

Submission by Business in the Community to the Joint Committee on Human Rights Call for Evidence on Business & Human Rights

May 2009

Introduction

The Joint Committee on Human Rights has issued a call for evidence on the subject of business and human rights. Business in the Community (BITC) has an established record on working with our member companies on human rights issues in the UK and overseas and welcomes the opportunity to respond to the call for evidence on what is a vitally important issue to address if we are to build greater confidence and trust in business. This paper sets out BITC's current thinking on the issue of business and human rights which we continue to research. Business in the Community has not sought to respond to every discussion point in the call for evidence, but has concentrated its response to those areas where it has relevant experience and expertise.

Business in the Community's approach

Business in the Community works to inspire, engage, support and challenge companies on responsible business to continually improve their positive impact on society. Membership of Business in the Community is an active commitment. Our 850+ members recognise the relationship between their company's values and responsible business practice and the role this plays in creating wealth, building trust and addressing social need.

Our robust, relevant and integrated approach to responsible business provides a clear framework to address new challenges and improve business performance. We work across four impact areas: marketplace, workplace, environment and community, with business leadership sitting at the heart of our approach.

Six key overarching principles run through Business in the Community's work and underpin our public voice:

- support for sustainable development: "development that means the needs of the present without compromising the ability of future generations to meet their own needs";
- recognition of the mutuality between business and society;
- conviction that progress in achieving higher standards of corporate responsibility will best be achieved through a voluntary approach, rather than regulation, where possible;
- different indicators of success in corporate responsibility have different levels of materiality in each company as expectations can reasonably vary by business size, sector and location;
- business, by and large does good by virtue of the goods and services provided and how it does it: creating wealth, enabling economic stability,

providing opportunities for employees, suppliers and customers, as well as paying tax;

- belief that excellent understanding of communities from which a business draws its customers and employees makes it more effective and profitable.

Background

Business in the Community's work on business and international human rights goes back to the Business Impact Task Force established in 1998 and its final report 'Winning with Integrity' (2000).ⁱ Our work on Human Rights issues in the UK has been advanced by our Workplace team, which has launched campaigns on race and gender equalityⁱⁱ and health & well-beingⁱⁱⁱ, as well as our Marketplace team, which first launched in 2006 the Marketplace Responsibility Principles^{iv} taking a supply chain view of human rights issues. In 2008 we launched the Voluntary Code of Practice on Employing Migrant Workers/Overseas Staff in Great Britain.^v

Despite this, until recently, confusion has continued around the extent of business's responsibilities internationally. Some argue this has clouded the issue preventing constructive action. The debate around the applicability of specific rights to business and the extent of the obligations to respect and protect has now been clarified by the work of Professor John Ruggie the UN Special Representative on Business and Human Rights. BITC welcomes the work of Professor Ruggie in his framework *Protect, Respect and Remedy (2008)*^{vi} and considers there is now a great opportunity to move the agenda forward and look at practical ways to improve business's impacts on human rights.

Impact of businesses on human rights

The impacts of business, positive and negative, are far reaching. Globalisation, and a trend towards the privatisation of many key services previously provided by government, has seen an increase in the potential impact on human rights of multinational corporations. While the primary responsibility for human rights still lies with the state, this has led to calls by a diverse range of stakeholders for greater business accountability on human rights issues throughout global supply chains.

As the role of business in society has grown, human rights benefits have been derived in many locations through job creation, economic regeneration and growth. This has seen improvements, particularly in respect of social and economic rights, such as adequate standards of living for many people throughout the world.

Many businesses have taken steps to improve access to healthcare or medicines for their employees. Some businesses have also taken a more proactive role in respect of civil and political rights. One such example is the Co-operative Bank which through the operation of its Ethical Policy, refuses to provide finance to businesses that advocate discrimination and incitement to hatred or are involved in the manufacturer or transfer of armaments to oppressive regimes^{vii}. Such examples

demonstrate that the considerable global power of business, when harnessed responsibly, can help support and enhance human rights.

However, BITC also recognises that the lack of accountability of some businesses has led to abuse of human rights, particularly in countries that have weak governance structures where governments are unable or unwilling to hold corporations accountable. The current difficulties around accountability are explored in CORE & LSE's recent report *The Reality of Rights: Barriers to accessing remedies when business operates beyond borders*^{viii}. At the most severe end of the scale businesses have been accused of complicity in killings and torture, but as John Ruggie's Framework points out business can affect the full spectrum of human rights both positively and negatively.

Awareness within business about human rights is now growing thanks to the work of a wide range of organisations including the Business & Human Rights Resource Centre, CORE, Realizing Rights, initiatives such as the UN Global Compact, as well as the new accountability that the growth of internet communications is delivering. BITC's CR Index, the UK's leading voluntary benchmark of corporate responsibility, helps companies to integrate and improve responsibility throughout their operations by providing a systematic approach to managing, measuring and reporting on business impacts in society and on the environment. There is therefore a growing recognition within business that human rights is a vitally important issue that will only grow in significance. This is reflected in the growing number of companies that have specific policies on human rights as tracked by the Business and Human Rights Resource Centre.

Guidance & support to business on human rights

Fostering a corporate culture which respects human rights was highlighted by John Ruggie as an important component of the state duty to protect human rights. The government has made some inroads in this respect. John Ruggie's report noted introduction of s172 in the Companies Act 2006 as a positive step. S172 obliges a company to consider the interests of employees as well as the impact of the company's operations on the environment and community. This clearly communicates to business that their responsibility is not to increase returns for shareholders at any social cost.

Many companies are now developing human rights policies. Business setting down its commitment to human rights is undoubtedly a positive step and should be further encouraged by the government and civil society. However BITC is mindful that policies need to be lived by the whole business to be effective. The integration of human rights considerations into core business will be challenging for many companies particularly those with decentralised structures and considerable support

will be required to achieve this ends. BITC believes that in addition to challenging business, celebration of success is also an important factor in changing behaviour. BITC runs the UK's leading corporate responsibility awards programme – Awards for Excellence – recognising those companies which have shown innovation, creativity and a sustained commitment to corporate responsibility. This includes an International Award.

John Ruggie's Framework points out that leadership within business is central to ensuring integration of human rights considerations throughout a company. It is therefore essential that buy in from business leadership on this issue is achieved.

Collaborative, industry initiatives on human rights can help make significant progress on sector specific human rights issues. Examples include the Kimberley Process, the Electronics Industry Code of Conduct and the International Council on Mining and Metals. Such initiatives have considerably raised the profile of human rights issues within business and sought to establish practical tools to improve business performance. Unfortunately UK/ EU competition law currently appears to hinder business collaboration in some areas that would be in the public interest, including human rights. BITC therefore considers that this barrier should be better understood and addressed.^{ix} In contrast Australian competition law provides a mechanism for the prior 'authorisation' of collaborative agreements between companies.^x

We would recommend the Joint Committee explores the following issues and ideas:

1. Issue mapping and transparent reporting is important in helping businesses establish their impacts and ensure they are taking the appropriate due diligence steps. Businesses should be encouraged to carry out human rights impact assessments and report their material human rights impacts. Guidance from Government working with relevant advisory bodies would be helpful on what businesses reporting should cover depending on their size, location and sector.
2. A wide range of existing organisations, are well placed to offer support to businesses as they seek to introduce reporting and improve their business processes. Strategic partnerships between government and civil society should be encouraged to pool expertise. Investment in intermediary organisations such as trade bodies and NGOs including BITC can ensure dialogues on the business and human rights agenda are convened and business leaders are mobilised.
3. Funding must be sufficient and sustained for government departments and quangos such as the Department for International Development (DFID) and

the Equalities and Human Rights Commission, which are currently supporting human rights efforts.

4. The Government should seek to utilise its purchasing power to improve human rights through all public procurement both in the UK and abroad. Through its broader monitoring and watchdog functions the Sustainable Development Commission (SDC) may also have a role to play in advancing human rights, particularly in public sector procurement at the workplace.
5. An area of concern highlighted by Professor Ruggie has been the negative consequences of bilateral investment treaties that fail to correctly balance the need to provide adequate protection to foreign investors with the host state's need to protect and promote human rights. The Government should ensure that investor protections are pursued in a way that does not hinder a host state's ability to improve human rights. Further investors should be encouraged not to adopt stabilization clauses in investment contracts which secure exemptions from new legislation concerning human rights or entitle it to compensation if such legislation is introduced.
6. The Government can directly impact human rights through ensuring the Export Credit Guarantee Department carries out human rights impacts assessments and factors human rights considerations into finance decisions. Professor Ruggie's recent report *Business and human rights: Towards operationalizing the "protect, respect and remedy" framework*^{xi} highlights the practice of some states of linking export credit to: "...companies having a CSR Policy, participating in the United Nations Global Compact, or confirming their awareness of the OECD Guidelines."
7. Initiatives such as the Kimberley Process should be encouraged and supported by the government where possible. The Government should also take steps to ensure that any voluntary collaborative action which raises human rights standards is not deterred by UK/EU competition law.

Grievance Mechanisms

Company level grievance mechanisms were highlighted by John Ruggie as part of the corporate responsibility to respect human rights. Through tools such as BITC's CR Index we encourage business to voluntarily adopt internal systems and build the capacity to engage with stakeholders proactively. The establishment of structures in more businesses to deal with the grievances of wider stakeholders would greatly benefit not only those that take issue with the operating behaviour of a company but would also be beneficial to business in terms of risk management and stakeholder engagement. BITC would like to see the Government working with NGOs to

encourage and support business to improve stakeholder relations and set up independent internal mechanisms that deal with human rights concerns proactively.

The UK has established one of the leading OECD National Contact Points (NCP); in the last two years the UK NCP has made significant headway in increasing corporate accountability. In particular there have been groundbreaking decisions in which the NCP found companies in breach of the OECD Guidelines for Multinational Enterprises. Although the NCP cannot pass a binding judgment, its decisions have still had considerable impact. This was demonstrated when it helped broker a deal between G4S and UNI in response to a complaint brought under the Guidelines in 2006. The actions of the UK NCP have helped increase the standing of the UK internationally and increased our competitiveness by reducing the reputational risk for those investing in UK-based companies. BITC considers it vital that the recently increased resources of the NCP is maintained going forward.

There are increasing calls from a wide range of stakeholders for the establishment of a body with powers to address human rights abuses committed by UK companies abroad. In particular CORE has proposed a UK Commission for Business and Human Rights and the Environment.^{xii} BITC agrees that accountability for serious corporate human rights abuses overseas needs to be increased. However, BITC considers that research is needed into the economic impact of limiting such a body to UK companies and the potential benefits for business and society. A European wide or global body would ensure a level playing field was maintained and would remove the risk of divestment from the UK. While BITC acknowledges that securing international support and agreement for such a project would be difficult, a European wide agreement should be easier to achieve particularly with current demands for enhanced business accountability. We note that the European Commission is in the process of commissioning research in this area and will read its conclusions with interest.

For further information please contact:

Danielle McMullan
Research & Development Manager
E-mail: danielle.mcmullan@bitc.org.uk

Andrew Dakers
Head of Public Affairs
E-mail: andrew.dakers@bitc.org.uk

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- ^{iv} 'Marketplace Responsibility Principles' (2006/8), BITC, http://www.bitc.org.uk/resources/publications/blank_1_1.html
- ^v 'Voluntary Code of Practice on Employing Migrant Workers/Overseas Staff in Great Britain' (2008), BITC, http://www.bitc.org.uk/princes_programmes/rural_action/migrant_workers.html
- ^{vi} Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5, 7 April 2008
- ^{vii} <http://www.goodwithmoney.co.uk/ethical-banking/>
- ^{viii} 'The Reality of Rights: Barriers to accessing remedies when business operates beyond borders' (2009), LSE/CORE, http://www.lse.ac.uk/collections/enterpriseLSE/pdf/reality_of_rights.pdf
- ^{ix} 'Response to Conservative Party Commission on Waste and Voluntary Agreements' (2008), <http://www.bitc.org.uk/document.rm?id=8579> and 'Response to Liberal Democrats Consumer Policy Consultation Paper' (2009), <http://www.bitc.org.uk/document.rm?id=9145>
- ^x 'Authorisations and notifications—a summary' (2007), Australian Competition and Consumer Commission, <http://www.accc.gov.au/content/index.phtml/itemId/776052>
- ^{xi} Business and human rights: Towards operationalizing the "protect, respect and remedy" framework Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie A/HRC/11/13, 22 April 2009
- ^{xii} 'Filling the Gap: a new body to investigate, sanction and provide remedies for abuses committed by UK companies abroad' (2008), Jennifer A. Zerk, A report prepared for the Corporate Responsibility (CORE) Coalition, http://www.corporate-responsibility.org/module_images/Filling%20the%20Gap_dec08.pdf