



Inclusive
Development
International

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U.S. Department of State
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Office of Investment Affairs (EB/IFD/OIA), Room 4669

To whom it may concern:

On behalf of Accountability Counsel and Inclusive Development International, we are pleased to submit the below comments for the revision of the U.S. National Action Plan on Responsible Business Conduct (NAP) that recommend ways in which the U.S. government can increase accountability for environmental, social, human rights, and labor harms stemming from U.S. government or private sector investments and development activities.

We engaged in the consultations to develop the first NAP. Although there are some positive commitments in the 2016 NAP, we were largely disappointed by the lack of concrete commitments concerning accountability and remedy for business and human rights-related harms. Based on our experience working with communities harmed by internationally financed projects to seek justice, we advise that the **revised NAP require an accountability framework to apply to all U.S. money that might harm individuals or the environment. In doing so, the revised NAP needs to significantly increase the U.S.'s commitment to ensuring that accountability and remedy are achieved when negative impacts occur from projects or investments, whether these projects or investments are put forward by the U.S. government, U.S.-supported multilateral institutions, or by U.S. based companies.**

I. What an Effective Accountability Framework Looks Like

When investments cause unintended harm, communities living near and working at investment sites bear the most risk. At the same time, communities negatively impacted by business and human rights harms often have few available avenues to seek justice. The UN Guiding Principles on Business & Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises recognize the important role that non-judicial accountability mechanisms play, along with judicial mechanisms, in providing access to justice and ultimately addressing abuses. Effective accountability mechanisms not only unearth environmental and social noncompliance, but they also facilitate remedy for harm caused by investments. The U.S. NAP should require investors and aid agencies to establish effective accountability mechanisms to govern their work, and it should increase the effectiveness of the U.S. National Contact Point. Further, it should ensure that all investors and agencies provide remedy if their investments contribute to harm.

A. Independent Accountability Mechanisms (IAMs) are critical tools for addressing grievances from project-affected communities.

A key component of an effective accountability framework is an [independent accountability mechanism](#), which is a feature of several international financial and development institutions. These mechanisms allow communities to directly raise concerns about potential or actual environmental, social, human rights, and labor harms stemming from projects. These negative impacts can harm the very communities that are supposed to benefit from these projects or activities and can leave communities worse off than before. Additionally, they can result in reputational damage to the institutions that support these projects.

The U.S. government was key to the development of the first IAM at the World Bank in 1993 and has supported their proliferation and strengthening at other institutions. IAMs are independent offices within an institution that typically address complaints through two functions - a compliance review function that examines whether the institution followed its own environmental and social policies and standards in the implementation of a project, and a dispute resolution function, that gives complainants, the project implementer, and other stakeholders the opportunity to engage in mediation or other dispute resolution methods to reach a mutually agreeable solution to the grievance. IAMs also typically have an advisory function, which derives thematic and systemic lessons from trends in the IAM's caseload, in both compliance and dispute resolution, and other sources in order to provide guidance to the institution's leadership on improving the institution's social and environmental performance.

It's important to note that an IAM is distinct from an Inspector General (IG): an IG monitors an institution's own compliance with its internal policies; an IAM offers a process for communities impacted by an institution's projects to seek accountability from the institutions and its clients or implementing partners. In fact, international financial institutions with IAMs also have internal audit functions. IAMs are designed to receive complaints of environmental and/or social harm directly from communities affected by the institution's activities. Although IG reports may include internal investigations associated with environmental and social challenges (e.g., fraud, corruption, other accounting related audit functions), the scope of the reports is highly different from external, community-oriented complaints. Additionally, although the IG can receive complaints of waste, fraud, and abuse from the general public, it is not designed as an outward-facing, community-oriented mechanism that can also facilitate dispute resolution between parties.

The NAP should include commitments to strengthen or create an IAM at several U.S. agencies supporting projects internationally and should likewise strengthen accountability for multilateral development finance and private business activities. A functioning IAM

should be designed and operated according to the UNGPs' 'effectiveness criteria' for non-judicial operational-level grievance mechanisms:

- **Legitimacy:** An IAM should have an independent governance structure to ensure that the process is fair and has the trust of project-affected people. The mechanism should be able to function independently of political influence or pressure from institution staff and management, whose actions may be the source of grievances. The mechanism should also have sufficient authority to handle grievances and make redress decisions objectively.
- **Accessibility:** In order to serve as a reliable forum for providing access to remedy, a mechanism should be well known to all potentially affected people and provide adequate assistance to help them overcome barriers to accessing it. The institution should ensure that affected people have access to the mechanism, including a requirement that project implementing partners or clients inform people of the existence of the mechanism and its functions. In addition, the mechanism should not impede access to remedy through other means, whether nonjudicial or judicial, or require people to use the mechanism before pursuing other avenues for remedy.
- **Predictability:** The IAM should have clear and known procedures with timeframes for each stage of the process. The timeframes should be explicit and clearly communicated to potentially affected people, and the mechanism should have a way to monitor that the process and parties are respecting those timelines.
- **Equitability:** To ensure that people can engage in a process on fair and equitable terms, they must receive non-biased information and advice. Affected people are often not well informed of their rights or options for recourse and may be severely disadvantaged in their access to resources and information compared to the institution or agency. In order to facilitate an equitable and fair process and maintain trust, the IAM should provide information on the process and inform people of their right to consult with and be accompanied by counsel and/or advisors at any time during the process.
- **Transparency:** Transparency can be key to building and maintaining confidence in the IAM within affected communities, as well as with stakeholders and the general public. This includes keeping parties to a complaint process informed about its progress and reporting to the public regarding the mechanism's activities. The IAM should maintain a publicly available case register, including an online version, in addition to any other culturally appropriate means of disseminating this information. The mechanism should not require parties to agree to a blanket confidentiality agreement as a prerequisite to participate in the complaint process. However, it should protect the identity of any complainant that requests confidentiality.
- **Rights-Compatibility:** In order to be considered effective and legitimate, accountability mechanisms must provide outcomes and remedies that align with internationally recognized rights. Outcomes and remedies should respect applicable rights under national

and international law. Any monitoring and evaluation efforts of the mechanism should also include a review of these outcomes and remedies for their rights compatibility.

- **A source of continuous learning:** In addition to resolving individual grievances, an effective IAM can serve a valuable role by providing feedback for specific projects and the institution's activities in general. An institution should incorporate a process for identifying lessons learned from the accountability mechanism, implementing improvements, and monitoring progress to avoid future harm and unsustainable projects. There should also be a monitoring and evaluation process of the mechanism itself to verify that it is fully carrying out best practices.

In addition to the UNGP effectiveness criteria, U.S. government IAMs should incorporate [best practices](#) from existing IAMs at international financial institutions and development agencies.

B. All investors who contribute to harm must contribute to remedy.

Currently, when projects and investments result in unintended environmental and social harm, investors do not guarantee that those harms will be remedied. In the limited instances when investors do remedy harm, it's a result of sustained campaigns by the very individuals who were harmed. In February 2022, the UN raised attention to this remedy gap and how it undermines development banks' missions in its report, *Remedy in Development Finance*. To respond to this remedy gap, the United States should support the creation of remedy frameworks at international financial institutions and U.S. government agencies whose financing might cause harm. Below are recommendations for key elements of a remedial environment that multilateral and bilateral financiers should adopt:

1. Remedy must be built into the planning process for every project.

The UN Report advocates for the “protect, respect, and remedy” framework for development finance institutions to uphold their human rights obligations and provides templates for how remedy can be embedded in every step of a project.¹

2. Institutions should implement financing mechanisms for remedy.

Any contribution to harm requires a contribution to remedy. Institutions should put financing mechanisms in place to ensure that funds are available in these circumstances. There are many financing mechanism options, including ring-fenced funds, escrow, trust funds, contingency

¹ “If commitments to remedy (including but not limited to financial compensation) are part of contingency planning from the beginning of the project cycle, this would promote more timely and granular inquiries into: (a) the likelihood and severity (scale, scope and remediability) of potential impacts; (b) the scope and effectiveness of available remedial mechanisms (including national GRMs, insurance arrangements and ring-fenced funds; (c) what remedy gaps may be foreseen; and (d) the roles that the client and bank, as appropriate, may play in filling those gaps.” (UN Report, p. 4)

funds, insurance, and guarantees and letters of credit. At a minimum an institution should set up a reserve fund.²

3. *Institutions must exercise leverage over clients to provide remedy.*

Business and Human Rights frameworks draw a distinction between causing, contributing to, and having a direct linkage to harm. Institutions typically fall into the “contributing to” or “direct linkage” categories, meaning part of their obligation under the UNGPs is to use their leverage to influence the client to stop causing the harmful impact, prevent further harm, and remediate the harm that was caused.³

4. *Institutions must engage effectively with their IAMs and adequately finance their processes and recommended outcomes.*

IAM processes must lead to remedy for affected communities. Institutions should include and ensure implementation of remedial actions in its responses to findings of noncompliance and dispute resolution agreements and should be prepared to engage with and finance processes related to IAM case processes, including dialogues and fact-finding experts.

II. What U.S. Government Financiers Need to Do to Implement Accountability Frameworks

Although the U.S. government has long been a champion for strong IAMs at multilateral development banks, U.S. government agencies financing or otherwise supporting projects that could lead to negative impacts on communities have not been subject to the same level of accountability. To strengthen accountability to local people affected by U.S.-funded projects, ensure U.S. finance meets its mission, and mitigate negative reputational impacts to the U.S. government, the NAP should include the following commitments:

A. U.S. International Development Finance Corporation (DFC)

The BUILD Act, which created the DFC, mandated that the agency have a “transparent and independent accountability mechanism.” Over two years into its existence, the DFC is still in the process of finalizing procedures for its accountability mechanism. This delay is to the disadvantage of communities affected by the DFC’s financing, who are currently unclear about how the mechanism operates. The DFC’s predecessor, the Overseas Private Investment

² “Ring-fenced funds are more likely to provide accessible, rapid, and reliable reparations and therefore deserve priority consideration in the remedial toolkit of [Development Finance Institutions (DFIs)].” (UN Report, p. 82)

³ “DFIs can build and exercise leverage through a thoroughly consulted action plan that covers remedial measures, backed by explicit remediation requirements in safeguards and legal agreements. Other options may include working with syndicated banks or other investors in the client company to pressure the client to take action, engaging with national authorities, providing incentives for bringing each project back into compliance (such as tying compliance to the prospect of repeat loans), extending closing dates and providing extended capacity support for the client, where needed.” (UN Report, p. 4)

Corporation (OPIC), had an IAM, and the DFC's IAM must build on the experience of OPIC's mechanism, as well as incorporate best practices from other mechanisms.⁴ The NAP should include the following commitments from DFC:

- Finalization of the IAM's procedures through a public consultation process;⁵
- A process for developing a separate, dedicated budget for the IAM;
- The inclusion of an external stakeholder in the selection process for IAM leadership;
- A development of a reprisal policy to address risks against those using the IAM; and
- Creation of a remedy framework

B. United States Agency for International Development (USAID)

In late 2020, Congress [directed](#) USAID to create an IAM to address “concerns about existent or potential adverse impacts, including social, environmental, and economic impacts, resulting from USAID-funded programs, projects, and activities.” Over a year later, communities affected by USAID's projects are still awaiting detailed information about the IAM. Meanwhile, allegations of harm stemming from USAID's projects continue to be [revealed](#). In April 2022, USAID announced that the IAM would be included in its [Equity Action Plan](#), stemming from President Biden's 2021 executive order on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” While this is a positive development, USAID needs to launch a consultation on the IAM's procedures immediately. **The NAP should include the following commitments from USAID concerning the IAM:**

- Finalization of the IAM's procedures through a public consultation process;⁶
- Independent staff on the agency level for the mechanism and sufficient resources to ensure its effective operation;
- A commitment to effective outreach to project-affected communities; and
- Creation of a remedy framework

C. U.S. Export-Import Bank (EXIM)

⁴ In 2021, we and our partners conducted an [analysis](#) of the procedures of OPIC's IAM and the new DFC IAM resolution against best practices at other IAMs. Our analysis highlights key areas of improvement for the new DFC IAM procedures.

⁵ We are calling on DFC to launch the consultation on the IAM before the finalization of the NAP. This consultation process should include all relevant documents for the IAM. The consultation process should include a 60-day public comment period that is advertised on the Federal Register as well as in-person and/or virtual consultations. Drafts of the IAM's documents should be disclosed as a part of the consultation. The DFC should publish a matrix or document that includes which recommendations were or were not implemented and why.

⁶ As with DFC, USAID should launch the consultation on the IAM before the finalization of the NAP and should include a 60-day public comment period that is advertised on the Federal Register as well as in-person and/or virtual consultations. Drafts of the IAM's documents should be disclosed as a part of the consultation. USAID should publish a matrix or document that includes which recommendations were or were not implemented and why.

The UN has [recommended](#) that export credit agencies “ensure that they have effective complaints mechanisms and that such mechanisms are readily accessible by affected parties, rights holders and communities.” In its 2015 [report](#) on the Sasan Coal Plant project in India, which has been connected to several community and worker deaths, the EXIM Inspector General acknowledged that EXIM did not have a process to address complaints from project affected-communities and recommended that it create one.

In 2016, EXIM created the Environmental and Social Project Information and Concerns portal. Unfortunately, this portal does not include key features of an accountability mechanism, such as a compliance review or dispute resolution function. It has been over five years since EXIM created its online complaint portal. **In keeping with best practices with accountability mechanisms, the NAP should include a commitment from EXIM to hold public consultations on its current process, with the objective of creating a mechanism that is in line with international best practices. Additionally, EXIM should create a remedy framework to ensure that it can effectively address impacts to communities.**

D. Power Africa

Power Africa is the U.S. government’s flagship electrification initiative in Africa. Although energy projects are the [second-most](#) complained about sector in Africa at existing IAMs, Power Africa does not have a grievance process where communities can raise concerns about initiatives that it supports. While some Power Africa partners or cooperating agencies, like DFC, have IAMs, not all Power Africa partners do, leaving an accountability gap that affects communities impacted by Power Africa-supported projects’ ability to raise concerns about these projects. **The NAP should include a commitment from Power Africa to create an IAM through a public consultation process.**

III. What the USG needs to support for International Financial Institutions to have adequate accountability frameworks.

The U.S. should continue its commitment to strong accountability at international financial institutions. U.S. Treasury must use its voice and vote at multilateral development banks (MDBs) to prioritize and champion remedy for environmental and social harm. At a minimum, the U.S. should require banks to establish reserve funds and to remediate issues identified through an accountability mechanism process. The International Finance Corporation (IFC) is currently working on a [proposal](#) for a remedial framework, and **the NAP should include commitments from Treasury to advocate for the IFC and other MDBs⁷ to adopt remedial frameworks that include at a minimum: (1) mechanisms for funding remedial action, including a reserve fund; (2) a commitment to and plan for remedial actions in response to**

⁷ These institutions include the World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, and Inter-American Development Bank.

accountability mechanism findings of noncompliance and related to the dispute resolution process; and (3) a commitment to and plan for providing remedy in situations in which an institution’s financial interest has ended.

The NAP should also include a commitment to advocate for the strengthening of IAMs that are undergoing reviews. The Asian Development Bank is expected to review its IAM in the next few years, and **the NAP should include a commitment by Treasury to push for a comprehensive review that results in the strengthening of the IAM.**

IV. What the USG Needs to do to strengthen corporate accountability frameworks.

A. U.S. National Contact Point

Given the reach of U.S. multinational enterprises and the reality that companies are causing or contributing to harm around the world, it’s crucial for the U.S. National Contact Point⁸ (NCP) to be as strong as possible. It is one of the only avenues available to communities to raise concerns about BHR harms tied to U.S. companies.

Evaluation of the NCP system as a whole has shown that NCPs are failing in facilitating remedy for [communities](#). In 2011, the OECD instituted the NCP peer review system to heighten the performance of the NCPs. We [participated](#) in the consultation process for the 2017 peer review of the U.S. NCP, including by submitting written feedback and participating in stakeholder meetings with the NCP peer review team. Although the peer review report was published in 2019, it remains unclear which steps have been taken to implement the report’s recommendations. Additionally, the U.S. NCP’s current procedures, which were last updated in November 2011, are out of date and fall far short of [best practice](#). The procedures should be updated, with a focus on instituting policies and practices that would help make the U.S. NCP an effective forum through which affected communities can secure remedy. Now is the time to ensure that the peer review report and civil society’s recommendations are fully implemented. **The State Department should make the following commitments in the NAP concerning the U.S. NCP:**

- Provide a public update on the implementation of the recommendations stemming from the 2017 peer review, including recommendations from civil society and labor groups;
- Reconstitute the Stakeholder Advisory Board;
- Relocate under the Bureau of Democracy, Human Rights, and Labor, which has the reputation of having more insight into sensitive human rights issues and less perception of “stakeholder capture” by business;

⁸ Although we are including the NCP in the private sector recommendations, we recognize that the term multinational enterprise is broad under the OECD Guidelines for Multinational Enterprises and could allow for NCP complaints to be filed against governmental and nonprofit entities.

- As a part of its outreach to businesses, encourage businesses to disseminate information about the NCP to relevant stakeholders;
- Develop an explicit policy on assessing and mitigating reprisal and security risks to complainants;
- Initiate a public review process to update the NCP's procedures and bring them in line with best practice, including revisions that would ensure that the NCP:
 - Includes all relevant documents and decisions in the public registry, including all initial assessments and complaints;
 - Prioritizes transparency except in specific, well-defined circumstances in which confidentiality is necessary, such as for legitimate security, privacy, or sensitive business information reasons or to preserve the confidentiality of documents shared and discussions had during the good offices stage;
 - Makes findings of fact or determinations of whether an enterprise has breached the OECD Guidelines and issues recommendations to bring an enterprise into compliance with the Guidelines when they have been breached;
 - Monitors to ensure that parties adhere to mediated agreements and/or implement recommendations; and
 - Issues sanctions, such as prohibiting federal contracting with or withdrawing support for companies in their overseas operations, for enterprises that are deemed to be in breach of the OECD Guidelines or who do not constructively engage in the NCP process.

B. Regulation of ESG and Impact Investing

1. Issues with ESG and Impact Investments:

A proliferation of ESG-, Impact-, Sustainable-, and Responsible-labeled funds have exploded in popularity in recent years, hitting trillions of dollars in assets under management last year. These funds have become the fastest growing sector of financial services, driven by marketing claims that these types of investments are a way for investors to align their money with their values. However, there are many documented instances that funds carrying these labels do not have the necessary governance and accountability mechanisms in place to make good on their commitments.⁹ Standardization and regulation is therefore needed across the field to prevent both fraudulent and misleading marketing, as well as harm to communities impacted by mislabeled investment projects.

Moreover, systemic flaws within the ESG research, ratings and investment industry converge to create a system that undermines efforts to hold companies accountable for breaching their human rights responsibilities under the UN Guiding Principles and OECD Guidelines for Multinational

⁹ See, for instance, [a recent investigation](#) published by Inclusive Development International that documents \$13.4 billion worth of ESG-labeled investments in companies that have funded, equipped or otherwise enabled Myanmar's military regime.

Enterprises. High ESG ratings and the inclusion of companies in ESG-labeled indexes distort the human rights due diligence processes of investors and obfuscate salient adverse human rights impacts caused by those companies' operations. As a result, when a company implicated in human rights abuses is given a high ESG rating and included in ESG-labeled indexes and funds, investors and lenders are less likely to use their leverage over the company to prevent, mitigate and remediate harms. This undercuts the ability of communities and human rights defenders to secure remediation for corporate abuses, thereby undermining adherence to the UNGPs. Unduly high ESG ratings not only shield companies from pressure from investors to address human rights impacts, but they reward potentially rights-abusing companies, by channeling an immense and growing amount of "ESG" capital to companies under false pretenses, rather than rewarding and encouraging genuine responsible business conduct. .

2. Recommendations to Better Govern ESG and Impact Investments

The recent regulatory measures by the SEC to prevent mis-labeling of funds¹⁰ and counter "greenwashing" by establishing new disclosure requirements for ESG-labeled funds¹¹ are welcome. However, these measures must be the first step in a broader taxonomy and enforcement effort which seeks to define ESG and ensure that companies implicated in serious human rights abuses are not included in ESG-labeled investment indexes and funds. **To this end, the NAP should include commitments for the regulation and reform of the ESG ratings industry to end false labeling and ensure that ESG ratings and the investment products tied to them are aligned with international human rights standards. The SEC should develop a consistent framework aligned with international human rights standards for corporate ESG disclosures and external ESG ratings that form the basis for ESG-labeled investment products.**

A fundamental flaw of the ESG ratings industry is the emphasis on financial materiality. The ratings that predominantly form the basis of ESG-labeled products (ratings produced by firms including MSCI, FTSE Russell and S&P Dow Jones) do not measure the impact of a company's practices on human rights or the planet, but rather the impact that ESG-related risks may have on a company's profitability. This emphasis on financial materiality directly contradicts how ESG products are marketed to investors and the general public. **To address this concern, the NAP should require that all regulatory and legislative initiatives related to ESG investing adopt standards based on the concept of "double materiality."**

Additionally, our extensive research documents an over-reliance on company self-reporting or policies and procedures as the basis for ESG ratings, without any reliable system to capture outcomes or company performance with respect to ESG issues. The industry lacks a system to gather and verify data on company performance on the ground. **To address this, the NAP should require that human rights-related ESG reporting standards must aim to capture actual human rights risks and impacts and be subject to a robust and regulated audit and assurance framework. The NAP should also urge the SEC to adopt such standards and incorporate into law penalties on companies and auditors that make false or misleading statements on ESG performance.**

¹⁰ <https://www.sec.gov/news/press-release/2022-91>.

¹¹ <https://www.sec.gov/news/press-release/2022-92>.

Further, the current dominant approach to rating, which amalgamates Environmental, Social, and Governance scores to create a single score or rating, often obfuscates salient human rights and environmental impacts. Under the current dominant methodology, human rights risks and impacts such as forced labor may be easily outweighed by unrelated factors, such as recycling initiatives or carbon emissions policies. This approach is not in line with international human rights standards. For this reason, **the NAP should include requirements for SEC to prohibit the use of aggregated ESG ratings as a basis for ESG-labeled investments.**

Finally, **ESG and impact fund managers should be required by an appropriate regulatory authority to establish effective human rights grievance mechanisms to provide a channel for stakeholders to report allegations of human rights abuses caused by companies in their portfolios.** Fund managers should take reasonable steps to assess such allegations, use their leverage to prevent and address human rights impacts, and, where the portfolio company refuses to act consistently with its UNGP responsibilities, remove the company from the fund. Further, investors should be required to report on effective governance and accountability mechanisms to monitor and manage for intended and unintended impacts of investments.¹²

We urge the State Department to consider the importance of ensuring that ESG ratings are consistent with, and do not undermine, international human rights standards and the responsibilities of all business enterprises, including ESG ratings providers, under the UN Guiding Principles, and **integrate the above recommendations in the NAP.**

Conclusion and Contact Information

Without committing to creating an enabling environment for accountability and remedy for business and human rights harms, the revised NAP risks being an ineffective document. We stand ready and available to discuss the implementation of the above recommendations to ensure that all U.S. money that might harm individuals or the environment has an effective accountability framework.

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Inclusive Development International

¹² International governance and accountability standards to guide such regulation exist, including but not limited to: (1) UNDP SDG Impact Standards for Private Equity Funds, Bonds, and Enterprises; (2) OECD-UNDP Impact Standards for Financing Sustainable Development; (3) World Economic Forum/International Business Council Stakeholder Capital Metrics; (4) Global Reporting Initiative Universal Standards for Sustainability Reporting; (5) Equator Principles for determining, assessing, and managing environmental and social risk in projects; (6) UN Principles for Responsible Investment; (7) IFC Operating Principles for Impact Management; and (8) the emerging International Sustainability Standards by the International Financial and Reporting Standards (IFRS) Foundation.

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Table of Recommendations

| <u>Agency</u> | <u>Recommendations</u> |
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| U.S. International Development Finance Corporation (DFC) | <ul style="list-style-type: none"> ● Finalization of the IAM’s procedures through a public consultation process; ● A process for developing a separate, dedicated budget for the IAM; ● The inclusion of an external stakeholder in the selection process for IAM leadership; ● A development of a reprisal policy to address risks against those using the IAM; and ● Creation of a remedy framework |
| United States Agency for International Development (USAID) | <ul style="list-style-type: none"> ● Finalization of the IAM’s procedures through a public consultation process; ● Independent staff on the agency level for the mechanism and sufficient resources to ensure its effective operation; ● A commitment to effective outreach to project-affected communities; and ● Creation of a remedy framework. |
| U.S. Export-Import Bank (EXIM) | <ul style="list-style-type: none"> ● Public consultations on its current grievance process, with the objective of creating a mechanism that is in line with international best practices; and ● Creation of a remedy framework. |
| Power Africa | <ul style="list-style-type: none"> ● Creation of an IAM through a public consultation process. |

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| <p>Treasury - Multilateral Development Banks</p> | <ul style="list-style-type: none"> ● Advocate for the IFC and other MDBs to adopt remedial frameworks that include at a minimum: (1) mechanisms for funding remedial action, including a reserve fund; (2) a commitment to and plan for remedial actions in response to accountability mechanism findings of noncompliance and related to the dispute resolution process; and (3) a commitment to and plan for providing remedy in situations in which an institution’s financial interest has ended; and ● Advocate for a comprehensive review at the Asian Development Bank that results in the strengthening of the IAM. |
| <p>State Department - U.S. National Contact Point (U.S. NCP)</p> | <ul style="list-style-type: none"> ● Provide a public update on the implementation of the recommendations stemming from the 2017 peer review, including recommendations from civil society and labor groups; ● Reinstitute the Stakeholder Advisory Board; ● Relocate under the Bureau of Democracy, Human Rights, and Labor; ● Encourage businesses to disseminate information about the NCP to relevant stakeholders; ● Develop an explicit policy on assessing and mitigating reprisal and security risks to complainants; ● Initiate a public review process to update the NCP’s procedures and bring them in line with best practice, including revisions that would ensure that the NCP: |

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| | <ul style="list-style-type: none">○ Includes all relevant documents and decisions in the public registry, including all initial assessments and complaints;○ Prioritizes transparency except in specific, well-defined circumstances in which confidentiality is necessary, such as for legitimate security, privacy, or sensitive business information reasons or to preserve the confidentiality of documents shared and discussions had during the good offices stage;○ Makes findings of fact or determinations of whether an enterprise has breached the OECD Guidelines and issues recommendations to bring an enterprise into compliance with the Guidelines when they have been breached;○ Monitors to ensure that parties adhere to mediated agreements and/or implement recommendations; and○ Issues sanctions, such as prohibiting federal contracting with or withdrawing support for companies in their overseas operations, for enterprises that are deemed to be in breach of the OECD Guidelines or who do not constructively engage in the NCP process. |
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Securities and Exchange Commission &
Other Agencies Governing ESG and Impact
Investments

- Regulate and reform the ESG ratings industry to end false labeling and ensure that ESG ratings and the investment products tied to them are aligned with international human rights standards;
- Develop a consistent framework aligned with international human rights standards for corporate ESG disclosures and external ESG ratings that form the basis for ESG-labeled investment products (SEC);
- Require that all regulatory and legislative initiatives related to ESG investing adopt standards based on the concept of “double materiality”;
- Require that human rights-related ESG reporting standards must aim to capture actual human rights risks and impacts, and be subject to a robust and regulated audit and assurance framework;
- Adopt human rights-related ESG reporting standards and incorporate into law penalties on companies and auditors that make false or misleading statements on ESG performance (SEC);
- Prohibit the use of aggregated ESG ratings as a basis for ESG-labeled investment (SEC);
- Require ESG and impact fund managers to establish effective human rights grievance mechanisms to provide a channel for stakeholders to report allegations of human rights abuses caused by companies in their portfolios; and
- Ensure that ESG ratings are consistent with, and do not undermine, international human rights standards and the responsibilities of all business enterprises, including ESG ratings providers, under the UN Guiding Principles.