

Craig Mokhiber
Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10
Switzerland

3rd April 2013

Dear Mr Mokhiber,

Re: request for inputs and suggestions on the 2013 Forum on Business and Human Rights

Thank you for your letter dated 5th March 2013 requesting suggestions for topics and speakers for the 2013 Forum on Business and Human Rights. The Equality and Human Rights Commission (the Commission) is pleased to be able to respond and offer input into the Forum.

The Commission is an accredited 'A' status National Human Rights Institution (NHRI) with the United Nations which recognises our authoritative and independent role in promoting and protecting human rights in Britain.

The Commission also has a statutory duty to promote equality and diversity, work towards the elimination of discrimination, promote human rights and build good relations between and among groups. The Commission has responsibilities in nine areas of equality (age, disability, gender, race, religion or belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment) as well as human rights.

Our suggestions for specific topics for the 2013 Forum are drawn from our work and experience of business and human rights at a practical, operating level. This includes the [Meat and Poultry Processing Inquiry](#) and [Home Care Inquiry](#). Focusing discussion at human rights issues currently experienced by business will help share good practice, and identify solutions to support businesses to demonstrate their corporate responsibility to respect human rights.

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The Equality and Human Rights Commission was established by the Equality Act 2006 as the Commission for Equality and Human Rights.

The Commission's suggestions for the Forum are:

1. The importance of the supply chain in promoting human rights to SMEs.
Our work with both major retailers and public sector procurement officials has demonstrated the power and influence large purchasing bodies can have in improving business practices. Minimum standards for suppliers, so long as they are proportionate and achievable, can be an effective way of promoting the importance of human rights to SMEs. Companies brands or reputations can be put at risk through the actions of their suppliers, for example if the supplier employs trafficked workers.

Most SMEs have a low awareness of human rights and do not consider them to be relevant to their business. Many, however, are already respecting them through compliance with wider legislation (for example complying with health and safety legislation helps protect the right to a safe working environment). Often what is needed is an awareness of what human rights are relevant to the business, and how they are being upheld.

A requirement, for example, that all suppliers of company X must have a written commitment to respect human rights, may prompt SMEs to think about human rights for the first time and consider what impacts their business has. The Commission has recently launched a [short guide](#) to help SMEs do this. Building relevant and proportionate but specific human rights standards into service specifications and contract management arrangements will further promote understanding, and more importantly provide incentives for SMEs to demonstrate respect for human rights.

Our work with the meat and poultry processing sector has led the major UK retailers and relevant industry bodies to agree a set of management practices and key performance indicators for processing firms. These have been rolled out to all of the retailers suppliers and cover issues such as confidential communication channels, training and workplace policies.

The management practices and KPIs help ensure that suppliers to the major retailers are treating their workers fairly and thus minimising the risk of there being major workforce problems within their supply chains. The data gathered from the KPIs is also useful to the individual processing firms: enabling them to compare their performance against their competitors and identify areas in which they need to improve.

As there are supply chains in all sectors we would advocate focusing discussions on sectors where there are specific human rights concerns (often due to the high proportion of vulnerable workers) such as agriculture, horticulture or contract cleaning.

2. The impact of ethical audits in driving better human rights policies and practices

Businesses regularly use ethical audits as a way to identify poor practices particularly regarding working conditions. Where these audits are done well and regularly they are a key tool in identifying and eradicating human rights violations such as child or trafficked labour.

Our research¹, however, has shown that in many cases ethical audits are failing to identify serious human rights concerns such as forced labour or discrimination. During the course of our work with the meat and poultry processing sector we learnt that despite processing firms having undertaken ethical audits (which were then shared with the retailers they supplied) they had not uncovered the problems in their supply chains that were apparent in our findings. These problems included widespread mistreatment and exploitation of migrant workers including pregnant workers, degrading and humiliating treatment and forced labour.

We would advocate a discussion on how ethical audits could be improved with a specific focus on gathering evidence from workers. Placing ethical audits in the context of Human Rights Due Diligence and UN Guiding Principle 18 (the need to identify and assess actual or potential adverse human rights impacts) will enable businesses to integrate this approach more effectively with a commitment to respect human rights.

This is particularly relevant as the interpretive guide on the corporate responsibility to respect human rights² emphasises the importance of engagement with potentially affected groups, especially those most vulnerable or marginalised.

Included in this discussion should be how frequently ethical audits should be undertaken, and the notice period given for the audits (which often gives suppliers time to hide poor working practices.)

¹ Meat and Poultry Processing Inquiry Review, November 2012
http://www.equalityhumanrights.com/uploaded_files/Inquiries/meat_and_poultry_processing_review_report.pdf

² The Corporate Responsibility to #respect Human Rights OHCHR
<http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>

3. The adequacy of current privacy laws and regulation to uphold human rights

Our research³ has found that a more flexible and comprehensive approach to privacy is needed. This would involve reforming the law and the regulatory system to create a comprehensive privacy protection regime.

We have highlighted the challenge for regulators and monitors charged with protecting privacy in dealing with the sheer amount of information being processed and shared⁴. It has become difficult for individuals to understand what happens to their personal information, or what they should do when that information is misused. This has important consequences for access to effective remedy.

The current the UK Information Commissioner's Office (ICO) investigation into whether Google's revised privacy policy is compliant with the Data Protection Act is therefore welcome. It follows a similar investigation in France and concern amongst data protection authorities across Europe about compliance with their own national legislation.

Earlier this year, the ICO acknowledged the announcements on reform of Europe's data protection rules as a great opportunity to update the law better to reflect the way personal information is used today and will be used in the future⁵. It concluded that what are needed are more effective rights for individuals and clearer responsibilities for those that process information about them.

We would, therefore, welcome a debate on the role companies can play in ensuring the privacy of their customers / users data where it is legitimately gathered for business activities.

4. Outsourcing of public functions to private sector providers.

Governments, in the UK and many other countries, view outsourcing public functions to private providers as a key way to reduce public spending. This is driven by the belief that the private sector is able to offer a more cost effective method of delivering these services.

Outsourcing public functions is not a new development, but there has been a significant increase in recent years in the number of services run by the private sector. Of these services run by the private sector there are some that have more potential to impact on human rights than others, often where

³ Equality and Human Rights Commission, 2011. *'Protecting information privacy, Charles Raab and Benjamin Goold,*

⁴ Equality and Human Rights Commission, 2012. *'Human Rights Review 2012'*

⁵ Information Commissioners' Office, 2013. *'Data protection reform: latest views from the ICO'*

they involve direct engagement with vulnerable people. These include the provision of care to elderly and disabled people, prisons, policing and probation services, and deportations and removals of asylum seekers.

Examples of human rights abuses occurring in outsourced services include:

- The use of force against pregnant women and children in detention centres prior to removal from the UK⁶
- Inhumane and degrading treatment of elderly people during the delivery of home care.⁷
- The use of lethal force by private contractors when deporting a refugee.⁸
- Physical and verbal abuse of disabled residents at a private care home⁹ (the cost of the care was funded by the local authority).

There are also concerns about the potential for human rights abuses following the increasing privatisation of military and security functions in the field of war, as seen in Iraq and Afghanistan.

We would, therefore, advocate a discussion on what actions are needed to ensure private contractors uphold human rights in the delivery of public functions. In particular how aware are private contractors of human rights, and how their actions may impact on them.

We hope you find these suggestions for the 2013 Business and Human Rights Forum useful. We would be more than happy to discuss these in more detail with you, and to provide ideas for organisations to speak at the Forum. My contact details are: alice.teague@equalityhumanrights.com, tel +44 2920 447715

Yours sincerely,

Alice Teague

Policy Head

Equality and Human Rights Commission (UK)

⁶ HM Chief Inspector of Prisons, report on Cedars Pre-Departure Accommodation October 2012 <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/cedars/cedars-2012.pdf>

⁷ EHRC Close to Home report <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/close-to-home-report/>

⁸ <http://www.guardian.co.uk/uk/2012/jul/17/jimmy-mubenga-guards-no-charges>

⁹ Department of Health report Transforming care: A national response to Winterbourne View Hospital https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/127310/final-report.pdf