



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

March 28, 2018

Anita Ramasastry
Chairperson of the Working Group on the issue
of human rights and transnational corporations
and other business enterprises

Dear Chairperson Ramasastry:

Thank you for your letter of February 16, 2018, seeking input of all Member States on information to be taken into account for a report that focuses on the issue of integrating human rights in the context of State activity related to export, trade and investment promotion.

Please find the United States response attached.

Sincerely,

A handwritten signature in blue ink that reads "Jason Mack".

Jason R. Mack
U.S. Deputy Permanent
Representative to the UN Human
Rights Council

SUBJECT: U.S. Response to questionnaire on states as economic actors

The U.S. government welcomes the opportunity to respond to the questionnaire on the role of the State as an economic actor from the UN Working Group on the issue of human rights and transnational enterprises. We hope that the attached information will be of assistance to you in developing your report to the 38th session of the Human Rights Council in June 2018. As requested, we have focused our feedback on the issue of integrating human rights in the context of State activity related to export, trade and investment promotion in line with the UN Guiding Principles on Business and Human Rights. We have focused on a few pertinent examples from the U.S. State Department, the U.S. Trade Representative (USTR), the Office of Overseas Private Investment Corporation (OPIC), and the Export-Import Bank of the United States (EXIM).

U.S. State Department

Responsible Business Conduct: The State Department's [Responsible Business Conduct \(RBC\) team](#) in the Bureau of Economic and Business Affairs works with the Bureau of Democracy, Human Rights and Labor's (DRL) Internet freedom and business and human rights (IFBHR) team, as well as companies and other stakeholders to promote responsible business practices globally, based on the international best practices found in the [OECD Guidelines for Multinational Enterprises](#) ("OECD Guidelines"). As a member of the OECD, the U.S. government established a National Contact Point (NCP) within the RBC team in order to, among other goals, (1) increase the awareness of the OECD Guidelines, (2) facilitate practical application of the Guidelines, and (3) offer a voluntary dispute resolution and mediation mechanism for issues arising related to a company's adherence to the OECD Guidelines. In the past few years, the U.S. NCP has worked with parties to successfully resolve two disputes between companies and workers in their global supply chains, and offered mediation in several other cases, which has led to significant positive outcomes.

Investment Climate Statements: The State Department publishes "Investment Climate Statements" annually for over 170 countries and economies worldwide that describe the investment and business climates in these territories. The reports

include assessments on issues such as responsible business conduct, labor, and political violence. This information supports efforts to help U.S. companies understand various risks—including human rights risks—that may exist when investing in foreign markets.

Commercial Advocacy: As part of the U.S. government’s commercial advocacy process, all companies that request formal U.S. advocacy for foreign procurement tenders are required to sign an anti-bribery agreement. For those advocacy requests for defense equipment or services, additional review and approval by three U.S. government agencies is required (State, Defense, Commerce). Foreign policy, including political and human rights concerns, is a factor in the review process.

Training: The State Department regularly trains diplomats, including economic officers, and other U.S. government employees stationed overseas through webinars and courses at the Foreign Service Institute. Training focuses on ensuring officers dealing with economic and labor issues have a background in Responsible Business Conduct.

U.S. Trade Representative (USTR)

The United States uses available trade policy tools to improve human rights, especially labor rights, in trading partners. The U.S. government engages with trade partners on labor rights through the formal mechanisms of trade agreements and trade preference programs, as well as through country-specific initiatives, capacity building, and technical assistance.

Since 2007, U.S. trade agreements have included obligations to ensure the consistency of each party’s labor laws with fundamental labor rights as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. U.S. trade preference programs, including the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), the Caribbean Basin Trade Partnership Act, and trade preferences for Haiti and Nepal, require beneficiaries to meet statutory eligibility criteria pertaining to worker rights and child labor.

AGOA provides incentives to promote human and labor rights as well as trade expansion in AGOA-eligible countries in support of broad-based economic development. The AGOA eligibility criteria include, among others, establishing or making continual progress in establishing a market-based economy, rule of law, poverty-reduction policies, a system to combat corruption and bribery, and protection of internationally recognized workers' rights. AGOA also requires that eligible countries do not engage in activities that undermine U.S. national security or foreign policy interests, or engage in gross violations of internationally recognized human rights.

Overseas Private Investment Corporation (OPIC)

OPIC's Environmental and Social Policy Statement (ESPS) requires environmental and social (including labor and human rights) due diligence and monitoring of OPIC-supported projects, and requires OPIC-supported projects to adhere to the requirements outlined in the ESPS. OPIC-supported projects with heightened social, labor, or human rights risks may receive the designation of "Special Consideration," which requires additional due diligence, monitoring, and reporting. OPIC's ESPS includes, by reference, the International Finance Corporation's Performance Standards on Social and Environmental Responsibility (IFC Performance Standards).

OPIC is required by statute in the Foreign Assistance Act to take into account, in consultation with the Department of State, the observance of and respect for human rights in the conduct of its programs in a country. OPIC and the Department of State's Bureau of Democracy, Human Rights and Labor have an established procedure for reviewing human rights-related risks for OPIC-supported projects, which is based on the level of human rights risks at the country level as determined by the Department of State.

Through IFC Performance Standards 1 and 2, OPIC requires each OPIC-supported project to have available both a grievance mechanism for workers to raise workplace concerns and a public grievance mechanism for affected communities. In addition, OPIC's Office of Accountability (OA) is an

independent office within OPIC that addresses concerns, complaints, or conflicts about environmental or social issues that may arise around OPIC-supported projects. The OA provides project-affected communities, project sponsors, and project workers an opportunity to have such concerns independently reviewed and addressed. Complaints may also be submitted to the NCP, and OPIC is involved in the NCP Interagency Working Group.

OPIC supports both internal and external human rights–related training for its analysts and officers. Its analysts receive periodic external training in social, labor, and human rights, and OPIC’s Office of Investment Policy provides basic training on those topics for OPIC’s investment officers.

Export-Import Bank of the United States (EXIM)

All projects classified as Category A (e.g. significant risk, including large projects in previously undeveloped sites, projects causing significant changes in land use, and projects located in, or impacting, a sensitive site) require an environmental and social impact assessment, consistent with the OECD’s Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (“Common Approaches”). Such projects also require, among other things, a project-operated grievance process, consistent with the IFC Performance Standards.

EXIM and the U.S. Department of State rely on established procedures for regular consultation with DRL on project-related human rights concerns on certain export credit financed projects.

Consistent with the OECD’s Common Approaches, EXIM considers any statements or reports made publicly available by the U.S. National Contact Point (NCP) at the conclusion of a specific instance procedure under the OECD Guidelines for Multinational Enterprises. EXIM is also a member of the US NCP’s Interagency Working Group.