



BIS Committee Inquiry into Rebalancing the Economy: Trade and Investment

Submission from Amnesty International UK

Amnesty International is a worldwide movement of people who campaign for internationally recognised human rights to be respected and protected. Our vision is for every person to enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Our mission is to conduct research and take action to prevent and end grave abuses of all rights – civil, political, social, cultural and economic.

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1. Summary of Recommendations

Amnesty International urges the BIS Committee to address the following issues with regard to the UK government's policy and actions on trade and investment:

Issue 1

How to ensure that the UK's approach to trade and investment promotion does not compromise human rights.

Issue 2

How to ensure that the UK's policy on trade and investment reflects the 'due diligence' framework for the operations of multinational corporations that has been developed by the UN Special Representative on Business and Human Rights, Professor John Ruggie.

Issue 3

How to address the reputational and financial consequences faced by UK companies that fail to respect human rights in their overseas operations.

Issue 4

How to improve the accountability and oversight of the UK's Export Credits Guarantee Department (ECGD) for the human rights impacts of projects and transactions that ECGD supports.

Issue 5

How to ensure that the UK's policy on trade and investment contributes to higher standards for companies at inter-governmental level.

Issue 6

How to ensure that all treaties underpinning trade and investment that UK is a signatory to, whether Bilateral Investment Treaties (BITs), regional investment treaties, economic partnership agreements or free trade agreements can be framed in a way that does not undermine the international human rights law obligations of any of the States that are party to such agreements.

2. Background

2.1 Amnesty International is submitting evidence to this inquiry, because there are human rights implications arising from the UK's trade and investment strategy and policies. While this submission addresses specific issues of relevance to the UK, it is informed by the broader context of the interface between human rights and international trade and investment.

2.2 The integration of human rights into international trade and investment is a topical issue in the light of the growing body of evidence on the ways in which international trade and investment affects human rights, enhancing rights under some circumstances and undermining rights under others.¹ It is a development issue in so far as the integration of the norms, standards and principles of the international human rights system into the superstructure of inter-State trade and investment can influence plans, policies and processes of development.² It also engages general principles of international law and contract law with regard to mechanisms for embedding human rights into international trade and investment agreements and for adjudicating disputes.³

2.3 The term 'human rights' is used here to refer to those standards that are guaranteed through international legal instruments, in particular the International Bill of Rights, various regional human rights instruments, customary international human rights law, general principles of international human rights law, case law, and officially documented opinions of the bodies established to monitor the implementation of these rights.

¹ S. Aaronson and J. Zimmerman, *Trade Imbalance: The Struggle to Weigh Human Rights Concerns in Trade Policymaking* (2007)

² M. Robinson, 'What Rights Can Add to Good Development Practice' in Alston, P. and Robinson, M. (eds) *Human Rights and Development: Towards Mutual Reinforcement* (2005)

³ J. Hu, 'The Role of International Law in the Development of WTO Law', in *Journal of International Economic Law*, (2002) Vol.13 No.4, p753-814; M. Sornarajah, *The International Law on Foreign Investment* (2010)

3. **Specific Issues and Recommendations**

3.1 **Amnesty International urges the BIS Committee to consider steps that can be taken to ensure that the UK's approach to trade and investment promotion does not compromise human rights**

3.1.1 The suggestion that the UK's focus on trade and investment promotion should not compromise human rights reflects the recommendations of the House of Lords and House of Commons Joint Committee on Human Rights (JCHR) in their December 2009 report "*Any of our Business? Human Rights and the UK Private Sector*". The JCHR drew attention to the need for a UK strategy on Business and Human Rights. Such a strategy would ensure that the UK's trade and investment policies are consistent with the UK's international human rights obligations, and with the evolving policies that different Government departments are adopting in the sphere of business and human rights.

3.1.2 Ensuring that human rights are taken account of in the UK's trade and investment strategy would require at the very least the following to be in place:

- a) Country desk officers and staff within UK missions should understand the human rights context of UK companies operating in their countries. The FCO-initiated Toolkit on Business and Human Rights is an important step in this direction, but it needs to be supported by training and awareness-raising, so that missions can intervene in contexts where UK companies are alleged to be contributing to human rights abuses, and can engage effectively with companies on these issues.
- b) Trade-promotion delegations should be aware of and find ways of raising human rights issues with their hosts, especially when these are relevant to the trade and investment activities of UK companies operating in the host country.
- c) There should be joined-up thinking on business and human rights across Government departments, including the Department for Business, Innovation and

Skills (BIS), the Foreign and Commonwealth Office (FCO), the Department for International Development (DFID) and the Ministry of Justice (MoJ). Different governmental bodies relate to these issues in different and sometimes inconsistent ways. There is the need for all Government departments and agencies relating to trade and investment to consider how to encourage and incentivise companies to address their human rights impacts. For example, UK Trade and Investment (UKTI), an arm of the Government that promotes international trade and investment by UK companies, does not address human rights issues in its country briefings. Colombia is described misleadingly on UKTI's website as '*enjoying a long tradition of economic and political stability*'. Human rights are not referred to amongst the challenges for businesses operating in Colombia, despite the many UK companies that have had their reputations tarnished because of associations with human rights violations in that country.

3.2 Amnesty International urges the BIS Committee to press for the UK's policy on trade and investment to reflect the 'due diligence' framework for the operations of multinational corporations that has been developed by the UN Special Representative on Business and Human Rights, Professor John Ruggie

3.2.1 The Mandate of the UN Special Representative on Business and Human Rights offers the prospect of bringing about a significant improvement in the human rights impacts of companies globally. The UK should promote and support the UN Special Representative's Guiding Principles when they are presented to the Human Rights Council in June 2011, as this will help create a level playing field on human rights, ensuring that responsible UK companies are not undercut by laggards operating to lower standards.

3.2.2 The UK should support the creation of a mechanism at the June 2011 Human Rights Council to take forward Professor Ruggie's Guiding Principles, with regard to each of the three pillars of his framework – the Duty of States to **Protect** human rights; the Responsibilities of Companies to **Respect** human rights and the need for victims to have access to **Remedy**.

3.3 Amnesty International urges the BIS Committee to consider the reputational and financial consequences faced by UK companies that fail to respect human rights in their operations abroad, and how the UK can do more to hold these companies accountable

3.3.1 Outward investment by UK companies that fails to respect the human rights of those individuals and communities affected by the investment does carry costs for the UK. This is particularly the case in areas of conflict, where many UK companies have suffered, reputational damage, experienced significant increases in their operating costs, and in some case have been unable to continue their operations.

3.3.2 Given the number and range of transnational companies based in the UK and the capacity of these companies to have significant impacts on human rights globally, the fact that there is at present only sporadic regulation of the extra-territorial impacts of corporate activity contributes to a serious regulatory failure. There are some spheres of activity in which UK companies are already subject to UK regulations that have extra-territorial effect, such as bribery and corruption, financing of terrorism, trafficking, and anti-competitive activity. Currently, however, the UK has not taken steps to regulate the extra-territorial human rights impacts of UK companies to ensure greater protection of human rights globally.

3.3.3 Research undertaken by Amnesty International⁴ and its partners in the Corporate Responsibility (CORE) Coalition reveals that UK companies have committed or contributed to human rights abuses in many countries and contexts.⁵ In some cases the company is the primary agent of the abuse, while in other cases it is the company's relationships with third parties, such as governmental agencies and security forces, that has given rise to the abuse.

⁴ *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, Amnesty International, 2009; *Don't Mine us Out of Existence: Bauxite Mine and Refinery Devastates lives in India*, Amnesty International, 2010

⁵ Five case studies of UK companies were published by the Corporate Responsibility (CORE) Coalition and the LSE in *The reality of rights: Barriers to accessing remedies when business operates beyond borders*, 2009

3.3.4 The UK government, via the UK's National Contact Point under *The OECD Guidelines for Multinational Enterprises* (located within BIS), has declared several UK companies to be in breach of the Guidelines.⁶ One of these companies, Vedanta Resources, was recently denied a licence to operate a mine in Orissa, India, and was refused permission to expand its existing refinery there on account of adverse impacts on human rights. The company has admitted that this is having significant consequences. This has been reflected in its share price, which has underperformed the market since these licences were refused. It has also led to concern amongst investors, some of whom have divested their shareholding.

3.4 Amnesty International urges the BIS Committee to consider steps to improve the accountability and oversight of the UK's Export Credits Guarantee Department (ECGD) for the human rights impacts of projects and transactions that ECGD supports. This should be done with regard to the following:

3.4.1 The extent to which fundamental policy decisions have been taken by the ECGD without any assessment of their impacts on human rights despite evidence that there is a human rights dimension to those policy changes. One such policy decision is the downgrading of the ECGD's Business Principles, which were introduced in 2000 to ensure that the ECGD's conduct is consistent with the UK's international obligations. Another policy decision is the removal of certain types of transactions, such as those falling under the remit of the Letter of Credit Guarantee Scheme (LCGS), from screening procedures that might identify prospective human rights abuses. Amnesty International takes the view that the failure of the ECGD to conduct an impact assessment of its proposed policy changes represents a failure to take reasonable and proactive steps to protect human rights.

3.4.2 The alignment of the ECGD's policies with steps that the UK government is taking to address the human rights impacts of UK companies operating abroad, including initiatives located elsewhere within BIS, FCO and MoJ.

⁶ <http://www.bis.gov.uk/policies/business-sectors/low-carbon-business-opportunities/sustainable-development/corporate-responsibility/uk-ncp-oecd-guidelines/cases>

3.4.3 The recommendations of UK Parliamentary Committees that have scrutinised the ECGD's activities, in particular those contained in reports of the Environmental Audit Committee (October 2008) and of the Joint Committee on Human Rights (December 2009). There appears to be a growing gap between the views of Parliament and those of Government with regard to the conduct of the ECGD.

3.5 There is the need for all Government departments and agencies relating to trade and investment to consider how the UK can promote stronger international frameworks for governing the human rights impacts of companies through the inter-governmental bodies of which the UK is a member. There are four significant inter-governmental processes at UN, OECD and World Bank level that offer opportunities for the UK to press for higher and more effectively implemented standards:

3.5.1 The UN Human Rights Council will determine in June 2011 what steps, if any, should be taken to give effect to the Guiding Principles on human rights for companies and for States that will be put forward by the UN Special Representative on Business and Human Rights.

3.5.2 The revision of the OECD Guidelines for Multinational Enterprises, undertaken by the OECD, is being led within the UK by BIS (i.e. UK National Contact Point). There is a real prospect of these Guidelines containing an explicit human rights chapter. We would like to see the UK pressing for a strong human rights framework to be incorporated into these Guidelines.

3.5.3 The harmonisation of social and environmental standards for export credit agencies (known as *The Common Approaches*) is being undertaken at OECD level. The current review provides an opportunity for integration of human rights into the screening procedures adopted by all the export credit agencies of OECD States. We would like to see the UK pressing for the Guiding Principles of the UN Special Representative on Business and Human Rights to be incorporated into the revised Common Approaches.

3.5.4 The World Bank's private sector lending arm, the International Finance Corporation (IFC), is currently reviewing its Performance Standards for companies it lends to. The UK as a Shareholder and Board Member of the IFC has an important role to play in pressing for human rights to be integrated into these Performance Standards.

3.6 Amnesty International urges BIS to address the need for all treaties between States that underpin trade and investment, whether Bilateral Investment Treaties (BITs), regional investment treaties, economic partnership agreements or free trade agreements, to be framed in a way that does not undermine the international human rights law obligations of any of the States that are party to such agreements. The UK should ensure that all of its agreements are consistent with this principle, including any investment agreements negotiated by the European Union on behalf of member States.

3.6.1 The human rights implications of investment agreements are related to a particular feature known as the 'stabilisation clause'. From the investor's perspective, the aim of such a clause is to ensure that future changes in the legislation of the host State do not vary the terms of the contract or the basis on which the investment was made. Such clauses are intended to immunise the foreign investor from a range of interventions by the host State that impose costs beyond what was written into the contract. These can arise from a range of matters such as taxation, environmental controls and other regulatory requirements, including those that might be necessary for the protection and fulfilment of human rights. The rationale for such a clause is that the host State's sovereignty gives it the legislative power to alter the effect of the State-investor contract in a way that will undermine the profitability of the investment. It is in the interest of the foreign corporation to neutralise this power.⁷

3.6.2 From a human rights perspective, the problem arises when the rights of foreign investors under such agreements come into conflict with the State's duty to protect human rights under international law.⁸ Amnesty International believes that States should not promote or enter into treaties that place constraints on their ability to give effect to their international human rights obligations, or on the ability of other states to do so.

⁷ M. Sornarajah, *The International Law on Foreign Investment* (2010, p281-282)

⁸ *Stabilization Clauses and Human Rights* (2008); this paper was the output of a research project conducted for the IFC and the UN Special Representative on Business and Human Rights