Memorandum of Understanding between the General Secretariat of the Organization of American States, through the Inter-American Commission on Human Rights, and the International Corporate Accountability Roundtable
THE PARTIES TO THIS AGREEMENT, the General Secretariat of the Organization of American States (hereinafter “GS/OAS”), a public international organization, with headquarters at 1889 F Street, N.W., Washington, D.C., 20006, represented by Emilio Alvarez-Icaza Longoria, Executive Secretary for Inter-American Commission on Human Rights (hereinafter “IACHR”), and the International Corporate Accountability Roundtable (hereinafter “ICAR”), an American, non-profit organization, located at 1612 K Street, N.W., Suite 515, Washington, D.C., 20001, represented by Amol Mehra, Director of ICAR.

CONSIDERING:

That Article 36 of the Charter of the Organization of American States (hereinafter “OAS”) provides that “Transnational enterprises and foreign private investment shall be subject to the legislation of the host countries and to the jurisdiction of their competent courts and to the international treaties and agreements to which said countries are parties, and should conform to the development policies of the recipient countries”;

That Article 26 of the American Convention on Human Rights provides that States must progressively achieve “the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires”;

That the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (known as the "Protocol of San Salvador"), which expressly recognizes "the close relationship that exists between economic, social and cultural rights and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized";

That the OAS General Assembly resolution AG/doc.5452 of June 2014 concerning the promotion and protection of human rights in business, in which the General Assembly resolved to promote the application of the United Nations Guiding Principles on Business and Human Rights (hereinafter "UNGPs"), encourages member states and their national human rights institutions to foster constructive dialogue among all stakeholder groups on the application of the UNGPs, and requests the IACHR, to support states in the promotion and application of state and business commitments in the area of human rights and business;

That ICAR is a coalition of human rights, environmental, labour, and development organizations that works to create, promote, and defend legal frameworks to ensure that corporations respect human rights in their global operations; and

That the GS/OAS is the central and permanent organ of the OAS and is authorized to carry out relations of cooperation in accordance with Article 112(h) of the OAS Charter and OAS General Assembly Resolution AG/RES.57 (1-O/71) and that the IACHR is a principal and autonomous organ of the GS/OAS whose mission is to promote and protect human rights in the American hemisphere,

HAVE AGREED to enter unto this Memorandum:
Article I
Objective

1.1. The objective of this Memorandum of Understanding (hereinafter the “MOU”) is to define a general framework for enhancing the cooperation mechanisms between the Parties in the areas of promotion and protection of economic, social, and cultural rights (hereinafter “ESCR”) with focus on the areas of business and human rights and sustainable development in the Americas.

Article II
Activities

2.1. The Parties agree to collaborate in the following general activities (hereinafter the “Activities”):

2.1.1. Knowledge and Capacity Exchange

2.1.1.1. The Parties shall take measures to promote a proactive exchange of knowledge and capacities through training, advice, testing, and exchange of methodologies and documentation, subject to arrangements that may be required to preserve the confidential or restricted nature of certain information and documents.

2.1.1.2. ICAR will support the IACHR in developing a strategy to create the ESCR Rapporteurship.

2.1.2. Dialogues and Convening

2.1.2.1. Where relevant, the Parties may collaborate on events such as consultations, hearings, and conferences at multilateral conferences or other events.

Article III
Funding and Resources

3.1. The Parties agree to collaborate in the Activities described in article II in a manner consistent with their capacity and resources.

3.2. ICAR shall assign and hire a fellow dedicated to executing the Activities described in article II (“ICAR Fellow”), who will initiate activities in the Secretariat of the IACHR starting on October 13, 2015.

3.3. The ICAR Fellow will execute the Activities for full workdays on the Monday and Tuesday of each week until the expiration of the fellowship period on December 18, 2015. Should scheduling conflicts arise during a particular day, the ICAR Fellow will communicate with the Coordinators of each of the Parties to arrange an alternative schedule for the week. The Coordinator at the IACHR will be Mario López. The Coordinator at ICAR will be Amol Mehra.

3.4. The ICAR Fellow is expected to comply with the GS/OAS’ policies.
3.5. This fellowship will be completely funded by ICAR, which will pay the ICAR Fellow directly. This MOU in and of itself does not create obligations of a financial nature for the GS/OAS or IACHR.

3.6. Nothing in this MOU is intended to or should be construed to create an employment relationship between the GS/OAS and the ICAR Fellow. Therefore, the ICAR Fellow is not entitled to any of the rights and benefits of GS/OAS staff members set out in the General Standards and in the GS/OAS' Staff Rules; and consequently, ICAR is responsible for, among other things, obtaining health insurance for the ICAR Fellow and may not hold the GS/OAS responsible for any accident/illness suffered by the ICAR Fellow while he or she is working at the IACHR.

3.7. The ICAR Fellow shall maintain the confidentiality, during and after the fellowship, of the documents and information (written or verbal) that he or she has access to through the fellowship, this includes content of ongoing cases, identity of victims or their representatives, Government information, among others. Under no circumstances shall documents related to ongoing cases be taken out of the IACHR, unless previously authorized.

3.8. The GS/OAS shall own the copyright to any work produced by the ICAR Fellow under this MOU, including the right of dissemination, reproduction, and publication of this work. All reports, studies, plans, drawings, source code, technical data, specifications, deliverables, and any other material prepared by or worked upon by the ICAR Fellow for the GS/OAS under this MOU are the sole and exclusive property of the GS/OAS and as such the GS/OAS has exclusive title, rights, and interest in all such material, including the right of dissemination, reproduction, and publication.

**Article IV**

**Coordination and Notice**

4.1. Within the GS/OAS, the dependency responsible for coordinating GS/OAS activities under this MOU is the Inter-American Commission on Human Rights, and the Coordinator is Marisol Blanchard, Human Rights Specialist. Notifications and communications should be directed to the Coordinator at the following street address and electronic mail:

Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 20006
United States of America
Tel.: (1-202) 3704983
mblanchard@oas.org

4.2. ICAR’s Coordinators for the activities under this MOU are ICAR’s Director, Amol Mehra (amol@icar.ngo, 202.296.0146), and ICAR’s Legal and Policy Coordinator, Sara Blackwell (sara@icar.ngo, 202.296.2026).

4.3. All communications and notifications under this MOU will be validly made only when they are sent by mail or electronic mail addressed to the Coordinators whose names are set out in Articles 4.1 and 4.2, above. When the communications and notifications are transmitted by electronic mail, they shall be valid when they are sent directly from the
electronic address of the Coordinator of one of the Parties to the electronic address of the Coordinator of the other.

4.4. Either Party may change the responsible dependency, the designated Coordinator, the address, telephone, or electronic mail indicated by notifying the other Party in writing.

Article V
Privileges and Immunities

5.1. Nothing in this MOU constitutes an express or implied waiver of the privileges and immunities of the OAS or the GS/OAS, its personnel and its assets pursuant to the following provisions and instruments ratified by the Government of the United States of America: Articles 133, 134 and 136 of the OAS Charter, whose instrument of ratification was deposited by the Government of the United States of America the 19 of June of 1951; the International Organizations Immunities Act (22 U.S.C. §§ 288 et seq.); and the Headquarters Agreement Between the Organization of American States and the Government of the United States of America, signed the 14 of May of 1992.

Article VI
Dispute Resolution

6.1. Any dispute or complaint that may arise in conjunction with the application or interpretation of this MOU, shall be settled by direct negotiations between the Parties. If a solution satisfactory to both Parties cannot be reached, then the Parties shall submit their differences to arbitration pursuant to the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL") currently in effect. The place of arbitration shall be Washington D.C., U.S.A. The language in the proceedings shall be English unless the Parties agree otherwise. The three arbitrators or, as the case may be, the one arbitrator shall decide the dispute as amiable compositeur or ex aequo et bono. The arbitrator's decision shall be final, binding and not subject to appeal. The law applicable to the arbitration proceedings and to this MOU shall be the law of the District of Columbia, USA.

Article VII
General Provisions

7.1. This MOU will become effective upon signature by the duly authorized representatives of the Parties and will be valid until December 18, 2015. Prior to this date, a Party may terminate the MOU at any time by providing written notice to the other Party at least 30 days prior to the intended date of termination. Prior to the date of this MOU's termination, the Parties may choose to extend the MOU and amend it accordingly.

7.2. Modifications to this MOU may only be made by mutual agreement in writing and signed by the duly authorized representatives of the Parties. The instruments in which the modifications are set out shall be attached as annexes to this MOU and shall form part of it.

7.3. The Parties agree to observe the highest ethical standards and administrative transparency in all actions and activities related to this MOU. In addition, the GS/OAS, to the extent applicable and without prejudice to its privileges and immunities referred to in Article V, and ICAR agree to comply with the provisions of the Inter-American Convention Against Corruption and in the applicable norms of the country in which the Activities take place. Failure to comply with this provision shall constitute grounds for anticipatory termination of this MOU, pursuant to Article 7.1.
7.4. The Parties shall retain exclusive rights to any intellectual property including but not limited to methodologies, reports, templates, software, data, and trademarks owned by each Party prior to and/or independently of this MOU. Each Party shall own the copyright to any work produced by such Party under this MOU, including the right of dissemination, reproduction, and publication of such work product.

7.5. Nothing in this MOU may be interpreted as preventing the Parties from pursuing their respective activities in accordance with their mandates, regulations, and procedures.

7.6. The Parties assume full responsibility for the claims and damages directly and proximately caused by actions or omissions of their corresponding representatives, officials, employees, contractors, and fellows.

7.7. Articles V and VI shall survive the expiry or the termination of this MOU.

Done in Washington DC, on October 28, 2015.

For ICAR

Amol Mehra
Director

For the GS/OAS

Emilio Alvarez-Icaza L.
Executive Secretary