



## **Briefing on the Environment Bill: New Clause 5 (NC5): “Environmental and human rights due diligence: duty to publish draft legislation.”**

*This briefing is provided by CORE (the UK civil society network on corporate accountability); Amnesty International UK; Anti-Slavery International; Business and Human Rights Resource Centre; CAFOD; Forest Peoples Programme; Friends of the Earth; RAID; Traidcraft Exchange; UNISON; WWF.*

### **Summary**

**We urge the Bill committee to accept the vital Environment Bill amendment NC5, tabled by Kerry McCarthy MP: “Environmental and human rights due diligence: duty to publish draft legislation.”**

NC5 would require the government to publish draft legislation that would then undergo pre-legislative scrutiny, allowing parliamentarians to study the recommended improvements and offering stakeholders from civil society and business the chance to feed in their views.

Below, we explain what due diligence legislation is, outline why the UK government should act now, explain the broad support such legislation has – including from business – and set out our thoughts on what a new due diligence law should include.

### **Introduction**

As the UK grapples with the coronavirus crisis and the economic downturn it has triggered, it is more vital and more accepted than ever before that our recovery must be both green and just. This was recently acknowledged by Prime Minister Boris Johnson, who has reiterated calls to “build back better” in order to create a “fairer, greener and more resilient global economy”<sup>1</sup> – as well as by all major UK opposition parties.

This new economy cannot be built without new measures to guarantee corporate accountability. Voluntary commitments from business have failed. Our current policy and legislative framework are, as environmental NGO WWF states, “not proving adequate to halt and reverse the environmental damage caused by our economic activity.”

We urgently need legislation to ensure that businesses adhere to human rights and environmental obligations – specifically, a law on human rights and environmental due diligence.<sup>2</sup> The EU’s plan to introduce due diligence legislation in 2021 – which could apply to *all businesses* operating in the EU in addition to those domiciled there – builds on a domestic and international, legal and political consensus on this issue. CORE

<sup>1</sup> <https://www.businessgreen.com/news/4015783/boris-johnson-owe-future-generations-build>

<sup>2</sup> See also: Global Witness & Client Earth, Strengthening Corporate Responsibility: The case for mandatory due diligence to tackle the UK’s global deforestation footprint, June 2020: <https://www.globalwitness.org/en/campaigns/forests/strengthening-corporate-responsibility-uk-briefing/>

would be pleased to offer its expertise on how new legislation could be framed and introduced in a way that would be workable for businesses and broader society.

## What is environmental and human rights due diligence legislation?

- **Human rights due diligence** is a process through which companies can identify, prevent, mitigate and account for their impacts on human rights. It was first described in the 2011 UN Guiding Principles on Business and Human Rights, which the UK Government is committed to implementing. **Environmental due diligence** is the application of the same process to environmental impacts.
- **Elements of human rights and environmental due diligence are referenced in existing statute**, for instance the Companies Act 2006 and Modern Slavery Act 2015. It is a key risk identification and mitigation strategy mentioned in the guidance to the Bribery Act 2010.<sup>3</sup>
- **Human rights and environmental due diligence are increasingly familiar to companies of all sizes.** Legislation is needed to make sure all businesses operate to the same high standards – something that existing provisions, such as section 54 of the Modern Slavery Act, have failed to do adequately.<sup>4</sup> Research by the Corporate Human Rights Benchmark shows the substantial gap between a small proportion of high-performing companies and the majority, which do not perform well.<sup>5</sup>

## Why the UK Government must act now

- **Negative human rights and environmental impacts are embedded in the supply chains of UK businesses in multiple sectors, from food to electronics, construction to cars.** This includes modern slavery and child labour, land grabs, attacks on human rights defenders and deforestation. Human rights and environmental protection are interdependent, requiring legislation that enhances responsible business conduct across a wide spectrum of impacts. The need for more regulated and robust supply chains has been made clear by the COVID-19 crisis.
- **The EU Commissioner for Justice recently announced that the EU will develop legislation on human rights due diligence.** He acknowledged this as a necessary means to address recovery from COVID-19 and bring in the EU's 'green deal' plans, and subsequently stated a preference for legislation to apply to companies operating in the EU and those domiciled there. This follows the 2017 Duty of Vigilance law in France and the ongoing development of similar laws across other European states. The UK Government must keep pace to maintain its reputation as a leader on business and human rights.

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<sup>3</sup> Companies Act 2006, section 174: <http://www.legislation.gov.uk/ukpga/2006/46/section/174>; Modern Slavery Act 2015, section 54: <http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>; Guidance to The Bribery Act 2010, March 2011. p. 27: <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>.

<sup>4</sup> See, for instance, recent findings from the UK's largest modern slavery case: <https://news.trust.org/item/20200616134021-hx9jn> and examples listed here: <https://www.business-humanrights.org/en/mandatory-human-rights-due-diligence-in-the-uk-to-be-or-not-to-be>

<sup>5</sup> The Corporate Human Rights Benchmark, an initiative which ranks disclosures on human rights from the 101 largest publicly-traded companies in the world, scored 49% of companies a zero against every human rights due diligence indicator: <https://www.corporatebenchmark.org/sites/default/files/2019-11/CHRB2019KeyFindingsReport.pdf>.

- **A law would provide benefits to business.** It would provide a level playing field for businesses operating in different jurisdictions, reduce the financial and reputational costs to businesses associated with poor practice, provide legal clarity and predictability on firms' responsibilities, and ensure that companies meeting higher standards are not undercut by those operating to lower standards. A number of businesses and investors – including H&M, Nestlé and Primark – have already expressed public support for such legislation.<sup>6 7</sup>

## Due diligence legislation has been recommended by expert groups

- The **Global Resource Initiative Taskforce** – which includes business, government and civil society groups – recommends the urgent introduction of a mandatory due diligence obligation covering both human rights and environmental risks and impacts. The GRI states that a focus on forests and land conversion should be a first step, before being extended to wider impacts.<sup>8</sup> The government has stated its commitment “to addressing the major challenges identified in the report and providing global leadership on these issues”.<sup>9</sup>
- In a **2020 study published by the European Commission**, 68% of businesses surveyed agreed that mandatory due diligence legislation would have a positive impact on human rights. The study also found that the costs of implementing such legislation would remain relatively low compared to companies' revenues.<sup>10</sup>
- The **British Institute of International and Comparative Law's 2020 study** finds that a law to penalise companies that fail to prevent human rights harms, modelled on the UK Bribery Act, is legally feasible and desirable, and supported by UK businesses.<sup>11</sup> This builds on a 2017 **report from the Joint Select Committee on Human Rights**, recommending 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.”<sup>12</sup>

## Legislation should include the following features

We are calling for the creation of a new duty for commercial and other organisations to prevent adverse human rights and environmental impacts in their domestic and

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<sup>6</sup> 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>.

<sup>7</sup> Investors with US\$5 trillion call on governments to institute mandatory human rights due diligence measures for companies, April 2020 <https://investorsforhumanrights.org/news/investor-case-for-mhrdd>.

<sup>8</sup> GRI Taskforce, Final recommendations report, March 2020 <https://www.gov.uk/government/publications/global-resource-initiative-taskforce>

<sup>9</sup> GRI Taskforce: Written Question – 52348, June 2020 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-06-01/52348/>

<sup>10</sup> European Commission study on due diligence in supply chains, February 2020 <https://www.biicl.org/projects/european-commission-study-on-due-diligence-in-supply-chains>

<sup>11</sup> BIICL, A UK Failure to Prevent Mechanism for Corporate Human Rights Harms, February 2020 [https://www.biicl.org/documents/84\\_failure\\_to\\_prevent\\_final\\_10\\_feb.pdf](https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf)

<sup>12</sup> JCHR, Human Rights and Business 2017: Promoting responsibility and ensuring accountability: <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2015/inquiry/>

international operations, products and services, including their supply and value chains. A law that would change company behaviour should include:

- A requirement to develop and implement reasonable and appropriate **due diligence procedures** to identify, prevent, mitigate *and remedy* adverse human rights and environmental impacts.
- A requirement to **publish a forward-looking plan** covering future commitments and an assessment of the effectiveness of actions taken in the previous year.
- **Sanctions** for failing to develop, implement and publish a due diligence plan, or for publishing a misleading or inadequate plan.
- **Civil liability** for harm, loss and damage arising from their failure to prevent adverse human rights and environmental impacts of their domestic and international operations, products and services.
- **Criminal penalties** for failures to prevent serious human rights or environmental impacts.

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