



UNITED STATES MISSION
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
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OHCHR REGISTRY

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Mr. Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association
Geneva, Switzerland

Recipients :S.P.O.....
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Enclosure
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Dear Mr. Kiai,

Thank you for your letter and questionnaire dated December 17, 2014, concerning your report of the exploitation of natural resources and the rights to peaceful assembly and association. The United States fully supports the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and we appreciate the opportunity to respond to this inquiry.

The U.S. government is committed to respecting and promoting the rights to peaceful assembly and association (FOAA), including in the context of natural resource exploitation. The U.S. government has demonstrated this commitment, in part, through the integration of FOAA rights into various laws, policies, and procedures impacting the extractives industry, including those outlined below.

Respect for Freedom of Expression, Peaceful Assembly, and Association

The rights to freedom of expression, peaceful assembly, and association are enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). As a state party to the ICCPR, the United States has obligations to respect these rights and has explained in its reports to the Human Rights Committee how it does so. The United States is also committed to promoting respect for these rights around the world. The United States drafted the texts of both the original resolution that created the mandate of the Special Rapporteur as well as the text that renewed its mandate in 2013. We continue to push for FOAA and other issues essential to creating an enabling environment for civil society to operate freely, including supporting the mandates of the Special Rapporteurs on Freedom of Expression and the on the situation of human rights defenders. We recently co-sponsored the Irish-led resolution on Civil Society Space during the 27th Session of the Human Rights Council Session.

The United States' commitment to the rights to freedom of expression, peaceful assembly, and association is also evident through our continuous efforts to combat restrictions on civil society

organizations around the world. On September 23, 2013, during the United Nations General Assembly, the United States convened a high level event on civil society to spur coordinated international action to support and defend civil society.

To take steps to fulfill commitments made at that meeting, President Obama directed U.S. agencies engaged abroad to undertake several steps that will strengthen the role of civil society. These steps include: engaging in consultation with civil society representatives; working with civil society organizations; opposing undue restrictions on civil society and fundamental freedoms; facilitating exchanges between government and civil society; and reporting on progress. Below is a description of each in more detail:

Sec. 1. Engaging in Consultation with Civil Society Representatives

(a) In the conduct of U.S. foreign policy, it is in the national interest to build relationships with people, as well as with governments. Therefore, agencies engaged abroad shall consult with representatives of civil society to explain the views of the United States on particular issues, seek their perspectives, utilize their expertise, and build strong partnerships to address joint challenges.

(b) When traveling overseas, senior U.S. officials of agencies engaged abroad shall seek opportunities to meet with representatives of civil society, especially those who face restrictions on their work and who may benefit from international support and solidarity.

(c) Each agency engaged abroad shall incorporate inclusive outreach to civil society into their international engagement.

Sec. 2. Working with Civil Society Organizations

The U.S. Government works with civil society organizations even when local laws restrict the ability of civil society organizations to operate or where local laws restrict the fundamental freedoms of expression, peaceful assembly, and association, with due regard for the safety of civil society interlocutors and their operations. Agencies engaged abroad shall oppose, through appropriate means, efforts by foreign governments to dictate the nature of U.S. assistance to civil society, the selection of individuals or entities to implement U.S. Government programs, or the selection of recipients or beneficiaries of those programs. Additionally, agencies engaged abroad shall review their internal regulations, policies, and procedures to ensure that programmatic requirements do not inadvertently impede civil society operations.

Sec. 3. Opposing Undue Restrictions on Civil Society and Fundamental Freedoms

(a) Agencies engaged abroad shall oppose, through appropriate means, efforts by foreign governments that restrict the freedoms of expression, peaceful assembly, and association in a

manner inconsistent with their international obligations and commitments. Such actions may include urging relevant governments or legislatures to reverse course; making high level statements or delivering messages publicly or privately; working with local and international civil society organizations and stakeholders, likeminded countries, and regional and multilateral organizations and bodies; and, where possible, providing direct assistance to civil society actors engaged in these efforts.

(b) Agencies engaged abroad shall, where possible, expand the provision of advice and other support to governments seeking to institute legal and political reforms to protect civic space, and to civil society organizations where governments are not engaged in such affirmative reform efforts. This may include funding for democracy, human rights, workers' rights, and governance assistance, as well as emergency support to activists and organizations.

(c) Agencies engaged abroad shall seek diplomatic and programmatic opportunities in regional and multilateral organizations and bodies to protect and strengthen civil society. This shall include efforts to enhance support for the work of the U.N. Special Rapporteurs charged with advancing relevant rights, including the rights to freedom of opinion and expression, peaceful assembly and association, and human rights defenders.

Sec. 4. Facilitating Exchanges between Governments and Civil Society

(a) Agencies engaged abroad shall seek to foster improved relations and understanding between governments and civil society, including in the advancement of social, economic, and development priorities. Such efforts may include training for government and civil society representatives; brokering dialogue between government and civil society representatives; identifying affirmative activities around which governments and civil society organizations can engage; providing legal or other assistance to governments and civil society organizations to draft or improve laws, regulations, and administrative measures; and sharing best practices regarding the proper implementation of these laws.

(b) Agencies engaged abroad that organize public, U.S.-hosted international gatherings shall create opportunities for civil society to substantively engage in such events, where appropriate.

Sec. 5. Reporting on Progress

The National Security Advisor shall prepare an annual report for the President on the Federal Government's progress implementing the requirements of this memorandum. Agencies engaged abroad shall provide the National Security Advisor with any requested information.

Endorsement of the UN Guiding Principles on Business and Human Rights

The U.S. government co-sponsored the Human Rights Council resolution endorsing the United Nations (UN) Guiding Principles on Business and Human Rights (Guiding Principles), the first

broadly accepted global set of guidelines on business and human rights. The Guiding Principles provide an important framework for corporations, states, civil society, and others as they work to strengthen their respective approaches to the issue of business and human rights. The U.S. government takes seriously the state duty to protect human rights as set forth in the first pillar of the Guiding Principles, and has subsequently taken various steps to further support the dissemination and implementation of the Guiding Principles, including: supporting the activities of the UN Working Group on human rights and transnational corporations and other business enterprises, including the Working Group's country visit to the United States; attending and participating in each of the annual global and regional forums on business and human rights organized by the UN; dedicating significant programmatic resources to the dissemination and implementation of the Guiding Principles in specific sectors and countries; and committing to develop a National Action Plan on responsible business conduct (see below).

Development of a National Action Plan on Responsible Business Conduct

With regard to Guiding Principles implementation, on September 24, 2014, on the margins of the UN General Assembly, President Obama announced the development of a U.S. National Action Plan (NAP) to promote responsible and transparent business conduct. The NAP will address ways in which the U.S. government can promote, encourage, and enforce established norms of responsible business conduct with respect to, but not limited to, human rights, labor rights, land tenure, anti-corruption, and transparency. In doing so, the NAP will: help provide clear, consistent, and predictable expectations for U.S. firms in their global operations; facilitate internal U.S. government communication and coordination; strengthen communication among stakeholders; identify U.S. government commitments and steps to assist in creating a rights-respecting, enabling environment for businesses operating abroad; and further promote responsible investment and responsible business conduct. The NAP will address what the U.S. government is doing in this space, highlight best practices from companies, as well as other relevant initiatives, and experiences, to identify U.S. government commitments and actions going forward.

The United States has capitalized on the opportunity to convene a broad cross-section of the U.S. government to discuss how we can coordinate and advance these various initiatives in consultation and coordination with outside stakeholders. As the extractives industry is an important stakeholder in the conversation, the U.S. government encourages extractive companies to participate in dialogues occurring throughout the United States this year. There is an early April dialogue occurring in Norman, Oklahoma focused, in part, on the extractives sector. There is also an opportunity to provide written input to the U.S. government.

The NAP will, in part, promote transparency about how the U.S. government encourages companies to live up to high standards. Responsible business conduct is about more than

agreeing to abide by a set of principles or guidelines. It is about integrating responsible investment and business practice into corporate management decision-making, consistent with U.S. laws and international standards, in a manner that promotes the rule of law and respects the rights of stakeholders within a company's workforce and value chain. It is also about encouraging transparency and accountability regarding the monitoring of conduct, verifying success stories, and identifying areas for improvement through the help of stakeholders, including those on the ground in countries where U.S. businesses and their supply chain partners are engaged abroad.

The U.S. government is holding several dialogues with stakeholders throughout the year to provide input into the NAP process. The first two dialogues occurred in New York, New York, at the NYU Stern School of Business on December 15, 2014, and in Berkeley, California, at the Center for Responsible Business at the University of California-Berkeley on February 6, 2014. There are three more dialogues scheduled in the coming year, with an early April dialogue occurring in Norman, Oklahoma focused, in part, on the extractives sector. There is also an opportunity to provide written input to the U.S. government.

Multi-stakeholder Initiatives

Multi-stakeholder initiatives involving extractive companies like the Voluntary Principles on Security and Human Rights (VPs) Initiative and Extractive Industries Transparency Initiative (EITI) are an important tool to engaging with business abroad on challenging issues, including FOAA rights, and will be a key approach to consider in developing our NAP.

Voluntary Principles on Security and Human Rights

The U.S. government is a founding member of the VPs Initiative, and will be the government chair of the Initiative for one year beginning in March 2015. During the U.S. government's chairmanship, the U.S. government will seek to strengthen the VPs Initiative by involving more participants, focusing on implementation, and strengthening both accountability and transparency with both internal and external stakeholders. This step will require continued efforts to build trust between participants, verify implementation of the VPs, and share experiences.

The VPs are both a set of principles and a multi-stakeholder initiative that provides guidance regarding how to promote universal respect for human rights in the provision of security for extractive industry activities. FOAA rights are an important component of the VPs. In the public security context, the principles provide that companies should use their influence to promote the rights of individuals to exercise the right to exercise freedom of association and peaceful assembly. In the private security context, the principles provide that companies should

use their influence to promote, among others, the following principle: the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly.

Extractive Industries Transparency Initiative

EITI is an international multi-stakeholder initiative that helps set a global standard to promote transparent and accountable management of the substantial natural resource revenues generated by the extractive sectors. The U.S. government has been a strong supporter of EITI since its founding in 2003, recognizing that revenue transparency is a critical component of ensuring that a country's natural resource wealth is used for the benefit of its citizens who own the resource, and recognizing the value to be gained from civil society, industry, and government sitting at the same table to enhance understanding and facilitate meaningful debate about how a country's natural resources should be exploited. President Obama's September 2011 announcement that the United States would not only support, but also implement the EITI domestically underscored the Administration's belief that this initiative benefits countries in all regions and all levels of development. Fostering a vibrant cross-sector discussion through U.S. EITI implementation that includes active and co-equal participation by civil society working together with industry and government has been a cornerstone of the U.S. EITI process. The U.S. acceptance as an EITI candidate country in March 2014 demonstrated the domestic success of this multi-stakeholder engagement to date, and has already succeeded in promoting the expansion of EITI globally.

U.S. Finance Institutions

Overseas Private Investment Corporation (OPIC)

The U.S. government's development finance institution, OPIC, seeks to promote FOAA rights by requiring that all projects it supports respect internationally recognized worker rights (as defined in the Generalized System of Preferences (GSP) program, established by the Trade Act of 1974), including the right to associate and the right to organize and bargain collectively. This requirement stems from both OPIC's statutory language and the agency's adoption of the IFC Performance Standards. Specifically, IFC Performance Standard 2 on Labor and Working Conditions requires that clients follow national law where it recognizes workers' rights to form and join workers' organizations of their own choosing without interference or discrimination. If national law is silent, the client is prohibited from discouraging workers from forming or joining workers' organizations of their choosing, and they cannot discriminate or retaliate against said workers. IFC Performance Standard 1 addresses both the community engagement and consultation process when local communities may be affected by risks or adverse impacts from a project, as well as the establishment of a grievance mechanism to receive and facilitate resolution

of Affected Communities' concerns and grievances about the project's environmental and social performance.

Export-Import Bank

The U.S. government's export credit agency, the Export-Import Bank (Ex-Im Bank) applies the IFC Performance Standards to projects receiving its support in accordance with the OECD Common Approaches on the Environment and implements them through the Bank's Environmental and Social Due Diligence Procedures and Guidelines. Among other things, IFC Performance Standard 2 on Labor and Working Conditions requires that clients follow host country requirements where they recognize workers' rights to form and join workers' organizations of their own choosing without interference or discrimination. If country requirements are silent, the client is prohibited from discouraging workers from forming or joining workers' organizations of their choosing, and the client cannot discriminate or retaliate against these workers. If requirements restrict workers' abilities to organize the client will not prevent workers from forming alternative mechanisms to express grievances or protect their rights for working conditions and terms of employment. Additionally clients should not seek to control these alternative mechanisms. IFC Performance Standard 1 addresses both the community engagement and consultation process when local communities may be affected by risks or adverse impacts from a project, as well as the establishment of a grievance mechanism to receive and facilitate resolution of Affected Communities' concerns and grievances about the project's environmental and social performance. Further, the Ex-Im Bank has adopted the Equator Principles, a globally recognized benchmark for financial institutions to determine, assess, and manage the social and environmental risks of international project financing. The Ex-Im Bank's Environmental and Social Due Diligence Procedures and Guidelines also encourage extractive industry sector projects to comply with the disclosure activities described in Section V of the IFC Policy on Environmental and Social Sustainability.

Sincerely,



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