



FREQUENTLY ASKED QUESTIONS

Canada already expects companies to voluntarily respect human rights when operating abroad. The proposed Human Rights and Environmental Due Diligence legislation would make this obligation legally enforceable. **Development and Peace — Caritas Canada** is supporting the model legislation from the Canadian Network for Corporate Accountability (CNCA), *The Corporate Respect for Human Rights and the Environment Abroad Act*, as a way of achieving effective corporate accountability for Canadian companies that operate overseas.

What is due diligence legislation/ mHREDD/HREDD?

Mandatory Human Rights and Environmental Due Diligence (mHREDD/HREDD), or due diligence legislation for short, requires companies to take action to prevent harm caused by their business activities or the activities of their subsidiaries, subcontractors and suppliers.

Due diligence laws require companies to identify human rights and environmental risks throughout their global operations and to report publicly on the risks identified and the actions taken to remove or mitigate those risks. The law would also provide for liability—and access to remedy—if a company fails to fulfill its obligations to prevent harm and implement due diligence.

How is the environment included in due diligence?

The CNCA model legislation specifies that human rights include the right to a safe, clean, healthy and sustainable environment, which is a right recognized by 80 per cent of UN member nations.

Why do we want both an empowered Ombudsperson and HREDD?

They are complementary. We need both **due diligence legislation** to require companies to **prevent** and **remedy** harm by helping impacted people access Canadian courts **AND** an empowered **Ombudsperson** who can **effectively and independently investigate** complaints.

How would human rights and environmental due diligence legislation help our partners and the communities they support?

- Many potential abuses would be prevented by placing the legal obligation on Canadian companies to assess the risks of human rights and environmental abuses before engaging in a project.
- By ensuring that the mitigation of the risk of harm is continually monitored and that harmed communities have access to justice in Canada, we ensure that communities' rights are not denied because of governance issues in their home countries.
- By placing the burden of action on Canadian companies, we alleviate the pressure on vulnerable communities to stand against multinational corporations on their own.

Would due diligence legislation apply in Canada as well as abroad?

Canada's constitutional division of powers—which differentiates the issues on which the federal and provincial/territorial governments can make laws—means that the CNCA's model legislation (a federal law) would only apply to the overseas impacts of Canadian companies. The CNCA is exploring this question.

How would due diligence law be enforced?

The CNCA's model legislation proposes a commissioner (a public officeholder) tasked with ensuring that companies comply with the law's reporting requirements and that these reports are publicly accessible on a website. The commissioner would be able to fine a company that does not report.

If harm did occur, the impacted person or community, or an interested party such as a non-governmental organization, would have the right to file a civil suit in Canadian courts. If a serious harm were caused by a Canadian company bound by the law, its subsidiaries or subcontractors, or its affiliates, the court would be able to order remedies (see below).

Why civil liability and not criminal liability?

In a criminal case, the state has the role of advancing the case and the burden of proof is very high. In a civil case, it is the plaintiff who brings the case and moves it forward. A plaintiff has more agency and more information throughout the process in a civil proceeding.

To learn more about the difference between civil and criminal cases in Canada, see this Department of Justice [summary](#).

How are Canadian companies currently expected to respect human rights in their overseas operations?

Canada is party to the United Nations Guiding Principles on Business and Human Rights (UNGPs), which are a set of guidelines for states and companies to prevent, address and remedy human rights abuses arising from business operations. It is a useful articulation of the expectations of states and companies to respect human rights, but it lacks an effective enforcement mechanism.

As a member of the Organization for Economic Co-operation and Development (OECD), Canada has also agreed to promote the OECD's Guidelines for Multinational Enterprises, which provide similar non-binding frameworks to encourage responsible business conduct in line with applicable laws and internationally recognized standards.

See the Government of Canada's page on [Responsible Business Conduct](#) for more information.

What other mechanisms exist for corporate accountability?

Canada's approach to business and human rights is outlined in its Corporate Social Responsibility Strategy. For a critique of the shortcomings of this strategy and recommendations for improving it, see [this page](#) on the CNCA's website.

Why wouldn't a harmed community seek justice in its own country?

Human rights should be protected by effective laws and access to remedies in the country in which harm occurs, in the country in which an offending company that causes the harm is registered, and at an international level. Human rights abuses, and specifically abuses against human rights and environmental defenders, occur where gaps exist between the recognition and implementation of human rights, or between how jurisdictions enforce them. These gaps may exist for a number of reasons, including political or economic pressure, discrimination, corruption, or a weak rule of law or weak justice system. While our partners work with local communities to seek law and policy reform in their jurisdictions, we can ensure that Canada does not permit, support or ignore human rights abuses by Canadian companies.

As a financier and facilitator of Canadian companies' overseas activities (through pension plan investments and diplomatic support, for instance), the Government of Canada has a duty to ensure that these corporations respect human and environmental rights wherever they operate. This is especially important when international trade agreements include investor state dispute resolution provisions that deter countries from passing or enforcing strong labour and environment laws.

Companies outsource to avoid liability. How will holding the Canadian company accountable help?

The CNCA model legislation specifically addresses this concern by including a company's business relationships within its definitions. Suppliers and subsidiaries are included among business relationships.

What happens when a project that causes harm is supported by a foreign government through, for instance, the issuing of permits or the deployment of security forces?

Canadian companies are expected to respect human rights wherever they operate. This expectation does not disappear even if a foreign government or a state agent is involved in or linked to the business activity. A company should not be able to profit from violence, whether by private security or local police, nor should a company turn a blind eye if local laws contribute to rights violations. Under due diligence law, a company would be required to ensure that people are not being harmed, an obligation that calls for training and oversight.

To learn more and to sign a petition calling for the enactment of strong due diligence laws, visit devp.org/act.