



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

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# Any of our business? Human rights and the UK private sector

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***Volume I***

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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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## Summary

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Businesses must have regard to human rights in several different contexts. In the UK, businesses which perform a public function have duties under the Human Rights Act. The regulation of UK firms may be intended to ensure that the UK complies with its international human rights obligations. The operations of UK firms overseas may have an impact on human rights, for example the rights of indigenous people. Difficult issues arise if there are weaker governance mechanisms for protecting human rights overseas, or if firms take different approaches to the protection of certain human rights in the UK and elsewhere. This report considers this complex range of issues, starting from the position that the UK should play a leadership role to ensure that all firms respect human rights wherever they operate.

The main focus of the international debate is on the work of the UN Secretary General's Special Representative on human rights and transnational corporations and other business entities, Professor Ruggie. We welcome his work, which is carefully building a global consensus on how businesses can respect and promote human rights. Professor Ruggie is due to make further recommendations in 2011 and we would support clearer guidance to states and businesses about how to meet their obligations under his "protect, respect, remedy" framework, however difficult or unwelcome his message may be. Greater clarity on the role of individuals and civil society is also needed. We call on the Government to continue to support Professor Ruggie and to encourage UK businesses and civil society to engage with his work. We are disappointed that the Government appears to have ruled out unilateral policy measures relating to business and human rights while Professor Ruggie carries out his work: international debate should not preclude innovative policies at home.

The OECD guidelines on multinational enterprises set voluntary standards for business conduct, compliance with which is monitored by National Contact Points (NCPs). The UK NCP has been much improved by recent reforms to its practices, but it still falls far short of the necessary criteria and powers needed by an effective remedial body. We recommend that the Government consider options for enhancing the NCP's ability to promote the Guidelines. We also recommend that the Government should draw up a policy for responding to Final Statements of the UK NCP which are critical of UK businesses.

We argue that an international agreement on business and human rights should be the ultimate objective, although we accept that no such agreement is likely in the near future. There is considerable scope for joint working on a regional level and globally to agree a consistent approach to business and human rights.

We welcome the commitment shown by many companies to respect human rights, wherever they operate, but few firms meet the due diligence standards recommended by Professor Ruggie. The UK Government could do more to explain the responsibility on businesses to respect human rights and the standard of due diligence work this entails.

In the UK, we have reported on a number of occasions on the scope of the Human Rights Act in relation to public functions which are undertaken by private sector entities. The Government has dealt with the issue in relation to care homes, following the *YL* case, but has not legislated to deal with the ambiguity in the law in other contexts. We again call on the

Government to bring forward legislation.

We again draw attention to concerns that UK law on the right to strike and on collective bargaining may not comply with the UK's international obligations. We call on the Government to review the law in order to identify the legislative changes which are required and to ratify the revised European Social Charter. We also express doubts about new regulations on the blacklisting of employees involved in trades union activity and request further information from the Government about how they comply with the UK's human rights obligations.

We are critical of aspects of the Government's work dealing with business and human rights issues. Its latest Corporate Responsibility Report is unduly focused on voluntary measures and underestimates the extent to which businesses have human rights responsibilities. Although we welcome the Ministry of Justice's Private Sector and Human Rights Project it was unfortunately limited to UK firms' domestic operations. We also welcome the Foreign and Commonwealth Office's toolkit on business and human rights and recommend that the Government consider how it can be used to share knowledge and expertise on business and human rights throughout Whitehall. We conclude that a clearer and more coherent strategy is required to link the work of a number of Government departments. This should include considering the application of conditions to a parent company based in the UK, for the purposes of regulating their relationship with the UK Government or UK shareholders. We have a number of specific suggestions, including in relation to guidance, rules on public procurement, the operation of the Export Credits Guarantee Department, company law, investment policy and listing rules, and the operation of firms in conflict zones. We are not persuaded that unilateral action of this sort would undermine the competitiveness of UK businesses.

We also recommend that the UK's national human right institutions could do more, working with Government, to ensure businesses respect and promote human rights.

Many of the substantive and procedural barriers to litigation against businesses in the UK in respect of their human rights impacts overseas are generic problems with the domestic legal system. During our visit to the USA we discussed the operation of the Alien Torts Claims Act, which enables claims to be made against US firms in the US in respect of human rights abuses abroad. While the creation of such legislation in the UK is superficially attractive, cases would be beset by similar substantive and procedural problems. We have sympathy for the case for a Commission for Business, Human Rights and the Environment in the UK and call on the Government to consider whether some of its proposed tasks could be performed by Government, the UK NCP or existing national human rights institutions.. The provision of an effective remedy for abuse of human rights by businesses is one of the most difficult issues in this area and we urge the Government to work towards an international consensus, building on existing institutions such as the NCPs.

The Government should send a clear message to business on the human rights standards which the UK expects its businesses to meet in order to prevent allegations of human rights abuse and to reduce the numbers of individuals who may need to seek a remedy through judicial or other means.

# 1 Introduction

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1. During the past year, in the coverage of the “credit crunch” which led to the recession, politicians, academics and commentators have consistently called for increased responsibility on the part of the banking and wider private sector as corporate citizens. Opening the G20 summit in London, the Prime Minister advocated new “family values” for the financial sector and argued “markets need morals”.<sup>1</sup>

2. In this climate of renewed interest in private sector responsibility, we decided to return to the issue of human rights and UK business. Over the course of our work, we have often considered how human rights obligations apply to the private sector; what implications the private sector may have for the human rights obligations of the UK; and how the UK should regulate the private sector to protect individual rights. We have reported on a number of occasions on the scope of the Human Rights Act 1998 and the circumstances in which private sector entities, performing a public function, will be subject to the duty to act in a Convention compatible way.<sup>2</sup> It is now widely accepted, including by many businesses, that business can affect the human rights of individuals not only when performing public functions, but also in their everyday activities.

3. There are many reasons why we consider that this inquiry provides a timely opportunity to consider the relationship between the activities of the private sector and the human rights obligations of the UK. For example, over the course of the past year several issues have been raised in Parliament and reported in the press raising concerns about the impact of private sector activities on rights such as the right to respect for home and private and family life:

- Increased repossession activity by banks and other lenders during the recession led to the widespread publicity of the need for effective procedural and other protection for the right to respect for home and family life. In 2008, we raised our concern that judgments of the UK’s domestic courts had led to the outcome that lenders being able to evict homeowners without due process after only one missed mortgage payment. We asked the Secretary of State for Justice whether allowing individual lenders to enforce their own right to recovery in this way was a disproportionate interference with the right to respect for home and private life, as guaranteed by Article 8 ECHR.<sup>3</sup>
- The launch of Google Street View across Europe led to a number of challenges, including in the UK, Switzerland and Greece, alleging that the operation of the service was incompatible with the right to respect for private life (as guaranteed by Article 8 ECHR) and EU data protection law.<sup>4</sup>

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1 BBC News Online, *Markets need ‘family values’ – PM*, 31 March 2009.

2 See Ninth Report of Session 2006-07, *Meaning of Public Authority under the Human Rights Act*, HL Paper 77/HC 410, Seventh Report of Session 2007-08, *Meaning of Public Authority under the Human Rights Act*, HL Paper 39/HC 382.

3 HC 174-I, Uncorrected transcript oral evidence of Rt Hon Jack Straw MP and Michael Wills MP, 20 January 2009, Q43.

4 Information Commissioner’s Office, *Common sense must prevail on Street View*, 23 April 2009 (UK); BBC News Online, *Switzerland takes Google to court*, 13 November 2009 (Switzerland); BBC News Online, *Greece puts brakes on Street View*, 12 May 2009 (Greece).

- The European Commission has begun proceedings against the UK in respect of the operation of Phorm, (a behavioural based advertising tool, tested by BT on its customers without prior consent) for alleged breaches of the protection of privacy contained in EU data protection law.<sup>5</sup>
- In July 2009, after an investigation by the Information Commissioner's Office, Ian Kerr was fined for breaches of the Data Protection Act in relation to the operation of a database or "blacklist" of construction employees, which infringed the employees' right to respect for their personal information. In August 2009, enforcement notices were issued against several companies alleged to have used the services of Mr Kerr's company, The Consulting Association.<sup>6</sup>
- In July 2009, the Guardian reported that the *News of the World* had settled litigation after allegations that the newspaper had been involved in phone-tapping.<sup>7</sup> The interception of communications engages the right to respect for communications, the home and private life. Although no new prosecutions resulted from the revelations, representatives of News Group Newspapers and the *News of the World* were called to answer questions about the allegations by the House of Commons Culture, Media and Sport Committee.<sup>8</sup>

4. Most public discussion of these cases focused on the practical impact of business activities on the right to privacy, on the assumption that the right to privacy is just as important where the interference is caused by a company rather than a public body. These stories are in addition to the well publicised human rights issues arising in the provision of social services by private providers, particularly in the health and social care sectors. For example, Parliament and the UK's domestic courts have recently had to grapple with the implications for the right to respect for private and family life when private care home providers propose to evict elderly residents, such as Mrs YL, who faced losing her home after her private care providers entered into a dispute with her family members.<sup>9</sup>

5. It is also relevant to consider the impact of UK companies operating overseas on the UK's international human rights obligations. Over the past decade there have been a number of high-profile stories about the role of UK companies in alleged human rights abuses overseas. For example:

- In July 2006, BP settled a claim in the High Court by Columbian farmers who had alleged that the company's involvement with the military in the construction of the Ocesa pipeline had led to breaches of their human rights. No admissions of liability were made.<sup>10</sup>

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5 BBC News Online, *EU starts legal action over Phorm*, 14 April 2009.

6 The Guardian, *Firms bought secret personal data on staff*, 6 March 2009.

7 The Guardian, *Murdoch papers paid £1M to gag phone-hacking victims*, 8 July 2009.

8 See HC 275-xiii, Uncorrected transcript of oral evidence dated 21 July 2009. Since this session, the Press Complaints Commission has reported dismissing the concerns expressed by the Guardian. See Press Complaints commission, *Report on phone-hacking allegations*, 9 November 2009.

9 *YL v Birmingham City Council* [2007] UKHL 27; Health and Social Care Act 2008.

10 The Independent, *BP pays out millions to Colombian farmers*, 22 July 2006.

- In August 2008, the UK National Contact Point concluded that Afrimex UK Ltd was in breach of OECD Guidelines for Multinational Enterprises in relation to its minerals' operations in the Democratic Republic of Congo. The NCP's conclusion included a decision that Afrimex had failed to respect human rights. This finding followed separate investigations on the trade of natural resources during the conflict in the Congo by both the United Nations and the House of Commons International Development Committee.<sup>11</sup>
- In June 2009, Royal Dutch Shell, an Anglo-Dutch company, reached a widely reported settlement in a claim in the New York Courts under the US Alien Torts Claims Act, in respect of its operations in Nigeria. No admissions of liability were made.
- In September 2009, commodities trader Trafigura reached a settlement in a High Court claim in respect of allegations of negligence causing serious injury and loss of life in connection with the dumping of allegedly toxic materials in West Africa. No admissions of liability were made, but again the case gained widespread publicity in the UK and overseas.<sup>12</sup>
- In September 2009, the UK National Contact Point concluded that Vedanta Resources Plc was in breach of OECD Guidelines for Multinational Enterprises in relation to its mining operations in Orissa, India. The NCP's conclusion included a decision that Vedanta had failed to respect the rights and freedoms of the local indigenous people affected by their operations.<sup>13</sup>
- In October 2009, Labour behind the Label published its third report on respect for labour rights on the UK high street. These reports focused on the garment industry and criticised the performance of a number of UK retailers in relation to working conditions in their overseas suppliers.<sup>14</sup>

6. These issues, all widely reported, have led to public concern about how businesses respect human rights in their operations and whether firms have a role to play in securing protection for human rights, especially in countries with weak governance systems.

## Our inquiry

7. We held a mini-conference at the start of this year to consider the scope of our inquiry, inviting representatives of NGOs, business organisations and individual businesses.<sup>15</sup> We issued a call for evidence on 6 March 2009. We asked a number of broad questions based upon the framework proposed by Professor John Ruggie, the UN Special Representative on Human Rights and Transnational Corporations and other Business Entities ("the UN Special Representative"), about the roles of UK Government and UK business and the

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11 <http://www.berr.gov.uk/files/file47555.doc>. More information about the operation of the OECD Guidelines, the UK NCP and this case is provided below at paras 75-86.

12 Press Release, Shell, *Shell settles Wiwa case with humanitarian gesture*, 8 June 2009, Press Release, Center for Constitutional Rights, *Settlement reached in human rights cases against Royal Dutch Shell*, 8 June 2009.

13 <http://www.berr.gov.uk/files/file53117.doc>. More information about the operation of the OECD Guidelines, the UK NCP and this case is provided below at paras 75-86.

14 Labour behind the Label, *Lets Clean-up Fashion 2009: The state of pay behind the UK high street*, October 2009.

15 A full list of attendees is available at Annex 1.

impact of the private sector on the fundamental rights of individuals in the communities where UK businesses operate. We focused on:

- the way in which businesses can affect human rights both positively and negatively;
- how business activities at home and abroad engage the relative responsibilities of the UK Government and individual businesses; and
- whether the existing UK regulatory, legal and voluntary framework provides adequate guidance and clarity to business as well as adequate protection for individual rights.

8. We asked for information on three principal areas:

- the scope of the duty of the UK to protect human rights;
- the responsibility of UK businesses to respect human rights; and
- effective access to remedies for individuals whose human rights have been affected by the activities of UK businesses.

9. In June, we issued a supplementary call for evidence, drawing attention to recent developments and Government proposals, including the draft Bribery Bill and the Foreign and Commonwealth Office (“FCO”) Consultation on Private Military Security Companies, published in April 2009. We received over 85 submissions and supplementary submissions, from international organisations, NGOs, businesses, business organisations, academics, individuals, trade unions and Government.<sup>16</sup> This included evidence from a range of witnesses who had not previously engaged with our work, particularly from businesses and individuals who have focused on the corporate responsibility of UK companies in their activities overseas. Most of this evidence is published in full in the second volume of this Report.

10. We held five oral evidence sessions. At our first session, on 3 June, we heard from Professor John Ruggie. We are particularly grateful to the UN Special Representative and his advisors for being able to give oral evidence at relatively short notice. We then heard from:

- NGOs and lawyers representing individuals affected by the human rights impacts of business and from the TUC and the Institute for Employment Rights on labour rights (9 June 2009);
- Representatives from the CBI and a number of individual UK companies: Tesco, Associated British Foods (parent company of Primark), Rio Tinto and BP (30 June 2009);
- The Equality and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC), on the role of National Human Rights Institutions (NHRIs) in respect of the impact of the private sector on human rights (7 July 2009).

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<sup>16</sup> The Ministry of Justice coordinated the Government submission and supplementary memoranda, herein “the Government submission”.

- Global Witness about the particular impact of business in areas of conflict (7 July 2009).

11. At our final session, on 14 July, we heard from Lord Malloch-Brown, then Minister for Africa, Asia and the UN, Foreign and Commonwealth Office (FCO), Ian Lucas MP, Minister for Business and Regulatory Reform, Department for Business, Innovation and Skills (BIS) and Michael Wills MP, Minister for Human Rights, Ministry of Justice.

## Visit to the United States

12. As part of our inquiry, we visited New York and Washington DC, where we met with the UN Global Compact,<sup>17</sup> a number of US businesses, NGOs, academics and attorneys representing both businesses and claimants, politicians and policy makers in the Departments of State and Justice.<sup>18</sup> A similar debate is underway in the United States about the responsibility of business for its impacts on the community and on fundamental human rights. In 2008, the Senate Judiciary Sub-Committee on Law and Human Rights conducted a series of hearings on corporate responsibility and the rule of law. These focused principally on the internet and the extractive industries, but otherwise covered similar issues to our inquiry. Opening its inquiry, the Senate Committee Chairman, Senator Durbin, stressed that the actions of the US Government and individual US companies could impact on the rights of individuals in countries where those companies operate. While he did not doubt that US companies would favour human rights protection, its inquiry intended to consider whether Congress should take steps to convert any moral obligation to respect the rights of the communities where US companies operate into a legal one.<sup>19</sup> US law provides an express statutory cause of action for foreign nationals against private citizens for breaches of international law, including certain fundamental human rights standards, in the Alien Torts Claims Act (ATCA).<sup>20</sup> We found this visit invaluable in informing this Report.

13. We are grateful to everyone who has assisted us with this inquiry. We are particularly grateful to our hosts and interlocutors during our visit to the United States.

## Structure of this Report

14. In Chapter 2, we provide a brief introduction to the legal framework, including how the activities of the private sector are affected by the human rights obligations of the UK and how those obligations may require the regulation of business. In Chapter 3, we summarise the evidence we received on the positive and negative impacts of business on human rights. In Chapter 4, we consider the international debate on business, responsibility and regulation of human rights impacts. In Chapter 5, we consider the responsibility of business to respect human rights. In Chapters 6, 7 and 8 we consider how the UK can meet its duty to protect individual human rights within the UK and support its businesses to take a human rights based approach to its activities in the UK and overseas. In Chapter 9, we consider the role of National Human Rights Institutions. In Chapter 10, we consider

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17 See Annex 3 and paragraph 73 below.

18 The full programme of our visit is provided at Annex 2.

19 Serial No JO 110-923, 20 May 2008.

20 We return to the Alien Torts Claims Act, below in Chapter 10.

remedies and next steps for the UK. In the final Chapter, we summarise the main conclusion of this report: that the UK needs a national strategy on business and human rights.

## 2 Any of our business?

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### Why do human rights matter to UK business?

15. Human rights are traditionally – and accurately – viewed as the rights enjoyed by individuals which the state has a duty to respect and protect. In the UK context, this is reflected in the constitutional settlement in the Human Rights Act 1998 (“HRA 1998”). The duties imposed by that Act apply to public authorities and a private body will be required to act compatibly with Convention rights only when it performs “a public function”.<sup>21</sup>

16. Although the duties of the HRA 1998 only apply to business in limited circumstances, the Act may have a much broader impact on businesses and their activities in the UK. For example, private entities have their own rights, as guaranteed by the ECHR and other international instruments.<sup>22</sup> Increasingly, human rights arguments arise in business disputes, and are relevant to businesses’ relationships with Government and their disputes with other entities. For example, newspapers and publishers regularly invoke the right to freedom of expression, not only in litigation, but also in their approach to Government policy.<sup>23</sup>

17. The HRA 1998 does not provide for the direct or horizontal application of Convention rights between private individuals. However, the UK’s domestic courts remain under a duty to interpret and apply the law in a manner which is compatible with Convention rights, including the law as it applies to disputes between private parties.<sup>24</sup> Section 3 of the Act places them under a specific duty to interpret all legislation, in so far as is possible, in a manner which complies with the Act. All public authorities, including local authorities and regulators such as the Office of Fair Trading or the Financial Services Authority are bound to act in a manner which is compatible with Convention rights. These broad indirect effects clearly have an impact on the legal and regulatory framework in which businesses operate.

18. There are also broader questions to consider about the international human rights obligations of the UK and their relationship with the activities of UK business. The Government told us that there were three broad points about the relationship between business and the UK’s human rights obligations:

- First, in order to meet its human rights obligations, the UK may have to restrain or regulate the activities of businesses, in order to ensure that their activities respect the rights of others.<sup>25</sup> The activities of business may help or hinder the state to

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21 Section 6(3)(b).

22 See for example, Marius Emberland, *The Human Rights of Companies*, Oxford University Press, 2006. See also *Colas Est SA & Ors v France* [2004] 39 EHRR 17.

23 *Campbell v Mirror Group Newspapers* [2004] UKHL 22

24 Section 6. See for example, *Campbell v Mirror Group Newspapers* [2004] UKHL 22 at para 17, where Lord Nichol explained “The values embodied in Articles 8 and 10 are as much applicable in disputes between individuals or between an individual and a non-governmental body such as a newspaper as they are in disputes between individuals and a public authority”.

25 The Legal Adviser to the FCO, Daniel Bethlehem QC has recently written to the UN Special Representative to clarify the UK view that there is no general international obligation on States to protect against the acts of third parties which may impact on human rights. The UN Special Representative has replied, accepting that although no such

meet its negative or positive obligations under human rights law and may contribute towards the progressive realisation of any number of economic and social rights, including the right to an adequate standard of living.

- Secondly, the impact of business on the human rights obligations of the UK will be enhanced where the relevant business is helping to fulfil those obligations under contract to the state.
- Otherwise, private sector entities cannot be considered directly subject to the state's obligations. The Government considers that while business may have a significant impact on the state's capacity to meet its international obligations, ultimately, the obligation of the state to secure the protection of fundamental rights to any individual within its jurisdiction remains the obligation of the UK Government.<sup>26</sup>

19. There are a number of other clear examples of legislative measures taken in the UK designed to protect fundamental rights, but which limit or regulate the activities of businesses or which rely on businesses to secure individual rights. For example, since the mid-1970s, businesses have been required to comply with the requirements of the Sex Discrimination Act and the Race Relations Act to secure the right to non-discrimination in employment. More recent examples of measures include the Corporate Manslaughter and Corporate Homicide Act 2007. Designed to create an offence of gross negligence corporate manslaughter, we welcomed the Bill as a measure capable of enhancing the ability of the UK to meet its obligation to protect the right to life, as guaranteed by Article 2 ECHR.<sup>27</sup> Many direct obligations on business may derive from the human rights obligations of the UK. Although the language may differ, the result is the same: human rights based regulation of business. Many of these requirements may be so ingrained in the obligations of business that firms fail to recognise their significance.<sup>28</sup>

**20. The principal legal duty to protect human rights will always lie with the state. However, it would be short-sighted to consider that the implications for human rights and the private sector begin and end with this narrow legal construct. The human rights obligations of the UK may impact on the activities of business, just as the activities of UK business may impact on the ability of the UK to meet its obligations. We welcome the Government's recognition that the activities of business may affect the ability of the UK Government to meet its human rights obligations, both positively and negatively. We particularly commend the broad acceptance that certain obligations may require the regulation of business. As we aim to develop a human rights culture within the UK, the importance of understanding human rights principles for all UK residents - both individuals and corporate entities - should grow. There is a strong**

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general duty exists, there are many UN treaties which do impose an express or implied duty on the UK to ensure that individuals enjoy the rights guaranteed. This, in the view of the UN Special Representative, includes a duty to secure those rights from interference by third parties. While the substance of the right may determine that it has little relevance to third parties or businesses, the duty to secure the right to people under the jurisdiction of the State remains. See letter dated 9 July 2009 from Daniel Bethlehem QC to UN Special Representative; Letter in response dated 14 July 2009, UN Special Representative to Daniel Bethlehem QC. Correspondence available from Parliamentary Archive or online at <http://www.business-humanrights.org/Search/SearchResults?SearchableText=ruggie+corporate+law+>

26 Ev 85

27 Twenty-seventh Report of 2005-06, *Legislative Scrutiny: Corporate Manslaughter and Corporate Homicide Bill*, HL Paper 246/ HC 1625, paras 1.35-1.36.

28 Ev 89

**incentive on the Government to ensure that it has a clear understanding of how its policies on business relate to the human rights obligations of the UK.**

### **UK Government and UK business overseas**

21. In his 2009 report, the UN Special Representative recognised that the legal responsibilities of states in respect of companies activities outside of their geographical jurisdiction are more complicated:

The extraterritorial dimension of the duty to protect remains unsettled in international law. Current guidance from international human rights bodies suggests that states are not required to regulate the extraterritorial activities of businesses incorporated in their jurisdiction, nor are they generally prohibited from doing so, provided there is a recognised jurisdictional basis and that an overall test of reasonableness is met. Within those parameters, some treaty bodies encourage home states to take steps to prevent abuse abroad by corporations within their jurisdiction.<sup>29</sup>

22. Most of our witnesses also recognised the legal distinction between the obligations on the UK Government in respect of business activities in the UK and on activities of UK companies that take place overseas.<sup>30</sup> Some witnesses stressed, however, that a number of existing international human rights bodies have called for states to take some extra-territorial action in respect of the activities of companies and other private entities. Witnesses pointed to statements made by the UN Human Rights Committee,<sup>31</sup> the International Court of Justice,<sup>32</sup> the UN Committee on Economic and Social Rights and the UN Committee on the Elimination of Racial Discrimination. For example: the UN Committee on the Elimination of Racial Discrimination has recently encouraged some states, in their Concluding Observations, to take appropriate legislative or administrative measures to prevent “adverse impacts” on the rights of indigenous peoples in other countries from the activities of corporations registered in that state and has recommended that states parties explore ways to hold transnational corporations “accountable” for their actions.<sup>33</sup>

23. Some witnesses observed that there appears to be a growing consensus within the EU that some form of state action is necessary to encourage companies based in the EU to respect human rights in non-EU states. For example:

The European Parliament has recognised that European states have a responsibility to regulate for European-based corporations dealing in developing states. In 1999,

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29 Professor John Ruggie, UN special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, *Business and human rights: operationalising the ‘protect, respect, remedy’ framework*, 22 April 2009, UN General Assembly, A/HRC/11/13, para 15. Herein “Ruggie Report 2009”.

30 Ev 107

31 Ev 107

32 For example, interpreting the scope of Article 2 ICCPR, which provides that States are obliged to secure the rights under the ICCPR to everyone within its jurisdiction, the ICJ are recognised that jurisdiction is not strictly territorial: See *Legal Consequences of the Constuction of a Wall in the Occupied Palestinian Terroitory (Advisory Opinion)* [2004] ICJ 136, 178-9. See Ev 105 – 106.

33 See Concluding Observations for Canada, CERD/C/CAN/CO/18, para 17; Concluding Observations for the United States, CERD/C/USA/CO/6. para 30. See also Ruggie Report 2009.

the European Parliament passed a resolution calling for a legally-binding framework for regulating European trans-national corporations operating in developing countries. While the European Commission has not adopted this mandatory model, the European Commission has adopted a voluntary code and individual European nations have developed voluntary regulatory frameworks to encourage corporations to engage in ethical conduct.<sup>34</sup>

24. The assessment of the UN Special Representative, that there is no overarching requirement that states regulate the overseas activities of companies for compliance with all their human rights obligations, was generally accepted in the submissions to our inquiry.<sup>35</sup> Some witnesses argued, however, that there is nothing in international law to stop states exercising extraterritorial jurisdiction over the human rights impacts of companies registered, listed or with headquarters within their jurisdiction, provided that the duties imposed are reasonable.<sup>36</sup> The UN Special Representative agreed with this view.<sup>37</sup>

### *Policy reasons for action?*

25. A number of witnesses argued that there are good policy reasons for the Government to regulate in some way the human rights impacts of UK companies operating abroad. Professor Ruggie concluded:

There are [...] strong policy reasons for home states to encourage their companies to respect rights abroad, especially if the state itself is involved in the business venture whether as owner, investor insurer, procurer, or simply promoter. Such encouragement gets home states out of the untenable position of being associated with possible overseas corporate abuse. And it can provide much-needed support to host states that lack the capacity to implement fully an effective regulatory environment of their own.<sup>38</sup>

26. Jennifer Zerk, on behalf of the Corporate Responsibility Coalition, a coalition of a number of NGOs working on corporate responsibility issues (“CORE”), told us that there were three main incentives for action:

- It would be “morally right” to act because UK citizens benefit from the activities of UK companies abroad, as consumers and as shareholders;
- In practice, it would be beneficial to the competitiveness of UK companies overseas. The UN Special Representative has clearly identified that the failure to provide clear guidance to Governments on activities overseas is not in the best interests of business;

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34 Ev 108

35 See for example, Q 63

36 Ev 108; See Q63 (Action Aid)

37 QQ 39 – 42

38 Ruggie Report 2009, para 16. See also Q11.

- This is an issue where the UK Government should show leadership. It is a key issue internationally and the UK provides the base for many major multinational companies.<sup>39</sup>

27. A number of witnesses also raised the risk posed to the UK by association with the activities of UK companies overseas. A number of the academics we spoke to in the US pointed out that, for example, BP would always be viewed internationally as a “British” company.

28. A number of witnesses, and some of the organisations we visited in the US, gave the example of US action on international corruption as a precedent for effective unilateral action by home states on private sector and human rights regulation. Global Witness said:

The US discovered that there was a major problem with American corporations bribing. There was a particularly big scandal around Boeing in the 1970s. They unilaterally passed legislation [the Foreign Corrupt Practices Act] that outlawed US companies doing it and they used that as a platform then to launch an international programme which led to the OECD Anti-Bribery Convention, so I would say there is a role for unilateral action leading in due course to a multilateral convention on understanding these things.<sup>40</sup>

29. The Institute of Directors (IoD) said that there currently exists a “legal vacuum” in respect of some of the activities of UK business overseas, which need to be addressed.<sup>41</sup> The CBI argued that human rights abuses are created by host states which fail to implement a domestic legal framework designed to protect human rights. It described these situations as “by their very nature not easy to resolve”.<sup>42</sup>

30. Both organisations disagreed with any approach which would involve the exercise of extra-territorial jurisdiction by the UK courts, particularly in cases without any substantive and demonstrable link to the UK.<sup>43</sup> The IoD argued in favour of an international solution, which provides for the international enforcement of human rights.<sup>44</sup> The CBI, however, is not generally in favour of an international solution, whether by means of a treaty or the formation of an international ombudsman.<sup>45</sup>

31. Witnesses highlighted a number of barriers to unilateral action by the UK in respect of the overseas activities of UK businesses. These included concern that taking extraterritorial steps could reduce the likelihood that countries with poor human rights records would change their practices for the better.<sup>46</sup> International human rights legislation could directly clash with domestic law in the host state and this could raise questions over the sovereignty of the host state and the obligation on any company to obey

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39 Q63. See also Ev 140

40 Q334

41 Ev 108

42 Ev 309

43 Ibid

44 Ev 108

45 Ev 309

46 Ev 230

its laws.<sup>47</sup> Some witnesses expressed a view that the most constructive role for the UK Government would be capacity building in countries with poor human rights records.<sup>48</sup>

**32. We recognise that there are complex legal and policy questions which arise around the cross-border operation of UK businesses, particularly where they operate in countries where states have weaker governance mechanisms than the UK for the purpose of protecting human rights in their jurisdiction. The purpose of this inquiry is consider these complex issues which the UN, major multinational companies and many other states have been grappling with for a decade. We intend to draw attention to the debate, consider the current UK stance on this issue, and put forward our recommendations below.**

**33. Although the UK's international legal obligations are far from clear, in our view there are good policy arguments in favour of action. The UK is a major consumer of internationally produced goods and provides a home to many major multinational companies. It is well placed to benefit from the experiences and activities of these many successful businesses. The UK is particularly vulnerable to impacts on its reputation when these companies are associated with allegations of human rights abuse overseas. If the UK fails to show leadership in this debate, it suggests to other states that it is not important to address the impacts of business on the fundamental rights of individuals. This may create the perception that the UK cares more about economics than human rights obligations. We recommend that the UK should play a leadership role in this global debate to ensure that multinational firms and other corporate entities respect human rights wherever they operate. We consider in more detail the actions the UK Government should consider in later Chapters.**

## **Do human rights matter for small businesses?**

34. At the start of 2007 there were 4.7 million businesses operating in the UK, over 950, 000 (25%) more than in 2000. Over 99% of UK businesses are small and medium sized enterprises (SMEs).<sup>49</sup> The World Bank ranks the UK second in Europe, and in the top ten world economies (out of 181) for measures on the ease of doing business.<sup>50</sup> Businesses operating in the UK range from sole traders to major multinational corporations. We have not used a specific definition of a UK business for the purposes of this inquiry. Some witnesses referred exclusively to companies registered in the UK or listed on a UK-based stock exchange in their evidence.

35. We asked the UN Special Representative whether the debate about human rights was only relevant to large multinational companies. He told us that size should not matter, but the implications of human rights for businesses may differ according to the nature and scale of their business:

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47 For example, Ev 109, Ev 149

48 For example, QQ 355 – 359 (Lord Malloch-Brown).

49 Information taken from Department for Business, Innovation and Skills website: <http://www.berr.gov.uk/whatwedo/enterprise/au/statistics/page38573.html>

50 Information taken from Department for Business, Innovation and Skills website: <http://www.berr.gov.uk/aboutus/corporate/performance/fastfacts/index.html>

The basic principles of respecting human rights ought to apply to everybody but the modalities of implementation would surely differ. A company that has an annual turnover that is equivalent to the GDP of 80% of the countries of the world has different capacities and also a different impact than a company that employs 50 people and operates in Manchester or wherever. So the modalities are different depending on the size and scope and impact of the company, but the basic principles ought to be similar.<sup>51</sup>

36. A number of witnesses, including the CBI, appeared to agree with this analysis. Gary Campkin, for the CBI, said:

The way in which smaller companies can have an impact is obviously different from the way in which some of the larger multinationals can have an impact. Therefore, I think there would be a degree of difference, depending on the impact, about how that responsibility is undertaken.<sup>52</sup>

**37. Human rights principles are relevant to a businesses of any size or type, although their detailed application may differ from case to case. Policy, advice or guidance on human rights should take into account the diverse nature of the UK business community, including small business and consumers of small business services.**

## What about the recession?

38. Generally, witnesses rejected the proposition that the current economic climate should have any impact on the legal, moral or social responsibilities on business to respect human rights, whether within the UK or overseas.<sup>53</sup> Some argued that the current economic crisis served to show that light touch regulation of the private sector might not always be in the greater public good.<sup>54</sup> Professor Cees Van Dam said:

Important causes of the financial crisis were a lack of social responsibility, an emphasis on short-term profits, and externalisation of costs and risk. These shortcomings are similar to the ones that negatively affect the sustainability of world trade in general and the lack of respect for human rights. In fact, we are talking about the same problem: large inefficiencies due to a lack of proper (global) regulation.<sup>55</sup>

39. Some witnesses told us that the current economic crisis had “sorted the wheat from the chaff”, in that those businesses whose commitment to corporate responsibility had been superficial were now abandoning earlier initiatives and activities.<sup>56</sup> In his latest report,

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51 Q24

52 Q126. Mr Campkin went on to explain that the CBI considers that the Ruggie framework is relevant for all business, but a difference in the degree of expectation which might lie upon an SME business and a multinational corporation, see Q127. On our visit, we spoke with lawyers from Foley Hoag LLP, a US firm with broad experience of advising large multinationals about human rights impacts and responsibilities. They told us that increasing awareness and activity on the part of States and large companies had a trickle down effect for small businesses. Many large corporate consumers were beginning to require that their suppliers meet the requirements of their own human rights codes of practice. Similarly, many consumers were beginning to place greater emphasis on ethical business practices. Combined, these changes were increasing the number of smaller businesses who were aware and engaged with human rights issues.

53 See for example, Ev 114, Ev 217

54 Ev 114

55 Ev 289

56 Q4 (Professor John Ruggie)

Professor Ruggie considered the current economic downturn and stressed that the greatest impacts would be felt by those who are already vulnerable. He considered that there were good reasons for Governments to avoid erecting protectionist barriers and lowering standards for business. He explained that despite the attractions which these measures might have: “short-run gains are illusory and they undermine longer-term recovery.”<sup>57</sup> This reflects the view of Thomas Hammarberg, the Council of Europe Human Rights Commissioner, who has stressed that the rights of the vulnerable should not be ignored during the economic recovery.<sup>58</sup> The Government agreed that there were benefits of a human-rights based approach even in the recession, as there was “a strong business case for companies embedding human rights within their practices”.

40. In the light of this stance, we were concerned to read recent press reports that individual businesses and the Secretary of State for Business, Innovation and Skills were arguing against aspects of the Equality Bill on the basis that in the current economic climate businesses should not be subject to additional regulation.<sup>59</sup>

**41. The current economic climate should not adversely affect the commitment of the UK Government or UK businesses to human rights. The Government has a responsibility to help businesses understand what a human rights responsible approach means and what it can add to business planning and to the global economic recovery. We welcome the Government’s statement that despite the economic climate, there is still a strong business case for embedding human rights in business. This sentiment should be consistently reflected across Government during the recession and thereafter.**

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57 Ruggie Report 2009, para 9.

58 [http://www.coe.int/t/commissioner/Viewpoints/090511\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/090511_en.asp) (on equality); <https://wcd.coe.int/ViewDoc.jsp?id=1436385&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> (on children’s rights).

59 The Independent, *Harriet Harman: ‘We must press ahead with equality plans’*, 28 September 2009.

## 3 The human rights impacts of UK business

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42. Reflecting on a review of more than 300 reports of alleged human rights abuses by corporations, the UN Special Representative concluded in his 2008 report that “there are few if any internationally recognized rights business cannot impact – or be perceived to impact – in some manner”.<sup>60</sup> Amongst the most significant are:

- the right to privacy in the workplace (e.g. the limits of employer’s rights to keep their employees under surveillance);
- the right to freedom of expression, including the right to receive information;
- the right to physical security (including where businesses engage private security firms or work with law enforcement agencies);
- health-related rights, including environmental conditions and access to information about health impacts;
- the right to freedom of association and other workplace rights, including conditions of employment and occupational health and safety.

This range is reflected in the evidence we received.

### Positive impacts

43. In written evidence, Business in the Community set out to demonstrate how businesses can enhance respect for human rights through their activities:

As the role of business in society has grown, human rights benefits have been derived in many locations through job creation, economic regeneration and growth. This has seen many improvements, particularly in respect of social and economic rights, such as adequate standards of living for many people throughout the world...Such examples demonstrate that the considerable global power of business, when harnessed responsibly, can help support and enhance human rights.<sup>61</sup>

44. Many of the businesses that sent us evidence gave examples of the steps which it was taking to try to ensure that their activities have a positive impact on the communities in which it operate. For example BP told us that it had taken a number of steps to change its business practices, including incorporating human rights standards into its investment agreements.<sup>62</sup> The CBI told us that the positive impacts on UK business should not be underestimated:

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60 Report of the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, ‘Protect, Respect and Remedy: a Framework for Business and Human Rights’, UN Doc.A/HRC/8/5, 7 April 2008.

61 Ev 321. See also Ev 270

62 Ev 164

Businesses are one of the key building blocks in society. They generate wealth, create jobs, supply goods and services, provide tax revenues, raise living standards and help lift people out of poverty.<sup>63</sup>

45. A number of businesses wrote to tell us how they incorporated human rights issues into their business practices. For example, BP told us that human rights issues were “at the heart of” its core values and said: “We must always have regard to the human rights impact of those are involved with and affected by our business activities”.<sup>64</sup> Tesco said:

Businesses have a responsibility to respect human rights in the way in which they operate. This means having regard for human rights both in their direct and indirect impacts on individuals and companies.<sup>65</sup>

46. Michael Wills MP, the Minister for Human Rights, saw a positive role for businesses in promoting a human rights culture in the UK.<sup>66</sup>

**47. We do not underestimate the significant and positive contribution that businesses can make to the communities in which they operate. This clearly has the capacity to enhance the protection of the rights of employees, service users and other local people. Businesses can support the state’s ability to protect the economic and social rights of individual, including for example, the right to an adequate standard of living. However, we also believe that businesses can play an important role in ensuring that individual civil and political rights – including, for example, freedom from inhuman treatment, freedom from forced labour and unjustifiable discrimination, the right to privacy, freedom of expression and the right to freedom of association, including the rights of independent trade unions and their members – are respected. We return to some of the proactive steps taken by business to address their human rights impacts in Chapter 5, below.**

## Negative impacts

48. We received a significant number of submissions which alleged that UK businesses have acted in a way that compromises the rights of individuals, both within the UK and overseas. This Report will not repeat the detailed allegations made in the written evidence. Where a business was drawn to our attention, we invited it to submit its own evidence. **Our terms of reference do not permit us to conduct a full investigation into any specific allegations against individuals and companies.**<sup>67</sup> However, in the light of the seriousness of many of these claims, we are persuaded that further action is necessary and we hope that our conclusions and recommendations will contribute to advancing the debate in the UK, both among parliamentarians and the wider public.

49. A number of broad themes emerge from the evidence. For ease of reference, we set out a summary of the human rights issues and allegations made against UK companies below.

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63 Ev 319

64 Ev 168

65 Ev 312

66 Q355

67 The terms of reference of the JCHR expressly preclude the consideration of individual cases: Standing Order 152B, House of Commons Standing Orders, 2009.

## *Activities in the UK*

50. The Citizens Advice Bureau (CAB) told us that the effects of business behaviour on the everyday aspects of individual UK residents should not be underestimated.<sup>68</sup> Several issues relating to business activities in the UK were raised by the CAB and other witnesses. These followed a number of broad themes, which follow.

### *The application of the HRA 1998*

51. Some witnesses argued that there was a need for increased certainty in the application of the HRA 1998 to businesses and their activities, particularly in relation to private bodies performing public functions.<sup>69</sup>

### *The impact of privatised public services*

52. Witnesses told us that the provision of privatised public services has a broad impact upon the rights of service users and the ability to secure a remedy for breach of fundamental rights.<sup>70</sup> Some of these services may fall outside the scope of the “public function” test, but may yet have an impact on individuals’ abilities to secure access to their rights. CAB wrote:

Key public services can also be delivered through market mechanisms, for example through public procurement. These services ...range from legal aid...to publicly funded work training programmes – some of these services may not always be [public functions] for the purposes of the HRA, but service failures can have devastating consequences for peoples’ rights in the UK.<sup>71</sup>

### *Consumer services and human rights*

53. Some witnesses argued that certain consumer services have an impact on the ability of individuals to secure their fundamental human rights, including the right to a home and to an adequate standard of living. For example:

Consumers often depend on the financial and legal sectors for the realisation of many key rights such as security of the home and family, and access to the legal system. Regulation of these sectors therefore needs to incorporate a human rights strand.<sup>72</sup>

### *Labour and trade union rights*

54. Some witnesses argued that there was a need for greater respect in the UK for labour and trades union rights, particularly to fulfil the UK’s international obligations in relation

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68 Ev 280

69 See for example, Ev 98; Ev 286; Ev 291; Ev 293

70 See for example, Ev 286, Ev 292

71 Ev 297

72 Ev 297

to various International Labour Organisation standards.<sup>73</sup> We consider some of these issues in Chapter 6, below.

### ***UK business overseas***

55. The bulk of the evidence we received relates to the human rights impacts of UK companies in countries with weaker governance than the UK. Sir Geoffrey Chandler, a former Director of Shell International and the Founder Chair of the Amnesty International Business and Human Rights Group, told us:

The globalisation of the world economy has made the corporate sector a more important influence on human rights for good or ill than almost any other constituency. Through its spreading supply chains it touches directly the lives of millions.<sup>74</sup>

56. Amnesty International added:

Failure to ensure that UK companies respect human rights in all their operations can leave the poorest and most vulnerable communities exposed to serious and repeated human rights abuses.<sup>75</sup> [...] The reality of the current phase of globalisation is that while multinational corporations today operate seamlessly across national boundaries, the framework of laws, regulations and initiatives that govern their activities remains piecemeal, fragmented and unequal to the task of ensuring that companies respect human rights.<sup>76</sup>

### ***Business, security and the right to life***

57. Witnesses raised particular concerns about the involvement of local police, military, paramilitaries and private security firms in providing security for major projects run by UK companies overseas.<sup>77</sup> These concerns focused principally on the right to life and the right to respect for physical integrity, but were associated with allegations of broader breaches of other rights, including the right to respect for private and family life, the right to freedom of expression and the right to freedom of association.<sup>78</sup>

### ***Labour rights***

58. A significant number of submissions focused on the importance of labour rights, both within the UK and overseas. Several trades union and union organisations submitted evidence on the importance of recognition for trades unions and the status of trades union rights as “human rights”.<sup>79</sup> These submissions principally referred to the right to freedom of association as recognised in the ECHR and other international human rights treaties.

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73 See for example, Ev 241

74 Ev 108

75 Ev 230

76 Ev 230

77 See for example, Ev 211

78 See for example, Ev 114

79 See for example, Ev 119; Ev 168

They also referred to the ILO Conventions on the right to freedom of association and the right to collective bargaining (Conventions 87 and 97).<sup>80</sup>

59. Vigeo, a Corporate Social Responsibility rating agency, undertook a Europe wide study and concluded:

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...In a recent study 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.<sup>81</sup>

60. Many submissions focused on the alleged disparity between the commitments offered by UK companies within the UK and the commitments offered to employees overseas. A number of examples were given of companies whose stated policies were applied differently across borders with detrimental effects for workers in third countries.<sup>82</sup>

### *Indigenous People*

61. Our attention was also drawn to the rights of indigenous peoples who may be affected by overseas projects.<sup>83</sup> For example, Action Aid submitted evidence about the operation of Vedanta Resources Plc in Orissa, India. This case has recently been subject to a negative statement by the UK National Contact Point for non-compliance with the OECD Guidelines for Multinational Enterprises.<sup>84</sup> Action Aid said:

Vedanta's construction of an integrated aluminium complex in the region has led to accusations of several human rights violations including:

- The razing and displacement of indigenous villages in violation of internationally recognised rights to property and livelihood
- The proposed construction of a mine on Niyamgiri mountain which is protected and considered sacred by the Kondh tribal people thereby violating communal, cultural and religious rights. [...] <sup>85</sup>

62. Survival told us about a number of other examples, including an order of the Botswana High Court in favour of Kalahari Bushmen preventing their eviction from their settlements in the Kalahari, which had been threatened by the construction of a diamond mine by a UK company. They also referred to a UK television company which had apparently

80 Ev 119

81 Ev 132

82 Ev114

83 Ev 161, paras 1 – 10; Ev 174

84 Final Statement, Complaint by Survival International against Vedanta Plc, 25 September 2009. For further information, see <http://www.berr.gov.uk/files/file53117.doc>. For the role of the UK National Contact Point, see below para 76.

85 Ev 137, para 18

trespassed on tribal land in South America allegedly causing illness and death, in order to make a reality TV programme. They wrote:

There is no doubt that British companies frequently exert an enormous impact on indigenous peoples in developing countries, and that their activities escape effective regulation in both the host country and the United Kingdom.<sup>86</sup>

### *Health*

63. The Former UN Special Representative on Health, Professor Paul Hunt, drew our attention to a number of issues relating to the right to health and the activities of pharmaceutical and healthcare companies. In 2009, he considered a number of corporate social responsibility measures proposed by Glaxo Smith-Kline (GSK) and made recommendations for improvement, including through the appointment of an independent Ombudsman to review compliance with its human rights responsibilities.<sup>87</sup> GSK reiterated its view that it has no legal obligation to take action and that, in its view, an Ombudsman would not be able to work without clear binding standards against which to judge the company's performance.<sup>88</sup>

64. Oxfam said that the health poverty suffered by individuals in developing countries could be exacerbated by steps taken by home states to protect the interests of their pharmaceutical companies:

Despite agreement at the World Trade Organisation that developing countries have the right to use safeguards in intellectual property rules in order to protect public health, the few attempts to use these safeguards to reduce the prices of medicines have been at the expense of attracting huge pressure from the US and EU governments and the drugs companies themselves.<sup>89</sup>

### *Environmental issues*

65. A number of the issues raised by witnesses involved the impact of major businesses on the environment. For example, Oxfam GB wrote:

The impacts of climate change are already undermining and will increasingly undermine, millions of people's rights to life, security, food, water, health and culture.<sup>90</sup>

### *Degrees of accountability*

66. Witnesses drew a distinction between various degrees of complicity in human rights abuse. They gave a range of examples from direction, or inadequate supervision of

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86 Ev 161

87 Ev 364. See UN Special Rapporteur on Health, Annex, Mission to Glaxo Smith Kline, 5 May 2009, UN Human Rights Council, A/HRC/11/12/Add.2

88 Glaxo Smith Kline, Press Release, *Glaxo Smith Kline Statement in Response to Paul Hunt's Report on GSK*, June 2009.

89 Ev 199, para 3.4

90 Ev 179

subsidiaries<sup>91</sup> to operations in a country where human rights are abused and companies provide financial support to that country and profit from its operations there.<sup>92</sup> For example, the Holly Hill Trust claimed that:

Typically UK mining companies don't carry out human rights abuses themselves, but rely on small exploration companies and para-military subcontractors to do the dirty work for them.<sup>93</sup>

67. A number of witnesses referred to the responsibility of businesses in respect of their supply-chain, and the role of contractors in the protection of human rights.<sup>94</sup> Oxfam argued that the purchasing practices and other activities of UK companies could make a real difference to working conditions:

For many producers, faced with fluctuating orders and falling prices, the solution is to hire workers on short-term contracts, set excessive targets and sub-contract to sub-standard, unseen producers. Pressurised to meet tight turnaround times, they demand that workers put in long hours to meet shipping deadlines. And to minimise resistance, they hire workers who are less likely to join trade unions (young women, often migrants and immigrants) and they intimidate or sack those who do stand up for their rights.<sup>95</sup>

### *High-risk industries or activities*

68. The impact of some types of industry (such as those involved in the extraction of natural resources) or the impact of activities in particularly dangerous areas (such as conflict zones) may raise several inter-related human rights issues.<sup>96</sup> Several submissions focused on the impact of the extractive industries, where the activities of companies and their associates or subsidiaries may have a particularly severe impact on a local community.<sup>97</sup>

69. The treatment of workers in the garment industries in developing countries by UK companies was also raised. War on Want referred to abuses including:

physical and verbal harassment, breaches of health and safety standards, intimidation and imprisonment of trade union [members], denial of the right to protest, excessive working hours and unfair wages.<sup>98</sup>

70. Businesses which operate in areas of military conflict may be particularly open to allegations of human rights abuse or implicated in disregard for human rights. For example, Global Witness said:

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91 See for example, Ev 107, Ev 288, Ev 301.

92 Ev 107, page 2

93 Ev 110. This case study, in Ecuador is also covered by Dr Mika Peck, Ev 119.

94 Ev 164

95 Ev 25, para 4.2

96 Ev 121

97 Ev 110. See also Ev 119, Ev 164, Ev 179, Ev 182, Ev 189

98 Ev 164

Often in these conflict or high-risk areas the host government...is unable or unwilling to assume its responsibility in safeguarding human rights. Thus, protections are weak and companies are at a greater risk of committing and exacerbating human rights violations. In these areas, gross human rights violations take place and criminal activity often goes unchecked.<sup>99</sup>

71. This was also reflected in the April 2009 Report of the UN Special Representative, which concluded that specific action was necessary to address business in conflict zones. Professor Ruggie has convened a working group on conflict and is working on a code of practice for companies in areas of conflict.<sup>100</sup> We return to this issue in Chapter 8, below.

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99 Ev 231

100 Ruggie Report 2009, para 43.

## 4 The international debate

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72. Perhaps unsurprisingly, we received far more evidence on the operations of UK companies abroad than about the human rights record of UK firms at home. The international debate on the impact of globalisation and the cross-border influence of companies on human rights is more advanced than the discussion of corporate responsibility and human rights in the UK. Lord Malloch-Brown, then Minister for the UN and Africa, told us that UK companies operating overseas were experienced in dealing with the potential impacts of their business on human rights in developing countries:

British companies understand that the environment in which they are operating in developing countries is getting steadily trickier.... It is often not just limited to human rights issues; it is [...] whether or not corporations are putting back into the communities where they are operating in terms of social and other developmental services, a lot more is expected of the company than before.<sup>101</sup>

73. The Government, UK businesses and NGOs have been involved in a range of international voluntary initiatives and programmes designed to address human rights impacts and spread good practice on human rights and corporate responsibility, including the:

- OECD Guidelines for Multinational Corporations (“OECD Guidelines”);
- Work of the UN Special Representative on human rights, transnational corporations and other business entities (“Special Representative”);
- UN Global Compact;
- Voluntary Principles on Security and Human Rights;
- Extractive Industries Transparency Initiative;
- Ethical Trading Initiative;
- Kimberley Process;
- Business Leaders Initiative on Human Rights; and
- Institute for Business and Human Rights.

74. We focus on the OECD Guidelines and the work of the UN Special Representative, below.<sup>102</sup>

### The OECD Guidelines

75. The OECD Guidelines are a series of principles and standards which adhering states, including the UK, undertake to promote to their businesses. They are the “only multilaterally endorsed and comprehensive code that Governments are committed to

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<sup>101</sup> Q385

<sup>102</sup> Further details about each of the other programmes is outlined in Annex 3.

promoting”.<sup>103</sup> The Guidelines set voluntary standards for business conduct, including in employment and industrial relations, human rights and the environment. They provide that multinational enterprises:

should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should:

....Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.<sup>104</sup>

76. The OECD has also produced a Risk Awareness Tool for Multinational Corporations in Weak Governance Zones. It addresses risks and ethical dilemmas that companies are likely to face in weak governance zones, including in respect of obeying the law and observing international instruments, managing investments, due diligence about business partners and clients, dealing with public sector officials, and “speaking out about wrongdoing”.<sup>105</sup>

77. Since they were revised in 2000, the OECD Guidelines have been implemented on a national basis by National Contact Points (or NCPs). These are generally government offices responsible for promoting the guidelines and handling inquiries and complaints against companies. The UK NCP is also responsible for the promotion of the Risk Assessment Tool to UK companies.<sup>106</sup> After complaints about its operation and structure, the UK NCP was subject to reforms in 2006 to enhance its operation.<sup>107</sup>

78. Witnesses told us that the 2006 reforms had had a significant and positive effect on the operation of the UK NCP.<sup>108</sup> Others raised concerns about its operation, including a lack of independence from Government; a lack of guidance for companies on the standards to be met; and the absence of sanctions against companies and remedies for individual victims.<sup>109</sup> Insufficient information in the Guidelines about human rights obligations has also been the subject of critical comment.<sup>110</sup> Amnesty International told us that the OECD NCP system itself was “too flawed” to provide victims of alleged abuse with a remedy.

79. The latest Final Statement of the UK NCP, dated 26 September, upholding a complaint by Survival International against Vedanta Plc in respect of its mining operations in Orissa, India seems to us to support the arguments of witnesses who argue that there are shortcomings in the investigatory powers of the NCP. The UK NCP reported that

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103 UK National Contact Point Website: <http://www.berr.gov.uk/whatwedo/sectors/lowcarbon/cr-sd-wp/nationalcontactpoint/page45873.html>

104 OECD General Principles, II, General Policies.

105 For further information, see [http://www.oecd.org/document/26/0,3343,en\\_2649\\_34889\\_36899994\\_1\\_1\\_1\\_34529562,00.html](http://www.oecd.org/document/26/0,3343,en_2649_34889_36899994_1_1_1_34529562,00.html)

106 In the UK, the Department for Business Innovation and Skills is responsible for the NCP.

107 The All-Party Parliamentary Group on the Great Lakes first criticised the operation of the UK NCP in its 2005 Report, *The OECD Guidelines and the DRC*. After the publication of this report, the Government initiated a review of the OECD Guidelines in the UK. Reforms to the UK NCP in 2006 included the creation of a Steering Board, including Government departments, business, NGO and Trades Union representatives.

108 Ev 293; Q111 (Owen Tudor, TUC)

109 Q77. See Q108 (Janet Williamson, TUC), where she explains that despite 5 challenges to the practices of Unilever in India and Pakistan, in respect of labour and trade union rights, no change has been achieved.

110 Ev 170, Q111, Ev 293

Vedanta did not participate in mediation, even after an offer of independent professional mediation, external to the NCP. Other than providing submissions that the NCP should not accept the case and a copy of its own sustainable development report, the company did not engage with the examination and did not submit any evidence in response to that provided by Survival International. The NCP had no powers to compel Vedanta to participate and expressed disappointment at the decision of Vedanta Plc not to “engage fully” with their work.<sup>111</sup> Vedanta has reportedly rejected the substantive findings in the report, arguing that it complied with all local regulatory requirements in India.<sup>112</sup>

80. The Government published the result of a initial review of the NCP in January 2009, looking in particular at the 2006 reforms. It concluded that the “NCPs performance [had] significantly improved since the revamp...although there remains room for improvement”. It considered that limited resources remained a risk for the NCP and that higher priority should be given to promotion of the Guidelines, as opposed to the processing of complaints.<sup>113</sup>

81. The way the Government reacts to final statements from the UK NCP will clearly affect the impact made by the statement. Global Witness told us that the Final Statement in August 2008, in the case of Afrimex, was a clear example of why the UK NCP could not provide an effective sanction against a company. Global Witness brought this complaint to highlight a number of alleged breaches of the OECD Guidelines by Afrimex in respect of minerals from the Democratic Republic of Congo (“DRC”). The NCP upheld the majority of the complaints made by Global Witness and made a number of recommendations to Afrimex, including for better due diligence.<sup>114</sup> Global Witness told us that these recommendations had not been acted on by Government departments.<sup>115</sup>

82. We asked Lord Malloch-Brown, the then Minister for the UN and Africa, for further information on the Government’s approach, but he told us he was “constrained” by ongoing inquiries.<sup>116</sup> In its written submission, the Government explained that it is considering how to follow up a negative decision of the UK NCP.<sup>117</sup> Since the recent UK NCP Statement in the Vedanta case, the High Court has been asked to consider a challenge to loans offered to Vedanta by the Royal Bank of Scotland, a bank in which the Treasury holds a over 70% share.<sup>118</sup>

**83. It is unacceptable for the Government not to have a strategy in place to deal with companies subject to negative final statements by the UK NCP [National Contact Point]. The credibility of findings of the UK NCP would be enhanced considerably if the Government had a clear and consistent policy on its response to final statements. We recommend that such a policy should be drawn up and disseminated widely.**

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111 Final Statement, Complaint by Survival International against Vedanta Plc, 25 September 2009, para 17. For further, see <http://www.berr.gov.uk/files/file53117.doc>

112 The Guardian, *Treasury taken to court for RBS loans to Vedanta resources*, 18 October 2009.

113 Q333. See also Ev 213.

114 Final Statement, Complaint by Global Witness against Afrimex, 28 August 2008. For further, see <http://www.berr.gov.uk/files/file47555.doc>

115 Ev 262, Q 333. See also Ev 213.

116 Q51

117 Ev 85

118 The Guardian, *Treasury taken to court for RBS loans to Vedanta resources*, 18 October 2009.

84. There has been significant improvement in the way the UK NCP approaches complaints that UK companies have failed to comply with the OECD Guidelines for Multinational Corporations. The UK NCP can perform only a limited role, however, as a Government-led organisation with few investigative powers and no powers to sanction individual companies. As a non-judicial mechanism for satisfying individuals who may have a complaint against a UK company, it falls far short of the necessary criteria and powers needed by an effective remedial body, including the need for independence from Government and the power to provide an effective remedy. There is little incentive for individuals to use a complaints mechanism which offers no prospect of any sanction against a company, compensation or any guarantee that action will be taken to make the company change its behaviour.

85. We recommend that the Government consider options for increasing the independence of the UK NCP from Government and enhance the ability of the NCP to promote the OECD Guidelines, including ensuring that it has the necessary resources and powers to fulfil this part of its role effectively.

### Reform of the OECD Guidelines

86. There is a general consensus that the OECD Guidelines are out-dated and in need of reform.<sup>119</sup> The OECD is due to launch a review in June 2010. The UK NCP is currently consulting on the scope of the review and this consultation will inform the Government's position in the forthcoming negotiations.<sup>120</sup> **In the light of the development of the debate on human rights and business over the past decade, the OECD Guidelines are ripe for review and reform. Reform of the Guidelines should reflect the work of the UN Special Representative on human rights and transnational corporations and other business entities. The Government should take a lead in ensuring that the Guidelines are reformed to give clearer direction to business about their responsibilities to respect human rights, especially including operations in states which do not recognise or respect the rights guaranteed by the fundamental UN human rights treaties.**

### The Work of the UN Special Representative

87. Over the past five years, there has been a lively debate about whether the approach to human rights embraced by many businesses is sufficiently effective in practice or whether more binding forms of international regulation than the OECD Guidelines are required. In 2003, the UN Sub-Commission on Human Rights adopted the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises (the Norms).<sup>121</sup> The Norms proposed a more coercive approach, setting out a series of human rights standards for companies and requiring companies to respect and promote those rights. The Norms were strongly opposed by many businesses and Governments on the

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119 See for example, Ev 274, para 21, Q165, Q214.

120 UK National Contact Point, *UK National Contact Point Stakeholder Consultation: Update of OECD Guidelines on Multinational Enterprises*, 27 October 2009.

121 UN Sub-Commission on the Promotion and Protection of Human Rights, *Responsibilities of transnational corporations and other business enterprises with regard to human rights*, UN Doc E/CN.4/Sub 2/2003/L.11.

grounds they were too broad and too vague.<sup>122</sup> The debate became polarised and the situation was described by Professor Ruggie as a “train wreck”.<sup>123</sup>

88. The UK played a key role in proposing a way forward with the appointment of the UN Special Representative, Professor Ruggie, in 2005. The broad purpose of his mandate was to consider how to take the debate on business and human rights forward following the failure of the Norms.<sup>124</sup> In oral evidence, Professor Ruggie told us that the human rights challenges arising from the activities of corporate or other business entities arise from a series of “governance gaps.” Although not simple to overcome, these could each be addressed by states within their own jurisdictions or by countries working together. Professor Ruggie’s analysis of the debate on business and human rights and the key drivers for action were broadly reflected in our evidence.<sup>125</sup> The main themes include:

- Gaps between the aims of the private sector and the aims of individual states;<sup>126</sup>
- A lack of policy coherence within individual Governments in relation to their human rights responsibilities;
- Governments taking on human rights obligations without ever intending to fulfil them; Governments lacking the capacity to fulfil their human rights obligations; and Governments neglecting to enforce human rights standards as they fear competitive disadvantage; and
- Corporate governance rules that rarely address the human rights impacts of companies, something which, in the words of Professor Ruggie, does not send “the appropriate signals to companies”.<sup>127</sup>

89. In April 2008, Professor Ruggie proposed the “protect, respect and remedy” policy framework for the business and human rights debate, based on three core principles:

- the state duty to protect against human rights abuses by third parties, including businesses;
- a corporate responsibility to respect human rights; and
- the need for individuals to have effective access to remedies for breaches of their human rights.<sup>128</sup>

90. In June 2008, the UN Human Rights Council approved the framework and extended the mandate of the Special Representative until 2011.<sup>129</sup> He has been asked to make

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122 Daniel Leader, *Business and Human Rights, Time to call Companies to Account*, *International Criminal Law Review* 8 (2008) 447 – 462, 455

123 Professor Ruggie, *Corporate Social Responsibility Forum, Fair Labour Association and the German Network of Business Ethics*, 14 June 2006.

124 See UN Human Rights Commission Resolution 2005/69, 20 April 2009.

125 Q1

126 Q1. See also Report of the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, ‘Protect, Respect and Remedy: a Framework for Business and Human Rights’, UN Doc.A/HRC/8/5, 7 April 2008. Herein “Ruggie Report 2008”, paras 11 – 16.

127 Q1

128 Ruggie Report 2008, para 17.

129 UN Human Rights Council, Resolution 8/7, 18 June 2008.

practical recommendations on ways to help states protect human rights from abuses involving businesses, and to enhance access to remedies for those whose human rights are affected by corporate activities. In his most recent report, published in April 2009, Professor Ruggie recognised that further work is necessary, to:

- address domestic policy incoherence and the failure of Governments to work together effectively;
- consider the impact of trade and investment agreements on human rights;
- encourage companies to make human rights due diligence effective and appropriate for their businesses;
- clarify how to ‘demystify human rights’ for businesses;
- explore the relationship between judicial and non-judicial remedies,
- increase the effectiveness of NCP decisions on the OECD Guidelines; and
- explore the role to be played by National Human Rights Institutions, such as, in the UK, the Equality and Human Rights Commission, the Scottish Human Rights Commission and Northern Ireland Human Rights Commission (NHRIs).<sup>130</sup>

91. Witnesses who commented on Professor Ruggie’s work welcomed both his mandate and the ‘protect, respect and remedy’ framework.<sup>131</sup> For example, BP told us that Professor Ruggie had:

helped to bring clarity in this contentious issue that previously had been characterised by sharply divided opinions on the scope, scale and accountability of business in the matter of human rights.<sup>132</sup>

92. Most witnesses recognised that drawing a distinction between voluntary arrangements and binding legal standards for business is no longer helpful.<sup>133</sup> Sir Geoffrey Chandler emphasised that there was a role for both voluntary and regulatory action:

At the end of the day a framework of law alone will not make for a responsible corporate world any more than it can make a moral individual...It is only when principles become the point of departure for corporate activity that we will have won, when companies do what is right because it is right.<sup>134</sup>

**93. The ‘protect, respect and remedy’ framework proposed by Professor Ruggie, the UN Special Representative, is a valuable and constructive contribution to the debate on business and human rights. The polarised positions previously taken by the proponents of voluntary or regulatory initiatives were unhelpful. While there continue to be many areas of contention over the respective roles and responsibilities of states**

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<sup>130</sup> Ruggie Report, 2009.

<sup>131</sup> See for example, Q125

<sup>132</sup> Ev 154. See also Q190 (Sir Brian Fall)

<sup>133</sup> Ev 107, page 2

<sup>134</sup> Ev 107, page 3, Ev 137, para 29

and individual businesses, this framework provides a solid platform upon which these issues can be debated and, hopefully, resolved. We welcome the renewed commitment to constructive dialogue that the framework appears to have provided and call on states, businesses and civil society to approach any operational recommendations made by the UN Special Representative in a positive way. It would be disappointing if the years of work and careful engagement undertaken by the UN Special Representative and his team were wasted by a return to the stalemate that arose after the UN Norms.

### *Limitations of the protect, respect and remedy framework*

94. Some witnesses pointed to limitations of the Ruggie framework. One criticism was that the ‘protect, respect and remedy’ framework treats the role of communities affected by business activities as a passive one.<sup>135</sup> Others expressed concern that the framework contained very little detail on what standards should apply to business conduct to ensure that rights are respected.<sup>136</sup> Professor David Kinley told us that as a conceptual framework, ‘protect, respect, remedy’ was “unobjectionable”, but that it did little to answer the problem which Professor Ruggie had identified: “in which states are so weak or unwilling to protect human rights and corporations are so comparatively strong or conveniently transnational to evade human rights responsibilities”.<sup>137</sup> A joint submission by a number of international academics expressed a similar view, arguing that the existing division of responsibilities between states and businesses failed to recognise that the division must be flexible and that in circumstances where states were unwilling or unable to fulfil their duty to protect, the responsibility on companies operating in those countries should be more onerous.<sup>138</sup>

95. While we recognise the value of the ‘protect, respect, remedy’ framework, further work is needed to increase its value to individual states and businesses. We look forward to the further recommendations which Professor Ruggie is due to make in 2011. They need to give clear guidance to home and host states and businesses, on how they should meet their obligations under the ‘protect, respect, remedy’ framework. While the value of consensus in this debate is clear, Professor Ruggie should not be afraid to tell states and business what positive steps must be taken to protect human rights, however difficult or unwelcome his message may be.

96. There is a case for further recognition of the role of communities in the Ruggie framework. The need for consultation and engagement appears to form part of the due diligence process envisaged by Professor Ruggie. However, greater clarity on the role of individuals and civil society could lend greater coherence to the development of the framework.

97. We call on the Government to continue to support the mandate of the UN Special Representative, to encourage UK businesses and civil society to engage with his work, and to respond constructively to his recommendations.

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135 Ev 217, Ev 274

136 Ev 218

137 Ev 146

138 Ev 217

### **Waiting for 2011?**

98. We asked a number of witnesses whether states could sensibly take any unilateral action before the Special Representative completed his work in 2011. Professor Ruggie criticised the notion that states should ignore business and human rights issues until he makes his final recommendations.<sup>139</sup>

99. Peter Frankental, of Amnesty International, told us that both unilateral and multilateral action was desirable and that the two were not mutually exclusive.<sup>140</sup> BP, on the other hand, said that it was “imperative” that businesses and states should not “pre-empt” the outcome of the work of the Special Representative, adding that there was “a risk of a multiplicity of new country-based business and human rights...standards and adjudication systems” if states acted on their own account.<sup>141</sup>

100. Sir Brian Fall of Rio Tinto and the CBI also counselled against unilateral action without coordination by major industrialised states.<sup>142</sup> The Government shares this view. In oral evidence, Lord Malloch-Brown said it was “too soon” to start incorporating Professor Ruggie’s work into UK policy.<sup>143</sup> He explained that the Government thought that what Professor Ruggie was trying to do was to determine a “conceptual framework” which tied together strands of work that the UK Government was already working on, including through its support for voluntary mechanisms such as the Kimberley Process. He explained that he did not want to “pre-judge” the conclusions of Professor Ruggie but that he thought that the Special Representative was taking an approach which was similar to the view of the UK Government, that the focus should be on strengthening host state capacity, rather than introducing any international dimension.<sup>144</sup>

**101. We are disappointed that the Government appears to have ruled out unilateral policy measures to deal with the human rights impacts of UK companies operating overseas while the Special Representative carries out his work, particularly as Professor Ruggie has encouraged states to do more. International debate should not preclude innovative policies at home.**

### **An international agreement on business and human rights?**

102. A number of witnesses told us that international agreement was the only way to achieve a global solution to the problems identified by Professor Ruggie.<sup>145</sup> The UN Special Representative told us, however, that an international agreement was unrealistic in the current climate:

I do not want to make it sound as though there should not be any kind of international legal instruments. I just do not think that an overarching business and

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139 Q48

140 Q52. See also Q 54 (Action Aid)

141 Ev 154

142 Q213. See also Q163

143 Q360

144 Q359-360

145 For example Ev 107 and Ev 146

human rights treaty is around the corner, and therefore we have to look to other measures if nothing else as an intermediate step to reduce the risks that they face.<sup>146</sup>

103. Peter Frankental, for Amnesty International agreed: “such a treaty is unlikely to happen within the next decade, but that is not a reason not to promote it now.”<sup>147</sup> He argued that an overarching UN treaty was only one aspiration and that there were a number of other forms of international cooperation, including through the OECD and the EU, which could address the impacts of business on human rights.<sup>148</sup>

104. The CBI and a number of businesses do not support a formal international agreement. The CBI said:

We believe that such an initiative should take a significantly long period of time to negotiate, it would divert resources away from the promise offered by the ...current mandate [of the Special Representative] and it is unclear as to how any such treaty might actually be enforced.<sup>149</sup>

105. International agreement comes in many forms. It would be disappointing if the failure of the UN Norms overshadowed the debate about any future international agreement on the steps which individual states could take to meet the governance gaps identified by Professor Ruggie. Although consensus took a significant period of time to reach on the issue of cross-border bribery and corruption, the obligations in the UN Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Officials are now widely supported. The measures in each of these agreements have been accepted as positive steps towards meeting a global problem affecting both the fundamental rights of many communities and the credibility of international business. A number of the academics and civil society groups we met in the US urged us to look at the long process through which these agreements were debated and agreed as indicative of how a debate on business and human rights could lead to a broad international agreement in the future.

**106. An international agreement on business and human rights is unlikely in the near future. However, the impact of business on human rights is a global issue that ultimately requires a global solution. We are concerned that reluctance by states to take unilateral action coupled with failure to commit to an international solution will mean that little progress is made. We believe that an international agreement should be the ultimate aspiration of any debate on business and human rights. There is considerable scope for joint working on a regional level and globally to agree a consistent approach to business and human rights. We recommend that the Government develops such joint-working programmes.**

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146 Q18

147 Q53

148 Ibid

149 Ev 319

## 5 Respect: the responsibility of business

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### What does the responsibility to respect human rights mean?

107. In his 2009 Report, the Special Representative explained that the corporate responsibility to respect human rights has a number of facets:

- The first is straightforward and involves the legal obligation on businesses to obey the laws of its home and host states;
- The second element of the responsibility to respect human rights is the social or moral responsibility on businesses to “do no harm” to the rights of others guaranteed by international human rights law. He explains that this is accepted “near-universally” by all businesses, states and civil society; applies regardless of the laws or international obligations of the host state; and that there may be circumstances in which the need to respect human rights imposes additional responsibilities on firms.<sup>150</sup>
- While some businesses implement corporate social responsibility policies over and above the responsibility to respect human rights, these activities are not a substitute for meeting the responsibility to “do no harm”. Philanthropy, while desirable, is not a requirement of the responsibility to respect human rights.<sup>151</sup>

108. In order to discharge the responsibility to respect human rights, businesses must take positive steps to recognise and mitigate the effects of their business activities on human rights. Companies are required to undertake human rights due diligence of their activities to assess their human rights impacts; and they must take steps to prevent or address those impacts through business planning or other positive measures.<sup>152</sup>

109. Witnesses expressed a range of views over the requirements of the responsibility to ‘respect’ human rights. It was widely recognised that the principal responsibility for securing adequate protection for human rights remains with states.<sup>153</sup> Some witnesses argued that more recognition was needed of the role which some businesses play relating to the rights of individuals, for example in areas of conflict.<sup>154</sup> Different perspectives were expressed on whether legal or regulatory action was necessary to enforce this social responsibility and whether those standards should be agreed internationally or set unilaterally by individual host or home states.

**110. We welcome the recognition by Professor Ruggie that the responsibility on businesses to respect human rights is not merely voluntary. However, we share the concerns of the UN Special Representative and others that while this responsibility is clear in theory, its practical implications are uncertain.**

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<sup>150</sup> Ruggie Report 2009, paras 46 – 48. See also para 54.

<sup>151</sup> Ibid, paras 61 – 65.

<sup>152</sup> Ibid, paras 45 – 65. See also para 85.

<sup>153</sup> Ev 104, Q190

<sup>154</sup> See for example, Ev 219

### ***What does “respect” mean for UK business?***

111. In recent years many companies have become increasingly aware of the need to enhance their corporate responsibility and deal with the human rights impacts of their business.<sup>155</sup> This is apparent from the growing number of companies who make human rights part of their corporate strategy, including through the adoption of codes of conduct or subscription to international codes or principles that call for observance of human rights standards by companies.<sup>156</sup> A number of these initiatives have been business-led, suggesting that some businesses see value in acknowledging that their operations have an impact on human rights. A number of witnesses - from both business and civil society - outlined the business case for respect for human rights, both at home and abroad. These include protecting the reputation of the business and its brand; increasing public confidence; actively managing financial and other risks that may arise as a consequence of allegations that the company has been involved in human rights abuse; enhancing employee satisfaction; and improving recruitment and retention.<sup>157</sup>

112. The Minister for Regulation, Ian Lucas MP added:

One of the best ways that you can improve your reputation is to show yourself as a company that has consciousness of the environment in which you operate; that does things beyond its normal commercial remit to assist the local community and to be seen to be behaving in that way. I think that brings a commercial benefit as well as doing the right thing, and that is a perfect solution as far as I am concerned.<sup>158</sup>

### ***Due diligence and human rights impacts***

113. In his 2009 Report, Professor Ruggie criticised the number of companies that introduce human rights policies which have no real impact on their business. In oral evidence he said:

Companies universally will say that they respect human rights. I have never come across a company website that said, “We do not respect human rights”. The question that we ask them is “Okay, that is great. We are delighted that you respect human rights, but how do you know that you do? What steps do you go through to demonstrate to yourself that you do, and are those steps adequate? Most of the time there are no systems in place.”<sup>159</sup>

114. Vigeo, a Corporate Social Responsibility Rating Agency provided us with some broad findings from their research on 414 European companies, including 104 UK companies, including a number of FTSE 100 companies.<sup>160</sup>

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155 Ev 107, page 1

156 Ev 107, page 1

157 Ev 124

158 Q376 (Minister for Regulation, Ian Lucas MP)

159 Q2

160 Ev 124. As we noted above in paragraph 48, we drew the attention of those companies referenced in the evidence to our inquiry and invited them to submit their own evidence.

- Between January 2008 and April 2009, Vigeo identified human rights allegations involving 18 British companies. This was a “rather high number” when compared with other European companies studied.<sup>161</sup>
- Compared to the average performance of European peers, more British companies have established formalised policies on human rights;
- 50% of those firms which have human rights policies have implemented measures to ensure respect for these rights (such as risk assessments, training and awareness raising);
- 25% of the UK companies studied do not have policies which address human rights issues at all.<sup>162</sup>

115. In its written submission, BP outlined a number of processes which it has introduced as part of its corporate governance and risk management programme. It explained that these processes were developed after the firm was criticised in the mid-1990s for alleged wrongdoing relating to security issues in Colombia:

Spurred by this experience we took a number of steps to develop internal ‘process’ with the intention of ensuring that considerations of human rights are embedded in our business practice. [...] The main elements of this broad framework include the need for clear policy positions which are articulated and backed-up by supporting developed processes; for ensuring that human rights requirements are enshrined in third party procurement and contracts, particularly in high risk areas; and for the provision of independent monitoring, assurance and reporting techniques.<sup>163</sup>

116. New Look told us that it was committed to membership of the Ethical Trading Initiative. It argued that it had achieved improved working conditions in its supply chain by introducing training on productivity, combining concern for the rights of its workers with business efficiency.<sup>164</sup>

117. Tesco also described a number of steps which it was taking to demonstrate its commitment to its “core values” and the Ethical Trading Initiative Base Code. It mentioned, for example, its annual audit of high-risk sites in their supply chain and recent steps taken to improve the audit programme. Tesco also informed us about its decision to stop using Uzbek cotton as action to remove child labour from its supply chain.<sup>165</sup>

118. Witnesses made few suggestions about the steps which companies can take to improve their due diligence processes. The UFCW (a US trade union) called for the UK Government to promote the inclusion of independent members on company corporate responsibility committees. The union noted that six out of ten of the FTSE’s largest UK firms have corporate responsibility committees which are comprised largely or entirely of independent non-executive directors. Shell were cited as an example of good practice

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161 Ev 124

162 Ev 124

163 Ev 152. See also the experiences of Imperial Tobacco, Ev 128

164 Ev 347

165 Ev 352

(having three independent non-executive board members on their corporate responsibility committee) and Tesco as bad practice (having a committee comprised entirely of employees and chaired by the director of corporate and legal affairs).<sup>166</sup>

**119. Many of the steps taken by businesses and their organisations have helped to move the debate on business and human rights forward. Changes in business practice on the ground can have a positive impact on the lives of communities and individuals. We welcome the commitment shown by many companies to respect human rights, wherever their businesses operate. Dealing with the negative impacts of businesses on human rights requires a culture change in the way that businesses think about their responsibilities. We see merit in the argument that business-led initiatives may achieve a credible and lasting change, but this is hampered by the perception that some businesses regard addressing human rights as little more than an exercise in “good PR”. Although compliance with the due diligence requirements outlined by the Special Representative - including the need to take action to address identified risks to individual rights - has the potential to benefit more than a business’s public image, Professor Ruggie himself recognises that few businesses meet the standards he considers are necessary. We consider this and other limits to the responsibility to respect, below.**

### **Limits of the responsibility to respect?**

120. Some witnesses have expressed concerns about the scope and implications of the responsibility to respect human rights. These included:

- Whether the responsibility to respect human rights means more than taking measures of corporate social responsibility?
- Whether voluntary arrangements and business-led initiatives work without state reinforcement?

### ***Respect for human rights and corporate social responsibility***

121. Several witnesses argued that it was important to remove the issue of human rights from the wider corporate social responsibility agenda.<sup>167</sup> For example, the Government told us:

Companies are taking proactive steps to produce their own human rights policies, statements of values, codes of conduct and pledges. However, policies tend to be aspirational and overarching, with a blurring of corporate social responsibility and human rights.<sup>168</sup>

122. War on Want argued:

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<sup>166</sup> Ev 114

<sup>167</sup> See for example, Ev 138, Ev 147- 148, Ev 164

<sup>168</sup> Ev 85

A CSR framework is determined by commitments that companies agree to enter into voluntarily but human rights need to be underpinned by legally binding framework.<sup>169</sup>

**123. Given the absence of a straightforward legal framework for business responsibilities regarding human rights, it is understandable that these issues are generally dealt with by businesses alongside environmental issues under the ‘corporate responsibility’ label.**

**124. How businesses describe their activities should not matter, provided that businesses take their responsibility to respect human rights seriously. Greater clarity on the distinction between actions required by the social or moral ‘responsibility to respect’ (i.e. do no harm) and acts of general philanthropy would go some way to reinforce the baseline responsibility identified by Professor Ruggie. The UK Government could encourage such a distinction by adopting the ‘protect, respect and remedy’ framework and clearly explaining the responsibility to respect human rights and the associated need for due diligence in their work on corporate responsibility.**

### ***Voluntary arrangements and multilateral international initiatives***

125. Witnesses expressed a range of views about the value of businesses’ participation in voluntary schemes and codes of practice. For example Business for Social Responsibility told us that the development of voluntary schemes and multi-stakeholder initiatives had captured the promise of “dialogue, debate and collective action”. It went on to explain that these arrangements provided institutional support for those businesses advancing support for human rights and provided accessible information on business and human rights issues.<sup>170</sup> Good Corporation argued that voluntary schemes could lead to “lowest common denominator results”.<sup>171</sup> CORE told us that the effectiveness of the range of voluntary initiatives were difficult to monitor.<sup>172</sup> Themes in the evidence included:

- Characterisation of participation in these schemes as voluntary underestimates the risks that a company may face to its reputation and its market share by withdrawing from a scheme.<sup>173</sup>
- Current schemes do not provide sufficient information to allow the public to influence consumer behaviour and thereby change corporate behaviour.<sup>174</sup>
- No process exists to scrutinise the effectiveness of any of the existing range of voluntary schemes. This reduces their value to business and consumers and ultimately reduces their ability to enhance human rights protection.<sup>175</sup>

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169 Ev 209

170 Ev 290

171 Ev 345

172 Ev 170. See also Ev 164

173 See for example, Q1, Q126, During our visit to the US, a number of the groups and individuals we spoke to, notably the UN Global Compact emphasised that participation in some schemes although voluntary in nature was not without consequences for business, including the impact on a company reputation of withdrawing or being expelled from a scheme.

174 Ev 107

- Businesses may benefit from the good publicity associated with a positive statement on human rights, without adequate scrutiny of how consistently their policy has been applied. This may mean that they apply their policy in one country (for example, their home state) but not in others.<sup>176</sup>

126. Several witnesses argued that a voluntary approach, on its own, could provide very little protection for human rights. War on Want argued that voluntary initiatives were inherently flawed:

Time and time again these voluntary initiatives fail to deliver significant and long lasting relief to the victims of human rights abuses. We believe that partly this is because these initiatives are used to protect the reputation of the corporations rather than as an effective tool for promoting socially responsible behaviour.<sup>177</sup>

127. CORE said:

There is no business case which exists for all companies to be more ethical, only a business case for strong consumer brands selling to socially conscious consumers.<sup>178</sup>

128. On the other hand New Look wrote:

The motivation behind brands taking responsibility for the impact of the industry on the rights of people along their supply chain varies widely: from truly caring about the issues to compliance reasons, to tick boxes and gain recognition, what matters is that action is taken and results are achieved.<sup>179</sup>

**129. The array of multi-stakeholder initiatives and sector-specific arrangements that have been agreed in the past decade show that businesses recognise they must take some action to meet the criticism levelled at a number of multinational businesses. Many of the doubts expressed about their effectiveness have merit. While there is no consistent global agreement on the standards to meet, it is difficult to assess the effectiveness of each scheme or for the outsider to accept that business can self-regulate without adequate scrutiny from active consumers, NGOs and others. We have not classified the arguments we heard as pro-‘voluntary’ or pro-‘regulatory’, but there is a clear distinction between those who favour business-led initiatives and those who see a far clearer role for home states. We support the view of Professor Ruggie, that a range of responses is necessary. No single solution will be able to address the complex issues which arise in cross-border commercial operations which impact on human rights. This collaborative approach should not involve a race towards the lowest common denominator, as some witnesses fear. We consider the Government can play a role in supporting and reinforcing the social and moral responsibility of business to respect human rights, through due diligence. We consider the Government’s broader strategy on business and human rights in Chapter 7, below.**

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175 Ev 161, para 10; Ev 170; Ev 345

176 Ev 114; Ev 193.

177 Ev 164

178 Ev 170

179 Ev 347

## 6 Protect: the duties of the UK

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130. The duty on states to protect human rights may include the responsibility to regulate the behaviour of businesses and other private entities to safeguard the rights of others. The means by which states meet their duty cannot be prescribed and could vary from state to state. In his April 2009 report, Professor Ruggie explained:

states are not held responsible for corporate-related human rights abuse per se, but may be considered in breach of their obligations where they fail to take appropriate steps to prevent it and to investigate, punish and redress it when it occurs. Within these parameters, states have discretion as to how to fulfil their duty. The main human right treaties generally contemplate legislative, administrative and judicial measures.<sup>180</sup>

131. We called for evidence of specific gaps in the legislative and regulatory framework in the UK and we consider three significant issues raised with us in this Chapter:

- The application of the Human Rights Act 1998 for the businesses performing public functions;
- Forced labour in the UK; and
- The recognition of labour and union rights.

### The application of the HRA 1998 to the private sector

132. In our March 2007 Report, *The Meaning of Public Authority under the Human Rights Act*,<sup>181</sup> we called for the Government to take legislative steps to clarify the scope of the HRA 1998, to ensure that all private providers performing a public function would be subject to the direct application of the Act and the duty in Section 6, to act in a manner compatible with Convention rights, as Parliament originally intended. We considered the impact of the gap in the law created by the unduly narrow interpretation of ‘public function’ adopted by the UK’s domestic courts and concluded that a legislative solution was necessary.<sup>182</sup> Subsequent to our Report, in *YL v Birmingham*, the House of Lords, confirmed this line of case law and concluded that private providers of publicly funded residential care were not performing a public function and the HRA 1998 did not apply to their activities.<sup>183</sup> The Government introduced amending legislation in the Health and Social Care Act 2008 to remedy the immediate problem by deeming the provision of publicly funded residential care in private care homes a public function for the purposes of the HRA 1998.<sup>184</sup>

133. No witnesses to this inquiry argued that the scope of the HRA 1998 should be restricted any further. The Institute of Directors (IoD) expressed concern about the “serious danger of extending the language and the legislation of human rights to areas

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<sup>180</sup> Ruggie Report 2009, para 14

<sup>181</sup> Ninth Report of Session 2006-07, *Meaning of Public Authority under the Human Rights Act*, HL Paper 77/HC 410.

<sup>182</sup> *Ibid*, see paras 135 – 136.

<sup>183</sup> *YL v Birmingham City Council* [2007] UKHL 27

<sup>184</sup> Health and Social Care Act 2008, Section 145.

where they do not belong”. Although it did not identify any particular danger the IoD argued that there was a risk that extending human rights obligations directly to service providers could reduce the ability of the private sector to provide public services in the most efficient way possible “without being burdened by a civil service mentality”. It also thought that this could lead to contracts failing to define service standards appropriately, allowing contracting public bodies to rely on minimum standards in the Convention rather than setting individual contractual standards. The IoD added that in its view, some breaches of service standards may be considered breaches of human rights, but may not be sufficiently grave for human rights legislation to apply.<sup>185</sup>

134. Professor Ruggie stressed that, in his view, it was important to remember that the state can never contract out of its human rights obligations. It remains the responsibility of the state to ensure that any private provider continues to operate to standards that meet those obligations.<sup>186</sup> Although Professor Ruggie said that this could be achieved through the use of contractual obligations, he conceded that he was not familiar with the arguments raised in the UK in respect of this issue.<sup>187</sup>

135. In its response to our 2007 Report, published two years late, on 28 October 2009, the Government criticised our approach to the concerns of private sector providers.<sup>188</sup> It agreed that some private sector concerns were “exaggerated or overstated”. However, the Government argued that we had failed to recognise that Government must “take into account the need to maintain a functioning market for the provision of public services” and so must provide “reassurance” to current or potential service providers.<sup>189</sup>

**136. We have heard nothing new in this inquiry to suggest that we should change our view that legislative change is necessary to restore the original intention of Parliament, that all private bodies performing public functions should be subject to the duty to act compatibly with human rights. We are concerned that the Government’s approach panders to the unjustified concerns of some in the private sector in order to maintain the market for contracted-out services and represents a significant shift from its earlier view that the scope of the HRA 1998 should be clarified. In our view, this apparent change of policy represents a failure of leadership by the Government on such an important human rights issue.**

137. In our Report on the Health and Social Care Bill, we said that the resolution of the immediate problem of publicly funded care in private residential homes did not deal with the broader uncertainty of the meaning of public function.<sup>190</sup> We asked Michael Wills MP, the Minister for Human Rights, about this during our inquiry on a Bill of Rights for the UK, in May 2008, and he was clear that there was a wider constitutional issue beyond the issue of private care homes that needed to be taken seriously. He reassured us that the

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185 Ev 108, paras 7 – 12

186 QQ 7-8

187 Q10

188 Cm 7726, Ministry of Justice, Government Response to the Joint Committee on Human Rights’ Ninth Report of Session 2006-07, October 2009. Herein “The Government Response”.

189 The Government Response, para 89

190 Eighth Report of 2007-08, *Legislative Scrutiny: Health and Social Care Bill*, HL Paper 46/HC 303, paras 1.22 – 1.24.

Government intended to move as quickly as it possibly could to consult on the broader issue of the scope of the HRA 1998:

We also accept that there is a wider issue .... It is not easy to resolve. Everyone wants to resolve it. There is no issue between us on where we want to end up. We want to end up at a proper definition which covers contracted-out public services in a way that Parliament originally intended but we must be certain we are not going to end up with unintended and perverse consequences. ... We are going to consult on this ... Please do not have any illusion that we do not take this anything other than extremely seriously.<sup>191</sup>

138. This assurance was repeated to us in January 2009<sup>192</sup> and in the House of Commons in June and July 2009.<sup>193</sup> Given this history, we were amazed that the Government's written evidence to this inquiry downplayed the significance of the problem, arguing that:

For the most part, it is clear both in law and in practice when a function should be considered a function of a public nature. It is only at the very margins of the concept that certainty may not exist; however, such marginal uncertainty would be an inevitable consequence of the duty having been defined in any manner other than by reference to a list of those subject thereto.<sup>194</sup>

139. The EHRC disagreed strongly with this position. It said the voluntary sector found the continuing uncertainty particularly difficult.<sup>195</sup> The SHRC told us that:

There is uncertainty in practice, if not legally about this question of whether this is settled in a legal sense or that it is an area of marginal uncertainty. The key areas that we have picked up on would be other vulnerable groups, such as detainees in the broadest sense and those detained under mental health legislation.<sup>196</sup>

140. Business for Social Responsibility argued that clarity in this area would add legal certainty for businesses and would be a 'valuable contribution' to this debate.<sup>197</sup> Other witnesses told us that uncertainty in the existing law was bad for business and bad for the protection of individual rights. Clifford Chance explained:

If satellite litigation on the issue of what is and is not a public authority has to go to the Court of Appeal or the House of Lords before a claimant can even be sure that a claim can proceed, that is a significant barrier to a remedy for that claimant, who may struggle to fund even a straightforward claim.<sup>198</sup>

141. Leigh Day told us that uncertainty was still leading to litigation:

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191 Q470, Twenty-ninth Report of 2007-08, *A Bill of Rights for the UK?*, HL Paper 165-II/HC150-II.

192 HC 174-I, Uncorrected transcript, oral evidence given by Rt Hon Jack Straw MP and Michael Wills MP, QQ 78-79.

193 HC Deb, 25 June 2009, Cols 344 WH – 345 WH; HC Deb, 3 July 2009, Col 659.

194 Ev 85

195 Q295

196 Q295

197 Ev 290

198 Ev 197

A key area in which the protection of the HRA fails (and in which Leigh Day & Co are often instructed) is in relation to private companies running immigration detention centres and providing escort services for removals and deportations. ...The Home Office argue that it is not responsible for the actions of private companies and hence rigorously defend HRA claims, and the companies themselves state that they are not subject to the HRA. This issue has yet to be determined by the Court and highlights the unnerving ability of public authorities to contract out of their human rights obligations.<sup>199</sup>

**142. We are particularly concerned to hear evidence from public law solicitors that cases are being litigated over the exercise of compulsory powers in immigration detention. In our previous correspondence with the Government, we understood that the exercise of any compulsory powers associated with detention would be subject to Section 6 of the HRA 1998.<sup>200</sup> This evidence clearly illustrates the need for clarification of the scope of the HRA 1998. Although the Government considers that the legal position in respect of these cases is settled, we maintain that legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of public authority, putting beyond doubt, in statute, Parliament’s original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA.**

143. We asked the Government to confirm how many arguments had arisen over the scope of Section 6(3)(b), including in litigation and were told that the Government was only aware of one contested case that had proceeded since the case of *YL*. This case involves a decision of the Court of Appeal that the allocation and management of social housing by a registered social landlord was a public function for the purposes of Section 6, HRA 1998.<sup>201</sup> It was subject to appeal and the *sub-judice* rule of both Houses during our inquiry, so we did not take evidence on the case. Our view – that the provision of social housing further to statutory arrangements is a public function – is already a matter of record.<sup>202</sup> On 6 November 2009, the Supreme Court refused permission to appeal in *Weaver*. The Court of Appeal judgment – that the allocation and termination of social tenancies by the defendant housing association was a public function – stands.

144. In its response to our 2007 Report, the Government reiterates the view that after the decision in *YL*, the law is largely clear and any uncertainty is marginal. It considers that this issue, although “frustrating” should not be allowed to “detract from the overall success” of the HRA 1998 or “give the impression that the scope of its protection has been significantly truncated”.<sup>203</sup> It argues that there is a “serious misconception” about the extent of the effect of the *YL* judgment:

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199 Ev 293

200 Eighth Report of 2007-08, *Legislative Scrutiny: Health and Social Care Bill*, HL Paper 46/HC 303.

201 *Weaver v London Quadrant Housing Trust* [2009] EWCA Civ 587.

202 Seventeenth Report of 2007-08, *Legislative Scrutiny: (1) Employment Bill; (2) Housing and Regeneration Bill; (3) Other Bills*, HL Paper 95/HC 501, paras 2.9 – 2.21.

203 The Government Response, para 49.

Many people receiving publicly-arranged social care were under the impression that, as a result of *YL*, they had “lost their human rights”. Even before the legislative response to that judgment came into force, this was an incorrect assessment of the position. The rights of every person in the United Kingdom are secured by the European Convention on Human Rights, and every person may bring proceedings under the Human Rights Act. The issue addressed in *YL* was only whether those proceedings could be brought directly against the service provider in question.<sup>204</sup>

145. We are concerned by the Government’s analysis of the House of Lords decision in *YL*. In our first report on this issue, we explained that unless private providers could be directly challenged on human rights grounds, service users could face difficulties in challenging the public authority who contracted out the service. These difficulties included proximity to the harm which occurred under the care of the private provider and whether the public authority knew that the actions of the private provider were likely to endanger service users’ rights.<sup>205</sup> These concerns are highlighted by the evidence provided by Leigh Day, that the Home Office has argued that it is not responsible for the activities of private contractors when faced with potential HRA 1998 claims.

146. The Government’s view that *YL* was only about the right to bring legal proceedings is a disappointingly narrow interpretation of the public duty to act in a Convention compatible way. In numerous reports, we have reported that this duty is intended to improve the way that those bodies performing a public function provide their services. It is not just a cause of action, but a positive duty designed to protect individual rights and improve service delivery, without recourse to law. Although Section 7 HRA 1998 provides a right for individuals to enforce that duty by seeking a remedy for failure to act in a Convention compatible way, the duty is not just about the right to litigate.

**147. The Government’s view that the scope of the HRA 1998 is subject only to marginal uncertainty is not correct. We accept its view that in the wider context of the operation of the Act against core public authorities, the application of the HRA 1998 is settled and clear. We also agree that this issue should not detract from the overall success of the HRA 1998. However, we find unacceptable the Government’s attempt to dismiss the outstanding problems created by the decision of the House of Lords.**<sup>206</sup>

148. We asked Michael Wills MP to confirm the Government’s position. He said that settling the issue of the scope of the HRA was important, but that a promised consultation was not imminent while litigation was continuing.<sup>207</sup> Without a legislative solution to the current state of case law on the scope of the Act, repetitive litigation on a case-by-case and sector-by-sector basis is inevitable. Continued delay can only exacerbate the problem. The Supreme Court is bound by House of Lords precedent in *YL*.<sup>208</sup> The courts will be bound to move further away from the original definition intended by Parliament, unless they decide to distinguish *YL* and all other earlier authorities in favour of a more functional test.

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204 The Government Response, para 50.

205 Seventh Report of Session 2003-04, *The Meaning of Public Authority under the Human Rights Act*, HL Paper 39, HC 382, paras 78 – 85.

206 *YL v Birmingham City Council* [2007] UKHL 27.

207 Q364

208 See *Price v Leeds; Kay v Lambeth London Borough Council*, [2006] UKHL 10.

149. The Government has broken its promise to consult speedily on the scope of the HRA 1998. It is disappointing that the Government now relies on further litigation to justify its procrastination. In the time since the passage of the Health and Social Care Act 2008, a consultation could have been completed. An interpretative provision could still be inserted in the Constitutional Reform and Governance Bill. Instead, uncertainty continues for both business and the users of public services, who are forced to litigate to seek clarity.

150. The Government's decision to delay is unacceptable, particularly as it has already published its broad view on the sole issue currently before the courts, and on the wider debate. The litigation in *Weaver* is over. It is inevitable that litigation on other issues will surface. We are not persuaded that any further public consultation on this issue is necessary and call on the Government to bring forward a legislative solution as soon as possible. If the Government insists on publishing a formal consultation document, we recommend that they do so without delay. Any consultation should be short in duration and focus on a proposed legislative solution.

## Offence of forced labour in the UK

151. Anti-Slavery International highlighted the issue of servitude and forced labour in the UK. Despite many efforts by the UK Government over the past decade, it told us that gaps in the law were allowing forced labour and modern slavery to continue in the UK, particularly in the agriculture and food packaging industries.<sup>209</sup>

152. It told us that forced labour generated high profits for those involved. It was often difficult to detect as it most often involved migrant workers in the informal labour market:

The forms of coercion in recruiting forced labour are relatively subtle. Actual physical violence is rare. The person may be deceived into a situation of exploitation by accepting an initial promise of work and finding on arrival, that the work or working conditions do not meet that promise but the person has little or no choice but to accept it. Manipulation, psychological pressure and threats or simply the retention of their identification documents, are tactics used to coerce the person to accept inferior (and often exploitative) working conditions than what they had previously agreed. This is often combined with debt bondage, which is exacerbated by the obligation that the worker accepts further services at inflated prices such as accommodation and transport.<sup>210</sup>

153. The principal gap in the law identified by Anti-Slavery International is the failure to criminalise the act of using a person for compulsory or forced labour, as distinct from the act of trafficking. Article 25 of ILO Forced Labour Convention (Convention 29) provides that the UK must penalise these offences. Article 4 ECHR prohibits servitude and forced labour. The European Court of Human Rights considers that a failure to criminalise these acts can amount to a failure to provide specific and effective protection for victims.<sup>211</sup> Together with Liberty, Anti-Slavery International proposed amendments to the Coroners

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<sup>209</sup> Ev 211. Liberty and Anti-Slavery International Joint Briefing on the Coroners and Justice Bill for Report State of the House of Lord, Servitude and Forced Labour amendment, October 2009.

<sup>210</sup> Ev 211

<sup>211</sup> *Siliadin v France*, App No 73316/01, 26 July 2005.

and Justice Bill to make it an offence to hold another person in servitude or subject a person to forced or compulsory labour.<sup>212</sup> At Third Reading in the House of Lords, the Government brought forward its own amendments to introduce an offence of slavery, servitude, forced or compulsory labour.<sup>213</sup> Introducing the amendments, Lord Tunncliffe explained that the offence would be brought into force “as soon as practicable”. The Government anticipated that guidance and training would be provided for the police on the scope of the new offence. The Government committed to work with stakeholders and others to raise awareness of the offence.<sup>214</sup>

**154. We commend the Government’s acceptance that a specific offence of servitude and forced labour was necessary to meet our international obligations to prohibit and prosecute these acts of modern slavery and welcome the provision included at a late stage in the Coroners and Justice Act 2009.**

155. We note that the Government “anticipates” that guidance and training will be provided on the scope of the new offence. **We welcome the Government’s commitment to promote awareness of this offence. We recommend that the Government works with the Association of Chief Police Officers and other relevant stakeholders, including business organisations, to ensure that adequate guidance is produced for both police and the wider community in an accessible way.**

## Labour and Union Rights

156. A number of trades unions and trades union associations told us that existing laws in the UK do not go far enough to protect employees’ labour rights or their trades union rights, as guaranteed by the right to freedom of association (which is protected by Article 11 ECHR and the International Covenant on Economic Social and Cultural Rights (ICESCR)); the rights guaranteed by the ILO Conventions (specifically, the Conventions on freedom of association and the effective recognition of the right to collective bargaining (Conventions 87 and 98)), and the European Social Charter.<sup>215</sup> Broadly, they argued:

- states, including the UK, must treat certain labour rights as human rights with the appropriate degree of protection. These labour rights include the right to strike, the right to collective bargaining and the right to organise, including through a trades union.<sup>216</sup>
- states should not be permitted to ignore their obligations under existing human rights instruments in respect of labour and trades union rights.<sup>217</sup>
- The UK Government has responded to criticism by the supervisory bodies of the ILO and the UN on these issues by asserting that existing laws are compatible with

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212 Amendment 74, Second Marshalled List, 22 October 2009

213 Amendment 15. HL Deb 5 Nov 2009, Col 399 – 401.

214 Ibid, Col 400.

215 Ev 241, Ev 250, Ev 354

216 Q85 (Professor Keith Ewing), See also Q86 (John Hendy QC)

217 Q 87 (Owen Tudor, TUC)

the relevant Convention obligations, despite repeated criticisms of the UK Government approach by those bodies.<sup>218</sup>

- The UK should ratify the revised European Social Charter to allow collective complaints against the UK to be brought before the Council of Europe Economic and Social Rights Committee.<sup>219</sup> This reiterates a recommendation of our predecessor Committee in its 2005 report on the review of international human rights instruments.<sup>220</sup>

157. The IER and the TUC argued that the right to collective bargaining through an independent trades union is inadequately protected in the UK. They maintain that the existing statutory recognition procedure for trades unions is overly complicated, does not extend to small businesses, and allows many businesses to avoid collective bargaining. In October 2004, in its report on the ICESCR, our predecessor Committee concluded that inconsistencies in the provisions of the Employment Relations Act 1999 could lead to breaches of the ICESCR and the right to respect for private life under Article 8 ECHR.<sup>221</sup> It concluded that the existing law was inadequate and criticised the consistent failure of the Government to answer the criticisms of the relevant international monitoring bodies.

158. The IER and the TUC said that the right to strike is undermined by the operation of the common law, which provides that strike action is a breach of the employment contract. Although domestic law currently provides for a 12 week protected period during which dismissal will be deemed unfair, the IER calls for the law to be amended to provide that strike action suspends rather than breaches the contract of employment. They point out that this is consistent with a number of recommendations of international human rights bodies, including the UN Economic, Social and Cultural Rights Committee.<sup>222</sup>

**159. The right to freedom of association, the associated right to strike, the right to trade union membership and the right to collective bargaining are rights recognised in the international human rights obligations of the UK and overseen by the European Court of Human Rights, the ILO and the UN Committee on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights and the ILO Committee of Experts considers that current domestic law on the right to strike and the right to collective bargaining places undue restrictions on those rights. The UK Government has failed to take the recommendations of those Committees seriously. We reiterate our predecessors' recommendation that the UK Government review the existing law in the light of those recommendations.<sup>223</sup> We note that the European Court of Human Rights is increasingly citing the findings of the UN Committee and the ILO in its interpretation of the right to freedom of association guaranteed by Article 11 ECHR.<sup>224</sup> This jurisprudence may be relied upon in the domestic courts to**

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218 Q95

219 QQ 97-98

220 Seventeenth Report of 2004-05, *Review of International Human Rights Instruments*, HL Paper 99/HC 264, paras 42-44.

221 Twenty-first Report of 2003-04, *The International Covenant on Economic, Social and Cultural Rights*, paras 143-144.

222 Ev 245 - 250

223 Twenty-first Report of 2003-04, *The International Covenant on Economic, Social and Cultural Rights*, paras 143-144.

224 *Demir and Baykara v Turkey*, App No 34503/97, Judgment 12 November 2008, para 154 (recognition that the right to collective bargaining was protected by Article 11 ECHR); *Enerji Yapi-Yol v Turkey*, 21 April 2009 (recognition that the

**challenge the compatibility of existing law with Convention rights protected by the HRA 1998. This provides an added incentive to the Government to conduct a review without delay.**

160. The IER argued that enabling trades unions to complain of breaches of the European Social Charter would increase the relevance to the UK's domestic courts of the jurisprudence of the ILO Committee and the Social Rights Committee of the Council of Europe in a way that had not previously been considered relevant. They agreed that the indirect effects of ratification were important:

The direct legal effects may not be massive but the indirect legal effects are very important and significant...we think that trade unions in this country, as they have in Ireland and as they have in other countries of the Council of Europe should have the same opportunity to ventilate and give publicity to particular grievances.<sup>225</sup>

161. In 2004, our predecessor Committee called on the Government to ratify the Revised Social Charter at an early date. It made this recommendation after receiving the Government's reassurance that it intended to ratify.<sup>226</sup> **The Government said in 2004 that it intended to ratify the Charter. We recommend that it explain why it has not done so. We repeat the recommendation of our predecessor Committee in 2004: the UK should ratify the Revised Social Charter.**

162. The IER and the TUC argued that the Information Commissioner's recent discovery of an unlawful "blacklist" database of construction employees should prompt the Government to use existing regulation making powers under Section 3 of the Employment Relations Act 1999 to create a new framework to stop the blacklisting of employees involved in trade union activity. In July 2009, the Department for Business, Innovation and Skills (BIS) published draft regulations for consultation.<sup>227</sup> The IER and other unions, particularly UCATT, have criticised the draft Regulations. Professor Keith Ewing of the Institute of Employment Rights dismissed the draft Regulations as "hopeless and inadequate".<sup>228</sup> UCATT consider that the proposals do not go far enough to stop blacklisting trades union members and that they fail to establish a compensation scheme for those individuals who have already been affected by blacklisting.<sup>229</sup> The Government is expected to introduce regulations before the end of 2009.

**163. We doubt the compatibility of the Government's blacklisting proposals with the UK's international human rights obligations. We recommend that the Government provide a full explanation of its argument that the proposals are compatible. This should include a response to the criticism of the Institute of Employment Rights, that these proposals fail to provide an adequate remedy for those individuals who have**

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right to strike is recognised by Article 11 ECHR). Contrast the decision of the Court of Appeal in *R (NUJ) v Central Arbitration Committee* [2005] EWCA Civ 1309, para 35, which concluded that the right to recognition for the purposes of collective bargaining was not protected by Article 11 ECHR.

225 Q98

226 Seventeenth Report of 2004-05, para 44.

227 BIS, *The Blacklisting of Trade Unionists: Revised Draft Regulations*, July 2009; <http://www.berr.gov.uk/consultations/page52145.html>

228 <http://www.ucatt.info/content/view/765/30/>

229 See for example, UCATT and IER, *Ruined Lives: Blacklisting in the Construction Industry*, October 2009.

**already been affected by blacklisting. In the light of the Government's explanation, we anticipate revisiting this issue.**

## 7 A UK strategy on business and human rights?

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164. One of the governance gaps identified by Professor Ruggie was a lack of coherence within national Governments on the relationship between their work with businesses and their human rights obligations and related policies. He told us:

Government departments...that directly shape business practices, whether it is securities regulations or whether it is trade, commerce or investment, are off doing their thing, the human rights people are off somewhere else and the twain rarely meet.<sup>230</sup>

### The UK Government approach

165. Responsibility for Government policy on business and human rights straddles at least four major departments:

- The Ministry of Justice, the Foreign and Commonwealth Office (FCO) and the Department for International Development (DFID) share responsibility for Government policy on human rights. Their responsibilities vary according to domestic or international boundaries, and whether the policy involved relates to human rights issues in developing countries;
- BIS has responsibility for business policy in the broader sense. It has lead responsibility for corporate responsibility, the operation of the OECD Guidelines and anti-corruption issues. BIS is “fully engaged” in any human rights initiatives which are taken forward by other departments which have an impact on UK businesses, consumers and employees;<sup>231</sup>
- A number of departments play additional roles:
  - DFID leads on a number of voluntary multi-stakeholder initiatives which the Government supports, including the Ethical Trading Initiative (ETI), the extractives industry mechanisms and other natural resource and conflict issues. DFID also provided funding for the establishment of the International Institute of Business and Human Rights, a body led by former UN Commissioner for Human Rights Mary Robinson, which is designed to build on the work of the Business Leaders Initiative on Human Rights;
  - The FCO provides the UK lead on the work of the UN Special Representative. It runs the Government Diamond Office which works on the Kimberley Process. Working with the US, the FCO was responsible for establishing the Voluntary Principles on Security and Human Rights in the extractive industry. It also led on the creation of the Extractives Industry Transparency Initiative;

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230 Q1

231 Ev 96

- The Export Credit Guarantees Department, together with BIS, DFID and the FCO sits on the Steering Board of the UK NCP for the OECD Guidelines;
- The Department for Environment, Food and Rural Affairs (DEFRA) has responsibility for environmental reporting by businesses and “skills for corporate responsibility”;
- The Department for Work and Pensions has responsibility for Government policy on ethical pension fund management and socially responsible investment, UK relations with the International Labour Organisation (ILO) and liaison with trade unions in the workplace; and
- Other Departments may work on individual projects, for example, the Department of Health is currently working with the Ministry of Justice on its Private Sector and Human Rights project, which we consider, below.<sup>232</sup>

166. Witnesses had three criticisms of Government policy in this area:

- Undue priority was given to voluntary initiatives in the Government’s approach;<sup>233</sup>
- Government policy lacked coherence;<sup>234</sup>
- The Government had failed to provide a clear lead.<sup>235</sup>

167. We consider each of these criticisms in relation to the following recent Government initiatives:

- The Corporate Responsibility Report, published by the then Department for Business, Enterprise and Regulatory Reform, in February 2009.
- The Ministry of Justice’s new private sector project, designed to inform Government work on the relevance of human rights for the domestic UK private sector (“the Private Sector and Human Rights Project”);
- The FCO Toolkit for its overseas posts, focusing on the issue of business and human rights. The final version of this Toolkit was published in October 2009. (“the FCO Toolkit”).
- The draft Bribery Bill, published for pre-legislative scrutiny in March 2009.

### *Government Corporate Responsibility Report 2009*

168. The Corporate Responsibility Report sets out the Government’s vision for corporate responsibility. It states:

Today’s nations face a global challenge- we want everyone to satisfy their basic needs and enjoy a better quality of life but to do so without compromising the quality of life

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232 Ev 85

233 See for example, Ev 138, Ev 209

234 See for example, Ev 139, Ev 172, Ev 207, Ev 218, Ev 271

235 See for example, Ev 279, Q 63 – 64, Q113 – 114

for future generations. [...] Everybody has obligations to act responsibly in order to achieve these goals, individuals, groups, businesses and Government.<sup>236</sup>

169. The Report sets out the business case for corporate social responsibility and explains that the Government intends to create a policy framework which sets minimum levels of performance in health and safety and environmental and employment practices and helps businesses to take voluntary measures aimed at encouraging responsible behaviour. The Report recognises that while much of the impetus behind the Corporate Responsibility agenda has come from environmental issues, customers, employees and other stakeholders are increasingly “demanding ethical trading policies, fair employment practices and the safeguarding of human rights”. It outlines a number of Government initiatives both at home and abroad to foster corporate responsibility.

170. The work of the UN Special Representative is highlighted as one of a number of initiatives supported by Government. The Report outlines the ‘protect, respect, remedy’ framework in brief but provides no explanation of what the business responsibility to respect means or of the due diligence measures recommended by the UN Special Representative to meet that responsibility.

171. Although the document sets out a range of measures which support corporate responsibility – and positive steps being taken by the Government to that end – there is no clear statement on which measures the Government consider to be effective or what steps the Government recommends or expects businesses to take next. **The Government’s latest Corporate Responsibility Report presents a positive overview of the steps which the Government is taking to implement its existing policy. While we commend the steps taken by the Government to promote the business case for corporate responsibility, we regret that the Report does not clearly connect this business case to the responsibility to respect human rights recognised by the UN Special Representative in his work. The language of ‘encouragement’ found in the Corporate Responsibility Report, while positive, seems out of kilter with the conclusion of Professor Ruggie that many of the steps taken by business to address their human rights impacts are incorrectly viewed as purely voluntary measures. Equally, the Report does not clearly identify that existing compliance and regulatory steps required of business – for example in respect of health and safety, the environment and equality – are designed to meet the human rights obligations of the UK. This suggests that the Government’s corporate responsibility strategy is unduly focused on voluntary measures and underestimates the extent to which businesses have human rights responsibilities.**

### *The Private Sector and Human Rights Project*

172. The Ministry of Justice is currently working with the Department of Health on a *Private Sector and Human Rights Project*. This has involved establishing a private sector working group, running an online survey and conducting a series of interviews with businesses from a variety of sectors. The project: “aims to establish an understanding of the engagement of UK businesses with human rights within their domestic operations and will consider whether a need for further guidance for businesses with human rights within

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<sup>236</sup> Corporate Responsibility Report 2009, page 5.

their domestic operations and ... whether a need for further guidance for businesses exists on how to embed human rights within their UK practices”.<sup>237</sup>

173. The project seems to us to demonstrate a number of limitations and shortcomings. First, it focuses solely on the domestic activities of UK businesses. Secondly, is principally concerned with the view of UK businesses on whether they need guidance, not on wider issues surrounding the impacts of UK business on human rights. The consultation appears to have focused principally on private sector and business bodies and organisations. It does not appear to have canvassed the wider views of consumers, NGOs or other stakeholders.<sup>238</sup>

174. The Ministry of Justice submitted a supplementary memorandum dealing principally with the preliminary findings of the project. These included that the majority of business respondents “clearly understood” human rights applying to all individuals. The majority of companies understood the concept of human rights, but these companies perceived that human rights issues were largely confined to employment matters. UK businesses surveyed had a “significant desire” for practical guidance on “how to integrate human rights within their policies”. Importantly, companies surveyed did not often use the term ‘human rights’ beyond the enclave of corporate social responsibility. Businesses surveyed typically saw ‘human rights’ as “mainly applicable to their wider operations only when they operate overseas, particularly in the least developed countries”.<sup>239</sup>

175. The Government launched the report of its scoping study after the conclusion of this inquiry, on 12 November 2009. The findings of the report broadly reflect the initial findings set out above. In addition, the study recognises that its sample is likely to be dominated by companies who were inclined to express a positive interest in human rights issues. It acknowledges that a “vociferous yet small number of negative responses” were likely to be significantly underrepresented. This group is characterised as the “Human rights are not for us” or “Get out of my hair” cohort in the study.<sup>240</sup>

176. The study raises a number of key questions for the Government to consider and encourages the Government to engage with business leaders in taking this discussion forward:

The initiation of dialogue between the UK government, the private sector and other interested organisations is in its early stages. There is clearly interest in the subject amongst the business community, which gives government an opportunity to enhance the understanding of the issues and promote business success.<sup>241</sup>

177. The Government told us that the findings of the study would inform the next steps of the project and its overall scope.<sup>242</sup> In his foreword to the report of the study, the Minister for Human Rights, Michael Wills MP called it an initial “outreach” to guide “further engagement with the UK private sector”. However, he also made clear that the project has

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237 Ev 85

238 Ev 85 and Ev 89. Compare Ev 99 – 100

239 Ev 89

240 Twenty-Fifty Ltd, *The Private Sector and Human Rights in the UK*, October 2009, pages 23 – 24.

241 *Ibid*, page 8

242 Ev 100

provided “initial momentum” which the Government hopes will be taken forward by the EHRC.<sup>243</sup>

178. It was initially unclear why the scope of this project had not been widened to include the overseas activities of UK businesses. In oral evidence, Michael Wills MP, the Minister for Human Rights, told us that the FCO was not part of the steering group for the project, although it had been “copied in”. The Government has since said that the FCO has begun to attend project steering group meetings.<sup>244</sup>

**179. We commend the decision of the Government to initiate its Private Sector and Human Rights Project. It seeks informed answers to many of the questions posed by this inquiry, including whether there are gaps in existing guidance and legal and regulatory frameworks relating to businesses in the UK which need to be addressed. However, we are concerned that the project appears to have been limited to gathering the views of UK businesses about their domestic activities. It is unfortunate that other Government departments, including BIS, DFID and the FCO, which are more familiar with the Government’s corporate responsibility agenda, have not been more heavily involved. Their experience of the international debate on the cross border impacts of companies could have usefully informed the scoping study. We recommend that any policy options pursued as a result of the Private Sector and Human Rights Project are subject to wider consultation with consumers, employees, NGOs and other stakeholders.**

**180. At present, there are no planned next steps for the Government Private Sector and Human Rights Project, other than to recommend action by the Equality and Human Rights Commission. We are concerned that this approach appears to indicate a lack of leadership and commitment to taking this debate forward. We make some positive recommendations for further action, below.**

### *The FCO Toolkit on Business and Human Rights*

181. The FCO Toolkit has been distributed to all overseas FCO and UK Trade and Industry posts. The 20 page Toolkit explains that its purpose is to give guidance to political, economic, commercial and development officers in overseas missions on how to “promote good conduct for UK companies overseas”. It focuses principally on the implementation of the OECD Guidelines, but gives guidance to staff on how to promote human rights. It provides basic further information on other mechanisms for the protection of human rights, including the Voluntary Principles on Security and Human Rights, the Extractives Industries Transparency Initiative and the work of the Special Representative. The Toolkit sets out the Government’s support of the work of the Special Representative and the OECD Guidelines and stresses that the UK is “committed to promoting responsible corporate behaviour amongst UK companies operating (or considering potential opportunities for operating) overseas”. It expressly states that:

An important part of overseas missions’ work is to promote human rights...with host government representatives. Missions should therefore be aware of allegations

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<sup>243</sup> Twenty-Fifty Ltd, *The Private Sector and Human Rights in the UK*, October 2009

<sup>244</sup> Ev 100

of concern arising from the operations of UK companies or their subsidiaries overseas. Where possible, facilitate and lobby for discussion and resolution of these issues.

182. In addition to this lobbying and promotional work, the Toolkit identified a number of possible actions for FCO posts. For example, staff who become aware of acts of bribery committed by UK nationals or companies, should report immediately to the Serious Fraud Office. Staff must inform companies about human rights risks, particularly in conflict zones. If a complaint arises against a UK company, staff should inform relevant bodies including the EU, the UN, and the International Monetary Fund. Any information relevant to a complaint - irrespective of whether it supports or undermines the allegations against the UK company - should be communicated to the UK NCP.

183. Some witnesses argued that promotion of UK businesses overseas should be linked to their human rights performance.<sup>245</sup> Others argued that the UK Government had taken steps to promote UK businesses in ways which would be inconsistent with local law and the international human rights commitments of the host state. Gavin Hayman, for Global Witness said:

[A UK Ambassador in a South Asian country] was effectively taking a British biofuels company to a plantation to encourage them to invest with inward investment, but effectively that plantation was completely illegal under the laws of the land. [...] This is the kind of thing where a sense of not simply promoting business but helping business manage risks could be a very sensible approach.<sup>246</sup>

184. We asked the Minister for further information on the guidance and support provided by UK posts overseas to business and others on human rights issues. The Minister for Regulation, Ian Lucas MP, told us that Government wanted human rights to be at the “front of the minds” of UK businesses working overseas and that this was “very high” on the list of priorities for UK missions.<sup>247</sup> We also asked whether the FCO and UK Trade and Investment (UKTI) took a consistent approach. The Minister explained:

There is a perception of difference, for example, in the UKTI and perhaps the Foreign Office, from outside, but what we are trying to do is ensure that for UKTI human rights are just as much on their agenda as they are for the Foreign Office.<sup>248</sup>

185. The Government subsequently provided us with further information on the role of UKTI. This information makes clear that the objectives of the UKTI – to promote UK enterprise overseas<sup>249</sup> – are paramount:

There are no specific references to human rights principles in the objectives of the UKTI. However through the commitments of its parent departments BIS and FCO,

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245 Ev 231

246 Q345

247 Q395

248 Q402

249 For further information on the objectives of UKTI, see: [https://www.uktradeinvest.gov.uk/ukti/appmanager/ukti/aboutus?\\_nfpb=true&\\_pageLabel=aims\\_objectives&\\_nfls=fa](https://www.uktradeinvest.gov.uk/ukti/appmanager/ukti/aboutus?_nfpb=true&_pageLabel=aims_objectives&_nfls=fa)lse

UKTI is bound to consider human rights principles in its efforts to achieve its objectives.<sup>250</sup>

186. We discussed the promotion of human rights with a number of FCO personnel overseas. We recognise from our discussions that a more proactive role for UK posts could require significant additional resources and the need for more training in human rights particularly in relation to the private sector.

187. Lord Malloch-Brown, then Minister for UN and Africa, explained that all posts currently receive generic human rights training. It is unclear what further training staff will receive on the issues in the Toolkit. In June 2009, the Government explained that it intended after publication of the Business and Human Rights Toolkit to disseminate it to posts and make it available on the FCO website.<sup>251</sup>

**188. We welcome the Government's Toolkit on Business and Human Rights and commend the aim of providing accessible information and recommendations to overseas posts on issues which might arise about business and human rights. We particularly welcome the specific directions given to posts about how they might promote human rights and respond to allegations against UK companies. There are, however, limits to what this short document can achieve. Without promotion and adequate training for relevant staff in what human rights mean for business, there is a risk that the Toolkit will gather dust in embassy in-trays.**

**189. We recommend that the FCO monitors the use of the Toolkit in practice to assess its value. At present, the Toolkit does not provide a UK contact for posts to consult for further guidance. We recommend that the Government considers how knowledge and expertise on business and human rights issues can be developed centrally, with a view to ensuring best practice is shared within the FCO and across Whitehall.**

### *The draft Bribery Bill*

190. The draft Bribery Bill was introduced by the Government in March 2009 for pre-legislative scrutiny. The Joint Committee on the draft Bribery Bill reported in July 2009. It welcomed the draft Bill and made a number of detailed recommendations.<sup>252</sup> At the request of the Chairman of the Joint Committee, we wrote to indicate our view that in so far as the Bill was designed to meet both domestic and cross border corruption, in our view it was a human rights enhancing measure.<sup>253</sup> Anti-corruption measures address human rights issues. In the 2004 foreword to the UN Convention, the then UN Secretary General, Kofi Annan explained:

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish.

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250 Ev 99

251 HC Deb 18 June 2009, Col 43'1W

252 Joint Committee on the Draft Bribery Bill, First Report of Session 2008-09, *The Draft Bribery Bill*, HL Paper 115/HC 430.

253 *Ibid*, Ev 328

191. In the past, the Government has been criticised for a lack of leadership on bribery and corruption issues, facing accusations that the international obligations of the UK suffer at the expense of short term economic interests.<sup>254</sup> We hope that the publication and enactment of the Bribery Bill during this Parliamentary session will mean that such concerns are a thing of the past. We look forward to scrutinising this measure. In so far as it is designed to reduce bribery and corruption in the UK and abroad, we consider that it is a human rights enhancing measure. We recommend that Parliamentary time be made available to allow this Bill to gain Royal Assent before the end of this Parliament.

## The need for a UK strategy on business and human rights

192. We are concerned that a number of the weaknesses highlighted by Professor Ruggie in his reports are apparent in the Government's current strategy for business and human rights. No clear message appears from the Government's evidence on these issues, other than encouragement to businesses to take a responsible approach to their human rights impacts. Peter Frankental, of Amnesty International told us that:

A good starting point would be for the UK to have an overarching strategy on business and human rights, which does not exist at the moment. If it is left to individual government departments to try to address these issues, the human rights impacts of business will always be subsumed within other departmental goals.<sup>255</sup>

193. The Institute for Business and Human Rights said that greater coordination on this issue was needed nationally and could be provided by either the Government or the national human rights institutions in the UK:

Several countries have taken steps to ensure greater policy coherence between different government departments with regard to business and human rights. Some governments have appointed ministers responsible for cross-department information sharing and coordination; others, such as France and Sweden have appointed ambassadors to foster greater integration of human rights principles and standards between government departments: including those addressing business and other trade and economic related issues. In some countries, like Kenya and South Africa, it is the National Human Rights Institution that has played this coordinating role. In the UK, there is a great need and great opportunity for one or both of these approaches to be harnessed.<sup>256</sup>

194. We asked Ministers how the Government achieved consistency and coherence in its approach when its policy straddled the responsibilities of so many Departments and agencies. The Minister for Human Rights, Michael Wills MP, explained that the Government hoped to learn from its Private Sector and Human Rights Project. He accepted that there may “need to be changes to the machinery of Government to ensure better coordination and better certainty for business” and that the project was highlighting

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254 See for example, OECD Working Group on Bribery, *United Kingdom: Phase 2bis*, October 2008; *R (Corner House) v Secretary of State for Industry* [2005] EWCA Civ 192, at paras 100-114; *R (Corner House) v Serious Fraud Office* [2008] UKHL 60. See also, for example, The Independent, *Britain rebuked for dropping bribe inquiry*, 19 January 2007.

255 Q64. See also Ev 189, Ev 205, para 4.2

256 Ev 270, para 2

the need to “join the dots”.<sup>257</sup> **Government policy on business and human rights lacks the coherence called for by the UN Special Representative. We recommend that the Government reviews its approach to business and human rights to develop a more consistent strategy with a clearer message. The forthcoming review of the OECD Guidelines provides a good opportunity for the Government to step back and look not just at the Government position on the Guidelines but at its broader approach to the human rights impacts of business both in the UK and overseas.**

195. **One approach would be to broaden the cross-Government steering group on the UK NCP so that it could inform and coordinate Government strategy on business and human rights issues. While this steering group includes external members, it also provides an example of a coalition of relevant Government departments not currently duplicated on other issues. We recommend that the Government consider this option.**

### **What would a UK strategy look like?**

196. There are many facets of the Government’s existing policy which are to be commended, not least its financial support for multi-stakeholder initiatives and capacity building in nations where governance is weak.<sup>258</sup> However, there are limits to the Government’s current approach.

197. On voluntary mechanisms, Professor Ruggie told us that policies limited to advocating voluntary approaches to corporate responsibility for business “often differ very little from *laissez faire*”:<sup>259</sup>

They are not really policies at all; they are just words on paper<sup>260</sup> Even if the government advocates voluntary corporate responsibility in a programme or a policy, it needs to signal what that means, it needs to signal what the expectations are, otherwise it is not a policy... at a minimum a policy needs to signal what is expected and then you go up from there, if you will, on a regulatory ladder.<sup>261</sup>

198. The limits of capacity building are illustrated in the recent work of the House of Commons International Development Committee on Nigeria. The Committee counselled against increased aid until corruption in Nigeria had been reduced and its governance mechanisms improved. It considered the impact of the operations of Royal Dutch Shell in Nigeria and concluded that legislation might be necessary in addition to capacity building measures:

Violence and instability in the Niger Delta are having a serious impact on Nigeria’s oil industry and therefore on its economic situation. The people of the region suffer poverty and live in fear, despite the wealth being generated in the region. The causes are complex and reflect the interaction between oil, politics, crime and corruption in Nigeria which have to be tackled in a co-ordinated and integrated approach. We

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257 Q390

258 See for example, QQ 359 - 360

259 Q1

260 Ibid

261 Q37

believe DFID must do more to support the Nigerian authorities to meet their responsibility to provide this response. This should include the adoption where necessary of stronger legislation to compel oil companies to honour the rights of local people.<sup>262</sup>

199. Witnesses identified a number of themes which could be addressed in a new UK strategy on business and human rights, including:

- A consistent approach across their domestic and international policies.<sup>263</sup>
- Capacity building and enhancing human rights protection in host states<sup>264</sup>
- Proactive engagement with business and human rights issues by the UK at an international or intergovernmental level.<sup>265</sup>

200. Professor Ruggie has been clear that the most effective approach is a proactive one, where Governments integrate a human rights based approach into all aspects of their activities relating to business:

The human rights policies of states in relation to business need to be pushed beyond their narrow institutional confines. Governments need actively to promote a corporate culture respectful of human rights at home and abroad.<sup>266</sup>

201. There are a number of proactive steps which Professor Ruggie and others told us the UK could consider taking to support and reinforce the ‘protect, respect, remedy’ framework. These include:

- Clearer guidance and support for business on human rights issues;
- A strategy on human rights in public procurement and public investment;
- Reforms to the Government’s approach to Export Credit Guarantees;
- Revisiting the Companies Act 2006; and
- A change in approach to investment.

202. The Government and business witnesses tended to argue against such measures and we assess their arguments, below.

### **Extraterritoriality**

203. Some witnesses suggested that the UK could use domestic law to make parent companies directly responsible for their actions overseas, the actions of their subsidiaries, or actions in their supply chain, where human rights abuses cannot be remedied in the

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262 Eighth Report of 2008-09, *DFID Programme in Nigeria*, HC 840, para 123

263 Ev 268, paras 1-3

264 Q139

265 Ev 205, para 4.2

266 Speech of Professor John Ruggie, Third Annual Responsible Investment Forum, New York, 12 Jan 2009. See also Ev 297.

countries where they happen.<sup>267</sup> However, the IoD argued that the adoption of this approach “serves to weaken the sovereignty of other national governments”, lacks legitimacy and can be criticised as an exercise in “cultural hegemony”.<sup>268</sup> The CBI was cautious about the involvement of the home state in any extraterritorial activities of business:

If you are looking at state duty, the state as the primary duty bearer has its own jurisdictions to undertake the obligations which are placed upon it. When you begin to look at the home-host country dynamic, one of the areas that you get into which does cause business some concern is extraterritoriality...business does not feel comfortable with the extraterritorial application of legislation ... but it is important to look at ways to explore the home-host state nexus.<sup>269</sup>

204. The Government opposes such extraterritorial action. Lord Malloch-Brown said he had concerns about how firms’ behaviour overseas could be monitored from the UK and about determining the relevant standard that should be applied to UK businesses. Professor Ruggie told us that home-state regulation applied to the activities of the parent company was not unreasonable and should be explored, despite its potential extraterritorial effects:

states are generally permitted to do more than they are currently doing. One of the things that states are permitted to do, which relatively few do, is what we call parent-based regulation, where, ... the ... Government requires [a] parent company to exercise oversight of its own subsidiaries, and it holds the parent company responsible, as opposed to directly reaching out into another country and legislating directly for the subsidiary. Developing countries in particular get all huffed up when confronted with extraterritorial jurisdiction by Western countries in particular. If you propose a major intervention in their jurisdiction, you would not get very far in most UN bodies, for example, but parent-based regulation or requirements are perfectly acceptable under current international law.<sup>270</sup>

**205. We accept that there are legitimate concerns to be addressed in respect of direct application of extraterritorial standards overseas. We are not persuaded that the same degree of concern applies to all forms of regulation which may have some extraterritorial effects. We consider that the application of conditions to a parent company based in the UK, for the purposes of regulating their relationship with the UK Government or its shareholders in the UK, has a very different degree of extraterritorial effect to the direct application of the jurisdiction of the UK courts to breaches of the human rights obligations of the UK overseas. We recommend that the Government considers which standards it expects UK companies to meet in respect of its own contacts with and support for those businesses.**

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267 See for example, Ev 106, Ev 166

268 Ev 108, paras 18-19

269 Q141

270 Q39

### *International standards and legal certainty*

206. Standards can be defined and applied in a number of ways to affect how businesses respect human rights. In the Netherlands, certain forms of support will not be provided to companies who cannot prove that they comply with the OECD Guidelines.<sup>271</sup> In Norway, statutory ethical standards are applied to certain actions of public bodies, for example in relation to public investment. A third possibility is to introduce a clear reporting mechanism which allows the Government, consumers and other stakeholders to test business performance against voluntarily accepted business standards.<sup>272</sup> **The Government should not rule out setting clear standards for business to meet where it considers these standards are necessary to meet its human rights obligations. There is merit in considering whether existing standards supported by both businesses and the UK Government could be used to reinforce the responsibility of business to respect human rights in practice.**

### *Competitiveness and the playing field argument*

207. The last of the key arguments against further action by the UK Government is that by taking action unilaterally, the UK will undermine the competitiveness of its companies and harm the economy. Gary Campkin, for the CBI, told us that caution must be exercised when looking at the competitiveness of UK businesses:

That is not to say that we downgrade human rights or we downgrade anti-bribery or what have you, but it has to be done in a way which is principled but also which does not put British companies at a disadvantage.<sup>273</sup>

208. We asked Professor Ruggie about this argument and he told us:

Your companies will be at an advantage because they are going to stay out of trouble, and the Chinese companies, or whatever they may be, who do not have the backing of a government to provide them with effective assistance and enhanced risk management concerns will be in deeper trouble. It is not an imposition, it is not a competitive disadvantage. It helps companies stay out of trouble because in the current environment, as we saw with the financial sector meltdown, when incentives are fundamentally misaligned the market does not automatically produce optimal outcomes. There has to be some signalling device, there has to be assistance provided.<sup>274</sup>

209. Arguments based on anti-competitiveness are difficult to square with the understanding that all responsible companies should already be performing due diligence in respect of their human rights impacts. For the home state to take action to incentivise or reward behaviour which is accepted good practice would seem logically to have little impact upon the competitiveness of UK companies. **We are not persuaded that unilateral steps by the UK would undermine the competitiveness of UK businesses.**

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271 See for example, Ev 289

272 See for example, Ev 228, Ev 238, Ev 274, Ev 292

273 Q163

274 Q19

210. We recommend that any new Government strategy should build on the work of the Special Representative and the ‘protect, respect, remedy’ framework. It should also seek to address the criticisms raised by witnesses to this inquiry. In particular, Government policy must be clearer and more coherent. The principal purposes of the strategy should be to meet the Government’s duty to protect human rights and to support UK businesses in meeting their responsibility to respect the human rights of others, both within the UK and abroad. Its key aim should be to set out clearly for businesses, consumers and the wider community what the UK expects of UK business. The international human rights obligations of the UK and UK Government policy on human rights should inform its policies for the private sector both within the UK and overseas. The strategy should present a clear and coherent connecting thread between domestic policy, foreign policy and the UK’s international diplomacy, including at the EU, the OECD and the UN.

## 8 Specific areas for improvement?

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211. Witnesses made a number of recommendations for changes to law and practice to enhance the approach of the UK Government to business and human rights. Most of these suggestions focus on how the Government can take a more proactive approach. We consider the main recommendations below:

- Clearer guidance and support for business on human rights issues;
- A strategy on human rights in public procurement and public investment;
- Reforms to the Government’s approach to Export Credit Guarantees;
- Revisiting the Companies Act 2006; and
- A change in approach to investment.

### Clearer standards in guidance and support

212. In his 2009 report, the UN Special Representative recommended that businesses need guidance to “demystify” human rights. He explained that since human rights instruments and the language they use are addressed to states, their “meaning for business has not always been understood clearly by human rights experts, let alone the engineers, security managers, and supply chain officers in companies who have to deal with the corporate responsibility to respect on the ground”.<sup>275</sup>

213. The Government said that “individual Government departments and National Human Rights Institutions should take steps to ensure and promote human rights in business where appropriate”.<sup>276</sup> The Government added that “it is good practice for companies to use the Human Rights Act as a framework in their business policies and practices”.<sup>277</sup> We asked Ministers to explain what this meant in practice and whether there were any examples of good practice that could be disseminated. The Minister for Regulation, Ian Lucas told us that the HRA 1998 “sets out fundamental principles” which the Government “hoped” would be developed by business. The Government considered it a “reference document” and a “benchmark” from which business should move forward. He did not give any examples of how the Government considered that the HRA 1998 should inform companies’ business practice.<sup>278</sup>

214. The Government has produced a number of information booklets on the operation of the HRA 1998. Existing guidance on its scope and implications generally focus on the actions of core public authorities. The SHRC recommended that more guidance was necessary in respect of the core obligations under the HRA 1998 and that further work was needed on a human rights based approach for business. The EHRC said that one of the conclusions of its recent inquiry on human rights in the UK was that guidance was needed

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<sup>275</sup> Ruggie Report 2009, para 57

<sup>276</sup> Ev 85

<sup>277</sup> Ev 85

<sup>278</sup> Q377

for companies in respect of their operations within the UK, particularly in respect of the operation of the HRA.<sup>279</sup> The Commission did not see any direct evidence of a demand from business for any broader kind of guidance - focusing specifically on human rights issues - but said that this was because UK business did not yet see many of their activities at home as related to human rights. In this climate, it would be a “stretch” to imagine any demand from businesses for specific human rights guidance.<sup>280</sup> This confirms the preliminary findings of the Government’s Private Sector and Human Rights project, which concluded that businesses most associate human rights concerns with their overseas operations.<sup>281</sup>

215. Some witnesses suggested that guidance from sources other than the Government might be more appropriate.<sup>282</sup> The CBI doubted whether there was any need or appetite for guidance from central Government. It highlighted that, in respect of corporate responsibility, there already existed a significant amount of industry-based guidance, including that produced by the CBI.

216. Other witnesses reiterated their concern that existing Government publications relied too heavily on references to other voluntary mechanisms without any clear assessment of the effectiveness of those mechanisms or guidance on what the Government expects of participating businesses.<sup>283</sup>

**217. We recommend that the Government should ensure that adequate guidance is available on:**

- (a) the scope of the HRA 1998, including guidance for private bodies performing public functions on how to meet their duty to act in a Convention compatible way;**
- (b) the wider implications of human rights law for business;**
- (c) a human rights based approach to business; and**
- (d) standards which businesses should apply when doing business at home and abroad.**

**218. We recommend that as part of its Private Sector and Human Rights project, the Government considers how additional guidance should be provided on each of these issues. Ensuring that adequate guidance is available in language which is practical and relevant to business should form part of the Government’s strategy on business and human rights.**

**219. The Government should be clear about the human rights standards it expects UK businesses to meet. It should not merely recommend a list of voluntary schemes, but positively advocate for certain standards to be applied. If participation in voluntary or sector specific initiatives is recommended or endorsed, the Government should explain**

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279 Q287

280 Q299

281 Ev 89

282 Q376

283 See for example, Ev 296, Ev 359, Ev 363

**why, and what businesses need to do to participate effectively. Given the need for this direction from Government, we do not consider that this task can be delegated entirely to the Equality and Human Rights Commission or other National Human Rights Institutions.**

## Public procurement

220. There was a broad consensus that the Government and other public authorities could use their purchasing power to reinforce the responsibility on business to respect human rights. The Government told us that departments and other public sector bodies can “take steps to exclude firms with a poor human rights record from tendering and where relevant ensure that appropriate human rights issues are covered in the contract”.<sup>284</sup>

221. Some witnesses gave examples of how public bodies, including states can use public procurement practices to encourage good business practices and enhance protection of human rights both at home and overseas. These included US state and city “anti-sweatshops” legislation which requires all corporations which supply products to any public bodies not to have acquired those products produced either domestically or internationally where poor labour standards have been applied.<sup>285</sup> Business organisations also recommended a fresh look at public procurement. Business in the Community called on the Government to “utilise its purchasing power to improve human rights through all public procurement both in the UK and abroad”.<sup>286</sup> The SHRC called for new guidance on public sector procurement and human rights:

An example of progressive change could be the promotion by the Office of Government Commerce (in England and Wales) and The Scottish Procurement Directorate (in Scotland) of guidelines which would encourage the public sector to purchase by reference to human rights standards....At present there is no appropriate guidance to assist the public sector realise the potential for human rights compliant public procurement.<sup>287</sup>

222. Michael Wills MP, Human Rights Minister, confirmed that there is nothing in the EU Public Procurement Directive which prohibits public authorities incorporating human rights principles into their purchasing practices:

[The] Procurement Directive enables contractors to exclude suppliers if they have been found guilty of human rights breaches. ...it is perfectly open for public sector procurers to stipulate compliance for basic human rights principles as well, particularly where we are talking provision of care services or things which directly engage human rights provisions as well. So it is not that we do not think that these things are important, but there are opportunities to bring this into play and we need to make sure that they are done across the public sector.<sup>288</sup>

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284 Ev 85

285 Ev 104, pages 6 - 7

286 Ev 304

287 Ev 156

288 Q413

223. The Government is currently considering how to enhance the approach to procurement and equality in the Equality Bill being considered by Parliament.<sup>289</sup> This Bill contains a new power for central Government to impose specific equality duties on public authorities in relation to public procurement functions. We have expressed our support for this initiative and have called on the Government to ensure that duties imposed on public authorities are clear and comprehensive.<sup>290</sup> When we asked whether the Government planned to expand this approach to wider human rights issues, Michael Wills MP said that the Government would not consider this “immediately” but there was a “case to be explored” for a broader approach.<sup>291</sup>

224. We last considered the potential for protecting human rights through Government guidance on procurement in our report on the *Meaning of Public Authority under the Human Rights Act*. We concluded that guidance was no substitute for the direct application of the HRA 1998 to private bodies performing public functions. Our predecessor Committee recommended that guidance on contracting could be valuable where it was not clear whether the HRA 1998 applied. We concluded that existing guidance was confusing and inaccessible and unlikely to be effective. We regretted that more mainstream guidance on procurement contained no references to human rights and the protection of the rights of service users.<sup>292</sup>

225. The Government has since published its UK Government Sustainable Procurement Action Plan.<sup>293</sup> This plan implements the Government’s commitment to “lead by example” by spending tax-payers’ money sustainably. The UK Government and the broader public sector buys £150 billion of goods and services each year and the plan sets out the Government’s vision and goal to be among the EU leaders on sustainable procurement. However, the plan is principally focused on “green” rights and does not deal with human rights impacts more generally.<sup>294</sup> The Plan is supplemented by more detailed guidance and support towards implementation from central Government. The 2008 Budget announced a specialist sustainable procurement centre would be established within the Office for Government Commerce.<sup>295</sup> The House of Commons Environmental Audit Committee recently regretted a lack of progress under the plan and called for more “decisive, radical action” on the part of the Government.<sup>296</sup>

**226. While we reiterate that contract compliance is no substitute for the direct application of the HRA 1998 to all private bodies performing public functions, there is much wider scope for public procurement to reinforce the responsibility of businesses to respect human rights. The Government has immense power as a purchaser and should take responsibility for human rights impacts in its supply chain. The Government’s strategy should include clear and detailed measures to ensure that the**

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289 Clause 149

290 Twenty-sixth Report of 2008-09, *Legislative Scrutiny: Equality Bill*, HL Paper 169/HC 318, paras 278 - 280

291 Q 436

292 Ninth Report of Session 2006-07, paras 33 – 58.

293 HM Government, *Sustainable Procurement Action Plan*, March 2007

294 *Ibid*, Foreword.

295 See Budget 2008. See also Office of Government Commerce, *Sustainable Procurement and Operations on the Government Estate*, December 2008.

296 Sixth Report of 2008-09, *Greening Government*, HC 503, para 13.

**UK takes a lead as an ethical consumer. This should include working with the Scottish Government and the devolved assemblies in Wales and Northern Ireland to ensure a consistent approach.**

227. Gary Campkin of the CBI expressed a number of concerns about debarring firms from public contracts. He said it was difficult to see what standards would be applied to assess whether businesses were acting incompatibly with human rights and whether there would be an ongoing assessment process to ensure that debarment was proportionate.<sup>297</sup> A number of models exist to ensure that human rights standards can be integrated into the tendering process without creating uncertainty and unfairness. The UN Special Representative suggested that Governments could explore how to give more weight to negative Final statements of NCPs: “a negative finding logically might affect the company’s access to government procurement and guarantees”.<sup>298</sup> Mr Campkin accepted that clear tendering requirements based on a prohibition on child labour in a public authority supply chain would be acceptable, where a general requirement to respect human rights would not be.<sup>299</sup> The Sustainable Procurement Action Plan provides a model for Government initiative on social issues in procurement. The proposals in the Equality Bill illustrate the next steps which central Government can take to strengthen the role played by public procurement. **Vague assertions that public authorities can take steps in their procurement processes to incorporate human rights standards are unlikely to lead to real change. Guidance from central Government will be required to encourage a more proactive approach. This guidance is essential, if public authorities are to have confidence that their responsibility to secure best value fits comfortably with wider social goals under EU public procurement requirements. We recommend that the Government issues guidance on different models, including in particular, use of the OECD Guidelines and negative Final statements by the UK NCP. The UK Government Sustainable Procurement Action Plan provides a valuable precedent, but the Government should not look at ethical procurement only through green tinted glasses. A broader approach is required.**

## Public investments

228. Some submissions made a wider point about ethical behaviour in public investments. The Holly Hill Trust give an example of the Norwegian state Pension Fund which has publicly withdrawn money from a number of companies and projects associated with human rights abuses.<sup>300</sup> RAID told the Committee that investments by the Commonwealth Development Corporation (CDC Group Plc) (the British publicly owned international development fund, described as a “UK Government owned fund of funds”) should apply greater due diligence to its investment procedures. Currently it does not perform scrutiny for human rights risks nor does it publish its development impact assessments or reports because of commercial sensitivity.<sup>301</sup> The most high-profile example of public investment has come with the recent Government investment in banks

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297 Q148. See also QQ 150 - 155

298 Ruggie Report 2009, para 104. See also Q1.

299 QQ 148 - 155.

300 Ev 110

301 Ev 274, para 16 - 17

adversely affected by the current economic downturn, including Lloyds, Royal Bank of Scotland and Northern Rock. The High-Court is currently considering a claim for judicial review of the Treasury's approach to investments by those banks and its screening process for human rights impacts.<sup>302</sup>

229. We asked the Government about whether human rights considerations should play a greater role in public investment. The Treasury response confirmed that the Government's primary concern was to protect the value of the taxpayers' shareholding. This could include pursuing "responsible policies with regards to human rights where that is considered necessary to enhance the value of the company". The Minister for Regulation told us that the UK Government takes human rights issues into consideration when investing public money, but with less "proselysation" than the Norwegian Government. The Government later wrote to clarify that most public pensions did not accrue sums for investment. However, it explained that local government pension funds are controlled by local authorities in England and Wales. These funds must be invested "prudently" and local authorities are required to publish their policies relating to ethical investment.<sup>303</sup> **We regret that the Minister chose to describe the proactive public approach to human rights in investment taken by the Norwegian Government as "proselysation". We accept that individuals responsible for investing taxpayers' money have a number of important and difficult responsibilities to meet. However, as in issues of public procurement, we consider that there is clear merit in encouraging public authorities to adopt an ethical or socially responsible approach. We recommend that when considering its approach to public procurement, the Government strategy should also address its position as an investor.**

## Export Credit Guarantees

230. Professor Ruggie told us that for home states to create a "logical" link between findings of their NCP and export credit was a "no brainer". He questioned how the day after an adverse NCP finding, a company could be granted export credit. He argued that at a minimum, there should be a probation period before companies can secure export credit after a negative final statement.<sup>304</sup>

231. Export credit guarantees are the responsibility of the Export Credit Guarantee Department (ECGD), which assists UK exporters by providing financial guarantees and insurance for export contracts in markets where commercial cover would not normally be available.

232. A review of the operation of the ECGD in 2000 led to the establishment of a set of Business Principles and, to support their implementation, a Business Principles Unit within the ECGD. The Business Principles state that the ECGD will:

[...] promote a responsible approach to business and will ensure our activities take into account the Government's international policies, including those on sustainable development, environment, human rights, good governance and trade.

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302 Leigh Day & Co, Press Release, *Unprecedented legal battle over RBS ethical investments*, 20 October 2009.

303 Ev 96

304 Q43. See also Q64 (Peter Frankental).

233. The primary mechanism for incorporating the Business Principles into the ECGD's procedures is the Case Impact Analysis Process (CIAP), which guides the ECGD's decisions on applications. The assessment process is carried out by the Business Principles Unit (BPU), on the basis of information provided by the exporter through impact questionnaires. The BPU reports any concerns to the ECGD's Risk Committee, which then decides whether it would be appropriate to support the application. The NAO has stressed that the effectiveness of the CIAP depends upon the experience and resources of the BPU.<sup>305</sup>

234. Gary Campkin for the CBI, told us that the CBI was comfortable with the ECGD taking into account the OECD Guidelines and that it understood they already were considered under existing practice.<sup>306</sup> NGO witnesses were generally disappointed by the approach of the ECGD to its existing standards, in the Business Principles. Amnesty International told us:

[The ECGD] does not operate projects itself, it has facilitated corporate activities that have resulted in human rights abuses abroad through the provision of financial guarantees. Currently the ECGD's consideration of human rights is not sufficient to ensure against such breaches.<sup>307</sup>

235. The Corner House thought that although the policies of the ECGD looked good on paper, in practice its approach was inadequate.<sup>308</sup> The Corner House identified five issues which it considered undermined the current operation of the ECGD:

- (a) that human rights policies are considered secondary to the economic benefits of any application for support;
- (b) those policies and procedures are discretionary, rather than part of the statutory duties of the ECGD;
- (c) those policies have limited extraterritorial effect, being limited to meeting the human rights requirements of the host country for the applicant project;
- (d) the degree of due diligence performed by ECGD in respect of the human rights impacts of any application is too limited; and
- (e) there is no mechanism through which individuals adversely affected by ECGD supported projects may raise a grievance against the UK.

236. The Corner House recommended amendment of the Export and Investments Guarantees Act 1991 to ensure that the ECGD is also subject to a duty to uphold the international human rights obligations of the UK. It argued that any support offered by the ECGD should be conditional on applicant companies' undertaking to comply with the human rights conventions to which the UK is a party. At a minimum, Corner House considered that the ECGD should be required to screen all applications for human rights

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305 House of Commons Environmental Audit Committee, Eleventh Report of 2007-08, *Export Credit Guarantees and Sustainable Development*, HC 929, paras 19-20

306 QQ 158-159

307 Ev 205, para 4.2

308 Ev 307

impacts and that an independent Human Rights Impact Assessment should be compulsory for “High Impact” projects. It recommended that an Ombudsman should be created to deal with grievances against ECGD supported projects.<sup>309</sup>

237. Gavin Hayman, of Global Witness, agreed that there had been no indication that the ECGD had become more effective at monitoring or implementing its existing standards, particularly on anti-bribery measures. He added:

If it did its job properly and enforced those standards then it would have a clear signalling effect to business and that would be something positive about this. I guess it would also provide some sort of affirmative defence for business to say I have attempted to do the best I possibly can, I have done my due diligence, and thus encouraging best practice.<sup>310</sup>

238. He agreed that since not all projects sought ECGD support, and many could find alternative funding, taking a stronger line on Government support could have a limited effect. However, such action would have “a small positive signalling effect”.<sup>311</sup> When asked about whether it would be appropriate for the ECGD to undertake or require human rights assessments of the projects which it supports, Ian Lucas MP, Minister for Regulation, told us that the ECGD was a commercial department and this governed the way it approached applications:

The whole focus of the work of the Department will have to change if a capacity was created to, for example, investigate the human rights position in another part of the world relating to the credit guarantees. What we need to do is ensure that embedded in the work of the Department is an understanding of the importance of human rights and the way in which the work of the Department is conducted.<sup>312</sup> We want UK businesses to conduct business with respect for human rights and that is the overarching framework that we want to see but it is not specifically the role of the ECGD to link in or use as a basis of their decision making the issues which you are raising.<sup>313</sup>

239. He considered that it would be too onerous a burden to require either the ECGD or the applicant company to provide or conduct a human rights impact assessment in respect of a relevant applicant project. When asked whether a company which had been subject to a negative statement by the UK NCP could receive ECG support, he explained that this decision would be taken on a case by case basis:

I do not think that you could operate a blanket system of absolute refusal whenever such a decision has been made in the past because it may be that a company has good ... evidence of changing its behaviour.<sup>314</sup>

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309 Ev 307

310 Q341

311 Q341. See also Ev 205, para 4.2.

312 Q415

313 Q416

314 Q430

240. Professor Cees van Dam argued that there are a number of examples of European countries where state support is dependant on human rights due diligence and scrutiny. For example, in The Netherlands, if a company wishes to be represented on an overseas trade mission, it must show that it does not use child labour in its supply chain.<sup>315</sup>

241. The House of Commons Environmental Audit Committee recently conducted a detailed inquiry into the operation of the Business Principles of the ECGD, focusing specifically on its approach to sustainable development. It considered many of the arguments raised during our inquiry and stressed that:

While the ECGD must balance the duty to raise its standards of sustainable development against its duty to support the competitiveness of UK industry, it has a unique capacity to influence and raise standards internationally.<sup>316</sup>

242. The Environmental Audit Committee rejected calls for an amendment to the statutory purpose of the ECGD, highlighting that many of the concerns raised by NGOs and others could be alleviated by increased disclosure and transparency and a revised approach to the assessment process operated by the ECGD. These included recommendations that no project should be approved before the Business Principles Unit had had an opportunity to report, increased transparency as part of the assessment process to allow interested parties to make recommendations, and a requirement that the ECGD be required to justify openly any decision to support a project which it considers breaches its own Business Principles.<sup>317</sup>

243. The Government has since rejected most of these recommendations citing practical or administrative difficulties for the ECGD or exporters and the impact on the competitiveness of UK exporters.<sup>318</sup>

**244. The Minister told us that the Government wants to create a framework where UK businesses conduct their business with respect for human rights. We find this difficult to square with his assertion that it would be too onerous to require UK companies seeking the support of the Export Credit Guarantee Department to perform due diligence of the human rights impacts of its application. We endorse the many constructive recommendations made by the House of Commons Environmental Audit Committee in its 2008 Report, *The Export Credits Guarantee Department and Sustainable Development*. The implementation of its proposals on increased transparency and disclosure in the CIAP process would improve the capacity of the ECGD system to incorporate human rights principles into its decision making and to pursue its statutory purpose more consistently with the Government's wider goals and obligations on sustainable development and human rights.**

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315 Ev 287

316 House of Commons Environmental Audit Committee, Eleventh Report of 2007-08, *Export Credit Guarantees and Sustainable Development*, HC 929, para 7

317 Ibid, Conclusions and Recommendations.

318 In its response, the Government explains that the main route through which the UK promotes its principles on sustainable development is multilaterally among its international partners, including through the OECD Common Approaches on the Environment and Officially Supported Export Credits. Third Special Report of 2008-09, *Government Response: Export Credits Guarantees Department and Sustainable Development*, HC 283.

245. We regret that the Government has rejected most of these proposals, except for a commitment to raise the issue of transparency during the review of the OECD Common Approaches to the Environment and Officially Supported Export Credits in 2010. This response appears to confirm concerns that the ECGD Business Principles, while ‘good on paper’, do not play a key role in the ECGD decision making process. It indicates that the UK Government is unwilling to show leadership on human rights issues, where to do so might impact negatively on UK business.

246. At a minimum, we recommend that the Government expands its position on the 2010 reviews of both the OECD Common Approaches on the Environment and Officially Supported Export Credits and the OECD Guidelines to ensure that the work of the Special Representative is considered. We recommend that the Government should promote a common position which takes forward Professor Ruggie’s recommendation that there should be a logical link between export credit and other forms of support and compliance with the OECD Guidelines. If no common position can be agreed, we recommend that the Government acts unilaterally to ensure that there are clear consequences following a negative final statement of the UK NCP against a UK company, including for any future applications by it for export credit.

247. The ECGD decision-making process has been the subject of criticism by parliamentarians and others for many years. While the introduction of the Business Principles in 2000 has improved the framework for decision making on the human rights impacts of business, it is not clear whether this has had any impact on the decisions of the ECGD. Without increased transparency and openness in the assessment of applications, this impression is likely to endure. If the Government does not agree that the assessment process should follow more open and accountable procedures, we recommend that the Business Principles should be incorporated into the ECGD’s statutory framework.

## Company law and reporting standards

248. In his April 2009 Report, Professor Ruggie highlighted recent reform of UK companies law as a positive development.<sup>319</sup> The Companies Act 2006 states that the director of a company is under a general duty to ‘act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole’. In the pursuit of this general duty, a director must have regard to the ‘impact of the company’s operations on the community and the environment’ (the directors’ duties).<sup>320</sup> All publicly listed companies, except those that are considered small or medium-sized companies, must include a business review in their annual directors’ report. The reviews must incorporate information about ‘environmental matters, the company’s employees and social and community issues’. This should include information ‘about any policies of the company in relation to those matters and the effectiveness of those policies’. However, the review need only include this information to the ‘extent necessary for an

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<sup>319</sup> Ruggie Report 2009, para 25

<sup>320</sup> s172 Companies Act 2006

understanding of the development, performance or position of the company's business' (the business review).<sup>321</sup>

249. During debates on these proposals, numerous amendments were recommended to broaden the application of these responsibilities. For example, we recommended that the Bill should expressly include human rights responsibilities; that the Government should consider extending some of its requirements to medium sized enterprises and non-quoted companies; and that the business review should require the company to conduct a human rights impact assessment of its activities.<sup>322</sup> The Government is committed to reviewing these proposals in 2010. We understand that the Government has not yet introduced guidance on either the new directors' duties or the business review.

250. We met socially responsible investors in the US, who told us that transparent and consistent reporting on human rights issues was invaluable in the absence of a clear legal or policy framework for business. Increased transparency enhances the ability of individual investors to assess company conduct and take an informed decision on investment. They pointed out that a number of guides and tools had been prepared on socially responsible reporting and told us that governments could build on these guides by requiring mandatory reporting against a single standard.<sup>323</sup> Academics at Columbia University agreed that human rights impact assessments were a key part of the Special Representative's framework, which could serve to improve business conduct across the board.<sup>324</sup>

251. A number of our witnesses argued that the reforms in the Companies Act 2006 did not go far enough.<sup>325</sup> For example, Harrison Grant solicitors told us that the major drawback to the new directors duties' was that it was unclear how they could be enforced and there was a "practical issue as to how breaches are monitored, and what remedies can be put in place where a breach occurs".<sup>326</sup>

252. Some witnesses recommended strengthening reporting standards for UK companies, to include specific and more detailed reporting requirements on environmental and social impacts (including human rights impacts), and providing for greater consistency in reporting.<sup>327</sup> Others said that social reports in the Business Review should be independently audited, like financial information, to check that businesses are presenting a "true and fair" picture of their achievements on CSR.<sup>328</sup>

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321 s417 Companies Act 2006

322 Twenty-eighth Report of Session 2005-06, *Legislative Scrutiny: Fourteenth Progress Report*, HL Paper 247/HC 1626, paras 1.1 – 1.19

323 See for example, the standards set by the UN Global Compact or the OECD Guidelines. In addition, numerous other schemes exist which purport to provide standards against which company behaviour may be assessed. For example, Social Accountability 8000 (SA 8000) sets certain standards for companies to comply with, requires audit and reporting of compliance. See Ev 129. For further information, see [www.sa-intl.org](http://www.sa-intl.org).

324 Ev 237 – 238.

325 Ev 110. Holly Hill Trust argues that detailed reporting on all projects which involve investment in militarised commerce should be compulsory and makes further recommendations for the improvement of the Companies Act 2006, based on a recent report of NGO, Client Earth. Client Earth submitted evidence to the inquiry, see Ev 330.

326 Ev 193

327 Ev 110

328 Ev 110; Ev 107; Ev 119. These recommendations are based on the report of Client Earth, *Environmental and Social Transparency under the Companies Act: Digging Deeper*, March 2009. See Ev 330.

253. Gary Campkin, for the CBI, said that human rights impacts were regarded as within the scope of the business review process. He considered that UK companies already understood what was required by the business review and that there was no need for greater clarity.<sup>329</sup> Ian Lucas MP, Minister for Regulation, told us that the 2006 reforms were “quite a step forward” for the UK and the Government should wait in order to review their impact before acting again.<sup>330</sup>

**254. Although the Companies Act 2006 represented a positive step forward for reporting on human rights impacts in the UK, we reiterate our earlier view that it could have gone much further to promote respect for human rights by UK companies. We welcome the recognition by the CBI that the business review process involves UK companies reporting on the human rights impacts of their operations. However, we share the concerns of a number of witnesses to our inquiry that these reforms have a number of limitations. Inconsistent reporting of human rights impacts in the business review will undermine its value. There is a case for clearer guidance on what reporting standards should apply and what issues should be considered material for the purposes of the review. We recommend that the Government should draw up and publish such guidance by the end of 2010 so that it can be informed by the forthcoming review of the Companies Act 2006. We again recommend that the Government considers amending the Act to require companies to undertake an annual human rights impact assessment as part of the business review, in the light of the recommendation of Professor Ruggie that all responsible companies should conduct such an assessment as part of their human rights due diligence.**

### **Investment, listing rules and socially responsible investors**

255. A number of our witnesses and some of the organisations we met during our visit to the US told us that the UK private investment community has a role to play in encouraging respect for human rights in UK companies.<sup>331</sup> The role of consumers and investors as drivers for change is considered important by the Special Representative, the UK Government and a number of individual businesses and business organisations.<sup>332</sup> In the course of the Ministry of Justice Private Sector and Human Rights Project scoping survey, the impact on investors was one of the key drivers identified by the most engaged companies for any action on human rights issues.<sup>333</sup>

256. Institutional investors, including pension funds and fund managers, have the power to influence activities in countries where human rights abuses are widespread but Bonita Meyersfeld said:

Despite rapid development in so-called ‘responsible investment’ practices and the adoption of global, regional and sector-specific voluntary principles, responsible

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329 QQ 145-146

330 Q443

331 Ev 119

332 See for example, Ruggie Report 2009, para 4.

333 Twenty Fifty, *The Private Sector and Human Rights in the UK*, October 2009, page 30. In Cohort 3, which are described as the most engaged companies responding to the survey, around 75% of respondents identified that investor expectations had a positive or very positive influence affecting their companies human rights agenda.

investment still remains on the fringe of mainstream institutional investment practices.<sup>334</sup>

257. She gave the example of the UK and EC Codes of Practice introduced for companies investing in South Africa during apartheid, which required annual reporting on conduct and employment practices there. A number of the academics and investment organisations we met in the US referred to the role which institutional investors could play in changing business culture. They argued that by taking a short-term view of profitability, financial advisers and investors could underestimate the long-term risks to shareholdings posed by irresponsible behaviour and associated allegations of human rights abuse. Major international companies had incurred significant losses as a result of well publicised allegations of human rights abuse, reflected in campaigns by NGOs and others. These risks would not be taken into consideration in traditional assessments of quarterly financial risks and results.

258. Some witnesses argued that there could be a link between domestic rules for listing mechanisms and human rights in the countries where those listed companies operate. Reference was made to the operation of the AIM (Alternative Investment Market) in the UK, which the Holly Hill Trust said lists a number of companies that are alleged to have been involved in human rights abuses in developing countries.<sup>335</sup> RAID also called for increased regulation of the AIM, principally through enhanced disclosure requirements for listing.<sup>336</sup> The Colombia Solidarity Campaign argued that UK listed companies should comply with the requirements of the UN Declaration on the Rights of Indigenous Peoples (which the UK has signed), in respect of all of their activities, including in countries that have not signed the declaration.<sup>337</sup>

259. The CBI told us that it did not see how listing rules could “easily and practically” be adapted to regulate human rights conduct by companies listed on the London Stock Exchange.<sup>338</sup>

260. The Government last considered the implications of human rights for investment decisions during the passage of the Pensions Act 2008, when the Government confirmed that there was no reason in law to prevent pensions trustees considering “social, ethical and environmental considerations, including sustainability, in addition to their usual criteria of financial returns, security and diversification”.<sup>339</sup>

261. The UN Principles on Responsible Investment, a voluntary set of principles promoted by the UN Global Compact, have been developed by institutional investors to promote best practice in responsible investment by facilitating the integration of environmental and social issues into mainstream investment practice.<sup>340</sup> Other voluntary principles for

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334 Ev 222, para 7

335 Ev 110. See also Ev 179; Ev 182; Ev 193

336 Ev 274

337 Ev 123

338 Ev 321

339 Ev 222, para 15

340 For more information, see [www.unpri.org](http://www.unpri.org)

investors are promulgated and supported by the OECD.<sup>341</sup> The Government Corporate Responsibility Report 2009 says very little about the role of socially responsible investment other than to recognise it as a key driver for responsible corporate behaviour.<sup>342</sup>

**262. Government strategy on business and human rights, including its policy on corporate responsibility, must engage with the important role played by institutional and other investors. While we welcome the recent statement by the Government that pensions fund trustees are legally able to take social, ethical and environmental considerations into account when making investment decisions, we recommend that the Government reviews existing measures and initiatives to support socially responsible investment in the UK and existing measures for the regulation of investment and associated guidance.**

## Conflict, business and human rights

263. In his April 2009 report, Professor Ruggie singled out the operation of businesses in conflict zones as an area where international action is particularly needed. Global Witness argued that the UK needs to take positive steps to regulate UK businesses when they operate in countries in conflict, rather than to rely on existing voluntary initiatives. In particular, firms needed clearer guidance about when and how to operate in conflict zones.<sup>343</sup> Global Witness particularly highlighted the issue of trade in the Democratic Republic of Congo (DRC) as illustrating their concerns. They told us that research during 2008 and 2009 showed that trade in natural resources was perpetuating instability and that UK companies were involved. They argued that the Government had been slow to act, or had failed to act, in a number of cases. They particularly highlighted the case of Afrimex, which has recently been the subject of a negative Final Statement of the UK NCP. They were especially concerned about the approach of the Government in such cases, where the activities of the companies concerned had previously been identified by the UN Group of Experts for the Democratic Republic of Congo. They note that the UN Security Council has specifically provided for the availability of UN Sanctions against “individuals and entities supporting illegal armed groups...through illicit trade in natural resources”.<sup>344</sup>

264. We received a late submission from Amalgamated Metal Corporation Plc (AMC) and its subsidiary, the Thailand Smelting and Refining Company (Thaisarco). Both of these companies were named in submissions to the inquiry, alleging that their trade with the DRC gave rise to human rights concerns.<sup>345</sup> They wrote to rebut these allegations and to argue that states should create a clearer legal framework for businesses operating in conditions of conflict. They argued that guidance was also necessary in order to ensure that businesses could continue to operate in countries with high risks, and to support the economic development of those countries without exacerbating existing conflict or being criticised for association with alleged human rights abuses:

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341 See most recently, the OECD Global Forum on International Investment for a Stronger, Cleaner, Fairer Economy, 7 – 8 December 2009. However, the OECD principally focuses on foreign direct investment by multinational companies.

342 Corporate Responsibility Report 2009, page 7, 11.

343 Q336

344 Ev 260

345 Ev 323

The continuing absence of an agreed due diligence process will drive the minerals trade underground or into less discerning hands, with no improvement to human rights. AMC believes that the most responsible approach is for the UK and other Governments to engage with all members of the supply chain to develop due diligence standards, that will improve progressively over time. That will provide security for business trading in the DRC, and that business will bring improvements to the quality of life and human rights.<sup>346</sup>

265. Lord Malloch-Brown told us that the Government had taken a particularly firm approach to trading in resources from the Congo:

Part of British Government strategy for dealing with the DRC is to crack down on companies that are party to [trade in minerals] and are fuelling the insurgencies there. So far from this in our eyes being dilatory we are working on it very aggressively because it is for us embarrassing that there is a British company involved or a British registered company.<sup>347</sup>

266. The House of Commons International Development Committee has conducted a series of detailed inquiries on the operation of UK companies in the DRC and the Government's response. It concluded that there had been a "serious deficiency" in the way that the Government approaches the activities of UK companies abroad, and particularly in areas of conflict. They said that the way that the Government had approached these cases did not "send out a strong message to UK companies about the significance it attaches to OECD Guidelines".<sup>348</sup> The Committee called on the Government to draw up practical measures for the implementation of the OECD Guidelines and the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones. The Government has responded positively to some of the Committee's recommendations, including an initiative to establish a web-portal for the Risk Awareness Tool.<sup>349</sup>

267. The UN Special Representative has convened a working group on business and human rights in conflict zones. The UK Government is participating in this working group, which aims to clarify further the risks associated with business in war zones or high-risk areas of conflict and the appropriate responses of home-states.

**268. We agree with the UN Special Representative that a particularly firm approach is necessary towards the responsibility of businesses who operate in war zones or areas of conflict. We welcome the Government's participation in Professor Ruggie's working group on business and human rights in conflict zones. We recommend that the Government encourage Professor Ruggie to take a robust approach to his work on business in conflict zones. Further regulation and guidance in this context – whether internationally agreed or otherwise – would be good for both business and the international reputation of the UK. In the meantime, we support the conclusion of the House of Commons International Development Committee, that the operation of UK companies in the DRC illustrates the lack of seriousness with which the UK**

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346 Ev 325

347 Q453

348 Sixth Report of Session 2005-06, *Conflict and Development: Peacebuilding and Post-conflict reconstruction*, HC 923-I, para 117.

349 Second Report of Session 2007-08, *Development and Trade: Cross-departmental Working*, HC 68, para 58.

Government has previously treated the OECD Guidelines. We reiterate our earlier recommendation that the Government should publish a clear policy on following up negative final statements of the UK NCP. We consider that this is particularly important in cases involving operations in conflict zones. We urge the Government to take a strong and proactive approach to UK companies who fail to meet the minimum standards in the OECD Guidelines. Where an appropriate and relevant sanctions regime is in place and a negative final statement by the UK NCP indicates that a UK company is in breach, the Government should report the findings of the UK NCP to the relevant authorities, for example, to the relevant UN Sanctions Committee, or publicly explain why it has failed to make such a report.

### *Private Military Security*

269. The FCO is currently conducting a consultation on standards of conduct of Private Military Security Companies (PMSCs). This consultation comes five years after the Government published a Green Paper exploring a number of options for the regulation of PMSCs. Consultation on the Green Paper produced a large number of responses in favour of some form of regulation. A further consultation in 2005 persuaded the Government that self-regulation of the industry together with international cooperation to improve standards would be most likely to achieve the desired outcome. The latest consultation produced proposals for self-regulation on the basis of a code of conduct agreed with and monitored by the Government. The code of conduct would be administered by a trade association and the Government would monitor its implementation. The Government would use its purchasing power to reinforce the obligations in the code.

270. The conduct of PMSCs has been scrutinised closely by the press and parliamentarians in recent years, particularly in respect of their operations in Iraq and Afghanistan. In these circumstances, PMSCs are operating in areas of conflict, often to protect other private sector employees or Government officials. Their tasks will often involve activities which engage the right to life and physical integrity and may engage the right to liberty and the right to be free from torture, inhuman or degrading treatment. RAID expressed their concern that the consultation process has been unduly short and that the Government's proposals are too weak and have been unduly influenced by the PMSC industry.<sup>350</sup>

271. James Cockayne, a researcher at the International Peace Institute, who specialises in this area, told us that "the private military and security industry has a uniquely rights-jeopardising potential amongst major UK business sectors, because the use of force is at the heart of the expertise and services it provides".<sup>351</sup> He argued that the Government consultation on this industry is detached from its support for the Ruggie framework and that it is questionable whether the proposal for regulation by a private military security trade association will meet the UK's duty to protect human rights. He cautioned that although the Government's approach might work in practice, the cost savings associated with the choice of industry-based regulation over Government regulation were a cause for concern.<sup>352</sup>

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350 Ev 274, para 14

351 Ev 214

352 Ev 231, para 16

272. The House of Commons Foreign Affairs Committee has recently reported on the Government's proposals. It concluded that the self-regulatory approach proposed is "regrettable and disappointing". It considered that loss of Government contracts would not be a sufficient sanction to control the behaviour of PMSCs and called on the Government to pursue a legislative solution either at an EU or international level.<sup>353</sup> The Government response rejected this view. It considered that any regulatory regime would be unenforceable, as many breaches would be likely to occur overseas, making the chances of prosecution remote. Attempts to subject overseas subsidiaries to a domestic regulatory regime would fall foul of "serious legal and diplomatic problems". Maintaining a register of approved companies would be open to legal challenge and could be seen as a stamp of approval for the conduct of companies which the UK could not effectively regulate. The Government confirmed that in addition to the role played by its procurement policy, the UK would "advocate the creation of an international graduated code of sanctions", overseen by an international secretariat.<sup>354</sup>

273. In a supplementary submission to our inquiry, the Government confirmed that it was considering how its preferred proposals fitted in with the 'protect, respect, remedy' framework. The Government told us that it did not consider that there was a general duty to protect against human rights abuse overseas by third parties. However, the Government has not told us whether there are circumstances when it accepts that the human rights obligations of the UK will be engaged. The legal situation is particularly complicated where PMSCs are contracted by the UK Government to perform tasks which would otherwise be performed by the UK armed forces. While the extent of UK jurisdiction under the ECHR is currently subject to litigation, it is clear that in some military contexts, the Government is bound to comply with the Convention and the HRA 1998 applies, for example, where individuals are detained on premises under the effective control of the UK.<sup>355</sup> In those situations, it is arguable that if PMSCs perform similar public functions, they will be directly subject to the requirement that they act compatibly with relevant Convention rights, including the right to life. In these circumstances, we consider that the UK Government has a particular responsibility to ensure that individuals and the relevant companies understand the extent of the domestic legal responsibilities applicable to PMSCs. The potential application of the HRA 1998 must inform the Government's approach to the regulation of PMSCs working under contract for the UK Government. In the circumstances that the HRA 1998 will apply to some of their functions, the deterrent effect of Government procurement measures in the Government's current proposals may be insignificant.

274. The Government intends to publish the outcome of its consultation shortly and will introduce legislation in the forthcoming session, if necessary.<sup>356</sup>

**275. We welcome the Government's commitment to an international solution and an agreed set of standards for the operation of private military security companies.**

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353 House of Commons Foreign Affairs Committee, Seventh Report of Session 2008-09, *Human Rights Annual Report 2008*, HC 557.

354 Cm 7723, Government Response to the Seventh Report of the Foreign Affairs Committee, paras 56 - 60

355 See *Al-Skeini v Secretary of State for Defence* [2008] 1 AC 153; *Al-Jedda v Secretary of State for Defence* [2008] 1 AC 332; *Al-Saadoon v Secretary of State for Defence* (2009) UKHRR 683. Each of these cases are now pending before the European Court of Human Rights.

356 Ev 103-104.

**However we share the concerns of the House of Commons Foreign Affairs Committee, that the Government’s approach to consultation on this issue has been “regrettable and disappointing”. We are concerned that this exercise provides another example of the Government citing administrative difficulties and business interests as justification for taking the path of least resistance. The Government should endeavour to secure international or EU agreement on a regulatory scheme for this sector to dispel the disappointment at its unacceptably weak approach thus far.**

## 9 The role for UK National Human Rights Institutions

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276. In his latest Report, Professor Ruggie called on National Human Rights Institutions (NHRIs) to consider how they could play a role in promoting the ‘protect, respect and remedy’ framework:

While the mandates of some NHRIs may currently preclude them from work on business and human rights, for many it has been a question of choice, tradition or capacity. The Special Representative hopes that more NHRIs will reflect on ways they can address alleged human rights abuses involving business.<sup>357</sup>

277. It appears from the evidence that the existing NHRIs in the United Kingdom differ in their approach to the private sector.<sup>358</sup> The Institute for Business and Human Rights told us:

The UK Equalities and Human rights Commission does not yet play the active role in the field of business and human rights as National Human Rights Institutions in Denmark, South Africa or Kenya. It remains less engaged in business and human rights than many of the organisations accredited to the Paris Principles. This is mystifying and does not reflect the interests of either UK business or civil society. It is worth noting that the newly-formed Scottish Human Rights Commission intends to be active in the area of business and human rights.<sup>359</sup>

278. Neither the EHRC nor SHRC said that they needed a broader mandate to deal with human rights issues in the private sector. The EHRC was cautious about assuming any additional roles and explained that the organisation was still finding its feet.<sup>360</sup> The SHRC explained that although its mandate was focused on Scotland and its powers particularly related to public authorities: “our general duty...provides us with a basis to work with Scottish companies operating at home and abroad in host states, as well as with the Scottish Government, to support them to comply with their duty to protect rights.”<sup>361</sup>

279. The SHRC outlined a number of plans for work in this area, including dissemination of good practice and work to spread a human rights based approach through the public and private sectors. **The SHRC appears to be taking a positive approach to business and human rights work and we particularly welcome its involvement in the International Coordinating Committee of National Human Rights Institutions Working Group on National Human Rights Institutions, business and human rights.**

280. The bulk of the evidence which we received from the EHRC focused on equality. We had expected that the EHRC would have skills from each of its legacy commissions’ work

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357 Ruggie Report 2009, para 103.

358 We had evidence from both the EHRC and the SHRC. The Northern Ireland Human Rights Commission was invited to submit evidence, but did not do so.

359 Ev 270, para 5

360 Q289 (Alan Christie)

361 Q289 (Kavita Chetty)

with the private sector which would be transferable to its broader work on human rights issues. Unfortunately, this notion of building on prior experience does not emerge from the evidence we took from the EHRC. **The private sector work of the EHRC has so far been largely limited to the equality stream. We are concerned that this is indicative of a broader failure of the EHRC effectively to integrate its work on equality and its work on human rights. We explored these concerns further in oral evidence with the Chair of the EHRC, Trevor Philips, on 10 November 2009.<sup>362</sup> We intend to report the broader findings of our inquiry on the work of the EHRC shortly.**

281. After the close of our inquiry, the EHRC published its first human rights strategy. It included a generalised commitment to “build business and public awareness of the key human rights issues in the private sector”. One of the ways it intended to approach this commitment was by holding a “high-level” summit on the implementation of the work of the UN Special Representative.<sup>363</sup> **We note the recent commitment in the EHRC Human Rights Strategy and Programme of Action 2009-2012 to build business and public awareness of the key human rights issues in the private sector. We look forward to receiving further information on how it intends to develop this strand of their work.**

282. The Danish Institute for Human Rights (DIHR, the Danish NHRI) is often held up as an exemplar for NHRI activity on business and human rights issues. The DIHR has an education and research mandate, which extends to cover education relating to the private sector. It runs a wide ranging business and human rights programme, producing tools and providing consultancy services for businesses on human rights impact assessments and other strategic advice. The DIHR wrote:

The Human Rights and Business Project...is a non-profit entity dedicated to promoting business’ compliance with human rights. To this end, the Human Rights and Business Project undertakes consultancy projects with corporate partners, develops tools and methodologies to help companies implement human rights, engages in capacity building partnership projects with a wide range of public and civil society actors internationally, and conducts strategic research on concepts of relevance to the field.<sup>364</sup>

283. It provides consultancy for a fee to “over a dozen of the Fortune 500” companies and including UK firms, such as Shell.<sup>365</sup> The DIHR works together with the SHRC on the ICC Working Group on Business and Human Rights. We understand that they have recently been in contact with the EHRC to share their experiences of their work in this area. Both the EHRC and the SHRC admired the DHRI approach, but neither considered that it would be appropriate for their mandates.<sup>366</sup>

**284. In the light of the enforcement elements of its mandate, we consider that it would be inappropriate for the EHRC to charge a fee for formal consultancy services like the Danish Institute for Human Rights. We note that the SHRC has a mandate to charge a**

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<sup>362</sup> HC 1042-ii, Uncorrected transcript, oral evidence, Trevor Phillips OBE, Ms Kay Carberry CBE, Ms Jeannie Drake CBE, Mr John Wadham, 10 November 2009.

<sup>363</sup> EHRC, *Our human rights strategy and programme of action, 2009-2012*, 10 November 2009, page 23.

<sup>364</sup> Ev 333

<sup>365</sup> Ibid

<sup>366</sup> QQ 290 - 292

fee for advice, guidance, research or training. While it may have the power to take the same approach as the Danish Institute for Human Rights, we accept its view, that charging businesses for consultancy in the UK may not be the right approach. However, we consider that there is far greater scope in the mandate and powers of both of these institutions (and the mandate of the NIHRC) to become involved in the debate around human rights impacts in the private sector.

285. The education and promotion mandates of the UK's NHRIs should be sufficiently broad to cover a joined-up approach to the Government's relationship with the private sector on the human rights obligations of the UK. In our view, the main priority should be the promotion of guidance for the private sector on what human rights means for their domestic activities. This should include guidance on when and how the HRA 1998 will apply and how human rights may affect their undertakings. **Government should produce such guidance for businesses without delay. We recommend that this is a key area where the expertise of the NHRIs should be used. The content and direction of this guidance should be informed by the outcome of the Ministry of Justice's Private Sector and Human Rights project currently underway and should only be published after consultation with business, business groups, NGOs and other interested parties.**

286. We also recommend that the NHRIs play a role in ensuring that the Government produces guidance on the wider human rights issues facing UK businesses in their operations overseas. In our view, the mandate of the EHRC is broad enough to engage with the Government on these issues. We note, for example, that the EHRC takes responsibility for contributions to the UN international monitoring bodies on the work of the UK. This could include monitoring Government responses to allegations that UK companies have undermined the UN Conventions overseas.<sup>367</sup> The EHRC should contribute to cross-Government work on how guidance from Government should be made available. Through its work on equality issues, the EHRC has – or should have – a broad network of contacts in the private sector. It would be ideally placed to distribute relevant guidance and to disseminate best practice.

287. **We recommend that the EHRC and the SHRC work together with the NIHRC to assist the UK Government to adopt a clear, positive and proactive strategy on business and human rights.**

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<sup>367</sup> Recommendations have been made by UN monitoring bodies against other states. See for example, the concluding observations of the UN Committee on the Elimination of Racial Discrimination on Canada (CERD/C/CAN/CO/18, para 17) and the United States (CERD/C/USA/CO/6, para 30).

## 10 Remedy: the right to a remedy

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### The problem

288. The final strand of Professor Ruggie’s framework recognises that where individual rights are breached, individual victims are entitled to an effective remedy. Many of our witnesses stressed that it is often extremely difficult for alleged victims of human rights abuses in which UK companies are alleged to be complicit to secure a remedy either in the host state or in the UK. Richard Meeran of Leigh Day Solicitors told us that it was “invariably impossible” to bring many claims against companies locally. He explained that many claimants who seek a remedy in the UK will already have tried unsuccessfully to do so overseas.<sup>368</sup> A number of reasons are highlighted in the evidence:

- An inability to access justice locally due to poverty, inadequate legal protection or corruption;<sup>369</sup>
- Substantive and procedural barriers in civil and criminal law that make it difficult to bring cases against UK companies in the UK (see below). These include:
  - funding difficulties;
  - complex corporate structures, involving distinct corporate legal personalities of parent companies and subsidiaries, protected by the “corporate veil” created by domestic company law;
  - legal and evidential difficulties in connecting behaviour of UK companies to subsidiaries or those within their ‘sphere of influence’ in third countries;
  - lack of awareness on the part of alleged victims;
  - unduly restrictive domestic rules on bringing representative or group actions; and
  - difficulties with limitation periods in relation to group claims.<sup>370</sup>

289. The International Commission of Jurists and JUSTICE (ICJ/JUSTICE) told us that these problems may exist in respect of claims against corporate bodies anywhere, but that the problems were exacerbated where victims did not have access to justice in their own country due to reasons ranging from “instability of the system, lack of solid institutions to the lack of independence of the judiciary, lack of enforcement of decisions in practice or insecurity for the plaintiffs and their families”.<sup>371</sup>

290. Richard Meeran accepted that while redress in the country where any alleged abuse took place would be preferable, in most of the cases he had been involved in, this had proved impossible. The cases which he had litigated in the civil courts in England and Wales had posed difficulties in bringing a case against a parent company. This was a very

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368 Q 67

369 Ev 144, Ev 301,

370 Ev 143, Ev 144, Ev 294-296

371 Ev 301

expensive exercise. The claimants were often faced by corporate lawyers with substantial resources to make the litigation more difficult. Running these cases on conditional fee agreements was a substantial burden for any firm willing to take a case. The inability to bring a class action in the UK often created limitation difficulties for individual members of a group, who may be awaiting the outcome of an initial case. Each case would need to be separately lodged in order to avoid the expiry of limitation. He recommended Australia as providing an example of a class action system which could work, by allowing individuals to bring a class action on a representative basis, with an opt-out for those not wishing to be treated as part of the “class”.<sup>372</sup>

291. The UK Civil Justice Council has recently published recommendations to the Government on group litigation. After over two years of investigation, the Council made a number of recommendations on collective and representative litigation, including recommending a change to allow an opt-out option for group litigation where it would be in the “interests of justice”. The Council recommended that the court should maintain discretion over opt-out cases as “gate-keeper” for the litigation, to prevent abuse of the system.<sup>373</sup> The Government has rejected a number of the recommendations made by the Civil Justice Council, but accepts that representative actions may be appropriate for certain types of litigation. The Government now intends to take a “sector-by-sector” approach to collective action. It plans to produce a framework under which individual departments may determine whether collective action would be appropriate.<sup>374</sup>

292. Lord Justice Jackson is currently undertaking a review of civil litigation costs in England and Wales (the Jackson Review). This will consider the availability of funding for civil litigation in England and Wales, including for group litigation, and will consider the operation of conditional fee arrangements and the no-costs rule. The final conclusions of the Jackson Review are expected in late 2009.<sup>375</sup>

**293. Many of the substantive and procedural barriers to litigation against businesses in the UK are generic problems with the domestic civil legal system, which are exacerbated in these cases because they generally involve multiple claimants who are far away and from whom it is difficult to take instructions, a complex series of facts and an uncertain legal background. These problems are not unique to the United Kingdom. Recommending a change would involve trailblazing in order to make it simpler for overseas claimants to pursue a remedy in the UK. We are not persuaded that we have enough evidence to reach a conclusion on whether changes to the law would be appropriate.**

**294. Recent recommendations of the UK Civil Justice Council on opt-out group litigation would meet at least some of the concerns raised about the current complexity of pursuing litigation in the courts in England and Wales. We did not have the opportunity to consider with witnesses the Government’s response to these recommendations, which rejects the proposal for a generic approach to opt-out actions,**

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372 QQ67 - 71

373 Civil Justice Council, ‘Improving Access to Justice through Collective Actions’, December 2008.

374 Ministry of Justice, Government Response to the Civil Justice Council’s Report: ‘Improving Access to Justice through Collective Actions’, July 2009, paras 51 – 54.

375 Review of Civil Litigation Costs, Review of Civil Litigation Costs Preliminary Report, May 2009. For further information see: [http://www.judiciary.gov.uk/about\\_judiciary/cost-review/preliminary-report.htm](http://www.judiciary.gov.uk/about_judiciary/cost-review/preliminary-report.htm)

because these were published after the close of our inquiry. The Government intends to examine representative actions on a case-by-case basis and to develop a framework for this purpose. We recommend that the Ministry of Justice considers the evidence provided to this inquiry about barriers to litigation against UK companies, when deciding which types of action may be suitable for representative action.

295. We recommend that, in its response to the Jackson Review of Civil Litigation Costs, the Government consider the evidence we received that current costs rules and funding limitations undermine the ability to seek redress of alleged victims of breaches of human rights standards as a result of actions or omissions by UK companies.

296. Very few alternative solutions were suggested in the evidence we received. We consider two potential solutions, below.

### ***Extraterritorial jurisdiction: the Alien Torts Claims Act Model***

297. A number of witnesses highlighted the operation of the US Alien Torts Statute or the Alien Torts Claims Act (ATCA) as an example of a mechanism which provided a potential source of action for victims of alleged human rights abuses in host states.

298. Earth Rights International (ERI) told us that the ATCA is not without similar procedural and substantive barriers and reiterated that “to date, not a single suit has resulted in a jury verdict against a corporate defendant on human rights claims”. However, they told us that the existence of the statute and the litigation surrounding it has led to valuable settlements in favour of individual victims. US courts had asserted the authority to hold corporations liable for their direct participation or complicity in a number of fundamental human rights abuses such as torture or forced labour. The litigation has allowed victims to tell their story and to confront the businesses which they allege have caused them harm. ERI argued that the potential financial and reputational cost to companies of ATCA litigation has had a significant and positive impact on many companies, who have introduced improved mechanisms for due diligence on human rights in order to remedy potential human rights problems before they lead to US judicial intervention.<sup>376</sup> ERI acknowledged that an ATCA model would be difficult to operate within the existing civil justice system in England and Wales. They outlined many of the same substantive and procedural difficulties highlighted by the UK lawyers.<sup>377</sup> We met with a number of attorneys during our visit to the US who broadly confirmed these arguments about the impact of the ATCA.

299. For reasons which we explained above, in Chapter 7, the Government, businesses and CBI caution against any form of extended extraterritorial jurisdiction for UK courts.<sup>378</sup>

300. **The high-profile operation of the Alien Torts Claims Act and the ensuing corporate fear of US litigation have helped to drive forward the debate on business and human rights. While the creation of a similar cause of action in the UK is superficially attractive, we consider that ATCA style cases would be beset by many of the same**

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376 Ev 202

377 Ev 202

378 Ev 319

**substantive and procedural difficulties outlined above. We were not persuaded at this stage of the debate that our inquiry should focus on new judicial remedies. In our view, the highest priority is for the Government to make clear to UK business the human rights standards which businesses should meet to avoid human rights abuses arising.**

### ***A UK Commission for Business, Human Rights and the Environment***

301. The Corporate Responsibility Coalition (CORE) working together with the London School of Economics, has recommended the establishment of a UK Commission for Business, Human Rights and the Environment, “to ensure greater coherence and effectiveness of government initiatives to improve the conduct of UK companies operating abroad”. It recommends that the Commission should have a number of powers, including coordination, capacity building and policy guidance. It would also operate as a dispute resolution body with a mandate to receive, investigate and settle complaints against UK parent companies.<sup>379</sup> The proposal had the support of a significant number of other witnesses to the inquiry.

302. Peter Frankental, of Amnesty International, explained that the existence of such a Commission would not preclude the existing UK NHRIs playing an important role on business and human rights issues. The Institute for Employment Rights expressed scepticism about whether a Commission could work without binding legal standards for business.<sup>380</sup> Business in the Community expressed similar concerns about introducing a body which applied standards only to UK businesses, as it would endanger the competitiveness of UK companies. It argued that a global or European solution would be more appropriate:

BITC agrees that accountability for serious human rights abuses overseas needs to be increased. However, BITC considers that research is needed into the economic impact of limiting such a body to UK companies and the potential benefits for business and society. A European or global body would ensure a level playing field was maintained and would remove the risk of divestment from the UK.<sup>381</sup>

303. The CBI told us that it was unable to support this proposal because it was concerned about an extraterritorial reach where the body would “judge standards of behaviour in other jurisdictions”. It was also concerned that the activities of the Commission would be counterproductive, would “drive the wrong-doer away from any influence that good practice UK companies can seek to deploy” and could undermine the further development of the OECD Guidelines and the NCP process.<sup>382</sup>

304. In oral evidence, the Minister for Human Rights, Michael Wills MP, told us that the Government could not support the proposal either. In a supplementary submission, the Government explained that it thought the EHRC could become more active in its work in the private sector and any new body was unnecessary:

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379 Ev 170

380 Q117

381 Ev 306

382 Ev 321

The Government is confident that there exists in the UK the correct framework to protect the rights of individuals, and therefore does not consider that the creation of any additional bodies is necessary.<sup>383</sup>

**305. We are sympathetic to the argument that there should be a Commission for Business, Human Rights and the Environment. We have already identified gaps in the current approach of the Government - - including providing guidance and promoting best practice - which are activities which it is proposed that the Commission could undertake. Without a clear Government strategy on business and human rights, or any clear legal framework or defined boundaries for the responsibility of business to respect human rights, we are concerned that such a Commission would have an impossible task. However, for the reasons outlined in the rest of this Report, we do not agree with the Government that the existing UK framework currently provides adequate protection for the rights of individuals against the potential impact of activities of UK companies. We recommend that the Government works with NGOs, business and business organisations to explore the proposal for a UK Commission for Business, Human Rights and the Environment; in order to consider whether some of the tasks which it might adopt can be performed by Government, the UK NCP or the existing NHRIs.**

306. ICJ and JUSTICE told us that the need to provide an effective remedy is “one of the central challenges raised by the issue of business and human rights”. They called on the UK to give serious consideration to improve the legal framework relating to claims in and accessibility of UK courts. It also recommended that the UK look to the international level and “new bodies and new legal mechanisms” to fill existing gaps.<sup>384</sup> This echoes recent calls by Professor Manfred Nowak, the UN Special Rapporteur on Torture, for the creation of a UN World Court on Human Rights, which would go beyond traditional boundaries and notions of state responsibility and would offer remedies based on the breach of individual rights by states, inter-governmental organisations and transnational corporations. Professor Nowak and the members of the Eminent Persons panel who recommended the goal of a World Court, recognise that this goal is unlikely to be achieved within the next decade.<sup>385</sup>

**307. We agree that securing a remedy for individuals whose rights are breached is one of the central challenges in the business and human rights debate. In our view, this is also likely to prove the most difficult part of Professor Ruggie’s work on which to find a consensus. Witnesses agreed that an international solution would be unlikely in the short-term. We recommend that the UK Government should help develop an international consensus and consider options in the UK for enhancing access to a remedy. In the meantime, the OECD should be encouraged to consider how the OECD Guidelines and the National Contact Point system can be strengthened to give greater specificity on the responsibility of business to respect human rights, greater**

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383 Ev 101

384 Ev 301

385 See, Panel of Eminent Persons, *Protecting Dignity: An Agenda for Human Rights*, December 2008. For further information, see: <http://www.udhr60.ch/agenda.html>. See also Manfred Nowak and Julia Kuzma, *A World Court of Human Rights*, June 2009; Dr Martin Scheinin, *Towards a World Court of Human Rights*, June 2009. Dr Scheinin has said “Multinational corporations, international organisations [as well as] armed groups and terrorists now have powers to negate or destruct human rights...we need a formal procedure in respect of them.” Commonwealth Secretariat Press Release *We need a World Court of Human Rights – UN Expert tells Commonwealth*, 3 June 2009.

**independence from Government, and the capacity for individuals to secure an effective remedy.**

## 11 Conclusion

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308. Under the Human Rights Act 1998, private sector entities performing a public function are subject to the duty to behave in a Convention compatible way. The Act also has a broader impact on UK businesses: private entities have their own rights guaranteed; human rights arguments arise in business disputes; and the legal and regulatory frameworks in which businesses operate are influenced by the Act. The activities of UK businesses operating abroad also impact on the Government's international human rights obligations. We are therefore disappointed that the Government has no coherent strategy in this area.

309. The UK should provide leadership by ensuring that all UK businesses understand their responsibility to respect human rights no matter where they operate. Unfortunately few businesses understand what relevance human rights principles, or the UK's international human rights obligations, have for their operations. Our intention in this Report is to encourage the Government to develop a new strategy on Business and Human Rights which clearly sets out the standards which UK businesses are expected to meet. In doing this the Government should draw on the work of the UN Special Representative and build on his 'protect, respect and remedy' framework. The goal must be international agreement on an approach to Business and Human Rights and the best way to achieve this would be to work with other countries to agree a consistent approach to business and human rights.

310. The UK is in a good position to show leadership in this area. This country is a major consumer of internationally produced goods and provides a base for many large multinational companies. The UK's reputation is particularly vulnerable when these companies are associated with allegations of human rights abuses overseas. If the UK takes the international lead in this area it will be beneficial to the competitiveness of UK companies overseas and to the UK's international reputation. By providing consistent leadership the Government can help ensure that human rights are respected more fully.

## Conclusions and recommendations

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### Why do human rights matter to UK business?

1. The principal legal duty to protect human rights will always lie with the state. However, it would be short-sighted to consider that the implications for human rights and the private sector begin and end with this narrow legal construct. The human rights obligations of the UK may impact on the activities of business, just as the activities of UK business may impact on the ability of the UK to meet its obligations. We welcome the Government's recognition that the activities of business may affect the ability of the UK Government to meet its human rights obligations, both positively and negatively. We particularly commend the broad acceptance that certain obligations may require the regulation of business. As we aim to develop a human rights culture within the UK, the importance of understanding human rights principles for all UK residents - both individuals and corporate entities - should grow. There is a strong incentive on the Government to ensure that it has a clear understanding of how its policies on business relate to the human rights obligations of the UK. (Paragraph 20)

### Policy reasons for action?

2. We recognise that there are complex legal and policy questions which arise around the cross-border operation of UK businesses, particularly where they operate in countries where states have weaker governance mechanisms than the UK for the purpose of protecting human rights in their jurisdiction. The purpose of this inquiry is to consider these complex issues which the UN, major multinational companies and many other states have been grappling with for a decade. We intend to draw attention to the debate, consider the current UK stance on this issue, and put forward our recommendations below. (Paragraph 32)
3. Although the UK's international legal obligations are far from clear, in our view there are good policy arguments in favour of action. The UK is a major consumer of internationally produced goods and provides a home to many major multinational companies. It is well placed to benefit from the experiences and activities of these many successful businesses. The UK is particularly vulnerable to impacts on its reputation when these companies are associated with allegations of human rights abuse overseas. If the UK fails to show leadership in this debate, it suggests to other states that it is not important to address the impacts of business on the fundamental rights of individuals. This may create the perception that the UK cares more about economics than human rights obligations. We recommend that the UK should play a leadership role in this global debate to ensure that multinational firms and other corporate entities respect human rights wherever they **operate**. (Paragraph 33)

### Do human rights matter for small businesses?

4. Human rights principles are relevant to a businesses of any size or type, although their detailed application may differ from case to case. Policy, advice or guidance on

human rights should take into account the diverse nature of the UK business community, including small business and consumers of small business **services**. (Paragraph 37)

### What about the recession?

5. The current economic climate should not adversely affect the commitment of the UK Government or UK businesses to human rights. The Government has a responsibility to help businesses understand what a human rights responsible approach means and what it can add to business planning and to the global economic recovery. We welcome the Government's statement that despite the economic climate, there is still a strong business case for embedding human rights in business. This sentiment should be consistently reflected across Government during the recession and thereafter. (Paragraph 41)

### Positive impacts

6. We do not underestimate the significant and positive contribution that businesses can make to the communities in which they operate. This clearly has the capacity to enhance the protection of the rights of employees, service users and other local people. Businesses can support the state's ability to protect the economic and social rights of individuals, including for example, the right to an adequate standard of living. However, we also believe that businesses can play an important role in ensuring that individual civil and political rights – including, for example, freedom from inhuman treatment, freedom from forced labour and unjustifiable discrimination, the right to privacy, freedom of expression and the right to freedom of association, including the rights of independent trade unions and their members – are respected. (Paragraph 47)

### Negative impacts

7. Our terms of reference do not permit us to conduct a full investigation into any specific allegations against individuals and **companies**. However, in the light of the seriousness of many of these claims, we are persuaded that further action is necessary and we hope that our conclusions and recommendations will contribute to advancing the debate in the UK, both among parliamentarians and the wider public. (Paragraph 48)

### The OECD Guidelines

8. It is unacceptable for the Government not to have a strategy in place to deal with companies subject to negative final statements by the UK NCP [National Contact Point]. The credibility of findings of the UK NCP would be enhanced considerably if the Government had a clear and consistent policy on its response to final statements. We recommend that such a policy should be drawn up and disseminated widely. (Paragraph 83)

9. There has been significant improvement in the way the UK NCP approaches complaints that UK companies have failed to comply with the OECD Guidelines for Multinational Corporations. The UK NCP can perform only a limited role, however, as a Government-led organisation with few investigative powers and no powers to sanction individual companies. As a non-judicial mechanism for satisfying individuals who may have a complaint against a UK company, it falls far short of the necessary criteria and powers needed by an effective remedial body, including the need for independence from Government and the power to provide an effective remedy. There is little incentive for individuals to use a complaints mechanism which offers no prospect of any sanction against a company, compensation or any guarantee that action will be taken to make the company change its behaviour. (Paragraph 84)
10. We recommend that the Government consider options for increasing the independence of the UK NCP from Government and enhance the ability of the NCP to promote the OECD Guidelines, including ensuring that it has the necessary resources and powers to fulfil this part of its role effectively. (Paragraph 85)

### Reform of the OECD Guidelines

11. In the light of the development of the debate on human rights and business over the past decade, the OECD Guidelines are ripe for review and reform. Reform of the Guidelines should reflect the work of the UN Special Representative on human rights and transnational corporations and other business entities. The Government should take a lead in ensuring that the Guidelines are reformed to give clearer direction to business about their responsibilities to respect human rights, especially including operations in states which do not recognise or respect the rights guaranteed by the fundamental UN human rights treaties. (Paragraph 86)

### The work of the UN Special Representative

12. The 'protect, respect and remedy' framework proposed by Professor Ruggie, the UN Special Representative, is a valuable and constructive contribution to the debate on business and human rights. The polarised positions previously taken by the proponents of voluntary or regulatory initiatives were unhelpful. While there continue to be many areas of contention over the respective roles and responsibilities of states and individual businesses, this framework provides a solid platform upon which these issues can be debated and, hopefully, resolved. We welcome the renewed commitment to constructive dialogue that the framework appears to have provided and call on states, businesses and civil society to approach any operational recommendations made by the UN Special Representative in a positive way. It would be disappointing if the years of work and careful engagement undertaken by the UN Special Representative and his team were wasted by a return to the stalemate that arose after the UN Norms. (Paragraph 93)

### Limitations of the protect, respect and remedy framework

13. While we recognise the value of the ‘protect, respect, remedy’ framework, further work is needed to increase its value to individual states and businesses. We look forward to the further recommendations which Professor Ruggie is due to make in 2011. They need to give clear guidance to home and host states and businesses, on how they should meet their obligations under the ‘protect, respect, remedy’ framework. While the value of consensus in this debate is clear, Professor Ruggie should not be afraid to tell states and business what positive steps must be taken to protect human rights, however difficult or unwelcome his message may be. (Paragraph 95)
14. There is a case for further recognition of the role of communities in the Ruggie framework. The need for consultation and engagement appears to form part of the due diligence process envisaged by Professor Ruggie. However, greater clarity on the role of individuals and civil society could lend greater coherence to the development of the framework. (Paragraph 96)
15. We call on the Government to continue to support the mandate of the UN Special Representative, to encourage UK businesses and civil society to engage with his work, and to respond constructively to his recommendations. (Paragraph 97)

### Waiting for 2011?

16. We are disappointed that the Government appears to have ruled out unilateral policy measures to deal with the human rights impacts of UK companies operating overseas while the Special Representative carries out his work, particularly as Professor Ruggie has encouraged states to do more. International debate should not preclude innovative policies at **home**. (Paragraph 101)

### An international agreement on business and human rights?

17. An international agreement on business and human rights is unlikely in the near future. However, the impact of business on human rights is a global issue that ultimately requires a global solution. We are concerned that reluctance by states to take unilateral action coupled with failure to commit to an international solution will mean that little progress is made. We believe that an international agreement should be the ultimate aspiration of any debate on business and human rights. There is considerable scope for joint working on a regional level and globally to agree a consistent approach to business and human rights. We recommend that the Government develops such joint-working programmes. (Paragraph 106)

### What does the responsibility to respect human rights mean?

18. We welcome the recognition by Professor Ruggie that the responsibility on businesses to respect human rights is not merely voluntary. However, we share the concerns of the UN Special Representative and others that while this responsibility is clear in theory, its practical implications are uncertain. (Paragraph 110)

## Due diligence and human rights impacts

19. Many of the steps taken by businesses and their organisations have helped to move the debate on business and human rights forward. Changes in business practice on the ground can have a positive impact on the lives of communities and individuals. We welcome the commitment shown by many companies to respect human rights, wherever their businesses operate. Dealing with the negative impacts of businesses on human rights requires a culture change in the way that businesses think about their responsibilities. We see merit in the argument that business-led initiatives may achieve a credible and lasting change, but this is hampered by the perception that some businesses regard addressing human rights as little more than an exercise in “good PR”. Although compliance with the due diligence requirements outlined by the Special Representative - including the need to take action to address identified risks to individual rights - has the potential to benefit more than a business’s public image, Professor Ruggie himself recognises that few businesses meet the standards he considers are necessary. (Paragraph 119)

## Respect for human rights and corporate social responsibility

20. Given the absence of a straightforward legal framework for business responsibilities regarding human rights, it is understandable that these issues are generally dealt with by businesses alongside environmental issues under the ‘corporate responsibility’ label. (Paragraph 123)
21. How businesses describe their activities should not matter, provided that businesses take their responsibility to respect human rights seriously. Greater clarity on the distinction between actions required by the social or moral ‘responsibility to respect’ (i.e. do no harm) and acts of general philanthropy would go some way to reinforce the baseline responsibility identified by Professor Ruggie. The UK Government could encourage such a distinction by adopting the ‘protect, respect and remedy’ framework and clearly explaining the responsibility to respect human rights and the associated need for due diligence in their work on corporate responsibility. (Paragraph 124)

## Voluntary arrangements and multilateral international initiatives

22. The array of multi-stakeholder initiatives and sector-specific arrangements that have been agreed in the past decade show that businesses recognise they must take some action to meet the criticism levelled at a number of multinational businesses. Many of the doubts expressed about their effectiveness have merit. While there is no consistent global agreement on the standards to meet, it is difficult to assess the effectiveness of each scheme or for the outsider to accept that business can self-regulate without adequate scrutiny from active consumers, NGOs and others. We have not classified the arguments we heard as pro-‘voluntary’ or pro-‘regulatory’, but there is a clear distinction between those who favour business-led initiatives and those who see a far clearer role for home states. We support the view of Professor Ruggie, that a range of responses is necessary. No single solution will be able to address the complex issues which arise in cross-border commercial operations which

impact on human rights. This collaborative approach should not involve a race towards the lowest common denominator, as some witnesses fear. We consider the Government can play a role in supporting and reinforcing the social and moral responsibility of business to respect human rights, through due diligence. (Paragraph 129)

### The application of the Human Rights Act 1998 (HRA 1998) to the private sector

23. We have heard nothing new in this inquiry to suggest that we should change our view that legislative change is necessary to restore the original intention of Parliament, that all private bodies performing public functions should be subject to the duty to act compatibly with human rights. We are concerned that the Government's approach panders to the unjustified concerns of some in the private sector in order to maintain the market for contracted-out services and represents a significant shift from its earlier view that the scope of the HRA 1998 should be clarified. In our view, this apparent change of policy represents a failure of leadership by the Government on such an important human rights **issue**. (Paragraph 136)
24. We are particularly concerned to hear evidence from public law solicitors that cases are being litigated over the exercise of compulsory powers in immigration detention. In our previous correspondence with the Government, we understood that the exercise of any compulsory powers associated with detention would be subject to Section 6 of the HRA 1998. This evidence clearly illustrates the need for clarification of the scope of the HRA 1998. Although the Government considers that the legal position in respect of these cases is settled, we maintain that legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of public authority, putting beyond doubt, in statute, Parliament's original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA. (Paragraph 142)
25. The Government's view that the scope of the HRA 1998 is subject only to marginal uncertainty is not correct. We accept its view that in the wider context of the operation of the Act against core public authorities, the application of the HRA 1998 is settled and clear. We also agree that this issue should not detract from the overall success of the HRA 1998. However, we find unacceptable the Government's attempt to dismiss the outstanding problems created by the decision of the House of Lords. (Paragraph 147)
26. The Government has broken its promise to consult speedily on the scope of the HRA 1998. It is disappointing that the Government now relies on further litigation to justify its procrastination. In the time since the passage of the Health and Social Care Act 2008, a consultation could have been completed. An interpretative provision could still be inserted in the Constitutional Reform and Governance Bill. Instead, uncertainty continues for both business and the users of public services, who are forced to litigate to seek clarity. (Paragraph 149)

27. The Government's decision to delay is unacceptable, particularly as it has already published its broad view on the sole issue currently before the courts, and on the wider debate. The litigation in *Weaver* is over. It is inevitable that litigation on other issues will surface. We are not persuaded that any further public consultation on this issue is necessary and call on the Government to bring forward a legislative solution as soon as possible. If the Government insists on publishing a formal consultation document, we recommend that they do so without delay. Any consultation should be short in duration and focus on a proposed legislative solution. (Paragraph 150)

### Offence of forced labour in the UK

28. We commend the Government's acceptance that a specific offence of servitude and forced labour was necessary to meet our international obligations to prohibit and prosecute these acts of modern slavery and welcome the provision included at a late stage in the Coroners and Justice Act 2009. (Paragraph 154)
29. We welcome the Government's commitment to promote awareness of this offence. We recommend that the Government works with the Association of Chief Police Officers and other relevant stakeholders, including business organisations, to ensure that adequate guidance is produced for both police and the wider community in an accessible way. (Paragraph 155)

### Labour and union rights

30. The right to freedom of association, the associated right to strike, the right to trade union membership and the right to collective bargaining are rights recognised in the international human rights obligations of the UK and overseen by the European Court of Human Rights, the ILO and the UN Committee on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights and the ILO Committee of Experts considers that current domestic law on the right to strike and the right to collective bargaining places undue restrictions on those rights. The UK Government has failed to take the recommendations of those Committees seriously. We reiterate our predecessors' recommendation that the UK Government review the existing law in the light of those recommendations. We note that the European Court of Human Rights is increasingly citing the findings of the UN Committee and the ILO in its interpretation of the right to freedom of association guaranteed by Article 11 ECHR. This jurisprudence may be relied upon in the domestic courts to challenge the compatibility of existing law with Convention rights protected by the HRA 1998. This provides an added incentive to the Government to conduct a review without delay. (Paragraph 159)
31. The Government said in 2004 that it intended to ratify the Charter. We recommend that it explain why it has not done so. We repeat the recommendation of our predecessor Committee in 2004: the UK should ratify the Revised Social Charter. (Paragraph 161)
32. We doubt the compatibility of the Government's blacklisting proposals with the UK's international human rights obligations. We recommend that the Government provide a full explanation of its argument that the proposals are compatible. This

should include a response to the criticism of the Institute of Employment Rights, that these proposals fail to provide an adequate remedy for those individuals who have already been affected by blacklisting. In the light of the Government's explanation, we anticipate revisiting this issue. (Paragraph 163)

### **Government Corporate Responsibility Report 2009**

33. The Government's latest Corporate Responsibility Report presents a positive overview of the steps which the Government is taking to implement its existing policy. While we commend the steps taken by the Government to promote the business case for corporate responsibility, we regret that the Report does not clearly connect this business case to the responsibility to respect human rights recognised by the UN Special Representative in his work. The language of 'encouragement' found in the Corporate Responsibility Report, while positive, seems out of kilter with the conclusion of Professor Ruggie that many of the steps taken by business to address their human rights impacts are incorrectly viewed as purely voluntary measures. Equally, the Report does not clearly identify that existing compliance and regulatory steps required of business – for example in respect of health and safety, the environment and equality – are designed to meet the human rights obligations of the UK. This suggests that the Government's corporate responsibility strategy is unduly focused on voluntary measures and underestimates the extent to which businesses have human rights responsibilities. (Paragraph 171)

### **The Private Sector and Human Rights Project**

34. We commend the decision of the Government to initiate its Private Sector and Human Rights Project. It seeks informed answers to many of the questions posed by this inquiry, including whether there are gaps in existing guidance and legal and regulatory frameworks relating to businesses in the UK which need to be addressed. However, we are concerned that the project appears to have been limited to gathering the views of UK businesses about their domestic activities. It is unfortunate that other Government departments, including BIS, DFID and the FCO, which are more familiar with the Government's corporate responsibility agenda, have not been more heavily involved. Their experience of the international debate on the cross border impacts of companies could have usefully informed the scoping study. We recommend that any policy options pursued as a result of the Private Sector and Human Rights Project are subject to wider consultation with consumers, employees, NGOs and other stakeholders. (Paragraph 179)
35. At present, there are no planned next steps for the Government Private Sector and Human Rights Project, other than to recommend action by the Equality and Human Rights Commission. We are concerned that this approach appears to indicate a lack of leadership and commitment to taking this debate forward. We make some positive recommendations for further action, below. (Paragraph 180)

## The FCO Toolkit on Business and Human Rights

36. We welcome the Government's Toolkit on Business and Human Rights and commend the aim of providing accessible information and recommendations to overseas posts on issues which might arise about business and human rights. We particularly welcome the specific directions given to posts about how they might promote human rights and respond to allegations against UK companies. There are, however, limits to what this short document can achieve. Without promotion and adequate training for relevant staff in what human rights mean for business, there is a risk that the Toolkit will gather dust in embassy **in-trays**. (Paragraph 188)
37. We recommend that the FCO monitors the use of the Toolkit in practice to assess its value. At present, the Toolkit does not provide a UK contact for posts to consult for further guidance. We recommend that the Government considers how knowledge and expertise on business and human rights issues can be developed centrally, with a view to ensuring best practice is shared within the FCO and across Whitehall. (Paragraph 189)

## The draft Bribery Bill

38. In the past, the Government has been criticised for a lack of leadership on bribery and corruption issues, facing accusations that the international obligations of the UK suffer at the expense of short term economic interests. We hope that the publication and enactment of the Bribery Bill during this Parliamentary session will mean that such concerns are a thing of the past. We look forward to scrutinising this measure. In so far as it is designed to reduce bribery and corruption in the UK and abroad, we consider that it is a human rights enhancing measure. We recommend that Parliamentary time be made available to allow this Bill to gain Royal Assent before the end of this Parliament. (Paragraph 191)

## The need for a UK Strategy on business and human rights

39. Government policy on business and human rights lacks the coherence called for by the UN Special Representative. We recommend that the Government reviews its approach to business and human rights to develop a more consistent strategy with a clearer message. The forthcoming review of the OECD Guidelines provides a good opportunity for the Government to step back and look not just at the Government position on the Guidelines but at its broader approach to the human rights impacts of business both in the UK and overseas. (Paragraph 194)
40. One approach would be to broaden the cross-Government steering group on the UK NCP so that it could inform and coordinate Government strategy on business and human rights issues. While this steering group includes external members, it also provides an example of a coalition of relevant Government departments not currently duplicated on other issues. We recommend that the Government consider this option. (Paragraph 195)

## Extraterritoriality

41. We accept that there are legitimate concerns to be addressed in respect of direct application of extraterritorial standards overseas. We are not persuaded that the same degree of concern applies to all forms of regulation which may have some extraterritorial effects. We consider that the application of conditions to a parent company based in the UK, for the purposes of regulating their relationship with the UK Government or its shareholders in the UK, has a very different degree of extraterritorial effect to the direct application of the jurisdiction of the UK courts to breaches of the human rights obligations of the UK overseas. We recommend that the Government considers which standards it expects UK companies to meet in respect of its own contacts with and support for those businesses. (Paragraph 205)

## International standards and legal certainty

42. The Government should not rule out setting clear standards for business to meet where it considers these standards are necessary to meet its human rights obligations. There is merit in considering whether existing standards supported by both businesses and the UK Government could be used to reinforce the responsibility of business to respect human rights in **practice**. (Paragraph 206)

## Competitiveness and the playing field argument

43. We are not persuaded that unilateral steps by the UK would undermine the competitiveness of UK businesses. (Paragraph 209)
44. We recommend that any new Government strategy should build on the work of the Special Representative and the ‘protect, respect, remedy’ framework. It should also seek to address the criticisms raised by witnesses to this inquiry. In particular, Government policy must be clearer and more coherent. The principal purposes of the strategy should be to meet the Government’s duty to protect human rights and to support UK businesses in meeting their responsibility to respect the human rights of others, both within the UK and abroad. Its key aim should be to set out clearly for businesses, consumers and the wider community what the UK expects of UK business. The international human rights obligations of the UK and UK Government policy on human rights should inform its policies for the private sector both within the UK and overseas. The strategy should present a clear and coherent connecting thread between domestic policy, foreign policy and the UK’s international diplomacy, including at the EU, the OECD and the UN. (Paragraph 210)

## Clearer standards in guidance and support

45. We recommend that the Government should ensure that adequate guidance is available on:
- (a) the scope of the HRA 1998, including guidance for private bodies performing public functions on how to meet their duty to act in a Convention compatible way;

- (b) the wider implications of human rights law for business;
- (c) a human rights based approach to business; and
- (d) standards which businesses should apply when doing business at home and abroad.

(Paragraph 217)

- 46. We recommend that as part of its Private Sector and Human Rights project, the Government considers how additional guidance should be provided on each of these issues. Ensuring that adequate guidance is available in language which is practical and relevant to business should form part of the Government's strategy on business and human rights. (Paragraph 218)
- 47. The Government should be clear about the human rights standards it expects UK businesses to meet. It should not merely recommend a list of voluntary schemes, but positively advocate for certain standards to be applied. If participation in voluntary or sector specific initiatives is recommended or endorsed, the Government should explain why, and what businesses need to do to participate effectively. Given the need for this direction from Government, we do not consider that this task can be delegated entirely to the Equality and Human Rights Commission or other National Human Rights Institutions. (Paragraph 219)

## Public procurement

- 48. While we reiterate that contract compliance is no substitute for the direct application of the HRA 1998 to all private bodies performing public functions, there is much wider scope for public procurement to reinforce the responsibility of businesses to respect human rights. The Government has immense power as a purchaser and should take responsibility for human rights impacts in its supply chain. The Government's strategy should include clear and detailed measures to ensure that the UK takes a lead as an ethical consumer. This should include working with the Scottish Government and the devolved assemblies in Wales and Northern Ireland to ensure a consistent approach. (Paragraph 226)
- 49. Vague assertions that public authorities can take steps in their procurement processes to incorporate human rights standards are unlikely to lead to real change. Guidance from central Government will be required to encourage a more proactive approach. This guidance is essential, if public authorities are to have confidence that their responsibility to secure best value fits comfortably with wider social goals under EU public procurement requirements. We recommend that the Government issues guidance on different models, including in particular, use of the OECD Guidelines and negative Final statements by the UK NCP. The UK Government Sustainable Procurement Action Plan provides a valuable precedent, but the Government should not look at ethical procurement only through green tinted glasses. A broader approach is required. (Paragraph 227)

## Public investments

50. We regret that the Minister chose to describe the proactive public approach to human rights in investment taken by the Norwegian Government as “proselysation”. We accept that individuals responsible for investing taxpayers’ money have a number of important and difficult responsibilities to meet. However, as in issues of public procurement, we consider that there is clear merit in encouraging public authorities to adopt an ethical or socially responsible approach. We recommend that when considering its approach to public procurement, the Government strategy should also address its position as an investor. (Paragraph 229)

## Export Credit Guarantees

51. The Minister told us that the Government wants to create a framework where UK businesses conduct their business with respect for human rights. We find this difficult to square with his assertion that it would be too onerous to require UK companies seeking the support of the Export Credit Guarantee Department to perform due diligence of the human rights impacts of its application. We endorse the many constructive recommendations made by the House of Commons Environmental Audit Committee in its 2008 Report, The Export Credits Guarantee Department and Sustainable Development. The implementation of its proposals on increased transparency and disclosure in the CIAP process would improve the capacity of the ECGD system to incorporate human rights principles into its decision making and to pursue its statutory purpose more consistently with the Government’s wider goals and obligations on sustainable development and human rights. (Paragraph 244)
52. We regret that the Government has rejected most of these proposals, except for a commitment to raise the issue of transparency during the review of the OECD Common Approaches to the Environment and Officially Supported Export Credits in 2010. This response appears to confirm concerns that the ECGD Business Principles, while ‘good on paper’, do not play a key role in the ECGD decision making process. It indicates that the UK Government is unwilling to show leadership on human rights issues, where to do so might impact negatively on UK business. (Paragraph 245)
53. At a minimum, we recommend that the Government expands its position on the 2010 reviews of both the OECD Common Approaches on the Environment and Officially Supported Export Credits and the OECD Guidelines to ensure that the work of the Special Representative is considered. We recommend that the Government should promote a common position which takes forward Professor Ruggie’s recommendation that there should be a logical link between export credit and other forms of support and compliance with the OECD Guidelines. If no common position can be agreed, we recommend that the Government acts unilaterally to ensure that there are clear consequences following a negative final statement of the UK NCP against a UK company, including for any future applications by it for export credit. (Paragraph 246)

54. The ECGD decision-making process has been the subject of criticism by parliamentarians and others for many years. While the introduction of the Business Principles in 2000 has improved the framework for decision making on the human rights impacts of business, it is not clear whether this has had any impact on the decisions of the ECGD. Without increased transparency and openness in the assessment of applications, this impression is likely to endure. If the Government does not agree that the assessment process should follow more open and accountable procedures, we recommend that the Business Principles should be incorporated into the ECGD's statutory framework. (Paragraph 247)

### **Company law and reporting standards**

55. Although the Companies Act 2006 represented a positive step forward for reporting on human rights impacts in the UK, we reiterate our earlier view that it could have gone much further to promote respect for human rights by UK companies. We welcome the recognition by the CBI that the business review process involves UK companies reporting on the human rights impacts of their operations. However, we share the concerns of a number of witnesses to our inquiry that these reforms have a number of limitations. Inconsistent reporting of human rights impacts in the business review will undermine its value. There is a case for clearer guidance on what reporting standards should apply and what issues should be considered material for the purposes of the review. We recommend that the Government should draw up and publish such guidance by the end of 2010 so that it can be informed by the forthcoming review of the Companies Act 2006. We again recommend that the Government considers amending the Act to require companies to undertake an annual human rights impact assessment as part of the business review, in the light of the recommendation of Professor Ruggie that all responsible companies should conduct such an assessment as part of their human rights due diligence. (Paragraph 254)

### **Investment, listing rules and socially responsible investors**

56. Government strategy on business and human rights, including its policy on corporate responsibility, must engage with the important role played by institutional and other investors. While we welcome the recent statement by the Government that pensions fund trustees are legally able to take social, ethical and environmental considerations into account when making investment decisions, we recommend that the Government reviews existing measures and initiatives to support socially responsible investment in the UK and existing measures for the regulation of investment and associated guidance. (Paragraph 262)

### **Conflict, business and human rights**

57. We agree with the UN Special Representative that a particularly firm approach is necessary towards the responsibility of businesses who operate in war zones or areas of conflict. We welcome the Government's participation in Professor Ruggie's working group on business and human rights in conflict zones. We recommend that the Government encourage Professor Ruggie to take a robust approach to his work

on business in conflict zones. Further regulation and guidance in this context – whether internationally agreed or otherwise – would be good for both business and the international reputation of the UK. In the meantime, we support the conclusion of the House of Commons International Development Committee, that the operation of UK companies in the DRC illustrates the lack of seriousness with which the UK Government has previously treated the OECD Guidelines. We reiterate our earlier recommendation that the Government should publish a clear policy on following up negative final statements of the UK NCP. We consider that this is particularly important in cases involving operations in conflict zones. We urge the Government to take a strong and proactive approach to UK companies who fail to meet the minimum standards in the OECD Guidelines. Where an appropriate and relevant sanctions regime is in place and a negative final statement by the UK NCP indicates that a UK company is in breach, the Government should report the findings of the UK NCP to the relevant authorities, for example, to the relevant UN Sanctions Committee, or publicly explain why it has failed to make such a report. (Paragraph 268)

### Private Military Security

58. We welcome the Government’s commitment to an international solution and an agreed set of standards for the operation of private military security companies. However we share the concerns of the House of Commons Foreign Affairs Committee, that the Government’s approach to consultation on this issue has been “regrettable and disappointing”. We are concerned that this exercise provides another example of the Government citing administrative difficulties and business interests as justification for taking the path of least resistance. The Government should endeavour to secure international or EU agreement on a regulatory scheme for this sector to dispel the disappointment at its unacceptably weak approach thus far. (Paragraph 275)

### The role of UK National Human Rights Institutions

59. The SHRC appears to be taking a positive approach to business and human rights work and we particularly welcome its involvement in the International Coordinating Committee of National Human Rights Institutions Working Group on National Human Rights Institutions, business and human rights. (Paragraph 279)
60. The private sector work of the Equality and Human Rights Commission [EHRC] has so far been largely limited to the equality stream. We are concerned that this is indicative of a broader failure of the EHRC effectively to integrate its work on equality and its work on human rights. We explored these concerns further in oral evidence with the Chair of the EHRC, Trevor Phillips, on 10 November 2009. We intend to report the broader findings of our inquiry on the work of the EHRC shortly. (Paragraph 280)
61. We note the recent commitment in the EHRC Human Rights Strategy and Programme of Action 2009-2012 to build business and public awareness of the key

human rights issues in the private sector. We look forward to receiving further information on how it intends to develop this strand of their work. (Paragraph 281)

62. In the light of the enforcement elements of its mandate, we consider that it would be inappropriate for the EHRC to charge a fee for formal consultancy services like the Danish Institute for Human Rights. We note that the SHRC has a mandate to charge a fee for advice, guidance, research or training. While it may have the power to take the same approach as the Danish Institute for Human Rights, we accept its view, that charging businesses for consultancy in the UK may not be the right approach. However, we consider that there is far greater scope in the mandate and powers of both of these institutions (and the mandate of the NIHRC) to become involved in the debate around human rights impacts in the private sector. (Paragraph 284)
63. Government should produce such guidance for businesses without delay. We recommend that this is a key area where the expertise of the NHRIs should be used. The content and direction of this guidance should be informed by the outcome of the Ministry of Justice's Private Sector and Human Rights project currently underway and should only be published after consultation with business, business groups, NGOs and other interested **parties**. (Paragraph 285)
64. We also recommend that the NHRIs play a role in ensuring that the Government produces guidance on the wider human rights issues facing UK businesses in their operations overseas. In our view, the mandate of the EHRC is broad enough to engage with the Government on these issues. (Paragraph 286)
65. We recommend that the EHRC and the SHRC work together with the NIHRC to assist the UK Government to adopt a clear, positive and proactive strategy on business and human rights. (Paragraph 287)

### Remedy: the right to a remedy

66. Many of the substantive and procedural barriers to litigation against businesses in the UK are generic problems with the domestic civil legal system, which are exacerbated in these cases because they generally involve multiple claimants who are far away and from whom it is difficult to take instructions, a complex series of facts and an uncertain legal background. These problems are not unique to the United Kingdom. Recommending a change would involve trailblazing in order to make it simpler for overseas claimants to pursue a remedy in the UK. We are not persuaded that we have enough evidence to reach a conclusion on whether changes to the law would be appropriate. (Paragraph 293)
67. Recent recommendations of the UK Civil Justice Council on opt-out group litigation would meet at least some of the concerns raised about the current complexity of pursuing litigation in the courts in England and Wales. We did not have the opportunity to consider with witnesses the Government's response to these recommendations, which rejects the proposal for a generic approach to opt-out actions, because these were published after the close of our inquiry. The Government intends to examine representative actions on a case-by-case basis and to develop a framework for this purpose. We recommend that the Ministry of Justice

considers the evidence provided to this inquiry about barriers to litigation against UK companies, when deciding which types of action may be suitable for representative action. (Paragraph 294)

68. We recommend that, in its response to the Jackson Review of Civil Litigation Costs, the Government consider the evidence we received that current costs rules and funding limitations undermine the ability to seek redress of alleged victims of breaches of human rights standards as a result of actions or omissions by UK companies. (Paragraph 295)

### **Extraterritorial jurisdiction: the Alien Torts Claims Act Model**

69. The high-profile operation of the Alien Torts Claims Act and the ensuing corporate fear of US litigation have helped to drive forward the debate on business and human rights. While the creation of a similar cause of action in the UK is superficially attractive, we consider that ATCA style cases would be beset by many of the same substantive and procedural difficulties outlined above. We were not persuaded at this stage of the debate that our inquiry should focus on new judicial remedies. In our view, the highest priority is for the Government to make clear to UK business the human rights standards which businesses should meet to avoid human rights abuses arising. (Paragraph 300)

### **A UK Commission for Business, Human Rights and the Environment**

70. We are sympathetic to the argument that there should be a Commission for Business, Human Rights and the Environment. We have already identified gaps in the current approach of the Government - – including providing guidance and promoting best practice – which are activities which it is proposed that the Commission could undertake. Without a clear Government strategy on business and human rights, or any clear legal framework or defined boundaries for the responsibility of business to respect human rights, we are concerned that such a Commission would have an impossible task. However, for the reasons outlined in the rest of this Report, we do not agree with the Government that the existing UK framework currently provides adequate protection for the rights of individuals against the potential impact of activities of UK companies. We recommend that the Government works with NGOs, business and business organisations to explore the proposal for a UK Commission for Business, Human Rights and the Environment; in order to consider whether some of the tasks which it might adopt can be performed by Government, the UK NCP or the existing **NHRIs**. (Paragraph 305)
71. We agree that securing a remedy for individuals whose rights are breached is one of the central challenges in the business and human rights debate. In our view, this is also likely to prove the most difficult part of Professor Ruggie's work on which to find a consensus. Witnesses agreed that an international solution would be unlikely in the short-term. We recommend that the UK Government should help develop an international consensus and consider options in the UK for enhancing access to a remedy. In the meantime, the OECD should be encouraged to consider how the OECD Guidelines and the National Contact Point system can be strengthened to

give greater specificity on the responsibility of business to respect human rights, greater independence from Government, and the capacity for individuals to secure an effective remedy. (Paragraph 307)

## Conclusion

72. Under the Human Rights Act 1998, private sector entities performing a public function are subject to the duty to behave in a Convention compatible way. The Act also has a broader impact on UK businesses: private entities have their own rights guaranteed; human rights arguments arise in business disputes; and the legal and regulatory frameworks in which businesses operate are influenced by the Act. The activities of UK businesses operating abroad also impact on the Government's international human rights obligations. We are therefore disappointed that the Government has no coherent strategy in this area. (Paragraph 308)
73. The UK should provide leadership by ensuring that all UK businesses understand their responsibility to respect human rights no matter where they operate. Unfortunately few businesses understand what relevance human rights principles, or the UK's international human rights obligations, have for their operations. Our intention in this Report is to encourage the Government to develop a new strategy on Business and Human Rights which clearly sets out the standards which UK businesses are expected to meet. In doing this the Government should draw on the work of the UN Special Representative and build on his 'protect, respect and remedy' framework. The goal must be international agreement on an approach to Business and Human Rights and the best way to achieve this would be to work with other countries to agree a consistent approach to business and human rights. (Paragraph 309)
74. The UK is in a good position to show leadership in this area. This country is a major consumer of internationally produced goods and provides a base for many large multinational companies. The UK's reputation is particularly vulnerable when these companies are associated with allegations of human rights abuses overseas. If the UK takes the international lead in this area it will be beneficial to the competitiveness of UK companies overseas and to the UK's international reputation. By providing consistent leadership the Government can help ensure that human rights are respected more fully. (Paragraph 310)

## Annex 1: Business and Human Rights Mini-Conference Participants

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### *Speakers*

Christopher Avery, Director, Business and Human Rights Resource Centre

Richard Baron, Head of Taxation, Institute of Directors

Hannah Ellis, Coordinator, The Corporate Responsibility (CORE) Coalition

### *Roundtable Participants*

Richard Ritchie, Director, UK Government Affairs, BP

Peter Frankental, Economic Relations Programme Director, Amnesty International (UK) Business Programme

Meredith Alexander, Head of Trade and Corporates, Action Aid

Stephen Kenzie, Secretariat, UK Network, UN Global Compact

Alice Tegue, Head of Enterprise, Equality and Human Rights Commission

Gary Campkin, Head of International Group, CBI

Caroline Rees, Harvard Kennedy School, Adviser to the UN Special Representative on Business and Human Rights.

Stephen Lowe, Social Care (and Quality) Policy Adviser, Age Concern England

Janet Williamson, Senior Policy Officer, TUC

Joanna Daniels, Business in the Community

Desiree Abrahams, International Business Leaders Forum

## Annex 2: US Visit Programme

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### **New York**

#### *Monday 15<sup>th</sup> June*

0830 – 0915	Philip Parham (Deputy Permanent Representative) and Nicola Freedman (2 <sup>nd</sup> Secretary Human Rights)
0945 – 1045	UN Global Compact – Georg Kell and Ursula Wynhoven
1130 – 1230	Mike Posner, President Human Rights First
1330 - 1500	Business for Social Responsibility (Kara Hurst, Managing Director and Nicki Weston, Associate); Ethical Global Initiative/Realising Rights (Heather Grady); Amnesty (Morton Winston); Human Rights Watch (Lisa Misol)
1530 – 1630	Adam Kanzer, Managing Director of Domini Social Investments and David Schilling, Director of Global Corporate Accountability at Interfaith Center for Corporate Responsibility
Dinner	Center for Constitutional Rights, Earth Rights International, Claimant Legal team in <i>Wiwa v Shell</i>

#### *Tuesday 16<sup>th</sup> June*

1000 - 1100	Center for Constitutional Rights: Board Member, Peter Weiss (lawyer on <i>Filartiga v Pena-Irala</i> case which paved way for ATCA) CCR Attorney, Catherine Gallagher (plus others)
1200 – 1400	Columbia School of International and Public Affairs
1500 – 1600	EJ Flynn, Senior Human Rights Officer, UN Counter Terrorism Committee Executive Directorate (CTED)

### **Washington DC**

#### *Wednesday 17<sup>th</sup> June*

1000 – 1100	Gare Smith, Partner, Foley Hoag LLP
1115 – 1215	Mark Cohen and Andy Pincus, Mayer Brown LLP
1230 – 1400	Dominick Chilcott, Deputy Head of Mission
1415 – 1530	State Department and other Administration Officials
1600 – 1700	Bennett Freeman, Calvert Group & Extractive Industries Transparency Initiative

*Thursday 18<sup>th</sup> June*

0845 – 0915	Congressman Jim McGovern, Co-chairman, Tom Lantos Human Rights Commission
1000 – 1100	U.S. Council for International Business
1130 – 1230	United Food & Commercial Workers Union
1300 – 1330	Jeff Barham, Labor and Employment Counsel, Senate Health, Education, Labor and Pensions Committee
1345 – 1415	Joseph Zogby, Chief Counsel, Senate Judiciary Committee; Heloisa Griggs, Counsel, Subcommittee on Human Rights and the Law, Senate Judiciary Committee
1430 – 1530	International Brotherhood of Teamsters

## Annex 3: International initiatives

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### *Introduction*

1. A number of our submissions referred to a range of international voluntary and multi-stakeholder initiatives on business and human rights. We address the OECD Guidelines and the work of the UN Special Representative in Chapter 4. In this Annex, we summarize the characteristics of a number of these initiatives and provide references to some of the evidence we received.

### *The UN Global Compact*

2. The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.<sup>386</sup> By doing so, member businesses aim to help ensure that “markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere”. The UN Global Compact has two objectives:

- Mainstream the ten principles in business activities around the world
- Catalyze actions in support of broader UN goals, including the Millennium Development Goals.

3. The Ten UN Global Compact Principles include:

- Businesses should support and respect the protection of internationally proclaimed human rights; and make sure that they are not complicit in human rights abuses.
- Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced and compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.
- Businesses should support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies.
- Businesses should work against corruption in all its forms, including extortion and bribery.

4. The Global Compact, today stands as the largest corporate citizenship and sustainability initiative in the world. It has 6,500 signatories – 5,000 from business and 1,500 from civil society and other non-business organizations – based in over 135 countries. In 2008, the Global Compact welcomed 1,473 business participants – a 30% increase in new corporate

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<sup>386</sup> <http://www.unglobalcompact.org/>

signatories compared to the previous year.<sup>387</sup> There are Global Compact Local Networks in over 80 countries. Their role is to support companies in their efforts to implement the Global Compact (both local firms and subsidiaries of foreign corporations), while also creating opportunities for further engagement and collective action.

5. A number of witnesses to our inquiry referred to the UN Global Compact as an example of an initiative supported by UK businesses.<sup>388</sup> Professor David Kinley, for example, told us that it provided an important “model code” but was only one of many initiatives to which business could subscribe.<sup>389</sup>

### *Voluntary Principles on Security and Human Rights*

6. The Voluntary Principles on Security and Human Rights (VSPs) are a set of non-binding principles which were developed to guide extractives companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms.<sup>390</sup> The main goal of the VSPs is to provide guidance for companies on identifying human rights and security risk, as well as engaging and collaborating with state and private security forces.

7. The VSPs address three main areas: risk assessment, interactions between companies and public security, and interactions between companies and private security. They provide human rights guidelines designed specifically for oil, gas, and mining companies, sectors that are particularly exposed to fundamental human rights risks and involved in controversies.<sup>391</sup>

8. The VSPs were developed in 2000 and involve the governments of the United States, the United Kingdom, the Netherlands and Norway, companies in the extractive and energy sectors and non-governmental organizations (Amnesty International, International Alert, Oxfam), observers (International Committee of the Red Cross, International Council on Mining & Metals, International Petroleum Industry Environmental), all with an interest in human rights and corporate social responsibility. The VSPs aim to help businesses to:

- Conduct a comprehensive assessment of human rights risks associated with security, with a particular focus on complicity.
- Engage appropriately with public and private security in conflict prone areas.
- Institute proactive human rights screenings of and trainings for public and private security forces.
- Ensure that the use of force is proportional and lawful.
- Develop systems for reporting and investigating allegations of human rights abuses.

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387 From United Nations Global Compact Annual Review 2008. Available at: [http://www.unglobalcompact.org/docs/news\\_events/9.1\\_news\\_archives/2009\\_04\\_08/GC\\_2008AR\\_FINAL.pdf](http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2009_04_08/GC_2008AR_FINAL.pdf)

388 See for example, Ev 89, Ev 98, Ev 125, Ev 129

389 Ev 147

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

391 Ev 125

9. Prospective participants—including governments, companies, and NGOs—agree to proactively implement or assist in the implementation of the VPs and to fulfill the roles and responsibilities described in the participation criteria. A considerable number of UK based companies support the international standards and initiatives that address the link between business and human rights including the Voluntary Principles on Security and Human Rights.<sup>392</sup>

10. War on Want told us that the VSPs had limited effects:

Many voluntary initiatives were found not to be embedded in the operations of corporations in a meaningful way. For example, regarding the Voluntary Principles on Security and Human Rights...only a few companies had attempted to integrate these principles into their operations let alone include them in contracts with suppliers.<sup>393</sup>

### *Extractive Industries Transparency Initiative*

11. The Extractive Industries Transparency Initiative (EITI) is a global standard which aims to strengthen and improve transparency and accountability in the extractives sector.<sup>394</sup> It is formed by a coalition of governments, companies, civil society groups, investors and international organisations. The EITI provides a methodology for monitoring and reconciling company payments and government revenues at the country level to increase transparency. The EITI Board and the International Secretariat support the EITI methodology internationally. Implementation is the responsibility of individual countries. The EITI Board consists of members from governments, companies and civil society. Its current governance structure was formalised at the latest EITI Global Conference in Doha, February 2009.

12. EITI aims to build governance capacity, improve international credibility, and affirm that participant Governments are committed to fighting corruption. Implementation of the EITI also aims to enhance local investment climates for participant companies. Energy security may be enhanced by a more transparent and level playing field.

13. A number of our witnesses referred to the EITI, including the role played by the UK Government in its establishment.<sup>395</sup> Others told us that its operation made a valuable contribution to the business and human rights debate. For example, Steve Westwell, for BP said:

We are now making significant headway and getting all the interested parties, government, business, NGOs, to participate in a process which is increasing the transparency involved in business. It takes time, it is not easy, but we are definitely seeing good progress in the EITI through a voluntary process<sup>396</sup>

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392 Ev 227

393 Ev 165

394 <http://eititransparency.org/>

395 See for example, Q124

396 Q 124

14. Some of the individuals and organisations we met during our visit to the US told us that it was important that participant Governments, including the UK maintained their support for the EITI and other initiatives after their early years.

### *Ethical Trading Initiative*

15. The Ethical Trading Initiative (ETI) is an alliance of companies, NGOs and trades union organisations.<sup>397</sup> It exists to promote and improve the implementation of corporate codes of practice which cover supply chain working conditions. ETI was set up in 1998 by a group of UK companies, NGOs and trade union organisations, with the backing of the then Secretary of State for International Development, Clare Short MP. Original member companies of ETI included ASDA, Premier Brands, The Body Shop, Littlewoods and Sainsbury's. Membership of ETI now comprises over 50 companies with leverage over more than 38,000 suppliers, collectively covering in excess of eight million workers across the globe. The ETI is supported by a number of UK Government departments, but DFID take the lead.<sup>398</sup>

16. Underpinning its work is the ETI Base Code and the accompanying Principles of Implementation, both of which were negotiated and agreed by the founding trades union, NGO and corporate members of ETI. The Base Code contains nine clauses which reflect the most relevant international standards with respect to labour practices (ILO Conventions):

- Employment is freely chosen
- Freedom of association and the right to collective bargaining are respected
- Working conditions are safe and hygienic
- Child labour shall not be used
- Living wages are paid
- Working hours are not excessive
- No discrimination is practised
- Regular employment is provided
- No harsh or inhumane treatment is allowed

17. The Principles of Implementation set out general principles governing the implementation of the Base Code and require companies to:

- demonstrate a clear commitment to ethical trade;
- integrate ethical trade into their core business practices;

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<sup>397</sup> <http://www.ethicaltrade.org/>. The House of Commons Committee on International Development commented on the operation of the Ethical Trading Initiative in its report Fair Trade and Development, Seventh Report of Session 2006-07, HC 356. See Government Response, Eighth Special Report of 2006-07.

<sup>398</sup> See for example, Q440, Ev 172.

- drive year-on-year improvements to working conditions;
- support suppliers to improve working conditions, for example through advice and training;
- report openly and accurately about their activities.

18. ETI members are expected to adopt either the Base Code or their own code, which in the case of UK is the Global Sourcing Principles. These should be accompanied by guidelines for implementing the code, and a structure to support the ETI's philosophy of learning.

19. We heard evidence from Tesco and Associated British Foods, the parent company of retailer, Primark, both members of the ETI (Tesco was a founding member of the ETI and Primark signed up in 2006). Tesco told us:

We only work with suppliers who share our values and demonstrate commitment to the ETI Base Code.<sup>399</sup>

20. Associated British Foods said:

Primark attaches huge importance to its relationship with the ETI, of which we are active members...Like the ETI, and many others in the industry, we recognise that the only way to successfully ensure that supply chains are ethical, and that standards continue to improve, is through collective action from all parties.<sup>400</sup>

21. A number of other witnesses referred to the role played by ETI.<sup>401</sup>

### *Kimberley Process*

22. The Kimberley Process is a joint government, industry and civil society initiative to stem the flow of conflict diamonds (rough diamonds used by rebel movements to finance violence). The scheme was initiated following decades of devastating conflicts in countries such as Angola, Cote d'Ivoire, the Democratic Republic of the Congo and Sierra Leone, where conflict was financed by illicit trade in diamonds.

23. The Kimberley Process Certification Scheme (KPCS) imposes extensive requirements on its members to enable them to certify shipments of rough diamonds as 'conflict-free'. The KP is open to all countries that are willing and able to implement its requirements. As of November 2008, the KP has 49 members, representing 75 countries, with the European Community and its Member states counting as an individual participant. KP members account for approximately 99.8% of the global production of rough diamonds. The World Diamond Council, representing the international diamond industry, and civil society organisations are participating in the KP and have played a major role since its outset.

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399 Ev 351

400 Ev 327

401 See for example, Ev 172, Ev 191, Ev 211 – 212

24. The Government told us that it adopts a leadership position across the Kimberley Process on Diamonds, the EITI and the VSPs.<sup>402</sup>

### *The Business Leaders Initiative on Human Rights*

25. The Business Leaders Initiative on Human Rights (BLIHR) was a business-led programme to help develop the corporate response to human rights. Its purpose was to demonstrate how the Universal Declaration of Human Rights could be integrated into business management across a range of geographical areas, political contexts and business functions.<sup>403</sup> The programme was created in March 2003 and ended in March 2009. It had 14 corporate members and was chaired by Mary Robinson, President of Realizing Rights: The Ethical Globalization Initiative, former President of Ireland and former UN High Commissioner for Human Rights. The Initiative was founded by 7 companies: ABB Ltd, Barclays Plc, MTV Networks Europe, National Grid Plc, Novartis Foundation for Sustainable Development, Novo Nordisk and The Body Shop International Plc.<sup>404</sup>

26. BLIHR gained recognition for its expertise in the area of business and human rights, having collaborated with other international organizations and companies including the International Business Leaders Forum (IBLF).<sup>405</sup> BLIHR worked with the Kennedy School at Harvard University and the Institute for Human Rights and Business to generate a diverse range of business case-studies which reflect links between human rights, development and business growth and opportunities in emerging economies.<sup>406</sup>

27. In developing tools and policy views in the area of business and human rights, BLIHR “aimed to support a reduction in human rights abuses by corporations, the development of a level playing field and ultimately a way of doing business that is socially sustainable for everyone”.<sup>407</sup>

28. In June 2009 BLIHR was replaced by the Global Business Initiative on Human Rights. This is a “global-led business project committed to advancing human rights around the world”. The initiative provides a platform for companies from different sectors to “show leadership”. It aims to provide “a supportive environment in which to learn about how to respect and support human rights and integrate them into the management of their business”. The strategic goals of this initiative are:

- To raise awareness of human rights, the business case for respecting rights and the practical steps companies can take to integrate a respect for human rights into their business;
- To support and share concrete, practical examples of companies respecting human rights in a variety of industries and locations around the world (e.g. developing policies, processes, procedures and initiatives); and

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402 Q 360.

403 Ev 268

404 Ibid

405 Ev 214

406 Ev 268

407 <http://www.blihr.org/>

- To be a leading global business voice on the realities, challenges and opportunities for incorporating human rights into responsible business and sustainable development and so inform national, regional and international policy dialogues.
- The Global Business Initiative on Human Rights works in partnership with the United Nations Global Compact and the Swiss Government.<sup>408</sup>

### *Institute for Human Rights and Business*

29. The Institute for Human Rights and Business (IBHR) is a global centre of excellence and expertise on the relationship between business and internationally proclaimed human rights standards.<sup>409</sup> The Institute works to raise corporate standards and strengthen public policy to ensure that the activities of companies do not contribute to human rights abuses, and in fact lead to positive outcomes<sup>410</sup>. It supports the ‘protect, respect and remedy’ framework developed by the Special Representative and believes that the current international financial and economic environment has strengthened the need for “a common framework of universal social values, good governance and accountability in relation to business activity”.<sup>411</sup>

30. IBHR was created in January 2009 after a year of global consultation. It aims to bring together expertise from business, government and civil society. The Institute is registered in the UK but has a global remit. It is also chaired by Mary Robinson. DFID contributed seed funding.<sup>412</sup>

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408 <http://www.global-business-initiative.org/>

409 <http://www.institutehrb.org/>

410 Ev 270, p.1

411 Ev 270, p.1

412 Ev 85

# Formal Minutes

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**Tuesday 24 November 2009**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness Lord Dubs Lord Lester of Herne Hill Lord Morris of Handsworth The Earl of Onslow	John Austin MP Dr Evan Harris MP Mr Virendra Sharma MP
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Draft Report (*Any of our business? Human rights and the UK private sector*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 310 read and agreed to.

Summary read and agreed to.

Annexes read and agreed to.

*Resolved*, That the Report be the First Report of the Committee to each House.

*Ordered*, That the Chairman make the Report to the House of Commons and that Lord Dubs make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 12 and 19 May, 2 and 30 June, 7, 14 and 21 July and 13 and 27 October in the last session of Parliament

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Tuesday 1 December at 1.30pm.]

# Witnesses

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## Wednesday 3 June 2009

Page

**Professor John Ruggie**, UN Special Representative on human rights and transnational corporations and other business entities

Ev 1

## Tuesday 9 June 2009

**Mr Peter Frankental**, Amnesty International, **Ms Jennifer Zerk**, Consultant on behalf of the Corporate Responsibility Coalition (CORE), **Ms Emily Armistead**, Action Aid and **Mr Richard Meeran, Leigh Day Solicitors**

Ev 9

**Mr Owen Tudor**, EU and International Relations and **Ms Janet Williamson**, Policy Officer, Economic and Social Affairs, Trades Unions Congress; and **Professor Keith Ewing**, President and **Mr John Hendy QC**, Chair, Institute for Employment Rights

Ev 17

## Tuesday 30 June 2009

**Gary Campkin**, Head of International Group, CBI

Ev 27

**Sir Brian Fall**, Senior Government and Corporate Relations Consultant, Rio Tinto, **Mr Paul Lister**, Director of Legal Services and Company Secretary, Associated British Foods plc, **Ms Lucy Neville-Rolfe CMG**, Executive Director, Corporate and Legal Affairs, Tesco plc and **Mr Steve Westwell**

Ev 36

## Tuesday 7 July 2009

**Mr Alan Christie**, Director of Policy and **Mr Peter Reading**, Senior Lawyer, Equality and Human Rights Commission and **Ms Kavita Chetty**, Legal Officer, Scottish Human Rights Commission

Ev 52

**Mr Gavin Hayman**, Director of Campaigns and **Ms Seema Joshi**, Legal Advisor for Ending Impunity, Global Witness

Ev 60

## Tuesday 14 July 2009

**Mr Michael Wills MP**, Minister of State, Ministry of Justice, **Ian Lucas MP**, Minister for Business and Regulatory Reform, Department for Business, Innovation and Skills, **Lord Malloch Brown**, Member of the House of Lords, Minister for Africa, Asia and the UN, Foreign and Commonwealth Office and **Ms Carmel Power**, Deputy Head of Human Rights Democracy and Good Governance Group, Foreign and Commonwealth Office

Ev 66

## List of written evidence

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1	Memorandum submitted by the Ministry of Justice	Ev 85
2	Supplementary memorandum submitted by the Ministry of Justice	Ev 89
3	Letter from the Chair of the Committee to the Rt Hon Michael Wills MP, Minister of State, Ministry of Justice	Ev 90
4	Further supplementary memorandum submitted by the Ministry of Justice	Ev 93
5	Paul Harpur	Ev 104
6	Sir Geoffrey Chandler	Ev 107
7	Institute of Directors	Ev 108
8	Holly Hill Trust	Ev 110
9	United Food and Commercial Workers Union (UFCW)	Ev 114
10	Supplementary memorandum submitted by the UFCW	Ev 117
11	Dr Mika Peck	Ev 119
12	Columbia Solidarity Campaign	Ev 121
13	Vigeo	Ev 124
14	Imperial Tobacco	Ev 128
15	"Drive Up Standards"	Ev 132
16	World Development Movement	Ev 135
17	Action Aid UK	Ev 137
18	Supplementary memorandum submitted by Action Aid	Ev 141
19	Richard Hermer QC and Rachel Chambers	Ev 143
20	Professor David Kinley	Ev 146
21	BP	Ev 152
22	Supplementary memorandum submitted by BP	Ev 154
23	Scottish Human Rights Commission	Ev 156
24	Survival International	Ev 161
25	Supplementary memorandum submitted by Survival International	Ev 164
26	War on Want	Ev 164
27	Prospect	Ev 168
28	Corporate Responsibility (CORE) Coalition	Ev 170
29	Supplementary memorandum submitted by CORE	Ev 173
30	Forest Peoples Programme and Middlesex University Business School Law Department	Ev 174
31	Working Group on Mining in the Phillippines	Ev 179
32	London Mining Network	Ev 182
33	Amarjit Singh	Ev 185
34	CAFOD and the Peru Support Group	Ev 189
35	Harrison Grant	Ev 193
36	Clifford Chance LLP	Ev 197
37	Oxfam GB	Ev 199
38	Earthrights	Ev 202
39	Amnesty International UK	Ev 205
40	Anti-Slavery International	Ev 211
41	International Business Leaders Forum	Ev 214

42	International Academic Human Rights Programmes	Ev 217
43	Bonita Meyersfield	Ev 222
44	Synergy Global Consulting	Ev 226
45	Fund for Peace	Ev 230
46	James Cockayne	Ev 231
47	Margo Drakos, Tarek Maassarani and Jenik Radon	Ev 236
48	Institute of Employment Rights	Ev 241
49	International Centre for Trade Union Rights	Ev 250
50	Latin American Mining Monitoring Programme	Ev 257
51	Global Witness	Ev 260
52	Supplementary memorandum submitted by Global Witness	Ev 268
53	Business Leaders Initiative on Human Rights	Ev 268
54	Institute for Human Rights and Business	Ev 270
55	RAID	Ev 274
56	CAB	Ev 279
57	Professor Cees van Dam	Ev 287
58	Business for Social Responsibility	Ev 290
59	Leigh Day & Co.	Ev 293
60	Business and Human Rights Resource Centre	Ev 297
61	Justice/International Commission for Jurists	Ev 301
62	Business in the Community	Ev 304
63	The Corner House	Ev 307
64	Supplementary memorandum submitted by The Corner House	Ev 312
65	CBI	Ev 319
66	Supplementary memorandum submitted by the CBI	Ev 321
67	Amalgamated Metal Corporation plc	Ev 323
68	BHP Billiton	Ev 325
69	Associated British Foods/Primark	Ev 326
70	Cable and Wireless	Ev 327
71	Campaign Against Arms Trade	Ev 329
72	ClientEarth	Ev 330
73	The Danish Institute of Human Rights, Human Rights & Business Project	Ev 333
74	Equality and Human Rights Commission	Ev 335
75	G4S	Ev 340
76	GCM Resources	Ev 342
77	GoodCorporation	Ev 345
78	National Express	Ev 346
79	New Look Retailers	Ev 347
80	T-Mobile	Ev 348
81	Tesco	Ev 348
82	Supplementary memorandum submitted by Tesco	Ev 352
83	TUC	Ev 354
84	UNICEF	Ev 360
85	Unite the Union	Ev 362
86	Virgin Holidays	Ev 363

## List of unprinted evidence

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The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

- 1 Surendra Kumar
- 2 Rumana Hashem and Paul. V. Dudman

# List of Reports from the Committee during the current Parliament

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## Session 2009-10

First Report	Any of our business? Human rights and the UK private sector	HL Paper 5/HC 64
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## Session 2008-09

First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	HL Paper 10/HC 92
Third Report	A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145
Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204
Fifth Report	Counter-Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2009	HL Paper 37/HC 282
Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09	HL Paper 46/HC 315
Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320
Eighth Report	Legislative Scrutiny: Coroners and Justice Bill	HL Paper 57/HC 362
Ninth Report	Legislative Scrutiny: Borders, Citizenship and Immigration	HL Paper 62/HC 375
Tenth Report	Legislative Scrutiny: Policing and Crime Bill	HL Paper 68/HC 395
Eleventh Report	Legislative Scrutiny: 1) Health Bill and 2) Marine and Coastal Access Bill	HL Paper 69/HC 396
Twelfth Report	Disability Rights Convention	HL Paper 70/HC 397
Thirteenth Report	Prisoner Transfer Treaty with Libya	HL Paper 71/HC 398
Fourteenth Report	Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill	HL Paper 78/HC 414
Fifteenth Report	Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)	HL Paper 81/HC 441
Sixteenth Report	Legislative Scrutiny: Coroners and Justice Bill (certified inquests)	HL Paper 94/HC 524
Seventeenth Report	Government Replies to the 2 <sup>nd</sup> , 4 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> and 12 <sup>th</sup> reports of Session 2008-09	HL Paper 104/HC 592
Eighteenth Report	Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009	HL Paper 119/HC 726

Nineteenth Report	Legislative Scrutiny: Parliamentary Standards Bill	HL Paper 124/HC 844
Twentieth Report	Legislative Scrutiny: Finance Bill; Government Responses to the Committee's Sixteenth Report of Session 2008-09, Coroners and Justice Bill (certified inquests)	HL Paper 133/ HC 882
Twenty First Report	Legislative Scrutiny: Marine and Coastal Access Bill; Government response to the Committee's Thirteenth Report of Session 2008-09	HL Paper 142/ HC 918
Twenty-second Report	Demonstrating respect for rights? Follow-up	HL Paper 141/ HC 522
Twenty-third Report	Allegations of UK Complicity in Torture	HL Paper 152/HC 230
Twenty-fourth Report	Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims	HL Paper 153/HC 553
Twenty-fifth Report	Children's Rights	HL Paper 157/HC 338
Twenty-sixth Report	Legislative Scrutiny: Equality Bill	HL Paper 169/HC 736
Twenty-seventh Report	Retention, use and destruction of biometric data: correspondence with Government	HL Paper 182/HC 1113
Twenty-eighth Report	Legislative Scrutiny: Child Poverty Bill	HL Paper 183/HC 1114

#### Session 2007-08

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the state of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378

Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee's First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380
Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132
Fifteenth Report	Legislative Scrutiny	HL Paper 81/HC 440
Sixteenth Report	Scrutiny of Mental Health Legislation: Follow Up	HL Paper 86/HC 455
Seventeenth Report	Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills	HL Paper 95/HC 501
Eighteenth Report	Government Response to the Committee's Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the state of Human Rights in the UK	HL Paper 103/HC 526
Nineteenth Report	Legislative Scrutiny: Education and Skills Bill	HL Paper 107/HC 553
Twentieth Report	Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill	HL Paper 108/HC 554
Twenty-First Report	Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 days and Public Emergencies	HL Paper 116/HC 635
Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	HL Paper 127/HC 756
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
Twenty-sixth Report	Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill	HL Paper 153/HC 950
Twenty-seventh Report	The Use of Restraint in Secure Training Centres: Government Response to the Committee's Eleventh Report	HL Paper 154/HC 979
Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
Thirtieth Report	Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill	HL Paper 172/HC 1077
Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079