



Advocates for International Development  
Lawyers Eradicating Poverty



LAW SOCIETY OF KENYA

---

# Responsible Business Training

---

Welcome



Advocates for International Development  
Lawyers Eradicating Poverty



LAW SOCIETY OF KENYA

---

# Introduction to UNGP and the International Legal framework for Responsible Businesses

---

Howard Morris and Chiraag Shah  
Morrison & Foerster

# What are the UNGP?



- 31 Principles supporting 3 Pillars
  - Protect
  - Respect
  - Remedy – victim access to judicial and non-judicial remedies
- Directly relevant to Principles 1 and 2 of the UN's Global Compact
- Responsibility falls on enterprises
- Not law as we know it

# Soft law in action



- “The responsibility to respect human rights requires that business enterprises: seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” GP 13b
- Know and Show
  - **Implement a Human Rights Policy** (GP 16)
  - Conduct **due diligence** and take appropriate action (GPs 17-20)
  - Develop processes to remedy impacts which they have caused or contributed to (GP 22, see also GPs 29 and 31)
  - Use leverage (GP 19b)
- **Show that they respect human rights**
  - Public reporting (GP 21)



Advocates for International Development  
Lawyers Eradicating Poverty



LAW SOCIETY OF KENYA

---

## **Corporate Responsibility to Respect: Role of In-House Counsel in ensuring responsible corporate response – mitigation of legal and reputational risk**

---

Chiraag Shah, Howard Morris  
Morrison & Foerster

# Is this a legal risk?



- In-house counsel are traditionally focused on legal risk
- But, explicitly, UNGP don't create new law
- Respect & Protect & Remedy - its largely soft law
- Downside for the enterprise of falling short
  - Legal responsibility
  - Reputational harm
  - Business consequences – counterparties are reluctant, no state contracts, finance dries up

# Familiar tasks



- Once management recognises that the obligations while often not legal can't be ignored
- A human rights policy
- Due diligence
- Counterparty investigation
- Remediating harm



Advocates for International Development  
Lawyers Eradicating Poverty



LAW SOCIETY OF KENYA

---

## Corporate Responsibility to Respect: Role of in-house counsel in ensuring responsible corporate response – mitigation of legal and reputational risks

---

FCS Catherine Musakali

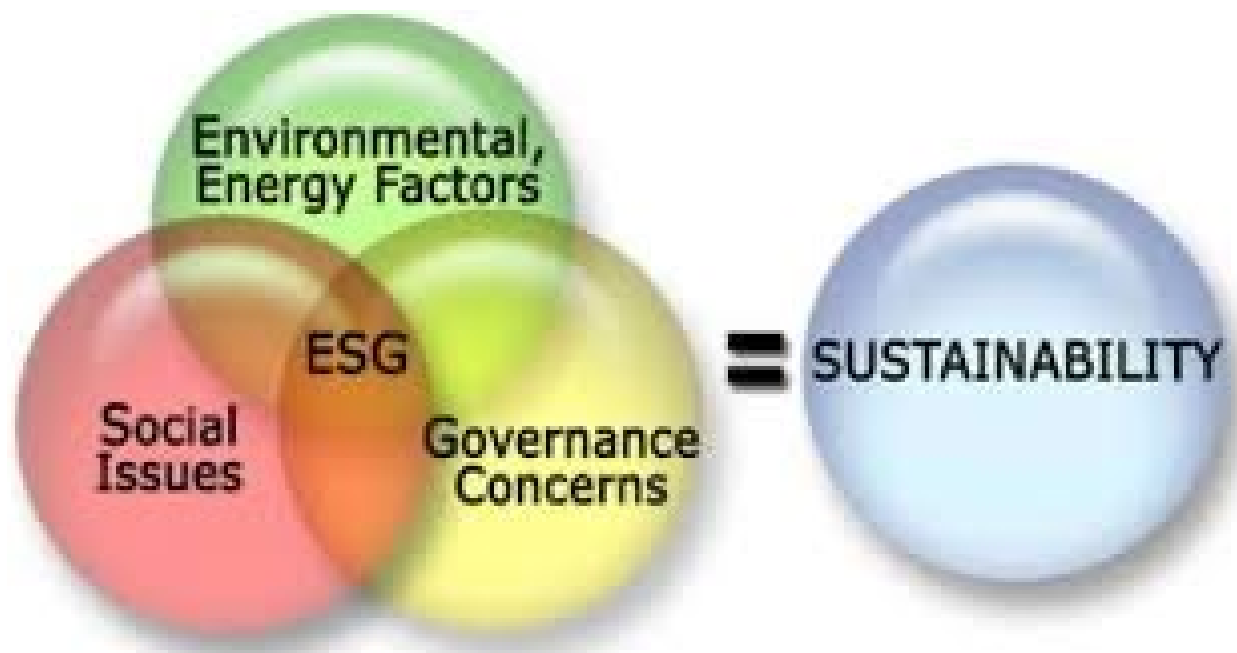
[cmusakali@dorion.co.ke](mailto:cmusakali@dorion.co.ke)



# INTRODUCTION



- Responsible business practices = Sustainability



- Sustainability = Legal & Reputational safety



# THE “E”



- The environmental pillar measures a company’s impact on living and non-living natural systems including the air, land and water as well as complete ecosystems. It reflects how well a company uses best management practices to avoid environmental risks and capitalize on environmental opportunities to generate long term shareholder value.

- Source: Thomson-Reuters ESG Factors

# THE “S”



- The social pillar measures a company’s capacity to generate trust and loyalty with its workforce, customers and society through its use of best management practices. It is a reflection on its reputation and the health of its license to operate – which are key factors in determining its ability to generate long-term shareholder value.

- Source: Thomson-Reuters ESG Factors

# THE “G”



- 
- The corporate governance pillar measures a company's systems and processes which ensure that its board members and executives act in the best interests of its long-term stakeholders..

- Source: Thomson-Reuters ESG Factors

- It is the role of in house counsel to advise the Board and ensure that the Board has adopted and embedded key policies including
  - Anti Bribery and Corruption
  - Antitrust (Competition Law)
  - Anti-Money Laundering
  - Appropriate HR policies and practices in compliance with the law
  - That the Organization has procedures for ensuring compliance with globally accepted Human rights tenets.
- In house Counsel must ensure that the reputation of the Organization is a regular agenda item for the Board.
- The In house counsel must impress upon the Board that there are Individual consequences for non compliance, in addition to corporate liability.
- S.23 of the Penal Code



Advocates for International Development  
Lawyers Eradicating Poverty



LAW SOCIETY OF KENYA

---

# THANK YOU!

---

[www.a4id.org](http://www.a4id.org) | [info@a4id.org](mailto:info@a4id.org)



@a4id



A4ID – Advocates for International Development