



House of Lords
House of Commons
Joint Committee on Human
Rights

**Human Rights and
Business 2017:
Promoting
responsibility and
ensuring accountability**

Sixth Report of Session 2016–17

*Report, together with formal minutes relating
to the report*

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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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Publication

Committee reports are published on the Committee’s website at www.parliament.uk/jchr by Order of the two Houses.

Evidence relating to this report is published on the relevant [inquiry page](#) of the Committee’s website.

Committee staff

The current staff of the Committee are Robin James (Commons Clerk), Donna Davidson (Lords Clerk), Murray Hunt (Legal Adviser), Alexander Horne (Deputy Legal Adviser), Katherine Hill (Committee Specialist), Penny McLean (Committee Specialist), Shabana Gulma (Specialist Assistant), Miguel Boo Fraga (Senior Committee Assistant) and Heather Fuller (Lords Committee Assistant).

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Summary

Human rights violations, such as child labour, prevention of free association and forced and compulsory labour all occur within the realm of business activity. Examples of multinational companies violating the human rights of their workers or of local communities are extensive. When UK companies source or manufacture goods in less developed countries where there are weaker mechanisms for protecting human rights than in the UK, serious violations can occur. Human rights are just as important abroad as they are in the UK, and we want to see UK companies being exemplary in their respect for human rights wherever they operate.

The European Convention on Human Rights and the UN Guiding Principles on Business and Human Rights place duties on the State to protect against human rights abuses by businesses and provide access to remedy for victims. They also place a corresponding responsibility on businesses to respect human rights.

The UK demonstrated its commitment to the UN Guiding Principles by publishing a National Action Plan in 2013. The Action Plan set out the Government's intention to:

- “Implement UK Government obligations to protect human rights within UK jurisdiction where business enterprises are involved;
- “support, motivate and incentivise UK businesses to meet their responsibility to respect human rights throughout their operations both at home and abroad;
- “support access to effective remedy for victims of human rights abuse involving business enterprises within UK jurisdiction;
- “promote understanding of how addressing human rights risks and impacts can help build business success;
- “promote international adherence to the UN Guiding Principles on Business and Human Rights (UNGPs), including for States to assume fully their duties to protect human rights and assure remedy within their jurisdiction; and
- “ensure policy consistency across the UK Government on the UNGPs.”¹

We commend the Government for being the first in the world to publish a National Action Plan. However, we are disappointed that the updated National Action Plan, published in 2016, is modest in scope and fails to incorporate best practice regarding having measureable objectives.

The Government must lead by example and demonstrate the same behaviour it expects from businesses. The guidance on circumstances in which human rights can be considered in public procurement processes is complicated and contradictory. Procurement officers of both central and local government should be able to exclude companies that have not undertaken human rights due diligence from all public sector contracts. Companies which have committed human rights abuses and been found

1 Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, Cm 8695, September 2013, pp 6–7: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [accessed 14 February 2017]

responsible by the courts or the National Contact Point should be excluded from public contracts for a specified period of time so that unethical conduct has financial consequences.

There is a lack of clarity about departmental responsibilities in relation to business and human rights. Stakeholders must be encouraged to engage with the Government and we believe that giving the Cabinet Office a co-ordinating role would make this easier for businesses and victims alike.

The Modern Slavery Act in 2015 has raised the profile of the problem of modern slavery within UK companies and their supply chains abroad. However, more action is needed before any meaningful changes brought about by the Act can be evaluated. We believe that the Government could make a positive start by facilitating the passage of Baroness Young of Hornsey's Modern Slavery (Transparency in Supply Chains) Bill and by introducing laws to make reporting on due diligence for all other relevant human rights compulsory for large businesses.

We were concerned by some of the evidence we received which suggested that bodies with responsibilities for preventing human rights abuses and enforcing penalties were under-resourced. The Anti-Slavery Commissioner, the Gangmasters and Labour Abuse Authority, the National Contact Point, and the Equality and Human Rights Commission have important roles to play in upholding human rights in relation to business, and we urge the Government to consider what extra resources they may require.

We also considered whether further powers should be given to these bodies and concluded that the Gangmasters and Labour Abuse Authority should have extended licensing powers, particularly in respect of garment manufacturing and construction. These bodies should also be consulted on the development of new powers for local authorities to close down workplaces which are found to exploit workers through underpayment of wages, lack of employment contracts or disregard of health and safety regulations.

The UK is weakest in the area of access to remedy. A number of obstacles to justice exist including changes to limit legal aid provision, limits on the recovery of legal costs in these types of case, increases in court and tribunal fees, and the otherwise high costs of civil action. The Government is in the process of reviewing legal aid and we will follow closely its findings and any subsequent changes. We recommend that the Government reduces fees payable by claimants when taking a case to an employment tribunal, which have had a significant impact on domestic victims accessing remedies.

The complex corporate structures of many large UK businesses also act as a barrier to victims seeking justice for human rights abuses. In order to redress the imbalance of power between potential claimants and businesses, we recommend that the Government brings forward legislation to impose a duty on all companies, including parent companies, to prevent human rights abuses, with failure to do so becoming an offence, along the lines of the relevant provisions of the Bribery Act 2010.

As a non-legal alternative for providing access to remedy, the UK National Contact Point is not fit for purpose. It lacks the resources and profile needed to fulfil its role and we recommend that the Government creates an independent steering board for the NCP, provides extra resources to the NCP, and finds new ways to publicise its findings.

Finally, we considered the effect of Brexit on business and human rights. We heard that concerns about the status of EU workers in the UK may leave them more vulnerable to labour exploitation and we urge the Government to reassure workers that all victims of human rights abuses will be protected, without reference to nationality or immigration status.

We were encouraged that the Government plans to include human rights clauses in all future bilateral trade agreements and encourage it to include provisions on enforcement, and to undertake human rights impact assessments before agreeing trade agreements.

1 Introduction

Our inquiry

1. On 16 June 2016, the Joint Committee on Human Rights announced an inquiry into human rights and business, to consider progress made by the UK Government in implementing the United Nations Guiding Principles on Business and Human Rights,² by means of the National Action Plan that was published in 2013³ and revised in May 2016.⁴
2. The Committee published an open call for evidence along with a detailed set of questions, which served as the terms of reference for the inquiry.⁵ The Committee focused on four main issues: the National Action Plan, Government engagement with business and human rights, monitoring transparency and compliance, and access to remedy.

Conducting the inquiry

3. As part of this inquiry, we have conducted eight oral evidence sessions with a total of 27 witnesses. **We are grateful to all the witnesses who appeared before us to give evidence.**
4. Alongside this, we received a total of 53 written submissions. All of the evidence, both written and oral, can be viewed on our website.⁶ **We are also grateful to everyone who took time to submit written evidence, the quality and range of which has aided our inquiry enormously.**
5. Members of the Committee have also conducted three visits as part of this inquiry, looking at supply chains in the UK and abroad. On 3 November 2016, we visited the UK National Contact Point for the OECD Guidelines on Multinational Enterprises, housed within the Department for International Trade. From 28 November to 1 December 2016, we travelled to Istanbul and Ankara to gain a more in-depth understanding of the garment sector in Turkey, which supplies clothing to many large UK brands. Finally, on 2 March 2017, we visited Leicester, following reports of human rights abuses in garment factories there. **We are indebted to all of the people who assisted us with each of our visits.**
6. The Committee was ably assisted by two specialist advisers, Professor Robert McCorquodale⁷ and Dr Virginia Mantouvalou. We are grateful for their expertise and insight.

2 United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011): http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [accessed 12 March 2017]

3 Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, Cm 8695, September 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [accessed 12 March 2017]

4 Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights Updated May 2016*, Cm 9255, May 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf [accessed 12 March 2017]

5 Call for evidence: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2015/human-rights-business-launch-16-17/>

6 Evidence: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2015/inquiry/publications/>

7 Declaration of interest: Executive Director, British Institute of International and Comparative Law

The structure of this report

7. Chapter 2 explains the policy background, both domestic and international, to the National Action Plan. Chapter 3 explores the relationship between businesses and human rights and puts the inquiry in context. Chapter 4 examines the UK Government's approach to the human rights and business agenda and looks in detail at the updated National Action Plan. Chapter 5 sets out the current regulatory framework for preventing human rights abuses by businesses and assesses whether it is fit for purpose. Chapter 6 examines the mechanisms, both judicial and non-judicial, for accessing justice after a human rights breach has happened, and considers whether the current law is sufficient for this purpose. Finally, Chapter 7 assesses the possible impacts of Brexit on human rights within the business sphere.

2 Background

Previous work by this Committee

8. In December 2009 the Joint Committee on Human Rights published a report entitled *Any of our business? Human rights and the UK private sector*.⁸

9. The report called on the Government to show leadership in relation to business and human rights and to support the work of the UN Special Representative, John Ruggie, who was at that point developing the UN Guiding Principles on Business and Human Rights. It also made a number of specific recommendations, some of which, for instance those around public sector procurement, are repeated in similar terms in this report.

European Convention on Human Rights

10. The European Convention on Human Rights guarantees rights such as the right to life (Article 2), the prohibition of slavery and forced labour (Article 4), freedom of assembly and association (Article 11), the right to an effective remedy (Article 13), and prohibition of discrimination (Article 14).

The UN Guiding Principles on Business and Human Rights

11. On 16 June 2011 the UN Human Rights Council (UNHRC) endorsed the UN Guiding Principles on Business and Human Rights (UNGPs).⁹ The principles are based on the UN ‘Protect, Respect and Remedy’ Framework, developed by Professor John Ruggie in his capacity as the Special Representative of the UN Secretary-General for Business and Human Rights. This Framework had been approved by the UN Human Rights Council in June 2008.

12. There are 31 Guiding Principles focused around three main pillars:

- (1) The state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
- (2) The corporate responsibility to respect human rights, that is, to act with due diligence to avoid infringing on human rights and to address adverse impacts with which they, or those with whom they have a business relationship, are involved; and
- (3) The need for greater access by victims to effective remedy, both judicial and non-judicial.¹⁰

8 Joint Committee on Human Rights, [Any of our business? Human rights and the UK private sector](#), (First Report, Session 2009–10, HC 64–1, HL Paper 5–1)

9 United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011): http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [accessed 14 February 2017]

10 *Ibid.* p 1

The UK National Action Plan

13. In September 2013, in response to the endorsement of the UNGPs by the UNHRC, the Coalition Government issued a command paper entitled *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*.¹¹ This was presented jointly by the then Foreign Secretary, Rt Hon William Hague MP, and the then Business, Innovation and Skills Secretary, Rt Hon Vince Cable MP.

14. The document welcomed the creation of the UN Guiding Principles and committed the UK to implementing them. It argued that “the promotion of business and respect for human rights should go hand in hand”,¹² and set out a National Action Plan to achieve implementation of the principles. This was aimed to supply British companies with “certainty about the Government’s expectations of them on human rights, and ... support in meeting those expectations”.¹³

15. The Action Plan set out the Government’s intention to:

- “Implement UK Government obligations to protect human rights within UK jurisdiction where business enterprises are involved;
- “support, motivate and incentivise UK businesses to meet their responsibility to respect human rights throughout their operations both at home and abroad;
- “support access to effective remedy for victims of human rights abuse involving business enterprises within UK jurisdiction;
- “promote understanding of how addressing human rights risks and impacts can help build business success;
- “promote international adherence to the UN Guiding Principles on Business and Human Rights (UNGPs), including for States to assume fully their duties to protect human rights and assure remedy within their jurisdiction; and
- “ensure policy consistency across the UK Government on the UNGPs.”¹⁴

16. The UK was the first country in the world to publish a National Action Plan for business and human rights. Since then, according to data from the Business & Human Rights Resource Centre, 11 other countries have published plans, and 26 other countries have plans in development.¹⁵

11 Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, Cm 8695, September 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [accessed 14 February 2017]

12 *Ibid.* p 4

13 *Ibid.* p 6

14 *Ibid.* p 6-7

15 <https://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans> [accessed 14 February 2017]

National Action Plan update

17. In October 2013 the then Government stated that it intended to publish a report on progress with the National Action Plan “by [the] end [of] 2015”.¹⁶ The report was finally published in May 2016,¹⁷ and we consider its contents in Chapter 4.

16 Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, Cm 8695, September 2013, p 19: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [accessed 14 February 2017]

17 Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights Updated May 2016*, Cm 9255, May 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf [accessed 14 February 2017]

3 The interaction between human rights and business

18. During this inquiry, we have heard first-hand from victims of alleged human rights abuses by large UK companies, including violations of labour rights, such as child labour, freedom of association and the prohibition of forced and compulsory labour. We have also heard commitment by businesses to respect human rights.

19. The original UK National Action Plan set out clearly why businesses should take human rights responsibilities seriously:

“Companies increasingly understand that there is a business case for respect for human rights and that this brings business benefit in various ways, by:

- “helping to protect and enhance a company’s reputation and brand value;
- “protecting and increasing the customer base, as consumers increasingly seek out companies with higher ethical standards;
- “helping companies attract and retain good staff, contributing to lower rates of staff turnover and higher productivity, and increasing employee motivation;
- “reducing risks to operational continuity resulting from conflict inside the company itself (strikes and other labour disputes), or with the local community or other parties (social licence to operate);
- “reducing the risk of litigation for human rights abuses;
- “appealing to institutional investors, including pension funds, who are increasingly taking ethical , including human rights, factors into account in their investment decisions; and
- “helping companies to become a partner/investor of choice for other businesses or governments that are concerned to avoid human rights risks.”¹⁸

Who are the victims of human rights abuses?

20. Victims of human rights abuses by businesses can include: direct employees of the company; people employed further along the supply and value chain by subsidiaries or companies contracted to undertake work;¹⁹ and people whose rights are affected by a company’s actions in their vicinity.

21. Within these broad categories, UNICEF UK told us that some groups of people, such as children, were more vulnerable to abuse by companies:

18 Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, Cm 8695, September 2013, para 1: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [accessed 12 March 2017]

19 This would also include companies who are producing goods for others and, for example, finance companies.

“As children are still growing and developing, they are especially vulnerable to negative business impacts and can be severely and permanently affected by infringements of their rights: there are more than 168 million child labourers worldwide, 85 million of whom are in hazardous work²⁰; child consumers can be more easily convinced to buy and use inappropriate or unsuitable products; and children are much more susceptible than adults to harmful physical effects of toxic chemicals, manual labour and poor diets.”²¹

22. According to Progressio (CIIR) and Gender and Development Network, women and girls are also particularly vulnerable to certain forms of human rights abuse by businesses:

“Violations of women’s and girls’ human rights caused by entrenched gender-based discrimination occur in every country in the world, cutting across economic, social, environmental, political and cultural spheres, from local to global levels. As such, business activities and operations, as well as the trade, investment and tax policies that facilitate them, create heightened risks to women’s rights and impact upon women in gender-specific ways, whether as workers, community members or human rights defenders.

“Women living in poverty in developing countries are particularly at risk of adverse impacts of business activities. Violations of their rights can be particularly severe in the extractives, large-scale agricultural and export manufacturing industries, including textiles.”²²

23. A similar concern has been expressed by the International Labour Organization (ILO), who found that:

“In many sectors, women represent a large share of the workforce in global supply chains. They are disproportionately represented in low-wage jobs in the lower tiers of the supply chain and are too often subject to discrimination, sexual harassment and other forms of workplace violence. In addition, they lack access to social protection measures in general, and maternity protection in particular, and their career opportunities are limited.”²³

The same is also true in some sectors in the UK.

Human rights abuses in the garment and textiles sector

24. While we did not focus particularly on any one sector, we received a large amount of evidence on human rights abuses in the garment and textiles industry, which has been under the microscope since the 2013 collapse of the Rana Plaza building, in which over 1,000 workers were killed. Common abuses around the world, according to the International Corporate Accountability Roundtable, include “the violation of freedom of association, health and safety risks, low wages and excessive hours, human trafficking, forced labour, and child labour”.²⁴

20 <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm> [accessed 9 March 2017]

21 Written evidence from UNICEF UK ([HRB0005](#))

22 Written evidence from Progressio (CIIR) and Gender and Development Network ([HRB0006](#))

23 ILO, Provisional Record, 105th Session, Geneva, (May–June 2016), para 4: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_489115.pdf [accessed 12 March 2017]

24 Written evidence from International Corporate Accountability Roundtable ([HRB0038](#))

25. In the light of concerns about conditions in this sector, we visited Turkey and Leicester to investigate specific claims further.

Turkey

26. In November 2016, we undertook a four-day visit to Istanbul and Ankara, prompted by a BBC *Panorama* programme which highlighted significant human rights issues in Turkish factories supplying clothes to UK companies.²⁵ It showed refugees being exploited and underage children being employed in factories supplying high street brands such as ASOS, NEXT and Marks and Spencer. The programme did not provide evidence that the children were employed to make clothes for these companies and some of its claims were contested by the companies.

27. While in Istanbul, we met buyers²⁶ from the companies named above and attended the launch of the Ethical Trading Initiative's Turkey platform. We met local trade union representatives and visited some local factories. In Ankara, we received a briefing from Foreign and Commonwealth Office officials and officials from the Department for International Development, and met the Turkish Parliamentary Human Rights Commission. We also had meetings with several Turkish Government departments and heard from local NGOs.

Syrian refugee crisis

28. The situation in Turkish factories is affected by the ongoing Syrian refugee crisis. When refugees first started arriving from Syria in 2011, Turkey set up what we were told was a very good system of camps. At the time it was thought that the refugee situation would be temporary. Now, there are approximately 150,000 Syrian refugees in Turkish camps and 2.7 million Syrian refugees in host communities (mostly in the South East of Turkey and Istanbul). In the early days, Turkey was very resistant to accepting international support, but as the crisis worsened, the Turkish Government in 2016 concluded an agreement with the EU, under which the EU would provide €3 billion of financial support for Turkey, €328 million of which would come from the UK.²⁷

29. It costs employers four times more to hire Syrian refugees legally than illegally, and businesses are also required to pay for their work permits. There is also a shortage of jobs, meaning that Turkish citizens and Syrian refugees are applying for the same jobs. FCO and DfID officials told us that this has meant that opposition within Turkey to hosting refugees is growing.

Child labour

30. The Turkish Government was reluctant during our visit to acknowledge that there was an issue with child labour in Turkish factories, but local NGOs were clear that there were children working in factories, and that this has been exacerbated by the influx of Syrian refugees. Their strong message to us was that UK companies should be encouraged

25 BBC Panorama, Undercover: The Refugees Who Make Our Clothes (October 2016): <http://www.bbc.co.uk/programmes/b0813kpg> [accessed 7 March 2017]

26 These are the company employees who place orders with suppliers and agree the terms of the contract under which the clothes will be manufactured.

27 http://europa.eu/rapid/press-release_MEMO-16-963_en.htm [accessed 16 March 2017]

to engage more with the Turkish Government: Turkish Ministers and officials might be more willing to engage with companies themselves on ways to reduce child labour and other labour abuses in factories.

31. Buyers from NEXT and Marks and Spencer told us that it could be difficult for them to have visibility further down their supply chains. Child labour, when it was discovered, usually occurred when suppliers had sub-contracted their work to other factories. They confirmed that UK brands either banned sub-contracting, or insisted on auditing sub-contracted factories, as part of their contracts with manufacturers: when illegal sub-contracting was discovered, UK companies would either put a remediation plan in place, or cease working with the supplier in the worst cases.



Still from BBC *Panorama* investigation showing children working in a factory in Istanbul

Trade union rights

32. Another significant issue raised during our visit to Turkey was hostility towards trade union membership by some Turkish manufacturers. In our meeting with trade union representatives, they mentioned a widely reported case in 2015, where 14 workers were dismissed for unionising in a factory in Izmir, SF Leather, used by Mulberry. They criticised Mulberry for not intervening sooner or terminating their contract with the factory. The case was subsequently settled out of court as part of a confidential settlement.

33. When visiting Chantuque, a factory supplying clothes to UK companies including ASOS, we asked the factory owner about his attitude towards trade union membership. He said that his workers were not unionised, but that he would meet worker representatives. We subsequently had sight of a newspaper article on Chantuque, which alleged that the owner gave pay rises to non-unionised workers and told unionised workers that if they

quit their unions they would get a rise; sacked 35 workers (seven of them unionised) as a warning; and told a number of them that they were being sacked for talking about politics at work.²⁸

Leicester

34. On 2 March 2017 we visited Leicester, following several media reports and the publication of research findings by the University of Leicester²⁹ on serious labour rights abuses in the East Midlands garment industry.³⁰

35. While in Leicester, we met different groups and stakeholders that were affected by the current problems in the sector, and in particular the ‘Fast Fashion’ industry. We received a briefing from Professor Peter Nolan and Dr Nikolaus Hammer, of the University of Leicester, on their research findings. We had meetings with representatives from Leicester City Council and the Leicester and Leicestershire Enterprise Partnership (LLEP). We also heard from all the key actors in the supply chain: leading High Street retailers, local manufacturers with a combined experience of over 300 years in the industry, and garment workers.

The UK garment and ‘Fast Fashion’ industry

36. With the emergence of the ‘Fast Fashion’ phenomenon, the UK garment manufacturing industry has undergone significant changes.³¹ Fast Fashion has changed the sourcing practices of retailers as it requires products to be designed, manufactured and delivered to consumers at speed.³² Retailers have consequently increased sourcing from UK manufacturing units, which are able to offer them faster turnaround times than suppliers in the Far East.

37. Simultaneously, the industry has undergone significant structural changes: where a few years ago it was made up of large manufacturing units; it is now dominated by

28 This description was provided by Alfred LeProvost from the British Embassy. The original report (in Turkish) can be found here: <https://www.evrensel.net/haber/90442/santukta-sendikalasma-mucadelesi-suruyor>

29 University of Leicester, *New Industry on a skewed Playing Field: Supply Chain Relations and Working Conditions in UK garment Manufacturing*, Centre for Sustainable Work and Employment Futures (2015): <http://www2.le.ac.uk/offices/press/for-journalists/media-resources/Leicester%20Report%20-%20Final%20-to%20publish.pdf/> [accessed 12 March 2017]

30 The Channel 4 *Despatches* programme, ‘Britain’s cheap clothes,’ was aired on 30 January 2017, and was widely publicised, see e.g. British factory workers paid £3 an hour making clothes for high street giants, *The Daily Telegraph*, 23 January 2017: <http://www.telegraph.co.uk/business/2017/01/23/british-factory-workers-paid-3-hour-making-clothes-high-street/> [accessed 8 March 2017]. Labour rights abuses in the UK garment sector have been featuring in media reports since 2010 (when the first series of the *Dispatches* programme exposed poor working conditions in factories in the Leicester area). Following these media reports, the Ethical Trading Initiative (ETI) commissioned the Centre for Sustainable Work and Employment Futures, of the University of Leicester, to carry out research into working conditions in the UK garment industry. The research sought to understand supply chain dynamics within the UK garment sector, and conducted a case study on working conditions in the garment manufacturing hub of Leicester.

31 “The term “Fast Fashion” refers to a phenomenon in the fashion industry whereby production processes are expedited in order to get new trends to the market as quickly and cheaply as possible. As a result of this trend, the tradition of introducing new fashion lines on a seasonal basis is being challenged. Today, it is not uncommon for fast-fashion retailers to introduce new products multiple times in a single week.” (<http://www.investopedia.com/terms/f/fast-fashion.asp> [accessed 16 March 2017])

32 University of Leicester, *New Industry on a skewed Playing Field: Supply Chain Relations and Working Conditions in UK garment Manufacturing*, Centre for Sustainable Work and Employment Futures (2015) p 22: <http://www2.le.ac.uk/offices/press/for-journalists/media-resources/Leicester%20Report%20-%20Final%20-to%20publish.pdf/> [accessed 9 March 2017]

small firms and fragmented supply chains.³³ These structural changes have resulted in the emergence of a new industry, which, according to the Leicester University research, is currently characterised by extremely poor working practices, with many firms violating work and employment regulations. Indeed, that research found that the “majority of garment workers are paid way below the National Minimum Wage, do not have employment contracts, and are subject to intense and arbitrary work practices”.³⁴ Dr Hammer and Professor Nolan made a strong case in their report for updating the existing regulatory framework governing garment manufacturing, so as to reflect the changed dynamics of the sector, and to safeguard against labour rights abuses.³⁵

Human rights abuses and violations of work and employment regulations in the Fast Fashion industry

38. We heard compelling evidence during our visit to Leicester that labour rights abuses are endemic in the Leicester garment industry; they are also very likely to be occurring in other key manufacturing hubs, such as London and Manchester. All these regions have a high concentration of vulnerable groups, particularly migrant communities who have difficulties speaking English, and who may in some cases be held “captive” to the sector despite the poor working conditions.³⁶

39. The most common forms of abuse include payment of wages below the minimum wage, lack of employment contracts and significant disregard of health and safety regulations. According to the Leicester University research, it is common practice for employers to hand out wage slips which understate the number of hours worked by employees in order to save on employers’ tax contributions and to make it appear as though employers are paying the minimum wage. For example, while most workers work between 40–50 hours a week, their wage slips might only show 20 hours of work, paid at the minimum wage.

40. Following our visit to Leicester, we received written evidence from the niece of a woman who had been working in these conditions:

“What the employers do is that they make her sign a paper that she will work either 16 or 20 hours a week at minimum wage. Then they will give her a draft copy of wage slip which will again show that she works for example 20 hours and is paid £7.20 an hour ... She worked on average 60 hours a week but only got paid £3 sometimes £3.50 an hour. In that time she also suffered severe back pain because of the number of hours she worked. She was always paid cash.”³⁷

41. Other worker grievances include poor physical conditions in the factories, such as working in the cold without heating; poor cleaning and hygiene practices; and lack of adequate maintenance of buildings and manufacturing units.

33 University of Leicester, *New Industry on a skewed Playing Field: Supply Chain Relations and Working Conditions in UK garment Manufacturing*, Centre for Sustainable Work and Employment Futures (2015) p 8: <http://www2.le.ac.uk/offices/press/for-journalists/media-resources/Leicester%20Report%20-%20Final%20-to%20publish.pdf> [accessed 9 March 2017]

34 *Ibid.*

35 *Ibid.*

36 *Ibid.* p 15

37 Written evidence from Sarita Shah ([HRB0056](#))



Workers making clothes for River Island in a Leicester factory. This factory is considered to be an example of good practice.



Workers and former workers in Leicester factories at the Pakistani Youth and Community Association



The Leicester Imperial Typewriter Building, where it is estimated that over 50 workplaces are housed. The building is in disrepair and key fire escapes are not fit for purpose.

Supply chain dynamics and the need to ‘level the playing field’

42. While violations of employment law and regulations need to be tackled, supply chain dynamics and the uneven distribution of costs and benefits between retailers and manufacturers also need to be addressed. The working conditions that manufacturers offer their workforce in many cases reflect the deal they receive from leading retailers. Currently, they face many pressures, including delivering high volume production in short time scales and at very low or even no profit margins.³⁸

43. Local manufacturers with years of experience in the sector told us that negotiating reasonable deals with retailers was one of the biggest challenges they faced. Their perception was that buyers had little knowledge about “real production costs”, and were unwilling to pay for the fast turnaround they received through local sourcing—they told us that buyers unfairly compared UK manufacturing costs to overseas costs.³⁹ Imbalanced commercial agreements, together with other conditions imposed on them by retailers, seriously undermined their ability “to improve working conditions.”⁴⁰ In fact, according to the Leicester University research, the pressures faced by manufacturers were such that “it might be fairly tempting for some to exploit the existing opportunities in the labour and product market; in other words, to push a vulnerable workforce harder, to subcontract to less compliant enterprises, and to calculate with a (relatively low) risk of the consequences following detection”.⁴¹

44. The “skewed playing field”⁴² has also created a divide between compliant and non-compliant businesses, adding further to the pressures faced by suppliers. Competition from unethical manufacturers, who are able to offer lower prices to buyers, undercuts and takes away business from ethical suppliers. This is a major grievance among suppliers, some of whom said in an off-the-record session that buyers “have an ethical responsibility” and should be able to identify the difference between ethical and non-ethical prices. The suppliers argued, in contrast, that leading retailers encouraged unlawful practices by doing business with unethical manufacturers in the knowledge that the prices quoted must require them to cut corners.

Human rights abuses in other sectors

45. While we did not look in detail at the alleged human rights abuses occurring in other industries, we did take evidence from a victim in Nigeria whose life and livelihood were significantly affected by an oil spill.⁴³ Other alleged human rights abuses in the

38 University of Leicester, *New Industry on a skewed Playing Field: Supply Chain Relations and Working Conditions in UK garment Manufacturing*, Centre for Sustainable Work and Employment Futures (2015) p 24: <http://www2.le.ac.uk/offices/press/for-journalists/media-resources/Leicester%20Report%20-%20Final%20-to%20publish.pdf> [accessed 9 March 2017]

39 A supplier commenting on the difficulties in negotiating prices with buyers when they compared his prices to overseas suppliers said he had to remind them, “I am not China and I am not Bangladesh.”

40 University of Leicester, *New Industry on a skewed Playing Field: Supply Chain Relations and Working Conditions in UK garment Manufacturing*, Centre for Sustainable Work and Employment Futures (2015) p 24: <http://www2.le.ac.uk/offices/press/for-journalists/media-resources/Leicester%20Report%20-%20Final%20-to%20publish.pdf> [accessed 9 March 2017]

41 *Ibid.*

42 *Ibid.* p 17

43 See [QQ 35–46](#) (Mr John Gbei)—Mr Gbei’s evidence is discussed below, at paragraph 154.

extractives industry in Africa and South America have been well documented.⁴⁴ Recent investigations have also focused on the Democratic Republic of Congo, where children are forced to mine minerals such as cobalt, which are essential to smartphones.⁴⁵

46. In the agricultural industry, both in the UK and overseas, workers are vulnerable to trafficking and being made to work in inhumane conditions for less than the minimum wage.⁴⁶ Child labour is also prevalent in the global tobacco industry.⁴⁷

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- 44 Amnesty International, Amnesty International Report 2016/17: The state of the world's human rights: <https://www.amnesty.org.uk/files/2017-02/POL1048002017ENGLISH.PDF?xMHdSpNaJBUNbiuvtMCJvJrnGuLiZnFU> [accessed 9 March 2017]; The Guardian, British gold mining firm agrees settlement over deaths of Tanzanian villagers (February 2015): <https://www.theguardian.com/environment/2015/feb/10/british-gold-mining-settlement-deaths-tanzanian-villagers> [accessed 9 March 2017]
- 45 Sky News, Meet Dorsen, 8, who mines cobalt to make your smartphone work (February 2017): <http://news.sky.com/story/meet-dorsen-8-who-mines-cobalt-to-make-your-smartphone-work-10784344> [accessed 9 March 2017]; The Guardian, Your new iPhone's features include oppression, inequality – and vast profit (September 2016): <https://www.theguardian.com/commentisfree/2016/sep/19/your-new-iphone-features-oppression-inequality-vast-profit> [accessed 12 March 2017]
- 46 The Guardian, Gangmasters agree to pay more than £1m to settle modern slavery claim (December 2016): <https://www.theguardian.com/uk-news/2016/dec/20/gangmasters-agree-1m-payout-to-settle-modern-slavery-claim> [accessed 9 March 2017]
- 47 The Guardian, Child labour: the tobacco industry's smoking gun (September 2011): <https://www.theguardian.com/global-development/2011/sep/14/malawi-child-labour-tobacco-industry> [accessed 9 March 2017]; The Independent, Imperial Tobacco and British American Tobacco linked to child labour in Indonesia (May 2016): <http://www.independent.co.uk/news/business/news/imperial-tobacco-and-british-american-tobacco-linked-to-child-labour-in-indonesia-ngo-says-a7047736.html> [accessed 9 March 2017]

4 The UK's Government's approach to human rights and business

UK leadership

47. A number of witnesses have commended the Government on the leadership it had shown. In the words of Owen Tudor, of the Trades Union Congress (TUC): “It is interesting at an international level that we are implementing the second national action plan at a time when other countries are just beginning the first action plan ... That is something to be praised.”⁴⁸

48. Several meaningful changes in both policy and statute have been made in recent years, as part of implementing the National Action Plan. Among changes described by witnesses are the following:

- The Law Society of England and Wales cited “the introduction of the Modern Slavery Act 2015 which consolidated existing legislation, toughened penalties for offences (including a maximum sentence of life imprisonment) and provided safeguards for victims”.⁴⁹
- The Law Society also noted the “amendments to the Companies Act 2006 on monitoring and accountability”.⁵⁰
- Marks and Spencer noted “the funding contribution for the Corporate Human Rights benchmark”.⁵¹
- They also highlighted “the extended investigatory remit of the Gangmasters Licensing Authority, and the creation of a new Labour Market Enforcement Director”.⁵²
- The Business & Human Rights Resource Centre noted the UK’s “admission as a candidate country to the Extractive Industries Transparency Initiative”.⁵³
- They also highlighted the UK’s “introduction of the Reports on Payments to Governments Regulations 2014 by which the UK became the first EU state to force extractive companies to report on the payments they make to governments in all countries in which they operate from the start of 2015”.⁵⁴

48 [Q 14](#) (Owen Tudor, Trades Union Congress)

49 Written evidence from the Law Society of England and Wales ([HRB0047](#))

50 *Ibid.*

51 Written evidence from Marks and Spencer ([HRB0013](#))

52 *Ibid.*

53 Written evidence from the Business & Human Rights Resource Centre ([HRB0019](#)). For more information see: <https://eiti.org/> [accessed 12 March 2017]

54 Written evidence from the Business & Human Rights Resource Centre ([HRB0019](#))

49. The UK has also shown leadership through its efforts to assist other countries in developing their National Action Plans. As the Department for Business, Energy and Industrial Strategy noted, “We have previously supported other countries in the development of their own plans, including Colombia (subsequently the first country outside of Europe to publish a plan), Malaysia and South Korea.”⁵⁵

50. The UK was the first state to implement the United Nations Guiding Principles on Business and Human Rights by publishing a National Action Plan, and by updating that Plan. The Government has also introduced some welcome legislation, including the Modern Slavery Act 2015. Additionally, the UK has supported a number of other countries to develop National Action Plans and implement the UN Guiding Principles. We commend the Government for the work that it has already undertaken to build its agenda on human rights and business.

Criticisms of the updated National Action Plan

Limited in scope

51. We heard a number of criticisms of the National Action Plan.⁵⁶ It was described variously as “modest in ambition, sparse in detail”,⁵⁷ “largely descriptive ... [and] thin on new commitments”,⁵⁸ and “not sufficiently ambitious”.⁵⁹ Marilyn Croser, of CORE, told us that “generally there is a lack of strategic overarching vision. That, for us, is a fundamental weakness in the plan, and we felt that it was difficult to see how the plan is much more than window dressing.”⁶⁰

No baseline study or timetable

52. We also heard criticism that the National Action Plan contained no baseline study or timeframes, making it difficult to evaluate progress on commitments. The Northern Ireland Human Rights Commission told us that “although the UK Update notes ‘Government commitments’ it does not provide concrete steps with timeframes or budgets attached to specific Government Departments or public authorities to take forward a business and human rights agenda.”⁶¹ One way to address this would have been to implement a baseline study: “A baseline assessment carried out in accordance with international best practice would have helped to identify the areas where action is required and place those actions within the wider policy context.”⁶²

55 Written evidence from Department for Business, Energy and Industrial Strategy (BEIS) ([HRB0044](#))

56 The UK National Contact Point is addressed separately in paragraphs 201–221

57 Written evidence from Amnesty International UK ([HRB0014](#))

58 Written evidence from Corporate Responsibility Coalition Ltd. (CORE) ([HRB0008](#))

59 Written evidence from CAFOD ([HRB0018](#))

60 [Q 2](#) (Marilyn Croser, CORE)

61 Written evidence from Northern Ireland Human Rights Commission ([HRB0031](#))

62 Written evidence from Corporate Responsibility Coalition Ltd. (CORE) ([HRB0008](#))

53. Without this comparative data, the strong message from witnesses was that the updated National Action Plan was repetitive of the 2013 version, and that it was too focused on reflecting on past actions without making measurable commitments for the future.⁶³

54. In response, Margot James MP, Parliamentary Under-Secretary of State at the Department for Business, Energy and Industrial Strategy, pointed out that the UK was the first country to publish a National Action Plan:

“We had no template to follow, and we have at least updated it since the original. It was informed by quite a wide stakeholder engagement exercise. So, although no formal baseline of measurement was in place, there was a lot of input there to give us a base from which to plan for the future. I think that the guidance from the UN on advocating a baseline measurement came out after we published our [original] plan and incorporated some changes in law.”⁶⁴

While we accept that there was no template to follow when the UK produced its first National Action Plan, we note that by the time the Government updated it in 2016, detailed guidance, along with a specialised toolkit, internationally recognised as an example of best practice, was readily available.⁶⁵

Failure to reflect consultation with NGOs

55. In 2015 the Government launched a consultation, before publishing the updated National Action Plan. Amnesty International UK felt that consultation responses had not been taken into account by Government, and told us that “the revised National Action Plan fails to reflect adequately the inputs made during the consultation workshops, even where there was a cross-sector consensus; e.g. on the need for clarity of expectations of business and a more robust approach to ensuring these expectations are met.”⁶⁶ Owen Tudor, of the TUC, agreed: “One of the problems with the [updated] [A]ction [P]lan ... is the inadequate consultation that took place before it was delivered. There was initially, quite a lot of consultation but then it just froze and we stopped being consulted—trade unions, NGOs or whatever.”⁶⁷

56. Other witnesses went further, and argued that the Government had failed to, or refused to, consult with important stakeholders. The Northern Ireland Human Rights Commission reflected feedback that businesses who had tried to engage with the process had been ignored: “Individuals, businesses, and organisations in Northern Ireland were

63 See, for example, written evidence from UNICEF UK ([HRB0005](#)), Institute for Human Rights and Business (IHRB) ([HRB0012](#)), Hogan Lovells LLP ([HRB0017](#)), and CAFOD ([HRB0018](#)); as well as [Q 14](#) (Professor Keith Ewing, King’s College London and Institute of Employment Rights) and [Q 79](#) (David Isaac, Equality and Human Rights Commission). See also CAFOD, [Leader or Laggard?: Is the UK meeting its commitments on business and human rights?](#) (November 2016).

64 [Q 97](#) (Margot James MP, BEIS)

65 The Danish Institute for Human Rights and International Corporate Accountability Roundtable, *National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks* (June 2014): <http://icar.ngo/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf> [accessed 14 February 2017]

66 Written evidence from Amnesty International UK ([HRB0014](#))

67 [Q 14](#) (Owen Tudor, Trades Union Congress)

interested in contributing, and are still keen to hear how business and human rights will be taken forward by the UK Government.”⁶⁸ The Ethical Trading Initiative felt that the failure to consult victims undermined legitimacy and limited progress:

“The government did not consult directly with victims of violations or their representatives in civil society. Not only does this diminish the legitimacy of the consultation process, but it has also restricted focus of the NAP on mapping of existing legislative and policy developments, rather than identifying the needs of victims and identifying action to be taken going forward.”⁶⁹

Other criticisms

57. We also heard a range of miscellaneous criticisms of the updated National Action Plan. The TUC was disappointed that “there is so little in there about trade unions. We are not an extraneous tool that is outside these businesses”.⁷⁰ The London Mining Network was concerned that the Plan placed too much confidence in “voluntary arrangements, which rely on the good will of companies”.⁷¹ The Plan largely sets out steps taken to improve voluntary compliance, without imposing any new statutory duties on companies.

58. The UN Committee on the Rights of the Child (UNCRC), in its concluding observations on the fifth periodic report of the UK, published in July 2016, recommended that the Government “integrate an explicit focus on children’s rights, including the requirement for businesses to undertake child-rights due diligence, in the revised version of its first National Action Plan”.⁷² There was no such explicit focus or requirement in the revised National Action Plan, but merely a commitment to consider new project activity on raising awareness and tackling the negative impacts of business activity on a number of groups, including children.

Conclusions

59. While acknowledging the leadership the Government has shown in producing the updated National Action Plan, we share the disappointment of many of our witnesses over its modest scope and lack of new commitments. It is difficult to evaluate progress on the older commitments in the absence of a baseline study or a timetable for meeting objectives.

60. We call on the Government, when producing the next update to the National Action Plan, to consult widely with a range of stakeholders, to develop more ambitious and specific targets, and to implement measures to allow for these targets to be evaluated.

68 Written evidence from Northern Ireland Human Rights Commission ([HRB0031](#))

69 Written evidence from The Ethical Trading Initiative ([HRB0027](#))

70 [Q 14](#) (Owen Tudor, Trades Union Congress)

71 Written evidence from London Mining Network ([HRB0034](#))

72 UNCRC, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. July 2016

The wider governmental approach to business and human rights

Perceived lack of ministerial leadership

61. When the original National Action Plan was launched in 2013, it contained a foreword jointly signed by the Foreign Secretary and the Secretary of State for Business, Innovation and Skills. This was seen as a sign that the Government was taking its commitment to implementing the UNGPs seriously. A number of witnesses⁷³ remarked on the fact that the updated National Action Plan contained no similar foreword. While this may not signal any weakening of Ministerial support in reality, we agree with CORE, that “visible, high-level political endorsement sends a powerful signal to business, investors and other governments”.⁷⁴

Departmental responsibility

62. A consistent message from witnesses was that it can be difficult to understand which Government department has responsibility for the different components of the business and human rights agenda. Amnesty International UK told us: “The involvement of different government departments is difficult to ascertain because of the lack of transparency around each department’s priorities, functions and roles with regard to advancing implementation of the UNGPs.”⁷⁵ The international law firm Hogan Lovells LLP stated that, as a result, “it is unclear on the face of it which government department to contact in relation to business and human rights matters”.⁷⁶

63. While the FCO and BEIS share ownership of the National Action Plan, witnesses told us that the update was largely undertaken by the FCO, with little input from BEIS (at the time, BIS). In the words of UNICEF UK:

“Unlike the original NAP that was co-authored by two Government departments, the updated plan appears to have been produced almost exclusively by the Foreign and Commonwealth Office. Commitments from other Government departments are lacking and it is unclear to what extent, if at all, they were engaged in the consultation process. Notably, the Department for Business, Innovation and Skills redeployed the most senior civil servant working on business and human rights immediately after the formal consultation process for the updated NAP, indicating limited commitment to either operationalise any recommendations emerging from the consultation process or to further embed the UNGPs within the Department.”⁷⁷

64. The Ministry of Justice (MoJ), the department responsible for access to justice for victims of human rights violations, was also strongly criticised. Amnesty International

73 See, for instance, written evidence from Corporate Responsibility Coalition Ltd. (CORE) ([HRB0008](#)), Institute for Human Rights and Business (IHRB) ([HRB0012](#)), and Amnesty International UK ([HRB0014](#))

74 Written evidence from Corporate Responsibility Coalition Ltd. (CORE) ([HRB0008](#))

75 Written evidence from Amnesty International UK ([HRB0014](#))

76 Written evidence from Hogan Lovells LLP ([HRB0017](#))

77 Written evidence from UNICEF UK ([HRB0005](#)). See also written evidence from Corporate Responsibility Coalition Ltd. (CORE) ([HRB0008](#)), Written evidence from Traidcraft ([HRB0009](#)), and Amnesty International UK ([HRB0014](#))

UK described the MoJ as “completely invisible” in the process of updating the National Action Plan⁷⁸—a view shared by others. It is therefore unsurprising that the Plan has been deemed to be particularly weak on access to justice issues, a topic addressed in Chapter 6.

65. The MoJ initially declined to give evidence to this inquiry, and only agreed to send a Minister after two requests to reconsider. During the session, Sir Oliver Heald QC MP, Minister of State for Courts and Justice at the MoJ, was challenged on this issue, and replied: “We see ourselves as a key party to this in relation to the remedies ... particularly the judicial remedies.”⁷⁹ Rob Linham OBE, Acting Deputy Director, Human Rights and Devolution Policy at the MoJ, added:

“The simple point on access to remedy is that this is an area where there is already a strong and consistent framework in the way that Sir Oliver has described, so in the updated action plan we say what needs to be said on the matter ... Professor McCorquodale’s work was exactly the work I was referring to. It is a superb survey of the provision of access to remedy in this area and is cited in the revised action plan.”⁸⁰

66. We find this puzzling. The report by Professor McCorquodale, who acted as one of the specialist advisers to our inquiry, actually reached the following conclusion:

“The current access to a remedy in the UK for a claim of abuse of human rights by a business enterprise is limited ... the current judicial and non-judicial mechanisms have a range of barriers that mean that they do not provide wide-ranging or effective access to a remedy for most victims of human rights harms by business enterprises.”⁸¹

Cross-Whitehall Steering Group

67. The updated National Action Plan sets out the Government’s plans for periodic meetings with representatives of business and civil society, “in the cross-Whitehall Steering Group to monitor implementation of this plan”.⁸² While witnesses accepted the need for a group to play a coordinating role within Government, they questioned whether the cross-Whitehall Steering Group, in its current composition, was best placed to do so. CAFOD, for instance, told us that membership of the Group, at official and Ministerial level, might impede its effectiveness: “We question whether the current membership is sufficiently senior to drive the level of policy coherence required for implementation of the UN Guiding Principles.”⁸³

78 Written evidence from Amnesty International UK ([HRB0014](#))

79 [Q 113](#) (Sir Oliver Heald MP, Ministry of Justice)

80 [Q 113](#) (Rob Linham, Ministry of Justice)

81 Robert McCorquodale (British Institute of International and Comparative Law), *Survey of the Provision in the United Kingdom of Access to Remedies for Victims of Human Rights Harms Involving Business Enterprises* (July 2015) p 48: http://www.biicl.org/documents/724_uk_access_to_remedies.pdf?showdocument=1 [accessed 15 February 2017]

82 Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights Updated May 2016*, Cm 9255, May 2016, p 24, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf [accessed 15 February 2017]

83 Written evidence from CAFOD ([HRB0018](#))

68. UNICEF UK, on the other hand, highlighted the difficulty of assessing the work of the Group, since “there has been a lack of transparency over the cross-Whitehall Steering Group’s membership, remit, meeting and work schedule and engagement with external stakeholders”.⁸⁴

Inconsistent messages between departments

69. Perhaps as a result of the perceived weaknesses of the cross-Whitehall Steering Group, and a lack of guidance from senior Ministers, we heard concerns that Government activities and information on business and human rights were at best confusing, and at worst contradictory. Andrew Silvester, of the Institute of Directors, was concerned that Government was making competing demands:

“The Government have a pro cake-eating and pro cake-having approach in that they want to encourage British businesses to go and trade in some countries that are high up—or rather low down—on Transparency International’s index and where there are concerns about modern slavery. Government puts burdens on them to look at the supply chains there at the same time as it tells them to trade there.”⁸⁵

70. Other witnesses felt that in any competition between business and human rights, business would always be prioritised by the Government. The law firm Deighton Pierce Glynn told us: “The preference for marketing ‘UK plc’ over and above stressing human rights concerns has been a recurrent theme.”⁸⁶ The Institute for Human Rights and Business was concerned about how these issues were viewed within Government: “It still seems that many government ministers, and some senior civil servants, see the business and human rights agenda as a constraint to growth.”⁸⁷

Conclusions

71. Issues relating to human rights and business cut across at least six different Government departments. The Government must do more to help relevant stakeholders understand the various departmental responsibilities and must guard against prioritising business concerns over human rights. We also recommend that the Cabinet Office plays a role in coordinating activity across departments.

Public sector procurement

72. Public sector procurement, and the weight that human rights considerations are given within them, can be used as a metric to evaluate the Government’s commitment to human rights and business. According to a House of Commons Library briefing, in 2013–14 the UK public sector spent a total of £242 billion on procurement of goods and services.⁸⁸ In the global context, according to the International Learning Lab on Public Procurement and Human Rights: “Public procurement represents a significant share of the total economy: globally, public procurement has a value of €1000 billion per year,

84 Written evidence from UNICEF UK ([HRB0005](#))

85 [Q 48](#) (Andrew Silvester, Institute of Directors)

86 Written evidence from Deighton Pierce Glynn ([HRB0033](#))

87 Written evidence from Institute for Human Rights and Business (IHRB) ([HRB0012](#))

88 House of Commons Library, Public Procurement, Briefing Paper, [Number 6029](#), July 2015

while across OECD countries it accounts for 12% of GDP, on average.”⁸⁹ It is self-evident that governments can, if they choose, use their spending power to pursue specific public policy aims.⁹⁰

73. The International Corporate Accountability Roundtable provided us with seven examples of human rights abuses connected to government procurement in the garment sector around the world. While most of these examples related to the United States, they told us that it was “highly unlikely that the [garment] supply chains of other governments, including the UK, are markedly different.”⁹¹

74. A more fully documented example of human rights violations connected to UK public procurement is the production of medical gloves in Malaysia and Thailand. A British Medical Association report into this concluded as follows:

“There are documented serious labour rights concerns at many of these factories, including excessive working hours and production targets, inadequate pay, payment of extortionate recruitment fees, illegal retention of passports, and anti-union activities. In some factories there are allegations of illegal imprisonment of workers, and beatings.”⁹²

Current Government advice on human rights in public procurement

75. A number of witnesses noted that the updated National Action Plan had further weakened the already weak commitment on public procurement made in the original plan. In the words of the London Universities Purchasing Consortium:

“The updated NAP claims that the Government will ‘Continue to ensure that UK Government procurement rules allow for human rights-related matters to be reflected in the procurement of public goods, works and services.’ This is a softening of the language from the original NAP, which commits to ‘ensuring that in UK Government procurement human rights related matters are reflected appropriately when purchasing goods, works and service.’”⁹³

76. Peter Frankental, from Amnesty International UK, articulated a discrepancy in the Government’s published guidance and rules regarding public procurement:

“The revised plan says that there is a commitment to: ‘Continue to ensure that UK Government procurement rules allow for human rights-related matters to be reflected in the procurement of public goods, works and services, taking into account the 2014 EU Public Procurement Directives’. However, in February [2016] the Cabinet Office issued a policy note on

89 Written evidence from International Learning Lab on Public Procurement and Human Rights ([HRB0037](#)). See also written evidence from International Corporate Accountability Roundtable ([HRB0038](#)).

90 The UN Committee on Human Rights (in General Comment 16) says: ‘States must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting children’s rights’. This was repeated in their Concluding Observations to the UK. The same must apply to other vulnerable groups.

91 Written evidence from International Corporate Accountability Roundtable ([HRB0038](#))

92 BMA, *In Good Hands: Tackling labour rights concerns in the manufacture of medical gloves* (June 2016) p 2: Available to download via <https://www.bma.org.uk/collective-voice/influence/international-work/fair-medical-trade/medical-gloves-report> [accessed 15 February 2017]

93 Written evidence from London Universities Purchasing Consortium ([HRB0036](#))

public procurement in which it took a completely different view. It said that, ‘Public procurement should never be used as a tool to boycott tenders from suppliers based in other countries, except where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government’. We seem to have incoherence between a fairly weak commitment in the action plan, but a commitment nonetheless, and a note issued just a few months earlier by the Cabinet Office. I imagine that any public authorities wanting to use human rights, among other criteria, with regard to tendering processes would feel very reluctant to do so on the basis of instructions from the Cabinet Office.”⁹⁴

77. While we acknowledge that blanket boycotts of particular countries would be hard to defend, public procurement officers do need clear and unambiguous messages: they cannot be expected to take human rights considerations into account if they are confused about the rules, especially in a process that is often subject to legal challenge and where, as a result, rules must be followed to the letter.

78. The Equality and Human Rights Commission went still further, arguing that businesses sometimes felt pressured to ignore human rights violations in order to fulfil public sector contracts:

“Some businesses said that public sector contracts sometimes included conditions which created perverse incentives; that is, in order to guarantee the fulfilment of a contract condition, staff sometimes prioritise avoiding contract sanctions over human rights considerations. These businesses said they were unwilling to speak to Government bodies about this for fear of losing the contract.”⁹⁵

Benefits of making human rights a condition of public procurement

79. The most obvious reason for the Government to incorporate human rights into its procurement policy was articulated by John Morrison: “Why should business listen to a Government if [they], as a powerful economic actor, representing 20% of GDP, are not modelling the behaviour that they want to see in the private sector?”⁹⁶ Government, in other words, has to set an example for others to follow.

80. Incorporating human rights conditions in public sector contracts can also change the behaviour of companies competing for those contracts, as David Isaac CBE, Chair of the EHRC, told us: “These things drive change and encourage bidders to interrogate their supply chains and insist that the sorts of protocols that they might be in control of in their own companies then float down as a condition of doing business in the rest of that procurement supply chain.”⁹⁷

81. A number of submissions signposted public authorities that are leading by example in scrutinising their supply chains. Boxes 1 and 2, drawing on written evidence from the International Learning Lab on Public Procurement and the Human Rights and International Corporate Accountability Roundtable, explore some of these.

94 [Q 2](#) (Peter Frankental, Amnesty International UK)

95 Written evidence from Equality and Human Rights Commission (EHRC) ([HRB0030](#))

96 [Q 7](#) (John Morrison, Institute for Human Rights and Business)

97 [Q 83](#) (David Isaac, Equality and Human Rights Commission)

Box 1: Examples of international good practice*The United States*

The Sweatfree Purchasing Consortium comprises 14 cities and 3 states, which seek to ensure that the garments they buy are made without sweatshop labour.⁹⁸ For example:

- Madison, Wisconsin, published a request for proposals for uniforms for its fire, metro, and police workers in 2014.⁹⁹ The resulting contract requires the contractor, subcontractors, and other entities used in production of the goods for the city to comply with Madison's Sweatfree Code of Conduct, which forbids the use of sweatshop conditions and requires compliance with certain minimum labour standards. Madison required disclosure of information about factory location, wages, and hours for factories where the total aggregate value of items produced under the contract was \$5,000 or more each year. In order to move onto full evaluation, each bidder had to disclose this information for 60% of factories. The awarded contractor was required to increase this disclosure by 10% each year and to produce compliance action plans for any factory where the total aggregate value of items produced under the contract was \$25,000 or more each year. The administration of this contract, including the sweatfree requirements, is funded by a rebate from the contractor.
- San Francisco has a sweatfree code of conduct that applies to all garment contracts above \$25,000.¹⁰⁰ Bidders for covered contracts must submit responses to 12 questions that aim to evaluate whether there are sweatshop conditions in the supply chain. Although San Francisco does not require bidders to disclose supply chain information in the evaluation period, San Francisco scores each bidder on a scale from 1–100 based on its answers to the 12 questions, and the extent to which the bidder discloses factory location information.¹⁰¹ This score is used to select the contractor, subject to a 15% price protection. To monitor compliance with the Code of Conduct, San Francisco hired the Worker Rights Consortium to conduct targeted factory investigations.
- In Los Angeles the Worker Rights Consortium monitors compliance with the City's Sweatfree Code of Conduct.¹⁰² The benefits were seen in one factory that was supplying the city with uniforms. In 2007 a Worker Rights Consortium audit discovered various labour violations at the factory, and the city was able to use its leverage to press the company to address these violations. Improvements were seen within months and included: no longer prohibiting workers from taking restroom breaks, paying legally required sick leave, implementing a policy to address verbal harassment by managers, creating additional protections for pregnant workers, and the rehiring of a worker who had been fired for trying to form a union.

98 Sweatfree Purchasing Consortium, <http://buysweatfree.org/> [accessed 16 February 2017]

99 City of Madison, Wisconsin, Uniform Management Program Request for Proposals (2014), http://buysweatfree.org/uniform_management_program [accessed 16 February 2017]

100 City of San Francisco, California, Administrative Code Chapter 12U: Sweatfree Contracting (2005), <http://sfgov.org/olse/sweatfree-contracting-ordinance> [accessed 16 February 2017]

101 City of San Francisco, California Sweatfree Purchasing Advisory Group, Annual Report 4 (2014), <http://sfgov.org/olse/sweatfree-contracting-ordinance> [accessed 16 February 2017]

102 WRC Reports, City of Los Angeles, Department of General Services, http://gsd.lacity.org/sms/WRC/WRC_reports.htm [accessed 16 February 2017]

Sweden

The 21 Swedish County Councils are responsible for health care, public transportation, and regional planning, spending about €13 billion per year through procurement.¹⁰³ Since 2010, all 21 County Councils have used the same Code of Conduct, which creates a contractual requirement for suppliers to comply with various human rights and labour conventions, as well as relevant laws in the country of manufacture. The Code of Conduct applies to purchases in 7 high-risk sectors, one of which is textiles. To ensure production complies with the Code of Conduct, contractors in these sectors are required to carry out human rights due diligence. The County Councils conduct two types of monitoring: 1) they conduct follow up desk studies to evaluate the human rights due diligence processes; and 2) they conduct targeted factory audits, either themselves or using an independent monitoring organization. If a violation is found, the contractor must create a time-bound corrective action plan, whose implementation is monitored by the County Councils. The County Councils may terminate a contract if the contractor is not willing to address violations in its supply chain.

The Swedish County Councils have also set up an expert group, made up of officials who have trained in human rights. They have also been trained in evaluating supplier compliance with the Code of Conduct, conducting risk assessments, and understanding social audits and corrective action plans.

The Netherlands

The Dutch national sustainable procurement policy requires companies supplying goods and services to public bodies in The Netherlands to respect human rights as part of the “social conditions” applicable to all central government EU contract award procedures since 1 January 2013.¹⁰⁴ Suppliers may meet the social conditions in various ways, such as participating in a multi-stakeholder supply chain initiative or undertaking risk analysis. PIANOo,¹⁰⁵ the government’s tendering expertise centre, has published a step-by-step guide on how to meet the social conditions at each phase of the tender-procedure. Various studies have questioned the effectiveness of the “social conditions” in practice, as a result of failure to incorporate them into public contracts, lack of contract performance monitoring, and low awareness by both public buyers and suppliers of relevant risks.

Norway

Public authorities are obliged to advance contract clauses on wages and decent working conditions when purchasing services such as construction, facility management, and cleaning services.¹⁰⁶ Public authorities are also required to follow up with suppliers on performance of such clauses, for instance by requiring the supplier to make a self-declaration.

Source: Written evidence from International Learning Lab on Public Procurement and Human Rights ([HRB0037](#)) and International Corporate Accountability Roundtable ([HRB0038](#))

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- 103 Kristian Hemstrom, TCO development webinar: Sustainable IT Webinar Series, Best Practice Sustainable IT Procurement (16 March, 2016), <http://tcodevelopment.com/news/watch-webinar-on-demand-best-practice-sustainable-it-procurement/> [accessed 16 February 2017]; Electronics Watch, Public Procurement and Human Rights Due Diligence to Achieve Respect for Labour Rights Standards in Electronics Factories: A Case Study of the Swedish County Councils and the Dell Computer Corporation 4 (February 2016), http://electronicswatch.org/en/publications_1633 [accessed 16 February 2017]
- 104 National Action Plan on Business and Human Rights, http://www.netherlandsmission.org/binaries/content/assets/postenweb/v/verenigde_staten_van_amerika/the-permanent-mission-to-the-un/actionplanbhr.pdf, pg. 5 [accessed 17 February 2017]
- 105 Professional and Innovative Tendering, Network for Government Contracting Authorities: <https://www.pianoo.nl/public-procurement-in-the-netherlands/about-pianoo> [accessed 12 March 2017]
- 106 Public Procurement and Human Rights: A Survey of Twenty Jurisdictions, The International Corporate Accountability Roundtable (ICAR), <http://icar.ngo/wp-content/uploads/2016/07/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>, pg. 28 [accessed 17 February 2017]

Box 2: Examples of good practice in the UK*Welsh Health Supplies*

Welsh Health Supplies has a Corporate Social Responsibility policy that includes ethical procurement.¹⁰⁷ This policy requires all contracts over £25,000 to include a sustainability risk assessment. The All Wales Nurses' and Midwives' Uniforms Procurement Project Board was created in 2009 to oversee a tender for about 150,000 uniforms. Welsh Health Supplies managed and coordinated the procurement on behalf of NHS Wales. The required risk assessment highlighted labour issues in the garment supply chains, and revealed that labour risks existed beyond the first tier.

Because of this risk, it was decided that the resulting contract would require: 1) compliance with the Ethical Trading Initiative Base Code for the entire supply chain; 2) that a labour standards audit had been conducted in the last six months at each site in the supply chain, and if an audit was not available, that the supplier should pay for an audit by a Welsh Health Services approved partner; and 3) disclosures of the details of the most recent corrective action report. Welsh Health Supplies enlisted the assistance of a qualified auditing organisation to review this documentation to determine compliance with the Ethical Trading Initiative Base Code and to provide advice on non-compliance.

London Universities Purchasing Consortium

The Consortium secured inclusion of Electronics Watch¹⁰⁸ contract clauses in the UK higher education sector's £100 million per annum supply agreements for devices using the Apple iOS Operating System. These require suppliers to adopt transparent supply chain management practices and respond to reports of labour rights abuses.¹⁰⁹

Universities in Scotland

Along with student representatives and NGOs, the universities have established, through Advanced Procurement for Universities and Colleges (APUC), the Sustain Project. This has led to development of a Code of Conduct for suppliers covering social, ethical, economic, and environmental issues.¹¹⁰ The project uses sector spend and supplier information to identify areas of risk and opportunities for scope and influence, and assesses suppliers through a single site assessment free to suppliers.

Scottish Government

The Scottish Government has developed a Sustainable Procurement Prioritisation Tool for public buyers, to support adoption of a consistent structured assessment of spend

107 Good Ethical Procurement, British Medical Association, <https://www.bma.org.uk/collective-voice/influence/international-work/fair-medical-trade/hospital-case-studies> [accessed 16 February 2017]

108 See <http://electronicswatch.org/en> [accessed 12 March 2017]

109 London Universities Purchasing Consortium Slavery and Human Trafficking Statement, London Universities Purchasing Consortium, <https://static.uk-plc.net/library/london-universities-purchasing-consortium/documents/lupc-slavery-and-human-trafficking-statement.pdf>, p 2 [accessed 17 February 2017]

110 'Sustain' Project - a Sector wide collaborative tool for assessing Supply Chain Sustainability, Advanced Procurement for Universities and Colleges, <http://www.apuc-scot.ac.uk/#!/Susproject> [accessed 17 February 2017]

categories according to social and environmental sustainability parameters. The tool is part of a suite of approaches, which also includes methodologies for evaluating life cycle impacts and designing appropriate sustainability measures for contracts.¹¹¹

The Scottish Government and the Convention of Scottish Local Authorities have also developed Guidance on the Procurement of Care and Support Services which includes advice on how human rights can be included in the commissioning and procurement of care services.

Transport for London (TfL)

TfL has adopted an Ethical Sourcing Policy, linked to the Ethical Trading Initiative's Base Code, according to which: TfL aims to improve labour conditions in the supply chain of relevant product categories or specific products; suppliers under contracts that include ethical sourcing provisions should monitor conditions via third party audits and provide TfL with results; TfL will collaborate with suppliers to remedy breaches.¹¹²

Source: Written evidence from International Learning Lab on Public Procurement and Human Rights ([HRB0037](#)) and International Corporate Accountability Roundtable ([HRB0038](#))

82. The examples outlined in Boxes 1 and 2 show that there is plenty of good practice, both internationally and within the UK, for the Government to draw on in taking action to improve public procurement guidance and level up their performance.

Requirement for companies to undertake due diligence for public sector contracts

83. Several witnesses urged the Government to exclude companies that have not undertaken effective human rights due diligence from access to public sector contracts, export credit and other public financial benefits, including support from the Department for International Development. This would enable the Government to fulfil its commitments under UN Guiding Principles 5 and 6.¹¹³ Nomogaia, an international, non-profit research organisation working in the field of business and human rights, explained:

“One key opportunity is in managing the UK government’s business relationships. In its contracts with private security providers and suppliers of goods in government procurement, as well as in funding of beneficiaries of export and development banks financing and insurance, the government

111 Sustainable Procurement Duty Tools, Scottish Government, <http://www.gov.scot/Topics/Government/Procurement/policy/corporate-responsibility/Sustainability/ScottishProcess/SustainableProcurementTools> [accessed 17 February 2017]

112 Ethical Sourcing Policy, Transport for London, <http://content.tfl.gov.uk/tfl-ethical-sourcing-policy.pdf> [accessed on 17 February 2017]

113 United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011) p 8: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [accessed 20 February 2017]

should require access to the human rights due diligence performed by those companies. Unless there are compelling reasons to the contrary, due diligence should be made public.”¹¹⁴

84. International Corporate Accountability Roundtable and International Learning Lab on Public Procurement and Human Rights made more specific recommendations about steps the Government could take to assist procurement officers, including providing online tools and guidance, creating an online database with information about human rights practices of suppliers, and investing in human rights training for public purchasers.¹¹⁵

Conclusions

85. The current Government guidance on the application of human rights considerations to public sector procurement is confusing, and may deter procurement officers from factoring in human rights.

86. If the Government expects businesses to take human rights issues in their supply chains seriously, it must demonstrate at least the same level of commitment in its own procurement supply chains.

87. The Government should exclude companies that have not undertaken appropriate and effective human rights due diligence from all public sector contracts, including contracts with local authorities, which could be over a specified threshold. This should also apply to export credit and other government financial incentives for companies to operate overseas.

88. Companies that have been found to have been responsible for abuses, either by the courts or by the National Contact Point, or where a settlement indicates that there have been human rights abuses, should also be excluded from public sector contracts for a defined and meaningful period.

114 Written evidence from Nomogaia ([HRB0028](#)). See also written evidence from UNICEF UK ([HRB0005](#)), Corporate Responsibility Coalition Ltd (CORE) ([HRB0008](#)), the Business & Human Rights Resource Centre ([HRB0019](#)), Centre for Human Rights in Practice, University of Warwick ([HRB0024](#)), Association for Labour Providers ([HRB0026](#)), Equality and Human Rights Commission (EHRC) ([HRB0030](#)), London Universities Purchasing Consortium ([HRB0036](#)), and International Learning Lab on Public Procurement and Human Rights ([HRB0037](#)),

115 Written evidence from International Learning Lab on Public Procurement and Human Rights ([HRB0037](#)) and International Corporate Accountability Roundtable ([HRB0038](#))

5 Preventing human rights abuses by businesses

Modern Slavery Act 2015

89. The Modern Slavery Act 2015¹¹⁶ became law in March 2015, building on the previous Government's legislation on exploitation and creation of the Gangmasters Licensing Authority, under the Gangmasters (Licensing) Act 2004. Among other provisions, the Modern Slavery Act toughened penalties to allow a maximum sentence of life imprisonment for serious human trafficking and modern slavery offences, and provided safeguards for victims. Companies covered by the provision¹¹⁷ must produce a "slavery and human trafficking" statement for each financial year, which may set out steps they have taken to make sure that such practices are not present in their business and supply chains and in the absence of this must state that it has taken no such steps. The Act also created an Independent Anti-Slavery Commissioner.

90. Following passage of the Modern Slavery Act, the Government issued 'Transparency in Supply Chains etc.: A Practical Guide',¹¹⁸ to help businesses meet these new obligations.

91. While it is still too early to evaluate the full effect of the Act, anecdotal evidence from some businesses suggests it is already having some beneficial effects. Marks and Spencer told us that the legislation had prompted them to "look even further into our business, and we have identified things that we need to do even better ... that piece of regulation has been helpful. It has driven consistency in the marketplace."¹¹⁹ NEXT said the same, and told us that the Act had given businesses "clarity and leverage".¹²⁰

Shortcomings of the Modern Slavery Act

Inadequate reporting requirements

92. The Modern Slavery Act suffers from a number of shortcomings. Two studies published in early 2016 examined the early modern slavery statements made by companies under the Act.¹²¹ They found that many reports failed to meet basic requirements, such as being signed off by the company director, and that "35% of statements say nothing on

116 [Modern Slavery Act 2015](#)

117 These are companies that supply goods or services and have a total turnover of not less than £36 million (as determined by the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 made by the Secretary of State).

118 Home Office, *Transparency in Supply Chains etc.: A practical guide* (October 2015): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf [accessed 16 February 2017]

119 [Q 69](#) (Mike Barry, Marks and Spencer)

120 [Q 69](#) (Chris Grayer, NEXT)

121 Business & Human Rights Resource Centre and CORE, *Register of slavery & human trafficking corporate statements released to date to comply with UK Modern Slavery Act* (March 2016): https://business-humanrights.org/sites/default/files/documents/CORE%20BHRRRC%20Analysis%20of%20Modern%20Slavery%20Statements%20FINAL_March2016.pdf [accessed 16 February 2017]; and Ergon Associates, *Reporting on Modern Slavery: The current state of disclosure* (May 2016): <http://www.ergonassociates.net/images/stories/articles/ergonmsastatement2.pdf> [accessed 16 February 2017]

the question of their risk assessment processes, which is surprising for statements that are intended to be based around a due diligence approach. Two-thirds do not identify priority risks, whether in terms of countries, supply chains or business areas.”¹²²

93. Moreover, analysis by Ergon Associates, a consultancy firm specialising in business and human rights, has uncovered suspicious uniformity between many of the statements:

“We have identified a number of longer statements that contain nearly identical wording in some of their paragraphs. Some of these even have the same KPIs [key performance indicators] and outline the same training actions. These statements are mostly from the UK and come from a range of different sectors, suggesting that they may be [using] the same advisers or template.”¹²³

94. Witnesses suggested that the varying quality of modern slavery statements was a result of the weak requirement in the Act, which says only that companies “may” include a number of details in their statements, and weak guidance from the Government, which has not been prescriptive enough in its guidance on statements. The Equality and Human Rights Commission told us: “Home Office guidance is not prescriptive about the content of the annual slavery and human trafficking statement ... companies are disclosing information about their policies and processes rather than detailed explanations of their human rights risks and the steps taken to manage those risks.”¹²⁴

95. One consequence is that many statements do not reveal much, if anything, about the practical steps being taken to tackle modern slavery. In the words of the Institute for Human Rights and Business: “Many statements have taken a very cautious, legalistic approach and as such fail to reveal much about operational human rights risks.”¹²⁵ UNICEF UK agreed: “While the TISC [transparency in supply chains] requirement under the Modern Slavery Act requires companies to report on the due diligence they are undertaking with respect to slavery in their supply chains, it does not require companies to actually undertake due diligence.”¹²⁶ We note that, under the terms of the Modern Slavery Act, a statement may be either a statement of the steps taken or “a statement that the organisation has taken no such steps”.¹²⁷

96. Sarah Newton MP, Parliamentary Under-Secretary of State at the Home Office, responded to such criticisms as follows:

“The Prime Minister, the Home Secretary and I have made it very clear that we expect all businesses with a high turnover to produce a statement about what they are doing ... Obviously, once we see the results from the whole first year and we see the statements, if we find that there are significant problems, including the one you are alluding to, we will take further action.”¹²⁸

122 Ergon Associates, *Reporting on Modern Slavery: The current state of disclosure* (May 2016) p 1: <http://www.ergonassociates.net/images/stories/articles/ergonmsastatement2.pdf> [accessed 16 February 2017]

123 *Ibid.* p 3

124 Written evidence from Equality and Human Rights Commission (EHRC) ([HRB0030](#))

125 Written evidence from Institute for Human Rights and Business (IHRB) ([HRB0012](#))

126 Written evidence from UNICEF UK ([HRB0005](#))

127 Modern Slavery Act 2015, [section 54\(4\)](#)

128 [Q 102](#) (Sarah Newton MP, Home Office)

97. We note also that other reporting obligations for companies exist in the form of the EU Non-Financial Reporting Directive and s.172 of the Companies Act 2006. But, as Anti-Slavery International told us, “Neither the EU’s non-financial reporting directive nor the UK’s Companies Act (both mentioned in the UK NAP) provide sufficient specificity about the substance of what companies are supposed to report on, or the methods by which they are supposed to report.”¹²⁹

No central repository of reports

98. Another shortcoming of the Modern Slavery Act is that there is no list of companies that are required to report, and no requirement for businesses to upload their statements onto a central database. Anti-Slavery International explained why this was important: “At present, it is not clear which businesses ... are covered by the provision. Without clarity on who is required to report, the public, investors, parliamentarians and the Government itself cannot effectively monitor compliance with the Modern Slavery Act requirements.”¹³⁰

99. Two NGOs have set up their own repositories. One is run by the Business & Human Rights Resource Centre, and at the time of publication, it listed 1,661¹³¹ statements from businesses.¹³² The other, tiscreport.org, lists 23,156¹³³ statements. While these are important projects, and were rightly recognised by the Minister, without a central list of companies required to report under the terms of the Act, it is difficult to put pressure on companies that have not met their obligations.

100. Sarah Newton MP said that “because [the Act] involves a turnover of more than £36 million a year, [companies] will come in and out of the list. That is the complexity”.¹³⁴ In response to further questioning, the Minister indicated that the Government would be doing further work: “I do not think that you will be waiting too much longer, and I do not think you will be disappointed when you see the outcome ... I hope that by the end of the year you will be very pleased with the positive steps that we have taken.”¹³⁵

Scope

101. While the Modern Slavery Act is undeniably an important addition to the regulatory framework in the UK, it has been criticised for focusing only on transparency in relation to slavery, without requiring companies to address the many other human rights issues that may arise in their supply chains.

102. Professor Keith Ewing suggested that companies should be required to report not just on efforts to eradicate modern slavery, but on all four ILO core labour obligations¹³⁶:

“If we are going to have this duty to report, there should be a duty to report on all four core obligations; not just slavery and forced labour but particularly

129 Written evidence from Centre for Human Rights in Practice, University of Warwick ([HRB0024](#))

130 Written evidence from Anti-Slavery International ([HRB0021](#))

131 Figure correct at the time of publication

132 <https://business-humanrights.org/en/uk-modern-slavery-act-registry> [accessed 16 February 2017]

133 Figure correct at the time of publication

134 [Q 102](#) (Sarah Newton MP, Home Office)

135 *Ibid.*

136 Freedom of association and the effective recognition of the right to collective bargaining; the elimination of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

freedom of association and collective bargaining and the relationships that companies have with trade unions throughout their operations. That duty should be complied with in a way whereby trade unions are consulted about the content of the report in order to ensure that there is a level of veracity and reliability about the report.”¹³⁷

103. Lawyers from firms that represent victims in claims against businesses were also in favour of legislation to require “companies or any businesses over a certain size ... to conduct and report on human rights due diligence”.¹³⁸ They believed that this would help to create an evidence trail, which would in turn help to overcome barriers to justice. We explore this issue further in Chapter 6.

Lack of awareness among businesses

104. The large companies that gave evidence were well aware of the Modern Slavery Act and their duties under it. But Andrew Silvester, of the Institute of Directors, quoted research indicating that this was not the case across the board:

“In September this year we asked our members about the Modern Slavery Act and their awareness thereof. These are engaged business leaders who have joined the Institute of Directors and membership organisations ... A third of them had no idea that the Modern Slavery Act exists. We have to be realistic about the fact that if the Government wants business to play a part, and business does want to play a part, it has to be a partner in this [process, rather than having regulation imposed on it].”¹³⁹

Public bodies not included

105. Finally, witnesses argued that the Government has missed an opportunity by not requiring public authorities, along with companies, to report on TISC. The International Learning Lab on Public Procurement and Human Rights noted: “While the Modern Slavery Act 2015 requires businesses to report on measures taken to address slavery and human trafficking, the Act does not establish analogous obligations for public authorities notwithstanding that the budgets of large numbers of public entities exceed the Act’s £36million annual turnover threshold.”¹⁴⁰

Suggestions for improvement

106. Witnesses suggested several ways in which the Modern Slavery Act could be improved to address some of these issues. In particular, many highlighted Baroness Young of Hornsey’s Private Member’s Bill, currently before Parliament, as the appropriate vehicle to bring about improvements.

137 [Q 18](#) (Professor Keith Ewing, King’s College London and Institute of Employment Rights)

138 See, for example, [Q 28](#) (Shanta Martin, Leigh Day)

139 [Q 48](#) (Andrew Silvester, Institute of Directors)

140 Written evidence from International Learning Lab on Public Procurement and Human Rights ([HRB0037](#))

Modern Slavery (Transparency in Supply Chains) Bill

107. On 23 May 2016 Baroness Young of Hornsey introduced a Private Member's Bill; it had its Second Reading in the House of Lords on 8 July 2016. The Modern Slavery (Transparency in Supply Chains) Bill¹⁴¹ seeks to amend the Modern Slavery Act 2015 to:

- Include public bodies in the transparency in supply chains requirements of the Act;
- Require companies and public bodies to publish their statements in their company reports, lodging them with appropriate bodies such as Companies House or the Charity Commission;
- Require the Secretary of State to compile a list of companies that should be compliant with Transparency in Supply Chains, to make it possible for NGOs, civil society and the general public to find the information required for effective monitoring; and
- Prevent public bodies from procuring services from companies that have not conducted due diligence.

108. At the time of publication, the Bill has been passed by the House of Lords, but has not received a Second Reading in the House of Commons.

109. All witnesses who mentioned Lady Young's Bill thought that it would improve the Modern Slavery Act. Anti-Slavery International told us that they considered it "an essential next step in strengthening the Modern Slavery Act".¹⁴²

110. Businesses that gave evidence to the Committee also supported the changes proposed by Lady Young, as a way to level the playing field between good businesses and those that are currently less compliant. Chris Grayer, of NEXT, stated:

"We have worked with Baroness Young on her Private Member's Bill, which tries to extend some of the requirements of the Modern Slavery Act. We support that. Looking at the regulation against third-party labour providers would give us a further piece of authority to practice our diligence in a much more significant way."¹⁴³

Conclusions

111. **The Government is to be applauded for the passing of the Modern Slavery Act 2015, which built on the previous Government's creation of the Gangmasters Licensing Authority, under the Gangmasters (Licensing) Act 2004. The Government has shown genuine leadership, and the issue of modern slavery has been raised in the boardrooms of large companies.**

141 [Modern Slavery \(Transparency in Supply Chains\) Bill \[HL\]](#)

142 [Written evidence from Anti-Slavery International \(HRB0021\)](#)

143 [Q 69](#) (Chris Grayer, NEXT)

112. However, the legislation has shortcomings. In particular, there is no central list of companies required to report. This, coupled with the fact that the reporting requirements on transparency in supply chains are weak, makes it very difficult to hold companies to account.

113. We therefore urge the Government to facilitate the passage of Baroness Young of Hornsey's Modern Slavery (Transparency in Supply Chains) Bill, which would rectify some of these problems, and which is supported by a number of large UK companies. If that bill fails to be enacted in the present parliamentary session, we recommend that the Government bring forward its own legislation in the next session to achieve a similar objective.

114. We also recommend that the Government bring forward legislative proposals to make reporting on due diligence for all other relevant human rights, not just the prohibition of modern slavery, compulsory for large businesses, with a monitoring mechanism and an enforcement procedure.

The Gangmasters Licensing Authority and the Gangmasters & Labour Abuse Authority

115. The Gangmasters Licensing Authority (GLA) is a non-departmental public body (NDPB), which is governed by an independent board and works in partnership to protect vulnerable and exploited workers.

116. The GLA licensing scheme regulates businesses that provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law. Employment agencies, labour providers or 'gangmasters' who provide workers to agriculture, horticulture, shellfish gathering and any associated processing and packaging businesses need to have a GLA licence. This requirement has existed since 1 October 2006.

117. In 2004 20 undocumented Chinese cockle pickers died in Morecambe Bay. In that year the Gangmasters (Licensing) Act was enacted, which also created the offences of acting as an unlicensed gangmaster and using an unlicensed gangmaster.

118. In May 2016, Parliament passed the Immigration Act 2016, which reformed and renamed the GLA to become the Gangmasters and Labour Abuse Authority (GLAA), sitting under a new post of Director of Labour Market Enforcement. Under the provisions of this Act the remit and powers of the GLA are to be extended. The GLA is expected to be given these additional powers in April 2017, at which time it will formally change its name to the GLAA. The additional powers are as follows:

- The GLAA will be given additional powers under the Police and Criminal Evidence Act 1984 (PACE). These will allow the organisation to investigate abuse allegations across the entire UK labour market, rather than just the agriculture and horticulture sector.
- The new GLAA remit allows officers to look into allegations of labour abuse in all aspects of UK business.

- The Labour Abuse Prevention Officer will be a specialist investigator role created within the GLAA. These will be officers specifically detailed to carry out enquiries into labour market abuse offences.

119. On 5 January 2017 the Government announced the first appointment to the new position of Director of Labour Market Enforcement. The new Director, Sir David Metcalf, will set the strategic priorities for all employment enforcement bodies, in order to stamp out exploitation. The new Director will also oversee the GLAA and will work alongside the Independent Anti-Slavery Commissioner, to better tackle exploitation and slavery in the labour market.

Decrease in inspections and enforcement

120. The Ethical Trading Initiative, while very supportive of the work of the GLA, highlighted the recent decrease in inspections and enforcement action:

“Home Office data setting out the number of investigations and prosecutions initiated by the GLA demonstrates that investigations into illegal activities of gangmasters dropped from 134 in 2011 to 68 in 2014 and prosecutions were down from 19 in 2010 to three in 2014.”¹⁴⁴

121. This is a worrying trend, and we were keen to understand the reasons underlying it. Margaret Beels, Chair of the GLA, attributed the decrease in actions taken to a number of factors, including the following: “the fact that we are doing more joint working and how that gets counted in the statistics”; “cases are more complicated so take more effort”; and “because we are getting new powers we have had to take some people offline to train them so that they know how to use the new powers.”¹⁴⁵

122. The coming year will see an increase of both resources and remit for the new GLAA, and we will take an active interest in discovering whether this results in an increase in inspections and enforcement actions against the worst gangmasters.

Licensing powers

123. While the new GLAA will be given expanded investigation and enforcement powers, the Immigration Act did not extend its licensing powers, which will remain confined to the agricultural industry, shellfish and certain processing and packaging industries. There was a feeling among businesses that the failure to extend licensing to the garment industry was a missed opportunity. Mike Barry from Marks and Spencer told us:

“The Gangmasters and Labour Abuse Authority has made such a difference in the food industry by driving a level playing field across the whole industry on a very complex issue that is fundamentally about criminality driven by abuse outside the workplace. The gangmasters start work on the other side of the world, to bring migrants here to abuse them. Our audit system could never track and follow that. What the GLAA has done on food could be brought across proportionately into the world of clothing.”¹⁴⁶

144 Written evidence from The Ethical Trading Initiative (ETI) ([HRB0027](#))

145 [Q 86](#) (Margaret Beels, Gangmasters Licensing Authority)

146 [Q 69](#) (Mike Barry, Marks and Spencer)

124. The Chief Executives of ASOS and New Look also recognised the benefits of the GLAA having a role in the garment industry: “We welcome the expansion of the GLAA remit to include [investigation of] the UK clothing and textile industry and would like to see this become a priority sector.”¹⁴⁷

125. Margaret Beels explained that the Government had not extended licensing powers because it sought “to reach a balance in relation to burdens on business, and there is a school of thought that having to have a licence in order to be in a business creates a burden on business”.¹⁴⁸ When asked which sector would most benefit from licensing, she said: “I think that construction is a real issue, but construction means so many different things. On the whole, I am less concerned about large, well-run construction sites than small-scale renovations of terraced houses or driveways—the smaller scale.”¹⁴⁹

Resourcing

126. Witnesses were clear that in order to cover its expanded remit adequately, the GLAA would need to be properly resourced. The Institute for Human Rights and Business told us:

“The reformulated and renamed Gangmasters and Labour Abuse Authority, with expanded powers and a remit extended across all industry sectors, can play an important part in preventing slavery and exploitation. This is contingent however on adequate resources being allocated to enable it to operate effectively.”¹⁵⁰

127. When asked about the funding the GLA has received and will receive in the future, Margaret Beels said:

“Our budget this year is £4.96 million and our budget next year is £7.78million. We are talking about what is a big increase for us but is still quite a modest amount of resources. We accept that our job is to make the best use of those resources. Do we have enough? We could make good use of more resources.”¹⁵¹

Conclusions

128. Our witnesses acknowledged the improvements the Gangmasters Licensing Authority has made in its sectors. While we welcome the extended powers that will be given to the Gangmasters and Labour Abuse Authority, we urge the Government to ensure that the new body is properly resourced.

129. Further consideration should be given to extending the Authority’s licensing powers to other sectors. In particular, we see merit in introducing a licensing system for the construction industry. UK businesses selling clothes have also expressed support for licensing in the garment sector, which would help them to have confidence in their UK supply chains, and we support this proposal.

147 Written evidence from New Look and ASOS ([HRB0053](#))

148 [Q 87](#) (Margaret Beels, Gangmasters Licensing Authority)

149 *Ibid.*

150 Written evidence from Institute for Human Rights and Business (IHRB) ([HRB0012](#))

151 [Q 85](#) (Margaret Beels, Gangmasters Licensing Authority)

Anti-Slavery Commissioner

130. Kevin Hyland OBE was appointed as the first Independent Anti-Slavery Commissioner in March 2015, leading efforts to tackle slavery and human trafficking. In his first strategic plan, he listed the following priorities:

- To drive improved identification of victims of modern slavery and enhanced levels of immediate and sustained support for victims and survivors across the UK;
- To promote an improved law enforcement and criminal justice response across the UK, to support development and adoption of effective training and to drive improvements in data collection;
- To identify, promote and facilitate best practice in partnership working, and to encourage improved data sharing and high quality research into key issues;
- To engage with the private sector to promote policies to ensure that supply chains are free from slavery and to encourage effectual transparency reporting; and
- To encourage effective and targeted international collaboration to combat modern slavery.

131. The Joint Committee on Human Rights in the previous Parliament was critical of the proposed mandate of the new Anti-Slavery Commissioner when it conducted legislative scrutiny of the Modern Slavery Bill, and the Government made some concessions as a result. However, the then Joint Committee still felt that the mandate was weak, the office could not be described as fully independent, and were disappointed that the office would not be seen to be part of the national human rights machinery.¹⁵²

Partnership building

132. While acknowledging that it is early to be assessing the work of the Anti-Slavery Commissioner, Owen Tudor emphasised the importance of partnership building if the Commissioner is to succeed: “A large part of how we should test the performance of the Commissioner relates to one of the priorities that the Commissioner has set out, which is about developing partnerships to make sure that the work is done effectively ... I have certainly not been approached yet—I do not think any of my staff at the TUC have been approached—about being partners in that process.”¹⁵³

Resourcing

133. The Equality and Human Rights Commission raised concerns about the resourcing of the Anti-Slavery Commissioner: “There are ... weaknesses in the powers of the Anti-Slavery Commissioner and the resources available to them.”¹⁵⁴

134. On appointment, the Anti-Slavery Commissioner was allocated a budget of £500,000. The Office of the Commissioner explained the limitations this imposed:

152 HL Paper 62, HC 779, Legislative Scrutiny: (1) Modern Slavery Bill and (2) Social Action, Responsibility and Heroism Bill, Third Report of 2014–15 Session by the Joint Committee on Human Rights, paras 1.43–1.56

153 Q 19 (Owen Tudor, Trades Union Congress)

154 Written evidence from Equality and Human Rights Commission (EHRC) ([HRB0030](#))

“Currently the Commissioner does not have the resource for a dedicated lead to work on engagement with the private sector and on labour market exploitation issues, as well as other priorities. He is therefore not able to maintain the sustained engagement with the business sector that he would hope for in order to develop projects and partnerships to reduce labour exploitation in the UK and internationally.”¹⁵⁵

Conclusions

135. Engagement with the business sector must be a priority for the Anti-Slavery Commissioner if he is to reduce labour exploitation. We encourage the Commissioner to make this his top priority, and we urge the Government to provide further resources to enable this.

Local authorities

136. During our visit to Leicester, we met representatives of Leicester City Council, and discussed what more they could do to clamp down on poor practices in local factories. We noted that local authorities currently have power to close down certain types of premises where anti-social behaviour is occurring, such as nightclubs and drug-dens, and discussed the feasibility of giving the local council powers to close down factories which have been found to breach employment standards. Council representatives, buyers and suppliers were generally in favour of the idea, but pointed out that the council would need extra resourcing to use such a power. Workers also noted that any closure of non-compliant factories would need to be accompanied by some remediation mechanism, so that employees would not be out of pocket.

Conclusions

137. We recommend that the Government should bring forward legislative proposals to grant powers to local authorities to close down premises which are found to exploit workers through underpayment of wages, lack of employment contracts or significant disregard of health and safety regulations. These new powers must be fully resourced and should be drawn up in consultation with the Gangmasters and Labour Abuse Authority, the Local Government Association and HMRC. In the event of a closure order, the local authority should also be given powers to compel the employer to compensate workers in the premises.

Businesses’ approach to auditing, trade unions and preventing human rights abuses

138. While the scope of our inquiry encompassed different sectors, we looked in most detail at businesses in the garment industry. While in Turkey and Leicester, we had the opportunity to visit factories supplying large UK businesses with clothing, and we asked representatives of a number of brands about their approach to preventing human rights abuses in their supply chains.

155 Written evidence from the Office of the Independent Anti-Slavery Commissioner ([HRB0057](#))

Conducting audits and working with trade unions

139. All the companies we spoke to relied on audits to monitor conditions in factories that supply garments. Most conduct semi-announced audits, where they give the supplier a window of a few weeks or months, during which the audit will take place. Marks and Spencer told us:

“Each year, we say to a supplier, ‘We will come within a three-month window’. A supplier cannot run a factory badly and hide all the bad practice for three months hoping that the audit turns up on the right day. That gives confidence to the good guys. Remember, we have confidence in 99% of our suppliers. We do not want to treat the good guys who pass our screening audits like naughty children. That three months shows them respect, but it means that the bad guys who might creep in cannot keep hiding.”¹⁵⁶

140. We were also told of a level of collaboration between UK companies regarding audits, as many use the same suppliers and the same factories. Some companies, like Marks and Spencer, upload their audit reports to a website,¹⁵⁷ where they can then be accessed by other participating companies.

141. Mulberry told us that it was through their independent audit system that they first heard about issues in a leather factory in Turkey:

“Back in March 2015 we as Mulberry were informed through one of our audit partners that some members of the SF¹⁵⁸ workforce had notified them that there was an issue about dismissals. Interestingly, we found out about the issue through our audit partner. When we do audits, the audit partner hands out cards to the employees so that they can anonymously and without prejudice flag issues through the audit company directly to us.”¹⁵⁹

142. The TUC and the Ethical Trading Initiative, however, believed that auditing was not always an effective way of diagnosing issues in supply chains. They argued that requiring suppliers to recognise a trade union in their factories would give the companies a much more realistic picture of what was happening in practice. To illustrate this point, Owen Tudor gave the example of Rana Plaza, the factory in Bangladesh in which over 1,000 people were killed in 2013. He said that the factory “had been audited by several companies and found to be perfectly okay”. Despite this, he said, “we have also seen a major increase in the amount of industry auditing that is going on. Multinational companies are spending enormous amounts of money on auditing. They accept that it does not work, but it persuades some of their customers that they are doing something about it.”¹⁶⁰

143. The difficulties faced by companies overseeing operations are further exacerbated lower down the supply chain, as explained by Debbie Coulter, of the Ethical Trading Initiative:

“The problems for business are further down the supply chain. The situation our members often face is that the further down the supply chain, the less

156 [Q 67](#) (Mike Barry, Marks and Spencer)

157 <http://www.sedexglobal.com/> [accessed 21 February 2017]

158 SF Leather, the factory referred to by Mulberry.

159 [Q 65](#) (Rob Billington, Mulberry)

160 [Q 13](#) (Owen Tudor, Trades Union Congress)

influence, leverage and oversight they have. Quite often it is further down the supply chain where there are severe labour rights violations. We see that in the UK in the form of modern slavery and we see it in global supply chains in the fields, farms and factories of companies that put goods, services and garments on the shelves and clothing rails of the high street.”¹⁶¹

Costing models

144. During our visit to Leicester, suppliers claimed that it was not difficult for buyers to discern when unscrupulous suppliers were cutting corners. We were told that buyers could assess what garments cost in terms of materials and worker time, and that they should know if the price being quoted was so low as to suggest that the supplier was not paying the minimum wage to workers.

145. Both buyers and manufacturers are in favour of developing open costing mechanisms, which would lay out all production costs to buyers prior to negotiating contracts. Buyers agree that it is necessary to know all the costs of their suppliers, in order to give them a better deal and help to improve working conditions in the industry, while suppliers are in favour of making open costing systems the norm, and believe that greater transparency could help in negotiating fairer and more realistic contracts.

Incentivising good practice among businesses

146. On 13 March 2017, the results of the first Corporate Human Rights Benchmark were launched.¹⁶² The initiative, coordinated by the Business & Human Rights Resource Centre, with funding from the UK Government, is the first-ever ranking of the world’s largest publicly listed companies on their human rights performance.

147. This approach was supported by David Isaac, the Chair of the Equality and Human Rights Commission: “I have seen ... that identifying exemplars can drive huge change. I am thinking in particular about the corporate benchmark for human rights, which I understand is going to be introduced in March ... I advocate a mixed-economy approach in relation to rewards but also penalties.”¹⁶³

Conclusions

148. The companies that gave evidence to this inquiry have recognised some of the issues in their supply chains and have shown a willingness to improve standards. These companies would also welcome more regulation by the Government, so as to improve the practices of all companies.

149. There is still a tendency by many companies to rely on audits, which, the evidence suggests, are not always effective. The Government must provide clearer and more specific guidance to companies about the risks that may present themselves in different supply chains. It should also oblige UK-owned companies to require the recognition of trade union membership of employees as a condition of contracts with suppliers.

150. We support the introduction of the Corporate Human Rights Benchmark, which recognises businesses who are taking human rights due diligence seriously.

161 [Q 48](#) (Debbie Coulter, Ethical Trading Initiative)

162 <https://www.corporatebenchmark.org/> [accessed 13 March 2017]

163 [Q 91](#) (David Isaac, Equality and Human Rights Commission)

6 Access to justice

151. In previous chapters, we have outlined different ways to secure business compliance with human right standards, including, but not limited to, appeals to the moral conscience of businesses; pressure brought to bear by consumers and others; government regulation and initiatives; and preferential access to public sector contracts. This chapter will focus on a fifth avenue: accountability in the courts and other forums.

152. The UK has a range of judicial mechanisms that help to support access to remedy for human rights abuses by business enterprises both at home and overseas. These include:

- Employment Tribunals, which provide access to remedy for abuses of labour rights in the UK.
- Avenues to pursue civil law claims in relation to human rights abuses by business enterprises in the UK and overseas.
- Specific criminal law provisions, including under the Bribery Act 2010 (applies in the UK and overseas), Modern Slavery Act 2015 (applies in the UK and overseas), Serious Crime Act 2007 (applies in the UK and in limited circumstances, overseas), Corporate Manslaughter and Corporate Homicide Act 2007 (applies in the UK) and Gangmasters (Licensing) Act 2004 (applies in the UK).

Current barriers to accessing justice

Difficulties for foreign claimants accessing justice in-country

153. Victims of abuses by UK companies can face difficulties in obtaining justice in the country where the abuse occurred. The solicitors Leigh Day told us:

“Victims of human rights abuses by multinational companies operating in developing states frequently find the impediments to accessing local courts insurmountable. The ability to pursue claims in the multinational’s home state (whose courts will have jurisdiction over claims against the MPC [multinational parent company]), such as in the UK, may often be the only feasible avenue for victims to seek access to justice. Nevertheless, there are multiple barriers to accessing the UK courts in such cases.”¹⁶⁴

154. This was reinforced by the evidence we heard from Mr John Gbei, a claimant in a large class action case brought against Shell by residents of Bodo, Nigeria. Mr Gbei suffered loss of livelihood and quality of life as a result of an oil spill in the Niger Delta. He told us about the process he and fellow claimants went through in order to obtain justice:

“We decided to give it to a Nigerian lawyer because he was our brother, an Ogoni indigen, and Bodo is part of the Ogoni community. We explained that, being our brother, he could pursue justice for us, but unfortunately the matter was with him for two years. He tried to go into negotiation with Shell rather than instituting the case in the court. There was no outcome, no nothing, so after two years of the matter being with him the Bodo people

164 Written evidence from Leigh Day ([HRB0041](#))

decided to withdraw the power from him and give it to a London law firm, Leigh Day & Co ... Also, given the Nigerian legal system, there would be delay, and it was a matter that needed urgent attention ... If you had been to Bodo at that early stage of the spill, you would have discovered that the people were in a bad situation. You would have pitied us. A matter of such magnitude needed not to be delayed in the court.”¹⁶⁵

These comments provide a compelling illustration of the difficulties facing individuals in other countries seeking to promote claims against UK companies or their subsidiaries.

Legal aid and the effect of Rome II

155. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) made significant changes to the legal aid regime. The Business & Human Rights Resource Centre believed that the two most significant changes from a business and human rights perspective were as follows:

“The success fee (still 100% except in cases of personal injury, capped at 25%) must now be paid from the compensation awarded to the victims of abuse;

“the costs incurred by the winning side’s legal team, which are recoverable from the losing side, must now be ‘proportionate’ to the amount awarded in compensation.”¹⁶⁶

156. Richard Meeran, a solicitor at Leigh Day, told us that because of the “change in the law on recoverability of success fees”, the company was reluctant to take these out of its clients’ damages “which means the profitability of the cases has decreased.”¹⁶⁷

157. On the second point, the proportionality test,¹⁶⁸ concern is further exacerbated by the EU Rome II Regulation (Rome II). The Bingham Centre for the Rule of Law told us: “The EU Rome II Regulation provides that for corporate entities domiciled in the EU, the law that applies to claims is the law of the State in which the damage occurred and damages are to be assessed in accordance with that law.”¹⁶⁹

158. Leigh Day summarised the cumulative effect of both the LASPO and Rome II provisions:

“Since 2009, Rome II has required damages in tort cases to be assessed by reference to local levels. The effect is that damages in international corporate human rights abuse claims are generally very low compared to the damages awarded for the same torts occurring in the UK.

165 [Q 38](#) (John Gbei)

166 Written evidence from Business & Human Rights Resource Centre ([HRB0019](#))

167 [Q 28](#) (Richard Meeran, Leigh Day)

168 “The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced a more stringent proportionality test which requires that the expense incurred in running a case should be proportionate to its value. While the proportionality test is more easily met in mass tort claims (where the level of damages is likely to be high), in cases involving a relatively small number of claimants, the costs will often exceed the value of the claim.” (Written evidence from Corporate Responsibility Coalition Ltd (CORE) ([HRB0008](#)))

169 Written evidence from The Bingham Centre for the Rule of Law ([HRB0022](#))

“Simultaneously, LASPO has caused a tightening of the ‘proportionality’ rule, generally requiring costs to be less than damages. With Rome II resulting in relatively low damages, the proportionality rule has often been relied upon by defendant companies to seek to restrict the incurrence of costs in these complex international cases, most specifically in relation to the costs of disclosure, which is an essential tool for victims’ access to evidence.

“LASPO has also resulted in the removal of recovery of success fees from defendants, such success fees now only being recoverable from the Claimants themselves. LASPO has thereby reduced the levels of compensation available to victims and concurrently, the financial viability of lawyers taking on the financial risk in pursuing the claims.”¹⁷⁰

159. When asked about the changes to legal aid and the effect these have had on victims accessing justice, Sir Oliver Heald QC MP, Minister of State for Justice, replied: “The civil legal aid situation is that if there is any question of our international obligations being at stake, which could well apply with human rights, exceptional case funding [ECF] can be made available and the Legal Aid Fund can make that decision.”¹⁷¹ He followed up with supplementary written evidence, in which he clarified the position regarding granting of ECF:

“ECF is available for human rights violations, which relate to the violation of an ECHR or EU law right, subject to the means and merits test, and where the absence of legal aid would constitute, or risk, a violation of that right ... I have asked the Legal Aid Agency, and unfortunately there is no way of breaking down the types of case which receive ECF in order to identify which would fall into this category. I can say that in general, over the last year, around half of total ECF applications have been granted.”¹⁷²

160. However, ECF is limited to an ECHR right or an EU right, whereas most of these type of claims relate to tort claims against companies, rather than to the actions of a public authority (as is required by the Human Rights Act).

161. The Minister also told the Committee that the effects of LASPO would be reviewed over the next two years:

“We are going to produce for the Justice Committee our post-implementation memorandum for the whole of the Act by May [2017]. We are going to do the post-implementation review of legal aid, which is part 1, over the period up to next year. We will produce a Green Paper early in 2018. Part 2 covers conditional fee arrangements, which have been mentioned in evidence to you in this inquiry, and we will review that in 2018.”¹⁷³

162. On the issue of Rome II, the Minister was clear that the benefits of the provision outweighed the costs:

170 Written evidence from Leigh Day ([HRB0041](#))

171 [Q 109](#) (Sir Oliver Heald, Ministry of Justice)

172 Written evidence from Sir Oliver Heald QC MP ([HRB0050](#))

173 [Q 109](#) (Sir Oliver Heald, Ministry of Justice)

“The point about Rome II is that it is well accepted across Europe, obviously, and it is useful that we have the same sorts of rules about how cases that are not contractual are dealt with. The effect of it, which is sometimes criticised, is that it basically works on the idea that the case will take place in the country where the damage occurs. That can mean that those rules require a case to be heard elsewhere in Europe rather than here. On the other hand, there is certainty.”¹⁷⁴

Employment tribunal fees

163. In July 2013 the Government introduced a scheme of fees for claimants wishing to take a case to an employment tribunal.¹⁷⁵ This has led to a fall in the number of cases being taken to employment tribunals. The Equality and Human Rights Commission, which has been monitoring the situation, explained its concerns:

“The Commission is concerned about the substantial drop in workplace discrimination cases following the introduction of employment tribunal fees. This is particularly marked for cases involving discrimination on the basis of sex, disability, race and sexual orientation, and cases on equal pay and unfair dismissal. Given that over four-fifths of claimants for sex discrimination and equal pay cases are women, the introduction of tribunal fees has had a disproportionate impact on this group. Figures from the Ministry of Justice indicate drops of 43 per cent in race discrimination claims and 64 per cent in religion or belief discrimination claims across Great Britain. In Scotland, race discrimination claims have fallen 59 per cent.”¹⁷⁶

The TUC described the policy of employment tribunal fees as “a huge victory for Britain’s worst bosses”,¹⁷⁷ because employees no longer felt able to access justice.

164. Sir Oliver Heald told us that the Government was consulting on some improvements to the scheme, but that overall the policy had worked well:

“We believe that the policy has worked in the way that we intended it to, which was, first, that we would recover some money to help with the costs of running the tribunals and we recovered about the amount that we expected. Secondly, we wanted to improve the take-up of conciliation.”¹⁷⁸

165. In supplementary written evidence, the Minister detailed the numbers of claims to employment tribunals before and after the introduction of tribunal fees; and concurrently the number of referrals to the pre-claim conciliation service. The Government’s view was:

“The introduction of fees in the Employment Tribunals, allied to the introduction of ACAS’s early conciliation service, which became mandatory in May 2014, has led to a dramatic shift in the way that employment related disputes are dealt with, and this is helping many more people to resolve their workplace disputes while avoiding the stress and cost of the tribunal.”¹⁷⁹

174 [Q 109](#) (Sir Oliver Heald, Ministry of Justice)

175 <https://www.gov.uk/employment-tribunals/make-a-claim> [accessed 22 March 2017]

176 Written evidence from the Equality and Human Rights Commission (EHRC) ([HRB0030](#))

177 Written evidence from the Trades Union Congress (TUC) ([HRB0016](#))

178 [Q 110](#) (Sir Oliver Heald, Ministry of Justice)

179 Written evidence from Sir Oliver Heald QC MP ([HRB0050](#))

166. The same assertion was made to the House of Commons Justice Committee during its inquiry into Court and Tribunal Fees. The Justice Committee concluded, however, that the Government's argument that access to justice had not been affected because of the success of the early conciliation service was "even on the most favourable construction, superficial."¹⁸⁰ It also concluded that fees "have had a significant adverse impact on access to justice for meritorious claims",¹⁸¹ and recommended that "the overall quantum of fees charged for bringing cases to employment tribunals should be substantially reduced".¹⁸²

167. The House of Commons Women and Equalities Committee has endorsed the findings of the Justice Committee, also calling for "a substantial reduction in tribunal fees for discrimination cases".¹⁸³

High costs of this type of litigation

168. The circumstances in which victims of human rights abuses by large companies often find themselves tend to mean that they do not have much money with which to pay legal fees. This means that, in order to have legal representation, they need to find a lawyer who will represent them on a no-win, no-fee basis. This significantly reduces the pool of lawyers willing to take on such cases: as the Law Society told us, "For smaller firms, this creates significant cash-flow issues if they take on this type of work, as cases are often protracted, taking years to be resolved."¹⁸⁴

169. Exacerbating this issue is the fact that cases against large multinational companies are invariably very costly. Deighton Pierce Glynn explained some of the factors: "Factual complexities, translation costs, expert costs, travel costs, evidence gathering costs, security costs etc".¹⁸⁵ As a result, case selection can be skewed "towards 'high quantum' cases (usually class actions) in order to ensure recovery of the costs invested in the event of success".¹⁸⁶ It can therefore be extremely difficult for individual victims of a human rights abuse outside the UK by a multinational company to find lawyers willing to represent them.

Conclusions

170. Our evidence indicates that the Government's approach is weakest in the area of access to remedy. There is a lack of engagement from the Ministry of Justice. This was particularly clear to us during our meeting with the Minister, whose answers demonstrated a measure of complacency when confronted with some of the issues we have considered.

171. We heard substantial evidence on the range of obstacles that obstruct access to remedies for victims of human rights abuses by companies. These include the changes to limit legal aid provision, limits on the recovery of legal costs in these types of case,

180 House of Commons Justice Committee, [Courts and Tribunal Fees](#), Second Report of Session 2016–17, HC 167, para 69

181 *Ibid.*

182 *Ibid.* para 79

183 House of Commons Women and Equalities Committee, [Pregnancy and Maternity Discrimination](#), First Report of Session 2016–17, HC 90, para 146

184 Written evidence from The Law Society of England and Wales ([HRB0047](#))

185 Written evidence from Deighton Pierce Glynn ([HRB0033](#))

186 *Ibid.*

increases in court and tribunal fees, and the otherwise high costs of civil action, especially if the abuse has occurred overseas. In addition, court procedures have made it increasingly difficult to obtain access to corporate documents.

172. We look forward to the results of the Government's review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and will follow closely any changes made to that Act, in order to assess whether they are sufficient to mitigate these concerns.

173. We join the Commons Justice and Women and Equalities Committees in calling on the Government to reduce employment tribunal fees. These, it is clear to us, are a barrier to victims seeking justice when they have suffered human rights abuses, including discrimination, at the hands of their employers and offer impunity for employers abusing human rights.

Access to remedy under civil and criminal law

Complexity of corporate structures

174. Accessing justice in respect of human rights abuses committed by large UK companies can be further complicated in cases involving Multinational Parent Companies (MPCs), with subsidiaries in other countries. Leigh Day explained how the law currently operates:

“The doctrine of separate corporate personality means that the circumstances in which the ‘corporate veil’ may be pierced so as to make a shareholder liable for the conduct of companies in which it invests [are] very limited. In the UK, the current legal framework for pursuing claims against MPCs has focused on the direct causative acts and omissions of the MPC itself rather than the acts and omissions of its subsidiaries.”¹⁸⁷

175. Witnesses cited examples where the doctrine of separate corporate personality had been upheld by UK courts, presenting a barrier to victims seeking remedy. One example was the 1990 case of *Adams v Cape Industries Plc*,¹⁸⁸ which:

“concerned US asbestos workers who sued the US company for damages to their health ... They won their case in the US but the US company had no money. It was a subsidiary of the UK company, so they sought to enforce that judgment in the UK courts, which said that they were bound by limited liability and corporate separate personality and could not enforce the judgment against the parent company.”¹⁸⁹

176. In 2012, in a ground-breaking judgment, *Chandler v Cape plc*,¹⁹⁰ the Court of Appeal held that, in appropriate circumstances, the law may impose on a parent company responsibility for the health and safety of its subsidiary's employees. The Court listed four circumstances that should apply:

187 Written evidence from Leigh Day ([HRB0041](#)). See also written evidence from Professor Peter Muchlinski ([HRB0011](#)) and Amnesty International UK ([HRB0014](#)); and supplementary written evidence from International Centre for Trade Union Rights and Professor Keith Ewing ([HRB0043](#)).

188 *Adams v Cape Industries Plc*, [1990] Ch 433

189 [Q 15](#) (Daniel Blackburn, International Centre for Trade Union Rights)

190 *Chandler v Cape plc*, [2012] EWCA Civ 525, <http://www.bailii.org/ew/cases/EWCA/Civ/2012/525.html>

- first, that the businesses of the parent and subsidiary are the same;
- secondly, that the parent has, or ought to have, superior knowledge of health and safety in the particular industry;
- thirdly, that the subsidiary's system of work is unsafe as the parent company knew, or ought to have known; and
- fourthly, that the parent company knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees' protection.

177. In *Chandler v Cape plc*, the claimant, Mr Chandler, had contracted asbestosis as a result of his employment with the subsidiary of Cape plc. He claimed that Cape plc was liable to him on the basis of the common law concept of assumption of responsibility. Ultimately, the Court of Appeal found that the parent company Cape plc owed a direct duty of care to the employees of its subsidiary Cape Products. *Chandler v Cape plc* is a landmark judgment, as it is the first legal precedent for holding parent companies accountable in the context of corporate groups' activities.

178. The effect of *Chandler v Cape* was qualified in 2014, when the Court of Appeal in *Thompson v The Renwick Group Plc*¹⁹¹ held that *Chandler* "required proof that the parent company was better placed, because of its superior knowledge or expertise, to protect the employees of subsidiary companies and that the subsidiary would rely upon the parent deploying its superior knowledge in order to protect its employees from risk of injury".¹⁹²

179. While *Chandler* showed that it is possible for liability to be assigned to the parent company, Richard Meeran told us that companies still used the corporate veil to avoid responsibility for harms done by their subsidiaries:

"I do not think there is any doubt that companies have utilised or attempted to utilise the corporate veil, as they call it, to its full extent. This idea that different corporate entities, even within a multinational group, are separate legal entities, and that the parent company is merely a shareholder which is not liable for the conduct of its subsidiaries, is one that multinationals have relied on very heavily, including in defending the cases that we have brought."¹⁹³

Contracting in supply chains

180. This problem also presents itself when human rights harms are committed by businesses which UK companies have contracted with to provide goods or services. We found this is particularly pertinent in Turkey, where Syrian refugees have found themselves at risk of exploitation by unscrupulous factory owners; and in Leicester, where migrant workers in garment factories are paid below the minimum wage and work in unsafe conditions. While UK companies may choose to remediate the situation in which,

191 Thompson v The Renwick Group Plc, [2014] EWCA Civ 635, [http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2014/635.html&query=\(Thompson\)+AND+\(v\)+AND+\(The\)+AND+\(Renwick\)+AND+\(Group\)+AND+\(Plc\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2014/635.html&query=(Thompson)+AND+(v)+AND+(The)+AND+(Renwick)+AND+(Group)+AND+(Plc))

192 Written evidence from Professor Peter Muchlinski (HRB0011)

193 Q 29 (Richard Meeran, Leigh Day)

for instance, a child labourer is found further down their supply chain, as a number of UK companies have done in Turkey, they cannot be held legally accountable for the actions of their suppliers in a UK court.

Importance of access to both civil and criminal remedies

181. It is clear to us that any legal regime for providing access to justice for victims of human rights abuses by businesses must provide for both civil remedies and criminal sanctions.

182. Civil law allows the victim to pursue their claim directly without recourse to prosecuting authorities. It also enables them, should they win the case, to claim reparation from the offending company, to give appropriate remediation to them for the harm they have suffered. Victims are not able to access any remedy directly themselves when a criminal case is brought, and not all human rights abuses are criminal offences, so civil remedies may be suitable for many human rights abuses that are not criminalised (as well as for those that are criminalised). Punitive damages are also a way of deterring companies for behaving similarly in the future and may incentivise victims to come forward.

183. A number of aspects of criminal law make accessing remedy for victims more difficult than in civil law. Criminal offences, unless subject to strict liability or committed through recklessness, require proof of *mens rea* (criminal intent) by the prosecution. This can be difficult to establish for a business, as the Bingham Centre for the Rule of Law told us: “Intent is based on the intentions of the individuals who direct its mind and will, primarily the directors”. The Centre went on to identify other limitations of the criminal law for victims: “Furthermore, UK criminal law generally only applies to acts committed within the UK, excluding human rights harms committed overseas. Finally, the standard of proof for criminal offences is beyond reasonable doubt, which is higher than for tort, and victims do not receive a direct remedy.”¹⁹⁴

184. Witnesses underlined, though, that there were also benefits in prosecuting companies under criminal law. The London Mining Network told us: “Civil cases can be, and often are, settled out of court. Legal precedents are not set and legal responsibility for abuses not made clear. Frequently the terms of the settlement are to be kept secret.”¹⁹⁵ The public nature of criminal cases meant that “rather than just get a few thousand pounds for an individual, you might be able to have a river cleaned up or have new procedures introduced”.¹⁹⁶

185. Traidcraft, while acknowledging that civil law was important, in enabling victims to obtain compensation, argued that “civil cases do not act as a sufficient deterrent to the business, which can settle out of court under terms which preclude further discussion or publicity about the case. The criminal law is the means by which serious breaches of the standards we expect as a society are punished and companies are subject to criminal law as legal persons, just as individuals are.”¹⁹⁷

194 Written evidence from The Bingham Centre for the Rule of Law ([HRB0022](#))

195 Written evidence from London Mining Network ([HRB0034](#))

196 [Q 29](#) (Sue Willman, Deighton Pierce Glynn)

197 Written evidence from Traidcraft ([HRB0009](#))

Duty to Prevent

186. In July 2011 the Bribery Act 2010 came into force. While the Act did not place a strict liability on companies for bribery, it did reverse the burden of proof, and created an offence of failure to prevent bribery for all companies, including parent companies. In the last five years, the Serious Fraud Office has successfully prosecuted three British companies and 10 individuals, nine of whom were British citizens, for bribery or corruption overseas.¹⁹⁸

187. It has been suggested to us that the model of the Bribery Act might be an appropriate one to apply to business and human rights, both in civil and criminal law. The Bingham Centre for the Rule of Law focused on civil remedies:

“The civil offences regime could focus on having policies and processes to respect human rights, consistent with the UNGP approach of human rights due diligence. The regime would establish civil penalties for human rights harms arising from negligence by a business enterprise, i.e. failure to take reasonable steps to prevent human rights harms. The proper establishment of a human rights policy and proof of its implementation through processes and procedures that were in fact put into practice could provide evidence of a business enterprise taking reasonable steps to prevent human rights harms.”¹⁹⁹

188. This approach was supported by some businesses. Rob Billington from Mulberry stated: “If we all agree that the best way to remove or certainly minimise the risk is to have a more transparent, rigorous due diligence system that we adopt ... compliance with and rigour in that system has to be the best answer”.²⁰⁰

189. Professor Peter Muchlinski believed that it would be justifiable to apply this model throughout a company’s supply chain, so that businesses could be held to account under civil law for the actions of their contractors and sub-contractors:

“Regarding sub-contractors, the UNGPs make clear that liability for indirect harm caused by business associates of a corporation should be part of the latter’s due diligence analysis. Thus the issue of indirect liability for foreseeable harm caused by a sub-contractor can arise in line with the UNGPs where due diligence is not carried out, or carried out properly.”²⁰¹

190. Turning to criminal law measures, the Ministry of Justice has recently launched a consultation on the ‘failure to prevent’ model for economic crimes such as fraud and money laundering.²⁰² CORE argued that the scope of this consultation should be extended to human rights abuses:

198 In addition to this the SFO has secured three Deferred Prosecution Agreements with British companies in the past two years for overseas corruption offences. The first agreement included a financial penalty of \$25m, plus SFO’s full costs; the second resulted in financial orders of £6.6m and the most recent one was for £497.25m plus interest, as well as a payment of the SFO’s full costs. (<http://www.parliament.uk/written-questions-answers-statements/written-question/lords/2017-01-09/HL4401>)

199 Written evidence from The Bingham Centre for the Rule of Law ([HRB0022](#))

200 [Q 74](#) (Rob Billington, Mulberry)

201 Written evidence from Professor Peter Muchlinski ([HRB0011](#))

202 Ministry of Justice, Corporate liability for economic crime: call for evidence: <https://consult.justice.gov.uk/digital-communications/corporate-liability-for-economic-crime/> [accessed 27 February 2017]. It is also worth noting that the Criminal Finances Bill, currently before Parliament, includes recognition that anyone, including a company, which has benefitted from an abuse of human rights (in the UK and overseas) may have their assets frozen.

“While the identification principle affects prosecutions on economic crimes, it equally affects prosecutions for human rights abuses which would be criminal offences under existing UK law. These include serious crimes such as bodily harm, trafficking offences, sexual exploitation and child labour. To address this, the proposed consultation on corporate economic crime should look at how the ‘failure to prevent’ model could be used in other cases where there is good evidence of corporate crime, including human rights abuses by companies.”²⁰³

191. The consensus among all the witnesses who supported the introduction of a criminal offence of failure to prevent human rights abuses was that it should be modelled along the same lines as section 7 of the Bribery Act. This would also seem consistent with the requirement of human rights due diligence on companies under the UNGPs.

Box 3: Comparative Business and Human Rights Legislation

USA

- Dodd-Frank Wall Street Reform and Consumer Protection Act 2010²⁰⁴

This Act contains specific reporting requirements for certain industries in certain localities. S.1502 requires due diligence and supply chain reporting for conflict minerals that have originated in the Democratic Republic of Congo or an adjoining country. This must be independently audited. S.1503 requires mine operators and their parent companies to disclose health and safety violations and any immediate danger notices indicating that a mine potentially violates health and safety standards.

- California Transparency in Supply Chains Act 2010²⁰⁵

California passed legislation requiring companies to disclose their efforts to keep supply chains free from slavery and human trafficking. The obligations apply to corporations doing business in California with annual receipts exceeding \$100 million. These companies are required to post reports online setting out how the company assesses risks of slavery and trafficking in supply chains; whether and how suppliers are audited to ensure compliance; and whether staff are trained on spotting and mitigating risks of slavery and trafficking. Failure to comply results in an action being brought for injunctive relief by the Attorney-General of California. There is no possibility of individuals bringing claims for damages, and there is no provision for compensatory orders.

The Netherlands

- Child Labour Due Diligence Act 2017

The law requires companies to examine whether child labour occurs in their production chain. If that is the case they should develop a plan of action to combat

203 Written evidence from Corporate Responsibility Coalition Ltd (CORE) ([HRB0008](#)). See also written evidence from UNICEF UK ([HRB0005](#)), Traidcraft ([HRB0009](#)), Amnesty International UK ([HRB0014](#)), London Mining Network ([HRB0034](#)); as well as [Q 8](#) (Peter Frankental, Amnesty International UK).

204 <https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf> [accessed 9 March 2017]

205 http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.pdf [accessed 9 March 2017]

child labour and draw up a declaration about their investigation and plan of action. If the Senate gives its approval, the Act will be effective from 1 January 2020. Companies not only have to determine whether there “is a reasonable suspicion” that their first supplier is free from child labour, but also whether child labour occurs further down the production chain. It is yet to be determined which groups of companies - for example, very small companies or companies that are not active in countries or sectors where child labour occurs - are exempted from the Act.

France

- Corporate Duty of Vigilance Law 2017

The law applies to the largest French companies and will make them assess and address the adverse impacts of their activities on people and the planet, by having them publish annual, public vigilance plans (like human rights due diligence assessments). This includes impacts linked to their own activities, those of companies under their control, and those of suppliers and subcontractors, with whom they have an established commercial relationship. When companies default on these obligations, the law empowers victims and other concerned parties to bring the issue before a judge. Judges can apply fines of up to € 10 million when companies fail to publish plans. Fines can go up to € 30 million if this failure resulted in damages that would otherwise have been preventable.

Source: Professor Robert McCorquodale, Dr Virginia Mantouvalou, India Committee of the Netherlands, and the European Coalition for Corporate Justice.

192. We also looked into ways in which companies could be held to account in scenarios where they escape liability for human rights abuses by demonstrating that they have undertaken human rights due diligence. We considered the possibility of introducing strict liability for companies that are found to have abused human rights in their supply chains. This is possible in civil law (such as with some product liability) and would be an inexpensive option for improving access to justice. However, the majority of witnesses felt that ‘failure to prevent’ legislation is a promising option for improving access to justice and should be implemented before resorting to strict liability.

Conclusions

193. **We recommend that the Government should bring forward legislation to impose a duty on all companies to prevent human rights abuses, as well as an offence of failure to prevent human rights abuses for all companies, including parent companies, along the lines of the relevant provisions of the Bribery Act 2010. This would require all companies to put in place effective human rights due diligence processes (as recommended by the UN Guiding Principles), both for their subsidiaries and across their whole supply chain. The legislation should enable remedies against the parent company and other companies when abuses do occur, so civil remedies (as well as criminal remedies) must be provided. It should include a defence for companies where they had conducted effective human rights due diligence, and the burden of proof should fall on companies to demonstrate that this has been done.**

194. **The current criminal law regime makes prosecuting a company for criminal offences, especially those with operations across the world, very difficult, as the focus is**

on the identification of the directing mind of one individual, which is highly unlikely in many large companies. We welcome the Ministry of Justice’s current consultation on a new ‘failure to prevent’ offence for economic crimes. We regret that a range of other corporate crimes, for example use of child labour, were excluded from the consultation, and we urge the Ministry of Justice to consider a further consultation with a wider remit.

Operation of current criminal law investigations and prosecutions

Resourcing and expertise of investigating authorities

195. Under the current criminal law regime, some human rights abuses by companies can be prosecuted in the UK. Deighton Pierce Glynn told us that despite these provisions, “conviction rates are very low. For example, there have been only a handful of convictions for Corporate Manslaughter in the UK, although the number of cases investigated by the Crown Prosecution Service is greater.” Deighton Pierce Glynn continued: “Cross-border cases are more difficult still. This appears to be, in part, a problem of resourcing of the police”,²⁰⁶ as well as prosecuting authorities such as the Serious Fraud Office (SFO).

196. Amnesty International UK felt that, coupled with a lack of resources, there was a lack of knowledge and expertise within the UK’s investigating agencies, about “how to effectively investigate and prosecute corporate crime particularly across borders”.²⁰⁷

197. The Equality and Human Rights Commission identified the following weaknesses in how criminal justice agencies respond to modern slavery:

- “Training for police officers, investigators and prosecutors is patchy and sometimes absent.
- “Modern slavery crime recording is substandard. In 2015/16, only 884 modern slavery crimes were recorded, compared to 3,146 referrals to the National Referral Mechanism (NRM) during the same period. When NRM referrals are not recorded as crimes, investigations are not launched and victims do not receive the justice that they both need and deserve.
- “Operational responses are hampered by insufficient quality and quantity of intelligence about nature and scale of modern slavery at national, regional and international level.
- “Operational agencies lack a structured approach to identify, investigate, prosecute and prevent slavery.
- “Some victims do not benefit from the vulnerable witness protections during Court process.”²⁰⁸

206 Written evidence from Deighton Pierce Glynn ([HRB0033](#))

207 Written evidence from Amnesty International UK ([HRB0014](#))

208 Supplementary written evidence from the Equality and Human Rights Commission ([HRB0052](#))

Sentencing

198. We heard compelling evidence from Margaret Beels, Chair of the GLA, about the lack of deterrent for businesses created by sentencing for gangmasters not in possession of a licence:

“We have regularly been disappointed in cases that we have brought to court in which gangmasters have been successfully prosecuted for not having a licence—these are unlicensed gangmasters—but the fine has been less than they would have to pay to have a licence. One thing that we have been anxious to improve are the sentencing guidelines, so that people who are guilty of these offences feel it in their pockets, because that is where it will hurt them.”²⁰⁹

Conclusions

199. We have heard that criminal prosecuting authorities sometimes lack the skills and resources to investigate human rights abuses by companies, and that, where there has been some action, such as under the GLA, the penalties are too low to be an effective deterrent. The Committee recommends that the prosecuting authorities be better trained and resourced in investigating breaches of human rights which are criminalised, including for cross-border crimes. Sentencing guidelines for these crimes should be created, to ensure that the penalties are high enough to provide an effective deterrent.

Non-judicial access to justice

200. As well as judicial mechanisms, the UK has a number of state-based non-judicial mechanisms for access to remedy, including some which are not directly focused on human rights. These include:

- The UK National Contact Point (NCP), which considers allegations of non-compliance by UK companies with the Organisation for Economic Co-Operation and Development (OECD) Guidelines for Multinational Enterprises. The NCP seeks to determine if there is a dispute and then to mediate an agreement between the parties. Where this is not possible, a determination of whether the enterprise has acted inconsistently with the Guidelines is published and available to the public. The NCP can make recommendations for improvement and can ask companies to provide an update on progress towards implementing these recommendations.
- The Equality and Human Rights Commission, which monitors and promotes human rights compliance and can conduct inquiries.
- The Independent Anti-Slavery Commissioner, who ensures that modern slavery issues are tackled in a coordinated and effective manner across the whole of the UK. He is currently calling for written submissions on how a central repository for modern slavery statements, required under Section 54 of the Modern Slavery Act, can work to help monitor the impact of the Modern Slavery Act.

209 [Q 91](#) (Margaret Beels, Gangmasters Licensing Authority)

- A number of Ombudsmen, Regulators and other Government Complaints Offices in industry sectors, which have various mechanisms to hear complaints, impose sanctions and award compensation. For instance, the Health and Safety Executive, Financial Conduct Authority, Financial Ombudsman Service, and Advertising Standards Agency.
- The Groceries Code Adjudicator, who oversees the relationship between supermarkets and their suppliers. She investigates complaints and arbitrates disputes. The Adjudicator is able to impose penalties on large supermarkets of up to 1% of their total annual UK turnover (not just turnover of groceries), if they breach the Groceries Supply Code of Practice.

UK National Contact Point

201. Of the various non-judicial remedy mechanisms just outlined, our main focus has been on the NCP, which features most prominently in the UK's National Action Plan. The OECD Guidelines for Multinational Enterprises are an annex to the OECD Declaration on International Investment and Multinational Enterprises. They set out principles and standards for responsible business conduct for multinational corporations operating in or from countries that adhere to the Declaration. The Guidelines are legally nonbinding, but 44 governments, including the UK, have agreed to encourage businesses to observe the Guidelines wherever they operate. These recommendations cover different aspects of good practice, including human rights. The Guidelines cover business ethical standards on: employment, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

202. The UK NCP is overseen by a Steering Board. Members of the Steering Board include external members and representatives of Government departments. There are currently four external members, who represent business, trade unions, NGOs and Parliament.

203. The Committee visited the NCP on 3 November 2016. The NCP is housed within the Department for International Trade (having moved from the Department for Business, Innovation and Skills), and is staffed by 2.5 full-time equivalent civil servants.

204. In February 2016 Amnesty International UK and CORE published the results of a joint investigation into the NCP. They claimed that the NCP was failing to tackle human rights abuses,²¹⁰ and that 60% of human rights complaints to the NCP had been rejected before being examined (at the initial assessment stage), while only one complaint had been fully accepted. The report concluded that problems had arisen from: lack of consistency in dealing with complaints; tendency to give undue weight to evidence provided by companies; reluctance to address future threats to human rights from companies' proposed activities; and the fact that the NCPs' complaint assessors (the 2.5 FTE staff who run the NCP) were not experts in human rights.

205. The NCP was heavily criticised by a number of witnesses to this inquiry.

210 Amnesty International UK, *Obstacle Course: How the UK's National Contact Point handles human rights complaints under the OECD Guidelines for Multinational Enterprises* (February 2016): https://www.amnesty.org.uk/files/uk_ncp_complaints_handling_full_report_lores_0.pdf [accessed 27 February 2017]

Setting the threshold for evidence too high

206. Many complaints to the UK NCP are rejected at the first assessment stage, often because the NCP considers that the evidence presented is not sufficient to merit any further investigation. Deighton Pierce Glynn believed that the NCP set too strict a threshold for claims: “The UK NCP has too often avoided dealing with issues of substantive human rights violation by refusing to find that they are material and substantiated (imposing too high a threshold for the satisfaction of this test) and concentrated on matters of corporate due diligence only.”²¹¹

Lack of expertise among NCP staff

207. The staff of the NCP are generalist civil servants, and do not have any particular human rights expertise. Amnesty International UK argued: “The NCP clearly lacks the expertise to address the human rights context of complaints—and it relies too heavily on general policies and information supplied by a company in its defence, even if these have little bearing on the issues raised in the complaint and on the plight of the affected individuals.”²¹²

208. The London Mining Network cited a specific example, where it believed the staff’s lack of expertise led to a poor response from the NCP:

“London Mining Network was involved in assisting Global Justice Now and International Accountability Project in preparing a 2012 complaint to the NCP about the activities of GCM Resources in Bangladesh. The NCP’s findings on the case, published in November 2014, and subsequent statement in September 2015, criticised certain aspects of the company’s behaviour but refrained from passing judgement on the part of the complaint dealing with the company’s plans to remove at least 40,000 people from their rural homes without providing alternative land. This was on the grounds that the removals had not yet taken place. We find it extraordinary that the NCP felt unable to comment on a violation which was openly planned, simply on the grounds that it had not yet taken place.”²¹³

NCP has a low profile and is inaccessible

209. A number of witnesses, including UK companies, were unaware of the NCP and its work. Even those who were aware of it thought that the reason so few labour rights cases had been reported to it was because of its low profile:

“Despite the common occurrence of forced labour and labour exploitation in supply chains of British companies, or British traders trading in commodities that have been produced in forced labour conditions, only a few submissions have been made to the UK NCP on these issues. This raises both the question of how accessible the complaint mechanism is to individual complainants, but also how effectively the NCP operates.”²¹⁴

211 Written evidence from Deighton Pierce Glynn ([HRB0033](#)). See also written evidence from Amnesty International UK ([HRB0014](#)) and The Ethical Trading Initiative (ETI) ([HRB0027](#)).

212 Written evidence from Amnesty International UK ([HRB0014](#))

213 Written evidence from London Mining Network ([HRB0034](#))

214 Written evidence from Anti-Slavery International ([HRB0021](#))

210. This was echoed by Debbie Coulter from the Ethical Trading Initiative, who told us that “as regards the labour rights agenda, it is not necessarily seen as the place to take labour disputes. That may be totally wrong, so that is potentially an argument for it to promote the work it does to wider audiences and to make its work more understandable and accessible.”²¹⁵

211. When asked if they had ever engaged with parliamentarians, staff of the NCP admitted they had not. Since MPs may be the first point of contact for a constituent experiencing a human rights abuse by a business, it would be advisable for the NCP to raise awareness of its work among parliamentarians. However, the NCP must be properly resourced to do so.

No enforcement powers so lack of consequences for businesses

212. If the NCP investigates a complaint and finds that a company has breached the OECD guidelines, it will issue a final statement, which may include a recommendation that the business should take certain actions to comply with the guidelines in the future. The NCP has no powers to enforce its findings, and while the reputational damage may be enough to encourage a company to act on these recommendations, this is not always the case. The Human Rights Centre, Queen’s University Belfast, expressed concern at the lack of enforcement powers: “The value of the NCP seems to lie more in the publicising of the standard as opposed to ensuring compliance or to the enforcement of the remedial aspect of the principles.”²¹⁶

213. While the NCP is designed to supplement judicial options for access to justice, and therefore should not duplicate legal powers to apply financial or criminal sanctions, there are various ways in which decisions by the NCP could be imbued with more direct consequences for businesses. John Morrison, for instance, told us that “The Canadians—and we could easily do this—have said that, if a company is unwilling to come to a national contact point or even respond, Canada will not provide consular services to that company anywhere in the world.”²¹⁷

214. Other witnesses, such as the TUC and Lawyers for Palestinian Human Rights, suggested that it was perverse for businesses that have had critical statements made against them by the NCP to be given export finance or awarded lucrative public sector contracts. In particular, Lawyers for Palestinian Human Rights considered that it was inappropriate for G4S to be awarded a contract to run a Government-funded discrimination helpline, when it had not adequately responded to criticisms made by the NCP:

“G4S’ response to the UK NCP’s findings has objectively fallen short of that expected of a company that expresses it is committed to applying the UN Guiding Principles on Business and Human Rights. We believe G4S’ inability to responsibly admit, let alone sufficiently address, its involvement in human rights violations against Palestinians as found by the UK NCP, raises substantial concern over its ability, suitability and credibility to importantly assist others facing discrimination.”²¹⁸

215 [Q 56](#) (Debbie Coulter, Ethical Trading Initiative)

216 Written evidence from Human Rights Centre, Queens University Belfast ([HRB0015](#))

217 [Q 10](#) (John Morrison, Institute for Human Rights and Business)

218 Written evidence from Lawyers for Palestinian Human Rights ([HRB0046](#))

Lack of resources

215. Much of the criticism levelled against the NCP reflects the limited resources available to it, a fact recognised by a number of witnesses. Andrew Silvester, from the Institute of Directors, acknowledged that “there is certainly a case for things like the National Contact Point to be re-resourced, because it seems it is a little small.”²¹⁹ The TUC also felt that the NCP’s lack of resourcing was preventing it from fulfilling its potential:

“Despite the OECD’s ‘proactive agenda’ (2011), the NCPs remain essentially reactive organisations, relying on cases and complaints being brought to them. Changing this would require a significant commitment from government to expand its remit and provide the necessary resources to do so. We would welcome increasing the resources of the UK NCP, especially to enable it to conduct in-country investigations and mediations.”²²⁰

Conclusions

216. The UK National Contact Point for the OECD Guidelines has the potential to provide meaningful non-judicial access to justice, alongside the more traditional routes of civil and criminal law. The findings of the NCP also have the potential to feed into judicial cases. In its current form, however, the NCP is largely invisible, and lacks the resources and essential human rights expertise necessary to undertake such a role.

217. We urge the Government to address concerns about the NCP as a matter of urgency. It should create an independent steering board for the NCP, with power to review decisions, to lend it greater expertise.

218. In order for the Government to support, and not undermine, decisions of the NCP, we recommend that the Government gives clear guidance to procurement officers that large public sector contracts, export credit, and other financial benefits should not be awarded to companies who have received negative final statements from the NCP and who have not made effective and timely efforts to address any issues raised.

219. We recommend that the Government provide extra resources for the NCP, so that it can raise its profile and be seen as a viable mechanism for victims to gain access justice in a non-legal forum.

220. The Government should itself publicise adverse decisions by the NCP, for instance via written ministerial statements, to assist in raising the profile of decisions.

221. We encourage the NCP to raise its profile by engaging more with parliamentarians, given that MPs in particular often advocate on their constituents’ behalf.

219 Q 56 (Andrew Silvester, Institute of Directors)

220 Written evidence from Trades Union Congress (TUC) ([HRB0016](#))

7 The implications of Brexit

222. In December 2016 we published a report on *The human rights implications of Brexit*,²²¹ which looked, on a preliminary basis, at how human rights might be affected by the UK's withdrawal from the EU. In this inquiry we have considered in more detail the specific business-related human rights that might be affected by Brexit.

The effect of Brexit on workers' rights and reporting standards

223. A number of EU Directives govern the treatment of workers by businesses operating in the EU. These include:

- Employment Directive 2000/78/EC, which prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation in the area of employment.
- Equal Treatment Directive (recast) 2006/54/EC, replacing the original Directive of 2000, and providing for equal treatment in the workplace of men and women. In particular, the Directive provides for: equal pay for equal work or for work of equal value (Article 4); equality in occupational social security schemes (Article 5); and equal access to training and promotion. In order to realise these rights the Directive requires that Member States take positive action to ensure full equality in practice (Article 3).
- Pregnant Workers Directive 92/85/EEC, which encourages the improvement of working conditions for pregnant women and new mothers, and entitles women to a continuous period of maternity leave of 14 weeks and paid leave for ante-natal examinations.
- Equal Treatment Directive 2004/113/EC, which extends the principle of equal treatment of men and women into the sphere of access to and supply of goods and services.
- EU Charter of Fundamental Rights, which contains a number of labour rights. It is binding on EU institutions as well as members states when they apply EU law.

224. Rt Hon David Davis MP, the Secretary of State for Exiting the EU, has made a commitment that there will not be any dilution of workers' rights as a result of Brexit—and it is important to remember that the UK has a long history of equality legislation, dating back to the Race Relations Act 1968 and the Equal Pay Act 1970.²²² More recently, equal treatment legislation (including that derived from EU Directives) has been consolidated in domestic primary legislation, by means of the Equality Act 2010. Nevertheless, David Isaac of the Equality and Human Rights Commission expressed concern about “what future derogation there might be from [EU standards] and that there will be gaps in relation to EU law which might not be plugged”.²²³

221 Joint Committee on Human Rights, [The human rights implications of Brexit](#) (Fifth Report, Session 2016–17, HC 695, HL Paper 88)

222 <https://www.politicshome.com/news/uk/political-parties/conservative-party/news/79518/read-full-david-davis-speech-conservative> [accessed 16 March 2017]

223 [Q 92](#) (David Isaac, Equality and Human Rights Commission)

Increased vulnerability of workers

225. But while the general framework of equality legislation in the UK appears to be secure, concerns were expressed in the aftermath of the referendum vote in June 2016, about the increased vulnerability of EU nationals working in the UK. The Business & Human Rights Resource Centre flagged it as an area of concern:

“The government should also be aware and implement a plan of action concerning the heightened risk of exploitation, including modern slavery, of migrants following the Brexit referendum. The vote to leave the European Union means many migrants from EU countries, particularly those in low skilled or seasonal work, are especially vulnerable as their position and future rights have become more uncertain. This uncertainty will be utilised by unscrupulous employers to exploit already vulnerable workers.”²²⁴

226. Margaret Beels, Chair of the Gangmasters Licensing Authority, raised similar concerns:

“We have already detected that among the workers in the GLA sector there is huge uncertainty and an additional sense of vulnerability. We do not just get that from talking to workers’ representatives, which means the trade unions and NGOs that work with people, but also the labour providers who are experiencing difficulty in getting enough labour to do the work ... So yes, we are concerned, because these are workers who have the right to be here, and they are worried.”²²⁵

EU laws on reporting and procurement

227. The Public Procurement Directives (2014),²²⁶ which introduced an obligation to consider accessibility for disabled people in procurement, and the Directive on Non-Financial Disclosure (2013),²²⁷ which requires large companies to give information on non-financial policies, such as human rights, both featured in the Government’s updated National Action Plan. As a result of Brexit, according to Professor Muchlinski, there was a “risk that EU rules and practices already forming part of the NAP will be undermined and that this will set back specific efforts in those areas”.²²⁸ He advised: “Reinventing the wheel would appear to be a futile waste of time and accumulated expertise. The better course would be to ensure that existing rules and practices relating to the NAP continue by being transposed into UK law and practice.”²²⁹

224 Written evidence from Business & Human Rights Resource Centre ([HRB0019](#))

225 [Q 92](#) (Margaret Beels, Gangmasters Licensing Authority)

226 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024> [accessed 16 March 2017]

227 <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32014L0095> [accessed 16 March 2017]

228 Written evidence from Professor Peter Muchlinski ([HRB0011](#)). See also written evidence from Human Rights Centre, Queens University Belfast ([HRB0015](#)), Hogan Lovells International LLP ([HRB0017](#)) and The Ethical Trading Initiative (ETI) ([HRB0027](#)).

229 Written evidence from Professor Peter Muchlinski ([HRB0011](#))

Conclusions

228. We heard evidence that EU workers are worried about their status within the UK and are less likely to report issues to the authorities, following the vote to leave the EU. This will leave them more vulnerable to labour exploitation.

229. Against the backdrop of Brexit, the Government must urgently reassure workers that all victims of human rights abuses will be protected, without reference to nationality or immigration status, and ensure they have clarity regarding their status in the UK.

230. We recommend that EU laws on reporting and procurement, as well as any relating to workers' rights that are not already set out in primary legislation, should be transposed into UK law by means of the Great Repeal Bill. In the longer term, UK laws on reporting and procurement in relation to human rights should continue to set standards at least as high as those set by the EU.

Human rights clauses in trade deals

231. The EU includes human rights clauses in its international trade agreements with non-EU member states. The EU has also established Guidelines requiring human rights impact assessments for any trade arrangements.²³⁰ While such provisions vary, a standard human rights clause comprises an 'essential elements' clause referring to basic human rights and democracy standards, and a 'non-execution' clause that provides for a mechanism for applying 'appropriate measures' (such as sanctions) if the other party violates an 'essential elements' clause. Such clauses have been invoked by the EU when there has been a coup d'état, for instance, leading to the suspension of financial aid. If the other party to a trade agreement does not comply with this human rights commitment, the agreement or parts of it can, as a last resort, be suspended.

232. The Cotonou Agreement,²³¹ the most comprehensive partnership agreement between the EU and developing countries, forming the basis for the EU's relations with 79 developing countries, is a good example. Article 9(2) states: "Respect for human rights, democratic principles and the rule of law ... shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement". Subject to some procedural preconditions, Article 96 allows "a Party [that] considers that the other Party fails to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law", as set out in Article 9(2), to take "appropriate measures". Any such measures must be "taken in accordance with international law, and proportional to the violation," and "shall be revoked as soon as the reasons for taking them no longer prevail".

233. Once the UK leaves the EU, it will cease to be a party to EU trade deals, and will negotiate new bilateral trade and investment agreements with other countries. There was universal agreement among our witnesses that the UK should, as a minimum, include in any such agreements the same level of human rights protection as are currently seen in EU trade agreements.

230 European Commission, Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiative: http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf [accessed 8 March 2017]

231 http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf [accessed 5 March 2017]

Case for higher standards

234. Notwithstanding what we have just outlined, Professor Keith Ewing criticised the human rights standards set by current EU trade agreements as too low:

“Most free trade agreements have labour clauses in them, but the problem with free trade agreements, certainly compared to EU law, is that they are very, very basic; they deal only with minimum standards. So the Canada-EU free trade agreement, which is in the process of being signed off at the moment, deals with the four ILO principles. You would hope that neither we in this country nor the Canadians would need to be told that we should respect no discrimination, no forced labour, no child labour and freedom of association.”²³²

235. Professor Peter Muchlinski suggested that the UK should look to include the model clause drafted by the United Nations Conference on Trade and Development (UNCTAD)²³³ in future trade agreements:

“A human rights clause could ensure that all Contracting Parties would seek to further corporate compliance with human rights in their domestic laws. In addition, any corporate rights to use treaty-based dispute settlement procedures could be made conditional on the claimant company observing human rights in its operations.”²³⁴

236. Owen Tudor of the TUC raised the enforceability of human rights clauses in trade agreements:

“At the moment, in the agreement between Canada and the EU, the sustainable development chapter allows enforcement only in so far as, if someone alleges a breach of their labour rights as a result of trading arrangements, they can get a committee of experts to come up with a stiffly worded letter. This contrasts with what a company can do if it says that its rights have been abrogated by a trading relationship; they can go to an international court or an international tribunal and get multibillion dollar settlements. It would be useful to have some sort of enforceability in the sustainable development chapters.”²³⁵

237. Asked about the Government’s plans to include human rights clauses in future bilateral trade agreements, Margot James MP, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy, replied: “I certainly would not expect any diminution whatever”²³⁶ from the standards that currently obtain in EU trade agreements. She continued:

“Britain has a higher standard of operation in these matters than is found elsewhere in the world, including in much of the European Union. We are

232 [Q 21](#) (Professor Keith Ewing, King’s College London and Institute of Employment Rights)

233 UNCTAD, *Investment Policy Framework for Sustainable Development* (2015): http://unctad.org/en/PublicationsLibrary/diaepcb2015d5_en.pdf [accessed 5 March 2017]

234 Written evidence from Professor Peter Muchlinski ([HRB0011](#))

235 [Q 15](#) (Owen Tudor, Trades Union Congress)

236 [Q 101](#) (Margot James MP, Department for Business, Energy and Industrial Strategy)

leaving the European Union but we are used to operating with higher ethical business standards and commitments to human rights. Therefore, it would be entirely illogical for us to do an about-turn on that prior position.”²³⁷

These sentiments were echoed by Rt Hon Baroness Anelay of St Johns DBE, Minister of State for the Commonwealth and the UN, Foreign and Commonwealth Office.²³⁸

Conclusions

238. We welcome the Government’s commitment that new bilateral trade agreements will include human rights protections at least equal to those currently included in EU trade agreements. We look forward to seeing this adhered to and will monitor progress with interest.

239. We encourage the Government to use the opportunity of Brexit to set higher human rights standards in future trade agreements, to include workable provisions on enforcement, and to undertake human rights impact assessments before agreeing trade agreements.

237 [Q 101](#) (Margot James MP, Department for Business, Energy and Industrial Strategy)

238 [Q 111](#) (Baroness Anelay of St Johns, Foreign and Commonwealth Office)

Conclusions and recommendations

The UK's Government's approach to human rights and business

1. The UK was the first state to implement the United Nations Guiding Principles on Business and Human Rights by publishing a National Action Plan, and by updating that Plan. The Government has also introduced some welcome legislation, including the Modern Slavery Act 2015. Additionally, the UK has supported a number of other countries to develop National Action Plans and implement the UN Guiding Principles. We commend the Government for the work that it has already undertaken to build its agenda on human rights and business. (Paragraph 50)
2. While acknowledging the leadership the Government has shown in producing the updated National Action Plan, we share the disappointment of many of our witnesses over its modest scope and lack of new commitments. It is difficult to evaluate progress on the older commitments in the absence of a baseline study or a timetable for meeting objectives. (Paragraph 59)
3. We call on the Government, when producing the next update to the National Action Plan, to consult widely with a range of stakeholders, to develop more ambitious and specific targets, and to implement measures to allow for these targets to be evaluated. (Paragraph 60)
4. Issues relating to human rights and business cut across at least six different Government departments. The Government must do more to help relevant stakeholders understand the various departmental responsibilities and must guard against prioritising business concerns over human rights. We also recommend that the Cabinet Office plays a role in coordinating activity across departments. (Paragraph 71)
5. The current Government guidance on the application of human rights considerations to public sector procurement is confusing, and may deter procurement officers from factoring in human rights. (Paragraph 85)
6. If the Government expects businesses to take human rights issues in their supply chains seriously, it must demonstrate at least the same level of commitment in its own procurement supply chains. (Paragraph 86)
7. The Government should exclude companies that have not undertaken appropriate and effective human rights due diligence from all public sector contracts, including contracts with local authorities, which could be over a specified threshold. This should also apply to export credit and other government financial incentives for companies to operate overseas. (Paragraph 87)
8. Companies that have been found to have been responsible for abuses, either by the courts or by the National Contact Point, or where a settlement indicates that there have been human rights abuses, should also be excluded from public sector contracts for a defined and meaningful period. (Paragraph 88)

Preventing human rights abuse by business

9. The Government is to be applauded for the passing of the Modern Slavery Act 2015, which built on the previous Government's creation of the Gangmasters Licensing Authority, under the Gangmasters (Licensing) Act 2004. The Government has shown genuine leadership, and the issue of modern slavery has been raised in the boardrooms of large companies. (Paragraph 111)
10. However, the legislation has shortcomings. In particular, here is no central list of companies required to report. This, coupled with the fact that the reporting requirements on transparency in supply chains are weak, makes it very difficult to hold companies to account. (Paragraph 112)
11. We therefore urge the Government to facilitate the passage of Baroness Young of Hornsey's Modern Slavery (Transparency in Supply Chains) Bill, which would rectify some of these problems, and which is supported by a number of large UK companies. If that bill fails to be enacted in the present parliamentary session, we recommend that the Government bring forward its own legislation in the next session to achieve a similar objective. (Paragraph 113)
12. We also recommend that the Government bring forward legislative proposals to make reporting on due diligence for all other relevant human rights, not just the prohibition of modern slavery, compulsory for large businesses, with a monitoring mechanism and an enforcement procedure. (Paragraph 114)
13. Our witnesses acknowledged the improvements the Gangmasters Licensing Authority has made in its sectors. While we welcome the extended powers that will be given to the Gangmasters and Labour Abuse Authority, we urge the Government to ensure that the new body is properly resourced. (Paragraph 128)
14. Further consideration should be given to extending the Authority's licensing powers to other sectors. In particular, we see merit in introducing a licensing system for the construction industry. UK businesses selling clothes have also expressed support for licensing in the garment sector, which would help them to have confidence in their UK supply chains, and we support this proposal. (Paragraph 129)
15. Engagement with the business sector must be a priority for the Anti-Slavery Commissioner if he is to reduce labour exploitation. We encourage the Commissioner to make this his top priority, and we urge the Government to provide further resources to enable this. (Paragraph 135)
16. We recommend that the Government should bring forward legislative proposals to grant powers to local authorities to close down premises which are found to exploit workers through underpayment of wages, lack of employment contracts or significant disregard of health and safety regulations. These new powers must be fully resourced and should be drawn up in consultation with the Gangmasters & Labour Abuse Authority, the Local Government Association and HMRC. In the event of a closure order, the local authority should also be given powers to compel the employer to compensate workers in the premises. (Paragraph 137)

17. The companies that gave evidence to this inquiry have recognised some of the issues in their supply chains and have shown a willingness to improve standards. These companies would also welcome more regulation by the Government, so as to improve the practices of all companies. (Paragraph 148)
18. There is still a tendency by many companies to rely on audits, which, the evidence suggests, are not always effective. The Government must provide clearer and more specific guidance to companies about the risks that may present themselves in different supply chains. It should also oblige UK-owned companies to require the recognition of trade union membership of employees as a condition of contracts with suppliers. (Paragraph 149)
19. We support the introduction of the Corporate Human Rights Benchmark, which recognises businesses who are taking human rights due diligence seriously. (Paragraph 150)

Access to justice

20. Our evidence indicates that the Government's approach is weakest in the area of access to remedy. There is a lack of engagement from the Ministry of Justice. This was particularly clear to us during our meeting with the Minister, whose answers demonstrated a measure of complacency when confronted with some of the issues we have considered. (Paragraph 170)
21. We heard substantial evidence on the range of obstacles that obstruct access to remedies for victims of human rights abuses by companies. These include the changes to limit legal aid provision, limits on the recovery of legal costs in these types of case, increases in court and tribunal fees, and the otherwise high costs of civil action, especially if the abuse has occurred overseas. In addition, court procedures have made it increasingly difficult to obtain access to corporate documents. (Paragraph 171)
22. We look forward to the results of the Government's review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and will follow closely any changes made to that Act, in order to assess whether they are sufficient to mitigate these concerns. (Paragraph 172)
23. We join the Commons Justice and Women and Equalities Committees in calling on the Government to reduce employment tribunal fees. These, it is clear to us, are a barrier to victims seeking justice when they have suffered human rights abuses, including discrimination, at the hands of their employers and offer impunity for employers abusing human rights. (Paragraph 173)
24. We recommend that the Government should bring forward legislation to impose a duty on all companies to prevent human rights abuses, as well as an offence of failure to prevent human rights abuses for all companies, including parent companies, along the lines of the relevant provisions of the Bribery Act 2010. This would require all companies to put in place effective human rights due diligence processes (as recommended by the UN Guiding Principles), both for their subsidiaries and across their whole supply chain. The legislation should enable remedies against

the parent company and other companies when abuses do occur, so civil remedies (as well as criminal remedies) must be provided. It should include a defence for companies where they had conducted effective human rights due diligence, and the burden of proof should fall on companies to demonstrate that this has been done. (Paragraph 193)

25. The current criminal law regime makes prosecuting a company for criminal offences, especially those with operations across the world, very difficult, as the focus is on the identification of the directing mind of one individual, which is highly unlikely in many large companies. We welcome the Ministry of Justice's current consultation on a new 'failure to prevent' offence for economic crimes. We regret that a range of other corporate crimes, for example use of child labour, were excluded from the consultation, and we urge the Ministry of Justice to consider a further consultation with a wider remit. (Paragraph 194)
26. We have heard that criminal prosecuting authorities sometimes lack the skills and resources to investigate human rights abuses by companies, and that, where there has been some action, such as under the GLA, the penalties are too low to be an effective deterrent. The Committee recommends that the prosecuting authorities be better trained and resourced in investigating breaches of human rights which are criminalised, including for cross-border crimes. Sentencing guidelines for these crimes should be created, to ensure that the penalties are high enough to provide an effective deterrent. (Paragraph 199)
27. The UK National Contact Point for the OECD Guidelines has the potential to provide meaningful non-judicial access to justice, alongside the more traditional routes of civil and criminal law. The findings of the NCP also have the potential to feed into judicial cases. In its current form, however, the NCP is largely invisible, and lacks the resources and essential human rights expertise necessary to undertake such a role. (Paragraph 216)
28. We urge the Government to address concerns about the NCP as a matter of urgency. It should create an independent steering board for the NCP, with power to review decisions, to lend it greater expertise. (Paragraph 217)
29. In order for the Government to support, and not undermine, decisions of the NCP, we recommend that the Government gives clear guidance to procurement officers that large public sector contracts, export credit, and other financial benefits should not be awarded to companies who have received negative final statements from the NCP and who have not made effective and timely efforts to address any issues raised. (Paragraph 218)
30. We recommend that the Government provide extra resources for the NCP, so that it can raise its profile and be seen as a viable mechanism for victims to gain access justice in a non-legal forum. (Paragraph 219)
31. The Government should itself publicise adverse decisions by the NCP, for instance via written ministerial statements, to assist in raising the profile of decisions. (Paragraph 220)

32. We encourage the NCP to raise its profile by engaging more with parliamentarians, given that MPs in particular often advocate on their constituents' behalf. (Paragraph 221)

The implications of Brexit

33. We heard evidence that EU workers are worried about their status within the UK and are less likely to report issues to the authorities, following the vote to leave the EU. This will leave them more vulnerable to labour exploitation. (Paragraph 228)
34. Against the backdrop of Brexit, the Government must urgently reassure workers that all victims of human rights abuses will be protected, without reference to nationality or immigration status, and ensure they have clarity regarding their status in the UK. (Paragraph 229)
35. We recommend that EU laws on reporting and procurement, as well as any relating to workers' rights that are not already set out in primary legislation, should be transposed into UK law by means of the Great Repeal Bill. In the longer term, UK laws on reporting and procurement in relation to human rights should continue to set standards at least as high as those set by the EU. (Paragraph 230)
36. We welcome the Government's commitment that new bilateral trade agreements will include human rights protections at least equal to those currently included in EU trade agreements. We look forward to seeing this adhered to and will monitor progress with interest. (Paragraph 238)
37. We encourage the Government to use the opportunity of Brexit to set higher human rights standards in future trade agreements, to include workable provisions on enforcement, and to undertake human rights impact assessments before agreeing trade agreements. (Paragraph 239)

Declaration of Lords' interests

Baroness Hamwee

Board Member at Safer London.

A full list of Members' interests can be found in the Register of Lords' interests.

Formal Minutes

Wednesday 29 March 2017

Members present:

Ms Harriet Harman MP, in the Chair

Ms Karen Buck MP	Baroness Hamwee
Jeremy Lefroy MP	Baroness Lawrence of Clarendon
Amanda Solloway MP	Baroness O’Cathain
	Baroness Prosser
	Lord Trimble
	Lord Woolf

Draft Report (*Human Rights and Business 2017: Promoting responsibility and ensuring accountability*), proposed by the Chair, brought up and read.

Ordered, That the Chair’s draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 239 read and agreed to.

Summary read and agreed to.

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

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of House of Commons Standing Order No. 134.

[The Committee adjourned.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 20 July 2016

Question number

John Morrison, Chief Executive, Institute for Human Rights and Business, **Marilyn Croser**, Executive Director, Corporate Responsibility Coalition, and **Peter Frankental**, Economic Relations Programme Director, Amnesty International UK

[Q1–10](#)

Wednesday 7 September 2016

Daniel Blackburn, Director, International Centre for Trade Union Rights, **Professor Keith Ewing**, King's College London and President of the Institute of Employment Rights, and **Owen Tudor**, Head of European Union and International Relations, Trade Union Congress

[Q11–24](#)

Wednesday 19 October 2016

Shanta Martin, Leigh Day, Richard Meeran, Leigh Day, **Sue Willman**, Deighton Pierce Glynn, and **Ingrid Gubbay**, Hausfeld LLP

[Q25–34](#)

Wednesday 2 November 2016

John Gbei

[Q35–46](#)

Wednesday 16 November 2016

Andrew Silvester, Head of Campaigns, Institute of Directors, **Debbie Coulter**, Head of Programmes, Ethical Trading Initiative

[Q47–61](#)

Wednesday 25 January 2017

Rob Billington, Group Production and Sourcing Director, Mulberry, **Mike Barry**, Sustainable Business Director, Marks & Spencer, **Nick Beighton**, Chief Executive, ASOS, **Chris Grayer**, Global Code of Practice Manager, Next

[Q62–76](#)

Wednesday 1 February 2017

David Isaac, Chair, Equality and Human Rights Commission, **Margaret Beels**, Chair, Gangmasters Licensing Authority, **Karen Jochelson**, Director, Economy and Employment programme, Equality and Human Rights Commission

[Q77–94](#)

Wednesday 8 February 2017

Margot James MP, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy, **Chris Carr**, Deputy Director Corporate Frameworks & Accountability, Department of Business, Energy and Industrial Strategy, **Sarah Newton MP**, Parliamentary Under-Secretary of State, Home Office

[Q95–105](#)

Rt Hon Baroness Anelay of St Johns DBE, Minister for the Commonwealth and the UN, Foreign and Commonwealth Office, **Rob Fenn**, Head of Human Rights and Democracy Department, Foreign and Commonwealth Office, **Rt Hon Sir Oliver Heald QC MP**, Minister of State for Courts and Justice, Ministry of Justice, **Rob Linham OBE**, Acting Deputy Director, Human Rights and Devolution Policy, Ministry of Justice

[Q106–114](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

HRB numbers are generated by the evidence processing system and so may not be complete.

- 1 Age UK ([HRB0003](#))
- 2 Amnesty International UK ([HRB0014](#))
- 3 Anti-Slavery International ([HRB0021](#))
- 4 Association for Labour Providers ([HRB0026](#))
- 5 Bingham Centre for the Rule of Law ([HRB0022](#))
- 6 Business & Human Rights Resource Centre ([HRB0019](#))
- 7 CAFOD ([HRB0018](#))
- 8 Centre for Human Rights in Practice, University of Warwick ([HRB0024](#))
- 9 Christian Aid ([HRB0029](#))
- 10 Co-op ([HRB0059](#))
- 11 Corporate Responsibility Coalition Ltd ([HRB0008](#))
- 12 Deighton Pierce Glynn ([HRB0033](#))
- 13 Department for Business, Energy and Industrial Strategy ([HRB0044](#))
- 14 Department for Business, Energy and Industrial Strategy ([HRB0058](#))
- 15 Department for Business, Energy and Industrial Strategy ([HRB0060](#))
- 16 Embassy of Turkey, London ([HRB0051](#))
- 17 Environmental Justice Foundation (EJF) ([HRB0007](#))
- 18 Equality and Human Rights Commission ([HRB0030](#))
- 19 Equality and Human Rights Commission ([HRB0052](#))
- 20 Gangmaster Licensing Authority ([HRB0055](#))
- 21 Hogan Lovells International LLP ([HRB0017](#))
- 22 Human Rights Centre QUB ([HRB0015](#))
- 23 Institute for Human Rights and Business (IHRB) ([HRB0012](#))
- 24 Institute of Directors ([HRB0045](#))
- 25 International Centre for Trade Union Rights and Professor Keith Ewing ([HRB0042](#))
- 26 International Centre for Trade Union Rights and Professor Keith Ewing ([HRB0043](#))
- 27 International Corporate Accountability Roundtable ([HRB0038](#))
- 28 International Learning Lab on Public Procurement and Human Rights ([HRB0037](#))
- 29 Lawyers for Palestinian Human Rights ([HRB0046](#))
- 30 Leigh Day ([HRB0041](#))
- 31 London Mining Network ([HRB0034](#))
- 32 London Universities Purchasing Consortium ([HRB0036](#))
- 33 Marks & Spencer ([HRB0013](#))

- 34 Ministry of Justice ([HRB0050](#))
- 35 Professor Peter Muchlinski ([HRB0011](#))
- 36 New Look & ASOS ([HRB0053](#))
- 37 Nomogaia ([HRB0028](#))
- 38 Northern Ireland Business and Human Rights Forum ([HRB0004](#))
- 39 Northern Ireland Human Rights Commission ([HRB0031](#))
- 40 Office of the Independent Anti-Slavery Commissioner ([HRB0057](#))
- 41 Office of the UN High Commissioner for Human Rights ([HRB0032](#))
- 42 Progressio (CIIR) and Gender and Development Network ([HRB0006](#))
- 43 Sarita Shah ([HRB0056](#))
- 44 Shell International Ltd ([HRB0054](#))
- 45 techUK ([HRB0020](#))
- 46 The Ethical Trading Initiative ([HRB0027](#))
- 47 The IARS International Institute ([HRB0010](#))
- 48 The Law Society of England and Wales ([HRB0047](#))
- 49 tiscreport.org ([HRB0049](#))
- 50 Trades Union Congress ([HRB0016](#))
- 51 Traidcraft ([HRB0009](#))
- 52 UNICEF UK ([HRB0040](#))
- 53 UNICEF UK ([HRB0005](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Legislative Scrutiny: Trade Union Bill	HL Paper 92/HC 630
Second Report	The Government's policy on the use of drones for targeted killing	HL Paper 141/HC 574
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HL Paper 145/HC 648

Session 2016–17

First Report	Legislative Scrutiny: Investigatory Powers Bill	HL Paper 6/HC 104
Second Report	Counter-Extremism	HL Paper 39/HC 105
Third Report	Legislative Scrutiny: (1) Children and Social Work Bill; (2) Policing and Crime Bill; (3) Cultural Property (Armed Conflict) Bill	HL Paper 48/HC 739
Fourth Report	The Government's policy on the use of drones for targeted killing: Government Response to the Committee's Second Report of Session 2015–16	HL Paper 49/HC 747
Fifth Report	The human rights implications of Brexit	HL Paper 88/HC 695
First Special Report	Counter-Extremism: Government Response to the Committee's Second Report of Session 2016–17	HC 756