

U.S. Government Approach on Business and Human Rights



2013

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United States Department of State
Bureau of Democracy, Human Rights, and Labor



I. Context and Landscape

Anywhere that human rights are under threat, the United States will proudly stand up, unabashedly, and continue to promote greater freedom, greater openness, and greater opportunity for all people. And that means speaking up when those rights are imperiled. It means providing support and training to those who are risking their lives every day so that their children can enjoy more freedom. It means engaging governments at the highest levels and pushing them to live up to their obligations to do right by their people. It means encouraging businesses to respect human rights wherever they operate.

-Secretary of State John Kerry, April 2013

Businesses can have a significant impact on the States in which they operate, and on the lives of billions of people. As businesses cross borders they can find themselves operating in difficult environments with weak governance institutions.

Twenty-first century statecraft is not only about government to government relations. When comparing the 2011 gross domestic product of countries to the gross revenue of multinational enterprises, ExxonMobil and Wal-Mart would be the 28th and 31st largest economies in the world, out-sizing the economies of Nigeria, Sweden, and Venezuela. The idea that business, on the one hand, and government, on the other hand, can simply operate in parallel worlds is not viable. They have to work together.

U.S. businesses are among the most innovative and competitive in the world, and strive to maintain high standards. The U.S. government's approach on business and human rights is intended to support the interests of U.S. companies, enhance the effectiveness of international institutions focused on this issue, and promote the human rights of people around the world.

II. Objective

This document illustrates how the U.S. government approaches business and human rights, by providing examples of laws, regulations and policies relevant to the intersection between these issues, and what U.S. companies should know when it comes to respecting human rights throughout their global operations.

III. International Guidelines on Business and Human Rights

The United Nations (UN) Guiding Principles on Business and Human Rights (Guiding Principles), unanimously endorsed by the UN Human Rights Council on June 16, 2011 in a resolution cosponsored by the U.S. government, are 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.¹ The U.S. government encourages stakeholders to treat the Guiding Principles as a “floor” rather than a “ceiling” for addressing issues of business and human rights, and to recognize that implementing the Guiding Principles should be a continuous process.

Developed by former UN Special Representative of the Secretary General on Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie, the Guiding Principles highlight steps States can take to encourage business respect for human rights; provide a blueprint for companies to demonstrate respect for human rights and minimize the risk of harm to people; and constitute a set of benchmarks for stakeholders to assess business respect for human rights. The principles are organized within a three-pillar framework that provides:

- **Protect:** States have a duty to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations, and adjudication.
- **Respect:** Business enterprises have a responsibility to respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- **Remedy:** As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

In the Guiding Principles, the responsibility of business enterprises to respect human rights refers to internationally recognized human rights defined in the Guiding Principles, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work.²

¹ See the text of the U.S. statement at the endorsement of the Guiding Principles and the text of the resolution here: <http://www.humanrights.gov/2011/06/16/businesses-and-transnational-corporations-have-a-responsibility-to-respect-human-rights/>

²The International Bill of Human Rights consists of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). Report of Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, Remedy” Framework; March 2011.

The Guiding Principles commentary provides that the responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by varied and various national law provisions in relevant jurisdictions. The commentary also states that, “Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where their activity may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.”

The U.S. government takes seriously the state duty to protect human rights—set forth in the first pillar of the Guiding Principles. This is evidenced, in part, through the integration of human rights into U.S. laws, regulations, and policies, some of which are referenced throughout the “U.S. Government Approach on Business and Human Rights” document. The U.S. government will continue to consult with stakeholders as it implements its duty under the first pillar.

The Guiding Principles were used in the update to the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises (OECD Guidelines) in 2011. The OECD Guidelines, established in 1976, are recommendations from 44 national governments to enterprises regarding responsible business conduct. The 2011 update to the OECD Guidelines included a human rights chapter, which draws upon and is in line with the Guiding Principles.³

IV. Business and Human Rights in Foreign Policy

Countries where strong human rights prevail are countries where people do better economies thrive, rule of law is stronger, governments are more effective and more responsive, and they are countries that lead on the world stage and project stability across their regions. Strong respect for human rights isn't merely an indicator that a country is likely doing well. It actually unleashes a country's potential, and it helps to advance growth and progress.

-Secretary of State John Kerry, April 2013

The National Security Strategy for the Obama Administration outlines four enduring national interests that guide American foreign policy:

- 1) The security of the United States, its citizens, and U.S. allies and partners;
- 2) A strong, innovative, and growing U.S. economy in an open international economic system that promotes opportunity and prosperity;
- 3) Respect for universal values at home and around the world; and
- 4) An international order advanced by U.S. leadership that promotes peace, security, and opportunity through stronger cooperation to meet global challenges.

Activities and decisions of business have an impact on each of these interests. The State Department and other U.S. government agencies will continue to leverage opportunities to work with business in pursuit of these foreign policy objectives in three principal ways:

- 1) **Support** the innovations and activities of business that help solve global challenges and improve the welfare of people;

³ See more information on the OECD Guidelines and the 2011 update here: <http://www.oecd.org/daf/inv/mne/2011update.htm>

- 2) **Partner** with business on projects in which business and government have comparative advantages that can be harnessed by working together;
- 3) **Promote** the rule of law, respect for human rights, and a level playing field by encouraging responsible business behavior and inviting engagement by business in venues that advance best practices.

The U.S. government approach to business is grounded in the idea that 21st century diplomacy must both harness the vast potential of business to contribute to human flourishing and ensure that businesses are included, where appropriate, in networks and institutions that reflect U.S. values and help protect people.

V. Support, Partner, and Promote in Practice

This Administration is dedicated to fostering commerce and promoting good conduct by the business community. I don't see this as a trade-off. I think we can have both, and that we should have both.

-Department of Commerce General Counsel Cameron Kerry, March 2012

The list below provides examples of ways the U.S. government is working to support the activities of business, partner with business on projects of mutual importance, and promote respect for human rights and a level playing field. This list is not exhaustive but rather provides a cross-sampling of relevant work and helps illustrate the broader context of U.S. government work on business and human rights.

Support

Economic Statecraft: Economic forces are transforming foreign policy realities in ways beyond what might have been imagined only a few decades ago. In increasingly competitive and dynamic circumstances, the U.S. government recognizes the valuable contributions that the private sector can make in promoting key U.S. foreign policy objectives, including economic inclusion, respect for labor and human rights, and environmental protection. The State Department is using all the tools at its disposal to support U.S. economic priorities, which at the same time foster global peace, stability, security and prosperity. In part, that means crafting policies that help create—and sustain the growth of—well-paying, productive American private sector jobs. It means elevating and updating commercial diplomacy to attract investment in America and ensure U.S. companies can invest on fair terms in overseas markets. Running throughout much of the economic statecraft agenda is the need to identify and respond to a set of strategic challenges posed by

state capitalism, including the ability and willingness of some states to distort markets to achieve strategic aims.⁴

Direct Line Program: The Direct Line program provides an opportunity for American businesses to engage directly via teleconference with U.S. ambassadors overseas. The program is open to U.S. companies that are already in the country where the ambassador serves or that are interested in expanding businesses into those countries. Calls vary in topic according to the specific needs of business in a given country.⁵

Partner

As we seek to implement the Guiding Principles, we want to stress the importance we attach to the multi-stakeholder process in general, and specific processes dealing with business and human rights. We believe that cooperation and coordination with other international bodies and the dialogue with relevant actors will continue to be a key part of the success of the mandate and should include the OECD with respect to the OECD Guidelines on Multinational Enterprises and the Voluntary Principles on Security and Human Rights.

-Deputy Assistant Secretary of State Daniel Baer, June 2011

Convening Meetings and Calls on Pressing Business and Human Rights Issues: The State Department – through the Bureau of Democracy, Human Rights and Labor – regularly convenes meetings and conference calls between U.S. companies and U.S. government experts to discuss business and human rights challenges and how stakeholders can work together to draw increased attention to current and emerging human and labor rights issues and address common challenges. Previous topics have included forced labor and forced child labor in Uzbekistan, labor rights in Vietnam, and fire safety issues in Bangladesh. During one such conference call, U.S. government officials outlined Best Practices for Companies with Operations in Bangladesh.⁶

Public Private Partnerships: The United States has prioritized public private partnerships as a means to leverage the strengths and resources of the U.S. government, the private sector, and other stakeholders toward common goals and positive impacts, such as the Public Private Alliance for Responsible Minerals Trade, designed to support conflict-free supply chains in the Democratic Republic of the Congo, and promote conflict-free sourcing from within the region.⁷

Global Entrepreneurship Program: With the help of over 100 private partners, including companies, universities, and nongovernmental organizations, the Global Entrepreneurship Program

⁴ More information on Economic Statecraft can be found here: <http://www.state.gov/e/eb/econstatecraft/>

⁵ More information on the Direct Line Program can be found here: <http://www.state.gov/e/eb/directline/>

⁶ The U.S. Government Recommendations on Best Practices for Companies with Operations in Bangladesh can be found here: <http://www.humanrights.gov/2013/03/11/united-states-government-recommendations-on-best-practices-for-companies-with-operations-in-bangladesh/>

⁷ More information on the Public Private Alliance for Responsible Minerals Trade can be found here: <http://www.resolve.org/site-ppa/>

seeks to empower local people and businesses to become full participants in their economies through entrepreneurship. In many countries, the Global Entrepreneurship Program works with local business and communities not only to foster innovation, but also to provide tools for people to create new businesses, and to build a new life for themselves.⁸

Participation in Multi-Stakeholder Initiatives: Multi-stakeholder initiatives (MSIs) are voluntary initiatives by which stakeholders, such as companies, governments, and civil society; work together to address challenges of collective concern that no one actor may be able to solve on its own. For example, extractive industry companies operate in some of the most challenging and conflict-affected environments in the world. The **Voluntary Principles on Security and Human Rights Initiative** (Voluntary Principles Initiative) is an MSI 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. For example, the principles 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 to encourage other governments to join the Voluntary Principles Initiative, and to implementation of the principles, and has devoted over \$1 million in programmatic funds to support this objective.

Corporate participants in the Voluntary Principles Initiative commit to implement the principles in their business practices. In order to continue to enhance implementation of the principles, some company participants are increasing their focus on accountability. Over the last year and a half, 15 of 22 Voluntary Principles Initiative companies have been piloting ways of verifying their commitments to the Initiative. This will help companies maintain high standards while they do business in some of the most challenging areas of the world, as well as enhance transparency. This Volunteer Group consists of: Anglo American, AngloGold Ashanti, Barrick Gold Corporation, BG Group, BHP Billiton, BP, Freeport-McMoRan Copper & Gold, Inmet Mining Corporation, Newmont Mining Corporation, Rio Tinto, Shell, Statoil, Talisman Energy, Tullow Oil, and Total.⁹

The International Code of Conduct for Private Security Service Providers (ICoC) is the product of a multi-stakeholder process aimed at raising the standards of private security companies (PSCs) operating in complex environments around the world. The ICoC sets forth principles on issues such as the use of force, detention, prohibition of slavery and forced labor, and other conduct. The ICoC has been signed by over 600 PSCs, including many that contract with the U.S. government in places like Iraq and Afghanistan. PSCs that sign the ICoC affirm that they have a responsibility to respect the human rights of all those affected by their business activities; commit to establish and demonstrate internal processes to meet the requirements of the ICoC's principles

⁸ More information on the Global Entrepreneurship Program can be found here:

<http://www.state.gov/e/eb/cba/entrepreneurship/gep/>

⁹ More information on the Voluntary Principles can be found here: <http://www.voluntaryprinciples.org/>

The U.S. government 2012 annual report on the Voluntary Principles Initiative can be found here:

<http://www.state.gov/j/drl/rls/vprpt/2012/206029.htm>

and the standards derived from the ICoC; and commit to become certified by, and submit to, ongoing independent monitoring by the soon-to-be-established ICoC oversight mechanism. The U.S. government has engaged in and supported this process from the beginning.¹⁰

The Extractive Industries Transparency Initiative (EITI) provides an international standard by which countries reconcile and publish revenues paid by extractive companies and revenues received by governments for extractive activities. The process is managed in each country by a multi-stakeholder group of government, civil society, and company representatives. In May 2013, the international EITI Board adopted extensive revisions to the EITI rules to make them more effective in promoting transparency and accountability in the extractives sector. The updated rules will help ensure EITI data is comprehensive, reliable, and usable by citizens in holding their governments accountable. The U.S. government has been a strong supporter of EITI since its founding 10 years ago, recognizing that transparency is a critical component of sound governance in countries' oil and other extractive sectors. President Obama's September 2011 announcement that the U.S. government would not only support, but also implement the EITI underscored the Administration's belief that this initiative benefits countries in all regions and all levels of development. A State Department representative serves as an Alternate on the international EITI Board and the State Department supports the U.S. Department of the Interior in implementing the EITI domestically. Implementing EITI is one of the commitments made by the U.S. government in its Open Government Partnership (OGP) national action plan.¹¹

Open Government Partnership: The Open Government Partnership (OGP) is a global effort to promote transparent, effective and accountable government. As a new multilateral initiative, OGP aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. The OGP is overseen by a Steering Committee of nine governments and nine civil society organizations. OGP formally launched in September 2011, when its founding governments (Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom, United States) endorsed the Open Government Declaration, announced their country action plans, and welcomed the commitment of 38 governments to join the Partnership. Now, through concrete commitments announced via OGP action plans, 58 governments are taking important steps towards greater transparency, accountability and participation. Since its launch, OGP has grown to become a global community of government reformers, civil society leaders, and business innovators, who together are advancing a new standard of good governance in the 21st century.¹²

Promote

Multilateral Collaboration: The U.S. government is engaging with multilateral organizations to further promote business respect for human rights globally. The U.S. government co-sponsored the UN Human Rights Council resolution that endorsed the Guiding Principles and works with the UN

¹⁰ More information on the ICoC can be found here: <http://www.icoc-psp.org/>

¹¹ More information on U.S. implementation of EITI can be found here: <http://www.doi.gov/EITI/index.cfm>

Working Group on Business and Human Rights, including facilitating a country visit by the Working Group to the United States in April 2013.

As mentioned previously, in 2011 the OECD updated its Guidelines for Multinational Enterprises, which was negotiated by a multi-lateral group of governments, including the U.S. government. The updated OECD Guidelines included a new chapter on human rights and enhanced language on due diligence and supply chain management. That chapter discusses all three pillars of the Guiding Principles. The Office of the U.S. National Contact Point (NCP) for the OECD Guidelines offers a recourse mechanism: the non-adversarial Specific Instance process. The Specific Instance process is designed to help resolve disputes related to observance of the OECD Guidelines. This process can assist business and civil society to work together, under the good offices of the NCP, to pursue a mutually agreeable solution regarding a multinational enterprise's conduct in relation to the corporate responsibility to respect human rights.¹³

The U.S. government supports the **International Labor Organization's (ILO) Decent Work** agenda, and funds ILO projects to promote Decent Work in several countries, including through the ILO's Fundamental Principles and Rights at Work program. The U.S. government was also a founding member of the ILO's Better Factories program in Cambodia, which has now expanded to seven countries, and operates as the Better Work program, operated jointly by the ILO and the International Finance Corporation. In line with the Decent Work agenda, companies that directly or indirectly (through suppliers) employ workers overseas should ensure that independent trade unions (or other legitimately representative mechanisms where independent unions do not exist) are in place to represent the views of workers, and that employers communicate regularly with such workers representatives.

The U.S. government has also worked to promote respect for human rights in the information and communication technology sector. For example, the U.S. government helped to found the **Freedom Online Coalition** (Coalition), a group of 19 governments that has endorsed a strong statement of principles on Internet freedom and commit to undertaking engagement with the private sector on Internet freedom, along with diplomatic coordination and support for civil society facing Internet repression. The Coalition is committed to working with technology companies to help them incorporate respect for human rights, including freedom of expression and privacy rights, into their business practices. The U.S. government also supports initiatives such as the **Global Network Initiative**, which helps affiliated technology companies to develop policies and procedures to guide their behavior, establish meaningful benchmarks to evaluate progress, engage systematically with a variety of stakeholders, and to help companies to develop industry best practices.¹⁴

¹² More information on the Open Government Partnership can be found here: <http://www.opengovpartnership.org/>

¹³ More information on the U.S. National Contact Point can be found here: www.state.gov/usncp

¹⁴ More information on the Freedom Online Coalition can be found here:

<http://www.humanrights.gov/2012/11/20/fact-sheet-freedom-online-coalition/>

More information on the Global Network Initiative can be found here: <http://www.globalnetworkinitiative.org/>

Bilateral Engagement: Business and human rights matters are a regular part of U.S. government engagement with other countries. The United States encourages – and, when asked, provides assistance or expertise to – other governments to develop and implement robust legislative and regulatory frameworks that support the rule of law, encourage business respect for human rights, ensure a level playing field, and protect citizens. The State Department provides information on the Guiding Principles, Voluntary Principles, OECD Guidelines, and other frameworks for use in embassy engagement with U.S. companies operating in-country as well as meetings with government officials.

U.S. trade initiatives generally include provisions to ensure respect for core labor standards. The Tariff Act of 1930 bars the importation of goods produced with forced labor. All U.S. trade preference programs have eligibility criteria that can limit or suspend trade benefits if participating countries fail to protect internationally recognized labor rights. U.S. trade agreements also contain commitments to respect internationally recognized labor rights. In addition, Trade and Investment Framework Agreements include provisions that establish ongoing dialogue between governments to promote respect for core labor standards.

Domestic Laws

Corruption is more than wrong. For the global economy, corruption is dangerous. Bribery in international business, for example, may center on shell companies and wire transfers, but no matter where – or how – it happens, the corrosive result is the same: stymied development, lost confidence, and distorted competition. The result is unfairness, not justice; the consequence is economic decay, not development.... put simply, corruption undermines the promise of democracy. It imperils development, stability, and faith in our markets. And it weakens the rule of law...but besides mere punishment, our FCPA prosecutions have resulted in remedial efforts by many companies, such as enhanced compliance programs to detect and deter foreign bribery. The way those companies do business has changed – permanently and for the better.

-Attorney General Eric Holder, May 2010

- **Foreign Corrupt Practices Act:** The Foreign Corrupt Practices Act of 1977 (FCPA), as amended, was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business. Specifically, the anti-bribery provisions of the FCPA prohibit the willful use of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order

to assist in obtaining or retaining business for or with, or directing business to, any person.¹⁵

- **Dodd-Frank 1502 and 1504:** In August 2012, the Securities and Exchange Commission (SEC) adopted final rules implementing Sections 1502 and 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The SEC rule for Section 1502 requires companies that file reports with the SEC under Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 to provide disclosures regarding the use of defined “conflict minerals” that are “necessary to the functionality or production” of a product manufactured by the company or contracted by the company to be manufactured. Section 1502 and the implementing rule support 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 Democratic Republic of the Congo (DRC) and surrounding region. Under the rule, if after a reasonable country of origin inquiry, a company determines or has reason to believe that its “conflict minerals” may have originated in the DRC or an adjoining country, then it must exercise due diligence on the source and chain of custody of those minerals. It is expected that this rule will encourage companies to undertake greater due diligence measures, in line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, to ensure their supply chains do not contribute to conflict or human rights abuse in the DRC or broader African Great Lakes region.¹⁶

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas was created in a multi-stakeholder manner and is designed to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices. The guidance is also intended to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their natural mineral resources and preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity.¹⁷

Section 1504 of the Dodd Frank Act sets a new standard for transparency in the extractives industry. Under the SEC’s rule implementing Section 1504, 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. Companies must disclose the type and total amount of covered payments made for each project and to each government. The disclosures required by the rule are expected to help improve transparency and

¹⁵ A resource guide for the Foreign Corrupt Practices Act can be found here:

<http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>

¹⁶ The final rule implementing Section 1502 can be found here: <http://www.sec.gov/rules/final/2012/34-67716.pdf>

¹⁷ Information on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas can be found here: <http://www.oecd.org/fr/daf/inv/mne/mining.htm>

accountability of government in management of extractive industry revenues. Access to this data provides citizens with a critical tool to hold their governments accountable for the wealth generated by those resources.¹⁸

- **Trafficking Victims Protection Act:** The Trafficking Victims Protection Act (TVPA) of 2000 is the first comprehensive federal law to address trafficking in persons. As amended, the TVPA contains criminal provisions relating to forced labor that can affect business. A 2008 amendment of 18 U.S.C. 1593(a) punishes “[w]hoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act of peonage, slavery, or trafficking in persons, knowing or in reckless disregard of the fact that the venture has engaged in such violation...”
- **Ending Trafficking in Government Contracting Act:** The National Defense Authorization Act (NDAA) of 2013 contains TITLE XVII—Ending Trafficking in Government Contracting, which amends and strengthens the protections in section 106(g) of the TVPA by prohibiting in all federal contracts acts that directly support human trafficking and by requiring compliance and certification measures to help prevent trafficking and related acts. This new law also expands existing criminal penalties for fraud in foreign labor contracting to also reach work performed outside the United States on a U.S. government contract or on U.S. property or military installation.

Regulations

- **Burma Reporting Requirements for Responsible Investment:** The Reporting Requirements comprise two separate requirements. First, they require any U.S. person (individual or entity) that has undertaken a new investment pursuant to an agreement or the exercise of rights under such agreement that is entered into with the Myanmar Oil and Gas Enterprise (MOGE) to notify the Department of State in writing. Second, they require any U.S. persons whose aggregate investment in Burma exceeds \$500,000 to submit an annual detailing certain types of information concerning their investment, including information related to due diligence policies and procedures. U.S. persons are to submit two versions of the report: a Public Report to BurmaPublicReport@state.gov and a U.S. Government Report to BurmaUSGReport@state.gov; reports are due 180 days after the \$500,000 threshold is reached and thereafter annually on July 1. If beyond the 180-day window, reports are due on July 1.¹⁹

The Reporting Requirements require U.S. persons (individuals or entities) making more than an aggregate \$500,000 in new investment in Burma to report annually on policies and procedures with respect to human rights, workers’ rights, environmental stewardship, land

¹⁸ The final rule implementing Section 1504 can be found here: <http://www.sec.gov/rules/final/2012/34-67717.pdf>

¹⁹ The draft Burma Reporting Requirements for Responsible Investment are available here: <http://www.humanrights.gov/wp-content/uploads/2012/07/Burma-Responsible-Investment-Reporting-Reqs.pdf>

acquisition, and other key areas for human rights due diligence in the Burma context. These Reporting Requirements encourage companies to uphold high standards of human rights in new and challenging investment climates. The U.S. government hopes companies will apply human rights due diligence efforts beyond their investment in Burma as they realize the risk mitigation value in this approach.

VI. New and Emerging Tools

- **Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses:** In December 2012, the Department of Labor released a new online tool to help businesses take proactive steps to combat child and forced labor in their supply chains. “*Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses*” is a free, easy-to-use guide that can assist companies in identifying and addressing potential incidences of child and forced labor through effective social compliance systems. The Toolkit covers such topics as stakeholder engagement, codes of conduct, remediation of child and forced labor, and public reporting on a company’s performance relative to labor standards.²⁰
- **Guidelines for Eliminating Child and Forced Labor in Agricultural Supply Chains:** The Food, Conservation, and Energy Act of 2008 (“Farm Bill”) established a Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, composed of 13 members: four high-level U.S. Government officials and nine representatives from the business community, civil society and academia. In 2011, the Consultative Group published a set of guidelines that agricultural companies can put in place on a voluntary basis to combat child and forced labor in their supply chains. The Guidelines include such measures as supply chain mapping and risk assessment, remediation, and independent third-party review.²¹
- **Procurement:** The U.S. government as a market actor is one of the largest consumers of goods and services in the world. As such, the government needs to be aware of the human rights impacts of its purchasing decisions. Policies are already in place to incorporate human rights considerations into the aspects of U.S. federal government procurement process, including a requirement under Executive Order (E.O.) 13126 that the government publish and maintain a list of products, by country of origin, which might have been mined, produced or manufactured by forced or indentured child labor. Under U.S. procurement regulations, federal contractors who supply products on a list published by the Department of Labor must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items listed. The Department of State actively contributes to this effort, working closely with the

²⁰ More information on Reducing Child Labor and Forced Labor: A Toolkit for Responsible Business is available here: <http://www.dol.gov/ilab/child-forced-labor/index.htm>

²¹ More information on the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products, as well as the Guidelines the group produced, are available here: http://www.fas.usda.gov/info/Child_labor/Childlabor.asp

Departments of Labor and Homeland Security to maintain this list. Another example is E.O. 13627 “Strengthening Protections Against Trafficking in Persons in Federal Contracts” which helps protect workers and ensures stronger compliance with the US government’s zero-tolerance policy on human trafficking. The State Department has also launched an inter-agency discussion of additional ways in which the U.S. government can address human rights issues related to its procurement practices.

VII. Business Case for Good Human Rights Behavior

As the Guiding Principles remind us, it is important for States to govern justly and effectively, such that individuals are protected not only from misconduct by the State but also from non-State actors, including business enterprises. Our conviction regarding the State "duty to protect" is grounded in States' moral and political imperative to engage in good governance, including by addressing properly acts of abuse by private actors.

-Assistant Secretary of State Jose Fernandez, April 2012

The duty to protect human rights articulated in the Guiding Principles is a duty of States. As discussed above and detailed in the Guiding Principles and the OECD Guidelines, companies have an important role to play in furthering human rights. Businesses can have an impact on virtually all human rights, either through their own activities or as a result of their business relationships with other parties. The type and severity of this impact will vary depending on a business’ size, industry sector, location, and other factors. However, as underscored in these recently-developed guidelines, businesses of all types have a responsibility to respect human rights. Respecting such rights is a responsibility companies must take seriously not just as a moral imperative, but because it is beneficial for the company’s shareholders, stakeholders, and overall brand.

Risk Mitigation:

- **Reputational:** U.S. companies often operate in a global context and, in many ways, a global “fishbowl”. The actions companies take directly, as well as those of their affiliates, are frequently visible and can be closely scrutinized, which could at times lead to changes in consumer behavior or expectations of investors. Therefore, there is a financial case to be made for U.S. companies to conduct their operations in line with the expectations of their consumers and broader stakeholders.
- **Legal:** The U.S. government has laws, regulations, and policies in place that provide “guardrails” for corporate behavior domestically and sometimes overseas. Having in place human rights policies and appropriate due diligence measures helps companies to ensure that they meet legal requirements of home and host governments.

Value proposition for direct investment in emerging economies: As U.S. companies seek new markets and investment opportunities, those who do business with them should find there to be an implicit value proposition to doing business with U.S. firms: that operations will be done in a manner that respects the laws of home and host governments, as well as the communities in which a company does business. Respect for human and labor rights should permeate every tier of a company's operations in its home country and beyond.

The participation of American companies in trade and investment will bring new jobs, raise standards of living, and make a qualitative improvement in how business is conducted.

-Under Secretary of State Robert Hormats, July 2012

Level playing field: As U.S. companies seek to implement human rights policies in line with the Guiding Principles and other international guidelines, there must be broad uptake – a race to the top – in order for those firms that are committed to good practices to compete on a level playing field with other market actors. It is thus incumbent on U.S. companies to encourage broad implementation of good corporate human rights practice by working through industry associations, sector-specific initiatives, and other mechanisms.

VIII. Best Practices for Companies

The U.S. government aims to support the innovations of business, partner with business on issues of shared interest, and promote the rule of law, respect for human rights, and a level playing field. Moreover, the U.S. government expects companies to act in a responsible manner throughout their operations. The points below summarize briefly the principles applicable to businesses that are laid out in the Guiding Principles and reflected in the OECD Guidelines. Companies should review these points, and the Guiding Principles and OECD Guidelines more fully, to determine how they can set about incorporating respect for human rights within the organization.

The Guiding Principles state clearly that businesses should respect human rights, avoiding infringing on the human rights of others and addressing adverse human rights impacts with which they are involved. The Guiding Principles also state that this responsibility is a global standard of expected conduct for all business enterprises wherever they operate, existing over and above, and distinct from, compliance with national laws and regulations. This responsibility is applicable to all enterprises, but the means by which companies will address this responsibility will vary depending on many factors, including size, sector, and operational context. For instance, small and medium-sized enterprises may have less capacity and more informal processes and management structures than larger companies, so their policies may take different forms.

The following points summarizing Guiding Principles 16 – 24 elaborate further on how businesses can “know and show” they respect human rights by putting in place policies and processes, as appropriate, to uphold the responsibility to respect human rights in their operations.

- 1. Develop a policy statement committing to respect human rights.** This should be approved at the highest levels of an organization; stipulate human rights expectations of personnel, business partners, and other parties directly linked to its operations; clearly articulate the organization’s human rights expectations; be publicly available and communicated to stakeholders; and be reflected in internal policies and procedures throughout the organization.
- 2. Conduct due diligence to identify, prevent, mitigate, and account for actual and potential adverse human rights impacts.** This should cover adverse human rights impacts that the organization may cause through its own activities, or which may be directly linked to its operations products, or services by its business relationships. Due diligence should be ongoing as risks and operating context evolve, and will vary in complexity with the size of the organization, the risk of severe human rights impacts, and the nature and context of its operations.
- 3. Identify and assess actual or potential adverse human rights impacts.** This should be done by drawing on internal and/or independent external human rights expertise, and involve meaningful consultation with potentially affected groups and other relevant stakeholders.
- 4. Integrate the findings of impact assessments across relevant internal functions and processes, and take appropriate action.** Effective integration requires that responsibility for addressing such impacts be assigned to the appropriate level and function within the organization and that internal decision-making, budget allocation, and oversight processes enable effective responses to such impacts. Appropriate action will vary according to whether the organization causes or contributes to an adverse impact or is directly linked the impact through a business relationship, and the extent of its leverage in addressing the adverse impact.
- 5. Track response effectiveness.** Tracking should include appropriate qualitative and quantitative indicators, draw on feedback from internal and external sources, and include affected stakeholders.
- 6. Communicate with external stakeholders.** Communication should be of a form and frequency that reflects the organization’s human rights impacts and is accessible to its intended audience. Information provided should be sufficient to evaluate the organization’s response to a particular human rights impact, and should not pose risks to affected stakeholders, personnel, or legitimate requirements of commercial confidentiality.
- 7. Implement or cooperate in a process for remediation of any adverse impacts on human rights.**
- 8. Comply with applicable laws and respect internationally recognized human rights.** Organizations should comply with all applicable laws and respect internationally recognized human rights wherever they operate, and should seek ways to honor the principles of internationally recognized human rights when faced with conflicting

requirements. To that end, organizations should treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

- 9. Seek to prevent and mitigate adverse human rights impacts that are most severe or where delayed response would make them irremediable, when it is necessary to prioritize actions to address adverse human rights impact.**

IX. Conclusion

Strong respect for human rights isn't merely an indicator that a country is likely doing well. It actually unleashes a country's potential, and it helps to advance growth and progress.

-Secretary of State John Kerry, April 2013

As the global economy evolves, the U.S. government aims to support the innovations and activities of business that help address global challenges and improve the welfare of people; partner with business on projects where business and government have comparative advantages that can be harnessed by working together; and promote the rule of law, respect for human rights, and a level playing field by encouraging responsible business behavior. The U.S. government will continue to engage in the ways outlined above and develop and utilize new tools in support of business and human rights goals.

For more information on the U.S. government's approach on business and human rights, contact the State Department's Business and Human Rights team at BHR@State.gov