



International Corporate Accountability Roundtable

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The International Corporate Accountability Roundtable is a coalition of leading human rights, environmental and development groups working to promote robust frameworks for corporate accountability, strengthen current measures and to defend existing laws, policies and legal precedents. Our Steering Committee includes Amnesty International, EarthRights International, Global Witness, Human Rights First and Human Rights Watch.

We offer these statements to express our concerns and recommendations to the European Commission as it carries forth projects on business and human rights under the Commission's "A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility."¹ As part of this strategy, the Commission announced a partnership with the Shift Project and the Institute for Business and Human Rights to develop sector-specific guidance in three sectors: employment and recruitment agencies, information and communication technologies, and oil and gas.² The Commission has also announced a partnership with Global CSR and Bernard Brunhes International to produce human rights risk-mapping for small and medium enterprises (SMEs), case studies and a practical guide on human rights for small businesses.³

While we welcome the initiative of the Commission to bring increased clarity to these concepts, we communicate the following considerations which pertain directly to the processes used to develop the guidance, the means to ensure that states are meeting their duty to protect human rights, or both:

The guidance should be based on extensive input and consultation with stakeholders, including civil society members and individuals and communities impacted by the business activity in question.

We understand that a consultation process is occurring in order to produce the proposed guidance. We encourage the Commission to ensure that there is wide outreach to and substantive engagement with civil society groups and impacted communities in the development of its guidance, including from regions beyond the EU. Because business activity impacts communities around the world, guidance should take into account the impacts of this activity on the ground and be framed as addressing human rights related risks that exist. As such, we encourage broad consultations with civil society and communities impacted by business activity to ensure that the guidelines properly address such impacts.

The guidance should be based on the most protective human rights standards.

It is important that the guidance fully reflects the critical importance of business respecting all human rights standards. The guidance should clarify and supplement the United Nations Guiding Principles⁴ to

¹ http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf

² http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=5752&lang=en

³ http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=5695

⁴ Human Rights Council, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc. A/HRC/17/31 (Mar. 21, 2011) (advance edited

ensure businesses are guided by comprehensive human rights norms that are fully consistent with international standards. In particular, care should be taken not to promote standards that are lower or narrower than those contained in international human rights instruments.

The guidance should consider the extraterritorial impacts of corporate activity on human rights.

We believe the guidance should consider the transnational impacts of corporate activity on human rights. We point to the OECD Guidelines on Multinational Enterprises, which clarify: “enterprises, regardless of their size, sector, operational context, ownership and structure, should respect human rights wherever they operate.”⁵ We also point to the Maastricht Principles on the Extraterritorial Obligations of States (ETO Principles),⁶ which provide useful interpretative support to clarify the obligations of states in relation to business activity that extends beyond national borders. We would draw particular attention to their articulation of the state “obligation to regulate”⁷ non-State actors, including business enterprises “where the corporation, or its parent or controlling company, has its center of activity, is registered or domiciled, or has its place of business or substantial business activities, in the State concerned.”⁸ Importantly, the ETO Principles also note that states “must ensure the availability of effective mechanisms to provide for accountability in the discharge of their extraterritorial obligation,”⁹ as well as effective remedies and reparation, including in cases when the harmful conduct occurred in a different state from where the alleged violation took place.

The guidance should include robust oversight and monitoring mechanisms.

Any effective due diligence process requires accountability mechanisms to act as a deterrent against errant behavior, and to proactively ensure compliance by business actors. We would therefore expect that any guidance on due diligence include recommendations for when it is appropriate to employ independent third-party monitoring and verification programs, and that due diligence practices should be disclosed publicly and transparently.

The guidance should fully uphold victims’ rights to remedy for human rights violations.

We believe that any guidance to be issued by the Commission should recognize the need for recourse, including through legal remedies, when harm occurs. Due diligence measures serve a valuable purpose as a means for companies to understand and address human rights related risks. They should not, however, be offered as means to evade liability. Where harm occurs, businesses must be responsive to provide a remedy and cooperate with complaints processes, including judicial processes, as appropriate. The right to remedy must be upheld, irrespective of whether due diligence processes were followed in a situation that results in harm.

edition) *available at* <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>.

⁵ OECD, OECD Guidelines for Multinational Enterprises, 2011 Edition (2011) ¶ 37, *available at* <http://www.oecd.org/dataoecd/43/29/48004323.pdf>.

⁶ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (Oct. 17, 2011), *available at* <http://www.icj.org/dwn/database/Maastricht%20ETO%20Principles%20-%20FINAL.pdf>.

⁷ *Id.* ¶ 24.

⁸ *Id.* ¶ 25.

⁹ *Id.* ¶ 36.

The Commission should encourage member states to implement binding measures, such as through legislation or regulation, to ensure corporate respect for human rights, including mandating human rights due diligence by corporate actors.

To uphold the duty of states to protect human rights, states should impose binding requirements on business entities to carry out due diligence. An obligation to have strong, effective due diligence procedures is fundamental to ensure that human rights are respected in company actions both in the home territory and extraterritorially. States should also mandate independent monitoring in appropriate cases and public reporting of companies' human rights impacts to verify compliance. These requirements should cover all business relationships, including suppliers, contractors, security forces, business partners and recipients of financing.

Our organizations are currently involved in an extensive research project that seeks to bring clarity to the ways in which states can, by law and regulation, require due diligence pertaining to human rights. This project, known as the "Human Rights Due Diligence Project," will conclude at year-end with the release of principles and commentary based on an extensive consultation process with legal experts from across the world. We believe that these principles will be instructive in showcasing the number of different policy options that states have to ensure human rights due diligence is conducted by corporate actors.

We reiterate our interest in the initiative undertaken by the European Commission in the "A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility" and trust that the concerns and suggestions we share above will be factored into the work to carry forward this strategy.