CORE
PUTTING PEOPLE & THE PLANET
AT THE CORE OF BUSINESS

Briefing for House of Commons Adjournment Debate on corporate governance and social responsibility, 14 December 2016

CORE is the UK civil society coalition on corporate accountability. We led the civil society campaign for the introduction into the Companies Act 2006 of a duty on company directors to have regard to the *'environmental and social impacts of their companies'* business (s. 172) and the associated requirement for directors to report annually on how they have fulfilled this duty.

We work with our partner organisations to advance the protection of human rights and the environment with regard to the global operations of UK companies, by promoting a stronger regulatory framework, higher standards of conduct, compliance with the law, and improved access to remedy for those harmed by the activities of UK companies.[1]

Key issues

- Companies affect almost every aspect of daily life in the UK. Globally, billions of people are touched by multinational companies' **international operations and supply chains**.
- Repeated, ongoing scandals are putting companies' social license to operate at critical risk. **Voluntary codes alone have proved insufficient** and action is now needed from government to recalibrate the relationship between business and society.
- Effectively **enforced legislation is necessary** to establish minimum standards for business operations and a level playing field. The last two decades have shown that voluntary codes and initiatives are not sufficient to drive the far-reaching changes that are urgently needed to ingrain long-term, responsible thinking in the boardroom and to restore **public confidence in business**.
- Legislation should be brought forward to: require large companies to conduct **due diligence** to prevent and mitigate harm to people and the environment; **reform directors' duties**; and change **corporate liability laws** to make it easier to **prosecute companies and directors** for serious malpractice.

Introduction

The government's consultation on corporate governance provides a vital opportunity for far-reaching reform to modernise UK company law and make it fit for purpose in the 21st century.

Companies affect almost **every aspect of our day-to-day lives**. Outsourcing in the UK means that companies are now partly or fully responsible for schools, roads, prisons, GP surgeries and walk-in centres, hospital services, transport, the Royal Mail, tax credits, care homes, government pay rolls, broadband roll-out, IT programmes and government security, among many other functions and services.

Globally, **one in six workers is part of a multinational company value chain**, not including those in informal and temporary work. Taking into account workers' families and their wider communities, over **two billion people are affected** by companies' supply chain standards.

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[1] Partner organisations include ActionAid, Amnesty International UK, CAFOD, Christian Aid, Oxfam, Save the Children, Traidcraft and Unicef UK. For full list, see http://corporate-responsibility.org/about-core/our-network/

Despite this, there are significant governance gaps that can have serious social and environmental consequences domestically and internationally, threatening the reputation of UK plc. These gaps include:

- the absence of duties on company directors to act in the **interests of stakeholders**, beyond shareholders;
- limited **lines of action** against companies by third parties and the State;
- **no minimum standards** in place for British companies' international subsidiaries and supply chain operations;
- a very limited regime for **criminal sanction** of companies and their directors.

Almost every week seems to bring a fresh corporate scandal:

- Pfizer's £84 million fine for increasing the price of epilepsy drugs by 2,600% overnight, costing the NHS and taxpayers millions of pounds. The company responded by saying it would appeal the decision.
- The use of child labour and toxic chemicals in the palm oil supply chains of household items produced by major global brands, including Nestle and Colgate.
- Allegations of intolerable working conditions at an Amazon warehouse in Scotland.
- Legal claims on behalf of over 40,000 Nigerians against Royal Dutch Shell (RDS) and its Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Ltd (SPDC) for extensive environmental damage caused by oil pollution to two separate communities in the Niger Delta.

Measures to improve corporate governance and corporate social responsibility

1. Reform directors' duties and reporting requirements

The Companies Act 2006 was a significant development: it placed a duty on company directors to 'have regard to' the long-term consequences of decisions, the interests of employees and the impact of companies' operations on the community and environment, and for directors to annually report on how this duty has been met.

Despite such efforts, the Act has been unable to drive transformative change in corporate practice and further reform is required. Company directors should be required to promote the long-term success of the company and to prevent and mitigate harmful impacts on stakeholders and the environment. Company directors who **fail to report accurately** on how they have fulfilled this duty **should be sanctioned**.

2. Require companies to carry out and report on due diligence to identify, prevent and mitigate harm to people and the environment

Conducting due diligence to identify and manage risk is standard practice in business. 'Human rights due diligence' is the process of assessing actual and potential risks to people and acting on the findings.

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The concept is already familiar to companies with an annual turnover of more than £36 million, which are covered by the supply chain reporting requirement in the Modern Slavery Act 2015. The Act states that a company may include in its annual slavery and human trafficking statement, *'information on its due diligence processes in relation to slavery and human trafficking in its business and supply chains'.*

Analysis by CORE and Business & Human Rights Resource Centre in March 2015 revealed that the majority of companies are **failing to provide this information** in their statements. We recommend that this be addressed through a new legal requirement on all companies with an annual turnover of over £36 million to carry out and **report on human rights due diligence**. This would level the playing field and ensure companies take action to prevent and mitigate harm to people. Similar initiatives are currently under consideration in France and Switzerland.

3. The corporate liability regime should be reformed to ensure that companies can be held to account for the most serious abuses.

None of the major recent scandals have resulted in any prosecutions against companies due to the current **corporate liability regime**, which requires prosecutors to prove that board-level executives intended misconduct to occur. These include:

- **LIBOR/EURIBOR:** the Serious Fraud Office (SFO) has not charged any of the employers concerned (Barclays, UBS, and Deutsche Bank).
- **News Group Newspapers:** in December 2015, the CPS stated that because of corporate liability laws it could not mount a successful prosecution against the companies in the phone hacking scandal.

Criminal prosecution should be the ultimate penalty for practises contributing **to slavery, exploitation of children** and other serious human rights abuses in business operations around the world, such as the palm oil case and the Shell oil spill detailed above.

Placing the burden on the company to show it had appropriate procedures in place to prevent criminal activity in these types of cases would remove the requirement for prosecutors to prove intentional wrong-doing at the highest levels of the company. This would increase access to justice for those affected by corporate crimes and would also allow the Government to advance a **fairer, more accountable style of business** the Prime Minister has recently called for.

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