

CORE VALUES

Why the UK needs a Commission for Business, Human Rights and the Environment

In summary

- Corporations have grown substantially and their sphere of influence is immense, affecting communities, workers, farmers among others across the world.
- We believe UK corporations must respect human rights and the environment wherever they operate.
- Voluntary initiatives to promote socially responsible behaviour from corporations do not protect some of the world's most vulnerable people and the environment.
- The United Nations has endorsed a framework on business and human rights that emphasises the need for strong accessible remedies for victims of corporate abuses.
- The CORE coalition is calling for a UK Commission on Business, Human Rights and the Environment that will lead to improvements in the conduct of UK companies and will provide access to justice for their victims.

Corporations and human rights

The UK likes to see itself as a leader in promoting socially responsible business practices. However, evidence from recent years of the impacts of UK corporations operating overseas reveals many cases of human rights abuses¹. This includes Shell's involvement in human rights abuses and environmental devastation in Nigeria, the exploitation of Bangladeshi garment workers in sweatshops producing clothes for well known high street retailers such as Primark and Tesco, and BP's failure to properly deal with the intimidation of local people by state security forces in Turkey guarding the controversial Baku-Tbilisi-Ceyhan oil pipeline².

Although the UK government has taken steps to ensure UK companies cannot legally commit human rights abuses at home, it has failed to take adequate measures to hold accountable UK companies that commit human rights abuses abroad. This matters particularly when a foreign government is unable or unwilling to make sure those companies operating within its jurisdiction respect human rights. It is for this reason, alongside the urgent need to provide readily accessible access to justice for victims of corporate abuse, that we believe action by the UK is required now.



Nigeria: Children watch as gas flares from a pipeline. Photo: Friends of the Earth

Proposal for a UK Commission on Business, Human Rights and the Environment

The Corporate Responsibility (CORE) Coalition is proposing a new body to address the human rights and environmental impacts of UK companies when operating abroad. Based on a detailed review of possible reforms for existing mechanisms³, CORE proposes that the Government should create a specialised Commission for Business, Human Rights and the Environment (Commission) that would have coordinating, capacity-building and informational roles, while also operating as a dispute resolution body.

The Commission would

- have a mandate to receive, investigate and settle complaints against UK parent companies relating to human rights abuses committed in other countries.
- provide clarity around standards of conduct, leading to improvements in UK companies' respect for human rights.
- have a capacity-building role in helping to strengthen local mechanisms in countries hosting UK investment and promote learning among stakeholders in those countries.

The need for bodies such as the proposed Commission has been supported by Professor John Ruggie, the UN Special Representative to the Secretary General on Business & Human Rights (UN Special Representative) in his recent report on business and human rights⁴, where he states “*Gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms.*”

Also, at the international biannual conference of National Human Rights Institutions (NHRI) held in Edinburgh in November 2010 conference delegates called on NHRIs worldwide to work more collaboratively with trade unions and NGOs to “*support victims of corporate abuses, and facilitating their access to effective judicial and non-judicial remedies*”⁵. CORE believes a body such as a Commission will make a significant difference to victims of such abuse in enabling them to gain access to effective and binding redress.

Why is access to justice so important?

Access to justice or the *right of redress* refers to the right of affected workers, farmers, fisher folk and local communities to seek redress from companies in cases where their human rights are denied. Redress can involve compensation, rehabilitation (e.g. land), an apology, guarantees of non-repetition, as well as the restoration of rights (e.g. labour rights).

Providing redress is critically important for victims but is also important for corporations in terms of learning and creating a culture of respect for human rights and the environment. Redress is important because it provides justice for affected individuals and communities, offers remedies for harm done to them, and contributes to improved compliance systems and better practice. In essence it ensures that corporations respect human rights and the environment in practice as well as in principle.

Respecting human rights

Since 2006 UK company law has required directors to look beyond the short term profit-maximising needs of the company and consider its social and environmental impact. *The Companies Act (2006)* requires company directors to consider the long-term implications of their decisions; the interests of the company's employees; the need to foster the company's business relationships with suppliers, customers and others; and the impact of the company's operations on the community and the environment.

While governments, as signatories to UN human rights conventions, are primarily responsible for ensuring that rights are respected and enforced, corporations themselves have a responsibility to take steps to avoid breaching human rights across all their global operations.

In June 2008, the United Nations Human Rights Council unanimously welcomed the 'protect, respect and remedy' framework for better managing the human rights challenges posed by transnational corporations and other business enterprises. This framework was developed by the UN Special Representative.

The framework rests on three pillars:

- the state duty to protect against human rights and environmental abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
- the corporate responsibility to respect human rights, acting with due diligence to avoid infringing on the rights of others;
- greater access for victims to effective remedy, judicial and non-judicial⁶.

The UN Special Representative recognises in his report the potential role for new non-judicial mechanisms in improving access to remedy, such as CORE's Commission proposal.

Sphere of influence

Modern corporations are integrated into the global economy through their extensive supply chains, with varying degrees of control over companies and businesses within these chains. Often decisions made by parent companies have enormous consequences on the behaviour of subsidiaries, suppliers and sub-contractors. To get round responsibility for these consequences, corporations often create subsidiaries that are separate legal entities, to minimise their legal responsibility for when things go wrong.⁷ This blurring of responsibility makes it very difficult to hold companies accountable for their decisions.

Modern corporations may have complex and not always transparent relationships with a large number of stakeholders, such as suppliers located in developing countries where human rights and the environment are not readily respected. CORE believes that corporations should take responsibility for human rights and the environment within their supply chains and not seek to use legal loopholes to escape responsibility.

Companies routinely use their contractual relationships with suppliers to ensure that products and services purchased meet certain technical and quality standards. Failure to comply with these standards can lead to penalties and ultimately the cancellation of contracts. The human rights and environmental impacts of companies should be treated in a similar way – as a quality control issue. However, when it comes to ethical labour standards or environmental sustainability, corporations dealing with suppliers in developing countries (e.g. garment producers supplying UK supermarkets) often rely on verbal agreements or other non-enforceable commitments, instead of insisting on binding contracts. In this way, respect for human rights and the environment becomes optional.

Another challenge in ensuring companies are held to account is the issue of *corporate complicity*, where companies may not be directly involved in human rights or environmental abuses but are knowingly involved in some way. This may be indirectly by aiding and abetting other parties or simply failing to speak out when abuses occur. This often happens where companies operate in conflict zones and other areas where rule of law is lacking and where there is weak governance on the part of the state⁸. For example, where the army or government has supported paramilitaries in forcibly removing indigenous communities in order to allow an oil pipeline or mining operation to proceed.

UK corporations have a moral obligation to ensure that wherever they operate or have influence over a business within their supply chain, they strive to ensure that the human rights of individuals and local communities affected by the company's activities are respected, as well as respecting their natural environment.

The regulatory gap – deficiencies of existing mechanisms & legislation

In the UK, environmental, labour and health and safety legislation has been vitally important in setting out standards of appropriate corporate practice. However, existing legislation has limited application in addressing the impacts on people and the environment where UK companies operate abroad. In the absence of any international legal framework to hold companies responsible, governments have relied on voluntary international agreements and standards such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. While the Guidelines were intended to some extent to fill this regulatory gap, these instruments have not proven effective in ensuring responsible corporate behaviour, especially in relation to the conduct of overseas subsidiaries.

For example, under the OECD Guidelines a National Contact Point (NCP) is meant to investigate complaints of potential breaches of the Guidelines. However, the NCP has limited investigative capacity and no enforcement powers, which limits its effectiveness. At the heart of these weaknesses is the inability of the NCP to impose penalties on companies or award compensation to victims⁹.

These weaknesses render the Guidelines ineffective as a remediation mechanism and of limited use in holding companies accountable for breaches. Even if a complaint is upheld by the NCP, the company may continue to deny the breach and use its public relations machinery to cast doubt on the NCP's adjudication, as occurred in the BP case¹⁰.

National Human Rights Institutions (NHRIs) also have an important role to play. The UK Equality and Human Rights Commission (EHRC), the UK NHRI, is able to investigate suspected breaches of human rights law by UK corporations, but not of the operations of UK companies abroad.¹¹ A review of non-judicial mechanisms such as the EHRC suggests that given the particular complexities of international business and human rights issues, the range of business sectors and the range of human rights impacts involved, that a specialised institution is both justified and necessary¹².

CSR is not acceptable for enforcing human rights

Corporate Social Responsibility (CSR) has been promoted by business as a way of realising its 'social responsibilities' beyond making a profit for its shareholders. In contrast to this view, NGOs and trade unions tend to dismiss CSR as a public relations tool at best, and at worst a means for corporations to avoid the creation of regulatory and

legal mechanisms as a means of ensuring that they adhere to acceptable standards of conduct.

For example, UK high street retailers have signed up to a voluntary initiative to ensure ethical labour practices in their supply chains when sourcing goods (e.g. garments) from overseas but have failed to deliver on their commitments to uphold workers' rights.¹³ Similarly, in the tourism industry, many UK companies subscribe to voluntary sustainability schemes which are rarely independently audited or indeed verified. The experience of CORE members is that voluntary initiatives to promote socially responsible behaviour are counteracted by other factors that are considered more fundamental to the business, such as purchasing practices, maintaining cash flow and maximising profitability.

It makes no sense that something as fundamental as human rights should be left to the whim of companies and to the vagaries of voluntary codes of conduct and CSR initiatives. We believe that the UK Government is mistaken in consistently championing voluntary codes of conduct for industry and opposing the introduction of international frameworks of regulation, arguing that these *"may divert attention and energy away from encouraging corporate social responsibility and towards legal processes"*.¹⁴ Such faith in the effectiveness of voluntarism is belied by the available evidence.

The failings of this approach have been spelled out clearly by the UN Special Representative in his February 2007 report to the UN Human Rights Council. Having surveyed existing instruments of corporate accountability in national and international law, the UN Special Representative drew attention to the *"large protection gap for victims"* which exists as a result of the international community's reliance on voluntary initiatives. He concluded: *"This misalignment creates the permissive environment within which blameworthy acts by corporations may occur without adequate sanctioning or reparation. For the sake of the victims of abuse, and to sustain globalization as a positive force, this must be fixed"*.¹⁵

Barriers to redress

The UK government's position has been that we shouldn't interfere in another country's responsibility to regulate corporate behaviour in that country, even if it is unable or unwilling to do so. However this is a duplicitous argument that allows the government to ignore its responsibility for the human rights abuses caused by UK companies operating overseas. It is also an argument rejected by the UN Special Representative who is of the view that there is nothing in international law to stop states exercising extraterritorial jurisdiction over the human rights impacts of companies registered, listed or with headquarters within their jurisdiction, provided that the duties imposed are reasonable¹⁶.

CORE knows from studies and many years of experience working in developing countries that there are often insurmountable barriers which prevent effective redress for victims of environmental and human rights abuse.¹⁷ These are greater when operating in conflict zones or where there is weak governance. Often these barriers are not legal but relate instead to practical and financial barriers to accessing avenues of redress (e.g. the cost of accessing courts), capacity barriers with respect to regulatory authorities and judicial systems (e.g. insufficient labour inspectors), in addition to motivational barriers from governments subordinating protection of rights for other private or public goals (e.g. business influence on government and corruption).

The systemic nature of barriers to redress in developing countries suggests that merely attempting to strengthen local systems of redress is an insufficient step to ensure that the human rights of workers and communities affected by the business activities of UK companies abroad are adequately protected. Western governments and companies which operate in those countries also need to take responsibility.

Judicial versus non-judicial state mechanisms

At present, there is limited scope for victims of environmental and human rights abuses committed by UK-registered corporations operating overseas to seek redress through the UK courts. The barriers for any potential claimants are often high and include obtaining legal standing, piercing the corporate veil (i.e. linking the parent company with the activities of subsidiaries operating overseas) and the potentially excessive costs needed to support legal action.

It is important that this system is improved, so that victims of UK companies, wherever in the world the abuses occur, can have access to justice either in a UK court of law or via a non-judicial mechanism. Due to the length of time and money taken up by court cases, access to judicial remedies is likely to be restricted to some of the worst and clearest instances of violations of human rights and damage to the environment.

It is because of these barriers and the limited scope for using the courts that CORE supports the promotion of an accessible and affordable non-judicial mechanism such as a *Commission* to address human rights abuses.

Next steps

Write to your MP and demand they:

1. Support the Commission for Business, Human Rights and the Environment
2. Join the All Party Parliamentary Group on International Corporate Responsibility: Business, Human Rights & The Environment

Find out more about the campaign at

www.corporate-responsibility.org
and associated members' websites.

End notes

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7. www.chathamhouse.org.uk/files/3033_corporate_accountability_insights.pdf
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10. http://www.business-humanrights.org/media/documents/company_responses/bp-response-re-alleged-abuses-along-btc-pipeline-14-mar-2011.doc
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