



Memorandum of Evidence to the Joint Committee on Human Rights

Enquiry on Business & Human Rights

The Corporate Responsibility (CORE) Coalition

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About CORE

The Corporate Responsibility (CORE) Coalition seeks to help achieve our members' goals by improving the environmental and social performance of UK companies abroad.

CORE is a coalition of 130 NGOs, trade unions, academics, responsible businesses and individuals who work on environment, development and human rights issues including groups as diverse as Action Aid, Amnesty International (UK), Christian Aid, Friends of the Earth, Global Witness, The Schumacher College, Traidcraft, War on Want, The Women's Institute, WWF-UK, UNISON and Unity Trust Bank. CORE was founded in 2001 to provide policy leadership and coordinate campaign efforts to improve the environmental and human rights impacts of UK companies.

CORE's members have extensive and diverse experience in identifying and finding solutions to environmental, human rights and poverty related issues. The broad experience of the membership has led them to conclude that all too often UK companies' impacts abroad are detrimental to people and the environment. CORE's work is guided by these experiences and aims to establish an appropriate framework for the corporate sector, specifically to:

1. Improve companies' *transparency* regarding social and environmental impacts;
2. Increase *accountability* of companies for their impacts on stakeholders; and
3. Ensure adequate *access to justice* mechanisms are in place for victims of corporate abuses.

From 2001 to 2006 CORE's campaign focused on securing legislative amendments

in relation to *directors' duties* and *company reporting* in The Companies Act 2006. The campaign resulted in new legal obligations on company directors to have regard to environmental and social impacts in company decision-making and a new obligation on the largest public companies to report annually on their environmental and social impacts.

Since enactment of the Companies Act 2006, CORE has followed the implementation of this new legislation¹ and undertaken a range of research to update our analysis in this area (producing research on corporate abuse in 2007², exploring options for reforming tort law³, and carrying out consultations with MPs, government departments and civil society groups). CORE is now campaigning for the UK Government to improve access to justice for victims of UK companies, through the creation of a new UK Commission for Business, Human Rights & The Environment.

¹ CORE's Directors Duties Guidance, by David Chivers QC was sent to the FTSE 100. Available here:

http://www.corporate-responsibility.org/module_images/directors_guidance_final.pdf

² Zerk, Jennifer, (2007), *Corporate Abuse 2007: A discussion paper on what changes in the law need to happen*,

CORE, London available at http://www.corporate-responsibility.org/module_images/corporateabuse_discussionpaper.pdf

³ Watson, Niall "*Challenging the Future of Corporate Responsibility*", CORE, London available at

http://www.corporate-responsibility.org/C2B/document_tree/ViewADocument.asp?ID=146&CatID=9

Our Analysis

There are many obstacles to effective corporate governance of international companies. The reluctance of some states to effectively regulate companies' negative impacts, liability limitations, concern about the exercise of extraterritorial jurisdiction and the sheer range and complexity of international business arrangements all combine to make it difficult to bring companies to account, particularly where the abuse has taken place in a country with a developing or emerging economy.

"The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relations to human rights is our fundamental challenge."

John Ruggie

UN Special Representative on Human Rights and Transnational Corporations

(April 2008)

There is a likelihood that trends in business-related international human rights and environmental violations are worsening as the global reach of companies and their supply chains extends and as poor practices go unchecked. This is compounded by the lack of effective penalties and other forms of deterrence that would have the effect of preventing poor practices. Those in business who would like their companies to have a better social and environmental footprint will only be able to

justify this if they know they will not be undercut in the market. Currently there is no business case which exists for all companies to be more ethical, only a business case for strong consumer brands selling to socially conscious consumers.

Ideally, unacceptable corporate practices should be dealt with in the country where they occur, the reality is there are often many barriers to redress in developing countries. Although laws may exist on paper, regulatory oversight can be weak, under-resourced and, in some cases, corrupt. CORE and The London School of Economics (LSE) published a report '*The Reality of Rights: Barriers to accessing remedies when business operates beyond borders*', provided as an appendix to this submission, illustrating how victims of human rights violations are far too often unable to obtain adequate remedy. Case studies were drawn from a broad spectrum of commercial sectors and activities and although each case study raised its own set of problems a number of common themes emerged:

1. Governments having to decide between the competing priorities of effective redress for victims and attracting international investment for job creation;
2. Victims lacking information about the processes for seeking redress;
3. Victims being politically marginalised based on issues such as race, class and gender;
4. Victims being unable to afford legal advice as well as there being a lack of legal expertise to call on;
5. Victims not trusting the delays, uncertainty, weak remedies, and independence of the legal and self-regulatory system;
6. Governments lacking the capacity to enforce the laws they do have, and
7. Large multinational companies having the money and expertise to exploit and reinforce the barriers.

Some victims' groups have bypassed their local legal systems altogether and have brought claims directly against parent companies of corporate groups in the "home states" of those companies (e.g. in the UK and the US). These claims are based upon the idea that parent companies ought to bear some responsibility for the failings of their subsidiaries and suppliers, since it is usually the parent which influences the subsidiary's decisions and profits. But the logistical, financial, legal and psychological obstacles to pursuing a lawsuit against the parent company in another jurisdiction are huge, meaning that many abuses go un-remediated.

Alternatively, it might be possible to bring a complaint under the Organisation for Economic Cooperation and Development's (OECD) Guidelines for Multinational Enterprises before the appropriate National Contact Point (NCP). Recent reforms of the UK NCP have resulted in some significant improvements to this process (eg. a steering board with external representation, increased capacity, judgements) though inherent limitations remain. The most significant of limitations are the lack of transparency, inconsistency of application, lack of legal force, and the absence of an enforcement mechanism to compensate those affected or to penalise companies that clearly breach these standards⁴.

In the UK, environmental, health and safety, and labour legislation has been vitally important in setting out what is and is not acceptable corporate practice in this country. Crucially, this legislation does not address the impacts of UK companies operating in other countries. Although ILO Conventions have been successful in securing advancement of workers rights internationally, many other international agreements and standards such as the OECD Guidelines for Multinational Enterprises have proven ineffective in ensuring responsible behaviour of

⁴ RAID in Association with CORE and The TUC, 'Fit for Purpose? A Review of the UK National Contact Point (NCP) for the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises 2008" available http://www.corporate-responsibility.org/module_images/NCP_report_2008.pdf

corporations in relation to their international activities.

There are, however, several other initiatives relating to business and human rights that the Government is currently involved in. The Foreign and Commonwealth Office (FCO) lead on the United Nations Human Rights Council, the Voluntary Principles on Security and Human Rights for the Extractive Sector, as well as liaising with the United Nation's Special Representative for Business and Human Rights. The Department of Works and Pensions lead on ILO conventions, the Department for International Development (DFID) lead on the Ethical Trading Initiative, Extractive Industries Transparency Initiative, The Kimberly Process and The Global Compact.

CORE's members follow all of these initiatives to a varying extent. Although there is significant encouragement by the actors involved in these initiatives for greater civil society involvement, CORE's members do not have the capacity to take part in all of these initiatives in a meaningful way. This makes it difficult for other concerned stakeholders be they business, investors and consumers to ascertain the effectiveness of these initiatives. Furthermore, CORE's members do not feel it is their role, and do not have the mandate, to monitor the compliance of all the companies involved in these initiatives, as is sometimes expected of them.

Additionally, very little coordination exists between government departments involved in these initiatives and no cross-initiative learning or analysis of if, and how, these initiatives may have contributed to preventing human rights abuses or the attainment of the Millennium Development Goals, has been produced. The Department of Business, Enterprise and Regulatory Reform (BERR), FCO⁵ and DFID all have produced their own corporate social responsibility (CSR) strategies

⁵ See the Foreign and Commonwealth Office Departmental Strategic Objectives for 2008/09 – 2010/11 at <http://www.fco.gov.uk/resources/en/pdf/pdf1/CSR-07>.

and it is of concern to CORE that it is unclear as to the progress achieved in relation to these strategies to date. It is also of deep regret to CORE that the FCO strategy has not been implemented due to the closure of the Sustainable Development and Business Group within FCO and CORE are concerned that this has led to further polarisation between departments working on these issues.

In summary, the problems with the operations of UK companies in developing and emerging economies are threefold:

1. There is a lack of effective enforcement of human rights by many host countries.
2. There is a lack of effective remedy available to foreign victims of UK companies;
and
3. A lack of clarity in the outcomes, benefits and coherence of the various CSR initiatives which the Government is involved in.

Recommendations

The Government must address the lack of accountability of UK companies responsible for human rights abuses abroad. Although many companies do act responsibly, relying on voluntary CSR initiatives to drive companies to act responsibly is insufficient. Such initiatives are far too often undermined in the market place by irresponsible competitors. Since poor practice is not checked, the trend of worsening practices appears to be increasing, particularly for unbranded and low quality goods where there is no driver for change. The lack of drivers to improve the social and environmental performance of the bottom of the market, effectively acts as a brake on all parts of the market to improve.

In many areas of UK law, alternatives to expensive and uncertain court action have already been found. The last few years have seen a proliferation of “quasi-judicial” bodies and public complaints mechanisms whereby people can enforce their rights and resolve disputes informally without having to resort to court action. The UK legislature has introduced numerous such procedures, ranging from court-like institutions (e.g. employment tribunals) to less formal methods of investigating and settling complaints by members of the public (e.g. various “ombudsmen” services). A new dispute resolution body with a mandate to receive, investigate and settle complaints against UK parent companies relating to subsidiary or supplier abuse in other countries is a realistic legal possibility provided it:

1. Respects international law restrictions on extraterritorial jurisdiction;
2. Complements existing civil liability processes, rather than seeking to replicate or replace them; and
3. Is underpinned by a clear set of standards which focus, not on the day-to-day

operations of subsidiaries and suppliers, but on the role of the parent company as the “primary influencer”, “overseer” or “coordinator” of the corporate group.

PROPOSAL: A UK Commission for Business, Human Rights and the Environment

Mandate: To oversee compliance with codes of best practice relating to the management by UK companies of their global labour, environmental and human rights impacts, and to monitor the impacts of UK companies abroad (either directly or through subsidiaries and suppliers).

Functions: To provide an information and advisory service for companies and complainants; to oversee and enforce standards of best management practice; and to investigate complaints and resolve disputes regarding alleged breaches of core labour rights or adverse environmental and human rights impacts outside the UK.

Powers: To investigate and report on allegations of breaches of standards; to compel production of documents and witnesses; to enter into “cooperation” agreements with foreign regulatory authorities; to undertake research; to commission expert reports; to hear and resolve disputes involving UK companies in accordance with its dispute resolution procedure, to make hearings and decisions publically available.

Possible Outcomes: Financial award (up to a specified limit). Publication of apology and /or explanation. Recommendations. Undertakings (an order to a company in relation to a specific breach, eg. clean up a contaminated

area).

Appendix: The Reality of Rights

See enclosed pdf