

FOR EVERY
CHILD

unicef 
UNITED KINGDOM



PREVENTING CORPORATE ABUSE AND REALISING CHILD RIGHTS:

THE CASE FOR UK LEGISLATION ON HUMAN RIGHTS
AND ENVIRONMENTAL DUE DILIGENCE

EXECUTIVE SUMMARY

The role of the private sector in society

Business is a central part of our society and vital to the lives of children. The role of business in all our lives has been brought into particular focus during the coronavirus pandemic. We have faced empty shelves as supply chains and shops raced to adapt, parents and caregivers have juggled childcare and work, others have lost jobs. We have seen businesses heralded for going above and beyond to support their communities, and others criticised for exploitative practices.

Prior to the COVID-19 pandemic, a central topic for debate in the business community was about redefining the purpose of a corporation, beyond the profit imperative. The pandemic has brought additional scrutiny to this question and the desire to do things differently. In particular, it has highlighted how tangible action brings to life or possibly undermines what a company says on paper about its social purpose.

The UK Prime Minister pledged to build back better for future generations, including a fairer, greener and more resilient global economy.¹ There is now the opportunity to reimagine a new economic system that works for everyone, including children.

The impact of business on children's rights

UK businesses and supply chains operate around the globe. They connect us to children labouring to produce cocoa in Côte d'Ivoire, to children of factory workers in Bangladesh producing our clothes as well as to children around the world using apps and products developed by British tech companies.

While child labour is perhaps the most widely recognised abuse of child rights by business, UNICEF research shows multiple ways that

businesses may impact on children's rights. Poor working conditions of parents and carers may limit the opportunities for a child to receive education, receive adequate care and nutrition, to play or to access healthcare. In the online world, excessive data collection practices can endanger children's privacy and weak safety measures may expose children to cyber abuse. Business operations may degrade the environment and contribute to climate change that threatens many, if not all, children's rights.

In addition, when children seek remedies to redress these abuses, they often face heightened and specific challenges. Remedy is an essential element of businesses' responsibility to respect child rights and of the UK Government's obligation to protect children's rights from business. However, when it comes to remedy for corporate abuses, children face particular barriers. Lack of information, inability to pay for fees or costs, dependency on adult's will to inform and support them are some of these challenges.

All these impacts can have serious, long lasting, often irreversible, consequences on the lives of children. However, with the necessary will and appropriate preventative action, many of these abuses could be avoided or reduced.

The UN Guiding Principles on Business and Human Rights (UNGPs) clarify that all businesses have an independent responsibility to respect human rights, and that in order to uphold such responsibility they are required to exercise human rights due diligence. **Human rights and environmental due diligence (HREDD) is the framework that allows businesses to identify, prevent and mitigate against negative impacts and account for how they address potential and actual negative impacts.**

Some companies are leading the way in conducting human rights and environmental due diligence, and

¹ HMG, UK PM addresses Financing for Development event via video, 28 May 2020, available at <https://www.gov.uk/government/news/uk-pm-addresses-financing-for-development-event-via-video-28-may-2020>.



others are making efforts to improve responsible business practices. However, there are still too many that are failing to meet their responsibility to respect human rights and the environment. Very few are adequately integrating child rights into such due diligence measures.

The current rate of change is extremely slow and without concerted action, the Government's vision for a fairer, greener economy will not be achieved.

A law on human rights and environmental due diligence in the UK

Mandatory measures and a system of accountability are one of the strongest levers that the UK has to ensure respect for child rights and the environment by business and to address market and governance failures that contribute to corporate abuses.

A law mandating human rights and environmental due diligence integrating children's rights is required that ensures businesses operating in the UK and UK businesses operating abroad take preventative action against child rights and environmental abuses. Such a law should apply to a businesses' operations, products, services, investments, as well as business partners and value chains, as appropriate in view of their size, the risks they pose to human and child rights and the nature and context of their operations.

To deliver effectively this legislation should have clear expectations of conduct for business and a definition of human rights and environmental due diligence aligned with the UNGPs, an effective enforcement mechanism, and a meaningful disclosure obligation. It should also allow for victims of abuses to seek remedies in the UK.

The case for legislation

1. Meeting international obligations

A legal requirement to conduct human rights and environmental due diligence would be in line with the UK's international obligations on human rights, and specifically with the international children's human rights. In 2016, the UN Committee on the Rights of the Child urged the UK Government to establish and implement regulations to ensure that the business sector respect children's rights and to introduce a requirement for business to undertake child-rights due diligence.

International and regional bodies have also called on States to introduce a legal requirement to conduct human rights and environmental due diligence. There is a growing recognition that requiring businesses to conduct human rights and environmental due diligence by law would close a gap in human rights protection from abuses by businesses at the national level and is a way for States to meet their internationally agreed human rights obligations.

2. Voluntary measures have failed to address the problem

Almost 10 years after the adoption of the UN Guiding Principles on Business and Human Rights, there are still few companies that take a preventative approach to human rights abuses and environmental harm, and even fewer that take a comprehensive approach that integrates child rights in their human rights and environmental due diligence.

The recent 2020 Corporate Human Rights Benchmark showed that, among the 229 companies assessed, almost half of them failed to score any point for human rights due diligence. This situation not only undermines the full realisation of children's rights, but it also penalises responsible businesses that are investing in upholding their responsibilities. In addition, because many businesses are not consumer facing, they are also not incentivised to act, even for only reputational risks. Finally, while voluntary action might indicate the commitment of a business to respect human rights, it does not ensure accountability or recourse to remedy for victims, so providing limited additional protections.

Voluntary action alone will never be enough to bring the scale needed at the speed required.

3. Existing legislation is insufficient

The current UK legislative framework on responsible business conduct is not cohesive, thus limiting its effectiveness for promoting responsible business behaviour. There is not a comprehensive due diligence requirement for business, creating confusion among businesses and leaving gaps in human rights protection. What exists is fragmented and mainly relies on obligations for reporting rather than encouraging preventative action.

The UK's approach to access to remedy for corporate abuses has been considered weak by the Joint Committee on Human Rights due to challenges related to costs, access to corporate documents and limits to legal aid provisions. These challenges are exacerbated when those seeking justice are children. In addition, the failure to ratify the Third Optional Protocol to the UN Convention on the Rights of the Child (UNCRC) by the UK is depriving children of an additional avenue for seeking remedies.

Legislation mandating human rights and environmental due diligence and providing access to remedy, would bring policy and legislative coherence and dissipate confusion among businesses.

4. Business support the need for additional regulation

Businesses in UK have recognised that additional regulation on their corporate human rights obligations would bring clarity to their responsibilities. For those leading in this area, it would level the playing field and increase leverage with third parties to improve practice, including in their supply chains.

The legislative landscape of corporate accountability is changing; similar legislation has been adopted or is under consideration in a number of other countries. The UK needs to support its businesses to manage their risks consistently across their supply chain and be prepared to meet the highest standards for respecting children's rights and the environment.

5. Children and young people want business to act responsibly

Children and young people have also demonstrated in the recent years that they expect businesses to act responsibly and expect the UK Government to ensure that they do so. A law on human rights and environmental due diligence would address children's concerns and expectations around business' behaviour and responsible products.

RECOMMENDATIONS

UNICEF UK recommends the UK Government to introduce new legislation that requires businesses operating in the UK and UK businesses operating abroad to take action to prevent child rights abuses and environmental harm, by conducting holistic human rights and environmental due diligence, and that allows victims to seek remedies for when abuses occur. The UK Government should also ensure that children have access to justice for the abuse of their rights by corporate entities and remove any additional barriers that they face. This would include also ratifying the Third Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure.

Such legislation should include the following principal elements and supporting measures:

1. A comprehensive approach to human rights and environmental due diligence, based on internationally recognised human rights that consider specifically the rights of different groups at risk of being affected by business, such as children.
2. Meaningful engagement and active listening to the views of children.
3. A clear set of expectations and responsibilities for businesses.
4. Meaningful disclosure and transparency.
5. An effective enforcement mechanism.
6. Effective access to justice and remedies for victims of corporate abuses.
7. Strengthen the remedy system to integrate enabling measures to overcome additional barriers that children face.
8. Ratify the Third Optional Protocol to the UNCRC on a communications procedure.
9. Promote the new obligations and, in general, corporate respect for human rights and provide clear guidance on how to implement the legal requirement and related processes.