concerned with practice and application." (2001, p. 13) This is going to become apparent in the following practical reasoning analysis.

### Capability-mainstreaming of the rf: the female empowerment case

After having brought out the relevance of this research for the RF, the strengths of the latter as a corporate responsibility framework, and the CA's suitability for the task, this paper goes all the way down to the specification of these ideas in gender-friendly corporate practices. It will be attempted by highlighting the CA's contribution in two main fronts:

- to present *basic capabilities* as a vehicle for the human rights' aspiration to cross-cultural applicability;
- and to get human rights *meaningfully specified* by means of Sen's factors of conversion, for each of the *freedom's aspects* and with regard to the *specific responsibilities* of businesses.

The election of the particular topic of gender equality is motivated by the fact that a growing body of research is converging on the view that economic, and human development in general, is by women, especially in developing countries (Sen, 1999, p.

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<sup>4</sup> Such as: the Millenium Development Goals and poverty (Cecchini & Notti, 2011; Vizard, 2006), the housing financial crisis (Balakrishnan, Elson, & Heintz, 2011), education (Lodigiani, 2010), information rights (Anand, 2011), job satisfaction (Leßmann & Bonvin, 2011), design and technology (Oosterlaken & van den Hoven, 2011; Garnham, 1997), social choice theory, disability and health, participation and deliberation, culture and indigeneous people, political theory, the environment, children, migrants, water, among others (see references in Alkire, 2010, pp. 35-36).

218).<sup>5</sup> Ruggie himself attaches great importance to this issue (UN, 2011, p. 6) and has been active in getting his framework gender-mainstreamed (EGI, 2009).

The CA is particularly sensitive to gender considerations. Sen and Nussbaum, along with others, have regularly applied the CA to the topics of gender bias, sexual division, and female and male role distribution regarding work-life balance and maternity (Nussbaum, 1995b, 1995a, 2000; Sen, 1985c; Kynch & Sen, 1983; Robeyns, 2003; Olson, 2002; Gasper, 1997; Qizilbash, 1997). The reason for this is that almost each of the following capabilities admits a gendered treatment. As Nussbaum argues, the CA can make an additional contribution in this point to the human rights discourse, which “has frequently been criticized by feminists for being male-centered, and for not including as fundamental entitlements some abilities and opportunities that are fundamental to women in their struggle for sex equality.” (2011, p. 24; Chattiera, 2012).

### Cross-cultural applicability of basic capabilities

Nussbaum presents a list of ten ‘basic capabilities’ that “are more at the core of human life, than others” (1995b, p. 63). Therefore, in this point Nussbaum’s positioning is preferred to Sen’s, who sees little use for a fixed set of basic capabilities. Two reasons can be put forward. First, according to the principle of indivisibility, it can be argued that all human rights, in some way or another, are interdependent. That is, they are universal. Assuming a fixed and overarching list of basic capabilities ensures that all of the human rights will always come from the corresponding capabilities. Second, managerial decision-making is particularly characterized by uncertainty, fragmentation and time pressure (cfr. Mintzberg, 1973). Therefore, it is likely to be better served by sticking to, as clear as possible, guidelines about which capabilities are to be considered.

Nussbaum’s enumeration varies slightly according to different works, otherwise remaining quite stable over time (Nussbaum, 1992, p. 216ff.; 2003, pp. 41–42). It encompasses:

- 1) mortality, including aversion to death
- 2) human body (hunger and thirst, need for shelter, sexual desire, mobility)

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<sup>5</sup> The Millenium Development Goals Report 2010 affirms that “gender equality and the empowerment of women are at the heart of the MDGs and are preconditions for overcoming poverty, hunger and disease.” (DESA, 2010, p. 4). In the same vein, the document *Gender Equality as Smart Economics: A World Bank Group Gender Action Plan (fiscal years 2007-2010)* (<http://siteresources.worldbank.org/INTGENDER/Resources/GAPNov2.pdf>) starts with this sentence: “Forget China, India and the internet: economic growth is driven by women”. A recent joint initiative of the UN Global Compact and UNIFEM (United Nations Development Fund for Women) goes ‘Equality means business’; its source document refers to two recent studies on gender diversity and corporate performance, conducted by McKinsey and Company in partnership with the Women’s Forum for the Economy & Society, suggesting that the companies where women are most strongly represented at board or top-management level are also the companies that perform best (Desvaux, Devillard, & Baumgarten, 2007; Desvaux & Devillard, 2008).



- 3) capacity for pleasure and pain
- 4) cognitive capacity (perceiving, imagining, thinking)
- 5) early infant development
- 6) practical reason
- 7) affiliation with other human beings (friendship, family, society)
- 8) relatedness to other species and to nature
- 9) humor and play and
- 10) separateness (need for individual development)

It is not possible to focus here on the discussion of the serious criticisms the Nussbaum's list has been subjected to and the existence of other possible lists and methodologies of elaboration (Drydyk, 2011; Robeyns, 2006; Alkire, 2001; Burchardt & Vizard, 2011). However, a couple of reasons support, at least, the provisional uptake of the Nussbaum's list of ten basic capabilities.

First, it is reasonable to think of all of the listed capabilities as truly 'basic' and, by 'basic', cross-cultural is meant. They are basic because being supposedly shared by all human beings, unregarded sex, race or cultural background and constitute a minimum threshold "beneath which a life will be so impoverished that it will not be human at all" (Nussbaum, 1995b, p. 81). For instance, a people who *never* laughed would appear to us as 'frightening' and we would hardly regard them as human beings. They are also basic because, albeit interrelated in many complex ways, are independent from each other, so that an increase in one does not make up (or at least not completely) for a decrease in another (Nussbaum, 1995b, pp. 85–86).

Second, this list is in line with the Sen's approach, since most of the basic capabilities might be reasonable outcomes of the Senian "open public reasoning" (Sen, 2004, p. 322). This features as a dynamic, multi-party, public and ongoing reflection process. Its main characteristics include free availability of information and the ability "to express and defend disagreements with the established views without suppression and fear" (Sen, 2004, pp. 353–354). In Sen's view, the public reasoning can generate a small number of "clearly sustainable" capabilities (Sen, 2004, p. 322; 2009), in the sense of them enjoying intrinsic relevance and centrality. Thus, although Nussbaum's stance has been chosen before Sen's, it still may be considered to have the latter's conceptual support.

Mentioning Sen's 'public reasoning' is not only meant to draw support but introduce a notion necessary to determine the meaningfulness of corporate practices, as will be explained later.

## The applicability of the CA

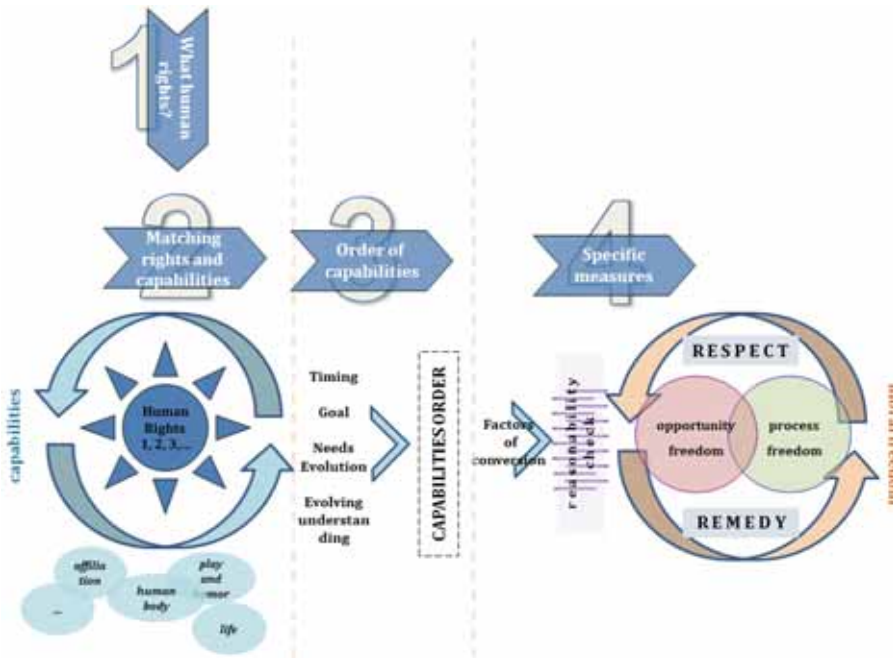
While human rights themselves demand universal applicability, the means by which they are 'transplanted' will reflect the fact that we live in a very complex world, where "one size does not fit all." (UN, 2010b, p. #14) Ruggie himself emphasizes the need to take into consideration "country contexts" (UN, 2008, p. #57). This section deals with the reasoning process needed to meet Ruggie's claims that his 2010 Guiding Principles for the implementation of his framework are not "a tool kit, simply to be

taken off the shelf and plugged in” (2010b, p. #14). They demand a valuational rational exercise.

There have already been a few initiatives in the direction of getting human rights specified in the business arena (UN, 2011; UNESCO, 2002; IBLF, 2010; Castan Center, 2008). It includes the launch in January 2012 of the “Key Performance Indicators for Investors to Assess Labor & Human Rights Risks”, a joint initiative of the Fair Labor Association, the IRRC Institute, and the Harvard Law School (IRRC Institute, 2012). However, none of them has formally or extensively dealt with the reasoning process implied and are often limited to present a set of specific recommendations. Sen’s factors of conversion and variability are believed to provide a robust procedure for this task.<sup>6</sup>

The CA distinguishes between different sources of variability that confer dynamism to the managerial task of specifying human rights or, more precisely, of answering the question presented at the beginning: *how company-provided goods (such as pay, promotion, fringe benefits, etc.) must be provided to bring about a meaningful expansion of female employees’ freedoms, within the limits of business specific responsibilities?* In the following, a tentative 4-step decision-making flow chart (diagram 1) is suggested.

**Diagram 1: Corporate transplantation of human rights**



<sup>6</sup> The measures came up with would be the content of the two basic company-level human rights instruments proposed by Ruggie. Those are the human rights impact assessment to fulfill the duty to respect and the grievance mechanisms for the responsibility to remedy (UN, 2007; 2008, p. #95; 2010a, p. 84; 2011, p. 28). A thorough treatment of these instruments will have to be left pending for further research.

## Step 1. Identification of human rights

The first thing to be figured out is which human rights are involved in the particular case being discussed. The principle of indivisibility discussed above ensures that all human rights must be respected at the company level. However, since the purpose of this proposal is that all of the affected human rights will eventually be dealt with according to each aspect of work relations, it seems sensible at this point to focus on those rights directly bearing on the gender equality issue.

These are the rights of non-discrimination (ICCPR Article 24); right to a fair wage and decent living (ICESCR Article 10), right to enjoy just and favourable conditions of work (ICESCR Article 7); right to a family life (ICESCR Article 10), right of protection of the family and to marry (ICCPR Article 23); of protection for the child (ICCPR Article 24).<sup>7</sup>

In order to identify potential human rights impacts, Ruggie suggests that companies examine different areas of their operations. First, Ruggie affirms that operating conditions may impose additional requirements on companies, “for example, the need to protect employees [...] from violence in the workplace.” (2009, p. #63) The case of the unfair dismissal of a Malaysian Airlines’ stewardess on grounds of her getting pregnant points to the fact that airlines’ specific operations (in a highly gender-typed industry such as the airlines one) may compromise women’s rights in different ways than men’s.<sup>8</sup>

Second, the uncovering of patterns of human rights by ‘management functions’ can prove useful too, such as “human resources, security of assets and personnel, supply chains, and community engagement” (UN, 2008, p. #52). Gender equality is not an issue for the personnel department alone, but has to become a concern across all of the functional units in the company.

Third, ‘additional corporate responsibilities may arise as a result of the specific functions the company is performing’, for instance “when companies perform certain public functions.” (UN, 2009, p. #64) In this sense, public companies may bear additional duties to promote women to top executive positions because of their role model as a public entity. Finally, depending on the circumstances, “companies may need to consider additional standards: for instance, they should also respect [...] those rights specific to vulnerable and/or marginalized groups, such as indigenous peoples, women, ethnic and religious minorities, and children.” (UN, 2010b, p. #12; 2011, p. #7) In this sense, and in regard to the abovementioned Malaysian stewardess example, it must be recognized that female workers may be victims to violence in the workplace more often or in different fashions than men, regardless of operative particularities—

<sup>7</sup> ICCPR: International Covenant on Civil and Political Rights (New York, 16 December 1966); ICESCR: International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966).

<sup>8</sup> Bhatt, J. K., “Gender Discrimination in EMPLOYMENT – How far Does Article 8 of the Federal Constitution guarantee gender equality?” *The Malaysian Bar*, 19 Jan, 2012 ([http://www.malaysianbar.org.my/gender issues/gender discrimination in employment how far does article 8 of the federal constitution guarantee gender equality by ja shpal kaur bhatt.html](http://www.malaysianbar.org.my/gender%20issues/gender%20discrimination%20in%20employment%20how%20far%20does%20article%208%20of%20the%20federal%20constitution%20guarantee%20gender%20equality%20by%20ja%20shpal%20kaur%20bhatt.html))

such as the widespread phenomenon of sexual harassment shows (Cortina & Berdahl, 2008).

This last remark is especially relevant to this paper, as it condenses an idea underlying all of the Ruggie' suggestions: that human rights obligations must be 'gendered'. Because of the current societal and cultural structures, women face specific situations of vulnerability or marginalization that are better dealt with through a gendered approach.

### **Step 2. Matching human rights with capabilities.**

After having identified the relevant human rights and potential impacts on them, an approximate match with the specific capabilities to be targeted is provided. Each human right can be considered to bear on some particular capabilities more directly than others, even though all of the capabilities will get affected to some extent, because of the interaction among capabilities (Sen, 1999, p. 40; 2004, p. 333).

This second step provides a first base for specification of human rights by helping to place the focus. An example is provided in the first two columns of Table 1 at the end.

### **Step 3. Coming up with the right capability order**

This step consists in applying to the basic capabilities the following factors of specification: (1) *evolution of capabilities and needs*, (2) *evolving understanding*, and (3) *timing and target-dependency*. This step aims at defining the capability order which is most suitable to the company's specific situation.

All of the basic capabilities are equally important or necessary. Also factory workers need recreation and time for themselves, while the top executive may be the bread-winner of the household. However, establishing a prioritization of capabilities is necessary, at least for three reasons. First, because firms have scarce resources. Second, because, although human rights are indivisible, they are to be progressively implemented and for that it is necessary to understand their interconnections. Thus, the CA "can help to specify the most effective sequence of policies, the causal connections between different human rights and the instrumental value that one capability has in advancing other capabilities." (Alkire, 2010, p. 58–59) Third, because each company has its own goals and resources, and needs to first develop in its employees those capabilities more useful for its survival in its competitive environment.

#### *Evolution of capabilities and needs*

For Nussbaum there are no time-less specification of capabilities—i.e., literacy could make no sense in times or places different than ours and so human need for knowledge should be catered to in a different way (Nussbaum, 2000, p. 78). In the same vein, Sen points out that, with technological development (e.g., Internet and its wide-ranging applications), in some developing societies "access to the web and the freedom of general communication has become a very important capability" (Sen, 2005, p. 160)—whilst several decades ago concentration on elementary education or basic health were the pressing issues.

Bringing this aspect closer to the topic of gender equality, someone could argue that the right to non-discrimination might require establishing a mandatory quota of women in corporate boardrooms. However, this assumes the existence of certain political and social institutions which do not have overall international presence.

With a different example, the gender-friendly goals targeted in a US-based consultancy firm may be very different from those in a Cambodian apparel factory. In the first case, the capability for humor and play may go first in some women's set of preferences (and, consequently, having time off work to go to the movies). In the second one, the capacity for living in society may be decisive for a woman's well-being (and, consequently, having a job). Furthermore, the same need may be understood in different ways in different societies. The capability for social recognition may be delivered by having time off to go to the movies in the US professional services firm and by just having a job in developing countries.

### *Evolving understanding*

This aspect points to an evolution, not in the capabilities themselves, but in their understanding. Even if given social conditions present us with a relatively firm set of relevant capabilities, "public discussion and reasoning can lead to a better understanding of the role, reach and the significance of particular capabilities." (Sen, 2005, p. 160) Sen gives the example of certain freedoms whose recognition has been brought about by feminism, such as freedom from the imposition of fixed and time-honoured family roles, or immunity from implicit derogation through the rhetoric of social communication. This derogation still occurs at the male-dominated level of companies, with women consistently getting less promotions or pay rises because of the differences in negotiation and communication habits between women and men (Tannen, 1995).

### *Target-dependency and timing*

What capabilities are relevant for corporate and public policy makers is contingent on the specific improvement targeted. There is not a fixed capability set that should be absolutely pursued (Sen, 2005, p. 160). It may depend on the importance of the damage being caused to employees' capabilities, which one is taken care of first. The order is also dependent on the particular goals of the company—there is a difference in the capabilities first pursued if managers are seeking to make the company attractive to prospective talented female employees or to provide workers with the necessary training to perform particular tasks.

The timing is also important; to provide jobs to women in developing countries may help tackle, in a way that facilitating time off work does not, not only affiliation-related problems but also those demanding an urgent solution, such as being well-nourished.

## **Step 4. Devising specific measures.**

As was discussed before, freedom must be not only formal, but material—i.e., corporate policies must care for providing, not only options, but also the ability to make use of them. This goal of capacity-building entails three factors:

- 1) the specific measures managers need to identify will turn goods into functionings (that is, into particularized capabilities) by means of the abovementioned factors of conversion—physical environment, social climate, relational perspectives, and personal heterogeneities;
- 2) these measures must cover the two ‘areas of impact’ of company-level human rights duties explained above,<sup>9</sup> opportunity freedom and process freedom; and
- 3) these measures must pass the ‘reasonability check’ because, as will be discussed later, it reveals a third ‘area of impact’ implicit, but also unfolded, in the Senian account of freedom.

Thus, the key words here are: goods, functionings, factors of conversion, areas of impact, and reasonability threshold.

### *Goods*

A good is here anything that satisfies an employee’s need—such as a living wage, fringe benefits, concierge services, training, etc. In a broad sense, it is in line with Aristotle’s (1934b) or Menger’s (1871) characterizations of economic goods.

### *Functionings*

A functioning is “an achievement of a person: what he or she manages to do or to be” (Sen, 1985a, p. 10), such as being well nourished, being free from malaria, or not being ashamed by the poverty of one’s clothing or shoes. One given capability is a specific combination of a person’s doings and beings, relevant to a given exercise. A person’s whole set of capabilities is “the various alternative functioning bundles he or she can achieve through choice.” (Sen, 1985a, p. 27; 1997)

Thus, a working mother who is well nourished, enjoys a flex work arrangement, is provided with stress management tools—such as a yoga class in the company’s gym—, and receives the proper training, has the choice of either accepting a promotion or quitting her job to do something else.

### *Variability in factors of conversion*

For Sen, the way goods are transformed into the kind of lives that people can lead depends on ‘conversion factors’ varying from person to person substantially (Sen, 1985a, p. 17–18; 1980, p. 219; Nussbaum, 2000, pp. 68–69). Sen identifies four important sources of variations (Sen, 2009, pp. 255–256): in the

- physical environment, such as climatic circumstances, flooding, etc.;
- social climate, such as public health care and epidemiology, public educational arrangements, prevalence or absence of crime and violence; community relations;
- relational perspectives, such as standards for ‘taking part in the life of the community’ are different in rich and poor societies;
- and personal heterogeneities (disparate physical characteristics in relation to age, gender, disability, proneness to illness, etc.

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<sup>9</sup> The expression ‘areas of impact’ is borrowed from Robeyns (2006) and Wanderley (2001).



For the purpose of this paper, a particularly interesting difference in conversion factors is the one between men and women. It can be said that almost all capabilities can be gendered. For instance, freedom from malnutrition (i.e., the ability to convert food consumption into being well-nourished) depends to a large extent on corporal differences strongly related to sexuality (Sen, 1985c, p. 198).<sup>10</sup> For instance, pregnant women may need more income or maybe a different composition in the factory's cafeteria meals than male workers in order to attain the same level of nutrition. Another instance may be the different impact of social climate or relational perspectives on female and male opportunities and the freedom to pursue them, as was seen above regarding Ruggie's emphasis on the rights of particularly vulnerable groups.

### *Areas of impact*

From the 'opportunity freedom' perspective, the wider the set of options, the more freedom the person enjoys; from the 'process freedom' viewpoint, it is sufficient that these options are free from coercion.

### *Goals scrutiny and the increase of freedom*

The open public reasoning, discussed above, is the extension to the public sphere of a crucial Senian qualification in the notion of empowerment, i.e., that capabilities should allow people "to do things *they have reasons* to value" (emphasis added, Sen, 2002, p. 506). The resort to 'reasons' points out that something is good not just for the fact of being desired. It still needs to be rationally justified. Capabilities have to be above the reasonability threshold. Sen clarifies this point by means of the 'argument of small mercies'. A person in a situation of deep poverty may frequently and unjustifiedly be content with much less than she would objectively be entitled to based on her human condition, for she may feel that she does not deserve better (Sen, 1985b, p. 66; Nussbaum, 2000). Hence, employee satisfaction may prove unreliable as a measure of corporate human rights performance—which has crucial implications for a variety of poignant issues, such as living wages, women's career promotion, etc. The setting up of a knitting club, as one company has done, may expand women's options in the company, but not be helpful in advancing their empowerment.

Therefore, personal rational decision-making, as well as corporate policy making, consists, not only, in hitting on the more effective means conducive to goals that are taken for granted—that is, goals that are not subject to rational discussion. Goals scrutiny is also a key element of rational decision-making. This is the only way for the pursued capabilities to truly advance human flourishing (Sen, 2002, p. 39).<sup>11</sup>

<sup>10</sup> More broadly, the conversion of consumption of food into the functioning of being well nourished "varies with (1) metabolic rates, (2) body size, (3) age, (4) sex (and if a woman, whether pregnant or lactating), (5) activity levels, (6) climatic conditions, (7) presence of parasitic diseases, (8) access to medical services, (9) nutritional knowledge, and other influences." (Sen, 1985b, p. 198; 1985a, p. 17–18)

<sup>11</sup> Here a 'soft' use of the notion of human flourishing is made. This concept was coined by Elisabeth Anscombe in 1958 and it heavily draws on the Aristotelian view on human beings as depicted in his *Nicomachean Ethics* (cfr. Aristotle, 1934a, p. I 7). The question about the 'good life' is extremely complicated and answering it probably demands a cer-

The need for ends inspection ('goal scrutiny') also reveals an important conceptual aspect that reaches out to the core of the notion of freedom. Albeit Sen does not make it explicit, it can be ascertained in his arguments. The reason is that true freedom can only be achieved when the options chosen are reasonable or good. More important than the agent feels free from coercion as he or she chooses from the set of options available to him or her, is to have the option she or he really wants or may want ('has reasons') to pursue (Sen, 2002, p. 602).

The rationale behind it is that goal scrutiny reveals the very essence of freedom—i.e., self-possession. We are not free because of our ability to choose; rather we can choose because of our being free, i.e., because we are the ultimate cause of our acts (Aristotle, 1934a; Runes, 1962; Millán Puelles, 1974). Carried to the extreme, theoretically it might be possible for an agent to have only one option and be, at the same time, absolutely free—if that is the option she or he *really* wants (cfr. Sen, 2002, p. 126). For instance, a woman may not want to accept a promotion because that would distort her family and work life balance and that would not mean *per se*, she is worse off in terms of empowerment.

This aspect of freedom might be called 'moral freedom' (Millán Puelles, 1974).<sup>12</sup> Thus, specific functionings would not only be true expressions of (process and opportunity) freedom but lead to more freedom in the agent—i.e., more control of one's own options or empowerment. Reasoned functionings make employees more free, and therefore are at the core of a meaningful life.<sup>13</sup>

Table 1 suggests results for the fourth step of the reasoning process presented here: specific company-level measures that expand both opportunity and process freedom for each gender equality-related human right. It illustrates in detail the last step 4 pictured in Diagram 1. For reasons of space and also for not stating the obvious in some cases, only a few of the aspects on the table will be commented on, specific case companies will be provided, where possible.

An important point is the interaction among capabilities (Sen, 1999, p. 40; 2004, p. 333). A specific measure is very likely to impact at the same time on different capabilities. Furthermore, some issues may also exist in the overlap of opportunity and process freedoms—that is the reason for the pointed-down arrow partially covering both columns in Table 1. For instance, sexual harassment is impactful on the capabil-

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tain picture of what human life should be like—both matters beyond this article' scope. In this paper, 'reasonable' or 'good' is used just as a synonym for meaningful life, full human life, etc., leaving aside the metaphysical and anthropological implications of Aristotle's view.

<sup>12</sup> It can be directly linked to a moral virtue approach, such as it can be found in Aristotle (1934a) or Solomon (1992).

<sup>13</sup> However, there may be an inconsistency in Sen's proposition. Sen argues, a particular functioning is not a freedom of any kind; freedom is rather to be seen in the capability, i.e., in the space of functionings: I have the *freedom of choosing* this or that functioning (eg. starving vs fasting). However, the example of the size of the set of options seemingly points in a different direction: that there are specific functionings that truly make us more free than others.

ity of feeling pleasure and pain (opportunity freedom), but also severely limits the harassee's control over her own's actions by means of creating a suffocating environment (process freedom).

**Table 1: Specific gender-friendly provisions**

Human Rights	Related capabilities	Opportunity freedom	Process freedom
<b>Right to non-discrimination (RND)</b>	Pleasure and pain Cognitive capacity Relatedness Affiliation	Hiring, promotion and termination Education, career development Prevention of sexual harassment Education in co-responsibility ...	<b>Dialogue</b> <ul style="list-style-type: none"> <li>• employee's participation in company's management</li> <li>• freedom of expression</li> <li>• collective rights</li> <li>• Grievances mechanism</li> </ul>
<b>Right to a fair wage and decent living (RFW)</b>	Mortality Human body	Fair wage Health insurance ...	
<b>Right to enjoy just and favourable conditions of work (RCW)</b>	Mortality Human body Cognitive capacity Practical reason Affiliation Separateness	Prevention of sexual harassment Safe working conditions Meaningful work (responsibility, autonomy, teamwork...) No harmful conditions, reasonable breaks and areas for breastfeeding and pregnant women ...	
<b>Right to a family life (RFL)</b>	Relatedness Affiliation Human body	Flexible work (part-time, telecommuting, satellite offices, homeworking...) Maternity and paternity leaves Caregiving-related time off On-site child-care facilities ...	<b>Freedom of coercion</b> <ul style="list-style-type: none"> <li>• not to foster violence</li> <li>• prevention of sexual harassment</li> <li>• respectful treatment</li> <li>• in the event of pregnancy, marriage, caregiving needs...</li> <li>• peer pressure (seminars, training...)</li> </ul>
<b>Rights of protection of the family and the right to marry (RPF)</b>	Relatedness Affiliation Human body	Non-discrimination for reason of pregnancy Housing facilities for employees supportive of family life Reasonable working hours ...	
<b>Rights of protection for the child (RPC)</b>	Mortality Human body Early development Humor and play	Safe working conditions Maximum age Facilitating schooling ...	<b>Transparency</b> <ul style="list-style-type: none"> <li>• corporate reporting</li> <li>• fair wages</li> <li>• process of attribution of merits, bonuses, benefits...</li> </ul>

In respect to the opportunity aspect of freedom, *time management* (RFL) is an important issue. Flexwork is an essential tool for work-family life balance. Many companies, such as IBM (with its 6 Flexibility Principles), make flexwork and work-family balance a distinctive sign.<sup>14</sup>

However, for flexwork to be productive in favour of gender equality, attention needs to be paid to the issue of co-responsibility (Addati & Cassirer, 2008; Lewis & Giullari, 2005). This means, the organizational design and the incentives system should encourage male employees to take a larger share in activities traditionally associated with women, such as care-giving or housework.

For instance, it is not sufficient to have a generous corporate program of parental leaves if it is used mainly by female employees; it must be designed in a way that also incentivizes their use by fathers—for instance, through the implementation of catch-

<sup>14</sup> [http://www.ibm.com/ibm/responsibility/employees\\_work-life\\_balance.shtml](http://www.ibm.com/ibm/responsibility/employees_work-life_balance.shtml)

up and refreshment programs, such as those Ernst & Young has implemented, apparently with success.<sup>15</sup>

*Education in corresponsibility* (RND). Not only the design of time arrangements may help to put corporations on the co-responsibility track. Also the organizing of targeted educational and coaching initiatives—such as parenting seminars—seems helpful when they are aimed at changing traditional allocations of men's and women's roles. An instance of this is the 'Maternity Coaching' program by Credit Suisse, a quarterly program that prepares women for maternity leave, but also encourages new dads and managers to attend the sessions (Working Mother Media Research, 2010).

*Fair wage* (RFW). The minimum wage required for basic needs may differ, as was mentioned above, for pregnant women; more generally, nutritional needs are contingent on sex, age, climatic factors, etc.—all of which must be accounted for in the design of a fair wage system.

Furthermore, the Castan Center Guide 'Human Rights Translated' makes some interesting point about this issue, such as the convenience of paying at intervals not exceeding a month (Castan Center, 2008); this time span may need to be shorter in some societies depending on various factors, such as having children, whether there is a refrigerator in the household, how widespread the custom of husbands drinking out women's salaries is... Moreover, fair wage is not only related to basic needs (such as nutrition or health)—it also bears on one aspect of the capability of affiliation, what Adam Smith described as the ability to 'appear in public without shame' (Sen, 1987b).

Also the salary structure bears on the ability, for instance, to conciliate family and work. Even in high-paying jobs where the salary is more than fair in terms of the amount of money, the variable part carrying too much weight may threaten employee's subordination to work (Leßmann & Bonvin, 2011).

*Health insurance* (RFW). The fact that women live longer than men is relevant in another respect, i.e., what Sen and Nussbaum refer to as the problem of 'missing women' (Sen, 2005; Nussbaum, 2000). Given the fact of women's longer life, a higher number of living women than men would be expected for any country. That is not the case in some developing countries, such as India or China. The reason for that is the dramatic discrimination girls are subjected to within their households regarding the amount of food or healthcare provisions they receive from the head of the household. Thus, the fact of 'missing women' should be taken into account, maybe through affirmative action, in the corporate provision of health insurance to female employees.

On a different matter, what are *reasonable working hours* (RPF) varies greatly depending on the cultural setting, the degree of development of a society, the nature of the work, etc. As a maximum, based probably on physiological grounds, the ILO sets the bar at: 60 hours/week, 10hours/day, 6 days/week. Many companies, such as Levy-Strauss, have committed themselves to this standard.

*Meaningful work* (RCW) is a very important basis of self-respect and the bedrock for a good number of capabilities. Although this subject is too broad to be dealt with

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<sup>15</sup> [http://www.opportunitynow.org.uk/best\\_practice/exemplar\\_employers/women\\_returners/case\\_studies/ernst\\_and\\_young.html](http://www.opportunitynow.org.uk/best_practice/exemplar_employers/women_returners/case_studies/ernst_and_young.html)

here, it is a well-established fact that allowing for autonomy, creativity, initiative, self-management, and so on, boosts self-respect and general psychological well-being (Sayles & Strauss, 1966; McClelland, 1975; Deci, 1975; Frey, 1997). The managers of Productos Médicos de Monterrey, a Mexican maquila near the US border, has re-designed the job place and operations to turn it from a traditional assembly line into a work space divided into a number of 8-member cells, where employees carry out multiple complex self-regulated tasks. They are also given time off to do community work. The result has been a dramatic increase in productivity and a boost in morale.

As for the process aspect of freedom, managers must ensure a coercion-free working environment. Some of the things that can be done are:

Engaging in dialogue > *Collective rights*. Besides being an expression of the capability of affiliation and others (opportunity freedom), collective rights are dialogue-based and, as such, important safeguards of procedural freedoms. Social dialogue and bargaining challenge potential corporate authoritarianism. Therefore, respecting them has a decisive impact across all the systems of rights, including gender-friendly ones.

Ruggie and others have suggested a number of company-based initiatives, such as to avoid being complicit in governments' quelling of demonstrations or harassing of union representatives; or where unions are unlawful, to try to empower employees within the plants, facilitating alternative worker representative frameworks (UN, 2009, 2010b). The Castan Center Guide puts forward the example of a company operating in China, actively engaged in circumventing national regulation that was limiting freedom of expression (Castan Center, 2008, p. 102).

Dialogue with stakeholders also takes on particular relevance for avoiding potential corporate paternalistic tendencies on the company's side in determining what specific functionings lead to a 'meaningful' life.

Freedom from coercion > *Not to foster violence*. In incorporating women into the workforce and providing them with empowering features, corporations should be careful not to foster violence, since there are societies where women are threatened with physical violence not to work (EGI, 2009, p. 6). Here the right timing, one of the variability factors, is crucial.

Freedom from coercion > *Peer pressure*. Some research shows that peer pressure from child-less men and women on working mothers is a significant source of stress and low perception of performance for them (Working Mother Media Research, 2010, p. 9). Seminars and other educational measures, as the abovementioned, can help to change the perception about working moms inside the company.

Transparency > *Corporate reporting*. As Ruggie powerfully expresses, corporations should be prepared, when faced with concerns of relevant stakeholders, to publicly communicate on how they respond to actual and potential human rights impacts. Communications can take on a variety of forms, such as reports, online dialogue, meetings, and stakeholder review panels. This is an important point because transparency of information underpins any effective dialogue strategy (cfr. UN, 2011, p. #17). Corporate reporting on social and environmental performance is being increasingly demanded from national governments with different degrees of legal enforcement and the number of companies that report on these issues are on the rise.

## Who will benefit from this research?

Some managers may find the resort to human rights too demanding on business. However, it would be absurd for companies to hold themselves unaccountable for their human rights direct violations or complicit deeds, or not feel obligated to redress the victims of their wrongdoings. As has been said in a recent top business school publication, “unlike corporate social responsibility, business cannot choose which rights to uphold and which to ignore.” (Isea, 2011)

Furthermore, the three pillars of the RF present a balanced view of different actors’ human rights obligations, whereby basically businesses are asked not to do harm in the course of their operations whilst States are expected to take up an active role in safeguarding and promoting citizens’ rights.

Some managers might still have trouble, not with accepting human rights as a general layout for a corporate responsibility strategy, but with the implementation proposed by CA. However, to leave human rights in their abstraction would just make it either less accountable or more prone to reputation or liability risks. The framework presented in this paper simply spells out what specific business obligations regarding human rights involve, without any additional demand.<sup>16</sup>

Furthermore, so much specification will actually feel relieving for the manager with a genuine ethical interest in the concrete implications of human rights. This also works for less ethics-conscious managers who are still aware of the decisive role that societal expectations are increasingly playing in the economic sustainability of the firm—what Ruggie calls the “social licence to operate” (UN, 2008, p. #54)—will find the capability-streaming of the RF useful. Empirical evidence in favor of the business case for corporate responsibility, often framed as ‘ethics pays’, is promising or even established in the view of a good number of scholars (Tombs, 2005; Orlitzky, Schmidt, & Rynes, 2003; Waddock, Bodwell, & Graves, 2002; Dorman, 2000; Griffin & Mahon, 1997; Wang & Qian, 2011). Besides, it is becoming trendy to connect gender equality with economic firm’s sustainability, in particular the positive impact of gender-friendly measures in terms of trust building, reduction of fluctuation and sick leaves, improved working climate, larger pool of applicants, or higher efficiency in delivering solutions to a diverse customer-base, to name a few (Heckl, Enichlmair, & Pecher, 2010, p. 120; Browne, 2004; Bilimoria, 2000; Campbell & Mínguez-Vera, 2008). The 2011 Women Empowerment Principles, a joint initiative of the UN Global Compact and UNIFEM (United Nations Development Fund for Women), also states motto-wise ‘Equality means business’.

Even if the evidence of correlation in social and financial performance has been argued to be inconclusive (Weber, 2008; A. McWilliams & Siegel, 2001; Abigail McWilliams, Siegel, & Wright, 2006; Margolis & Walsh, 2003), negative (L.E. Preston & O’Bannon, 1997), or even to perversely yield unethical outcomes (Colling & Dickens, 1998; Nyborg & Zhang, 2011), the fact that society will expect more and

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<sup>16</sup> The CA instrumental role in the deployment of human rights obligations has already proved useful for clarifying State duties, as the UN Human Development Reports makes apparent.



more companies to hold themselves to ethical standards adds weight to arguments by the business case's advocates. A 'self-fulfilling prophecy'-type of argument may have a role to play here: the more it is insisted on corporate responsibility from different parties, the greater the societal expectations are and, therefore, the greater also the value that companies can reap from them—in the form of 'ethical consumerism' (Smith & Higgins, 2000; A. McWilliams & Siegel, 2001) or social responsible investment (Porter & Kramer, 2002), for instance.

A word about regulatory issues is due here, even if this paper is neither about corporate self-regulation nor external legal regulation on businesses.<sup>17</sup> Although the business case for corporate responsibility is gaining momentum, this does not suggest supporting a de-regulation process in favor of corporate voluntary initiatives. The abovementioned possible unethical outcomes make it unadvisable (Vogel, 2005). However, also relying only on external legal regulation has its own limitations, precisely because of the 'governance gaps' mentioned by Ruggie or just because sometimes legal compliance may be insufficient from an ethical perspective. Hence, a complementary approach to regulation seems necessary. Rather than posing them as alternatives, social justice and economic efficiency can be (and increasingly are) seen as complementary—rather than an 'either/or', in this paper a regulatory 'both' is defended (Dickens, 2006; Hart, 2010).

Even if convinced of the benefits of using the RF in connection to the CA, the manager concerned with his or her company's human rights performance may still raise the question: why is the procedure just described better than managerial to-do-lists or checklists? Because it allows greater leeway and discretion for the deciding manager, providing him or her with tools to better perform his or her practical reasoning (the *how*), by means of having clarified the *why*. Many of the here suggested practical insights and corporate practices, growing out of the interaction between the RF and the CA, may not be new. Guides, such as the 'Human Rights Translated' (Castan Center, 2008), the 'Human Rights Compliance Assessment' (DIHR, 2006), or the 'Key Performance Indicators' (IRRC Institute, 2012) provide us with a number of well-thought suggestions. However, the placement of these or other measures in a new conceptual framework had not been done so far. As any theoretical advancement is truly 'practical', the framework presented here yields, not only a better justification of those measures, but also a mechanism for the generation of further practices on a solid basis.

This is its main advantage in front of formalistic approaches to business ethics, since no checklist can cover all possible situations and work effectively in different cultural environments. Yet this topic cannot be fully developed here and must therefore be further researched on another occasion.

## Conclusions

As seen in this paper, the CA can make a substantial contribution to the corporate duties of protecting and remedying human rights. On the one hand, by providing a better understanding of human rights and shedding light on potential new demands. On

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<sup>17</sup> For corporate social responsibility as a norm-building instance, see Gröneweg and Matiaske (2011).

the other hand, by helping in the specification of human rights in business operations. This has been shown by means of the case of gender equality in the enterprise through the examination of the three aspects of freedom: opportunity, process, and moral freedom. This paper's contribution has been framed in a manager-friendly decision-making chart depicting the capability-mainstreaming of the RF.

This paper invites further research in a number of aspects. At the conceptual level, the CA can still strengthen the RF in a number of ways. First, RF may be suggesting a potentially instrumentalist depiction of corporate responsibility (UN, 2010a, p. #72; 2008, p. #54). The CA can countervail it by laying out the theoretical foundation of the moral case for corporate social responsibility (cfr. Sen, 1987a). Second, the CA can provide a better understanding of human rights as expansions of freedom. Third, capabilities may draw even more agreement than human rights, which have been criticized sometimes as a form of neocolonialism.

However, also the relationship between RF and CA should be deployed in the opposite direction, i.e., the RF's contribution to the CA: Nussbaum (2000) and Sen (2005) argue that the human rights perspective may strengthen both aspects of opportunity and process freedoms, respectively.

Further research can also be done at the application level by applying this framework to other human rights. A natural extension of the issues discussed in this paper would be children-related rights because of their impact on family life; and collective rights (freedom of association, collective bargaining, and strike), for their impact on process freedoms, respectively. Furthermore, the framework presented here may be extended to other stakeholders, such as customers or communities.

Finally, some thorny issues have been suggested that need more reflection. Among them, the need for capabilities 'lists' and their different justifications and methodologies of elaboration (Drydyk, 2011; Robeyns, 2006; Alkire, 2001; Burchardt & Vizard, 2011); and the meaning and scope of the Senian notion of 'open public reasoning'. In addition, the universality of capabilities should very probably be conceptually framed within some notion of human flourishing (Nussbaum, 1992; Hurka, 1999; Rasmussen, 1999; Anscombe, 1958).

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