

The Permanent Mission of the United States of America to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and to the members of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (the Working Group) and has the honor to inform the OHCHR and the Working Group of the following:

This Note is submitted in response to the Note circulated by OHCHR on October 5, 2012, transmitting a questionnaire from the Working Group, soliciting information on State practices in the sphere of business and human rights. The stated purpose of the questionnaire is to understand early challenges, opportunities and policy innovations by Member States in the implementation of the United Nations Guiding Principles on Business and Human Rights (GPs).

This response is subdivided into two parts: (A) Examples of laws, regulations and policies that implement and/or are relevant to the GPs; and (B) Examples of internal and external stakeholder engagement.

A. Examples of Laws, Regulations, and Policies that Implement and/or are Relevant to the GPs

The U.S. government is committed to the GPs, as evidenced, in part, through the integration of human rights into U.S. laws, regulations, and policies that govern business activities. While it would be challenging to provide a full analysis of laws, regulations, and policies that implicate business and human rights, below the United States has highlighted key examples to help inform the Working Group of the work the United States has undertaken in this arena.

1. Examples of Laws and Regulations

a. The Dodd Frank Wall Street Reform and Consumer Protection Act, Sections 1502 and 1504

In August 2012, the Securities and Exchange Commission (SEC) approved final rules implementing Sections 1502 and 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The SEC rule implementing Section 1502 is the first-ever of its kind requiring companies that file reports with the SEC to provide disclosure regarding use of defined “conflict minerals” in the manufacture of products or in products they contract to manufacture. Specifically, the rule implementing Section 1502 supports regional and international efforts to

prevent the exploitation and trade of tin, tantalum, tungsten and gold by armed groups which help to finance conflict in the DRC region. The United States hopes that this rule will encourage companies to undertake greater due diligence measures to ensure their supply chains do not contribute to conflict or human rights abuse in the Democratic Republic of the Congo or broader African Great Lakes region.

Section 1504, also known as the Cardin-Lugar rule, sets a new standard for transparency in the extractives industry. Under the rule, companies engaged in the commercial development of oil, natural gas, or minerals and required to file an annual report with the SEC must disclose certain payments to governments for the commercial development of these resources on a project-by-project basis. The disclosures required by Section 1504 will help improve transparency and accountability of both business and government in management of extractive industry revenues.

b. The Reporting Requirements on Responsible Investment in Burma

In May 2012, President Obama and Secretary of State Clinton announced that the United States would ease financial and investment sanctions on Burma in response to the historic reforms that have taken place in that country over the past year. Following this announcement, the U.S. government eased its ban on new investment by U.S. persons in Burma and, as part of that step, unveiled the first-ever set of human rights due diligence reporting requirements - the Reporting Requirements on Responsible Investment in Burma (“Reporting Requirements”). See draft at: <http://www.humanrights.gov/wp-content/uploads/2012/07/Burma-Responsible-Investment-Reporting-Reqs.pdf>.

The Reporting Requirements require U.S. persons (individuals or entities) with more than \$500,000 in new investment in Burma to report annually on policies and procedures with respect to human rights, workers’ rights, environmental stewardship, land acquisition, and other key areas for human rights due diligence in the Burma context. These Reporting Requirements are a critical step toward encouraging companies to uphold high standards of human rights in new and challenging investment climates, and a process the United States hopes companies will expand beyond their investment in Burma as they realize the risk mitigation value in this approach.

2. Examples of Policies

a. Support for Multi-Stakeholder Initiatives (MSIs)

The U.S. government strongly believes in the power of MSIs, which bring together stakeholders from governments, civil society, and business, to address difficult issues that no one party could solve alone. Below are a few examples of MSIs in which the U.S. government participates.

i. *Voluntary Principles on Security and Human Rights (VPs) Initiative*

Established in 2000, the VPs Initiative is a MSI involving governments, companies, and non-governmental organizations that promotes implementation of a set of principles that guide oil, gas, and mining companies on providing security for their operations in a manner that respects human rights. Specifically, the VPs guide companies in conducting a comprehensive human rights risk assessment in their engagement with public and private security providers to ensure human rights are respected in the protection of company facilities and premises.

The U.S. government has devoted significant time and energy towards strengthening outreach and implementation of the VPs Initiative and has devoted over \$1 million in programmatic funds to support this objective.

ii. *International Code of Conduct for Private Security Service Providers (ICoC)*

The ICoC is the product of a multi-stakeholder process and consultations to raise the standards of private security companies (PSCs) operating in complex environments around the world. As of today, the Code has been signed by over 500 PSCs, including many that contract with the U.S. government in places like Iraq and Afghanistan. PSCs that sign the Code commit to principles regarding the conduct of personnel and security management practices. As contemplated in the preamble, PSCs, states, and civil society involved in the establishment of the Code have continued to work to establish objective and measurable standards based on the Code and external independent governance and oversight mechanisms. The U.S. government has been deeply involved in developing the governance and oversight mechanism, having actively participated on the temporary steering committee, which was tasked with moving the process forward. The U.S. government has also participated in the establishment of standards based on the Code through the American National Standards Institute.

Innovative initiatives such as the Code offer a chance to make real progress by changing security service practices, improving state compliance with their existing obligations, and promoting accountability for PSCs and respect for human rights. The U.S. government has engaged in and supported this process from the beginning because the ICoC, coupled with a credible independent mechanism for governance and oversight and objective and measurable standards, has the potential to raise the standards of the industry and mitigate the risk of human rights impacts associated with private security service provision in complex environments.

iii. *Extractives Industry Transparency Initiative (EITI)*

In September 2011, President Obama announced that the United States would implement EITI domestically. The United States is only the second Organization for Economic Cooperation and Development (OECD) country to do so. The Secretary of the Interior, Ken Salazar, was designated as the senior U.S. official responsible for EITI implementation, and the United States is in the process of forming the required multi-stakeholder group. This will include representatives from all three EITI constituencies in the United States – government, industry,

and civil society. Domestic EITI implementation complements U.S. efforts to support EITI internationally, and is also complementary to the transparency requirements in Dodd-Frank Section 1504.

b. Guidance on Responsible Investment

i. *Online Toolkit on Child Labor and Forced Labor*

The U.S. government provides guidance to stakeholders regarding best practices in creating a corporate compliance system to eradicate child and forced labor. The U.S. Department of Labor (DOL) is about to release an online toolkit that will provide detailed, step-by-step, practical guidance to businesses and other stakeholders called, “Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses.” This new toolkit shares the best practices for creating and sustaining effective social compliance systems. It is the first such corporate social responsibility guide developed by the U.S. government focusing on child labor and forced labor practices. In creating the toolkit, DOL conducted an exhaustive investigation of corporate social responsibility and ethical sourcing initiatives, and solicited input from a range of stakeholders, including companies, industry groups, labor unions, non-governmental organizations, academic experts and others. The toolkit will be released in December 2012.

ii. *Guidelines for Eliminating the Worst Forms of Child Labor and Forced Labor in Agricultural Supply Chains*

The U.S. government also participated in and supports the recommendations of the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, established by Section 3205 of the Food, Conservation, and Energy Act of 2008 (or “Farm Bill”). The Group was composed of a total of 13 members, including government officials, individuals representing agriculture-related enterprises, individuals representing institutions of higher learning and research institutions, a representative of an organization that provides independent, third-party certification services for labor standards, and three individuals representing charitable organizations with expertise on the issues of international child labor and forced labor. The Group developed recommendations relating to guidelines for a standard set of practices for independent, third party monitoring and verification for the production, processing, and distribution of agricultural products or commodities, to reduce the likelihood that such products or commodities imported into the United States are produced by forced labor or through the worst forms of child labor. These program elements are grouped into the broad categories of Foundation Elements, Communications and Monitoring, and Continuous Improvement and Accountability.

c. The Overseas Private Investment Corporation (OPIC) and Export-Import Bank (Ex-Im Bank) Project Assessment

The U.S. government's OPIC and Ex-Im Bank use the IFC Performance Standards, which incorporate aspects of the GPs, as part of their criteria in evaluating and selecting projects to finance. 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.

d. Support for the UN BHR Working Group

The U.S. government is supportive of the work of the Working Group, which is mandated with disseminating the GPs and promoting their implementation. One way the United States shows its support is by focusing on high impact projects to build civil society capacity, having recently launched a \$500,000 program to this end.

The program just began and will focus on building the capacity of civil society organizations (CSOs) in Bangladesh, Nicaragua, and Zimbabwe to engage with and train on the GPs, by adapting and customizing existing materials and co-training staff of the CSOs as trainers for the private sector, peer organizations and government representatives. The program will focus on one sector in each country: agriculture in Nicaragua, garment manufacturing in Bangladesh, and mining in Zimbabwe. This program is intended to produce country- and industry-specific curricula on the GPs; build the capacity of civil society and stakeholders to use the GPs; increase the knowledge and capacity of businesses, CSOs, trade unions and governments to protect, respect and remedy; facilitate multi-stakeholder dialogue roundtables on human rights impacts of the private sector; produce case studies tracking changes in implementing the GPs; and collaborate with and support the work of the Working Group.

e. Office of the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises

The U.S. government has endorsed the OECD Guidelines for Multinational Enterprises, which contains a human rights chapter that draws upon and is consistent with the GPs. Adhering governments conducted an update of the Guidelines in 2011, and held extensive consultations with a wide range of stakeholders and partners, including business, organized labor, human rights and other NGOs, and inputs from John Ruggie, the UN Secretary General's Special Representative on Human Rights, Transnational Corporations and Other Business Enterprises, the International Labor Organization, and other international organizations.

The Office of the U.S. National Contact Point for the OECD Guidelines offers a recourse mechanism -- the non-adversarial Specific Instance process -- to contribute to the resolution of disputes in relation to observance of the OECD Guidelines. The Specific Instance process can assist NGOs and other members of civil society to address their concerns to the NCP regarding a multinational enterprise's conduct in relation to the corporate responsibility to respect human rights.

3. Examples of Grievance Procedures

In line with the GPs, the U.S. government supports grievance procedures that protect against business-related human rights abuses. Below are a few examples of relevant policies.

a. OPIC Recourse Mechanism

OPIC's Office of Accountability (OA) offers an independent recourse mechanism to address local concerns and disputes that occasionally emerge around the environmental, human rights, rights of indigenous peoples, and labor rights aspects of OPIC-supported projects. As the U.S. government's development finance institution, OPIC operates in over 150 emerging market countries, and provides financing in frontier markets or other risky investment environments, such as post-conflict or post-disaster situations.

The OA mechanism enables affected stakeholders (e.g., nearby communities) to share concerns regarding OPIC-supported projects and access its services. The OA offers both problem-solving and compliance review processes. Its problem-solving processes seek to resolve concerns and conflicts about the environmental and social impacts of OPIC supported projects. A problem-solving initiative may include independent fact-finding, dialogue facilitation or mediation. The OA's compliance-review process examines whether OPIC's environmental, labor rights, and human rights policies are appropriately applied to OPIC-supported projects and implemented.

B. Internal and External Stakeholder Engagement

1. Consultations with Business, Civil Society, Investors

The United States continually meets with various external stakeholders to identify and discuss best practices and challenges in order to best frame U.S. policies and practices regarding implementation of the GPs. To this end, the U.S. has hosted three implementation workshops this year.

The first workshop, held in April, targeted the general business community and focused on respecting human rights in business operations. The second was held in July, and targeted members of civil society, academia, and think tanks. Its focus was on strategies and priority-setting with regard to U.S. government implementation of the GPs. The third workshop in October was with investors, and focused discussions on strategies for investment firms to incorporate the GPs into their regular business practices as well as the use of non-financial factors in decision-making.

2. Buyer-Supplier Dialogue with Chinese Stakeholders

The United States is promoting innovation in the management of labor conditions in global supply chains by funding two upcoming dialogues among key stakeholders in the United States

and China. The dialogues will bring together representatives from Chinese suppliers, major U.S. brands/buyers, unions, and Chinese and transnational labor rights organizations, representatives from Chinese civil society, as well as scholars and government officials from both countries.

The U.S. will focus the dialogues on three themes: capability-building initiatives aimed at enhancing the technical and managerial skills necessary to operate more efficient and ethical enterprises; innovative upstream buyer practices and buyer-supplier relations focused on improving the underlying economic conditions permitting better working conditions within supplier factories; and seeking to promote a culture of compliance with labor standards across various supply chains. The core objectives are to (a) facilitate dialogue between representatives of buyers, suppliers, government agencies, non-governmental organizations, civil society groups, and academia in the United States and China that results in innovations in labor practices in global supply chains, and (b) to inform these dialogues and future supply chain practices through new research on the efficacy of innovative efforts to promote higher labor standards in globalized production. The ultimate goal is to combine the perspectives of business, government, civil society and academia to develop new strategies to improve labor practices.

3. Engagement with other Governments

The United States regularly consults with other governments to share best practices and innovative mechanisms in GPs implementation. The U.S. has led conversations with its European partners on how the U.S. and its European partners can work together on this issue, and convened an Embassy Roundtable in Washington where the U.S. invited representatives of the core group of Resolution 17/4 to mark progress and next steps on the one-year anniversary of the GPs endorsement.

4. Engagement with U.S. Government Agencies

a. Inter-Agency Consultations

This fall, the United States convened an inter-agency meeting to discuss how the GPs are implemented across different agencies within the U.S. government, and how to collaborate to further strengthen the U.S. government approach moving forward. Meeting participants spanned across a broad range of agencies. Participants included representatives from the Departments of State, Labor, Commerce, Treasury, Defense, the Office of Management and Budget, and the Export-Import Bank. The United States will continue to convene inter-agency meetings to build off of progress made.

b. Outreach to Embassies Around the World

To promote greater awareness and understanding of the GPs within the U.S. Government, a cable was sent to all Embassies providing general background information on what the GPs are, and instructing them on how they can be used in engagement with businesses, civil society, and

governments. It is the objective that the GPs and business and human rights more broadly become a regular point of conversation in these engagements, and work with embassies around the world to promote the GPs will continue.

The United States looks forward to continuing to build off of the progress made on further integrating the GPs into U.S. government laws, policies and regulations, and working with stakeholders to address human rights challenges in the business arena.

The Permanent Mission of the United States of America to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to OHCHR and to the Working Group the assurances of its highest consideration.

The Permanent Mission of the

United States of America, Geneva,

December 5, 2012.

