



ClientEarth submission to the Office of the High Commissioner for Human Rights

Consultation on business and human rights:

Operationalizing the “Protect, Respect, Remedy” framework

31st October 2009

ClientEarth has been examining the UK legal framework governing company transparency on social and environmental matters. We have therefore been looking at the legal obligations of UK-based companies to report on their management of human rights issues and their impacts on human rights domestically and worldwide.

The governing framework is the Companies Act 2006, often discussed¹ as an example of the way in which social and environmental concerns are beginning to be integrated into company law and regulation.

We have produced a critical analysis of the legal framework, examining its foundations, goals and efficacy. Our work in this area appears to be of clear relevance to the ongoing mandate of the Special Representative. We are scrutinising and seeking to improve the efficacy of domestic legislation that is ostensibly leading in integrating public interest considerations into corporate law, and thereby potentially developing corporate responsibility to respect human rights. Furthermore, in the case of the requirements of the Companies Act 2006, it does so in the context of identifying and examining business drivers for companies to articulate and progress the corporate responsibility to respect.

Put simply, the UK transparency requirements (linked closely to the directors’ duties under section 172), put public companies under obligations to report annually on human rights matters where they are of bearing on the business success of the company, and to make those reports public. ‘Quoted’ companies are explicitly required to report on “*environmental matters (including the impact of the company’s business on the environment)*”, “*the company’s employees*”, and “*social and community issues*”, “*to the extent necessary for an understanding of the development, performance or position of the company’s business*”². This reporting must include information about any company policies in relation to those matters (and the effectiveness of those policies).

This potentially requires companies to report annually on their management of human rights matters, the success of that management, and the way that their success or otherwise engages business drivers such as reputation, social licence to operate, regulatory risk, litigation risk and access to capital.

Our analysis concludes that while the broad legal framework is in place in the UK to make significant progress on integrating these vital matters into company transparency and practice, a number of factors currently undermine the success that the framework can have in doing so. We have authored a legal review that outlines these problems, and our proposed solutions (in overview: more detailed legislative provision; more effective regulatory monitoring and enforcement; an enhanced role for company Annual General Meetings). The study is soon to be published, but is currently available on request. If it would be of interest to the OHCHR or the Special Representative, please do not hesitate to contact us at bbundock@clientearth.org for a copy.

We are now working to promote our proposals and stimulate existing regulatory actors. This work will explore the current achievements, and potential, of corporate law in the UK to drive a corporate responsibility to respect human rights. The work also has the potential to help drive and develop such a corporate responsibility.

For any further detail, documents or discussion, please do not hesitate to contact us at bbundock@clientearth.org.

¹ E.g. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, ‘Business and human rights: Towards operationalizing the “protect, respect and remedy” framework’ (A/HRC/11/13, 22 April 2009), p. 9.

² Section 417 Companies Act 2006.