



Fifth Submission by the International Corporate Accountability Roundtable (ICAR) to the Open-ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights (OEIGW)

30 JUNE 2015

The International Corporate Accountability Roundtable (ICAR) is a coalition of non-profit organizations that create, promote, and defend legal frameworks to ensure corporations respect human rights in their global operations.

In this, our fifth submission to the OEIWG, we call on the Working Group to:

Incorporate clear standards for human rights due diligence and harmonize emerging international approaches.

While due diligence requirements cannot replace effective redress mechanisms, they are crucial tools to identify, prevent, mitigate, and assess a business enterprise's respect for human rights.¹ Implementing due diligence mechanisms to protect human rights is an emerging trend, and many States have begun to impose legal obligations on business enterprises, their managers, agents, partners, or contractors to detect and prevent harm to workers and the public.² Recently, the French National Assembly approved a bill that would require large business enterprises to develop and publish due diligence plans for human rights, environmental, and social risks – with fines of up to 10 million euros if a company fails to do so.³ The Swiss Coalition for Corporate Justice is currently leading an effort to enforce similar standards through binding public referendum after a proposal to mandate human rights and environmental due diligence in Switzerland was narrowly defeated by Parliament.⁴ While unilateral initiatives within States serve as crucial models, ICAR urges the OEIWG to ensure policy coherence by designing a binding instrument that incorporates clear standards for human rights due diligence and harmonizes emerging international approaches.

Work with States to develop modes of human rights due diligence requirements grouped along the following themes:

Securities Laws

- Securities laws are an effective mechanism for due diligence, as demonstrated by financial performance reporting requirements in Canada⁵ and conflict mineral reporting requirements in the United States.⁶ These

¹ OLIVIER DE SCHUTTER ET AL, HUMAN RIGHTS DUE DILIGENCE: THE ROLE OF STATES (2012), <http://icar.ngo/wp-content/uploads/2012/12/Human-Rights-Due-Diligence-The-Role-of-States.pdf>.

² Id. at 50.

³ National Assembly of France, Proposed Law, adopted text no. 501, 30 March 2015, accessible at <http://www.assemblee-nationale.fr/14/ta/ta0501.asp>.

⁴ *Conservative backlash blocks increased corporate accountability*, SWISS COALITION FOR CORPORATE JUSTICE (Mar. 13, 2015), http://www.corporatejustice.ch/media/medialibrary/2015/03/150311_sccj_press_release_-_swiss_vote_on_mandatory_human_rights_due_diligence.pdf.

⁵ Canada Business Corporations Act, R.S.C. 1985, c. C-44, § 155(1).

⁶ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

transparency and disclosure standards – which require businesses to publish or disclose their due diligence policies and practices, including human rights risks that have been identified and the prevention and mitigation steps taken to address such risks – are essential to an effective due diligence framework.⁷ At a minimum, companies should be required to disclose the information necessary for regulators, investors, consumers, and other stakeholders to assess business respect for human rights and take appropriate action.

Conditioned Benefits

- The UN Guiding Principles on Business and Human Rights indicate that a State's duty to protect people against human rights abuses by business actors is most compelling when governments "contract out" public services during public procurement, thereby establishing a commercial relationship.⁸ Public procurement schemes at all levels should require companies to demonstrate compliance with universally recognized human rights due diligence standards, provided compliance assessments are conducted in an objective and impartial manner to avoid unjustified discrimination.

Investment

- Like public procurement, State investments are government-established commercial relationships, making the State's duty to protect against human rights abuses similarly compelling. In practice, human rights due diligence can be embedded in these processes by making the approval of licenses and permits for specific projects or business activity contingent on meeting established standards. For example, environmental impact assessments should integrate human rights considerations. States should also be encouraged to grant trade preferences in part on requiring businesses to be able to show compliance with specified and universally recognized due diligence standards.

ICAR urges OEIWG to use its opportunity to pursue agreement on **common human rights standards and due diligence processes**, ensure policy coherence by **harmonizing international approaches**, and focus on **securities laws, conditioned benefits, and investment** as vehicles for embedding due diligence principles in State action.

Sincerely,



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⁷ ICAR Due Diligence Report, *supra* note 1, at 43.

⁸ UN SRSG, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy Framework', Annex, UN Doc. A/HRC/17/31 (21 March 2011), available at <http://business-humanrights.org/en/un-guiding-principles/text-of-the-un-guiding-principles>.