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A rights issue

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A rights issue

Begoña Sánchez Ramos asks how companies can achieve a corporate focus on human rights

Companies provide extraordinary advantages to society. They allow people to benefit from goods and services that would otherwise be unavailable to much of the world's population.

Companies serve basic and vital needs, such as the provision of health, food, and hygiene, as well as more sophisticated needs, such as culture and leisure. Companies also generate employment, contributing to the sustenance and dignity of the people who work for them. Finally, companies are capable of generating knowledge and innovation. A society with a healthy business fabric benefits from the economic development and social welfare created by its companies.

The company is, however, a very complex entity. Operating a company is a difficult task, requiring organisation and management to carry out the company's mission. Therefore, companies need a defined strategy in order to control and monitor all business indicators, processes and procedures. Within this complex system, companies run the risk of violating the rights of individuals including customers, employees, suppliers and shareholders. Indeed, in practice, the risk of violating stakeholders' rights is high.

Risk factors

The following factors contribute to the risk of violating human rights in the current business environment:

- We are in an unprecedented moment in history, with high concentration within businesses. **Certain companies**

now have enormous economic and social power, meaning that they can exert a profound influence on the environment in which they operate. Due to their size and geographical range, it is hard for such companies to guarantee that all their employees and suppliers behave appropriately.

- **Financial markets allow the movement of capital with extraordinary agility.** This leads to changes which are difficult to control and which can affect large parts of the population.
- **Companies have gone global as they have relocated operations overseas.** A company whose headquarters are in Spain, for example, may have centres that serve customers from Colombia, or may have located its IT services in India and its production in other Asian countries. This has two important consequences in relation to the management of human rights in the company. Firstly, the company is operating in countries whose laws have different levels of protection regarding human rights. Compliance with local legislation may not guarantee compliance with the rights

of individuals. Complying with the law may violate, for example, certain rights relating to workers and clients. Second, companies work with a large number of subcontractors whose traceability is complex and whose respect for human rights is difficult to control.

- **The processes of a company are very varied** – purchasing materials, selecting and remunerating workers, hiring and paying suppliers, serving customers, transporting goods, developing products and services, and advertising and promoting them. People are implicated in all of these processes.

For these reasons, and more, addressing the issue of “enterprise and human rights” is an inescapable priority.

Until recently, human rights were part of the duties of states. Today there is a paradigm shift. The concept that companies have corporate social responsibility (CSR), or that they should exhibit responsible business management, combined with the expectations of stakeholders of companies, means that corporate

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management should pay close attention.

The implementation of a corporate programme to ensure human rights should have some basic key processes led by the Board of Directors of the company. Senior management should have competencies across business lines – including Public Affairs, CSR, Corporate Organisation and Compliance – in order to lead the management of this change.

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Pillars and brakes for advancement

1. The Guiding Principles on

Enterprises and Human Rights – A key pillar to achieving this aim was the unanimous approval, on June 16, 2011 in the United Nations Human Rights Council, of the Guiding Principles on Business and Human Rights. These principles provide a basis for action, which sets out the responsibilities of all stakeholders. Therefore, States have the obligation to protect citizens' human rights and the Principles "require" governments to develop corresponding positive legislation and, initially, a National Business Plan and a Human Rights Plan.

2. The culture of respect within

the company – It is imperative to generate a deep and de-ideological culture of respect for human rights within the company, both by society and by the company's directors, managers, employees and collaborators. This requires implementing concrete solutions and, moreover, the rest of the

actors involved – governments and companies – should set in motion a constructive process for developing such solutions.

In Spain, for example, the government has recently approved the National Plan of Enterprise and Human Rights. This will provide a strong impetus for companies to begin concerted efforts in this area, just as the Spanish business associations play their own important role as promoting constructive change.

3. Training – Training deserves a special mention. I believe that good training on human rights in companies is vital and must, *inter alia*:

- Target workers at all levels and other stakeholders. Each level and group should have a specific focus
- Consider the internationalisation of the company
- Delve into the specific characteristics of each sector.

Training employees on this subject should enable them to understand the need for a cross-cutting approach to the protection of human rights, as well as to evaluate how their company must act to prevent and mitigate the risk of violating human rights. In this way, a "human rights" approach will be embedded in each of their activities and decisions. In other words, training must be specific, practical and constant.

Spanish specifics

Our experience in Spain suggests that there is still a long way to go to achieve these ambitions. With significant exceptions, Spanish companies have not begun to develop their "due diligence" processes, and many of them have only just started to consider it in their action plans. Important milestones in this regard include:

- The entry into force of the new Capital Companies Act – Article 529 confers an inalienable power on the Board of Directors to approve the corporate social responsibility policy
- The approval in 2015 of the Code of Good Governance (Code Rodríguez) for listed companies –

This Code states "that corporate social responsibility policy includes the principles or commitments that the company voluntarily assumes in its relationship with different Interest groups"

- Specific practices in matters related to: shareholders, employees, customers, suppliers, social issues, environment, diversity, fiscal responsibility, respect for human rights and prevention of illegal conduct.
- Methods or systems for monitoring the results of the implementation of the specific practices identified above, the associated risks and their management.

Compliance with local legislation may not guarantee compliance with the rights of individuals

- Mechanisms for monitoring non-financial risk, ethics and business conduct.

In addition, the candidacy of Spain as a member of the UN Human Rights Council between 2018 and 2020 includes, among its priorities, attention to the issue of business and human rights, as declared on 19 July 2016 by Javier Sanabria, Director General of the United Nations and for Human Rights of the Ministry of Foreign Affairs of Spain. As a result of this interest the national plan was approved last July, as already mentioned.

Undoubtedly, these facts will influence the attitudes of top managers and boards of administration within Spanish companies as they become increasingly aware of this requirement which, we hope, will be treated with depth and professionalism in the near future. ●



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