



Session Report

Please know you may design the structure of this report to better suit the session. It's important to capture the key outcomes and solutions proposed for the future.

Session Title: Knowledge is Power: The Case For Human Rights Due Diligence To Tackle Corruption and Human Rights Abuses in Global Supply Chains

Date & Time: Tuesday, 07.12.2022, 5:30 pm – 7:00 pm GMT -5

Report prepared by: Robin Hodess, Strategy Lead, The B Team

Moderated by: Sierra Leder, Strategist and Human Rights Lead, The B Team

Panellists:

- Irit Tamir, Director, Private Sector Department, Oxfam America
- John Drimmer, Partner, Litigation Department, Paul Hastings, LLP
- Anita Ramasastry, Special Representative of the OSCE Chairperson-in-Office on Combating Corruption
- Hentie Dirker, Chief ESG & Integrity Officer, SNC-Lavalin

Share the thematic focus of the session, it's purpose and corruption risks?

This session considered the role and responsibility of business in global security and tackling corruption - including respecting human rights - and the case for conducting due diligence and mandatory reporting for transparent supply chains.

Lack of transparency in supply chains allows corruption to proliferate unnoticed. For companies, lack of transparency in supply chains can cause reputational, financial, and legal risks. Both governments and companies have an interest in ensuring their supply chains are free from corruption and human rights abuse. For governments, public procurement systems must be transparent to ensure they are not implicated in abuse and corruption downstream.

Without transparency, global supply chains are not only vulnerable to corruption but also can inadvertently facilitate human rights violations. The money lost through supply chain corruption limits the resources made available to lift up the world's most vulnerable, further entrenching inequality.

Governments are starting to enact legislation on mandatory due diligence in supply chains in order to cut down on both corruption and rights abuses, such as forced labor, human trafficking, and environmental abuses (under the newly recognised human right to a healthy environment). The session reflected on the way better supply chain management can address risks and to improve the lives of people in vulnerable conditions, weak states, and resource-rich yet fragile environments. It also mentioned growing awareness of the need for due diligence in conflict-affected contexts.

Governments and business each have a role to play to eliminate risks, including improving how they work together to tackle the problems. Deeper collaboration for both an enabling regulatory environment and active engagement from business will support the achievement of the SDGs and a progressive realisation of human rights, whilst simultaneously enabling civil society in its role to keep government and business accountable and free from corruption.

The case for conducting due diligence and mandating reporting for transparent supply chains is strong. Due diligence is a critical step toward understanding and acting on a company's impacts, aligning policy, practice and investment with purpose. Governments will also experience positive impacts from mandating due diligence and reporting, both in fulfilling the state duty to protect its people and through the benefits of a sustainable and stable economic environment. Some leading companies are beginning to go beyond their requirements to respect human rights under the UN Guiding Principles on Business and Human Rights in order to both protect basic human rights and civil society organisations operating in countries where they operate.

Summary of panellists' contributions & discussion points (please be as detailed as possible)

The focus was on the role of business in global security/respect for rights, mandatory human rights due diligence, supply chain transparency, fighting human rights and environmental abuses.

Anita Ramasastry, Special Representative of the OSCE Chairperson-in-Office on Combating Corruption introduced the idea that the overall field is business and human rights, and was not established because of risks to companies, but to understand their risks to impacts on people. This approach stems from UNGPs and OECD Guidelines most of all.

She suggested that the voluntary framework is moving from soft law to hard law.

Human rights focus was once a part of Corporate Social Responsibility, not close to

compliance. But now companies need to look at supply chain issues for regulators, and there is a lot to learn from compliance for the human rights community.

She outlined the relationship between corruption and human rights risk, referencing a report to the UN Human Rights Council on this from 2020. When we talk about human rights due diligence, we can reference issues of land and displacement, pollution, dams collapsing, state capture. In each of these, the effect was human rights abuse, but there was corruption along the way, especially bribery.

So, when you deal with human rights side, especially stakeholder engagement, it means you need to ask about corruption, to identify where the corruption issues are. This information should flow back into compliance function, and there should be indicators that raise flags for attention on each topic.

In sum, human rights due diligence needs questions about corruption. It should inform strategy, risk mitigation and collective action.

Business partner screening is done for anti-corruption, but we are not there yet in human rights risks. If a local company has been implicated in a human rights violation, you need to figure out if/how to work with them. We don't yet have systems for that on the human rights side.

John Drimmer, Partner, Litigation Department, Paul Hastings, LLP: When it comes to the business marketplace in human right and anti-corruption programmes, he sees a spectrum. On one end, some companies see that they have human rights issues, and they give them to a compliance group, to avoid being a part of negative human rights impacts. This helps bringing human rights and anti-corruption into the same risk framework. There are advantages to this integrated approach. With anti-corruption training, you can include human rights elements and risks. Human rights indicators can be included in anti-corruption risk assessments. You can leverage what you have on anti-corruption side with human rights. But: there are limits to bolting respect for human rights onto an anti-corruption programme. Risk assessments done differently, as is remedy.

On the other end, you often have a dedicated human rights team and programmes. But then there is often lack of a systematized approach to risk. The areas of risk assessment and mitigation are siloed. There is little or no collaboration with an anti-corruption team, no efficiencies, and no way to identify red flags.

There are ways to break down silos. These include due diligence, trainings, development of basic red-flag indicators, joint internal and external committees, and internal processes to increase compliance.

Regulations can also be helpful. In the draft EU mandatory human rights and environmental due diligence legislation, corruption was initially included in governance component. Leaving it in would compel companies to consider these together.

One difference in these fields is internal: with anti-corruption training, in house, it is hard to connect subject matter with the audience. People (employees) often can not identify with corruption cases. When he has found a way to include their personal experiences in training, it had an enormous impact.

Human rights work looks at impacts on third parties. Corruption looks at impacts on the business. Can they be fused in company regulation? This may be important to bringing them together and making them more effective.

Irit Tamir, Director, Private Sector Department, Oxfam America: Systemic corruption impedes respect for rights, to life, to livelihoods, and beyond. Human rights violations create fertile ground for anti-corruption, and vice versa. They share common causes including instability, weak institutions, poverty, and more - and are mutually reinforcing. Root causes are crucial to both. Human rights due diligence can be an essential means to identify root causes and to find solutions. This requires engaging those affected by corruption and human rights violations.

Where do they go hand in hand, as an example? In the fishing sector, particularly unregulated fishing, there is great vulnerability to corruption and human rights abuse as it is a highly opaque industry.

In oil, gas, and mining, there is great progress on transparency. But corporate actors have not been held meaningfully responsible, such as Glencore and mining deals. As demand for transition materials such as minerals skyrockets, fast tracking processes will come in and exacerbate corruption risk. Upstream and downstream actors need to play a role and mandatory due diligence is key. We need to be vigilant about landgrabs and corruption. Governments may hand out land for quick profit without the knowledge, understanding, or engagement of people with historical and cultural rights to those lands, particularly in contexts of foreign direct investments. Local stakeholders will often know where corruption occurs, such as in the Philippine mining sector.

One way to combat both corruption and human rights abuses is free prior and informed consent (FPIC). FPIC is a human rights due diligence tool for identifying human rights risks and corrupt practices that recognises the two as closely linked.

Hentie Dirker, Chief ESG & Integrity Officer, SNC-Lavalin: Hentie introduced how his company, a global engineering services company, with 35k employees, were active in oil and gas in the Middle East in mid 2010s. They had a large migrant labor force, and had to understand how due diligence worked around that due to issues with labour brokers. He joined in 2015 and it was not entirely clear where human rights fit in back then. It was part of human resources, recruitment, and procurement but as his company expanded, the need to focus on human rights more substantially also grew.

Businesses now need due diligence on suppliers and their extended network, but they need a broad spectrum of diligence, including tax and other issues. Workers also need to be safe and feel safe. Psychological safety for employees is really important.

One challenge is determining how to make sure your systems don't work in silos. Project bids go to management but need all kinds of diligence. One company perspective is branding, but there is also risk management. One way is to perform audits on suppliers. Another way is to keep a reference list. As the company does investigations, they have internal investigations team, on fraud and human rights. They also have an ethics and compliance committee that will review. Any flags that are found will be listed for future reference, and supplier qualifications reviews also raise flags. Sometimes it is not possible to work at all with a supplier, sometimes it leads to engagement with the supplier on how to improve practices.

One lesson learned was from a situation where the most vulnerable workers and people had to pay fees for recruitment. This had to be addressed even though it did not originate with the company. Another example, for those who live in company housing – need to ensure adequate living standards. The issues can be close to home. For some projects in Canada, the issues emerged of products being used that came from forced labour, out of China. This was a wake-up call. Businesses can and must do more to protect people.

Main outcomes of session (include quotes/highlights and interesting questions from the floor)

Questions and discussion from floor:

Alliance for Integrity: Integrating human rights compliance and anti-corruption efforts is important from smaller suppliers too. Capacity building and support from larger companies can level the playing field for smaller players. It is not just about efficiencies.

Anti-corruption processes can be trigger-happy and punitive, and can lead to quick termination of contract. On human rights issues, you support your supplier to do better. Human rights can be an example of how not being zero tolerance can improve the whole space.

- Irit Tamir agreed: there is no cut and run wished for, from companies. Do not disengage unless companies won't work at all toward respecting rights. But asks: What do you do when you suspect corruption? Supplier could get land from third party, third party was corrupt, is this land now tainted? Can you still work on it?
- Jon Drimmer added: one needs to balance mitigating human rights risks vs human rights impacts of terminating the company/supplier relationship. United States Department of Justice is going to have very little sympathy if there is corruption. But anti-corruption controls are all about mitigating risk. Is corruption abstract or something you would be liable for if discovered and not properly addressed? There is potential tension there.
- Anita Ramasastry -- Using leverage works in human rights, but if you have misconduct, it goes further.

Transparency International: There is a difference between human rights impact of operations and active targeting of defenders. How do we deal with those difference

instances?

- Anita Ramasastry: defenders themselves are crucial to identifying human risks and red flags. If a company is not directly bringing defender into harm, then it is a third party. We need to distinguish who the defenders are: using the UNGPs is most effective when linked to defenders. There is also a degree of intentionality to be considered – poor working conditions vs intentional physical attack on a person.
- Jon Drimmer: a challenge is to understand how to use the international frameworks, to provide protections to defenders. What is an attack? How do you address it? Frameworks are broad.

Open Corporates: What is the role of enabling data to be available throughout the supply chain? This can help with due diligence across the spectrum. Example of Open Apparel. Do we see trends?

- Hentie Dirker: This goes back to the metrics we want from suppliers. We need to clarify expectations on data-gathering and reporting.
- John Drimmer: the supplier challenges beyond the first tier are real. Suppliers have an onslaught of due diligence questionnaires, and often few resources. Some are filled out poorly. Standards in this area would be a great idea.

CIPE: SMEs do have contractual clauses, but do not always understand them. Training thus far is not enough. How to engage local companies in the communities? Can large companies organize around doing the right thing? Where does liability lie if big companies don't well-explain contractual requirements?

For Germany, there is an SME helpdesk. This builds partners partner to partner cooperation. Solutions are moving to local, to be tailor-made. One way is to find out who big clients are and match them to suppliers, so they can lend staff or resources.

- Jon Drimmer: We increasingly seeing companies put in systematized supply chain programmes, this starts at RFP. The stage is set very early, and impacts (including on defenders) must be anticipated from the beginning of a project. Programmes have ongoing engagement. If there are sophisticated programmes, these can trickle down.
- Irit Tamir: One issue is not enough investment to help small business to thrive. We need incentives, to show how can suppliers and companies be recognized for doing the right thing. Bring this into the procurement system.
- Irit: Right now, we are advocating for human rights due diligence in the EU and US.
- In addition, in specific countries that are challenging, we need to focus on what are the root causes. Where there are weak institutions, where companies dominate government, we need to rebalance the system. We can encourage investment in local economies.
- Hentie Dirker: With so much focus on ESG reporting, he wishes for convergence from government and regulators. There are on-going processes for ISSB, EFRAG, SEC. We have an opportunity to guide the setting of these standards and reporting frameworks. It can help in how companies are being held accountable.
- Jon Drimmer thinks we need ground-breaking change in the way things are

done. There is mandatory due diligence, upstream and downstream. Many companies will have to gather more information about how they are doing business, on their responsible conduct, and they will have to report publicly – because of the EU Corporate Sustainability Reporting Directive (CSRD). The EU's influence will be across tens of thousands of companies. Since 2006/7, he has started to see real enforcement of anti-corruption of OECD Conventions/FCPA. Controls came in strong. He sees this as macro trends, human rights and responsible business conduct are a new force.

- Anita Ramasastry: Civil society will press for legislation. A treaty on business and human rights is now being debated in Geneva. There is a new treaty on plastics, and the role of business is included. Human rights can be more easily integrated as a result of all these frameworks.

Question from audience: We are mostly talking about Tier 1 suppliers. Do companies know about Tiers 3, 4, and beyond? Where do you see this going, in an ideal world?

When there has been regulation, for example in conflict minerals, there are creative solutions, for example to trace and create alternative sources that are clean. Business needs to innovate. Business will also do what it is mandated or regulated to do. If you must prove where everything comes from, businesses will come up with a solution for essential resources.

- Irit Tamir: In the end, if you can't do due diligence adequately, you cannot get the deal. For example, the risks in the chocolate sector are in two main countries – this is well-known. Mandatory measures will get companies to think about how to make supply chains more sustainable. We need more actors and more engagement, rather than fewer and less.
- Jon Drimmer: The bigger the company, the harder to address tiers. The key is risk tiering, based on the materiality of products. There should be a system to prioritise oversight and investigations.

Final thoughts:

- **Anita Ramasastry:** We continue to overlook remedy to those who are affected. This is underexplored by companies. Human rights remediation must be more than heavier fines for business.
- **Jon Drimmer:** The direction of travel is clear, and the blistering pace. We may not yet have standalone human rights legislation, but human rights is integrated into other legislation, sanctions, trade, etc. There is now more international regulation of compliance, too.
- **Irit Tamir:** The trend is going in a good direction, with more integration of reporting. Companies realize they have to take it on board. Companies are doing human rights due diligence, but may be not yet be at a stage of optimisation or as wished for by civil society
- **Hentie Dirker:** Business has to raise the bar. Civil society should hold companies accountable. Companies can lift the veil, which then encourages others to get engaged. The crossover of human rights and anti-corruption is an ideal space for collective action. We need conversations and to get started on action.

Key recommendations for the future and concrete follow-up actions

- Join up global standards for business regarding anti-corruption and human rights due diligence, including reporting requirements in ISSB.
 - Develop incentives for best practice behaviour.
- Break down siloes in companies and establish synergies across human rights and anti-corruption risk mitigation, both in due diligence and in training.
- Focus by companies on who defenders are and on what remedy means.
- Use collective action and stakeholder consultation as means to improve both human rights and anti-corruption due diligence.
 - For example, bring together industry suppliers annually for review and improvements.
- Conduct capacity-building for business partners and suppliers, especially SMEs.
 - Develop system of risk-tiering to prioritise action in highest-risk situations.
- Call for increased data-collection, particularly at country level to determine where corruption originates and the impacts it has.

What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

- Industry-level collaboration and capacity-building
- Multi-stakeholder dialogues
- Breakdown of silos
- Coordinated advocacy to policymakers

Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists or any other stakeholder that should be noted? Please specify if relevant.

- Call for governments to develop due diligence legislation
- Call to action for businesses to enable a company culture of respect and use leverage in business relationships to spread good practices throughout the private sector.
- Call for increased awareness of cross-over solutions for reducing corruption and advancing human rights, such as due diligence and transparent reporting.

Rapporteur's name and date submitted

Robin Hodess, 12.2022