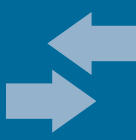


Doing Business Better: **RECOMMENDATIONS** for Political Leadership on

CORPORATE ACCOUNTABILITY & SUSTAINABILITY



CORE

PUTTING PEOPLE
& THE PLANET AT THE
CORE OF BUSINESS

Doing Business Better: Recommendations for Political Leadership on Corporate Accountability and Sustainability

THERE IS NO SHORTAGE OF OPPORTUNITIES to make a difference; the run-up to the 2015 General Election is the time for political parties to join the conversation.

The private sector is a vital part of the domestic and international economy. Yet the last five years have seen a crisis of trust in business, following scandals around tax avoidance and excessive executive pay, and revelations of shocking practices in supply chains causing serious harm to people and the environment.

The UK has taken some significant steps to address irresponsible corporate behaviour and to meet the growing expectations of ethical business standards from consumers and investors. In 2013 the UK put corporate transparency on the G8's agenda and became the first country to release a National Action Plan to implement the UN Guiding Principles on Business and Human Rights. Political will is needed now to translate policy commitments into practical changes.

There is no shortage of opportunities to make a difference: effective international frameworks on tax and investment; measures on due diligence and greater transparency to help prevent abuses in supply chains; and steps to guarantee access to justice for victims of corporate abuse should be priorities. Business people, consumers, campaigners, and investors are already talking about what they expect from government. The run-up to the 2015 General Election is the time for political parties to join the conversation.

ABOUT CORE

CORE is the UK civil society network on corporate accountability. We bring together experience and expertise on international development, the environment and human rights from NGOs, academics, trade unions and legal experts. CORE's aim is to reduce business-related human rights and environmental abuses by ensuring companies can be held to account for their impacts both at home and abroad, and to guarantee access to justice for people adversely affected by corporate activity.

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September 2014

SUMMARY OF RECOMMENDATIONS



TAX TRANSPARENCY

The next government should adopt measures to improve the availability of, and free access to companies' statutory accounts in all countries (including UK Overseas Territories and Crown Dependencies) as well as requiring all large companies to adopt public country by country reporting on tax.



INVESTMENT TREATIES

The UK government should make human rights obligations central to its Bilateral Investment Treaties (BITs) and press for the same within EU investment agreements: investor protections should be contingent on companies' adherence to international labour, human rights and environmental standards.

Recourse to Investor-State Dispute Settlement (ISDS) mechanisms should not be included in UK BITs and the UK should lead calls for removal of ISDS from EU investment agreements.



CONFLICT MINERALS

The UK should press for a mandatory EU scheme to compel companies to take steps to source natural resources responsibly. The scope of companies covered by the proposed scheme should be broadened from the limited number of primary importers, to include companies that first place component parts or finished products containing those materials on to the EU market.



POLICY COHERENCE

UK companies receiving taxpayer support or delivering government-funded projects should meet the threshold standards set out in the UN Guiding Principles on Business and Human Rights. For example, partnership companies or those receiving other kinds of support from DFID should be required to conduct human rights due diligence. These criteria should also apply to businesses seeking Export Credit support.

Use the 2015 review of the UK's Business and Human Rights Action Plan to create a genuine strategy to support responsible business activities by developing detailed actions and a timeline for delivering on commitments.



SUPPLY CHAINS

Amend the Modern Slavery Bill to require large companies to report on what they are doing to identify and address modern slavery in their international supply chains.

Require all large companies, including those not publicly listed on the Stock Exchange to report on key social, environment and human rights issues in their supply chains.



ACCESS TO JUSTICE

Address the legal and financial barriers which make it difficult for vulnerable individuals and communities in developing countries to bring civil damages claims against UK companies.

Enforce laws and enact reforms to allow for criminal prosecutions against UK companies for conduct that results in human rights abuses.

Ensure non-judicial mechanisms have the appropriate resources and powers to hold companies to account.

Effective International and Regional Frameworks

THE UK GOVERNMENT should use its influence internationally to make more progress on corporate tax avoidance and to put human rights at the centre of investment treaties.



CORPORATE TAX: ACTIONS FOR TRANSPARENCY AND PROSPERITY

Addressing corporate tax avoidance and evasion is key to strengthening the ability of many countries, developing and developed, to grow their economies and create equitable, prosperous and healthy societies through effectively mobilising domestic resources. Developing countries lose an estimated \$100 billion to \$160 billion annually to corporate tax avoidance.¹ This considerably limits these countries' ability to move beyond reliance on aid and creates huge anger in the UK, where companies including Starbucks, Google and Amazon have been accused of an "immoral" use of secretive jurisdictions, inflated royalties payments to subsidiaries and complex company structures to avoid tax.²

Many governments have recognised the need to respond to tax avoidance and evasion. Inter-governmental bodies such as the G8, G20 and OECD have been working to reform international tax rules to limit corporate tax avoidance globally. However, progress towards such measures is uneven and undermined by corporate lobbying, to the detriment of developing countries and non-corporate interests.

CASE STUDY: ASSOCIATED BRITISH FOOD GROUP (ABF)

One of the world's largest food multinationals, ABF significantly reduced its taxable profits in Zambia by an array of transactions involving tax havens including: the payment of large management fees to a sister company in Ireland, the routing of large bank loans through Ireland and the shuffling of the Zambian company's ownership through a string of holding companies in Ireland, Mauritius and the Netherlands. ActionAid has shown how this financial engineering resulted in an estimated loss to Zambian tax revenues of \$17.7 million between 2007 and 2012 – more than 14 times the value of UK aid to Zambia during the same period, provided to combat hunger and food insecurity in a country where more than one third of child deaths are related to malnutrition. And this is just one multinational company in one developing country.³

RECOMMENDATIONS

The next government should adopt measures to improve the availability of, and free access to companies' statutory accounts in all countries (including UK Overseas Territories and Crown Dependencies) as well as requiring all large companies to adopt public country-by-country reporting on tax.

We welcome the decision to create a new, public register of company ownership. We encourage the next government to go further and adopt additional measures to enhance corporate transparency both domestically and internationally.



INVESTMENT TREATIES: SAFEGUARDING HUMAN RIGHTS

International investment treaties establish enhanced and exclusive rights for foreign private investors. The UK has 93 Bilateral Investment Treaties (BITs) in force, nine with low income countries. Treaties with Ethiopia, Gambia, Kenya, Sierra Leone and others await ratification.

Investment treaties have come under mounting criticism on the grounds that they ignore the human rights and environmental obligations of host countries and do not take into account adverse impacts on local communities affected by the investment. Just as significantly, they impose no actionable responsibilities on foreign investors to operate to acceptable standards that reflect international law. Agricultural investments are of special concern, with evidence that they are contributing to human rights violations and the destruction of livelihoods, including the displacement and dispossession of small farmers and indigenous peoples, and exacerbating inequality in countries where the distribution of land is already extremely uneven.

CASE STUDY: CHURCHILL MINING VS. INDONESIA

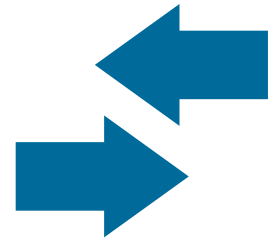
UK-based Churchill Mining is currently claiming \$2 billion from the Indonesian government after local partner Ridlatama Group's coal concession rights were revoked. Indonesia's Justice and Human Rights Minister Amir Syamsuddin has said that Churchill never had legitimate mining rights in Indonesia, that it explored a protected area without permission, and that state auditors discovered fraud at the company. "We do not want to damage the investment climate. But investors who come must also be legitimate and comply with all our laws", Syamsuddin has said.⁴ The case continues.

RECOMMENDATIONS

The UK government should make human rights obligations central to BITs: investor protections should be contingent on companies' adherence to international labour, human rights and environmental standards.

Recourse to ISDS mechanisms should not be included in UK BITs and the UK should lead calls for removal of ISDS from EU investment agreements.

Foreign investors can use the Investor-State Dispute Settlement (ISDS) mechanism in the treaties to challenge domestic public policy measures which they regard as a potential threat to their profits. Legislative measures on Black Economic Empowerment in South Africa and public health in Uruguay, and government decisions such as El Salvador's move to end heavily polluting mining have led to investors claiming breaches of BITs. The prospect of large claims through this inequitable system of arbitration can undermine developing countries' ability to act in the public interest. There is also considerable public opposition to the inclusion of ISDS in the current Transatlantic Trade and Investment Partnership (TTIP) negotiation between the EU and the United States.



CONFLICT MINERALS: EU MEASURES ON RESPONSIBLE SOURCING

The trade in minerals, precious stones and other commodities has fuelled some of the world's most brutal conflicts for decades. Global Witness has exposed how natural resources that have funded war and human rights abuses around the world, are used and traded internationally including by UK-based companies.⁵ These companies risk financing the very conflicts – in countries including Afghanistan, Burma, Colombia and the DRC – that are the focus of UK aid flows and international peacekeeping efforts.

RECOMMENDATIONS

The UK should press for a mandatory EU scheme to compel companies to take steps to source natural resources responsibly. The scope of companies covered by the proposed scheme should be broadened from the limited number of primary importers, to include companies that first place component parts or finished products containing those materials on to the EU market.

The European Commission is currently proposing a voluntary due diligence scheme for a limited number of EU-based importers to address the issue of conflict minerals but this will not give consumers a guarantee that the products they buy are not fuelling violence and conflict. The UK should use the EU negotiation process to call for a law that will compel companies to responsibly source natural resources in line with existing international standards.⁶

Policy coherence on responsible business

CITIZENS AND BUSINESSES are looking for clarity from government on what's expected from companies. Genuine policy coherence will reinforce responsible business practices.



POLICY COHERENCE ON RESPONSIBLE BUSINESS

Innovative government projects in collaboration with the private sector should go hand-in-hand with a realistic approach to corporate accountability. Rather than labelling policies 'pro-' or 'anti-' business, the discussion should be about understanding how businesses' varied activities can impact on poor people in positive and negative ways. This is particularly important as governments place more emphasis on putting the private sector at the heart of policy at home, in the developing world and in climate finance mechanisms, often via complex 'public private partnerships'. The nature of business today means that different government departments – the Treasury, BIS, FCO, DFID, DECC and the MOJ – are all involved in setting the right standards for corporate behaviour. Citizens and businesses want clarity about what's expected, rather than a plethora of CSR initiatives. Genuine policy coherence across government will reinforce rather than undermine responsible business practices.

RECOMMENDATIONS

UK companies receiving taxpayer support or delivering government-funded projects should meet the threshold standards set out in the UN Guiding Principles on Business and Human Rights. For example, partnership companies or those receiving other kinds of support from DFID should be required to conduct human rights due diligence. These criteria should also apply to businesses seeking Export Credit support.

Use the 2015 review of the UK's Business and Human Rights Action plan to create a genuine strategy to support responsible business activities by developing detailed actions and a timeline for delivering on commitments.

Safer Supply Chains

GREATER TRANSPARENCY in the supply chains of large companies will raise standards and give consumers and investors the assurances that they are looking for on social and environmental issues.



THE NEED FOR TRANSPARENCY

Most of the items that we need and use on a daily basis – food, clothing, mobile phones, computers, cars, our children's toys – are now produced outside of the UK or include materials sourced elsewhere. Increasingly, consumers want information about where products come from and the conditions in which they are made. An IPSOS poll from June 2014 showed that 83% of people questioned are concerned about whether products are produced in an ethical way.⁷

CASE STUDY: SCANDALS IN SUPPLY CHAINS

Over the last eighteen months, there have been serious scandals involving UK supply chains.

- On 24 April 2013 the Rana Plaza factory complex in Bangladesh collapsed, killing 1,130 workers, many of them young women. In the rubble were the labels of dozens of Western brands.⁸
- Work by Friends of the Earth published in November 2012 revealed how tin mining in Indonesia has polluted water, threatening fishermen's livelihoods. The tin was destined for mobile phones.⁹
- In June 2014, a Guardian investigation showed how slave workers are subject to appalling violence in the supply chain of seafood products sold by major US, British and other European retailers.¹⁰

RECOMMENDATIONS

Amend the Modern Slavery Bill to require large companies to report on what they are doing to identify and address modern slavery in their international supply chains.

The Modern Slavery Bill is an important step towards achieving the goal of ending slavery. The addition of supply chain transparency measures would ensure that UK businesses do not sustain and benefit from slavery, while creating a level playing field for all businesses that are taking steps to address slavery issues within their operations. Parliamentarians from all parties have joined campaigners, investors, and businesses to back calls for the Bill to be amended.

Require all large companies, including those not publicly listed on the Stock Exchange to report on key social, environment and human rights issues in their supply chains.

From 2016 large listed companies will have to report on key social, environmental and human rights impacts and risks in their supply chains.¹¹ This will help to give consumers assurances about products and will provide shareholders with an understanding of the social and environmental performance of companies they invest in. Companies not listed on the Stock Exchange are not covered by the new requirement, despite their significant market presence: a typical UK top 100 private company has sales ranging between £700 million and £3 billion and employs between 500 and 20,000 staff.¹² Top mid-market private companies' sales range between £130 million and £650 million, and they each employ between 100 and 5,000 staff.¹³ Extending the reporting requirement to these companies would open them up to scrutiny, creating a level playing field for all large firms.

Access to Justice for Victims of Corporate Abuse

Despite numerous allegations of UK corporate misconduct in developing countries, it remains extremely difficult for communities to hold multinationals to account. Action must be taken in the UK to address this.



BARRIERS TO REMEDY MUST BE REMOVED

There is extensive evidence that vulnerable individuals and communities overseas, who have been seriously harmed by UK companies' irresponsible practices, are frequently left without remedy. It is often impossible for these victims to access justice in the country where the harm occurs due to poorly functioning legal systems, political interference and insufficient resources to challenge a multinational company. For these reasons, victims should be able to seek redress in the UK when they have been seriously harmed by the activities of a UK firm.¹⁴

Three years on from the endorsement of the UN Guiding Principles on Business and Human Rights, little progress has been made on action to ensure that all victims of corporate abuse can access remedy. Criminal prosecutions are rarely brought against companies and a range of barriers make pursuing civil cases in the UK very challenging. At the same time, the complaints mechanism based in the Department of Business, Innovation and Skills has no powers of enforcement, cannot offer victims compensation and cannot require a company to take any action, even when a complaint against it is upheld.¹⁵

CASE STUDY: SHELL IN THE NIGER DELTA

The Niger Delta where UK-Dutch oil company Shell has been operating since the 1950s, is now one of the most polluted ecosystems in the world, affecting everyone living there. Millions of people in the Delta drink and bathe in contaminated water and two-thirds of the population rely on the oil-damaged natural environment for their livelihoods, particularly farming and fishing. Oil companies remain reluctant to disclose information about oil spills, preventing affected communities from taking action to defend their rights and blocking the effective exercise of official oversight.¹⁶ Shell's responses to spills have been slow and inadequate and it is reluctant to provide remediation to victims.¹⁷ Very few people in the Delta have been able to hold Shell to account through Nigeria's courts. A tiny proportion of those affected are currently pursuing cases against Shell in the UK but this is a costly and protracted process.

RECOMMENDATIONS

Address the legal and financial barriers which make it difficult for vulnerable and marginalised individuals and communities to bring civil damages claims against UK companies.

Bringing civil cases in the UK has always been challenging for victims; following changes to the court costs regime introduced in 2012 it has become even more difficult. The impact of these changes on access to justice for victims of corporate abuse overseas should be reviewed as a matter of urgency.

Enforce laws and enact reforms to allow for criminal prosecutions against UK companies for conduct that results in human rights abuses.

Ensure non-judicial mechanisms have the appropriate resources and powers to hold companies to account.

Footnotes

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- 1 Global Financial Integrity estimates that developing countries lose \$100bn annually from trade mispricing alone. See <http://bit.ly/1pbLTkm>
Christian Aid estimates that trade mispricing and false invoicing costs developing countries \$160 billion a year. See <http://bit.ly/1kXP25S>
- 2 BBC (2013) Google, Starbucks, Amazon: The rise of ‘tax-shaming’ <http://bbc.in/1lY6eyG>
- 3 ActionAid (2013) Sweet Nothings: The human cost of a British sugar giant avoiding taxes in southern Africa
- 4 Institute for Policy Studies (2013) Mining for Profits in International Tribunals: Lessons for the Trans-Pacific Partnership
- 5 See <http://bit.ly/1rNLvdo>
- 6 The due diligence standard available to companies, now widely endorsed internationally, is the Organisation for Economic Cooperation and Development (OECD) ‘Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’, <http://bit.ly/1jmWmmz>
- 7 Ipsos MORI (2014) Public views on ethical retail See <http://bit.ly/1qHnl82>
- 8 BTC Trade for Development (2013) Labels Primark and Mango found after factory collapse Bangladesh See <http://bit.ly/1qJGHJS>
- 9 Friends of the Earth (2012) Mining for smartphones: the true cost of tin See <http://bit.ly/1dxJn5I>
- 10 The Guardian (2014) Revealed: Asian slave labour producing prawns for supermarkets in US, UK See <http://bit.ly/1kWQla0>
- 11 European Commission (2014) Disclosure of non-financial and diversity information by large companies and groups – Frequently asked questions See <http://bit.ly/WO7d8k>
- 12 See <http://bit.ly/1h69HDb>
- 13 See <http://bit.ly/1pT7Fcs>
- 14 Skinner, G., McCorquodale R., de Schutter, O. (2013) The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business (ICAR, CORE, ECCJ) and Amnesty International (2014) Injustice Incorporated
- 15 UK National Contact Point for the OECD Guidelines for Multinational Enterprises: <http://bit.ly/1muqTI3>
- 16 Amnesty International (2011) The True ‘Tragedy’: Delays and Failures in Tackling Oil Spills in the Niger Delta
- 17 United Nations Environment Programme (2011) Environmental Assessment of Ogoniland See <http://bit.ly/WO7rwp>

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CORE is the leading UK civil society network on corporate accountability, promoting corporate transparency and access to justice for people harmed by business activities.