

## **BEIS Reforming Regulation Initiative**

### ***Submission by CORE, the UK civil society network on corporate accountability***

#### **Our recommendation for reforming regulation**

The UK government must introduce a new corporate duty to prevent negative human rights and environmental impacts, mandating businesses to conduct human rights and environmental due diligence, and holding UK companies accountable if they fail to prevent harmful impacts on society and the environment.

#### **Introduction: the need for new legislation**

In inviting responses to this consultation, the government states that it “strives to achieve the right regulatory balance between supporting excellent business practice and protecting workers, consumers and the environment”.

Negative social and environmental impacts are embedded in the supply chains of UK businesses in multiple sectors, from food to electronics, construction to cars. This includes modern slavery and child labour; land and water grabs; attacks on human rights defenders, and deforestation. All too often, businesses evade accountability for their impacts by transferring their legal obligations to other parties. In reforming regulation, attention should be paid to businesses at the top of the supply chain that hold significant market power.

The need for more regulated and robust supply chains has been made more evident by the COVID-19 pandemic. It has exposed structural injustices in our society and economy and the burden of risk carried by workers in supply chains, as large UK businesses use their purchasing power to cancel orders and push down costs.<sup>1</sup>

As the UK emerges from the crisis, it will be vital to build a new economy that better values its workers and the environment. There is a growing consensus that our recovery must be both green and just: this was recently acknowledged by Prime Minister Boris Johnson, who reiterated civil society calls to “build back better” in order to create a “fairer, greener and more resilient global economy”.<sup>2</sup>

This new economy cannot be built without new measures to guarantee corporate accountability. Voluntary initiatives have failed and corporate competitive dynamics continue to perpetuate a ‘race to the bottom’. Research by the Corporate Human Rights Benchmark shows the gap between a small proportion of high-performing companies and the majority, which do not perform well.<sup>3</sup> The drawbacks of corporate requirements with weak enforcement measures, such as the transparency requirement in the UK’s Modern Slavery Act, have been well documented. While we support reforms to enforce meaningful modern slavery reporting from companies, there is an urgent need to go beyond reporting.<sup>4</sup>

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<sup>1</sup> Business and Human Rights Resource Centre, COVID-19 Action Tracker, June 2020 <https://covid19.business-humanrights.org/en/tracker/>

<sup>2</sup> <https://www.businessgreen.com/news/4015783/boris-johnson-owe-future-generations-build>

<sup>3</sup> The Corporate Human Rights Benchmark scored 49% of companies zero against every human rights due diligence indicator: <https://www.corporatebenchmark.org/sites/default/files/2019-11/CHRB2019KeyFindingsReport.pdf>

<sup>4</sup> See the Independent Review of the Modern Slavery Act, 2019 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/803406/Independent\\_review\\_of\\_the\\_Modern\\_Slavery\\_Act\\_-\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf) and reports by FLEX and ICAR, 2019

As such, there is a need for legislation to ensure mandatory adherence to human rights and environmental obligation. The EU's plan to introduce due diligence legislation in 2021 – which could apply to all businesses operating in the EU, in addition to those domiciled there – builds on a domestic and international, legal and political consensus on this issue. The UK government must keep pace to ensure it maintains its reputation as a leader on business and human rights.

## **Our recommendation for reforming regulation**

The Government must bring forward a proposal for a corporate duty to prevent negative human rights and environmental impacts, modelled on the civil and criminal duties to prevent tax evasion and bribery found in the Criminal Finances Act 2017 and the Bribery Act 2010.

Under this new law, commercial organisations (and potentially public sector bodies) would have to take action to prevent human rights abuses and environmental harm in, or arising from, their global products, services, operations, investments and value chain, through carrying out effective due diligence. Commercial organisations would be sanctioned if they failed to put in place adequate due diligence measures and would be held liable for harm, loss and damage arising from their failure to prevent these impacts.<sup>5</sup>

By establishing UK company liability for human rights abuses and environmental damage, the law would make it easier for victims of corporate malpractice to bring actions against UK companies in UK courts, and thus help to alleviate the enormous obstacles faced by victims of corporate abuse when they seek remedy. A fully independent regulator should be well-resourced in order to enforce the legislation, and to overcome the issues that small suppliers and victims face in holding well-resourced companies accountable for their actions.<sup>6</sup>

## **The policy and legislative context**

Human rights due diligence is a process through which companies can identify, prevent, mitigate and account for their impacts on human rights. It was first described in the 2011 UN Guiding Principles on Business and Human Rights, which the UK government is committed to implementing. Environmental due diligence is the application of the same process to environmental impacts.

The EU Commissioner for Justice recently announced that the EU will develop legislation on human rights due diligence, acknowledging this as a necessary means to address recovery from Covid-19 and bring in the EU's green deal plans and stating a preference for legislation to apply to companies operating in the EU in addition to those domiciled there. This follows the 2017 Duty of Vigilance law in France and emergence of similar proposals across other European states, including Germany, Switzerland and Finland.<sup>7</sup>

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<https://www.labourexploitation.org/publications/full-disclosure-towards-better-modern-slavery-reporting>; Business and Human Rights Resource Centre, 2018 <https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Briefing%202018.pdf> and CORE Coalition, 2017 [http://corporate-responsibility.org/wpcontent/uploads/2017/10/171003\\_Risk-Averse-FINAL-1.pdf](http://corporate-responsibility.org/wpcontent/uploads/2017/10/171003_Risk-Averse-FINAL-1.pdf)

<sup>5</sup> CORE *et al.*, Principal elements for due diligence legislation, March 2020 [https://corporate-responsibility.org/wp-content/uploads/2020/04/Duty-to-prevent\\_principal-elements\\_FINAL.pdf](https://corporate-responsibility.org/wp-content/uploads/2020/04/Duty-to-prevent_principal-elements_FINAL.pdf)

<sup>6</sup> See for instance the decision of the Environment Agency not to prosecute Trafigura for environmental damage in the Ivory Coast, January 2015 <https://amnesty.app.box.com/s/erdx002r6i7wj9jvtf2ahc3zn42lcfq>

<sup>7</sup> ECCJ, Evidence for mandatory HRDD legislation, May 2020 <https://corporatejustice.org/evidence-for-mhrdd-may-2020-.pdf>

The Global Resource Initiative Taskforce – which includes business, government and civil society groups – recommends the urgent introduction of a mandatory due diligence obligation covering both human rights and environmental risks and impacts. The GRI states that a focus on forests and land conversion should be a first step, before being extended to wider impacts.<sup>8</sup>

The British Institute of International and Comparative Law’s (BIICL) 2020 study finds that a law to penalise companies that fail to prevent human rights harms, modelled on the UK Bribery Act, is legally feasible and desirable, and supported by UK businesses.<sup>9</sup> This builds on a 2017 report from the Joint Committee on Human Rights, which recommended that “the Government bring forward legislation to impose a duty on all companies to prevent human rights abuses...[which] would require all companies to put in place effective human rights due diligence processes [...] both for their subsidiaries and across their whole supply chain.”

## Support from business and the public

Businesses have expressed support for legislation that provides legal clarity on firms’ responsibilities and ensure that responsible companies are not undercut by firms operating to lower standards. The vast majority of companies surveyed by BIICL disagreed with the statement that “existing law provides businesses with clarity about corporate human rights obligations.”

In a 2020 study published by the European Commission, 68% of businesses surveyed agreed that mandatory due diligence legislation would have a positive impact on human rights.<sup>10</sup> The study also found that the costs of implementing such legislation would remain relatively low compared to companies’ revenues. A number of large businesses and investors, including H&M, Nestlé and PepsiCo, have already expressed public support for mandatory human rights and environmental due diligence laws.<sup>11</sup>

The UK public also supports laws that punish business for malpractice. Polling conducted by Hanbury for Onward in 2019 found that two-thirds of people across all ages favour “tackling companies that behave badly” over “helping companies in the private sector to succeed”.<sup>12</sup> Recent polling by Ipsos MORI for Unchecked found that most younger Leave voters think that corporate regulation should be maintained or increased, with little support from these voters for less regulation.<sup>13</sup>

## ENDS

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<sup>8</sup> GRI taskforce, Final recommendations report, March 2020 <https://www.gov.uk/government/publications/global-resource-initiative-taskforce>

<sup>9</sup> BIICL, A UK Failure to Prevent Mechanism for Corporate Human Rights Harms, January 2020 [https://www.biicl.org/documents/84\\_failure\\_to\\_prevent\\_final\\_10\\_feb.pdf](https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf)

<sup>10</sup> BIICL, European Commission study on due diligence in supply chains, February 2020 <https://www.biicl.org/projects/european-commission-study-on-due-diligence-in-supply-chains>

<sup>11</sup> BHRRC, List of businesses publicly endorsing human rights due diligence regulation, June 2020 <https://www.business-humanrights.org/en/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-human-rights-due-diligence-regulation>

<sup>12</sup> Onward, Generation Why, April 2019 <https://www.ukonward.com/generationwhy/>

<sup>13</sup> Unchecked, Attitudes of Younger Leave Voters to Regulation and Deregulation, May 2020 <https://www.unchecked.uk/research/attitudes-of-younger-leave-voters-regulation-deregulation/>