

# US Government Holds First Consultation on National Action Plan on Business and Human Rights

In June 2011, the United Nations Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights. While they are not themselves binding law, the UN Guiding Principles emphasize that States have obligations under international law to "respect, protect, and fulfill" human rights, and exhort States "to set out clearly the expectation that businesses respect human rights abroad."

The UN Working Group on Business and Human Rights has encouraged States to develop National Action Plans ("NAPs") on business and human rights as part of their responsibility to disseminate and implement the Guiding Principles on Business and Human Rights. A NAP is defined as an "evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights."

On September 24, 2014, President Barack Obama announced that the US Government would develop a NAP. On December 15, 2014, the US Government held its first public consultation on the White House National Action Plan on Responsible Business Conduct in New York City at the NYU Stern School of Business. The event was the first of four national consultations announced by the Government to develop the US NAP.

The consultations are open to public participation, but the discussions are not publicized. Topics covered in the consultations – and likely to be addressed in the NAP – included US Government and company reporting on social risks, land rights and agricultural investments, the extractive sector, trade and investment agreements, and the financial sector.

While no NAP to-date has set forth binding legal obligations, they will be public expressions of expectation and are likely to impact business conduct in the future. Opportunities to participate in these consultations will continue through the first half of 2015. The US Government also has issued a schedule for extensive consultations with various public stakeholders in the first half of 2015, with an aim to complete a draft NAP by the end of 2015. The next public consultations are planned for early 2015 in Berkeley, California, Oklahoma City, and Washington, D.C.

## Background on the UN Guiding Principles and National Action Plans

From 2005 to 2011, the UN Secretary General on Business and Human Rights, Professor John Ruggie, developed the UN Guiding Principles on Business and Human Rights. The UN Guiding Principles emphasize States' duty to protect human rights and elaborate on the ways States can help businesses consider and respect human rights in their activities, including through policy, legislation and adjudication. The Guiding Principles affirm that companies and other business enterprises have a responsibility to respect human rights, which means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. The Guiding Principles were unanimously endorsed by the UN Human Rights Council in June 2011.

The UN Working Group on Business and Human Rights has encouraged countries to develop and adopt NAPs as part of their responsibilities under the Guiding Principles, and in 2011 the European Union called on its Member States to formulate NAPs. The UK published the first NAP in September 2013, followed by the Netherlands, Denmark, Italy, Finland, and Spain in 2013 and 2014. As at least twenty more countries are reported to be developing NAPs, the UN Working Group produced the "[Guidance on National Action Plans on Business and Human Rights](#)" at the December 2014 UN Annual Forum on Business and Human Rights in Geneva, Switzerland, to further assist governments in developing NAPs.

The NAPs developed to-date articulate an expectation that their respective domiciled business enterprises meet the responsibility to respect human rights in their activities. For example, the [UK NAP suggests](#), among other actions, that businesses adopt appropriate human rights due diligence policies, adopt or participate in effective grievance mechanisms to remediate any adverse human rights impacts they may cause or to which they may contribute, and emphasize the importance of respect for human rights to their domestic and overseas suppliers. The NAPs also outline their implementation and expectations for future development.

NAP development is at a nascent stage and no NAPs produced to date propose new legislation, regulations, or other enforceable mechanisms. Rather, they reflect their government's policy and commitment of resources, as well as expectations of and guidance for their domiciliary businesses.

At the same time, individual businesses are considering the Guiding Principles and how to implement them. For example, the Guiding Principles have been incorporated into market standards applied by the financial sector, such as the IFC Performance Standards and the Equator Principles. A group of international banks formed the Thun Group of Banks to discuss implementation of the Guiding Principles (for information on emerging business and human rights issues for financial institutions, see our [May 2014 briefing](#)). And a group of management firms, investor associations, and NGOs has launched the Corporate Human Rights Benchmark ("CHRB"), with a goal to develop a system to rank 500 companies worldwide on human rights performance by 2017. This effort is initially focused on four sectors: apparel, food and agriculture, extractives, and information and communications technology.

## The December 15, 2014 Consultation

The December consultation was opened by Ambassador Elizabeth Cousens of the US Mission to the UN, and included Eric Biel, Deputy Assistant Under-Secretary of Labor, Karen Hanrahan, Deputy Assistant Secretary of State, and Melike Yetken, Senior Advisor for Corporate Responsibility and the US National Contact Point for OECD Guidelines at the State Department's Economic Bureau. These representatives reconfirmed that the US plans to use the UN Guiding Principles and the 2011 updated [OECD Guidelines on Multilateral Enterprises](#) as a basis for its NAP.

The US Government stated that it intends to pursue extensive consultations with the public in the first half of 2015 to identify what is already working in this field to promote human rights compliance, identify gaps that could be addressed by the NAP, and identify ways to ensure the NAP is a credible mechanism. Although the Government did not provide a clear timeline for completing the NAP nor describe an intended format, it intends to have a draft NAP completed by the end of 2015. The representatives emphasized that the Government's effort will be broad with responsibilities shared across agencies. They also underscored their interest in broad consultation with stakeholders, including not just foreign governments but affected communities abroad.

After presenting its strategy for developing the US NAP, the Government sought specific and non-public feedback in breakout groups regarding US Government and company reporting on social risks, land rights and agricultural investments, the extractive sector, trade and investment agreements, and the financial sector.

## Looking Forward

Although industry representatives attended the December consultation, participation was greatest from Government, NGOs, and academic institutions. Given the Government's interest in contributions from all stakeholders and the potential impact of NAPs on expectations of business, businesses may wish to engage in the consultations scheduled for early 2015.

The December consultation was the first of several public consultations on the US NAP, with the next public consultations are planned for early 2015 – February in Berkeley, California, March in Oklahoma City, and April in Washington, D.C. In addition to following or participating in the consultation process, the Government has also invited written input on the NAP, permitting a first round of submissions until January 15, 2015 (to be sent to [NAP-RBC@state.gov](mailto:NAP-RBC@state.gov)).

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