



Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (OEIWG)

Remarks by the International Corporate Accountability Roundtable (ICAR), Uganda Consortium on Corporate Accountability (UCCA), and the Initiative for Social and Economic Rights (ISER)

Geneva, 26 October 2017

Mr. Chairperson-Rapporteur,

The International Corporate Accountability Roundtable (ICAR), Uganda Consortium on Corporate Accountability (UCCA), and the Initiative for Social and Economic Rights (ISER) would first like to congratulate you on your election, and thank the Ecuadorian mission for its leadership throughout the course of the past two OEIWG sessions.

ICAR, UCCA, and ISER would like to stress the complementarity of the ongoing treaty process and the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) through the creation of National Action Plans (NAPs) on business and human rights. We echo the comments of both the UN High Commissioner for Human Rights and then-Ambassador María Fernanda Espinosa Garcés, Chair-Rapporteur at the opening of the first session of the OEIWG on 6 July 2015, who both expressed that the intergovernmental process was a complementary step not in conflict or competition with continued advocacy for and implementation of the UNGPs, including in the form of NAPs.ⁱ

The ongoing treaty process should not be seen as undermining the implementation of the UNGPs through NAPs, nor should a State's creation and implementation of a NAP excuse it from participating in the treaty negotiations. Efforts to develop and implement NAPs and the treaty process are not in competition; rather, they can be seen as strongly benefiting and reinforcing one another.ⁱⁱ

NAPs provide a critical framework for the promulgation of national laws, regulations, and policies integral to a State's fulfillment of its duty to protect human rights from business-related harm. The process of creating a NAP, including the creation of a National Baseline Assessment (NBA)—an in-depth study of the current state of implementation of the UNGPs which seeks to identify gaps in existing law, policy, and regulation, and their implementation—and multi-stakeholder consultations, provides key insight into how businesses are negatively impacting

human rights and elucidate existing protection gaps. This information can be used to inform the content and scope of the treaty.

NAPs processes can lead to increased stakeholder capacity and knowledge about business and human rights issues, not only across government, but also across non-governmental stakeholders, further helping to facilitate the participation of a broad range of stakeholders in the treaty negotiations. In addition, dialogue around the treaty may foster new or strengthened relationships between business and human rights stakeholders from across the globe, as well as strengthen already existing networks of business and human rights stakeholder in a way that will foster collaboration on efforts to implement the UNGPs.

Finally, when a treaty is created, States that have conducted NAPs processes will be better equipped to identify which domestic reforms are necessary to become treaty-compliant.

To briefly conclude, rather than viewing these two efforts to be in opposition, States should leverage the opportunities provided by engaging in each to further progress in the other.

ⁱ See, opening statements of Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights and Ambassador María Fernanda Espinosa Garcés, Permanent Representative of Ecuador to the UN in Geneva. UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *OEIWG 'First Session-Oral Statements and Presentations,' available at* <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session1/Pages/Session1.aspx> (last visited Oct. 26, 2017).

ⁱⁱ Sara Blackwell & Nicole Vander Meulen, *Two Roads Converged: The Mutual Complementarity of Binding Business & Human Rights Treaty and National Action Plans on Business and Human Rights*, 6 NOTRE DAME J. OF INT'L & COMP. L. 51 (2016).