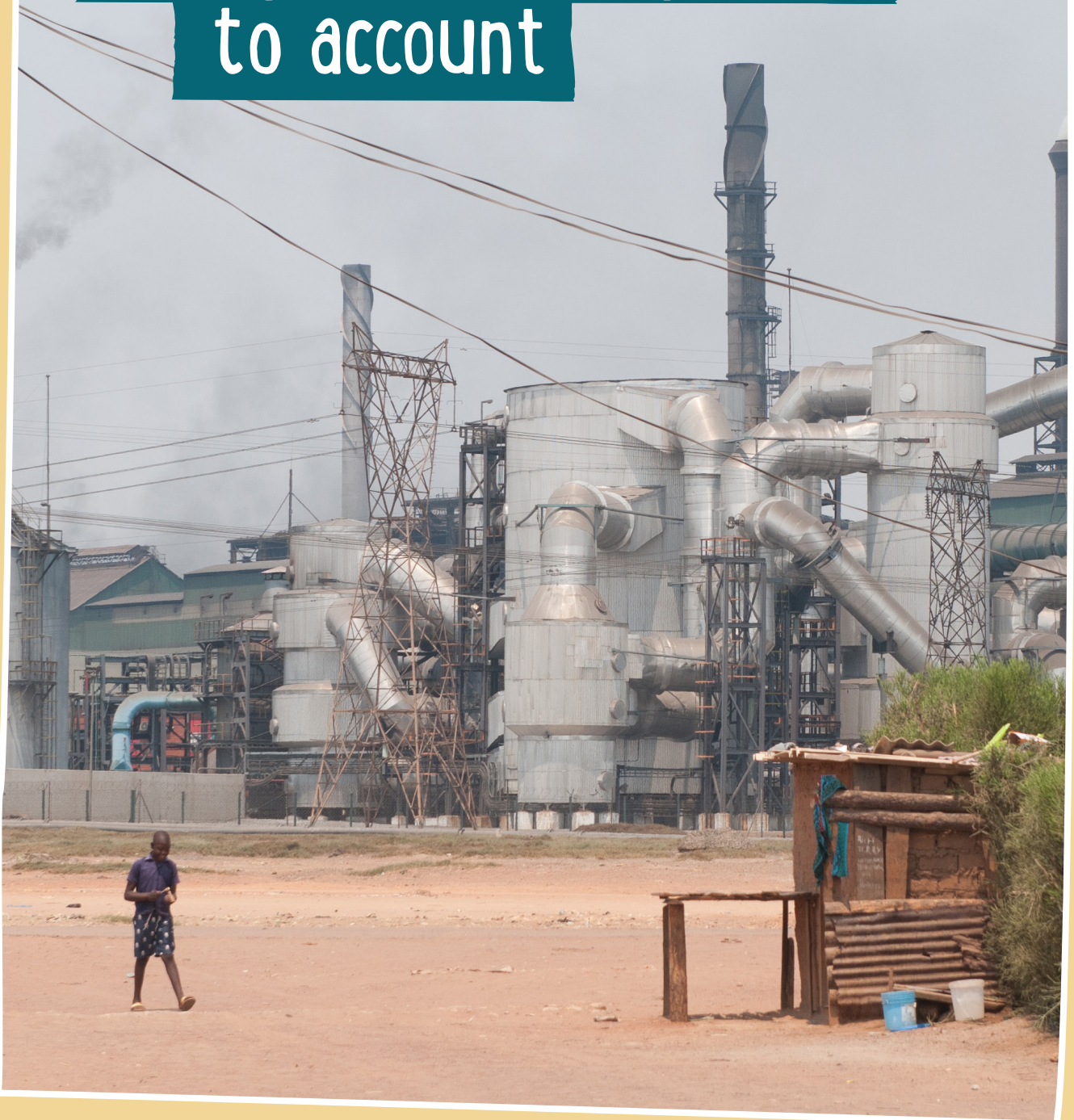


Above the Law?

time to hold
irresponsible companies
to account



TRAI DCRAFT
Fighting poverty through trade

About Traidcraft

Traidcraft Exchange is the UK's only development charity specialising in making trade work for the poor. In collaboration with local partners we work to create opportunities for poor people to harness the benefits of trade, helping them to develop sustainable livelihoods. Traidcraft uses the experiences of its sister fair trade company, Traidcraft plc, to improve wider trade practices and to inform our campaigns for trade justice and corporate accountability.

Traidcraft's Justice campaign is calling for people in developing countries who have been harmed by the actions or decisions of British companies as they trade internationally to be able to get justice, and for the companies to be held to account in the UK. Traidcraft is a member of CORE.

www.traidcraft.co.uk/justicecampaign

About CORE

CORE is the UK civil society coalition on corporate accountability. We bring together extensive experience and expertise on international development, the environment and human rights from NGOs, academics, trade unions and legal experts. CORE's aim is to reduce business-related human rights and environmental abuses by ensuring companies can be held to account for their impacts both at home and abroad, and to guarantee access to justice for people adversely affected by corporate activity.

www.corporate-responsibility.org

Acknowledgments

This report was written by Marilyn Croser, with additional material from Fiona Gooch, Mary Milne and Liz May. Traidcraft would like to thank Alex Batesmith, Rachel Chambers, and Martin Evans for their assistance and advice. Traidcraft bears full responsibility for any errors or omissions.

Photography: page 9 @Arete Stories, all other photography Geoff Crawford www.gcphotosite.com

Executive summary

UK companies' important contribution to society should be valued and celebrated. The vast majority of British businesses play by the rules and expect others to do the same. The UK rightly prides itself on high standards of corporate governance and the government has made clear its expectation that companies uphold these high standards.

Yet a small number of irresponsible UK-linked companies operating in developing countries are acting as if they are above the law, putting profit firmly before people. In doing so they also damage the reputation of responsible British companies, undermining their efforts to operate to high standards.

Traidcraft has collated examples of allegations against UK-linked companies covering forced evictions, unacceptable labour standards, pollution which damages both livelihoods and health, and even beatings and deaths. The Business and Human Rights Resource Centre have documented allegations against 127 UK companies, the majority relating to harm caused in developing countries. But despite these allegations, no UK company has ever been prosecuted in the UK for an offence related to serious harm abroad.

This report makes the case for using the law to prosecute such irresponsible companies. This would incentivise companies to put in place the systems necessary to prevent harm before it happens, deterring businesses from turning a blind eye in the knowledge that they are unlikely ever to be held to account.

There is widespread support for change. New polling commissioned by Traidcraft from YouGov revealed that more than two-thirds (69%) of British business leaders agree that British companies operating in developing countries should be held accountable in the UK for any harm they cause to workers or local communities in the developing countries¹.

The UK has led the way internationally on developing a National Action Plan on Business and Human Rights. Now the government needs to put in place a legal framework to hold companies to account and allow victims justice.

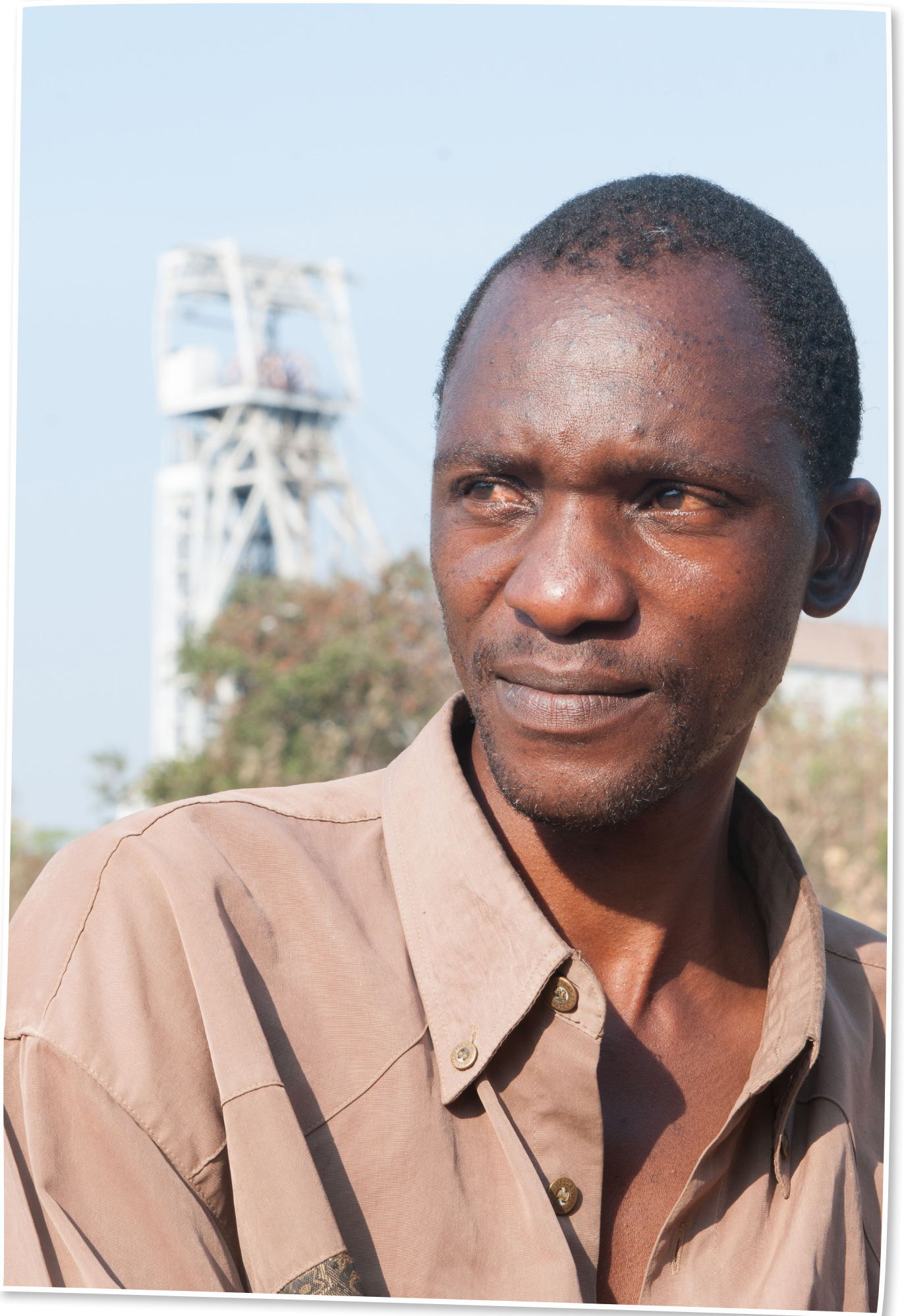
Using the law to hold companies to account in the UK if they cause serious harm in developing countries is legally possible, urgently needed and would have support from business leaders, the public and parliamentarians.

Political will and ambition are needed to make this change a reality. If the government is serious about tackling poor business practice, it should not hesitate to act.

Using the law to prosecute irresponsible companies would incentivise companies to put in place the systems to prevent harm before it happens.

"Poor business practice doesn't operate in a vacuum: it hurts the good...When some cowboys play the system all businesses suffer from the fallout to their reputation - that is why it's not just those in the NGOs who've been lobbying my government on these issues, it's those in the high rises in the City of London: bankers, lawyers, senior figures in finance. They've told us to pursue this agenda hard and that is exactly what we're going to do."

David Cameron, speech to the World Economic Forum, Davos, 2013²



1. Introduction

Business is a vital part of our society, making an invaluable contribution to the economy, providing employment, goods and services. There are now 5.2 million businesses in the UK³ and 24.4 million people work in the private sector.⁴ Businesses spent £18.4 billion on research and development in 2013 and non-financial businesses alone added over £1 trillion to the economy.⁵

As a UK company which has been sourcing fair trade products for over 35 years, Traidcraft understands the realities of doing business around the world. Traidcraft believes firmly that trade and investment can have a positive impact on developing countries.

UK businesses are increasingly global in their activities, and contribute significant foreign exchange, skill development and employment to developing economies. However the impact of these companies is not universally positive. Some irresponsible companies have benefited from the UK's markets by bringing in products and profits made at the expense of people in developing countries.

UK businesses are increasingly global in their activities, and contribute significant foreign exchange, skill development and employment to developing economies. However the impact of these companies is not universally positive.

People in some of the world's poorest countries are being forced off their land to make way for palm oil which ends up in cosmetics and processed food⁶. Workers, like the 1,100 people killed when the Rana Plaza factory complex in Bangladesh collapsed in April 2012, are employed in sweatshop conditions making products sold on high streets all over Britain⁷. Impoverished villagers are poisoned by pollution from mining operations that supply minerals destined for mobile phones, laptops and televisions⁸. When communities protest, they are beaten or tear-gassed – and in extreme cases, sexually assaulted and tortured.⁹ Such practices would simply not be acceptable here.

This is why Traidcraft launched the Justice campaign, calling for people in developing countries who have been harmed by the operations of British companies as they trade internationally to be able to get justice.

The pattern and repeated nature of these abuses suggests a worrying predictability. But that also means that such outcomes are preventable.

This is why Traidcraft launched the Justice campaign, calling for people in developing countries who have been harmed by the operations of British companies as they trade internationally to be able to get justice, and for the companies concerned to be held to account for their actions in the UK.

This report makes the case for use of the law to stop irresponsible companies causing serious harm in developing countries.

2. UK companies: worldwide allegations

Research commissioned by Traidcraft in 2015 highlighted allegations against 18 UK-linked¹⁰ companies for serious harm caused in the last decade. The type of harms ranged from people moved off their land against their wishes with inadequate compensation; through pollution of the local environment with a knock-on impact on the health and livelihoods of people who rely on land and water; to beatings of protestors, or even killings.

This survey is backed up by work from the Business and Human Rights Resource Centre¹¹ which over the

last ten years has pioneered the practice of collating allegations of human rights abuses made against companies and contacting the named company to request a response. The Resource Centre is widely regarded as an objective source of data on this topic.

From 2004 to 2014, 303 allegations were made against 127 UK companies¹², accounting for 13% of allegations globally. The vast majority of these cases related to allegations of abuse in other countries, mostly in the global south.¹³ Some companies had repeated allegations made against them, sometimes for different subsidiaries or operations.

UK corporate malpractice is a cross-sectoral problem. Allegations are particularly prevalent in the extractive industry: nearly half (47%) of allegations recorded by the Resource Centre related to extractives.

A breakdown of the most common allegations made against UK businesses found that:

- 27% (82 of 303) concerned environmental abuses affecting human health;
- 22% (67) concerned labour abuses;
- 20% (60) concerned land rights;
- 19% (57) concerned allegations that companies were contributing to impoverishment of communities;
- 18% (54) concerned negative health impacts;
- 17% (51) concerned support or complicity for oppressive regimes or groups.¹⁴

The majority of the allegations concerned abuses alleged to have occurred in Africa, Asia or the Middle East, and only 5% related to malpractice in Western Europe, leading the Resource Centre to conclude that:

The high volume of allegations against UK companies abroad demonstrates that while UK based companies are comparatively well regulated in Western Europe they are frequently implicated in places where regulatory regimes are not as robust and options for remedy are more limited. It would appear that companies are breaching human rights abroad, partly because they do not face the same (or any) consequences.¹⁵

LIBERIA

Palm oil plantation protestors arrested & beaten

British company Equatorial Palm Oil (EPO) has two palm oil concessions in Liberia covering a total of 89,000 hectares. The company, which is listed on the Alternative Investment Market of the London Stock Exchange took steps in late 2012 and throughout 2013 to expand its operations in Grand Bassa County, onto land customarily held by the Jogbahn community. The expansion of the company's operations would have destroyed the forests, farms and wetlands upon which the Jogbahn people rely for their livelihoods and food.

In September 2013, a march was planned to lodge a complaint about EPO's activities. Community members report that EPO vehicles with security staff and members of the elite Liberian Police Support Unit arrived, beat members of the community and arrested 17 of them, taking them away in convoy to Buchanan. They were brought before the County Attorney, who then released them.

In a letter to UK NGO Global Witness, the company stated that 'they were not involved' in the incident, had been 'falsely accused' and they 'never instructed or directed any of its staff or Police Support Unit officer to intimidate Jogbahn community members... at any time.' The company denied that it acted without community consultation or outside Liberian law and stated that it respects 'the Liberian community rights and land.' The government's County Attorney confirmed that there was evidence that people had been accosted, however the Grand Bassa police commander denied that his forces had beaten any members of the Jogbahn community.



Air pollution from copper smelting

The people of Kankoyo, in Zambia's Copperbelt District, live downwind of a huge copper smelting plant. Some of the houses are just a few hundred metres from the factory.

The plant is part of Mopani Copper Mines, the largest mining corporation operating in Zambia. UK-listed mining giant Glencore International owns 73% of the shares in Mopani.¹⁶

For years, the plant has emitted sulphur dioxide generated in the copper smelting process. Local people even have a word for the emissions – 'senta'. In 2014, Glencore announced that new equipment was in operation which captured 95% of all sulphur dioxide emissions.

But when Traidcraft staff visited Kankoyo in September 2015, local residents were telling a different story. As one woman said, 'We all started asking – when will the 'senta' stop? We were told it would stop but it hasn't stopped.'

People told Traidcraft that sulphurous gases are still released into the air every few weeks, killing off plants, corroding iron roofs and filling the lungs of local people.

Glencore state that the company actively monitors emissions which remain within international standards and the Zambian Environmental

Management Agency guidelines. Mopani regularly engages with community members and provides support on a broad range of health matters. You can read their full response here: www.traidcraft.co.uk/glencore

Seven-year-old Bertha has had breathing problems ever since she was a baby. Whether these underlying problems are the result of the gas emissions from the copper smelting plant is probably impossible to tell.

But repeated exposure to the sulphurous gases from the plant seems to be taking its toll on her physical and mental health.

Her father Felix explains what happens when the gas is released. 'She says 'I feel my chest – I can't breathe, Dad.' So I just leave her in the house.'

She loves school, but going there has become increasingly difficult. 'She just starts coughing, just coughing. They bring her home saying that she is coughing a lot.' He worries about how she will get an education.

'It's getting worse. When she starts coughing, she doesn't stop. She doesn't even play with her friends, she just stays at home, sometimes she just sleeps.'

3. Justice denied: barriers to holding companies to account

When UK companies harm people in developing countries, it is extremely rare for them to be held to account or to have to remediate the damage. While there are a number of potential routes to justice, victims face almost insuperable barriers.

3.1 Non-judicial grievance mechanisms

Depending on the circumstances, non-judicial complaint mechanisms, such as the OECD National Contact Points, can be an option, but they vary widely in their effectiveness and few, to date, have any powers of enforcement.¹⁷

Some companies have a complaints procedure, and these can have a useful role to play in identifying and resolving issues at an early stage. But they have been criticized as inappropriate for dealing with allegations of serious harm on the grounds that they lack independence and transparency, effectively enabling the company concerned to investigate and exonerate itself.¹⁸ It is also really important that any such internal mechanisms should not interfere with due legal processes or require victims to waive their legal rights.

3.2 Accountability through national courts

National courts in the country where the harm takes place should be the means by which victims get justice and companies are held to account. However, as Joe Kibugu from the Business and Human Rights Resource Centre in Nairobi explains:

*'The reality however is that in many jurisdictions in Africa the rule of law is weak, not only in relation to corporate abuses, but also other human rights violations. Whereas states have the primary obligation to redress human rights occurring in their territory, structural and procedural obstacles have made it hard to hold international companies to account. For victims, this means that hope for redress lies beyond their borders.'*¹⁹

In very poor countries, the resources necessary for the proper functioning of the judicial system are not available and as a consequence, the rule of law is severely undermined. Political and business interests are frequently intertwined, and judicial independence compromised. Lawyers are unwilling to take cases on, or unable to do so as victims have no money to pay legal fees and there is limited pro-bono representation. Even when cases do reach the courts, it can be many years before they are heard, let alone resolved.

In 2006, Konkola Copper Mines (KCM), owned by UK-based Vedanta, is alleged to have spilled effluent into a tributary of the Kafue River which is the water source for 40% of Zambia's population²⁰. Thousands of people became ill as a result and 2000 victims subsequently sued the company through the Zambian courts. In 2011, the Zambian High Court ordered KCM to pay a total of \$2m to the families, however on appeal to the Supreme Court the claims of all but 12 of the victims were dismissed, because they were unable to produce contemporaneous medical reports²¹.

3.3 Suing companies in the English courts

In the last two decades there have been important developments towards improved access to remedy in the UK for overseas victims of corporate related harm, with victims suing UK-based parent companies for harm arising from the activities of their subsidiary companies.²²

Cases have been brought by: miners in South Africa who developed asbestosis and silicosis; Peruvian villagers who were detained and tortured when they protested against a mine; residents of Abidjan, Ivory Coast who sued Trafigura when it dumped toxic waste at various sites around the city; and villagers in the Niger Delta against Shell for its failure to prevent oil spills that have devastated the area's ecosystem.²³

Lawyers have established that, in circumstances where a connection can be made between an alleged harm and the parent or controlling company's responsibility for particular functions or deficiencies in functions within the corporate group, the parent company may owe a duty of care to those adversely affected.²⁴ This approach, however, is limited to situations where it can be demonstrated that a UK company was in direct control of the activities of the subsidiary in question. To date, no case has been brought against a company for harm in its supply chains, due to the difficulty of demonstrating that a UK company purchasing goods or services was in control of the functions or deficiencies within the operations of a supplier company that is not part of the same corporate group.

Settlements in these cases have resulted in vital monetary compensation for victims. As companies tend to be keen to avoid adverse publicity and high legal costs, it is usual for such cases to settle out of court. This means that they tend to conclude with no admission of liability and little transparency about the terms of the settlement.



Killings at the North Mara gold mine

The North Mara gold mine opened in 2002 and is owned and run by African Barrick Gold (now Acacia Mining), a UK registered company. In this part of north-west Tanzania, local people have always relied on small-scale mining to supplement their meagre income from farming. But as one local resident said, 'When the mine arrived, everything changed.'

Located in the middle of seven villages, the mine has been a source of friction with local people since it opened. Inevitably, in this poor area, some people have gone onto the waste dumps to try to find a few gold-bearing rocks. The company's response has been heavy-handed and disproportionate. They have continued to use the Tanzanian police to provide security, despite the fact that at least 16 people have been killed in the last six years.²⁵

Samwel was a victim of one of the shootings which left him paralysed and dependent on his wife for full time care. She spoke of the impact his injuries had: 'I have nobody to help me look after Samwel. I have to carry him down the path whenever he

needs to go to hospital. The rest of the time he lies in bed. ... If we had money to have good treatment for Samwel and an income to serve our needs, life would be better.'

On 30 July 2013, victims filed a lawsuit in the UK High Court against African Barrick Gold and North Mara Gold Mine Limited, claiming that the companies were complicit in the killings and injuries of local people by police. The claims were denied and the litigation was settled out of court in February 2015. The terms of the settlement are confidential.²⁶

Wider questions about alleged human rights violations at the mine remain unanswered. No one has been brought to justice for the abuses and those victims who were not included in the settlement will be unable to benefit from the more generous compensation offered to those who persevered with the claim.²⁷ The civil court case does not seem to have deterred further shootings nor improved the performance management of the security provider because a further 4 people were killed in January 2014.²⁸



3.4 Criminal prosecutions in the UK

No company has ever been prosecuted in the UK for harming people in a developing country.

The Corporate Manslaughter Act (2007) allows for a corporation to be convicted when a death results from the way in which the organisation's activities are managed or organised, and when the organisation's actions constitute a gross breach of the 'relevant duty of care' owed to the deceased person. However, the legislation is limited to the jurisdiction of the United Kingdom and no case has yet been brought against a large corporation with a complex organisational structure. Similarly a company can be prosecuted for breaches of health and safety standards under the Health and Safety at Work Act (1974), or for environmental crimes, such as pollution or water contamination under various pieces of legislation including the Environment Act (1995) but these do not apply overseas.

Section 1 of the Criminal Law Act 1977 establishes the offence of conspiracy, with Section 1A extending the territorial effect of the Act to include a conspiracy to commit an offence outside England and Wales. There is no specific mention that the Act should apply to corporations, but in the absence of contrary intention, a 'person' includes companies.

In August 2015, Amnesty International published evidence that UK-based staff at oil trading company Trafigura had conspired to dump toxic waste in Abidjan, in Ivory Coast. Amnesty alleged that this amounted to a crime under Section 1 of the Criminal Law Act. When the evidence was presented to the Crown Prosecution Service, it declined to pursue the case, saying that it was not within their remit

to carry out investigations. The Metropolitan Police passed the dossier to the Environment Agency, who also declined to investigate.²⁹ This case suggests that far more prosecutions could be brought against companies under existing laws, were the political will and resources available.

Prosecuting companies when there is evidence of wrong doing would be a significant step towards creating a corporate culture where serious malpractice is unacceptable, wherever it takes place.

3.5 Time for a new legal framework

The effect of this patchwork of gaps and failings is that UK-linked companies with operations in developing countries are extremely unlikely to be sued or prosecuted.

The Business and Human Rights Resource Centre research cited earlier in this report highlighted more than 300 allegations against 127 UK companies for harms committed in other countries, the majority developing countries. But over the same period they have seen only 11 lawsuits against UK companies.³⁰

Civil litigation is a powerful tool for holding companies to account, and provides at the least the potential for monetary compensation for victims. But there will always be pressure for an early settlement and confidentiality clauses limit the wider deterrent effect.

The criminal law is the means by which serious breaches of the standards we expect as a society are punished. International businesses, as valued members of our society, should also be held to account through the criminal law. To do this adequately we need a new legal framework.

4. Making responsibility a reality: what can and needs to be done

Traidcraft is calling on the government to improve the framework of law so that irresponsible companies can be prosecuted in the UK for causing serious harm in developing countries.

There is already growing recognition that English law needs to change, either through extension of existing statutes or through the introduction of new offences to better enable companies to be held to account for their actions around the world.

The UK government announced in March 2015 that it wants to ensure that corporations can be held criminally responsible for failing to prevent their agents from facilitating tax evasion. This builds on the ‘failure to prevent’ model already adopted under the Bribery Act.

This proposal tackles two important problems – that of establishing corporate criminal liability and that of applying UK law to acts that take place in other jurisdictions. The HMRC consultation document on the proposals states that:

‘Under the existing law it can be extremely difficult to hold the corporations to account for the criminal actions of their agents, because of the need under the existing law to prove the involvement of the most senior members of the corporation. In the case of large corporations where decision making is not necessarily centralised or where steps have been taken to deliberately obscure the involvement of senior members of the corporation, gathering evidence of such involvement can be particularly difficult.’³¹

The ‘failure to prevent’ model is a helpful system of corporate liability which moves away from the need to identify the individual decision-makers responsible and instead allows the company to be directly liable for failing to prevent its employees or agents committing the offence.

The model emphasises the importance of the company having adequate procedures in place, driving improved corporate practice. This would reverse the current perverse practice of senior managers purposefully avoiding knowledge of harms caused to benefit the company. The tax evasion proposals also recognise the transnational nature of business today and the associated accountability.

The HMRC consultation document goes on to state that:

“...we believe that corporations with a presence in the UK should be obliged to take reasonable steps to prevent their agents being complicit in criminal tax evasion, wherever that tax is evaded. We do not consider that corporations should escape criminal liability just because the tax evaded is levied abroad.”³²

Traidcraft believes that the same logic and principle can, and should, be applied to a range of serious harms that might be committed by UK companies. As outlined in this report, these include causing death, serious injury and severe health impacts. There is no one piece of legislation which could address all these issues, but there are a number of practical ways that the government could enable corporate prosecutions.

Firstly, for cases where there is a death, the Corporate Manslaughter Act could be amended to allow for its extra-territorial application. This would need to be accompanied by a review of the liability regime of the Act. It has been recognised that the current regime makes it difficult, even within the UK, to prosecute large companies where senior management cannot be shown to be personally involved in a decision which resulted in the death.

Secondly, for cases of other serious abuses, such as bodily harm, new legislation would be needed. It is currently not possible to prosecute a company for these crimes³³, even in the UK, unless it can be shown that a particular person or people within the company was directly responsible for the offence. This is the ‘identification’ problem referred to in connection with tax evasion above. However use of the ‘failure to prevent’ model could be considered which would overcome this problem.

Finally, there are cases including serious pollution or health and safety breaches which in the UK would be regulatory offences with a strict liability regime (ie the prosecution does not need to prove criminal intent). Our research would suggest that these are some of the most common abuses carried out by UK-linked companies in developing countries, they can affect large numbers of people and can be severe. Legislation relating to these offences might be extended extra-territorially for the most severe breaches and could incorporate the ‘failure to prevent’ model.

5. Frequently Asked Questions

5.1 Why do we need more laws?

Over time there has been increasing clarification on business responsibilities in relation to communities and the environment. This has included the Companies Act 2006 and the United Nations' Guiding Principles on Business and Human Rights. But while leading companies are making progress, the evidence in this report shows that some other companies are still causing significant harm to people in developing countries. Some companies are the subject of multiple allegations. While consumer pressure can go some way towards persuading well-known brands to change their practices, legislative action is needed to hold businesses to account for the most serious harms. In the Economist Intelligent Unit survey of CEOs, almost a quarter cited legislative changes as one of the biggest drivers for their companies' commitment to human rights.³⁴

5.2 Isn't this an unnecessary burden on business?

The proposals we are making are designed to minimise unnecessary burdens on businesses. Many responsible businesses already implement due diligence processes to identify and avoid causing harms. Our proposal builds on such good practice. Under the 'failure to prevent' model UK companies would only be liable for the offence if it can be shown that they failed to take steps to prevent it in the course of their international operations. Companies and directors would be able to call upon an adequate procedures defence to show that systems were in place to prevent harms. However, there would be no legal obligation to put in place such systems, and the specifics of the procedures would be up to the company concerned, the risks pertinent to their type of business, where they operate and how they manage their operations.



5.3 Will it stop companies being open about the issues they're facing?

The purpose of changes to the law would not be to catch out companies that are trying to do the right thing. Prosecutions could only be initiated after serious harm had occurred. Any changes to legislation would actually increase transparency as it would enhance the current trend of investors asking for more information on how companies are handling human rights issues.³⁵

Enabling a company to defend itself by showing that it has adequate procedures in place would make the prevention of serious abuses a compliance issue at the highest level of the company.

5.4 Won't British companies be disadvantaged?

Whilst improvements in the legal framework would mark the UK as a leader on corporate liability, other countries are already some way ahead of us.

- In Australia, Work, Health and Safety laws implemented by most Australian states in 2012 & 2013 apply extra-territorially in certain circumstances.³⁶
- The Czech Republic's Act on Criminal Liability of Corporations (2012) allows Czech companies to be prosecuted for some criminal offences even if these are committed abroad. These include money laundering, corruption, environmental offences, tax offences and human trafficking.
- In France, a new law amending the Commercial Code to create a 'duty of vigilance' for the directors of large companies will go to a vote in the Senate in November 2015. Under the new requirements, large French companies would have to implement and publish 'vigilance plans' (also called due diligence plans) prior to conducting business with companies in France and abroad – whether they are subsidiaries, subcontractors or suppliers.³⁷
- The Government of North Rhine-Westphalia in Germany has proposed a new law creating criminal liability for corporate entities. This extends to offences committed abroad, if the corporate entity is headquartered in Germany.

The UK is renowned for having one of the best corporate governance regimes in the world, and promotes itself as an advantageous market for global businesses. Clarifying expectations of companies which chose to operate here would only enhance our global reputation.



5.5 The UK can't police the world

During its inquiry into the Foreign Office's human rights work in 2011, the Foreign Affairs Select Committee (FAC) questioned the government's reluctance to introduce extra-territorial regulations to cover UK businesses. The government responded that:

'While it is a general rule that the criminal law of England and Wales is territorial in scope, there is a growing body of provisions creating exceptions to the general rule, providing extraterritorial jurisdiction in a range of criminal offences, including genocide and torture, homicide, sex offences against children, bribery and money laundering.'

In its report, the FAC noted a Home Office Steering Committee review of extra-territorial jurisdiction from 1996 that drew up criteria to be taken into account when deciding whether extra-territorial jurisdiction should be taken in respect of particular offences. One of these criteria was, 'Where it appears to be in the interest of the standing and reputation of the UK in the international community'.

The FAC concluded that '...this might be taken to include actions by businesses based in the UK' and recommended that

*'...the Government should not dismiss out of hand the extension of extra-territorial jurisdiction to cover actions overseas of business based in the UK, or by firms operating under contract to the UK government, which have an impact on human rights. Relying on the local administration of justice may not be enough to preserve the international reputation of the UK for upholding high standards of human rights.'*³⁸

Given the significant number of businesses registered and operating in the UK and their global impact, there is a need for the UK government to fill the gaps in the current legal framework. Regulation such as we are proposing will hold companies liable when harms occur and put the onus on the companies to put in place suitable procedures to avoid causing serious harms in the first place.

6. Maintaining the UK's reputation for high standards

The UK government rightly prides itself on offering an attractive business environment to companies looking to establish a European headquarters. High standards of corporate governance are a significant element of this package. Other benefits include highly skilled workers, a competitive tax regime, global links, excellent ICT infrastructure and supportive stance for innovation.³⁹

It is unacceptable that some companies enjoy these advantages while operating to low standards in developing countries, damaging the UK's reputation and the reputations of responsible businesses. This type of behaviour has contributed over the last decade to a collapse in public trust in business, particularly 'big business'. Company directors are viewed as acting in their own interests and those of their shareholders, caring little for consumers, workers and the general public. A race to the bottom on standards – culminating in episodes like the 2013 horse-meat scandal – has been matched with a race to the top on executive pay.⁴⁰

There is a clear public expectation that it is the role of government to regulate business. Polling in February 2015 suggested that the British public has identified an ethical deficit at the heart of big British business and is calling for the government to take action. The majority of the British public felt that policy to promote ethical practices among big businesses should be a government priority. Over three-quarters (78%) of adults in Britain agreed that big businesses are more likely to prioritise profits over high ethical standards, while 76% agreed that government should make it a priority to promote ethical practices among big businesses.⁴¹

Business leaders too recognise the need for real change and have started to call for much tougher penalties for irresponsible practices. Recent polling by YouGov on behalf of Traidcraft revealed that more than two-thirds (69%) of British business leaders agree that British companies operating in developing countries should be held accountable in the UK for any harm they cause to workers or local communities in the developing countries. Seven in ten (71%) think British companies would benefit from greater clarity on the UK laws affecting their conduct and responsibilities for their overseas operations.⁴²

Ray O'Rourke, founder and major shareholder of Laing O'Rourke, the largest privately-owned construction company in the UK, and Australian mining magnate Andrew Forrest have called for company boards to be held criminally liable when they fail to take steps to prevent the serious harms associated with forced labour in their international operations.⁴³

The UK government has shown that it is prepared to take tough action on corporate crime and misconduct. On corruption, government has recognized the value of robust enforcement. The Department for International Development funds the International Corruption Unit which investigates cases affecting developing countries. It has also funded police units in the UK which have investigated more than 150 cases of overseas bribery and recovered £200 million of stolen assets as well as successfully prosecuting 27 individuals and one company.⁴⁴ The evidence gathered has also supported some later complementary prosecutions in developing countries.

Government action on business practices which cause serious harm in developing countries would be in keeping with current commitments, protecting communities at risk, while reinforcing the government's willingness to bring irresponsible businesses into line. Responsible business would welcome a meaningful 'floor' of enforcement that would establish and incentivise higher standards, and prevent good practice being undermined by irresponsible companies.

UK leadership on business & human rights

The UK's National Action Plan on Business and Human Rights – a world first – was launched by the Secretary of State for Business and the Foreign Secretary in 2013.

The UN Guiding Principles on Business and Human Rights were endorsed by the UN Human Rights Council in June 2011. The framework, developed by Professor John Ruggie, sets out the state duty to protect human rights, the business responsibility to respect human rights, and the right to remedy for victims of business-related human rights abuses.

UK companies including Unilever, Vodafone, HSBC and Associated British Foods have made public commitments to respecting human rights. Major economies including Brazil, Germany, Indonesia and the USA are developing business and human rights action plans.

Endnotes

1. YouGov Business Omnibus. All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1023 adults. Fieldwork was undertaken between 21th - 28th September 2015. The survey was carried out online. The figures have been weighted and are representative of all number of employees.
2. Speech to the World Economic Forum in Davos, 24 January 2013 www.gov.uk/government/speeches/prime-minister-david-camerons-speech-to-the-world-economic-forum-in-davos
3. UK Office for National Statistics (2013) 'The percentage of people in employment who work in the public sector is at the lowest since records began'. Accessed online via: www.ons.gov.uk/ons/rel/lms/labour-market-statistics/december-2013/sty-public-sector-employment.html
4. UK Parliament House of Commons Library (2015) 'Briefing Paper no. 06152: Business Statistics'. Accessed online via www.parliament.uk/briefing-papers/sn06152.pdf
5. UK Office for National Statistics (2015) 'Business and Energy'. Website page. Accessed online via: www.ons.gov.uk/ons/taxonomy/index.html?nscl=Business+and+Energy#tab-overview
6. For example: www.jus.uio.no/smr/english/about/programmes/indonesia/docs/report-english-version-jan-2015.pdf
7. Many examples can be found here: www.labourbehindthelabel.org
8. For example: www.brotfueralle.ch/fileadmin/english/Business_and_Human_Rights/20120416_Glencore_in_the_DRC_report_2012.pdf
9. For example: www.bbc.co.uk/news/world-latin-america-14227670
10. Headquartered in the UK or listed on the London Stock Exchange.
11. Business and Human Rights Resource Centre (2014) 'Is the UK living up to its business & human rights commitments? An agenda for the election, and recommendations for the next government'. Accessed online via: business-humanrights.org/sites/default/files/UK%20Briefing%20-%20FINAL.pdf
12. From a total of 2,258 allegations globally
13. Business and Human Rights Resource Centre (2014) 'Is the UK living up to its business & human rights commitments? An agenda for the election, and recommendations for the next government'. Accessed online via: business-humanrights.org/sites/default/files/UK%20Briefing%20-%20FINAL.pdf
14. Ibid
15. Ibid
16. Via Carlisa Investment Corporation (made up of 81.2% Glencore Finance Ltd., Bermuda; 18.8% Skyblue Enterprise Inc./First Quantum)
17. SOMO (2014) 'The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the Limitations of the Current Landscape'. Website page. Accessed via: somo.nl/news-en/the-patchwork-of-non-judicial-grievance-mechanisms
18. RAID (2015) 'Principles without justice: the corporate takeover of human rights. Executive Summary Conclusions and Recommendations' accessed online via www.raid-uk.org/sites/default/files/principles-justice-summary.pdf. p.12
19. 'Justice: a view from East Africa' by Joe Kibugu, www.traidcraft.co.uk/campaign-blog-entry/justice-a-view-from-east-africa
20. Fraser, A. and J. Lungu (2006) 'For whom the windfalls? Winners & losers in the privatisation of Zambia's copper mines'. Accessed online via: www.banktrack.org/manage/ems_files/download/for_whom_the_windfalls_report_for_whom_the_wind_falls.pdf. p. 36
21. Foil Vedanta (2015) 'Evidence of corruption and miscarriage of justice in KCM water poisoning case'. Lusaka Times. Accessed online via: www.lusakatimes.com/2015/05/19/evidence-of-corruption-and-miscarriage-of-justice-in-kcm-water-poisoning-case/
22. Frank Bold et al (2014) 'The EU's Business: Recommended actions for the EU and its Member States to ensure access to judicial remedy for business-related human rights impacts'. Accessed online via www.accessjustice.eu/downloads/eu_business.pdf
23. Leigh Day (2015) 'International and group claims'. Website page. Accessed via: www.leighday.co.uk/International-and-group-claims
24. Frank Bold et al (2014) 'The EU's Business: Recommended actions for the EU and its Member States to ensure access to judicial remedy for business-related human rights impacts'. Accessed online via www.accessjustice.eu/downloads/eu_business.pdf
25. Traidcraft (2014) 'Justice: we mean business'. Accessed online via: www.traidcraft.co.uk/media/df3b6c09-d665-417c-9625-24668d118af2
26. Vidal, J. (2015) 'British gold mining firm agrees settlement over deaths of Tanzanian villagers' The Guardian. Accessed online via: www.theguardian.com/environment/2015/feb/10/british-gold-mining-settlement-deaths-tanzanian-villagers
27. RAID-UK and MiningWatch Canada (2015) 'Out-of-Court Settlement Good for Some Tanzanian Villagers - But Many Others Hindered from Participation by Barrick's Grievance Mechanism'. Website page. Accessed via: www.miningwatch.ca/news/out-court-settlement-good-some-tanzanian-villagers-many-others-hindered-participation-barrick-s
28. Tanzania Daily News, 19 January 2014. Accessed online via: allafrica.com/stories/201401200304.html
29. Amnesty International (2015) 'Too toxic to touch? The UK's response to Amnesty International's call for a criminal investigation into Trafigura Ltd.' Accessed online via www.amnesty.org/en/documents/eur45/2101/2015/en/
30. Unpublished email to Traidcraft from Business and Human Rights Resource Centre, 29 April 2015
31. HM Revenue and Customs (2015) 'Tackling offshore tax evasion: a new corporate criminal offence of failure to prevent the facilitation of evasion'. Consultation document. Accessed online via: www.gov.uk/government/uploads/system/uploads/attachment_data/file/445534/Tackling_offshore_tax_evasion_-_a_new_corporate_criminal_offence_of_failure_to_prevent_facilitation_of_tax_evasion.pdf. p. 7
32. Ibid, p. 20
33. With the possible exception of regulatory offences under Health and Safety legislation where the risk arose out of or in connection with the activities of people at work.
34. The Economist Intelligence Unit (2015) 'The Road from Principles to Practice'. Accessed online via www.economistinsights.com/business-strategy/analysis/road-principles-practice/fullreport
35. Drakers, M. (2014) 'New benchmark to rank companies on their human rights records' The Telegraph. Accessed online via: www.telegraph.co.uk/finance/markets/11300074/New-benchmark-to-rank-companies-on-their-human-rights-records.html
36. Safe Work Australia (2015) 'Model Work Health and Safety Act (explanatory memorandum)'. Website page. Accessed via: www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/model-whs-act/pages/model-whs-act
37. French National Assembly (2015) PROPOSITION DE LOI relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (National Assembly, Paris).
38. UK House of Commons Foreign Affairs Committee (2012) The FCO's human rights work in 2011. Third Report of Session 2012-2013 (London: The Stationary Office Limited). p. 49-51.
39. UK Department of Trade and Investment (2013) 'The UK - a world of advantages'. Brochure. Accessed online via: www.gov.uk/government/uploads/system/uploads/attachment_data/file/204004/UK_European_Headquarters_Brochure.pdf
40. BBC News (14 July 2014) 'Executive pay '180 times average', report finds'. Accessed online via: www.bbc.co.uk/news/28286264
41. ComRes (2015) 'Forum of private business ethics survey'. Accessed online via: comres.co.uk/polls/forum-of-private-business-ethics-survey/
42. See reference 1.
43. Forrest, A. and R. O'Rourke (2015) 'The Modern Slavery Bill: A Step in the Right Direction' Huffington Post: The Blog. Accessed online via: www.huffingtonpost.com/andrew-forrest/the-modern-slavery-bill-a_b_7010494.html
44. UK Department for International Development and J. Greening MP (2015) 'New crime unit to investigate corruption affecting developing countries.' Press release. Accessed online via: www.gov.uk/government/news/new-crime-unit-to-investigate-corruption-affecting-developing-countries



UK companies play a valuable role in developing countries. The vast majority play by the rules and expect others to do the same. But a minority of companies are acting as if they are above the law and are failing to prevent serious harms through their international operations.

In this report, Traidcraft and CORE set out how gaps in the legal framework are allowing irresponsible companies to get away with actions in developing countries which would not be acceptable in the UK. It shows how some companies are turning a blind eye to forced evictions, unacceptable labour standards, pollution which damages both livelihoods and health, and even beatings and deaths.

The UK needs to use the law to hold companies to account and allow victims justice.

