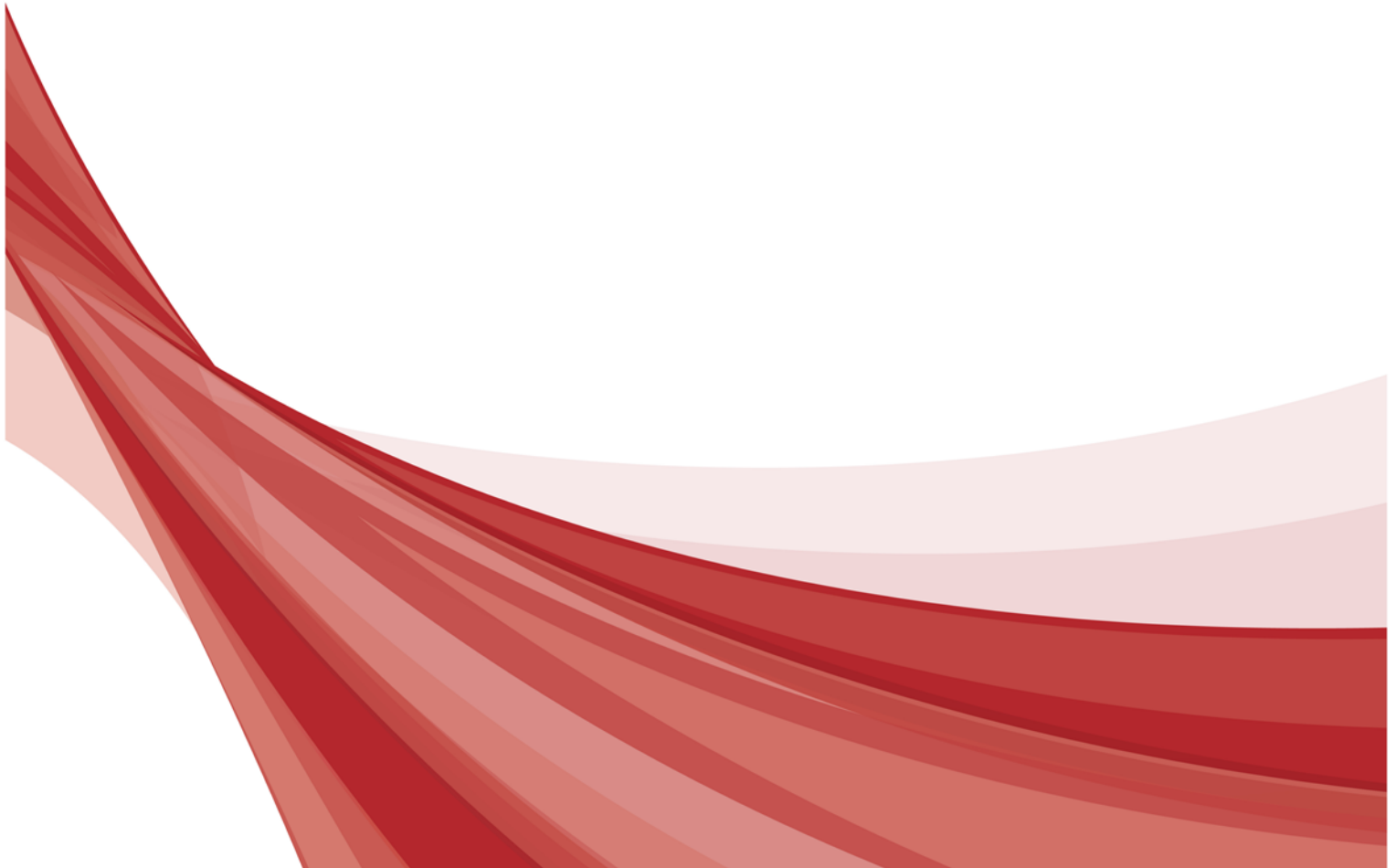




UK Action Plan on Business & Human Rights – review

TUC submission



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 - 1.1. The Trades Union Congress (TUC) has 56 affiliated unions, representing almost six million members, who work in a wide variety of sectors and occupations.
 - 1.2. Our submission focuses on issues of concern to our membership and to our international partners. It also describes the positive role trade unions play, domestically and internationally, in meeting the current objectives of the UK Action Plan and in properly implementing the UN Guiding Principles.
 - 1.3. In addition to these comments, the TUC supports the measures proposed in CORE's submission that reflect a broader set of considerations to enable the UK's revised plan to be consistent with the UNGPs.
 - 1.4. In addition to CORE's call for Parliamentary scrutiny, we would note the high level of engagement during the 'refresh' process and suggest that independent oversight body with representation from social partners and civil society to monitor, evaluate and provide recommendations for improving implementation of the UK Action Plan would help overcome technical and political barriers to its effective implementation.

2. **The State's Duty to protect**

- 2.1. We welcome the original UK Action Plan's commitment to "Lobby foreign states, including through ministerial contact and our embassies and high commissions, to support widespread international implementation of the... ILO's Fundamental Principles and Rights at Work and the eight core Conventions which embody them." (Good Business, p9) Given the tripartite nature of the ILO and workers and employers' shared responsibility in monitoring effective implementation of standards, we suggest the government reports on its work in this area, through the DWP, to the social partners.
- 2.2. The plan should commit the UK government to making human rights obligations central to investment treaties and the investment chapters of Free Trade Agreements. The UK should lead calls for removal of ISDS from EU trade and investment agreements as they provide investors with privileged access to justice and significantly restrict the ability of governments to pursue public policy goals. The UK should call for binding and enforceable commitments to ILO Core Labour conventions and clear exemptions for public services written into all trade and investment agreements.
- 2.3. The UK Action Plan should further commit to and promote:
 - 2.3.1. Measures to reduce the vulnerability of work, by ensuring statutory enforcement agencies, including the Gangmasters Licensing Authority, the Health and Safety Executive and the HMRC National Minimum Wage Team are properly resourced and have effective inspection and enforcement powers.

- 2.3.2. Strengthening the ability of institutions such as the Equality and Human Rights Commission and the Parliamentary Joint Committee on Human Rights to periodically assess the adequacy of the UK laws and policies to meet its “duty to protect” against business-related human rights harm.
- 2.3.3. Underpinning transparency in government activity by mapping out how it supports or interacts with business. This includes businesses that it owns or controls, including contracted-out services. It also includes support or services provided to business such as through UK Export Finance, CDC group plc, or through public-private partnerships, development assistance, finance, insurance or other forms of guarantee. It should especially include commercial transactions that it conducts with business, including its procurement activities.
- 2.3.4. Conducting a “root and branch” review to bring the UK into compliance with its international human rights law obligations. This should include a special emphasis on the international treaties, and the jurisprudence of the International Labour Organisation Committee of Experts, the European Social Rights Committee and the European Court of Human Rights, particularly as they relate to freedom of association and the right to collective bargaining and the right to strike.
- 2.3.5. Supporting the introduction of human rights due diligence requirements in the World Bank Groups’ safeguards procedures, as well as those of the regional development banks.
- 2.3.6. Providing funding and support for the ILO to assist governments, especially in the developing world, to improve their “duty to protect”, with a particular focus on businesses operating in their territory
- 2.3.7. Supporting and funding an ILO action plan on implementing the ILO Declaration on Multinational Enterprises, including a new survey to monitor its implementation
- 2.3.8. Ensuring that the IMF, World Bank, WTO and other multilateral institutions do not act in ways that erode respect for international labour standards and other human rights, or restrict states in meeting their “duty to protect”.
- 2.3.9. Supporting the establishment of a WTO working group on business and human rights to explore how trade and trade agreements can support and not undermine the promotion of human rights.
- 2.3.10. Supporting the OECD to put in place a strong peer review mechanisms to improve the effectiveness of National Contact Points in implementing the OECD Guidelines for Multinational Enterprises.
- 2.3.11. Developing specific guidance on what business should be doing to addresses difficult governance gaps such as the denial of freedom of association in supply chains.

3. UK companies' responsibility to respect

- 3.1. UK businesses operate in a range of countries where conflict or dictatorship has led to terrible abuses of workers' rights. Such countries include Burma, Colombia, Fiji, Guatemala, Iraq and Swaziland. UK business stands a high risk of being directly associated with such human rights abuses and in some cases causes or contributes to them.
- 3.2. We note the inclusion of human rights reporting in the 2013 amendment of the 2006 Companies Act, as well as provisions of the 2015 Modern Slavery Act. However, the UK Action Plan should support the establishment, at least in high risk cases, of a binding mechanism to require businesses sourcing or investing in such countries to conduct human rights due diligence. This would include compulsory public reporting on such due diligence and their business relationships, as well as being subject to a mediation and arbitration process.
- 3.3. The Plan should also commit to developing the FCO-UKTI Overseas Business Risk (OBR) service to cover all high risk countries, and to coordinate in-country briefings on human rights for UK business and investors that involve local unions and other human rights defenders.
- 3.4. In particular, there should be rigorous assessment by DFID's Private Sector Unit of their private sector partners to ensure they meet appropriate standards of conduct, and meeting those standards should be a fundamental requirement of selecting such partners.
- 3.5. The Plan should set out moves towards introducing penalties for companies that consistently fail to carry out effective due diligence, including legal routes to hold UK companies to account for malpractice abroad.

4. Access to remedy & the role of unions

- 4.1. The OECD Guidelines for Multinational Enterprises which provides a set of recommendations to companies on human rights and other key topics has recently been updated to be brought into line with the Guiding Principles. The UK National Contact Point (NCP), set up to hear complaints under the Guidelines is one of the better performing NCPs because of its professional procedures, oversight body, and encouraging track record in resolving disputes, particularly in trade union cases. Yet there is significant room for improvement. The UK Plan should commit to:
 - 4.1.1. Increasing the resources of the UK NCP especially to enable it to conduct in-country investigations and mediations; and
 - 4.1.2. Using the UK NCP in carrying out any assessments of business adherence to the Guiding Principles, particularly in determining state support or whether or not to establish a business relationship as per the recommendations in GPs 4, 5 & 6.
- 4.2. Recent ACAS research confirms that people are having as many problems at work in Britain as ever. Resolving those issues as soon as possible is important. It is encouraging that the vast majority of employers and staff are participating in early conciliation, and that ACAS is settling so many cases so quickly. However the research suggests that fees are a major deterrent for individuals taking their claims to employment tribunals, with around at least one in four

claimants whose cases are not settled by early conciliation being put off from further action by the costs. Many employees – particularly the low paid – cannot afford justice, which could explain this apparent keenness to settle a dispute at early conciliation without going to tribunal.

- 4.3. Employment tribunal fees have been a huge victory for Britain’s worst bosses. By charging up-front fees for harassment and abuse claims the government has made it easier for bad employers to get away with the most appalling behaviour. The Ministry of Justice must prioritise its review into the impact of tribunal fees and take swift action to abolish them.
- 4.4. The FCO Human Rights and Democracy Programme (Good Business p18) promotes work with trade unions on access to remedy, but does not list work supporting freedom of association as a funding priority. Since the programme recognises the role of unions in access to justice, it should include freedom of association, under fire in many countries, as a priority area for 2016 to help protect union capacity to assist in this area.
- 4.5. Not only is Freedom of Association and recognition of unions part of the companies’ duties with regard to the Responsibility to Respect human rights, unions can play the following positive role in underpinning the success of the National Action Plan. Their potential contribution includes:
 - 4.5.1. Negotiating better conditions which will preclude erosion of rights and empowering workers to take action to protect their own health and safety. For example, the Rana Plaza disaster would not have cost lives in a unionised workplace where workers could have refused to enter the unsafe building, which audits had pronounced ‘safe’.
 - 4.5.2. Linking the workplace to wider communities that can monitor where business is having a negative impact on social rights
 - 4.5.3. Providing independent verification of audit and other monitoring processes
 - 4.5.4. Actively flagging up abuses through national and international networks and ensuring that exercise of due diligence results in genuine protection for human rights. Independent trade unions collectively negotiate with employers to improve adherence to labour standards. Trade unions have access to national and international support structures and global sectoral federations that enhance the process of monitoring and addressing labour rights violations. A number of multinational companies have signed global framework agreements with global union federations to gather information on supply chains and negotiate to improve conditions, where violations of labour rights occur, e.g. <http://www.industrial-union.org/special-report-inditex-and-industrial-global-union-getting-results-from-a-global-framework>
 - 4.5.5. Providing a channel through which business can “consult people who may potentially be affected at all stages of project design and implementation” (*Good Business* p13).
- 4.6. We therefore urge the government to include promotion of the positive role of trade unions in guidance given to UK businesses, and to promote stakeholder alliances involving the private sector, civil society and trade unions for the implementation of agreed labour, social and environmental standards. In this regard we welcome the government’s continued support for the tripartite Ethical Trading Initiative, and urge continued and enhanced support.
- 4.7. Although unions operate on a largely self-funding basis, and as such are an extremely cost effective addition to the provision of monitoring and accessible non-judicial route to remedy,

resources are limited. In many emerging economies the low pay workers receive means that unions have very limited funds from their members.

- 4.8. International trade union organisations can provide support to local trade unions to strengthen their capacity to play a role in this process, as well as their widely recognised role in assuring healthy and safe working environments. A number of other countries, including Sweden, Germany, the USA and the Netherlands, support trade unions directly as an important part of their international development strategies, and DFID clearly have the opportunity to contribute to the success of the action plan by implementing similar support.



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