



“State regulatory approaches: the trend toward mandatory human rights due diligence and reporting across sectors”

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In recent years, important government level initiatives have been successful in creating obligations on businesses to communicate their potential impacts and mitigation measures. Regulation on conflict minerals requires companies buying gold, tin, tungsten and tantalum to undertake due diligence. Fledgling initiatives in some jurisdictions have been seeking to create wider due diligence obligations for some businesses, requiring them to identify, prevent, mitigate and account for the negative human rights impacts of their activities. These types of regulation – together with other intergovernmental efforts in providing effective guidance – represent a significant opportunity for states to make corporate due diligence as set out in the UN Guiding Principles a reality, and build on recent positive steps around reporting and transparency. This session seeks to understand recent efforts in regulatory human rights due diligence in some States as well as initiatives to develop overarching guidance for business enterprises. It will address questions of how States can show greater leadership in this area through different forms of regulation, consider lessons from voluntary human rights due diligence initiatives towards more robust reporting and due diligence requirements and issues where further guidance and clarification may be required.

Moderator: Anita Ramasastry, UN Working Group on Business and Human Rights

Speakers:

- Jerome Bellion-Jourdan, Policy Officer, EU Delegation in Geneva
- René Lefeber, University of Amsterdam, formerly Chair, Council of Europe CDDH-CORP
- Stephen Lowe, Team leader, Equality & Democracy, Foreign & Commonwealth Office, UK
- Violaine Du Pontavice, Executive Director, EY Société d'avocats
- Rachel Phillips Rigby, Deputy Chief, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, US Department of Labor

ANNEX

This annex was prepared by the Business & Human Rights Resource Centre as background information in support of the UN Forum.

Examples of government regulations on human rights reporting & due diligence for companies

Country	Regulation/proposal	Companies covered	Scope	Status
Argentina	<u>Balancing Social and Environmental Responsibility (BRSA)</u> : The city of Buenos Aires requires companies to prepare an annual report of their social, environmental and economic impact. Failure to file the report, obstruction, misrepresentation, and concealment of material information are criminalized.	Domestic and foreign companies with more than 300 employees and whose main business has resided in Buenos Aires for more than 1 year	Reporting	The law was passed in 2008.
Brazil	<u>Brazil's "dirty list"</u> : Publicly available blacklist of Brazilian companies that had been fined in the previous two years for using slave labour, including forced labour and degrading working conditions, in their supply chains.	All Brazilian companies	Public disclosure	Launched in 2003. In 2014, the Supreme Court ordered the Ministry of Labour to suspend the publication of the list. The suspension lasted 17 months and was lifted in August 2016.
China	<u>Ministry of Commerce (MOFCOM) Guidelines</u> for the management of safety issues arising out of overseas investment. Companies are required and encouraged to engage in due diligence and risk assessment with respect to overseas investment and	Chinese companies operating abroad and employment companies placing Chinese workers at foreign firms abroad	Due Diligence	A series of regulations and guidelines have been issued by MOFCOM and other relevant government agencies since 2010 and took effect in 2012.

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	the protection of workers' rights.			
Denmark	<u>Mandatory report on corporate social responsibility</u> , specifically including human rights policies.	Large Danish companies	Reporting	The regulation was adopted in 2008 and modified in 2012.
DRC	<u>The DRC Mining Code</u> and its implementing regulations require environmental due diligence as the basis for issuing permits for exploration and exploitation of minerals. The exploration licensee has to file annual reports to the Department for the Protection of the Environment. Permits can be revoked and operations suspended in case of non-compliance.	All mining companies operating in the DRC	Due Diligence	The 2002 Mining Law has been under review since 2012, however, plans for reform have recently been stalled.
EU	<u>Conflict Minerals Regulation</u> : Mandatory due diligence for mineral importing firms. Importers obliged to disclose details of products that might contain conflict minerals.	EU firms importing tin, tungsten, tantalum, gold and their ores from conflict and high-risk areas, including smelters and refiners	Due Diligence	An agreement on the framework has been reached in June 2016 and the regulation is to be approved by parliament before the end of the year.
EU	<u>Directive on Non-Financial Information Disclosure</u> : Requires companies to report annually on their sustainability performance, including on human rights management, board diversity, as well as approaches to due diligence and risk assessment.	Large public-interest entities (listed companies, banks, insurance undertakings, other companies designated by member states) with more than 500 employees	Reporting	The Directive was adopted in 2014. The first reports will have to be published in 2018 (on activities of FY2017).

Country	Regulation/proposal	Companies covered	Scope	Status
France	<u>Bill on duty of care for parent and subsidiary companies</u> requiring publication and implementation of a vigilance plan (see current status).	French companies with at least 5,000 employees and foreign companies with at least 10,000 employees	Due Diligence	Several versions of this bill have been presented to Parliament. In October 2016, the Senate adopted a modified version, Bill #3, which is focused on reporting. The core aspect of the Bill, corporate liability for human rights violations, is not included in this version.
Germany	<u>Proposal of Human Rights Due Diligence processes</u> within the National Action Plan for Business and Human Rights	State-owned companies & private companies with more than 5000 employees (voluntary)	Due Diligence	If 50% of private companies covered have not implemented voluntary human rights due diligence processes by 2020, the government will consider binding legislation.
India	<u>The Land Acquisition, Rehabilitation and Resettlement Bill</u> aims to bring more transparency to the process of land acquisition and to assure the compensation, rehabilitation and resettlement of affected people. It requires a social impact assessment and a public hearing.	Private companies operating for public purpose (producing public goods and services)	Due Diligence	The Bill was passed in 2013.
India	<u>Environmental Protection Act 1986</u> : Mandatory environmental impact assessment to grant	Private and public companies operating in India	Reporting	Environmental Impact Assessment Notification was introduced in 2006.

	permits for company projects.			
Indonesia	<u>The Corporate Social Responsibility Regulation</u> obliges companies operating in the natural resources sector and in related sectors to plan, budget and perform corporate social and environmental responsibility activities and to include these in the company's annual report.	Limited Liability Companies in the natural resources sector and in related sectors	Reporting	Relevant provisions of the 2007 Law were implemented by a 2012 Government Regulation on the Social and Environmental Responsibility of Limited Liability Companies.
Nigeria	<u>Nigeria's Petroleum Industry Bill</u> imposes a requirement on all licensed petroleum operators to submit an environmental quality management plan, to ensure compliance with environmental laws and to establish and monitor health and safety standards in the industry. It also sets out obligations with respect to human rights, including labour rights and gender equality.	All licensed petroleum operators in Nigeria	Due Diligence	The Bill was enacted in 2009.
Switzerland	<u>The Responsible Business Initiative</u> aims to protect human rights and the environment by establishing a mandatory due diligence process for Swiss based companies in all their operations abroad.	Companies with registered office, central administration, or principal place of business in Switzerland as well as companies controlled by Swiss based companies and their business relationships	Due Diligence	The popular initiative was accepted by the Swiss Federal Chancellery in April 2015 and 140,000 signatures have been gathered in the following year. It was officially submitted in October 2016.

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UK	<u>The UK Modern Slavery Act</u> obliges companies to prepare and publish a statement disclosing the steps they have taken during the financial year to ensure that slavery and human trafficking is not taking place in their supply chains.	Companies operating in the UK with a total turnover of at least £36 million	Reporting	The Act was adopted in March 2015 and the first deadline to report was 30 September 2016. Several hundreds of statements have been published.
USA	<u>The California Transparency in Supply Chains Act</u> obliges companies to disclose the extent to which they conduct due diligence with respect to human trafficking and slavery in their supply chains.	Retailers and manufacturers operating in California with worldwide sales exceeding \$100 million	Due Diligence	The Act went into effect in 2012.
USA	<u>The U.S. conflict minerals regulation*</u> requires publicly traded companies to conduct due diligence and report to the Security and Exchange Commission (SEC) on whether their sourcing of conflict minerals – tin, tungsten, tantalum and gold – is supporting armed groups in the Democratic Republic of Congo (DRC) or its neighbouring countries.	Foreign and domestic companies with a reporting obligation to the financial supervisory authorities	Due Diligence	The conflict minerals regulation was passed in 2010 through Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, but was repealed in September 2016 when the House Committee on Financial Services passed the Financial Choice Act.
USA	<u>The Reporting Requirements on Responsible Investment in Myanmar*</u> cover policies and procedures relating to human rights, anticorruption, land acquisition, grievance	U.S. companies investing over \$500,000 in Myanmar or investing with the country's energy monopoly, Myanmar Oil and Gas Enterprise	Reporting	The reporting requirements were established in 2013 after the USA had eased sanctions on Myanmar.

	mechanisms, financial transparency and the environment.			
USA	<p>The <u>Trafficking Victims Protection Reauthorization Act (TVPRA)*</u> requires government agencies to work with corporations to ensure their supply chains are free of materials produced with the use of trafficked labour and that businesses do not contribute to trafficking in human beings for the purpose of sexual exploitation.</p> <p>To ensure compliance with the related Executive Order, contractors and their subcontractors must agree to cooperate fully with contracting agency audits and investigations.</p>	The Executive Order covers all federal contracts for services or goods performed in the USA or abroad	Due Diligence	The Act was introduced in 2003, followed by an Executive Order in 2012 to strengthen the protection against trafficking in persons.

This annex was prepared by Business & Human Rights Resource Centre based on sources including:

- "In the face of corporate impunity - Progress in Europe", Forum Citoyen pour la RSE (Responsabilité Sociale des Entreprises), Oct 2016
- "Human Rights Due Diligence- The Role of States", International Corporate Accountability Roundtable, 2012
- "2013 Progress Report - Human Rights Due Diligence- The Role of States", International Corporate Accountability Roundtable, 2012
- Corporate Social Responsibility regulation in Indonesia", UBI Business, 14 March 2014
- "Update to John Ruggie's Corporate Law project: Human rights reporting initiatives", Shift, 2013
- The European Business Network for Corporate Social Responsibility