



Break Out Session 1: U.S. Government and Company Reporting on Social Risks

Various government agencies produce reports that businesses use to evaluate their supply chains and assess social risks, including human rights, in markets around the world. The main reports are the State Department's annual Human Rights Reports and Trafficking in Persons Report, and the Department of Labor's three reports related to child labor (Findings on the Worst forms of Child Labor, List of Goods Produced by Child Labor or Forced Labor, and the Executive Order 13126 List of Products). Conversely, under the Dodd-Frank Act the U.S. government requires financial reports to be submitted by extractive companies relating to their efforts to address conflict mineral challenges in the DRC and reports outlining human rights risks in Burma and what each company is doing to mitigate those risks. A number of other governments, and the EU, are considering human rights and other ESG reporting requirements and frameworks.

The discussion focused on how these U.S. government reports are prepared and disseminated, how they are used by companies and other stakeholders, and the extent to which they help companies assess and address the human rights challenges they face in their core business operations. Participants were asked to discuss ways to improve the reporting process and its outputs. For example, how can the private sector's own due diligence and reporting efforts inform government reports to make them stronger and more useful in improving human rights performance in specific business sectors and in different countries? To what extent is information to which the government has access useful to companies in their efforts to assess human rights and environmental risks? How might these reports best be disseminated through separate means? How can the U.S. government and other stakeholders work to ensure that these various reporting frameworks are developed and implemented efficiently and effectively on a global scale?

Facilitators: Karen Hanrahan (USG), Mike Posner (NYU Stern CBHR), Melike Yetken (USG)

Participants: Anthony Ewing (Columbia Law School), Nick Lauda (Center for the Study of Social Justice), Michelle Guelbart (ECPAT-USA), Sharon Kelly McBride (Human Rights First), Amol Mehra (ICAR), Peter Micek (Access), Taier Perlman (Access), Jenik Radon (Radon Offices), Melissa Shute (Conoco Phillips), Rachel Spence (USCIB), Scott Zdrzil (Amalgamated Bank)

Rapporteurs: Jodi Chao, Rachel Hurnyak

Overview: The session focused both on company reporting requirements (i.e. Dodd-Frank Sections 1502 & 1504 on conflict minerals in the DRC, Burma Responsible Investment Reporting Requirement), and on reports produced by USG (Country Reports on Human Rights Practices, Trafficking in Persons Report, DOL's International Child Labor and Forced Labor

Reports), and opportunities for the NAP present recommendations for modifying or strengthening these reporting avenues.

Current Reporting & Gaps

Some stakeholders favor the imposition of more mandatory reporting by companies on human rights issues. At the same time they see challenges, including current legislative efforts to repeal Dodd-Frank Sections 1502 & 1504 and the potentially temporary nature of reporting requirements for Burma which are tied to sanctions that may be lifted in the future. A further obstacle is the current attitude at the SEC towards human rights disclosures, social risk reporting and difficulty in persuading it to change its approach because of its status as an independent agency. To bring the SEC to the table, in the context of the NAP, will require further consideration by the Executive Branch and a plan for engaging the SEC in an appropriate manner.

Alternative agencies to explore for managing reporting requirements were proposed, including Customs & Borders and Commerce, in order to drive more coherence in reporting and enforcement. Though these other avenues might work well for commodities it will be challenging to apply them to other industries. There also is the potential for building a social risk component into existing reporting requirements like the Management Discussion & Analysis within the 10-K filing of publicly traded companies.

Civil society stakeholders also noted other concerns, such as the general non-responsiveness of companies to existing reporting requirements, and the lack of government enforcement when they fail to report or do so inadequately. They also commented in the very uneven quality of company auditing. Several participants commented on the need to strike the right balance between mandatory requirements and voluntary guidelines. Other participants stressed the need for specificity in reporting and greater clarity about what is expected by due diligence requirements. Yet others stressed the need to provide greater transparency and reporting about human rights challenges at the subcontractor level. Several participants suggested looking to international reporting models relating to the UN Global Compact and the UN Global Reporting Initiative as possible templates. Others suggested the need for greater clarity in the substantive standards underlying the reporting requirements that need to be developed for relevant service providers like accountants, and lawyers.

A business representative noted that private companies use USG reports when looking at new markets – typically as part of political risk considerations. In addition to making more companies aware of these reports as resources, several participants urged maximizing the role that US embassies can play for companies operating or going to market internationally and for the local community (stakeholder outreach, grievance mechanism, etc.). One starting point for this could be connecting US embassies with regional working groups of the UN Global Compact.

Another participant noted that while there is no specific reporting USG commitment on anti-corruption, there is significant high-level political will around creating more transparency domestically and combating bribery/corruption abroad, a commitment which is incorporated in US law under the FCPA. The NAP provides a great opportunity to foster inter-agency discussion and creative thinking around these issues.

Incentivizing Best Practice – “Race to the Top”

Several participants voiced the view that the USG has the opportunity to encourage a “race to the top” by using its soft power in convening and highlighting positive examples of reporting. If reporting is viewed as a means of embedding human rights thinking into company norms and communicating a company’s best efforts, the USG could identify companies who excel in each area and publicly encourage other companies to follow suit consistent with industry specific standards and guidelines. The USG has great convening power and should not underestimate its impact in driving best practice, disseminating information, and in facilitating industry specific conversations among companies. Another suggestion was for the USG to help specific industries develop substantive standards and guidelines and then to capitalize on the “brand value” of the USG logo or a .gov web address in helping to promote these standards and guidelines.

Several of the participants expressed the view that the NAP offers the opportunity to bolster country, sector, and issue-specific reporting –which it needs to do in order to accommodate the wide array of issues and challenges in various industries.



Breakout Session 2: Land and Labor Rights and Agricultural Investments

Following the sharp rise in international food prices in 2007-2008 there has been a rapid increase in large-scale land acquisitions in developing countries by sovereign wealth funds, private equity funds, agricultural producers, and other key players in the food and beverage industries. The largest concentration of acquisitions has been in countries with weak protection of land, labor and in other areas where human rights protections are lacking. Voluntary international guidelines, principles, and performance standards encourage investors to recognize, respect and protect the land and resource rights of local communities, indigenous peoples and others who hold legitimate rights to their assets.

When those making these investments fail to take adequate account of local land and resource rights, it often results in significant costs to local populations, and to specific projects. Many companies are looking for guidance on how to make their agricultural investments more sustainable and inclusive and less risky with respect to land tenure issues.

What is the U.S. government doing or could it be doing to help avoid and decrease the negative impact caused by such transactions? How can the U.S. government enhance U.S. companies' understanding and visibility of these issues and facilitate due diligence in their supply chains? How can the U.S. government support company efforts to mitigate land tenure risks, and promote investments in developing countries that do not displace or disadvantage local communities? At the urging of Congress, the U.S. Department of Agriculture (USDA) established a consultative group in 2010 to explore ways for companies to reduce the likelihood that agricultural products imported into the United States were produced by forced labor or child labor. In 2011 the USDA published Proposed Guidelines on Forced and Child Labor. What is the status of these guidelines and their implementation?

Facilitators: Motoko Aizawa, (Institute for Human Rights and Business, Managing Director & Chair of IHRB US Board), Amy Diggs (USG)

Participants: Roberto Borrero, (International Indian Treaty Council), Bruce Buchanan (NYU Stern), Tim Fella (USAID), Amanda Richardson, (Center for Gender Resource Equity)

Rapporteur: Larry Arbuthnot

Overview: After introductions, several attendees noted that land rights are largely undocumented in the less democratic environments where disputes typically occur and where land use often is contested. Where land records exist, they are often disorganized and subject to corruption, which creates a more risky environment for land based investments to occur. Recent media attention on “land grabs” and other negative land related situations have focused on corporations that acquire land through either lease or title in a way that displaces legitimate rights holders. It is hard to broadly characterize private sector or government actions given that both the heterogeneous group of actors involved in land decisions and the fact that governments may allocate a piece of property in good faith only to realize that land claims have subsequently emerged.

Recent Developments

Out of this ambiguity, some attempts have been made in recent years to address land related issues. The Food and Agriculture Organization of the UN (FAO)’s *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* have moved the needle of the conversation and various organizations (UNCTAD, FAO, IFAD and the World Bank) have separately crafted *Principles for responsible agricultural investment (PRAI)* that respects rights, livelihoods and resources.

The question that remains in light of these new entities is how to operationalize broad and good business principles?

In that vein, the group discussed the fact that USAID is in the process of receiving public comment on a draft entitled: *Practical Guide for Land Based Investments*. It seeks to improve the enabling environment and ensure that local laws and policies are put into place that protect all stakeholders (especially indigenous communities, smallholder farmers, etc.).

Parallel to USAID’s efforts, a broad coalition of international institutions meet twice yearly via the *Global Donor Working Group on Land*, with the aim of improving donor coordination on land governance and crafting joint actions where possible. Notable in their efforts is an attempt to begin a “safe” dialogue, where land issues can be openly discussed among various stakeholders despite the traditional contentiousness of these issues.

Tools

The conversation then turned to what tools might help create an enabling environment for meaningful action on making more equitable land based investment decisions, aimed in part at protecting disadvantaged stakeholders, most notably indigenous peoples:

1. The UN Global Compact's "*Food and Agriculture Business Principles*" and the "Voluntary Principles on Security and Human Rights" could serve as models for businesses that interact with indigenous peoples outside of the United States.
2. Depending on how the USG responds to issues and cases that have arisen through the mechanisms of the *UN Committee on the Elimination of Racial Discrimination (CERD)*, it's response may provide a framework for assessing land issues more broadly.
3. Resolution from the National Congress of American Indians (NCAI) on the *Impacts on the Contamination of Subsistence Food Resources, Health, Human Rights and Development of Tribes and Indigenous Communities*

Brand Value

The conversation then shifted to the potential role of consumers. A member of the academic community noted that companies with strong brand identities tend to be much more sensitive to these types of issues than those in industries like the extractive sector. (One NGO is working with corporations that source coffee and cocoa and is looking to enhance their brand value through better practices in their supply chains). Once a certain notion is linked to brand value, the consumer is more likely to demand it. In contrast, the B2B context is harder to police/apply pressure. A participant noted that agricultural enhancements that encourage productivity could in fact run counter to goals of affected communities, as a glut of any given commodity could depresses price, with potentially devastating consequences for local actors.

Another participant noted that, despite the appeal of brand value as a lever for action, it is an extralegal concept and can only amplify legal efforts, rather than serve as a substitute for them. Moreover, while socially and environmentally certified supply chains are laudable in name, the diversity of certifications raises the question of which standards *should* be applied. The conversation highlighted the fact that many standards are structured in a way that fails to recognize secondary rights holders, who may not even hold legal recognition from their own national governments.

Moving beyond land tenure, the group addressed the life cycle of acquisitions and the thorny issue of consent when acquiring land. One participant said that, given the large amounts of money spent by companies engaging in land based investments who must deal with protests, conducting “human rights due diligence” can decrease the riskiness of a project. Key business actions in that vein are reflected in a text produced by the UN Global Compact¹ (*Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples*).

Extractives vs. Agriculture

The last part of the conversation focused on a discussion of the extractives and agriculture sectors, specifically that disclosure, transparency and accountability that are expected for the former, but typically absent from the latter. It was suggested by a government representative that understanding why that might be and what lessons can be learned and adopted by the agriculture sector would provide a useful blueprint for making the agricultural sector more responsive and responsible.

Key Questions

What is the government’s role in trying to incentivize better behavior? Better reporting? Providing mechanisms for affected groups to voice their concerns? Scrutinizing social impact reports published by the private sector? Spearheading a coordinated effort to get major banks or debt issuers on board with the idea of providing cheaper capital to responsible/compliant organizations? How far down the chain do we want to go?

¹ Policy Commitment, Human Rights Consultation, engagement, and decision-making Free, Prior, and Informed Consent Grievance Mechanisms & Remediation Monitoring and Reporting



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Break Out Session 3: Social Risks in Complex and Conflict Environments in the Extractive Sector

A variety of efforts and initiatives, some involving the U.S. government directly, exist to help extractive companies assess and address human rights risks in complex environments. These include Voluntary Principles on Security and Human Rights, the Kimberley Process for conflict diamonds, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas, Sections 1502 and 1504 of the Dodd-Frank Act, and a variety of other tools and initiatives. What impact have these efforts had? What lessons have been learned from these efforts? What challenges remain? What additional actions or activities should the U.S. government and other stakeholders consider taking to improve human rights and good governance for extractive companies working in complex environments?

Facilitators: Chris Albin-Lackey (Human Rights Watch), Eileen Kane (USG), Jason Pielmier (USG)

Participants: Mahima Achuthan (Associate at Radin Law Offices), Robert Boneberg (Free the Slaves), Karen Beadle (ConocoPhillips), Joshua Cooper (Hawaii Institute for Human Rights), Adele Faure (Convington and Burling), Suzan Flamm (Jewelers Vigilance Committee), Cecilia Gardner (Jewelers Vigilance Committee, World Diamond), Gabriela Herzog (Hess Corporation), Annabel Hogg (RFK Compass), Paloma Munoz-Quick (Inter-American Commission on Human Rights), Kathy Mulvey (EIRIS Conflict Risk Network)

Rapporteur: Noemí Jimenez

Overview: This session discussed the extractive sector and how it was affected by Dodd-Frank and Reform Acts, the role of U.S. and Chinese companies and governments in Africa, minimum human rights standards for extractive companies, and the role of U.S. government in this sector and how these issues should be covered in the NAP.

Dodd-Frank

Several participants noted that some companies are avoiding entering new African markets because they find the costs of addressing the human rights challenges effectively outweigh the benefits. Others noted that there were unintended consequences resulting from the Dodd-Frank Act, for example that it was enacted without taking into account the resources it would take to comply in a meaningful way. Some companies operating in the extractive sector were ill-prepared to produce mandated reports and needed to divert added resources to do so felt blindsided and some found it difficult to determine where in their companies to house responsibilities for this work.

Despite these and other challenges, participants acknowledged that the Dodd- Frank Act did give companies a better understanding of their global supply chains and encouraged them to become more proactive in preparing for future challenges. Several participants noted that the Dodd-Frank Act has been a catalyst for greater engagement, encouraging beneficial partnerships among different stakeholders.

Some participants urged that in the future when legislation of this type is contemplated industry input should be sought early on, in part so that companies understand the implications for them and have time to prepare for its enactment and implementation. One participant proposed that in addressing issues like these a combination of mandatory and voluntary standards would be optimal.

China

One participant urged the need for the U.S. government to focus greater attention on Africa, noting the great attention that Chinese energy companies are paying to that region. One person estimated that Chinese companies have tripled their investments in extractive operations in Africa over the last four years. They highlighted the concern that the U.S. government needs to devote more time and attention to ensuring that American companies are in a competitive position to get this business. Several participants urged that the US National Action Plan needs to be implementable, efficient, understandable and affordable. Another participant encouraged the USG to highlight best practice examples to help others in the industry understand the types of actions they can and should be taking in assessing the history of those with whom they are doing business.

Minimum Standards (Carrots vs. Sticks)

Some participants said that minimum standards are not effective if not enforced and that the NAP must press companies to live up to the minimum industry standards. Other participants urged the need for greater incentives for companies to meet these minimum standards and to receive positive acknowledgement when they do so, rather than punishing those who do not comply. Other participants said that companies should be required publish public reports outlining their efforts to meet industry standards, including their due diligence measures, as part of a commitment to increase transparency.

Other participants reiterated the view that the USG should foster an environment where companies share best practices/failures in a way that encourages companies to strive to be industry leaders. Some participants proposed that the USG should provide information in places where U.S. companies are having trouble doing business.

Issues Specific to the Sector

Some participants noted that the location of natural resources is unalterable and therefore companies cannot choose where to operate and, once there, it is very difficult for companies to leave. Among the greatest risks companies face are: corrupt governments, rights violating military forces, police and private security who fail to protect citizens, and difficulties in community/company relationships.



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Break Out Session 4: Financial Sector Due Diligence

The U.S. government aims to support the innovations of the financial services industry while promoting the rule of law, respect for human rights, and a level playing field. The government also expects companies to act in a responsible manner throughout their operations. Various international agreements such as the Equator Principles, IFC Performance Standards, OECD Guidelines for Multinational Enterprises, UN Principles for Responsible Investing, and UN Guiding Principles for Business and Human Rights, provide different frameworks to help managers develop responsible business practices and standards throughout their operations. The OECD is convening a broad stakeholder advisory group to clarify how these principles apply to the financial sector in particular. What is the U.S. government doing or could it be doing to amplify the uptake of these instruments? What are other multilateral efforts, or best practices, not captured in these instruments, upon which that NAP build? What challenges are banks and other financial service providers experiencing when conducting due diligence; can the U.S. government play a role in overcoming these barriers? How might the NAP facilitate industry efforts to standardize or otherwise improve transparency and disclosure practices; to increase banks' "leverage" in persuading clients and suppliers to act responsibly? Should we address various asset classes separately, or are there sufficient commonalities that apply to all financial actors?

Facilitators: Ariel Meyerstein (USCIB), Janet Shannon (USG)

Participants: Joann Bauer (Columbia University), Larry Beeferman (HLS), Alex Feldman (Clifford Chance US LLP), Nicole Karlebach (Yahoo!), Anjali Nanda (ABA Center for Human Rights), Nikki Reisch (NYU Law School), Eryn Schornick (Sorini, Samet & Associates LLC), Val Smith (CITI), Morton Winston (Center for the Study of Social Justice)

Rapporteurs: Peter Leahey, Morgan White

Overview: The financial services sector breakout discussion was attended by representatives from academia, government and private industry. There was a general sense that the topic is vast in that virtually all money in the economy can be traced back to a bank in some form or fashion. Thus several participants urged that the NAP needs to be very focused, and to prioritize the areas in the financial sector where it can have the greatest impact. With that in mind, participants discussed the following topics:

Financial Sector Reform

Several participants suggested the NAP should look at the financial services sector not just as enablers of human rights violations by client companies, but also should focus on human rights challenges in the practices of the financial services industries themselves. To the extent possible, these participants felt that the NAP should attempt to address issues such as risky mortgage lending practices and speculative derivative trading as a means to better control or regulate the more potentially risky or damaging of these activities. Among the ways the government might address these challenges would be to increase funding of regulatory bodies (like the U.S. Commodity Futures Trading Commission) or increasing transparency reporting by financial service firms.

Transparency/Reporting

There was considerable emphasis on the importance of reporting. Several participants highlighted the State Department's Reporting Requirements for Responsible Investing in Burma as one potential model of success. Transparency and reporting should both be goals of the NAP, but at the same time any new reporting requirements should balance the burden of mandating additional reporting with recognizing the burdens already imposed on companies by existing requirements. Some participants suggested that any new reporting requirements proposed by the NAP could also serve as a source of information to NGOs who could then evaluate the performance of various financial institutions independently. Some argued that increased reporting standards need not be viewed only as burdensome, but rather they may also give financial institutions an opportunity to showcase their successes.

Industry Participation and Incentives

Several participants urged that RBC is an area where financial firms can work collaboratively, rather than competitively, and work to develop concrete, clearly defined joint approaches. Some noted the work of the informal "Thun Group" comprised of banks in the U.S. who already met to discuss best practices and industry-wide solutions. In that spirit, the NAP could support convening meetings to discuss and disseminate best practices and facilitate industry-wide policies and practices. The NAP should also look at ways to incentivize adherence and adoption to human rights standards by highlighting and rewarding best practices and illustrating the competitive advantage that adherence offers financial institutions over others that struggle with RBC standards. This holds particularly true in an era when investors are increasingly concerned about conflicts of interest and reputational capital.

Performance Index

A civil society participant noted examples of civil society efforts to rank brands on indices (e.g., Oxfam's "Behind the Brands" campaign) that could be applied to financial institutions. The NAP could build on the success of these and others by creating a baseline standard that incorporates the RBC principles into an industry "scorecard" or performance metric.

Regardless of what measures are implemented, there was consensus that any guidance from the NAP needs to be accessible, with clearly defined steps for participants. Many financial institutions are global and already struggle with implementing and regulating internal policy across multiple countries and cultures. The NAP would benefit from understanding this reality, and prioritizing the steps that can have the biggest impact first rather than trying to address issues from every possible angle.



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Breakout Session 5: Labor Rights Challenges in the Manufacturing Supply Chain

In a number of countries and manufacturing sectors, U.S. companies confront significant labor and human rights challenges that they alone do not have the capacity to resolve. A stark example is factory safety issues in Bangladesh. How can the U.S. government create incentives and provide resources to support better practices by both U.S. based buyers and retailers and their foreign domestic suppliers including through trade and investment agreements, cooperation in the implementation of those agreements capacity-building and in the provision of foreign assistance?

Facilitator: Eric Biel (USG), Sarah Labowitz (NYU Stern CBHR)

Participants: Louis Bickford (Ford Foundation), Sarah Blackwell (ICAR), Cathy Feingold (AFL-CIO), Michael Garland (NYC Comptroller's Office), Billy Knapp (NYU Stern), Alice Tepper Marlin (Social Accountability International), Larry Memmott (USG), Alicia Miller (NYU Stern) Ignacio Mujica (Human Rights First), Brendan Murphy (NYU Stern), Vijay Padmanabhan (Vanderbilt, NYU Stern), Ted Sattler (Worldwide Responsible Accredited Production), Jessica Slatterly (USG), Robert Strand (UC Berkley), Marianne Voss (SedEx)

Rapporteur: Nayantara Banerjee

Several participants encouraged the USG to disseminate more information through the NAP. They noted that though the USG provides useful communication through its annual human rights and labor reports, more could be done to give companies added information relating to specific factories and buyers. Another participant expressed the view that company compliance reports are not uniform across sectors or fully communicated within large companies. This participant proposed that the USG should move the conversation about labor practices in manufacturing supply chains beyond an auditing and compliance model, to encourage dialogues among suppliers in specific countries to bridge the information gap and encourage a broader dialogue about endemic issues.

Participants encouraged the USG to help set and harmonize labor and human rights standards across sectors based on these discussions. Conversations about remediation and capacity building also need to be integrated into case studies, for example of fire and safety initiatives, as well as in consultations with other standards and reporting initiatives.

Another participant suggested that the USG could also serve as an important convener of multiple parties through the NAP process. The USG has the power to bring companies, foreign governments and NGOs to the table and to encourage new initiatives. Another participant noted that the NAP can serve to level the global playing field, encourage wider private sector participation and help foster a more open environment that will better allow companies to collaborate and foster greater transparency. To accomplish this will require coordination with multiple government agencies, including the US Departments of State, Justice and Labor as well as other federal agencies.

One participant emphasized that the Justice Department has a crucial role to play in providing guidance and clarity to companies with regard to anti-trust laws and international wage and anti-trust regulation which are likely to have an important impact on these issues.

A participant proposed that the USG can help business and other stakeholders continue to define these problems. Another participant observed that risk management may help prompt more expansive and deep examination of supply chain issues especially by well-known brands. Several participants said that the USG should expand its reach to include a wider network of companies, including non-brand names, while pushing all companies to map and share information about their supply chains. In preparing NAP recommendations on these issues the USG should coordinate with international organizations, civil society representatives, and a wide range of businesses to help determine how best to influence the conduct of US companies and their suppliers as they conduct business abroad.