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UN FORUM SERIES – Where does human rights fit within business?

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Measuring performance: a win/win

“What can be reported can be measured and what can be measured can be improved.” It is with this in mind that measuring and reporting on progress to implement the United Nations Guiding Principles on Business and Human Rights (UNGPs) will form the focus of this year’s UN [Forum on Business and Human Rights](#).

While their starting points undoubtedly vary, the various players – or “stakeholders”, to use the *de rigueur* lingo – from across the Business and Human Rights community agree that this is a vital step in developing the field and for the mutual benefit of companies and the communities in which they operate.

For example, some campaigning groups see companies’ pronouncements on human rights as mere lip-service to corporate responsibility, and so set out to hold businesses to account for failing to meet their self-professed standards and values.

At the other end of the spectrum, there are corporate leaders examining the business case for proactively managing their organisations’ human rights impacts, for whom Key Performance Indicators, Return on Investment and Year-on-Year tracking data form the *lingua franca* of commercial monitoring, analysis and planning.

New metrics and indices are playing an important role in advancing this discussion around measuring and reporting. Rankings and benchmarking initiatives such as [Oxfam’s Behind the Brands Company Scorecards](#), the [Access to Medicine Index](#) and the [Corporate Human Rights Benchmark](#) are changing the way companies and civil society engage on human rights performance and are setting the foundations for a competitive “race to the top”.

Views from inside business

Omnia Strategy’s work with corporate clients of various shapes and sizes has given us first-hand experience of how human rights issues have become a key concern for business leaders and factor heavily in their decision-making. This is reflected by the fact that, according to the Business and Human Rights Resource Centre, [34 of the world’s largest 50 companies](#) now have publicly available statements on human rights.

However, while putting in place a human rights policy approved from the very top is a crucial step for businesses looking to implement the UNGPs (see [Principle 16](#)), it is only a beginning. Leading businesses are actively embedding respect for human rights throughout their operations and practices (see [Principle 17 to 24](#)) not only to mitigate legal risk, but to meet society’s broader expectations.

In the words of Felix Ehrat, Group General Counsel and Executive Committee member at Novartis, “complying with the black letter of the law of today is not enough if you want to be a corporate leader, as law very often lags behind social trends”.

Concerted effort

Omnia Strategy advises businesses on the legal, communications and strategic aspects of implementing the UNGPs. We have seen how companies are identifying and tackling key challenges at all stages of the implementation process.

One initial hurdle for a business to overcome is determining where responsibility for managing its human rights impacts fits within the organisation. Should CSR “own” human rights? Does it belong to *Compliance*, *External Affairs/Communications* or perhaps *Legal*? What about *Human Resources* and at what point should *Finance* become involved?

Genuine engagement from all these departments – and others – is vital to deliver effective and sustained implementation. Precisely how to achieve this in an efficient and coordinated way will differ from business to business. However, in our experience, two things are crucial:

- responsibility must ultimately rest with senior leadership: Executive Committees, Boards of Directors, CEOs, Managing Partners, Chairs and the like. They must set the tone, priorities and strategy for the future, as well as carrying the can for past mistakes; and

- coordination is key, and to be effective this must be led by someone with considerable stature within the business. Truly holistic, cross-departmental approaches to implementing the UNGPs do not happen without concerted effort.

But who should lead this coordination effort?

Legal is trending

In some organisations, senior leadership have created corporate officer level posts for coordinating *Corporate Responsibility* or *Sustainability* efforts, or a team reporting directly to the Board or Executive Committee. For example, of respondents to an [automotive-sector survey on corporate responsibility](#), 59% of companies with a revenue of US\$5 billion or more reported having a Chief Sustainability Officer.

However, there is a parallel and fast-emerging trend of *Legal* departments being tasked with primary responsibility for coordinating human rights efforts, with General Counsel reporting directly to their CEOs on these issues. In larger organisations this is partly because few or no other departments are so well connected to all the other limbs of the business, which enables *Legal* to identify and work collaboratively with the right people across the organisation. We have heard General Counsel describe themselves as “enterprise connectors”, precisely for this reason. That said, we have not checked that their non-lawyer colleagues use the same endearment to describe them.

Another reason is the growing recognition of real legal risks to corporates in the human rights field, caused in part by the gradual crystallising of “soft” standards into hard law.

The UK’s new [Modern Slavery Act 2015](#) is a good example, as are new corporate reporting obligations under the UK Companies Act, the EU’s Non-Financial Reporting Directive, and the gender gap pay disclosure rules to be introduced in the UK in 2016. Technical legal developments around parent company liability and the scope of directors’ “fiduciary duties” will also force businesses to turn to their lawyers ever more to manage human rights risks and liabilities.

In a [recent report co-authored by the UN Global Compact](#), no less than forty General Counsel from leading multinational corporations expressed their common view that sustainability issues – including compliance with the UNGPs – were a key strategic priority. Similarly, the Association of Corporate Counsel’s excellent [2015 survey of chief legal officers](#), found that 96% of respondents rated ethics and compliance as “important”, with one third of those from larger legal departments saying the issue is “extremely important”.

Describing the work of Royal Dutch Shell’s legal team, Legal Director and Executive Committee Member Donny Ching said recently, “human rights comes up repeatedly... human rights is good business. It is front and centre of how we operate”.

First among equals

With corporate responsibility issues more and more falling within the remit of Legal, General Counsel would be well advised to eliminate silos within their organisations and to coordinate effective, company-wide responses to the challenges set out by the UNGPs. Lawyers must also nurture the humility to recognise the contributions that non-lawyer colleagues might be uniquely well placed to provide.

For example, *External Affairs* is experienced in building relationships with a broad range of stakeholders, *Operations* is often well placed to develop creative alternatives to reduce negative human rights impacts, and *Finance* might even be able to factor social and environmental harms (or at least working assumptions) into their financial forecasts on which commercial decisions are based.

There is no one-size-fits-all approach for businesses seeking effectively to implement, measure and report on UNGP issues. Commercial organisations must build upon existing systems and institutional values to design and deliver an approach that works for them, bringing internal and external stakeholders along with them. Increasingly, General Counsel will be at the centre – if not the front – of this effort. But they can’t do it alone and they certainly shouldn’t try to.

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