



## **Canada's Legislative Proposals to Eliminate Forced Labour in Supply Chains**

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## I. Background

Over the past 30 years, multinational corporations (MNCs) have faced mounting pressure to improve labour standards in their supply chains and their corporate social responsibility (CSR) regimes have failed to meaningfully address the problem.<sup>1</sup> The adoption of Target 8.7 of the 2030 Sustainable Development Goals (SDGs) by UN member states in September 2015 – which calls for immediate and effective measures to eradicate forced labour, end modern slavery, end human trafficking, and eliminate child labour – brought renewed global attention to the problem of labour exploitation and to the role of supply chains as a vector of forced labour and modern slavery. There is now widespread acknowledgment that eliminating forced labour and child labour from supply chains, which made up 80% of global trade prior to the pandemic<sup>2</sup>, is critical to achieving SDG Target 8.7.

In response to these developments, many countries in the Global North, where most MNCs are incorporated, have enacted legislation designed to increase the accountability of MNCs for labour violations occurring in their transnational supply chains. These “modern slavery laws” are a form of “new” governance, responsive regulation, or reflexive law that impose minimum obligations on all MNCs to adopt CSR measures. These laws can be categorized into four legislative models:

- The **disclosure or transparency model** seeks to increase the obligations of MNCs in relation to supply chain governance through the mechanism of disclosure (Phillips, LeBaron & Wallin, 2018). Companies are required to report on activities, if any, they have undertaken to detect, eradicate, mitigate, and compensate for any forced labour, modern slavery, child labour, and human trafficking in their supply chains. This was the preferred model adopted by the mainly Anglo-American jurisdictions that were the first to enact modern slavery laws, including California’s Transparency in Supply Chains Act (2010), the United Kingdom’s Modern Slavery Act (2015), and Australia’s Modern Slavery Act (2018).
- The **human rights due diligence model** imposes obligations on companies in respect of a much broader range of harms, including international human and labour rights and international environmental standards. It draws on the UN Guiding Principles on Business and Human Rights (UNGPs) which introduced the first global standard for “due diligence” and provided a non-binding framework for companies to put their responsibility to respect human rights into practice. These laws range in the stringency of their requirements and the variety of their components. They impose due diligence obligations that range, at the lightest, from making due diligence processes and reporting obligatory, to requiring companies to remediate harms they have caused. Some require companies to consult with stakeholders in developing a due diligence plan and provide company-level grievance mechanisms. They also differ in the type and extent of public supervision and enforcement.<sup>3</sup> This is the dominant model in Europe, with notable examples including Germany’s Law on Supply Chain Due Diligence (2021), Norway’s Transparency Act

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<sup>1</sup> M. Anner, ‘Monitoring workers’ rights: The limits of voluntary social compliance initiatives in labor repressive regimes’ (2017). *Global Policy*, 8, 56.

<sup>2</sup> World Bank. World Development Report 2020: Trading for Development in the Age of Global Value Chains. 2020. Washington, DC: World Bank, 15. doi:10.1596/978-1-4648-1457-0

<sup>3</sup> H. Millar, Y. Dandurand & M. Chan, *Supply Chains Transparency and Due Diligence Legislation to Prevent Child and Forced Labour: A Guide for Policy Makers and Legislators* (International Centre for Criminal Law Reform and Criminal Justice Policy: Vancouver, 2022) 58-69, available at <https://icclr.org/wp-content/uploads/2022/02/Supply-Chain-Transparency-and-Due-Diligence-Legislative-Guide-final.pdf?x56541> (accessed 27 June 2022)

(2021), and Switzerland’s Criminal Code reforms and Ordinance on Due Diligence and Transparency Duties (2022).

- The **due diligence with civil liability model** takes the second model a step further by imposing liability for negligence where companies are found to contribute to human rights breaches in business relations. Duty of care and diligence requirements are found in France’s Corporate Duty of Vigilance Law (2017) and the proposed European Union Directive on Corporate Sustainability Due Diligence.
- The **due diligence with civil liability and reverse onus model** adds a further layer to the previous models by imposing a reverse onus. This means that corporations would be found liable for their adverse human rights impacts unless they can prove that they took all due care to prevent such impacts. This model was proposed in Switzerland’s Responsible Business Initiative but did not survive the nationwide referendum in 2020. It was also proposed in the initial draft of France’s Corporate Duty of Vigilance Law.

## II. Overview of Canadian legislative proposals

At present, there is no specific modern slavery legislation in Canada. Efforts to introduce a legislative framework for regulating forced labour in supply chains date back to 2009. The major legislative proposals are outlined below:

| Year | Bill  | Title   |
|------|-------|---|
| 2009 | C-300 | <a href="#">An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries</a>   |
| 2018 | C-423 | <a href="#">An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff</a>                              |
| 2020 | S-211 | <a href="#">An Act to enact the Modern Slavery Act and to amend the Customs Tariff</a>  |
| 2020 | S-216 | <a href="#">An Act to enact the Modern Slavery Act and to amend the Customs Tariff</a>  |
| 2021 | S-211 | <a href="#">An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff</a>  |
| 2022 | C-243 | <a href="#">An Act respecting the elimination of the use of forced labour and child labour in supply chains</a>   |
| 2022 | C-262 | <a href="#">An Act respecting the corporate responsibility to prevent, address and remedy adverse impacts on human rights occurring in relation to business activities conducted abroad</a> |
| 2022 | C-263 | <a href="#">An Act to establish the Office of the Commissioner for Responsible Business Conduct Abroad and to make consequential amendments to other Acts</a>                               |

Canada’s initial legislative proposals to address forced labour were focused exclusively on the extractive sector but addressed a broad scope of harm and wider access to remedies. For example, **Bill C-300 (2009)** required companies engaged in mining, oil, and gas operations in the Global South to adhere to environmental best practices and comply with international human rights standards and proposed a complaints procedure by which non-Canadian citizens could bring violations to the government’s attention.

In 2018, Canada’s Standing Committee on Foreign Affairs and International Development presented [A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains](#) to Parliament, an investigative report on the use of forced labour and child labour in Canadian supply chains, based on consultations with

a wide range of stakeholders. This report formed the basis of **Bills C-423 (2018), S-211 (2020), and S-216 (2020)**, three iterations of a *Modern Slavery Act* focusing on the elimination of child labour and forced labour. Although they differ slightly in detail, the general thrust of these bills was to impose an obligation on businesses to disclose the efforts they had taken to rid their business and supply chains of child and forced labour.

During the 2021 federal election campaign, the Liberal government pledged to introduce legislation to eradicate forced labour from Canadian supply chains and ensure Canadian businesses that operate abroad are not contributing to human rights abuses. Following their electoral win, **Bill S-211 (2021)** was introduced in the Senate and **Bill C-243 (2022)** in the House of Commons. These bills are also limited to the elimination of child labour and forced labour in businesses and their supply chain through disclosure obligations.

**Bill C-262 (2022)**, introduced March 2022, goes beyond the earlier legislative proposals by requiring entities to implement a due diligence process *and* providing a cause of action against an entity in respect of the entity's failure to develop and implement due diligence procedures. It is based on a draft law proposed by the Canadian Network for Corporate Accountability (CNCA) in May 2021.<sup>4</sup> Other civil society stakeholders that have proposed model bills and guidance for legislators include the Allard International Justice and Human Rights Clinic<sup>5</sup> and the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR).<sup>6</sup>

In addition, Canada has also introduced trade-related legislation to address modern slavery. The United States-Mexico-Canada Agreement (USMCA) free trade deal, which came into force on July 1, 2020, has a labour chapter, which includes the prohibition against forced labour.<sup>7</sup> These commitments extend beyond domestic activities and encapsulate imports as well, as each country is required to put measures in place to prohibit the importation of goods manufactured wholly or in part by forced or compulsory labour. To meet these obligations, Canada amended its *Customs Tariff Act*, which is enforced by the Canada Border Services Agency, to prohibit the importation of goods produced wholly or in part by forced or compulsory labour.<sup>8</sup> It does not, however, provide any access to remedy for victims of forced labour, and appears to be more of a form of trade, rather than human rights, protection.

### III. Analytical comparison of the major legislative proposals

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<sup>4</sup> The Corporate Respect for Human Rights and the Environment Abroad Act, Canadian Network for Corporate Accountability (Ottawa, May 2021), available at <https://cnca-rcrce.ca/site/wp-content/uploads/2021/05/The-Corporate-Respect-for-Human-Rights-and-the-Environment-Abroad-Act-May-31-2021.pdf> (accessed 27 June 2022).

<sup>5</sup> Transparency in Supply Chains Act: A Proposed Model Bill, Allard International Justice and Human Rights Clinic (Vancouver: Allard School of Law, April 2019), available at [https://allard.ubc.ca/sites/default/files/2021-03/TSCA\\_proposed\\_model\\_bill\\_with\\_cover-FINAL.pdf](https://allard.ubc.ca/sites/default/files/2021-03/TSCA_proposed_model_bill_with_cover-FINAL.pdf) (accessed 27 June 2022).

<sup>6</sup> Millar et al., 2022.

<sup>7</sup> Article 23.6, 'Agreement between the United States of America, the United Mexican States, and Canada 7/1/20 Text', <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> (accessed 27 June 2022).

<sup>8</sup> *Customs Tariff, S.C. 1997, c. 36*, as amended by the *Canada–United States–Mexico Agreement Implementation Act, S.C. 2020, c.1*.

Annex A (below) sets out a tabular comparison of the four most recent legislative proposals and demonstrates the significant differences between the different legislative models. As will become clear, Bills S-216 (2020), S-211 (2021), C-243 (2022) embrace the first model of modern slavery laws while Bill C-262 (2022) follows the third legislative model.

Under Bill S-216, companies must publish an annual report setting out the steps they have taken to prevent and reduce the risk that forced labour or child labour is used at any step of their production or sale of goods in any country, and in their import of goods into Canada. The report must be approved by the company's governing board, posted on the company's website, and provided to the Minister, who will maintain a public electronic registry of these reports. Bills S-211 and C-243 extend the reporting obligation to the distribution of goods and require public companies to enclose the report in their annual financial statements to shareholders. Companies that fail to report or knowingly make false or misleading statements face a maximum fine of \$250,000.

By contrast, under Bill C-243, companies have a duty to avoid causing adverse impacts on human rights (including all rights recognized under major international human rights instruments) and must prevent such impacts from occurring through its business relationships. They must develop and implement due diligence procedures in consultation with all relevant stakeholders and publish an annual due diligence report. They can be subject to lawsuits in Canadian courts for failing to develop and implement these due diligence procedures, as well as for any losses or damages resulting from their failure to prevent adverse human rights impacts. Standing to file these lawsuits is not limited to directly affected parties and the bill provides a defence for entities that can show that they exercised all due diligence to prevent the adverse impact.

Compared to the first three bills, Bill C-243 covers a wider range of harms (child labour and forced labour versus the full scope of human rights), imposes higher obligations on companies (a duty to report versus a duty of due diligence), and entails more significant consequences for non-compliance (a limited fine vs damages and other court-imposed remedies). Bill C-243 also covers more entities, as it includes all companies incorporated, carrying out business, or having offices or assets in Canada. In contrast, the first three bills apply only to entities that are listed on a Canadian stock exchange or that meet a combined threshold of assets, revenue, and number of employees. These bills only cover these entities' direct activities and the activities of companies they control and those which control them. Bill C-243's application extends beyond companies directly by businesses incorporated, doing business or having assets and offices in Canada to include companies with whom they have business relationships, such as individuals and entities in their supply chain or who are directly linked to their operations, products, or services.

This last point is key as it makes Canadian entities covered by the law *jointly and severally liable* with their subsidiaries, affiliates, and other companies in their supply chain for the adverse human rights impacts that result from their activities. This extension of legal responsibility is crucial because key components of private law have enabled lead entities to fragment and disperse production around the globe in order to distance themselves from the violations of the human rights of workers employed further down the chain and the communities from which value is extracted.<sup>9</sup> The mechanism of joint and several liability ensures that lead entities can be held liable for the harms caused by business models from which they profit.

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<sup>9</sup> J.G. Ruggie, 'Global Governance and New Governance Theory: Lessons from Business and Human Rights' (2014) 20 *Global Governance* 5, 13; K.H. Eller, 'Is 'Global Value Chain' a Legal Concept?' (2020) 16 *European Review of Contract Law* 3, 13.

However, Bill C-243 stops short of imposing a reverse onus, that is, holding corporations liable for their adverse human rights impacts unless they can prove that they took all due care to prevent such adverse impacts. Although the civil liability regime is a powerful tool for victims to hold corporations accountable, it is often very difficult and costly for those who have suffered harms to prove the violation of their human or labour rights. For this reason, it is important that the legislation shift the burden of proof so that the entity is required to adduce evidence if prima facie case of a human or labour rights violation has been made out. To further reduce the financial burden on claimants, the legislation could also provide that, in cases where the claimant is successful, legal costs will be fully recoverable from the defendant entity; and, where a claimant loses, costs will be balanced by the court in light of the disparity of resources between the parties.

#### IV. The road ahead for Canada

On June 1, 2022, the House of Commons voted unanimously in favour of sending Bill S-211 (2021) to the committee stage and Federal Labour Minister Seamus O'Regan confirmed the government's support for the bill.<sup>10</sup> Consequently, it seems likely that Canada will implement legislation based on the disclosure model. This is a mistake.

Since the first of these disclosure laws came into effect in 2012, it is possible to draw some general conclusions on their effectiveness on the basis of evidence. Reporting has tended to be superficial; reporting requirements do not reach the segment of supply chains where the worst human rights abuses occur; certification standards and social auditing have been found to be weak; and reporting requirements can be fulfilled without changing corporate practices that are clearly tied to human rights abuses.<sup>11</sup> There is a growing awareness that the use of disclosure legislation has not produced tangible results, despite the energy and money that has gone into promoting firm compliance and refining disclosure and reporting requirements.<sup>12</sup> Further, there is no evidence that disclosure laws can be used as a steppingstone towards implementing more robust due diligence legislation. At best, these laws raise business, public, and political awareness of the problem; at worst, they are a form of window dressing in which reporting substitutes for remedial action.

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<sup>10</sup> M. Woolf, 'Labour Minister Seamus O'Regan backs Senate forced labour bill', *Canadian Broadcasting Corporation*, June 1, 2022, <https://www.cbc.ca/news/politics/minister-bill-slavery-forced-labour-1.6474273> (accessed 27 June 2022)

<sup>11</sup> S. Kuruvilla, *Private Regulation of Labor Standards in Global Supply Chains: Problems, Progress, and Prospects*. (NY: Cornell University Press, 2021); P. Paiement (2021) 'Transnational auditors, local workplaces and the law' (2021) 12 *Transnational Legal Theory*, 390; C. Bright, A. Marx, N. Pineau & J. Wouters, 'Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?', (2020) 22 *Business and Politics* 667; Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It* (Cambridge: Polity, 2020); I. Landau, 'Human Rights Due Diligence and the Risk of Cosmetic Compliance,' (2019) 20 *Melbourne Journal of International Law*, 221.

<sup>12</sup> N. Phillips, G. LeBaron & S. Wallin, 'Mapping and Measuring the Effectiveness of Labour-Related Disclosure Requirements for Global Supply Chains', ILO Working Paper No. 32, Geneva, 2018, 2; Business and Human Rights Resource Centre, Modern Slavery Act: Five years of reporting (February 2021), [https://media.business-humanrights.org/media/documents/Modern\\_Slavery\\_Act\\_2021.pdf](https://media.business-humanrights.org/media/documents/Modern_Slavery_Act_2021.pdf) (accessed 29 June 2022); The Financial Reporting Council, Modern Slavery Reporting Practices in the UK - Evidence from Modern Slavery Statements and Annual Reports (April 2022), <https://www.frc.org.uk/getattachment/77c053d9-fe30-42c6-8236-d9821c8a1e2b/FRC-Modern-Slavery-Reporting-Practices-in-the-UK-2022.pdf> (accessed 29 June 2022).

Given the known flaws of the disclosure model, it would be a step backward, not forward, for Canada to adopt simple disclosure legislation directed only to modern slavery. The Canadian government should not embrace a legislative model already known to be ineffective. There is still time to make amendments to Bill S-211 to ensure that Canadian businesses respect human rights and labour rights of all people, not only those who have the good fortune to live in Canada. Specifically, the legislature should:

- **Remove the asset, revenue, and employee threshold requirements for entities to be covered by the law.** All entities should be covered regardless of size or sector. The UNGPs (Principle 14) make it clear that while policies and processes will necessarily have to vary in complexity depending on the size of the business enterprise, all companies are required to carry out human rights due diligence. The size and structure of a business enterprise should only affect the modalities of implementation of due diligence.
- **Introduce a broad due diligence obligation that extends to all entities to which an entity covered by the law is connected,** through investment and contractual relationships, regardless of whether they are located within or outside of Canada. It is important to provide definitions of the types of entities and relationships to which the due diligence obligation applies.
- **Introduce a duty to consult impacted and potentially impacted stakeholders in the definition and implementation of the due diligence measures.** The expectations of what constitutes meaningful stakeholder consultation for entities should be specified.
- **Expand the duty to report** to include entities' due diligence and consultation processes; reporting on key indicators that are associated with human and labour rights abuses;<sup>13</sup> the results and outcomes of remediation processes; and a map of the entity's business relationships and value chains including suppliers and contractors below the first tier. The limits of non-disclosure agreements should be clarified and a clear definition of the notion of "commercially sensitive" information should be provided.
- **Extend the obligation to practice human rights due diligence to all internationally recognized human rights,** including labour rights, without distinction. Entities should also be required to take a gender sensitive approach to the adverse impacts of human rights violations as men and women experience these impacts differently
- **Introduce a duty to document.** Entities should maintain a written record of their due diligence and consultation processes and their results, and make these records available to the competent authorities on request.
- **Require entities to establish or participate in effective operational-level grievance mechanisms, in consultation with the stakeholder groups including workers and trade unions.** These mechanisms support the identification of adverse human rights impacts as a part of an entity's ongoing human rights due diligence by providing an avenue for those directly impacted by an

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<sup>13</sup> For forced labour, for example, entities should report on the following indicators: percentage paid over costs of production, percentage of supply chain workforce receiving living wage, percentage of workers with temporary contracts.

entity's operations to raise concerns when they believe they are being or will be adversely impacted.

- **Provide access to a civil remedy for victims**, including a robust liability regime, an adequate limitation period, and strong enforcement measures that ensure accountability for failure to perform due diligence. Entities should be jointly and severally liable for harm arising out of human rights abuses caused or contributed to by controlled or economically dependent entities, or linked to their products, services or operations through a business relationship. Collective redress mechanisms, such as class actions, should be available to the claimants and Canadian courts should have jurisdiction over legal actions under this law.
- **Establish a public supervisory agency** with responsibility for overseeing entities' compliance with their due diligence obligations, and with the authority to effectively sanction entities that do not carry out their duties, for example, by financial penalties.

ANNEX A: CHART OF MAJOR LEGISLATIVE PROPOSALS

| ELEMENTS                 |                   | Bill S-216 (2020)   | Bill S-211 (2021)  | Bill C-243 (2022)   | Bill C-262 (2022)  |
|--------------------------|-------------------|---|--|---|--|
| <b>Title</b>             |                   | The <i>Modern Slavery Act</i>   | The <i>Fighting Against Forced Labour and Child Labour in Supply Chains Act</i>  | The <i>Ending the Use of Forced Labour and Child Labour in Supply Chains Act</i>  | The <i>Corporate Responsibility to Protect Human Rights Act</i>  |
| <b>Purpose/Rationale</b> |                   | To contribute to the fight against modern slavery through the imposition of reporting obligations on entities (producers and importers)   | To contribute to the fight against child labour and forced labour through the imposition of reporting obligations on entities (producers and importers) and government institutions (producers, purchasers, and importers) | To contribute to fight against child labour and forced labour in supply chains through the imposition of reporting obligations on entities (producers and importers)                  | To prevent, address, and remedy the adverse impacts on human rights that occur in relation to business activities conducted by entities abroad.  |
| <b>Coverage</b>          |                   | Child labour, as defined under Canadian law and in the <i>Worst Forms of Child Labour Convention, 1999</i><br>Forced labour, as defined under Canadian law and in the <i>Forced Labour Convention, 1930</i>   |  |   | Human rights, including the right to a healthy environment and rights recognized under the identified international human rights instruments <sup>14</sup>   |
| <b>Scope</b>             | <b>Legal Form</b> | Corporations, trusts, partnerships, and other unincorporated organizations  | Corporations, trusts, partnerships, other unincorporated organizations, and government entities  | Corporations, trusts, partnerships, other unincorporated organizations, and government entities (via amendment to the <i>Department of Public Works and Government Services Act</i> ) | Corporations, trusts, partnerships, and other associations, but specifically excluding registered charities, non-profit organizations, and trade unions  |
|                          | <b>Nexus</b>      | <ul style="list-style-type: none"> <li>- Listed on a stock exchange in Canada; or</li> <li>- Has a place of business in Canada, does business in Canada, or has assets in Canada, and meets at least two of the following conditions for at least one of the two most recent financial years: <ul style="list-style-type: none"> <li>i. At least \$20 million in assets</li> <li>ii. At least \$40 million in revenue generated</li> <li>iii. An average of at least 250 employees</li> </ul> </li> </ul> |  |   | <ul style="list-style-type: none"> <li>- incorporated or formed in Canada; or</li> <li>- has a place of business in Canada, carries on business in Canada, or has assets in Canada that are used in carrying on the entity's business</li> </ul> |

<sup>14</sup> The Schedule to Bill C-262 lists 22 international human rights instruments.

| ELEMENTS              |                                    | Bill S-216 (2020)   | Bill S-211 (2021)   | Bill C-243 (2022)  | Bill C-262 (2022)  |
|-----------------------|------------------------------------|---|---|--------------------|--|
|                       | <b>Covered business activities</b> | <ul style="list-style-type: none"> <li>- Produces or sells goods in Canada or elsewhere</li> <li>- Imports goods produced outside Canada; or</li> <li>- Controls an entity that does either of the above</li> </ul> | <ul style="list-style-type: none"> <li>- Produces, sells, or distributes goods in Canada or elsewhere</li> <li>- Imports goods produced outside Canada; or</li> <li>- Controls an entity that does either of the above</li> </ul> | Same as Bill S-216 | <ul style="list-style-type: none"> <li>- Carries out business activities abroad</li> <li>- Has affiliates (incl. subsidiaries and other controlled or controlling entities) which carry out business activities abroad</li> <li>- Has business relationships, including with individuals and entities that are in its supply chain, or directly linked to its operations, products, or services</li> </ul>                 |
| Duty of due diligence | <b>General obligation</b>          | None  |   |                    | <ul style="list-style-type: none"> <li>- Duty to avoid causing adverse impacts on human rights resulting from the entity or its affiliates' acts or omissions, to occur outside Canada</li> <li>- Duty to prevent adverse impacts on human rights resulting from the entity's business relationships from occurring outside Canada</li> </ul>  |
|                       | <b>Due diligence procedures</b>    | None  |   |                    | <ul style="list-style-type: none"> <li>- Identify and assess actual and potential adverse impacts on human rights resulting from activities and business relationships</li> <li>- Cease any activity that leads to adverse impacts and take remedial action</li> <li>- Mitigate risks of adverse impacts</li> <li>- Develop internal alert mechanisms to warn of any potential adverse impacts on human rights.</li> </ul> |
| Duty to consult       |                                    | None  |   |                    | <p>Due diligence procedures must be developed and implemented in consultation with:</p> <ul style="list-style-type: none"> <li>- directly affected individuals (or their representatives)</li> <li>- trade unions</li> <li>- employees</li> <li>- affected communities; and</li> <li>- other relevant stakeholders, incl. independent experts</li> </ul>   |

| ELEMENTS              |                                | Bill S-216 (2020)  | Bill S-211 (2021)   | Bill C-243 (2022)   | Bill C-262 (2022)   |
|-----------------------|--------------------------------|--|---|---|---|
| <b>Duty to report</b> | <b>Reporting obligation</b>    | A report that sets out the steps the entity has taken to prevent and reduce the risk that forced labour or child labour is used at any step of the entity's production (in Canada or elsewhere) or import of goods   | <i>Replicates S-216</i> and, in addition, permits entities to produce reports jointly and to revise their reports   | <i>Replicates S-216</i> and, in addition, requires entities to report on steps taken with respect to entities they control, and allows entities to revise reports   | A report on the entity's due diligence  |
|                       | <b>Content of report</b>       | <ul style="list-style-type: none"> <li>- Structure and goods produced or imported</li> <li>- Policies on child labour and forced labour</li> <li>- Activities that carry a risk and steps taken to assess and manage risk</li> <li>- Remediation measures taken</li> <li>- Training provided to employees</li> </ul> | <ul style="list-style-type: none"> <li>- Structure, activities, and supply chains</li> <li>- Policies and due diligence processes</li> <li>- Parts of business and supply chains that carry risk and steps taken to assess and manage risk</li> <li>- Remediation measures</li> <li>- Training provided to employees</li> <li>- Methods for assessing effectiveness in ensuring that forced labour and child labour are not being used in business and supply chains</li> </ul> | <ul style="list-style-type: none"> <li>- Structure, business, and supply chains</li> <li>- Policies on child labour and forced labour</li> <li>- Parts of business and supply chains that carry risk and steps taken to assess and manage risk</li> <li>- Remediation, including due diligence processes</li> <li>- Training provided to employees</li> <li>- Methods for assessing effectiveness in ensuring that forced labour and child labour are not being used in business and supply chains</li> </ul> | <ul style="list-style-type: none"> <li>- Due diligence procedures implemented and their effectiveness</li> <li>- Business activities and business relationships covered by due diligence procedures</li> <li>- List of affiliates covered by due diligence procedures</li> <li>- Activities in respect of which a risk of adverse impacts on human rights has been identified and measures taken to assess and mitigate the risk</li> </ul> |
|                       | <b>Publication requirement</b> | The report must be made available to the public, including publication in a prominent place on the entity's website.   | <i>Replicates S-216</i> and, in addition, requires federal corporations to provide report to shareholders along with annual financial statements  | <i>Replicates S-216</i> and, in addition, requires all corporations to provide report to shareholders along with annual financial statements  | The report must be made public.   |
|                       | <b>Registry</b>                | Minister must maintain an electronic registry of reports that is made publicly available on the Ministry's website   |   |   | None  |
|                       | <b>Approval</b>                | The report must include an attestation by a director or officer of the entity  | The report must include a statement of approval from the entity's governing body  | The report must be approved by the governing body of entity and   | None  |

| ELEMENTS   |  | Bill S-216 (2020)   | Bill S-211 (2021)  | Bill C-243 (2022)  | Bill C-262 (2022)   |
|--|--|---|--|--|---|
|  |  |   | and the manual signature of one or more of its members   | evidenced by the manual signature of one or more of its members of |   |
|  | <b>Frequency of reporting</b>                  | Annual - 180 days after the end of each financial year  | Annual - On or before May 31 of each <sup>[P]</sup> year |  | Annual  |
| <b>Duty to document</b>                          |  | None  |  |  | Entities must monitor and document the implementation and effectiveness of their due diligence procedures   |
| <b>Workplace grievance and remedy mechanisms</b> |  | None  |  |  |   |
| <b>Public enforcement</b>                        | <b>Penalties</b>                               | <ul style="list-style-type: none"> <li>- Summary conviction offence and maximum fine of \$250,000 for entities which fail to report or knowingly make false or misleading statements or information</li> <li>- Officers and directors are liable if they directed, authorized, assented to, acquiesced, or participated in the commission of the offence</li> <li>- Offences committed by employees will be attributed to the entity unless the entity exercised due diligence to prevent its commission</li> </ul> |  |  | None  |
|  | <b>Powers to compel</b>                        | <ul style="list-style-type: none"> <li>- Designated persons may enter any relevant place to obtain and examine documents and data</li> <li>- The Minister may require non-compliant entities to take measures to comply</li> </ul>  |  |  | None  |
|  | <b>Withdrawal of government support</b>        | None  |  |  | Government support or funding to an entity may be withdrawn if there are reasonable grounds to believe it has failed to meet its obligations  |
|  | <b>Supervisory agency</b>                      | None  |  |  | Appointment of a commissioner with a mandate to ensure compliance by entities with business activities or relationships abroad  |
| <b>Access to remedy and civil liability</b>      | <b>Civil liability regime</b>                  | None  |  |  | An entity is liable for any injury that results from its failure to comply with obligation to prevent adverse impacts   |
|  | <b>Rights of action and limitation periods</b> | None  |  |  | <ul style="list-style-type: none"> <li>- Action against an entity for loss or damage resulting from failure to comply with obligation to prevent adverse impacts <ul style="list-style-type: none"> <li>➤ Limitation period: 5 years, except allegations of sexual assault for which there is no limitation period</li> </ul> </li> </ul> |

| ELEMENTS                  |                     | Bill S-216 (2020)  | Bill S-211 (2021) | Bill C-243 (2022) | Bill C-262 (2022)   |
|---------------------------|---------------------|--|-------------------|-------------------|---|
|                           |                     |  |                   |                   | <ul style="list-style-type: none"> <li>- Action against an entity for failure to develop and implement due diligence procedures (limited to matters arising in the human rights protection context) <ul style="list-style-type: none"> <li>➤ Limitation period: 2 years</li> </ul> </li> </ul>  |
|                           | <b>Jurisdiction</b> | N/A  |                   |                   | <p>Canadian courts will have jurisdiction if entity is:</p> <ul style="list-style-type: none"> <li>- domiciled or ordinary resident in the jurisdiction; or</li> <li>- explicitly submits to the jurisdiction; or</li> <li>- there is a real and substantial connection between the facts of the action and the jurisdiction</li> </ul> |
|                           | <b>Standing</b>     | N/A  |                   |                   | <p>Any person who:</p> <ul style="list-style-type: none"> <li>(a) raises a serious issue and is directly affected by the matter; or</li> <li>(b) has a genuine interest in the matter, presents a reasonable means of advancing the proceeding, and has no conflict of interest</li> </ul>  |
|                           | <b>Remedies</b>     | N/A  |                   |                   | Damages for loss suffered, aggravated or punitive damages, injunction, specific performance order, costs of the action  |
|                           | <b>Defences</b>     | N/A  |                   |                   | The entity must establish that it exercised all due diligence to prevent the adverse impact   |
| <b>Import prohibition</b> |                     | Introduces an amendment to the <i>Customs Tariff</i> to exclude goods that are mined, manufactured, or produced wholly or in part by forced labour or child labour |                   | N/A <sup>15</sup> | N/A <sup>15</sup>   |

<sup>15</sup> On July 1, 2020, the Customs Tariff was amended to prohibit the importation of goods produced by forced labour or prison labour, as part of the implementation of the Canada-United States-Mexico Agreement.

## ANNEX B: LIST OF LEGISLATIVE CITATIONS

Act on Corporate Due Diligence Obligations in Supply Chains, BGBl I 2021, 2959. Official English translation at <https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporatedue-diligence-obligations-supply-chains.pdf> (accessed 27 June 2022)

Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions, LOV-2021-06-18-99. Unofficial English translation at: <https://lovdata.no/dokument/NLE/lov/2021-06-18-99#:~:text=The%20Act%20shall%20promote%20enterprises,fundamental%20human%20rights%20and%20decent> (accessed 27 June 2022)

*California Transparency in Supply Chains Act 2010*, Cal Civ Code 1872 § 1714.43, [https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb\\_657\\_bill\\_ch556.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersafety/sb_657_bill_ch556.pdf) (accessed 27 June 2022)

*Customs Tariff*, S.C. 1997, c. 36, as amended by the *Canada–United States–Mexico Agreement Implementation Act*, S.C. 2020, c.1, <https://laws-lois.justice.gc.ca/eng/acts/C-54.011/index.html> (accessed 27 June 2022)

*Modern Slavery Act 2015* (UK) c 30, Part 6, s 54, <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted> (accessed 27 June 2022)

*Modern Slavery Act 2018* (Cth), <https://www.legislation.gov.au/Details/C2018A00153> (accessed 27 June 2022)

Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre" Journal officiel de la République, March 27, 2017. <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&dateTexte=&categorieLien=id> (accessed 27 June 2022)

Ordinance on Due Diligence Obligations and Transparency Regarding Minerals and Metals from Conflict Areas and Child Labor (VSoTr), AS 2021 847, <https://www.fedlex.admin.ch/eli/oc/2021/847/de> (accessed 27 June 2022)