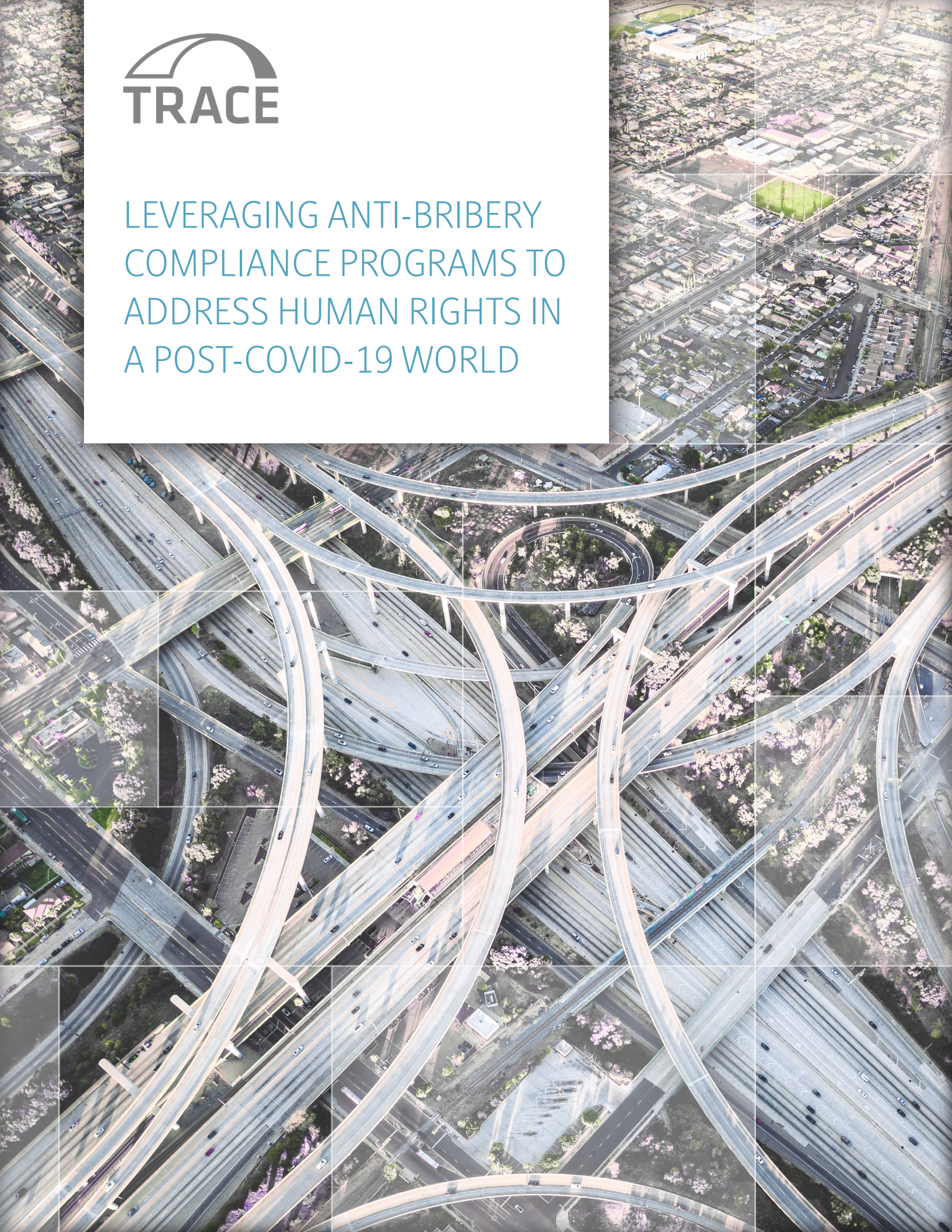




LEVERAGING ANTI-BRIBERY
COMPLIANCE PROGRAMS TO
ADDRESS HUMAN RIGHTS IN
A POST-COVID-19 WORLD





I. INTRODUCTION

The COVID-19 pandemic continues to affect virtually every aspect of daily life for individuals and communities around the globe. From travel restrictions to business closings, from quarantines and stay-at-home orders to massive supply chain disruptions, the effects of the pandemic are unprecedented. While it can be difficult to forecast longer-term implications of the crisis, it is becoming clear that every major sector will face new business and human rights challenges. These will include:

- **Workforce and labor challenges.** Employees will continue to be acutely concerned about job requirements that expose them to potential new illnesses. New patterns of discrimination will emerge, and the concept of sick leave as a human right will continue to be debated.¹
- **Privacy and surveillance.** Companies will continue to create and rely on new technologies and surveillance mechanisms, and communications providers and technology firms will provide data to governments to identify potential illnesses among employees or the public.²
- **Supply chains.** There will be radical shifts in global supply chains. Companies seeking to maintain or restore production levels will quickly identify alternative suppliers without robust diligence. Other companies may pressure existing suppliers to increase their capacity. Given high levels of unemployment, risks of worker exploitation and modern slavery will rise.³
- **Security.** High levels of unemployment and ongoing economic challenges will lead to an increase in crime and violence.⁴ Responses by private and public security will inevitably lead to claims of excessive force.

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Few businesses will be able to escape these challenges, or others like them, creating the substantial legal, reputational and business risks that frequently arise when allegations of human rights abuse are levied.

Human rights compliance programs are commonly instituted by companies to address such risks. Companies seeking to enhance their human rights approach often will consider leveraging existing anti-corruption frameworks designed to assist company compliance with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act and other laws.⁵ That approach is particularly appropriate given the traditional correlation between corruption and negative human rights consequences, as bribery is cited as a key contributor to modern slavery and labor abuses, factory and building collapses, plane and train crashes, health risks from illegal toxic waste, impunity for security sector abuses, and a host of other negative impacts that will remain germane in a post-COVID-19 world.⁶ This paper is designed to assist companies in identifying the key components of a human rights compliance program, and how they might be integrated into existing anti-corruption compliance programs. After providing background on the rapid proliferation of human rights legal risks, the paper will discuss the six primary areas where anti-corruption programs can most readily incorporate human rights elements, as well as some relevant distinctions.

II. BACKGROUND

A. The Rapid Rise of Business and Human Rights

Over the past several years, three related legal trends have led companies around the world to institute human rights compliance programs, and elevated human rights into the portfolios of corporate legal and compliance personnel. First, there has been a consistent rise in human rights and transnational tort lawsuits and claims around the globe as individuals, communities and civil society organizations have sought redress in domestic and human rights-specific courts, arbitrations, and state-sponsored non-judicial grievance processes such as OECD National Contact Point specific instances. While these cases have generally focused on corporate liability, they have increasingly included claims against corporate officers and directors.⁷

Second, the proliferation of soft law standards continues to grow in volume and acceptance. Thousands of companies claim to adhere to the UN Guiding Principles (UNGPs) on Business and Human Rights, the Voluntary Principles on Security and Human Rights, the OECD Guidelines for Multinational Enterprises, the Global Network Initiative Principles, and other general and sector-specific codes. Although these standards are voluntary, they are often treated by companies as *de facto* mandatory when they commit to them.

Finally, there has been a dramatic increase in human rights-based legislation and regulation, including laws mandating disclosures of human rights processes that extend through a company's operations and supply chain, such as the California Transparency in Supply Chains Act, and the UK and Australian Modern Slavery Acts.⁸ They also include mandatory due diligence laws, creating a company "duty to know" about and report on human rights risks throughout its operations and its value chains—for example, France's Duty of Vigilance Law and the recent Dutch child labor law.⁹ The increased attention on human rights also comes in the form of criminal laws and sanctions regimes—such as the U.S. Trafficking Victims Protection Reauthorization Act, the U.S. Global Magnitsky Act, the UK Criminal Finances Act, and changes to the U.S. Tariff Act of 1930—targeting companies that cause, facilitate or benefit from human rights abuses.¹⁰

These hard and soft law developments have been coupled with a dramatic rise in investor interest in corporate sustainability and human rights performance. Sustainable investment funds captured \$20.6 billion in new money in 2019, almost four times the \$5.5 billion seen in 2018. Approximately 85 percent of investors are interested in the subject, and there are more than 2,800 sustainability-related funds.¹¹ Investment analysis companies often focus on and rate corporate human rights performance, which helps guide those investment decisions, and human rights issues are frequently raised in shareholder resolutions. Such investor-driven interest, combined with the legal and reputational risks associated with human rights violations, have resulted in numerous companies developing and implementing global human rights programs to demonstrate their commitment and avoid negative repercussions.

B. The UN Guiding Principles on Business and Human Rights

The core elements of a human rights program bear strong similarities to anti-corruption and other transnational regulatory and compliance programs. The most prominent source for human rights program components is the UNGPs, which were unanimously adopted in June 2011 by the UN Human Rights Council following a comprehensive multi-year review and consultation process.¹² The UNGPs have been endorsed by thousands of companies around the world, and are widely considered the definitive corporate human rights framework. While the UNGPs themselves are quite detailed, several additional publications provide further insights into how they can be implemented, including publications from the UN's Office of the High Commissioner for Human Rights;



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Shift, a non-profit organization headed by senior members of the team that created the UNGPs; and the Corporate Human Rights Benchmark (CHRB), which includes a detailed framework created by leading business and human rights organizations to assess company performance under the UNGPs.¹³

The UNGPs comprise three pillars, two of which pertain directly to companies: Pillar I, which is directed at governments and their obligation to protect human rights; Pillar II, which is directed at companies and their responsibility to respect human rights; and

Pillar III, which is related to companies and governments regarding the importance of providing a remedy for human rights violations. Focusing on the private sector, the UNGPs maintain that businesses have a responsibility to respect human rights, meaning they should avoid infringing on human rights and should address adverse human rights impacts in which they are involved.¹⁴ The core human rights businesses should respect, according to the UNGPs, include those enumerated in the International Bill of Human Rights, and the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work. However, the UNGPs make clear that depending on their operations, companies should consider other UN instruments on the rights of various vulnerable groups, including indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. The UNGPs also provide that depending on their operating context, companies should consider other standards, such as international humanitarian law in situations of armed conflict.¹⁵

Following these general standards, the operationalization of a business and human rights program under the UNGPs contains three parts. First, businesses should adopt a statement of policy that: (i) is “approved at the most senior level of the business enterprise”; (ii) is informed “by relevant internal and/or external expertise”; (iii) identifies the entity’s human rights expectations of its employees and of entities in its value chain; (iv) is publicly available and communicated internally and externally; and (v) is reflected in operational principles to embed it throughout the enterprise.¹⁶ As the UNGPs’ key interpretative publications make clear, part of embedding the policy commitment entails a governance framework comprised of oversight of the program and the company’s salient risks by the board of directors or a board committee, and assignment of day-to-day responsibilities for the program to senior-level personnel. It is also important that, as part of communicating and embedding the policy commitment, the company provides robust training and education for employees and relevant third parties.¹⁷

Second, the program should have a due diligence process to identify, mitigate and account for how the company addresses its impact on human rights. That process should encompass risks associated with the company's operations and transactions, its potential and current employees, its supply chain, and entities with which it engages formally and informally.¹⁸ The UNGPs further provide that findings from human rights assessments should be integrated across relevant functions and into relevant processes, and companies should take appropriate action to prevent and mitigate potential negative human rights impacts when they are identified.¹⁹ The UNGPs also state that companies should include a process to monitor the effectiveness of their approach, and report externally on how they are addressing human rights impacts.²⁰

Finally, companies should implement a grievance process. These “operational grievance mechanisms” should allow aggrieved internal and external stakeholders to report concerns, and should be legitimate, accessible, predictable, equitable and transparent.²¹ When the company identifies negative impacts, the responsive expectations can differ depending on the relationship between the entity and the violation. A company causing or contributing to a negative impact is expected to provide remediation, cease the cause of the negative impact and prevent future negative impacts. A company that is directly linked to a negative impact because of activities in its value chain has a responsibility to use its leverage to prevent and mitigate the impact.²²

III. BUILDING A HUMAN RIGHTS PROGRAM ON TOP OF AN ANTI-CORRUPTION PROGRAM

While there are some key distinctions between the components of anti-corruption and human rights compliance programs, there is substantial overlap that allows companies to leverage existing compliance frameworks to include human rights elements. These points of overlap can be separated into six areas: (1) governance and oversight; (2) policies and procedures; (3) diligence, risk assessments and program testing; (4) training, communication and advice; (5) hotline reporting and grievances; and (6) reporting.

A. Governance and Oversight

Effective anti-corruption programs have a governance structure that includes (a) board-level oversight and (b) day-to-day supervision of the program by one or more senior officers.²³ Similar governance structures are expected in the human rights context. Just as board committee charters may encompass anti-corruption responsibilities, they likewise can be drafted to include a human rights mandate. Indeed, there are growing legislative expectations, and sometimes requirements, that corporate boards oversee salient human rights risks. For instance, the UK and Australian Modern Slavery Acts, and similar proposed legislation, demand board-level approval of mandated public reports.

Likewise, the expectation that day-to-day program management will be assigned to senior company personnel exists both for anti-corruption and human rights programs. Most companies assign human rights responsibilities to compliance personnel who already oversee the anti-corruption program and understand how to drive compliance programs. The UNGPs endorse such an approach. UNGP 23(c) provides that companies should treat the risk of contributing to gross human rights abuses as a “legal compliance issue wherever they operate.” As the Commentary to UNGP 23 explains:

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Some operating environments ... may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses.

Given the clear legal risks associated with human rights non-compliance, vesting human rights compliance with personnel experienced in implementing compliance processes is highly logical.

Beyond governance structures, for both programs, visible support from senior and mid-level management is critical to success.²⁴ Such a “tone from the top” or “message from the middle” underscores the company's commitment to conduct that is unwaveringly ethical and shuns fraudulent and corrupt activities, and that is respectful of stakeholders and local communities. That tone includes both words and actions.²⁵ Words might include messaging from senior management—through executive addresses, town hall meetings and blast emails. Actions include modeling proper behavior, as managers must practice what they preach for any compliance program to be respected internally and for a culture of compliance to thrive.²⁶

B. Policies and Procedures

Corporate anti-corruption policy frameworks generally include a code of conduct that expresses the company's ethical commitment to avoiding corruption, supported by a more detailed standalone anti-corruption policy and specific procedures to implement that commitment.²⁷ The same conceptual approach is expected in the human rights context.

High-level commitments to respect human rights should be incorporated into a company code of conduct, adopted by the board of directors. Likewise, to accompany a standalone anti-corruption policy, hundreds of companies have adopted distinct human rights policies.²⁸ As the UNGPs make clear, a human rights policy should apply throughout the organization and to third parties, detail the company's stance regarding respecting human rights, define human rights to include the International Bill of Human Rights and the International Labor Organization's core conventions, and identify other key instruments and principles the company follows.²⁹ Further, while anti-corruption and human rights policies may be distinct, there are numerous policies and procedures that support an anti-corruption program where human rights components can be added. That may include procedures requiring immediate escalation of concerns, supplier or third party codes of conduct, and relevant functional unit management systems.

C. Diligence, Risk Assessments and Program Testing

i. Operational Diligence: Risk Assessments and Testing

Fundamental to an anti-corruption compliance program are risk assessments and program testing, which identify the company's actual and potential inherent risks, the degree of adherence to the company's processes to address those risks, and the effectiveness of those processes in mitigating inherent risks.³⁰

UNGPs 17, 18 and 19 endorse a similar approach for human rights programs, and processes to conduct anti-corruption assessments and testing can be leveraged in the human rights context. Of course, the core emphases of anti-corruption and human rights assessments differ. Anti-corruption assessments generally focus on government touchpoints, including company personnel and third parties that interface with the government directly and indirectly, while human rights assessments focus on actual, potential and even perceived human rights impacts. Nonetheless, there are substantial points of overlap, and leveraging those synergies may be particularly useful given the expense, time commitment and operational impacts of live assessments.

Many anti-corruption assessments start with a desktop assessment, which can include human rights concerns. On a geographic level, countries with high perceptions of corruption often have equally high perceptions of human rights abuse, which can be identified in a range of public benchmarks.³¹ Corruption and human rights abuses are often causes of each other or otherwise related, and identifying risks associated with one may correlate with risks for the other.

The joint assessment can continue in the field. From a process standpoint, human rights and anti-corruption assessments typically include meetings with many of the same functional units and personnel, allowing for audit protocols that cover both subjects in one interview and limiting audit fatigue concerns. For instance, just as anti-corruption assessments might include a review of hiring procedures and interviews with human resources personnel that interact with national labor boards, the same interviews might cover the company's approach to modern slavery or discrimination, and an assessment of how human rights risks are screened among prospective employees.

Substantively, given that corruption risks can cause human rights impacts, and vice versa, a single assessment that examines both can lead to more probing insights and effective recommendations. As an example, where an assessment identifies anomalous payments to labor inspectors, there may be related risks associated with worker safety or modern slavery. Conversely, where the assessment identifies such worker or slavery concerns, known security abuses that have not been investigated, or human health impacts from illegal dumping, it may mean government officials are looking the other way. A joint assessment thus allows for a deepened understanding of corruption and human rights risks, their correlation with each other, and how they may impact rights holders and the company. It also may allow for responsive solutions that are more effective and sustainable.

ii. Employee Diligence

Most anti-corruption programs screen current and potential employees to identify whether workers or job applicants are Politically Exposed Persons, have been referred by a government official, or were involved in past investigations or legal actions for fraud or corruption. That process often includes questionnaires completed by the individual, and internet or subscription database searches run by the company or a third party. For gatekeepers and individuals in positions of elevated risk, such as government relations personnel, background checks and other heightened diligence are often pursued.

That approach can readily incorporate human rights. Pre-screening questionnaires should include questions related to past issues of violence, discrimination or other human rights red flags. Internet and database searches should also encompass such issues. Enhanced diligence should be undertaken for potential employees in functions closely connected to a company's salient human rights risks. Further, just as anti-corruption expectations are often included in job applications, employment agreements or employment letters, human rights expectations may be added as well.

iii. Third Party Diligence

Similar efficiencies exist for third party diligence. For anti-corruption programs, substantial time and resources can be spent on third party diligence, which often includes baseline diligence and controls for a wide swath of suppliers, and enhanced diligence and controls for those who may pose enhanced corruption risks. Those processes can be expanded to include human rights considerations for first-tier suppliers.

For baseline diligence, the onboarding questionnaires commonly completed by third parties to identify anti-corruption concerns can easily be expanded to include human rights-related questions. These might include, for instance, past accusations of forced labor, previous incidents of use of force by security contractors, or litigation or controversies with a human rights component. Similarly, internet and subscription database searches—common in anti-corruption baseline diligence—might be expanded to include human rights elements. Indeed, an increasing number of databases, including TRACE's **TRAC platform**, now address at least some human rights risks.³²

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Similar points of consistency exist for enhanced diligence. As with anti-corruption, in the human rights arena, elevated risks may be identified during baseline diligence, or arise from goods or services procured in certain places. For example, some goods produced in specific locales, such as bricks from Afghanistan or cotton from Azerbaijan, have been identified as having a high correlation to modern slavery.³³ And some service providers in specific locales, such as security providers in Zimbabwe or Sierra Leone, may pose heightened risks of abuse.³⁴ When higher human rights risks are present, many of the same processes used for anti-corruption enhanced diligence can be employed. These include interviews of the third party or others, audits, reference checks, a review of policies and procedures, embassy checks, litigation checks and additional public records searches. Given the potential legal, reputational, operational and stakeholder risks associated with human rights abuses, heightened internal approvals for higher-risk third parties—as with anti-corruption—may also be appropriate.

Assuming the company believes that human rights red flags can be remediated and the relationship can proceed, controls employed in the anti-corruption context may also be leveraged for human rights concerns. Most obviously, companies can add human rights language to contracts and purchase orders that already have anti-corruption provisions. Companies also might closely monitor and document performance, conduct post-engagement third party assessments, conduct third party training, periodically refresh diligence, obtain third party certifications, and conduct other steps similar to those used in the anti-corruption context.

D. Training and Education

Another point of overlap involves training, a critical component of both anti-corruption and human rights programs.³⁵ Anti-corruption training programs and platforms, including live training, e-training and workshops, can readily be expanded to include key human rights elements. Those may include induction training, annual code of conduct training and refreshers, annual in-person training, or “just-in-time” training associated with specific activities or transactions. In each of these situations, the inclusion of human rights content—such as company policies and procedures, or identifying human rights red flags—is straightforward. The same is true for annual certifications: Just as companies regularly ask employees to certify annually that they are unaware of any potential corruption concerns that have not been reported, those certifications can easily be expanded to include human rights concerns.

In-depth and tailored anti-corruption training is appropriate for gatekeepers and other key personnel, and a similar concept exists for human rights.³⁶ To ensure they fully understand the company’s policies and their roles, individuals with programmatic responsibilities should generally receive focused human rights training. Likewise, tailored training is important for employees and third parties who—because of their job function, or personal or professional histories—may have enhanced risks of negative impacts. That may include, for instance, training on land-grabbing for community resources personnel, or on conflict minerals for procurement personnel.

Finally, joint human rights and anti-corruption training can be fundamentally beneficial. Joint training can help recipients identify and consider the causal connections between the two areas, and spot and escalate relevant red flags. Understanding the individual and community impacts of corruption also creates far more traction among company employees than a rote reminder about the importance of adhering to company policies and procedures. For instance, using photographs that depict the human rights impacts of corruption—such as child labor, lack of access to food because of toxic dumping, or collapsed bridges or factories—can leave a deep and lasting impression.

E. Hotlines and Grievance Mechanisms

A core aspect of any anti-corruption program includes a confidential reporting mechanism to receive and process complaints.³⁷ A similar concept exists in the human rights sphere. As UNGP 29 makes clear, companies are expected to establish operational grievance mechanisms “accessible directly to individuals and communities who may be adversely impacted by a business enterprise.”³⁸ In practice, existing hotline frameworks are often used to report human rights concerns. While some companies create distinct operational grievance mechanisms for local communities, most companies advertise the use of the company hotline to internal and external stakeholders to report a range of adverse impacts.

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When human rights concerns are lodged, it is important that they are sorted and routed to the appropriate internal function for further consideration. Some may warrant engagement with the complainant, while others may warrant investigations. Certain investigations can be conducted internally where there is adequate expertise. However, given the potential legal, operational and reputational risks, where substantial issues are raised—as with anti-corruption inquiries—human rights investigations often are conducted by independent experts under legal privilege.

There are some differences between anti-corruption and human rights grievance mechanisms.

One area of distinction is remediation. In the anti-corruption context, investigations that identify policy violations often cause companies to enhance their control frameworks to prevent recurrence. While human rights programs may do the same, when the company causes or contributes to a negative impact, it is expected to remedy that impact.³⁹ Remedy can carry different meanings in different circumstances, and encompasses a wide range of potentially appropriate actions. Given the need to provide remedy in a culturally sensitive and highly individualized manner, some companies have established internal procedures and guidance specific to human rights remediation. In addition, because plaintiffs' attorneys have used human rights remedy schemes against companies in litigation,⁴⁰ remedial approaches should be considered from multiple angles.

F. Reporting

There are more limited points of anti-corruption and human rights overlap in terms of public reporting. As a general proposition, the UNGPs specifically reference the importance of corporate transparency for human rights issues. UNGP 21 states that companies should provide details regarding their approach to addressing human rights risks, and that formal reporting should exist where their operations or operating contexts pose risks of "severe" impacts.⁴¹ Therefore, many companies make public their policies, procedures and overall program approach, and explicitly disclose their salient human rights risks and the various steps they take to mitigate them. This may include publishing relevant metrics, such as the number of human rights grievances filed, the number of individuals trained and other similar data. Companies also often provide public information related to their anti-corruption programs, and some provide further detail on revenue transparency and other matters.

While anti-corruption and human rights information generally appears on company websites, companies frequently address both topics in sustainability reports. Further, public reporting frameworks such as the Global Reporting Initiative seek information related to both topics, which companies typically provide in one response.

When information is publicly reported, close legal review is appropriate. This is particularly true for U.S. publicly listed companies, as plaintiffs commonly cite non-financial disclosures in support of securities and shareholder derivative lawsuits. Legal complaints in transnational tort cases also frequently reference non-financial disclosures in support of claims involving alleged environmental, security, health and safety, and labor abuses. These cases may raise such disclosures in connection with substantive claims asserting that statements are misleading or create a duty of care that must be followed, or in connection with seeking to hold parent companies liable for the actions of subsidiaries. Companies are increasingly asking legal and compliance personnel to vet non-financial disclosures and to carefully calibrate public representations.

CONCLUSION

As we emerge from the COVID-19 crisis, substantial new challenges will lead companies to implement and expand their human rights compliance programs. Doing so by leveraging an existing anti-corruption compliance framework can provide efficiencies, stretch compliance budgets and limit operational burdens. This approach also provides substantive benefits, as both subjects help inform risks and remedial actions associated with the other. While there are important distinctions between anti-corruption and human rights programs, taking advantage of the similarities can help drive and deepen compliance, and reduce risks to the company, employees and third parties affected by company operations.



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TRACE is a globally recognized anti-bribery business association and leading provider of shared-cost third party risk management solutions. Members and clients include over 500 multinational companies located worldwide. TRACE is headquartered in the United States and registered in Canada, with a presence on five continents. For more information, visit www.TRACEinternational.org

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- 9** See Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Law 2017-399 of March 27, 2017]; Wet Zorgplicht Kinderarbeid 2017, Stb. 2017(Ned.).
- 10** See Global Magnitsky Human Rights Accountability Act, Pub. L. No. 114-328, §1261-65, 130 Stat 2000, 2533-38 (2016) (codified at 22 U.S.C. §2656 (2018)); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875, 2878-2879 (2003) (codified at 18 U.S.C. §1595 et seq.); The Criminal Finances Act 2017, c. 22, §13 (Eng.); The Tariff Act of 1930 (19 U.S.C. Ch. 4, §§ 1202 et seq.).
- 11** Jonathan Drimmer, Tara Giunta, et al., "ESG Strategies Could Be Misleading Investors," Lexology, March 11, 2020, at <https://www.lexology.com/library/detail.aspx?g=46ec13e9-da35-47c2-8164-abc44bd991d3>.
- 12** Guiding Principles on Business and Human Rights: implementing the United Nations "Protect. Respect and Remedy" Framework (March 21, 2011), available at www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf.
- 13** "The Corporate Responsibility to Respect Human Rights: An Interpretive Guide," Office of the UN High Commissioner for Human Rights, www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf; Frequently Asked Questions about the Guiding Principles on Business and Human Rights, Office of the UN High Commissioner for Human Rights, https://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf; "Human Rights Reporting and Assurance Frameworks Initiative" ("RAFI"), Shift Project, <https://www.shiftproject.org/resources/collaborations/human-rights-reporting-assurance-frameworks-initiative/>; Corporate Human Rights Benchmark, Guide to the Benchmark (<https://www.corporatebenchmark.org/guide-benchmark>), and Core UNGP Indicators (<https://www.corporatebenchmark.org/sites/default/files/2019-11/CHRB%20Core%20UNGP%20Indicators%20-%2025Apr2019.pdf>).
- 14** See UNGP 11.
- 15** See UNGP 12.
- 16** See UNGP 14.
- 17** See, e.g., CHRB Indicator B.1.1, Core UNGP Indicators; RAFI Indicator A1, A2.1, A2.2.
- 18** See UNGP 17-18.
- 19** See UNGP 19.
- 20** See UNGP 20- 21.
- 21** See UNGP 29, 31.
- 22** See UNGP 19.
- 23** See, e.g., "Evaluation of Corporate Compliance Programs" ("ECCP"), U.S. Department of Justice, Criminal Division, April 2019, §§ II.A & B.
- 24** See ECCP §§ II.A & B; UNGP 16, Commentary.
- 25** ECCP §§ II.A.
- 26** See Jonathan Drimmer, Matthew Herrington and Tom Best, "Behavioral Ethics and Economics, Compliance Culture and Meeting DOJ's Compliance Expectations," Anti-Corruption Report, June 26, 2019.
- 27** See ECCP § I.B.
- 28** See Company Policy Statement on Human Rights, Business and Human Rights Resource Centre, <https://www.business-humanrights.org/en/company-policy-statements-on-human-rights>.
- 29** See UNGP 16.
- 30** See ECCP §§ I.B, III.A.
- 31** See, e.g., Fragile States Index, Indicator 3 (Human Rights and Rule of Law), Fund for Peace, at <https://fragilestatesindex.org/indicators/p3/>; TRACE Bribery Risk Matrix (Domains: Deterrence, Transparency and Oversight; Subdomains: Dissuasion, Enforcement, Processes, FreePress and CivilSociety), at <https://matrixbrowser.traceinternational.org/#tab-3581-2>.

32 See TRAC, TRACE International, at <https://www.traceinternational.org/due-diligence-trac>. Note that understanding risks throughout a company's supply chain is expected in the human rights context, while anti-corruption programs focus primarily on first-tier suppliers and their agents and subcontractors.

33 See "2018 List of Goods Produced by Child Labor or Forced Labor," U.S. Department of Labor, at <https://www.dol.gov/sites/dolgov/files/ILAB/ListofGoods.pdf>.

34 See U.S. Department of Justice, "Sierra Leone 2018 Human Rights Report," at <https://www.justice.gov/file/1146611/download>; U.S. Department of Justice, "Zimbabwe 2018 Human Rights Report," at <https://www.justice.gov/eoir/page/file/1257576/download>.

35 See ECCP §1.C; UNGP 16.

36 TRACE's eLearning platform provides a wide array of anti-corruption trainings, and some touching on human rights issues, such as conflict minerals and sexual harassment. See <https://www.traceinternational.org/compliance-training>.

37 See ECCP §1.D.

38 See UNGP 29.

39 See UNGP 22. When a company is directly linked to a negative impact by actions of a third party, it is expected to use its leverage with the party to prevent and mitigate future impacts. See UNGP 19, 22.

40 See *Doe v. Apple, et al.*, Case 1:19-cv-03737 (D.D.C. Dec. 15, 2019), at <http://www.iradvocates.org/sites/iradvocates.org/files/stamped%20-Complaint.pdf>.

41 See UNGP 21.



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