



**British Institute of
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Comparative Law**

NORTON ROSE FULBRIGHT

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Significant number of businesses neglect potential human rights risks

- *Global study reveals that almost half of surveyed businesses have never undertaken a human rights due diligence exercise*
- *Human rights impacts may go undetected through lack of adequate review mechanisms*
- *Consequences of inadequate attention can include reputational damage, fines and legal claims*

A global study has found that almost half of the surveyed companies have never undertaken a dedicated human rights due diligence process or a human rights impact assessment.

The results of the study by the British Institute of International & Comparative Law (BIICL) and the global law firm Norton Rose Fulbright were published today.

The study, which included a survey of 152 major companies, showed that only 51 per cent of companies performed a dedicated human rights due diligence assessment which encompassed the full range of a company's human rights obligations. Of these companies, 77 per cent identified actual or potential human rights impacts, and 72 per cent identified adverse impacts linked to the activities of their third party relationships.

In stark contrast, only 19 per cent of those companies who did not conduct express human rights due diligence and instead used other mechanisms, identified potential or adverse impacts and only 29 per cent identified adverse impacts linked to the activities of their third party relationships.

Where human rights considerations are limited to existing processes - such as those relating to health and safety, equality, or labour rights - companies fail to identify other human rights impacts and serious impacts may be overlooked. A dedicated human rights due diligence process should, as a starting point, take into account all internationally recognised human rights as well as the business' impacts across all its operations and supply chain.

The report findings are particularly relevant as next month the Corporate Human Rights Benchmark (CiHRB) is set to publish a ranking of the world's largest publicly listed companies on their human rights performance for the first time. Additionally, companies which conduct business in the UK are in the process of publishing their first annual statements on the steps they have taken to eradicate slavery and human trafficking in their business and supply chains under the Modern Slavery Act.

Professor Robert McCorquodale, Director of BIICL, said:

“Human rights due diligence is assuming a hard legal dimension that transcends the traditional understanding of CSR and addresses actual impacts on the rights of others.

Although significant changes to national and EU laws have made the human rights performance of companies an increasingly important corporate issue, our report has found that half of companies don't even have a dedicated human rights due diligence process, and as a result, they are failing to pick up adverse human rights impacts in their business, and with third parties, such as suppliers. This is despite the clear recommendations of the UN Guiding Principles on Business and Human Rights, which is the international standard in this area.”

Norton Rose Fulbright partner Robin Brooks commented:

“Human rights impacts of businesses include impacts occurring in their value and supply chains. Companies are realising that they may be responsible for activities of their business partners and third-party suppliers. Unless a company undertakes a specific human rights due diligence exercise, it is unlikely to identify the kinds of impacts linked to such third parties for which it may be responsible.

There is an emerging body of legal claims in a number of different jurisdictions against companies for human rights abuses in their supply chains and we expect this to continue. Businesses must also be mindful of any gap between public statements they make about their approach to human rights and reality. Businesses which do not address human rights impacts in their operations in a substantive way may cause adverse human rights impacts and unsubstantiated statements about human their rights practices may be used to establish a duty of care they owed to impacted individuals.”

Other key findings from the report included:

- The two main incentives (selected by 67 per cent of the respondents to the survey) for undertaking human rights due diligence are avoidance of legal risk and reputation. Compliance with regulatory reporting requirements, and compliance with other relevant and local laws, were also frequently (60 per cent) chosen as incentives.- Where the business conducted express human rights due diligence, 77 per cent identified actual or potential adverse human rights impacts linked to the activities of third parties. However, where human rights were only indirectly considered as part of other processes, this figure dropped to 29 per cent.
- Of those businesses which had undertaken express human rights due diligence, nearly 60 per cent indicated that their company had in the past been connected to allegations of human rights impacts. This suggests that awareness of the risk of human rights impacts is a driver for conducting a human rights due diligence process.
- There was an overwhelming contrast in the use of human rights experts between those businesses who had undertaken express human rights due diligence and those who had not. 93 per cent of those who had undertaken express human rights due diligence had used human rights experts (whether internal or external); whereas 76 per cent of the other group used no human rights experts.
- The main challenges in conducting human rights due diligence processes, including a lack of information on third parties' country-specific human rights risks and assessing how deep will their supply chains due diligence need to be.

The Norton Rose Fulbright and BIICL study is based on academic research, a survey of 152 major companies, and individual interviews with senior executives to clarify issues of law, principle and practice in the area of human rights due diligence. The survey and interviews were conducted with companies working across various sectors. Where relevant, the analysis was focused on four sectors – extractives, including mining and energy; financial services; health sciences and pharmaceuticals; and technology.

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For further information please contact:

Louise Nelson, Senior PR Manager, Norton Rose Fulbright

Tel +44 20 7444 5086 | Mob +44 7909 684893

louise.nelson@nortonrosefulbright.com

David Pippett, Director, DWP Public Relations

Tel +44 1225 335675 | Mob +44 7899 798197

david@dwppublicrelations.co.uk

Notes for editors:

1. The British Institute of International and Comparative Law (BIICL) provides informed, independent and practical legal ideas for a global community. Its high quality and respected work involves analysis and debate about contemporary issues on every continent, from its base in the heart of London's energetic and multicultural legal network. BIICL is one of the very few independent legal bodies of its type in the world. (Registered Charity No. 209425. Company Registration 615025). For more information visit www.biicl.org

2. Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have 3800 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.

Recognised for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

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3. Norton Rose Fulbright will speak at the fifth annual United Nations Forum on Business and Human Rights in Geneva which takes place from November 14 to 16, 2016.