

Written evidence from Professor Robert McCorquodale (COV0232)

Summary

1. This submission focuses on the human rights and environmental impacts of the actions of private sector and public bodies during COVID-19. It offers recommended legislative action which the UK government could take in relation to these impacts.

Author

2. Robert McCorquodale is a Professor of International Law and Human Rights at the University of Nottingham, a barrister and mediator at Brick Court Chambers, London, and Founder of Inclusive Law, a business and human rights consultancy. He has been working in the field of business and human rights for over 25 years, including providing advice and support to governments, international organizations, corporations and civil society on business and human rights issues. He was a Special Advisor to the Joint Committee on Human Rights in their Inquiry into Human Rights and Business in 2016-2017.

Context

3. The rapid spread of the COVID-19 pandemic has had disruptive impacts in the UK and worldwide. The consequences of decisions by government and also by businesses on workers and communities in their supply chains, present very significant challenges.
4. Actions by UK businesses to the pandemic, in which many of them cut off supply chain production within the UK and around the world without payment, caused severe impacts on the livelihoods, physical and mental health, and security of many thousands of people.¹ This has tested the durability of the current globalised economy, and raised issues as to how to address the urgent needs of workers, communities and business within and across countries and supply chains, to enable recovery that builds resilience and advances global economic, social and environmental goals.²
5. The current legislative provisions, such as the Modern Slavery Act, and the practices of enforcement agencies, show the limitations of existing government responses to dealing with business activities which have an adverse impact on human rights. It also shows the conditions which existed prior to the pandemic have been exacerbated by it. For example, the Joint Committee on Human Rights in its seminal report on *Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability*,³ visited Leicester and undertook a thorough consideration of the garment sector there:

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

¹ For further detail see: <https://www.business-humanrights.org/en/covid-19-coronavirus-outbreak>.

² Resilience has been defined as “the ability of a system, community or society exposed to hazards to resist, absorb, accommodate, adapt to, transform and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions through risk management”: International Labour Organization’s Employment and Decent Work for Peace and Resilience Recommendation, 2017 (Recommendation No. 205), para. 2(b).

³ Joint Committee on Human Rights Report on *Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability*: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf> (JCHR Report 2017).

migrant communities who have difficulties speaking English, and who may in some cases be held “captive” to the sector despite the poor working conditions.⁴

After setting out further evidence, the Committee concluded:

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.⁵

As far as I am aware, no action has been taken by government on this issue. This is evident from recent reports of terrible labour conditions in the garment sector in Leicester.⁶

6. The UK government must ensure its responses to the pandemic are founded on its clear endorsement of the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines).⁷

Human Rights Impacts and Implications

7. The COVID-19 pandemic has given rise to a number of human rights impacts and implications. These include impacts on mental health, life-threatening consequences for those who are in public and private care homes (most of whom are elderly), education for children and others, and access to courts. There are implications of increased risk of labour exploitation and of modern slavery – especially of migrants and vulnerable workers – and a lack of income security for many, including those in the ‘gig economy’.⁸
8. These human rights risks and implications are compounded by the global supply chain, where actions by UK domiciled businesses result in severe impacts on those in many non-industrialised countries, who have been left with no access to income, health care or security. There is also a particular impact on women and vulnerable groups, and an increased risk of child and forced labour. The actions of investors have at times effectively encouraged UK businesses to act in these ways.
9. There are also human rights impacts and implications from government action and the public sector more generally. The lack of provision of personal protection equipment (PPE) to private care homes, and the purchase of protective equipment produced in factories where there is no protection of the workers are two key examples.⁹

⁴ Ibid, paragraph 38.

⁵ Ibid, paragraph 137.

⁶ See, for example, Labour Behind the Label, *Boohoo & COVID-19: The People behind the Profit*, June 2020: <https://labourbehindthelabel.org/report-boohoo-covid-19-the-people-behind-the-profit/>.

⁷ See https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf and <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

⁸ See FLEX, *No Worker Left Behind: How might the COVID-19 pandemic impact worker exploitation?* April 2020: <https://www.labourexploitation.org/news/new-briefing-no-worker-left-behind-how-might-covid-19-pandemic-impact-worker-exploitation>.

⁹ See Melanie Henwood,, ‘[Care home deaths: the untold and largely unrecorded tragedy of COVID-19](https://blogs.lse.ac.uk/politicsandpolicy/care-home-deaths-covid19/)’ LSE Blog <https://blogs.lse.ac.uk/politicsandpolicy/care-home-deaths-covid19/>.

10. There are also related impacts on the environment, by environmental damage and on environmental human rights. The United Nations Human Rights Special Rapporteurs on Human Rights and the Environment have applied a human rights focus to environmental issues, which is a valuable way forward.¹⁰ So all actions by the government in this area should include environmental issue.

Recommended Government Responses

11. When the UK government sought to implement the UNGPs, it expressly amended the Companies Act to do assist in this. It inserted sections 414A-C Companies Act requiring directors of companies to take reasonable and effective steps to take account of all "environmental matters" and "social, community and human rights issues".¹¹ This was linked to director's duties under section 172 Companies Act. Yet there is no current effective sanction for failure by a business to either report on these matters or to take any action on them. This has allowed businesses to ignore these issues. **Section 172 Companies Act should be amended so that a failure to report and to take effective action is a breach of director's duties, with consequence sanctions. The same would apply for senior managers.**
12. The UK government should introduce legislation for a **corporate duty to prevent human rights and environmental abuses**. This would be modelled on the Bribery Act 2010 to become a general requirement on all businesses, including financial institutions and public bodies, and without regard to the size of the business, to conduct human rights and environmental due diligence. This was exactly what was recommended by the Joint Committee on Human Rights in its 2017 Report on Human Rights and Business:

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.¹²

Introducing this legislation now would assist greatly in relation to business practices in their supply and value chains. It would also build on international, regional and comparative legal developments.¹³ It would also be consistent with business expectations as a Study commissioned by the European

¹⁰ <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>. My thanks to Sara Seck for these insights.

¹¹ UK government, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights* (National Action Plan on Business and Human Rights), updated May 2016, p.7.

¹² JCHR Report 2017, above, para 193. See also British Institute of Comparative and International Law, *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms*, February 2020: https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf.

¹³ *Study on Due Diligence Requirements Through the Supply Chain*, 24 February 2020, (EC Study), accessible at: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/%20language-en>. The author of this Submission was a co-author for this Study.

Commission on due diligence in supply chains showed that the majority of businesses considered that such legislation would improve or facilitate leverage with third parties by introducing a non-negotiable standard, without reducing competitiveness or innovation.¹⁴

13. This legislation should also include clear and effective **access to remedies for victims** of business activities of UK domiciled businesses which have adversely affected human rights and the environment, no matter where the abuse occurred. It should remove those obstacles which exist to bringing claims before UK courts.
14. The Joint Committee on Human Rights in its 2017 Report also recommended considering **criminal offences** in relation particular human rights abuses.¹⁵ These should be considered by the Government, together with the appointment of an **independent supervisory body** to review compliance with the legislation recommended above.
15. Consequently, the UK government could support a proposed amendment to the **Environment Bill** requiring the government to bring forward legislation on “environmental and human rights due diligence” within six months of the Bill receiving Royal Assent.
16. In addition to the legislation on mandatory human rights and environmental due diligence, the UK government should introduce legislation in relation to **public procurement and export credit** in regard to human rights and environmental abuse. Public procurement and export credits are major areas of state support to business and yet it is only in a few areas, such as private military companies, that the regulation requires any business seeking funding to comply with human rights standards. This legislation should include specific provisions on public procurement requiring that effective human rights and environmental due diligence be a mandatory criteria in the assessment process. This legislation should also require all public bodies to ensure human rights, especially the right to health in care homes, and the right to health and education in prisons and detention centres.
17. When providing support to those affected by COVID-19 and economic stimulus packages, Government should **exclude from application** those companies which are domiciled in tax havens, do not pay a living wage to their workers, and do not have in place recovery plans which implement human rights protections for their employees and all those in their supply and value chains.
18. The Government should ensure that all medical and dental facilities, and care homes, have access to **adequate PPE and other necessary protections**. It should also enable access to a remedy for those directly affected by COVID-19 due to lack of effective and adequate personal protective equipment.

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¹⁴ Ibid.

¹⁵ JCHR Report 2017, para 194.