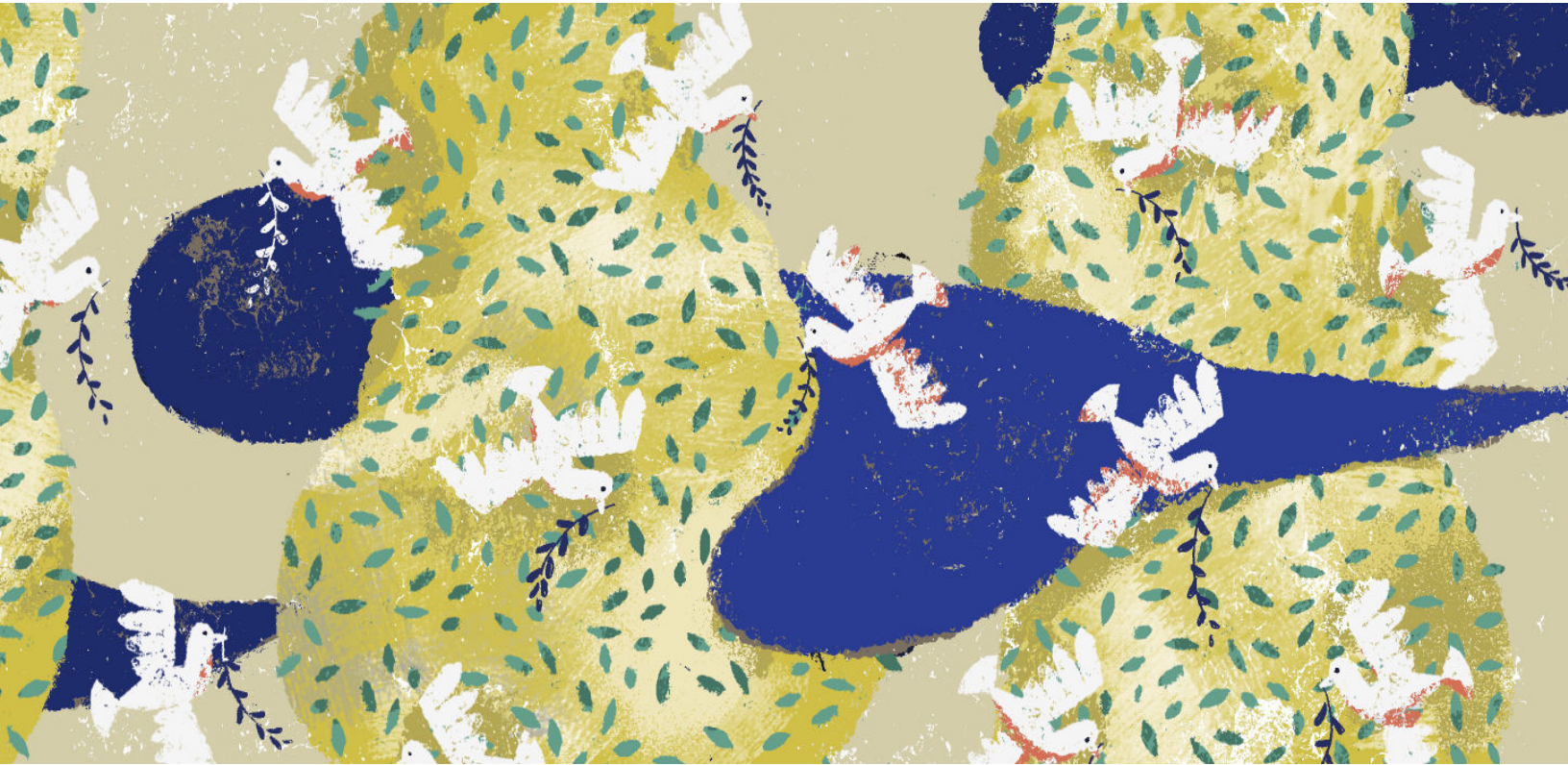


**ASSESSMENT OF THE UNITED STATES
2024 NATIONAL ACTION PLAN (NAP) ON
RESPONSIBLE BUSINESS CONDUCT**



ICAR International Corporate
Accountability Roundtable

July 2024

In March 2024, the government of the United States launched the second iteration of its National Action Plan (NAP) on Responsible Business Conduct. In response, the International Corporate Accountability Roundtable (ICAR) conducted a structured assessment of the U.S. NAP, using the NAPs Checklist developed and published by ICAR and the Danish Institute for Human Rights (DIHR).¹ The NAPs Checklist lays out a set of twenty-five criteria that address both the content of NAPs and the process for developing them.

This assessment builds on past efforts by ICAR to assess NAPs on business and human rights. In November 2014, ICAR and ECCJ published its first version of a joint report *Assessments of Existing National Action Plans (NAPs) on Business and Human Rights*, which systematically assessed the published NAPs from the United Kingdom, the Netherlands, Denmark, and Finland. In November 2015, ICAR and ECCJ published an update of this report including the assessments of the Lithuanian and Swedish NAPs. This report was updated a further time in August 2017, in conjunction with both ECCJ and Dejusticia, to include assessments of the Colombian, Norwegian, United States (first iteration), United Kingdom (second iteration), Italian, and Swiss NAPs.²

ASSESSMENT SUMMARY: 2024 UNITED STATES NATIONAL ACTION PLAN

Introduction

On March 22, the Biden Administration released the 2024 United States Government National Action Plan on Responsible Business Conduct (NAP). This 2024 NAP is the result of a roughly two-and-a-half-year process to revitalize and update the first NAP released at the end of the Obama Administration in December 2016. While it has limitations, the 2024 NAP represents a significant improvement from the 2016 NAP.

The 2024 NAP is clearly organized into three sections. **Section I** focuses on the government’s approach to due diligence. **Section II** details four priority areas that the government has identified for increased action on responsible business conduct, and summarizes forward-looking commitments in those areas, including: (1) Establishing a Federal Advisory Committee on Responsible Business Conduct; (2) Strengthening Respect for Human Rights in Federal Procurement Policies and Processes; (3) Strengthening Access to Remedy; and (4) Providing Resources to Businesses. Finally, **Section III** elaborates on “certain priority area commitments” and includes additional commitments related to other issue areas including expanding engagement and coordination on RBC (Table 1); technology (table 4); workers’ rights (Table 5); environment, climate, and just transitions (Table 6); and anti-corruption (Table 7).

This summary outlines key trends in process and content, as identified through the attached assessment of the 2024 U.S. NAP.

Process

The positive aspects of the NAP drafting process included: (1) the government entity tasked with overseeing the drafting of the NAP was clearly identified; (2) terms of reference for the NAP were published via a series of FAQs on the NAP webpage; (3) stakeholder consultation to inform the NAP was relatively robust; and (4) the NAP team worked hard to bring other agencies to the table during the process, resulting in commitments coming from 33 offices at 15 agencies, including via three interagency working groups or councils.

As part of the development process, the U.S. government issued an official Notice of Opportunity to Submit Written Comments for the US National Action Plan on RBC in the Federal Register. This comment period was open for three months and resulted in 48 submissions. Additionally, the U.S. government’s NAP team “attended over a dozen bilateral meetings with members of civil society and academia; led the coordination of U.S. Government agency participation in 10 roundtables organized by civil society and academia; and conducted 8 briefings for individual businesses, industry groups,

and other experts to solicit their input.”³³ The U.S. government also took some steps to facilitate participation by marginalized or at-risk stakeholders.

However, the process could have been strengthened by providing greater transparency around the stakeholder dialogues period of the consultation process, which was not publicly announced. Additionally, the U.S. government did not publish and consult on a draft NAP and did not release any information or summary documents regarding its deliberation over the content of the NAP, making it difficult to discern the extent to which the government took stakeholder recommendations into consideration.

The NAP process also could have been improved with increased transparency and clarity around the overarching plan and timeline for its development, including information about the drafting, review, and publication dates. Additional drawbacks include the lack of monitoring and follow-up provisions, the late timing of the NAP’s release.

Finally, as with the 2016 NAP, the drafting process of the NAP was undermined by the fact that the U.S. government did not conduct a full national baseline assessment (NBA) to inform the content of the NAP. This is problematic because a NBA provides evidence and data concerning the State’s unique context, current progress in implementation, and remaining governance gaps, all of which are essential in informing a NAP and ensuring its efficacy in addressing the most pressing business and human rights concerns within the country.

Content

While the 2016 NAP was largely focused on reciting past actions, the 2024 NAP is much more focused on laying out forward-looking commitments. This is a welcomed change. These commitments are relatively specific, measurable, achievable, and relevant. There are some commitments, however, that are vague or worded in a way that makes it difficult to discern the concrete steps the government agency is committing to take. Further, there are several commitments that are focused on continued exploration or consideration of taking an action, rather than a commitment to take that action.

Another positive aspect is that each commitment in the NAP clearly identifies the government body or bodies responsible for implementation. However, the action points could be strengthened by including the timeline for implementation, as almost none of the NAP’s 66 commitments provide that information. A key criticism of the 2016 NAP was that most of its attention was on United Nations Guiding Principles (UNGP) Pillars I and II, with Pillar III on access to remedy scarcely addressed in the document. Thankfully, there is more deliberate attention paid to access to remedy in the 2024 NAP, as it is elevated to one of the four priority areas, and the commitments laid out represent a good start on this important issue.

Unfortunately, like the 2016 NAP, the 2024 NAP is almost exclusively focused on voluntary measures such as dialogue and stakeholder engagement, identifying best practices, providing guidance to

business, engaging in outreach to other governments, providing funding, and increasing internal government capacity and expertise, among others. While voluntary measures like capacity building, stakeholder dialogue, and targeted guidance from governments to companies are a necessary component in implementation of business and human rights frameworks, a model of voluntary guidelines and self-regulation by companies is not an adequate approach in fulfilling the State duty to protect human rights. Instead, exploration and elaboration of legally binding requirements in the form of regulatory reforms should have been elevated in the updated U.S. NAP.

Overall, the 2024 NAP is a dramatic step forward from the 2016 version, with clear commitments from a variety of government agencies, although it suffers from a lack of embedded timelines and some key missed opportunities in substantive areas. ICAR would have liked to see a stronger and more ambitious NAP, but there are elements of this NAP that are well done and worth noting.

**ASSESSMENT OF THE UNITED STATES
2024 NATIONAL ACTION PLAN ON RESPONSIBLE BUSINESS CONDUCT**

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>The Biden administration announced its decision to update and revitalize the U.S. National Action Plan on Responsible Business Conduct (RBC) in a press statement issued by Secretary of State Antony Blinken on June 16, 2021, marking the 10th anniversary of the adoption of the UN Guiding Principles on Business and Human Rights.⁴</p> <p>The robust stakeholder engagement and consultation process; the explicit statement that this NAP is the starting point for a longer conversation and part of an iterative process; and the creation of a Federal Advisory Committee on RBC to continue engagement on this issue are all positive signs of the United States' commitment to the NAP process.</p> <p>However, the U.S. government's failure to conduct a national baseline assessment and demonstrated a lack of willingness to commit to a truly comprehensive and robust NAP process. Additionally, the failure to publish and consult on a draft NAP and the lack of a clear framework for monitoring and reporting on implementation of the NAP also undermine USG's commitment to the NAP process.</p>

1. GOVERNANCE AND RESOURCES	COMMENTS
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The U.S. Department of State was designated to lead the development of the NAP, “in coordination with the White House and other federal agencies.”⁵ More specifically, the “NAP team” consisted of officers from the Bureau of Democracy, Human Rights, and Labor and the Bureau of Economic and Business Affairs.⁶</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>To ICAR’s knowledge, there was no coordinating mechanism, such as a cross-departmental advisory group or steering committee set up to meet periodically throughout the NAP process.</p> <p>However, the Department of State’s NAP team made efforts to ensure that other government departments, offices, and agencies were involved and engaged in the NAP development process. For example, after receiving written input via the Federal Register process, the NAP team “analyzed the recommendations received and shared them with relevant agencies to help inform commitments for the NAP.”⁷ Further, as noted in USG’s Overview of the NAP Process, “[n]umerous U.S. government agencies and members of the National Security Council attended events to hear from stakeholders regarding their thoughts on key issues and recommendations.”⁸</p> <p>The decision to put the Department of State in charge of creating the NAP represents a shift from the 2016 NAP development process, which was led and coordinated by the White House National Security Council (NSC).⁹ While the Bureau of Democracy, Human Rights, and Labor (DRL) certainly has the needed expertise, there is a limited amount that an externally focused human rights bureau within the Department of State can do to get other agencies to prioritize the process and put forward meaningful commitments.¹⁰ In light of this, it is impressive that the Department of State staff who were driving the process were able to</p>

1. GOVERNANCE AND RESOURCES	COMMENTS
	<p>produce a NAP that included commitments “from 33 offices at 15 agencies, including via three interagency working groups or councils.”¹¹ However, it is telling that 32 of the 66 commitments (just under half, at 48.5%) laid out in the NAP are from the Department of State itself, while an agency like the Department of Commerce, which is the agency responsible for engaging with business, only put forward <i>one</i> commitment.¹²</p> <p>By not designating the NSC or a White House level official as the driver of the NAP process, the Biden Administration missed a key opportunity to send a clear signal both to the public and to federal agencies that business and human rights is a priority. Moving forward, and in any future NAP process, USG should ensure that this work is driven from within the White House, which is necessary to effectively compel the various agencies to come to the table, engage in a meaningful way, and commit to robust new measures.¹³</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>The U.S. government published terms of reference but <i>not</i> a clear timeline for the NAP development process.</p> <p>The terms of reference for the NAP process were laid out in a “Frequently Asked Questions” section of the Department of State’s National Action Plan on Responsible Business Conduct webpage and were posted sometime between October 21 and December 16, 2021.¹⁴ The FAQ section provided information around the purpose of the NAP revitalization, who would be leading the process, what geographic scope it would cover, and answers to other key questions. These FAQ have since been removed, but they can be accessed via the Wayback machine.¹⁵</p>

1. GOVERNANCE AND RESOURCES	COMMENTS
	<p>After announcing that the Department of State would be launching a process to update and revitalize the NAP on June 16, 2021, there was no public communication about the start date or overarching timeline for the process. The next communication that went out about the NAP that ICAR is aware of was the announcement of the formal opportunity to comment via the federal register, which was published about eight months later, on February 28, 2022. Outside of the Formal Federal Register process, the U.S. government did not publish a timeline in relation to the rest of the NAP process, such as the drafting, review, or publication dates.</p>
Adequate Resourcing	
<p>1.5. Determine an appropriate budget for the NAP process.</p>	<p>There is no information publicly available on the level of funding provided for the NAP process.</p>

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
<p>2.1. Conduct and publish a stakeholder mapping.</p>	<p>No information on any stakeholder mapping was published.</p>
<p>2.2. Develop and publish a clear plan and timeline for stakeholder participation.</p>	<p>A partial plan and timeline for stakeholder participation was published, covering the formal Federal Register submission process and the fact that written submissions could be sent in on a rolling basis via email (RBCNAP@state.gov). USG did include a brief reference to another opportunity for Stakeholder</p>

2. STAKEHOLDER PARTICIPATION	COMMENTS
	<p>participation in the FAQs page, which stated that USG would “...establish a series of open dialogues, through which we hope to engage with and hear from interested stakeholders about this process.”¹⁶ While these dialogues did indeed take place following the Federal Register period, USG did not publish a plan or timeline or (to ICAR’s knowledge) even publicly announce that this phase of the consultation process was underway. This lack of transparency represents a gap and weakness in an otherwise robust stakeholder consultation and engagement process.</p> <p><u>Federal Register Process – Written Submissions</u></p> <p>On February 28, 2022, about eight months after announcing the launch of the NAP update process, the State Department issued an official Notice of Opportunity To Submit Written Comments for the US National Action Plan on RBC in the Federal Register.¹⁷ Instructions on how to submit a comment and the deadline for doing so, which was set at May 31, 2022, were clearly communicated, and the invitation to submit input via this Fed Reg process was shared publicly through various channels, including via the Department of State’s diplomatic posts overseas. Stakeholders submitted 48 written comments through this process, and the Department of State then “analyzed the recommendations received and shared them with relevant agencies to help inform commitments for the NAP.”¹⁸ Written input submitted via this Fed Reg process is publicly available.¹⁹ While the Federal Register process and associated timeline was well publicized, there was limited transparency around the rest of the stakeholder engagement and consultation process.</p> <p><u>Other Engagement – Meetings, Roundtables, and Briefings</u></p> <p>As highlighted in the USG’s Overview of the National Action Plan Process, following the Federal Register comment period, “the NAP team attended over a</p>

2. STAKEHOLDER PARTICIPATION	COMMENTS
	<p>dozen bilateral meetings with members of civil society and academia; led the coordination of U.S. Government agency participation in 10 roundtables organized by civil society and academia; and conducted 8 briefings for individual businesses, industry groups, and other experts to solicit their input.”²⁰</p> <p>To set these discussions up, at least in the case of engagement with civil society, USG reached out to specific groups to request that they organize roundtable discussions on a particular topic or topic(s). To ICAR’s knowledge, USG did not publicly announce that this phase had begun or publicly distribute information about the confirmed roundtables or the opportunity to be involved in the dialogue process more broadly. In contrast, during the 2016 NAP process, the U.S. government published a timeline for the four public consultations/open dialogues in both the FAQ page and via its Announcement of Opportunity to Provide Input into the U.S. National Action Plan on Responsible Business Conduct, which was published in November 2014.²¹ This included the names of the consultation organizers, the date and general location it would take place, and who to contact to express interest in attending.²²</p> <p>While concerns about being flooded with requests for meetings and opportunities to provide input via consultations are understandable, by not opening the dialogue process up this time around (at least to some degree) USG took a step backwards from the 2016 NAP process and ran the risk of excluding civil society voices that may not often be heard or that may not be well connected in the U.S. policy space.</p>
2.3. Provide adequate information and capacity-building where needed.	It does not appear that capacity-building measures were included in the NAP process.

2. STAKEHOLDER PARTICIPATION	COMMENTS
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>The U.S. Government took some steps to facilitate participation by marginalized or at-risk groups. Specifically, as highlighted in the NAP, the Department of State “encouraged U.S. diplomatic missions to post the Federal Register Notice on their websites in local languages, to encourage submission of local input, and to engage with groups adversely impacted by business activities.”²³ USG goes on to state that it “appreciate[s] the efforts of communities in sharing their experiences and recommendations with U.S. diplomatic missions and to civil society partners for circulating this opportunity in their networks.”²⁴ There is no public information about the degree to which diplomatic missions followed through on the steps they were “encouraged” to take.</p> <p>Additionally, in the FAQ section of the NAP webpage the U.S. government stated that it would “look to set up webinars, as well as consider video conferences through certain embassies or consulates” in order to reach the “most vulnerable individuals and communities who may be impacted by the conduct of U.S. companies abroad.”²⁵ However, it appears that USG did not end up taking these steps as there is no mention of webinars or video conferences of this sort in either the NAP itself or in USG’s overview of the NAP process.</p>
<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>To ICAR’s knowledge, no stakeholder steering group or advisory committee was created to help guide or inform the NAP development process. Whether the U.S. government considered creating such a group is unknown.</p>

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	<p>The U.S. government did not conduct a national baseline assessment (NBA).</p> <p>As with the 2016 NAP, USG did not undertake a national baseline assessment (NBA) to map the status of implementation of the UNGPs in the United States and identify implementation gaps that should be addressed in the content of the NAP. Undertaking a National Baseline Assessment (NBA) of a States' current implementation of business and human rights frameworks, including the UNGPs, is critical to the development and implementation of a robust and reality-responsive NAP. When undertaken, a NBA brings together an analysis of legal and policy gaps with an overview of the adverse human rights impacts of business to identify the most salient human rights issues in a given context.²⁶ In this way, the findings of an NBA are intended to inform the formulation and prioritization of actions in a NAP.²⁷</p>
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable.
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable.
3.4. Publish and disseminate the NBA.	Not applicable.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>A key criticism of the 2016 NAP was that most of its attention was on Pillars I and II, with Pillar III on access to remedy scarcely addressed in the document. Although the U.S. government briefly acknowledged access to remedies, it appeared more as an afterthought. Thankfully, there is more deliberate attention paid to access to remedy in the 2024 NAP, as it is elevated to one of the four priority areas, and the commitments laid out represent a good start on this important issue.</p> <p>Unfortunately, as was the case with the 2016 NAP, the updated 2024 NAP is heavily skewed towards voluntary measures, guidance, trainings, outreach, and dialogue, and is severely lacking in commitments to new regulatory measures. This is in part due to the scope of the NAP, which is necessarily focused on what the U.S. government has statutory authorization to do, rather than what the Administration may like to see enacted through legislation.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the U.S. NAP's coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP's fulfillment of each UNGP, which is a task to be completed during the national baseline assessment (NBA) process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).¹⁹ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>of a NAP’s adequacy in terms of substantive content. The 2024 U.S NAP could have done better on each of these criteria:</p> <p>(1) <u>Positive and Negative Incentives for Due Diligence</u></p> <p>The commitments in the NAP do not provide new positive or negative incentives for conducting due diligence. However, the NAP does include a commitment related to the Tariff Act and the UFLPA, which both help incentivize companies to conduct forced labor due diligence to decrease the likelihood that the goods they are importing to the U.S. are not denied entry. Specifically, the NAP includes a commitment from CBP to “draft guidance to direct the proactive consideration on a case-by-case basis, suspension and debarment whenever CBP issues a penalty under the customs laws for repeated violations of 19 U.S.C. § 1307 or other laws CBP enforces to combat forced labor.”²⁸ It also states that the guidance will “<i>encourage</i> consideration of suspension and debarment...when CBP issues withhold release orders (WROs) or Findings against entities or individuals” [Emphasis added].²⁹ This is complemented by a commitment from the Federal Acquisition Regulatory (FAR) Council to “consider regulatory changes to reduce or eliminate the ability of federal contractors to contract with subcontractors who have been debarred, suspended, or proposed for debarment.”³⁰ Essentially, the FAR Council will review regulatory exemptions and gaps that currently allow federal contractors to subcontract with debarred or suspended entities in certain circumstances, and will consider closing them.</p> <p>While establishing an additional potential consequence (i.e., ineligibility for federal government contracts or subcontracts) for repeated violations of § 1307 or the</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>UFLPA is a positive step, it is likely insufficient on its own to shift company due diligence practices on a broader level.</p> <p>(2) <u>Disclosure of Due Diligence Activities</u></p> <p>There are no action points in the NAP that would require disclosure of human rights due diligence activities. While there is a commitment from the Department of State related to “RBC Reporting Requirements,” it only commits to “<i>evaluate and assess the impact of potential approaches</i> to implementing RBC Reporting Requirements, which would build on previous models of public reporting related to HRDD and RBC-related issues” [emphasis added].³¹ The wording of this commitment is very exploratory in nature, and it is not clear what the purpose or objective of conducting this evaluation is. What is clear, however, is that it does not commit to requiring or even considering requiring disclosure of due diligence activities.</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are no measures in the NAP that require due diligence as the basis for compliance with a legal rule.</p> <p>(4) <u>Regulatory Mix</u></p> <p>The regulatory mix of the Biden administration’s NAP is skewed too heavily towards voluntary measures to represent a smart mix.</p> <p>In Section I of the NAP, which lays out “The U.S. Government Approach to Responsible Business Conduct and Due Diligence,” there is significant coverage and discussion of existing USGs efforts to regulate business activity to strengthen</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>RBC. This section traces the history and evolution of relevant legislation, including section 1307 of the Tariff Act, the Foreign Corrupt Practice Act, and the Uyghur Forced Labor Prevention Act (UFLPA).³² It highlights that “[t]hrough these laws, the USG incentivizes businesses to conduct due diligence” and that “[a]dditionally, the USG takes regulatory measures that reinforce and amplify the USG’s approach to due diligence” such as “[p]rohibitions against federal contractors and sub-contractors engaging in trafficking in persons or using forced or indentured child labor.”³³</p> <p>Despite this focus on the laws and regulations that are part of USG’s approach to RBC and due diligence, the vast majority (nearly all, in fact) of the 66 commitments laid out in the NAP are focused on voluntary measures, rather than mandatory or regulatory efforts.</p> <p>These voluntary measures include, among other things, trainings and capacity building (e.g., the Department of State commits to “launch a BHR training for Department officers”);³⁴ providing grants and funding (e.g., DRL, through the Office of Global Programs and Initiatives, will award grants for work related to just transitions, focusing on the nexus of climate and labor rights);³⁵ engaging with stakeholders (e.g., the Department of Homeland Security commits to “convene biannual stakeholder engagements on the implementation of the UFLPA Strategy”);³⁶ developing guidance for business (e.g., Department of State commits to “releasing U.S. Guidance for Online Platforms on Protecting HRDs”);³⁷ and appointing government experts (e.g., Department of State commits to “designate a labor and AI expert to increase engagement on the impact of AI throughout labor-related workstreams”).³⁸</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Out of the 66 commitments in the NAP, only a few are mandatory or have some degree of teeth that come along with them.</p> <p>This includes a commitment from the Department of State, which notes that “State, in coordination with other government agencies, will deploy appropriate tools, including economic sanctions, visa restrictions, and export control measures, to promote accountability for relevant actors for BHR-related abuses.”³⁹ The action point provides additional context, highlighting that “USG maintains and implements several tools to promote accountability for individuals and entities that are responsible for actions that run counter to RBC principles, including human rights abuses, labor abuses, corruption, and wildlife and timber trafficking” and that “[t]hese tools apply a range of specific pressures and impacts, including denying officials the right to enter the United States, restricting export privileges, and blocking assets.”⁴⁰</p> <p>It should be noted that this does <i>not</i> establish any new mandatory measures or create new tools that provide consequences for corporate misconduct. However, even though these are tools USG should <i>already</i> have been using to advance RBC, the inclusion of a broader commitment to deploy them moving forward is still valuable as it enables civil society to put pressure on USG and point to this action point should they continue to underutilize these measures in the future.</p> <p>The NAP also includes a commitment from the Department of Treasury’s Financial Crimes Enforcement Network (FinCEN), which says it “will advance a rulemaking effort to increase the transparency of the U.S. real estate sector.”⁴¹ The commitment goes on to note that on “February 7, 2024, FinCEN issued a Notice of Proposed Rulemaking that aims to address the systemic money laundering vulnerabilities associated with the U.S. real estate sector and, consequently, the</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>ability of illicit actors to launder, store, or move criminal proceeds through purchases of real estate.”⁴²</p> <p>In a separate action point, the Department of Treasury also states that it “will continue to implement the Corporate Transparency Act (CTA) to enhance beneficial ownership transparency for legal persons in the United States.”⁴³ This commitment goes on to note that this includes “continued implementation of the FinCEN rule on beneficial ownership information reporting provisions” as well as “the revision of FinCEN’s 2016 Customer Due Diligence Rule” which “will aid in the implementation of the CTA and strengthen beneficial ownership transparency for legal persons, such as shell and front companies, in the United States to prevent their misuse by illicit actors.”⁴⁴ It also highlights that “[o]n January 1, 2024, FinCEN launched a beneficial ownership filing system pursuant to the CTA.”⁴⁵</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>Like its predecessor, the updated 2024 NAP does not adequately address the full scope of the State’s jurisdiction, as it is only focused on addressing issues of corporate-related human rights abuses that take place abroad and fails to address harmful business practices and human rights abuses involving companies that occur within the United States.⁴⁶</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The U.S. NAP refers to international and regional organizations and standards including the International Labor Organization’s (ILO’s) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (“MNE Declaration”);⁴⁷ OECD Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (The “Common Approaches”);⁴⁸ UN Educational, Scientific and Cultural Organization (UNESCO)</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>and UNESCO’s Recommendation on the Ethics of AI;⁴⁹ UN Office on Drugs and Crime (UNODC),⁵⁰ and of course the OECD Guidelines for Multinational Enterprises and the UNGPs.</p> <p>The NAP also seeks to ensure coherency other relevant frameworks including the United States’ Open Government Partnership NAP;⁵¹ the Presidential Memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally (“Global Labor Strategy”);⁵² the U.S. Strategy on Countering Corruption;⁵³ the U.S. Strategy to Prevent and Respond to Gender-Based Violence Globally;⁵⁴ and the NAP to Combat Human Trafficking.⁵⁵</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP does address thematic and sector-specific human rights issues. The NAP lays out four priority areas, namely: (1) establishing a Federal Advisory Committee on Responsible Business Conduct; (2) strengthening respect for human rights in federal procurement policies and processes; (3) strengthening access to remedy; and (4) providing resources to businesses. In addition to these four priority areas, the NAP includes tables that lay out commitments related to technology; workers’ rights; environment, climate, and just transitions; and anti-corruption. Other thematic issues and sector specific commitments are peppered throughout the NAP, covering private security contractors, construction, mining, health care products and services, palm oil, and fishing/seafood, among others.</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The U.S. NAP contains statements that indicate a strong commitment to the UNGPs. For example, the NAP highlights that Secretary Antony Blinken announced the USG’s intent to revitalize and update the NAP was issued on June</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>16, 2021 “[t]o mark the 10th anniversary of the UNGPs.”⁵⁶ The NAP also states that “[t]he USG expects businesses to conduct HRDD throughout their value chains in line with internationally recognized standards set out in the UNGPs and the OECD Guidelines as well as in the International Labor Organization’s (ILO’s) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (“MNE Declaration”). Businesses should treat these standards and principles as a floor rather than a ceiling for implementing responsible business practices while incorporating lessons learned and striving for continuous improvement.”⁵⁷ This is followed by an explanation of USG’s expectations around what this HRDD should look like, which is largely a recitation of the elements laid out in the UNGPs.⁵⁸</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Overall, the commitments laid out in the NAP are generally forward looking (which is an improvement from the 2016 NAP, which largely recited past actions) and are relatively specific and measurable. However, there are some commitments that are overly vague, such as the Department of State’s commitment to “strengthen policy coordination around BHR with other governments” which “will include greater information-sharing and consultations with other governments as well as consideration of joint policy initiatives around topics of mutual interest.”⁵⁹ While this is a good overarching goal, it is not clear what specific actions will be taken.</p> <p>Additionally, there are several commitments that use exploratory language, rather than making a clear commitment to actually take a particular action. For example, the Department of Defense commits to “conduct a review to evaluate the value of encouraging or requiring membership in the International Code of Conduct Association for Private Security Providers’ Association for its private security</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>company (PSC) vendors” rather than committing to requiring membership in ICoCA as a condition of eligibility for contracts.⁶⁰</p> <p>None of the commitments laid out in the NAP appear to be irrelevant to the subject of advancing RBC, or overly ambitious to the point that they are not achievable.</p> <p>Unfortunately, almost none of the commitments in the NAP include a time frame or specify a deadline for implementation. In fact, out of the 66 commitments laid out in the NAP, ICAR could only identify two that include an indication of their timing. Specifically: (1) the Department of State’s commitment to leverage its Chairship of the Voluntary Principles on Security and Human Rights Initiative (VPI) to make meaningful governance reforms and expand membership comes with a deadline because, as noted in the commitment, USG’s chairship is over at the end of May 2025; and (2) USAID commits to launching “a <i>five-year</i> Advancing Digital Democracy (ADD) program <i>in 2024</i>” [emphasis added].⁶¹ The remaining commitments are entirely silent on their timeframe, making it more difficult for civil society to hold agencies accountable for following through on their commitments.</p>
Priorities for NAPS	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>As stated above, the NAP lays out four priority areas that the government “has identified for increased action on responsible business conduct,” namely: (1) establishing a Federal Advisory Committee on Responsible Business Conduct; (2) strengthening respect for human rights in federal procurement policies and processes; (3) strengthening access to remedy; and (4) providing resources to businesses. In addition to these four priority areas, the NAP lays out commitments</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>related to technology; workers’ rights; environment, climate, and just transitions; and anti-corruption.</p> <p>When it comes to specific human rights abuses, there are commitments in the NAP related to gender-based violence, child labor, human trafficking and forced labor, human rights and environmental defenders, health and safety, and labor rights more broadly, among others. While not explicitly stated as a priority, the commitments laid out in the NAP are fairly skewed towards addressing the issue of forced labor/human trafficking, with at least 14 of the 66 commitments covering these human rights abuses. While these are important human rights issues, the U.S. already has a standalone NAP on human trafficking and ICAR would have liked to see commitments in this NAP that built on and expanded existing mechanisms, such as those connected to federal procurement, to cover rights beyond human trafficking.</p> <p>Because no NBA was developed, any prioritization of human rights abuses, sectors, or thematic issues in the NAP was not informed by a thorough mapping and gap analysis.⁶² While input from stakeholders was likely considered when USG selected its priority areas, there is not much information in the NAP itself about how USG identified them “for increased action” and why these priorities were chosen above others.</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>While the NAP does cover some marginalized and vulnerable groups, it could have gone further. Section I of the NAP states: “the USG expects businesses to account for populations that face disproportionate impacts of business activity in conducting HRDD. Best practice dictates developing policies to protect HRDs and taking steps to prevent reprisals against defenders. Throughout their HRDD</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>efforts, businesses should account for the disproportionate harms business activity can have on marginalized populations, including women and girls in all their diversity; persons with disabilities; members of ethnic, religious, linguistic, or racial minority groups; Indigenous Peoples; LGBTQI+ persons; children; and migrant workers.”⁶³</p> <p>The NAP does include several commitments related to human rights and environmental defenders, as well as commitments focused on addressing gender-based violence, which is positive. While the NAP does include coverage of children’s rights, this is almost exclusively focused on child labor. Commitments in the NAP also reference migrant workers,⁶⁴ “marginalized and underrepresented groups,”⁶⁵ or “underserved communities.”⁶⁶ There do not appear to be any commitments related to Indigenous Peoples, LGBTQI+ persons, or persons with disabilities.</p>

5. TRANSPARENCY	COMMENTS
Full Transparency With All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>USG published the 48 written stakeholder submissions received via the Federal Register process. However, to ICAR’s knowledge, USG did not publish information or documents related to the briefings, roundtables, and bilateral meetings that were conducted, such as who attended, minutes from the meetings, or summaries of consultations.</p>

5. TRANSPARENCY	COMMENTS
	<p>As with the 2016 NAP process, USG did not publish and consult on a draft version of the NAP, missing a key opportunity to gather stakeholder opinions during a critical phase of the drafting process. Releasing and consulting around a draft NAP is an essential part of a robust NAP development process as it allows stakeholders to provide additional input and also raise concerns as to the contents of the plan, and to seek clarifications on how stakeholder input was incorporated or is reflected in the draft text.⁶⁷ Conducting draft consultations also would have given the administration additional opportunities to reflect upon stakeholder input and adopt necessary changes before the final version was released.⁶⁸</p> <p>Finally, the government did not release any information or summary documents regarding its deliberation over the content of the NAP. Thus, it is not clear the extent to which the U.S. government took stakeholder recommendations into consideration during the drafting process, or its reasons for not addressing recommendations in the NAP's content.</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The NAP clearly identifies which U.S. government body is responsible for implementing each action point through a dedicated column on the left in each commitment table labeled "Agency." Further, in many cases, the specific agency office(s) or bureau(s) are listed in the text of the commitment itself, providing even more detail about who within USG is responsible for implementing a given action</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>point. However, the NAP does <i>not</i> state or identify which government body or actor is responsible for overall follow-up on implementation or how such follow-up will be conducted.</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>There is no framework for monitoring or reporting on implementation explicitly laid out in the NAP.</p> <p>It is clear that the newly established Federal Advisory Committee on RBC is intended to play some role in monitoring NAP implementation, as the USG’s NAP Fact Sheet states that the FAC “can help track NAP implementation”⁶⁹ and with the NAP itself highlighting that “[t]he RBC Advisory Committee will further serve as a venue for follow-up on NAP implementation.”⁷⁰ However, beyond these general references, the NAP does not present any structured framework, methodology, or timeline for monitoring and publicly reporting on implementation of the action points laid out in the NAP.</p> <p>Finally, while it is a positive sign that USG specified that “[a]s with other U.S. government national action plans, we will treat this as an iterative and evolving process,”⁷¹ there is no overarching period set out for implementation and there is no commitment in the NAP itself for updating the document or writing a new NAP in the future.⁷²</p>

ENDNOTES

- ¹ ICAR & DIHR, NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A TOOLKIT FOR THE DEVELOPMENT, IMPLEMENTATION, AND REVIEW OF STATE COMMITMENTS ON BUSINESS AND HUMAN RIGHTS (2014) [hereinafter ICAR & DIHR 2014 NAPs TOOLKIT], <https://icar.ngo/wp-content/uploads/2021/04/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf>.
- ² ICAR, ECCJ, & DEJUSTICIA, ASSESSMENTS OF EXISTING NATIONAL ACTION PLANS (NAPs) ON BUSINESS AND HUMAN RIGHTS: AUGUST 2017 UPDATE (2017), <https://icar.ngo/wp-content/uploads/2021/04/NAP-Assessment-Aug-2017-FINAL.pdf>.
- ³ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, OVERVIEW OF THE NATIONAL ACTION PLAN PROCESS [hereinafter OVERVIEW OF THE NAP PROCESS], <https://www.state.gov/overview-of-national-action-plan-process/> (last visited July 22, 2024)
- ⁴ Anthony J. Blinken, Secretary of State, U.S. Department of State, *10th Anniversary of the UN Guiding Principles on Business and Human Rights*, Press Statement (June 16, 2021), <https://www.state.gov/10th-anniversary-of-the-un-guiding-principles-on-business-and-human-rights/>; 2024 UNITED STATES GOVERNMENT NATIONAL ACTION PLAN ON RESPONSIBLE BUSINESS CONDUCT 3 (April 2024) [hereinafter 2024 U.S. NAP on RBC], <https://www.state.gov/wp-content/uploads/2024/03/2024-United-States-Government-National-Action-Plan-on-Responsible-Business-Conduct.pdf>
- ⁵ National Action Plan on Responsible Business Conduct: Notice of Opportunity To Submit Written Comments, 87 Fed. Reg. 11114 (Feb. 28, 2022), <https://www.regulations.gov/document/DOS-2022-0002-0001> [hereinafter NOTICE TO SUBMIT WRITTEN COMMENTS]; Anthony J. Blinken, Secretary of State, U.S. Department of State, *10th Anniversary of the UN Guiding Principles on Business and Human Rights*, Press Statement (June 16, 2021), <https://www.state.gov/10th-anniversary-of-the-un-guiding-principles-on-business-and-human-rights/>
- ⁶ OVERVIEW OF THE NAP PROCESS, *supra* note 3.
- ⁷ *Id.*
- ⁸ *Id.*
- ⁹ U.S. DEPARTMENT OF STATE, RESPONSIBLE BUSINESS CONDUCT: FIRST NATIONAL ACTION PLAN FOR THE UNITED STATES OF AMERICA 24 (2016) [hereinafter 2016 U.S. NAP] <https://www.state.gov/documents/organization/265918.pdf>.
- ¹⁰ COMMENT SUBMISSION TO THE DEPARTMENT OF STATE, DOCKET NUMBER: DOS-2022-0002 DOCKET, ON BEHALF OF THE INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, RECOMMENDATION #9 (May 2022) [hereinafter ICAR 2024 Fed. Reg Submission]; ICAR & DIHR, NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS TOOLKIT: 2017 EDITION 19-20 (2017) [hereinafter ICAR & DIHR 2017 NAPs TOOLKIT], <https://icar.ngo/wp-content/uploads/2021/04/FINALNAPsToolkitUpdate2017.pdf>
- ¹¹ *Recording: The Launch of the United States Government's National Action Plan on Responsible Business Conduct* (March 2024) <https://vimeo.com/928095279/da6781fcc6>.
- ¹² 32 of the 66 commitments (just under half, at 48.5%) laid out in the NAP are from the Department of State; with Department of Labor making 6 commitments (18.75%); while Treasury, Homeland Security, and USAID each contributed 4 commitments (12.5% each); Health & Human Services and DFC contributed 3 commitments each (4.5% each); (and, Department of Defense, NOAA, FAR Council, SPOG SC Committee, the Hotlines Working Group, and the Department of Commerce providing 1 commitment. [ICAR analysis, on file with author].
- ¹³ ICAR & DIHR 2017 NAPs TOOLKIT, *supra* note 10, at 19 & 20.
- ¹⁴ Bureau of Democracy, Human Rights, and Labor, *National Action Plan on Responsible Business Conduct* (Wayback machine, Dec. 16, 2021), <https://web.archive.org/web/20211216211310/https://www.state.gov/responsible-business-conduct-national-action-plan/>
- ¹⁵ *Id.*
- ¹⁶ *Id.*

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- ¹⁷ NOTICE TO SUBMIT WRITTEN COMMENTS, *supra* note 5.
- ¹⁸ OVERVIEW OF THE NAP PROCESS, *supra* note 3.
- ¹⁹ NOTICE TO SUBMIT WRITTEN COMMENTS, *supra* note 5.
- ²⁰ OVERVIEW OF THE NAP PROCESS, *supra* note 3.
- ²¹ ICAR, ASSESSMENT OF THE UNITED STATES NATIONAL ACTION PLAN (NAP) ON RESPONSIBLE BUSINESS CONDUCT 4 (2016), <https://icar.ngo/wp-content/uploads/2021/04/USNAPAssessmentFINAL.pdf>; Christopher Smart, *Announcement of Opportunity to Provide Input into the U.S. National Action Plan on Responsible Business Conduct* (November 20, 2014), <https://obamawhitehouse.archives.gov/blog/2014/11/20/announcement-opportunity-provide-input-us-national-action-plan-responsible-business->
- ²² U.S. Department of State, *USG National Action Plan on Responsible Business Conduct* (Wayback machine, Feb 15, 2015), <https://web.archive.org/web/20150215011349/https://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/>
- ²³ OVERVIEW OF THE NAP PROCESS, *supra* note 3.
- ²⁴ *Id.*
- ²⁵ Bureau of Democracy, Human Rights, and Labor, *National Action Plan on Responsible Business Conduct* (Wayback machine, Dec. 16, 2021), <https://web.archive.org/web/20211216211310/https://www.state.gov/responsible-business-conduct-national-action-plan/> (Q: How do you intend to consult with stakeholders? A. We understand that one of the most important stakeholder groups in this process is also the hardest to reach – that is, the most vulnerable individuals and communities who may be impacted by the conduct of U.S. companies abroad. In order to engage with advocates for these populations, we will also look to set up webinars, as well as consider video conferences through certain embassies or consulates.)
- ²⁶ ICAR & DIHR 2017 NAPs TOOLKIT, *supra* note 10, at 25.
- ²⁷ *Id.* at 25 (Indeed, “to make the link between the findings of the NBA and the content of a NAP explicit, some States have chosen to include relevant NBA information as well as input from stakeholder consultations in the final NAP text, or as an annex to the final report, to clearly communicate why an action was elaborated.”)
- ²⁸ 2024 U.S. NAP on RBC, *supra* note 4, at 18.
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ *Id.* at 15.
- ³² *Id.* at 6 & 7.
- ³³ *Id.*
- ³⁴ *Id.* at 16
- ³⁵ *Id.* at 33
- ³⁶ *Id.* at 31
- ³⁷ *Id.* at 28
- ³⁸ *Id.* at 27
- ³⁹ *Id.* at 15.
- ⁴⁰ *Id.*
- ⁴¹ *Id.* at 37.
- ⁴² *Id.*
- ⁴³ *Id.*
- ⁴⁴ *Id.*
- ⁴⁵ *Id.*
- ⁴⁶ ICAR & DIHR 2017 NAPs TOOLKIT, *supra* note 10, at 33 (In line with UNGP 2, a NAP should consider measures to regulate the actions of businesses based in its territory to prevent, address, and remedy business-related human rights abuses when these businesses are operating both at home and abroad.); Department of State, *Fact Sheet: U.S.*

Government's National Action Plan on Responsible Business Conduct (March 25, 2024), <https://www.state.gov/u-s-governments-national-action-plan-on-responsible-business-conduct-2/> (the Fact Sheet released alongside the NAP clearly states that "...this NAP addresses the full range of responsible business conduct (RBC) issues for U.S. businesses operating and investing *abroad*" [emphasis added].)

⁴⁷ 2024 U.S. NAP on RBC, *supra* note 4, at 7.

⁴⁸ *Id.* at 24.

⁴⁹ *Id.* at 27.

⁵⁰ *Id.* at 39.

⁵¹ *Id.* at 11.

⁵² *Id.* at 11, 23, 30.

⁵³ *Id.* at 37.

⁵⁴ *Id.* at 28.

⁵⁵ *Id.* at 11 & 20.

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 7.

⁵⁸ *Id.* at 7-10.

⁵⁹ *Id.* at 16.

⁶⁰ *Id.* at 18.

⁶¹ *Id.* at 17 & 26.

⁶² ICAR & DIHR 2014 NAPs TOOLKIT, *supra* note 1, at 46. ("Informed by the results of the NBA, the NAP should prioritize for action those issues or situations where business-related human rights abuses are current or imminent, as well as situations where abuses have already occurred but have not yet been remediated. States should moreover prioritize and commit to take immediate action in response to actual or threatened human rights abuses of a serious nature, such as where there are threats to life, liberty, and security of person, inhumane or degrading treatment, where there are violations of core labor rights or the rights of vulnerable groups.")

⁶³ 2024 U.S. NAP on RBC, *supra* note 4, at 10.

⁶⁴ *Id.* at 32 (HHS will launch new resources under its Look Beneath the Surface (LBS) public awareness and outreach campaign on trafficking in persons specific to migrant farmworkers.)

⁶⁵ *Id.* at 35 (USAID will elevate the role of workers, unions, and community leaders in just transition initiatives and work with partners to ensure labor organizations, trade unions, and impacted communities meaningfully participate in energy transition planning. USAID will support partners to pursue ambitious and equitable mitigation efforts to advance just transitions that will have economic, health, ecological, and social benefits. Such mitigation efforts will use an inclusive approach that empowers a broad range of stakeholders, including the labor movement and marginalized and underrepresented groups, to ensure shared and sustained outcomes as well as limit any negative impacts.)

⁶⁶ *Id.* at 34 (USTR will advance environmental sustainability at home and abroad by prioritizing trade policies that are resilient, sustainable, and inclusive in the implementation of its framework to advance environmental sustainability. USTR will leverage trade policy tools and associated cooperation to advance environmental sustainability and support mitigating the impact of the climate crisis on underserved and overburdened communities, including by pressing trade partners to continually reassess domestic policies to ensure they provide for high levels of environmental protection.)

⁶⁷ ICAR, OXFAM, AMNESTY, Et.AL., SUBMISSION ON THE REVISION PROCESS FOR THE U.S. NATIONAL ACTION PLAN ON RESPONSIBLE BUSINESS CONDUCT (October 7, 2021); ICAR & DIHR 2017 NAPs TOOLKIT, *supra* note 10, at 21.

⁶⁸ ICAR, OXFAM, AMNESTY, Et.AL., SUBMISSION ON THE REVISION PROCESS FOR THE U.S. NATIONAL ACTION PLAN ON RESPONSIBLE BUSINESS CONDUCT (October 7, 2021); ICAR & DIHR 2017 NAPs TOOLKIT, *supra* note 10, at 21.

⁶⁹ Department of State, *Fact Sheet: U.S. Government's National Action Plan on Responsible Business Conduct* (March 25, 2024), <https://www.state.gov/u-s-governments-national-action-plan-on-responsible-business-conduct-2/>

⁷⁰ 2024 U.S. NAP on RBC, *supra* note 4, at 11.

⁷¹ OVERVIEW OF THE NAP PROCESS, *supra* note 3.

⁷² *Id.*