



Human rights compliance programmes: why now?

by *Laura Ford*, *Daniel D'Ambrosio* and *Lizzy Bullock*, DLA Piper

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Businesses are increasingly required to identify and manage their involvement in adverse environmental and social impacts throughout their organisations and supply chains. Previously, drivers for developing human rights compliance programmes have included reputation risk and compliance with best practice and “soft law” standards. However, the global legal landscape is evolving rapidly and human rights compliance programmes are increasingly becoming a regulatory requirement. Businesses should consider how to evolve existing structures to embed respect for human rights and to ensure a rights-respecting culture of integrity throughout their organisations.

Global businesses are increasingly expected to keep their corporate compliance programmes under review. Given the trend towards regulation of corporate involvement in adverse human rights impacts, in addition to the existing potential for litigation risk and significant negative publicity and reputational damage, companies should act promptly to ensure that environmental and social considerations are effectively integrated into their existing corporate governance and compliance architecture.

Business and human rights legal risk landscape

The transnational business and human rights legal risk landscape is changing rapidly. Litigation risk is increasing across several jurisdictions for parent companies, companies at the top of complex supply chains and investors, relating to environmental and social issues associated with group entities, suppliers and business partners. These trends are evident in a range of jurisdictions including England, Canada, The Netherlands, France and Germany, to name a few.

The transnational regulatory trend is moving from reporting and disclosure of human rights policies, processes and performance to compliance-based requirements that will include sanctions and liability for non-compliance. The French Duty of Vigilance and Dutch Child Labour Law are two existing examples of this direction of travel when compared with modern slavery reporting and disclosure obligations.

In the UK, the Modern Slavery Act 2015 is being reviewed and recommendations have been made to the government to introduce harder reporting requirements. Currently, businesses meeting certain thresholds are required to publish annual statements to demonstrate the steps they have taken to prevent slavery and human trafficking in their operations and supply chains. However, the effectiveness of these statements as a tool for starting real corporate conversation around business and human rights risks has frequently been called into question. In some cases it has been suggested that businesses are taking a “tick-box” approach and publishing statements with minimal

detail or limited year-on-year progress. The legislation does not impose penalties and there is no supervisory authority tasked with overseeing or, indeed, challenging the steps businesses are taking or publishing in their statements. (For information on the Modern Slavery Act 2015, see [Practice notes: Modern slavery: overview and Modern Slavery Act 2015: slavery and human trafficking statement](#).)

As such, in 2017, the Joint Parliamentary Committee on Human Rights report first floated the idea of a “failure to prevent” offence for corporate human rights abuses, along the lines of the analogous provisions in the Bribery Act 2010 and Criminal Finances Act 2017. Since then, these proposals have formed the basis of further research and publications in the UK and at EU level.

A further development that will change the regulatory business and human rights landscape is a recent commitment by the European Commission to introduce mandatory supply chain due diligence legislation (see [Legal update: Due diligence through the supply chain: European Commission publishes study](#)). In making the announcement, the Directorate General for Justice and Consumers noted that voluntary measures have not been effective in encouraging companies to identify, account for and mitigate negative environmental and social impacts in their supply chains, and highlighted a need for EU-wide, inter-sectoral, mandatory legislation. There is also an intention to include a proper enforcement mechanism, with suggestions as to potential supervision at the national level with a network of supervisory authorities at European level. Several European governments are already developing legislation in response to this.

Given this transnational regulatory context, and to get ahead of the regulatory curve, businesses are embedding their responsibility to respect human rights throughout their organisations, supply chains and business relationships, including by ensuring effective integration with existing corporate compliance programmes.

Aligning human rights and anti-corruption compliance programmes

There are several practical benefits of integrating human rights into compliance programmes, given the practical crossover in requirements for demonstrating respect for human rights and anti-corruption compliance. However, it is imperative to clarify that embedding human rights into corporate compliance programmes requires that the basis of risk identification is risk to people. This may require some adjustment to existing compliance programmes' risk-framing.

In January 2020, the Serious Fraud Office (SFO) published an update to its Operational Handbook to provide guidance on evaluating corporate compliance programmes

(see [Legal update: SFO guidance on evaluating a compliance programme](#)). It refers to the six principles that were developed by the Ministry of Justice in its 2011 statutory guidance to the "adequate procedures" defence under the Bribery Act 2010 as a "good general framework for assessing compliance programmes". These six principles are also relevant in the context of developing effective human rights compliance programmes, particularly given their close alignment with the UN Guiding Principles on Business and Human Rights (UNGP), the leading international framework for businesses on identifying and managing human rights risks.

SFO OPERATIONAL HANDBOOK: EVALUATING A COMPLIANCE PROGRAMME	UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGP)
Proportionate procedures	Processes and procedures by which a business demonstrates respect for human rights should be proportionate and context-specific: <ul style="list-style-type: none"> • "The scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts" (UNGP 14). • Human rights due diligence "will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations" (UNGP 17).
Top-level commitment	The basis of a business enterprise's responsibility to respect human rights should be a top-level commitment that sets the tone from the top. Businesses should express their commitment through a statement of policy that is "approved at the most senior level of the business enterprise" (UNGP 16).
Risk assessment	The identification and assessment of any actual or potential adverse human rights impacts on a business enterprise's activities or business relationships. UNGP 18 requires ongoing and periodic risk assessments, drawing on internal and/or external human rights expertise. This should also involve "meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation", or where this is not possible, reasonable alternatives are adequate such as consulting credible, independent expert resources, including human rights defenders and others from civil society.
Due diligence	Due diligence should ensure integration of findings from risk assessments across relevant internal functions and processes, which requires that appropriate action is taken to ensure due diligence procedures are applied correctly (UNGP 19).

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	This includes ensuring adequate risk screening and mitigation procedures are in place across all business activities, supply chain procedures and business relationships (for example, in relation to the use of intermediaries, vendors and other business partners as well as with employees and other recruitment partners). This also means robust due diligence needs to be applied to transactional activities (for example, mergers and acquisitions, and contractual arrangements).
Communication and training	<p>Internal and external communication of these steps should “be of a form and frequency that reflects an enterprise’s human rights impacts” and should be accessible. It should provide sufficient information to evaluate the effectiveness of an enterprise’s responses and also “not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality” (<i>UNGP 21</i>).</p> <p>Importantly, this should include processes by which businesses can respond to concerns raised by stakeholders and, where applicable, provide for or co-operate in their remediation through legitimate processes. This must include the use of effective grievance mechanisms (<i>UNGP 22</i>).</p>
Monitoring and review	Verification of actions taken to ensure adverse human rights impacts are addressed by tracking the effectiveness of responses is a key component of monitoring and review. This should be based on appropriate qualitative and quantitative indicators and draw on feedback from internal and external sources (<i>UNGP 20</i>).

Guided by the structured systems already in place for anti-corruption compliance, businesses can take the following steps to ensure there is effective alignment between anti-corruption and human rights compliance programmes:

- **Tone from the top.** Ensure there is adequate understanding and support from senior management to embed and align compliance strategies throughout the organisation and that this is reflected in the organisation’s statements of policy.

- **Include human rights considerations in anti-corruption risk assessments.** Given the correlation between corruption and human rights abuses, risk assessments can be mutually reinforcing by embedding risks to people into existing risk assessments.

Human rights considerations can be included in the following:

Country risk	<ul style="list-style-type: none"> • No ratification or historic non-compliance with international human rights and labour conventions. • High ranking on country human rights benchmarks (for example, Global Slavery Index). • Conflict-affected areas or post-conflict zones; political instability; weak governance where monitoring and enforcement of relevant laws is weak or absent. • High prevalence of vulnerable groups. • Restrictions or limitations on civil society.
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Sector risk	<ul style="list-style-type: none"> • Energy and natural resources, infrastructure, construction, transport and real estate: excessive use of force by security services; involuntary relocation, “land grabbing” and forced evictions; inadequate consultation or compensation for local communities, including free, prior and informed consent of indigenous communities, impacts on livelihood, subsistence and cultural heritage; social and cultural conflict through acquisition of disputed land; gender discrimination; labour exploitation, for example, forced and child labour; and health and safety concerns. • Financial services: sector-specific. Common risks through project lending and finance; involuntary relocation, “land grabbing” and forced evictions; excessive use of force by security services; impacts on indigenous and non-indigenous communities in the vicinity of the operations; human rights abuse or poor human rights records associated with regimes, governments or state-owned enterprises; labour exploitation, for example, forced and child labour, health and safety conditions and unfair remuneration. • Technology: privacy; freedom of expression; labour exploitation in sourcing and supply chain of raw materials, for example, child and forced labour, unfair remuneration, health and safety; conflict minerals.
Transactional risks	<ul style="list-style-type: none"> • Cost requirements or tight delivery timeframes that require excessive working hours to make cost savings. • Abnormally low tender or contract cost with third party. • Staff recruitment costs for labour hire recruiters not covered by company. • Products or services being acquired present a high risk because of how they are produced, sourced or used, for example, products or components made in high-risk countries, raw materials sourced from conflict-prone countries, services require skilled labour.
Business opportunity	<ul style="list-style-type: none"> • Project workforce includes high number of informal, migrant, temporary, contract or low skilled workers. • Licence and planning permissions obtained by third parties with little or no oversight of non-financial due diligence undertaken to obtain approvals. • Community engagement and compensation undertaken by government or state bodies. • Complex subcontracting or opaque supply chains.
Business partnership	<ul style="list-style-type: none"> • Absent or weak human rights compliance systems, including procurement and sourcing processes, appear poorly managed or inefficient, audit results appear unreliable and so on. • Historic allegations or findings of involvement in human rights impacts. • High number of informal, migrant, temporary, contract or low skilled workers. • Workers have little information about entitlements or entity provides sub-standard accommodation for workers.

Aligning human rights and anti-corruption implementation efforts

Findings from risk assessments can be embedded into anti-corruption compliance efforts. For example:

- **Policies.** Align human rights and anti-corruption commitments in organisational policies and codes of business conduct, supplier and vendor codes of conduct and operating policies.
- **Contractual clauses.** Include human rights language along with anti-corruption clauses in corporate transactional documents (such as share purchase and joint venture agreements) and commercial contracts (such as supply, franchise, distribution and service agreements) to require business partners' compliance with relevant standards and commitments, enable the effective use of leverage and ensure business partners are doing what they say they will do. Contractual clauses should also include appropriate rights for information-sharing, auditing, exercising leverage and in the right circumstances termination for human rights impacts that arise.
- **Training.** Integrate human rights considerations into anti-corruption training with specialised training delivered to personnel responsible for specific business activities and relationships that can create human rights impacts (for example, in supplier and procurement processes, recruitment practices, corporate transactions and other commercial activities and so on).
- **Key performance indicators (KPIs).** Develop human rights-related KPIs and internal metrics alongside those used to measure the effectiveness of anti-corruption compliance programmes to assess the strength of compliance programmes (for example, by including questions on the number of trainings, the percentage of the workforce trained and completion rates). Metrics can also be used to assess the identification and mitigation of specific impacts (for example, by including questions on the number of human rights impact assessments undertaken, the types of findings that arise and whether corrective actions are taken or their success rate).
- **Due diligence and know your customer (KYC) questionnaires.** Include human rights questions in anti-corruption due diligence and procurement questionnaires and checklists (for example, questions can be included to assess business partners' human rights compliance and governance approach), identify indicators of forced labour or human trafficking or identify historical abuses and excessive use of force by security contractors.
- **Auditing.** Integrate human rights impacts and anti-corruption into non-financial auditing of relevant areas (for example, security, health and safety, environment and community relations), especially in high-risk contexts.
- **Internal reporting.** Include human rights reporting in anti-corruption reports to senior management, the board and board relevant committees. Human rights reporting can also be included in external reporting on transparency, business integrity and ethics and annual sustainability or strategic reporting.
- **Grievance mechanisms.** Update corporate and operational-level grievance reporting processes to align with the UNGP effectiveness criteria and enable external and other stakeholder grievances. Grievance processes should feed into ongoing risk assessments and due diligence as well as enable access to remedy where involvement in adverse human rights impacts occurs.

Anti-corruption and human rights compliance systems: objective

There is alignment of objectives between anti-corruption and human rights compliance systems which merits further integration: changing attitudes and behaviour throughout the organisation to ensure a rights-respecting culture of integrity.

Taking steps now to assess, mitigate and monitor potential human rights impacts is not only the right thing to do from a responsible business and risk management perspective, but also a practical strategy for companies looking to avoid significant, costly and time-pressured upheaval further down the line.