



Labour relations and rights

Risking lawsuits, boycotts and blacklisting

Growing pressure from consumers and other stakeholders for responsible behaviour by corporates on labour rights and conditions suggests that companies should prepare for far greater scrutiny on ethical performance.

Overview

The growing public demand for industry to act responsibly towards employees, regardless of the country or level of the supply chain in which they work, means that companies who fail to meet both legal and ethical standards are increasingly at risk of lawsuits, boycotts and blacklisting. Companies utilising the rich natural resources offered by Africa could find themselves being targeted, since, although African states have legislation in place to protect workers, enforcement can be patchy, and dangerous or inhumane working conditions are often only brought to light by the media, NGOs or lawsuits.

Furthermore, despite widespread ratification of the International Labour Organization's (ILO) convention on freedom of association and collective bargaining, there have been recent reports of anti-union violence, repression and discrimination. Workers in export-processing zones have been excluded from union participation, and governments and employers have established artificial trade unions to prohibit genuine freedom of association.

Risks to your business

Local law

The primary source of labour law is the legislation of the country in which you operate. Non-compliance with these laws could lead to imprisonment of employees or loss of your operating licence.

Extra-territorial law

In 2007, a lawsuit against Drummond, a coal mining company (which was accused of hiring paramilitaries to kill labour leaders at a Colombian mine), became the first claim brought against a corporation under the Alien Tort Claims Act (ATCA) to reach a verdict in the US courts. Dozens of other ATCA cases have been brought before and since, and many, like Drummond, are against companies in the extractives industry for alleged labour, including child labour, abuses. All of these cases have had serious and damaging PR implications for the businesses concerned.

Soft law

International soft law is in the process of progressive ossification so that the reputational and other risks for a company in breach of ILO conventions, the OECD Guidelines or the (soon-to-be-published) ISO 26000 standards are becoming increasingly serious. In particular, the recent mandate of the UN Secretary General's Special Representative on the issue of business and human rights, Professor John Ruggie, to operationalise his 'protect, respect and remedy' policy framework has focused international attention on companies' human rights records.

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Public pressure

Growing pressure from consumers and other stakeholders for responsible behaviour by corporates on labour rights and conditions (illustrated by the recent establishment of a German corporate accountability network of unions, NGOs and consumer associations), suggests that companies should prepare for far greater scrutiny on ethical performance. In April this year, the Hamburg Consumer Protection Agency banned Lidl, a supermarket chain, from claiming in adverts that it 'advocates fair working conditions' when, in fact, inhumane conditions had been found at its suppliers' factories.

Stakeholder responsibilities

The widespread adoption by financial institutions of the UN Principles for Responsible Investment, the Equator Principles and the UN Global Compact has led to closer scrutiny of potential investments. A business or project that fails to demonstrate compliance with relevant standards may struggle to find financiers, partners and buyers. In 2007, the blacklisting of Cosan, a Brazilian sugarcane producer, by the US labour ministry for its poor treatment of workers caused Wal-Mart and the Brazilian state development bank to stop dealing with the company.

Suppliers and sub-contractors

The majority of instances where multinational companies have been implicated in labour rights violations have resulted from misdeeds of their suppliers, sub-contractors or agents, rather than of the company itself. Just this year, Coca-Cola was sued in New York in connection with alleged violence against unionised workers at a Guatemalan factory in which it has a minority share. In Africa, electronics and car manufacturers have recently faced criticism for failing to address labour rights when sourcing metals, and for indirectly purchasing from militia-controlled Congolese mines employing children.

Actions to mitigate risk

- Risk assessment and due diligence.
- Regulatory monitoring.
- Internal policies.
- Internal procedures.
- Mechanisms for monitoring compliance.
- Engagement with local NGOs.

Where we have seen this before

The attention that industry is now paying these issues has caused many clients to voluntarily review their labour practices and those of companies with which they do business. We have worked with one client, a leading international grocery and general merchandising retail chain, on the ethical auditing of its supply chain to ensure it meets the standards required by the Global Social Compliance Programme. Another multinational client, which has recently vertically integrated parts of its supply chain, has been undergoing a review process to establish mechanisms to ensure that child labour is not used in the farming operations of its newly acquired subsidiary.

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Opportunities and risks in the extractives industry