Traidcraft Exchange submission to UK government consultation on due diligence and deforestation

Summary of recommendations

- The proposed law should be extended to create a corporate duty to prevent human rights and broader environmental destruction
- This should hold UK companies to UK and international standards, including on deforestation
- The law should apply to all companies regardless of size, as well as to investors
- The law requires proper enforcement, including the option of criminal sanctions, if it is to be effective

Introduction

1. It is encouraging that the UK government has proposed a due diligence law that seeks to hold companies to account when their sourcing practices do not satisfy agreed standards. Such a proposal demonstrates that the government has recognised two vital principles:
   
   a. Firstly, that UK companies should take responsibility for what goes on in their supply chains. Sourcing companies turning a blind eye to how their products are produced has gone on for far too long, and has allowed a range of practices, such as child labour and modern slavery, to flourish within global supply chains.
   
   b. Secondly, that the way to get companies to take responsibility is to use the law. Other options – from certification schemes to industry-led self-regulation – have proved to be inadequate at changing corporate behaviour when compared to legislation.

2. The proposed law does not, however, apply these principles logically. The actions of UK companies have been linked to a range of environmental and human rights abuses around the world. By restricting the scope of this law to only illegal deforestation, the government is failing to grasp that these abuses are interlinked, and attempting to tackle asingle issue without engaging with the broader problem of corporate impunityis counter-productive.

Introduction to Traidcraft Exchange

3. Traidcraft Exchange is an international development charity which uses the power of trade to bring about lasting solutions to poverty. It runs development programmes in South Asia and Africa, works
directly with businesses to improve their supply chains, and does advocacy and campaigning in the UK to promote justice and fairness in international trade. It works closely with specialist fair trade company Traidcraft Plc.

4. Corporate accountability has been a major focus of Traidcraft Exchange's recent campaigning work, based upon the assessment that trade cannot be fair while powerful corporations are able to act with impunity in their overseas operations and supply chains.

Traidcraft Exchange has published a number of reports exploring examples of UK companies abusing human rights and the environment. These include:

a. Equatorial Palm Oil, a UK company running plantations in Grand Bassa, Liberia, on land that communities allege was taken illegally. Promises of compensation were broken, protestors against the company were beaten, and villages have been left without livelihoods.¹

b. Glencore, a UK-listed mining giant whose copper smelting plant in Kankoyo, Zambia, polluted the air and water of the local area, killing crops and leading to respiratory problems in the surrounding community.²

c. The UK-listed company Africa Barrick Gold ran the North Mara gold mine in Tanzania, where private security contractors have been accused of using disproportionate force, having killed 16 members of the local population in six years.³

5. Campaigners working with Traidcraft Exchange have consistently called for new UK laws to improve corporate accountability:

a. In 2016, more than 20 000 Traidcraft Exchange campaigners wrote to Number 10 Downing Street calling for new legislation to allow companies to be prosecuted for human rights violations.⁴

b. Since January 2020, Traidcraft Exchange campaigners have been writing to Prime Minister Boris Johnson calling for a UK Human Rights Due Diligence law.⁵

A corporate duty to prevent human rights abuses and broader environmental destruction

6. A new UK law holding companies accountable for illegal deforestation in their supply chains is welcome. However, the proposal should be expanded to include a duty to prevent a broad range of human rights and environmental abuses. Corporations have the responsibility to respect human rights: this is articulated in the 2011 UN Guiding Principles, to which the UK is a signatory.⁶

¹ https://traidcraftexchange.org/our-land-our-rights-report-web
³ https://traidcraftexchange.org/policy-resources/2017/10/27/justice-we-mean-business
⁴ https://traidcraftexchange.org/justice-campaign
⁵ https://action.traidcraft.org.uk/are-you-willing-campaign-people-and-planet
7. In March 2020 the Global Resource Initiative (GRI), an expert group convened by the government to advise on how to reduce the climate and environmental impact of UK supply chains, recommended that the UK government introduce a mandatory due diligence obligation. This “should require companies to analyse the presence of environmental and human rights risks and impacts within their supply chains, take action to prevent or mitigate those risks, and publicly report on actions taken and planned.” This recognises that it is appropriate, achievable and proportionate for a company to tackle its human rights and environmental risks in the same process.

8. This legal proposal brings forward the GRI’s due diligence recommendation but strips away any mention of human rights, and offers no rationale for having done so. Given that the membership of the GRI included major businesses including Tesco and Cargill, it is surprising that the government have not been more receptive to one of its key recommendations.

9. The UK risks falling behind the curve when it comes to regulation in the field of business and human rights. Section 54 of the 2015 Modern Slavery Act requires UK companies to report on the modern slavery risks in their supply chain. This was rightly lauded at the time as groundbreaking. However, since 2015 other jurisdictions have gone further. The Netherlands’ Child Labour Law and France’s Duty of Vigilance law both provide a means to hold companies legally accountable for a failure to prevent supply chain abuses, and the European Union is due to propose a similar directive in 2021. It is time for the UK to follow suit and use the law to hold companies meaningfully to account when it comes to human rights and the environment.

10. Retaining a narrow focus on deforestation is likely to undermine the effectiveness of legislation. Human rights and deforestation are impossible to separate. Large-scale deforestation always involves abusing the rights of indigenous peoples that occupy those forests. This could be their right to tenure or their right to give or withhold free, prior and informed consent (FPIC) to land use changes, both of which are established in customary, national and international laws. Requiring companies to assess and mitigate their human rights risks, and holding them to account for their failure to do so, is likely to have the secondary impact of stopping large-scale deforestation.

**UK companies should be held to UK and international standards**

11. The proposed law seeks to prevent UK companies contributing to illegal deforestation, with legality defined by the laws of the country from which the forest-risk commodity is sourced. This is inadequate. UK companies should be required to take steps to ensure that they do not contribute to net deforestation, whether legal or otherwise.

12. As the consultation document itself points out, more than half of tropical deforestation is actually permitted under local laws. Of 39 countries assessed for the strength of their legal protections for

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The European Commission’s proposal is due to apply to all companies operating in the EU, meaning that the large number of UK-based companies with an EU presence will have to comply with the eventual law.
indigenous peoples, only three had domestic laws requiring deforestation companies to guarantee FPIC. Additionally, some of the jurisdictions where the world’s rainforests are most at risk are moving in a deregulatory direction, allowing greater levels of legal deforestation.

13. The destruction of the world’s forests is an issue of urgent and existential significance to the future of the planet, given the importance of forests in removing carbon from the atmosphere and supporting biodiversity. The UK government cannot legislate to strengthen deforestation laws in countries like Brazil and Indonesia, which are seeing widespread deforestation. But the UK can hold its own companies to a higher standard and require them to take steps to ensure that they do not contribute to any deforestation. This is the minimum that should be expected from a country that aspires to greener supply chains and would be in line with recent non-binding international agreements to which the UK is signatory, such as the New York Declaration on Forests. It would also send a strong signal of the government’s ambition on climate change mitigation as the UK prepares to host COP26 in November 2021.

14. There is precedent, in the 2010 Bribery Act, for UK law that carries extra-territorial application. That is, it defines illegal behaviour under UK law and applies that law to UK businesses regardless of where in the world their subsidiaries or suppliers are operating, and regardless of the legal regime in that country.

**Investors should be in scope**

15. The proposed law should be expanded to place an obligation on investors. Limiting the scope of the law to only those UK companies that are placing forest-risk commodities on the UK market fails to engage with the UK’s role as a global financial centre. A huge number of companies engaged in socially or environmentally risky supply chains, from agri-business to mining, are registered in the UK, in receipt of UK investment, or a customer of UK professional services. To have maximum impact, therefore, a due diligence obligation should apply to all UK companies within the value chain.

16. Equatorial Palm Oil’s illegal annexation of indigenous land in Liberia occurred before the company had produced any palm oil for export. And, although Equatorial Palm Oil (EPO) are a UK company, registered in London and with British directors, they may never sell palm oil to the UK market, and focus instead on regional markets in other parts of West Africa. A law that focuses only on sale in the UK risks allowing such companies to slip through the net.

**All companies should be subject to a due diligence law**

17. The consultation document suggests that this law would apply to “a relatively small number of larger businesses that use forest risk commodities in production or trade in the UK, and meet an employee number and turnover threshold.” This should be expanded to cover all UK companies.

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18. Human rights abuses and environmental destruction are extremely serious harms and should be treated as such. Due diligence to assess and mitigate the risks of these harms is the minimum that we should expect from our businesses, regardless of their employee number or annual turnover.

19. This is not to say that some level of differentiated responsibility is not appropriate. A small business with domestic supply chains poses a very different level of risk to human rights and the environment than a multinational with a global footprint. But the very concept of due diligence is that it is risk-based. Companies with greater risks will be expected to conduct more rigorous assessments, and to commit to more comprehensive mitigation measures, and for those companies with fewer risks, compliance will be relatively simple.

20. The size of a business is a poor proxy for risk. EPO is a small business, with operations limited to two plantations in Liberia that have not been profitable. It is unlikely that they would fall within scope of a law that applied only to “a relatively small number of larger businesses”. Yet, EPO are operating in a context that carries huge intrinsic risks to human rights and the environment: acquiring and managing plantations in a poor, fragile, post-conflict state that contains some of West Africa’s richest remaining rainforests. It is entirely appropriate that the UK should require companies such as EPO to conduct human rights and environmental due diligence.

**A law requires tough enforcement**

21. The legal proposal is worryingly vague when it comes to how a due diligence law would be enforced. Fines and other civil penalties are one of a number of appropriate means of enforcing this law. Fines should be set at an appropriately dissuasive level, with guidelines defined in law, to ensure that businesses engage with the law rather than simply accepting fines for non-compliance as a manageable cost of doing business.

22. For certain violations, which might include gross human rights abuses, the government should introduce criminal sanctions to hold companies and their directors properly to account where they failed to take preventative action.

23. One means through which to ensure effective enforcement of a human rights and environmental due diligence law would be for the UK government to establish an independent regulator. According to one recent study ‘a dedicated regulatory body could add value to the enforcement of the proposed human rights due diligence law by increasing the likelihood of UK companies being held accountable for cross-border human rights abuses and providing specialist advice relating to cross-border corporate human rights abuses.’

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https://static1.squarespace.com/static/59242eb03596e804886c7f4/t/5f69fa52ccfcb6a56f4df39/1600780900693/Research+report+1.pdf
Conclusion

24. ‘Global Britain’ is a key part of this government’s vision: a country of diplomatic, cultural and financial heft with a positive international role. This vision is undermined if UK companies are able to act with impunity in their overseas operations, destroying the environment and abusing human rights.

25. UK companies should be held to a high environmental and human rights standard, wherever they operate and whatever the domestic legal regime. To ensure effectiveness and provide remedy to victims, the failure to prevent abuses should lead to civil or criminal penalties in the UK. Establishing and enforcing that legal standard is the UK government’s responsibility. It is time to follow the GRI’s recommendation and reestablish the UK as a world-leader in regulating to protect human rights by mandating corporate due diligence covering social and environmental risks.

This submission is made by Tom Wills, Senior Policy Advisor, tom.wills@traidcraft.org.

There is no need for Defra to keep this submission confidential.