CNCA Submission to the Government of Canada's Public consultation on potential due diligence and civil liability measures to fight labour exploitation in supply chains

August 20, 2026

Introduction

The Canadian Network for Corporate Accountability (CNCA) appreciates the opportunity to provide inputs to the Government of Canada's public consultation on potential due diligence and civil liability measures to fight labour exploitation in supply chains. As we elaborate below, a robust mandatory human rights due diligence law is an essential component of any effective strategy to combat labour exploitation and we urge the government to expeditiously introduce such measures. We welcome the government's intention to move beyond reporting-only and voluntary requirements by introducing binding human rights due diligence obligations for Canadian companies.

For decades, directly impacted people and international human rights bodies have attested to ongoing and serious human rights abuses, including labour exploitation, linked to the global operations and supply chains of Canadian companies and have called for action from the Canadian government.[1] People already experiencing structural marginalization are the most likely to be harmed, including Indigenous people, racialized people, and women and gender-diverse people. Canada must ensure the lived experiences of rights-holders are at the forefront in all aspects of its supply chain regime.

A mandatory labour rights due diligence regime would represent a positive and important step forward, but is in no way sufficient to address this widespread pattern of abuse nor to fully align with international regulatory momentum. If Canada elects to table legislation more narrowly focused on labour rights, as outlined in the consultation documents, we urge the government of Canada to immediately publish a roadmap to tabling comprehensive mandatory human rights and environmental due diligence

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[1] Canadian Network for Corporate Accountability, *Taking Stock: Accountability and the Overseas Operations of Canadian Multinationals* (April 2026), https://cnca-rcrce.ca/2026/04/29/taking-stock-accountability-and-the-overseas-operations-of-canadian-multinationals/.

legislation covering the full scope of human rights, including the right to a healthy environment.

About the CNCA

Formed in 2005, the CNCA unites over 40 human rights, labour, international cooperation, environmental and faith-based organizations from across Canada, collectively representing the voices of millions of Canadians. Together, we call for measures to ensure that Canadian companies are held accountable to international human rights standards and that directly impacted people can access remedy if they are harmed by Canadian business activity abroad or by practices in Canadian supply chains.

CNCA members are subject matter experts on corporate accountability and on business and human rights. Many of our members have decades-long relationships with people who have been negatively affected by Canadian businesses overseas, especially in the extractive sector, and our members have engaged extensively to put an end to forced labour in Canada. Our member list is in Annex A.

In 2021, the CNCA published model human rights and environmental due diligence legislation for the Canadian context. This proposal was drafted by legal experts, who drew on international best practice and lessons learned in other jurisdictions, as well as insights from subject matter experts and rights-holders. The model legislation has been endorsed by over two hundred organizations, unions and investor groups in Canada and abroad.[2] The model legislation is included in Appendix B. Over 50,000 Canadians have signed petitions calling for Canada to adopt such a law.[3]

CNCA is also a co-founder of the Global Initiative for Corporate Accountability (GICA), which brings together organizations and networks from six continents to share best practices and promote law and policy reform to advance corporate accountability across our respective jurisdictions.

The CNCA's reform proposals focus on preventing and remedying corporate abuse that occurs outside of Canada, which is under the jurisdiction of the federal government.

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[2] See https://cnca-rcrce.ca/2021/11/22/broad-support-for-canadian-mandatory-human-rights-and-environmental-due-diligence-legislation/; https://cnca-rcrce.ca/2021/05/31/over-150-groups-endorse-cnca-proposed-law/.

[3] Development and Peace - Caritas Canada, *Over 52,000 Canadians call for stricter corporate due diligence laws* (September 2025), https://devp.org/en/wp_press_release/over-52000-canadians-call-for-stricter-corporate-due-diligence-laws/.

Finally, while we appreciate the opportunity to provide inputs, we note with concern the very limited timeline given for this consultation. This greatly restricts our ability to provide meaningful feedback and is the latest example in a concerning pattern of rushed consultations on matters of significant public interest. Given the limited time provided we have not answered all the questions in the discussion paper, but we remain available for further discussion.

Section 1: Scope and coverage

1.1: Scope

CNCA urges Canada to adopt a comprehensive mandatory human rights and environmental due diligence (mHREDD) law.

The United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) explain that "[b]ecause business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights."[4] Under international law, the state duty to protect against human rights abuse by business enterprises also encompasses the full range of protected rights.

Scores of international human rights bodies have called on Canada to adopt such a law, including, most recently, the United Nations Human Rights Committee during Canada's seventh periodic review.[5] 150 organizations working with directly impacted people in 32 countries have called for Canada to take this approach.[6] CNCA's model legislation offers a blueprint.

If Canada's initial measures remain focused on labour exploitation, such measures should be comprehensive, applying to all fundamental labour rights, and Canada must expeditiously complement these measures with legislation that prevents and remedies all forms of human rights abuse in the global operations and supply chains of Canadian companies. Beyond aligning with Canada's international human rights obligations, this

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[4] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 13, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
[5] United Nations Human RIghts Committee, *Concluding observations on the seventh periodic report of Canada* (April 2026), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F7&Lang=en.
[6] Canadian Network for Corporate Accountability, *150+ groups representing affected people in 32 countries endorse CNCA's proposed law* (May 2021), https://cnca-rcrce.ca/2021/05/31/over-150-groups-endorse-cnca-proposed-law/.

broader approach also enables Canada to adequately address the scourge of labour exploitation, which is often difficult to detect and is directly connected to, and predicted by, the abuse of other human rights. For example, women, racialized and Indigenous peoples, migrant workers and people experiencing economic insecurity are disproportionately at risk of forced labour.

Many of Canada's largest trading partners, including the European Union, South Korea, and Switzerland, have adopted or are advancing mHREDD laws that apply to the full scope of human rights and to which Canadian companies doing business in these jurisdictions will be required to adhere.

1.2: Coverage

Leading international expectations, including the UNGPs, establish that businesses of all sizes have a responsibility to respect human rights. Small businesses in high-risk sectors, for example in extractives, have been linked to very serious human rights abuses and environmental destruction and must absolutely be captured in the scope of this legislation. Such an approach would also be consistent with Canada's current stated approach to business and human rights: for many years, including in its 2022-27 Responsible Business Conduct strategy, Canada has said it "expects and encourages" its companies to respect human rights.

We thus urge the government to adopt a broad scope of coverage reflecting these responsibilities, as outlined in CNCA's model law. It can do so by including in scope all companies which 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, while allowing exceptions to be made in the regulations for small and medium sized businesses in low-risk sectors.

1.3: Due diligence and reporting obligations

The evidence is crystal-clear: voluntary measures don't work to prevent corporate abuse.[7] For this legislation to be effective, it is essential that the due diligence obligations specified are binding and comprehensive, encompassing all stages of the internationally recognized human rights due diligence process.

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[7] See the World Benchmarking Alliance's 2026 study of Canadian companies' transition readiness, finding only 11% of companies assessed risks and only 4% take action to prevent and remedy abuses; the OECD's Responsible Business Outlook 2026m finding just 8% of large listed companies globally report engaging stakeholders on human rights issues; and a 2020 study commissioned by the European Commission establishing that voluntary measures have had only a limited impact.

Alignment with international standards offers strong protection for workers and promotes consistency across jurisdictions, helping to reduce compliance burdens for business, while providing legal certainty regarding due diligence expectations. These key standards include the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines), and guidance set out in the ILO Helpdesk: Business and the labour dimension of human rights due diligence.[8] Such an approach would constitute an enhanced version of Option 1 as proposed in the consultation paper.

Consistent with international standards, we emphasize that **Canada's legislation must require companies to engage meaningfully and safely with rights-holders throughout their full value chains, at all stages of the due diligence process, using an intersectional lens**. Without this essential requirement, mHREDD obligations risk becoming a "box-checking" exercise and/or causing unintended harm to directly impacted people, whose needs must be centred in any procedure to prevent or remedy abuse. Detailed guidance on meaningful and safe engagement with rights-holders are included in Appendix C.

Article 13 of the European Union's Corporate Sustainability Due Diligence directive is not an appropriate reference for stakeholder engagement. Provisions regarding consultation were weakened prior to the directive's adoption by excluding key actors from consultation, granting companies unnecessary discretion to determine relevant stakeholders and limiting the circumstances under which companies must consult stakeholders.[9] We further note that a less frequent reporting requirement, as proposed in Option 2, would risk undermining the effectiveness of the proposed regime by creating significant transparency and accountability gaps, particularly where human rights risks and supply chain conditions can change rapidly.

In their submission to this consultation, CNCA member Above Ground has comprehensively assessed the elements proposed in Option 1 against leading international guidance. We echo this analysis in full. For ease of reference, Above Ground's point-by-point analysis is included in Appendix C.

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[8] https://www.ilo.org/resource/other/ilo-helpdesk-tools-and-resources-business-labour-dimension-human-rights-due.

[9] For more information, see European Coalition for Corporate Justice, *From Ambition to Erosion: How Omnibus I Rolls Back the CSDDD* (February 2026), https://corporatejustice.org/wp-content/uploads/2026/02/Preliminary-Legal-Analysis-How-Omnibus-I-Rolls-Back-the-CSDDD.pdf.

1.4: Compliance and enforcement

Effective enforcement by a competent authority, as outlined in Option 1, is necessary for the effective application of the proposed due diligence regime.

CNCA advises the creation of a commissioner role to administer and enforce the act, as outlined in our model legislation. The commissioner should be equipped with the power to investigate a company (employing all the powers conferred under the *Inquiries Act*), on application from an interested party or on their own initiative. If the commissioner determines that a company is failing to comply with the statute's reporting obligations, they can issue a notice, setting out the steps required and a timeline for the company to achieve compliance with the act. The commissioner should also be empowered to impose an administrative penalty for a company that fails to comply with the terms of a notice.

This competent authority should be required to receive and investigate complaints of non-compliance, and to receive related information from stakeholders. The complaint mechanism should be open to interested parties, including affected workers, communities and social movements; unions and other worker rights organizations; non-governmental organizations; academics; and journalists. The competent authority must also be granted the necessary resources and be staffed with subject matter experts.

Effective protections should be extended to sources who may face retaliation for providing the competent authority with information or for making a complaint. Local workers, trade union members and whistleblowers are particularly vulnerable to retaliation. Safeguards should include:

- The use of a broad definition of retaliation;
- Confidential reporting and complaint mechanisms that facilitate anonymous submissions through secure communication channels;
- Receipt of information from workers and other local actors that is submitted through trusted intermediaries, such as Canadian and international NGOs, and labour rights organizations;
- Measures to ensure accessibility in the languages used by workers;
- Robust data protection measures, including encryption of government files containing source information; and
- Transparent rules governing the disclosure of information.

In developing these safeguards, the government should draw on the retaliation framework produced by the Canadian Ombudsperson for Responsible Enterprise and

Global Affairs Canada's *Voices at Risk* guidelines. Useful reference materials are also available from international organizations such as Front Line Defenders.

Beyond measures to enforce the proposed supply chain due diligence regime, a diversity of complementary measures will continue to be needed in order to enforce Canadian companies' international human rights obligations and ensure directly impacted people have access to remedy. To this end, the Canadian Ombudsperson for Responsible Enterprise (CORE) is an essential complementary mechanism. The CORE had been mandated to investigate allegations of human rights abuse in the overseas operations of Canadian companies before it was abruptly "eliminated" in June 2026. A significant number of cases brought to the CORE concerned allegations of forced labour in Canadian supply chains.[10] As a non-judicial human rights instrument, the CORE provides a faster and cheaper avenue for directly-impacted people to seek justice and remedy when human rights abuse is alleged to have occurred, and an empowered and independent CORE could conduct investigations which reveal non-compliance with a company's human rights obligations. We urge the government of Canada to reinstate the CORE and equip the office with the independence and investigatory powers it has always needed.[11]

Section 2: Civil liability

For the proposed legislation to be enforceable and to meaningfully remedy human rights abuse, civil liability is non-negotiable. Absent civil liability, the effectiveness of the proposed due diligence regime would be very seriously compromised.

We urge the government to move forward with a civil liability regime which allows for people harmed in the operations and supply chains of Canadian companies abroad, as well as interested parties – namely the civil society intermediaries of foreign plaintiffs – to file claims for damages in Canadian courts, and/or for failure to do due diligence.

The state duty to protect against human rights abuse includes the obligation to provide access to remedy. According to the UN Guiding Principles, "[e]ffective judicial

[10] For example, see Teich, Sarah, David Matas and John Packer, *Canada still needs an ombudsperson for responsible enterprise* (August 2026), https://macdonaldlaurier.ca/canada-still-needs-an-ombudsperson-for-responsible-enterprise-sarah-teich-david-matas-and-john-packer-for-inside-policy/.
[11] For additional detail on these powers and a detailed blueprint to provide such powers through legislation or an order in council, see https://cnca-rcrce.ca/model-legislation-core-ombudsperson/.

mechanisms are at the core of ensuring access to remedy."[12] The Guiding Principles call on states to "take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy."[13]

Yet, as outlined in the consultation paper, people impacted by human rights abuse linked to Canadian companies abroad continue to face significant barriers to accessing justice in Canadian courts. Canada's failure to ensure access to remedy has drawn the critical attention of United Nations' human rights bodies for decades, including, in March 2026, by the UN Human Rights Committee during Canada's seventh universal periodic review.[14] The civil liability regime outlined above would remove key barriers to justice.

In addition, and further outlined in the "rationale" section of the discussion paper, civil liability is a vital tool to ensure companies proactively prevent and remedy harm. It acts as a concrete incentive for a business to internalize its responsibility to prevent harm, and to put adequate procedures in place. 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 impacts. The requirement to consult with rights-holders on an ongoing basis means that significant risks are more likely to be identified, and companies alerted early if the mitigation measures are not adequate.

The CNCA's model legislation offers a blueprint for operationalizing the above. It creates a corporate duty to avoid causing adverse human rights impacts and to prevent harm directly linked to corporate operations through a company's business relationships. Companies are also required to address such impacts when they occur. If a company fails to fulfill these duties, it is liable for any resulting harm. Any person who suffers harm may bring an action in court and seek the following remedies:

- injunction, including rehabilitation at the expense of the company;
- recovery of damages or losses;

[12] Office of the United Nations High Commissioner for Human Rights, G*uiding Principles on Business and Human Rights* (2011), at 28, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
[13] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 28, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
[14] United Nations Human RIghts Committee, *Concluding observations on the seventh periodic report of Canada* (April 2026), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCAN%2FCO%2F7&Lang=en.

- aggravated and/or punitive damages;
- an amount to fully or partially compensate for the costs that the person incurs in connection with the matter and court proceedings; and
- any order that a court considers appropriate in the circumstances.

The model legislation further provides clarity regarding the circumstances under which Canadian courts may exercise jurisdiction to adjudicate such claims. It also provides that it is a defence in litigation for a company to prove that it exercised effective due diligence to prevent the adverse human rights impact(s) alleged by the plaintiff(s).

In addition, when civil litigation is brought, and if a court is satisfied that a person has suffered loss or damage as a result of corporate conduct that contravenes the statute, that person may make a motion for an order regarding the company's eligibility for support, subsidy, promotion or protection by government agencies and departments. The court may order that such agencies and departments withdraw existing support and disallow future support until specific conditions are met.[15]

Such measures are also aligned with international best practices. The GICA's guide for lawmakers on the essential elements of effective human rights and environmental due diligence legislation, which draws from international standards and commentary from United Nations experts, provides that effective due diligence legislation:

> [c]ontains measures that address the financial, legal and other barriers that hinder rights-holders from accessing judicial and other remedies. When accused of causing harm (in its operations and/or value chain), a business must prove that it acted with due care and took all reasonable steps to prevent adverse impacts. Impacted rights-holders are involved in the determination of appropriate remedy when companies are found liable. Impacted rights-holders are involved in the determination of appropriate remedy when companies are found liable.[16]

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[15] Additional detail on the application of civil liability in the CNCA's model legislation can be found in the executive summary, available at: https://cnca-rcrce.ca/model-legislation-due-diligence/.

[16] Global Initiative for Corporate Accountability, *Human Rights and Environmental Due Diligence: Essential Elements of Effective Legislation. A Guide for Lawmakers* (June 2025), paragraph 5, https://static1.squarespace.com/static/65640ca1140a465cc87460b7/t/68634c629ebcb80877a8da25/1751338083374/mHREDDelements_FinalLayout_EN_June2025.pdf.

Section 3: Ways to maximize effectiveness and ensure coherence with the forced labour import prohibition

Mandatory human rights due diligence legislation is a necessary complement to the forced labour import prohibition, as outlined in the consultation document. As measures to strengthen the forced labour import ban have already been tabled, we urge the government to immediately adopt a robust mandatory due diligence law. As outlined in section 1.1, legislation applying to all human rights would further strengthen Canada's ability to eradicate forced labour in Canadian supply chains, and we re-emphasize that Canada must make a time-bound commitment to following labour rights due diligence legislation with a law applying to all human rights, including the right to a healthy environment.

Adopting due diligence legislation in parallel to measures to strengthen the import ban also helps mitigate the potential for harmful unintended consequences which can be associated with import bans in isolation, including by requiring companies to meaningfully engage with rights-holders and to remedy human rights harm. For example, this reduces the risk of unwanted "cut and run," ensuring companies engage with workers to address forced labour rather than simply ending the supplier relationship, which can leave vulnerable workers even worse off. This reinforcing effect would be strengthened by adding remedy provisions directly to bill C-35, from which they are currently absent.

Appendices

Appendix A: Members of the Canadian Network for Corporate Accountability

Above Ground

Africa-Canada Forum

Americas Policy Group

Amnesty International Canada (anglophone section)

Amnistie internationale Canada francophone

Asia-Pacific Working Group

Association Québécoise des organismes de cooperation internationale

British Columbia Teachers' Federation

Canada Tibet Committee

Canadian Jesuits International

Canadian Journalists for Free Expression

Canadian Labour Congress

Canadian Union of Public Employees

Centre international de solidarité ouvrière

CoDevelopment Canada

Committee for Human Rights in Latin America

Cooperation Canada

Coordination du Québec de la Marche mondiale des femmes

Development and Peace – Caritas Canada

Éduconnexion

Friends of the Earth Canada

Grandmothers' Advocacy Network

Human Rights Watch

Inter Pares

KAIROS: Canadian Ecumenical Justice Initiatives

Maquila Solidarity Network

Maritimes-Guatemala Breaking the Silence Network

Mennonite Central Committee Canada

Mining Injustice Solidarity Network

Mining Justice Action Committee

MiningWatch Canada

Nobel Women's Initiative

Office of Religious Congregations for Integral Ecology

Oxfam Canada

Peace Brigades International – Canada

Public Service Alliance of Canada

Regroupement pour la responsabilité sociale des entreprises

Seachoice

Steelworkers Humanity Fund

Solidarité Laurentides-Amérique Centrale

Unifor

United Church of Canada

United Food and Commercial Workers of Canada

Appendix B: The Corporate Respect for Human Rights and the Environment Abroad Act

Model legislation for mandatory human rights and environmental due diligence by the Canadian Network for Corporate Accountability

PREAMBLE

Whereas business entities may cause adverse human rights impacts through their own activities, or through their business relationships;

Whereas the realities of global supply chains, cross-border trade, investment, communications and movement of people are such that Canadian business entities may cause adverse human rights impacts outside Canada;

Whereas, at present, accountability and remedy in such cases is often elusive, and where legal remedy is obtained, it frequently does not meet the international standard of "adequate, effective and prompt reparation for harm suffered";

Whereas 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 UN Guiding Principles on Business and Human Rights (UNGPs);

Whereas undertaking human rights due diligence can assist business enterprises to proactively manage potential and adverse human rights impacts, and can assist enterprises in fulfilling their responsibility to respect human rights;

Whereas the prevention of adverse impacts is the main purpose of human rights due diligence;

Whereas ensuring the legal accountability of business enterprises and access to effective remedy for persons affected by such abuses is a vital part of a State's duty to protect against business-related human rights abuse;

And whereas effective State-based judicial mechanisms are at the core of ensuring access to remedy;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART I: INTERPRETATION

1. Interpretation:

1) Nothing in this Act should be interpreted to preclude the Attorney General of Canada from prosecuting any entity or individual associated with any entity for any offence under the Criminal Code of Canada or any other Act of any province or jurisdiction in Canada.

2. Definitions

1) “Activities” includes actions and omissions
2) An entity is an “affiliate” of an entity if:
   (i) It is a subsidiary of the entity; or
   (ii) both are subsidiaries of the same entity; or
   (iii) each of them is controlled by the same person.
3) “business relationship” includes an entity’s relationships with business partners, entities throughout its value or supply chain, and any other non-State or State entity directly linked to its business operations, products or services. For greater clarity, and without limiting the generality of the foregoing, relationships with state and non-state security forces, and home-based workers are “business relationships” for purposes of this Act.
4) “entity” means a corporation or a trust, or partnership. For greater clarity, a not-for-profit, charity, or trade union is not an “entity” for purposes of this Act.
5) An entity is a “subsidiary” of an entity if
   (i) It is controlled by
      1. That entity;
      2. That entity and one or more entities each of which is controlled by that entity; or
      3. Two or more entities, each of which is controlled by that entity; or
   (ii) It is a subsidiary of an entity that is a subsidiary of that entity.
6) “Commissioner” is the Commissioner provided for in Part XI.
7) “Interested person” means:
   (i) a person who is directly affected, or
   (ii) a person who:
      a) has a genuine interest in the issues arising in the case;
      b) presents a reasonable means of the case being brought forward;
      c) does not have a conflict of interest in the outcome of the case.
8) “Minister” means the Minister of Justice.
9) “Person” means legal person or natural person.

3. Control

1. An entity is controlled by a person or another entity if
   i. Twenty percent or more of the voting interests in the entity are held by or for the benefit of that person or entity, directly or indirectly; or
   ii. The person or entity ordinarily directs or instructs the conduct of the entity, directly or indirectly; or
   iii. The person or entity is, alone or in combination with another entity, empowered through voting interests, or based on agreement with another party, to elect at least thirty percent of the board of directors of the entity, directly or indirectly; or
   iv. The person or entity has the power to cause direction of the management and policies of the entity, directly or indirectly; or
   v. The person or entity determines the salary or bonus structure for executives or employees of the entity, directly or indirectly; or
   vi. The person or entity otherwise controls the entity in fact, directly or indirectly;
   vii. The person or entity publicly represents itself as being responsible for or in control of the entity.

PART II: ENABLING AUTHORITIES

4. Except as otherwise provided, the Minister of Justice is responsible for the administration of this Act.

5. The Governor in Council may make any regulation that is referred to in this Act or that prescribes any matter whose prescription is referred to in this Act.

6. The Minister shall cause a copy of each proposed regulation made under this Act to be laid before each House of Parliament, and each House shall refer the proposed regulation to the appropriate Committee of that House.

PART III: PURPOSES

7. The purpose of this Act is to prevent, address, and remedy adverse human rights impacts connected to the overseas business activities of entities under this Act.

PART IV: GENERAL PROVISIONS

8. Adverse Human Rights Impacts

1. An adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy their human rights.
2. Subject to any further additions in the regulations under this Act, “human rights” includes:
   (i) human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;
   (ii) the rights set out in:
   1. The nine core human rights treaties:
      1. the International Covenant on Civil and Political Rights (ICCPR);
      2. the International Covenant on Economic, Social and Cultural Rights (ICESCR);
      3. the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
      4. the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
      5. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
      6. Convention on the Rights of the Child (CRC);
      7. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW);
      8. Convention on the Rights of Persons With Disabilities (CRPD);
      9. the International Convention for the Protection of All Persons from Enforced Disappearance (CED);
   2. The United Nations Declaration on the Rights of Indigenous Peoples;
   3. International Labour Organization Convention 169, the Indigenous and Tribal Peoples Convention;
   4. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;
   5. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
   6. The 8 core international Labour Organization Conventions:
      1. the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
      2. the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
      3. the Forced Labour Convention, 1930 (No. 29);
      4. the Abolition of Forced Labour Convention, 1957 (No. 105);
      5. the Minimum Age Convention, 1973 (No. 138);
      6. the Worst Forms of Child Labour Convention, 1999 (No. 182);

   7. the Equal Remuneration Convention, 1951 (No. 100);
   8. the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
3. The regulations under this Act may provide any further international human rights instruments encompassed by “human rights” for the purposes of this Act.

PART V: APPLICATION

9. Entities:

1. An entity is subject to this Act if the entity:
   (i) Is domiciled or ordinarily resident in Canada; or
   (ii) Sells goods or services in Canada and the entity has a resident agent, representative, warehouse, office or place where it carries on its business in any jurisdiction in Canada; AND
   (iii) The entity is not exempted from application of this Act by the regulations;
2. All entities are “reporting entities” unless exempted in the regulations;
3. The regulations may exempt entities from application of this Act by sector, revenue, or number of employees.

10. Conflict of Laws:

1. Subject to any exception established herein or by regulation, this Act contains overriding mandatory rules that apply to the overseas business activities of entities irrespective of the rules of Canadian private international law, whether they be found in the common law or established by an Act of a province or Canada.
2. Any provision of an agreement or arrangement that contravenes a rule under this Act, or provides inferior rights and protections than those established herein is absolutely null.
3. Notwithstanding subsections 1 and 2, nothing in this section shall be construed as affecting any obligation that an entity owes under any domestic or foreign law, contract, or arrangement that holds it to a higher standard than the rules of this Act and its regulations.

PART VI: COMMISSIONER

Appointment of Commissioner

11. Within three months of the coming into force of this Act, the Governor in Council shall appoint an officer to be known as the Commissioner for Human Rights Protection in Business, who shall be responsible for the administration and enforcement of this Act.

12. The Commissioner has all the power of a Commissioner appointed under the Inquiries Act.

13. The Commissioner holds office during good behaviour for a term of five years, but may be removed for cause by the Governor in Council.

14. The Commissioner, on the expiration of a first term of office, is eligible to be re-appointed for one further term not exceeding five years. For greater clarity, the Commissioner is eligible for only one re-appointment.

15. The Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Commissioner under this Act or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

16. The Commissioner shall have expertise and experience in human rights and have knowledge of international best practices in human rights-based approaches and gender-sensitive analysis.

Compensation of Commissioner

17. The Commissioner shall be paid a salary, fixed by Parliament, equal to the salary of a puisne judge of the Federal Court, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament.

18. The provisions of the Public Service Superannuation Act, other than those relating to tenure of office, apply to the Commissioner, except that a person appointed as Commissioner from outside the public service, as defined in the Public Service Superannuation Act, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the Diplomatic Service (Special) Superannuation Act, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Commissioner from the date of appointment and the provisions of the Public Service Superannuation Act do not apply.

Staff

19. Such officers and employees as are necessary to enable the Commissioner to perform the duties and functions of the Commissioner under this Act or any other Act of Parliament shall be appointed in accordance with the Public Service Employment Act.

20. The Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner and the officers and employees, in the performance of their duties and functions under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

Delegation

21. The Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this Act of Parliament.

22. The Commissioner is authorized to exercise the powers and perform the functions of the Treasury Board that relate to human resources management within the meaning of paras 7(1)(b) and of the Financial Administration Act.

23. The Commissioner shall publish procedures and policies governing the handling of applications to investigate, investigations, and the making of Notices under s. 36.

24. Information-gathering in foreign jurisdictions;

1. Where the law of a foreign state does not prohibit it, the Commissioner may gather information in furtherance of his or her investigation, outside Canada;
2. Where an investigation requires the Commissioner to gather information or meet with individuals in a foreign jurisdiction, he or she will inform the foreign government of his or her meeting and information-gathering activities;
3. In gathering information in foreign jurisdictions, the Commissioner shall endeavour to enter into mutual assistance agreements, letters rogatory, or other like legal agreement, with local authorities;
4. For greater clarity, the Commissioner shall not participate in law enforcement activities in any foreign jurisdiction.

PART VII: OBLIGATIONS

Duties to Avoid, Prevent and Address

25. (1) Every entity has a duty to:

    i) Avoid causing adverse human rights impacts outside Canada through its own activities, and through the activities of its affiliates; and to address such impacts when they occur; AND

    ii) Prevent adverse human rights impacts outside Canada that are directly linked to its operations, products or services by its business relationships; and to address such impacts when they occur;

    (2) Where an entity contravenes s. 25 (1), it is liable for any injury that results from its contravention, whether it be caused by its own act or omission or that of its affiliate or a person with whom it has a business relationship.

Due Diligence Procedures

26. Subject to any provision in the regulations under this Act, due diligence means taking reasonable measures to:

    1. Avoid causing adverse human rights impacts outside Canada through its own activities, and through the activities of its affiliates, and to address such impacts when they occur; AND
    2. Prevent adverse human rights impacts outside Canada that are directly linked to its operations, products or services by its business relationships, and to address such impacts when they occur.

27. Due diligence procedures shall include:

    1. Identifying and assessing real and potential adverse impacts;
    2. Ceasing and remedying existing adverse impacts;
    3. Mitigating risks of adverse impacts;
    4. Monitoring the implementation and effectiveness of the measures adopted to address adverse human rights impacts;
    5. A mechanism to provide an alert to the entity of possible adverse effects on or risks to human rights;
    6. Documenting due diligence efforts.

28. Every entity shall develop and implement due diligence procedures with respect to itself, its affiliates, and its business relationships.

29. In developing and implementing due diligence procedures, entities shall:

1. have regard to the intersection of sex and gender with other identity factors that include race, national and ethnic origin, Indigenous origin or identity, age, sexual orientation, socio-economic condition, place of residence and disability;
2. consult with the relevant stakeholders, including any relevant:
   (i) trade unions;
   (ii) affected communities;
   (iii) workers;
3. have reference to the practice of competent international bodies; and to:
   (i) the Rio Declaration on Environment and Development;
   (ii) the UN Guiding Principles on Business and Human Rights;
   (iii) the Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, "Mapping Report", UN Human Rights Council;
   (iv) the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

30. The regulations may provide

1. Any specific requirements in due diligence procedures, including auditing procedures; and
2. Any applicable standards and guidance to assist in assessing the adequacy of due diligence procedures, including standards applying to specific sectors, or to entities of particular sizes.

Due Diligence Reporting

31. Every reporting entity must publish a due diligence report annually;

1. Subject to any further requirements in the regulations, due diligence reports shall list the affiliates and business relationships affected by the due diligence obligation arising under s. 26.

32. The regulations shall specify the required headings in due diligence reports.

33. The due diligence report shall be published in any annual reports of the entity, and on a website dedicated to this task and maintained by the Commissioner, and shall be called "human rights risk reports";

1. Any interested person or persons may, in accordance with procedures published by the Commissioner, submit commentary on due diligence reports published under this Act. Comments under this section shall be published on the website.

PART VIII: AUDIT AND ENFORCEMENT

34. On application from an interested person, or on its own initiative, the Commissioner shall inquire into a reporting entity's compliance with s. 31 whenever there is reason to suspect

1. that a reporting entity has not published a due diligence report, or has not complied with the requirements under regulations made under s. 32; OR
2. that a reporting entity's list of affiliates or business relationships provided pursuant to s. 31(1) is not comprehensive for the purposes of s. 26.

35. For purposes of verifying compliance with this Act, the Commissioner has all the powers conferred on a commissioner by sections 4 and 5 of the Inquiries Act and that may be conferred on a commissioner under section 11 thereof.

36. If, on the basis of information obtained, the Commissioner is of the opinion that

1. a reporting entity has not published a due diligence report per, s. 31, or including the headings specified in the regulations per s. 32; OR
2. that a reporting entity's list of affiliates or business relationships provided pursuant to s. 31(1) is not comprehensive for the purposes of s. 26

the Commissioner may issue a Notice.

37. The Notice shall:

1. specify the name of the entity;
2. detail the basis of the Notice, and specify how the entity can bring its reporting into compliance with the requirements of ss. 31 and regulations under s. 32;
3. indicate a timeline for the entity to bring its reporting into compliance with the requirements of ss. 31 and regulations under s. 32;
4. specify the amount, if any, of an Administrative Monetary Penalty owing if the entity does not bring its reporting into compliance with the requirements of ss. 31 and regulations under s. 32 on the timeline indicated;
5. inform the entity of its right to contest the Notice, or the Penalty, in writing, and any procedure to be followed to exercise that right;

6. inform the entity of the manner of paying the penalty set out in the notice; and
7. inform the entity that if they do not pay the penalty or exercise their right to contest under part (5) they will be considered to have failed to comply and be liable for the penalty set out in the notice.

38. For greater clarity, the Notice shall not include any opinion on the accuracy or adequacy of due diligence procedures in a report.

39. The Minister may make regulations

1. respecting the determination of, or the method of determining, the amount payable as the Administrative Monetary Penalty;
2. respecting the service of Notices required or authorized under this Part, including the manner and proof of service and the circumstances under which documents are deemed to be served;
3. respecting the procedures to be followed in contesting a Notice or Penalty under s. 37 (5).

40. The amount that may be determined under any regulations made under s. 39 as the penalty for a violation may not exceed $250,000.

PART IX: PRIVATE RIGHT OF ACTION

41. Nothing in this Part should be interpreted so as to preclude new or ongoing civil actions in relation to the activities of an entity.

Failure to Avoid, Prevent and Address Adverse Human Rights Impacts

42. Any person who has suffered an injury as a result of an entity's contravention of s. 25 (1), may, in a court of competent jurisdiction, bring an action against the entity for relief by way of:

1. injunction, including rehabilitation at the expense of the entity;
2. recovery of damages or losses;
3. aggravated and/or punitive damages;
4. an amount to fully or partially compensate for the costs that the person incurs in connection with the matter and proceedings under this section;
5. any combination of the above, or any order that a court considers appropriate in the circumstances.

43. If an entity fails to develop or implement adequate due diligence procedures, any interested person may apply to a court of competent jurisdiction to make any order against the entity that it considers appropriate in the circumstances, including an order providing for relief by way of:

1. injunction, including rehabilitation at the expense of the entity;
2. recovery of damages or losses;
3. aggravated and/or punitive damages;
4. an amount to fully or partially compensate for the costs that the person incurs in connection with the matter and proceedings under this section; or
5. any combination of the above, or any order that a court considers appropriate in the circumstances.

Defence

44. In any action under s. 42, it is a defence for the entity to prove that it exercised effective due diligence to prevent the adverse human rights impact(s) alleged.

Factors to Consider

45. In determining whether an entity exercised effective due diligence for purposes of s. 44, the court may consider
Extent of adherence to any relevant standards of conduct set out in the regulations;

1. Extent of adherence to any relevant standards of conduct set out in the entity's public communications;
2. Whether the adverse human rights impact was, or should reasonably have been, identified as a risk in the entity's due diligence procedures; and the adequacy of any steps taken to minimize the risk of the adverse human rights impact, having regard to the size of the entity;
3. Any history of adverse human rights abuses in the entity's business operations; Any steps taken by the entity to improve its due diligence procedures;
4. In the case of business relationships in an entity's supply chain, any incentives the entity has created for improving human rights standards;
5. Other factors as defined in the regulations.

Public Support

46. If, on an action under s. 42, or on application under s. 43, a court is satisfied that

1. A person has suffered loss or damage as a result of conduct that contravenes any provision of this Act or the regulations; OR
2. An entity has failed to develop and implement adequate due diligence procedures;

A party may additionally make a motion for an order regarding the entity's eligibility for support, subsidy, promotion or protection by any or all government agencies or departments. The court may order that any or all government agencies or departments:

i. Withdraw any existing support or subsidy, and terminate any promotion or protection of the entity for a stipulated period, or until specified conditions are met;

ii. Disallow any future support, subsidy, promotion or protection for a stipulated period or until specified conditions are met.

47. On a motion under s. 46, any affected government agency may appear.

Jurisdiction

48. A Canadian court has jurisdiction to hear and determine an action or application brought under this Part in the following cases:

1. the Defendant is domiciled or ordinarily resident in the court's jurisdiction;
2. the Defendant has submitted to the court's jurisdiction;
3. the Defendant has entered an agreement that grants the court jurisdiction over the action; or
4. there is a real and substantial connection between the court's jurisdiction and the facts on which the action against the Defendant is based.

49. An entity is ordinarily resident in the court's jurisdiction, for the purposes of this Part, only if:

1. it has or is required by law to have a registered office or business address in the court's jurisdiction;
2. pursuant to law, it
   i. has registered an address in the court's jurisdiction at which process may be served generally; or
   ii. has nominated an agent in the court's jurisdiction upon whom process may be served generally;
3. it has an agent, representative, warehouse, or place of business in the court's jurisdiction; or
4. its central management is exercised in the court's jurisdiction.

50. Without limiting the right of the Plaintiff to prove other circumstances that constitute a real and substantial connection, a real and substantial connection is presumed to exist if the action:

1. concerns actual and not virtual business carried out in the court's jurisdiction over a sustained period;
2. concerns a multi-jurisdictional tort or fault where more than a minor element of it was committed in the court's jurisdiction; or
3. concerns obligations that are connected to a contract made in the court's jurisdiction or governed by its laws;
4. concerns restitutionary obligations that, to a substantial extent, arose in the court's jurisdiction.

51. Once a court has jurisdiction under s. 48, it shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State or an arbitral forum.

1. This section shall not affect the rules on jurisdiction related to:
   i) subject matter or to the value of the claim; or
   ii) on the internal allocation of jurisdiction among the courts of Canada.

Limitation

52. No action may be brought under subsection s. 42 after five years from

1. the day on which the adverse impact was discovered; or
2. the day on which criminal proceedings, under this Act or other, in any jurisdiction in Canada were finally disposed of

whichever is the later.

53. No application may be brought under s. 43 after two years from

1. the day on which the procedures in question were, or ought to have been, published.

54. A limitation or prescription period under this Act is suspended

1. during any period in which the person that suffered the loss or damage is incapable of beginning the action because of any physical, mental or psychological condition;
2. during any period in which the person that suffered the loss or damage is unable to ascertain the involvement of the entity or its identity;
3. in respect of an action based on a sexual assault; or
4. for any other reasons for suspension under the common law.

Parallel litigation

55. The provisions of this Act apply notwithstanding any proceedings on the same adverse impact, or on a related adverse impact, in a state other than Canada.

56. The provisions of this Act apply notwithstanding any ruling or order by a court in a state other than Canada.

Court of Competent Jurisdiction

57. “Court” in this Part refers to a court of competent jurisdiction, including a provincial Superior Court and Federal Court

Appendix C: Line-by-line analysis from Above Ground of the proposed Option 1 due diligence process

The analysis below can also be found in Section 1.3 of Above Ground's submission to this consultation.

a. Embed due diligence in its policies and practices

Canadian legislation must ensure that corporate due diligence is established as a core governance function and not a one-time compliance exercise. The UN Guiding Principles provide that:

> [a]s the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:
> (a) Is approved at the most senior level of the business enterprise;
> (b) Is informed by relevant internal and/or external expertise;
> (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
> (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
> (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.[17]

Canadian legislation should include these requirements.

b. Identify and assess any adverse impacts in its operations abroad and its international supply chains (all upstream activities and certain downstream activities) (applies to "entities" only) [Footnote 5 of the consultation document: "International supply chains" is meant to capture a mix of all upstream activities and certain downstream business relationships (i.e., those related to the phases of sale, distribution, transport, storage, and disposal) except the phase of the use of products/services.]

[17] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 16, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

Corporate due diligence must identify and assess actual and *potential* adverse impacts. The latter is essential in order to anticipate and prevent harm, and must be included in Canadian legislation. The UN Guiding Principles provide that:

> [i]n order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:
> (a) Draw on internal and/or independent external human rights expertise;
> (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.[18]

The UN Guiding Principles do not differentiate between upstream and downstream business relationships, and nor should Canadian legislation:

> [t]he responsibility to respect human rights requires that business enterprises:
> (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
> (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.[19]
>
> For the purpose of these Guiding Principles a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-

[18] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 19, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
[19] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 14, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

> State or State entity directly linked to its business operations, products or services.[20]

Finally, as discussed below, adverse impacts should be prioritized by their level of severity and not their placement in a company's value chain. In some cases, such as with surveillance and social media products, serious impacts can occur in the end-use phase. For this reason, Canadian legislation should apply to the product and service use phase of companies' value chains .

c. Identify and assess any adverse impacts in the international supply chains of any products and services that they procure (applies to federal government and crown corporations)

Government due diligence obligations extend beyond the identification and assessment of adverse impacts. Government entities that do business with corporations and/or facilitate corporate activity must also seek to prevent, cease, mitigate and remedy potential and actual adverse impacts caused by their private sector clients and partners.

Moreover, the due diligence obligation extends to non-procurement relationships that federal government departments, agencies and crown corporations enter into with corporations. This includes the provision of: financing, insurance and guarantees; political and relational support; funding and other forms of support connected to international development objectives; as well as equity ownership in corporations.

The UN Guiding Principles provide that:

> [a] range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

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[20] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 15, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

> Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.[21]

Canadian legislation must impose the entire due diligence obligation on the full range of government departments and agencies that are exposed to human rights risks through their business relationships.

d. Prioritize adverse impacts according to their level of severity

The UN Guiding Principles state that:

> [w]here it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.[22]

However, the Guiding Principles emphasize that companies are responsible for *all* adverse impacts, as should Canadian legislation:

> [w]hile business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. (...) if prioritization is necessary, business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect remediability. Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified.[23]

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[21] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 7, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
[22] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 26, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
[23] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 26, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

e. Address (cease, mitigate or prevent) adverse impacts according to and in proportion to the regulated party's level of involvement (whether it has caused or contributed to the adverse impact or is connected to the adverse impact through its business relationships)

Under the GICA guide for lawmakers, the corporate due diligence duty creates an 'obligation of result' that is not fulfilled by merely following a specific process.[24] The UN Guiding Principles provide metrics for this obligation, depending on a company's level of involvement in the adverse impact:

> [w]here a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.
>
> Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.
>
> Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.
>
> The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.
>
> If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there

[24] Global Initiative for Corporate Accountability, *Human Rights and Environmental Due Diligence: Essential Elements of Effective Legislation. A Guide for Lawmakers* (June 2025), paragraph 2, https://static1.squarespace.com/static/65640ca1140a465cc87460b7/t/68634c629ebcb80877a8da25/1751338083374/mHREDDelements_FinalLayout_EN_June2025.pdf.

> may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.
>
> There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so. Where the relationship is “crucial” to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise’s business, and for which no reasonable alternative source exists. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.[25]

Canadian legislation should clearly set out corporate responsibilities in these varied contexts, in alignment with the UN Guiding Principles.

f. Take measures, tailored to the circumstances, to remediate the damages caused by any actual impacts to which the entity has caused or is contributing

The UN Guiding Principles provide that:

> [e]ven with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.
>
> Where a business enterprise identifies such a situation, whether through its human rights due diligence process or other means, its

[25] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 21, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

> responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors.[26]

The Office of the Australian Anti-Slavery Commissioner recently called for the adoption of a corporate due diligence obligation in that country. The commissioner recommended that companies be required to take reasonable measures to “[p]rovide for, or cooperate in remediation where the entity has caused or contributed to harm, or use its leverage to influence remediation where it is directly linked to harm" as part of the due diligence obligation.[27]

Canadian legislation must include measures that require companies to provide remediation when they cause or contribute to harm (see more on this in the section below on compliance and enforcement).

g. Monitor, assess and improve the effectiveness of the measures taken to address and remediate adverse impacts

The UN Guiding Principles provide that:

> [i]n order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:
> (a) Be based on appropriate qualitative and quantitative indicators;
> (b) Draw on feedback from both internal and external sources, including affected stakeholders.
>
> Tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement.[28]

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[26] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 24, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

[27] Office of the Australian Anti-Slavery Commissioner, *Recommendations to strengthen Australia's modern slavery laws, Initial position paper* (January 30, 2026), at 15, https://www.antislaverycommissioner.gov.au/system/files/2026-01/OAASC_initial_position_paper.pdf.

[28] Office of the United Nations High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), at 22, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

The GIGA guide for lawmakers recommends that legislation include requirements that companies evaluate and communicate the effectiveness of their due diligence processes, and that they improve their due diligence practices.[29] Canadian legislation should include these requirements.

h. Establish a communication process that enables any person or organization to submit information about a suspected adverse impact in the regulated party's operations abroad or international supply chains and consider this information when identifying and assessing adverse impacts

Both the UN Guiding Principles and OECD Guidelines require companies to engage with stakeholders when conducting due diligence.

The OCED Guidelines stipulate that:

> [m]eaningful stakeholder engagement is a key component of the due diligence process. In some cases, stakeholder engagement may also be a right in and of itself. Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through, for example, meetings, hearings or consultation proceedings. Relevant stakeholders are persons or groups, or their legitimate representatives, who have rights or interests related to the matters covered by the *Guidelines* that are or could be affected by adverse impacts associated with the enterprise's operations, products or services. (...) Meaningful stakeholder engagement refers to ongoing engagement with stakeholders that is two-way, conducted in good faith by the participants on both sides and responsive to stakeholders' views. To ensure stakeholder engagement is meaningful and effective, it is important to ensure that it is timely, accessible, appropriate and safe for stakeholders, and to identify and remove potential barriers to engaging with stakeholders in positions of vulnerability or marginalisation.[30]

The OECD Due Diligence Guidance for Responsible Business Conduct provides additional orientation:

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[29] Global Initiative for Corporate Accountability, *Human Rights and Environmental Due Diligence: Essential Elements of Effective Legislation. A Guide for Lawmakers* (June 2025), paragraph 2, https://static1.squarespace.com/static/65640ca1140a465cc87460b7/t/68634c629ebcb80877a8da25/1751338083374/mHREDDelements_FinalLayout_EN_June2025.pdf.

[30] OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023), at 20, https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990/81f92357-en.pdf.

> [t]wo-way engagement means that the enterprise and stakeholders freely express opinions, share perspectives and listen to alternative viewpoints to reach a mutual understanding. It also means that relevant stakeholders have the opportunity to help design and carry out engagement activities themselves. (...)
>
> Responsive engagement means that the enterprise seeks to inform its decision by eliciting the views of those likely to be affected by the decision. It is important to engage potentially impacted stakeholders and rightsholders prior to taking any decisions that may impact them. This involves the timely provision of all information needed by the potentially impacted stakeholders and rightsholders to be able to make an informed decision as to how the decision of the enterprise could affect their interests. It also means there is follow-through on implementation of agreed commitments, ensuring that adverse impacts to impacted and potentially impacted stakeholders and rightsholders are addressed including through provision of remedies when enterprises have caused or contributed to the impact(s).
>
> Ongoing engagement means that stakeholder engagement activities continue throughout the lifecycle of an operation or activity and are not a one-off endeavour.[31]

The GICA due diligence guide to lawmakers provides that:

> [d]ue diligence includes ongoing, meaningful, safe engagement (including consultation and communication) with affected or potentially affected rights-holders throughout the process. This includes the participation of stakeholders, including affected rights-holders, in the ongoing process to evaluate and improve a business' due diligence processes. Rights to free, prior and informed consent are respected. Special attention is paid during the due diligence process to individuals and groups who are made vulnerable to adverse impacts on the basis of their sex, gender, age, race, ethnicity, class, caste, education, sexual orientation, migration status,

[31] OECD, *OECD Due Diligence Guidance for Responsible Business Conduct* (2018), at 49, https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/02/oecd-due-diligence-guidance-for-responsible-business-conduct_c669bd57/15f5f4b3-en.pdf.

disability, social or economic status, or for any other reason. Intersectional risks to rights-holders are considered.[32]

The CNCA model legislation requires that companies consult with relevant stakeholders, including trade unions, affected communities and workers, when developing and implementing their due diligence procedures. A requirement to consult workers and trade unions in producer jurisdictions is particularly important for legislation focused on labour rights. These actors can provide first-hand information that may be difficult for authorities to obtain.

Canadian legislation should require regulated parties to carry out meaningful engagement with stakeholders at every step of the due diligence process, consistent with international standards. The stakeholder engagement provisions of the European Union's Corporate Sustainability Due Diligence Directive are not an appropriate reference regarding consultation. Those provisions were weakened prior to adoption by excluding key actors from consultation, granting companies unnecessary discretion to determine relevant stakeholders and limiting the circumstances under which companies must consult stakeholders.[33]

Finally, consultation must not put rights-holders and other actors at risk. As discussed below, legislation should require that special protections and considerations be provided to sources who may face retaliation in any form for providing information about labour exploitation. Local workers, trade union members and whistleblowers are particularly vulnerable to retaliation, both from producer companies and local governments.

i. Submit an annual report to the competent authority containing information on its due diligence obligations, organizational structure and any other prescribed information. This report must be made available to the public.

Canadian legislation should require that companies report annually. Corporate reports must be made public. Given the serious nature of the risks at play, rights-holders and their representative organizations, the general public and regulators require information that is updated at least on an annual basis.

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[32] Global Initiative for Corporate Accountability, *Human Rights and Environmental Due Diligence: Essential Elements of Effective Legislation. A Guide for Lawmakers* (June 2025), paragraph 3, https://static1.squarespace.com/static/65640ca1140a465cc87460b7/t/68634c629ebcb80877a8da25/1751338083374/mHREDDelements_FinalLayout_EN_June2025.pdf.

[33] For more information, see European Coalition for Corporate Justice, *From Ambition to Erosion: How Omnibus I Rolls Back the CSDDD* (February 2026), https://corporatejustice.org/wp-content/uploads/2026/02/Preliminary-Legal-Analysis-How-Omnibus-I-Rolls-Back-the-CSDDD.pdf.

The GICA due diligence guide stipulates that the due diligence duty:

> (...) includes taking steps to assess actual and potential environmental and human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed, having effective grievance mechanisms in place and providing adequate remediation. Includes requirement to develop and communicate due diligence strategies, policies, targets, plans and management systems, to evaluate and communicate the effectiveness of the due diligence process undertaken and to improve due diligence practices.[34]

The CNCA model due diligence legislation requires that companies include due diligence reports in their annual corporate reports. These reports are also to be published by the commissioner established under the act on a dedicated website. Finally, any interested person may submit commentary on a corporate due diligence report, which is also to be published on the website.

Canadian due diligence legislation should avoid the shortcomings of the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*. Research by the International Justice and Human Rights Clinic at the University of British Columbia (UBC) reveals that many corporate reports submitted under that legislation lack meaningful detail and fail to identify relevant risks. The UBC report identifies important gaps in the legislation and a lack of enforcement.[35]

[34] Global Initiative for Corporate Accountability, *Human Rights and Environmental Due Diligence: Essential Elements of Effective Legislation. A Guide for Lawmakers* (June 2025), paragraph 2, https://static1.squarespace.com/static/65640ca1140a465cc87460b7/t/68634c629ebcb80877a8da25/1751338083374/mHREDDelements_FinalLayout_EN_June2025.pdf.

[35] https://allard.ubc.ca/community-clinics/international-justice-and-human-rights-clinic/ijhrc-news-and-announcements/ijhrc-research-highlights-gaps-canadas-supply-chains-act-enforcement