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CAFOD's response to DEFRA consultation: Implementing due diligence on forest risk commodities

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Executive Summary

CAFOD is the official aid agency for the Catholic Church in England and Wales and part of the global Caritas confederation. CAFOD partners with diverse local NGOs, including both faith-based groups and others, to respond to poverty and injustice, regardless of religion or culture.

We welcome the important opportunity to submit to this consultation with the view of strengthening this legislation. We believe the proposal put forward by DEFRA falls short of what is needed to achieve the commitment of halting and reversing forest loss and land use change by 2030. Our response outlines the changes necessary to protect the communities we work with around the world who are impacted by the destruction and degradation of forests and other ecosystems, for the production of goods used and sold by UK businesses. It also emphasises that the solutions need to involve indigenous peoples and other forest communities.

We emphasise the following points:

- The approach to the scope of commodities and scope of companies included in this legislation must be more ambitious in order for the legislation to be effective.
- The due diligence obligation must be clearly specified and aligned with the UN Guiding Principles on Human Rights and the OECD Guidelines for Multinational Enterprises.
- The "legality" approach is a significant shortcoming of the due diligence legislation, and to mitigate this, the government must set out the categories of law that businesses must comply with, including those explicitly protecting the rights of indigenous peoples and local communities.
- The government must empower and resource the relevant authorities to effectively monitor and enforce the legislation, including ensuring full supply chain transparency and traceability, which is crucial for enforcement.

While we would welcome these changes to the regulation, we are also concerned at the approach which notably excludes internationally recognised human rights - against the express advice of the Government's own multi-stakeholder taskforce, the Global Resource Initiative (GRI). We believe the Environment Act provision on forest-risk commodities is inherently limited and must be seen as a first step towards stronger legislation that tackles all human rights and environmental violations in the supply chains and operations of UK companies, across all sectors and issues: a "Business, Human Rights and Environment Act" (https://corporatejusticecoalition.org/uncategorised/principal-elements-of-a-uk-corporate-duty-to-prevent-adverse-human-rights-and-environmental-impacts-a-failure-to-prevent-law/).

Introduction

Government's approach to the consultation

CAFOD welcomes the opportunity to submit evidence to this crucial consultation on the implementation of due diligence legislation on forest-risk commodities.

In the first instance, we wish to raise our concerns about the structure and framing of the consultation, such as the multiple-choice answers to question 28, 35, 36 and 37 which significantly constrains the ability of respondents to input in a meaningful way. We are equally concerned that the consultation neglects to ask specific questions on applicable law and the due diligence system, which are integral to this legislation and should not be simply left to Guidance: particularly given the central importance of these components. We urge DEFRA to carefully consider all responses on these issues that fall largely out of the scope of the consultation questions.

We also wish to raise that, given the structure and framing of the consultation, and the lack of accessibility measures such as translation of key documents, it has been challenging for CAFOD partners, including forest communities and Indigenous peoples, to input to this consultation.

Government's approach to the legislation

CAFOD strongly believes that we cannot prevent deforestation without protecting the rights of communities around the world whose lives are integrally bound up in their land, forests and rivers, and who defend forests and other ecosystems (see CAFOD's report on land and environmental human rights defenders in Latin America, for further detail https://cafod.org.uk/About-us/Policy-and-research/Private-sector/Human-rights-Latin-America.) **This includes people such as Claudelice da Silva Santos in Brazil, campaigning for justice for the murders of her brother and sister-in-law, Brazil nut collectors killed in 2011 for defending their land and forest from loggers and cattle ranchers.** The Land Pastoral Commission (CPT) of the Brazilian Catholic Bishops' Conference (CNBB), which supports Claudelice, have recorded an increase in territorial invasions of 103 percent between 2019 to 2020, with 71 per cent of those affected indigenous peoples. "Defending human rights and defending the environment is to defend dignity. It's fundamentally important for us in the Amazon, because in the last few years our struggle to defend to the forest has been attacked and criminalised," says Claudelice. Indigenous peoples and local communities are often the best protectors of land and forests: 45% of intact forest in the Amazon lies within Indigenous-occupied land (https://www.fao.org/americas/noticias/ver/en/c/1381870/). A combined approach to human rights and the environment is needed to protect forests, ecosystems and communities from abuse.

We are concerned that human rights are not recognised in the primary legislation nor referred to in the consultation – yet an integrated approach to human rights and the environment is essential to protect forests, ecosystems and biodiversity. The Government's own taskforce, the Global Resource Initiative (GRI), recommended that "The mandatory due diligence obligation should require companies to analyse the presence of environmental and human rights risks and impacts within

their supply chains" (https://www.gov.uk/government/publications/global-resource-initiative-taskforce). Parliamentarians have repeatedly raised the need for an integrated approach to human rights and the environment: for instance an amendment tabled in the Commons in 2020 (https://corporatejusticecoalition.org/resources/briefing-on-the-environment-bill-amendment-nc5-on-due-diligence-legislation/) and a series of interventions by Peers during report stage (https://hansard.parliament.uk/lords/2021-06-07/debates/6E1FE4FF-613D-44D6-8668-C8468E87D916/EnvironmentBill). The message that human rights and the environment must not be 'siloed' into discrete policy areas, was outlined in an open letter ahead of COP26 signed by 180 indigenous peoples' organisations, civil society groups, human rights, activists, academics and experts from 58 countries (Open letter from civil society to world leaders: Put human rights at the centre of environmental policy - Business & Human Rights Resource Centre (business-humanrights.org). Multiple businesses, including Unilever and Nestle, expressed in their responses to DEFRA's Environment Bill 2020 consultation that human rights should be expressly included in the proposals.

In the absence of international human rights obligations and laws in the primary legislation, we are calling on the government to put Indigenous peoples and other local communities at the heart of the implementation of this legislation, through: ensuring that the law (including the commodities covered, timeframe and scope) is designed with impacted communities at its centre; that businesses conduct due diligence aligned with authoritative global standards, the UN Guiding Principles on Business and Human Rights (UNGPs) (https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) and OECD Guidelines for Multinational Enterprises (https://www.oecd.org/corporate/mne/); that the law sets out that the relevant local laws businesses must comply with, including those that protect indigenous peoples and local communities; and ensuring that there are sufficiently strong penalties to deter behaviour that poses a threat to the lands and livelihoods of the communities we work with.

a) The approach to the scope of commodities and scope of companies included in this legislation must be more ambitious in order for the legislation to be effective.

We are deeply concerned about the lack of ambition shown in the proposal on commodities and scope of companies, which could have far-reaching detrimental impacts on communities supported by CAFOD partners around the world. We urge the government to bring in legislation that includes the widest scope of commodities to be included in the legislation from the very beginning, that requirements are apply uniformly across all forest-risk commodity supply chains, and that all companies using forest risk commodities in their UK commercial activities are subject to the Schedule 17 requirements without exemption.

We also wish to state that commodity-focused, sector specific approach taken by the UK government in this legislation is not the most effective approach to regulating UK company supply chains. Many communities we work with impacted by the destruction and conversion of forests and other ecosystems for the production of commodities later sold by UK businesses, including and going beyond the specific commodities proposed for coverage in this law**. For instance, illegal gold mining is creating deadly conflict, deforestation and poisoning water sources in the community of Palimiu, in Yanomami Indigenous Territory, in the Brazilian Amazon**. As much as 28% of gold exported from Brazil is illegal (http://www.lagesa.org/wp-content/uploads/documents/Manzolli_Rajao_21_Illegal_gold.pdf) and the UK, as the international centre of the mining industry, is a major importer of gold from Brazil (https://www.reuters.com/world/americas/nearly-30-brazils-gold-exports-are-illegal-report-says-2021-08-30). Yanomami leader, Davi Kopenawa Yanomami, describes this gold as "full of my people's blood." Land deforested for timber is then often then used to grow agricultural commodities and/or for the extraction of minerals. In 2020 the GRI Taskforce recommended that **"**a

focus on forests and land conversion should only be a first step – wider environmental and human rights impacts associated with commodity production and trade must also be addressed and the lessons extended to other food commodities and beyond." (https://partnershipsforforests.com/gri-final-recommendations-report/).

The commodity-focused, sector-specific approach could also lead to a patchwork of rules that impose a greater compliance burden on businesses. The UK's Modern Slavery Act (2015) takes a similar approach, only dealing with a subset of human rights. This approach risks being less effective than a more comprehensive and consistent approach contained within a single piece of legislation, such as the proposed EU human rights due diligence law which includes environmental and human rights due diligence in a manner more consistent with the UNGPs.

b) The due diligence obligation must be clearly specified and aligned with the UN Guiding Principles on Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises.

As it stands, the 'due diligence system' that forms part of Schedule 17 has been envisioned in a far simpler way than set out in authoritative frameworks from the OECD Guidelines and UNGPs. We urge that the secondary legislation clearly specifies what businesses need to do to meet their due diligence obligation, and that this is aligned with the OECD Guidelines and UNGPs, encompassing: due diligence for both human rights and the environment (going beyond what is "illegal" in producer countries); a comprehensive approach which includes the participation of local communities and indigenous peoples in the identification, prevention, mitigation and accounting of impacts; and ensuring that due diligence is a continuous improvement process which incentivizes engagement with suppliers, rather than a "cut and run" approach.

c) The "legality" approach is a significant shortcoming of the due diligence legislation. The government should at a minimum set out the categories of law that businesses must comply with, including those explicitly protecting the rights of indigenous peoples and local communities.

We are concerned at the approach in Schedule 17, as much deforestation is technically "legal" but still harmful to human rights and the environment. For instance, **CAFOD partner the Episcopal Commission for Natural Resources, CERN-CENCO, in the DRC, has been working to protect the forest lung of the Congo Basin.** CERN is campaigning for the Congolese government to not to proceed with the lifting of the moratorium on the allocation of new forestry concessions. If the Environment Bill takes an "illegal only" approach to deforestation, commodities sourced via deforestation enabled by the lifting of this moratorium could be used and sold by UK companies.

CAFOD also supports the Hutukara Associação Yanomami (HAY) who are facing renewed threats to their lives, livelihoods and lands from legal reforms proposed by the Brazilian Government that would open up vast tracts of indigenous lands for mining, logging and agribusiness. They say: "We Yanomami and Ye'kwana, peoples of the forest, have come here to speak clearly: we are against Bill 191/2020 which will only bring disease, death and sadness to the indigenous peoples." (http://emdefesadosterritorios.org/wp-content/uploads/2022/03/Quem-e%CC%81-Quem-no-debate-sobre-Minerac%CC%A7a%CC%83o-em-Terras-Indi%CC%81genas-2.pdf)

CAFOD believes that setting a clear no-deforestation standard would be a more effective approach to protecting forests and forest communities than to base this on producer country laws, as well as providing a clear standard for companies to comply with. In circumstances where local law might be inadequate to protect the environment or human rights, this new regime risks failing to raise standards or achieving the aim of preventing deforestation. On top of this, it is also less ambitious than many existing industry commitments. We stress that legislation should set clear standards for UK businesses, based on international norms and human rights standards.

In the absence of this, we urge the government to set out the categories of law that businesses must comply with, including those explicitly protecting the rights of indigenous peoples and local communities; and include their representatives in defining and outlining these laws.

d) **Government must empower and resources the relevant authorities to effectively monitor and enforce the legislation and ensure full supply chain transparency and traceability.**

CAFOD are calling for a dedicated, independent and well-funded enforcement body with real expertise in human rights, the environment and corporate accountability to enforce this legislation, with strong penalties which go beyond fines and incorporate liability. Any enforcement regime must ensure the participation of indigenous peoples sand local communities and ensure access to remedy for communities harmed. The legislation must also ensure a thorough and effective reporting that enables rights-holders to have information about a company's activities and actions, and to hold them accountable.

We would also like to raise our view that holding companies accountable for their failure to undertake reasonable and appropriate due diligence that led to harm to people and/or the environment would be a more effective approach than due diligence obligation accompanied by a prohibition.

The need for new legislation: a Business, Human Rights and Environment Act

While a commendable first step by the government, we believe that, because of the aforementioned reasons, the Environment Act provision on forest-risk commodities is inherently limited. This legislation must be seen as a commendable first step towards stronger legislation that tackles all human rights and environmental violations in the supply chains and operations of UK companies, across all sectors and issues - not just certain deforestation-linked commodities.

We therefore urge the Government to introduce a new "Business, Human Rights and Environmental Act" to hold companies accountable when they fail to prevent human rights abuses and environmental destruction - modelled on the UK's Bribery Act (https://corporatejusticecoalition.org/uncategorised/principal-elements-of-a-uk-corporate-duty-to-prevent-adverse-human-rights-and-environmental-impacts-a-failure-to-prevent-law/). The law should require all business actors across all sectors to conduct human rights and environmental due diligence, and should hold companies liable should they fail to carry out this duty properly and people or the environment are harmed.

The Parliamentary Joint Committee on Human Rights recommended such legislation in their 2017 report (https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf) and the law has been found legally feasible by the British Institute of International and Comparative Law (https://www.biicl.org/projects/a-failure-to-prevent-adverse-human-rights-impacts-mechanism-project). In October 2021, 36 UK businesses and investors, including Mars, Nestle, Mondelez, Unilever, Twinings, Tony's Chocolony, Tesco and the Co-op released a statement supporting "a new legal requirement for companies and investors to carry out human rights and environmental due diligence", "accompanied by consequences that will be strong enough to ensure that businesses that fall within the scope of the legislation carry out HREDD to a high standard and that victims have access to justice" (https://www.business-humanrights.org/en/latest-news/uk-businesses-and-investors-call-for-new-human-rights-due-diligence-law/).

Consultation response

Question 21. Should we lay secondary legislation at the earliest opportunity? If you ticked no, please state why.

Yes.

Question 22. What should we take into account when considering how long businesses have to prepare for regulation before it comes into effect?

CAFOD partners supporting communities in Brazil, Colombia and the Democratic Republic of the Congo already face a desperate situation driven by global demand for commodities and large-scale industrial production, worsened by omission, connivance and sanctioning via state collusion. There is already ample evidence that businesses are aware of the problem and many businesses have held commitments to achieve deforestation-free supply chains for years, with change on the ground being slow or non-existent. For instance, commodity traders like JBS made deforestation pledges to combat deforestation at COP26 despite being repeatedly connected to deforestation for cattle ranching in the Amazon, and it was recently reported that agribusiness firms sought to weaken a draft EU law banning food imports linked to deforestation, only eight days after vowing to accelerate action (https://www.theguardian.com/environment/2022/mar/04/agribusiness-giants-tried-to-thwart-eu-deforestation-plan-after-cop26-pledge).

Due to the scale and urgency of the global problem, we must not wait for businesses to prepare for regulation, especially for a basic requirement such as ensuring products consumed in the UK are produced without breaking local laws. Deforestation of the Amazon is 57% higher than in the previous year and is the worst since 2012, with parts of the Amazon now emitting more CO2 than it absorbs (https://www.theguardian.com/environment/2021/jul/14/amazon-rainforest-now-emitting-more-co2-than-it-absorbs). Voluntary approaches end deforestation in supply chains have failed, and urgent action is what the Global Resource Initiative (GRI) Taskforce recommended in its report to the government in March 2020.

Proposed timeline delays differ significantly from other proposed legislation on forest-risk commodities in the EU and US. This falls short of the UK's 'world-leading' ambition and the action it must take to achieve the commitment of halting and reversing forest loss and land use change by 2030. We urge urgent and ambitious measures to regulate UK company supply chains.

Commodities covered

Question 23. Can you provide any further evidence on commodities that drive deforestation? Please provide detail here.

The following examples from CAFOD partner CPT Maraba Xinguara from the south and southeast regions of the State of Pará in Brazil, provide some detail on the commodities driving deforestation, which is intricately related to land conflicts and other human rights violations.

1. The expansion of soybean monocultures

A key problem is soybean expansion in southern Pará, Brazil. The '*pacote da destruição'* ('death combo') set of policy proposals to weaken environmental legislation, currently going through the Brazilian Parliament) will enable soya producers and others to more easily deforest in order to expand production (rather than intensify production). These policy proposals include the weakening of environmental licensing of mega-projects, weakening of land titling procedures effectively providing an amnesty for illegally grabbed and illegally deforested land, changing time limit rules on indigenous territories thus making it harder for un-demarcated indigenous land to be recognised, allowing mining in indigenous lands, and deregulation of pesticides.

2. Palm oil production

Palm oil production often generates land conflicts, deforestation and land grabbing. This is evident in the case of Vale's Agropalma Project, located between the municipalities of Tailândia and Mojú, along PA 150.

3. Cattle ranching

As an example of extensive cattle raising and live cattle exportation, we cite the cases of the JBS Group that acquires cattle from properties in irregular situations such as the Fazenda Santa Tereza, located in the municipality of Marabá and the case of the Complexo de Fazendas Divino Pai Eterno, located in São Félix do Xingu. A process known as "triangulation" is used by cattle producers in order to circumvent the rules that prohibit the sale of cattle produced in areas that have environmental embargoes to meat packing plants. In practice, the triangulation process works in the following way: cattle fattened in an irregular area, with an environmental embargo, cannot be traded directly with meat packing plants; to avoid this impediment, some months before being sold, the cattle are transferred to another area that does not have environmental impediments and thus are sold to meat packing plants in Brazil. The meat is then exported abroad as if it had nothing to do with illegally deforested areas.

Furthermore, Colombian Government figures show that for the period 2015-2020, the most important causes of deforestation were cattle ranching, unplanned infrastructure growth, coca crops, mining (mostly illegal), industrial agriculture, land grabbing and logging (https://www.crisisgroup.org/latin-america-caribbean/andes/colombia/091-broken-canopy-deforestation-and-conflict-colombia). Colombia's experience aligns with global trends; as in Colombia, cattle ranching is by far the greatest source of deforestation worldwide, causing nearly twice as much as all other factors combined.

Question 24. Which of the following factors do you think should be considered to determine legislative sequencing? Please tick all that apply and state your reasons.

- the commodity's impact on global deforestation
- the UK's role in this global deforestation
- ability to deliver effective regulation
- other (please specify)

Please see answer to question 27 for further detail.

Question 25. What data sources or information should be used to consider the proposed factors?

Not answered.

Question 26. Do you have any further comments regarding the order in which we introduce key forest risk commodities?

All commodities DEFRA have identified as contributing to widescale deforestation should be included in the legislation from the day it comes into force. See answer to Question 27 for more detail.

Question 27. Which option for the first round of secondary legislation do you recommend? Please state your reasons

- Option 1: introduce 2 commodities in the first round of secondary legislation
- Option 2: introduce 3 to 4 commodities in the first round of secondary legislation
- Option 3: introduce 5 to 7 commodities in the first round of secondary legislation

[No box ticked]

We do not recommend any of these options.

We believe that all commodities considered by the government for inclusion in this legislation should be introduced in the first round of implementation, as a matter of urgency, simultaneously. There is ample evidence that all seven commodities considered by the government are driving illegal (and legal) deforestation and conversion (https://iopscience.iop.org/article/10.1088/1748-9326/ab0d41). By delaying the inclusion of any of these commodities in the legislation, the UK government would be complicit in massive loss of forests, biodiversity and the infringement of the rights of the communities whose livelihoods depend on forests – undermining the commitments it made at COP26.

The obligations should come into effect as soon as possible, even if this has higher resourcing implications than anticipated by government. Including all commodities in the first round will also be a simpler approach for business and will drive improvements in sectors which may be lagging behind others. At a minimum, the UK legislation should be aligned with similar legislation in the EU and US, which both include both a similar or wider scope of commodities and would come into effect within 12 months of being passed.

We do not believe there is a need to tailor requirements to specific commodity supply chains and recommend clear requirements that can be applied equally to all forest risk commodities.

Additionally, we recommend a process to review and expand the commodity coverage beyond the initial list of eight commodities. In 2020 the GRI recommended that **"**a focus on forests and land conversion should only be a first step – wider environmental and human rights impacts associated with commodity production and trade must also be addressed and the lessons extended to other food commodities and beyond." (https://partnershipsforforests.com/gri-final-recommendations-report/)

Scope and exemptions

Question 28. Should businesses fall in scope of the requirements if they exceed the turnover threshold in the previous financial year?

- Yes
- No
- Do not know

Question 29. Should we use UK turnover as the metric to capture UK based businesses?

- Yes
- No
- Do not know

Question 30. Which of the following metrics should be used to regulate the UK operations of businesses that are based outside of the UK under due diligence legislation? Please state your reasons.

- option 1: turnover related to UK activity
- option 2: global turnover
- other (please specify)

All companies using forest risk commodities in their UK commercial activities should be subject to the Schedule 17 requirements without exemption. Such an approach is in line with international standards, such as the OECD Guidance on Responsible Business Conduct (https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm) and the UN Guiding Principles on Business and Human Rights.

If UK government chooses to not follow such a recommendation, then any metrics related to inclusion in scope businesses that are based outside of the UK could be based on the global turnover of the company group.

Question 31. Can you provide any data or information that will help identify potential businesses in scope based outside the UK? Please provide details for your answer.

No answer.

Question 32. Which of the following factors should be considered when setting the turnover threshold level? Please tick all that apply and state your reasons.

- policy impact
- burden on business
- deliverability
- other (please specify)

Policy impact should mean the impact of any actions on halting the UK's role in global deforestation and protecting forest communities who are at the forefront of deforestation and forest degradation.

We are concerned about any proposed thresholds based on turnover, and detail this further under question 34.

Question 33. For each of the following commodities, please tick where the turnover threshold for inclusion of UK based businesses should be set.

No answer.

Question 34. Do you have any further comments regarding businesses in scope?

Primary legislation does not explicitly require this due diligence obligation to apply only to 'large businesses'. There is no turnover threshold in similar existing or proposed laws, such as the EU and UK Timber Regulations which apply to all companies placing products on the market and do not make any distinction regarding their size. Furthermore, the minimum turnover threshold proposed for this legislation is far above that of existing laws in the UK, such as the Companies Act and the Modern Slavery Act s.54 (Transparency in Supply Chains) legislation.

Larger companies clearly are involved in larger volumes of production and movements of products, but medium and smaller companies still have risks when importing processed commodities. In many cases, there may be smaller businesses importing or using low-margin materials at much greater volumes than larger companies. Some smaller companies are also likely to receive requests from their customers to conduct due diligence. Setting out clear, certain and uniform legal standards

would help to level the playing field for all companies and would only strengthen the leverage that large companies would have on smaller companies in their value chains.

We are also concerned that any threshold could be exploited as a loophole. Companies can create and trade through smaller subsidiaries with ease. Even if global revenues are used to determine the scope of the regulation as it relates to the operations of businesses that are based outside of the UK, these will be difficult for UK authorities to monitor.

The UK has signed up to the OECD Guidelines for Multinational Enterprises, with a requirement to ensure that all businesses address their environmental and human rights risks. The UN Guiding Principles on Business and Human Rights (UNGPs) also state that companies of all sizes have a duty to protect human rights in their supply chains - with the extent of their obligations proportionate to their size, sector and activities (https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf). Studies do not provide evidence for a disproportionate impact on SMEs (https://mneguidelines.oecd.org/Quantifying-the-Cost-Benefits-Risks-of-Due-Diligence-for-RBC.pdf). A study for the European Commission estimated the costs of implementing mandatory due diligence to be 0.074% of revenue for SMEs and 0.067% for large companies. This assumes companies are starting at zero, whereas many companies already have developed some due diligence systems (https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en).

We therefore strongly challenge the use of a turnover threshold - especially at the high levels proposed in the consultation. This will exclude major market players who are driving deforestation and human rights abuse in the countries in which CAFOD operates. All companies using forest risk commodities in their UK commercial activities should be subject to the Schedule 17 requirements without exemption. If UK government wishes to disregard this recommendation and proceed with a threshold, it should be based on global turnover of company group and align with existing definitions of company size in UK law.

Question 35. Should we set a single exemption threshold for each regulated forest risk commodity, combining raw commodity use with derived commodity use?

- Yes
- No

Question 36. Should businesses be able to use conversion factors to estimate the volumes of commodities used in the supply chain to understand whether they can be exempt from due diligence requirements? Please state your reasons.

- Yes
- No

Question 37. Should we use the proposed approach for businesses to understand whether they could be exempt? Please state your reasons.

- Yes
- No
- Do not know

Question 38. Which of the following factors should be considered when setting the exemption threshold level? Please tick all that apply and state your reasons.

- policy impact
- burden on business
- deliverability
- other (please specify)

Please see answer to question 40.

Question 39. For each of the following commodities, please tick the scale at which the exemption threshold level should be set.

No answer.

Question 40. Please provide reasons for the scale selected for each commodity in Question 39.

An assessment by Global Witness based on the Joint Nature Conservation Committee (JNCC) data and other data shows that the single largest commodity from a given country responsible for the UK's deforestation footprint is beef from Brazil. According to preliminary data from Earthsight, for beef importers, a 1,000 tonnes threshold would mean that only JBS, Princes and Weston (Marfrig) would be covered – i.e. only three of at least seventeen known importers. Any exemptions, whether based on annual turnover, trade volumes or otherwise, will likely introduce loopholes that will directly undermine the efficacy and impact of the new law.

We recommend no exemptions and have therefore not selected any of the options under Question 39.

Question 41. Do you have any further comments on the exemption?

No answer.

Due diligence system

Question 45. Should businesses in scope be required through secondary legislation to 'eliminate risk or reduce risk to as low as reasonably practicable'? Please state your reasons

- Yes
- No

It is unclear what the wording "as low as reasonably practicable" means in practice – it is legally ambiguous, subjective and open to wide interpretation. The government needs to be explicit in the secondary legislation with absolute clarity on definitions and thresholds. We believe the language should be "negligible risk."

Question 46. Which of the following should we provide information on in guidance to support businesses to establish effective due diligence systems? Please tick all that apply and state your reasons.

- what is required of eligible business to comply with regulations
- examples of best practice to support businesses in improving their systems
- metrics and indicators to help assess where there are low, medium, or high risks of illegal land use and ownership
- methods that businesses may use to assess and mitigate risk
- available resources to help understand legal frameworks in producer countries
- other (please specify)

Secondary legislation must set out clear and comprehensive requirements of what businesses need to do to comply with the due diligence obligation, applied across all commodities and to all companies in scope of the legislation, with additional guidance providing an explanation of how businesses could comply with those requirements.

Our answer to this question is centred around the need to protect the local communities and indigenous peoples who live and work in harmony with forests and help to defend them.

1. **Secondary legislation must clearly specify the due diligence obligation, aligning this with the authoritative global standards, the OECD Guidelines for Multinational Enterprises and United Nations Guiding Principles on Business and Human Rights (UNGPs).**

Secondary legislation must specify the following.

Businesses must conduct broad-based human rights and environmental due diligence aligned with the OECD Guidelines and UNGPs, as well as with further commodity-specific guidance on due diligence, going beyond what is illegal under producer country laws. This aligns with a recommendation from the Global Resource Initiative (GRI) Taskforce: "The mandatory due diligence obligation should require companies to analyse the presence of environmental and human rights risks and impacts within their supply chains" (Global Resource Initiative Taskforce: Final recommendations report 2020 - GOV.UK (www.gov.uk). Not only are human rights abuses are deeply concerning in and of themselves, they are also indicative of heightened risks illegal environmental practises and illegitimate land acquisitions. CAFOD's report on land and environmental human rights defenders in Latin America details the increasing threats and violence faced by those peacefully speaking out on land and environmental issues (https://cafod.org.uk/About-us/Policy-and-research/Private-sector/Human-rights-Latin-America).

Businesses must undertake a range of actions, including to identify, prevent, mitigate, address and remedy their adverse human rights and environmental impacts – going beyond the "mitigation" of risks. Government should also set specific criteria for assessing risk to ensure all businesses are operating to high standards and that risk assessments are consistent. This must include evidence that indicates violence, or threats to land and environmental defenders and evidence that the rights of indigenous peoples and local communities has not been respected and/or that the free, prior and informed consent of communities has not been obtained. **In supporting our response, CAFOD's partner CPT Maraba Xinguara in Brazil has stated that: "**If the product comes from an area in a situation of conflict with traditional populations, indigenous peoples or traditional and landless farmers, companies must seek to identify if the area, or the producers of the commodities, have a history related to any type of violation of human rights, according to the parameters established by the UN Charter and the Universal Declaration, among other treaties."

Businesses must consult with indigenous peoples and other forest-dependent communities, in their assessment, prevention, mitigation and accounting of impacts, and obtain their Free, Prior and Informed Consent (FPIC). Consent must be south and reiterated on an ongoing basis, particularly so at times when new activities or changes are undertaken or when concerns are raised. **In supporting our response, CAFOD's partner CPT Maraba Xinguara in Brazil has stated that** "It is extremely important that the consultation process, carried out through hearings, however many are necessary, take place in a simple, didactic, transparent manner, with a participative methodology,

accompanied by facilitators appointed by the communities themselves, using accessible language for a better understanding and ownership of the information on the project, proposed infrastructure development project, among others, in order to make a conscious, informed decision on whether or not to accept the proposed project that would impact their lives."

Due diligence must be an iterative, continuous improvement process. CAFOD is concerned that the prohibition-style legislation, if poorly designed, may encourage businesses to disengage from smallholder farmers, who are already among some of the poorest in the world. Under the UNGPs and OECD Guidelines, responsible disengagement is a last resort, and a "cut and run" approach by businesses is discouraged. Government must also ensure adequate support to smallholders to support them with compliance and to mitigate risks that companies push the costs of compliance down their supply chains.

2. Secondary legislation must specify the "relevant local laws" that companies must comply with.

The secondary legislation should clarify that, in conducting their due diligence under para 3 of Schedule 17, companies should be required to:

- Name the relevant local laws that apply;
- List the obligations that apply under those laws;
- Show evidence of compliance with each legal obligation under those laws.

Companies should be required to show how they are complying with the obligations described in the relevant laws, statutes and regulatory structures that apply – even if they have already been issued with a permit or license by a government or local authority. A permit should not be taken as evidence that all relevant laws on land use and ownership have been complied with.

At the very minimum, secondary legislation must set out the categories and types of relevant "local law" that businesses must comply with. Further Guidance should provide a non-exhaustive list of examples of the types of laws, statutes, legal obligations and regulations that should constitute a relevant local law on land use and land ownership. In 2021, Lord Goldsmith said: "…producer country laws protecting the land rights of indigenous peoples and local communities are in scope of our legislation already, including laws that require obtaining free, prior and informed consent." (https://hansard.parliament.uk/lords/2021-07-12/debates/33F3048B-698C-42D1-8D0A-7E9DDCDB5952/EnvironmentBill#contribution-48306F74-3DCA-4663-B76F-A9A677F447A5). To avoid this being an empty promise, steps need to be taken to ensure that rights, protections and laws protecting human rights - including those specifically related to indigenous peoples, traditional communities, afro-descendant communities, human rights defenders, landless peoples and subsistence land users - are explicitly listed. This should include land claims on the basis of indigenous, customary or other legitimate tenure rights, and land-related human rights and/or environmental protections where international human rights law is ratified into local law. We endorse the list of relevant laws in Client Earth and Global Witness's submissions to this consultation.

We wish to emphasise that land registries and formal land documentation are not a reliable tool for due diligence on compliance with legal obligations on land use and land ownership. We consider it vital that applicable law is defined based on the analysis of local experts on land use and ownership law in forest-rich countries, including indigenous peoples and forest-dependent communities, smallholders and civil society organisations. In processes of consulting with such groups, DEFRA must address/remove barriers that obstruct participation, including cost, location and language barriers. They must also regularly consult with such groups to ensure that Guidance is updated (for instance, new Environmental Crimes legislation in Colombia came into force in 2021).

CAFOD's partner CPT Maraba Xinguara in Brazil has provided the following examples of relevant local laws:

- Companies should be required to observe the provisions of ILO Convention 169, the United Nations Declaration on Indigenous peoples, which has been ratified by Brazil. This Convention guarantees indigenous, original, traditional and quilombo communities the right to self-determination and to be consulted in a free, prior and informed manner about legislative projects, the implementation of economic undertakings, among others, that directly or indirectly affect their territories, in accordance with the 1988 Federal Constitution (in the case of Brazil) and with the Consultation Protocols of each community.
- Brazil is a country with a high rate of land conflicts, where traditional, indigenous and landless populations are the main impacted ones. Deforestation is predicated by the appropriation, generally illegal, of thousands of hectares of land through fraudulent processes. Therefore, it is crucial that the list of relevant laws include those related to land rights.
- In the state of Pará the "Meat TAC - Conduct Adjustment Agreement", signed by the Federal Public Ministry, provides for the annual monitoring and inspection of purchases made by slaughterhouses, seeking to avoid the sale of cattle from areas with environmental embargoes. TAC is a very relevant instrument and needs to be used in practice. External audits show that many meat packing countries are still sourcing illegally produced meat.

CAFOD's partner The Episcopal Commission for Natural Resources, CERN-CENCO, in the Democratic Republic of the Congo, has shared that there are a number of laws that protect the rights of indigenous peoples and local communities who are likely to be impacted by deforestation. These include:

- The Forestry Code: in this law there is a provision on community forestry, but its implementation is still an issue.
- The Land Policy: the government has recently validated a document on land policy with a particular focus on local communities and indigenous peoples' land.
- A draft law on the protection of the rights of indigenous pygmy peoples in the DRC has been adopted by the National Assembly and will be submitted to the Senate for the March session. This law devotes a significant section to indigenous pygmy peoples' access to natural resources.
- The forest exploitation moratorium in the DRC, is a debate between civil society organisations and the Government on whether to maintain or revoke this moratorium, which has lasted for more than five years. For the civil society organisations the Government must fulfil certain preconditions, including zoning.

In all these laws, the issue of Free, Prior and Informed Consent (FPIC) is of utmost importance.

CERN have also shared an example of illegal land use or ownership: in January 2021 pygmies were killed and their bodies beheaded in Abembi village in Irumu territory. This attack was intended to scare the population and take over their land by Allied Democratic Forces (ADF), according to the Congolese media.

CAFOD wishes to state our belief that setting a clear no-deforestation standard based on international standards would be a more effective approach to protecting forests and forest communities than to base this on what is illegal in producer countries. The government should look to expand the legislation scope to include all deforestation (both illegal and legal) during the first review.

Question 47. Should we set out in guidance how businesses may use existing certifications and standards to help meet the due diligence requirement? Please state your reasons.

- Yes
- No
- Do not know

Government should give guidance on how certification schemes can support a company's due diligence but clarify that certification schemes must not be used to meet the due diligence requirement itself. Some certification schemes and standards can help companies to identify risks and engage with smallholders and other stakeholders. However, many have widespread implementation and governance failures and businesses themselves are usually involved in setting the standards and enforcing them. These schemes cannot be a proxy for legal compliance. See the Greenpeace report 'Destruction Certified' for more details (https://www.greenpeace.org/international/publication/46812/destruction-certified/).

Question 48. Which of the following criteria should we set out in guidance to support the use of existing certification schemes and standards? Please tick all that apply and state your reasons.

- proof of legality
- chain of custody
- robustness
- transparency
- other (please specify)

Please see our answer to question 47.

Question 49. Please provide any relevant evidence on current business practices, methods, and metrics available to assess and mitigate risk.

Please see our answer to question 46.

Question 50. Can you provide any evidence on the cost of carrying out due diligence? Please provide details including how this relates to business size.

No answer.

Question 51. Can you provide any evidence on the cost of carrying out due diligence for specific commodities? Please provide details about your answer.

No answer.

Question 52. Can you provide any evidence on the benefits to businesses of conducting due diligence for specific commodities? Please provide details about your answer.

Potential benefits for such supply chain regulation include a level playing field for all companies seeking to be deforestation-free, clarity on company obligations with regard to human rights and the environment, and contributing to more sustainable and resilient supply chains in the long-term. Businesses support such regulation: in 2021 more than 30 leading UK businesses released a

statement calling for "ambitious primary legislation to mandate companies to carry out human rights and environmental due diligence" (https://www.business-humanrights.org/en/latest-news/uk-businesses-and-investors-call-for-new-human-rights-due-diligence-law/).

Question 53. If you answered Question 52, can these benefits be quantified? Please provide details about your answer.

No answer.

Question 54. Can you provide any evidence on the costs to consumers of businesses conducting due diligence? Please provide details about your answer.

There is considerable consumer demand for ethical products (see for instance, research by Ethical Consumer: https://www.ethicalconsumer.org/research-hub/uk-ethical-consumer-markets-report), but consumers do not have the information nor means to hold companies accountable for their actions. Any costs passed on to consumers are likely to be low and offset by the clarity that legislation will give consumers on the ethics of the products they are purchasing.

Reporting

Question 55. What should businesses be required to report on to enable a regulator to identify areas for further scrutiny?

Secondary legislation should explicitly detail what companies should report on, to avoid the shortcomings of reporting under the Modern Slavery Act, whereby companies have been able to provide reports of little substance while still complying with the legislation.

Firstly, companies must be required to outline the identification of risks and set out how they have, or will, address, prevent, mitigate and remedy any issues as applicable, and ongoing review of their due diligence process and its effectiveness. This must include all known links to environmental and related human rights harm – including harm that is not "illegal". This will enable regulators to identify risk that can be a precursor or high-risk indicator of a likely failure of legal compliance.

Secondly, in order to effectively enforce the prohibition element of this legislation, companies must be required to a) name the relevant local laws that apply; b) list the legal obligations that apply under that law; and c) show evidence that the legal obligations have been met.

Thirdly, traceability is fundamental to the success, or failure, of legislation, and legal (and other) due diligence cannot take place if the origin of a product is not traced or known. Company reports should include: a) detailed information about the commodities and derived products, including volumes traded, countries of origin and geo-location details, including indigenous peoples and territories within the sourcing area; and b) Information about the supply chain, including their full supplier data and principle financiers of their company group. Full transparency and traceability is a fundamental building block necessary for due diligence to be effective and this legislation could be crucial to incentivising this for other commodities. Global Witness's response to this consultation provides further detail on the importance of traceability.

Reports should be made public in their entirety and searchable on an online government database, as per the transparency in supply chain requirement of the UK's Modern Slavery Act. This database was introduced several years after the Act was implemented, the delay being a significant oversight that made it difficult for the government to enforce the act in practise, with NGOs taking up the role

of publishing company reports instead (see the following report for more detail: https://media.business-humanrights.org/media/documents/Modern_Slavery_Act_2021.pdf).

Question 56. Should non-commercially sensitive information about businesses' due diligence exercises be made public to increase sector transparency and accountability?

- Yes
- No

Question 57. What information should be made public about businesses' due diligence exercises to support accountability and decision making?

The principle first and foremost should be full disclosure for all companies in scope of the legislation. It is essential that NGOs and rights holders can access information in order to hold companies accountable. Affected rights-holders should be enabled to access information about the company's due diligence actions and outcomes, in order to draw attention to any violations of their obligations. The OECD Guidance on Due Diligence for Responsible Business Conduct lists the information that should be available to the public, including dealing with the matter of commercially sensitive information. This document should be referred to in any "best practise" guidance (mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf). This must be combined with a confidential mechanism for indigenous peoples and forest-dependent communities to make complaints to the enforcement body regarding deforestation on their land.

In supporting our response, CAFOD's partner CPT Maraba Xinguara in Brazil has stated that "information must be made publicly available by companies should include: a socio-economic feasibility study of the project, an environmental impact study, measures to mitigate and make reparations for possible socio-environmental damage caused, the project budget, public hearings between communities and organised civil society, monitored by the Public Prosecutor's Office, and a guarantee of the community's power of veto over the proposed economic development project."

CAFOD's partner The Episcopal Commission for Natural Resources, CERN-CENCO, in the Democratic Republic of the Congo, has been working to protect the forests of the Congo Basin. CERN have shared that the following information should be made public with regard to timber. Much land that has been cleared for timber is subsequently used to grow, raise or cultivate agricultural commodities.

- The procedure for acquiring the forestry and agricultural concession, the licence giving details about the date of authorisation, the duration of exploitation, the size of the concession, the social capital, the nature of the use of the concession, the location (province, territory, sector, chiefdom, etc.), the taxes paid, the cahiers de charge with the communities affected.
- In addition to the information on the acquisition procedure, the traceability of the timber should be added: Source of the timber (country of origin), name of the company and its country of origin, exploitation permit number of the concession, size of the tree, name (types) of the tree, date of felling, country of destination of the tree.
- The company must carry out an Environmental and Social Impact Assessment (ESIA) and submit an Environmental and Social Impact Management Plan (ESMP) prior to exploitation and publish them on its website before the start of exploitation (forestry and agriculture).

Enforcement

Question 58. Which criteria should the enforcement authority fulfil? Please tick all that apply and state your reasons.

- UK-wide remit
- capacity to regulate
- capability and experience to deliver
- other (please specify)

Enforcement requires a dedicated, independent and well-funded enforcement body with real expertise in human rights, the environment and corporate accountability. This body must be adequately resourced, with sufficient expertise and powers, including to investigate on the ground in countries where commodities are produced. This enforcement system relies on transparency and provision of public information to support regulatory function.

The role of the regulator should be to:

a) Monitor compliance via due diligence reports and publish a list of them.

b) Collate and publish materials to support compliance, including a list of companies covered by the legislation and lists of relevant local laws in different jurisdictions, on the basis of consultation with local stakeholders.

c) Enforce the law, including to take action where due diligence is not reasonable and/or appropriate in the circumstances and to enforce the legislation where companies have been found not to be in compliance with relevant legal standards. The regulator should also operate an accessible, transparent and confidential mechanism for the public and affected communities to submit complaints and concerns about potential non-compliance. The regulator should itself publish an annual report on enforcement actions taken, including complaints/concerns received and actions taken in response, and investigations conducted.

Question 59. Should the maximum variable monetary penalty be £250,000?

- Yes
- No
- Do not know

Question 60. Do you have any further comments on the enforcement regime?

Experience from the implementation of the UK's Modern Slavery Act demonstrates the need for effective enforcement mechanisms. An independent review of the Act, published in 2019, stated that an estimated 40 per cent of eligible companies are not complying with the legislation at all and limited penalties for non-compliance have not been enforced (https://www.gov.uk/government/collections/independent-review-of-the-modern-slavery-act).

Effective enforcement mechanisms are crucial to ensuring that companies follow their due diligence obligations and that they have meaningful impact. Any monetary penalties should be set on the basis of percentage of the company's turnover: fines of maximum £250,000 will not be sufficient to dissuade irresponsible business practice. The UK has demonstrated leadership in placing dissuasive sanctions on businesses before, for example, under the Bribery Act 2010 where the penalty can be up to ten years imprisonment and a fine can be unlimited.

The government should explore what level of minimum penalty would effectively deter non-compliance and be commensurate with the severity of the abuses that this provision seeks to tackle,

including non-monetary sanctions such as civil sanctions, injunctions and the disqualification of non-compliant companies from public contracts. Criminal offences be available for more serious offences or repeat offenders. Critically, there also needs to be a mechanism that those harmed by deforestation and land rights violations have a form of redress and access to justice in the UK.

CAFOD's view is that a law that holds companies accountable for their failure to undertake reasonable and appropriate due diligence that leads to harm to people and/or the environment would be a more effective approach than due diligence accompanied by a prohibition. We are campaigning for such legislation: A "Business, Human Rights and Environment Act" (https://corporatejusticecoalition.org/uncategorised/principal-elements-of-a-uk-corporate-duty-to-prevent-adverse-human-rights-and-environmental-impacts-a-failure-to-prevent-law/).