

Submission by Oxfam Canada

On Bill S-211: An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act

To the Standing Committee on Foreign Affairs and International Development, House of Commons



A Bangladeshi garment worker is seen wearing a face mask while producing clothing to be sold on major overseas markets.

Credit: Marcel Crozet / ILO

RECOMMENDATIONS

We recommend that the Standing Committee strongly encourage the Minister of Labour and Government of Canada to introduce robust and comprehensive mandatory due diligence legislation that includes all human rights and all business sectors, to keep up with international best practice and strengthen Canada's reputation as a defender of human rights, women's rights and gender equality.

Bill S-211 does not meet these criteria.

To meet Canada's human rights obligations and fulfill the government's commitments in the Minister of Labour's mandate letter, Parliament should adopt effective legislation that includes:

- **RESPECT FOR ALL HUMAN RIGHTS, INCLUDING WOMEN'S RIGHTS AND THE RIGHT TO A LIVING WAGE.** This includes adherence to all internationally recognized human rights, including the UN Convention on the Elimination of Discrimination against Women (CEDAW), and not restricting legislation to some rights, such as forced labour, to the exclusion of others. Human rights are recognized as indivisible and interdependent, and have been demonstrated by international bodies to not have a hierarchy and cannot be upheld in isolation of each other.
- **THAT COMPANIES IDENTIFY, MITIGATE, PREVENT AND REMEDY HUMAN RIGHTS AND ENVIRONMENTAL HARM IN LINE WITH INTERNATIONAL HUMAN RIGHTS AND LABOUR STANDARDS.** As part of their due diligence obligation, companies must ensure that they pay their workers a living wage and ensure workers in their supply chain are paid a living wage.
- **ACCESS TO JUSTICE AND REMEDY.** This includes civil liability if a Canadian business fails to exercise due diligence in preventing human rights abuses or environmental harm. Furthermore, remedy must include protections against re-victimization and ensure guarantees of non-recurrence.
- **A FEMINIST ANALYSIS.** Legislation must consider the guidance from the United Nations *"Protect, Respect and Remedy Framework"* (United Nations publication, Sales No. 13.XIV.5), and the text of *"Gender guidance for the Guiding Principles on Business and Human Rights"* within the United Nations official document (A/HRC/41/43) and *"Gender dimensions of the Guiding Principles on Business and Human Rights: Report*

of the Working Group" on the issue of human rights and transnational corporations and other business enterprises.¹ The integration of a gender perspective would include consultation with women and women's organizations, in all stages of due diligence by providing a role for and being informed by impacted workers and communities.²

- **MEANINGFUL CONSEQUENCES** if companies fail to be duly diligent.
- **BROAD SCOPE.** Legislation should apply to all companies of all sizes and sectors, and include the entire supply chain. Exemptions for small businesses operating in low risk sectors, a phased in approach, or a prioritization of risks could be employed via regulation.

Bill S-211 does none of the above.³ See [Don't Mistake Reporting for Accountability: Canada must require Canadian companies to respect human rights throughout their supply chains](#) for a comparison of Bill S-211 with C-262 or a similar due diligence approach. We encourage all parties and Parliament to work together with the Minister of Labour to introduce effective legislation, in line with the above recommendations.

SUMMARY

Canada is at a crossroads regarding corporate accountability and responsible business conduct. For too long, the federal government has relied exclusively on voluntary corporate social responsibility (CSR) measures or reporting-only obligations, which have failed to prevent human rights abuses in corporate supply chains and operations abroad. A strong legislative framework is needed. One that clearly recognizes that all companies – regardless of size, sector or place of operations – have a responsibility to respect human rights and has adequate enforcement mechanisms in place to hold corporations accountable and provide access to remedy.

Oxfam Canada works collaboratively with industry, civil society, labour and government to prevent human rights abuses, sexual violence and exploitation, worker exploitation and environmental harm in Canadian corporate operations abroad and their global supply chains. Our organization is committed to promoting and upholding women's human rights and gender equality

and, given this exclusive focus, we are particularly concerned that Canada meets global obligations under the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) and its commitment to feminist foreign policy and women's rights.

We are also members of the Canadian Network on Corporate Accountability (CNCA), which has also previously provided extensive input, developed a complete model law for the Government of Canada to use as a blueprint (Bill C-262) and has provided a submission to this committee. We endorse their submission, their model legislation on mandatory human rights and environmental due diligence⁴, as well as their support for Bill C-262, *An Act respecting the corporate responsibility to prevent, address and remedy adverse impacts on human rights occurring in relation to business activities conducted abroad*, tabled in Canada's House of Commons on March 29, 2022.⁵

Oxfam Canada welcomed Prime Minister Trudeau's commitment to "introduce legislation to eradicate forced labour from Canadian supply chains **and** ensure that Canadian businesses operating abroad do not contribute to human rights abuses,"⁶ (emphasis added) as set out in the Minister of Labour's mandate letter in December 2021. Bill S-211 does **not** meet these criteria.

Reporting-only legislation, such as Bill S-211, is not an adequate first step but rather a distraction from the enactment of a robust legislative approach.

- Bill S-211 would only require that companies report if they have taken measures to identify forced labour in their supply chains and assess their effectiveness. It does not require companies to take measures to eliminate forced labour, nor even to confirm or deny if forced labour was found.
- Bill C-262 would require Canadian companies to be duly diligent in respecting all human rights, including women's rights, and create a requirement to prevent harm and give victims of abuses access to remedy.

There is widespread support for Canada to take progressive leadership in this space and catch up with peer jurisdictions around the world. It is not a matter of 'if', but a question of 'when'. In the decade since the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, mHREDD has emerged as the current authoritative framework for corporate accountability.

Legislators do not need to reinvent the wheel. See also [recommendations for legislators on mHREDD](#).

However, Bill S-211 would distract from that mission and create an ineffective reporting obligation that will do nothing to curb and remedy human rights abuses. We fear that passing S-211 will distract the government from enacting effective legislation for years to come. Only when proven ineffective will momentum to support mHREDD return. This assessment has been articulated by a variety of stakeholders, including numerous global and Canadian organizations and movements advocating for mandatory human rights and environmental due diligence; Members of Parliament and Senators who have tabled more robust legislative proposals; and the Canadian public in opinion polls.⁷

We call on the Members of the Foreign Affairs Committee to not get distracted by Bill S-211. We call for the government and Minister of Labour to table a bill that is more robust and more progressive, to level the playing field, meet Canada's international obligations and finally address a corporate accountability gap that is undermining Canadian values and priorities. We encourage the committee to echo this request.

IMPLEMENTATION, ENFORCEMENT AND REMEDY

Canadian companies have a responsibility to respect human rights but often evade that responsibility because, for the most part, the Government of Canada employs only voluntary measures of responsible business conduct. It is easy to structure global operations to avoid liability, blame third parties for harms or hide behind extraterritoriality to evade legal accountability. Businesses need the impetus to act and therefore any legislation should include both civil liability and enforcement powers. Effective enforcement creates a level playing field in which all companies in Canada are held to the same standard.

Obligations must be mandatory, not voluntary, and include the provision of remedy. Adding civil liability provisions in the legislation will increase corporate compliance and allow victims to access both judicial and non-judicial remedies. Access to civil remedy for victims of human rights abuse must be available, and considerations for enabling access to remedy by women or specific groups must be applied. Available remedies

must take into account the needs and interests of the affected party and be decided and designed in consultation with rights-holders. Due attention shall be given to overcome the barriers that women and other marginalized groups face in accessing and securing remedy, as well as in ensuring that all procedures are impartial, safe and free from undue influence.

Canadian businesses already benefit from the government's support and guidance on responsible business conduct abroad,⁸ since at least 2009 for the extractives sector and 2019 for the garment sector.⁹ Canada must also support and assist impacted communities and workers to access effective remedy in Canadian courts. Canada should further provide or facilitate access to training on how to effectively document cases of human rights or environmental violations relative to the law and enable rights-holders to document and bring complaints forward.


HOW CIVIL LIABILITY HELPS PREVENT HARM AND ENSURE ACCESS TO REMEDY

Risk management is an important business practice taken very seriously by corporate management, governance bodies and investors. When anti-bribery and corruption legislation was introduced around the world, many corporations moved to significantly more robust corruption risk identification and mitigation strategies. In the same way, establishing civil liability in Canada for human and environmental harms primarily acts as a concrete incentive for a business to internalize its responsibility to prevent harm, and to put adequate procedures in place. The expected response to this legislation is that companies will enhance their attention to such risks of harm, and change their behaviour without communities needing to regularly seek recourse in Canadian courts.

When companies are aware that they could be held liable, management, boards and investors are incentivized to pay attention to such risks, and to ensure steps are taken to prevent adverse human rights impacts. The requirement to consult with rights-holders on an ongoing basis means that significant risks are more likely to be identified, and companies alerted early if the mitigation measures are not adequate. The provision in the legislation that can defend against liability by demonstrating adequate due diligence, enhances the incentive to ensure such diligence is undertaken.

All of these factors help ensure that communities and workers aren't harmed in the first place. They would also help ensure access to remedy if harm does occur. Remedying adverse impacts must be part of any legislation's due diligence procedures. If companies fail to offer remedy on their own, they can be ordered to do so by the court.

From the *Canadian Network on Corporate Accountability*, "Executive Summary: CNCA's draft model human rights and environmental due diligence law."¹⁰



Samia, 21, works at a garment factory in order to financially support her parents.

Credit: Fabeha Monir/Oxfam

COHERENCE WITH FEMINIST FOREIGN POLICY

Introducing comprehensive and robust MHREDD legislation is consistent with Canada's feminist foreign policy goals. A country's foreign policy is not limited to the actions of state institutions, such as its embassies and armed forces. The international operations and business dealings of Canadian companies have a significant impact on Canada's efforts to advance its interests and feminist values in the world. Canada's mining sector is active in at least 100 countries, and Canadian retailers and manufacturers import apparel, footwear and other consumer products from every continent, depending on a workforce largely dominated by women. Without proper oversight of private sector activities and incentives to advance gender equality throughout global operations, the Canadian government risks policy incoherence and setting back its feminist foreign policy objectives.

A feminist foreign policy requires an understanding of the unequal gendered power dynamics that infringe on women's rights. For example, Canadian companies are heavily invested in Latin America's mining, oil and gas sectors. Research by Oxfam and the national Indigenous women's organization of Peru, ONAMIAP, reveals that Indigenous women are often excluded from important decisions over natural resources that affect their lives and rights. Canada's reliance on voluntary corporate social responsibility measures have proven ineffective and contrary to the advancement of feminist natural resource governance internationally. Women's rights organizations and land defenders are too often excluded or marginalized and, in the worst cases, face grave risks and threats to their lives or those of their family members and colleagues for their work.

Another example is the purchasing practices of Canadian and global fashion brands. Women and girls are vastly overrepresented in the critical supply chains of many Canadian companies. Unfair purchasing practices, such as aggressive price negotiations on cost and schedules, have a direct and disproportionate impact on women by keeping wages low and forcing factories to cut corners therefore placing workers at risk. High impact sectors must identify all risks, especially those where adverse impacts are highest, where marginalized groups, such as women, are most present, such as the garment sector, and where the need for intervention is greatest.

Next year marks the ten-year anniversary of the Rana Plaza factory collapse in Bangladesh. The collapse killed 1,132 people and brought significant occupational health and safety violations to light. Several Canadian brands sourced from the factory.¹¹ In 2021, an independent researcher in Dhaka, Bangladesh, working on a report of the Steelworkers Humanity Fund titled *Not Even the Bare Minimum*, spoke to workers in factories producing garments for at least six Canadian garment companies. She found that the wages paid to Bangladeshi garment workers in factories supplying Canadian brands were insufficient to cover living expenses such as food, housing, healthcare, childcare and education, and savings for the future. Workers seeking to defend their rights by joining unions also faced retaliation from factory management, leaving them virtually unable to organize, thus further exacerbating their vulnerability.¹²

Additionally, the COVID-19 pandemic has shed renewed light on the vulnerability of many workers in global value chains, such as women garment workers who were withheld pay as global fashion brands canceled orders in the early days of the pandemic.¹³ In light of the failure of voluntary measures, laws that deliver mandatory human rights due diligence are needed and could contribute to enhancing human rights protections for people across the globe affected by corporate activities, ensuring access to justice for victims of corporate abuse and holding companies legally accountable when abuses occur.

Canada should include gender-related protections and implement their commitment to upholding women's human rights in law, regulations, policies and plans in a way that is responsive to the differences that women face as rights holders. Women experience the adverse impacts of business activities differently and disproportionately. They may also face additional barriers in seeking access to remedy. Furthermore, women themselves are not a homogenous group of rights-holders. Because of intersecting and multiple forms of discrimination, different women may be affected differently by business activities in view of their age, race, caste, class, ethnicity, religion, language, literacy, access to economic resources, marital status, sexual orientation, gender identity, disability, residence in a rural location, and migration, indigenous or minority status. A gender analysis in the prospective mandatory human rights due diligence law must be applied. Legislation should require all Canadian companies to undertake mandatory human rights due diligence in a gender-sensitive way. Canada should refer to

the “*Gender dimensions of the Guiding Principles on Business and Human Rights*” report recommendations from the Working Group on the issue of human rights and transnational corporations and other business enterprises.

Legislation should require both companies and the government to engage in meaningful consultation with women’s rights organizations and advocates, including women’s trade union representatives and women’s committees. Access to remedy for marginalized groups and women who have disproportionately been affected must be considered in any civil liability provision. Any legislation must take into consideration the broader policy environment and for example, a whole of government approach would consider other human rights standards and guidelines of the Government of Canada, including its guidelines for protecting women human rights defenders.¹⁴

In 2016, the CEDAW Committee published its Concluding Observations on Canada, which represent its evaluation of Canada’s compliance with its international obligations under the Convention.¹⁵ The CEDAW Committee expressed concerns about:

(a) the negative impact of the conduct of transnational companies, in particular mining corporations, registered or domiciled in [Canada] and operating abroad on the enjoyment of the rights enshrined in the Convention by local women and girls; (b) the inadequate legal framework to hold all companies and corporations from the State party accountable for abuses of women’s human rights committed abroad; (c) the limited access to judicial remedies by women victims, and the absence of an effective independent mechanism with powers to investigate complaints alleging abuses by such corporations; (d) the lack of impact assessments explicitly taking into account women’s human rights prior to the negotiation of international trade and investment agreements.

These human rights obligations are binding and require action by the Government of Canada. Consideration for this Convention -- and a variety of other human rights instruments including the nine core international human rights treaties, the eight core international labour conventions and the United Nations Declaration on the Rights of Indigenous Peoples -- must be included as part of the legislative scope.

Human rights and environmental due-diligence should also be reflected in trade policy, and free trade agreements and other trade instruments should be consistent with HREDD obligations.

OXFAM CANADA

Oxfam Canada is an affiliate of the international Oxfam Confederation networked in 87 countries as part of a global movement for change. Our mission is to build lasting solutions to poverty and injustice with a focus on improving the lives and promoting the rights of women and girls. We work directly with communities, partners and women’s rights organizations to challenge the systems that perpetuate inequality and keep people poor. Together we seek to influence those in power to ensure that women trapped in poverty have a say in the critical decisions that affect them, their families and entire communities. We believe that ending global poverty begins with women’s rights.

- 1 https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Gender_Booklet_Final.pdf
- 2 https://actionaid.nl/wp-content/uploads/2022/10/Pathway-to-a-Feminist-Corporate-Accountability-Framework_2022-1.pdf
- 3 <https://cnca-rcrce.ca/site/wp-content/uploads/2022/06/Dont-Mistake-Reporting-for-Accountability-EN-1.pdf>
- 4 <https://cnca-rcrce.ca/campaigns/business-human-rights-legislation-hrdd/>
- 5 <https://cnca-rcrce.ca/2022/03/29/news-release-bills-introduced-to-protect-people-and-the-planet-warrant-all-party-support/>
- 6 <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-labour-mandate-letter>
- 7 A public opinion study of 600 Canadians, commissioned by Oxfam Canada in 2019, reveals that 82% of consumers believe Canadian clothing brands should ensure a living wage and proper working conditions for the people who make and sell their clothes.
- 8 <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-rse.aspx?lang=eng>
- 9 The Canadian Ombudsperson for Responsible Enterprise was established in 2019 to include both the extractives and garment sectors.
- 10 <https://cnca-rcrce.ca/site/wp-content/uploads/2021/05/Executive-Summary-Corporate-Respect-for-Human-Rights-and-the-Environment-Act.pdf>
- 11 <https://www.business-humanrights.org/en/latest-news/what-have-canadian-firms-done-since-rana-plaza/>
- 12 <https://www.bcwsbd.org/uploads/Not%20Even%20Bare%20Minimum%202021%20Report.pdf>
- 13 <https://cleanclothes.org/news/2020/garment-workers-on-poverty-pay-are-left-without-billions-of-their-wages-during-pandemic>
- 14 https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng#a7_1
- 15 <https://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/CAN/CO/8-9&Lang=E>



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Oxfam Canada acknowledges the historical and ongoing oppression and colonization of all Indigenous Peoples, cultures and lands in what we now know as Canada. We commit to acting in solidarity with First Nations, Inuit and Métis peoples in their struggles for self-determination and decolonization. Oxfam Canada's offices are located on the unceded, unsurrendered traditional territories of the Algonquin Anishinabe, Musqueam, Squamish, and Tsleil-Waututh peoples. We recognize the privilege of operating on lands that these peoples have nurtured since time immemorial.