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Regional Risk Spotlight

10 Compliance Best Practices for Business Operations in the Northern Triangle

By [Robert A. Johnston, Jr.](#) and [Rachel Maimin, Lowenstein Sandler](#)

On June 3, 2021, President Joseph Biden **declared** the fight against corruption to be a core national security interest, noting that “[c]orruption corrodes public trust; hobbles effective governance; distorts markets and equitable access to services; undercuts development efforts; contributes to national fragility, extremism and migration; and provides authoritarian leaders a means to undermine democracies worldwide. When leaders steal from their nations’ citizens or oligarchs flout the rule of law, economic growth slows, inequality widens and trust in government plummets.” Among other things, the anti-corruption national security strategy sought to bolster the ability to identify and punish transnational criminals and their enablers, who all too often are corrupt government officials.

Days later, on June 7, 2021, Attorney General Garland **announced** the DOJ’s “Initiatives to Combat Human Smuggling and Trafficking and to Fight Corruption in Central America” and the creation of “Joint Task Force Alpha” “to enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras.” Joint Task Force Alpha further complemented the DOJ’s efforts to fight corruption by “increas[ing] its focus on investigations, prosecutions and asset recoveries relating to corruption in Northern Triangle countries.”

Subsequently, on Oct. 15, 2021, the DOJ **launched a task force** to combat corruption in the Northern Triangle countries of El Salvador, Guatemala and Honduras. The task force is comprised of representatives from the following DOJ Criminal Division components: the FCPA Unit of the Fraud Section, which focuses on investigating and prosecuting overseas bribery cases; the Kleptocracy Asset Recovery Initiative in the International Unit of the Money Laundering Recovery Section, which focuses on recovering assets linked to foreign corruption; and the Narcotic and Dangerous Drug Section, which enforces federal narcotics laws against the manufacturing, importation and distribution of illegal drugs into and out of the United States.

The Northern Triangle “task force is part of the Administration’s commitment to consistently engage in the region to address the root causes of migration. Corruption undermines government ser-

vices and the rule of law, including critical institutions that provide health, education and other services to those most in need.”

In this article, we look at the local corruption climate in the countries of the Northern Triangle and provide 10 tips to mitigate the corruption risks of operating there.

See [“All Eyes on the Northern Triangle: A Call to Action for Companies Operating in the Region”](#) (Nov. 10, 2021).

Corruption and National Security Risks in the Northern Triangle

The Biden administration’s [declaration](#) of global corruption to be “a core United States national security interest” is at least in part due to the large-scale migration of people escaping violence and corruption from the Northern Triangle. Indeed, the U.S. Border Patrol (USBP) encountered almost 700,000 migrants from the Northern Triangle in FY2021 alone. Since 2014, over 2 million people have fled El Salvador, Guatemala and Honduras.

The Northern Triangle presents multiple interrelated corruption and national security risks. The countries are among the poorest in the Western Hemisphere. For example, in Honduras, 73 percent of the country lives in poverty and 54 percent lives in extreme poverty. The populations of the Northern Triangle nations have suffered decades of extreme violence, including civil war and political instability in the 1980s and 1990s, which were followed by a rise in transnational criminal gang and drug cartel activity more recently (such criminality often enabled or facilitated with the help of corrupt government officials). Furthermore, endemic corruption has resulted in weak civil societies and poor social service programs that are ill-equipped to address the countries’ respective societal problems or the suffering of each nation’s ordinary citizens.

See [“A Comparative Look at Anti-Corruption Compliance Program Expectations in Latin America”](#) (Oct. 28, 2020).

El Salvador

El Salvador scored 34/100 on the [2021 Transparency International Corruption Perceptions Index](#) (CPI); although this score is indicative of widespread public corruption in the country, it is the “best” among Northern Triangle nations. The Commission Against Impunity in El Salvador (CICIES) [was established](#) in 2019 in partnership with the Organization of American States (OAS) to help address the issue. Its power and independence were limited by design, and El Salvador ended CICES in 2021. That action was one of many characterized as authoritarian by critics of President Nayib Bukele. In response, USAID has redirected aid meant for the government to civil society groups in the country.

Bukele has generally taken strides toward reducing the homicide rate and gang violence since his inauguration in 2019, though gang violence [has markedly increased](#) in 2022. The U.S. Treasury De-

partment imposed sanctions on Salvadorian officials in December 2021, **accusing** the Bukele administration of negotiating in secret with the gang MS-13 to curb public killings in exchange for political support. Deals such as this seem to show that in El Salvador, as gang violence recedes, the tactics that helped reduce it actually increase opportunities for corruption.

Furthermore, the U.S. Central Intelligence Agency (CIA) **has deemed** El Salvador to be “a transit country for illicit drugs destined for the United States.” As a result of corruption and widespread gang violence, nearly 100,000 Salvadorian migrants were encountered by USBP in FY2021.

Guatemala

Guatemala scored 25 on the CPI in 2021, which ranked Guatemala as one of the most corrupt countries in the world (150 out of 180 jurisdictions surveyed). Guatemala partnered with the United Nations to create the International Commission Against Impunity in Guatemala (CICIG), which **found success** while it was active from 2007 to 2019 by working with the country’s own prosecutors and police. The commission helped prosecute thousands of police officers and dozens of government officials; however, it ended in 2019 when then-President Jimmy Morales, himself under investigation for corruption, refused to extend its mandate. After the commission ended, some involved in prosecuting corruption have been **subject to retribution** in the form of threats and spurious criminal charges.

In FY2021, the USBP **encountered** 279,000 Guatemalan migrants. In addition, there are more than **243,000 internally displaced persons in Guatemala** following three decades of civil war that ended in 1996 and due to ongoing drug cartel and gang violence. According to the CIA, Guatemala is a “a major transit country for illegal drugs destined for the United States with increasing cultivation originating from Guatemala; farmers cultivate opium poppy and cannabis.” This may result from the severe underfunding of public investment, which is often driven by corruption and autocracy, and the psychological effects of the perceived hopelessness of the problem.

Honduras

Honduras scored 23 on the CPI, ranking 157 out of 180 globally and having the worst score among the Northern Triangle nations. Like Guatemala and El Salvador, Honduras **established an anti-corruption commission**, the Mission to Support the Fight Against Corruption and Impunity (MACCIH), in 2016. MACCIH did not have the same level of independence that Guatemala’s CICIG had, and it was hampered by a lack of resources and Honduran officials’ efforts to shield themselves from investigation. MACCIH’s mandate ended in 2020 when then-President Juan Orlando Hernandez refused to extend it. Since then, Hernandez has been extradited to the U.S. to face drug-trafficking and firearms **charges**, and his successor, Xiomara Castro, has requested support from the UN to create a new commission.

Corruption has strong individual impacts on Hondurans, driving migration and implicating U.S. national security interests. Among the Northern Triangle nations, Honduras **had the highest per-capita homicide rate in 2021**, 39 per 100,000, largely attributed both to criminal gang and extrajudicial security force killings. The UN Refugee Agency also counted at least 247,000 Hondurans who were internally displaced by violence through 2018. It is perhaps unsurprising that in FY2021, Hondurans made up the largest number of USBP encounters among Northern Triangle migrants, at over 300,000.

In addition, **according to the CIA**, there is “some experimental cocoa cultivation in Honduras,” and the country is a “transshipment point for cocaine destined for the United States and precursor chemicals used to produce illicit drugs.”

See “**Latin American Corruption in the Crosshairs of the Biden Administration**” (Apr. 14, 2021).

10 Compliance Best Practices for Northern Triangle Operations

On May 10, 2022, Millicom International Cellular S.A. (Millicom), a NASDAQ-listed telecommunications company, publicly disclosed that it received a DOJ subpoena on April 27, 2022, requesting information related to the purchase of its former Guatemalan joint venture partner’s minority interests in Millicom’s Guatemalan subsidiary and contacts with certain Guatemalan government officials. The subpoena further sought information related to Millicom’s activities in other Latin American countries.

Previously, in 2015, Millicom reported improper payments to Guatemalan officials to the DOJ; however, in 2018, the DOJ closed that investigation without taking further action. It is not clear from **Millicom’s recent Form 6-K filing** whether the company’s current Guatemala corruption investigation relates to the DOJ’s Northern Triangle initiative. Nevertheless, it should be abundantly apparent that the FCPA compliance risks attendant to business operations in the Northern Triangle are actual and not hypothetical.

Accordingly, companies would be well served to implement the following 10 anti-corruption and national security compliance best practices for their operations in the Northern Triangle region.

1) Resources

Ensure that your compliance, legal and internal audit functions are adequately staffed, including Spanish-speaking staff, and empowered by senior management to address and mitigate the unique compliance challenges posed by the region. Indeed, as stated in the **DOJ’s and SEC’s FCPA Resource Guide**, the compliance department should have “adequate autonomy from management, and sufficient resources to ensure that the company’s compliance program is implemented effectively. Adequate autonomy generally includes direct access to an organization’s governing authority, such as the board of directors and committees of the board of directors (e.g., the audit committee) ... More-

over, the amount of resources devoted to compliance will depend on the company's size, complexity, industry, geographical reach and risks associated with the business."

See "[How Lawyers Can Leverage the Shifting Environment to Enhance Compliance Programs](#)" (Aug 17, 2022)

2) Appropriate Classifications

Treat each Northern Triangle country as "high risk" under internal policies and procedures. Companies should take a risk-based approach to designing and implementing their anti-corruption compliance programs. As stated in the [DOJ's and SEC's FCPA Resource Guide](#), companies should place their attention and resources on the areas of operation that pose the most significant risk. (See Point 3, Risk Assessments.) Given the corruption, sanctions and national security risks posed by the Northern Triangle, companies with operations there should consider those countries to be "high risk" under their policies and procedures and subject their business activities and operations, e.g. diligence related to engaging third parties (see Point 6, Third Party Diligence), to the highest level of scrutiny and review.

3) Risk Assessments

Conduct periodic compliance risk assessments of your operations. Risk assessments are a crucial component of any well-designed compliance program. Indeed, how can one design effective compliance controls or appropriately allocate compliance resources if one does not fully understand the risks posed by the company's day-to-day operations? Moreover, a company's operations and commercial activity may change over time. Conducting periodic risk assessments enables the company to assess whether new controls and procedures are necessary to mitigate risks posed by changing commercial operations.

See "[A Quick-Start Guide to Risk Assessments](#)" (Mar. 31, 2021).

4) Policy Assessments

Increase the frequency and scope of testing of compliance policies and procedures in the Northern Triangle. Similar to risk assessments, frequent policy reviews (at least annually) and periodic compliance testing of compliance procedures (quarterly, semi-annually, or annually) enable the compliance department to confirm that existing policies and controls are working as intended and to identify potential instances of non-compliance before they metastasize into serious problems.

5) Audit Testing

Increase the frequency and scope of internal audit testing of staff, operations and systems in the Northern Triangle. Often referred to as the "third line of defense," internal audit's compliance role is to provide independent assurance to senior management that the company's operations, generally,

and compliance department, specifically, are operating as intended. Internal audit does not implement compliance procedures; however, they can provide useful and objective recommendations as to how the company's control environment can improve. Companies with operations in high-risk jurisdictions, such as the Northern Triangle countries, should be sure that internal audit work plan includes a review of some aspect of Northern Triangle operations on a periodic basis. Similar to policy assessments, internal audit testing and review identify compliance gaps or controls needing remediation before they fester into major issues.

See "[HPE's Approach to Anti-Corruption Audits and Analytics](#)" (Apr. 29, 2020).

6) Third-Party Diligence

Conduct thorough and enhanced due diligence on all business partners, sales channel partners, and other high-risk third parties with governmental touchpoints. The company should understand the qualifications, affiliations and business reputations of its third-party partners and service providers. Enhanced diligence should include screening the proposed partner or third party as well as any direct and indirect beneficial owners for connections to government officials and sanctioned parties. Moreover, the business rationale for using a particular third party should be documented, and all such third-party relationships should be supported with a written contract that contains appropriate compliance representations, warranties and undertakings (see Point 7, Contractual Provisions).

See "[Lessons From Airbus on Third-Party Corruption Risk Mitigation](#)" (May 25, 2022).

7) Contractual Provisions

Ensure that representations, warranties and undertakings, including audit rights, in all contracts and agreements are robust. All contracts with third parties in high-risk jurisdictions like the Northern Triangle should include an agreement that the third party will comply with all applicable anti-bribery and anti-corruption laws, including the FCPA, and that the third party will maintain its books, records and accounts related to its interactions with the company in such a manner that they can be easily and readily audited upon request (and that the third party will cooperate in any such audit). A third party's reluctance or refusal to provide compliance with laws related contractual provisions should be treated as a "red flag" and escalated within the company prior to engaging the third party.

See "[Doing More With Less: Tools for Managing Third Party Risk With Scarce Resources](#)" (Apr. 28, 2021).

8) Audit Rights

Exercise audit rights proactively to confirm that all partners, vendors and counterparties are living up to their contracted compliance obligations. In high-risk jurisdictions, such as the Northern Triangle countries, it is imperative to routinely and proactively exercise audit rights over third party partners and service providers to confirm that those third parties are complying with applicable law

as well as the terms of the contract. Auditing and monitoring can entail a wide range of activity, from periodically re-confirming a third party's ownership structure to reviewing payments to ensure conformity with the applicable contract to engaging service providers to conduct a full audit of the third party.

9) Training in Native Language

As stated in the [DOJ's and SEC's FCPA Resource Guide](#), “[c]ompliance policies cannot work unless effectively communicated throughout a company.” Accordingly, it is of paramount importance to train your employees, in Spanish, on compliance risks identified during your risk assessment or otherwise informed by other audits, internal investigations and reviews.

See [“How Apache Uses Case Studies to Keep Its Training Pain-Free”](#) (Oct. 26, 2019).

10) Compliance Action Plan

Develop and implement an action plan to manage extortion or other threats of violence waged by the Northern Triangle's notorious transnational criminal gangs against your employees, facilities and equipment. Similar to how many companies have a detailed work plan ready in the event of a cyber-attack, companies operating in the Northern Triangle should have a detailed plan in place as to how to respond to violent criminal activity that establishes responsibility for interactions with law enforcement, impacted employees, insurers and outside advisers.

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