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Francis West – Leadership and being first aren't the same things: An assessment of the UK National Action Plan on Business and Human Rights

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The 12th of May marked the UK Government's much vaunted Corruption Summit, which championed corporate transparency. On the same day, hidden by the Summit's fanfare, the Foreign and Commonwealth Office released its [updated National Action Plan](#) (NAP) on Business and Human Rights, five and a half months after the 2015 deadline specified in the [original plan](#).

So, was the Plan worth the wait?

For those that retain faith in the UN Guiding Principles on Business and Human Rights (and we at Unicef UK are certainly amongst that number), that the UK Government has re-iterated its commitment to the Principles and the expectation that UK Plc should be undertaking human rights due diligence is entirely welcome. However, when it comes to substantive action to implement the Principles, the picture the Plan paints is rather less positive.

Here are four areas where the Government falls frustratingly short:

1. Prioritisation and policy coherence

Let's rewind two and a half years to the publication of the original Plan. The NAP, featuring a combined ministerial forward from not one, but two Secretaries of State, was launched with a speech from none other than chief architect of the Guiding Principles himself, John Ruggie. While this alone didn't make the original NAP a great success, the relative lack of ceremony that has accompanied the updated Plan and the absence of a ministerial forward does tell us something about the level of priority that the Government now affords business and human rights.

On a practical level, this is reflected in the sparse commitments in the Plan from the Department for Business, Innovation and Skills (BIS). The Plan now very much reads exclusively as an FCO document. For those of us involved in the lengthy consultation process, and aware that BIS re-deployed highly effective civil servants immediately following a week of detailed workshops debating the issues in the Plan, this will come as little surprise. One has to wonder how the Government expects companies to take this Plan seriously, without the commitment at ministerial level from the department responsible for their organisations.

Conversely, with the UN Guiding Principles covering issues such as overseas aid, public procurement, trade and access to remedy, it is difficult to see how tangible action can be achieved without a focus on policy coherence and the commitment of the departments for International Development, Business, Justice and the Home Office, alongside that of the Foreign Office. The updated Plan mentions that the consultation process delivered a clear message on the need for policy coherence. In view of this, its conspicuous absence suggests a serious lack of buy-in at the political level across Government.

2. Public procurement

One way to energise multiple departments across Government on business and human rights would be through a focus on public procurement. UK Government departments award £45 billion worth of contracts to private firms each year – around three per cent of the UK's GDP. Directing this capital only towards companies that are undertaking effective human rights due diligence would realise Government's responsibility under UN Guiding Principle 6 and would also help level the playing field for companies that are taking human rights seriously.

The updated NAP claims that the Government will 'Continue to ensure that UK Government procurement rules allow for human rights-related matters to be reflected in the procurement of public goods, works and services.' This is actually a softening of the language from the 2013 version of the NAP, which commits to 'ensuring that in UK Government procurement human rights related matters are reflected appropriately when purchasing goods, works and services.'

In any case, as it stands, public bodies are only required to have due regard for equality-related issues in their procurement activity. Bids for a contract may be excluded if evidence of grave misconduct by a company is found. Although this might include breaches of human rights, this falls well short of the Government's responsibility to assess and address any negative human rights impacts in its supply chain. It remains unclear what actions the Government is taking to 'allow' for human rights

to be reflected in public procurement and this is precisely the sort of information that Unicef UK would have hoped to see in a forward looking National Action Plan.

3. Access to remedy

While there are no concrete commitments, the third pillar of the NAP on access to remedy does indicate that the Government will 'keep the UK provision of remedy under review.' This provides a chink of light for those vulnerable groups – such as children, the elderly, the disabled, indigenous peoples or migrants – whose rights are more likely to be infringed by corporate behaviour. In practice, Unicef UK would like to see any such review include granting UK courts jurisdiction over claims concerning overseas infringements of children's rights involving UK businesses. Clarification is also needed of when the actions or negligence of one business can be considered complicit with rights abuses committed by a business partner or subsidiary.

4. Silence on children

Children are mentioned only once in the update. While it is welcome that the Government will 'consider new project activity' with regards to groups like children, this does not afford sufficient attention to their need for protection. As children are still growing and developing, they are especially vulnerable to negative business impacts and can be severely and permanently affected by infringements of their rights: there are more than 168 million child labourers worldwide, 85 million of whom are in hazardous work; child consumers can be more easily convinced to buy and use inappropriate or unsuitable products; and children are much more susceptible than adults to the harmful physical effects of toxic chemicals, manual labour and poor diets. The Plan fails to provide children with the appropriate level of attention and neglects to mention the Convention on the Rights of the Child as one of the international human rights treaties that has been ratified by the UK.

Looking forward: From funding to action

Conclusion

There are positives to the updated Plan. In particular, it is pleasing to see a loose commitment to considering human rights impacts of free trade agreements. Likewise, there is welcome continued financial support afforded for worthwhile projects such as the Equality and Human Rights Commission's Business and Human Rights Guide for Boards.

Overall, however, the updated Plan appears to reflect a move towards looking at the work that Government can fund on business and human rights, rather than matching this with a focus on its own day to day business. The irony will not be lost on those who have welcomed the UN Guiding Principles as crystallising the move in corporate responsibility away from a focus on how a business spends its money, to how it makes its money.

The speed at which the Government produced the first NAP and then followed up on its commitment with an update is commendable. But let's not conflate being first with leadership. If that is truly the Government's aim, then it should lead by example and take the first step of committing to proactively integrating human and child rights considerations into public procurement – substantive action of the sort and magnitude that National Action Plans were always intended to deliver.

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