

Submission to the Committee on Economic, Cultural, and Social Rights
72nd Pre-Sessional Working Group (6 March 2023-10 March 2023)

1. The **Forest Peoples Programme** is a human rights organisation working with indigenous and forest peoples to secure their collective customary rights to their lands, territories and resources and associated rights to self-determination, self-governance and free, prior and informed consent.¹ FPP respectfully makes this submission in advance of the Committee on Economic, Cultural, and Social Rights' ("this Committee") 72nd pre-sessional working group to highlight gaps in the United Kingdom's ("the UK" or "the State") 7th Periodic Report.
2. The UK impacts people around the world through its international policies, national laws, aid money, trade agreements, public procurement and diplomacy. Business enterprises, including financial institutions, that are domiciled in the State also affect people worldwide through their operations or investments. The State's and State-based entities' actions often negatively affect human rights, and in particular the rights of groups in vulnerable situations including indigenous and forest peoples, indigenous women, and human rights defenders.
3. This Committee, together with other human rights bodies, has made clear that the observance and promotion of human rights does not stop at national borders. The UN Charter similarly requires States to promote universal respect for, and observance of, human rights and freedoms. This submission therefore highlights issues related to the protection of economic, cultural, and social rights beyond the State's national borders, in particular: the State's provision of international climate and conservation finance (Section I); business activities and investments by UK-domiciled corporations and financial institutions (Section II); and the State's refusal to recognize collective rights (Section III). FPP recommends that the Committee ask:
 - a. *In relation to climate and conservation financing –*
 - i. Please provide information on the measures taken by the State to ensure that it has respected indigenous and forest peoples' rights in the development of its international climate, biodiversity and conservation financing programs, including the conduct of any human rights impact assessments, ensuring the effective participation of indigenous peoples in programme design, as well as requiring human rights impact assessment and effective participation in programmes and projects developed by other entities funded by the State. Please provide information on the measures taken by the State to ensure that the implementation of its international climate, biodiversity and conservation financing programs will not violate ESCR rights, and in particular, indigenous peoples' self-determination, FPIC,

¹ Under international human rights law, in addition to indigenous peoples whose rights are clearly articulated in the UN Declaration on the Rights of Indigenous Peoples, other groups, such as afro-descendant peoples and local communities with customary land tenure systems, who share social, cultural and economic characteristics with indigenous peoples (that differ from characteristics of other sections of the national community), and who maintain a special relationship with their territories, and "regulate themselves, at least partially, by their own norms, customs, and/or traditions", also require protection of their collective land rights and their governance structures and related decision-making rights, including where appropriate FPIC.

land and cultural rights, or where they do so, that victims can access remedy in the State party.

b. *In relation to business and human rights –*

- i. Please provide information on the legislative measures the State plans to take to prevent acts of transnational corporations and financial entities domiciled in its territory, including in the State's Overseas Territories and Crown Dependencies, from negatively affecting the enjoyment of human rights abroad. Specifically, please provide information on the measures to adopt legislation imposing a duty on business enterprises across all sectors, financial enterprises, and public procurement bodies to prevent, address and remedy human rights abuses. Please specify if these measures would include the requirement for companies and investors to conduct outcome-focused human rights due diligence across their supply chains including comprehensive human rights impact assessments and to ensure that they respect indigenous peoples' self-determination, FPIC, land, and culture rights. Please specify how these measures will ensure the protection of the rights of groups in vulnerable situations, such as indigenous and forest peoples, including indigenous women and human rights defenders.
- ii. Please provide information on the mechanisms available to hold UK-based corporations and financial entities accountable for violations of human rights, and in particular indigenous and forest peoples' rights, including those related to extraterritorial operations or investments, and to provide victims with access to effective remedies in the State party. Please specify if these mechanisms are judicial or non-judicial, whether they are independent, can receive complaints from indigenous and forest peoples abroad, have the resources to conduct investigations, and have the authority to issue enforceable sanctions for violations carried out or funded by UK-based corporations or investors. Please additionally provide information on whether and to what extent the State provides adequate legal aid to affected communities who seek to take legal actions in the UK against UK based companies or investors.

c. *In relation to the State's refusal to recognize collective rights –*

- i. Please explain how the State will ensure that its actions (and the actions of business entities and other non-State actors domiciled in the State) will avoid causing or contributing to violations of indigenous peoples' rights and discrimination against them if the State fails to acknowledge and ensure respect for the collective dimensions of their rights.

I. International climate, biodiversity and conservation finance

4. In May 2022, the State released a ten-year strategy for International Development and named its “number one” international priority as climate change and biodiversity.² In that strategy, the State pledged to double its International Climate Finance contribution to at least £11.6 billion between 2021 and 2026, £3 billion of which is committed towards “development solutions that protect and respect nature”.³ Which programmes and what support will be covered by this remains unclear, but it seems to include financial support to developing countries to deliver the ‘30 by 30’ target to protect 30% of land and oceans by 2030.⁴ It also appears to include a second phase of the UK’s Forest Governance, Markets and Climate Programme, whose scope at the time of writing remains to be determined. There appear to be several other programmes under development, such as the Global Land Governance Programme which includes components such as ‘The Land Facility’ and ‘Align’ but there is little information publicly available to suggest how much money is committed or what these programmes aim to deliver. The State has confirmed a small proportion of its climate financing, around £224 million, is to specifically support indigenous peoples and local communities and advancement of their human rights, including to their land, territories and resources. The State has indicated that a proportion of this may go towards direct funding, but details are not publicly available. Some of the UK’s financing will also be spent in public-private partnerships such as the LEAF Coalition for the purchasing of carbon credits, many of which do not adequately protect the human rights of indigenous peoples.

5. The State has not demonstrated how it will take a human rights-based approach to the provision of any of this climate change and biodiversity financing.⁵ In particular, it has not established any mechanisms to ensure that this financing will not violate the rights of indigenous peoples and forest peoples in whose lands much of the world’s biodiversity is located, and who are particularly vulnerable to rights abuses in the context of conservation related to climate change and biodiversity.⁶ The State has, at best, implied it will respect the rights of indigenous peoples, through pledges made at COP26 and the role it has stated it will play in the newly formed Forest and Climate Leaders Partnership launched at COP27.⁷

² <https://commonslibrary.parliament.uk/research-briefings/cbp-9567/>. Note that aid spending in the UK has decreased from 0.7% to 0.5% of Gross National Income.

³ <https://www.gov.uk/government/publications/uk-governments-strategy-for-international-development/the-uk-governments-strategy-for-international-development>

⁴ <https://www.gov.uk/government/news/efforts-to-protect-habitat-and-wildlife-around-the-world-boosted-by-34-million-of-uk-government-funding>

⁵ The UN Special Rapporteur on the Rights of Indigenous Peoples had in her 2017 annual report recommended that climate finance donors should take measures to respect and support the rights of indigenous peoples in climate financing and develop more dedicated direct funding mechanisms to support indigenous peoples’ own climate change initiatives. A/HRC/36/46, Report of the Special Rapporteur on the rights of indigenous peoples, 1 November 2017, para. 123.

⁶ The UN Special Rapporteur on the Rights of Indigenous Peoples detailed several examples of climate mitigation projects which have negatively affected indigenous peoples’ rights in her 2017 annual report. A/HRC/36/46, Report of the Special Rapporteur on the rights of indigenous peoples, 1 November 2017, Section VIII.

⁷ During its COP26 presidency, for example, the State made several pledges to respect the rights of indigenous peoples, including:

- Signing onto the ‘Glasgow Climate Pact’, which acknowledges that states should “respect, promote and consider their respective obligations on [...] the rights of indigenous peoples” in actions to address climate change and recognises the

6. Yet despite these commitments to respect indigenous peoples' rights, the State has already demonstrated its inadequate treatment of indigenous peoples' rights in climate action. In October 2022, the State announced that it had signed a bilateral Memorandum of Understanding with the Government of Indonesia⁸ to support implementation of Indonesia's policy towards reducing greenhouse gas emissions. This agreement was signed without prior consultation with, let alone obtaining the free, prior, and informed consent (FPIC) of, any of Indonesia's indigenous peoples. The MOU provides no commitments to respect for human rights, including indigenous peoples' rights. This is particularly concerning in light of the indigenous peoples' rights abuses committed in Indonesia in the implementation of conservation measures. These include loss of access to resources and associated loss of traditional practices as a result of the establishment of protected areas⁹ and criminalization of traditional practices such as rotational farming.¹⁰

7. The UK government, along with the governments of Norway and Germany, also negotiated a climate change-related forest conservation and mitigation programme with the Government of Colombia for the Amazon region but failed to ensure the full and effective participation and FPIC of indigenous peoples in that process. As a result, the legality of the programme and failure to uphold consultation and consent rights have been successfully challenged by indigenous peoples in the Colombian Courts.¹¹ Both the MOU with the Government of Indonesia and the programme negotiated with the Government of Colombia fall short of the State's obligations as affirmed in CESCR General Recommendation 26 (2022) which requires that "Cooperation mechanisms for climate change mitigation and adaptation measures shall provide and implement a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment and to guarantee access to information and meaningful consultation with those affected by such projects. They shall also respect the free, prior, and informed consent (FPIC) of indigenous peoples."¹²

8. Despite acknowledging the important role played by indigenous peoples and other traditional communities in biodiversity protection and conservation and in mitigating and adapting to climate change, the State appears to have committed less than 2% of overall

important role of indigenous peoples and their knowledge in these actions.

https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf

- Joining the 'Global Forest Finance Pledge' which promises to promote "the full, effective, and willing participation of indigenous peoples and local communities in programmes that protect and restore forests, reduce deforestation and forest degradation, and ensure that benefits reach smallholders and local communities".

⁸ Indonesia-UK MoU concerning cooperation on Indonesia's Forestry and Other Land Use (FOLU) Net Sink 2030, 25 October 2022, available at <https://www.gov.uk/government/publications/indonesia-uk-memorandum-of-understanding-cooperation-on-indonesias-forestry-and-other-land-use-folu-net-sink-2030/indonesia-uk-mou-concerning-cooperation-on-indonesias-forestry-and-other-land-use-folu-net-sink-2030>.

⁹ See, e.g., <https://www.corneredbypas.com/indonesia/>

<https://www.forestpeoples.org/sites/fpp/files/publication/2011/10/central-sulawesi-briefing-4.pdf>.

¹⁰ Konsorsium Pembaruan Agraria, "Catahu 2019: Dari Aceh Sampai Papua - Urgensi Penyelesaian Konflik Agraria Struktural dan Jalan Pembaruan Agraria ke Depan", 29 February 2020,

http://kpa.or.id/publikasi/baca/laporan/82/Catahu_2019:_Dari_Aceh_Sampai_Papua_-_Urgensi_Penyelesaian_Konflik_Agraria_Struktural_dan_Jalan_Pembaruan_Agraria_ke_Depan/

¹¹ Constitutional Court of Colombia Sentence T063/19 of 2019

¹² General comment No. 26 (2022) on Land and Economic, Social and Cultural Rights E/C.12/GC/26 para 58

climate change and biodiversity financing towards direct funding for indigenous peoples. The provision of direct financing would not only support indigenous peoples' ongoing work to combat climate change and biodiversity loss, it would also enable more effective realization of indigenous peoples' rights to self-determination and FPIC as well as their rights to lands, territories, and resources, and a healthy environment. As noted by the indigenous peoples' caucus at the UNFCCC COP27, "Direct access means direct negotiation and discussions with financial partner countries or funders to determine level of funding, parameters, and agreements on the funding mechanisms."¹³

9. This Committee has previously, while welcoming the State's provision of international development assistance, expressed concern that in some cases the assistance has been used for activities in contravention of economic, social and cultural rights in the receiving countries.¹⁴ It recommended that the State "adopt a human rights-based approach in its international development cooperation by" undertaking HRIAs (Human Rights Impact Assessments) prior to decision-making on projects, monitoring the human rights impact of its projects and providing remedy when appropriate, and ensuring there is an accessible complaints mechanism for violations of human rights associated with its projects.¹⁵ While this Concluding Observation referred specifically to development assistance in the context of education, the same need for a human rights-based approach applies in climate and conservation financing. As observed by the Special Rapporteur on human rights and the environment in his 2022 annual report, in pursuing the Sustainable Development Goals, states have obligations to, inter alia, "Implement human rights safeguards in the design and use of innovative financing mechanisms (e.g., payments for ecosystem services...)"¹⁶ The State's periodic report notes that it works to ensure that victims of rights violations can "raise concerns about violations of their rights ... within their respective countries" but does not provide further information regarding the mechanisms in the UK to receive and address complaints regarding rights violations in this context. Nor does the State provide any information regarding if or how it takes a human rights-based approach towards development assistance, and in particular, climate change and conservation financing.

FPP recommends that the Committee ask the State:

1. Please provide information on the measures taken by the State to ensure that it has respected indigenous and forest peoples' rights in the development of international climate, biodiversity and conservation financing programs, including the conduct of any human rights impact assessments and ensuring the effective participation of indigenous and forest peoples in programme design.
2. Please provide information on the measures taken by the State to ensure that recipients of its international climate, biodiversity and conservation financing programmes are required

¹³ <https://assets.takeshape.io/86ce9525-f5f2-4e97-81ba-54e8ce933da7/dev/01375808-c4d4-412c-80a5-8a516e835976/Indigenous%20peoples%20-%20principles%20%26%20guidelines%20for%20direct%20access%20funding.pdf>

¹⁴ E/C.12/GBR/CO/6, 14 July 2016, para. 14.

¹⁵ Ibid, para. 15.

¹⁶ A/77/284*, 10 August 2022, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, para. 41(g).

to undertake prior and ongoing human rights impact assessments and, where appropriate, provide remedy for any human rights violations which the programme has caused or contributed to, and that the relevant government department administering funds uses these as part of the monitoring and evaluation of such projects and as part of the criteria to determine continued funding.

3. Please provide information on the measures taken by the State to ensure that the implementation of its international climate, biodiversity and conservation financing programmes will not violate ESCR rights, and in particular, indigenous peoples' self-determination, FPIC, land and cultural rights, or where they do so, that victims can access remedy in the State party. Specifically, please provide information on measures taken by the State to ensure that the implementation of its bilateral MOU with the Government of Indonesia regarding Indonesia's Forest and Other Land Use Net Sink 2030 Plan will not negatively affect indigenous peoples' rights.
4. Please provide information on the proportion of funding that is or is planned to be given in direct funding to indigenous peoples for their work on climate change, biodiversity, and conservation.
5. Please provide information on measures taken by the State to ensure that the rights of indigenous and forest peoples will be respected in the implementation of other climate, biodiversity and conservation financing mechanisms, such as carbon markets that the State currently or plans to participate in (including via private-public partnerships such as the LEAF Coalition). Please provide information on measures taken by the State to ensure that victims of any rights violations that do occur can access remedy in the State party.
6. Please provide information on measures taken by the State to ensure transparency and accountability in the implementation of international climate, biodiversity and conservation finance initiatives and programmes.

II. Business and human rights

10. UK-based businesses, including financial institutions, play an outsized role in global markets and supply chains. Most of the world's largest mining companies (e.g., BHP Billiton, Anglo American plc, Xstrata plc, Vedanta Resources, Rio Tinto) that operate or have operated rights-denying projects in indigenous peoples' territories throughout the world (including in Colombia, the Philippines, South Africa, India and the United States) are headquartered in London or registered on the London Stock Exchange.¹⁷ A huge volume of investment for the extractive sector is generated through London's stock exchanges, with 145 million lots traded at the London Metals Exchange alone in 2021, equating to 15.6 trillion USD.¹⁸ With much of the world's remaining mineral resources located in indigenous peoples' territories,

¹⁷ <https://www.forestpeoples.org/sites/default/files/documents/1-s2.0-S167900731730004X-main.pdf>

¹⁸ <https://www.lme.com/en/about>

and the extractive sector being associated with some of the most serious human rights abuses, UK-based minerals companies and investors have a profound effect on indigenous peoples' enjoyment of their rights.

11. In 2022, the UK developed a Critical Minerals Strategy to secure its supply chains for “transition minerals” required for the transition to clean energy - minerals which are also located in indigenous peoples' lands. The strategy states that the State aims to “direct Overseas Development Assistance (ODA) towards helping like-minded, resource-rich countries develop critical mineral resources in a market-led way that aligns with sustainability, transparency, human rights and environmental goals, and supports our development priorities”. However, there is nothing further in the strategy to ensure the development of critical mineral resources does not violate human rights.¹⁹ While the strategy notes the Environmental, Social and Governance risks associated with sourcing these minerals and that “irresponsible” mining can cause human rights abuses of communities or indigenous peoples, and mentions a commitment to higher voluntary standards, it fails to address the requirement for FPIC and lacks clarity as to how indigenous and forest peoples' rights will be protected, given the state's lack of regulation of overseas activities of its companies and investors.²⁰
12. Similar issues arise in the agri-business sector.²¹ As highlighted by the UN Working Group in its 2016 report on the sector, few financial institutions “accept their full responsibility to respect human rights through their loans or investments. This has real consequences — when finance freely flows without accountability, there is little incentive to respect rights, and both affected communities and businesses trying to address harm find themselves with less influence over the situation.” The State is aware of the rights abuses in the agribusiness sector and has issued a guidance note on managing legacy land issues in agro-industrial investments; however, this is insufficient to address the nature and extent of violation of indigenous and forest peoples' rights.²² Similarly, while the State has acknowledged the high incidences of rights violations against human rights defenders, the State does not have any legislative or regulatory measure to address these aside from guidelines expressing support for human rights defenders.²³
13. The State, the State's Overseas Territories (e.g. the Cayman Islands, the British Virgin Islands and Bermuda) and the State's Crown Dependencies (e.g. Jersey, Guernsey and the Isle of Man) account for nearly a quarter of the global market in offshore financial services.²⁴

¹⁹ Note that the State signed a statement at COP26 on ‘Supporting the Conditions for a Just Transition Internationally’ which refers directly to the need for States to advance respect for human rights consistent with the UDHR in existing and emerging markets. <https://ukcop26.org/supporting-the-conditions-for-a-just-transition-internationally/>

²⁰ [UKACC+Briefing_Critical+Minerals+Strategy_July+2022.pdf \(squarespace.com\)](https://www.ukacc.org.uk/wp-content/uploads/2022/07/UKACC+Briefing_Critical+Minerals+Strategy_July+2022.pdf)

²¹ See, e.g., <https://www.zerotoleranceinitiative.org/enough>.

²² Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Addressing the human rights impacts of agro-industrial operations on indigenous and local communities: State duties and responsibilities of business enterprises, A/71/291, 4 August 2016 para 29.

²³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819299/UK-Support-for-Human-Rights-Defenders.pdf

²⁴ Ending the Era of Tax Havens: Why the UK government must lead the way, Oxfam Briefing Paper, 14 March 2016 <https://search.issuelab.org/resources/32439/32439.pdf>

Currently, the State does not require its Overseas Territories and Crown Dependencies to introduce public registries of beneficial ownership for companies, trusts and other legal entities. Concealed beneficial ownership can help shield corporations from accountability for operations they control that are causing, contributing to or directly linked to human rights abuses.

14. More generally, the State's own Parliamentary Joint Committee on Human Rights recommended in 2018 that the State "bring forward legislation to impose a duty on all companies to prevent human rights abuses, as well as an offence of failure to prevent human rights abuses for all companies, including parent companies, along the lines of the relevant provisions of the Bribery Act 2010. This would require all companies to put in place effective human rights due diligence processes (as recommended by the UN Guiding Principles), both for their subsidiaries and across their whole supply chain. The legislation should enable remedies against the parent company and other companies when abuses do occur, so civil remedies (as well as criminal remedies) must be provided. It should include a defence for companies where they had conducted effective human rights due diligence, and the burden of proof should fall on companies to demonstrate that this has been done."²⁵ Such a proposal has been found legally feasible by the British Institute of International and Comparative Law²⁶ and is being called for widely by civil society.²⁷ Support for a new UK law has been expressed by UK Businesses and UK investors.²⁸
15. UN treaty bodies, including this Committee, have repeatedly urged States, including the UK, to take measures to ensure that business entities, including financial institutions, respect human rights.²⁹ This Committee has also specifically addressed the related need of States parties to strengthen regulatory powers in relation to investment decisions of their pension funds and "other investors acting abroad" and ensure that independent human rights impact assessments are conducted and effective grievance mechanisms are available.³⁰
16. In 2011, the CERD expressed its concern at the "adverse effects of operations by transnational corporations registered in the [UK] but conducted outside the territory of the State party that affect the rights of indigenous peoples to land, health, environment and an adequate standard of living" and recommended that the State: a) take appropriate legislative and administrative measures to ensure that acts of transnational corporations registered in the UK comply with the provisions of ICERD, b) ensure that no legal obstacles

²⁵ <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>

²⁶ <https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>

²⁷ <https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>

²⁸ <https://www.business-humanrights.org/en/latest-news/investor-letter-for-uk-human-rights-due-diligence/>;
<https://www.business-humanrights.org/en/latest-news/uk-update-47-businesses-sign-statement-calling-for-human-rights-due-diligence-legislation/>

²⁹ See, e.g., E /C.12/LUX/CO/4, Concluding observations on the fourth periodic report of Luxembourg, November 15, 2022, para. 13 (recommending that Luxembourg adopt a legislative and regulatory framework to require companies domiciled in its territory, including those in the financial sector, to conduct human rights due diligence; provides for accountability for companies who violate human rights; and to enable victims, including non-citizens, to have access to remedy in the State party);

E/C.12/DNK/CO/6, Concluding observations on sixth periodic report of Denmark, 12 November 2019, para. 19;

E/C.12/NOR/CO/6, Concluding observations on the sixth periodic report of Norway, 2 April 2020, paras. 7-9.

³⁰ Sweden, E/C.12/SWE/CO/6, 14 July 2016 paras 19, 20

are introduced that prevent the holding of such transnational corporations accountable in UK courts when such violations are committed outside the UK, and c) sensitize corporations registered in its territory of their social responsibilities in the places where they operate.³¹

17. In its 2016 Concluding Observations on the UK, this Committee expressed its concern about the “lack of a regulatory framework to ensure that ... companies domiciled under its jurisdiction acting abroad, fully respect economic, social and cultural rights.”³² It recommended that the State take measures to ensure “the legal liability of companies domiciled under the State party’s jurisdiction for violations of economic, social and cultural rights in their projects abroad committed directly by these companies or resulting from the activities of their subsidiaries”.³³ Numerous human rights experts have similarly called for States to ensure that businesses respect human rights, including by conducting human rights due diligence, including: the UN Special Rapporteur on the Rights of Indigenous Peoples,³⁴ the UN Special Rapporteur on Human Rights and the Environment.³⁵
18. The State’s 7th Periodic Report refers to the Modern Slavery Act’s requirements on companies to report on steps they have taken to ensure there is no modern slavery in their business or supply chains. This piece of legislation is limited both in its human rights coverage and in its self-reporting-based approach towards regulating business activities. The Report also refers to reporting requirements under the Companies Act and the operation of the UK OECD National Contact Point. Other legislative measures not mentioned in the Periodic Report also provide little to no protections for human rights. The State has only partly acted on recommendations (2020) by the multi-stakeholder, government-convened Global Resource Initiative (GRI) to introduce a new law to protect human rights and the environment in relation to forest-risk commodities linked to UK commercial activities.³⁶ Schedule 17 of The Environment Act of 2021 introduces a prohibition on the import of forest risk commodities that have been illegally produced but this does not require adherence to international human rights law.³⁷ The Schedule requires only a limited version of deforestation-focussed ‘due diligence’. While the full extent of the process will only be known after secondary regulations are published, it is also clear that due diligence requirements do not extend to human rights except in respect of certain areas, and to the extent they are incorporated already by national laws in countries of production. This limits its potential to provide accountability to indigenous and forest peoples whose human rights are affected by deforestation.

³¹ United Kingdom, CERD/C/GBR/CO/18-20, 1 September 2011 para 29.

³² E/C.12/GBR/CO/6, 14 July 2016, para. 11.

³³ Ibid, para. 12(b).

³⁴ Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya ‘Extractive industries and indigenous peoples’ (2013) A/HRC/24/41 para 52-7

³⁵ A/77/284*, 10 August 2022, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, para. 81(e)(iv) (recommending that States “Strengthen[] regulation of businesses covering full supply chains, through human rights and environment due diligence legislation.”).

³⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881395/global-resource-initiative.pdf

³⁷ <https://www.legislation.gov.uk/ukpga/2021/30/schedule/17/enacted>

19. In 2022, the GRI made a set of recommendations to the State in relation to the financial sector to introduce legislation akin to that contained within Schedule 17 of the Environment Act (2021) and to set out a timeline to go beyond this by introducing a mandatory requirement that includes human rights due diligence.³⁸ However, the Financial Services and Markets Bill, currently in 2nd reading in the House of Lords does not include a ‘due diligence’ obligation in relation to the financial flows that enable the production of forest-risk commodities, let alone one that would require respect for human rights. None of these existing or pending Acts address this Committee’s recommendations that the State ensure that business, including financial, enterprises can be held legally liable for violations of human rights in their projects abroad. The State has also reported in its inputs to this Committee’s draft comment (No. 26) on land and economic, social, and cultural rights that “The UK does not accept that States parties should adopt a legal framework requiring business entities to exercise human rights due diligence.”³⁹

FPP recommends that the Committee ask the State:

1. Please provide information on the legislative measures the State plans to take to prevent acts of transnational corporations and financial entities domiciled in its territory from negatively affecting the enjoyment of human rights abroad.⁴⁰ Please specify if these mandatory measures would include the requirement for companies and investors to conduct outcome-focused human rights due diligence across their supply chains including comprehensive human rights impact assessments and to ensure that they respect indigenous peoples’ self-determination, FPIC, land, and culture rights.⁴¹ Please specify how these measures will ensure the protection of the rights of groups in vulnerable situations, such as indigenous and forest peoples, women including indigenous women, and human rights defenders.
2. Please provide the evidence that the State relied on when concluding that a law obliging business enterprises and investors to respect human rights would not be practicable or proportionate and would not deliver tangible improvements in the protection of human

³⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1087635/global-resource-initiative-finance-report-may-2022.pdf

³⁹ Committee on Economic, Social and Cultural Rights: Draft General Comment on Land and Economic, Social and Cultural Rights: Comments of the Government of the United Kingdom of Great Britain and Northern Ireland, Input No. 51, available at <https://www.ohchr.org/en/calls-for-input/2021/call-written-contributions-draft-general-comment-no-26-land-and-economic>, para. 20. The State has also repeatedly denied the need for mandatory measures in response to Parliamentary Questions. See, e.g., <https://questions-statements.parliament.uk/written-questions/detail/2022-01-11/hl5314>; <https://questions-statements.parliament.uk/written-questions/detail/2022-01-13/103624>; <https://questions-statements.parliament.uk/written-questions/detail/2022-04-14/154134/>; <https://questions-statements.parliament.uk/written-questions/detail/2022-06-20/HL1104/>.

⁴⁰ Note that this has not only been recommended to the State by UN Treaty Bodies, it is also a commitment the State made in its 2020 National Action Plan, see

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf (Page 11).

⁴¹ This should be consistent with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ICESCR General comment No. 26 (2022) on Land and Economic, Social and Cultural Rights, which seek to guarantee that their activities and investments respect indigenous and forest peoples’ self-determination, FPIC and cultural rights (Art 1, 15). Indigenous peoples’ experience has repeatedly demonstrated that the existence of corporate policies and voluntary commitments are insufficient to guarantee respect for indigenous peoples’ rights in practice, and need to be accompanied by regulation, see for example [LMN-angloamerican-report-digital-final.pdf](https://www.londonminingnetwork.org/LMN-angloamerican-report-digital-final.pdf) ([londonminingnetwork.org](https://www.londonminingnetwork.org))

rights and the environment. Provide information regarding how the State monitors and reviews the effectiveness of voluntary human rights and environmental due diligence, including how it monitors businesses consultations with indigenous peoples, as set out in its 2020 Business and Human Rights National Action Plan.

3. Please provide information on the State's implementation of its commitment in its National Action Plan to ensure that businesses respect indigenous peoples' "free, and informed participation"⁴² and how this is consistent with guaranteeing their right to FPIC as outlined in this Committee's General Comment No. 24 (2017) and its extraterritorial obligations as outlined in ICESR General comment No. 26 (2022) on Land and Economic, Social and Cultural Right.⁴³
4. Please provide information on the mechanisms available to hold UK-based corporations and financial entities accountable for violations of human rights, and in particular indigenous and forest peoples' rights, including those related to extraterritorial operations or investments, and to provide victims with access to effective remedies in the State party. Please specify if these mechanisms are judicial or non-judicial, whether they are independent, can receive complaints from indigenous and forest peoples abroad, have the resources to conduct investigations, and have the authority to issue enforceable sanctions for violations carried out or funded by UK-based corporations or investors. Please additionally provide information on whether and to what extent the State provides adequate legal aid to affected communities who seek to take legal actions in the UK against UK based companies or investors.
5. Please provide information on the timeline for the publication of secondary regulations in relation to the Environment Act (2020) and details relating to its enforcement mechanism. In particular, please provide information on whether the regulations will establish an independent mechanism to receive, investigate, and address complaints and grievances by rights-holders including indigenous and other forest peoples regarding violations of their human rights in the context of agri-commodity production.
6. Please provide information regarding any plans to develop a Human Rights Defenders Policy informed by consultations with rights-holders and civil society, building and expanding on the existing 2019 guidelines.
7. Please provide details of how the State is addressing and plans to address human rights abuses against indigenous women and girls in business operations and supply chains.
8. Please explain why the public registry of beneficial ownership is not extended to trusts and other legal entities in the State's Overseas Territories and Crown Dependencies and why the

⁴²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf (Page 14);

⁴³ General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities E/C.12/GC/24; General comment No. 26 (2022) on Land and Economic, Social and Cultural Rights E/C.12/GC/26

States's Crown Dependencies and Overseas Territories have not been required to introduce public registries of beneficial ownership for companies, trusts and other legal entities.

III. Denial of collective rights

20. In its inputs to this Committee on the then draft general comment (No. 26) on land and economic, social, and cultural rights, the State noted that "With the exception of the right of self-determination, we therefore do not accept the concept of collective human rights in international law..."⁴⁴ The State has previously explained on the adoption of UNDRIP⁴⁵ and in subsequent UN meetings that

[T]he UK does not accept that some groups in society should benefit from human rights that are not available to others... It is [a position] we consider to be important in ensuring that individuals within groups are not left vulnerable or unprotected by allowing the rights of the group to supersede the human rights of the individual. This position is without prejudice to the UK's recognition of the fact that the governments of many states with indigenous populations have granted them various collective rights in their constitutions, national laws, and agreements. We welcome the fact that this has served to strengthen the political and economic position of, and protections for indigenous peoples in those states.

The UK therefore understands any internationally-agreed reference to the rights of indigenous peoples, including those in the UN Declaration on the Rights of Indigenous Peoples, to refer to those rights bestowed at the national level by governments to indigenous peoples and according to the above position on human rights and collective rights.⁴⁶

21. This position on collective rights runs counter to this Committee's longstanding recognition of the existence and importance of collective rights, and is problematic in that it: a) subordinates indigenous peoples' internationally recognized collective rights to national legislation and thereby renders them vulnerable to non-recognition and violation (a particular problem in the context of supply chains where national legislation does not adequately recognize indigenous peoples' rights); b) assumes that the recognition of collective rights is incompatible with the protection of individual rights, rather than being necessary for the realization of the latter in the case of individuals belonging to indigenous peoples, and c) fails to recognize that, as explained by CERD, "The notion of inadmissible "separate rights" must be distinguished from rights accepted and recognized by the international community to secure the existence and identity of groups such as minorities,

⁴⁴ Committee on Economic, Social and Cultural Rights: Draft General Comment on Land and Economic, Social and Cultural Rights: Comments of the Government of the United Kingdom of Great Britain and Northern Ireland, Input No. 51, para. 16.

⁴⁵ " General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major Step Forward' towards Human Rights for All, Says President", GA/10612, 13 September 2007, available at <https://press.un.org/en/2007/ga10612.doc.htm>.

⁴⁶ "UK EoP UNGA76: Human rights and indigenous peoples", UK Explanation of Position on resolution on "Rights of indigenous peoples" at UNGA76, available at https://estatemts.unmeetings.org/estatemts/11.0030/20211112/a3UkguFTYXna/4toVnNoEs69N_en.pdf

indigenous peoples and other categories of person whose rights are similarly accepted and recognized within the framework of universal human rights."⁴⁷

22. The notion that collective rights render the rights of individuals within groups vulnerable has been rejected by all human rights bodies. This is reflected in CEDAW's General Recommendation No. 39 (2022) on Indigenous Women and Girls which affirms that respect for both the individual and collective dimension of their human rights is essential with the violation of either constituting discrimination against Indigenous women, girls and their communities given that "collective rights are indispensable for the existence, well-being and integral development of Indigenous Peoples, including Indigenous women and girls".⁴⁸

FPP recommends that the Committee ask the State:

1. Please explain how the State will ensure that its actions (and the actions of business entities domiciled in the State with operations overseas) will avoid causing or contributing to violations of indigenous peoples' rights and discrimination against them if the State fails to acknowledge and ensure respect for the collective dimensions of their internationally recognized rights.
2. Please explain the State's position that it supports the UNDRIP while rejecting all the collective rights (with the exception of self-determination) that it affirms.³⁵ In so doing, please also clarify:
 - a. why it opposes the international consensus on the collective rights of indigenous peoples, some of which are recognized as having reached the status of customary international law, and how it reconciles this with its practice before the UPR of asking States about their implementation of collective rights of indigenous peoples,
 - b. why it assumes that recognizing collective rights of indigenous peoples would leave individual members of indigenous peoples vulnerable or unprotected, when the UNDRIP and international human rights law more generally affirms both sets of rights as fundamental to self-determination and non-discrimination, and indigenous individuals themselves strongly advocate for respect for their collective rights as the basis for the cultural and physical survival of their people, and
 - c. if it acknowledges that recognition of indigenous peoples' collective territorial and self-governance rights has been demonstrated to be the most effective way of protecting global biodiversity and forests.

⁴⁷ General Recommendation no. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination para 26

⁴⁸ General recommendation No.39 (2022) on the rights of Indigenous women and Girls CEDAW/C/GC/39