

U.S. Government Response to UN Business and Human Rights Working Group Survey – Next 10 years Project

The U.S. government appreciates the opportunity to respond to the UN Business and Human Rights Working Group questionnaire.

As requested, we are providing information about various aspects of UN Guiding Principles implementation in terms of existing practices and current challenges as well as actionable targets for the next decade. The existing practices listed are examples and should not be taken as the full scope of efforts undertaken by the U.S. government for each item. Also as requested, hyperlinks are embedded throughout the survey where relevant.

UNGPs	Existing U.S. practice or challenge	Actionable goals and targets for next decade
Commitment to implementing the UNGPs		
<p>State commitment to implementing the UNGPs, e.g., National Action Plans, public statements, national baseline assessments.</p>	<p>The <u>U.S. Government National Action Plan on Responsible Business Conduct</u> was released in December 2016 (“NAP”). The NAP seeks to enhance coordination within the U.S. government, push for higher standards and a more level playing field globally, and strengthen public-private coordination to help U.S. companies attain their responsible conduct goals in a variety of environments around the world.</p> <p>While it is challenging to track progress in terms of implementing each goal in the NAP, each year the U.S. government releases examples of new efforts undertaken by the interagency to advance business and human rights. The 2019 document can be found here.</p> <p>In October 2020, the U.S. government released the <u>National Action Plan to Combat Human Trafficking</u>. It represents a broad-based multi-disciplinary, whole-of-government strategy to eradicate human trafficking, including commitments to strengthen efforts to identify, prevent, and address labor trafficking in product supply chains; enhance capacity to prohibit goods produced with forced labor; incorporate financial crimes and money laundering to combat human trafficking; and enhance</p>	<p>Some States are still in the process of developing their first NAP and many States have not yet begun the process. It will be important for the UN Working Group to update its guidance on NAPs, as appropriate; reflect on NAPs developed to date; and share best practices and lessons learned. This is particularly relevant as other States seek to track implementation and/or develop an updated version of their NAPs.</p>

	protections against trafficking in persons in U.S.-based visa programs.	
State structures mandated to implement the UNGPs , e.g., government ministry tasked with implementation measures; allocation of internal resources.	The Bureau of Democracy, Human Rights, and Labor in the U.S. Department of State leads implementation of the UN Guiding Principles on Business and Human Rights. This involves close coordination with relevant bureaus and offices across the State Department as well as the U.S. government interagency.	It is frequently the foreign ministry within governments that leads implementation efforts of the UNGPs. It is important to continue to strengthen cross-agency coordination on the UNGPs, particularly with those agencies focused on commercial and domestic issues. The UN Working Group should continue to focus efforts on helping governments bridge this gap.
Regulatory and Policy Efforts		
Legal and regulatory developments that enable or require business enterprises to respect human rights , e.g., mandatory human rights due diligence, duty of care, reform of securities law.	<p>The U.S. Commerce Department’s Bureau of Industry and Security (BIS) considers human rights concerns when reviewing license applications with the sole exception of short supply items. This includes assessing whether items may be used to engage in, or enable violation of, human rights including those involving censorship, surveillance, detention, or excessive use of force.</p> <p>EO 13818, which builds upon and implements The Global Magnitsky Human Rights Accountability Act (GloMag), enables the U.S. government to apply economic sanctions and visa restrictions to persons for serious human rights abuse and corruption. GloMag discourages businesses from engaging with persons sanctioned for human rights abuse, as U.S. businesses are prohibited from dealing with designated persons and foreign businesses may limit engagement to avoid sanctions risk.</p> <p>The Tariff Act of 1930 prohibits the importation of merchandise mined, produced, or manufactured, wholly or in part, in any foreign country by forced or indentured labor – including forced child labor. Under the Tariff Act, Department of Homeland Security (DHS) U.S. Customs and</p>	<p>It is still early to tell what kind of mandatory due diligence laws have been most effective as many States are just starting to pass these laws. We encourage the Working Group to further reflect on best practices and encourage consistency with the UN Guiding Principles.</p> <p>Examples of U.S. legislation listed in this submission emphasize that there are different types of laws that could incentivize business respect for human rights. We would be interested in the Working Group’s perspective on effectiveness of these laws and approaches. Additionally, we encourage the Working Group to make recommendations to governments on how to better incorporate the UNGPs into laws and regulations that already touch on responsible business conduct (e.g., corruption and export control).</p> <p>While there has been much emphasis on due diligence legislation and related reporting requirements, the Working Group should also focus on gathering best practices and making</p>

	<p>Border Protection (CBP) may issue a withhold release order to detain imported merchandise reasonably suspected of being produced with forced labor. CBP works collaboratively with industry and non-profit organizations to prohibit the importation of goods made with forced labor. Criminal liability can also be pursued by DHS U.S. Immigration and Customs Enforcement (ICE) or the Federal Bureau of Investigation and prosecuted by the Department of Justice.</p> <p>In January 2020, DHS published the DHS Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation. The strategy outlines DHS’s priority actions for interdicting the importation of goods made with forced labor, including increasing investigative and enforcement capacity, improving outreach to industry partners, and encouraging international partners to adopt reciprocal safeguards. In response to the strategy, ICE led the opening of the DHS Center for Countering Human Trafficking (CCHT). CCHT brings together resources across DHS to support efforts to identify, disrupt, and dismantle human trafficking organizations and minimize the risk they pose to national security and public safety.</p> <p>Title III, the Korean Interdiction and Modernization of Sanctions Act of the Countering America’s Adversaries through Sanctions Act (CAATSA), requires that importers establish by “clear and convincing evidence” that their supply chains are free from involvement by North Korean nationals, wherever located.</p>	<p>recommendations more broadly on how governments can incentivize business respect for human rights, including policy approaches, and by linking incentives to existing laws and regulations. This is particularly important as not all States have mandatory due diligence requirements.</p>
<p>Legal or regulatory developments that enable or require</p>	<p>Dodd Frank sec. 1504 directs the U.S. Securities and Exchange Commission to issue rules requiring resource extraction issuers to report information relating to</p>	<p>We encourage the Working Group to explore best practices and as a clear path emerges, encourage consistency in terms of recommendations so as not</p>

<p>reporting and transparency on how business enterprises address human rights risks (own activities and value chain)</p>	<p>payments made to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.</p> <p>The California Supply Chain Transparency Act requires companies subject to the law to disclose information regarding their efforts to eradicate human trafficking and slavery within their supply chains.</p>	<p>to place undue burden on business in terms of reporting requirements.</p>
<p>Legal or regulatory developments that enable or require financial institutions, including institutional investors, to embed respect for human rights throughout their core business activities</p>	<p>Dodd Frank Section 1502 requires U.S. publicly-listed companies to check their supply chains for tin, tungsten, tantalum, and gold if they might originate in the Congo or its neighbors, take steps to address any risks they find, and report on their efforts.</p> <p>In accordance with the Bank Secrecy Act, financial institutions are to report on suspicious activity related to money laundering predicate offenses such as human trafficking and corruption. The U.S. Department of the Treasury continues to provide feedback to the industry on human rights and corruption risks.</p>	<p>We encourage the Working Group to coordinate with the OECD to promote adoption and implementation of the OECD Due Diligence Guidance for Responsible Mineral Supply Chains, or similar due diligence measures, by the private sector.</p> <p>In terms of prioritization, we encourage the Working Group to focus on development finance and investors, as more detailed business and human rights guidance would be useful for these topics.</p>
<p>Incentives for responsible business (e.g., sanctions for practice that breaches human rights standards; or “carrots” or “sticks” by export credit or finance institutions to encourage responsible business)</p>	<p>The Export-Import Bank of the United States (EXIM) applies the IFC Performance Standards on Social & Environmental Sustainability and the EHS Guidelines of the World Bank Group to Category A and B projects receiving its support. EXIM adheres to the OECD’s Common Approaches on Officially Supported Export Credits, U.S. laws, and its Board-approved policies and procedures, including EXIM’s Environmental and Social Due Diligence Procedures and Guidelines. EXIM requires the appropriate and robust environmental and social (E&S) information and documentation for the duration of EXIM’s involvement, including Environmental and Social Impact Assessments (ESIA) prior to approval and E&S monitoring</p>	<p>We encourage the Working Group to explore additional means through which businesses can receive technical support in meeting international environmental and social standards and best practices.</p> <p>We also encourage the Working Group to focus efforts on incentives linked to project-related human rights and social impacts, where mitigation measures will have the greatest impact.</p>

	<p>reports during the period of EXIM support. EXIM presents its analysis of the beneficial and adverse environmental and social (including project-related human rights) impacts to its Board of Directors for decision. EXIM’s Board has the authority to deny transactions on the basis of adverse impacts, and has done so in the past. EXIM’s credit documentation also includes appropriate environmental and social covenants, and EXIM conducts robust monitoring of projects to ensure compliance with these covenants, as well as with EXIM’s expectations on credit, legal, environmental and social, and other aspects of the project.</p> <p>The U.S. International Development Finance Corporation (DFC) conditions its support on projects adhering to its Environmental and Social Policy and Procedures, which incorporate the IFC Performance Standards. In order to receive DFC support (e.g., loans or risk insurance), projects must enter into agreements that reflect this requirement, including contractual language addressing Internationally Recognized Worker Rights.</p> <p>The Blue Dot Network, a multistakeholder initiative that aims to promote quality infrastructure investment, will brand and certify quality projects that meet international standards. The U.S. government is a founding member of the Network.</p> <p>See section on “business-related policy with other State and business” for more incentives.</p>	
<p>Guidance on human rights expectations for business enterprises,</p>	<p>The U.S. State Department has issued guidance on implementing the UN Guiding Principles for Transactions Linked to Foreign Government End-Users for Products or</p>	<p>The UN Working Group should reflect on States that have developed guidance for various industry sectors or high-risk regions and assess its utility (e.g., Has it</p>

<p>including financial institutions</p>	<p>Services with surveillance capabilities. The guidance assists U.S. businesses in evaluating the human rights impacts of relevant products or services and recommends human rights safeguards if U.S. business considers proceeding with a transaction.</p> <p>Xinjiang: The U.S. government issued an Advisory for Business with Supply Chain Links to Xinjiang to caution business about the risks of supply chain links to entities that engage in human rights abuses. The Advisory includes human rights due diligence for a range of industry sectors focused particularly on surveillance and forced labor.</p> <p>DPRK: The U.S. government issued an Advisory on the Risks for Business with Supply Chain Links to North Korea. The Advisory includes human rights due diligence recommendations to mitigate the risk of North Korean forced labor in a business' supply chain.</p> <p>The U.S. Department of State funds www.ResponsibleSourcingTool.org, which provides federal contractors and other companies with guidance on risk assessment and mitigation for human trafficking, including 10 comprehensive tools for implementation and monitoring as well as tailored tools for the seafood sector and food and beverage sector.</p> <p>The U.S. Department of Labor Comply Chain: Business Tools for Labor Compliance in Global Supply Chains is an app that helps companies seeking to develop robust social compliance systems for their global production and</p>	<p>been implemented by business? Is it only helpful if such guidance it is linked to regulation? Are there certain types of guidance that have proven more useful than others?) The Working Group should also assess if there are industry sectors or regions that may require further State guidance (e.g., do conflict-affected regions warrant more specific guidance from a State that is home to a multinational enterprise)?</p>
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	<p>reduce child labor and forced labor in their global supply chains.</p> <p>In fall 2020, a comprehensive report was issued to Congress on an Analysis of Anti-Money Laundering Efforts Related to Human Trafficking including best practices of what financial institutions are doing to combat illicit finance and money laundering associated with human trafficking. The report includes multiple recommendations for financial institutions to enhance those efforts.</p>	
<p>Integration of the UNGPs into other policy tools oriented to responsible business (e.g., do other policy instruments relating to responsible business or “CSR” refer to the UNGPs or, if not, are there plans to strengthen alignment)</p>	<p>U.S. embassy staff are trained on responsible business conduct (RBC) tools and instruments in the Foreign Service Institute’s Commercial Tradecraft course, including content on the U.S. National Contact Point for Responsible Business Conduct resource under the OECD Guidelines for Multinational Enterprises.</p> <p>The informal State Department-led interagency working group (IAWG) meets an average of 15 times a year to discuss what can be done to reduce the violence against environmental defenders, with a focus on countries with high levels of violence against environmental defenders as reported by the UN and non-governmental organizations. The IAWG also focuses on identifying and seeking to expand best practices to protect environmental defenders; prevent attacks, intimidation, and/or criminalization of their role; investigate attacks; and bring those responsible to justice.</p>	<p>We encourage the Working Group to work with governments to help build tools and training for their overseas officers on responsible business conduct and specifically the UNGPs. There are various tools focused on helping companies implement the UNGPs, but the same does not exist for governments who seek to train their officers abroad on how to work with business and host governments on these issues, including in conflict-affected regions.</p>
<p>Human rights at the “state-business-nexus” – leading by example</p>		
<p>State efforts to promote human rights among business enterprises that</p>	<p>Please see the section above on “incentives for responsible business” which describes efforts by the DRC and EXIM to promote responsible business conduct.</p>	<p>See response in in section above on “incentives for responsible business.”</p>

<p>are owned or controlled by the State, and when providing funding or other support to business (e.g., export credit agencies)</p>		
<p>State efforts to protect human rights when contracting with businesses to provide services, e.g., health care, social security, education</p>	<p>See below “State efforts to protect human rights through public procurement” on Federal Acquisition Regulation subpart 22.17, which applies to U.S. government contracting with businesses to provide services to the U.S. government.</p>	<p>See below recommendations in “State efforts to protect human rights through public procurement.”</p>
<p>State efforts to protect human rights through public procurement</p>	<p>Federal Acquisition Regulation subpart 22.17 prohibits human trafficking and trafficking-related activity in federal contracts for both goods and services. Violation of the FAR can result in penalties up to and including suspension and debarment.</p> <p>Federal Acquisition Regulation subpart 22.15 requires U.S. Government contracting officials, when issuing a solicitation for supplies, to check the U.S. Department of Labor’s <i>List of Products Produced by Forced or Indentured Child Labor</i>. This List is intended to ensure that U.S. federal agencies do not procure goods made by forced or indentured child labor. Under procurement regulations, federal contractors who supply products on the List must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items supplied.</p>	<p>Recommendations for the Working Group are to:</p> <ul style="list-style-type: none"> • develop best practices or recommendations for how governments can validate whether contractors are complying with contract requirements; • explore the effectiveness of third-party monitoring organizations for commercially available items (e.g., Electronics Watch); • create a training on risk assessment for procurement personnel, who often have no background or expertise on human rights issues, including forced labor; • create a database governments can use to report contractors that have engaged in human rights abuses/severe contract violations to give other governments access to information on experiences and findings with certain vendors; • encourage all member States to include or strengthen practices to prevent human rights abuses, including forced labor, in the goods

		<p>and services they procure as well as in project finance; and</p> <ul style="list-style-type: none"> • encourage the UN bodies to take steps to prevent and address human rights abuses, including forced labor in their own procurement and document the challenges and solutions.
<p>State efforts to protect human rights through development finance</p>	<p>The U.S. government reviews multilateral development bank (MDB) projects to assess if projects are designed and conducted in line with an MDB's environmental and social policies and procedures. The U.S. government also works with MDBs on the review and update of MDB safeguards policies that apply to both public and private sector projects.</p> <p>The Millennium Challenge Corporation (MCC) only invests in countries that meet MCC's strict selection criteria. Countries are assessed on 20 different indicators through the MCC scorecard and must pass a "democratic rights hard hurdle" (e.g. show clear commitment to political rights and civil liberties) as well as a "control of corruption" hard hurdle to receive the flagship investment of a Compact. Compacts are large, five-year grants for selected countries that meet MCC's eligibility criteria. Countries are incentivized to use the MCC scorecard as a roadmap for reform, often before MCC invests a single dollar, seeking to make critical reforms—often in democratic governance and human rights—to boost policy performance, measured by the MCC scorecard, in hopes of qualifying for an MCC investment.</p>	<p>Recommend the Working Group reflect on whether donors to development finance institutions could contribute to the periodic review of environmental and social safeguard policies to strengthen references to human rights and related issues such as grievance mechanisms, risk assessments, due diligence, reprisals and retaliations, access to remedy, and stakeholder consultations. In particular, focusing on best practice with respect to preventing and addressing reprisals and retaliation in connection with development finance projects would be particularly useful. Another useful area of focus could include responsible divestment.</p> <p>Relatedly, the Working Group could help increase States' awareness of the business and human rights equities in development finance projects generally.</p>
<p>Policy coherence at the national, regional, and international levels</p>	<p>See section on horizontal and vertical policy coherence.</p>	<p>See section on horizontal and vertical policy coherence.</p>

<p>Horizontal and vertical policy coherence, e.g., coordination on business and human rights policies across government agencies and departments, at multiple levels of government (e.g., BHR and SDG NAPs cross-reference or are integrated, government training curriculum on BHR, NHRI recommendations to government)</p>	<p>The U.S. National Contact Point for Responsible Business Conduct consults with a broader group of U.S. government subject matter experts who comprise the Interagency Working Group (IWG), which includes representatives from the Department of State and other relevant U.S. agencies. The IWG consultations solicit expert input on responsible business conduct matters and increase awareness of the Guidelines’ application at an intragovernmental level.</p> <p>The State Department conducts an in-depth review of U.S. Export-Import Bank (EXIM) transactions to assess whether they raise human rights-related concerns, are aligned with and support foreign policy goals for a given country, and are in the U.S. national interests. The U.S. government also provides a broad interagency review of proposed EXIM transactions through the interagency National Advisory Council on International Monetary and Financial Policies (NAC).</p> <p>Several U.S. agencies have seats on the U.S. International Development Finance Corporation's (DFC) Board of Directors (State, USAID, Commerce, and Treasury), which provides an interagency review of proposed DFC transactions and ensures coherence on policies and priorities (e.g., foreign policy, U.S. national interests). In addition, DFC consults with the State Department regarding human rights-related risks of DFC-supported projects.</p> <p>See also section on “State commitment to implementing the UNGPs” for information on U.S. government</p>	<p>See above “State Structures Mandated to Implement the UNGPs” for our recommendation.</p>
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	development and coordination linked to its National Action Plan.	
Business-related policy with other State and businesses (e.g., trade and investment agreements, investor-state contracts)	<p>U.S. trade agreements include provisions that require parties to adopt, maintain, and enforce legal provisions on freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation. In addition, The U.S.-Mexico-Canada Agreement includes a ground-breaking provision requiring all three countries to prohibit the importation of goods produced wholly or in part with forced labor.</p> <p>U.S. trade preference programs require countries receiving preferential trade benefits to meet all of the eligibility criteria, including with respect to internationally recognized worker rights. The annual enforcement and review processes for these programs ensure that beneficiary countries are complying with their requirements, thereby strengthening protections for workers.</p>	As a first step the Working Group could create a catalogue of provisions in regional trade agreements that include enforcement mechanisms related to internationally recognized worker rights to develop recommendations on best practices.
Across multi-lateral institutions (e.g., regional organizations, participation in other international processes on BHR, integration of BHR in multi-lateral finance and trade)	See above for multilateral development institutions.	See above for multilateral development institutions.
Access to Remedy		

<p>Effectiveness of judicial mechanisms to address business-related human rights abuse allegations</p>	<p>The Foreign Corrupt Practices Act (FCPA) is a federal law that prohibits U.S. citizens and entities from bribing foreign government officials to benefit their business interests. The Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) are jointly responsible for enforcement of the FCPA. SEC enforcement applies to companies it regulates while the DOJ enforces the Act against all other domestic companies.</p> <p>The Alien Tort Statute provides federal district courts with jurisdiction over any civil action by an alien for a tort committed in violation of the law of nations or a treaty of the United States. The statute has been used to bring claims against corporations allegedly involved in human rights abuses, including forced labor.</p> <p>U.S. criminal laws prohibit trafficking in persons, including forced labor, including by corporations. In particular, the Trafficking Victims Protection Act (TVPA) imposes criminal liability on whomever benefits financially from forced labor in “reckless disregard” that their business ventures engaged in such exploitation. The TVPA creates extraterritorial jurisdiction over certain trafficking offenses committed overseas and a corporation that is present in the United States could be held criminally liable for corporate human trafficking even where the exploitation occurs abroad.</p>	<p>We encourage the Working Group to explore various existing judicial mechanisms and emerging best practices. We recommend exploring possible legislation or regulation requiring publicly listed companies to conduct human rights due diligence and report on their findings and responses. Components to such legislation could include: requirements for annual analyses to identify human rights/forced labor risks and impacts in their operations and supply chains; the inclusion of human rights/forced labor reporting in annual reports to the SEC that describes the structure of the company's supply chain, addresses the findings of the annual assessments, identifies the actions the company has taken to avoid or mitigate any risks or impacts, describes the results of those actions and assesses their efficacy, and explains the processes the company has in place to avoid and mitigate human rights/forced labor impacts. Such reporting would help the U.S. government in prosecuting substantive forced labor and human rights violations, and would also provide a platform for certain conspiracy charges for defrauding the government in those instances where companies falsely represent no issues exist, recklessly disregard allegations, etc.</p>
<p>Effectiveness of and access to non-judicial state-based processes,</p>	<p>The U.S. National Contact Point (U.S. NCP) for Responsible Business Conduct, established by the U.S. government, effectively promotes the OECD Guidelines for</p>	<p>We encourage the Working Group in coordination with the OHCHR to develop practical guidance and tools as an outcome of the Access to Remedy Project</p>

e.g., OECD NCPs, NHRIs, multi-stakeholder grievance mechanisms, international grievance and regional mechanisms	Multinational Enterprises and related due diligence guidance, and serves as an accessible non-judicial grievance resource to encourage resolution of issues. The U.S. NCP is committed to its mission of furthering the effectiveness of the Guidelines by promoting awareness, encouraging implementation, facilitating practical applications, and offering a Specific Instance mediation process to resolve issues between parties.	(ARP) to further effectiveness of and access to non-judicial state-based processes. That project was very detailed on all of these issues. Expansion on this work to develop tools would be a useful next step.
Multi-stakeholder platforms		
Multi-stakeholder initiatives to support responsible business and accountability	The U.S. government is a member of several multistakeholder initiatives, including the International Code of Conduct for Private Security Service Providers' Association, the Voluntary Principles on Security and Human Rights Initiative, the Centre for Sport and Human Rights, Extractives Industry Transparency Initiative, and the Public Private Alliance for Responsible Mineral Trade.	Multistakeholder initiatives (MSIs) play a critical role in terms of strengthening corporate accountability and filling governance gaps. Encourage the Working Group to reflect on (a) the kind of instances in which a multistakeholder initiative might be most appropriate and (b) lessons learned and best practices in MSIs.
Other relevant information		
U.S. government reporting that helps companies conduct due diligence	The U.S. government publishes various reports, many of which are congressionally mandated or by Presidential directive that can assist businesses in conducting human rights due diligence. Below are some examples: <ul style="list-style-type: none"> The U.S. Department of Labor (DOL) publishes three reports on international child and forced labor. These reports are <i>The Findings on the Worst Forms of Child Labor</i>; the <i>List of Goods Produced by Child Labor or Forced Labor</i>; and the <i>List of Products Produced by Forced or Indentured Child Labor</i>. The reports document the current 	Recommend the Working Group reflect on how this type of reporting assists business on efforts to undertake due diligence.

	<p>situation of child labor, forced labor, and forced child labor around the world.</p> <ul style="list-style-type: none">• DOL's <i>Sweat & Toil: Child Labor, Forced Labor and Human Trafficking Around the World</i> is a comprehensive resource available as a smartphone app and includes data and research from DOL's three flagship reports.• The State Department's Bureau of Democracy, Human Rights, and Labor publishes annual <i>Country Reports on Human Rights Practices</i>.• The State Department publishes annual <i>Investment Climate Statements</i> that include responsible business conduct.• The State Department publishes the annual <i>Trafficking in Persons Report</i>, which assesses 188 governments, including the United States, on their efforts to combat human trafficking.	
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