



September 26, 2016

Business and Human Rights in the United States: A Call to Action for the U.S. Presidential Candidates

Dear Candidates for the Presidency of the United States of America:

The International Corporate Accountability Roundtable (ICAR) is a civil society organization working to ensure that governments create, implement, and enforce laws and policies to protect against business-related human rights abuse.

In today's increasingly interconnected and globalized world, a significant number of corporations operate across national borders and with growing economic, social, and political reach and power. This evolving role presents complex challenges for society at large as businesses can impact the full spectrum of human rights. In many instances, these impacts can be positive, for example by creating a workplace that is free from discrimination and that respects the human rights of all employees. However, in other situations, business activity can negatively impact the rights of individuals or entire communities. For instance, companies can fail to provide adequate working conditions for employees, ignore land rights, cause environmental damage, or fail to address and prevent child labor or human trafficking (including both labor and sex trafficking) within their supply chains.

As such, ICAR and its membership of civil society organizations call on you to prioritize business and human rights issues during this final stage of the election, and beyond. Your leadership can greatly contribute to ensuring that the necessary laws, policies, and frameworks are in place to safeguard the universal, interconnected, and inalienable human rights of people around the world. We offer this primer on business and human rights for your consideration in setting priorities and ask that you adopt the following platforms.

1. Commit to full implementation and review of the National Action Plan on Responsible Business Conduct.

ICAR commends the U.S. government on the development of its National Action Plan (NAP) on Responsible Business Conduct, which is likely to be launched before the next presidential term begins. The NAP is aimed at furthering U.S. implementation of the United Nations Guiding

Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises.¹ The development of the NAP signals a significant step in promoting better corporate human rights practices, both at home and abroad. We encourage you to build on the inclusive process taken throughout the NAP's development by applying a transparent and multi-stakeholder approach to the implementation and review process. We also urge you to commit to fully implementing the NAP, which must be adequately resourced in order to fulfill its purpose. Furthermore, we call for the development of a framework to monitor and report on the NAP's implementation in order to ensure that the commitments outlined therein are carried out across all government sectors and streamlined in law, policy, and practice.

2. Enhance regulation of business activity to prevent human rights abuse in the first place, including through public procurement processes.

We encourage you to commit to providing a regulatory environment that ensures businesses respect human rights throughout their operations. Specifically, we ask you to commit to requiring companies to: (1) conduct human rights due diligence throughout their business relationships, including in relation to the activities of subsidiaries, subcontractors, and suppliers; and (2) publicly report on efforts to prevent and address adverse human rights impacts.

Additionally, the U.S. government is well positioned to provide important leadership toward this end through public procurement. As the largest purchaser of goods and services in the world,² the U.S. government must lead the way in responsible procurement practices by requiring and/or incentivizing government contractors to: (1) conduct human rights due diligence; (2) disclose their supply chains, such as through full implementation of the Federal Funding Accountability and Transparency Act 2006³; and (3) publicly report on their efforts to ensure respect for human rights. By using its purchasing power in this way, the federal government can ensure that taxpayer dollars are not going to businesses that disrespect or violate human rights.

3. Implement full and public country-by-country reporting as an integral step to ensuring that corporations uphold human rights by paying their fair share of tax.

Corporate tax avoidance costs developing countries at least \$100 billion every year, depriving governments the world over of necessary resources to pay for schools, hospitals, bridges, roads, and other essential services and infrastructure for their citizens.⁴ Without funds to pay for teachers, doctors, nurses, and police officers, governments cannot protect the human rights of their citizens. There is now a growing consensus that responsible tax behavior is a critical component of corporations' responsibility to respect the human rights of the people and

¹ Christopher Smart, *Announcement of Opportunity to Provide Input into the U.S. National Action Plan on Responsible Business Conduct* (2014), <https://www.whitehouse.gov/blog/2014/11/20/announcement-opportunity-provide-input-us-national-action-plan-responsible-business->

² ROBERT STUMBERG ET. AL., *TURNING A BLIND EYE? RESPECTING HUMAN RIGHTS IN GOVERNMENT PURCHASING 1* (2014), available at <http://icar.ngo/initiatives/procurement>.

³ Funding Accountability and Transparency Act, 31 U.S.C. § 6101 (2006).

⁴ UNCTAD, *World Investment Report 2015*, http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf.

communities in the areas in which they do business, and, conversely, that corporate tax avoidance threatens those rights.⁵ Greater transparency about where corporations earn their money and pay taxes is a critical first step to aligning corporate tax payments with actual economic activity.⁶ We call on you to mandate full country-by-country reporting for corporations and to make that information available to the public to ensure meaningful accountability. This is an important first step to preventing and ending the scourge of corporate tax avoidance that threatens the human rights of Americans and people across the globe.

4. Work to ensure effective remedy for victims of corporate related human rights violations.

Under international law, governments have an obligation to ensure that human rights victims have access to effective remedy. Yet, for most victims of corporate-related human rights abuse, remedy remains rare. Currently, legal, procedural, and practical barriers in the U.S. judicial system make remedy difficult to implement and enforce. Such barriers include the cost of litigation and short-term statutes of limitations, as well as issues impacting legal standing and extraterritorial jurisdiction. We therefore call on you to prioritize the identification of legal and practical barriers to judicial remedy, including for abuses that occur extraterritorially, and consider existing policy recommendations aimed at alleviating these barriers.⁷

We also strongly believe that non-judicial avenues, such as grievance mechanisms and accountability offices, are essential to the remedy landscape and can complement the role of the formal judiciary. Because those suffering human rights abuses as a result of U.S. activities abroad may have few other options for recourse, creating and strengthening non-judicial avenues must also be a priority. Non-judicial grievance mechanisms can ensure that there is accountability for human rights violations resulting from corporate misconduct or from U.S. financial and technical support of international projects. The U.S. government should include an inter-agency plan to: (1) create non-judicial grievance mechanisms where they are non-existent, (2) reform existing mechanisms to lower barriers to access and to increase transparency, and (3) institute financial or other remedial elements into the framework of these mechanisms in order to compensate for harms that have occurred.

5. Prosecute human rights violators at the corporate and individual level.

We call on you to support the pursuit of full justice for victims of human rights abuse by corporate actors. This includes adequate resourcing of executive entities that play a key role in our civil law system, such as the Department of Labor and the Equal Employment and

⁵ Shane Darcy, *'The Elephant in the Room': Corporate Tax Avoidance & Business and Human Rights*, BUSINESS & HUMAN RIGHTS JOURNAL (Forthcoming), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2797219.

⁶ ACTIONAID, CHRISTIAN AID, AND OXFAM, GETTING TO GOOD: TOWARD RESPONSIBLE CORPORATE TAX BEHAVIOUR, https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/dp-getting-to-good-corporate-tax-171115-en.pdf.

⁷ For policy recommendations to address the barriers to judicial remedy, see GWYNNE SKINNER ET AL., THE THIRD PILLAR: ACCESS TO JUDICIAL REMEDIES FOR HUMAN RIGHTS VIOLATIONS BY TRANSNATIONAL BUSINESS (Dec. 2013), available at <http://accountabilityroundtable.org/wp-content/uploads/2013/02/The-Third-Pillar.pdf>.

Opportunity Commission, as many human rights victims are best-served using civil law claims. At the same time, many human rights abuses by corporations constitute a violation of criminal law, yet the corporations perpetrating these abuses are rarely, if ever, held to account. In practice, the criminal justice system does not adequately hold corporations or individuals accountable for their involvement in or links to human rights violations. We call on you to commit to ensuring that corporate human rights crimes receive adequate attention and energy. This should include commitments to: (1) undertake a review of existing criminal statutes to identify the barriers to effective prosecution, (2) consider the range of actions that can be taken to alleviate these barriers, and (3) empower investigators and prosecutors with a clear mandate and provide them with the necessary tools and resources to address the inherent complexities associated with prosecuting corporate crimes.

6. Commit to working collaboratively with a broad range of stakeholders and demonstrate leadership, both domestically and internationally, on business and human rights.

The challenges that arise in relation to many business and human rights issues are complex and multi-faceted. As such, these issues require a holistic and multi-stakeholder approach. By working together with civil society organizations, community groups, rights holders, unions, labor organizations, business associations, companies, and investors, the U.S. government can leverage its power to both enforce and encourage respect for human rights. We therefore urge you to commit to working with a broad range of stakeholders and to take proactive efforts to ensure that the voices of rights-holders are taken into full consideration when developing and implementing laws and policies that affect them.

Thank you for your full consideration of these important issues. Prioritizing the above recommendations will benefit the United States on many levels. It will also bring the U.S. government closer to meeting its human rights obligations under international law. We look forward to working with you to accomplish these goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Amol Mehra". The signature is fluid and cursive, with the first name "Amol" being more prominent than the last name "Mehra".

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