

Key Principles for the 2015 Review of the UK Government's Business and Human Rights Action Plan

Revision and evaluation

- The current action plan should be independently evaluated to assess the extent to which existing commitments have been implemented.
- The independent review should include at least one case study evaluating the impact of the Action Plan in a country identified in the FCO's Annual Human Rights and Democracy Report as a 'country of concern'. Appropriate country cases studies would be Myanmar/Burma and/or Colombia, given the level of UK company presence and the special emphasis that the FCO has placed on implementing the UN Guiding Principles (UNGPs) in these countries¹.
- The process of revising the plan should include a comprehensive baseline assessment as outlined in the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR) 'Toolkit for National Action Plans'².
- Specific consultation should be facilitated with Human Rights Defenders (HRDs), including indigenous people and women human rights defenders, with regard to 11(xi) of the Action Plan which applies to British Embassies and High Commissions.

General Approach

- The plan should set out a strategic, cross-departmental approach to fulfilling the commitment to implement the UNGPs. In addition to the two lead departments, the Foreign and Commonwealth Office and the Department for Business, Innovation and Skills, key departments and government agencies are the Department for International Development, the Ministry of Justice, UK Trade & Investment, UK Export Finance, the Home Office and the Cabinet Office. The role of other agencies, public bodies and independent entities owned or mandated by government (such as CDC Group and the Financial Reporting Council) in implementing the UNGPs should be addressed. The Action Plan should set long-term goals and identify specific, shorter-term milestones towards their achievement.
- Goals and milestones set out in the plan should be well-defined with an identified lead department and a timeline for delivery.
- Actions should reflect a 'smart mix of measures' with the emphasis on effectiveness and on the added value of the UK government in addressing corporate abuses of human rights and the need for business to comply with recognised standards. Actions to promote adherence to labour rights standards should be accorded higher priority.
- Given the additional severity for women of adverse human rights impacts, the Action Plan should be gender sensitive.

¹ Announcement, Foreign & Commonwealth Office, *UK and Colombia joint declaration on human rights* (21 November 2011) <https://www.gov.uk/government/news/uk-and-colombia-agree-joint-declaration-on-human-rights>. The FCO provided initial funding (later supplemented by the Department for International Development) for the creation of a resource centre in Rangoon to sensitise incoming investors to the importance of human rights compliant business in Burma, based on the UNGPs. See UK GOVERNMENT (SEPTEMBER 2013), 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights' (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf)

² INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE AND DANISH INSTITUTE FOR HUMAN RIGHTS (JULY 2014) 'National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation and Review of State Commitments to Business and Human Rights Frameworks' (<http://accountabilityroundtable.org/analysis/napsreport/>)

- Actions to support and maintain space for civil society, including Human Rights Defenders and affected communities in 'host' countries should be thorough and strategic.
- Consideration should be given to how the plan applies to investors, including the UK government as an investor.
- The process for evaluating and reviewing the Action Plan should be clearly set out and should include formal parliamentary scrutiny.

Priority Themes and Content

1. Addressing access to remedy and impunity

a. Supply chain accountability

- Developing policy options to improve accountability for harms suffered in the international supply chains of UK companies should be a priority in the revised Action Plan.

b. Criminal sanctions

- The plan should reiterate that companies, their directors and/or their employees will be prosecuted where there is evidence that crimes committed in the UK led to serious human rights abuses abroad. Reforms to enable improved accountability for such actions should be examined. The government should also ensure investigators and prosecutors have the necessary training and resources to pursue such cases.

c. Judicial remedy

- We recommend that the revised plan creates a process to identify reforms to address barriers to judicial remedy in the UK. This should include options to address the cost barriers to bringing civil actions against multinationals for human rights harms and a review of rules relating to the disclosure and inspection of documents.

d. State based non-judicial grievance mechanisms

- The UK National Contact Point for the OECD Guidelines (NCP) should be given enhanced investigatory duties and powers, including with regard to disclosure of information by companies that are the subject of complaints. All complaints should be handled in compliance with human rights standards.
- There should be consequences for UK companies found to be in breach of the OECD Guidelines for Multinational Enterprises, including sanctions such as denial of access to government contracts, export credits, and other forms of government support for their activities.

e. Company grievance mechanisms

- The government should make it clear to companies that operational-level grievance mechanisms are complementary to judicial redress and are not appropriate for dealing with cases of gross human rights violations, serious crimes, or for violations of international human rights and humanitarian law.
- Guidance to business on establishing grievance mechanisms should also emphasise that such mechanisms should operate in line with the effectiveness criteria in Principle 31 of the UN Guiding

Principles. Companies should also be encouraged to include criteria of ‘independence’ and ‘capacity to provide an effective remedy’.

- The further roll-out of company grievance mechanisms should be slowed while a process to rectify deficiencies and gaps in guidance is established. We recommend that the revised plan should assign the role of advising companies on establishing or participating in grievance mechanisms to a competent State body with expertise in human rights.

2. Public procurement

- The UK government should use the process of implementing and preparing guidance on the 2014 EU Procurement Directives to enable and, where appropriate mandate the use of human rights criteria at various stages of the bidding process for public sector contracts.
- Build on the action in the current plan ‘to ensure that in UK Government procurement human rights related matters are reflected appropriately when purchasing goods, works and services’, by producing guidance identifying the circumstances in which public bodies could exclude tenderers which have committed grave misconduct in the course of their business, arising from a human rights violation.

3. Transparency and reporting

a. Narrative reporting

- The process of transposing the EU Directive on Non-Financial Reporting into UK law should be used to extend the narrative reporting requirements in the Companies Act 2006 to large non-listed companies.
- The Financial Reporting Council’s (FRC) ‘Guidance on the Strategic Report’ should be revised to provide greater clarity on what should be included in reports and should specify that, as per the Commentary on Guiding Principle 3 ‘...human rights impacts may be “material” or “significant” to the economic performance of the business enterprise.’
- The FRC should draw on external expertise as necessary to assess company reporting on human rights, labour rights and environmental issues.
- The supply chain reporting requirements in the new Modern Slavery Act should be clarified and properly enforced.

b. Transparency of tax and revenue payments, beneficial ownership and corporate structure

- The Action Plan should set out a commitment 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.
- The Action Plan should also commit to establishing a central and publicly-available registry containing full and regularly updated details of the beneficial ownership of all corporate entities, including trusts, located in British Virgin Islands and other overseas territories and dependencies.

4. Government support for business

- The Action Plan should include a commitment to make human rights obligations central to investment treaties and the investment chapters of Free Trade 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 investment treaties until these mechanisms are reformed to reflect International Human Rights Law. The UK should lead calls for removal of ISDS from EU trade and investment agreements.

- The revised Action Plan should require companies that the UK enters into development partnerships with to undertake human rights due diligence, including proper impact assessments as set out in the Guiding Principles.
- The plan should include actions to support business to foster a high standard of common practice on effective human rights impacts assessments (HRIAs), including designing HRIAs to make them participatory and inclusive, and improving their scope and transparency.

5. Supporting the development of international and regional frameworks

- The UK should use its influence internationally to lead, support and promote the development of clearer standards and common approaches on topics including but not limited to access to remedy, human rights due diligence and transparency.
- The UK should participate and play a constructive role in inter-governmental institutions, fora and initiatives to close specific governance gaps, including the open-ended intergovernmental working group on an international legally binding instrument on Transnational Corporations and Other Business Enterprises.

6. Action Plan scrutiny and review

- We recommend that a light touch review and evaluation of the Action Plan is conducted annually. To ensure appropriate accountability and transparency, the review should include a Foreign Affairs Select Committee evidence session.

END

CORE Coalition, March 2015. This paper was prepared with assistance from CORE member and partner organisations but should not be read as a formal statement of their views and positions.

For further information Marilyn Croser at CORE: marilyn@corporate-responsibility.org