

Submission to Employment and Social Development Canada’s Consultation on Labour Exploitation in Global Supply Chains

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Introduction

The Government of Canada has committed to introducing legislation to address forced labour and other human rights abuses in Canadian global supply chains. As a supplement to its 2019 stakeholder consultation, the Government of Canada has requested additional input on five key elements of possible Canadian supply chain legislation.

The Canadian Network on Corporate Accountability (CNCA) and its members have already provided extensive input on these and related issues, and in 2021 released a complete model law for the Government of Canada to use as a blueprint for such legislation.

Below you will find our comments on the government’s five key elements. Further below is an annex of selected publications and input from CNCA and CNCA member organizations produced in the last five years.

About the CNCA

Our network unites 40 human rights, labour, international development, environmental and faith-based organizations from across Canada that collectively represent the voices of millions of Canadians. Together we call for Canadian law and policy reform to ensure that impacted communities can access remedy in Canada if they are harmed by Canadian business activity abroad or by practices in Canadian supply chains; Canadian companies¹ respect human rights in their global operations; and, if they are involved in abuses abroad, Canadian companies face real consequences in Canada. A link to our member list is in the Annex.

Many of our members have decades-long relationships with people who have been negatively affected by Canadian businesses overseas, especially in the extractive sector. We are subject matter experts on corporate accountability and on business and human rights. Examples of our members' work to put an end to forced labour include Above Ground's 2021 [report](#) *Creating Consequences: Canada's Moment to Act on Forced Labour*; the 2020 [report](#) by the Centre international de solidarité ouvrière on preventing forced labour in Canadian food supply chains; submissions by the [Canadian Labour Congress](#), [Amnesty International Canada](#) and [Human Rights Watch Canada](#) to the House of Commons Subcommittee on International Human Rights' 2017 study on child labour and modern slavery; and CNCA member interventions in the Supreme Court of Canada case involving Canadian company Nevsun Resources' links to forced labour in Eritrea (see, for example, [here](#) and [here](#)).

The CNCA's reform proposals focus on preventing and remedying corporate abuse that occurs outside of Canada. Nonetheless, we recognize that business-related abuse occurs both within and beyond our borders, and that impacted people in Canada also face challenges in preventing harms and accessing remedy. This is particularly true for First Nations communities, environmental defenders and migrant workers. Our proposals are limited by the division of powers in Canada: law and policy reform aimed at the abuses of Canadian companies abroad is the jurisdiction of the federal government, whereas regulating Canadian companies operating inside Canada is generally the jurisdiction of the provinces.

Why Canada needs mandatory human rights and environmental due diligence

Far too often, Canadian companies operating abroad fail to deliver on their responsibility to respect human rights and protect the environment. Ten years after the unanimous endorsement of the United Nations [Guiding Principles on Business and Human Rights](#) (UNGPs), there continue to be widespread reports of serious human rights abuses and environmental damage linked to the overseas activities of Canadian companies and supply chains.²

¹ Canadian companies include those that are incorporated in Canada, have a place of business in Canada, or sell goods or services and have either a physical presence or otherwise carry out business in a jurisdiction in Canada.

² For example, in 2016 the Justice and Corporate Accountability Project at Osgoode Hall Law School published the report *The 'Canada Brand': Violence and Canadian Mining Companies in Latin America*. The report found that from 2000 to 2015, in only 13 Latin American countries, 28 different mining companies associated with

Communities and workers who suffer harm are often unable to access justice and remedy. Human rights and environmental defenders who stand up to powerful corporations frequently face violence, intimidation or criminalization.³ The risks and vulnerabilities they face have worsened with the global COVID-19 health crisis.⁴ The gendered and racialized impacts of these harms are well-documented.

While Canadian companies have a responsibility to respect human rights, they can often avoid fulfilling that responsibility because binding rules do not exist, are not enforced, or because companies structure their global operations to avoid liability.⁵ Mandatory human rights and environmental due diligence legislation would change that.

To date, Canada has relied almost exclusively on voluntary approaches to prevent, address and remedy serious harms. Voluntary approaches, in Canada and elsewhere, have proven on their own to be ineffective at curbing corporate abuse.⁶ Employment and Social Development

over 1,000 human rights violations, including:

- 44 deaths related to opposition to mining projects;
- 403 injuries, of which 363 were sustained during protests; and
- 709 cases of criminalization of human rights and community groups, including arbitrary use of legal complaints, arrests, detentions and charges.

The full report, which describes this stats as the “tip of the iceberg”, is available at: <https://justice-project.org/the-canada-brand-violence-and-canadian-mining-companies-in-latin-america/>

³ For example, Global Witness [recorded](#) that 227 land and environmental defenders were killed in 2020 – an average of more than four people a week. Over a third of the incidents were linked to natural resource extraction.

⁴ For more on why building back better requires action on corporate accountability, see CNCA’s 2020 letter to Minister Ng [here](#). For examples of the increased impact on the women who make our clothes see [here](#), and on those working or impacted by the mining sector see [here](#).

⁵ This can be done by outsourcing production, using complex supply chains and subsidiaries, or turning a blind eye to the human rights practices of their business relationships. Worse still, some companies use their influence to ensure that laws that would protect human rights and the environment are not passed, are watered down, or are not enforced. No Canadian legislation currently articulates a company’s obligation to avoid, address and prevent human rights abuse. Furthermore, barriers continue to exist for foreign plaintiffs seeking to access Canadian courts.

⁶ For example:

A 2020 [study](#) commissioned by the European Commission established that voluntary measures have had only a limited impact.

A 2022 report by Know the Chain “exposes the **glacial rate of progress on due diligence** by the world’s largest companies over the last five years. On average, the 129 companies benchmarked by KnowTheChain score a mere **29%** for their human rights due diligence efforts. Key findings include:

- Over a third of benchmarked companies (36%) do not show any evidence they are **assessing human rights risk** in their supply chains.
- Four out of five provide no evidence they are adopting **responsible purchasing practices** to mitigate the risk of forced labour in their supply chains.

A [2021 Responsible Mining Foundation report](#) highlights that “the vast majority of companies assessed in the RMI Report 2020 show no evidence of translating their corporate commitments into [action](#) plans, thorough due diligence processes, and tracking the effectiveness of implementation. On average the set of large mining companies assessed in the RMI Report 2020 achieve a low 19% score on human rights-related issues.”

Finally, a 2015 report [Remedy Remains Rare](#) analyzes 15 years of NCP cases and outlines the failure of the NCP system to provide relief for victims of corporate misconduct.

Canada's 2022 report [Labour Exploitation in Global Supply Chains: What We Heard Report](#) makes reference to several voluntary initiatives that are "relevant to tackling labour exploitation in global supply chains." None of the initiatives reduce the need for Canada to introduce comprehensive human rights and environmental due diligence legislation. Shortcomings in some of the listed initiatives are outlined in the following CNCA and member documents on:

- the introduction of the [ban on the importation of goods produced with forced labour](#)⁷
- [Canada's National Contact Point for Responsible Business Conduct](#) for the Organization for Economic Co-operation and Development
- [Canadian Ombudsperson for Responsible Enterprise](#)⁸, and
- The renewed [Responsible Business Conduct \(RBC\) Strategy](#) for Canadian companies

Input on the Government of Canada's five key elements

Element 1: Scope

The scope of Canadian supply chain legislation should cover all human rights and not be limited to forced labour.

Canada's supply chain legislation should not be limited in scope to a specific human right. The legislation should articulate companies' responsibility to respect all human rights. Human rights should be defined in the legislation by reference to internationally-recognized human rights instruments. These include the nine core international human rights treaties⁹, the eight core international labour conventions¹⁰ and the United Nations Declaration on the Rights of Indigenous Peoples. Furthermore, the legislation should make specific reference to the human right to a healthy, safe and sustainable environment.

⁷ See also CNCA's submission to the Senate at page 5, available at: <https://cnca-rcrce.ca/2022/03/31/cnca-submission-to-the-senate-human-rights-committee-on-bill-s-211/>

⁸ Our analysis of the serious deficiencies of the CORE's mandate are available [here](#) and [here](#). The Government of Canada's own external expert report confirming the need for the CORE to have the power to compel is available [here](#).

⁹ These are: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from Enforced Disappearance.

¹⁰ These are: the Freedom of Association and Protection of the Right to Organise Convention 1948, the Right to Organise and Collective Bargaining Convention 1949, the Forced Labour Convention 1930, the Abolition of Forced Labour Convention 1957, the Minimum Age Convention 1973, the Worst Forms of Child Labour Convention 1999, the Equal Remuneration Convention 1951, and the Discrimination (Employment and Occupation) Convention 1958.

Forced labour cannot be looked at in isolation. The UNGPs clearly stipulate that human rights are interrelated, interdependent and indivisible. It is impossible to effectively prevent forced labour, without also protecting other human rights, like the right to non-discrimination or to organize collectively. The violation of one right often contributes to the violation of another.

While it is vital that Canada take action to address forced labour, our actions should not exclude other prevalent human rights violations. Allegations of sexual violence, bodily harm and killings linked to the operations of Canadian mining companies are widespread and several lawsuits have been filed in Canadian courts.¹¹ The collapse of the Rana Plaza garment factory in Bangladesh killed 1,132 people and brought to light the occupational health and safety violations that injure and kill workers on a daily basis. Several Canadian brands sourced from the factory.¹²

Legislation that covers all human rights would be consistent with emerging international best practice. For example, the French, German and Norwegian laws, as well as the Dutch, Austrian and Belgian law proposals, all apply to human rights broadly and are not limited to forced labour.¹³ Importantly, there are several examples of countries with laws focused solely on modern slavery or child labour that are now expanding to these laws to include other rights. This is the case in the Netherlands, where the Dutch Foreign Trade and Development Minister announced that the Dutch government will propose a national law on mandatory human rights and environmental due diligence to replace its child labour due diligence law. It is also the case in the UK, where there is active campaign which has been [endorsed by nearly 40 companies and investors](#) including Microsoft, Nestlé and Unilever, calls for a UK mandatory human rights due diligence law, a tacit acknowledgement that the UK modern slavery reporting law is inadequate. In his March 28, 2022 testimony at the Senate Standing Committee on Human Rights, Surya Deva of the United Nations Working Group on Business and Human Rights confirmed this would also be necessary for Canada's supply chain law to be consistent with the UNGPs.¹⁴

This approach would also be consistent with the Canadian Minister of Labour's [mandate letter](#) which directs the minister to "introduce *legislation* to eradicate *forced labour* from Canadian supply chains *and* ensure that Canadian businesses operating abroad do not contribute to *human rights abuses*." (emphasis added)

Finally, this approach is consistent with Canada's feminist foreign policy goals. A country's foreign policy is not limited to the actions of state institutions, such as its embassies and armed forces. The international operations and business dealings of Canadian companies have a

¹¹ For more on this see https://aboveground.ngo/wp-content/uploads/2021/02/Cases_12Jan2021.pdf.

¹² For more on links to Canadian brands see: <https://www.business-humanrights.org/en/latest-news/what-have-canadian-firms-done-since-rana-plaza/>

¹³ The European Coalition on Corporate Justice's comparative chart of mHREDD laws in Europe is available at: <https://corporatejustice.org/wp-content/uploads/2022/03/Corporate-due-diligence-laws-and-legislative-proposals-in-Europe-March-2022.pdf>

¹⁴ https://www.ohchr.org/sites/default/files/2022-03/Statement_Bill_S211_Deva.pdf

significant impact on Canada's efforts to advance its interests and feminist values in the world. Canada's mining sector is active in at least 100 countries, and Canadian retailers and manufacturers import apparel, footwear and other consumer products from every continent, from a workforce largely dominated by women. Without proper oversight of private sector activities and incentives to advance gender equality throughout global operations, the Canadian government risks policy incoherence, dissonance and sets back its feminist foreign policy objectives.

Addressing corporate abuse is a feminist issue

Canadian companies are heavily invested in Peru's mining and oil and gas sectors. However, research¹⁵ by Oxfam and the national Indigenous women's organization of Peru, ONAMIAP, reveals that Indigenous women are often excluded from important decisions over natural resources that affect their lives and rights. Canada's reliance on voluntary corporate social responsibility measures have proven ineffective and contrary to the advancement of feminist natural resource governance internationally.¹⁶ Women's rights organizations and land defenders are also too often excluded or marginalized and in the worst cases, face grave risks and threats to their lives or those of their family members and colleagues for their work.

The purchasing practices of Canadian and global fashion brands are also important to consider. Unfair purchasing practices such as aggressive price negotiations on cost and schedules have a direct and disproportionate impact on women by keeping wages low and forcing factories to cut corners therefore placing workers at risk.¹⁷ High impact sectors must identify all risks, especially those where adverse impacts are highest, where marginalized groups, such as women, are most present, such as the garment sector, and where the need for intervention is greatest.

Furthermore, beyond Canada's self-declared goal of applying feminist approaches to policy and governance, Canada has international human rights obligations, such as before the UN Committee on the Elimination of Discrimination against Women (CEDAW). During Canada's most recent review, experts charged that Canada has been supporting and financing mining companies facing allegations of links to discrimination,

¹⁵ [ONAMIAP. \(2018\). *Consulta Previa: una demanda de las mujeres indígenas del Perú*. <http://onamiap.org/wp-content/uploads/2019/01/CP-Una-demanda-de-las-Mujeres-indigenas.pdf>](http://onamiap.org/wp-content/uploads/2019/01/CP-Una-demanda-de-las-Mujeres-indigenas.pdf)

¹⁶ [Oxfam, et al. \(2020\). *Articulating Feminist Natural Resource Governance to Herald a Just Transition*. \[https://www.pwyp.org/wp-content/uploads/2020/10/ENDORSED_Feminist-Natural-Resource-Governance-Agenda-for-the-Action-Coalition-on-Economic-Justice.pdf\]\(https://www.pwyp.org/wp-content/uploads/2020/10/ENDORSED_Feminist-Natural-Resource-Governance-Agenda-for-the-Action-Coalition-on-Economic-Justice.pdf\)](https://www.pwyp.org/wp-content/uploads/2020/10/ENDORSED_Feminist-Natural-Resource-Governance-Agenda-for-the-Action-Coalition-on-Economic-Justice.pdf)

¹⁷ For more on this see Oxfam Australia's Report on the impact of purchasing practices on women workers in Bangladesh: <https://www.oxfam.org.au/shoppingforabargain/>.

rape and violence against women in their operations abroad.¹⁸ The CEDAW 8th and 9th periodic reports concluded that Canada must strengthen legislation to ensure Canadian corporations operating abroad do not negatively impact women’s human rights and undertake gender based impact assessments, facilitate access to remedy and justice and ensure primacy of human rights over investor interests.¹⁹

Element 2: Type of requirement

Canadian supply chain legislation should require companies to prevent human rights and environmental harms and to undertake due diligence. Legislation that only requires company reporting is inadequate.

“Public disclosure is critical, but on its own it is not sufficient to drive meaningful, broad and lasting change, as evidenced from other jurisdictions.”

- 2019 Canadian Civil Society [Consensus Starting Points](#)

→ Experience shows that legislation centred on reporting fails to curb abuse

The UK’s 2015 *Modern Slavery Act*, which centers on reporting requirements, failed in its objective to protect victims of forced labour. When it closed its [Modern Slavery Registry](#) in 2020, the Business & Human Rights Resource Centre reported on the impact of five years of company reporting under the UK Act. The registry “revealed no significant improvements in companies’ policies or practice,” and that the Act had “failed to be an effective driver of corporate action to end forced labour, even in high-risk sectors and regions.”²⁰

Similarly, Australia’s 2019 *Commonwealth Modern Slavery Act* established a national Modern Slavery Reporting Requirement. The 2022 Human Rights Law Centre’s report [Paper Promises? Evaluating the Early Impact of Australia’s Modern Slavery Act](#) provides an in-depth review of the first modern slavery reports published by 102 Australian companies sourcing from four sectors with known modern slavery risks and found that:

- 77% of companies failed to comply with the mandatory reporting requirements;
- 52% of companies failed to identify obvious modern slavery risks in their operations or supply chains; and
- a mere 27% of companies appear to be taking any effective action to address modern

¹⁸ For example, see MiningWatch Canada’s submission: <https://miningwatch.ca/news/2016/10/4/report-un-committee-canada-complicit-mining-companies-pervasive-abuses-against-women>

¹⁹ These reports are available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCAN%2f8-9&Lang=en

²⁰ For more see: <https://www.business-humanrights.org/en/from-us/media-centre/six-years-on-modern-slavery-act-failed-to-tackle-forced-labour/>

slavery risks.²¹

Requiring companies to report, but not requiring them to undertake due diligence nor provide access to remedy to impacted communities is also inconsistent with the UNGPs.²²

United Nations Working Group on the failure of modern slavery reporting laws

“ There is significant evidence that both (the Australian and UK modern slavery laws) have really failed to address this gross situation of modern slavery. There is plenty of evidence and research indicating that. So why should any country at this point of time in 2022 follow a very defective model of regulation when far superior models of regulation are emerging out of Europe in terms of comprehensive human rights due diligence. ”²³

→ It is long past time for Canada to require companies not to profit off of harms

It has been thirteen years since Canada introduced its first Corporate Social Responsibility Strategy, and ten years since the unanimous endorsement of the UNGPs, yet there continue to be widespread reports of serious human rights abuses and environmental damage linked to the overseas activities of Canadian companies and supply chains.

For at least a decade multiple UN bodies have been calling on Canada to act to address these harms. So has the Inter-American Commission on Human Rights, which has held special hearings on the impacts of Canadian mining companies in Latin America.²⁴ Canadian parliamentarians have heard from numerous people harmed by Canadian corporate abuse²⁵ and have issued important recommendations.²⁶ Furthermore, Latin American organizations and

²¹ <https://www.hrlc.org.au/reports/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act>

²² See for example the testimony of UN Working Group on Business and Human Rights member Surya Deva’s March 28, 2022 [statement](#) and testimony at the Senate Standing Committee on Human Rights.

²³ Surya Deva, UN Working Group on Business and Human Rights, March 28 2022 testimony at the Senate Standing Committee on Human Rights study on bill S 211. Free transcription from [video](#).

²⁴ <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=137&page=2>

²⁵ CNCA members have organized multiple speaking tours and MP meetings, and human rights defenders impacted by Canadian businesses have testified before numerous international human rights parliamentary subcommittees between [2005](#) and [2021](#).

²⁶ Many of the 2005 recommendations from the international human rights subcommittee found in this report <https://www.ourcommons.ca/DocumentViewer/en/38-1/FAAE/report-14> remain relevant today. This includes the recommendation to “Establish clear legal norms in Canada to ensure that Canadian companies and residents are held accountable when there is evidence of environmental and/or human rights violations associated with the activities of Canadian mining companies.” In 2020 and 2021, the subcommittee has [recommended](#) that Canada

partners have repeatedly called on Canada to move beyond voluntary measures to ensure their rights are respected.²⁷

To respond to serious human rights and environmental harms with anything short of a duty to prevent is unreasonable. Measures that require companies to report, without also requiring that they take steps to prevent harm, are patently inadequate.

→ **Comprehensive human rights and environmental due diligence legislation is the better path forward**

The CNCA recommends that Canada introduce legislation that will help to prevent, address, and remedy adverse human rights and environmental impacts connected to the business activities of Canadian companies abroad. The legislation should create an obligation on companies to prevent harm and to implement human rights due diligence procedures. It should also provide for liability – and access to remedy – if a company fails to fulfil those obligations. In May 2021 the CNCA published model legislation that provides Canadian lawmakers with a blueprint for writing into Canadian law precisely such legislation.²⁸ For the CNCA, strong legislation must:

1. establish a corporate duty to prevent adverse human rights impacts and environmental damage outside Canada, throughout their business relationships.

This means that a company would need to proactively ensure it is neither encouraging human rights abuse or environmental damage in its supply chains, nor turning a blind eye to negligent or harmful practices of its business relationships. Companies would no longer be able to avoid their responsibility to respect human rights by outsourcing, operating through subsidiaries or remaining wilfully blind to the human rights and environmental impacts of their supply chains.

As a result, companies would be required to ensure that they – along with their affiliates (e.g. controlled subsidiaries) – *avoid* causing adverse human rights and environmental impacts in their overseas operations. In addition, companies would be required to take steps to *prevent* adverse human rights and environmental impacts caused or contributed to by their business relationships (e.g. their subcontractors or suppliers). They would be required to address any impacts they failed to avoid or prevent.

2. establish a corporate duty to develop, implement, consult and report on adequate human rights and environmental due diligence procedures.

The purpose of human rights and environmental due diligence is to prevent and avoid adverse

introduce comprehensive mandatory human rights due diligence legislation, including in response to the [situation of the Uyghurs in Xinjiang](#).

²⁷ For some of these letters see: <https://cnca-rcrce.ca/campaigns/ombuds-power2investigate/calls-to-action-from-around-the-world/>

²⁸ The model legislation, *The Corporate Respect for Human Rights and the Environment Abroad Act (Corporate Respect for Human Rights Act)*, is available [here](#) and the executive summary [here](#).

human rights and environmental impacts. Canadian legislation should require companies to develop and implement adequate due diligence procedures, consult with rights-holders in the development and implementation of these procedures, and report annually. Companies should be required to develop and implement due diligence procedures with respect to their own activities, as well as with respect to their affiliates and business relationships.

Canadian legislation should make clear the minimum due diligence procedures that a company is required to undertake while also making reference to the extensive due diligence guidance that has been developed to assist companies in fulfilling their responsibilities.²⁹ The legislation could indicate that further direction may be articulated through regulations – such as with respect to auditing procedures; applicable standards applying to specific sectors, or to entities of particular sizes. The legislation should stipulate that the regulations will be subject to committee review in both Houses of Parliament.

Required minimum due diligence procedures should include:

- identifying and assessing real and potential adverse impacts;
- ceasing and remedying existing adverse impacts;
- mitigating risks of adverse impacts;
- monitoring the implementation and effectiveness of the measures adopted to address adverse human rights impacts;
- a mechanism to provide an alert to the entity of possible adverse effects on or risks to human rights; and
- documenting due diligence efforts.

→ **Corporate duty to prevent legislation will help Canada fulfil the UNGPs**

Canadian supply chain legislation that includes the elements proposed by the CNCA would help Canada fulfil its international human rights obligations.

For over a decade, Canadian companies have been expected to respect human rights throughout their global operations.³⁰ It is time for that expectation to be translated into an enforceable legal obligation. Transformation of the expectation that companies will voluntarily respect human rights and undertake due diligence into a binding obligation is not onerous for businesses. Those companies who are already taken steps to respect human rights will welcome such legislation. Those who are seeking to profit off of abuse may not, as effective legislation could mean an end to impunity for involvement in abuses.

The corporate responsibility to respect human rights is outlined in principle 13 of pillar 2 of the

²⁹ For example, from the United Nations and the OECD Guidelines for MNEs. Further, Canada's National Contact Point for the OECD Guidelines, Global Affairs Canada's Responsible Business Conduct Unit and the Canadian Ombudsperson for Responsible Enterprise are all tasked with supporting and advising companies regarding this guidance.

³⁰ See, for example, Canada's Corporate Social Responsibility Strategy at <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>.

UNGPs.

The UN Working Group explains the significance of the UNGPs and due diligence

“The unanimous endorsement of the Guiding Principles on Business and Human Rights by the United Nations Human Rights Council in 2011 represented a watershed moment in efforts to tackle adverse impacts on people resulting from globalization and business activity in all sectors. They provided, for the first time, a globally recognized and authoritative framework for the respective duties and responsibilities of Governments and business enterprises to prevent and address such impacts.

The UNGPs clarify that all business enterprises have an independent responsibility to respect human rights, and that in order to do so they are required to exercise human rights due diligence to identify, prevent, mitigate and account for how they address impacts on human rights.

Human rights due diligence is a way for enterprises to proactively manage potential and actual adverse human rights impacts with which they are involved. It involves four core components:

- (a) Identifying and assessing actual or potential adverse human rights impacts that the enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact;
- (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working; and
- (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place...

The prevention of adverse impacts on people is the main purpose of human rights due diligence. It concerns risks to people, not risks to business. It should be ongoing, as the risks to human rights may change over time; and be informed by meaningful stakeholder engagement, in particular with affected stakeholders, human rights defenders, trade unions and grassroots organizations. Risks to **human rights defenders** and other critical voices need to be considered.³¹

Due diligence is the primary expectation of behaviour for any business with respect to its responsibilities concerning the adverse impacts on human rights that it causes,

³¹ <https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx>

contributes to or to which it is directly linked ... (and) ... is therefore fundamental as a way of informing what any business enterprise should do to meet its responsibility to respect human rights. It goes well beyond the idea of doing no harm. The concept of corporate respect, as set forth in the Guiding Principles, requires proactive steps to prevent and address harmful impacts.³²

Element 3: Entities captured

Canadian companies of all sizes from all sectors should be required to respect human rights in their global operations. Any flexibilities for small businesses in low risk contexts should be outlined in regulations.

Internationally recognized guidelines, including the UNGPs and the OECD Guidelines for Multi-National Enterprises Due Diligence Guidance for Responsible Business Conduct (OECD Guidance for RBC) clearly stipulate that all companies, regardless of size, sector, or where the company operates, have a responsibility to respect human rights and to implement human rights due diligence.

For example, the OECD Guidance for RBC acknowledges the challenges that may be experienced by small and medium sized enterprises, while acknowledging their responsibilities: “the size or resource capacity of an enterprise does not change its responsibility to conduct due diligence commensurate with the risk, but may affect how an entity carries it out.”³³

The Government of Canada has an opportunity to demonstrate global leadership by establishing measures that capture companies of all sizes. Many European jurisdictions are advancing due diligence laws with thresholds that observers have criticised as too high. For example, the UN Working Group on Business and Human Rights recently criticised the threshold in the February 2022 draft European Union directive on corporate sustainability due diligence: “[T]he blanket exclusion of a large proportion of business entities, means that there is not as of yet a full ambition of levelling the playing field. To exclude key actors, and to not approach this in a way that will include all businesses within a foreseeable time, means that this endeavour becomes incomplete and may encourage other jurisdictions to follow suit.”³⁴

The Canadian context provides a further rationale for obligations to apply to companies of all sizes. More than 50% of mining companies in the world are headquartered in Canada. There are

³² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement>

³³ <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

³⁴ Remarks on behalf of the Working Group by UNWG member Anita Ramisastry, March 2 2022, available at <https://www.ohchr.org/sites/default/files/2022-03/20220302-WG-remarks.pdf>.

high risks of human rights and environmental harms associated with the mining sector.³⁵ Junior mining and exploration companies can be small operations, yet they can have significant impacts on rights-holders.³⁶ According to the UN's 2016 figures, extractive projects, including mining, generate by far the largest proportion of claims of business-related human rights violations against human rights defenders.³⁷

The CNCA recommends that Canadian supply chain legislation applies to:

- companies domiciled in Canada; and
- companies that sell goods or services in Canada if they also have a physical connection to Canada.

The CNCA further recommends that Canadian supply chain legislation should not have a size threshold. Instead, it could provide that regulations may exempt certain companies (based on revenue, number of employees or sector) from the application of the legislation. This approach, which relies on sector-specific size thresholds rather than a single size threshold, recognizes the particularities of the Canadian context, while also recognizing that it would be reasonable to exempt small businesses from some low-risk sectors from all or part of the law's application, without undermining the principle that all companies must respect human rights.

The CNCA does not recommend that Canada take a phased-in approach. Canadian companies have been receiving guidance on how to respect human rights for many years. Canadian offices have been mandated to provide guidance to companies operating outside Canada since 2000,³⁸ to Canadian extractive sector companies since at least 2009,³⁹ and to the garment sector since at least 2019.⁴⁰ Given the particular risks of harm in the mining sector, and the extensive government guidance and support to this sector, a phased-in approach to the legislation's application to that sector would be particularly difficult to justify.

³⁵ In his first interim report to the Commission on Human Rights, John Ruggie, then UN Special Representative on Human Rights and business, recognized that "The extractive sector is unique because no other has so enormous and intrusive a social and environmental footprint." <http://hrlibrary.umn.edu/business/RuggieReport2006.html>

³⁶ For example, the Due Process of Law Foundation's report on the impact of Canadian mining in Latin America highlights that there were more than 100 Canadian headquartered junior mining companies operating in Peru in 2012 and that those companies are often involved in exploration.

https://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf. Risks in the exploration phase are also highlighted here:

https://www.ihrb.org/uploads/reports/2013%2C_IHRB_Report%2C_Human_Rights_Risks_Responsibilities_of_Oil_Gas_Exploration_Companies_in_Kenya.pdf

³⁷ Michel Forst, Report of the Special Rapporteur on the situation of human rights defenders, 3 August 2016, p. 9. Available at: undocs.org/A/71/281.

³⁸ E.g. this is part of the mandate of the National Contact Point for the OECD which was established in Canada in 2000.

³⁹ Guidance to companies on mitigating risks and enhancing CSR performance are central features of Canada's CSR Strategy, which was first introduced in 2009 <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>.

⁴⁰ The Canadian Ombudsperson for Responsible Enterprise is also tasked with advising companies in the garment, mining, oil and gas sectors.

Element 4: Enforcement and governance

Canadian legislation should include meaningful consequences for companies that fail to prevent human rights violations and should help ensure access to remedy for impacted communities and workers.

The right to remedy is a core tenet of the international human rights system, and the need for victims to have access to an effective remedy is recognized in the UNGPs. Several UN treaty monitoring bodies have called on Canada to do more to facilitate access to judicial remedy in Canada for victims of Canadian corporate abuse abroad.⁴¹ Canadian supply chain legislation should establish meaningful consequences for failure to prevent serious human rights impacts and/or failure to undertake adequate due diligence. It should also assist impacted communities and workers to access effective remedy in Canadian courts.

This requires that the legislation include the following two mechanisms:

- civil liability for harms and/or the failure to do due diligence; and
- a commissioner empowered to enforce the production of due diligence reports

The legislation should establish a statutory right of action to bring a suit to a Canadian court. It should ensure that if a company, its subsidiary, its subcontractor or its supplier causes a serious adverse human rights impact, the company could be sued in a Canadian court. The legislation should empower the court to order an injunction, payment for damages/losses, punitive damages, rehabilitation or specific performance, legal costs, or a combination thereof. Impacted communities should have a statutory right to file a motion for the company to be ineligible for future government supports, or for existing supports to be withdrawn.⁴²

The CNCA's model legislation included a limited defence that would allow a company to seek to avoid a court order by establishing they have developed and implemented effective due diligence procedures to prevent harm. The CNCA's model sets out factors for the court to consider in making this determination.⁴³ These factors would incentivize companies to undertake effective due diligence procedures. The inclusion of this limited defence emphasizes the prevention of harm objective of such legislation.

⁴¹ See Appendix A, page 9, in the CNCA's Submission to the Senate Standing Committee on Human Rights, available at: <https://cnca-rcrce.ca/2022/03/31/cnca-submission-to-the-senate-human-rights-committee-on-bill-s-211/>

⁴² Section 27 of CNCA's [model law](#) outlines that this could include "eligibility for support, subsidy, promotion or protection by any or all government agencies or departments" and it provides that the court could order the withdrawal of support or disallowance of future support for a stipulated period, or until specified conditions are met.

⁴³ The model law states that "In determining whether an entity exercised effective due diligence the court may consider the extent of adherence to relevant standards of conduct (set in regulations or outlined in the entity's public communications); whether the impact was or should have been identified as a risk in due diligence procedures, adequacy of steps taken (having regard to company's size), history of adverse impacts (and any subsequent due diligence procedure improvements), any incentives the company created for improving human rights standards in its supply chains."

Additionally, the Canadian supply chain legislation should provide that interested parties – such as civil society organizations – could file suit against a company in Canadian court if the company failed to develop and implement adequate due diligence procedures. This will help ensure that interested parties do not need to wait for harm to occur, but could instead take pre-emptive action to prevent harm from occurring.

These mechanisms would ensure that the Canadian supply chain legislation overcomes shortcomings in such proposals as Senate Bill S-211, which the CNCA has criticised for not providing any agency to those harmed by corporate abuse, not requiring companies to consult with rights-holders and not helping eliminate the barriers faced by foreign plaintiffs seeking to access Canadian courts.⁴⁴

Finally, the Canadian supply chain legislation should create a commissioner role to enforce the publication of annual reports. The Commissioner should be mandated to maintain a website where the annual reports are published and to ensure that the reports include content relating to all of the required business relationships. Investigatory powers pursuant to the *Inquiries Act* would be required to fulfil this aspect of the Commissioner’s mandate. Companies that fail to publish comprehensive reports should be subject to a fine of up to \$250,000. Interested parties should be able to submit commentary to these company reports and request the commentary be published on the Commissioner website.

⁴⁴ Some of the existing barriers are outlined here: <https://cnca-rcrce.ca/2019/03/26/why-is-it-difficult-for-victims-to-access-canadian-courts/>

How civil liability helps prevent harm and ensure access to remedy

Risk management is an important business practice taken very seriously by corporate management, governance bodies and investors. When anti-bribery and corruption legislation was first introduced around the world, many corporations moved to significantly more robust corruption risk identification and mitigation strategies. In the same way, establishing civil liability in Canada for human and environmental harms primarily acts as a concrete incentive for a business to internalize its responsibility to prevent harm, and to put adequate procedures in place. The expected response to Canadian supply chain legislation is that companies will enhance their attention to such risks of harm, and change their behaviour without rights-holders having to regularly seek recourse in Canadian courts.

When companies are aware that they *could* be held liable, management, boards and investors are incentivized to pay attention to such risks, and to ensure steps are taken to prevent adverse human rights and environmental impacts. The requirement to consult with rights-holders on an ongoing basis means that significant risks are more likely to be identified, and companies are alerted early on if their mitigation measures are inadequate. A provision in the legislation that can defend against liability by demonstrating adequate due diligence, enhances the incentive to ensure such diligence is undertaken.

All of these factors help ensure that communities and workers are not harmed in the first place. They would also help ensure access to remedy if harm does occur.

Element 5: Non-legislative tools and other measures

Canada should provide financial and other supports to assist impacted communities and workers in knowing and defending their rights, and in accessing remedy.

In line with the recommendation we put forward for the 2020 consultation on Canada's Corporate Social Responsibility Strategy, the CNCA recommends that funding envelopes be made available to enable human rights defenders, workers and community leaders to effectively document corporate human rights abuse and make use of available grievance mechanisms, including in Canada. The money generated from fines issued to companies for their failure to report should be directed to these envelopes.

The funding envelopes should be used to

- provide trainings to human rights defenders and impacted communities on how to

effectively document corporate human rights abuse, ensuring a significant portion of those trainings are led by other rights-holders:

- enable rights-holders to document human rights abuses, including through the hiring of technical experts; and
- enable rights-holders to bring complaints in national and international fora.⁴⁵

Thank you for your time and consideration. We remain available for any further consultation or information required.

Best regards,



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⁴⁵ These and other recommendations are outlined in CNCA's 2020 [submission](#) to Canada's CSR strategy consultations.

Annex: Additional materials and previous submissions

- CNCA’s model legislation [full text](#) and [executive summary](#)
- 2019 Civil society [consensus starting points](#) on possible supply chain legislation
- CNCA [submission](#) to the Senate Standing Committee on Human Rights’ study of Bill S-211
- CNCA member submissions to the House of Commons Subcommittee on International Human Rights’ 2017 study on child labour and modern slavery
 - [Canadian Labour Congress](#)
 - [Amnesty International Canada](#) and
 - [Human Rights Watch Canada](#)
- CNCA member reports on forced labour:
 - Above Ground’s 2021 [report](#) *Creating Consequences: Canada’s Moment to Act on Forced Labour*
 - Centre international de solidarité ouvrière 2020 [report](#) on preventing forced labour in Canadian food supply chains
- Canadian Parliamentary (sub) Committees recommendations that Canada introduce comprehensive human rights due diligence legislation
 - June 2021. [Report](#) of the Standing Committee on Foreign Affairs and International Development, *MANDATE OF THE CANADIAN OMBUDSPERSON FOR RESPONSIBLE ENTERPRISE*.
 - March 2021. [Report](#) of the Standing Committee on Foreign Affairs and International Development, *THE HUMAN RIGHTS SITUATION OF UYGHURS IN XINJIANG, CHINA*
 - October 2020. [STATEMENT](#) BY THE SUBCOMMITTEE ON INTERNATIONAL HUMAN RIGHTS CONCERNING THE HUMAN RIGHTS SITUATION OF UYGHURS AND OTHER TURKIC MUSLIMS IN XINJIANG, CHINA
- List of CNCA [Member Organizations](#), March 2022