



**Second 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**

**30 June 2015**

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

In this, our second submission to the Open-Ended Intergovernmental Working Group (OEIWG) on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, we call on the OEIWG to:

***Recognize and require the extraterritorial application of domestic laws imposing a duty of due diligence to prevent business-related human rights abuses.***

Corporations and other business enterprises structure their commercial relationships to avoid compliance with and liability under domestic regimes governing due diligence activities. The responsibility to conduct due diligence does not, however, end at domestic boundaries.<sup>1</sup> Many States have already imposed legal obligations on business enterprises and their managers, agents, partners, or contractors with respect to detecting and preventing harm to workers and the public, including those entities and individuals operating outside the enterprise's home State.<sup>2</sup> ICAR urges the OEIWG to design a binding instrument that reflects the reality of an integrated global economy—one that recognizes and requires the extraterritorial application of due diligence requirements in order to reach all of the actors that form a part of an enterprise's value chain.

***Encourage the exercise of extraterritorial jurisdiction by States to ensure that victims of business-related human rights abuses have access to an effective remedy in businesses' host and home States.***

The UN Guiding Principles on Business and Human Rights call for effective access to remedy for corporate abuses without distinguishing between crimes in host and home States. Nonetheless, States remain reluctant to promote access to judicial remedies for victims of cross border crimes. As part of the preparatory work for its accountability and remedy project, the Office of the High Commissioner for Human Rights (OHCHR) reviewed State interventions related to assertions of extraterritorial jurisdiction by United States courts in Alien Tort Statute (ATS) cases and

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<sup>1</sup> 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>.

<sup>2</sup> *Id.* at 50.

surveyed key provisions and State practice under selected International Labour Organization (ILO) instruments.<sup>3</sup> The ILO study confirmed that, even where extraterritorial jurisdiction is available to States as a tool and its use for combating serious human rights abuse is encouraged, States rarely employ it.<sup>4</sup> The ATS litigation study found that States only occasionally encourage the exercise of extraterritorial jurisdiction and under no circumstances consider it to be required.<sup>5</sup>

There is a persistent gap between what international and domestic legal authority permits States to do and what they are willing to do in practice. OEIWG has an opportunity to close this gap by: (1) addressing States' and businesses' long-standing concerns surrounding the enhanced use of extraterritoriality, such as jurisdictional overreach, comity, and increased financial and administrative burdens on home State judicial systems; (2) identifying the situations in which States have a legal obligation to apply their laws extraterritorially; and (3) distilling principles that can be incorporated into an international binding instrument.

Cross border business activities have become the norm for a growing number of economic actors. ICAR urges the OEIWG to develop an international binding instrument that encourages the use of **extraterritorial jurisdiction to prevent and remediate** business-related human rights abuses.

Sincerely,



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Director

International Corporate Accountability Roundtable

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<sup>3</sup> UN Office of the High Commissioner, *Progress report of the United Nations High Commissioner for Human Rights on legal options and practical measures to improve access to remedy for victims of business-related human rights abuses*, U.N. Doc. A/HRC/29/39, at 10-11 (May 7, 2015).

<sup>4</sup> *Id.* at 13.

<sup>5</sup> *Id.* at 12.