

Peace and Prosperity

Commission on Corporate Responsibility and Anti-corruption

ICC comments UN consultation Business and Human Rights and Anti-corruption

The International Chamber of Commerce (ICC), as the world business organization speaking with authority on behalf of enterprises in every part of the world, appreciates the opportunity to provide input to the UN Working Group on Business and Human rights on “connecting the business and human rights and anti-corruption agendas” .

ICC is firmly committed to respecting human rights and to ensuring that human rights are respected throughout the value chains of businesses across the world.

ICC believes that the UN Guiding Principles on Business and Human Rights (UN GPs) represent a transformational roadmap to a future where human beings and businesses alike can thrive and prosper. ICC actively supports its members worldwide to scale up implementation of the UN GPs— including through the deployment of ICC capacity building tools and accessible training for responsible business conduct – and we will continue to intensify these efforts to achieve the maximum on the ground impact.

ICC also pioneered the business drive for anti-corruption in commercial transactions as it believes that only a corruption-free system will enable all participants to compete on a level-playing field and will help uphold integrity including business worldwide.

Specific Comments

1. How can anti-corruption compliance and human rights due diligence be better coordinated within companies as part of an overall approach to responsible business conduct? What are examples of good practices?

Third party due diligence is an integral part of an effective compliance program and one which businesses adhere to in line with global, regional and domestic anti-corruption laws. As part of this process, companies check reputational and legal risks associated with the third party, who will represent them in the marketplace. What becomes important is how much the topic of human rights due diligence is incorporated into these checks.

Recommendations for alignment of anti-corruption compliance and human rights due diligence include, but are not limited to:

- Integration of human rights and antic-corruption in messaging from Senior Leadership and corporate policies.
- A shift away from “box-ticking” compliance to promoting a responsible business culture.
- Integrating human rights in ongoing anti-corruption, compliance and integrity training of employees. These can include real-life scenarios. Design measures to test the effectiveness of such training programs.
- Integration of human rights in existing supply chain due diligence processes and policies. “Risk-to-business” and “risk-to-people” approach are both equally important to ensure both a prosperous commercial sector as well as a culture of transparency, integrity, compliance and respect for human rights.

- Integration of human rights databases into existing third-party checks to ensure whether the third party (partner, supplier and end-customer) being screened is blacklisted for a human rights violation (in addition to other compliance concerns, including, corruption, anti-money laundering, etc.).
- If a transaction involves a sale, assessment of the products to ensure that the technology may not end up in the hands of unintended parties – not only from an export controls/sanctions angle, but also from a human rights angle (i.e., sale to a government perceived to have high levels of corruption / human rights concerns).

One example of this is the various Artificial Intelligence solutions – and the impact on human rights violations if used by corrupt governments. Some examples include:

- Whether an AI solution be utilised to identify or pinpoint the identity of a whistle-blower in a corrupt government with the intent to retaliate against that individual (personally/professionally/safety)?
 - Governments are making increasingly use of open data to identify those individuals / corporations that require tax scrutiny. Can an AI solution be manipulated to identify those individuals / corporations whose views are not in line with the vision of the current government in place? In order to minimise the risk of such concerns, companies should proactively assess their third parties / end-customers in light of the commercial transactions.
- If the third party is a supplier / sub-contractor, depending on the perceived risk corruption/human rights violations of a country, additional steps may need to be taken, including, but not limited to, site visits to assess the conditions of facilities of the third party.
 - Finally, another important factor is the topic of donations or charitable contributions. It is common for companies, countries and multi-lateral organisations to provide donations and charitable contributions to support with social causes with which they are aligned. What is at risk is to ensure that the funds donated are utilised for their intended purpose of helping the country socially and does not end up in the hands of politicians for their personal benefit. In these instances, companies should focus on the 1) transparency of these donations as well as related public reporting; and 2) incorporate systematic controls and a thorough monitoring over use of these funds to ensure that they reach their purpose.

It should be noted that a real global impact cannot be made only through a company's internal processes; external involvement is just as important. This includes, but is not limited to engagement in collective action, working closely with multilateral organisations, governments and other companies.

2. Are there areas where there should be greater policy alignment, in terms of policy reforms, that will benefit both the business and human rights and anti-corruption agendas, such as in public procurement, whistle -blower protection, beneficial ownership reform and conflict of interest legislation with respect to public officials?

Corruption and human rights are not the only two topics where greater policy alignment is needed. For example, greater alignment is also needed to address issues linked to corruption such as money-laundering and tax evasion. Increased policy coherence on these issues would lead to greater information transparency in those jurisdictions that traditionally have low transparency.

Increased policy coherence is also needed to simplify and digitalize public procurement processes, where possible. Where these are excessively burdensome, this creates the risk of companies resorting to bribery of low paid public officials in order to circumvent bureaucratic requirements.

Greater policy alignment is needed on Conflicts of interest legislation, which should address different categories of categories of interest, to determine the applicability of mitigating measures once these are reported and registered.

Greater policy coherence is also needed in areas of data privacy and protection.

3. How do corrupt activities impact the ability of victims to seek access to an effective remedy? What measures can States and companies take to address these challenges?

Governments

To improve victims' access to effective remedies, states must primarily ensure that existing laws relating to non-discrimination, anti-bribery, whistle-blower protection, protection of labour rights are enforced effectively.

The state should promulgate laws that provide a mechanism to ensure company compliance companies with duty of care, such as public reporting, annual non-financial audits, communication with stakeholders, etc., and a liability mechanism in case of actual harm.

Government policies should also make provision for financial and legal support to individuals and communities affected by corrupt practices and human rights abuses by business organisations.

Policies for effective remedy may include rehabilitation, financial compensation, injunctions or other punitive actions, depending on the nature of the adverse impact.

Business

In countries with high levels of corruption, where people enjoy limited social and economic rights, companies, multi-lateral organisations and other governments have a strong responsibility. Business must prioritize awareness-raising, training and continuous messaging to work towards transparency in interactions with governments.

With respect to measures by companies, it is useful for companies to provide complaints and grievance mechanism for employees, workers in the supply chain and customers. For developing an effective grievance mechanism, companies should identify areas where their human rights and corruption impacts are most likely, understand impacts on different stakeholders and train complaints-handling staff on procedures and remedies.

Remedies provided by the company could include apologies, promise of non-repetition of disputed actions, compensation and/or internal penalties. It is important for companies to regularly review its grievance mechanism to check whether it suits the needs of its business, stakeholders and effectively addresses human rights and corruption issues. Based on the outcome of the issues raised and complaints resolved, companies should also consider changing their business practices, procedures or relationship with business partners.

Conclusion

Last, greater coordination between the relevant UN bodies - the OHCHR and the UN ODC - with regard to approaches on implementation of the UN GPS and of the UN Convention against Corruption, both at global Secretariat level and between in-country UN offices can help promote greater coherence on the two agendas.

ICC, as the most representative global business organization, can also support the development of policy coherence through the organization of global government-business multi-stakeholder consultations to identify common approaches and solutions for policy coherence on the business and human rights and anti-corruption agendas.

ICC hopes that these comments will be helpful for the UN Working Group's consideration. ICC continues to stand ready to closely work with the UN Working Group on its crucial work on the

implementation of the UN Guiding Principles on Business and Human Rights.

About the International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC) is the world's largest business organization representing more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

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