

# The Corporate Responsibility (CORE) Coalition's proposal for a UK Commission on Business, Human Rights and the Environment

## The Essentials<sup>1</sup>

### **Q. WHAT kind of body would the Commission be?**

A. An independent, non-departmental Commission with statutory mandate.

### **Q. WHAT would the Commission do?**

A. The Commission would have responsibilities in four main areas:-

- (a) Clarifying and promoting appropriate standards for UK companies to help them address and manage their human rights impacts. Maintaining a "Centre of Excellence" for UK companies as regards human rights "best practice". Providing a hub of business and human rights expertise and resources that can readily be accessed by UK companies.
- (b) Providing a complaints mechanism accessible by those whose human rights have been infringed as a result of the activities of subsidiaries and contractors of UK companies in other countries.
- (c) Evaluating the effectiveness of existing business and human rights measures supported by the UK government.
- (d) Providing authoritative policy advice to government. Bringing about greater coherency in UK government response.

### **Q. WHO would it be regulating?**

A. UK companies (i.e. companies incorporated in the UK with the power to control or direct the activities of foreign companies and contractors in other jurisdictions). *No legal obligations would be imposed on foreign entities directly.*

### **Q. WHAT standards would it apply?**

A. UK companies would be placed under a general duty to supervise their foreign subsidiaries and contractors so as to respect the human rights of all those that are, or may be, affected by the operations of those foreign entities.

This general duty could then be amplified by further standards and codes of conduct, *derived from internationally agreed standards* and adopted from time to time by the Commission.

*The intention is not to apply UK law to the activities of foreign legal entities in other jurisdictions.* Instead, such standards and codes of conduct would focus on the role of the UK parent company as ultimate "overseer" of global corporate operations. As such, these standards would be likely to cover matters such as:-

- (i) regular human rights auditing;
- (ii) on-going human rights monitoring requirements;

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<sup>1</sup> The CORE Coalition supports co-operative efforts within the EU and internationally towards greater accountability of corporations as regards their international human rights impacts. Additionally, national governments, especially the most significant home states for multinationals, should be doing more to support their companies in the development of "best human rights practice", and to prevent abuse by their companies overseas. This note sets out, in outline, some ideas as to how a UK Commission on Business, Human Rights and the Environment could operate in practice.

- (iii) consultation with local populations and employees;
- (iv) observance of local legal requirements;
- (v) disclosure of human rights impacts, compliance policies and activities;
- (vi) appropriate remedial action.

Standards could be tailored for different sectors and regions. And facilities could be provided for companies to seek clarification of standards in relation to specific human rights compliance problems and circumstances.

**Q. WHAT powers would it have?**

A. The Commission's legal powers would include:-

- (i) powers to commission and undertake research;
- (ii) powers to promulgate standards and codes of conduct;
- (iii) powers to make recommendations to government;
- (iv) powers to investigate complaints of non-compliance with legal obligations (e.g. to compel production of documents, and to require attendance at interviews);
- (v) powers to obtain binding undertakings or "action plans" from companies;
- (vi) powers to make binding financial awards (up to a specified limit);
- (vii) appropriate sanctioning powers in the event of non-compliance with the Commission's decisions;
- (viii) powers to publish details of dispute resolution outcomes; and
- (ix) powers to consult and co-operate with human rights institutions in other countries.

**Q. HOW does the Commission's role differ from that of other existing bodies?**

A. The Commission would be administering a *UK regulatory initiative* applicable to *UK parent companies* with operations and interests overseas. The NCP, on the other hand, is concerned with a non-binding code of conduct promulgated by the OECD and addressed to multinational groups as a whole. The standards administered by the Commission would be more detailed than those used at present by the NCP. And the Commission's role would be much wider, engaging with business on an ongoing basis to consolidate and develop our understanding of "best practice". Finally, and unlike the NCP, the Commission would have powers to make remedial orders at the end of a dispute resolution process.

Unlike the UK's NHRIs, the Commission would have a clear mandate in relation to human rights impacts of UK business *overseas*. However, liaison between the two institutions will clearly be necessary on UK business and human rights policy generally.

**Q. WHAT international law issues are raised by this proposal?**

A. This proposal is based on the "nationality" jurisdiction that the UK enjoys over companies incorporated within the UK. It is a "parent-based" form of regulation that, provided it is exercised "reasonably", is permitted under established international law principles relating to the use of extraterritorial jurisdiction,<sup>2</sup> Regulation that is based on *internationally agreed human rights standards*, provided it is *implemented sensitively and with regard to the legitimate policy interests of other states*, ought to satisfy this "reasonableness" test.

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<sup>2</sup> See Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, Report of the Special Representative to the Secretary-General on the issue of human rights and transnational corporations and other enterprises, A/HRC/8/5 7 April 2008, para. 19.