

Six Best Practices in Corporate Human Rights and Social Responsibility

With the Biden administration's emphasis on human rights and the upcoming 10th anniversary of the UN Guiding Principles on Business and Human Rights, corporate social responsibility is an issue of increasing focus and prominence.

By Rachel Alpert, Corey Smith and Karam Jardaneh

With the Biden administration's emphasis on human rights and the upcoming 10th anniversary of the UN Guiding Principles on Business and Human Rights, corporate social responsibility is an issue of increasing focus and prominence.

A patchwork of laws and policies lays the groundwork for U.S. government enforcement in this space. Section 307 of the Tariff Act of 1930 prohibits the importation of merchandise wholly or partially mined, produced or manufactured in any foreign country by forced or indentured labor. Such merchandise is subject to exclusion from the United States and seizure, and may subject the importer to criminal investigation. Section 321(b) of the Countering America's Adversaries Through Sanctions Act creates a specific presumption under the Tariff Act that certain items manufactured anywhere in the world by North Korean nationals are prohibited forced labor goods. Separately, recent seizures under the Tariff Act, sanctions designations under the Global Magnitsky Act, Department of Commerce Entity List designations, and an interagency advisory notice issued last summer highlight the U.S. government's particular focus on forced labor in the Xinjiang autonomous region of China.

Issues of corporate human rights and social responsibility are also at the fore in the courts. In the *Nestlé & Cargill v. Doe* case this term, the Supreme Court will analyze the scope of U.S. corporate exposure to lawsuits alleging facilitation of claimed human rights abuses through their supply-chain relationships.

International human rights and corporate social responsibility efforts continue to gain momentum. To mark the occasion of the 10-year anniversary of the adoption of the UN Guiding Principles on Business and Human Rights, the UN has launched a new project to expand implementation of the principles in the next decade. Many jurisdictions are already adopting human rights-related legislation based on these principles. Notably, the EU is committed to introducing mandatory corporate human rights due diligence obligations. The EU has yet to confirm the details of such obligations, but they may extend to any company operating in the EU (including U.S. companies with EU operations).

In light of the increased U.S. and international focus on human rights and corporate social responsibility, we have identified six best practices to promote and support human rights and corporate social responsibility in supply chains.



Shutterstock image

HOW Can Companies Promote Human Rights and Corporate Social Responsibility?

Commit to respect human rights.

A business's written policy commitment will both set the tone for an environment where human rights are taken seriously and facilitate the development of more detailed policies and procedures to honor this commitment. A strong policy commitment is one that is:

- Approved at a senior level;
- Communicated both internally and externally; and
- Reflective of the business's human rights expectations of its partners, suppliers, and other associated third parties, including by specifying minimum labor standards.

Implement a human rights due diligence process.

The details of a company's human rights due diligence process depend on the size of the business and the nature and location of its operations and supply chain. Due diligence

should include assessments of direct business impacts, as well as broader community impacts that directly result from supply chain business operations, products or services. The following steps are important elements of a human rights due diligence process:

- Mapping the supply chain, from sourcing of raw materials, to sub-contracted manufacturing, to the assembly of finished goods, to end users;
- Assessing the risk level of each step in the supply chain, based on industry, raw materials, and location, to identify areas for enhanced due diligence; and
- Developing internal and external processes to audit and monitor the global supply chain according to the assessed risk levels.

Assess actual and potential human rights impacts.

Assessment of human rights impacts is an ongoing process, which businesses should undertake when they embark on new activities, new business or supply chain relationships, and periodically thereafter. It should involve human rights experts and include meaningful consultations with potentially affected groups and other relevant stakeholders. Factors to take into account in an assessment include:

- Human rights risks in the countries of operation;
- The nature of the supply chain; and
- Industry specific risks.

Integrate and act upon the findings from impact assessments.

Once a business identifies human rights impacts it is important to take steps, as outlined below, to cease or prevent those impacts and, where possible, to mitigate adverse human

rights impacts by other involved parties.

- With involvement of legal counsel and internal stakeholders and, where possible, affected populations, create a roadmap to halt and prevent activities causing adverse impacts;
- Provide employees training and guidance on identifying and preventing identified human rights impacts, including training on applicable business policies and processes; and
- Mandate and enforce respect for human rights in agreements with third parties.

Monitor effectiveness of due diligence procedures on reducing human rights impacts.

Adopting and tracking human rights based indicators at a corporate level is key to effectively monitoring due diligence and responses to identified human rights impacts. Companies should consider both qualitative and quantitative human rights indicators, incorporating feedback from internal and external sources (including outside experts, industry groups and affected individuals, where possible). The OECD identifies the following representative indicators in its Due Diligence Guidance for Responsible Business Conduct:

- Percentage of individuals previously affected by human rights impacts who now believe the issue has been adequately addressed;
- Number of human rights action items the business has implemented to address identified impacts; and
- Rate of (re)occurrence of identified human rights impacts linked to the business.

Report on human rights performance and engagement.

Communicating information on the steps a company takes to comply with human rights standards demon-

strates good faith and accountability to the public. While often voluntary, reporting on human rights compliance is mandatory for certain companies in certain jurisdictions, including California under the California Transparency in Supply Chains Act, and the UK under the UK Modern Slavery Act. Human rights reporting may incorporate information on a range of topics, including:

- Business structure and supply chain relationships;
- Policy commitment to respecting human rights;
- Human rights due diligence processes; and
- Specific updates on key human rights issues.

Rachel Alpert is a Washington, D.C.-based partner in Jenner & Block's investigations, compliance, and defense practice. An international trade and sanctions lawyer who previously spent seven years in the U.S. Department of State's Office of the Legal Adviser, Alpert counsels domestic and international companies on a range of issues, including trade sanctions compliance, supply chain and human rights accountability, and CFIUS matters. Corey Smith, also based in D.C., is an associate in the firm's litigation department and a member of the investigations, compliance and defense practice. She has represented corporate and individual clients in white-collar criminal and regulatory enforcement matters as well as government and internal investigations. Karam Jardaneh is based in London and is an associate in the firm's investigations, compliance and Defense Practice. She has represented corporate, institutional and individual clients on white-collar crime matters, including sanctions and regulatory issues, among others.