

Legislative Scrutiny: Environment Bill

Written submission to the *Joint Committee on Human Rights* by CORE Coalition, Amnesty International UK, Traidcraft Exchange, RAID UK, Forest Peoples Programme, Oxfam, UNICEF UK, Anti-Slavery International, CAFOD, ShareAction and Business and Human Rights Resource Centre.

31 March 2020

Our submission

1. CORE is the UK civil society coalition for corporate accountability. We aim to advance the protection of human rights and the environment with regard to UK companies' global and domestic operations by advocating for higher standards of corporate conduct, a more effective regulatory framework, and improved access to remedy for people harmed by UK-linked business activities.
2. This submission relates to proposed new clause (NC5) in the Environment Bill: "Environmental and human rights due diligence: duty to publish draft legislation." This will be considered by the Public Bill Committee when proceedings on the bill resume.

Policy and legislative context

3. Human rights due diligence (HRDD) is established as a clear expectation for businesses under the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises. In 2013, the UK published its National Action Plan on Business and Human Rights (NAP), in which "adopting human rights due diligence" is listed as a key principle of the approach that UK companies should take to respect human rights.
4. In the report from its 2016-17 Business and Human Rights inquiry, the JCHR 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.*"
5. A 2020 report from the British Institute of International and Comparative Law (BIICL) found that a "failure to prevent" mechanism for corporate human rights harms, modelled on the UK Bribery Act, would be legally feasible.¹ The recent Global Resource Initiative Taskforce report recommends that the government introduce a mandatory due diligence obligation for companies that place commodities and products linked to deforestation on the UK market, and for organisations that provide finance for these firms.²

¹ Full report: https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf

² Full report: <https://www.gov.uk/government/publications/global-resource-initiative-taskforce>

6. A number of large businesses have expressed public support for HRDD regulation.³ The vast majority of companies surveyed by BIICL disagreed with the statement that “existing law provides businesses with clarity about corporate human rights obligations.”
7. Following the French “Duty of Vigilance” law (2017), a new generation of laws is now emerging in Europe.⁴ A study for the European Commission on due diligence throughout the supply chain confirms that there is urgent need for regulatory action at the EU level.⁵
8. To meet its ambition to be a world leader on shaping responsible business behaviour, the UK needs to strengthen its legal corporate accountability provisions. This is crucial at a time in which the UK Government is seeking to forge new trade deals which offer opportunities and legal protections for companies. It is in the wider public interest that these protections should be balanced by safeguards for people affected by business activity.

Environment Bill: Our recommendations

9. We are calling for UK legislation to create a corporate duty to prevent human rights and environmental abuses. Under this law, commercial organisations (and, depending how the law was drafted, public sector bodies) would have to take action to prevent human rights abuses and environmental harm in, or arising from their global products, services, operations, investments, and value chain, through carrying out effective due diligence. Commercial organisations would be sanctioned if they failed to put in place adequate due diligence measures and would be held liable for harm, loss and damage arising from their failure to prevent harmful impacts.⁶
10. It is our view that the complex legal and organisational structures of many modern businesses create gaps in legal accountability. The inclusion of this new clause in the Environment Bill has the potential to enhance the protection of human rights and the environment by requiring the government to bring forward legislation that would close these gaps within six months of the Environment Bill receiving Royal Assent.
11. A new law will provide clarity for business, make sure that companies doing the right thing are not undercut by firms operating to lower standards, and create an equal footing for all companies - regardless of whether they are consumer-facing. It will also make it easier for regulatory bodies that have oversight of companies, such as the

³ A list of large businesses publicly endorsing human rights due diligence regulation can be found here: <https://www.business-humanrights.org/en/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-human-rights-due-diligence-regulation>

⁴ See overview of developments from the European Coalition on Corporate Justice (ECCJ): <https://corporatejustice.org/eccj-publications/15144-evidence-for-mandatory-hrdd-legislation-updated-may-2019>.

⁵ Full report: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>

⁶ Please see the legal principal elements that campaigners are calling for: https://corporate-responsibility.org/wp-content/uploads/2020/04/Duty-to-prevent_principal-elements_FINAL.pdf

Environment Agency, to fulfil their remit more effectively, by embedding the business responsibility to protect society and the environment in law.

12. **We therefore urge the JCHR to support New Clause 5 tabled by Kerry McCarthy on the Environment Bill and to recommend in their report that the Government should introduce future legislation on human rights and environmental due diligence, along these lines.**
13. ***Recognising the pressure on Government and Parliament during the current COVID-19 crisis, we would be pleased to offer expertise and ideas about how new legislation could be framed in an appropriate way that would be workable for businesses and broader society.***
14. Below, we highlight some crucial key features of new legislation as proposed by the new clause.

1) All environmental and human rights risks and impacts should be covered

15. We support a requirement for companies to carry out due diligence in relation to *“all environmental and human rights risks and impacts associated with the exercise of their functions”* as per subsection (1)(a) of this clause.
16. Human rights and environmental protection are interdependent. A safe, healthy and sustainable environment is essential to the fulfilment of the rights to life, food, health, water, housing, decent work, and other social and cultural rights. Many negative impacts caused by a business’s actions or negligence, such as tailings dam collapse that devastate livelihoods, or intimidation and harassment of indigenous activists defending rainforests, demonstrate that human rights and the environment cannot be extricated from one another.
17. We therefore support provisions made in subsection (6) to *“require compliance with international standards and obligations relating to human rights, including the rights of indigenous peoples and local communities.”* We emphasise the need for a legal requirement that covers negative impacts on both people and the environment, including but not limited to exploitative working conditions, including modern slavery and child labour; land grabs and evictions of indigenous peoples and local communities; attacks on human rights defenders; and ecosystem degradation and deforestation. It should also recognise that specific attention and consideration is needed for groups at risk of vulnerability and marginalisation, such as children, women and indigenous peoples.
18. Legislation should aim to enhance responsible business conduct across a wide spectrum of impacts, rather than adopt a narrow sectoral or issue-specific approach. Single-sector regulation risks creating a patchwork of different, overlapping requirements, which could create confusion for businesses. Holistic human rights due diligence legislation with broad scope and applicability would create clarity and enable

companies to focus on the most salient risks for human rights and the environment in their own business.

2) A corporate duty to carry out due diligence should be legally enforced

19. Voluntary initiatives and reporting requirements are not driving the scale or pace of change needed to address the systemic problems which give rise to corporate human rights and environmental negligence. In the absence of a legally binding requirement, only a minority of very well-intentioned companies, or those facing consumer scrutiny, would take sufficient measures to improve their performance.⁷
20. There is now an international consensus on the need for a “smart mix” of legislative and voluntary measures to achieve lasting change. The drawbacks of corporate requirements with weak enforcement measures, such as the transparency requirement in the UK’s Modern Slavery Act, have been well documented.⁸
21. We are therefore in favour of the proposals under subsection (7), including the provision of effective and deterrent sanctions (7a), to establish or designate a body to oversee implementation and compliance (7b), and to ensure effective and appropriate redress for any affected person/s (7d). Any such legislation should include sanctions for firms which fail to put in place and make public their due diligence measures (as required under subsection (7e)) and civil and, in the most serious cases, criminal action for harm, loss and damage arising from their failure to prevent harmful impacts.

3) A forward-looking requirement will help to avoid a tick-box approach

22. We are of the view that the provision of a forward-looking requirement for businesses to conduct human rights and environmental due diligence (that is to “*identify, assess, prevent, or mitigate... risks*”) will help to avoid a tick-box approach to compliance.
23. Most current corporate reporting obligations, including the Modern Slavery Act’s Transparency in Supply Chains provision and the transposition into UK law of the EU Non-Financial Reporting Directive, do not require a forward-looking approach to addressing the damage a company’s operations may cause. Many companies reporting under the Modern Slavery Act provide highly selective and generalised information on what actions they have taken to combat modern slavery. Such forms of compliance are superficial and risk being a tick-box exercise.

⁷ The Corporate Human Rights Benchmark (CHRB), an initiative which ranks disclosures on human rights from the 101 largest publicly-traded companies in the world, scored 49% of companies zero against every human rights due diligence indicator: <https://www.corporatebenchmark.org/sites/default/files/2019-11/CHRB2019KeyFindingsReport.pdf>

⁸ See the Independent Review of the Modern Slavery Act https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf and reports by FLEX and ICAR (2019) <https://www.labourexploitation.org/publications/full-disclosure-towards-better-modern-slavery-reporting>; Business and Human Rights Resource Centre (2018) <https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Briefing%202018.pdf> and CORE Coalition (2017) http://corporate-responsibility.org/wpcontent/uploads/2017/10/171003_Risk-Averse-FINAL-1.pdf.

24. Mandating due diligence would require UK companies to map the full extent of their impacts on human rights and the environment and to act to prevent and mitigate negative impacts, both now and in the future. While some companies are already conducting elements of a due diligence approach, a legal requirement would create more impetus and help provide clarity on firms' responsibilities. Companies should be required to take action on risks and impacts across their entire supply chain and investment chain, as outlined in subsection (3) of this clause.
25. According to a report recently published by the European Commission, mandating due diligence is also likely to bring some benefits for companies, thanks to new legal certainty, a level playing field and the additional leverage they would have on third parties in their supply chain. Any increase in financial costs for carrying out due diligence will remain relatively low compared to companies' revenues, and reputational costs are likely to decrease with mandatory due diligence requirements.⁹

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⁹See footnote 4.