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Call for Evidence on Business & Human Rights

Thank you for the opportunity to provide evidence to the Joint Committee's inquiry on business and human rights, one of the most important human rights debates of our time.

A leader in corporate responsibility since 1992, Business for Social Responsibility (BSR) works with its global network of more than 250 member companies to develop sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. Our membership includes 17 multinational companies based in the UK and many more with significant operations in the UK. With six offices in Asia, Europe, and North America, BSR leverages its expertise in human rights, economic development, environment, and transparency and accountability to guide global companies toward creating a just and sustainable world.

We welcome the Joint Committee's decision to acknowledge the framework for business and human rights proposed by John Ruggie, the UN secretary-general's special representative on business and human rights, as a significant step forward in the effort to clarify the responsibilities of state and non-state actors for human rights.

We can only overcome the considerable challenges we still face in this area if all actors, including government, businesses, and civil society collaborate to develop effective solutions to these challenges. This is why we strongly support the Joint Committee's inquiry into this subject and its approach to seek input from a variety of stakeholders.

The UK has been and continues to be at the forefront of this important progress. Many UK businesses and the UK government have catalyzed leadership initiatives on human rights and thus helped set best practice standards for managing company human rights impacts. It is critical that both the government and companies continue this leadership on human rights, as much work remains to be done.

Over the past decade, we have seen significant progress in the business and human rights sphere. Where once multi-stakeholder dialogue on human rights was rare, now, several initiatives are thriving, from the Extractives Industry Transparency Initiative and the Voluntary Principles on Security and Human Rights, of which the

UK Government is a co-founder, in the energy and mining sectors; to the Ethical Trading Initiative, the Fair Labor Association, and SA8000 on labor rights; to the newly founded Global Network Initiative on free expression on the Internet. All of these initiatives capture the promise of dialogue, debate, and collective action.

Where once there was little or no institutional support for advancing business support for human rights, now there is the UN Global Compact and the International Finance Corporation's social standards, both of which include human rights standards.

Where once there was little human rights information available and accessible for business, we now have the rich resource of the UK based Business & Human Rights Resource Centre. A large number of companies have established institutional support for the human rights debate.

While there are several signs of important progress in strengthening corporate human rights practices, much work remains to be done. Below, I will outline important areas for further debate as we see them, seeking to answer the Committee's specific questions, and following the Committee's suggestion of using the Ruggie framework's three pillars as an outline:

1. The State Duty to Protect Human Rights

Weak Governance and Rule of Law

Human rights protections remain the primary responsibility of states. This responsibility includes governing corporate human rights impacts through effective regulation and enforcement. Yet, many governments remain unwilling or unable to effectively protect their citizens' human rights. Companies operating in those countries risk becoming complicit in government human rights violations. Further, the most difficult human rights dilemmas companies face often involve a conflict between domestic law and international human rights protections.

The UK government could help address this challenge in a number of ways. Wherever possible, the government should include human rights and specifically corporate human rights issues in its public diplomacy and dialogue with other nations, aimed at helping to close the gap between international human rights standards and domestic law or its enforcement. This would also support businesses in addressing some of the most difficult dilemmas in this area. By supporting capacity building, training and education projects, financially and operationally, to strengthen rule of law and governance, the UK government could help address critical root causes of human rights violations around the world.

Policy Integration and Alignment

As John Ruggie has stated, too often human rights are compartmentalized in one government agency or department tasked with advancing them. Yet, many business and human rights dilemmas arise outside of the traditional public policy forums for human rights. International trade policy, regulations on foreign direct investment,

development aid, export credit mechanisms, and corporate law can all have significant implications for corporate human rights impacts. The UK Government should consider assessing to what extent its current corporate regulatory regime aligns with its human rights policies and ensure that human rights are an important consideration in revising all aspects of that regime in the future.

Legal Clarity

It is critical for companies to understand the regulatory environment within which they operate. This is especially true for an issue as complex as the human rights responsibilities of business. A clear legal standard would help level the competitive playing field, rewarding those companies that are already proactively managing their human rights impacts. In this light, the UK Government should seek to clarify the applicability of the Human Rights Act 1998 to private actors, including corporations: Questions remain both on the applicability of the Act to businesses and around the definition for public functions or services provided by private actors. Added clarity here would be a very valuable contribution to this debate, even beyond the specific UK legal context.

2. Corporate Responsibility to Respect Human Rights

Human Rights Impacts of Businesses

The human rights impacts of businesses, including UK companies, are manifold: Companies can impact human rights positively and negatively, directly or indirectly, they can impact communities in their home state, in host countries, as well as communities in other far away regions of the world, through the company's operations or use of its products or services.

Examples of positive impact include job and wealth creation, furthering the human rights to work and an adequate standard of living, facilitation of the right to free expression through information and communications technology and services, and advancement of the right to health through development and provision of medicines.

Negative human rights impacts can include substandard working conditions in a company's supply chain, complicity in a government's human rights violations, such as abuses by police or security forces to protect a company asset, or severe pollution of air and water, potentially harming the human rights to health, food, and access to clean water.

Research conducted by John Ruggie's mandate and presented as a supplement to Ruggie's June 2008 report to the UN Human Rights Council showed that allegations of human rights violations had been made against companies in virtually all business sectors, all regions of the world, and alleging violations of a wide variety of human rights, including civil and political, labor, and economic, social and cultural rights.

Therefore it is our strong belief that the baseline business responsibility to respect all human rights should be the same for all companies, regardless of the type, nature and

size of their business. Most importantly, this baseline responsibility does not vary based on where a company operates.

Due Diligence

To discharge their responsibility to respect human rights, proactive measures are required from companies. These measures, which John Ruggie refers to as human rights 'due diligence', should include key elements of a business management system, including a formal policy, impact assessments, integration of human rights throughout the business, and measuring and reporting on impact. In practice, while the baseline responsibility should be the same for all companies, the implementation will and should vary depending on the type, nature and size of the company.

Additional Responsibilities for Companies Performing Public Functions

It is important to stress that the responsibility to respect all human rights, to do no harm, is a baseline responsibility. Companies can and should go further in advancing human rights where possible. In addition, where companies or other private actors perform public functions or provide public services, additional responsibility should apply. States are charged with the primary duty to protect and fulfill human rights – where the state passes on the provision of essential services that further human rights to non-state actors, including companies, the responsibility associated with the human rights in question should extend to those private actors. For example, private prison operators should be held to account for violations of the human rights of prisoners in the same way that state actors could be held accountable.

Additional Efforts

In addition to the points raised above, we see a number of specific areas in which the UK government, and other governments, can take action to improve human rights conditions relevant to business:

- Procurement policies: The UK government should ensure that all its procurement is conducted in a manner consistent with human rights principles. In doing so, it will mirror best practice, and also help to create and expand commercial incentives for companies globally to integrate human rights protections into their operations.
- Widening the circle of engaged companies: The London-based Business & Human Rights Resource Centre reports that only 241 companies, out of 4,000 monitored, have adopted formal human rights policy statements. Too many multinational companies remain unwilling to take the risk involved with stating their commitment to respect basic human rights principles. But in 2009, the concern that mentioning the Universal Declaration of Human Rights in corporate policy will bring unnecessary risk of legal liability simply hasn't been borne out by experience.
- The UK government could encourage a culture for respect by requiring or

promoting public reporting on human rights impacts by companies. The Global Reporting Initiative, the most commonly accepted standard for social and environmental reporting, already includes a number of human rights indicators that could serve as a reference point. In addition, the government can publicly acknowledge and reward the many UK companies that have led and continue to lead in this area, through an awards program, a speaker series, or another public event.

- Deepening the practical understanding of what human rights means for business: Even for companies employing leading human rights efforts, understanding and implementation can remain incomplete. There is a sufficient community of practice and expertise in organizations like BSR and others such that operational advice is available to any company that wishes to look for it. To help deepen the understanding and advance implementation of human rights among companies, the UK Government could provide financial and operational support for training programs on human rights for companies, both in the UK and abroad.
- Measuring progress: John Ruggie’s work is immensely helpful in that it is setting some parameters on just what a company’s duties are. Yet, today few companies are in a position to measure their impacts, and the wider world generally only sees violations, which are often quickly attributed to business. A better means of measuring and reporting on impacts, both positive and negative, will illuminate this poorly understood debate. The UK government could support this effort by ensuring that it considers impact and outcomes, including positive impact, when addressing corporate responsibility for human rights in regulatory efforts, as well as through multi-stakeholder initiatives.
- Examining horizon issues in today’s world: The world from which the Universal Declaration emerged in 1948 is gone. Today’s wired world presents a very different picture, with fluid connections across borders, NGOs growing by the day, and political influence dispersing from Europe and the United States. Every company will spend the coming decades wrestling with its approach to privacy, free expression, and access to economic rights—items that are not well understood today. Supporting continued research and study of this continuously evolving field is a key contribution that the UK Government could make to further human rights protections around the world.

3. Effective Access to Remedies

Access to remedies for those whose rights have been violated remains weak in many parts of the world. In fact, where human rights violations are most likely to occur, access to remedies often is least effective. Given the magnitude of this challenge, we strongly believe that a debate between judicial and non-judicial mechanisms is misguided. Rather, effective access will require a number of different avenues, both judicial and non-judicial, to be available to victims of human rights abuses involving companies.

In addition to fulfilling its duty to protect citizens from human rights abuses through law, effective enforcement, and judicial remedies, the UK Government could provide significant support to improving access to remedies around the world. As mentioned above, the government can help build capacity in countries with weak rule of law and ineffective judicial mechanisms. Providing financial and operational support for training, educational exchange, and continued research would all prove valuable.

Regarding non-judicial remedies, we believe that the different options the Committee listed in its call for evidence, including ombudsmen, complaint mechanisms, alternative dispute resolution, and mediation, all have merit. All of these instruments have already proven successful in various aspects of corporate social responsibility, including ethics, anti-corruption programs, and labor rights. They should not be seen as replacing judicial mechanisms, but as important alternative avenues towards redress for victims. Non-judicial mechanisms provided by business, other private actors, or international organizations are especially needed where rule of law and judicial avenues are weak.

The OECD National Contact Point system is a non-judicial mechanism that could be improved to provide effective access to remedies for victims more widely. The UK National Contact Point has been significantly more active than other contact points in investigating complaints of alleged human rights violations involving companies. Exploring further the successes and challenges of this process and sharing the results widely would be very valuable. Based on such a study, the UK National Contact Point's process could be optimized and other countries could be encouraged to adopt a similar process.

In closing, I would like to again thank the Committee for the opportunity to provide BSR's view on this important debate. We will continue to work with our member companies on developing effective solutions to the many human rights challenges businesses face around the world and we look forward to the Committee's and the UK government's continued efforts to advance human rights globally.



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