



Fourth Submission by the International Corporate Accountability Roundtable (ICAR) to the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights

30 June 2015

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

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

Remove legal barriers that prevent victims from accessing effective judicial remedies.

The UN Guiding Principles on Business and Human Rights (UNGPs) identify access to remedy as one of the three essential pillars of the international business and human rights framework.¹ Along with its partner networks, ICAR researched and mapped the barriers that confront victims seeking judicial remedies in various jurisdictions for business-related human rights abuses.² ICAR found that States are generally not fulfilling their obligations to ensure access to effective judicial remedies.³ The barriers to effective remedy include: the doctrine of limited liability for corporations; time limitations on bringing claims; immunities and non-justiciability doctrines; evidentiary burdens on claimants, particularly in relation to transnational litigation; and limitations on collective redress mechanisms.⁴

In light of these barriers, and in addition to the recommendations in our second submission to the OEIWG on extraterritoriality,⁵ we call on the OEIWG to use the binding instrument drafting process to develop requirements that will obligate State parties to enhance existing criminal and civil laws relevant to corporate accountability in the human rights context. ICAR hopes the OEIWG will first work with stakeholders to identify the barriers to remedy that exist in their specific jurisdictions and then ensure the binding instrument includes measures that will progressively eliminate these barriers.

¹ Special Representative on Business and Human Rights, *Protect, Respect, and Remedy: A Framework for Business and Human Rights*, U.N. Doc. A/HRC/8/5 (Apr. 2008).

² See GWYNNE SKINNER ET AL., *THE THIRD PILLAR: ACCESS TO JUDICIAL REMEDIES FOR HUMAN RIGHTS VIOLATIONS BY TRANSNATIONAL BUSINESS* (Dec. 2013), <http://accountabilityroundtable.org/initiatives/remedy/>.

³ *See id.*

⁴ *Id.* at 19-20.


⁵ ICAR, *Second Submission by the International Corporate Accountability Roundtable (ICAR) to the Open-ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights (OEIWG)*, June 2015.

Remove practical barriers that prevent victims from accessing effective remedies.

ICAR's research also revealed that multiple practical barriers often prevent victims of business-related human rights abuses from bringing and prosecuting a case. Examples of practical barriers that inhibit human rights litigation include: inadequate legal aid, which is particularly problematic in relation to complex, long-running transnational litigation; "loser pays" provisions, which require the loser in litigation to pay the prevailing parties costs; and insufficient training for public prosecutors and judges.⁶ ICAR thus urges the OIEWG to draft a binding instrument that will require State parties to enact legislation to limit or remove practical barriers that prevent victims from bringing and prosecuting a case in their courts.

States cannot fulfill their duty to protect individuals against human rights abuses, and corporations cannot uphold their responsibility to respect human rights, if victims of human rights violations do not have full and effective access to judicial remedies. **We urge the OIEWG to explicitly acknowledge the many barriers involved in accessing remedy for business-related human rights harms and develop a binding instrument that prioritizes removing legal and practical barriers to remedy.**

Sincerely,



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Director

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www.icar.ngo

⁶ SKINNER ET AL., *supra* note 2, at 20.