

Anti-Slavery International response to DEFRA consultation

About Anti-Slavery International

Founded in 1839, we are the oldest international human rights organisation in the world. We draw on our experience to work to eliminate all forms of slavery and slavery like practices throughout the world. We work in partnership with our supporters, governments, businesses, like-minded organisations and global movements to bring about long-term, sustainable change.¹

Summary

The UK Government's announcement to introduce legislation to require businesses to carry out due diligence on harm linked to their supply chains is a welcome step. Further, we recognise the urgent need for legislation to hold UK companies to account for links to illegal deforestation.

However, the proposed approach to introduce a due diligence obligation with limited scope over illegal deforestation, detaching deforestation from other environmental harms and human rights abuses, fails to address the interlinkage between human rights abuses, environmental harms, and corporate impunity. Adopting robust legislation covering human rights *and* environmental due diligence for British businesses and investors based on internationally recognised standards will provide the UK government with the opportunity to address human rights and environmental abuses in global supply chains.

There is growing international consensus that human rights and environmental measures must be aligned. As stated by the former UN Special Rapporteur on Extreme Poverty, impacts of climate change are "likely to challenge or undermine the enjoyment of almost every human right in the international bill of rights".²

Introducing a legal obligation over British businesses and financial institutions to conduct human rights and environmental due diligence would follow the recommendation of the UK's Global Resource Initiative Taskforce, a taskforce of leaders from business and environmental organisations, which recognised the importance of introducing a mandatory due diligence obligation on companies dealing in forest-risk commodities covering both human rights and environmental risks and impacts.³ The Government should respond in full to the Global Resource Initiative recommendations.

The expert advice provided by the Global Resource Initiative also highlights the need to align deforestation with human rights to understand the drivers of deforestation. Introducing a due diligence obligation focused narrowly on illegal deforestation would likely fail to ensure the effectiveness of the objective of the legislation, and fail to ensure that companies and other undertakings address the human rights impacts linked to deforestation, including labour abuses and modern slavery. We are therefore deeply concerned by the lack of inclusion of human rights in the proposed legislation.

¹ Anti-Slavery International. About Us - Anti-Slavery International. Retrieved from <https://www.antislavery.org/about-us/>

² Human Rights Council. 2019. Report of the Special Rapporteur on extreme poverty and human rights. Retrieved from https://www.spsai.org/dsp_emailhandler.cfm?eid=101753&uid=USERIDTOREPLACE

³ Global Resource Initiative. 2020. Final Recommendations Report. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876465/gri-taskforce-executive-summary.pdf

British businesses can be a 'force for good' globally, particularly as we see many countries backtrack on environmental harms and human rights protections. The UK government can achieve this by putting forward plans to introduce a corporate duty to prevent human rights abuses and environmental harm, which includes companies, investors and the public sector in scope, and establishes liability for a failure to prevent harm.

Links between deforestation and modern slavery

1. Forced and child labour in global supply chains does not occur in a vacuum, and evidence has shown that the wider impact of many industries, including environmental damage and climate-change impacts can make people more vulnerable to exploitation and modern slavery.
2. The **displacement caused by environmental destruction and climate change increases the risk of certain forms of modern slavery, including human trafficking, forced labour and debt bondage**. In a forthcoming policy paper on the links between climate change, environmental destruction and contemporary slavery, Dr. Christopher O'Connell, IRC/MSCA Caroline Fellow at Dublin City University's School of Law and Government notes that the combination of the destruction caused by the extractive and agricultural industries and climate change is aggravating people's economic vulnerabilities, which in turn drives the migration of communities.
3. Deforestation accounts for 11% of global greenhouse gas emissions - the second biggest contributor to climate change after fossil fuels.⁴ Climate change is negatively impacting many countries in the Global South, destabilising the lives of both urban and rural communities. Research has shown that the livelihoods of 9 in 10 of the world's poorest people rely on the availability of natural resources.⁵ The destruction of these natural resources caused by climate change is forcing communities to seek for opportunities elsewhere. In Bangladesh alone, the World Bank estimates that climate change could displace over 13 million people by 2050.⁶ Searching for alternative sources of subsistence usually means precarious migration, rendering families at risk of exploitation including debt bondage, domestic servitude, forced and child labour, and human trafficking.

The insufficiency of the Modern Slavery Act 2015, and the need for mandatory human rights and environmental due diligence legislation

4. The UK Modern Slavery Act's Transparency in Supply Chains Provision is insufficient to address the modern slavery risks associated with climate change and environmental harms of business operations, and more broadly is insufficient to ensure that UK businesses are taking the appropriate steps to address exploitation in their supply chains.
5. The Transparency in Supply Chains Provision requires companies only to disclose the steps they are taking to prevent slavery in their supply chains, but does not oblige them to *take* those steps. While some companies have used transparency measures as an opportunity to advance

⁴ IPCC. 2014. AR5 Synthesis Report: Climate Change 2014. Retrieved from <https://www.ipcc.ch/report/ar5/syr/>

⁵ Bond Development and Environment group. 2020. Addressing the Triple Emergency: Poverty, climate change and environmental degradation. Retrieved from <https://www.bond.org.uk/resources/addressing-the-triple-emergency-poverty-climate-change-and-environmental-degradation>

⁶ Oxfam. 2019. Forced from Home: Climate-fuelled displacement. Retrieved from <https://www.oxfam.org/en/research/forced-home-climate-fuelled-displacement>

efforts to address modern slavery, many have not.⁷ In contrast, due diligence legislation mandates business to take responsibility to address risks and impacts throughout their operations, and to be transparent about the measures taken.

6. There is emerging consensus on due diligence legislation around the world. France, Germany, the Netherlands, Switzerland, as well as other jurisdictions, have introduced or are considering introducing such legislation, and the European Commission has committed to introducing a legislative proposal for mandatory human rights and environmental due diligence in 2021.
7. Businesses have expressed support for mandatory due diligence legislation. The 2020 BIICL survey found that UK businesses would support legislation that penalises businesses failing to prevent human rights harms, indicating that additional regulation may bring benefits to business through providing legal certainty and through levelling the playing field, holding competitors and suppliers to the same standards.⁸ Leading businesses, such as Primark⁹, H&M¹⁰, Mondelez¹¹ have publicly expressed support for such legislation. This is the moment for the UK to maintain its leadership on promoting responsible business conduct, in line with its commitments under the UK National Action Plan on Business and Human Rights.
8. A 2017 report from the Joint Committee on Human Rights recommended that “the Government bring forward legislation to impose a duty on all companies to prevent human rights abuses...[which] would require all companies to put in place effective human rights due diligence processes [...] both for their subsidiaries and across their whole supply chain.¹² As noted, the UK’s Global Resource Initiative Taskforce has also recommended such an approach. The Defra proposal has failed to meet the recommendations of the GRI, which were put forward by a multi-stakeholder group including leading UK businesses such as Tesco.
9. We therefore support New Clause 5 on mandatory human rights and environmental due diligence tabled by Kerry McCarthy as an amendment to the Environment Bill and encourage the Government to introduce legislation along these lines. This legislation must ensure that companies are legally liable if they fail to prevent these harms.

⁷ The independent review of the Modern Slavery Act, conducted by Frank Field MP, Maria Miller MP and Baroness Butler-Sloss, which was laid before Parliament on 22 May 2019. The reviewers note that the legislation is “light on detail” on reporting, and estimated 40 per cent of eligible companies are not complying with the legislation at all. Retrieved from <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

⁸ BIICL. 2020. A UK Failure to Prevent Mechanism for Corporate Human Rights Harms. Retrieved from https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf

⁹ Business & Human Rights Resource Centre. 2019. A call for mandatory human rights and environmental due diligence legislation. Retrieved from <https://www.business-humanrights.org/en/statement-für-eine-gesetzliche-regelungsmenschenrechtlicher-und-umweltbezogener-sorgfaltspflichten>

¹⁰ Business & Human Rights Resource Centre. 2019. List of large businesses, associations & investors with public statements & endorsements in support of human rights due diligence regulation. Retrieved from <https://www.business-humanrights.org/en/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-human-rights-due-diligence-regulation>

¹¹ VOICE Network. 2019. Cocoa companies call for human rights and environmental due diligence requirements. Retrieved from: <https://www.voicenetwork.eu/2019/12/cocoa-companies-call-for-human-rights-and-environmental-duediligence-requirements/>

¹² Parliament UK. 2017. Human Rights and Business 2017: Promoting responsibility and ensuring accountability, Conclusions and recommendations. Retrieved from <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44311.htm>

Effective legislation must be in line with international human rights standards, address human rights and environmental impacts, enable access to justice and include liability provisions.

10. Companies, financial institutions and the public sector must be mandated to undertake human rights and environmental due diligence in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises. The UNGPs set out the corporate responsibility to respect all internationally respected human rights, requiring both policy commitments and due diligence “in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts,” including “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”
11. We are concerned by the proposed due diligence obligation’s narrow focus on *illegal* deforestation, with legality determined by the local laws of the sourcing country. Regulation must focus upon ending deforestation in all its forms, recognising that in many jurisdictions much deforestation is considered legal. Under the UNGPs, companies must comply with all national laws wherever they operate, and to “seek ways to honour the principles of internationally recognised human rights when faced with conflicting requirements”. Proposed legislation must be aligned with this approach, requiring businesses to respect all *internationally* respected human rights and environmental standards. Failure to expand the proposed legislation to address corporate contributions to net deforestation, whether legal or not, and to require compliance with international standards risks encouraging deregulation and backtracking of environmental protections globally.
12. Proposed legislation must be effectively enforced, providing for an effective public investigation and enforcement mechanism, proportionate and dissuasive financial sanctions and criminal and civil liability for harm, loss and damage arising from a failure to prevent negative impacts. By establishing the legislation, it should enable better access to justice for victims of corporate harm to bring actions against UK companies in UK courts and seek remedy.

Conclusions

13. By introducing robust legislation that is fit for purpose, the UK government can play a leading role, alongside like-minded nations, in preventing the devastating effects of companies on people and the environment around the world. It is time to make a difference to both people and planet, obliging companies to seek ways to ensure respect for the rights of workers and communities and the environment, holding companies to account, and ensuring that when companies fail to work to protect workers and communities, both national and overseas victims can call for justice in UK courts and companies held liable.

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