

GENERAL COUNSEL MUST UNDERSTAND THAT BUSINESSES ARE RESPONSIBLE FOR PROTECTING HUMAN RIGHTS

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In-house lawyers should conduct human rights assessments that identify potential risks in their organisation's supply chain – companies that don't do this could find their reputations destroyed

Traditionally, businesses have believed the issue of human rights is not their responsibility, but

opinion is changing. In-house lawyers and corporate counsel see the need to change their mindset and learn about new norms and guidelines that define their organisation's human rights responsibilities. We have moved from the sphere of corporate social responsibility to the reality of responsible business conduct – it's not enough to do good voluntarily, businesses now must do no harm to stakeholders.

The reason is that there is now an international consensus around the United Nations (UN) Guiding Principles for Business and Human Rights, which outline how states and businesses should implement the UN "Protect, Respect and Remedy" framework to better manage human rights challenges. The principles, endorsed by the UN Human Rights Council in 2011, are based on three pillars: the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication; the corporate responsibility to respect human rights, which means avoiding infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedy, both judicial and non-judicial. Businesses in many sectors run the risk of coming into conflict with human rights standards and norms. For example, in the mining, infrastructure and oil and gas sectors, there are land issues (including the rights of indigenous people) that could lead to infringements of human rights. In the construction industry, there could be issues related to dire working conditions. Meanwhile, businesses producing garments and footwear could face labour-related human rights problems – one of the most high profile examples of this was the Rana Plaza clothing factory collapse in Bangladesh in 2013, which resulted in the deaths of 1,129 people, with around 2,500 more suffering injuries. Workers in the factory made clothes for international retail chains, including the Spanish company Mango.

The response of governments around the world to the implementation of the UN guiding principles has been patchy. According to the UN, ten nations have produced a national action plan on business and human rights - they are: Spain, the UK, the Netherlands, Italy, Denmark, Finland, Lithuania, Sweden, Norway and Colombia. Meanwhile, Portugal, Germany and the USA are among 19 other countries that "are in the process of developing a national action plan or have committed to doing one", the UN says.

But in-house lawyers have to take the lead on this issue. The IBA has issued guidance on human rights for business lawyers that can be used as a foundation for more tailored advice and guidance by in-house lawyers. Generally, among in-house lawyers there is a lack of awareness of the importance of this issue, but they need to ideally work with international human rights experts to explore the risks they face. If in-house lawyers wish to be considered as "trusted advisers" to their organisation's 'C-Suites' and boards of directors, they need to report on human rights. For example, UK high street chain Marks & Spencer produced its first human rights report in 2016 outlining its approach to "recognising, respecting and advancing human rights throughout our business operations". However, despite Marks & Spencer producing a human rights report, an investigation by BBC TV's Panorama found Syrian refugee children in Turkish factories making clothes for Marks & Spencer. The programme also found adult refugees working illegally on jeans for Spanish chains Zara and Mango.

The consequences for corporations tagged with this problem can be severe. For example, mining companies in Latin America have had problems because they didn't do proper human rights assessments – in some instances, companies had to stop operations for long periods of time, sometimes spanning years.

When conducting a human rights assessment, and specifically when mapping your risk, it's worth looking at what is done by other enterprises in the same field and allying with them. It's also important to publicise what you are doing in view of increasing reporting obligations. Conducting human rights assessments should motivate companies to be part of a race to the top. It will also enthuse employees. Such assessments are in your company's best interests as they can improve brand value and make your company more sustainable.

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