

BRIDGING THE LEGISLATIVE GAP ON CORPORATE EXPLOITATION

Luise Schroter of the Corporate Justice Coalition on calls for a new law to improve corporate accountability

Should UK companies be allowed to profit from the exploitation of people in their upstream and downstream supply chains? From environmental destruction? From violating human rights?

These are rhetorical questions to which most would probably say: no, of course not. Yet these abuses happen with shocking regularity in value chains involving UK companies.

From worker exploitation in Leicester¹ to environmental destruction in the Niger Delta² to the killing of human rights defenders in Indonesia³, UK companies are involved in – and indeed profit from – value chain human and labour rights abuses and environmental destruction both in the UK and overseas.

Voluntary commitments by companies have long failed to tackle these issues. At the international level, via the UN, this was recognised to be true more than a decade ago via the unanimous support – including from the UK – of a new approach to stop and remediate such abuses: ‘human rights and environmental due diligence’.

A new law specifically requiring UK businesses to undertake due diligence to prevent human rights abuses and environmental harms linked to their activities is desperately needed – and called for by parliamentarians, businesses, investors, civil society organisations, trade unions and the UK public.⁴

YouGov polling shows that 4 in 5 Britons⁵ are in favour of new laws to end exploitation and environmental destruction, and more than 125,000 have signed a petition for a new Business, Human Rights and Environment Act.

The new government must heed these calls and live up to its long history of legislating for more equality, social justice and environmental protection. Businesses already committed to human rights and the environment need a level playing field. Corporate impunity for those exploiting people and planet must end.

The business responsibility to respect human rights and the environment is by no means a new concept. In 2011, the UN Human Rights Council unanimously adopted the UN

1 <https://www.bbc.co.uk/news/uk-67218916>

2 Corporate Justice Coalition – Bridging the gap. November 2023

3 Demanding accountability – Strengthening corporate accountability and supply chain due diligence: Indonesian palm oil sector case studies, T Griffiths and N Jiwan, June 2021

4 www.goodbusinessmatters.org

5 YouGov poll conducted for Corporate Justice Coalition and Friends of the Earth with 2,124 UK adults 5th-7th April 2024, available at <https://corporatejusticecoalition.org/news/press/press-release-four-in-five-uk-adults-support-new-laws-to-tackle-environmental-harm-and-human-rights-abuses-in-company-supply-chains/>

Guiding Principles on Business and Human Rights (UNGPs) and acknowledged that respecting human rights is the global standard of expected conduct for all businesses. This includes respect for the environment and labour rights, as made clear by various international bodies and instruments.⁶

According to the UNGPs, businesses should undertake human rights and environmental due diligence (HREDD), a process to ‘identify, prevent, mitigate and account for’ how they address harm occurring in their operations and value chains. Barriers to justice for those affected have to be broken down and harms remedied.

Yet, few businesses conduct HREDD. KnowTheChain, which scores companies in the ICT, food and beverage, and apparel sectors based on voluntary adherence to the UNGPs, gave an average overall score of 19/100 across all three sectors in 2023.

Perhaps unsurprisingly, given this reality, the situation for victims has not improved. They continue to face barriers to justice and claims for damages for human rights and environmental harm are tied up in courts for years.

Take the example of a claim against Shell from Niger Delta communities which reached the UK Supreme Court in 2021 after a six-year slog. Having only addressed whether jurisdiction exists, the case is still unresolved. The Ogalé and Bille communities continue to suffer from widespread oil pollution contaminating their water and destroying their way of life. The cost and time it takes to bring cases like these to court, the jurisdiction challenges created by harms occurring in one country at the hands of parent companies in another, and the fact that most of the relevant information is often in the hands of the accused business, make it impossible for most victims to ever receive remedy from the courts.

The Shell case led to a landmark ruling which, if not backed up by legislation, shows businesses how to escape liability in the future. The Supreme Court established that a duty of care can exist between parent companies and those affected by their subsidiaries under certain conditions, e.g. group-wide policies. Thus, businesses seeking to avoid liability will loosen their control over their subsidiaries in the future – the very opposite of what the UNGPs envision.

Yet while businesses continue to fail to conduct HREDD, there is cause for hope in the evident global trend towards embedding mandatory HREDD into domestic laws. Germany, France and Norway have stepped up and adopted value chain due diligence legislation. The EU followed suit and adopted a directive this spring. Meanwhile, the UK is lagging behind, failing in its commitment to the UNGPs.

There has been a distinct failure from government to address corporate human rights abuses and environmental destruction

While breaking new ground, the Modern Slavery Act 2015’s ‘transparency in supply chains’ provision has failed to end forced labour in corporate value chains. Its limited demand for value chain transparency – without action to tackle abuses – is not enforced, with, shockingly, some 40 percent⁷ of businesses consequently not bothering to comply. As Parliament’s former Business, Energy and Industrial Strategy (BEIS) Committee put it in 2021: the act and BEIS department policy are ‘not fit for purpose’ to tackle forced labour in value chains.

⁶ Eg OECD Guidelines for Multinational Enterprises (2023)

⁷ Briefing from Business & Human Rights Resource Centre and Modern Slavery Registry (February 2021)

In the same year, Parliament's Foreign Affairs Committee recommended the introduction of new legislation requiring businesses and the public sector 'to take concrete measures to prevent and remove the use of forced labour in their value chains'. Its advice was ignored by the former government.

The Environment Act 2021, the first legislation to include value chain due diligence, also falls short. The Act's deforestation due diligence schedule still requires regulation to become operationalised, is limited to illegal deforestation, and does not address Indigenous Peoples rights. Notably, the former government ignored its own multi-stakeholder taskforce's recommendation to introduce mandatory human rights and environmental due diligence.

The UK was not always a laggard. It was once, briefly, a leader on these issues on the global stage: it was the first country to publish a National Action Plan on the implementation of the UNGPs. But then it started to rely more on symbolic law-making – sub-par laws adopted for political ends – rather than legislating to tackle both causes and symptoms of human rights abuses.

The blueprint for effective, world-leading corporate legislation, a 'failure to prevent' mechanism, has existed since the 2010 Bribery Act. Crucially, it was specifically recommended to be used as a model for implementing the UNGPs by Parliament's – cross-party – Joint Committee on Human Rights in 2017.

In the past decade, laws on criminal finances and economic crime have all adopted the failure to prevent model. In 2020, the British Institute for International and Comparative Law concluded that using the same model for human rights due diligence is legally feasible. And in 2022, the Law Commission listed it as one of the options for reforming corporate criminal liability.

There is little doubt that this world-leading model would hold great value for transposing the UNGPs into UK domestic law. Firstly, it would require businesses to conduct effective human rights and environmental due diligence to prevent human rights abuses and environmental harm. Secondly, once any harm occurs, it would lead to improved judicial decision-making and access to justice as the burden of proof would rest with the party best equipped to provide it: businesses.

In November 2023, the crossbench peer Baroness Young of Hornsey introduced the 'Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Bill' in the House of Lords. The bill uses the failure to prevent model and is a laudable example of what a thoroughgoing due diligence law – what Corporate Justice Coalition calls a Business, Human Rights and Environment Act – could look like.

The ball is very much in the court of the new government. The Labour Party's National Policy Forum has committed to 'assess' the best way to prevent human rights abuses and environmental harm. And, during the second reading of Baroness Young's Bill, Labour said it supported the principles of the Bill. We will need to see action.

It is abundantly clear that government cannot sit idle while corporate impunity reigns – and while neighbouring trade partners move forward with their own new value chain laws: the pressure for change is increasingly both moral and pragmatic.

Do it right, and the UK can begin to move from laggard back to leader and, crucially, stop UK business and investor complicity in the wrecking of people and planet in the name of profit.

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This essay is part of a collection of thought pieces curated by Amnesty International UK and Labour Campaign for Human Rights. June 2024

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