

## Briefing for House of Lords debate on the case for maintaining the balance between rights and responsibilities in the corporate sector, 8 December 2016

### About CORE

CORE is the UK civil society coalition on corporate accountability. We work with our partner organisations to advance the protection of human rights and the environment with regard to the global operations of UK companies, by promoting a stronger regulatory framework, higher standards of conduct, compliance with the law, and improved access to remedy for those harmed by the activities of UK companies.<sup>1</sup>

### Steps to ensure that UK companies operate responsibly around the world

- The private sector is a **crucial component of the domestic and international economy**, yet irresponsible corporate practices have given rise to a **huge financial and trust deficit** over the last decade;
- **Alongside domestic scandals such as tax avoidance, BHS and LIBOR**, irresponsible practices in UK companies' international operations and supply chains are causing serious harm to people and the environment;
- To tackle widespread corporate abuse, CORE calls for mandatory **human rights due diligence; access to remedy** for victims subjected to corporate mistreatment or exploitation; and **criminal sanctions** to punish and deter the gravest corporate crimes.

### Introduction

In the last decade, major companies have been linked to **serious human rights** abuses around the world. Recent examples include:

- BBC Panorama's exposé of **child exploitation** in Turkish factories producing clothes for the some of the UK's biggest clothing brands;
- An Amnesty International report detailing how food and household companies including Unilever, Nestlé and Procter & Gamble are selling food and cosmetics containing palm oil tainted by shocking human rights abuses in Indonesia, with **children as young as eight working in hazardous conditions**;
- The ongoing failure of Shell to prevent extensive oil pollution **destroying the environment and livelihoods** in the Niger Delta.

In 2016, the UK government published a Business and Human Rights Action Plan but the voluntary measures outlined are insufficient to prevent, deter and sanction **serial corporate offending**.

The government should now take steps to introduce legislation to prevent and punish corporate malpractice internationally; provide access to remedy for victims who have been subject to corporate abuse; and ensure criminal sanctions for companies which commit the most serious crimes.

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<sup>1</sup> Partner organisations include ActionAid, Amnesty International UK, CAFOD, Christian Aid, Oxfam, Save the Children, Traidcraft and Unicef UK. For full list, see <http://corporate-responsibility.org/about-core/our-network/>

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## Amend the Criminal Finances Bill to ensure that companies can be held to account for the most serious abuses

The government should urgently take steps to make it possible for companies to be **prosecuted in the UK** when they fail to prevent economic crimes, serious human rights abuses and damage to the environment.

Several major recent scandals have resulted in no prosecutions against companies due to the current **corporate liability regime**, which requires prosecutors to prove that board-level executives intended misconduct to occur. These include:

- **LIBOR/EURIBOR:** the Serious Fraud Office (SFO) has not charged any of the employers concerned (Barclays, UBS, and Deutsche Bank);
- **News Group Newspapers:** in December 2015, the CPS stated that because of corporate liability laws it could not mount a successful prosecution against the companies in the phone hacking scandal;
- **Trafigura:** Amnesty International findings showed that after the company dumped toxic waste in Côte d'Ivoire in 2006, 100,000 required medical help. The incident was described as one of the "worst corporate-created disasters of the 21<sup>st</sup> century", but the UK Environment Agency refused to investigate on the grounds that it had insufficient resources.

**Recommendation:** Criminal prosecution should be the ultimate penalty for practises contributing to slavery, exploitation of children and other serious human rights abuses in business operations around the world. Only this can effectively punish and deter corporate malpractice.

## Require all companies with an annual turnover of more than £36 million to report on human rights due diligence

Conducting due diligence to identify and manage risk is standard practice in business. Human rights due diligence is the process of assessing actual and potential risks to human rights and acting on the findings. We recommend that companies with a turnover of more than £36 million be required to publish a **human rights due diligence report annually**. This would be in line with a draft bill recently adopted by the French National Assembly that would require companies to publish a due diligence plan.

The **Modern Slavery Act 2015** requires all companies operating in the UK with an annual turnover of more than £36 million to report annually on what they are doing to ensure that their supply chains are free from modern slavery and human trafficking. The legislation states that a company's statements may include '*information on its due diligence processes in relation to slavery and human trafficking in its business and supply chains*'.

However analysis by CORE and partner organisation, Business and Human Rights Resource Centre in March 2015, revealed that the majority of company statements **did not even comply with the Act's basic legal requirements** and failed to provide meaningful additional information.

**Recommendation:** The government should make reporting on due diligence mandatory for all companies that meet the turnover threshold in the Modern Slavery Act.

## Access to remedy for victims of corporate malpractice

The government should take steps to ensure that when people in developing countries are seriously harmed by UK company operations, they can access remedy in the UK courts, as this may not be possible in their own country.

In very poor countries, the resources necessary for the proper functioning of the judicial system are not available and as a consequence, the **rule of law is severely undermined**. **Political and business interests** are also frequently intertwined, and judicial independence compromised.

In the past 20 years there has been improved access to remedy in the UK for overseas victims of corporate related harm, with victims suing UK-based parent companies for harm arising from the activities of their subsidiary companies. However, **no case has been brought against a company for harm** in its supply chains, due to the difficulty of proving that a UK company purchasing goods or services was in control of the functions or deficiencies within the operations of a supplier company.

**Recommendation:** Where a UK-linked business is accused of violating human rights or damaging the environment overseas, the UK courts should be available to victims of that abuse.

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