

Human Rights Watch submission to the Department for Environment, Food and Rural Affairs public consultation on due diligence on forest risk commodities

Consultation Questions

Section A: About you

- **Question 1: What is your name?**
Human Rights Watch
- **Question 2: What is your email address?**
 - [Juliana Nnoko-Mewanu](#), Women's Rights Researcher
 - [Luciana Téllez-Chávez](#), Environment and Human Rights Researcher
- **Question 3: What country are you based in?**
Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Miami, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.
- **Question 4: Would you like your response to be treated as confidential?**
No
- **Question 5: Are you responding:**
On behalf of an organisation

Section B: About your organisation

- **Question 1: What type of organisation are you responding on behalf of?**
Non-governmental organisation
- **Question 2: Please provide your organisation's name.**
Human Rights Watch

Section C: About your business

Not applicable

Section D: About the proposal

- **Question 1: Should the Government introduce legislation designed to make forest risk commodities more sustainable?**
Yes
- **Question 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

- **Question 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, but it should also incorporate broader considerations about sustainability that protect rights and the environment (see more details below under Question 9).

- **Question 4: Should businesses be required to report publicly on their system of due diligence?**

Yes

- **Question 5: Should the Government be able to levy fines against businesses that use forest risk commodities not produced in accordance with relevant laws?**

Yes

- **Question 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

- **Question 7: If you responded ‘Other’ to Question 6, please expand.**

The legislation should apply to all business entities that use forest and ecosystem-risk commodities in their own operations and business relations, and in their global value chains, including products and services offered in the UK.

The law should apply regardless of how the business entity is incorporated or structured, and regardless of its size, to be effective. This is especially important for entities in sectors that present heightened human rights and environmental risks, such as beef and leather, palm oil, cocoa, coffee, soya, rubber, pulp and paper and timber, as recognized in the public consultation document. The scale and complexity of the means that entities should use to discharge their due diligence obligations under the legislation should be commensurate with the size, sector, operational context, ownership, structure, and the severity of their adverse human rights and environmental risks and impacts.

The legislation should equally apply to financial institutions that invest in or provide insurance or other services to other businesses that harvest, extract, produce, process or sell forest and ecosystem-risk commodities and their derived products.

- **Question 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)]?**

(Human Rights Watch contribution to this public consultation on climate change is outlined under Question 9.)

- **Question 9: Do you have any further information or comments you would like us to be aware of?**

Human Rights Watch welcomes the initiative of the UK government to launch this public consultation on due diligence on forest and ecosystem-risk commodities, as well as the announcement by minister of state Zac Goldsmith that the UK intends to spearhead a major global crackdown on illegal timber and deforestation in the run-up to COP 26.¹

However, narrowly cast legislation that is designed to only prevent the illegal conversion of forests into agricultural land, as the government currently proposes, would miss a critical opportunity to address the wide range of rights abuses that undermine the protection of forests, as well as the consequences of the destruction of forests for climate change mitigation efforts.

i. Implications of Deforestation for Human Rights

Human Rights Watch research shows that environmental crime impacts not only ecosystems, but also the people who defend them and depend on them, including Indigenous peoples. Conversely, many studies show that protecting forest defenders is one of the most cost-effective and impactful conservation strategies. Legislation that requires businesses to conduct due diligence both on environmental and human rights matters would go a long way in advancing this rights-respecting conservation model.

- **Brazil**

Human Rights Watch exposed how the violent criminal networks that drive illegal deforestation in the Brazilian Amazon also threaten, attack and kill forest defenders that stand in their way.² Working in partnership with Brazilian environmental and health research centers, Human Rights Watch subsequently showed that the fires resulting from this unchecked deforestation are poisoning the air millions of people breathe, affecting health throughout the Brazilian Amazon. These fires are often set to clear land for cattle-grazing, agriculture, or land speculation.³ Prosecutors and environmental enforcement agents interviewed by Human Rights Watch across the Amazon emphasized that halting the destruction of the rainforest required close cooperation between state authorities and grassroot forest defenders.⁴ Among the factors that allowed Brazil to reduce deforestation by 80 per cent between 2004 and 2012 was indeed cooperation between authorities and civil society, and subsequent studies show deforestation rates are 2.5 times lower inside lands where Indigenous peoples have secure tenure.⁵

- **Indonesia**

1 Fiona Harvey, "UK to lead global fight against illegal logging and deforestation," The Guardian, February 13, 2020, <https://www.theguardian.com/environment/2020/feb/13/uk-lead-global-fight-illegal-logging-deforestation-cop-26>

2 Human Rights Watch, "Brazil: Criminal Networks Target Rainforest Defenders," September 17, 2019, <https://www.hrw.org/news/2019/09/17/brazil-criminal-networks-target-rainforest-defenders>

3 Human Rights Watch, IPAM, IEPS, "Brazil: Amazon Fires Affect Health of Thousands," August 26, 2020, <https://www.hrw.org/news/2020/08/26/brazil-amazon-fires-affect-health-thousands>

4 Ibid.

5 H. Ding et al, "Climate Benefits, Tenure Costs: The Economic Case for Securing Indigenous Land Rights in the Amazon," WRI, October 2016, <https://www.wri.org/publication/climate-benefits-tenure-costs>

Human Rights Watch documented how the establishment and expansion of oil palm plantations in Indonesia has adversely affected Indigenous people's rights to their forests, livelihood, food, water, and culture.⁶ In partnership with Aliansi Masyarakat Adat Nusantara (AMAN), the research illustrates how a patchwork of weak laws, exacerbated by poor government oversight, and the failure of oil palm plantation companies to fulfill their human rights due diligence responsibilities, have resulted in loss of land and livelihood opportunities for Indigenous people in West Kalimantan and Jambi. These findings were consistent with previous Human Rights Watch research in 2003 and 2009, which highlighted the adverse impact of the pulp and paper industry in Sumatra, and corruption, poor oversight, and lack of corporate accountability in the Indonesian forestry sector in West Kalimantan, on Indigenous people and peasant communities.⁷

According to Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform, KPA), an Indonesian NGO, the cases Human Rights Watch documented are not unique. They documented more than 650 land-related conflicts affecting over 650,000 households in 2017 alone. They estimated that, on average, there were nearly two land-related conflicts every day that year.⁸

With over 14 million hectares of land planted with oil palm, conflicts related to land have frequently been linked to oil palm plantations. Deforestation on such massive scale has not only threatened the wellbeing and culture of the Indigenous population, but also has global significance, contributing to carbon emissions and heightened concerns around climate change.

ii. Implications of Deforestation for Climate Change

The 2014 Intergovernmental Panel on Climate Change (IPCC) report identifies deforestation as the second leading cause of climate change globally, with forestry and agricultural activities being key drivers of this trend.⁹ Five of the United Nations human rights treaty bodies have issued a joint statement to governments on their obligations with respect to climate change and human rights. In the statement they set out governments' human rights obligations to take action to address anthropogenic climate change, including by holding businesses accountable for the environmental and human rights harm that they cause.¹⁰ The UK is a party to four of the treaties monitored by those bodies.

6 Human Rights Watch, "Indonesia: Indigenous Peoples Losing Their Forests," September 22, 2019, <https://www.hrw.org/news/2019/09/22/indonesia-indigenous-peoples-losing-their-forests>.

7 Human Rights Watch, "Indonesia: Forestry Failures Jeopardize 'Green Growth,'" July 16, 2013, <https://www.hrw.org/news/2013/07/16/indonesia-forestry-failures-jeopardize-green-growth>; Human Rights Watch, "Indonesia: Timber Corruption's High Costs," November 30, 2009, <https://www.hrw.org/news/2009/11/30/indonesia-timber-corruptions-high-costs>.

8 Konsorsium Pembaruan Agraria, *Agrarian Reform under the Shadow of Investment: Great Echoes on the Roadsides, 2017 End of Year Report*, (Jakarta: KPA, 2017), p. 6.

9 Intergovernmental Panel on Climate Change (IPCC) Fifth Assessment Report, 2014

10 Joint Statement on "Human Rights and Climate Change" of the Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child, Committee on the Rights of Persons with Disabilities, September 16, 2019, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#_edn10 (accessed October 2, 2020).

The government's intention is that the legislation will ensure that "forest risk commodities are produced legally *and sustainably*" (emphasis added). Human Rights Watch welcomes this approach, which would concretely advance the UK's ambition to eliminate deforestation from agricultural supply chains as well as to support the private sector in meeting this goal, as stated by the government's endorsement of the New York Declaration on Forests and the Amsterdam Declaration on Deforestation.¹¹

Unfortunately, the government's proposal, as currently envisioned, would require that businesses conduct due diligence only to ensure that forest risk commodities are produced legally.¹² An approach that ensures the sustainability of these commodities would be rooted on two fundamental considerations:

- First, that forests and other natural ecosystems, including peatlands, provide essential services for people and planet—such as holding carbon underground, regulating the water cycle, cleaning the air and preventing soil erosion, as this consultation recognizes—and that they are also central to the cultural survival of several Indigenous peoples and other forest-dependent peoples;
- Second, that the urgency to mitigate climate change and its associated impacts on biodiversity, livelihoods and human rights requires rethinking food systems to stop the conversion of forested land and, furthermore, to limit cropland expansion to lands with low environmental costs in a rights-respecting manner.¹³

A narrow focus on compliance with legality only, as the government currently proposes, fails to acknowledge that the definition of what is considered legal land conversion can vary widely, and does not necessarily adhere to a logic that protects forests and other natural ecosystems, or the rights of forest-dependent peoples. Most recently, the Covid-19 pandemic has seen an aggressive push for environmental deregulation, including to open protected forest areas for exploitation.¹⁴

Consistent with this sustainability approach, peatlands should be explicitly included among the natural ecosystems protected by this legislation, in addition to natural forests. Peatlands are a type of wetland that occurs in almost every country around the globe, storing vast amounts of carbon—twice as much carbon as all the world's forests. Globally, this unique ecosystem has been overexploited and damaged by drainage, agricultural conversion, burning and mining for fuel releasing huge amounts of greenhouse gases, such as carbon dioxide (CO₂), from centuries of carbon stored within peat soils into the atmosphere.¹⁵

11 New York Declaration on Forests, September 23, 2014; Amsterdam Declaration: Towards Eliminating Deforestation from Agricultural Commodity Chains with European Countries, December 7, 2015.

12 The government's proposal is that "businesses conduct due diligence to ensure that forest risk commodities that have not been legally produced do not enter their supply chain", in p. 6 of the "Due diligence on forest risk commodities" consultation document.

13 See for example, J. Ranganathan et al, "How to Sustainably Feed 10 Billion People by 2050," World Resources Institute, December 5, 2018, <https://www.wri.org/blog/2018/12/how-sustainably-feed-10-billion-people-2050-21-charts> (accessed September 22, 2020).

14 See for example: Hans Nicholas Jong, "Indonesia bill weakening environmental safeguards to pass in October," Mongabay, August 24, 2020, <https://news.mongabay.com/2020/08/indonesia-omnibus-deregulation-bill-pass-october/> (accessed September 22, 2020); Jenny Gonzales, "Brazil minister advises using COVID-19 to distract from Amazon deregulation," Mongabay, May 26, 2020, <https://news.mongabay.com/2020/05/brazil-minister-advises-using-covid-19-to-distract-from-amazon-deregulation/> (accessed September 22, 2020).

15 United Nations Environment Programme (UNEP), "Story: Ecosystems and Biodiversity, Peatlands Store Twice as Much Carbon as all the World's Forests," February 1, 2019, <https://www.unenvironment.org/news-and-stories/story/peatlands-store-twice-much-carbon-all-worlds-forests> (accessed September 16, 2020).

iii. Human Rights Watch recommendations for mandatory due diligence on forest and eco-system risk commodities

In line with the considerations on human rights and climate change outlined above, Human Rights Watch strongly encourages that the proposed legislation be more ambitious in its scope and reach along seven pillars.

- 1. Sustainability**
- 2. Respect and Protect Rights**
- 3. Land Rights**
- 4. Climate Change**
- 5. Transparency**
- 6. Enforcement**
- 7. Access to Remedy**

1. Sustainability

Human Rights Watch urges the government to ensure that forest and eco-system risk commodities placed in the UK market are sustainably produced by specifically requiring that they:

- Do not originate from land obtained via new conversion of natural forests or other natural ecosystems, including peatlands,¹⁶
- Do not originate from natural forests and natural ecosystems—including peatlands—undergoing degradation,¹⁷ and
- Do not cause or contribute and are not linked to ongoing human rights abuses from previous forests and ecosystem degradation.

These provisions are modeled after the operational language proposed by the Accountability Framework for businesses that have pledged to eliminate deforestation and respect human rights in agricultural and forestry supply chains, as well as the recommendations addressed by the Environment Committee of the European Parliament to the European Commission on a regulation to eliminate deforestation from supply chains.¹⁸

¹⁶ Ecosystem conversion is defined as a “change of a natural ecosystem to another land cover or profound change in the natural ecosystem’s species composition, structure or function,” in accordance with the Terms and Definitions document of the Accountability Framework, an initiative supported by UK Aid that provides a set of common definitions, norms, and guidelines to support companies deliver on ethical supply chain commitments. (See Accountability Framework, “Terms and Definitions,” June 2019, Revised March 2020, <https://accountability-framework.org/wp-content/uploads/2020/03/Definitions-Mar2020.pdf>, accessed October 2, 2020).

¹⁷ Forest and ecosystem degradation is defined as “changes within a forest or a natural ecosystem that significantly and negatively affect its species composition, structure, or function and reduce the ecosystem’s capacity to supply products, support biodiversity, or deliver ecosystem services,” in accordance with the Terms and Definitions document of the Accountability Framework. The Accountability Framework also establishes that “degradation may be considered conversion if it is (a) large-scale and progressive or enduring; (b) alters ecosystem composition, structure, and function to the extent that regeneration to a previous state is unlikely; or (c) leads to a change in land use (e.g. to agriculture or other use that is not a natural forest or other natural ecosystem).” (See Accountability Framework, “Terms and Definitions,” June 2019, Revised March 2020, <https://accountability-framework.org/wp-content/uploads/2020/03/Definitions-Mar2020.pdf> (accessed October 2, 2020).

¹⁸ Accountability Framework, “Core Principles,” June 2019, Revised May 2020, <https://accountability-framework.org/core-principles/page/2/> (accessed October 2, 2020); European Parliament Environment Committee, “Binding legislation needed to stop EU-driven global deforestation, say MEPs,” October 1, 2020, <https://www.europarl.europa.eu/news/en/press-room/20201001IPR88302/binding-legislation-needed-to-stop-eu-driven-global-deforestation-say-meps> (accessed October 2, 2020).

The legislation should cover forest and ecosystem-risk commodities such as beef and leather, palm oil, cocoa, coffee, soya, rubber, pulp and paper and timber, as well as all intermediate or final products that are derived from these commodities, and products and services that contain or use these commodities. In the event that the derived products contain input from more than one commodity covered by the proposal, due diligence should be performed with respect to each of these commodities.

2. Respect and Protect Rights

The legislation should require businesses to respect internationally recognized human rights, labor and environmental rights, in their own operations and business relations, including global value chains. For businesses to effectively discharge their obligations, the legislation should require them to design its due diligence incorporating, at a minimum, the following processes:

- a. Adopt a policy commitment to respect human rights, including those of Indigenous and other forest-dependent peoples, and embed it in all relevant business functions.¹⁹
- b. Identify and assess human rights and environmental risks and impacts of its actions and omissions, in its own operations and in business relationships, including its global value chains.²⁰ This identification and assessment of human rights risks should cover all of the business' own activities, including examining how its practices cause or contribute to adverse impacts,²¹ or how it may be directly linked to its operations, products, or services by its business relationships.²²
- c. Develop and implement measures to cease, prevent, and mitigate human rights and environmental risks, including on climate change, and impacts commensurate with their severity.²³
- d. Remediate or cooperate in remediation where the business enterprise causes or contributes to adverse impacts.²⁴
- e. Track results of the measures adopted, and draw on feedback from internal and external sources, including affected stakeholders.²⁵
- f. Regularly publish the results of due diligence processes, including human rights risks and adverse impacts identified (including on climate change); the range of measures designed to address them; methods to ensure appropriate remedies, and the results and effectiveness of these measures.²⁶

In turn, these processes should be guided by the following operating principles:

- a. Dynamism: Regularly review, update, and evaluate the due diligence processes;²⁷

19 UNGPs, principles 15 and 16.

20 UNGPs, principle 17.

21 Due diligence should include assessment of human rights risks arising out of business enterprises' model and associated processes, like purchasing and pricing.

22 UNGPs, principle 13 (a); "avoid causing or contributing to adverse impacts through their own activities"; principle 17(a); OECD Guidance on Due Diligence, para 1.3 (e), p. 24.

23 UNGPs, principle 17; OECD Due Diligence Guidance, Chapter 3, p. 29.

24 UNGPs, principle 22.

25 UNGPs, principle 20.

26 UNGPs, principle 17, 20, 21.

27 UNGPs, principle 17 (c).

- b. Risk-based and preventative: Develop a system that identifies and addresses risks before they cause harm, taking action to prevent or mitigate human rights and environmental risks based on their severity and likelihood.
- c. Context specific: Ensure due diligence processes address risks and impacts in a manner that is tailored to national, local, and context-specific conditions in a rights respecting manner.
- d. Intersectionality²⁸: Take into consideration intersecting and multiple forms of discrimination and exclusion,²⁹ including based on age, gender and sexuality, class, disability, religion, race, ethnicity, caste, nationality, Indigenous and migrant and refugee statuses.
- e. Meaningful stakeholder consultation and communication: Businesses should consult and communicate with a wide range of civil society and other relevant stakeholders, including those most impacted or likely to be adversely impacted by their operations.³⁰

The parliament's Environment, Food and Rural Affairs Committee could have a prominent monitoring and oversight role in the implementation the legislation.

3. Land (Including Forests) Rights

Land, including forest, is a vital asset to individuals and communities, including Indigenous peoples. For example, Human Rights Watch's most recent research in Indonesia illustrates the intrinsic relationship Indigenous people have with their environments.³¹ Their traditions, knowledge, and cultural identity are deeply connected to the natural environments in which they live. Any disruption to their natural environments, without their free, prior, and informed consent, as in the cases Human Rights Watch documented in Indonesia, affects their culture, languages, knowledge, and unique traditions. Denial of land rights threatens a range of human rights, and individuals and communities suffer, for example, where a failure to recognize customary or indigenous rights of ownership and tenure leads to forced evictions, environmental degradation, loss of livelihoods, resulting in increases in poverty and food insecurity which may pose a threat to life and health.³² Severity of the adverse impacts would depend on the vulnerability of the community impacted. Other human rights risks such as violence directed at environmental and land defenders has been documented especially when individuals and communities impacted resist the loss of their land.³³

28 Crenshaw, Kimberlé W., "On Intersectionality: Essential Writings" (2017). Books. 255. <https://scholarship.law.columbia.edu/books/255>

29 UNGPs, "Guiding Principles," p. 1, "These Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men."

30 UNGP, Principle 18 (b), 20, 21. For example, relevant stakeholders include unions, Indigenous peoples' and peasants' organizations, community organizations, disabled peoples' organizations, patients' rights groups, and victims' groups.

31 Human Rights Watch, "When We Lost the Forest, We Lost Everything:" Oil Palm Plantations and Rights Violations in Indonesia. 2019, https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations#_ftn34.

32 Ibid

33 Human Rights Watch, "Brazil's Amazon – and its Forests Defenders – are Under Attack from Illegal Loggers," November 15, 2019, <https://www.hrw.org/news/2019/11/15/brazils-amazon-and-its-defenders-are-under-attack-illegal-loggers>.

Due diligence legislation should incorporate explicit consideration of the protection of legitimate ownership, tenure, and access-rights and associated human rights, under international as well as domestic law, and enforcement oversight. Businesses should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved, within the framework set out in the UN Guiding Principles on Business and Human Rights, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), and Committee on World Food Security, Principles for Responsible Investment in Agriculture and Food Systems, (CFS-RAI).³⁴ Without such needed government reforms—both legislative and oversight—Indigenous and peasant communities will continue to bear the brunt of the oil palm plantations’ impact.

4. Climate Change

Robust due diligence legislation that binds businesses who trade in or produce forest and ecosystem-risk commodities is urgently needed to reach climate neutrality, and should explicitly articulate business responsibilities to tackle anthropogenic climate change given the serious and irreversible impact it poses to rights and livelihoods. At a minimum, the legislation should require that businesses:

- Measure their direct and indirect greenhouse gas (GHG) emissions from land use, land-use change and forestry (LULUCF) across their global value chains,
- Set targets for reducing GHG emissions from LULUCF to align with the most ambitious goal of the Paris Agreement to hold the increase in the global average temperature to 1.5 degrees Celsius above pre-industrial levels, and
- Publicly report on their progress towards meeting these targets.

This requirement would enshrine in the legislation businesses’ responsibility to adopt measures to cease, prevent, and mitigate human rights and environmental harms that are expected if we fail to hold the increase in the global average temperature to 1.5 degrees Celsius above pre-industrial levels.³⁵ Many major companies have already made a voluntary commitment to set science-based targets aligned with limiting global temperature rise to 1.5 degrees and reaching net-zero emissions by 2050, or as early as 2022.³⁶ These companies include leading British businesses like The Co-operative Group and Burberry Limited whose operations incorporate forest and ecosystem-risk commodities, such as beef and leather.³⁷

34 UN Food and Agriculture Organization (FAO), *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)*, Rome, 2012; Committee on World Food Security, *Principles for Responsible Investment in Agriculture and Food Systems*, 2014, http://www.fao.org/fileadmin/templates/cfs/Docs/1314/rai/CFS_Principles_Oct_2014_EN.pdf;

35 The best available science indicates that limiting the increase to 1.5 degrees would substantially reduce harm to people and natural ecosystems in relation to the 2 degrees scenario that is also foreseen in the Paris Agreement, IPCC, “Summary for Policymakers of IPCC Special Report on Global Warming of 1.5 C approved by governments,” October 8, 2018, <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/> (accessed September 14, 2020).

36 UNFCCC, “87 Major Companies Lead the Way Towards a 1.5°C Future at UN Climate Action Summit”, September 22, 2019, <https://unfccc.int/news/87-major-companies-lead-the-way-towards-a-15degc-future-at-un-climate-action-summit> (accessed September 14, 2020). See also the Science Based Targets initiative (SBTi), a joint initiative by CDP, the UN Global Compact, the World Resources Institute and the World Wildlife Fund: <https://sciencebasedtargets.org/> (accessed September 14, 2020).

37 The Cooperative Group, “Co-op curbs greenhouse gas emissions in face of climate emergency,” 27 June 2019, <https://www.co-operative.coop/media/news-releases/co-op-curbs-green-house-gas-emissions-in-face-climate-emergency> (accessed September 14, 2020). Burberry Limited, “Burberry announces science based targets, expanding our ambition to build a more sustainable future for fashion,” 25 June 2019, <https://www.burberryplc.com/en/news/news/responsibility/2019/burberry-announces-science-based-targets--expanding-its-ambition.html> (accessed September 14, 2020).

5. Transparency

The legislation should require businesses to be transparent about their value chains. The lack of transparency around a business' global value chain is a serious barrier to accountability. Value chain transparency has a distinctly different function from other reporting requirements because it directly impacts the ability of victims of human rights abuses to access grievance redress. Requiring businesses to publicly disclose the names, locations, and other important information of other entities in their value chain better facilitates grievance redress for those adversely impacted.

6. Enforcement

The legislation should require adequate budget and infrastructure, including competent authorities to support, monitor, and enforce implementation. The parliament's Environment, Food and Rural Affairs Committee, for example, could have an important monitoring and oversight role.

Competent authorities should also create and maintain a searchable public database of all businesses and their human rights and environmental due diligence reports to promote transparency and accountability for legislative requirements. The database should include a full list of businesses that are covered by the legislation, organized by the level of compliance required by the legislation commensurate with a business enterprise's size, sector, operational context, ownership, structure, and the severity of their adverse human rights risks and impacts. The database should be designed to enhance and maximize accessibility for different kinds of users.

The legislation should incentivize compliance and create a virtuous cycle in which responsible businesses benefit from their efforts. To this end, the legislation should look at how to incentivize compliance through procurement or other financial incentives so that businesses benefit from incorporating these practices. Simultaneously, the legislation should carry consequences for businesses that do not comply with the law, including penalties. When the actions or omissions of businesses result in harm, or business enterprises have not taken good faith efforts to comply with regulation even when harm has not resulted, they should face penalties. Penalties can promote greater compliance and reduce the incidence of serious human rights abuses and environmental harms in value chains.

Penalties should:

- a. Be commensurate with the size, sector, operational context, ownership, and structure; and the nature and severity of the regulatory non-compliance.
- b. Include a range of measures, including fines.
- c. Carry escalation procedures and additional consequences for repeated non-compliance.
- d. Be dissuasive in nature to ensure that businesses subject to the legislation are compliant.

The legislation should incorporate effective enforcement mechanisms, complete with penalties and incentives, to ensure it does not reproduce the same structural failures of the UK Modern Slavery Act (MSA). A recent study on due diligence led by the London School of Economics that surveyed businesses and civil society found that the absence of enforcement of the MSA created an uneven playing field, where free riders are not penalized and compliant businesses assume a cost for taking measures to ensure their supply chains are free from forced labor.³⁸ Similarly, the study notes that the enforcement must focus on ensuring that the due diligence is effective in preventing harm, rather than simply surveying whether plans are in place without regard to their actual impact.³⁹

Furthermore, an approach without robust enforcement of the rules enables large corporations to run roughshod over rights and create environments where it becomes impossible to hold smaller companies that do not make headlines to a coherent standard, as evidenced by our research in Indonesia and Zambia.⁴⁰

7. Access to Remedy

The legislation should include potential liability for human rights and environmental harms caused by or substantially contributed to by a business, or jointly by more than one enterprise, either through actions or omissions in its own operations or in business relationships, including global value chains.

The legislation should ensure that those affected around the world have a clear path to judicial remedies, including access to domestic courts. Assessment of whether there is access to remedy should include attention to intersecting and multiple forms of discrimination and exclusion,⁴¹ including based on age, gender and sexuality, class, disability, religion, race, ethnicity, caste, nationality, and Indigenous, migrant and refugee statuses.

Whether a business conducted effective human rights and environmental due diligence in good faith should be considered as a factor in any litigation, but should not provide legal immunity. The burden of proof should rest with a business enterprise to demonstrate their human rights and environmental due diligence efforts were effective.⁴²

38 British Institute of International and Comparative Law, Civic Consulting and the London School of Economics and Political Science study for the European Commission, “Study on due diligence requirements through the supply chain: Final Report,” January 2020, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en> (accessed September 16, 2020).

39 Ibid.

40 Human Rights Watch, “When We Lost the Forest, We Lost Everything:” Oil Palm Plantations and Rights Violations in Indonesia. 2019, <https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>; Human Rights Watch, “Forced to Leave:” Commercial Farming and Displacement in Zambia. 2017, <https://www.hrw.org/report/2017/10/25/forced-leave/commercial-farming-and-displacement-zambia>

41 UNGPs, “Guiding Principles,” p. 1, “These Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.”

42 See for example: European Parliament Sub-Committee on Human Rights, “Access to legal remedies for victims of corporate human rights abuses in third countries,” February 2019, [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf) (accessed June 12, 2020), p. 109.