

**Written Evidence for the Public Bill Committee on the Economic Activity of Public Bodies
(Overseas Matters) Bill submitted by the Corporate Justice Coalition**

August 2023

Submitting party

The Corporate Justice Coalition, formerly known as the CORE Coalition, is the UK's long-standing civil society network on corporate accountability with a wide membership spanning NGOs, trade unions and law firms. We work to ensure greater corporate accountability in the UK and promote compliance with human rights in business activities around the world.

Summary of Submission

- 1. The Economic Activity of Public Bodies (Overseas Matters) Bill is not amenable to amendment and should be abandoned in its entirety.**
2. The Bill would prevent public authorities from effectively considering international human, labour, and environmental rights in their procurement and investment decisions.
3. It would negatively impact progress made in the private sector towards respecting human, labour and environmental rights in operations and value chains.
4. It would be contrary to the UK's national and international commitments to international human rights, labour rights and environmental law, and the UN Guiding Principles on Business and Human Rights.
5. The UK would fall further behind rapidly developing international standards on human, labour and environmental rights in global value chains.

Public authorities should conduct human rights and environmental due diligence in procurement and investment decisions

6. The Bill would prohibit public authorities from taking procurement or investment decisions influenced by “political or moral disapproval of foreign state conduct” by having regard to “territorial considerations” (sections 1 and 2). “Foreign state conduct” includes any conduct or policy of a foreign government or public authority – including in relation to human, labour and environmental rights abuses. The “state conduct” can both be an act or a failure to act by the state.
7. There are many examples of human, labour or environmental rights abuses in global value chains associated with specific territories. These include, for example, illegal Israeli [settlements](#) in occupied Palestinian territory, [forced disappearances](#) of environmental defenders in Mexico and Uyghur [forced labour](#) in Xinjiang, China. The public sector has already been connected to human rights abuses, e.g., by sourcing [PPE](#) from a Malaysian supplier already subject to a US import ban due to its use of forced labour.
8. Public authorities should conduct human rights and environmental due diligence (HREDD) – a process of identifying, mitigating, preventing, and accounting for actual and potential human rights and environmental harms. In doing so, public authorities fulfil the state duty to respect and protect human rights in its own activities including procurement and investment. As previously outlined, it is necessary to take territorial considerations into account during the due diligence process for an adequate assessment of the risks to human, labour and environmental rights. However, this can easily be challenged as constituting “political or moral disapproval” of the relevant state’s failure to protect against human rights harm.
9. The Bill’s international law, labour misconduct and environmental misconduct exceptions do not provide adequate protection for human, labour and environmental rights. The UK breaches international law where it directly causes or contributes to human rights abuses. However, procurement and investment are seldom straightforward, and it is legally uncertain whether more indirect economic involvement with human rights abuses would meet the stated exceptions. The labour misconduct exception, while more specific, focuses on trafficking and modern slavery; it does not address many other forms of labour rights violations, as pointed out by UNISON. The environmental misconduct exception is too ambiguous to work; it includes a loophole that enables widespread damage to the environment and climate to take place while being in compliance with weak local laws, e.g., on [deforestation](#).
10. Public authorities taking decisions based on their HREDD risk assessment carry the burden of proof that their decision falls under the international law, labour-related misconduct or environmental misconduct exception in schedule part 2. The exceptions are too limited and ambiguous. “Political or moral disapproval” is not defined, which also leads to uncertainty. This uncertainty, coupled with the ambiguity and limitations of the exceptions and the need to establish that all territorial considerations solely fall within the exceptions, will make it very difficult for public authorities to meet the burden of proof. Aside from the risks connected with it, it will lead to additional legal and consultancy costs, both during the

tender stage to avoid challenges and also when a challenge takes place, as also pointed out by UNISON. As procurement processes are often subject to legal challenges, this will stop public authorities from properly considering human, labour and environmental rights in favour of legal certainty. This chilling effect has also been explained by [Amnesty International](#) and [Human Rights Watch](#).

Connection to the private sector conducting human rights and environmental due diligence

11. Public procurement influences business behaviour. In the UK, public spending constitutes over [£300 billion](#) – on average, about [14%](#) of GDP. Local Government Pension Schemes are responsible for an additional [£364 billion](#). Businesses correspondingly take any factors influencing the public procurement tender and decision-making process into consideration. The public sector also leads by [example](#), with businesses less likely to adhere to high standards if government fails to do so itself.
12. Businesses should respect human, labour and environmental rights in their operations and value chains. The [UN Guiding Principles](#) on Business and Human Rights (UNGPs), which extend to [climate change](#), and the [OECD Guidelines](#) for Multinational Enterprises on Responsible Business Conduct, state this should be done via the conduct of HREDD.
13. The UK expects businesses to voluntarily undertake HREDD in line with the UNGPs. However, [Germany](#), [France](#) and [Norway](#) have already created mandatory HREDD frameworks. The EU is currently [negotiating](#) an HREDD Directive for all companies active in the EU over a certain [threshold](#). The UK Modern Slavery Act [S.54](#) and the Environment Act [Schedule 17](#) are ineffective and fail to introduce HREDD in alignment with international standards, e.g., failing to cover a wide enough range of rights, or including enforcement necessary to ensure [compliance](#) from business.
14. The introduction of a Business, Human Rights and Environment [Act](#) requiring businesses to prevent, address and remedy human rights and environmental abuses is crucial for business compliance with international standards and ensuring a level playing field for business. A new law is called for by UK [civil society](#) organisations, [businesses](#), [investors](#) and over [120,000](#) petition signers. Polling shows that [4 in 5 Britons](#) would support a new law to stop the exploitation of people and the environment in UK supply chains.
15. Public authorities play an important role in incentivising ethical business behaviour. This was also [emphasised](#) by Parliament's Joint Committee on Human Rights, which recommended the public sector excludes from contracts businesses that do not conduct human rights due diligence or that were found to have been responsible for abuses. The 2023 UK [Procurement Bill](#) aligns to this trajectory by allowing public bodies to exclude tenders based on human rights and environmental grounds as part of "professional misconduct" which was previously established via the [Public Contracts Regulations](#) 2015. The devolved governments also have procurement guidance and regulations which take human rights into account. E.g., Scotland [requires](#) contracting authorities with expenditure over a certain threshold to make, among others, a statement about their policy in relation to living wages, and fairly and ethically traded goods; Wales [established](#) "a globally responsible Wales" as a well-being goal of public bodies and [introduced](#) a "socially responsible procurement duty". Northern Ireland

[issued](#) a Procurement Policy Note on Human Rights. The Economic Activity of Public Bodies Bill would overrule all these with its prohibition of “disapproval of foreign state conduct”.

16. Under the Bill, public authorities would have to consider businesses with a bad human and environmental rights record on the same level as ‘responsible businesses’ with a good record – or risk legal challenges. The Bill will thus halt the process made in encouraging businesses to respect human and environmental rights. The Government will no longer be able to lead by example. Moreover, responsible businesses which follow international guidelines on conducting HREDD will be at a competitive disadvantage.

Contrary to the UK’s national and international commitments

17. The Bill is contrary to the UK’s commitment to international instruments on business and human rights. The UK voted in the UN Human Rights Council for the unanimously adopted [UN Guiding Principles](#) on Business and Human Rights (UNGPs). The UNGPs not only introduce the corporate responsibility to respect human rights, but also clarify the state duty to protect human rights under international human rights law. They clearly outline that state agents, such as public authorities, should be encouraged or even required to conduct HREDD, via promoting it in procurement. The unanimously adopted [OECD Recommendation](#) on the Role of Government in Promoting Responsible Business Conduct also recommends using procurement as a strategic tool.
18. The Bill is contrary to the UK’s national commitments on businesses and human rights, including its own National Action Plan (NAP), as also outlined by [Human Rights Watch](#). The 2016 [update](#) of the NAP states 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”. UK Government guidance on human rights and procurement was [criticised](#) by Parliament’s Joint Committee on Human Rights for being “confusing” and therefore potentially deterring procurement officers from taking human rights into account. The Bill will lead to even more confusion and contradiction and will ultimately discourage public authorities from “factoring in” human rights.
19. The Bill could lead to a breach of the Paris Agreement. Public procurement and, especially, investment will play a key role in the transition to net-zero. Much environmental destruction, such as deforestation, takes place legally – making it impossible for public authorities to use the environmental misconduct exception. The production of fossil fuels is often linked to states making it possible that specific disinvestments are also challenged under the Bill, as also outlined by [Friends of the Earth](#). The chilling effect will make it more difficult for the UK to achieve net zero and contribute to limiting global warming to 1.5°C.
20. The Bill is contrary to international efforts to stop Israeli violations of international law in the occupied Palestinian territory. The UN Security Council reaffirmed in resolution [2234](#) (2016) – affirmatively voted upon by the UK Government – that the Israeli settlements in the occupied Palestinian territory are ‘a flagrant violation’ of international law. A UN [database](#) lists all businesses – including three UK companies – linked to illegal settlement-related activities that cause concerns of a broad range of human rights violations. Specific human rights abuses in the occupied Palestinian territory also include a system of [apartheid](#)

against Palestinians, home demolitions and [forced evictions](#), and considerable [workers' rights](#) concerns. The UK's own [guidance](#) on overseas business risks in Israel does not encourage economic and financial activities in the illegal Israeli settlements. Yet, the Bill does not allow for new exceptions to the prohibition of territorial consideration indicating "political or moral disapproval" of state conduct for Israel, the occupied Palestinian territory or the occupied Syrian Golan Heights. This blanket prohibition coupled with the insufficient existing exceptions to the Bill will foreseeably have a strong chilling effect on public authorities assessing and acting in compliance with its legal duties – as an organ of the State – to 'protect, respect and fulfil human rights' in decisions connected to those territories.

21. The Bill also threatens the human rights to freedom of expression and a private life. These issues are not within our specific expertise but our partners [Amnesty International](#) and [Human Rights Watch](#) have published briefings on these issues noting that the Bill is incompatible with the UK's obligations under Article 10 of the European Convention on Human Rights, and Article 19 of the International Covenant on Civil and Political Rights.

The Bill is not amenable to amendment

22. The Bill is not amenable to amendment and needs to be abandoned. Sections 1 to 3, the main provisions of the Bill, have far reaching consequences, some of which are unintended. They prevent public authorities from effectively considering international human, labour, and environmental right in their decision making. The chilling effect on HREDD cannot be prevented by having a more detailed definition of "political or moral disapproval" or adding broader exceptions for human, labour, and environmental rights. This would not change the intrinsic mechanism of the Bill which puts the burden of proof – and the connected risks and costs – on the public authorities to show that their action was not "influenced by political or moral disapproval". As such, the chilling effect this Bill would have on the protection of human, labour and environmental rights cannot be changed via amendment.
23. The call to abandon the Bill completely is also supported by [Amnesty International](#), [Friends of the Earth](#), [Human Rights Watch](#), [Palestine Solidarity Campaign](#), and [UNISON](#).

Conclusion

24. The Bill prevents public authorities from effectively considering human, labour and environmental rights in their procurement and investment decisions. In doing so, it will have potential far-reaching negative effects on businesses conducting HREDD and preventing, addressing and remedying human, labour and environmental rights abuses in their value chains.