GLOBAL DEVELOPMENT OF HUMAN RIGHTS AND DUE DILIGENCE LAWS

By Mark Temme, Global Business Development Manager at Intertek Business Assurance

Working in the field since 2006 with practical working experience on various continents. Although Mark has a technical background as a chemical processing engineer he has developed his passion for sustainability and social responsibility over the last 16 years, and has been working and gathering practical working experience on various continents. And he is addicted to rugby.

The changes and developments regarding requirements on human rights as well as on due diligence pose some challenges to global businesses. Having an overview of existing as well as upcoming requirements and laws is compulsory to be able to take right decisions.

Expectations from investors, business partners, non-governmental organizations and governments have never been higher for businesses to make meaningful progress towards ‘knowing and showing’ their respect for human rights. Corporate human rights due diligence is slowly becoming expected conduct for all types of businesses, regardless of the size or sectors.

Government actors from around the world have attempted to create incentives, and on the flip side put legal action as a threat, for human rights due diligence through mandatory regulations and disclosure laws. These laws require businesses to report their policies and practices concerning the identification and mitigation of human rights impacts within their supply chains.

Proper management of the supply chain remains a key element that must be in place to mitigate risk and avoid related reputational, operational, business disruption and litigation costs.

The responsibility of business enterprises to respect human rights refers to internationally recognized human rights as expressed in the Universal Declaration of Human Rights, the eight fundamental Conventions of the International Labour Organization (ILO), the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the Organisation for Economic Co-operation and Development Responsible Business Guidelines (OECD).

What does this term “Due Diligence” mean in this context? According to OECD Guidelines, Due Diligence is the process enterprises should carry out to identify, prevent, mitigate, and account for how they address actual and potential adverse impacts in their own operations, supply chain and other business relationships. Effective Due Diligence should be supported by efforts to embed Responsible Business Conduct into policies and management systems and aims to enable enterprises to remediate adverse impacts that they cause or contribute to. In essence, it means that companies must take clear actions to ensure that people and local communities that are part of its supply chain must not be harmed. It is designed as a process approach for companies to establish an appropriate risk management system that is flexible enough to meet each unique operating context that includes a risk analysis, complaints procedure, and active steps to take preventive measures to effectively stop any known human rights violations.

WFSGI. REINVENTING THE REGULATIONS
Due Diligence is defined by the United Nations as the responsibility of business enterprises to (a) Avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur and (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts. The foundational mantra is “Do no harm”.

What is “Human Rights” exactly? This boils down to the essential conditions that all of us need if we are to live lives of dignity and equality. They include our rights to be treated decently at work, to be free to express our opinions and beliefs, to have privacy and be free from harassment, abuse, or discrimination; and our rights to access clean drinking water, sanitation, healthcare, and nutrition.

Great practical examples of implementing Due Diligence and Responsible Business conduct across company value chain are provided by the World Business Council for Sustainable Development Implementation Guidance, including:

• When a company tackles gender discrimination or sexual harassment across its workplaces, it isn’t just “doing no harm”; it is trying to change often long-standing behaviors both in work and beyond, so that women can pursue their work and home lives with dignity and security.
• When a company plays its part in rooting out forced labor from its supply chain, it isn’t just “doing no harm”; it is working to lift people out of misery and bondage and into a life of new freedom and hope.
• When a company engages with communities around its operations to hear their fears and concerns and works with them to find solutions, it isn’t just “doing no harm”; it is empowering them to be partners in decisions that affect their lives and to claim that same treatment from their government and other organizations.
• When a company minimizes carbon and greenhouse gas emissions in its vast supply chain, it creates the largest possible positive net impact on reversing climate change for a healthier planet.

Supply chains are inherently complex. The expectation is that Human Rights Due Diligence starts with Tier 1 of the supply chain, but obligations will progressively be cascaded down value chains through business-to-business pressure. For many companies, an assessment of potential human rights impacts reveals that the most severe risks to stakeholders occur one or more levels down within the supply chain.

What’s new in human rights legislation?
In recent years, the United Kingdom, Canada, and Australia have released sweeping legislation to combat modern slavery and other offenses relating to trafficking and slavery. In the United States, California released the Transparency in Supply Chains Act. Below you will find several new pieces of legislation aiming to improve the conditions of workers around the world.

German Due Diligence Law
The German Bundestag passed the Supply Chain Act on 11 June 2021. It makes German companies much more responsible than before for the implementation of Corporate Social Responsibility (CSR) throughout their supply chain. From 2023, companies will be obliged to trace procured intermediate goods or finished products at all stages of their supply chain back to any production processes that are harmful to the environment or that violate working conditions.

Norwegian Transparency Act
A new Norwegian law, the Transparency Act, became effective on July 2022 requiring companies to make sure human rights and decent working conditions are respected in their operations and supply chains. Norway’s Transparency Act requires companies to carry out due diligence activities to ensure they are operating responsibly, respecting both human rights and decent working conditions.
EU directive proposal
The European Commission has adopted a proposal in February 2022 for a Directive on corporate sustainability due diligence. The proposal aims to foster sustainable and responsible corporate behaviour throughout global value chains. Companies play a key role in building a sustainable economy and society. They will be required to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights, such as child labour and exploitation of workers, and on the environment, for example pollution and biodiversity loss. For businesses these new rules will bring legal certainty and a level playing field. For consumers and investors, they will provide more transparency. The new EU rules will advance the green transition and protect human rights in Europe and beyond.

The new due diligence rules will apply to the following companies and sectors:
EU companies:
Group 1: all EU limited liability companies of substantial size and economic power (with 500+ employees and EUR 150 million+ in net turnover worldwide).
Group 2: Other limited liability companies operating in defined high impact sectors, which do not meet both Group 1 thresholds, but have more than 250 employees and a net turnover of EUR 40 million worldwide and more. For these companies, rules will start to apply 2 years later than for group 1.
Non-EU companies active in the EU with turnover threshold aligned with Group 1 and 2, generated in the EU. Small and medium enterprises (SMEs) are not directly in the scope of this proposal.

This proposal applies to the company’s own operations, their subsidiaries and their value chains (direct and indirect established business relationships). In order to comply with the corporate due diligence duty, companies need to:
- integrate due diligence into policies;
- identify actual or potential adverse human rights and environmental impacts;
- prevent or mitigate potential impacts;
- bring to an end or minimise actual impacts;
- establish and maintain a complaints procedure;
- monitor the effectiveness of the due diligence policy and measures;
- and publicly communicate on due diligence.