

## **BRIEFING: Is the UK living up to its business & human rights commitments?**

An agenda for the election, and recommendations for the next government



### **About Business & Human Rights Resource Centre**

Business & Human Rights Resource Centre is an independent non-profit organization that brings information on companies' human rights impacts, positive and negative, to a global audience. We have researchers based in Brazil, Colombia, Hong Kong, India, Japan, Jordan, Kenya, Mexico, Myanmar, Senegal, South Africa, UK, Ukraine and USA. Our International Advisory Network, comprising 70 experts from all regions, is chaired by Mary Robinson, former United Nations High Commissioner for Human Rights and former President of Ireland. The Resource Centre was named as recipient of the 2013 Dodd Prize in International Justice and Human Rights. For further information about the Centre, see the "About us" section of our website, and a profile of our work by the Financial Times entitled "A fair approach to human rights".

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Please do not hesitate to get in touch with the author of this briefing for any questions or suggestions of material for our website:

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## Executive summary

The issue of business and human rights is now recognised as critical to the sustainability and credibility of global markets, and the license of companies to operate, especially internationally. The UK Government has shown international leadership in a number of respects, but severe weaknesses also remain. We have produced this briefing for the election period to highlight the major challenges facing the next British Government where international leadership will be required. The briefing is based on an analysis of our data over 10 years of tracking company human rights performance.

In September 2013 the UK became the first country to release its [National Action Plan \(NAP\) to implement the UN Guiding Principles on Business & Human Rights](#) (UN Guiding Principles), demonstrating its commitment to address business and human rights issues at a strategic level. This leadership is to be welcomed and the UK has shown some indications that it is willing to engage meaningfully on a policy and statutory level on business and human rights. Good examples of this commitment include its introduction of the [Modern Slavery Act](#), its recent admission as a candidate country to the [Extractive Industries Transparency Initiative](#) and its introduction of the [Reports on Payments to Governments Regulations 2014](#) by which the UK became the first EU state to force extractive companies to report on the payments they make to governments in all countries in which they operate from the start of 2015. Having been the first country to release its NAP, the UK has also made efforts to encourage other countries to follow its lead, including [asking its embassies](#) to engage host governments on the issue of publishing and implementing a NAP.

While these are undoubtedly positive moves by the UK Government, Business & Human Rights Resource Centre's international network of [regional researchers](#) continues to receive serious reports of abuse by UK companies internationally. Since 2005, the Resource Centre has made 303 approaches to UK headquartered and listed companies for responses to allegations of serious human rights abuses around the world; 77% of these resulted in a response. Our analysis of these approaches indicated that there were three main areas of concern.

1. The vast majority of these cases related to allegations of extraterritorial abuse, mostly in the Global South where victims had limited access to remedy.
2. A disproportionate number of allegations are against extractive companies; 47% of our approaches were to these companies.
3. Labour abuses emerged as the largest area of concern for non-extractive companies with 32% of approaches made to companies concerning this issue.

Drawing on analysis of our company response process, this briefing makes recommendations on these issues which we hope the next government will prioritise for action after the General Election. We believe that such changes are vital if the UK is to comply with its international commitment to protect human rights under the [UN Guiding Principles](#). Doing so will help close the accountability gap which currently allows UK companies to evade justice and leaves victims, particularly those victims harmed abroad, without remedy. Ultimately we believe that taking action on these issues will build on the promising work that the current government has already undertaken and place the UK at the forefront of leadership on business and human rights. It will also enhance the reputation of UK companies internationally and benefit their bottom line in the long-term.

## Recommendations

At the end of this briefing we include our recommendations to the next UK Government. These include:

### Mandatory transparency:

- work with European partner-governments to ensure early and bold transposing of the [Non-Financial Reporting Directive](#) into national law to provide the highest levels of accountability regarding human rights due diligence
- lead efforts to strengthen proposed [EU conflict minerals regulations](#), especially mandatory requirements for responsible sourcing
- strengthen the supply chain reporting requirements of the [Modern Slavery Act](#) by including clearer requirements for disclosure and stronger enforcement provisions

### Access to remedy:

- utilise the existing legislation ([Criminal Law Act 1977](#)) to hold companies accountable for abuses committed abroad and explore using the Bribery Act as a model to further extend extraterritorial criminal liability for human rights abuses
- improve extraterritorial access to civil remedies for victims of corporate abuse, including introducing an amendment to the [LASPOA](#) to ensure that it is financially feasible for law firms to take on such cases & victims receive fair compensation

### Incentives:

- commit to only support projects through UK Export Finance that have undertaken strong human rights due diligence and are not associated with serious rights abuses
- commit to only provide access to public procurement contracts to companies that have undertaken strong human rights due diligence and are not associated with serious rights abuses

### Labour rights and living wage:

- promote freedom of association and right to collective bargaining in international trade and investment agreements and with, governments, and UK companies

## 1. Introduction

UK business needs to put human rights at the core of its business model, both for ethical reasons, and for the long term sustainability of their firms. This briefing seeks to inform the UK debate, during the elections and after, on the key reforms necessary for a future government to both incentivise and direct UK companies to do this. The briefing provides an overview of the human rights impacts of UK companies. It draws on our experience and data to summarise key trends and highlight key issues which we believe the next UK Government should address in order to meet its commitment to protect human rights under the UN Guiding Principles. The briefing is not intended to be comprehensive and represents only a fraction of the wide range of human rights abuses, advances and lawsuits in which UK companies are implicated; many more are available on our [website](#).

## 2. Company responses – trends

Since 2005, Business & Human Rights Resource Centre has invited companies to respond to allegations raised by civil society groups, before posting those allegations on its website (when we find no response by the company already in the public domain). The Resource Centre takes this approach to ensure that its coverage is fair, and also to encourage companies to publicly address human rights concerns that civil society believes are not being addressed.

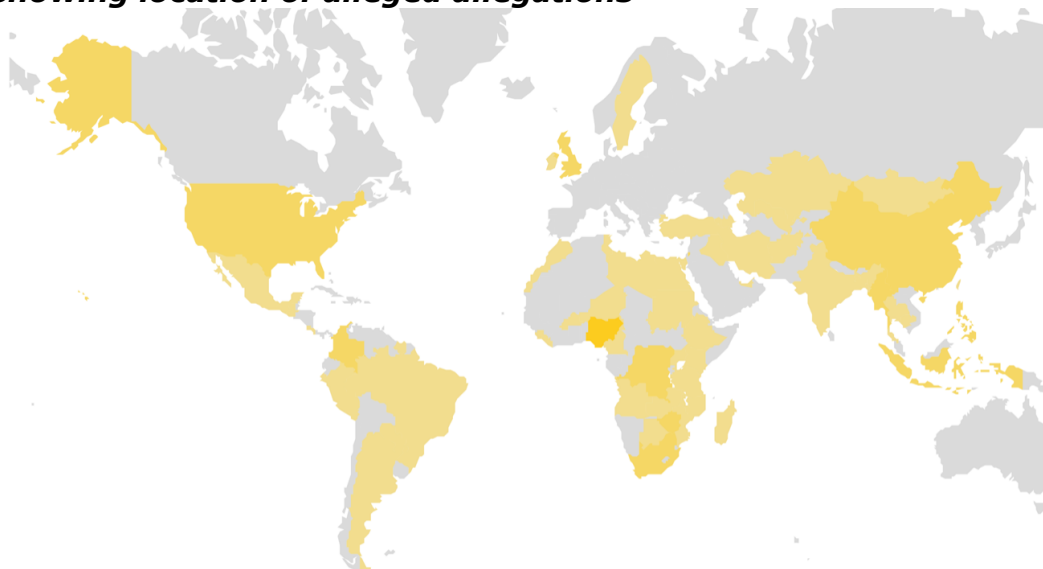
This section of the briefing identifies trends from these cases and company responses (and non-responses) relating to UK headquartered and listed companies: a total of 303 approaches to companies about human rights concerns from a total of 2,258 approaches globally<sup>1</sup>. The overall response rate for UK based companies is 77%. This is broadly in line with response rates for other Western headquartered companies and higher than the global response rate of 72%.

### 2.1. Where are the abuses occurring?

Approaches to UK based companies account for 13% of all approaches made and the vast majority concern abuses in the Global South. Our analysis revealed:

- 29% of the approaches we made to companies concerned rights abuses alleged to have occurred in Africa;
- 24% of approaches concerned Asia;
- 17% of approaches concerned the Middle East & North Africa;
- 9% of approaches concerned the Americas;
- 16% of approaches concerned global human rights issues (or allegations relating to multiple countries).

#### **Heat map showing location of alleged allegations**



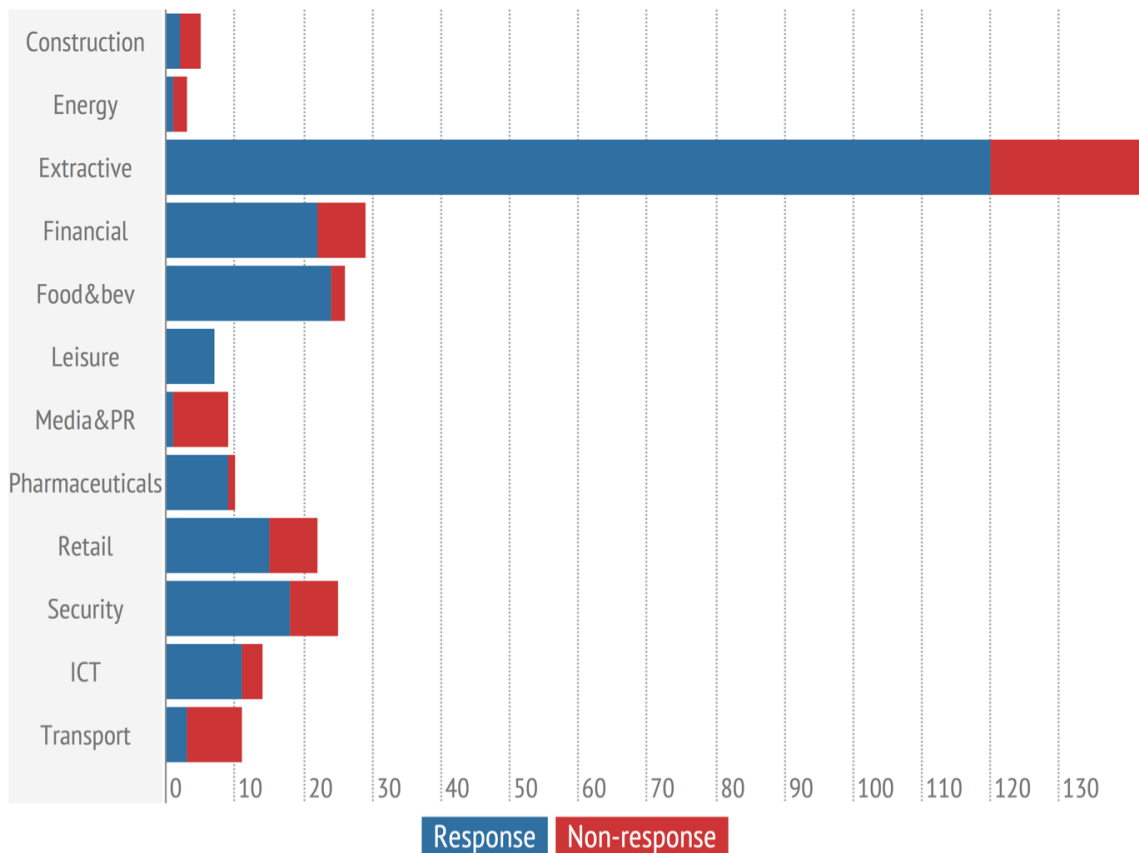
<sup>1</sup> Figures correct as of 31 Dec 2014

Only 5% of the approaches we made concerned allegations relating to Western Europe (from these, the majority, 12 out of 14 related to allegations in the UK)<sup>2</sup>. Many [NGOs working on access to justice issues argue](#) that the high volume of allegations against UK companies abroad demonstrates that while UK based companies are comparatively well regulated in Western Europe they are frequently implicated in places where regulatory regimes are not as robust and options for remedy are more limited. It would appear that, companies are breaching human rights abroad, partly because they do not face the same (or any) consequences. This high number of approaches concerning extraterritorial allegations suggests the UK Government should place a greater emphasis on companies carrying out improved human rights due diligence and ensuring there are accountability mechanisms in the UK when abuses do occur.

## 2.2. Which sectors are most implicated in abuse?

The extractive sector was the industry sector from which we sought by far the largest number of responses (detailed analysis of the extractive sector is in part 3 of this report). 47% of all approaches (142 of 303) that we made were to this sector. Extractives was followed by: Financial (9%, 28), Security (8%, 25), Food & Beverage incl. agriculture (9%, 26) and Retail (7%, 22).

While the overall response rate was high (77%) and broadly in line with the response rate when compared to companies headquartered in other Western countries, there was some variance by sector.



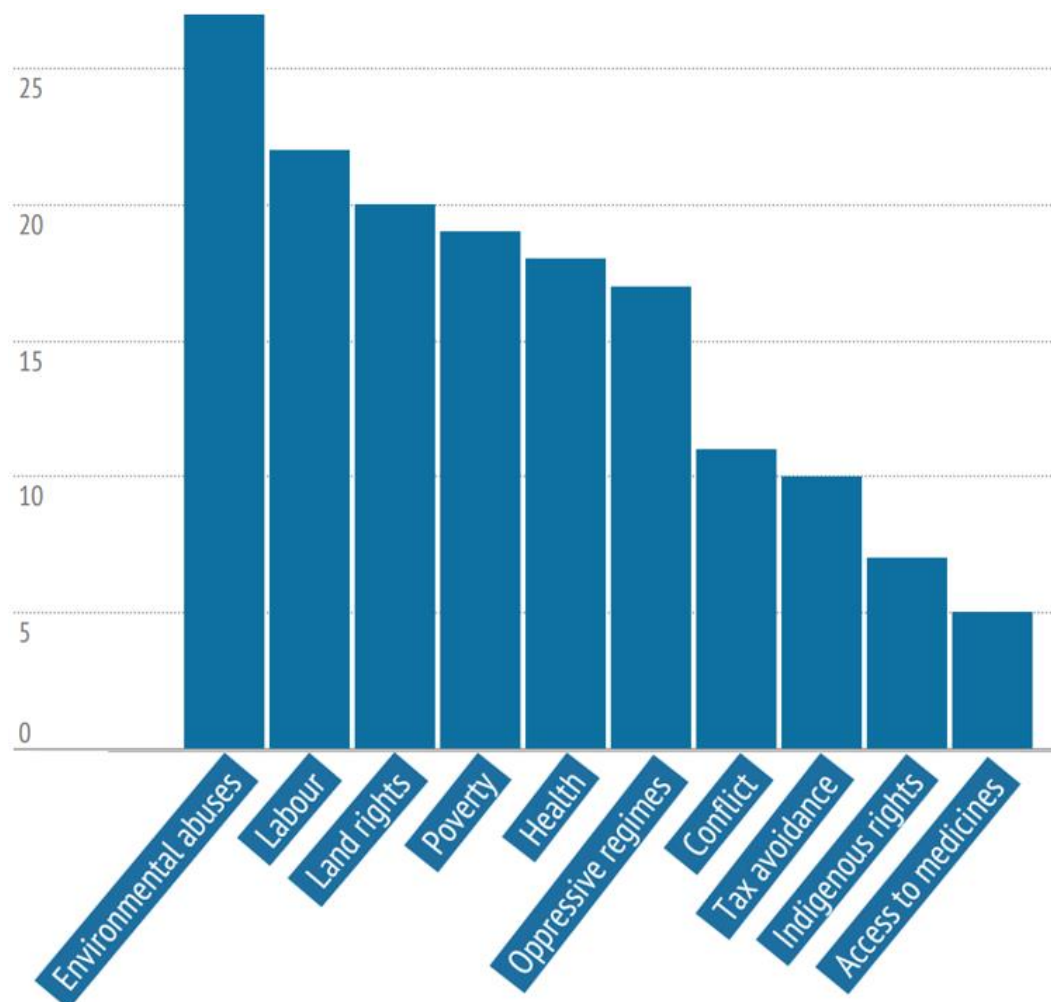
<sup>2</sup> Both approaches to the UK and USA contained allegations over trade union right: 3 (out of 10) in the US and 2 (out of 12) in the UK. The USA figures also include 3 approaches to BP regarding the Gulf of Mexico spill, partly accounting for the relatively high number of approaches (10 out of 303).

Extractives (85%), Financial (75%), Food & Beverage (92%), Leisure (100%), Pharma (90%), Security (72%), and Technology (79%) all had response rates that were above the overall response rate average of 70%. Construction (40%), Energy (33%), Media & PR (11%), Retail (68%), and Transport (27%) all had response rates below the average level.

The 11% response rate by the Media & PR sector is perhaps particularly ironic, given their justified demand for accountability from all other strands of society. This is also not an industry that usually receives much attention from NGOs on their human rights impacts. In particular, the NGO Bahrain Watch brought this issue to the fore in 2012 through its project "PR Watch", which highlights PR firms that have worked in some form for the Bahrain Government. Bahrain is widely seen by NGOs as a repressive regime that systematically abuses the human rights of its citizens. We approached 9 UK Media & PR firms that were named by this project and only one responded. See details of the allegations [here](#).

## 2.3. Which are the greatest human rights abuses?

### *Human rights issues raised*



The analysis of the issues which we approached UK based companies for responses on revealed that often allegations were complex and raised several related human rights issues. A breakdown of the most common allegations found: 27% (82 of 303) of all approaches made concerned environmental abuses affecting human health; 22% (67) concerned labour abuses, 20% (60) concerned land rights; 19% (57) concerned allegations that companies were contributing to impoverishment of communities; 18% (54) concerned negative health impacts; 17% (51) concerned support or complicity for oppressive regimes/groups; 11%

(32) concerned involvement in conflict; 10% (29) concerned tax avoidance; 7% (22) concerned indigenous peoples rights and 5% (16) concerned access to medicines<sup>3</sup>.

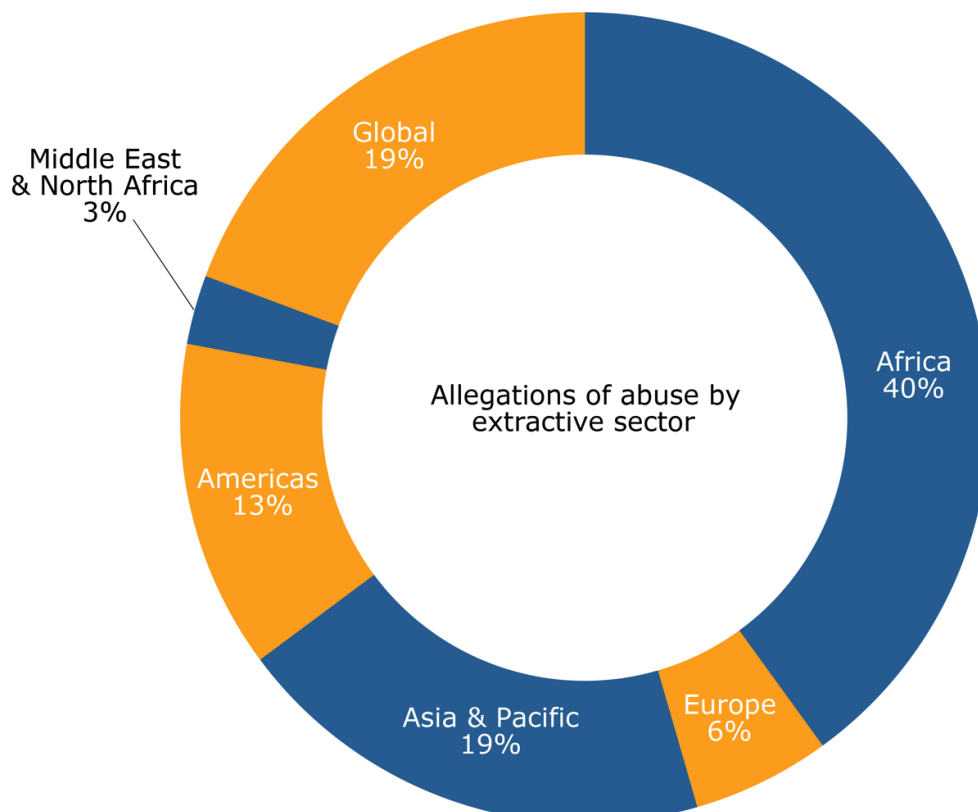
<sup>3</sup> Note we did seek responses to other issues but these were the most numerous.

### 3. Challenges for the extractives sector

In recent years London has become a global hub for mining and extractive companies with many of the leading firms listed on the London Stock Exchange. Although many countries have financed their development through resource extraction, the [United Nations Development Programme highlights](#) the fact that there are also considerable dangers and risks associated with the extraction of natural resources. Large-scale extractives projects often require obtaining land and water from local communities, and security for high-value machinery. Without enormous care and due diligence, human rights abuse of the poor and vulnerable people is very likely. Too often this results in allegations of large-scale pollution, land grabs, violence, and killings. Approaches to extractive companies accounted for 47% (142 of 303 requests) of all company response requests to UK based companies. This is by far the highest number of any sector and while the response rate is high at 85% (121 responses, 21 non-responses) this should not necessarily be taken as an indication that these companies are addressing human rights abuses and issues adequately.

The current UK Government has recognised the significance of transparency in this sector and has taken two steps that improve accountability. Firstly, in October 2014 it [was admitted as a candidate country to the Extractive Industries Transparency Initiative](#). Secondly it introduced the [Reports on Payments to Government Regulations](#), which requires mining, oil and gas companies to report on all payments made to governments worldwide from 2015. Notwithstanding this, our analysis suggests that further government action is required to ameliorate the impacts of this sector and increase accountability. The UK Government is particularly well placed to engage with the extractives industry on these issues as industry organizations, pushing for more responsible business are based in London. For example the International Council on Mining and Metals (ICMM) and IPECA, the global oil and gas industry association for environmental and social issues.

Analysis of our approaches to extractive sector companies revealed that they were heavily directed towards Africa, with 40% of all approaches made in respect of alleged abuses in this region. This compares with 29% when taking all sectors together. This is not a surprising statistic; indeed [South Africa alone is estimated to have mineral reserves worth \\$2.5 trillion](#). However, what it does suggest, is that a key area for the next government to focus on should be looking for ways to improve the human rights impacts of the extractives sector in Africa.

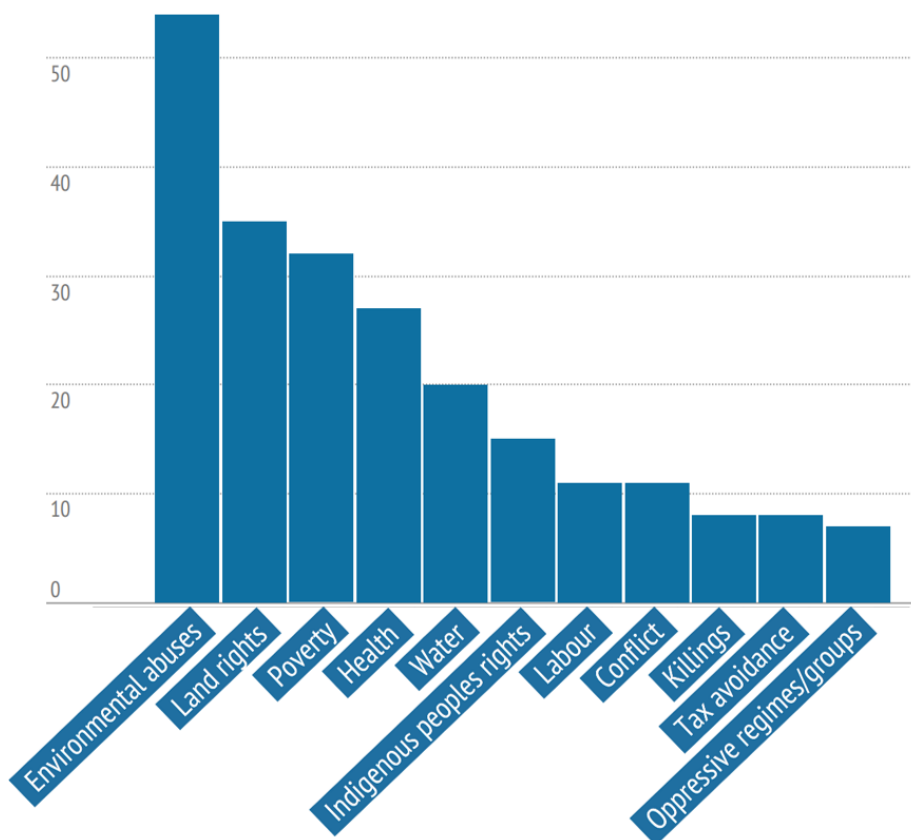




## Case study examples of company responses by extractives in Africa



## Human rights issues raised in allegations against extractive companies

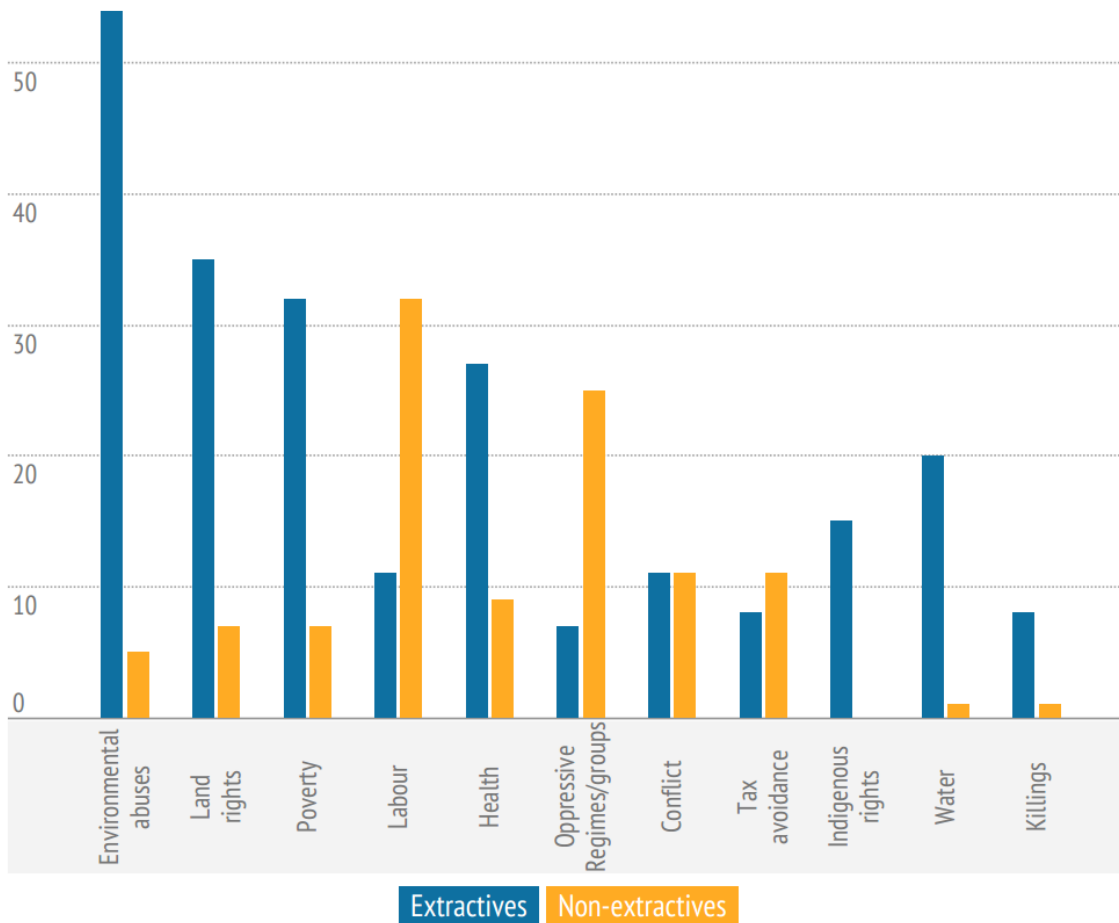


Our analysis also showed that the allegations made against UK extractives are more complex than those made against other sectors and often involve multiple allegations of human rights abuses. Unsurprisingly, claims of negative environmental impacts were contained in the majority of the approaches we made; there was an allegation of environmental abuse affecting human health in 54% (76) of all approaches we made to extractive sector companies. We also made 49 (35%) approaches on land rights (including displacements); 46 (32%) concerning allegations that companies were contributing to impoverishment of communities; 39 (27%) regarding negative health impacts; 29 (20%) regarding access to water and 22 (15%) regarding abuse of indigenous

peoples' rights; 16 (12%) regarding labour rights; 15 (11%) alleging corporate involvement in conflict; 12 (8%) allegations of involvement in killings; 11 (8%) over tax avoidance and 10 (7%) allegations that extractive companies were supporting or complicit with oppressive regimes or groups.

Furthermore it was clear from our analysis that many of these issues are disproportionately associated with the extractives sector, as demonstrated by the graph below.

### **Human rights issues Extractives v non-extractives**



While environmental allegations concerned 54% of all approaches to extractive sector companies, only 5% of approaches to other sectors concerned environmental abuses. Similarly while 35% of approaches to extractives concerned land rights only 7% of other sectors did so. Moreover, it was only approaches to extractive companies that raised indigenous rights abuses (15% v 0%). A similar trend is true of poverty (32% v 7%), water (20% v 1%), health (27% v 9%) and killings (8% v 1%). By contrast labour abuses made up only 11% of approaches to extractives, compared with 32% of other sector approaches.

Furthermore, the 142 approaches we made have been to just 28 companies with just 7 companies making up 110 of the approaches, all of which had average or above average response rates:

- Anglo American (7) 100% response rate (human rights policy available [here](#))
- BHP Billiton (11) 73% response rate (human rights policy available [here](#))
- BP (12) 100% response rate (human rights policy available [here](#))
- Glencore (14) 100% response rate (human rights policy available [here](#)), although there was a non-response from Xstrata which is now part of Glencore
- Rio Tinto (15) 81% response rate (human rights policy available [here](#))
- Shell (40) 93% response rate (human rights policy available [here](#))
- Vedanta (11) 91% response rate

These figures suggest that these companies are having a disproportionate impact, and are being closely monitored by civil society. Clearly any solution to improving the impacts of this sector will require close engagement with these companies.

Almost all of these companies have a publicly available human rights policy, indicating that while this is a good step in addressing human rights, the existence of a policy alone does not prevent a company from being implicated in rights abuses. However, in addition to negative impacts, it is important to highlight positive moves made by these companies on the human rights agenda. For example [Shell and BP recently announced they were backing resolutions](#) from activist shareholders requiring it to test whether its business model is compatible with the pledge by the world's nations to limit global warming to 2C. [Here](#) you can find more examples of positive initiatives by the extractive sector. As well as regulating corporate behaviour, government policy should find a way to foster and reward companies when they take positive steps.

### 3.1. Quality of responses

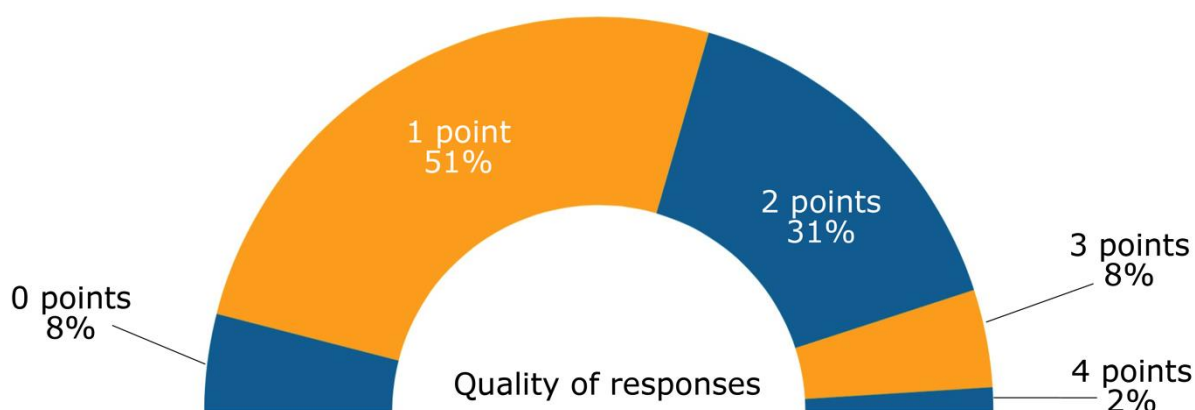
The response rate by companies has consistently been above 70% and has risen to over 80% in 2014. However, although the response rate may indicate a company's willingness to engage on business and human rights issues we also notice a huge variation in the quality of responses. Some responses we receive are detailed, address each point raised, show a genuine willingness to investigate the allegations and prevent abuse. On some occasions the response request has led to a genuine dialogue between the company and victims, resulting in real change on the ground. At the other end of the spectrum we have received one-line responses or a short paragraph that essentially amount to a bare denial. Sometimes we receive information which is irrelevant to the concerns being raised.

In order to put the response rate data in more context we undertook an analysis of the quality of the responses we have received from UK based extractive companies. We chose the extractives because of the seriousness of the allegations, and because 47% of all responses we sought from UK companies were from this sector so they represented a significant sample.

We graded the responses as follows:

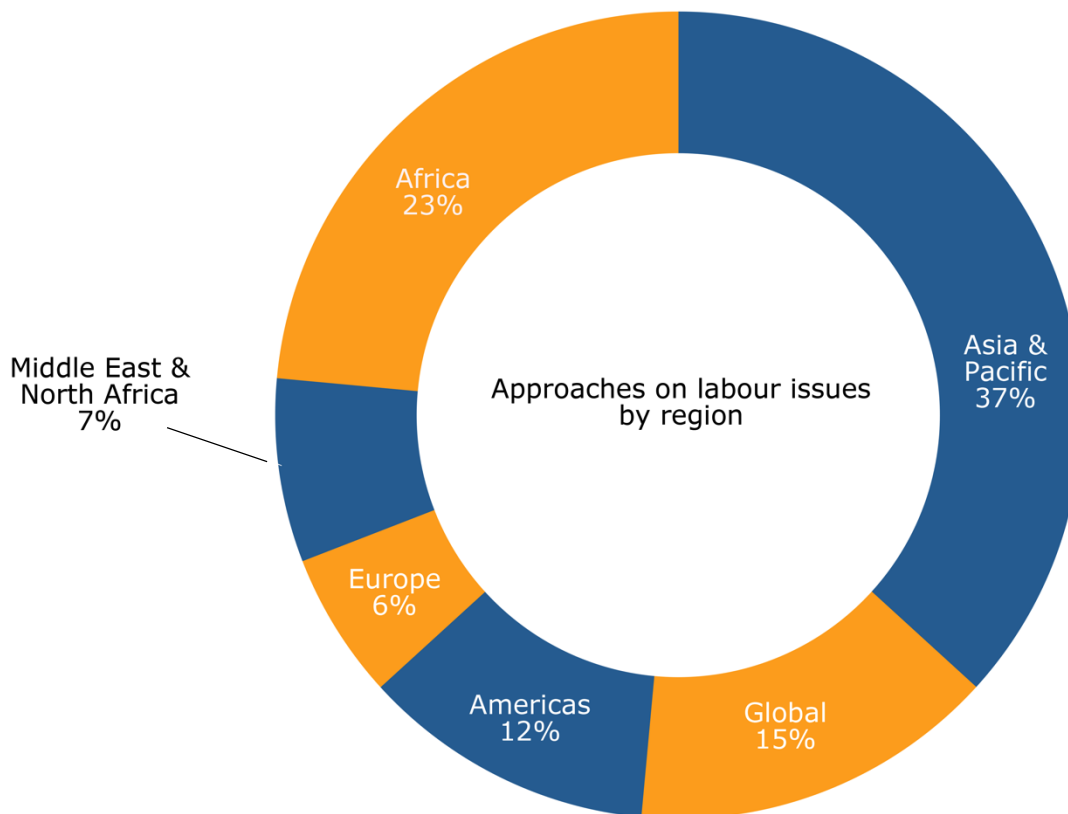
- 0 – failed to address the concerns raised
- 1 – addressed the concerns generally and in limited detail
- 2 – addressed the concerns point-by-point
- 3 – addressed the concerns point-by-point and showed an openness to investigate claims
- 4 – addressed concerns and entered into genuine dialogue with civil society/victims

Our analysis (see chart below) showed that only 2% of the responses we received from extractive companies met the highest 4 point standard. This included a response from **REA Holdings** to a report by the Forest Peoples Programme over allegations concerning indigenous peoples and land rights in Indonesia (further details [here](#)). In this response the company accepted where mistakes had been made and outlined its commitment to rectify the issues. Another 8% also met the 3 point standard. Unfortunately 59% either failed to address the issues in a point by point way or at all (those scoring 0 or 1 point). Many responses addressed elements of the allegations but often failed to address an important or central part of the concerns raised.



## 4. Labour abuses & modern slavery

Labour abuses were contained in 22% (67 of 303) of all approaches made to UK based companies. However, when the approaches to extractive companies are stripped out this figure rises to 32% (51 of 161). This suggests that when looking at sectors other than the extractives, labour abuses are the most serious human rights issue facing UK companies globally. The 67 approaches on labour issues included 12 allegations that they (or their suppliers) were not paying a living wage, 13 allegations that they were not respecting the right to freedom of association and 6 allegations of child labour. Of the labour abuse allegations: 37% related to alleged abuses in Asia, 23% in Africa, 12% in the Americas; 7% in the Middle East & North Africa and 6% in Europe<sup>4</sup>.



Of the 4 approaches made in Europe all of them were made in the UK and 3 related to abuse of trade union rights. While there are obviously many more allegations made against companies in Europe and the UK for labour rights abuses, including forced human trafficking, the Resource Centre does not tend to seek responses for these as the company has either publicly responded or the allegations are already the subject of regulatory or judicial action (we post reports on those cases on our website as well). In contrast, many of the allegations of labour abuse concerning the operations or supply chains of UK company's abroad are not the subject of any formal judicial process and may not even be illegal in that country. A good example of this is the issue of the [living wage](#). While many UK firms are criticised for having workers in their supply chains in countries such as Cambodia and Bangladesh that are not being paid a living wage, these workers are often still being paid in line with that country's minimum wage legislation. Therefore, although the low level of approaches in Europe compared to other regions cannot be said to show that UK companies are not breaching labour rights in Europe, it can perhaps be said to show that there are a disproportionately larger number of unremedied labour rights abuses being committed by UK companies abroad.

The apparel sector (approached most on labour issues) has an overall response rate of 67% (14 responses out of 21 approaches), which is significantly lower than the overall response rate of UK companies of 77%. This low level of engagement is also reflected in the response rate (25%) of the apparel sector to our [Company Action Platform](#) initiative in which we surveyed companies on the action they were taking on business and human rights (this was carried out in late 2014/early 2015). However, we also made approaches to extractive companies, food & beverage companies, agricultural

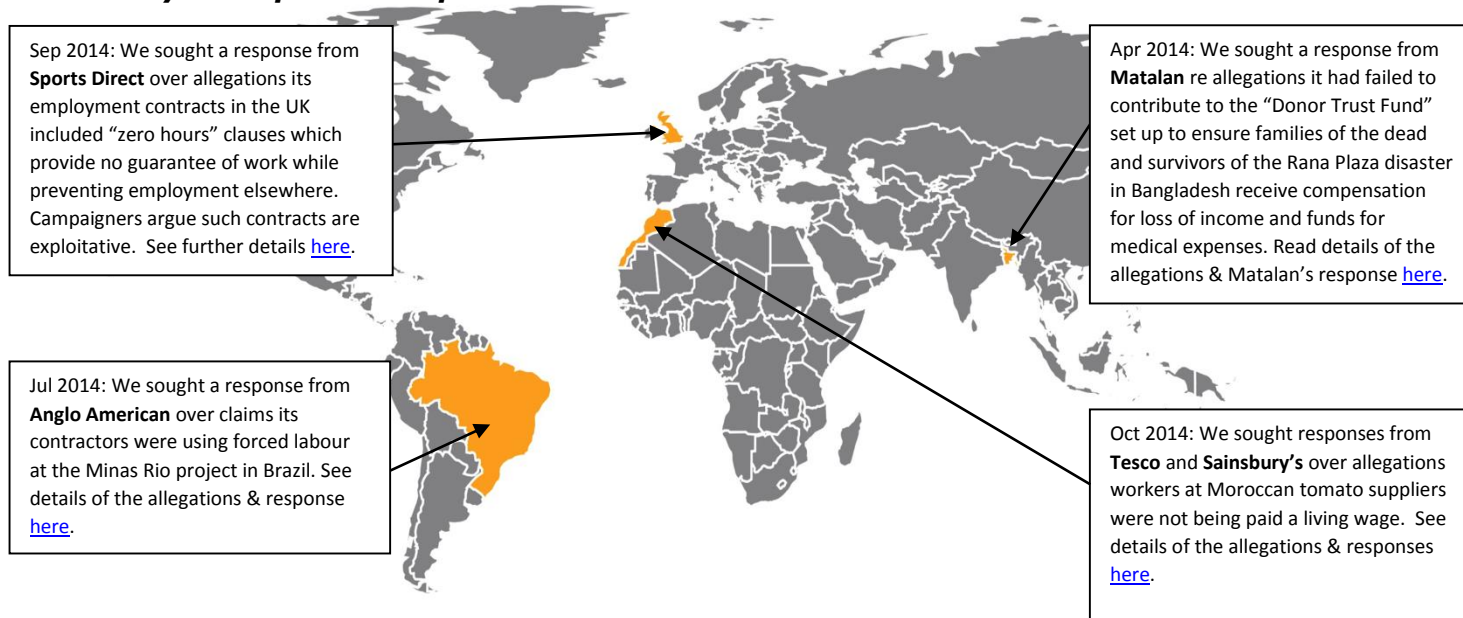
<sup>4</sup> Note that 15% of allegations were global in nature or related to multiple countries

companies, transport companies and finance companies demonstrating that this is an issue for many if not all sectors.

54% of approaches on labour issues concerned the supply chain (indeed all of the apparel sector approaches concerned supply chain allegations), indicating that if UK companies are going to improve their labour impacts, the supply chain will be key to achieving this. The danger of companies not ensuring labour rights are respected in their supply chains was devastatingly demonstrated by the collapse of the [Rana Plaza](#) factory in Bangladesh that left more than 1,100 workers dead. Many UK companies including **Primark** and **Matalan** had clothes made in the building.

Nonetheless, over the last year we have seen some indications that UK retail brands are willing to take steps to promote labour rights within their supply chains. For example **Next, New Look and Primark (part of Associated British Foods)** were part of [group of companies that publicly agreed](#) to factor a higher minimum wage into their pricing to enable them to pay a living wage in Cambodia and urged the government to take steps itself to raise the minimum wage and engage with unions. This demonstrates a growing acceptance by companies that human rights abuses in their supply chains are their responsibility, as made clear in [principle 13b of the UN Guiding Principles](#).

### Case study examples of responses on labour issues



The current government has recognised labour as a key business and human rights area, particularly focusing on the issue of modern slavery. [Research carried out by the Home Office estimates that there were between 10,000 and 13,000 victims in the UK in 2013](#) of modern slavery. However, as our analysis indicates, the number of victims in global supply chains making the goods we in the UK purchase, is disproportionately higher.

The most important step taken by the current government on this issue was the introduction of the [Modern Slavery Act](#). This legislation was welcomed by NGOs and [investors](#). Particularly welcomed was the [government’s announcement that it would include provisions to compel large companies to state publicly the action they have taken to ensure their supply chains are slavery free](#). However, NGOs and many companies have also pointed out the limitations of the Act. In November 2014 the [Transparency in Supply Chains Coalition released a briefing paper](#) arguing that the Bill should be strengthened to ensure the reporting and accountability requirements are clearer and more effective.

Furthermore, although this legislation will go some way to prompting action by companies on forced labour, it does not cover other forms of labour exploitation and abuse such as failing to pay a living wage, health and safety failures or the undermining of core trade union rights.

## 5. Barriers to justice for victims abroad

The last two sections of the report have illustrated what appears to be an accountability gap. While UK companies are well regulated in their operations within Western Europe many UK companies are being implicated in serious abuses abroad, particularly in the Global South where the consequences (if there are any) can be much less serious for breaching human rights and victims often have limited or no access to legal remedies. This apparent accountability gap is not unique to the UK. [Our legal accountability team compared 210 leading cases against corporations for human rights abuses with over 2000 company responses we have sought on human rights issues](#). They found that lawsuits against companies in OECD countries claiming extraterritorial abuse are disproportionately much lower than all instances of concern over extraterritorial human rights impacts raised with companies headquartered in the same countries. Specifically, 44% of the responses we have sought have been from companies headquartered in OECD countries regarding extraterritorial abuses. Yet only 18% of the 210 lawsuits are in those same countries<sup>5</sup>. A breakdown of these figures with respect to the UK reveals that while 13% of the responses we sought have been from companies headquartered in the UK, only 5% of the lawsuits are in the UK.

This demonstrates that the UK and other Western governments are failing to hold companies headquartered or based in their jurisdictions accountable for the abuses they are implicated in. The experience of our regional researchers has revealed that abuses abroad, particularly in Global South countries often go unremedied for a variety of reasons. This underlines how important having an avenue to justice in the UK is.

### 5.1. Access to remedy narrowing in the UK

Under [Brussels I regulation](#) victims of abuses by UK multinationals abroad have been able to access the UK courts to seek redress. This led to a number of high profile lawsuits against (largely extractive) UK companies including [Monterrico Metals](#), [BP](#) and companies with a “sufficient presence” in the UK like [Trafigura](#). These cases led to monetary settlements for the communities affected. While this may not be a perfect result, it is the closest these victims can currently get to justice. However, over the last few years significant barriers to bringing these cases have emerged.

In 2012 the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (LASPOA) was passed, which was enacted with the stated aim of bringing down legal aid costs and discouraging unnecessary litigation. Unfortunately this act also contained provisions affecting Conditional Fee Agreements (CFAs) that critics argue significantly undermine the ability of victims of corporate abuses abroad to achieve justice. CFAs are agreements whereby the lawyer agrees not to charge their fee if they lose the case. However, if they win they are allowed to charge uplift on their fee of up to 100%. Previously the uplift fee was payable by the losing party on top of the ordinary legal costs incurred by the claimants solicitors. The rationale behind this system was to increase access to justice by encouraging lawyers to take on risky and difficult cases which could not be funded in another way.

The LASPOA made two main changes to CFAs that make accessing justice more difficult for victims:

- The success fee (still 100% except in cases of personal injury, capped at 25%) must now be paid from the compensation awarded to the victims of abuse.
- The costs incurred by the winning sides’ legal team, which are recoverable from the losing side must now be “proportionate” to the amount awarded in compensation.

These changes have created barriers to justice for a number of reasons. Firstly [these cases are by their very nature extremely complicated](#). They often involve complex corporate structures and hundreds if not thousands of claimants. This means that legal costs can often be very high and can even exceed the compensation awarded. This is compounded by the [Rome II Regulation](#), which provides that compensation awarded in UK courts must be at the levels awarded by the local courts. This makes it increasingly unlikely that the UK legal costs will be determined as proportionate when compared to compensation awarded at a local level.

The fact that compensation levels are deliberately kept at local levels while legal costs are incurred at higher UK levels also means that deducting the success fees from the compensation may leave victims

<sup>5</sup> This is other than for lawsuits in the USA under the now-narrowed Alien Tort Claims Act

with inadequate compensation. Although it is too early to appreciate the full impact of these changes, it is feared that they will deter victims from seeking redress and lawyers from taking on these very important but inherently risky cases that may no longer be financially viable. As it stands only a handful of law firms currently take on these cases.

The importance of keeping this avenue for redress open was highlighted recently by the settlement achieved when [Shell agreed to pay £55 million to compensate the Bodo community](#) over two oil spills that devastated a local community in Nigeria. This was a case taken on under the old funding system and delivered redress for a community after the initial settlement offer made by Shell of just £4000.

A new government could also look at ways to ensure that those companies implicated in the most serious extraterritorial abuses, face criminal sanctions in the UK. This can be done simply by utilising existing legislation. Section 1A of the [Criminal Law Act 1977](#) makes it a crime to conspire to commit a crime overseas where (a) it would be an offence under the law of that country (where the abuse is occurring) and (b) it would be an offence in England and Wales (if it were committed here). [Legal Guidance from the Crown Prosecution Service](#) (CPS) makes it clear that this law covers the case of a conspiracy to traffick humans from abroad and there is clearly no reason why this should not also be applied in other cases of serious extraterritorial abuse when the decisions leading to abuse were taken by the company in the UK. A new government could provide guidance to the CPS outlining how prosecutions using this provision in such cases helps it meet its commitments under the UNGP and is therefore in the public interest. Amnesty International has recently [urged the CPS and the Environment Agency](#) to launch a criminal investigation under this provision into Trafigura over the dumping of toxic waste in the Ivory Coast in 2006.

Furthermore, the [Bribery Act 2010](#) also allows for criminal prosecution of companies for actions abroad. The offense of failing to prevent bribery can be committed by any “relevant commercial organisation” irrespective of where they are based. Given that the government has already seen the merit in pursuing criminal sanctions for bribery abroad (and given how closely related bribery & human rights abuses often are), there would appear to be a clear opportunity to extend this model to human rights abuses.

While many argue that companies are largely well-regulated in the UK, there have recently been changes that civil society argue make access to justice for UK victims more difficult. In July 2013 the UK introduced fees for bringing an employment Tribunal claim. This means that those now bringing sex or race discrimination claims have to pay £250 to lodge a claim and a further £950 for a hearing. The [TUC argues that tribunal claims are down 79%](#) and emphasises that this change is particularly eroding hard fought victories for women and minorities. The TUC states that claims for pregnancy discrimination are down a quarter and that sex discrimination claims have also seen a disproportionate drop.

For further information on how major avenues for extraterritorial claims are narrowing see our [3<sup>rd</sup> Corporate Legal Accountability Annual Briefing](#).

For further recommendations on addressing this issue see: [The EU’s Business: Recommended actions for the EU and its Member States to ensure access to judicial remedy for business-related human rights impacts](#), Access to Justice.

## 6. Recommendations

The next British Government has a major opportunity to re-establish international leadership in business and human rights. To achieve this, will demand decisiveness, and a will to stand up to vested interests. But there are enough companies now that understand the importance of putting human rights at the core of their business, thanks to the role of active civil society organisations, including trade unions. The elections are a moment for this will to be shown to the UK public.

The analysis of our responses to UK based companies over the last 10 years has uncovered an accountability gap. Despite a growing public recognition by companies that they need to respect human rights they continue to be implicated in abuses overseas.

The next government should look at ways to help companies embed respect for human rights throughout their international operations. However, in addition to increasing capacity at the

company level, the government should also look at ways of increasing extraterritorial accountability for breaches of human rights by its companies. Knowing that they will be held accountable will force companies to address these issues and drive change. There are several immediate opportunities to make progress in a number of key areas, at domestic and EU level. In particular the Resource Centre recommends the next UK Government takes the following steps:

### **Mandatory transparency & accountability:**

- work with European partner-governments to ensure early and bold transposing of [the Non-Financial Reporting Directive](#) into national law to provide the highest levels of accountability regarding human rights due diligence
- lead efforts to strengthen proposed [EU conflict minerals regulations](#), especially mandatory requirements for responsible sourcing
- strengthen the supply chain reporting requirements of the [Modern Slavery Act](#) by including clearer requirements for disclosure and stronger enforcement provisions
- make human rights obligations central to Bilateral Investment Treaties by: (1) ensuring investor protections are dependent on compliance with international human rights standards, and (2) companies are not able to take host governments to international arbitration over measures that seek to improve the human rights of their citizens
- recognise the particular dangers facing human rights defenders around the world by ensuring increased support from UK embassies to intervene in such cases

### **Access to justice:**

- utilise the existing legislation ([Criminal Law Act 1977](#)) to hold companies accountable for abuses committed abroad and explore using the Bribery Act as a model to further extend extraterritorial criminal liability for human rights abuses
- improve extraterritorial access to civil remedies for victims of corporate abuse, including introducing an amendment to the [LASPOA](#) to ensure that it is financially feasible for law firms to take on such cases & victims receive fair compensation
- engage in a peer review of its OECD National Contact Point to explore how it could more effectively fulfil its mandate (see details on the Norwegian NCP peer review [here](#))
- strengthen the access to remedy element of the UK's National Action Plan on business & human rights, particularly setting out how it will ensure overseas victims, including those in the supply chains of UK companies, are able to access justice in the UK

### **Incentives:**

- commit to only support projects through UK Export Finance that have undertaken strong human rights due diligence and are not associated with serious rights abuses
- commit to only provide access to public procurement contracts to companies that have undertaken strong human rights due diligence and are not associated with serious rights abuses

### **Extractives:**

- develop a specific action plan to improve the human rights performance of extractive companies abroad and particularly in Africa

### **Labour rights and living wage:**

- promote freedom of association and right to collective bargaining in international trade and investment agreements and with, governments, and UK companies