



National Action Plan must address companies' human rights impacts in USA, not only abroad *Submission to US Government consultation on National Action Plan – January 2015*

The US Government's initiative to develop a National Action Plan on Business and Human Rights is of great strategic importance to the global debate on business and human rights. This is not only because the US economy is the world's largest in total GDP, private sector capitalization, and foreign direct investment outflows, but also because of US leadership in upholding human rights in business domestically and internationally. The fact that the USA and Germany are simultaneously developing their NAPs is an opportunity to set important precedents in this vital field.

We welcome the US proposal to develop a NAP on international action to promote business and human rights. By building on its leadership through initiatives such as the Reporting Requirements on Responsible Investment in Burma, Dodd-Frank Act provisions on conflict minerals and extractive industry revenue transparency, the California Transparency in Supply Chains Act, and the Foreign Corrupt Practices Act, the US NAP can break new ground in working toward an end to modern slavery; promoting human rights in commodity supply chains; and using transparency to fight tax avoidance, opacity in natural resource revenues, and corruption. There is also the opportunity to assert the importance of extra-territorial access to justice, which we are concerned has been weakened in the last eighteen months. When the Supreme Court issued its *Kiobel v. Royal Dutch Shell* decision in 2013, there were at least 19 human rights cases pending in US courts under the Alien Tort Claims Act against companies. Since then, only one new Alien Tort case has been filed against a company in US court, and a majority of the pending ATCA cases have been dismissed. We offer our assistance in these endeavors.

Our primary concern is the proposed exclusive focus on international business and human rights at the expense of domestic issues. Human rights abuses involving companies occur at home as well as overseas. Given the leadership of the United States in this arena, we urge the US Government to not restrict its NAP to companies' overseas conduct.

At a recent consultation in New York by the US Government on the NAP that it is preparing, officials indicated the US NAP would be focused on international business conduct. At Business & Human Rights Resource Centre, we have tracked allegations of companies' involvement in abuse for over a decade. We frequently confront the misconception that companies are involved in abuses "over there" – especially in countries seen as high-risk for abuses, such as oil companies causing pollution in Nigeria or Ecuador, apparel companies sourcing from sweatshops in Asia, and companies' complicity in abuses by military governments in Burma and Latin America – but not in the United States. Sadly, reality is far different.

The Resource Centre invites companies to respond to concerns raised by civil society about their human rights impacts. Over the last decade, we have invited companies to respond to allegations over 2000 times worldwide. Approximately 600 of these invitations to respond have had a US nexus: they involved either US companies (operating in USA or abroad) or foreign companies operating in the United States. While most cases with a US nexus involved overseas conduct by US companies, 12% of them involved companies' impacts in the United States. Examples of these concerns over impacts in USA are below. (Overall, US companies have responded to these allegations in 73% of the cases, which is in line with the average of all of our invitations to companies to respond to concerns globally.)

Similarly, we profile over 100 major human rights lawsuits against companies around the world. Of these, 47 have been litigated in US courts. Although most of these 47 concern impacts outside the USA, over one-fourth are based on human rights impacts in the USA, such as racial and gender discrimination, environmental impacts on health and livelihoods, and abuses by private prison companies.

Some key examples (with responses from the companies concerned where available):

- [BP's Deepwater Horizon explosion and spill](#) highlighted the need to take a human rights approach centered on impacts on workers and communities in regulation of oil drilling. This approach could also protect workers in other sectors with high rates of injuries and fatalities, such as [coal mining](#).

- Large industrial facilities, often sited very near poor and minority communities, are often accused of causing fatal diseases, such as in [Mossville, Louisiana](#) and [Vernon, California](#).
- The [United Automobile Workers, international union federations, Human Rights Watch](#) and others have raised concerns that many firms' US labor practices do not respect freedom of association as required in the OECD Guidelines, ILO conventions, and other international standards.
- Workers in the huge US agricultural sector lack basic protections, with [modern slavery in Florida tomato fields](#), [child labor on tobacco farms in North Carolina](#) and on [cotton farms in Texas](#), [sexual harassment and violence against women farm workers](#), and [widespread pesticide poisoning](#).
- Some of the country's largest employers have been sued for systematic discrimination on the basis of [race](#) and [gender](#), in some cases leading to huge settlements and judgments.
- Many service industry and retail workers find minimum wages do not enable them to meet basic human needs, leading to protests and disruptions, including in the [fast food industry](#).
- Foreign workers are trafficked into the USA to work on farms, construction and other projects, with [hundreds allegedly trafficked to work on Hurricane Katrina reconstruction](#).
- [Human Rights First and European groups urged US Internet companies](#) to "continue to press the U.S. government to allow them to disclose" requests in connection with the NSA's PRISM program, as part of their obligations to protect users' privacy rights.
- Banks have allegedly [violated state law and not respected housing rights in mortgage foreclosures](#), studies have found [widespread racial discrimination in lending](#), and Human Rights Watch has raised concerns about [predatory lenders targeting Native Americans](#).
- AIDS Healthcare Foundation raised concerns that [Gilead Sciences and other drug companies' pricing "may break hard-hit AIDS drug programs"](#) for poor US patients.
- Prison companies have repeatedly been cited for severe mistreatment by their employees of inmates and detainees, including violence and [sexual abuse](#).
- [Companies including Walmart market guns to young children](#), which the Coalition to Stop Gun Violence says irresponsibly puts children at risk of injury and death.

Strong steps in the US National Action Plan to address company impacts using a human rights framework are needed to comply with the government's duty to protect human rights under the UN Guiding Principles on Business and Human Rights. In addition to incorporating human rights and increasing the role of affected people in legal and other enforcement measures, the US NAP could encourage successful domestic initiatives led by workers and communities, in cooperation with companies – such as the Coalition of Immokalee Workers and Fair Food Program, now working with dozens of brands and tomato growers, and [recognized in a Presidential Advisory Council report](#).

In addition to these direct impacts in the USA, concerns about US companies' human rights impacts have other important connections to the United States that we hope the US NAP will address, such as:

- companies' global operations that include serious impacts in the USA, including toxic materials in products, and health impacts of food & tobacco firms
- companies' compliance with local US laws such as [California's Transparency in Supply Chains Act concerning forced labor](#)
- abuses abroad involving private companies that are in contracts with US federal, state and local governments, e.g., for [procurement of goods](#), and for [military and security services](#)

We thank the US Government for this opportunity to provide input, and stand ready to provide additional information or any other assistance that would be helpful in developing its NAP.