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Business and Human Rights Evidence Submitted by Synergy to the Joint Committee on Human Rights

Synergy Global Consulting (Synergy) works with organisations to improve the way they understand and manage their relations with society, with a particular focus on the extractive industries and their operations in developing countries. With offices in Oxford, UK; Johannesburg, South Africa and Abu Dhabi, UAE, Synergy has worked in over 40 countries working with private sector companies (including many UK companies), civil society organisations and governmental departments (notably the Department for International Development - DFID). Within its line of work Synergy has had the experience of helping extractive companies understand and manage potential human rights impacts and risks.

Introduction

Synergy welcomes the Joint Committee on Human Rights' decision to inquire into business and human rights. Acknowledging the progress which has been made over the last few years advancing the multi stakeholder dialogue on business and human rights, Synergy welcomes steps which are now being taken to operationalise these dialogues, including the work of the Secretary General's Special Representative (SGSR) John Ruggie, and the engagement of the UK Joint Committee on Human Rights.

Synergy has based its response to this call for evidence on the knowledge, experience and understanding of the human rights and business context gained from working with both UK and non-UK extractive companies with operations outside the UK. Most human rights cases that involve businesses tend to occur outside of the UK and within the infrastructure, energy, textiles and extractive industries sectors. This has been reinforced by John Ruggie both in his 2008 'Protect, Respect, Remedy' report and its 2009 successor 'Business and human rights: Towards operationalising the 'protect, respect and remedy' framework recently submitted to the Human Rights Council. While acknowledging the need to encourage UK based companies to manage their human rights risks for UK based operations, Synergy believes the spirit of the Ruggie framework is predominantly focused on addressing the most serious forms of human rights abuse that tend to be most prevalent in areas of weak governance. Synergy has extensive experience operating in areas of weak governance and engages at both a field and policy level with the types of human rights risks, which companies face when operating in such environments. As such our submission of evidence will focus on **UK companies operating outside the UK** and will cover:

1. An understanding of the current context, including the key drivers for change; and
2. Recommendations for Her Majesty's Government (HMG) to influence these drivers and to support UK companies operating outside of the UK in managing their human rights risks.

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The current context

The role of the state in protecting individuals from corporate sponsored abuse is at the centre of the international debate on business and human rights. In both his 2008 and 2009 reports Ruggie iterates that the State **duty to protect** against third party abuse is overtly grounded in international human rights law.¹ Despite this Ruggie maintains that “the business and human rights domain exhibit(s) considerable legal and policy incoherence” both horizontally across government departments and vertically in failure to adopt and implement international law and policy.² According to Ruggie, this “results in ambiguous and mixed messages to business from Governments and international organizations”³.

The second element of Ruggie’s business and human rights framework concerns businesses’ **responsibility to respect** human rights. Human rights violations by businesses are routinely brought to public attention by civil society groups and the media. Many high profile UK extractive companies have been accused of complicity in various human rights violations as a result of their operations outside the UK. Within this context, UK companies operating outside the UK are having to engage with human rights as a result of a series of key drivers, outlined below:

Business drivers

- **Improved practices in companies:** Companies are increasingly considering human rights in business practices. This is particularly notable in companies that have both learned from experience but have also been influenced by individual actors within those companies that have recognised the business and moral imperative for engaging with human rights.
- **Role of investors and shareholders:** There is increasing recognition that human rights provisions need to better inform UK sponsored investment into countries of weak governance to ensure that such investment does not undermine the ability for such countries to adhere to international human rights commitments, as well as to ensure management of the material financial risks that human rights issues can pose. HMG has influence on this through regulation of the financial sector in the UK and through its shareholdings in various financial institutions.
- **Role of civil society:** The UK is in many ways at the forefront of the business and human rights debate with a host of NGOs including Amnesty International, Global Witness, ActionAid, CAFOD, Christian Aid, RAID, CORE Coalition, The Corner House, Environmental Justice Foundation, Friends of the Earth, Greenpeace, Oxfam, International Alert and trade unions including the TUC engaging with and pushing the business and human rights debate forward and in some cases initiating consumer pressure campaigns to affect change.
- **Role of international standards and multi stakeholder initiatives:** HMG and UK based companies support a number of international standards and initiatives that address the link between business and human rights including the Global Reporting Initiative, the UN Global Compact, the Voluntary Principles on Security and Human Rights, the Extractive Industries Transparency Initiative, various certification initiatives, e.g. SA8000, Fair

¹ SGSR John Ruggie *Business and Human Rights: Towards operationalising the “protect, respect and remedy” framework* April 2009

² *Prepared Remarks by SRSJ John Ruggie Public Hearings on Business and Human Rights Sub-Committee on HR European Parliament*

³ SGSR John Ruggie *Business and Human Rights: Towards operationalising the “protect, respect and remedy” framework* April 2009

Trade, and various initiatives for fair trade, and ethical and responsible mineral extraction. There has also been an increase in the number of multi stakeholder initiatives and partnerships aimed at facilitating the engagement of UK companies with human rights including the International Business Leaders Forum and the Business Leaders Initiative on Human Rights

Legislative and governance drivers

- **Role of home country government legislation and governance:** At present efforts are clearly being made by HMG to address business engagement with human rights through legislative, policy and governance based initiatives. The role of the Alien Tort Claims Act on influencing the behaviour of some US-based companies demonstrates the potential influence that effective home country legislation could have.
- **Role of host country government legislation and governance:** Most of the worst cases of business related human rights violations occur in countries of weak governance. Much of the UK's overseas aid programme is already focused on improving governance and therefore has potential to help host states improve their capacity to protect human rights.

In seeking to ensure businesses respect human rights, some arguments emphasise strengthening and creating further legislative drivers, whilst others argue that current business drivers are sufficient and more appropriate to the business sector. Synergy believes that both a strengthening of legislation and the development of a more enabling business and human rights environment are necessary to ensure companies uphold their responsibility to respect human rights.

As part of its duty to protect, a government clearly has the duty to ensure businesses uphold their responsibility to respect human rights. As such, HMG needs to address its role within business and human rights drivers and identify specific actions that would ensure UK companies operating outside of the UK in fulfilling their responsibility to respect human rights.

Recommendations

The following recommendations detail specific actions that could be undertaken by HMG to support UK companies in fulfilling their human rights responsibilities. These recommendations are based on Synergy's field and policy level experience, including our work with DFID. They also draw on a variety of recommendations and frameworks including:

- John Ruggie's 2008 Report: 'Protect, Respect and Remedy: a Framework for Business and Human Rights' and the recently published 2009 follow up, 'Business and human rights: Towards operationalising the "protect, respect and remedy" framework';
- DFID's 2006 White Paper;
- The International Development Committee report on Private Sector Development (Fourth Report of Session 2005–06);
- National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries: Advisory Group Report March 29 2007;
- Outputs from the Mining, Minerals and Sustainable Development (MMSD) programme; and
- The OECD Guidelines for Multinational Enterprises and Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.

HMG demonstrably has influence over the level of engagement companies operating outside the UK have with human rights, and is already taking a wide variety of actions in this area. However, these actions can sometimes be overlapping and occasionally contradictory. We hope that this enquiry will help identify all of these different government actions and be an important step in developing a coordinated, consistent and strategic government approach to this issue.

1. Supporting improved practices in companies

- 1.1. Encourage UK-based **companies to endorse SGSR John Ruggie's *Protect, Respect and Remedy* framework.**
- 1.2. Encourage companies to include a **specific commitment to human rights** in their statement of business principles and codes of conduct
- 1.3. Encourage companies to produce explicit **human rights policies** and ensure that they are integrated, monitored and audited
- 1.4. Support the development and implementation of **Human Rights Impact Assessments**, that can be integrated into other assessment activity
- 1.5. Encourage companies to put in place necessary **management systems** to ensure that assessment outcomes are integrated into business decision making
- 1.6. Encourage companies to develop **monitoring and reporting** mechanisms to track performance, notably producing public reports according to GRI standards.
- 1.7. Encourage companies to develop **grievance mechanisms** to ensure that specific rights holders affected by company activities have access to remedy.

2. Improving the role of investment

- 2.1. Promote human rights **due diligence** of business investments made by financial institutions in which HMG has a shareholding (e.g. IFC, EBRD, CDC and Actis).and UK banks
- 2.2. Engage, facilitate, and encourage businesses and the financial sector to understand **the linkages between human rights performance and financial value** and risk management and help make this link more relevant to financial sector decisions.
- 2.3. Ensure that all **investment agreements** undertaken to facilitate UK foreign investment are not undermining a host countries ability to achieve its legitimate policy objectives, including its international human rights obligations
- 2.4. Work with country partners to ensure that **stabilisation clauses** included within bilateral investment treaties do not undermine the ability of the host country to impose environmental and social regulation on foreign investors
- 2.5. Improve advisory services provided by FCO to UK companies investing abroad to ensure that they are aware of their obligations under UK law, international law and the law that they are operating in as well as international norms and human rights standards

3. Civil society engagement

- 3.1. Continue to **support civil society organisations** that play an effective role in supporting business engagement with human rights

4. Supporting international standards and multi stakeholder initiatives for business conduct

- 4.1. HMG could consider making an overt statement in support of **Ruggie’s Protect, Respect and Remedy framework**
- 4.2. HMG could consider the recommendations outlined in **Ruggie’s Business and human rights: Towards operationalising the “protect, respect and remedy” framework** particularly with regard to the State duty to protect both within the UK and extraterritorially.
- 4.3. Continued support for FCO’s lead role in the implementation of the **Voluntary Principles on Security and Human Rights**.
- 4.4. HMG could use existing forums to **enhance international cooperation and peer learning** with respect to the business and human rights framework, including treaty bodies, the Human Rights Council’s Universal Periodic Review, National Contact Points under OECD Guidelines and regional human rights mechanisms
- 4.5. Work to make the **OECD Guidelines for Multinational Enterprises** more effective in promoting responsible business conduct, particularly in countries with weak governance, including continuing to improve the effectiveness of the National Contact Point.
- 4.6. Support the implementation of the **OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones**, and other tools for companies operating in fragile states.
- 4.7. Continue to provide input and support towards **incorporating a human rights framework within the World Bank Group and the regional development banks standards and guidelines, and the commercial banks’ Equator Principles**.
- 4.8. Encourage initiatives that aim to develop and implement **standards that improve the role of business in human rights**, including the Business Leaders Initiative on Human Rights
- 4.9. Work with industry associations and other stakeholders, to develop and distribute **information tools and targeted educational programmes** to support the continuous improvement of human rights performance among companies.
- 4.10. Support **research partnerships** for assessing corporate behaviour and human rights.

5. UK governance, policy and legislation

- 5.1. Develop a **formal policy on business and human rights**, and a cross Whitehall strategic plan for implementing that policy.
- 5.2. Improve **coordination between key UK Government Departments**, e.g. DTI, FCO, and DFID on business and human rights.
- 5.3. **Revise the Companies Act (2006)** to ensure UK companies operating outside the UK are required to undertake full due diligence of their potential human rights impacts
- 5.4. Provide **guidelines to supplement the Companies Act (2006)** to ensure companies understand the due diligence process and enable them to identify human rights issues as material issues to disclose to shareholders
- 5.5. Support the further **integration of the role of business and human rights into PRSPs**.

- 5.6. Improve FCO's capacity to ensure that **UK companies operating abroad are aware of the local political, social and cultural context** in which they intend to operate, particularly in weak governance zones.
- 5.7. Establishing an **independent ombudsman** to provide advisory, fact-finding and reporting functions relating to grievances raised against UK listed and financed companies

6. Host governance and policy

- 6.1. Commission, support and conduct **assessments in weak governance countries** to further determine the linkages between business and human rights.
- 6.2. Based on these assessments, **review HMG's programmes in these countries.**

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