



UNITED STATES MISSION
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

August 31, 2015

Mr. Michael K. Addo
Chairperson of the UN Working Group
on the Issue of Human Rights and Transnational
Corporations and Other Business Enterprises
Geneva, Switzerland

Dear Mr. Addo:

The U.S. government thanks the Working Group on Business and Human Rights for the opportunity to comment on implementation of the UN Guiding Principles on Business and Human Rights (“Guiding Principles”) in the United States, and on how business and human rights issues are incorporated into the role of the U.S. government as an economic actor. The response below takes into consideration and seeks to respond to the seven items from the questionnaire, and builds on previous questionnaire responses on this topic from 2014 and 2012/13.

General Update

In September 2014, President Obama announced that the United States would undertake a National Action Plan (NAP) on Responsible Business Conduct, in line with the Guiding Principles and the OECD Guidelines for Multinational Enterprises. As far as we are aware, this is the first time that a head of state has announced the launch of such a National Action Plan, and demonstrates the high-level of U.S. government commitment to promoting respect for human rights in the context of business operations.

Since the President’s announcement, the White House has led the U.S. NAP process. To date, this process has included forming government-wide working groups; participating in four multi-stakeholder NAP consultations hosted around the United States; and receiving feedback through written submissions and informal consultation as part of our regular business and human rights outreach.

The U.S. NAP process has benefited from the significant expertise and substantive recommendations from stakeholders, including the Working Group on Business and Human Rights, and we plan to continue to collect additional input from stakeholders in drafting the NAP.

In addition to the U.S. NAP, in June President Obama met with the leaders of other G7 nations in Schloss Elmau, Germany, where the leaders’ final Summit Declaration announced our shared commitment to addressing issues of “responsible supply chains,” including by noting strong support for the Guiding Principles; welcoming efforts to establish substantive National Action Plans; encouraging human rights due diligence; supporting a “Vision Zero Fund” in

coordination with the International Labor Organization (ILO) to prevent and reduce workplace deaths and serious injuries; and extending a commitment to strengthening the National Contact Point for the OECD Guidelines to ensure effectiveness and leadership by example. This declaration by the G7 represents significant progress for the global business and human rights agenda, and the United States is dedicated to addressing these commitments, including, in part, through our National Action Plan.

Business Enterprises and the State

The United States government does not own or control any corporate enterprises. That said, the government engages with the private sector through our facilitation of development finance, managed primarily by the Overseas Private Investment Corporation (OPIC). OPIC has worked hard to ensure that it has robust safeguards and due diligence systems in place. OPIC conducts project-level human rights reviews and for each project seeking OPIC support, OPIC works in close consultation with the U.S. Department of State prior to making any final commitment (see footnote 1). Furthermore, OPIC's Office of Investment Policy (OIP) works to ensure that OPIC-supported projects respect human rights and workers' rights (see footnote 2).

Pursuant to Section 239 (i) of the Foreign Assistance Act, OPIC must take into account in the conduct of its programs in a country, in consultation with the U.S. Department of State, all available information pertinent to the observance of and respect for human rights and fundamental freedoms and any effect of its programs on human rights and fundamental freedoms in the country in question.

Additionally, OPIC's Office of Accountability addresses environmental and social complaints, including human rights-related complaints, that result from OPIC-supported projects. This helps to ensure that OPIC's policies on human rights and other issues match the practice on the ground, and when issues arise, that there are mechanisms in place for redress.

The State Department and the Export-Import Bank of the United States relied on established procedures for regular consultation on human rights concerns through State's Bureau of Democracy, Human Rights, and Labor on certain export credit financed projects. Additionally, all high risk projects required an environmental and social impact assessment consistent with the IFC Performance Standards (see footnote 3).

In addition to promoting respect for human rights through bilateral U.S. development finance, the United States has also urged the World Bank to incorporate respect for human rights into its Safeguards policies and social impact assessments. The United States has issued several public statements on the World Bank's Safeguards review process highlighting the need to address the potential human rights impacts of World Bank projects.

With respect to trade, the United States includes labor provisions in its trade agreements that help ensure trade partners are protecting internationally-recognized labor rights. Trade preference programs, which encourage economic growth in developing countries through expanded trade and investment, all condition preferential market access on meeting certain "eligibility criteria," which include criteria relating to labor rights. While the specific labor criteria in each program are unique, the Obama Administration has made use of all of them to

address a range of serious problems: from lack of worker voice, to building and fire safety concerns, to acts of violence and intimidation towards union organizers, to employment-related sexual harassment. Addressing these issues is not only critical to protecting workers' rights, it is necessary for strengthening developing countries' growth strategies.

The United States is also seeking the most robust ever labor commitments with the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (T-TIP) countries, which collectively represent nearly two-thirds of the global economy. For example, in the TPP, the United States is seeking to include provisions that require parties to provide workers their fundamental rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work, and has insisted that labor provisions be at the core of the agreement, subject to full dispute settlement and the full range of trade sanctions.

Further, the United States has announced a joint "Initiative to Promote Fundamental Labor Rights and Practices in Myanmar," which aims to establish a partnership to advance labor rights and protections for workers in Burma. With recent changes in its posture towards the outside world, Burma is at an early and pivotal stage in its economic growth. The Initiative helps Burma lay the right foundation for ensuring that economic growth and development proceed on a basis that is inclusive and sustainable.

As a large purchaser of goods and services globally, the U.S. government recognizes its role in promoting and incentivizing responsible business conduct through its procurement practices. As such, the Obama Administration has consistently taken steps to refine and update procurement procedures to address social issues.

In July 2014, the President issued Executive Order 13673: Fair Pay and Safe Workplaces, which requires prospective federal contractors to disclose domestic labor law violations and gives agencies guidance on considering labor violations when awarding federal contracts. The Executive Order also ensures that contractors' employees are given the necessary information each pay period to verify the accuracy of their paycheck, and that workers who may have been sexually assaulted or had their civil rights violated get their day in court by ending pre-dispute arbitration agreements covering these claims at corporations with large federal contracts, except where valid contracts already exist.

Also in July 2014, the President issued EO 13672, which prohibits contractors from discriminating in hiring on the basis of sexual orientation and gender identity.

And in January 2015, a final Federal Acquisition Regulation (FAR) rule was published on strengthening prevention of trafficking in persons in federal contracts, released during a major White House forum on preventing human trafficking in supply chains (see footnote 4). The regulations implement Executive Order 13627, "Strengthening Protections Against Trafficking in Persons in Federal Contracts" and Title XVII of the National Defense Authorization Act for Fiscal Year 2013. These regulations prohibit trafficking or trafficking-related practices, such as charging recruitment fees to get work, confiscating workers' identity documents, and using fraudulent or misleading recruitment practices. In addition, the new Executive Order mandates additional protections for large overseas contracts, namely compliance plans that include awareness programs, whistleblower protections, and recruitment, wage, and housing plans, etc. In order to further these regulations, Department of State funded a leading labor rights

NGO to develop a framework for evaluating trafficking risks in global supply chains; research key sectors and commodities at heightened risk for human trafficking; and develop a set of tools including a sample compliance plan, sample set of criteria for screening and evaluating labor recruiters, and a labor recruiter performance assessment.

In addition to the Executive Orders listed above, this year the Department of State modified its Worldwide Protective Services contract to require that all private security firms bidding on these contracts be members of the International Code of Conduct for Private Security Service Providers (ICoC) Association. The ICoC provides guidance for private security service providers to promote adherence to international human rights and humanitarian law, and the ICoC Association oversees dissemination and implementation of the International Code of Conduct in practice. The U.S. government worked with other governments, industry, and civil society organizations to establish the ICoC Association, and continues to engage with the Association as a member of the Board. The U.S. government, through the Department of Defense, has also facilitated the development of management standards for the private security industry based on the International Code of Conduct. Currently, among other related activities, the Departments of Defense and State are incentivizing and promoting these standards by referencing them as contract requirements.

Besides utilizing its major procurement role to promote respect for human rights, several U.S. federal agencies are examining their “branding” through licensing agreements. Starting in 2014, the U.S. Marine Corps (USMC) Trademark Licensing Office (TMLO) launched a revised and more robust licensing policy for licensees who produce goods with USMC logos. This policy requires license holders to have a firm understanding and oversight of their supply chain. As a child and forced labor risk mitigation measure, the policy further prohibits licensees from sourcing products or components listed on the U.S. Department of Labor’s *List of Goods Produced by Child Labor or Forced Labor* (see footnote 5). For example, USMC licensees are prohibited from sourcing footwear from Bangladesh, Brazil, China, India and Indonesia since these industries show high risk for child or forced labor according to the Labor Department’s listing.

Conclusion

The U.S. government would like to reiterate its support for the Working Group on Business and Human Rights as well as the Annual Forum on Business and Human Rights, and thanks the Working Group for the opportunity to provide this information on how the United States promotes respect for human rights at home and around the world.

Sincerely,



Keith M. Harper
Ambassador
U.S. Representative to the United Nations
Human Rights Council