

When national laws or local practices conflict with human rights: Recommendations for global operations and supply chains

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Human rights due diligence (HRDD) holds vital importance in addressing human rights impacts in a company's global operations and supply chains, in particular when faced with conflicting laws or practices at a national level. Enacting HRDD not only helps to address and prevent human rights impacts before they escalate, but likewise better place companies in defending themselves against legal risks and regulatory developments.

How can companies respect human rights when faced with conflicting laws or practices at a national level? This is a dilemma which many companies face on a daily basis, whether through domestic laws or practices that require conduct which contradict human rights, weak enforcement of human rights protections, or vague or inconsistent laws. Recent research has highlighted the importance of using human rights due diligence (HRDD) to address human rights impacts in a company's global operations and supply chains, which often requires companies to navigate complex and frequently contradictory regulatory landscapes.

The UN Guiding Principles on Business and Human Rights (UNGPs) expect companies to respect human rights, including by undertaking ongoing and comprehensive HRDD which covers all internationally recognised human rights. The UNGPs also expect companies to comply with additional laws where they agree, the duty of care to seek out information the pr nationally recognised human rights when faced with conflicting requirements". Where the domestic legal framework contradicts international human rights standards, companies are

accordingly pulled in opposite directions, without much clarity on how to meet both requirements.

The British Institute of International and Comparative Law (BIICL) has recently published a major report which aims to provide guidance on how to address these situations within the framework of HRDD as set out in the UNGPs.

Commissioned by BIICL's Business Network, the report, entitled When national law conflicts with international human rights standards: Recommendations for Business, considers how companies could respect human rights when faced with conflicting laws or practices at national level.

The report categorises the kinds of ways in which these conflicts manifest themselves in real-life, to assist companies to identify the potential human rights impacts, and sets out a range of approaches which companies may consider to address these conflicts. Examples of commonly used approaches include limiting compliance with the conflicting law only to what is absolutely necessary, exercising leverage to improve the legal framework or operating conditions, and collective action with peers or multi-stakeholder groups. Some more extreme and rarely used approaches include compliance in alternative ways, exiting the jurisdiction, delayed compliance and what the report calls "responsible non-compliance". There is no one-size-fits-all solution: companies should frame their decision-making within their HRDD process.

In a second major report, entitled Making sense of managing human rights issues in supply chains, BIICL has collaborated with the law firm Norton Rose Fulbright, to undertake a comprehensive global study of HRDD in the supply chain. We conducted a series of interviews with multinationals who have experience with integrating HRDD into their relationships with suppliers, and analysed the global regulatory framework.

We found certain common challenges facing companies across sectors: going beyond the first tier of suppliers, exercising leverage where no contractual relationship exists, a lack of information and traceability of the entire supply chain, and the limitations of traditional audit processes. A lack of cross-functional integration within large companies also means that one team may incorporate human rights standards into supplier codes on conduct, only to be negated by the low prices negotiated by another team within the same company.

Our research showed that collective action, including through sectoral, cross-sectoral and multi-stakeholder initiatives, is particularly beneficial where the nature of the supply chain is more opaque. Through effective collaboration between industry peers and alignment of purchasing practices, rights expectations, companies may prevent

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suppliers from being subjected to the unnecessary cost and time burdens of complying with multiple audits, training and screening exercises.

Critically, businesses should be aware that in addition to the developing case law around a legal duty of care based on the exercise of control over a supply chain, non-judicial mechanisms for financial and non-compensatory redress continue to develop. Examples include state-based procedures (e.g. OECD National Contact Points) and industry initiatives (e.g. the Bangladesh Accord on Fire and Building Safety arbitral procedure).





It is clear that HRDD has a prominent place in the existing and developing regulatory landscape. Corporations which undertake HRDD will not only be more likely to prevent and address human rights impacts before they escalate in severity, but they will also be better placed to defend themselves against legal risks and regulatory developments which flow from the UNGPs. As such, businesses which have been proactive in taking steps to respect human rights will be rewarded with better managed risks and legal protections than those which have not.

Read the report *When national law conflicts with international human rights standards: Recommendations for Business* [here](#).

Read the report on *Making sense of managing human rights issues in supply chains* [here](#).

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