



Submission to inform the revision of the UK's National Action Plan on Business and Human Rights

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About CORE

CORE is the UK civil society network on corporate accountability. We bring together extensive experience and expertise on international development, the environment and human rights from NGOs, academics, trade unions, investors 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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Introduction

CORE welcomes the opportunity to make a submission to the government's review of the UK's National Action Plan on Business and Human Rights.

The UK government showed international leadership in September 2013 when it published the first National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). Since the plan's launch, there have been several notable moves in the UK, including the introduction of a requirement for quoted companies to include information on human rights policies in their annual reports, and the world-leading transparency in supply chains clause in the Modern Slavery Act.

While these are welcome developments, greater and more rapid progress is needed from both UK government and businesses on the implementation of the UNGPs. Insufficient attention has been given to improving access to remedy for victims of corporate abuse. Too few businesses are carrying out and reporting on human rights due diligence, one of the central tenets of the UNGPs, and identified in the original plan as a government expectation of all UK companies.

There is clear evidence of a growth in expectation from both business and the general public of further government action in this field. Almost a quarter of respondents to a recent Economist survey of CEOs said

that provision of incentives based on human rights performance would enable companies to better fulfil their corporate responsibility to respect human rights.¹ A poll in February 2015 showed that 72% of people agreed with the statement that ‘the next Government should make it a priority to promote ethical practices among big businesses’.²

The UK government can use the process of revising the action plan to respond this, leading by example through a more consistent approach across departments, and taking steps to level the playing field for companies, rewarding those who take human rights seriously and incentivising others to do better. The message that UK companies must respect internationally recognised human rights standards wherever they operate should be reiterated and clarified. When companies damage the UK’s reputation by failing to operate to the highest standards, a robust regulatory response should follow. Finally, the new plan must properly address Pillar III of the UNGPs by detailing actions to enable people and communities harmed by UK company malpractice internationally to access remedy in the UK when they are unable to do so in their own countries.

Scope, content and priorities of the revised plan

The revised plan should:

- Address the full scope of the UNGPs. The current action plan focusses largely on the business responsibility to respect human rights. In Section 4 (covering Pillar III) there is no discussion of creating judicial remedy and instead the focus is on company-run grievance mechanisms. Although the highest number of planned actions are listed in Section 2 (covering Pillar I), the majority of these effectively relate to the promotion of Pillar II on the corporate responsibility to respect.
- Prioritize for action the most egregious business-related human rights abuses.
- Adequately address issues related to the most vulnerable and excluded groups, including women within and across all groups.³
- Specify the concrete measures that government will take to contribute to overarching goals. Planned actions should be specific, with criteria for success, measurable targets, and timetables.
- State clearly who within government is responsible for implementing the various planned actions, and provide information on actions to be taken outside of BIS and the FCO, particularly by the Department for International Development, the Ministry of Justice, the Home Office, the Cabinet Office, the Department for Work and Pensions, UK Trade & Investment and UK Export Finance.
- Actions from the 2013 plan which were not started or are incomplete or non-time bound should be retained in the revised plan.

¹ Economist Intelligence Unit: 16 March 2015, ‘The road from principles to practice: Today’s challenges for business in respecting human rights’ <http://www.economistinsights.com/business-strategy/analysis/road-principles-practice>

² ComRes: 9 February 2015, ‘Forum of Private Business Ethics Survey’ <http://comres.co.uk/polls/forum-of-private-business-ethics-survey/>

³ See submissions to the review from the Gender & Development Network, International Service for Human Rights, Peace Brigades International and UNICEF UK.

Accountability and follow-up

- The plan should clarify the membership of the cross-departmental working group responsible for the delivery and give details of how often it will meet and which department is responsible for convening it.
- The plan should be subject to formal Parliamentary scrutiny.

Key Recommended Actions: Pillar I

1. Policy coherence

- 1.1 Set out a strategic, cross-departmental approach to fulfilling the commitment to implement the UNGPs.
- 1.2 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.
- 1.3 Reiterate the commitment to support and maintain space for civil society, particularly Human Rights Defenders, including Women Human Rights Defenders, and affected communities in ‘host’ countries.

2. Human Rights Due Diligence

- 2.1 Require all businesses that are awarded large public sector contracts to undertake human rights due diligence.
- 2.2 Companies entering into development partnerships with the UK government should be required to undertake gender sensitive human rights due diligence, including impact assessments as set out in the Guiding Principles.
- 2.3 Support the European Parliament’s position on the proposed EU Conflict Minerals Regulation by calling for the adoption of a mandatory conflict minerals scheme in the European Union, legally requiring companies importing key minerals, including those contained in products into Europe, to source responsibly.

3. Transparency

3.1 Transposition of the EU Directive on Non-Financial Reporting

- 3.1.1 Use the transposition to extend narrative reporting requirements on social,

environmental and human rights issues to large non-listed companies, in recognition of the potential serious risks and impacts that these companies and their operations can pose to human rights and labour rights.

- 3.1.2 Commission the Financial Reporting Council (FRC) to produce revised 'Guidance on the Strategic Report' to provide greater clarity on what should be included in reports and to 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.'
- 3.1.3 Require the FRC to draw on external expertise as necessary to assess company reporting on human rights, labour rights and environmental issues.

3.2 Implementation of the transparency in supply chains clause in the Modern Slavery Act

- 3.2.1 Reiterate in the statutory guidance accompanying the clause that companies' slavery and human trafficking statements should include information on all issues listed in clause 54(5)(a)-(f) of the Act.
- 3.2.2 Establish a single online repository for company slavery and trafficking statements and carry out monitoring of compliance with the supply chain reporting requirement.

4. Public procurement

- 4.1 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, where appropriate, mandating the use of human rights criteria at various stages of the bidding process for public sector contracts.
- 4.2 Produce 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.
- 4.3 Support the European Commission to revise its 'Buying Social' guidance to implement socially responsible public procurement by Member State authorities under the 2014 EU Procurement Directives.

5. Government support for business

- 5.1 Commit to making 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.

- 5.2 Provide training to business to foster a high standard of common practice on effective human rights impacts assessments (HRIAs), including designing HRIAs to make them participatory, inclusive and gender-sensitive, and to improve their scope and transparency.
- 5.3 Include information on the UN Guiding Principles, the National Action Plan, and appropriate human rights due diligence and impact assessments in FCO & UKTI 'Doing Business Guides', Overseas Business Risk, and Infrastructure Sector Opportunities guidance.
- 5.4 Support stakeholder alliances involving the private sector, civil society and trade unions for the implementation of agreed labour, social and environmental standards, including the 'Action Collaboration Transformation' (ACT) initiative between garment brands and retailers, which includes a MoU with IndustriALL Global Union towards realising industry-level collective bargaining for living wages in the sector.⁴
- 5.5 Support, through project activities, the development of 'Business Principles for Protecting Civic Space and Human Rights Defenders' building on the UK's experience with similar initiatives, such as the International Code of Conduct on Private Military Security Contracts, and the Voluntary Principles on Security and Human Rights.

6. Supporting the development of international and regional frameworks

- 6.1 Constructively participate in the open-ended intergovernmental working group on an international legally binding instrument on Transnational Corporations and Other Business Enterprises.

Key Recommended Actions: Pillar III

7. Criminal sanctions

- 7.1 Clearly communicate 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.
- 7.2 Develop and adopt into law a consistent and coherent concept of corporate criminal liability that would enable authorities to investigate and prosecute UK companies involved in serious crime overseas (whether human rights-related or otherwise and whether through their subsidiaries, associates or otherwise). One option to consider is strict liability for serious crimes committed in the context of a company's global operations with a due diligence (adequate procedures) defence, similar to section 7 of the UK Bribery Act 2010.
- 7.3 Direct UK authorities to investigate and prosecute corporate crime as a matter of priority, including when UK-based companies (through their subsidiaries or otherwise) commit crime abroad.

⁴ See Ergon Associates for ETI Denmark, Norway and UK: 'Living Wages in Global Supply Chains: A new agenda for Business'
http://www.dieh.dk/dyn/Normal/3/23/Normal_Content/file/723/1435826913/ieh_eti_dieh_report_web.pdf

- 7.4 Provide training for investigators and prosecutors on the link between corporate crime and human rights abuse.
- 7.5 Ensure investigators and prosecutors have the resources, knowledge, expertise and capacity needed to successfully investigate and prosecute corporate crime.
- 7.6 Better allocate existing resources in this area, for example:
- a) By improving evidence gathering techniques for corporate crime: Investigators should be provided with specific training on evidence-gathering in corporate crime cases, including training on corporate structures and decision-making processes as well as effective methods for gathering evidence against companies.
 - b) By ensuring investigators have, from the beginning of an investigation the legal, practical and technical support needed to ensure its success; teams investigating corporate crimes could be supplemented with prosecutors specialised in tackling such crimes as well as individuals with relevant expertise in areas such as extra-territorial crime, financial crime or technology.

8. Judicial remedy

Take steps to limit the financial risk taken by victims bringing civil actions against multinationals for human rights harms:

- 8.1 Amend the Civil Procedure Rules to extend qualified one-way cost shifting beyond personal injury, to ensure that claimants are not potentially liable for paying defendant's costs.
- 8.2 Provide guidance on the application of the LASPO proportionality test in complex cases involving serious harm in which the costs incurred are likely to exceed the value of the claim.
- 8.3 Examine the options for the introduction of a class action mechanism in civil claims, to enable a simpler and more cost effective system for the aggregation of cases.
- 8.4 Reduce the costs involved in investigating claims by facilitating easier access to relevant documents, through placing earlier pre-action disclosure obligations on defendants, contingent on there being an arguable claim, and removing the link between a request for pre-action disclosure and liability for the defendant's costs.
- 8.5 Amend the civil procedure rules to reverse the burden of proof in cases involving subsidiary companies, to require the controlling company to prove that it was not in control of the relevant subsidiary functions that caused the harm.

9. State based non-judicial grievance mechanisms

- 9.1 Give the UK National Contact Point for the OECD Guidelines (NCP) 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.

- 9.2 Introduce sanctions for UK companies found to be in breach of the OECD Guidelines for Multinational Enterprises, including denial of access to government contracts, export credits, and other forms of government support for their activities.

10. Company grievance mechanisms

- 10.1 Communicate to companies that operational-level grievance mechanisms are complementary to judicial redress and are not appropriate for dealing with cases of serious human rights violations, including rape and sexual assault, serious crimes, or for violations of international human rights and humanitarian law.
- 10.2 Slow the further roll-out of company grievance mechanisms and establish a process to rectify deficiencies and gaps in guidance, including the need for such grievance mechanisms to be gender sensitive and take account of the particular barriers women can face in accessing remedy.
- 10.3 Assign the role of advising companies on establishing or participating in grievance mechanisms to a competent State body with expertise in human rights.
- 10.4 Provide guidance to business on establishing grievance mechanisms and 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'.

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