

CORE Coalition response to DEFRA consultation

About CORE

CORE is the UK civil society network on corporate accountability. Our network of over 50 partner organisations brings together expertise on international development, the environment and human rights.¹ We are willing for our response to this consultation to be made public.

For more information, please contact louise.eldridge@corporate-responsibility.org.

Our response to the consultation

- 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.

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 (e.g., per tonne) particularly

¹ <https://corporate-responsibility.org/about-core/our-network/>

when importing processed commodities. Many key traders and market players are medium-sized or even small (for instance, soy traders and processors).

Under the OECD Guidelines on Multinational Enterprises,² the UK is required 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.³ While regulators should focus their enforcement efforts on businesses that have the highest level of risk and impacts, the requirement should extend to companies of all sizes. This would also help to avoid complex loopholes and streamline compliance and enforcement.

A key recommendation of the UK Government taskforce, the Global Resource Initiative (GRI),⁴ is that a deforestation due diligence obligation should cover finance – we believe this is crucial to ensuring a consistent standard applies to all UK companies. UK-based financial institutions have been the single biggest source of international finance for six of the most harmful agribusiness companies involved in deforestation in the climate-critical forests of Brazil, the Congo Basin and Papua New Guinea, providing £5 billion over the last six years.⁵

The UK should set a standard that is at a minimum aligned to European regulations. Financial organisations are covered under the French Duty of Vigilance Law, and proposed EU legislation on cross-sectoral mandatory human rights and environmental due diligence expressly covers companies of all sectors and sizes.⁶

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)]?

There is a gap in current climate and finance initiatives, including the TCFD. These initiatives rely on businesses reporting their net carbon emissions from planned activities. However, many businesses linked to deforestation already have zero deforestation commitments: exposure to deforestation is unplanned and therefore not captured by TCFD reporting, but instead arises from a failure to undertake adequate due diligence to identify, mitigate and prevent the risk of deforestation in their supply chains or financing. Only by legislating for mandatory due diligence will companies be required to take action to tackle deforestation risks.

9. Do you have any further information or comments you would like us to be aware of?

The Government's announcement that UK companies should carry out due diligence on their supply chains is a very welcome step. UK imports of commodities associated with

² <https://www.oecd.org/corporate/mne/>

³ https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁴ <https://www.gov.uk/government/publications/global-resource-initiative-taskforce>

⁵ <https://www.globalwitness.org/en/campaigns/forests/money-to-burn-how-iconic-banks-and-investors-fund-the-destruction-of-the-worlds-largest-rainforests/>

⁶ <https://www.business-humanrights.org/en/latest-news/eu-mandatory-due-diligence/>

illegal deforestation are significant, and urgent action on this issue is vital. However, it is perverse to detach deforestation from human rights, and highlights a misunderstanding of the drivers of deforestation and the growing consensus – as clearly expressed by the Global Resource Initiative (GRI) taskforce - that human rights and the environment must be aligned. In order to be a true ‘world leader’ on sustainable trade, the Government must go further. We support the expert advice provided by the GRI and urge the Government to adopt robust legislation covering human rights and environmental due diligence for British businesses and investors, based on internationally recognised standards.

I. A legal requirement for businesses to tackle deforestation must require businesses to undertake combined environmental and human rights due diligence on forest risk commodities

A failure to recognise the interlinkages between the environment and human rights would mean that it would be impossible to adequately respond to the underlying drivers of deforestation. Furthermore, efforts to seize control of rights to land from indigenous peoples and local communities who have safeguarded forests for generations is often the root cause for other types of human rights abuses, such as the harassment, intimidation and violence directed towards indigenous peoples and local communities protecting their forested land from corporate activity.⁷

If indigenous peoples and forest communities’ customary rights to land, territories and resources⁸ are respected and they give consent to activities happening on their lands, the likelihood of deforestation, ecosystem degradation and biodiversity loss is much lower. Illegal deforestation can and should, therefore, be defined as deforestation taking place ‘without the free, prior, and informed consent (FPIC) of indigenous peoples’ (who live on forested land). The rights of local people to make decisions about that land must be respected. There is a large body of evidence showing that the abuse of insecure customary land tenure (i.e. land rights not formally legalised) is a key underlying driver of large-scale deforestation.⁹ As FERN points out: “Respecting community customary tenure rights reduces forest conversion and hence deforestation.”¹⁰

There are precedents for requiring FPIC in national and international law, and in cases filed under the Roundtable on Sustainable Palm Oil, the OECD Guidelines on Multinational Enterprises, and the World Bank.¹¹ Leading scientists,¹² industry standards and company policies recognise the importance of FPIC.

The importance of a due diligence obligation covering both human rights and the environment has been recognised by the Global Resource Initiative, which states that: “The UK must take a new, more inclusive, approach towards agriculture and forestry commodity supply chains in which environmental, human rights and economic development goals are

⁷ <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/>

⁸ As defined in the Accountability Framework Initiative: https://accountability-framework.org/definitions/?definition_category=18

⁹ https://www.forestpeoples.org/sites/default/files/documents/Closing%20The%20Gap_0.pdf

¹⁰ https://www.fern.org/fileadmin/uploads/fern/Documents/Discussion_Paper_forests_and_human_rights.pdf

¹¹ http://www.cao-ombudsman.org/cases/document-links/documents/CAO_SecondComplianceMonitoringReport_Honduras_Ficohsa.pdf

¹² <https://www.ipcc.ch/srccl/>

aligned.”¹³ It recommends that the UK “urgently introduce” a mandatory obligation on companies dealing in forest-risk commodities, which should require them: “... 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.” The report also states that a focus on forests and land conversion should be a first step, before being extended to wider impacts. **We strongly believe that the Government must respond in full to the GRI recommendations, including its plans for establishing a broader corporate duty.**

While we support the government taking action to develop legislation to address deforestation, we believe that the most effective way for the UK to be a world leader in tackling deforestation and related harm to global ecosystems is to introduce a new law requiring all UK companies to prevent human rights and environmental abuse throughout their supply chains and operations, mandating human rights and environmental due diligence across all sectors and issues, and ensuring that companies are legally liable if they fail to prevent abuses. The Joint Committee on Human Rights recommends such legislation,¹⁴ and there is an emerging consensus on this issue around the world, with the EU recently announcing its intention to table a legislative proposal on mandatory human rights and environmental due diligence legislation in 2021.

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 future legislation along these lines.¹⁵

II. **The law should clearly state what practices the UK sees as harmful, with international standards as the benchmark for sustainability**

As the UK government acknowledges in its own consultation document, only half of all recent tropical deforestation is the result of illegal clearance for commercial agriculture and timber plantations.¹⁶ Tolerating UK involvement in *legal* deforestation could encourage efforts to roll-back hard-won laws and forest enforcement systems in countries around the world: the Government must focus on ending UK complicity in deforestation in *all* its forms. Relying on local laws as the standard by which due diligence will be measured is insufficient, since under local laws much deforestation is not necessarily “illegal”.

Under the OECD Guidelines on Multinational Enterprises, the UK is required to ensure that all businesses are addressing internationally recognised environmental and human rights risks and impacts. The UN Guiding Principles on Human Rights and Business – which the UK has committed to implement – similarly outline the duty of home states to ensure businesses respect *all* internationally protected human rights through conducting due diligence in their supply chains. The proposal for a due diligence obligation on deforestation must be aligned with this approach. Moreover, the UK has already signed international agreements on deforestation that go beyond local laws – such as the New York Declaration

¹³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876465/gri-taskforce-executive-summary.pdf

¹⁴ <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44311.htm>

¹⁵ https://corporate-responsibility.org/wp-content/uploads/2020/07/CORE-Briefing_Environment-Bill_FINAL_070720.pdf

¹⁶ https://consult.defra.gov.uk/eu/due-diligence-on-forest-risk-commodities/supporting_documents/duediligenceconsultationdocument.pdf

on Forests and the Amsterdam Declaration Partnership.¹⁷ Other existing benchmarks include those articulated under the international Accountability Framework Initiative.¹⁸

Companies that undertake due diligence will likely prioritise action by looking to gaps in operating contexts between local laws and human rights standards on specific issues. Were this law to focus only on national law, that could incentivise companies to use supplier clauses and other leverage options to reverse the higher standards that can be found across many industries. A single, uniform standard must be applied by the UK Government across all jurisdictions in order to clarify business responsibility to protect the environment and prevent deforestation. This would also simplify compliance for business.

The law should therefore clearly outline what business practices the UK views as harmful and will no longer be complicit in, based on international standards, irrespective of what local rules allow. This approach is not novel – it has already been taken on issues including bribery, corruption and wildlife trafficking. The Bribery Act, for instance, defines a standard that is applied to UK businesses wherever they operate. This approach will help to protect forests in alignment with the international agreements that many producer countries have already ratified.

III. Legislation must be effectively enforced

Voluntary initiatives and reporting requirements are not driving the change needed to address systemic problems leading to corporate human rights and environmental harms. There is an established international consensus on the need for what Professor John Ruggie has referred to as a “smart mix” of legislative and voluntary measures to achieve lasting change.

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.¹⁹ Moreover, the Act does not require companies to *act on their due diligence*, only to report on it, nor does it hold companies to account when *they fail to act*.

Effective enforcement mechanisms are crucial to ensuring that companies follow their due diligence obligations, and that they have meaningful impact. 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. Penalties should go beyond fines to include the disqualification of non-compliant companies from public contracts and directors’ disqualification.

We also recommend criminal and civil liability for companies failing to prevent harm. Penalties should also include options for communities harmed by deforestation to seek redress. Such provisions are expressly included in the proposals for mandatory human rights and environmental due diligence at the EU level and other states (for example, France and the Netherlands) have already introduced similar legislation with liability provisions. The UK must now follow suit.

¹⁷ <https://ad-partnership.org/about/>

¹⁸ <https://accountability-framework.org/>

¹⁹ <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>