



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

June 7, 2019

Surya Deva  
Chairperson for the Working Group on the  
issue of human rights and transnational corporations  
and other business enterprises

Dear Ms. Deva:

Thank you for your letter dated May 16, 2019. The U.S. government welcomes the opportunity to respond to the questionnaire on the call for input into the UN Working Group on Business and Human Rights' report on "policy coherence in government action to protect against business-related human rights abuse." We hope that the attached information will be of assistance to you in developing your report to the UN General Assembly in October. We have focused our feedback on an overview of the interagency process for the U.S. National Action Plan and various U.S. government approaches to address integrating business and human rights issues in policies, operations, and trainings.

Please find the United States response below.

Sincerely,

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

Jason R. Mack  
Human Rights Counselor

**SUBJECT: U.S. Response to the questionnaire on policy coherence in government action to protect against business-related human rights abuse**

The United States government has strong policy coherence within and across agencies on a number of business and human rights and responsible business conduct (RBC) processes and initiatives. Strong policy coherence has been critical to implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). In response to the questionnaire, we are providing illustrative examples of how the U.S. government seeks to promote such coherence.

**National Action Plan on Responsible Business Conduct and policy coherence**

The U.S. government engaged in robust interagency coordination in development and implementation of the U.S. National Action Plan (NAP) on RBC. The NAP was designed to reinforce and strengthen effective intra-governmental coordination and policymaking in advancing RBC, promote high standards globally, and highlight and support U.S. industry leadership. The NAP focuses on a broad range of issues including but not limited to: human rights, the rights of indigenous peoples, labor rights, land tenure and property rights, anti-corruption, and transparency.

The process of developing the NAP included a wide array of executive branch agencies that work on aspects of RBC. In total, more than a dozen U.S. government agencies participated in the development and drafting of the NAP, including: the Department of Commerce, the Department of Homeland Security, the Department of Defense, the Department of Justice, the Department of Labor, the Export Import Bank (EXIM), the General Services Administration, the Office of Management and Budget, the Overseas Private Investment Corporation (OPIC), the Department of State, the Department of Treasury, the Agency for International Development, the Office of the United States Trade Representative, the Small Business Administration, and the Environmental Protection Agency.

**Examples of approaches to address integrating business and human rights in policies, operations, and trainings**

***Responsible Business Conduct***

The U.S. National Contact Point (NCP) leads interagency policy coordination of the U.S. NAP. The Office of the U.S. NCP has developed training for U.S. diplomats around the world in order to further integrate instruction on RBC and the Organization for Economic Cooperation and Development Guidelines on Multinational Enterprises into their work, including those who focus on economic, trade, and labor issues. The U.S. NCP encourages them to conduct their own training on the Guidelines and provide information on the NCP role to their stakeholders once abroad.

The Office of the U.S. NCP works with partners to support and inform its work. In order to operate impartially, avoid potential conflicts of interest, and consult experts, the Office of the U.S. NCP consults regularly with a broader group of U.S. government subject matter experts, called the Interagency Working Group (IWG), which includes representatives from the Agency for International Development, Department of Agriculture, Department of Commerce, Department of Labor, Department of State, Department of the Treasury, EXIM, Environmental Protection Agency, General Services Administration, Millennium Challenge Corporation, Office of the U.S. Trade Representative, and OPIC.

Within the U.S. Department of State, officials involved in this process can include the Office of the Legal Adviser, the Bureau of Economic and Business Affairs, the Bureau of Democracy, Human Rights and Labor, the Bureau of Oceans and International Environmental and Scientific Affairs, regional country desk officers, and officers at U.S. missions abroad, as appropriate. As issues arise related to specific instances – a mechanism under the OECD guidelines provided by NCP for discussion and assistance to stakeholders to help find a resolution for issues arising from non-observance of the guidelines – the IWG helps the U.S. NCP remain informed on U.S. government positions on related issues and provides additional support.

Consultation with stakeholders is a key part of this process. In fact, the U.S. NCP manages the Stakeholder Advisory Board (SAB), an advisory committee composed of leaders from business, labor, civil society, and academia to assist the NCP promote responsible business conduct. The SAB issues written reports with recommendations for the NCP. To date, the U.S. NCP has implemented 99% of the SAB’s recommendations.

### ***Trafficking in Persons/Procurement***

The United States has long had a policy prohibiting government employees and contractor personnel from engaging in trafficking in persons. The U.S. government engaged in sustained interagency coordination over several years to amend the Federal Acquisition Regulation (FAR) rule in 2015 to strengthen protections against trafficking in persons in federal contracts. The FAR rule entitled “Ending Trafficking in Persons” implemented a number of trafficking-related prohibitions for federal contractors and subcontractors, including one prohibiting federal contractors from charging workers recruitment fees. Interagency work was instrumental in gathering internal and external input to better clarify recruitment fees, and the United States has now published a rule providing an official definition of “recruitment fees.”

An interagency Committee on Procurement and Supply Chains meets on a regular basis to share information, tools, resources, and training to enhance understanding and implementation of this FAR framework. Tools such as the State Department’s and the NGO Verite’s Responsible Sourcing Tool ([www.responsiblesourcingtool.org](http://www.responsiblesourcingtool.org)) and the Department of Labor’s Comply Chain – Business Tools for Labor Compliance in Global Supply Chains ([www.dol.gov/ilab/complychain](http://www.dol.gov/ilab/complychain)) were developed in close collaboration with experts across the

U.S. government and civil society. U.S. government human trafficking experts also worked with experts from the Governments of the United Kingdom, Canada, Australia, and New Zealand to develop and launch in 2018 a set of principles to guide government action to combat human trafficking in global supply chains. The principles center around bolstering responsible procurement practices, encouraging the private sector to prevent and address human trafficking in its supply chains, advancing responsible recruitment policies and practices, and striving for harmonization in aligning existing and proposed laws, regulations, and policies to combat human trafficking in supply chains.

### ***U.S. Department of State Approach to Addressing Environmental Defenders***

The U.S. government has an informal State Department-led interagency working group (IAWG) to discuss how to reduce violence against environmental defenders. The IAWG has more than 500 invitees from the Department of State as well as 16 other U.S. government agencies.

The IAWG focuses on countries that have been the subject of reports by the UN and non-governmental organizations of violence against environmental defenders. It also focuses on identifying and seeking to expand best practices to protect environmental defenders, preventing attacks, intimidation, and/or criminalization of their role, investigating attacks, and bringing those responsible to justice. The IAWG has identified trends in publicly available reporting that indicate long-standing grievances, often pertaining to land use, that can be at the root of social protest or action in which state-backed security forces have responded, sometimes with force. The IAWG seeks to evaluate and identify practices to better provide, with partners, strengthened and relevant stakeholder access to environmental information, robust environmental impact review of extractive sector, energy, and infrastructure tenders and projects, transparency, and access to justice in cases of violence.

### ***The U.S. Overseas Private Investment Corporation (OPIC) Approach to Addressing Human Rights Issues***

OPIC's Environmental and Social Policy Statement (ESPS) requires OPIC-supported projects to adhere to the requirements outlined in the ESPS as well as environmental and social (including labor and human rights) due diligence and monitoring of OPIC-supported projects. 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 incorporates 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 Bureau of Democracy, Human Rights and Labor at the Department of State 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.

### ***The Export-Import Bank of the United States (EXIM) Approach to Addressing Human Rights Issues***

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. State Department 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. NCP at the conclusion of a specific instance procedure under the OECD Guidelines for Multinational Enterprises. EXIM is also a member of the U.S. NCP's Interagency Working Group.