

Updating the UK National Action Plan on Business and Human Rights

Headline messages from workshops held in w/c 29 June

Context

Good Business, the UK's National Action Plan on Business and Human Rights, was published in September 2013. The document includes a commitment to issue an updated Action Plan by the end of 2015.

A launch event held on 24th March 2015 at the Foreign and Commonwealth Office marked the beginning of the consultation process for this update. This event was attended by 80 people from business, civil society, academia and government.

The second stage of the process consisted of a series of eight workshops held at the end of June and the beginning of July. The workshop topics were based on feedback from the launch event and are listed at Appendix A. These workshops were attended by delegates representing a wide range of organisations, listed at Appendix B.

In addition to their participation in the workshops, organisations were also invited to make a written contribution setting out their proposals for an updated Action Plan. The Business and Human Rights Resource Centre has made these submissions available on its website, at <http://business-humanrights.org/en/submissions-uk-natl-action-plan-review-process-2015>. This note does not attempt to summarise the content of these submissions.

Feedback received

The workshops were themed according to the three 'pillars' of the UN Guiding Principles on Business and Human Rights, with two cross-cutting workshops on conflict-affected areas and modern-day slavery and human trafficking. Some of the comments and proposals made relate to the process as a whole, including the structure of the updated plan and ownership within government. These proposals were made at more than one workshop and for the sake of clarity they have been listed separately.

The project team has reported ideas and recommendations impartially, even where they run counter to established government policy or there would be practical barriers to adoption. Therefore, the fact that a proposal is recorded here should not be taken as endorsement or as having the implication that the proposal is likely to be adopted in the updated plan.

Summary of feedback and proposals

Structure of the updated Action Plan

- Following the 3 Pillars, as in the first plan, is a good structure
- The three pillars need to be better balanced. For example, in the current plan Pillar 3 has less emphasis than the others.
- Differentiate between strategy/rationale and specific actions
- Consider including case studies
- Actions such as 'encouraging' something are hard to measure. In general, objectives should be SMART so that it is possible to know whether they have been achieved
- Provide an implementation plan showing target dates for actions, either as part of the Action Plan itself or as a standalone document

Other general suggestions on the Action Plan

- Provide updates specifically on the Action Plan, not on all human rights activity (This proposal followed a discussion in which it emerged that some participants were not aware of how government was currently reporting on progress)
- The Action Plan should be based on a National Baseline Assessment, carried out independently and following the specification set out by the Danish Institute for Human Rights and ICAR
- In considering its priorities, government should follow the principles of the UNGPs themselves by addressing salient risks. This would be likely to mean focusing on the most serious areas of business-related human rights abuses.
- The plan should consider the impact of specific types of human rights harm on vulnerable groups, such as children, and should consider specific measures where those groups are likely to be affected disproportionately.
- There were different views on how best to take into account the impact on women. Women may be disproportionately affected by some issues, but there was also resistance to the way women's position is sometimes described. Can 50% of the population really be considered as a 'vulnerable group'?

Responsibility for the National Action Plan within government

- There were a number of suggestions about the cross-government Steering Group, such as publishing its terms of reference and allocating actions to specific members
- Could roles and responsibilities within the Steering Group be made public?
- As the National Action Plan is a cross-government commitment one would expect the Prime Minister to be launching it
- Government should consider appointing a non-political champion for Business and Human Rights. One suggestion was that the Prime Minister could appoint an 'envoy' whose role would be to speak on the issue and engage the business community.

Business perspectives

- Business values government leadership on this issue. Individual businesses and sectors are well-placed to act; many are already doing so.
- Some issues can only be solved with government input, e.g. when businesses are operating in a country whose legal system puts human rights at risk. Cannot expect business to take on roles for which it is not suited (e.g. changing the law)
- The updated plan needs to be as clear as possible in its expectations of business
- An aim of the Action Plan should be to move beyond the “usual suspects” to creating a clear (but reasonable) sense of what is expected from every company
- The goal is to be specific without being prescriptive
- The government brand on the document strengthens the voice of those within companies saying “we need to take this seriously”
- Needs a specific message for SMEs as their perspective is so different
- Government needs to align with standard-setting bodies such as the FRC so that their advice is more specific
- New reporting requirements (EU non-financial reporting and UK Modern Slavery Act) could create duplication, government needs to ensure this is not the case

Pillar 1

- ‘Policy coherence’ was an overall theme, meaning that every aspect of policy should be consistent with the overall goals of the Action Plan (and with the UNGPs)
- Procurement a key issue – specific example given, NHS sourcing cotton products from high-risk countries. This was no different in principle from a company undertaking supply chain due diligence.
- Could government commit to applying the UNGPs Reporting Framework to its own operations? Could it ask suppliers about their human rights due diligence and explicitly include this among the selection criteria, to send a market signal?
- Implementation of the 2014 EU Procurement Directives is an opportunity (could be meaningful or not, depending on how it’s done)
- Concerns were raised about the provisions of investment treaties and their impact on the freedom of action of governments, as well as the interests of rights-holders
- Businesses (and other organisations) involved in the delivery of UK Aid should be required to undertake human rights due diligence
- In agreeing export credits, could human rights due diligence be considered more explicitly? This should be undertaken with OECD partners, not unilaterally.
- Companies that had not cooperated with the National Contact Point should lose access to government services for a period (e.g. UKTI services, export credits)
- Government could do more to support human rights defenders – need to set expectations. Could the performance of embassies be assessed regularly?

- Government had an important role in engaging internationally, especially with the OECD (in setting standards and guidelines), the EU Commission, the UN and the G7.

Pillar 2

- Guidance on due diligence & reporting was the main request
- Some felt that new guidance was not needed, but rather a signposting document that put existing guidance and reporting frameworks in context. Need for clarity, consistency of language. Too many overlapping frameworks.
- UNGPs reporting framework was a significant opportunity, but would take time to be fully understood and even more time to be integrated into business operations
- Reporting requirements were the main practical issue for companies; this workshop attracted the most attention
- Impact of Modern Slavery Act – this reporting requirement is seen as higher-profile and more immediate; little understanding as yet of Home Office timing
- Reporting was not onerous of itself (e.g. Slavery and Human Trafficking Statement) but familiarisation and training took significant resource
- Sector-based guidance is the right way to go
- How to engage SMEs with an offer that was genuinely suited to their business needs? Some argued for government to have a convening role, others for sector bodies to be more active
- UKTI has a key role to advise companies in high-risk countries but some businesses had experience of UKTI staff not being in a position to do this. Could government invest in additional training and resource for embassies in high-risk countries?
- In difficult and conflict-affected areas, the Voluntary Principles on Security and Human Rights were felt to have played a valuable role. However these were sector-specific and had been developed a decade before publication of the UNGPs. Should the government seek to extend the VPs to other sectors?
- Participants noted the importance of trusted, established frameworks and the need for a pragmatic approach in difficult environments.
- The International Code of Conduct for Private Security Service Providers (ICoC) was also considered valuable. Like the VPs, this is voluntary. Some pointed to the lack of effective remedy or mechanism to address grievances as weaknesses of the Code.
- The OBR Service is a good concept but the actual information for each country was felt to be limited – good as a starting point, but no more. Participants felt that specific advice to individual businesses was the next step, not expanding OBR.
- The Corporate Human Rights Benchmark was cited as a potentially important development, though at an early stage. Important not to try and reduce a complex set of metrics to a single number in an attempt to make comparisons

Pillar 3 – judicial remedy

- Several participants acknowledged that UK common law does provide access to remedy, unlike many European jurisdictions
- Need to understand why prosecuting authorities decline to act; seems to be lack of resource and a perception that pursuing overseas cases is not a good use of UK taxpayers' money. Recommended that government should investigate this specific issue and provide necessary support (e.g. internal guidance?)
- A new concept of criminal liability for corporations was proposed (this already exists in some circumstances, e.g. corporate manslaughter and the Bribery Act)
- Consider extending the Bribery Act principles to human rights – so that failure to prevent harm would be an offence, but taking reasonable steps to prevent harm (e.g. human rights due diligence) would be a defence, even if in practice these steps were unsuccessful
- Some participants considered that the introduction of fees for Employment Tribunals had been a significant change, leading to a sharp fall in the number of cases, and that this amounted to a reduction in the ability of employees to access a remedy.
- Some participants considered that the impact of rules on legal fees (under LASPO, the Legal Aid, Sentencing and Punishment of Offenders Act 2012) was making it harder for legal firms to recover their costs in complex cases, even if successful. There was some debate as to whether this was an intended or unintended consequence.
- Recognising that this was the most difficult of the three pillars, participants suggested that action could be taken initially on the most serious breaches of human rights, e.g. involving injury or loss of life, to provide enhanced access to a remedy in those cases.

Pillar 3 – non-judicial remedy

- There was a range of representations on the role of the UK's National Contact Point. The NCP's work is widely respected; the dilemma is what happens if the complaint is not suitable for mediation, or the parties do not cooperate with the mediator?
- Some participants felt that the operation of NCPs should change so that in addition to assessing complaints against the OECD Guidelines, the NCP would have the ability to impose sanctions. Such a change would be an OECD decision.
- Others felt that this change would be likely to have unintended consequences, making the NCP process less flexible and more legalistic.
- Another suggestion was that an adverse finding by the NCP (or lack of collaboration with the NCP process on the part of a company) should be passed on to other agencies and could affect a company's entitlement to services such as export credits or support and advice from UK Trade and Investment.

- It was suggested that the NCP process was suffering from the lack of other routes – therefore, NCPs were expected to solve cases that were inherently unsuitable for a mediated route.
- A similar point was made about company-level mechanisms; these were not a suitable route to address the most serious breaches such as loss of life.
- There was scope for greater use of company-level and sector-level grievance mechanisms and for these to be improved through sharing good practice.

[ends]

Appendix A: Consultation workshops held in June/July 2015

Monday, 29 June

10:30 to 13:00 – Furthering access to justice: judicial remedies (Pillar 3)

Includes UK civil and criminal law; the position of civil litigants; the incentives on UK prosecuting authorities; any parallels between human rights issues and the Bribery Act

14:00 to 16:30 – Furthering access to justice: non-judicial remedies (Pillar 3)

Includes company-level grievance mechanisms and how to share good practice; the OECD National Contact Point and other State-based mechanisms; State support for affected communities

Tuesday, 30 June

10:30 to 13:00 – State actions and advocacy internationally and at home (Pillar 1)

Includes ensuring policy coherence between the Action Plan and other aims; support in multilateral institutions, support to civil society and partnerships whose actions protect human rights

14:00 to 16:30 – Rights of working people including modern slavery and trafficking (Pillars 1-3)

Includes initiatives to expose and eliminate modern-day slavery, trafficking and labour exploitation in the UK and overseas; legal framework and impact of the Modern Slavery Act

Wednesday, 1 July

10:30 to 13:00 – Direct influence of the State on markets (Pillar 1)

Includes policy coherence between human rights objectives and policies on state owned companies, export credits and in-country support from UKTI, public sector procurement

14:00 to 16:30 – Supporting business to respect human rights in conflict affected areas (Pillars 1-3)

Includes supporting multi-stakeholder initiatives such as the voluntary principles; guidance and legislation specific to conflict-affected areas; State contracting with private security companies

Thursday, 2 July

10:00 to 12:30 – Supporting business to respect human rights (Pillar 2)

Includes guidance (e.g. TechUK guide), information and support services (e.g. Overseas Business Risk service) and multi-stakeholder initiatives

Friday, 3 July

10:00 to 12:30 – Reporting on human rights (Pillar 2)

Includes reporting requirements, the UNGPs Reporting Framework and expectations on business in terms of reporting; human rights due diligence; evaluation and benchmarking of reports

Appendix B: List of organisations represented at the workshops

ABColumbia	Institute for Human Rights and Business
Access Facility	International Alert
Action Aid	IPIECA, the global oil and gas industry association for environmental and social issues
Amnesty International	Law Society
Anglo American plc	Ministry of Justice
Barclays Bank plc	Mitchel-Hill Consultancy
BG Group plc	NEC United Kingdom
BP plc	Next plc
British Institute of International and Comparative Law	Norton Rose Fulbright
BT Group plc	Oxfam GB
Business and Human Rights Resource Centre	Peace Brigades
CAFOD	Primark
Christian Aid	Progressio
Clifford Chance	Prospect
CORE Coalition	The Royal Bank of Scotland plc
Department for Business, Innovation and Skills	Rights and Accountability in Development (RAID)
Department for International Development	Rio Tinto plc
DLA Piper	ShareAction
Equality and Human Rights Commission	Shift
Ethical Trading Initiative	Talking Oak International
Eversheds	Trade Union Congress
Fairtrade Foundation	Traidcraft
Foreign and Commonwealth Office	TwentyFifty Limited
G4S plc	UK Export Finance
GlaxoSmithKline plc	UN Global Compact UK Network
Global Business Initiative	United Nations Children's Fund (UNICEF)
HSC Consultants	Unseen UK
	World Gold Council