



ICAR 2019 ANNUAL MEETING REPORT SUMMARY

Overview

The International Corporate Accountability Roundtable (ICAR) convened its eighth annual meeting on April 24-25, 2019 in Washington, D.C. The meeting focused on three key themes: addressing inequality through greater government oversight of corporations; effective human rights due diligence; and strategies to counter the closing of civic space. We commemorated the life and contributions of our former colleague, Gwynne Skinner, with the first annual namesake award to Steve Hitov for his groundbreaking work with the Coalition of Immokalee Workers to advance labor rights protection in agricultural supply chains. ICAR brought in Story District to teach us basic techniques to enhance our work through the power of storytelling. You can find more information on Story District here: <https://storydistrict.org/consulting/about>.

Our annual meeting webpage includes individual descriptions, background information, and resources for each of the meeting sessions. We will be updating this page to include additional materials and photographs as they become available. A link to this information can be found here: <https://www.icar.ngo/agenda-annual-meeting-2019>.

The first day was dedicated to an in-depth examination of the question “What does effective due diligence look like?” The morning panel considered two interrelated themes: emerging legislation and rulemaking, principally in Europe; and the mix of guidance, tools, benchmarks, multi-stakeholder collaborations, and other initiatives that inform corporate understanding and implementation of human rights due diligence in global supply chains. A series of afternoon workshops delved deeper looking at a range of strategies for due diligence, including emerging transparency reporting requirements; engaging new, tech driven, corporate business models; new approaches to strategic litigation; the role of investors and disclosure of non-financial information; and evidence gathering techniques used by investigative reporters and government law enforcement officials.

The second day highlighted stories from human and environmental rights defenders on the front lines and strategies to push back against the closing of civic space. Our day began with a call to action to seize the transformative opportunity presented by United 2026, the successful joint bid by the United States, Canada, and Mexico to hold the FIFA World Cup. A panel discussion highlighted the challenges faced by civil society activists across issues and jurisdictions due to closing civic space. Our afternoon sessions explored rapid response strategies by governments and civil society, new opportunities to improve protections for defenders at risk in development, and priorities for protecting defenders in the palm oil sector.

Day 1 Recap

What Does Effective Due Diligence Look Like?

The first panel considered progress in corporate human rights due diligence. This panel recognized that government legislation and rulemaking, as well as guidance and benchmarks are complementary activities. As one panelist reminded us, the UNGPs acknowledge the role of mandatory, as well as voluntary, actions to advance corporate respect for human rights.

Comparing and Contrasting Approaches

This panel examined several emerging legislative and regulatory strategies: modern slavery act type reporting requirements from California, the United Kingdom and Australia; the EU non-financial reporting directive and implementation; the French Duty of Vigilance law; and emerging mandatory human rights due diligence proposals.

The panel noted that modern slavery act reporting has been ineffective for several key reasons, including a lack of guidance on which companies are covered by these laws, a lack of understanding of what is required in the reports, the fact that companies can comply with the law by reporting that they do not have any policies, and the lack of government enforcement. Panelists noted that these laws do not mandate due diligence by companies or, where the risk of modern slavery is identified, the steps taken to address these risks.

One panelist noted that of 50 companies in high risk sectors or with high risk products reporting under the UK Modern Slavery Act, there were no mentions of the risk of child labor, and often no mention of supply chain associated risks, in reports. Another panelist made similar conclusions as a result of an ongoing review of corporate disclosure under national legislation implementing the EU Non-Financial Disclosure Reporting Directive. This measure requires disclosure of human and environmental rights risks and information affecting investor understanding of company performance. While some similar challenges apply, the panelist concluded that conflict minerals disclosure legislation has positively affected the quality and specificity of company disclosures under the directive. This is a valuable insight into the ways in which sector or issue specific disclosure strategies may enhance overall corporate understanding and implementation of human rights due diligence.

Though the French Duty of Vigilance Law is relatively new, it is already clear that the quality of corporate reporting has not advanced substantially. Advocates are now beginning to press for injunctive relief and civil enforcement.

The panel collectively agreed that while sector and issue specific mechanisms have raised corporate awareness and enabled engagement and collective action, without meaningful oversight and enforcement authority, their impact will be limited.

The discussion concluded with a brief examination of prospects for mandatory human rights due diligence legislation that would include two basic elements to address the limitations of current measures: going beyond reporting to require risk assessment and mitigation measures and holding companies accountable through some form of civil liability.

Guidelines, Tools, and Benchmarks

A second panel examined the role of guidance and stakeholder collaboration to improve corporate human rights due diligence. The panel discussed the interplay of mandatory and voluntary measures, noting the efforts of governments to elaborate sector specific guidance and other tools, and the long-term engagements among various stakeholders, with companies, to develop risk mapping, impact assessment, mitigation, and remedy strategies and tools. The panel also pointed out the importance of remedy, and the need for civil society to clarify expectations to ensure more meaningful corporate investment in remedy.

The panel considered three related issues: when to engage with companies, how to gauge whether companies are seriously committed, and how to move beyond the beginning stages to more meaningful due diligence.

The panelists identified a few red flags to inform whether to engage with companies: where and with whom the responsibility of human rights due diligence is placed within a company's governance structure; whether the company considers all aspects of its business, including human rights impacts to which it may contribute; and how open the company is to discussing issues arising across its business operations.

To gauge whether a company is seriously committed, panelists suggested that advocates look to behaviors and practices, such as how individuals carry out their specific responsibilities. One example provided related to a company grievance mechanism where the individual in charge presumed the complaints filed were valid, which had an important impact on the mechanism's operation.

All panelists agreed that corporations need to move beyond the identification stage to a more meaningful focus on mitigating and remedying human rights impacts.

The afternoon workshops provided an opportunity to consider a range of strategies to promote more effective corporate human rights due diligence.

Using Transparency to Enhance Accountability

This session examined the role and effectiveness of various transparency efforts, from investigative reporting aimed at educating the general public, to public campaigning, to mobilizing consumer pressure, to collective NGO action, and to advancing corporate supply chain disclosure for the benefit of workers and their advocates. The session considered the transformative impact of the Associated Press Pulitzer-prize winning series, *Seafood from Slaves*, on the human cost of harvesting seafood and its immediate connection to everyday supermarkets. This investigation illustrated the challenges and

possible responses associated with gathering supply chain information with this level of detail and traceability, including using technology, on the ground investigation and Customs records, as well as noted the concerns around protecting vulnerable fishermen from the real threat of reprisal until they could be rescued.

Consumer-focused campaigns that are supported by stories and testimonies from local partners can be powerful tools but need to be coupled with ongoing in-house research and analysis, and brand engagement. The Transparency Pledge, a nine-organization collective effort to require apparel brand factory disclosure, is gaining traction. The Fair Labor Association recently adopted a requirement that its affiliates disclose their factories.

Environmental, Social, and Governance Reporting

Building on the morning panel discussion of non-financial reporting disclosure, this workshop dug deeper into developments in Europe, including the EU Sustainability Finance Action Plan. Participants considered the need for a common framework for collecting and analyzing environmental, social and governance (ESG) data. There is some interest in the US Congress in advancing legislation to require ESG disclosure as well as a pending investor and NGO-led rulemaking request on ESG disclosure. Participants considered possible elements to be included in such US legislation and key questions to consider moving forward. Participants recognized the value of EU developments in driving US engagement and the value of close coordination going forward.

Holding Amazon Accountable

A cross section of investors, union organizers, and human rights advocates discussed the challenges of working with new, tech-enabled corporate business models. The discussion focused on Amazon and highlighted several recent engagements to illustrate a few key lessons learned, such as the importance of cross-stakeholder collaboration, the value of media and consumer education, the role and interest of local and state governments, and the challenges they face in attempting to regulate and tax this form of business.

In challenging Amazon's decision to locate one of its new headquarters in Long Island, unions benefited from the support of investors, local community leaders left out of the consultations, and ongoing media coverage from one of the country's largest media markets. The union brought to the table a history of advocacy, including around exploitative workplace practices and a lack of health and safety protections. In the past year, a coalition of investors, unions, and human rights organizations have filed 15 shareholder resolutions, 12 of which passed, covering a range of business practices, including sales of facial recognition technology and implications for rights to privacy and non-discrimination. Campaigns have engaged with Amazon subsequent to its acquisition of Whole Foods, to advance a range of issues by mobilizing consumer pressure.

Evidence Gathering and Witness Protection

Panelists reviewed existing US government tools and reports, such as the Department of Labor Comply Chain app for companies and Sweat and Toil app for information on forced labor. In enforcement of 19 USC 1307, to block imports of goods made with forced and child labor, corroborating information from stakeholders is particularly valuable where recent data is unavailable. NGOs can provide valuable information to government investigations and cases. Additionally, civil litigation efforts by NGOs could be turned into government efforts to enforce civil criminal provisions. The workshop included a discussion among participants of evidence needs and thresholds associated with various types of civil and criminal enforcement as well as investigative journalism, and techniques for working with and protecting possible witnesses.

Strategic Litigation

A strategic litigation workshop focused on the Corporate Crimes Principles as a framework for promoting greater understanding between civil society and law enforcement about evidence thresholds, witness protection issues, and opportunities for changed thinking and approaches.

Other strategies highlighted in this session include the use of the US foreign legal assistance statute in document discovery and depositions to advance litigation outside the US; a successful Supreme Court challenge to the claimed immunity of the International Finance Corporation for its support of a coal plant in India (*Jam v. IFC*); the possible applicability of trade statutes and agencies that sanction unfair methods of competition (e.g. goods made with forced labor); and emerging tort and criminal law theories to hold corporations accountable for major climate change impacts.

The Zero Draft

A cross section of NGOs provided an update on the pending business and human rights treaty. A formal draft is anticipated in June 2020, with work underway to improve on the current zero draft. A revision is expected at the October 2019 meeting of the working group. The group recognized the challenges of engaging civil society globally, noting that to date there has been limited government engagement and similarly, limited NGO leadership, mostly from the countries of the states supporting the original draft (China and India). The update focused on three issues: clarifying the concepts of mandatory human rights due diligence and liability; including provisions throughout that address corporate capture, building on Art. 5.3 of the WHO Framework Convention on Tobacco Control; and including a gender perspective in the draft to address disproportionate corporate impacts on women's rights, such as through gender-sensitive impact assessment and remedy mechanisms.

Evening Reception: First Annual Gwynne Skinner Human Rights Award

The Gwynne Skinner Human Rights Award recognizes the work of an individual or organization that has made a significant contribution to corporate accountability that year.

Gwynne Skinner was a Professor of Law at Willamette University. Professor Skinner also worked as an ICAR Advisor for over six years, serving as a resource, guide, mentor, and friend to the ICAR team and to our whole community. Her work litigating on the front lines of corporate accountability, producing scholarship, and thought-leadership on access to remedy, parent company accountability, and a range of other issues put her at the forefront of the agenda of business and human rights.

In an evening reception, ICAR presented the first annual award to Steve Hitov, General Counsel for the Coalition of Immokalee Workers. Steve has devoted his career to representing low income clients and has served as a staff attorney, managing attorney, and litigation director in legal services programs in New York, Massachusetts, Florida, and Washington, D.C. Through individual client representation, class action litigation, community development work, and legislative support activity on Capitol Hill, Steve has used his legal training to promote social change. Steve has also been active in clinical legal education, supervising clinical programs and placements at Harvard University, Western New England College, and the University of Maryland.

Steve's acceptance speech can be found here: <http://ciw-online.org/blog/2019/04/gwynne-skinner-award-ceremony/>.

Day Two Recap

The second day began with a plenary session on the transformative power of mega-sporting events to drive respect for human, labor, and environmental rights. The United 2026 bid includes a human rights strategy, which provides the opportunity for mobilizing civil society to set a new and lasting standard for human rights protections. This opportunity is urgent and civil society needs to mobilize now to inform US host city selection and to set the framework for implementing and monitoring progress in achieving a human rights strategy.

United 2026

The panel began by reviewing the impacts achieved so far through engagement with international sport: key global sports bodies and major corporate sponsors are now talking about human rights issues; ongoing engagement with and access to Qatar's government; and additional labor rights tribunals and work welfare committees are now being established.

There is an immediate and urgent opportunity to engage in efforts to promote implementation of the human rights strategy for United 2026. Over the next year, advocates will need to organize, assess human rights risks in target sectors, and create a scorecard for monitoring and evaluating progress in addressing these risks. From now through 2020, advocates will need to reach out to host city candidates, begin drafting sourcing codes and contract provisions, and evaluate possible remedy frameworks. At the same time, advocates should begin engaging with both FIFA and United 2026 on these and related issues.

Investor Influence and Investor Responsibility

Investors discussed their approach to promoting corporate respect for human rights and outlined opportunities for civil society to work more collaboratively with them to advance shared priorities. Investors stressed the valuable role that civil society can play in informing investor decisions, especially through data, which is instrumental in informing resolutions, and through contact with communities directly affected by investors. Investors have an interest in understanding the risks of their investments, and affected communities can convey that powerfully and directly. Civil society advocates should consider how their ongoing research and analysis can be made available, in a more sustained way, to support investor engagement. While most investors do not understand their responsibility around human rights, this presents an opportunity for change. Companies are legally required to respond to shareholders as owners. Shareholder resolutions can be particularly effective and while divestment is a powerful additional strategy, it requires careful planning to ensure it is done responsibly and the investor has sufficient ownership to drive changed behavior through divestment.

Closing of Civic Space

Activists from the environmental, labor, and internet freedom movements shared stories of closing civic space around the world and ICAR reminded attendees that these same challenges persist here in the US.

The panel reflected on Colombian communities at risk, particularly those confronting the impacts of mining operations. Industry pressures, combined with retaliatory prosecutions, have silenced activists.

KeepItOn is a global coalition formed to highlight and respond rapidly to government shutdowns of the internet, a tactic now widely used to curb protest and silence dissent. Among strategies that have contributed to KeepItOn's success are gathering information through the network and making it available to everyone, in real time. Companies often are unaware that their networks have been disrupted and KeepItOn shines a spotlight and mobilizes public pressure to push back against outages.

In Tunisia, workers conducted daily meetings with grassroots organizers and mobilized a significant public protest. Their leadership won them a seat at the table for the drafting of the new constitution. Brazil's CUT, the country's main labor union, arose from the landless people's movement. The US labor movement has worked closely with the Brazilian labor movement on shared research on exploitative forms of work and strategies to address them.

Protect the Protest is a US campaign to call out and counter the use of strategic lawsuits against public participation (SLAPPs). ICAR coordinates this campaign, which has focused on building resilience through coordinated campaigns, creating a network of attorneys ready to defend individuals against SLAPP suits, and passing federal anti-SLAPP legislation.

Communications Workshop

ICAR invited Story District to provide a training on basic storytelling techniques in support of advocacy efforts. This lively and fun workshop coached participants on building a compelling, personal, and relatable narrative that illuminates the human connection in our often abstract policy and legal advocacy work.

Rapid Response to Defenders at Risk

This workshop broadly outlined the nature of the threat and populations at risk, based on the recently released report, Shared Space. This report emphasizes that governments, companies, and civil society all rely on the same space and have a common interest in protecting and defending human rights advocates. Among actions that companies can take to address this issue are specific corporate policies, public statements and advocacy, and case-specific engagement by management and employees.

US government officials briefly summarized short- and long-term strategies to respond to defenders at risk based on a general "do no harm" approach, following the lead of activists on ground. Short term responses include immediate security and protection of defenders, engagement with the host country and any available mechanisms, outreach to the company and investors affected, and consideration of public and private statements. Long term responses may include working through existing multi-stakeholder mechanisms where available and appropriate, and invoking available mechanisms from

national and international human rights and environmental mechanisms to OECD National Contact Point and free trade agreement secretariats. The officials noted their close collaboration with peers in allied governments.

Defenders-at-Risk in Development

This workshop considered the risks to defenders associated with development finance. Among emerging areas for ICAR member engagement to advance protections are support for the Latin America Escazu Convention, a binding treaty with provisions on key challenges associated with development, and participation in the Defenders and Development Campaign, a coalition aimed at supporting defenders challenging current development models and advancing the right to information and participation and remedy. The World Bank Compliance Advisor Ombudsman will take complaints. The mechanism is independent from bank management and in addition to offering review of environmental and social requirements for compliance, it also offers dispute resolution functions. The Inter-American Development Bank recently released a Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management. Workshop facilitators noted the importance of this guidance, citing police force threats to Nicaraguan communities shortly after filing a complaint with the CAO concerning gold mining impacts. The Inter American System offers a petition process, which includes an emergency mechanism to order local governments to protect defenders.

Strategic Litigation Brainstorming Session

Participants gathered for a strategic litigation brainstorming session to consider failed and successful strategies and possible new approaches, following an earlier discussion regarding the use of consumer protection and trade law, shareholder actions, procurement provisions and the French Duty of Vigilance Law.

Making Defender Protections a Top Priority

This session, focused on agribusiness and palm oil, reviewed recent research and reporting on risks to defenders, pointing to Colombia where an activist is killed every three days. The root cause of human and environmental rights violations in agribusiness is the violation of community land rights. In most host countries, legal frameworks for land rights are either inadequate or too weak in the face of coercion and corruption. Police and security guards use threats and force to facilitate land acquisition for corporate agribusiness. The key priorities to improve protections for defenders in this sector include corporate engagement to improve host country laws and policies, corporate due diligence to identify and address threats to defenders, home country regulation of trade and investment, and investor policies to guide palm oil investment.

ICAR thanks the many panelists, facilitators, and participants for their support of the annual meeting. We look forward to the opportunity to work in coalition and collaboration with you to advance our shared priorities highlighted during this gathering.

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