



Fifth Annual Meeting of the International Corporate Accountability Roundtable

Georgetown Law Human Rights Institute

Washington, DC

September 10-11, 2015

What is the International Corporate Accountability Roundtable (ICAR)?

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

For more information about ICAR's work and campaigns, visit:

<http://www.icar.ngo>

Fifth Annual Meeting Agenda

DAY 1: THURSDAY, SEPTEMBER 10

Gewirz Student Center, 120 F Street NW, 12th Floor

- 8:30 am** ***Registration and Breakfast***
- 9:00 am** ***Welcome***
Introductory Remarks
Amol Mehra, ICAR
- 9:15 am** ***Realizing Remedies: Reflections from Judicial & Non-Judicial Spheres***
Moderator:
Amol Mehra, ICAR
Discussants:
Natalie Bridgeman Fields, Accountability Counsel
Sandra Cossart, Sherpa
Kris Genovese, SOMO
Seema Joshi, Amnesty International
- 10:30 am** ***Coffee Break***
- 10:45 am** ***Overcoming Barriers to Justice: Launch of Parent Company Accountability Project***
Moderator:
Sophia Lin, ICAR
Discussants:
Filip Gregor, Frank Bold
Gwynne Skinner, Willamette University
Jacqueline Lainez, University of District of Columbia
- 11:30 am** ***Reporting and Benchmarks for Business and Human Rights***
Moderator:
Amol Mehra, ICAR
Discussants:
Motoko Aizawa, Institute for Human Rights and Business
Jonathan Jacoby, Oxfam America
Rebecca MacKinnon, Ranking Digital Rights
Zorka Milin, Global Witness
-
- 12:30 pm** ***Lunch***
Keynote Remarks:
Ellen Dorsey, Wallace Global Fund
-

1:30 pm ***Land, Extractives and Security: Addressing Corruption, Strengthening Standards, and Improving Transparency***

Moderator:

Mina Manuchehri, ICAR

Discussants:

Chris Albin-Lackey, Human Rights Watch

Corinna Gilfillan, Global Witness

Chris Jochnick, Landesa

Meg Roggensack, Georgetown University

2:45 pm ***Procurement and Supply Chain Transparency***

Moderator:

Amanda Werner, ICAR

Discussants:

Brian Finnegan, AFL-CIO

Sarah Labowitz, NYU Stern

Karen Stauss, Free the Slaves

Professor Robert Stumberg, Georgetown University

3:45 pm ***Coffee Break and Tea Break***

4:00 pm ***Aid, Development, and Corporate Accountability***

Moderator:

Sara Blackwell, ICAR

Discussants:

Carla Garcia Zendejas, CIEL

Gretchen Gordon, Bank on Human Rights

Kindra Mohr, Accountability Counsel

4:45 pm ***Open Floor and Closing Remarks***

EVENING RECEPTION: THURSDAY, SEPTEMBER 10

5:30 pm ***5th Year ICAR Anniversary Evening Reception***

Philos Mezze & Wine Bar, 401 Massachusetts Avenue NW

Welcoming Remarks and Toast:

Katie Redford, Earthrights International

DAY 2: FRIDAY, SEPTEMBER 11

Gewirz Student Center, 120 F Street NW, 12th Floor

9:30 am

Arrivals and Breakfast

10:00 am

Implementing Frameworks for Accountability: National Action Plans and Beyond

Moderator:

Sara Blackwell, ICAR

Discussants:

Marilyn Croser, CORE

Patrick Geary, UNICEF

Josua Loots, Center for Human Rights at University of Pretoria

Christopher Schuller, German Institute for Human Rights

10:45 am

Teaching Business and Human Rights – Working With Advocates

Remarks:

Tyler Giannini, Harvard School of Law

Meg Roggensack, Georgetown University

11:00 am

Treaty Talk: Business and Human Rights Developments and Opportunities in Geneva

Opening Remarks and Moderator:

Arvind Ganesan, Human Rights Watch

Discussants:

Dominic Renfrey, ESCR-Net

Sif Thorgeirsson, Business and Human Rights Resource Center

12:00 pm

Lunch

1:00 pm

Roundtable Session: Setting the Strategy and Building a Coordinated Movement

****This session will be closed to ICAR Members only****

Moderator:

Amol Mehra, ICAR

4:00 pm

Closing Remarks and Thank You

Discussion I: Realizing Remedies

Reflections from Judicial & Non-Judicial Spheres

Scope

This discussion focused on judicial and non-judicial grievance mechanisms and the way in which they are utilized. Specifically, the discussion explored the barriers to accessing remedies for human rights victims and the potential solutions to overcome such hurdles.

Discussion on Non-Judicial Mechanisms

Participants noted that non-judicial mechanisms have yet reached their potential in providing effective access to remedies. For instance, only less than 10 complaints have been filed with International Financial Institutions (IFI) complaint mechanisms, and very few were heard. The Organization for Economic Cooperation and Development (OECD) National Contact Points (NCPs) are more widely used, yet with similar low success rate—of the 250 cases analyzed in SOMO's *Remedy Remains Rare* report, only 35 led to somewhat beneficial results. For more information on the *Remedy Remains Rare* report, please visit:

http://www.oecdwatch.org/publications-en/Publication_420.

The lack of availability and knowledge of mechanisms to affected communities is one of the reasons for the underutilization of non-judicial mechanisms. To file a

complaint with an IFI accountability mechanism, for instance, the affected communities would first need to know that an IFI is providing funding for the business project, which is often undisclosed information privy on to the contracted parties.

For the NCPs in many countries, the lack of resources and experience in dispute resolution is another reason for the dissatisfactory results for providing remedies. The NCPs often suffer from high staff turnover, which render it difficult to build and retain expertise. They also commonly lack sufficient funding and capacity to effectively facilitate the dispute resolution process, such as conducting in-country mediation with the affected communities.

The non-binding nature of agreements provides another barrier, particularly in bringing companies to the negotiating table.

Discussion on Judicial Mechanisms

Although judicial mechanisms are more adept in providing enforceable decisions and effective remedies in comparison to non-judicial ones, barriers still exist. The legal frameworks, such as limited shareholder liability and the presumption against extraterritoriality, impose challenges for human rights victims to

obtain remedies. In many cases, judicial actions and decisions are highly politicalized due to the economic and political power of multinational corporations in both the host and home countries, rendering the process even less transparent and victims less chance to obtain remedy.

Despite the barriers, there has been some progress. One participant pointed out that human rights litigation, especially in the United States (U.S.), continues despite the judicial setback as the result of the Supreme Court *Kiobel* decision.

There have also been important legislative developments. In France, a bill that would impose a duty of care on parent companies for activities and damages of its subsidiaries and subcontractors was registered with the French National Assembly in 2014. While the final language was weakened from the original bill, the legislation establishes a higher standard of care for French based parent companies thus making it easier to pierce the corporate veil.

Concluding Themes

Throughout the discussion it was noted that improvements are needed for both the judicial and non-judicial mechanisms to ensure access to effective remedy. In relation to non-judicial mechanisms, participants agreed that an evaluation system that provides quantitative and qualitative analysis should be developed to assess and compare effectiveness. This would be especially useful to push for improvements of the OECD NCPs in each country. There was consensus that the growing number of non-judicial mechanisms has not resulted in enhanced access to remedy. Instead, efforts should be made to strengthen existing mechanisms to provide better remedies and tailor more to the needs of the affected communities.

In terms of judicial mechanisms, more legislation is required to remove the legal and procedural barriers to justice and remedy. Efforts should also focus on the criminal system. Greater attention and resources should be devoted to prosecuting corporations for human rights related crimes. Furthermore, prosecutors need to be more transparent in providing reasons as to why they decline to prosecute corporate human rights crimes.

Discussion II: Overcoming Barriers to Justice

Launch of the Parent Company Accountability Project

Scope

This session featured ICAR’s most recently published report on Parent Company Accountability Project (PCAP) written by Professor Gwynne Skinner with contributions from Professor Jacqueline Lainez. The discussion focused on the challenges to accessing remedy that stem from the legal doctrine of shareholder limited liability in the U.S., limitations of the current approaches, recent developments in Europe to address the issue and the report’s recommendations.

Parent Company Accountability Project Overview

Corporate groups organize as a network of distinct legal entities with parent companies exercising varying degrees of influence over their subsidiaries or other parts of a business enterprise. Structuring themselves in this way gives corporate groups access to tax and financial benefits, but it also allows them to avoid liability for the harmful and illegal actions of their subsidiaries.

The original conception of limited liability in the U.S. dates back to the 1800s. However, this doctrine does not appropriately take into consideration the reality of modern global business and the role that large multinational corporations currently hold. Since the development of the doctrine of limited liability, companies have been

taking advantage of this regulatory gap by obtaining the benefits of their subsidiaries while not being held to account for their actions and impacts.

Human rights litigators have pursued a range of theories, including piercing the corporate veil, agency theory, joint venture theory, enterprise theory, and others, to overcome limited liability of parent companies. A number of these approaches predicate upon a high level of parental control on the subsidiary to trigger liability, but there is difficulty in proving that such control exists. As such, these attempts have had marginal success.

The PCAP offers specific recommendations on legislative change barrier that the shareholder limited liability doctrine imposes on access to remedy for victims of human rights violations. The recommended approach moves away from the parental “control” test to a legislative enactment that allows the courts to ignore the doctrine of limited liability if the subsidiary operates in a high-risk country and the plaintiffs are unable to obtain a remedy in their own jurisdiction. Reasons why this may not be possible include; corruption, lack of a cause of action, or if damages are not available because the subsidiary is underfunded.

The report recommends that legislation is required in order to address the gap of corporate accountability created by the

legal doctrine of shareholder limited liability. Parent companies should be held accountable for acts of their subsidiaries when they receive such immense benefits from such corporate structure.

Trend towards Increased Accountability in Europe

Several countries in Europe have already taken legislative action to address this legal gap in corporate accountability. In France, a bill is being considered in the legislature to create a parental duty of care on subsidiaries. This duty of care can be overcome if the parent companies engage in human rights due diligence. In Switzerland, a motion was submitted in 2014 in Parliament to require human rights and environmental due diligence for Swiss companies operating abroad. While the motion was narrowly defeated, a coalition is calling for a referendum on a legislative proposal that is similar to the French bill that requires companies to engage in human rights due diligence, risk assessment, and comprehensive reporting.

Participants agreed that although due diligence is still a step away from parent company legal liability for the acts of subsidiary, the legislative movement in Europe is an encouraging trend. There was consensus on the need to continue the conversation and strategically push for more legal reforms internationally.

Concluding Discussion

Participants agreed that the PCAP should grow into a large-scale campaign in holding companies accountable for the actions of their subsidiaries. Some participants noted a campaign would likely gain traction with the public by showcasing the substantial monetary benefits the parent companies receive from their subsidiaries. Since there has been a substantial growth in international business over the past decades there needs to be action and awareness on this issue. There was agreement that there is a need for more coverage and publicity of these issues in the U.S and globally.

Discussion III: Reporting and Benchmarks for Business and Human Rights

Scope

This discussion explored a number of emerging initiatives aimed at: ranking corporate human rights performance, creating human rights benchmarks for specific sectors, and assessing company respect for human rights.

Benchmarking Human Rights Performance

This component of the discussion focused on the Corporate Human Rights Benchmark (CHRB), a joint initiative developed by leading investors and civil society groups. The presentation focused on the difficulties in defining the “social” dimension of traditional Environmental, Social and Governance (ESG) criteria.

It was noted by participants that the process of developing the CHRB, including the benchmarks developed, will be useful in helping elaborate further this “social” aspect, particularly focusing on human rights.

The presentation elaborated the design principles behind the CHRB and the timeline of consultations. For more information on the CHRB, please visit: <http://business-humanrights.org/en/corporate-human-rights-benchmark>.

Scoring Human Rights Performance

The conversation shifted to discuss the “Behind the Brands” work of Oxfam, an index to rank large food and beverage companies against human rights and social sustainability criteria.

The objective of this discussion was on the development of the index, as well as the need to both engage the companies directly before the score is issued, and to hold them to a standard of performance afterwards. Monitoring of company implementation of policies on the ground was therefore another crucial element of the approach adopted.

The discussion highlighted the need to think about business as not just a target, but an enabling actor in policy-making. Further, participants agreed on the need to engage stakeholders and communities directly when assessing company performance, and not simply relying on companies’ own assertions.

For more information on the “Behind the Brands” campaign, please visit:

<http://www.behindthebrands.org/en-us>

Ranking Online Freedoms

This section of the session turned to a project focused on the ranking of the right to freedom of expression and privacy in the information and communications sector. The project involved the evaluation of 16 internet and telecommunications companies against 31 indicators focused on corporate disclosure of policies and practices that affect users' freedom of expression and privacy. The project was designed to inform the work of human rights advocates, policymakers, and responsible investors. In addition to informing the policy and practice of companies operating in this industry.

Participants noted that the relationship between companies and governments varies significantly in the context of freedom of expression and privacy, as some engagement leads to a bolstering of rights, while others can be rights-restricting.

The ranking, which is the result of an extensive period of consultation and research, will focus on company commitments, including policy commitments; governance, management, and oversight; and freedom of expression in relation to how companies inform their users about what information is being collected and shared. The ranking was published in early November 2015.

For more information on "Ranking Digital Rights", please visit:

<https://rankingdigitalrights.org/>

Corporate First Amendment Rights

Participants also voiced concerns of an alarming and recent court decision handed down by the DC Circuit in the conflict minerals case. The case objective is the implementation of the SEC rule for Section 1502 of the Dodd-Frank Act. The decision has interpreted commercial speech in a way that can harm future social disclosure, and has also limited the application of the full conflict minerals rule.

Participants noted a general increase in corporate power and rights, which has been the hallmark of recent years of case law, and called for stronger organization within the advocacy community to push back on these dangerous precedents.

Concluding Themes

During the discussion, it was noted that rankings and benchmarks are not one-off exercises, but rather must be thought of as part of an ecosystem of other actions, including campaigns, advocacy and engagement. Participants agreed that the focus shouldn't be on whether a particular company scored high or low, but rather on the trends and gaps.

Although there is value in efforts focused at assessing company policies and adoption of strong human rights management systems, the need to factor in performance and outcomes is critical. There was strong consensus that the involvement of communities and affected groups is crucial to understanding a company's impact on human rights.

Further, even though such initiatives focused on company performance, there

was a critical need to ensure governments themselves are held accountable for their impacts on human rights, including through the conditions they place on companies that may lead to stronger or weaker human rights respect.

There was also discussion about tensions that may arise from overloading users

(consumers, regulators, civil society, and other) with raw data as opposed to synthesized data and conclusions, as this may lead to apathy to the results, or even misleading assessments of company performance by a focus on a particular sector or set of rights.

Discussion IV: Land, Extractives, & Security

Addressing Corruption, Strengthening Standards, and Improving Transparency

Scope

Combining the distinct but interrelated topics of land rights, the extractive industry, and the private security sector, this session highlighted the need for robust anti-corruption, human rights due diligence, and transparency measures to be put in place across all three areas for crosscutting solutions and coherent policies at both the government and corporate levels. The session also provided a creative discussion around how the siloes around these issue areas can be breached and how certain initiatives in one area could provide models for another area.

Discussion and Key Themes

Land Rights

The topic of land rights has evolved into a field of its own in the last couple of years, whereas, before, the topic itself had only been discussed in conjunction with issues such as indigenous rights and water rights. A key cause of this increased focus has been growing awareness around land grabs and an associated explosion of norm-creation in relation to land in the last several years. Participants pointed out the fact that the business case for enhanced standard-setting around lands rights is very strong, as clarity around titling, for instance, provides clarity for companies in terms of how to

avoid operational-level risks and controversy. However, there remain significant gaps in addressing issues of corrupt practices associated with large-scale land deals; the honoring of free, prior, and informed consent (FPIC) at all stages of operations; and community engagement, such as through community-driven human rights impact assessments (HRIAs) and mapping initiatives. Participants also voiced their concerns on how to best foster and sustain engagement at the international, regional, and national levels because land tenure is an intensely local issue.

The Extractive Industry

In the United States, Section 1504 of the Dodd-Frank Act requires all U.S.-listed extractive companies to disclose payments to governments on both the country and project levels. The most recent litigation around this provision did not overturn the rule, but called on the U.S. Securities and Exchange Commission (SEC) to reissue the rule with more detailed justifications. A key development in this regard is the result of a lawsuit filed by Oxfam, with the support of EarthRights International (ERI), calling on the SEC to reissue the rule after an undue delay of two years. The U.S. District Court ruled in favor of Oxfam, compelling the SEC to expedite its new rulemaking.

Highlighting the Extractive Industry Transparency Initiative (EITI) as an example of an innovative and useful model for enhanced disclosure and multi-stakeholder cooperation, participants at the same time called for the improvement of such initiatives through greater enforcement of the standards they expound and an increase on the amount of information disclosed. For example, EITI should not only require disclosure of payments made by extractive companies to host governments, but also government budget and expenditure transparency to ensure that such revenue is being spent in line with the public interest. Moreover, it remains a voluntary rather than a mandatory disclosure initiative.

Participants also highlighted the issue of remedy as a unique area of concern within the realm of negative human rights impacts and the extractive industry. In many cases, extractive operations are taking place within highly complex political environments, wherein State-level remedy is inaccessible and ineffective. In such contexts, company-led remedial mechanisms might be the more readily

available avenue for bringing a complaint, but such mechanisms most often do not meet the effectiveness criteria for non-judicial grievance mechanisms under the United Nations Guiding Principles (UNGPs).

The Private Security Sector

Following the U.S.-led wars in Iraq and Afghanistan, the private security sector has rapidly grown in recent years, particularly in high-risk areas. While several participants commented on the negative effects of accepting private security as the norm and therefore developing normative standards for the sector, others described the sector as a necessary and as a sector that must be addressed through more robust and enforceable frameworks. A key example of this is the International Code of Conduct (ICoC), which is currently being developed by the ICoC Association (ICoCA), a multi-stakeholder initiative with active government, company, and civil society participation. The ICoC currently covers a wide range of human rights concerns and includes operational-level standards that are already being incorporated into the bidding process for U.S. State Department and UN contracts.

Discussion V: Procurement & Supply Chain Transparency

Scope

This discussion highlighted the U.S. Executive Orders (EO) relevant to procurement, and the need to ensure they are implemented domestically before they are further expanded. The issue of unofficial factories in Bangladesh and the inadequacy of relying on companies to conduct oversight were discussed, as was a proposed alternative model of “shared responsibility.” It was also noted the regulatory efforts to increase transparency in relation to corporate efforts to eradicate human trafficking and modern slavery from their supply chains. ICAR’s recommendation to the U.S. Government on actions related to procurement in order to include it in the National Action Plan as well as the Federal Accountability and Transparency Act of 2006 was discussed.

Labor and Procurement

The conversation started with a discussion of U.S. EO, with a particular focus on the fair pay and safe workplaces EO. It was noted that relevant EO in the U.S. have a lot of exceptions, particularly for commercially available off-the-shelf items (COTS). The panelist pointed out that transparency is not the end goal, and that we need to also discuss monitoring and enforcement. Additionally, there is a split between the domestic and global work on this issue. In these terms, it was noted that there is a

need to do a better job in keeping the domestic and global parts of this work together.

The EO on fair pay and safe workplaces in the U.S. is about contracts performed domestically. Participants agreed on the need to make sure that this EO is actually being implemented domestically, which might allow for applying it to global supply chains in the future. Finally, it has to be taken into account that often the public procurers are actually members of labor unions themselves, which highlights the need for engagement with the unions on this issue.

The issue of trade was also discussed in the context of experience using the complaint mechanisms of the Department of Labor (ILAB, specifically). A panelist noted that petitions have been filed, but that one took almost 7 years, and that the results of the complaint have now been delayed through September. There has been no remedy for the affected workers during this time, and it is not clear whether at the end of the process the victims will get anything. It was noted that this is not really an effective mechanism, and the U.S. government is not proactively enforcing the provisions of trade agreements.

Rana Plaza and Supply Chains

The panelist highlighted the fact that we know much less about supply chains than we think we do. Recently, a report on supply chains in Bangladesh identified a system of indirect sourcing. The report found that in Bangladesh there are many more factories than thought to be, and most of the production is happening in unofficial factories that are not registered with the government. These factories are not visible to regulators or foreign buyers. This means that a lot of workers are not being protected by the efforts in Bangladesh. Specifically, the current model of relying on brands to conduct oversight is leaving workers out because these factories are not visible to the brands. To address this issue, a new model of “shared responsibility,” which would include a mix of public and private actors, is being created in an industry specific way.

The model of shared responsibilities was proposed as a response to the protection gap, with both unions and CSOs having a role. There are models of this shared responsibility approach in other sectors, for example the Detroit model and Quicken Loans.

Transparency and Human Trafficking / Slavery in Procurement

The panelist discussed legislation that has been introduced in the U.S. regarding human trafficking and modern slavery in supply chains. Specifically, HR 3226 and its companion bill in the Senate. This bill would require companies that have above \$100 million in global receipts to disclose the efforts they are taking to address modern

slavery and trafficking in their supply chains. This is an improvement from the California bill because the California bill left “supply chain” undefined and it was interpreted to mean only tier one contractors. EO 13627 Strengthening Protections Against Trafficking in Persons in Federal Contracts was also discussed, as was the U.K. Modern Slavery Act, which requires companies to disclose the steps they are taking to eradicate modern slavery in their supply chains. In sum, the panelist noted that while transparency is an important step, it is not the solution. The challenge ahead lies in expanding the attention span of consumers and investors so that campaigns can be launched and sustained based on the information revealed through transparency.

What is left in procurement reform and how do we get there?

ICAR submitted recommendations on what the U.S. Government should include on procurement in its NAP, which included a discussion on the Federal Accountability and Transparency Act of 2006. The intention of the Act is to require public disclosure of government contractor supply chains via USASpending.gov, but currently only information about primary contractors is provided. In addition to not providing information about sub-contractors, the database uses categories that are too broad, (e.g. “meat/poultry/fish”), which makes it difficult to use. Finally, the database is not as user friendly as it once was because it can no longer be used to create contractor or agency profiles.

The panelist noted that there is work currently underway to pull out effective practices in relation to public purchasing, including transparency.

Concluding Themes

Overall the discussion highlighted that much needs to be done to increase transparency in public procurement, either

through ensuring existing regulatory measures are implemented faithfully or by passing new laws. However, it was also made clear that transparency is just the first step and not the end goal. In order to create real change, other issues, such as consumer/investor attention span and the issue of unofficial factories, must be addressed as well.

Discussion VI: Aid, Development, and Corporate Accountability

Scope

The main objective of this session was to better emphasize and more concretely discuss the intersection of priorities within the aid, development, and corporate accountability communities. The purpose of aid and development is to reduce poverty and facilitate economic development; however, it must come hand-in-hand with corporate respect for human rights in order to be sustainable.

The Existing Landscape

Several participants noted that the older development banks feel as if they are losing ground to the newer, more flexible banks coming out of the BRICs countries (Brazil, Russia, India, and China) and new regional banks. Specifically, the newer banks are not currently held to the same traditional standards and regulations as the older banks. Due to this, the World Bank and others have begun to create regressive reforms in terms of internal structures and standards, creating a possibility of deregulation and dilution of policies in order to compete with speedier loan transactions offered by the newer banks that do not yet have safeguards in place.

Participants discussed two main gaps in terms of human rights and development agencies and banks: (1) there remains a strong lack of political will to address

human rights within these entities; and (2) there remains a lack of technical and institutional understanding in terms of how to operationalize policy-level human rights commitments within these entities.

In terms of the first gap, participants discussed that, in the past, development was just defined as economic development. However, the paradigm is shifting toward a dialogue that includes human rights. For example, the International Finance Corporation (IFC) and the Asian Development Bank (ADB) have taken on some nominal human rights provisions, and the World Bank is currently developing human rights safeguards while revising its social and environmental safeguards. Moreover, some governments who have created NAPs on business and human rights have incorporated a commitment to promote development in terms of respect for human rights. At the same time, a challenge in this regard is transparency in terms of who makes financial decisions and how those decisions are made, as such elements are most often highly opaque for external actors.

In terms of the second gap, participants stressed the need to bring together the expertise of the development community and the business and human rights community in terms of finance and human rights due diligence. Moreover, targeted

capacity building to enhance human rights expertise within the aid and development communities must address knowledge gaps at both the policy formation and operational stages.

Future Opportunities for Engagement and Collaboration

Overall, aid and development is mostly associated with government. However, participants stressed that the focus needs to shift to more directly include business because of their level of involvement in financial development, as well as civil society as key representatives of impacted communities. Participants noted that, if civil society can influence key reviews happening at the World Bank and other large financial actors such as USAID, while at the same time influencing newer actors such as the BRICS and regional banks, business respect for human rights may become more incorporated within aid and development activities.

Specifically, some examples of opportunities for engagement that were highlighted by participants were: (1) Power Africa, which is a USD 7 billion fund for the development projects across the continent over the course of five years and which is being matched by USD 20 million from the private sector; (2) the recent G7 commitments and Sustainable Development Goals (SDGs) that relate to business and human rights; (3) the increasing number of NAPs process underway worldwide; (4) trade preference systems and the potential to incorporate human rights protections into them; and (5) the establishment of general grievance mechanisms for any public financing of aid and development projects, which civil society and national human rights institutions (NHRIs) are currently pushing for within various countries as there is an overwhelming lack of remedy in relation to aid and development projects.

Discussion VII: Implementing Frameworks for Accountability

National Action Plans and Beyond

Scope

This session presented an overview on the progress of National Action Plans (NAPs) developments worldwide, as well as a debate on the benefits and limitations of NAPs in achieving progress in State implementation of the UNGPs and other business and human rights frameworks.

NAPs Developments: Examples from Germany, South Africa, and the United Kingdom

Germany has begun the development of its NAP, with the government aiming to have a model process that includes a high level of multi-stakeholder consultation and leadership from an interagency steering committee. The government also commissioned the completion of a national baseline assessment by the German Institute for Human Rights, which was published in May 2015. Expert hearings are also ongoing to inform the NAP, including on the topics of human rights due diligence and access to remedy. The NAP is scheduled for release in June 2016.

In South Africa, the government has not yet indicated a commitment to developing a NAP, but the Centre for Human Rights at the University of Pretoria is conducting a national baseline assessment to take stock

of existing legislation, regulation, policy, and practice at the State level. In the case of South Africa, where relatively well-developed legislation on corporate accountability already exists, analysis of implementation and enforcement will be a key part of the national baseline assessment, which will be submitted to the South African government upon completion.

The United Kingdom (U.K) released the first NAP on business and human rights in September 2013 and is now in the process of reviewing it. The U.K. government has not committed to conducting a national baseline assessment as part of its revision process, nor did it conduct one for its initial NAP process. In regard to the impact of the U.K. NAP, it was specifically noted during the discussion that the initial iteration of the NAP called for the U.K Government to issue guidance to address the risks posed by exports of information and communication technology to human rights, including freedom of expression online, and the U.K. National Contact Point has heard several specific instances on the issue of surveillance since, including one wherein a company was found to have been in violation of the OECD Guidelines for Multinational Enterprises.

Discussion and Key Themes

Key Benefits Provided by NAPs

A large number of participants noted the “door-opening” effect that NAPs are having across diverse national contexts, especially in terms of less-often highlighted issues such as children’s rights and the rights of other vulnerable groups. As such, NAPs are serving as a “hook” for more specific and direct discussions on implementation with a wider range of government departments than was previously occurring. The national baseline assessment process in particular was highlighted as a key opportunity for government engagement, whereby the “grunt work” of this process can be done by a civil society group or national human rights institution in order to help facilitate a commitment by the government to do a NAP, NBA, or similar exercise. It was suggested that NAPs could serve as an impetus for Regional Action Plans (RAPs) on business and human rights, which may be ripe for development in already active regions like the EU or, on the other hand, more feasible in regions like Africa, as compared to state-by-state advocacy for NAPs. The suggestion was also made that the infusion of business and human rights issues into other NAPs, such as those on human rights in general or on development, might be another way to engage more governments, especially those with limited capacity and/or resources. Overall, participants noted that NAPs are useful as an accountability tool in that they allow civil society groups to hold government action against the commitments made in NAPs and publically point out when such promises have or have not been fulfilled.

Key Limitations of NAPs

Several participants noted their disappointment in the content of NAPs thus far and the processes for developing them. For example, several of the published NAPs were pointed out as lacking adequate coverage of remedy reforms, as well as a sufficient balance of support for both regulatory and voluntary mechanisms. Some participants noted issues with transparency throughout drafting processes, a lack of meaningful engagement on the part of business, and concern about the sustainability of commitments made in NAPs across changing administrations, where applicable. Issues of capacity and political will were also highlighted, particularly in terms of the resources that are being committed to NAPs and how this might relate to available capacity for other initiatives, such as those that take advantage of more democratic processes. Lastly, some participants noted a concern that, for countries that are wary of the UNGPs in particular, NAPs association with this particular framework might hinder engagement with specific national contexts.

Areas for Further NAPs Advocacy

It was noted that NAPs may be a means of better integrating human rights into existing government guidance to companies operating abroad, which in many cases is quite extensive yet does not have meaningful coverage of human rights considerations. It was also pointed out that NAPs might be a means of pushing for better integration of human rights issues into trade policy, especially in light of the TPP and TTIP developments. It was also

noted that clarity and further advocacy is needed in terms of how the treaty process and ongoing NAPs processes can and should interact. Moreover, it was stressed throughout the session that clear leadership of the NAP and over individual action points therein must be explicit for effective implementation. Active participation from both foreign- and domestic-focused offices and ministries was also stressed as key criteria for implementation. It was

emphasized that more and more NAPs processes are underway, and civil society has a key opportunity to come to the table, set the agenda, and push for high standards. Lastly, it was highlighted that the uptake so far of civil society assessments of the published NAPs strongly signals that governments are paying attention to stakeholder opinions and analyses, so civil society should continue to engage and aim to steer the conversation.

Discussion VIII: Treaty Talk

Business & Human Rights Developments and Opportunities in Geneva

Scope

This session presented an overview of the current status of the Open-Ended Intergovernmental Working Group (IGWG) and corresponding developments around an international, legally binding treaty on business and human rights.

Treaty Developments

The first session of the IGWG, held in July 2015, focused mostly on clarification of the footnote found in the UN Human Rights Council resolution that limited the scope of the treaty to transnational corporations (TNCs). Thus far, discussions at the Council level have not clarified the legal substance that the treaty may contain.

At this stage, the divide between those governments that support the treaty and those that do not remains relatively the same as it stood at the resolution vote in June 2014. With holdouts like the United States and the European Union, quick progress is unlikely, according to participants. At the same time, several countries (such as Mexico and Ghana) have been more supportive than initially expected.

Future Opportunities for Engagement

Participants stressed that civil society engagement is key if robust requirements are to be part of an eventual treaty on business and human rights. Some participants argued that the UNGPs and the treaty developments are mutually beneficial, rather than mutually exclusive, and that the treaty is a natural progression from the floor that the UNGPs set. Some participants argued for a unified civil society voice, while others argued for more of a “divide and conquer” strategy.

Overall, most agreed that, in order to have a successful treaty negotiation process, it must be highly transparent and multi-stakeholder in nature. In this regard, some participants called for a project clarifying the actual costs of human rights violations for companies to get them at the table, while others emphasized usage of the languages of risk and anti-corruption to ensure corporate engagement.

Another key point of discussion was the amount of capacity and resources that engagement in the treaty process would necessitate. Some participants stressed the need to avoid diverting resources away from ongoing initiatives, such as those focused on enhancing judicial systems around the world.

Roundtable Session

Strategy and Building a Coordinated Movement

This session was closed to ICAR Members only.

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SPECIAL THANKS TO

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