



CALL FOR EVIDENCE

Business and Human Rights

JOINT COMMITTEE ON HUMAN RIGHTS

The Joint Committee on Human Rights has decided to inquire into Business and Human rights and the way in which businesses can affect human rights both positively and negatively. Vigeo, a Corporate Social Responsibility Rating Agency, would like to contribute to this inquiry by sharing some of its findings on the human rights performances of UK companies. This paper focuses on the question: *How should UK businesses take into account the human rights impact of their activities? How can a culture of respect for human rights be encouraged?*

Vigeo's Research Results on UK Companies and Human Rights

Vigeo's reference model is based on criteria drawing together international objectives for social responsibility. These criteria are divided into six fields: Human Rights, Human Resources, Environment, Business Behaviour, Corporate Governance and Community Involvement. In this paper we only consider findings analysed under the Human Rights Domain, focusing in particular on two criteria: *Fundamental Human Rights*, and *Freedom of Association and the Right to Collective Bargaining* (Labour Rights).

1. Respect for Human Rights Standards and the Prevention of Violations (fundamental human rights in society)

Over the past three years, Vigeo has analysed 414 European companies on the issue of fundamental human rights. 104 of these are British. Compared to the average performance of its European peers, more British companies have established formalised policies on Human Rights and 50% of them have implemented concrete measures to ensure the respect of these rights (such as risks assessments, training and awareness raising, etc...). However, 25% of the UK companies do not address human rights issues at all. Moreover, between January 2007 and April 2009 Vigeo has identified human rights allegations involving 18 British companies – which is a rather high number compared to companies from other European countries.

The British companies included in Vigeo's panel that were involved in violations of fundamental human rights, were: Group 4 Securicor, Serco GRP, GlaxoSmithKline, BHP Billiton, Unilever, Vedanta Resources, Mondi, BAE Systems, AstraZeneca, Anglo American, Royal Bank of Scotland, HSBC Holdings, BP, Royal Dutch Shell, Xstrata, Rio Tinto, Barclays and Standard Chartered.

In general, these companies belong to 'sensitive' sectors in terms of human rights, which means that, due to the specific activity or the region in which these companies operate, there is an increased risk of exposure to human rights violations.

The sectors that were most exposed to fundamental human rights risks and involved in controversies were Mining & Metals, Business Support Services (security), Forest Products and Paper, Energy (oil & gas), Banks (related to investment projects) and Pharmaceuticals.

Empirical examples of UK companies involved in fundamental human rights controversies:

Anglo American

In September 2006, Amnesty International reported that a leader of the Association of Miners of the Bolívar Department (linked to the Agro-mining Federation of the south of Bolívar Department in Colombia) had been killed. According to Amnesty, he was "reportedly killed by members of the Colombian army's Nueva Granada Anti-Aircraft Battalion". The reports states that "Soldiers have also reportedly told local residents that their operations aim to guarantee the presence of international corporate mining interests in the area". This is an area in which the gold-mining company AngloGold Ashanti has interests (Kedahda S.A. in which Anglo American has 17.5 holding). Local miners had opposed the arrival of this company in the area.

Rio Tinto

In April 2007, the U.S. Ninth Circuit Court of Appeals upheld the right of Bougainville Island residents in Papua New Guinea to pursue class-action litigation against Rio Tinto. The plaintiffs claim that they or their families were victims of numerous violations of international law as a result of Rio Tinto's Bougainville copper mining operations, and the decade-long uprising generated by the controversy over the mine. Rio Tinto has argued that the plaintiffs need to exhaust all PNG court remedies prior to seeking U.S. court intervention. In November 2007, War on Want released a report, "Fanning the Flames: The role of British mining companies in conflict and the violation of human rights". Rio Tinto responded to the report by explaining its policies and management systems in safeguarding human rights, and proposed a meeting with War on Want, which has been accepted.

BP

According to the Independent, in 2006, BP paid multi-million dollar compensation to Colombian farmers, who accused the company of benefiting from a harassment and intimidation from Colombian paramilitaries hired by the government to protect BP's pipeline. However, BP's direct involvement with the paramilitaries was not established.

However, there are also examples of good practices among British corporations. Quite many companies adhere to the Global Compact¹ and/or to the UK Voluntary Principles on Security



and Human Rights.ⁱⁱ Although it remains rare, some companies also cooperate with independent stakeholders.

Companies should not only issue commitments to Human Rights. It also lies within their responsibility to ensure the respect of these rights within their operations. Some of the British companies in Vigeo's panel have implemented relevant measures such as risk assessments, consultations with local populations, grievance procedures (such as confidential hotlines), human rights training and awareness raising for relevant employees and contractors. Best in class companies also conduct external human rights audits.

Empirical examples of good practices among UK companies:

Old Mutual

Old Mutual is a signatory of the Global Compact. Nedbank, the major unit of the company's banking activities, is also a signatory of the Equator Principles. Nedbank has a structured approach to prevent human rights violations in project finance. Procedures are in place to ensure that appropriate social assessment studies are carried out by the borrowers. The bank verifies that the borrowers implement and monitor environmental and social risk management programmes and borrowers must submit periodic reports. Nedbank discloses the number of project finance transactions subjected to environmental / social assessment. In 2007, the company completed a second two-day training session for its key support staff. Credit Committee awareness sessions were also included.

Meggitt

As a defence company, Meggitt's business activities in it selves are highly controversial from a Human Rights point of view. Indeed, the defence industry's responsibilities in this area are important. As other companies in the sector, Meggitt is subject to statutory export controls. While Meggitt's Corporate Responsibility Policy only vaguely refers to human rights, the company states that it seeks to become an "industry champion" on export compliance, and hence non-proliferation, based on the recommendations of the Nunn-Wolfowitz Taskforce Report on best practice in export compliance. Meggitt's commitment to arms export compliance is sponsored by senior management and compliance officers at all business units. The company's export compliance programme includes awareness-raising and training programmes for employees, internal audits and screening of potential counterparties against government lists of restricted parties. In addition, the programme is externally audited by trade consultancy JPMorgan Chase Vastera. The company has set up such systems throughout the group, including subsidiaries and sites located in countries where regulations on arms exports are not stringent.

A review of stakeholder sources did not reveal any allegations against the company on this issue.



2. Respect for freedom of association and the right to collective bargaining

A majority of the European companies in Vigeo's panel commit to respect basic labour rights. Some companies go further in their commitment and sign an International Framework Agreement (IFA) with global trade unions. In the end of 2008, 78 IFA's had been signed world wide. As regards to UK companies, only 5 have concluded an IFA (Ability, Barclays Africa, Brunel, G4S, NAG) which is a rather low number compared to countries like Germany, Sweden or France.

Although many European companies commit to respect basic labour rights, very few (UK companies included) have implemented measures for ensuring the respect of basic labour rights within their operations. Hence, this is an area of improvement for international corporations. Even basic measures, such as providing and spreading information on freedom of association to employees (e.g. access to the Code of Conduct in all relevant languages), are rarely in place. There are several means available for companies that wish to ensure the respect of labour rights within their operations. Best in class companies have for example conducted risk assessments, internal and external audits, and collaborate actively with international and local trade unions.

Empirical examples of good practices among UK companies:

Reckitt Benckiser PLCR

Reckitt set up internal standards that including a part relating to the right of employees to freedom of association and collective bargaining. All Reckitt's entities are audited on their compliance to these standards.

BAE Systems

BAE Systems has developed a set of guidelines, through consultations with trade unions, on the recruitment of new union members. In order to make an informed choice, trade unions are said to be provided with an opportunity to talk to new employees during their induction, and "check-off facilities" for union dues are provided at a number of sites. Paid time off is usually granted for shop stewards to be trained in membership recruitment activities. BAE Systems does not operate a collective bargaining policy in Saudi Arabia, where the situation is naturally more complex. There, employees are said to be encouraged to represent their views through formal consultative forums, opinion surveys, local briefing and discussion forums.

In a recent studyⁱⁱⁱ on European companies and their respect of basic labour rights, Vigeo demonstrates that British companies are more often involved in labour rights controversies than companies from other European countries.^{iv} Most of these allegations occurred outside Europe, in so called "sensitive" countries. The controversies relate to cases of union busting, non recognition of trade unions, the refusal of collective bargaining, the denial of the right

to strike, and discrimination of trade union members or representatives. The sectors most involved in allegations were the Mining & Metals, Technology Hardware, Building Materials and Automobiles sectors.

Empirical examples of UK companies involved in labour rights controversies.

Group 4 Securitor

In October 2007 workers and trade union members brought demands to their employer, Group 4 Securitor Marocco (Business Support Services), on the payment for overtime work and proper health and safety protection. According to UNI, following this demand G4S dismissed 20 trade union members. In protest, 500 union members took 24-hour strike action on 11 October 2007. The following day, almost 200 of the strikers, including the union leaders, were dismissed from their employment. During the 3 months that followed, G4S offered severance packages to the dismissed workers but refused to re-employ any of them. In January 2008, the last of the remaining strikers accepted severance pay. G4S Morocco reported on 23 January 2008 that it had recognised another union.

Tesco

Tesco faces major and recurrent allegations of labour rights abuses. According to UNI, the British retail giant did not accept a newly created trade union at its subsidiary Tesco Lotus in Thailand and resorted to repression instead of dialogue. In Turkey, the company refused to accept a government decision that recognised UNI Commerce affiliate Tez-Koop-IS as a negotiating partner. In South Korea, Tesco Homeplus is considered as an anti-union employer. And in the United States, Tesco has consistently refused to meet with the large UNI Commerce affiliate UFCW (USA), prior to its recent entry to the United States market. Instead, UNI believes that the retail giant is tempted to build up a non-union convenience store chain, thus avoiding entering into a collective agreement relationship.

How should UK businesses take into account the human rights impact of their activities? How can a culture of respect for human rights be encouraged?

International law firmly establishes that States have a duty to protect against non-State human rights abuses within their jurisdiction, and that this duty extends to protection against abuses by business entities.^v Of concern are the HRT violations reported by Amnesty International in 2008 and 2007. These allegations are particularly severe considering the pioneering role the UK could fulfil in the promotion of human rights.^{vi}

Companies have clear legal responsibilities to respect human rights standards according to both international and UK law.^{vii} There is also an overwhelming consensus that corporations have a clear moral obligation to respect Human Rights.



This paper provides several examples on how businesses can, and should, take into account the human rights impacts of their activities. A first step for companies is to issue formal commitments towards the respect and the promotion of human rights. However, such commitments must be followed by measures that monitor and ensure that the company's policies are respected.

In Vigeo's opinion, active and transparent support of human rights can induce a motivating working environment as well as company cohesion. Indeed, addressing human rights issues may enhance a company's effectiveness in managing its human capital risks. The competition for high qualified employees is a challenge in today's business world. Responsible business practices, including transparency and appropriate policies on human rights, are persuasive means for encouraging employees and potential employees to choose a company over its rivals. Indeed, graduates take into account social responsibility issues when choosing which jobs to apply for – even when the employment market is depressed. Adopting and implementing explicit human rights policies therefore reinforces a company's value proposition and sends a strong and tangible signal internally and externally about what the company stands for. Moreover, violations of human rights can have severe consequences for the company's reputation as well as its market acceptability. Vigeo's examples demonstrate that companies that do not comprehensively address human rights issues also run important legal risks (litigations, trials, legal proceedings, fines etc).

When looking at the results of Vigeo's analysis of the 104 British companies in the panel, it is striking that barely 50% of the UK companies have monitoring/audit systems in place to ensure the implementation of their declared policies and commitments. The lack of such measures increases the risk that fundamental human rights and labour rights will not be effectively monitored, and in case of conflicts, corrective measures might not be taken. Additionally, a company's policy may be considered by external stakeholders as a mere marketing instrument or pure "window-dressing" if not concretely supported by strong implementation mechanisms.

Finally, it has become more and more common for companies to externalise and delocalise their core businesses from their home and host country of operations, to suppliers or subcontractors in more "sensitive" countries or regions. Under the pressure of stakeholders (in particular international trade union movements and human rights NGOs) companies increasingly need to prove that they handle human rights risks in an effective and responsible way throughout their entire supply chain. Indeed, in Vigeo's opinion, a responsible management of the supply chain by international companies will be the next "front line" for promoting human rights and for fighting against the violations of these rights. This is why companies should, starting from today, address human rights issues within their own operations as well as within their supply chain.



Annex: Presentation of Vigeo's Research Framework on Human Rights^{viii}

Vigeo Group is a European leading supplier of extra-financial analysis. The Group measures the degree to which the companies take into account – in the definition and deployment of their strategies – corporate social responsibility objectives. Vigeo's reference model is based on criteria drawing together international objectives for social responsibility. These criteria are divided into six fields: Human Rights, Human Resources, Environment, Business Behaviour, Corporate Governance and Community Involvement. In this paper we only consider findings analysed under the Human Rights Domain, focusing in particular on two criteria: *Fundamental Human Rights*, and *Freedom of Association and the Right to Collective Bargaining* (Labour Rights). Each criterion is correlated to international texts of reference.^{ix}

Like all other Vigeo criteria, the human rights criteria are analysed through the Leadership, Implementation and Results (LIR) approach:

- Leadership (L) relates to the formalisation of commitments towards the promotion of human rights in terms of visibility, relevance and ownership.
- Implementation (I) focuses on the relevance of the implementation measures used to achieve or respect the company's commitment: monitoring of the respect of human rights, risk assessments, and the promotion and coverage of the implementation tools.
- Results (R) are linked to the efficiency of the system which is measured by the occurrence and management of allegations and/or controversies.

For Vigeo, a company's CSR performance is also an indication of the way it manages its legal, human capital, operational and reputational risks. The weight Vigeo gives to each risk class to assess a company depends on the nature of stakeholders' rights, interests and expectations and the stakeholders' exposure. For the domain of human rights, the *reputational risks* (brand recognition; allegations; controversies; social acceptability; attracting new skills; licence to operate) and *legal risks* (litigations; trials; legal proceedings; fines) are of utter importance.



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ⁱ <http://www.unglobalcompact.org/>

ⁱⁱ <http://www.voluntaryprinciples.org/>

ⁱⁱⁱ “Freedom of Association and the Right to Collective Bargaining: Analysis of Vigeo’s Universe of European companies”, Vigeo, February 2009

^{iv} German, Swedish, Finnish, Italian, French, Belgian, Swiss and Spanish companies have also faced labour rights controversies during the last three years. Controversies that occurred in the “Western” world mostly concerned Anglo-Saxon countries such as the USA, the UK and Australia.

^v <http://daccessdds.un.org/doc/UNDOC/GEN/G07/108/85/PDF/G0710885.pdf?OpenElement>

^{vi} Amnesty International Report 2008:

The UK continued to attempt to return individuals to states where they would face a real risk of grave human rights violations on the strength of unenforceable “diplomatic assurances”. Secrecy in the implementation of counter-terrorism measures led to unfair judicial proceedings. There were continued failures of accountability for past violations, including in relation to alleged state collusion in killings in Northern Ireland. The government sought to limit the extraterritorial application of human rights protection, in particular in relation to the acts of its armed forces in Iraq. Women who were subject to immigration control and had experienced violence in the UK, including domestic violence and trafficking, were unable to access the support they needed. Rejected asylum-seekers continued to be forced into destitution.

Amnesty International Report 2007:

The government continued to erode fundamental human rights, the rule of law and the independence of the judiciary, including by persisting with attempts to undermine the ban on torture at home and abroad, and by seeking to enact legislation inconsistent with fundamental human rights. Measures taken by the authorities with the stated aim of countering terrorism led to serious human rights violations, and concern was widespread about the impact of these measures on Muslims and other minority communities. Public judicial inquiries into cases of alleged state collusion in past killings in Northern Ireland were ongoing, but the government continued to fail to establish an inquiry into the killing of Patrick Finucane.

^{vii} See for example John Ruggie’s report “on the issue of human rights and transnational corporations and other business enterprises” according to which corporations have legal responsibilities to prevent human rights abuses

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/108/85/PDF/G0710885.pdf?OpenElement>

^{viii} www.vigeo.com

^{ix} – The International Bill of Human Rights,

– United Nations: International covenant on civil and political rights, 1966

– United Nations: International Covenant on Economic, Social and Cultural Rights, 1966

– Global Compact, Principles 1 and 2, 1999

– United Nations: Code of Conduct for Law Enforcement Officials

– United Nations: Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

– United Nations: Project of Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, 2002

– ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 2000

– ILO: C169 Indigenous and Tribal Peoples Convention, 1989

– OECD guidelines for multinational enterprises, revision 2000

– fundamental ILO conventions: 29, 87, 98, 100, 105, 111, 138 and 182