



Amnesty International UK

DEFRA Consultation on Due Diligence legislation on Forest Risk Commodities, August – October 2020

Below is Amnesty International's response to this consultation including comments on further issues that we consider pertinent to the effective implementation of the proposed legislation:

- a) Environmental impacts of deforestation cannot be separated from human rights impacts
- b) Due diligence benchmarks should be based on UK laws or international standards, not local laws
- c) The Finance Sector should be included within the scope of due diligence legislation
- d) Need for coherence across UK Government Departments

Response

1. Should the Government introduce legislation designed to make forest risk commodities more sustainable?

YES

2. Should it be illegal for businesses to use forest risk commodities in the UK that have not been produced in accordance with relevant laws?

YES

3. Should businesses in the UK be obliged to have a system of due diligence in place to ensure that the forest risk commodities they use have been produced in accordance with relevant laws?

YES

4. Should businesses be required to report publicly on their system of due diligence?

YES

5. Should the Government be able to levy fines against businesses that use forest risk commodities that have not been produced in accordance with relevant laws?

YES

6. Should the legislation apply to larger businesses, over an employee number and turnover threshold, that use forest risk commodities in production or trade?

OTHER

7. If you responded 'Other' to Question 6, please expand.

The law should cover companies in all sectors and of all sizes carrying out business in the UK, including financial organisations and public sector bodies. This issue should be viewed systemically. While larger companies may be more likely to be placing a larger portion of product on the market, smaller companies may also have a high risk per unit when importing processed commodities. Some key traders and market players are small or medium-sized enterprise (SMEs).

A more effective approach would be to ensure that companies that import, use or trade forest risk commodities over a certain volume, rather than purely by company size, are included in scope, and that no UK-based company can use offshore manufacturing to avoid the new requirements.

A further consideration is that some such SMEs will be in the supply chains of large companies. If these SMEs are covered under the proposed law, then it becomes easier for the large companies that source from them to hold them accountable. If the due diligence provision is not applied to SMEs, then it will become more difficult for those who purchase from them to conduct their own due diligence. This is one of the reasons why the Transparency in Supply Chain provision of the Modern Slavery Act (Section 54) has a much lower threshold (£36m annual turnover) than originally envisaged. Some of the big brands were in favour of a low threshold to enable some of their suppliers to be included.

While the legal responsibility to conduct due diligence should apply to all companies, the means through which a business enterprise is expected to meet its responsibility should be proportional to, among other factors, its size. SMEs may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms.

The ways in which a business enterprise meets its responsibility to avoid having products arising from illegal forms of deforestation in its supply chains may also vary depending on whether it conducts business through a corporate group or individually. However, the responsibility should in principle apply equally to all business enterprises. Companies should not be able to use complex and diffuse organisational structures as a means of evading accountability under the law.

8. Large businesses have existing obligations to report on climate and environment issues including in relation to net zero. To what extent are there opportunities to align the proposal set out in this consultation with businesses' reporting under existing international frameworks [e.g. the recommendations of the Taskforce on Climate-Related Financial Disclosures (TCFD)]?

Any reporting must be related to the risks of a company having illegal forms of deforestation and other environmental harm in its business, including its global supply chains.

In order to account for how they address the risks of illegal deforestation in their business and supply chains, companies should be required to communicate this externally. Any such reporting should be of a form and frequency that reflects an enterprise's impacts and also the concerns that are raised by or on behalf of affected stakeholders. The information

provided should be sufficient to enable concerned parties to evaluate the adequacy of an enterprise's response to the risks it faces.

While reporting would be a necessary part of any such law, it is by no means sufficient. A reporting requirement is no substitute for a due diligence requirement. If this proposed law were to amount largely to a reporting provision, it could have similar limitations to the Transparency in Supply Chain provision (Section 54) of the Modern Slavery Act 2015.

Defra should take heed of the 2019 findings of the [Independent Review of the Modern Slavery Act](#) commissioned by the Government which found deficiencies in this provision. The Review highlighted that many businesses ignore it or respond to the requirement as a tick box exercise, and that the quality of modern slavery statements produced has been poor. Whilst the Act provides for the Secretary of State to be able to seek injunctive action against non-compliant companies, this has not happened and there are no penalties for non-compliance. In summary, the Review determined that the lack of clarity, guidance, monitoring and enforcement of modern slavery statements needs to be addressed.

9. Other considerations to make the proposed law effective

a) Environmental impacts of deforestation cannot be separated from human rights impacts

Case study from Amnesty International's research

In Brazil's Amazon, land seizures for illegal commercial cattle ranching are increasing at the expense of the rights of Indigenous peoples and traditional residents of Reserves, who cannot access occupied areas, reducing their opportunities to hunt or collect natural resources. The land seizures are often accompanied by threats and intimidation against those living on and seeking to defend their territories. Indigenous peoples and traditional residents of Reserves often fear being hurt or killed if they go to these areas. In the worst cases, they are compelled to flee their homes. Land seizures, deforestation and fires are stages in a process that converts Amazon rainforest into pasture for cattle.

The process starts when cattle farmers and grileiros – private individuals who illegally seize land which they either keep for themselves or sell to others for profit – mark plots of land in the forest. The process continues when cattle farmers and grileiros cut down trees, light fires, then plant grass and introduce cattle to graze. While there is a long history of land seizures, incursions have intensified since January 2019. The number of land seizures has increased sharply, and new areas have been cleared and planted with grass for pasture. Satellite imagery taken between January and May 2020 clearly shows recent attempts to expand illegal commercial cattle ranching in all three sites that were the subject of Amnesty's research.

While the primary responsibility to protect the human rights of those living in the Brazilian Amazon rest with the Government of Brazil, companies are part of the problem and need to be part of the solution. This is particularly the case with JBS, because it is the largest meat producer in the world, and also with companies that source from JBS, including all the major British supermarkets.

A due diligence law that fails to address the human rights dimension of illegal forestation and of other environmental harms is unlikely to be effective. The Task Force of the [Global Resource Initiative](#) recommended that the framing of a mandatory requirement to exercise due diligence and disclose actions taken should in principle “*Cover both human rights abuses and environmental risks and impacts, which will need to be carefully and clearly defined, and require companies to analyse the presence of these risks within their supply chains, take action to prevent or mitigate those risks and impacts, and publicly report on actions taken and planned*” (p26).

The inter-relationships between human rights violations and environmental harms is evident from Amnesty International’s research into illegal cattle grazing in protected areas of the Amazon.

In July 2020, Amnesty published [From Forest to Farmland](#) which provides an account of how cattle illegally grazed in Brazil’s Amazon are found in the supply chain of the world’s largest meat producing company, JBS, which is a supplier to all the UK’s major supermarkets. The findings reveal that this is a systemic issue that companies can help address by putting in place an effective due diligence process.

British supermarkets, as part of their human rights due diligence, should require their direct and indirect suppliers to implement an effective monitoring system to ensure that no cattle illegally grazed in protected areas at some stage of their lives enter their supply chains. The technologies exist for this to happen.

If UK companies are not required to conduct human rights due diligence on the impacts of deforestation on the people most affected, then they are much less likely to root out environmental harm from their supply chains. Those most affected by deforestation, who have been living sustainably and in harmony with their environment, are in effect custodians of the natural resources around them on which they depend. They are in the best position to bear witness to environmental harm that is occurring and to act as the ‘canary in the coal mine’ by providing early warning of the onset of illegal activity, such as land incursions.

b) Due diligence benchmarks should be based on UK laws or international standards, not local laws

The UK Bribery Act applies to UK companies across their global operations. In line with the UK’s OECD commitments, businesses are liable in the UK for acts of bribery committed anywhere in the world. There are other [areas of UK law that have extra-territorial application](#) for UK companies particularly in the sphere of economic crimes and ant-trust laws. There is no reason in principle why environmental crimes should not be treated similarly.

The use of local laws in other countries as a benchmark for due diligence legislation in the UK is dubious in principle and would almost certainly be unworkable in practice. For example, if JBS as the largest meat producer in the world is not subject to prosecution in Brazil for breaching national laws relating to illegal cattle-grazing in protected areas of the Amazon, then how could its subsidiary in the UK be found liable for such failings, or any of the British supermarkets that source their beef from its subsidiary?

The reality is that laws protecting the environment are not properly enforced in many jurisdictions for various reasons, including the weakness of regulatory bodies, the ability

of companies to circumvent the law, and in some cases because of corruption. How then could a UK court find a company culpable of due diligence failings in relation to illegal activity in a third country when such activity has not been subject to criminal sanction within that country?

In effect, a UK court would be expected to determine what constitutes illegal activity in other countries and to assess evidence of whether such activity has occurred. Otherwise UK businesses would be able to assert that they don't have illegal deforestation in their supply chains, in so far as the companies they source from have not been indicted for such activity.

UK law and International standards would provide a more reliable benchmark for due diligence procedures relating to environmental harm, as they would for violations of human rights.

Under international human rights law and standards, companies have a responsibility to respect human rights. For example, the [United Nations Guiding Principles on Business and Human Rights](#) (the UN Guiding Principles) require companies to implement a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights, including in their supply chains. Amnesty International considers that, by failing to effectively monitor for illegally grazed cattle entering its supply chain, JBS and British supermarkets that source from JBS would be failing to carry out adequate due diligence.

Under the terms of the UN Guiding Principles, the Brazilian meat-producing company JBS contributed to human rights abuses against Indigenous peoples and residents of Reserves in Brazil by participating in the economic incentives for cattle illegally grazed in protected areas. It is incumbent on British supermarkets that source JBS meat to have in place a due diligence procedure that can identify and root out products arising from such illegal activity.

c) The Finance Sector should be included within the scope of due diligence legislation

The inclusion of those providing financial services to companies that trade or produce forest risk commodities was a key recommendation of the Task Force to the [Global Resource Initiative](#), which noted that *"The finance sector has been slow to integrate commodity driven forest loss and land conversion in their decision-making processes. This sector must also step up if it is to avoid funding deforestation through lending and investments"* (p6).

UK Financial institutions have been implicated in the financing of agribusiness traders in a number of global reports and databases, including Global Witness's 2019 Report, [Money to Burn](#), and the [Forests and Finance Database](#). Global Witness showed that the UK's financial contributions to forest risk agribusinesses were estimated to be circa 5 billion GBP since 2014.

Finance sector actors may lend or invest disproportionately to specific sectors of the market, including soft commodities. Inclusion of the finance sector is important for market cohesion and is reflected in existing EU Regulations, such as the [French Duty of Vigilance](#) law, and existing international guidelines on due diligence.

d) Need for coherence across UK Government Departments

It is essential that Defra takes account of developments elsewhere across Government in framing due diligence legislation. This will help ensure that the measures adopted complement and reinforce expectations and requirements of the conduct of companies in spheres that are related to environmental impacts.

The UK launched a [National Action Plan on Business and Human Rights](#) in 2013 to give effect to the UN Guiding Principles on Business and Human Rights. This was [updated](#) in 2016 with a specific reference to the UK supporting the G7's commitment on supply chains: *"To enhance supply chain transparency and accountability, we encourage enterprises active or headquartered in our countries to implement due diligence procedures regarding their supply chains"* (p3).

A cross-Whitehall Steering Group has been set up to monitor implementation of the UK's National Action Plan. If Defra is not part of the Steering Group, then it should consider joining this to ensure coherence across Government Departments.

In view of the extent to which the environmental impacts of companies have consequences for human rights and visa versa, any due diligence measures introduced by the Government should reflect this complementarity. Otherwise there is a risk that the measures introduced will reflect a piecemeal approach to supply chain due diligence, leading to a fragmentation of policy and law in a way that would bring about less effective outcomes.

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