

ABCColombia
CAFOD, Christian Aid, Oxfam GB, SCIAF, Trócaire
Working for Peace and Human Rights in Colombia

ADI
Animal Defenders International

animal
EQUALITY
UK

CAFOD
Catholic Agency for
Overseas Development

Research Centre
Agroecology, Water
and Resilience

Coventry
University

ClientEarth

closer
socio-environmental research

COMPASSION
in world farming
ciwf.org

Corporate
Justice
Coalition

Protecting rights.
Ending corporate abuse.

earthsight

global witness



london
mining
network

 **Meraki Impact**

N1M
NOT ONE MORE

 Size of
Wales
Maint
Cymru

The Roddick Foundation

 **SYNCHRONICITY**
EARTH

ENDORISING THE END OF THE AMAZON:

CRITICAL WEAKNESSES IN THE UK GOVERNMENT'S PROPOSED FOREST RISK COMMODITIES FRAMEWORK AND HOW TO FIX THEM

As a major consumer of 'forest risk commodities' like soy, beef, palm oil, timber, pulp and paper, cocoa and rubber, the UK is partly responsible for driving deforestation around the world. An [area of land almost the size of the UK itself](#) (and growing) is used each year to produce only seven of the forest risk commodities consumed annually in the UK. The UK Government is currently proposing a new law to minimise deforestation linked to the consumption of forest risk commodities in the UK. That proposal, contained in Schedule 17 of the Environment Bill, is currently being debated before parliament.

While a step in the right direction, the Government's proposal has several major weaknesses, particularly when considered in light of the dangerous package of legal reforms proposed by the Brazilian Government and currently before the Brazilian Congress, which aim to legalise millions of hectares of deforestation, undermine the rights of Indigenous Peoples, and would likely spell the end of the Amazon rainforest. If those

reforms are adopted, they would render the new UK law effectively meaningless in terms of addressing deforestation in Brazil.

It is therefore crucial that the UK Government's proposal is strengthened to:

- i. establish a UK deforestation standard that covers all deforestation, regardless of treatment under local laws, that applies to all forest risk commodities and derived products, regardless of their origin;
- ii. include a requirement that UK operators must ensure that the forest risk commodities they use have not been produced in violation of the right of Indigenous Peoples or other affected communities to free, prior and informed consent ("**FPIC**"); and
- iii. include cattle (as well as derived products like beef and leather) and soy, as well as non-agricultural commodities like mining, oil and gas products that are also highly associated with deforestation, as "forest risk commodities".

This brief examines the legislative proposals in Brazil and considers how these reforms, if enacted, would be treated under the UK Government's proposed forest risk commodity framework. In doing so, we identify several major weaknesses in the Government's proposal and outline how Schedule 17 should be improved to correct them.

1. HALTING DEFORESTATION IN THE SHORT TERM IS CRITICAL TO ACHIEVING GLOBAL CLIMATE AND BIODIVERSITY OBJECTIVES

The threats to the world's forests are one of the biggest sustainability challenges of our time. Deforestation is a [major cause of biodiversity loss](#). Emissions from land-use and land-use change, mostly due to deforestation, are the [second biggest cause of climate change](#) after burning fossil fuels, accounting for around 12% of all greenhouse gas emissions. Commercial agriculture is the [largest global driver of deforestation and ecosystem conversion](#) and the most significant driver of land-based biodiversity loss. It accounts for [at least 80% of tropical deforestation](#), with large-scale agribusiness, mainly cattle, soy and palm oil operations, being the [biggest drivers](#). Deforestation also has a dramatic impact on the livelihoods of the world's most vulnerable people, who rely heavily on forest ecosystems and the services they provide, as well as the rights and survival of the world's Indigenous Peoples.

Despite countless non-binding commitments and voluntary initiatives from [companies](#), [countries](#) and [international organizations](#) in recent decades, many aiming to halve or completely stop forest loss by 2020, global deforestation continues at alarming rates. Instead of being a landmark year in the fight against deforestation, primary rainforest destruction [increased by 12% in 2020](#).

Reversing these trends requires bold action now. The [recent IPCC Report](#) confirms that climate change is "widespread, rapid and intensifying" and that it is "unequivocally" caused by human activities. The report underlines the urgent need for drastic action to mitigate climate change and recognises the "large potential to reduce emissions by halting deforestation and degradation". Likewise, the [Dasgupta Review on the Economics of Biodiversity](#) commissioned by the UK Government highlighted that "[c]ontinuing down our current path – where our demands on Nature far exceed its capacity to supply – presents extreme risks and uncertainty for our economies". The Review concludes that our "consumption and production patterns will need to be fundamentally restructured". We face an urgent choice: continuing to allow potentially irreversible environmental harm for the sake of the agribusiness industry, or fundamentally transforming commodity supply chains in line with global environmental objectives and human rights standards.

2. THE AMAZON IS CRITICAL TO GLOBAL DEFORESTATION, BIODIVERSITY AND CLIMATE EFFORTS, YET IT IS UNDER IMMINENT THREAT

Nowhere is this choice more apparent than in Brazil. Home to both the world's largest tropical forest: the Amazon - [one of the most biodiverse places on Earth](#), and the world's largest tropical savannah: the Cerrado - [the most biodiverse-rich savannah in the world](#), Brazil [plays an essential role](#) in global deforestation, biodiversity and climate change efforts. Yet the Amazon and Cerrado are in serious danger. Brazil accounted for [more than 33% of the world's tropical deforestation for commodity production](#) between 2010 and 2014 and deforestation has continued to soar. This year the Amazon experienced its [highest level of deforestation in a decade](#), causing massive carbon releases, biodiversity loss and ecological destruction. This deforestation is also linked to [violations of the rights of Indigenous Peoples and other forest-dependent communities](#) - the very communities that, when given control over their lands, prove to be [the most effective at protecting forests](#) and thereby mitigating climate change

Agricultural expansion, particularly [large-scale cattle ranching in the Amazon](#), and [soy plantations in the Cerrado](#), are the primary drivers of deforestation in Brazil. With the support of Bolsonaro's administration, the Brazilian Congress is in the process of passing a legislative package that serves the commercial interests of the agribusiness industry and its 'ruralistas' and [threatens the future of the Amazon](#) by weakening environmental and social protections and legalising (including retrospectively) vast amounts of land-grabbing and deforestation, [pushing the Amazon towards an irreversible tipping-point](#). These reforms will violate the rights of Indigenous Peoples and local communities, risk widespread social conflict, and harm the global climate.

If passed, these reforms would allow an [additional 178 million hectares of 'legal' deforestation on private land and up to 115 million hectares of 'legal' deforestation in currently protected Indigenous territories](#) - a total area more than 12 times the size of the United Kingdom.

This package of bills and their implications are outlined below.

a) PL 2633/2020 & PL 510/2021 - the 'land grabbing bills' (replacing MP 910/2019)

Illegally seizing public land for profit - "land grabbing" - usually for agricultural expansion, is a major contributor to the rapid deforestation of the Brazilian Amazon and Cerrado. A common practice is for large operators to illegally invade land, divide it up and sell it to ranchers, who then deforest the land in order to convert it to commercial activities, such as the production of forest-risk commodities like cattle and soy.

Neither of these bills propose new measures to fight land grabbing or deforestation. In fact, PL 2633 extends a deadline set by the Federal Audit Court for the government to release a plan on how it will fight land grabbing to December 2022.

Instead, these bills [seek to legalise historical land grabbing](#) by allowing those who have illegally occupied public land to receive legal titles to that land through a bidding process, therefore converting it to private property and legalising previously illegal occupation. Currently, private title cannot be granted for public land that was illegally occupied after 2011. This deadline was intended to deter further land grabbing. [PL 510 retrospectively extends this deadline to 2014](#) and allows land illegally occupied as of 2014 to be converted to private title without requiring a bidding process, effectively granting an amnesty for illegal land grabbing committed until 2014.

These amendments would allow 19.6 million hectares of illegally occupied public land in the Amazon to be 'regularised' and converted to private title, with Brazilian groups

warning that this policy of legalising historical illegal land grabbing and rewarding land grabbers with private title will stimulate further land grabbing in the Amazon that could result in [additional deforestation of up to 16,000 km² by 2027](#). If those committing land grabbing do not fear any meaningful legal consequences, they and others will likely be emboldened to seize more public lands for private commercial gain. This is likely to be most damaging in remote and rural areas where Indigenous Peoples and other collective rights-holders face systemic barriers to having their rights formally recognised and in areas held by Indigenous Peoples and Afro-descendant communities that have not yet had their territories, land, or rights formally recognised by the State.

Of particular concern is the likelihood that these bills will significantly increase the risk of legalising areas subject to land conflicts and thereby escalating those conflicts and worsening the position of Indigenous Peoples and other local communities who hold interests in illegally occupied land. This is the expected result of the proposal in the bills to allow land to be privatised on the basis of a mere “self-declaration” by the occupier without the need for any government inspections to check that the occupier’s declaration is true and that the granting of private title will comply with environmental legislation. Likewise, the size of land that can be privatised will also be increased: to [600 hectares under PL 2633](#) and [to 2,500 hectares under PL 510](#).

While both bills have some exceptions that require government inspections prior to a grant of private title regardless of the size of the land, these provisions are insufficient to ensure adequate safeguards for the rights of Indigenous Peoples or other rights-holders. For example, neither bill requires inspections where land overlaps other interests registered in government databases, such as the Environmental Rural Cadastre, despite such overlaps usually being evidence of a land conflict.

The Chamber of Deputies (the lower house of the Brazilian Congress) has approved both bills and they are awaiting Senate (upper house) approval.

b) PL 490/2007 – restricting demarcation of Indigenous territories

This bill seeks to introduce a series of legislative changes which violate the land rights of Indigenous Peoples articulated in the Brazilian Constitution. The Brazilian Constitution recognises the pre-existing territorial rights of Indigenous Peoples – irrespective of whether they have yet been formally demarcated by the Brazilian State (demarcation is a process by which the State provides the official documentation recognising land as part of an Indigenous territory held by Indigenous Peoples). Art. 231 provides that the Indigenous Peoples have “original rights” to the lands they inhabit, and that the Brazilian State has an obligation to demarcate those lands. Brazilian case law establishes that the demarcation process is a formality, and that the “original rights” of Indigenous Peoples exist even where their lands have not been formally demarcated. The same article provides that Indigenous Peoples have permanent possession of their lands and exclusive rights over the resources of the soil, rivers and lakes found on their lands.

This bill seeks to impose the so-called “marco temporal” rule, by which only those Indigenous Peoples who can prove they were in possession of their lands when the Brazilian Constitution came into effect on 5 October 1988 have a right to the demarcation of their land. Various factors, including forced removal, non-recognition of Indigenous Peoples’ land rights and restricted capacity to evidence their historical possession of land, mean that many indigenous communities were either not in possession of their land at that date or are unable to prove they were, and would therefore lose their rights to demarcation – essentially erasing the existence of Indigenous Peoples on their lands.

This bill also seeks to permit a wide range of economic activities in Indigenous territories without the need for Indigenous People’s free, prior and informed consent,

including cattle rearing, agribusiness, mining and hydroelectric energy projects. The proposal amends the Statute of the Indian (Law 6,001/1973), revoking Indigenous Peoples' rights such as permanent possession of their lands and the exclusive right to the natural resources contained within them. Finally, this bill may also spell the end of the "no contact" policy with isolated Indigenous groups, as it permits contact in the so-called "public interest".

This bill is awaiting approval from the relevant congressional committee, before being sent to Chamber of Deputies for approval.

c) PL 191/2020 – economic exploitation of Indigenous territories

This bill seeks to allow a range of economic activities in Indigenous territories that are currently illegal, including mineral, oil and gas exploitation, construction of hydroelectric infrastructure and the conversion of large areas of forest for cattle rearing and agricultural use. This would violate Indigenous People's right to free, prior and informed consent, as the bill requires consultation with Indigenous communities in relation to proposed activities that may affect their rights but does not require their consent, except in relation to *garimpo* – small-scale informal mining.

This is a particularly dangerous bill given that [Indigenous territories protect about 34% of the carbon stocks in the Brazilian Amazon](#) and have historically seen very low rates of deforestation. They accounted for [5% of deforestation recorded in the Amazon in 2019 and 3% in 2020](#). The rate of deforestation in Indigenous territories in the Cerrado is [less than one fifth of the rate in other protected areas](#). The vast majority of deforestation in Indigenous territories is [due to non-Indigenous activities](#). Not only do Indigenous communities protect the forests they inhabit, current laws prevent the construction of harmful projects on their land. However, the rate of deforestation in Indigenous territories and conservation areas is increasing year after year: [deforestation within 10 km of protected areas in the Amazon increased by 19%](#) in 2020 compared to 2019. This is primarily the result of illegal activities expanding into these areas, such as mining and logging. The likely impacts of this bill and its legalisation of extractive and agribusiness activities in Indigenous territories will be increased deforestation, environmental degradation, violations of the rights of Indigenous Peoples and social conflict.

This bill is currently awaiting approval by the Chamber of Deputies.

d) PL 3729/2004 – weakening environmental approval requirements

Under current legislation, companies must conduct Environmental Impact Assessments ("EIAs") for proposed projects which could potentially harm the environment. EIAs must then be approved by the environmental authorities before a licence to operate is granted. This bill seeks to weaken, and in some cases eliminate, EIA requirements for economics activities. It will make environmental licensing an exception rather than the rule, exempting 14 sectors from existing EIA obligations, including large-scale cattle rearing, agriculture, logging, dam and road construction, sewage plants and water management. Instead, project operators will simply have to fill out a "self-declaration", which does not require any research, consultation with affected communities or expert advice. Beyond the 14 exempt sectors, the bill seeks to delegate authority to decide which additional activities will be covered by the self-declaration regime to states. This will likely encourage a "race to the bottom", where states will include as many activities as possible in the regime so as to attract investment at the expense of appropriate environmental impact assessments and protections. Clearly, the impacts of allowing environmentally harmful projects to go ahead in Brazil's climate-critical biomes are potentially devastating for people and planet.

This bill also seeks to remove the requirement for the environmental agency to consult with other agencies responsible for the protection of other rights and interests that are indirectly affected by a project before granting a licence. These agencies often include, for example, those responsible for biodiversity, Indigenous Peoples, and cultural and archaeological heritage. This proposal to de-regulate the approvals required for environmentally harmful activities threatens other nationally-significant interests and undermines the governance of industrial activities in general. History tells us that, even where Indigenous Peoples occupy areas indirectly affected by industrial projects, they still suffer harm and see their rights violated.

This bill was approved by the Chamber of Deputies on 13 May 2021 and is awaiting public hearings in the Senate.

e) PDL 177/2021 – withdrawal from ILO Convention 169

This bill proposes a legislative decree to permit Brazil's withdrawal from the International Labour Organisation ("ILO") Convention 169 on Indigenous and Tribal Peoples, which requires governments to guarantee the rights of such peoples and to respect their integrity. Brazil's withdrawal from Convention 169 would put the rights of Indigenous Peoples at even greater risk, with the consequential impact of putting the forests, lands ecosystems which they protect at greater risk of deforestation and destruction.

This bill is currently awaiting a vote in the relevant congressional committee before being sent to the Chamber of Deputies for approval.

In addition to the dangerous package of laws proposed at the national level, several Brazilian state governments whose jurisdictions include the Amazon and Cerrado are also pushing a similar agenda with equally dangerous legal proposals, as outlined below.

f) Mato Grosso: PLC 17/2020 – registration of private properties in Indigenous territories

The bill seeks to allow non-Indigenous Peoples to register private ownership of land which overlaps with Indigenous territories in the state of Mato Grosso, which includes part of both the Cerrado and the Amazon rainforest. This proposal violates Indigenous Peoples' constitutional rights to the land they traditionally occupy and effectively legalises land grabbing of Indigenous territories. It also risks harming the environment, denying Indigenous Peoples the right to stop deforestation or the expansion of forest-risk industries into their territories. This bill will, inevitably, lead to land conflicts and violence.

This bill was approved by the Mato Grosso state legislature on 17 June 2021 and is currently suspended by a legal challenge in federal courts.

g) Roraima: PLE 201/2020 – deregulation of small-scale mining

This bill seeks to introduce flexibility in the process of environmental licensing for small-scale mining activities (known as *garimpo*), open more of Roraima's lands to mining, and legalise the use of machinery and mercury – a substance that is highly toxic to humans, plants and animals. The Indigenous Peoples of Roraima – the Yanamami – and their lands have been [devastated by the influx of informal mining in their territory](#) in recent years. This bill will increase and worsen these social and environmental impacts.

This bill was approved by the Roraima state legislature on 8 February 2021 and the Federal Prosecution Service is investigating whether the law is constitutional.

h) Rondônia: PLC80 – destruction of an ecological park

This law reduces the size of two conservation areas: the Jaci-Paraná Extractive Reserve and the Guajará-Mirim State Park by approximately 170,000 hectares, around 90% of their total area. Since the early 2000s, illegal occupation of these areas and conversion for commercial agriculture has been commonplace. The law allows those who illegally occupied areas that were, at the time, conservation areas, to now receive legal titles to that land, therefore converting it to private property.

This bill was passed by the Rondônia state legislature and came into force on 20 May 2021.

3. TACKLING GLOBAL DEFORESTATION REQUIRES BOLD AND URGENT ACTION, NOT ACQUIESCENCE

In response to the dangerous legal reforms proposed in Brazil, nearly 40 UK food businesses signed an open letter to the Brazilian parliament on 5 May 2021 [calling on legislators to reject PL 510/2021 and other measures](#) that undermine existing environmental and social protections, which they claim have been crucial to giving them confidence that “products, services, investments and business relationships in Brazil are aligned with the commitments [they] hold as environmentally and socially responsible enterprises.” Those businesses claimed that they “will have no choice but to reconsider our support and use of the Brazilian agricultural commodity supply chain” if the proposed measures become law. This statement echoes an earlier letter from 22 of the UK’s largest retail food businesses in October 2020 [calling on the UK Government to address all deforestation and land conversion](#), whether treated as legal or illegal under local laws.

Unfortunately, the UK Government has not shown similar leadership nor has it heeded the retail sector’s request to address all deforestation and land conversion in its proposed legal framework for forest risk commodities. Instead, the Government’s proposed legal framework in Schedule 17 of the Environment Bill has several major weaknesses, which are outlined below together with recommendations to fix them.

Taken together, these weaknesses mean that the Government’s proposal will fail to prevent any forest risk commodities from being traded or consumed in the UK that are derived from the deforestation, environmental destruction, land grabbing in Indigenous territories, human rights violations, or social conflict resulting from the activities legalised under the proposed Brazilian legal reforms. Instead, by proposing a framework that maintains access to the UK market for commodities derived from ‘legal deforestation’, the UK Government’s proposal effectively signals its acceptance of environmental and social impacts that are or become ‘legal’. By enacting a new law to tackle global deforestation that deliberately excludes ‘legal deforestation’ while the Brazilian Government is legalising the destruction of the Amazon and its Indigenous Peoples, the UK Government is effectively acquiescing to the end of the Amazon.

a) Encouraging a global race to the bottom

A disappointing and dangerous aspect of the UK Government’s proposal is that it does not establish an objective standard that applies to *all* deforestation. Instead, the proposal defers entirely to the levels of deforestation permitted under “relevant local laws” – laws relating to land adopted in the jurisdictions that are producing and exporting forest risk commodities to the UK, like Brazil. This is known as a “legality approach”, where commodities are permitted if they are treated as ‘legal’ under local laws, regardless of the rules and standards that those laws apply.

This means that if commodities like beef, soy or palm oil are not produced in contravention of local legal requirements, they will have access to the UK market regardless of their actual deforestation footprint. This approach completely overlooks deforestation that is considered 'legal' (either because it is allowed or simply not prohibited by local laws or because local laws are not enforced), which constitutes [almost a third of agricultural-driven deforestation in the tropics](#). It is also likely to be extremely cumbersome for UK operators and regulators who would be required to identify, understand and apply a kaleidoscope of deforestation standards determined by various sources of national and sub-national law (statute, legal decree, secondary legislation, judicial precedent etc) in the multiple jurisdictions where forest risk commodities are sourced, and potentially the reliability of local law enforcement agencies, in order to determine whether any deforestation is 'legal' or not.

This approach is unlikely to lead to the ambitious deforestation standards required to halt global deforestation in the short-term. On the contrary, jurisdictions that are major exporters of forest risk commodities often experience higher rates of deforestation – [like Brazil and Indonesia](#) – for structural reasons, such as [weak environmental and social protections](#), [difficulties administering legal frameworks](#), and [under-resourced enforcement agencies](#). They also often face systemic problems with [industry governance and transparency](#), [corporate accountability](#) and [resource conflicts](#). Agriculture is often dominant in the domestic economy and the agribusiness industry often holds disproportionate economic and political influence in public decision-making. This means that local laws are often designed or implemented in ways that favour the agribusiness industry over environmental and social protections. The [powerful influence of the rural lobby in Brazil's Congress](#) provides a clear example.

By adopting an approach that relies on the deforestation standards set by the countries exporting forest risk commodities to the UK despite these common producer country dynamics, the UK Government's proposal risks creating perverse incentives to weaken or abolish laws that limit agribusiness operations by protecting the environment or the rights of Indigenous Peoples. This risks encouraging a race to the bottom amongst producer country governments, which may choose to prioritise the agribusiness industry or agricultural exports over protections for forests and Indigenous Peoples, particularly as short-term economic growth may be a political priority in the wake of the COVID pandemic. This is an inadequate approach to tackling global deforestation and sends a dangerous signal to producing countries that they can avoid the new UK law and even increase deforestation exported to the UK simply by changing their laws. This is particularly reckless in light of the dangerous legal reforms proposed in Brazil.

The Minister for Pacific and the Environment, Rt Hon Lord Goldsmith, has confirmed that "if a country were to start legalising activities that are currently illegal to get around the new laws we are bringing in, that would clearly be a problem" ([12 July 2021](#)). This is precisely what is happening in Brazil. The package of proposed laws will systematically legalise impacts on the environment and the rights of Indigenous Peoples and local communities that are currently illegal, potentially legalising the irreversible destruction of the Amazon and Cerrado biomes. Agribusiness operators and their products that are linked to those impacts will entirely circumvent the UK Government's new law and will enjoy unfettered access to the UK market, effectively rendering the UK law redundant from the outset in terms of deforestation in Brazil.

In the face of the rapidly escalating climate crisis and the sixth mass extinction of life on Earth, the UK Government should instead be leading a race to the top.

b) Legitimising 'legal deforestation'

A related weakness of the UK Government's proposal is that it risks legitimising 'legal deforestation', despite it having the same potential ecological, climate, human rights and sustainability impacts. By pushing ahead with an approach that ignores legal deforestation and the potential for producer countries to legalise currently illegal practices, *including retrospectively*, as is the case in Brazil, the UK Government is effectively legitimising any and all deforestation that is 'legal' under local laws regardless of the damage it causes.

The Minister for the Environment has been adamant that the Government's proposed approach is crucial to building partnerships with producing countries, like Brazil, to "build a global movement of consumer and producer countries committed to working with us to tackle this problem [of global deforestation]" ([12 July 2021](#)). However, it is hard to accept that the Bolsonaro administration is 'committed to working together' to tackle global deforestation when it is simultaneously working to legalise millions of hectares of deforestation that could collapse the 'lungs of the planet'.

The 'legal deforestation' of millions of hectares in the Amazon and Cerrado biomes expected under Brazil's proposed legal reforms will have catastrophic impacts for global climate and biodiversity efforts and significant human rights implications. Yet because those impacts, and any commodities derived from them, would be legal under Brazilian law, they will also be legal (and therefore legitimate) under the proposed UK law.

Indeed, commodities linked to 'legal deforestation' will enjoy the same treatment under the Government's proposed law as commodities produced sustainably. This false equivalency not only ignores the damage caused by 'legal deforestation' but would legitimise environmentally harmful agribusiness operators and commodities by giving them equivalent access to the UK market as sustainable operators and commodities. By ignoring the underlying political and economic factors that lead to weak social and environmental protections in producer countries, the Government's approach also risks legitimising objectively weak forest governance laws and the weakening of environmental and social protections in producer countries, such as through its so-called 'partnership' with Brazil under the FACT Dialogue.

c) A simple solution: all deforestation

The independent Global Resource Initiative Taskforce convened by the Government [recommended](#) that Government action to address the sustainability of UK commodity supply chains should focus on *all deforestation* and land-use conversion, not just illegal deforestation. Likewise, [99% of respondents to the Government's public consultation](#) on 'due diligence on forest risk commodities' that addressed the consultation questions supported the introduction of legislation based on sustainability, with 98% of all responses (62,506) calling for the introduction of legislation that covers all deforestation. This indicates strong community support for an approach focused on removing *all* deforestation from UK supply chains, rather than only 'illegal deforestation'. Pushing ahead with an approach that targets only 'illegal deforestation' despite the dangerous reforms proposed in Brazil will fall short of expectations and undermine the confidence of the UK public in the Government's ability to guarantee the sustainability of products on their supermarket shelves.

Adopting a standard that requires UK supply chains to be free of *all* deforestation is a far more simple, streamlined and effective approach. A requirement that covers all deforestation, based on accepted [international norms](#) and [definitions](#), would provide clarity, consistency and certainty for the public and business community. It could be easily implemented by UK businesses using existing tools and technologies, and would

be more easily and cost-effectively enforced by the UK Government, while allowing the UK Government to work in partnership with producer countries to ensure that local laws effectively prevent commodity-driven deforestation.

The amendment to Schedule 17 proposed by Lord Randall of Uxbridge, [Amendment 106](#), seeks to achieve this outcome and should be adopted.

d) Respect the rights of forest defenders

Efforts to protect the world's remaining forests are [unlikely to succeed](#) without ensuring the rights of forest defenders are respected. Indigenous Peoples and other customary rights-holders have unparalleled knowledge and expertise in sustainable forest management. The [UN Food and Agriculture Organisation](#), the [IPCC](#) and the [conservation](#) and [scientific communities](#) have widely acknowledged the expertise and stewardship of Indigenous Peoples and other customary rights-holders in protecting the world's forests. Studies confirm that [deforestation rates are lower in Indigenous and tribal territories](#) where their collective land rights are recognised and secure.

However, Indigenous Peoples and other forest defenders are [facing increasing danger](#), particularly in the face of expanding agribusiness frontiers and [shrinking civic space](#), as is the case in Brazil. The conversion of forests and other ecosystems to agribusiness operations is often linked to [land grabbing, conflict, violence, and adverse human rights impacts](#), particularly for Indigenous Peoples and other customary rights-holders. [Research shows](#) that Indigenous Peoples and other customary rights-holders are particularly vulnerable to rights abuses and experience significantly greater risks of conflict and violence related to their land.

While the Government's forest risk commodities proposal rightly requires UK companies to ensure that local laws related to land use and land ownership are respected, this approach overlooks the fact that [globally about 80% of Indigenous and communal lands are held without legally recognised tenure rights](#). Where local laws do recognise Indigenous land rights, the degree to which those rights are upheld [varies greatly on paper and in practice](#), with structural economic, political, social and cultural disadvantages often making it extremely difficult for rights-holders to safely assert their rights in the face of encroaching agribusiness operations.

Local laws that recognise Indigenous rights, including rights enshrined in national constitutions, can also be repealed, as proposed in Brazil as outlined above.

Given that [most of the world's forests](#) are found on Indigenous and communal lands, a critical step in protecting the world's forests is therefore protecting the rights of the communities that have defended and protected those forests for centuries. However, Schedule 17 does not require UK operators to check whether the forest risk commodities they use are linked to human rights violations. Nor does it include any requirement on UK businesses to ensure that human rights are respected throughout their business relationships – the [global standard of expected conduct for all business enterprises](#) recognised by the United Nations over a decade ago.

At a minimum, the Schedule 17 should include a requirement on UK operators to ensure that the commodities they use have not been produced in violation of the right of Indigenous Peoples and other customary rights-holders to free, prior and informed consent ("**FPIC**"). FPIC is an [internationally recognised right](#) and has been incorporated into [OECD guidelines](#) and [multi-stakeholder standards](#) for the agribusiness industry. Given the UK is an OECD member, UK operators should, in theory, already be respecting FPIC in their business operations. Including a requirement to respect the right to FPIC is not only consistent with the UK's international commitments, but would likely enhance the effectiveness of the new law

in minimising the role of UK consumption in driving global deforestation and increase protection for the world's forests by upholding the rights of forest defenders.

Without a stand-alone requirement to respect the right to FPIC in the UK's forest risk commodities law, the existing requirement to respect local laws relating to land use and ownership will provide little comfort to Brazil's Indigenous Peoples currently facing proposals to legalise (including retrospectively) the dispossession of their lands and the denial of their constitutional and human rights.

The amendment to Schedule 17 proposed by Lord Randall of Uxbridge, [Amendment 106](#), seeks to achieve this outcome and should be adopted.

e) The law must cover cattle and soy

Many of the crucial details of the Government's proposal will be set by regulations made by the Secretary of State. One such detail is which commodities will be designated as "forest risk commodities" and subject to the new law. Given the expansion of [cattle farming caused 36% of agriculture-related deforestation globally between 2001 and 2015](#) – five times as much as any other forest risk commodity, and almost half of that deforestation occurred in Brazil, it is imperative that cattle (and derived products like beef and leather) are designated as a forest risk commodity.

The UK imports a significant volume of Brazilian beef each year. For example, [95% of UK corned beef imports come from Brazil](#). From 2014 to 2019, the three biggest Brazilian beef producers and their subsidiaries shipped at least [147,000 tonnes of beef to the UK](#) – worth £1bn and enough to make 170 million burgers a year, enough for two and a half burgers for every man, woman and child in the UK annually. Those same producers have been linked to [up to 500 square kilometres of deforestation every year](#), as well as [land-grabbing, violence against Indigenous peoples and local communities, and human rights violations](#).

Expansion of [large-scale soy production](#), mainly for the livestock-feed sector, is the other [major driver of deforestation in Brazil](#). Globally, [soy production is the second-largest cause of agriculture-related deforestation](#). 61% of that occurs in Brazil. Like Brazilian beef, the UK is also a significant consumer of Brazilian soy. Brazil is the UK's second largest direct soy supplier (after Argentina), and when indirect and embedded imports are included (eg embedded in other products like meat, eggs and dairy produced using Brazilian soy animal feed) the UK's Brazilian soy land-use footprint covers [almost half a million hectares every year](#). Several UK food retailers like Tesco, Lidl, Asda, McDonald's, Nando's and other high street retailers have been [linked to Brazilian deforestation via soy-fed chicken products](#).

Given the role of soy production in global deforestation and deforestation in Brazil in particular, with greater expansion of Brazil's large-scale soy operations as a result of the proposed legislative reforms outlined above, and given the UK's significant direct and indirect consumption of Brazilian soy, it is imperative that soy is designated as one of the forest risk commodities covered by the new law.

f) Include non-agricultural forest risk commodities

Given the role of other industries in deforestation (and associated environmental damage and human rights violations) in Brazil and other forest-rich countries, particularly the [mining](#) and [fossil fuel](#) industries, the scope of potential "forest risk commodities" should not be limited to agricultural products only. Mining, oil and gas products in particular should be included in the scope of forest risk commodities covered by the new law.

4. CLOSE THE LOOPHOLES AND LISTEN TO THE EXPERTS

There is still time for the UK parliament to fix these fundamental weaknesses. The proposed legal changes in Brazil underscore the importance of improving the framework set out in Schedule 17 and adopting a strong and ambitious UK law that includes an all deforestation and FPIC requirement for forest risk commodities, regardless of where they are produced, in addition to compliance with requirements under 'relevant local laws'.

These improvements, summarised below, are particularly essential to ensure that Brazilian individuals, Indigenous Peoples and communities who are seeking to protect their forests are able to use the new law to help ensure that no UK business is complicit in the destruction of Brazil's globally-significant forests.

The UK parliament is urged to amend Schedule 17 of the Environment Bill to:

- i. establish a UK deforestation standard that covers all deforestation, regardless of treatment under local laws, that applies to all forest risk commodities and derived products, regardless of their origin;
- ii. include a requirement that UK operators must ensure that the forest risk commodities they use have not been produced in violation of the right of Indigenous Peoples or other affected communities to free, prior and informed consent; and
- iii. include cattle (as well as derived products like beef and leather) and soy, as well as non-agricultural commodities like mining and energy products that are also highly associated with deforestation, as "forest risk commodities".

As many other important elements of the forest risk commodities framework in Schedule 17 will be set by secondary legislation (such as the requirements of the "due diligence system", which UK businesses will be subject to the law and which will be exempt, public reporting requirements, and how the framework will be enforced), it is also vital that there is a clear, inclusive and transparent consultation process that informs decisions on these details.

It is essential to the credibility and effectiveness of the new law that those decisions are informed by the perspectives of Indigenous Peoples, forest communities and other civil society stakeholders working to defend forests from commodity-driven deforestation, as well as other practitioners and experts with specialised knowledge on forest risk commodity supply chains.

To this end, the development of the secondary legislation should include:

- i. Proactive outreach to Indigenous Peoples and civil society organisations in producer countries and the provision of clear, accessible and timely information in their language to inform them of the Government's proposal and how they can provide input;
- ii. Clear, accessible and transparent consultation processes that reflect the needs and capacity constraints of important stakeholders such as Indigenous Peoples and civil society organisations in producer countries conducted prior to the development of draft secondary legislation, at the earliest possible stage and conducted over an

appropriate timeframe, including sufficient notice, appropriate scheduling for producer country time zones, and information in local languages; and.

- iii. Safe, confidential and accessible means for Indigenous Peoples and civil society organisations in producer countries to participate in consultations on the Government's proposal in their own language, including technical and financial support where necessary, taking into account that sometimes local community and civil society stakeholders cannot speak freely in public forums or in the presence of government or industry representatives.

Department of Environment, Food and Rural Affairs officials, policy-makers and the Minister are strongly encouraged to meet with Indigenous Peoples groups and civil society organisations from Brazil and other forest risk commodity producing countries to discuss the points raised in this briefing. The authors are available to help facilitate these meetings if needed.

UK businesses, parliamentarians and government representatives are also encouraged to speak out both publicly and privately against the package of legal reforms currently moving through the Brazilian Congress, as well as the ongoing stigmatisation and violence against Indigenous Peoples, NGOs, activists and others working to defend the environment in Brazil.

10 September 2021

Prepared by **ClientEarth** and supported by:

Dr. Grace Iara Souza, Research Fellow, King's Brazil Institute, King's College London (KCL) and The Latin America and the Caribbean Centre, The London School of Economics and Political Science (LSE)

Prof. Kathryn Hochstetler, Professor and Head of Department, Department of International Development, London School of Economics and Political Science

Dr Mary Menton, Research Fellow, University of Sussex

R Andrew Nickson, Honorary Reader in Public Management and Latin American Studies, University of Birmingham

ABColumbia

Animal Defenders International

Animal Equality UK

Catholic Agency for Overseas Development (CAFOD)

Centre for Agroecology, Water and Resilience (CAWR), Coventry University

CLOSER

Compassion in World Farming

Corporate Justice Coalition

Earthsight

Global Witness

London Mining Network

Meraki Impact

Not1More

The Roddick Foundation

Size of Wales

Synchronicity Earth