



## U.S. National Action Plan on Business & Human Rights Review

Written Comments From The New York City Bar Association<sup>1</sup>

31 May 2022

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### <sup>1</sup> About the Association

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

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## I. INTRODUCTION

1. The New York City Bar Association (“**NYCBA**”) submits these written comments for U.S. government agencies to review when developing the updated National Action Plan (“**NAP**”) on Responsible Business Conduct (“**RBC**”). In this submission, we will use the term RBC as it is defined in the U.S. government’s Federal Register Notice on the NAP.<sup>2</sup> Where appropriate, we will also employ the term “Business and Human Rights” (“**BHR**”), which the U.S. government recognizes as being closely inter-linked with the concept of RBC.
2. The NYCBA was founded in 1870 and is a voluntary association of approximately 24,000 lawyers and law students whose mission is to equip and mobilize a diverse legal profession to practice with excellence, promote legal reform, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.
3. The Vance Center is a program of the Association of the Bar of the City of New York Fund, a non-profit affiliate of the NYCBA. The Vance Center advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession. It brings together leading law firms and other partners worldwide to pioneer international justice initiatives, provide pro bono legal representation to social justice NGOs, and strengthen the ethical practices of the legal profession.
4. In 2015, the Vance Center’s Human Rights and Access to Justice Program launched a Business and Human Rights Initiative (“**the BHR Initiative**”), grounded in the U.N. Guiding Principles on Business and Human Rights (the “**UNGPs**”). A key focus of the BHR Initiative has been to educate legal professionals on RBC.
5. Additionally, the Vance Center’s BHR Initiative informed the establishment of the NYCBA’s Business and Human Rights Working Group in August 2019 (the “**Working Group**”).<sup>3</sup> The Working Group’s activities have led to the NYCBA endorsing the UNGPs and the Organization of Economic Cooperation and Development (“**OECD**”) Guidelines for Multinational Enterprises (“**OECD Guidelines**”), as well as engagement with the legal profession on a number of BHR subjects, including human rights and the environment and digital rights. The Working Group is composed of a range of legal experts, including private practitioners, academics, in-house counsel, and representatives from several NYCBA standing committees.<sup>4</sup> In 2021, the Working Group has, among other activities:
  - (i) developed a position statement on the Application of the Business Responsibility to

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<sup>2</sup> <https://www.state.gov/responsible-business-conduct-national-action-plan/>. The U.S. government has defined RBC as a “broad concept based on the idea that businesses can perform well while doing good, and that governments should create and facilitate the conditions for it to take place. The principles underlying this concept are encompassed in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.” All websites were last accessed on 31 May 2022.

<sup>3</sup> <https://www.nycbar.org/member-and-career-services/committees/business-and-human-rights-working-group>.

<sup>4</sup> <https://www.nycbar.org/member-and-career-services/committees/business-and-human-rights-working-group>.

Respect Human Rights to Environmental Human Rights Abuses;<sup>5</sup> and (ii) drafted a memorandum on the UN Global Compact recommending that the NYCBA join the Global Compact, a suggestion that was recently approved by the NYCBA. More information about the Vance Center and the Working Group may be found in **Appendix I**.

6. K&S is an international law firm that provides a range of legal services to its clients, which include the Vance Center. K&S specializes in BHR, ESG, and global human capital and compliance. More information about K&S' BHR practice may be found in **Appendix II**.
7. The NYCBA submits these comments with the foremost goal that the U.S. NAP recognize the critical role that lawyers, and bar associations play in the promotion and enforcement of RBC best practices in the United States and abroad. The U.S. NAP should therefore address the ways in which the U.S. government can engage both lawyers and state and regional bar associations across the Country, as well as overseas, to implement the goals of the U.S. NAP. As the bar association of New York City, which is the most populous city in the United States and a leading center for finance, commerce, and law, the NYCBA is well-positioned to advise the U.S. government on how the U.S. NAP can activate and involve lawyers and bar associations as champions for RBC best practices. The recent activities of the NYCBA's Working Group on BHR, in particular, on the OECD Guidelines and the UNGPs, can inform the U.S. government on how to achieve this objective and we hope to share our learned experiences with the government through this submission.
8. As a bar association committed to enhancing the United States' ability to offer sufficient remedies to human rights claimants—especially those who have suffered adverse impacts from U.S.-related companies' business practices either at home or abroad—the NYCBA also offers recommendations on ways the U.S. can provide better access to remedies. As we explain in the following sections, better access to remedies can be facilitated, *inter alia*, through state-level legislation, federal legislation, and/or through the U.S. National Contact Point (“NCP”) housed within the United States' Department of State (“DoS”).

## II. PROPOSED REFORMS

9. We have divided our written comments into two related categories. The first category explains why we believe the legal profession should be engaged with and consulted during the development and enforcement of BHR. We provide specific recommendations in this first category on how the U.S. NAP may achieve this objective by providing guidance and training on RBC to members of the legal profession, as well as consulting with them, through bar associations and/or other forums.

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<sup>5</sup> <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/business-responsibility-to-respect-human-rights>.

10. The second category focuses on how the U.S. NAP may further engage members of the legal profession by reforming the U.S. NCP for the OECD Guidelines. The recommendations in this category focus on procedural and substantive modifications to the U.S. NCP as well as publicizing its role in enforcing the OECD Guidelines. These reforms will further advance RBC as companies, and their legal counsel (both in-house and external), understand the importance of access to remedies and other services offered by the U.S. NCP.
11. We understand that the revised NAP will build upon the previous framework established in the First National Action Plan on Responsible Business Conduct promulgated in 2016.<sup>6</sup> Accordingly, where possible, we have organized our comments within the five categories of action identified in the 2016 NAP.<sup>7</sup>
  - a. Reforms Regarding Collaboration with Stakeholders (Action Plan Goal #2)
12. Goal #2 of the 2016 U.S. NAP focuses on “collaborating with non-governmental stakeholders to build trust, develop common objectives, identify good practices, resolve issues, and facilitate learning.”<sup>8</sup> We agree that there should be more collaboration with stakeholders generally. Specifically, we recommend that the U.S. NAP be updated to include collaboration with bar associations and members of the legal profession to achieve RBC, and that details should be set forth in the U.S. NAP regarding how such collaboration will be achieved.
  - i. The U.S. Government Should Develop Guidance and Training on Best Practices in Consultation with Bar Associations and Members of the Legal Profession
13. The U.S. NAP has an incomplete focus on developing best practices through guidance and training. For example, in Action Plan Goal #3, “Facilitating RBC by Companies,”<sup>9</sup> the U.S. NAP identifies training on RBC for a number of governmental entities, including U.S. embassies, U.S. AID, and U.S.-related companies. We recommend that training be updated to include RBC training for members of the legal profession in the public and private sectors, which could be facilitated through national, state, and local bar associations.
14. The NYCBA has a specific interest in such collaboration for two reasons. First, the NYCBA can provide expertise to U.S. government agencies regarding RBC. New York City is a hub for global business. Consequently, some lawyers in New York City have already developed expertise in the field of RBC, regularly providing legal counsel to manage adverse impacts of business operations on human rights, labor rights, the environment, and anti-corruption. The NYCBA and its members are therefore well-

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<sup>6</sup> U.S. First National Action Plan on RBC, 16 December 2016 (“U.S. NAP 2016”), available at <https://globalnaps.org/country/usa/>.

<sup>7</sup> U.S. NAP 2016, p. 6.

<sup>8</sup> U.S. NAP 2016, pp. 6, 13.

<sup>9</sup> U.S. NAP 2016, pp. 6, 17.

positioned to assist the U.S. government in shaping guidance and training on best practices in advancing RBC.

15. We understand that the United States could seek stakeholder input in its renewed participation in meetings of the U.N. Human Rights Council, the U.N. Office of the High Commissioner for Human Rights in Geneva, and the U.N. Working Group on Transnational Corporations and Other Enterprises. Bar associations such as the NYCBA have specific expertise to provide to the U.S. government as it engages in this work through the U.S. Mission to international organizations in Geneva.<sup>10</sup> Such collaboration between bar associations, law firms, and the U.S. Mission in Geneva could be facilitated more easily than ever before through virtual conferencing technology.
16. Second, the NYCBA can assist the U.S. government with the training of the many members of the legal profession who lack substantive familiarity with RBC. The NAPs on RBC of other countries such as France and Switzerland place considerable emphasis on governments' work to advance knowledge of RBC best practices, the UNGPs, the OECD Guidelines, and other leading BHR soft law instruments.<sup>11</sup> There is no reason why the U.S. government, in accordance with the 2016 NAP Goal #1, "Leading By Example," should not pioneer similar training programs.
17. Many U.S. attorneys, whether engaged in corporate practice, litigation, or regulatory affairs, do not have exposure to the UNGPs, the OECD Guidelines, or other core international instruments on BHR. Few U.S. law schools offer core courses on RBC, BHR, the UNGPs, or the OECD Guidelines. Many U.S. lawyers are therefore ill-equipped to assist their clients, either in circumstances that are wholly domestic or that involve foreign actors, in complying with RBC best practices and in taking identification, management, and mitigation efforts.
18. To facilitate voluntary efforts as well as legal compliance with RBC best practices, members of the legal profession should have access to guidance and training to better advise clients on evolving laws, regulations, and norms. It would thus be advisable for the U.S. government not only to offer in-person training programs and to engage in robust and active advocacy to American attorneys, but also to offer online training (such as through recorded webinars).
19. U.S.-based bar associations could play a role in developing and facilitating awareness of such training programs.

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<sup>10</sup> <https://geneva.usmission.gov/>.

<sup>11</sup> France NAP, 26 April 2017, available at <https://globalnaps.org/country/france/>; Switzerland NAP, 15 January 2020, available at <https://globalnaps.org/country/switzerland/>.

- ii. The U.S. Government Should Support Bar Associations and Human Rights Advocates Abroad to Promote RBC Within Their Own Jurisdictions
20. The NYCBA believes strongly in collaborating with bar associations all over the world to develop the rule of law, including the development and enforcement of RBC. Accordingly, we recommend that the U.S. NAP include a commitment to outreach by the U.S. government to foreign bar associations. Foreign bar associations are crucial allies in the promotion and implementation of RBC best practices worldwide, especially in jurisdictions where these concepts may not be as widespread or respected as in the United States. Forms of support could include exchange and peer learning programs between and among the U.S. government, U.S. bar associations, and foreign bar associations.
21. The NYCBA and other national, state, and local bar associations would be able to facilitate such exchanges and trainings given that they already network with different foreign bar associations.
22. The NYCBA has already conducted such exchanges with foreign bar associations (and, in turn, members of the legal profession who practice outside the United States). For example, the Vance Center organized a program in 2021 titled “*Bar Associations and the Business and Human Rights Agenda: A Regional Vision 10 years after the Guiding Principles.*”<sup>12</sup> The program was promulgated as part of the United Nations VI Regional Forum on Business and Human Rights in Latin America and the Caribbean. The program brought together more than a dozen bar associations from Latin America and the Caribbean for dialogue with the Vance Center and focused on: a) the role of lawyers in the implementation of the UNGPs; b) the intersection between the UNGPs and the ethical responsibility of lawyers; c) the role of bar associations; and d) the experience of bar associations that have adopted the UNGPs. The program concluded with a discussion among the bar association representatives on how these organizations can lead in the implementation of the UNGPs in the region. U.S.-based bar associations could play a key role in supporting the U.S. government in collaborating with foreign bar associations, which will overall promote RBC.
23. U.S.-based bar associations could also play a key role in supporting the U.S. government’s collaboration with foreign NGOs working on RBC, international human rights law (“**IHRL**”), and the rule of law. As is the case in the United States, many foreign lawyers work in NGOs that enforce RBC through human rights advocacy before local courts or tribunals. The U.S. government should support these NGOs in their efforts to implement best RBC practices.
24. The NYCBA has already conducted such exchanges with foreign lawyers and organizations. For example, in 2018, the Vance Center participated in a workshop in Port-

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<sup>12</sup> “Vance Center leads Latin American and Caribbean Bar Association Discussion on Business and Human Rights”, October 2021, available at <https://www.vancecenter.org/human-rights-bhr-forum/>.



au-Prince, Haiti on “*Business and Human Rights: A Role for Alternative Dispute Resolution Mechanisms?*” The workshop was part of the first International Forum on Arbitration in Haiti hosted by the Chamber for Conciliation and Arbitration of Haiti (CCAH by its French acronym).<sup>13</sup> The workshop included an overview of the evolution and growth of the concept of BHR, including the UNGPs, and a discussion of the potential role of alternative dispute resolution mechanisms, in particular international arbitration, in solving BHR disputes. The workshop particularly focused on the example of the recently-settled duo of arbitrations under the Bangladesh Accord on Fire and Building Safety. The Vance Center encouraged workshop participants to become involved in shaping the BHR agenda, including by interacting with the U.N. Working Group on Business and Human Rights and the negotiations towards a binding treaty on BHR taking place at the United Nations in Geneva.

25. More than twenty participants attended the two-hour workshop, including lawyers, judges, and representatives of the business sector. Participants raised many questions on the application of the UNGPs to the Haitian context. The workshop represented part of a larger effort by Haitians, with the support of partners like the Vance Center, to improve access to justice and the rule of law in Haiti, so that economic development does not come at the expense of human rights and social cohesion. The U.S. government should organize similar workshops overseas, and commit to doing so in the NAP, either jointly or with support from U.S. bar associations such as the NYCBA.
26. The United States should also encourage partner countries in Europe, Latin America, Asia, the Middle East and in other regions of the world to draft their own NAPs on RBC if they have not yet done so. Other peer governments have undertaken efforts to encourage their allies to draft NAPs on RBC with a significant degree of success. For instance, the U.K. government established a “strong collaborative partnership” with the Colombian government and supported the drafting of the Colombian NAP. Colombia became the first non-EU state to draft and complete a NAP on RBC in December 2015.<sup>14</sup> The U.K. government also “advised and encouraged” the development of NAPs on RBC in Malaysia, South Korea, and a number of EU Member States.<sup>15</sup> By establishing similar partnerships with the foreign ministries (or whatever appropriate governmental entity has been afforded responsibility in the foreign country for drafting the NAP), the United States can implement Action Plan Goal #1 (“Leading By Example”) and encourage other countries to draft their own NAPs to implement and strengthen RBC best practices. Such action would contribute to creating a level playing field for American companies operating abroad that the NAP seeks to promote.

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<sup>13</sup> “Vance Center Organizes Workshop on Business and Human Rights in Haiti”, April 2018, available <https://www.vancecenter.org/wp-content/uploads/2020/01/March-2018.pdf>.

<sup>14</sup> Colombia NAP, December 2015, available at <https://globalnaps.org/country/colombia/>.

<sup>15</sup> U.K. NAP, May 2016, PDF p. 12, ¶17(viii), available at <https://globalnaps.org/wp-content/uploads/2017/11/uk-2016.pdf>.

- iii. The US Government Should Increase its Participation in International Efforts to Promote RBC Including with the OHCHR and the U.N. Council on Human Rights

27. As a bar association committed to U.S. leadership on RBC, IHRL and the rule of law, we applaud the United States' participation in the Universal Periodic Review (“UPR”) process of the U.N. Council on Human Rights and its welcoming of the OHCHR Special Rapporteurs for visits to the United States. Especially important to the fulfillment of the 2016 U.S. NAP’s Goals #s 1 (“Leading by Example”) & 3 (“Facilitating RBC by Companies”) is the work of the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) Special Rapporteur on trafficking in persons.<sup>16</sup> The Special Rapporteur on trafficking in persons last delivered a report on the United States to the U.N. Human Rights Council in June 2017. The United States government should consider the recommendation of the Special Rapporteur that the U.S. executive and legislative branches take concrete action to extend labor protections provided under the Migrant and Seasonal Agricultural Work Protection Act to temporary and seasonal agricultural workers. Another positive step for promotion of RBC domestically would be extending the protections of the National Labor Relations Act (“NLRA”) to public sector employees at the federal and state levels and to agricultural and domestic workers. The Special Rapporteur has observed that this omission from the NLRA prevents workers from collectively organizing to demand improved working conditions; moreover, the exclusion of lawfully present immigrants from Medicaid for a five-year waiting period, with the exception of critical and urgent care, also increases the vulnerability of temporary agricultural workers and their family members to human trafficking. These gaps could and should be remedied through appropriate Congressional and/or Executive Branch action.

28. At a minimum, the U.S. government should continue to work with the OHCHR and the UN Human Rights Council to welcome the Special Rapporteurs into the United States for country visits and monitoring. The U.S. government should also deliver, in accordance with the request of the U.N. High Commissioner for Human Rights, a mid-term report in 2023 to the OHCHR discussing United States' implementation of the UPR Working Group's recommendations from its third-cycle report, which was delivered to the United States in 2021.<sup>17</sup>

- iv. The NAP Should Cover Access to Remedies and the U.S. Government Should Consult with Bar Associations and Members of the Legal

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<sup>16</sup> OHCHR Report of the Special Rapporteur on trafficking in persons, especially women and children on her mission to the United States of America, A/HRC/35/37/Add.2, available at <https://www.ohchr.org/en/documents/country-reports/ahrc3537add2-report-special-rapporteur-trafficking-persons-especially>.

<sup>17</sup> OHCHR Letter to United States Secretary of State, Anthony Blinken Jr, 17 May 2021, p. 2.

## Profession to Identify Best Practices to Strengthen and Identify Effective Remedies

29. The NAP is meant to be a governmental policy strategy to protect against adverse human rights impacts by business enterprises. The UN Working Group on BHR advises that such governmental policies must be founded on the UNGPs, reflect States' duties under IHRL to protect individuals from adverse business-related human rights impacts, and provide access to remedies.<sup>18</sup>
30. As a bar association that endorses the UNGPs,<sup>19</sup> we believe the NAP should follow the “protect, respect, and remedy framework” set forth in those principles. The U.S. NAP should identify existing remedy mechanisms available to human rights claimants for violations of BHR in the United States and commit the United States to creating new remedy mechanisms and strengthening those that already exist where appropriate.
31. This is the best practice taken by other leading countries in their NAPs. For instance, the U.K.'s updated 2016 NAP discusses several grievance mechanisms available to human rights claimants within the U.K., including (a) employment tribunals; (2) civil law claims before U.K. courts; and (3) criminal law provisions, including under the Bribery Act 2010, Modern Slavery Act 2015, and Serious Crime Act 2007, all of which may legally sanction MNEs engaged in human rights violations.<sup>20</sup> The U.K. NAP also explains the availability of several “non-state” grievance mechanisms to human rights claimants, notably (a) the U.K. NCP; (b) the Equality and Human Rights Commission;<sup>21</sup> and (c) government complaints offices at the Health and Safety Executive, Financial Conduct Authority, and Financial Ombudsman Services.
32. Likewise, the German NAP advises companies operating both within Germany and in foreign jurisdictions to focus “first and foremost on developing remedial measures.”<sup>22</sup> The German NAP lists a number of civil remedies available to human rights claimants in Germany, including the Regulatory Offenses Act, which allows claimants to bring suits against German companies for violations of human rights.<sup>23</sup> Under the Regulatory Offenses

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<sup>18</sup> Guidance on National Action Plans on Business and Human Rights, U.N. Working Group on Business and Human Rights, Executive Summary, November 2016, p. i, available at [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

<sup>19</sup> Policy Statement of the New York City Bar Associations, Business and Human Rights Working Group, June 2020, available at [http://documents.nycbar.org/files/Working\\_Group\\_on\\_Business\\_and\\_Human\\_Rights\\_Policy\\_Statement.pdf](http://documents.nycbar.org/files/Working_Group_on_Business_and_Human_Rights_Policy_Statement.pdf).

<sup>20</sup> U.K. NAP, May 2016, PDF p. 23.

<sup>21</sup> The U.K. NAP explains that the commission “monitors and promotes human rights compliance and can conduct inquiries.” U.K. Updated NAP, May 2016, PDF p. 23. For instance, the commission has conducted inquiries into the meat and poultry processing and home care industries.

<sup>22</sup> Germany NAP, 2016-2020, p. 9, PDF p. 11, available at <https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>.

<sup>23</sup> Germany NAP, 2016-2020, p. 24, PDF p. 26, available at <https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>.

Act, companies may be fined up to EUR 10 million and higher fines may be imposed according to the judge's discretion.

33. Accordingly, the U.S. NAP should detail existing remedies for BHR victims in the United States. This listing should be comprehensive, including federal and state laws.
34. Additionally, in furthering 2016 NAP Goal #4 (“Recognising Positive Performance”)<sup>24</sup>, the U.S. NAP should encourage legislative debate and developments at the state level.
35. For example, the New York State legislature is currently considering the Fashion Sustainability and Social Accountability Act (“**the Act**”), which, if passed, would require retail sellers and manufacturers incorporated in or doing business in the state of New York to disclose environmental and social due diligence policies.<sup>25</sup> The Act explicitly references the OECD Guidelines and their standards for corporate due diligence, the UNGPs, and ILO Declaration on Fundamental Principles and Rights at Work.<sup>26</sup> In its current form, the Act provides that if fashion retail sellers and fashion manufacturers do not comply with their disclosure and due diligence obligations under the Act, New York State may fine them up to 2% of annual revenues or \$450 million, whichever sum is larger.<sup>27</sup> Any proceeds recovered from such fines are to be placed into a community benefit fund by New York State, which would be used to fund appropriate projects. The Act also authorizes the New York State Attorney General to bring legal proceedings for injunctions, monetary damages, or other sanctions against non-compliant companies.
36. As another example, SB 62 in California, which was passed into law on 1 January 2022, requires employers in the California garment industry to pay workers an hourly minimum wage as opposed to a “piece-rate.”<sup>28</sup> The bill also expands the legal liability of garment industry manufacturers in California and includes provisions making manufactures liable for third-party contractors’ violations of workers’ basic rights to fair remuneration and safe working conditions.<sup>29</sup>

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<sup>24</sup> U.S. NAP 2016, pp. 6, 22.

<sup>25</sup> Jasmine Hicks, “A New York bill could bring more climate accountability to the fashion industry”, The Verge, 3 February 2022, available at <https://www.theverge.com/2022/2/3/22891874/new-york-fashion-climate-change-environment>.

<sup>26</sup> Draft Fashion Sustainability and Social Accountability Act, Assembly Bill A8352, p. 3, available at <https://www.nysenate.gov/legislation/bills/2021/A8352>.

<sup>27</sup> Draft Fashion Sustainability and Social Accountability Act, Assembly Bill A8352, p. 4, available at <https://www.nysenate.gov/legislation/bills/2021/A8352>. In its proposed approach to remedies and penalties for MNEs found in violation of RBC, the New York State draft act mirrors the 2021 German law on due diligence. See Spinaci Stedano, “Corporate sustainability due diligence: Could value chains integrate human rights and environmental concerns?”, Think Tank European Parliament, 16 May 2022, available at [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2022\)729424](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)729424).

<sup>28</sup> “Governor Newsom Signs SB 62, Senator Durazo’s Bill to Eliminate Piece Rate in Garment Industry and Hold Brands Accountable”, 27 September 2021, available at <https://sd24.senate.ca.gov/news/2021-09-27-governor-newsom-signs-sb-62-senator-durazos-bill-eliminate-piece-rate-garment>.

<sup>29</sup> Chris Micheli, “SB 62 Expands Liability on Garment Manufacturers”, California Globe, 27 September 2021, available at <https://californiaglobe.com/articles/sb-62-expands-liability-on-garment-manufacturers/>.

37. The U.S. government should consider New York and California’s legislative efforts as an opportunity for study and learning to guide the promulgation of future federal legislation on RBC and effective remedies. By facilitating dialogue with state-level elected officials and other relevant stakeholders, including bar associations, in-house counsel, NGOs, academics and other RBC advocates, the U.S. government could identify strengths and weaknesses in the existing state-based legislative approaches and remedy those gaps at the federal level.
38. The Fabric Act, a bill recently proposed by New York State Senator Kristen Gillibrand, could serve as an initial model for federal legislation and a springboard for considering how BHR practices might be supported and enforced at the federal level. The bill takes inspiration from California’s SB 62.<sup>30</sup> It would extend protections under the Fair Labor Standards Act of 1938 to ban employers from paying employees in the garment industry by piece-rate; instead, the bill would guarantee the federal minimum wage as the base rate for employees’ remuneration. Currently, the draft Fabric Act also includes a clause on joint liability, under which garment manufacturers (including licensors) as well as subcontractors would maintain joint liability for breach of the legislation, including for the payment of lost wages and additional damages, where applicable. Companies found to be in violation of the Fabric Act could face up to \$50 million in fines.<sup>31</sup>
39. In addition to identifying grievance mechanisms and laws that provide remedies to human rights claimants who may have suffered RBC violations, the U.S. NCP could be authorized to recommend human rights remedies where appropriate. We discuss this in more detail in Section II b.ii. below.
- v. As a Bar Association Committed to Advancing Human Rights Holistically, We Recommend that the NAP should Address Both Domestic and Overseas Human Rights Impacts of Business Conduct
40. According to the U.N. Working Group on BHR, a NAP must be context-specific and address the country’s actual and potential business-related human rights impacts, including within and outside the territory.<sup>32</sup> That the U.S. NAP address and recommend actions to improve RBC best practices both at home and abroad would be in accord with both the OECD Guidelines and the UNGPs. For instance, the Preface of the OECD Guidelines urges governments adhering to the Guidelines to be “committed to continuous improvement of both domestic and international policies with a view to improving the welfare and living

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<sup>30</sup> Kaley Roshitsh, “Sen. Gillibrand’s ‘Fabric Act’ Is Fashion’s Big Federal Pro-Labor, Domestic Reshoring Effort”, Yahoo! News, 13 May 2022, available at <https://news.yahoo.com/sen-gillibrand-fabric-act-fashion-181525282.html>.

<sup>31</sup> Kaley Roshitsh, “Sen. Gillibrand’s ‘Fabric Act’ Is Fashion’s Big Federal Pro-Labor, Domestic Reshoring Effort”, Yahoo! News, 13 May 2022, available at <https://news.yahoo.com/sen-gillibrand-fabric-act-fashion-181525282.html>.

<sup>32</sup> Guidance on National Action Plans on Business and Human Rights, U.N. Working Group on Business and Human Rights, Executive Summary, November 2016, p. i, available at [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

standards of all people.”<sup>33</sup> The UNGPs also encourage States to “maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives.”<sup>34</sup> Since the NYCBA and the Vance Center are committed to not only advancing the rule of law and RBC within their local community of New York City but also nationwide and internationally, we fully support the U.S. NAP’s adoption of this “dual-lens” approach. The NAP should address ways in which the United States can facilitate RBC best practices both within the United States and in foreign jurisdictions.

41. NAPs of other States such as Belgium, France, the U.K., and Switzerland address the implementation of the UNGPs, the OECD Guidelines, and RBC best practices both domestically and abroad. For example, the Belgian NAP discusses how Belgium’s different regions promulgated strict regulations on the exportation of arms, munitions, and other military equipment by Belgian corporations in the defense sector, in accordance with the 2008 Common Policy of the Belgian federal government and the EU Code of Conduct on the Exportation of Arms of 1998.<sup>35</sup> The Belgian NAP highlights how women and children may be especially negatively impacted by Belgian-related MNEs’ violations of the OECD Guidelines and the UNGPs; to mitigate gender-related injustices in these areas, Belgium has ratified and implemented two ILO conventions, specifically No. 156 on the Rights of Workers with Family Care-Giving Responsibilities<sup>36</sup> and No. 189 on Domestic Workers Convention.<sup>37</sup> The Belgian NAP also delegates responsibilities to the Belgian regions in enforcing the OECD Guidelines and UNGPs in local procurement policy and establishing a “toolkit” on RBC to be promulgated to local businesses and NGOs.<sup>38</sup> Similarly, the U.K. NAP encourages British MNEs operating overseas to establish labor relations and grievance mechanisms similar to those offered domestically in the U.K.
42. The U.S. NAP should therefore be updated to include a plan for addressing the BHR impacts overseas that U.S. companies may face through their operations in foreign jurisdictions.
43. The U.S. NAP should also identify in more detail a plan to address the BHR impacts domestically that U.S. companies may face through their U.S.-based operations. Business conduct in the United States may impact human rights, labor rights, the rights of indigenous populations, land tenure and property rights, anti-corruption, and transparency. It is not enough to simply state that the U.S. government supports RBC domestically; rather, the

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<sup>33</sup>OECD Guidelines for Multinational Enterprises, 2021, Preface, ¶ 9, available at <https://mneguidelines.oecd.org/2011Preface.pdf>.

<sup>34</sup> UNGPs, Section I.A.9.

<sup>35</sup> Belgium NAP, 23 June 2017, p. 74, ¶33(1).

<sup>36</sup> Ratifications of C156 - Workers with Family Responsibilities Convention, 1981 (No. 156), available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312301:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312301:NO).

<sup>37</sup> Ratifications of C189 - Domestic Workers Convention, 2011 (No. 189), available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:2551460](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460).

<sup>38</sup> Belgium NAP, 23 June 2017, pp. 76-77.

U.S. NAP should honestly critique the state of RBC here at home and equally set forth a framework and strategy that addresses continuing adverse human rights impacts within the United States, as peer countries have done in their NAPs.

- vi. To Develop a Coherent Federal Scheme on RBC, the U.S. Government Should Consult with Members of the Legal Profession to Identify Strengths, Gaps, and Lessons Learned with Respect to Existing Due Diligence, Supply Chain Management, and Anti-Corruption Laws & Regulations

44. We are seeing a growing regime of international, national, state, and local laws and policies being enacted to promote RBC and mitigate the adverse effects of MNEs' business operations on human rights. These laws and policies usually focus on human rights due diligence, supply chain transparency, and the protection of vulnerable populations, such as women and children and native and indigenous peoples. However, there is a lack of uniformity in the terms, scope, and application of such laws.
45. In response, many companies in the EU and in the United States, including Mondelez International, IKEA, Patagonia, Barry Callebaut and others, have called for domestic or regional regulations to enhance legal certainty for companies operating in sectors with high potential for adverse human rights impacts.<sup>39</sup> Partially in response to these calls for action, the European Commission in February 2022 proposed a Directive on Sustainability for MNEs incorporated in or doing business within the Union.<sup>40</sup> If the Directive is approved by the European Council and the European Parliament, each EU Member State will have two years to incorporate the so-called Corporate Sustainability Directive into its domestic law. Although at least two EU Member States, Germany and France, have already passed human rights due diligence laws broadly reflecting the contents of the OECD Guidelines,<sup>41</sup> the new Directive will make such reporting requirements mandatory for all large companies operating and/or selling goods or services within the EU.

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<sup>39</sup> "MEPs & companies call for EU-level human rights due diligence legislation", Business and Human Rights Resource Centre, 19 March 2019, available at <https://www.business-humanrights.org/en/latest-news/meps-companies-call-for-eu-level-human-rights-due-diligence-legislation/>.

<sup>40</sup> "Proposal for a Directive on corporate sustainability due diligence and annex", European Commission, 23 February 2022, available at [https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en#what-are-the-next-steps](https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en#what-are-the-next-steps); Viren Mascarenhas, Douglass Cassel et al., "Proposed New EU Directive on Corporate Sustainability Due Diligence", King & Spalding Client Alert, 24 February 2022, available at <https://www.kslaw.com/news-and-insights/proposed-new-eu-directive-on-corporate-sustainability-due-diligence>.

<sup>41</sup> "France's Duty of Vigilance Law", Business & Human Rights Resource Centre, 16 March 2021, available at <https://www.business-humanrights.org/en/latest-news/frances-duty-of-vigilance-law/>; Dr. Alexander Kiefner et al., "The German Parliament Passed the "Act on Corporate Due Diligence in Supply Chains" on 11 June 2021", 21 June 2021, available at <https://www.whitecase.com/publications/alert/german-parliament-passed-act-corporate-due-diligence-supply-chains-11-june-2021>. Although not an EU Member State, Norway has also passed a law on corporate due diligence in 2021. See "Norway: Parliament passes due diligence law incl. right to information about corporate impacts", Business & Human Rights Resource Centre, 14 June 2021, available at <https://www.business->

46. Some legislative developments in the field of RBC are underway in the United States at the state level. As mentioned above in Section II, within the United States, California has passed (and New York is considering) laws imposing stricter due diligence requirements for companies incorporated or doing business in their jurisdictions. Under these laws, companies doing business in the state must take action to identify, mitigate, and report to state regulators potential adverse human rights impacts resulting from their business activities either within the United States or abroad. The development of state-level bills promoting RBC are positive developments that the U.S. federal government should encourage in the U.S. NAP, in accordance with Action Plan Goal # 4 (“Recognizing Positive Performance”).
47. The U.S. government should also encourage other states to engage in legislative debate with the goal of strengthening the United States’ domestic adherence to the UNGPs and the OECD Guidelines. At least one other NAP, the German NAP, included a commitment that the government would consider legislation that would obligate corporations to conduct and produce due diligence reports on potential adverse human rights impacts of their business practices to government regulators.<sup>42</sup> As momentum builds for binding due diligence legislation in accordance with the OECD Guidelines and the UNGPs overseas, the United States risks being left behind (in an explicit failure to meet the 2016 U.S. NAP’s Goal #1 of “Leading By Example”) if it does not take action to pass legislation or regulations at the federal level on RBC issues.
48. In relation to supply chain management and due diligence strengthening at the federal level, however, we do applaud the recent actions undertaken by the U.S. Congress and Executive Branch to spread awareness of the involvement of American and other MNEs in grievous human rights violations in the Xinjiang Autonomous Region of the People’s Republic of China (“**PRC**”). The July 2020 Supply Chain Business Advisory on Xinjiang makes appropriate reference to various IHRL instruments such as the Universal Declaration on Human Rights, the UNGPs, the OECD Guidelines and the ILO Tripartite Declaration of Principles Concerning MNEs and Social Policy.<sup>43</sup> This kind of cross-referencing between key IHRL instruments is key to harmonization of different legal and policy tools and promotion of RBC.
49. Additionally, the Uighur Forced Labor Prevention Act, which the U.S. government enacted in December 2021, is a step in the right direction for the United States’ leadership in RBC

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[humanrights.org/en/latest-news/norway-govt-proposes-act-regulating-corporate-supply-chain-transparency-duty-to-know--due-diligence/](https://www.humanrights.org/en/latest-news/norway-govt-proposes-act-regulating-corporate-supply-chain-transparency-duty-to-know--due-diligence/). It is set to come into force in July 2022. *See id.*

<sup>42</sup> And indeed, the German government delivered on this promise enshrined in its NAP by passing a mandatory corporate due diligence law on BHR in 2021.

<sup>43</sup> “Xinjiang Supply Chain Business Advisory”, U.S. Department of State, Remarks and Releases, available at <https://www.state.gov/xinjiang-supply-chain-business-advisory/>.



and IHRL enforcement.<sup>44</sup> The legislation authorizes sanctions against PRC officials determined to be responsible for forced labor practices in Xinjiang and blocks PRC firms engaged in mass surveillance, forced labor, or arbitrary detentions of Uighurs or other ethnic/religious minorities in Xinjiang from raising capital in or receiving technology from the United States. Furthermore, the act strongly encourages companies still operating in the Xinjiang region to conduct due diligence to uncover and mitigate human rights violations that may be occurring in their supply chains; the Act accomplishes this by requiring companies seeking to input goods from the region into the United States to provide “clear and convincing” evidence to overcome the presumption that the goods have been produced with forced labor. Unless the company provides this “clear and convincing” evidence to the U.S. Customs and Border Protection office within 180 days, its goods are blocked from being imported into the United States.

50. We understand that Congress undertook both of these actions after consultation with various NGOs, international human rights lawyers and legal and policy experts on the PRC and the Xinjiang region in particular. As the United States continues to implement the Uighur Forced Labor Prevention Act, the policies announced in the July 2020 Supply Chain Business Advisory on Xinjiang and other measures to stop the PRC’s internationally unlawful conduct in the region, we encourage the U.S. government to consult legal experts on RBC, IHRL, and human rights in the PRC. The Uighur Forced Labor Prevention Act could be a model for mandatory due diligence reporting from U.S.-related MNEs operating in other parts of the world where human rights violations in business practice and supply chains may be prevalent.

51. Generally, we recommend that the U.S. NAP be updated to include a commitment from the U.S. government to regularly solicit feedback and consult with bar associations and members of the legal profession regarding potential areas of legislative and regulatory reform specific RBC issues, such as the situation in Xinjiang.

b. Suggested Reforms to the U.S. NCP for the OECD (Action Plan Goals # 3 & 5)

i. Introduction to the OECD Guidelines and the U.S. NCP

52. Since 2000, as part of the latest reform to the OECD Guidelines, the United States and other adhering countries must establish NCPs, which are an administrative mechanism to facilitate dialogue, problem-solving, and dispute resolution between MNEs and human rights claimants. In the past 22 years since the NCPs have been functioning, they have been increasingly recognized by both OECD and non-OECD Member States, MNEs, international NGOs, academics, and human rights advocates as important venues for

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<sup>44</sup> Uyghur Forced Labor Prevention Act, December 2021, available at <https://www.cbp.gov/trade/forced-labor/UFLPA>.

promoting best practices and furthering the principles enshrined within the OECD Guidelines and the UNGPs.

53. The 2016 U.S. NAP identified in Outcome 5.1 that it needed to improve the performance of the U.S. NCP for the OECD Guidelines and work with U.S. companies to help address concerns about the perceived lack of accessible and effective remedies available to those who feel they have been negatively impacted by U.S. business conduct abroad.<sup>45</sup> We believe that although the U.S. NCP is one of the most widely utilized NCP mechanisms worldwide, it suffers from shortcomings that prevent it from being as effective, inclusive, and as transparent as it should be. These shortcomings hinder performance improvements and access to the U.S. NCP.
54. *First*, the U.S. NCP rarely achieves resolutions between human rights claimants (known as “submitters” in the U.S. NCP process) and MNEs involved in specific instances. The U.S. NCP rarely secures promises from U.S.-related MNEs to reform their internal operating procedures to better adhere to the OECD Guidelines or to adopt better RBC practices. One of the most common outcomes resulting from specific instances managed by the U.S. NCP is that U.S.-related MNEs either refuse mediation entirely or withdraw from the mediation process when the MNE and human rights claimants cannot agree to a specific mediation agenda.
55. *Second*, the U.S. NCP does not act as transparently as other leading NCPs. For example, the U.S. NCP does not publish Initial Instances (summaries of the submitter(s)’ complaint(s) against the MNE under the Guidelines and procedural steps to be taken by the U.S. NCP for dispute resolution).<sup>46</sup> Additionally, and often because of lack of consent from all of the involved parties, the U.S. NCP limits its remarks and observations in Final Statements to nothing more than a basic description of the parties’ dispute under the OECD Guidelines and the procedural steps taken by the U.S. NCP to attempt to resolve the parties’ differences. Unlike many of its peers, the U.S. NCP does not report publicly to either the Legislative or Executive Branches on the implementation of its mandate under the OECD Guidelines, which would elicit constructive feedback.
56. *Third*, the U.S. NCP does not adequately involve other government and non-governmental stakeholders in its work. The U.S. NCP should take several measures—including changing its unitary, one-person structure to an inter-agency, democratic one—to improve non-DoS government and non-governmental stakeholders’ participation in the specific instance process as well as in the NCP’s other activities promoting the OECD Guidelines. The U.S. NCP should also seek more broadly to involve non-governmental stakeholders such as

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<sup>45</sup> U.S. NAP 2016, p. 23.

<sup>46</sup> The U.S. NCP does sometimes publish “Initial Assessments” – but only when specific instances have been rejected by the NCP for lack of admissibility. For all other specific instances, the NCP currently does not notify the public when it has received a new specific instance from a submitter or when a specific instance has been passed through to the good offices phase or another phase of mediation.

NGOs, academics and other experts focused on RBC and international human rights, bar associations, and in-house corporate counsel in the specific instance process on a non-binding and consultative basis. Additionally, and apart from the OECD's peer review process for the NCPs, the U.S. NCP should invite peer review by human rights NGOs or leading academics in the field. All of these measures would facilitate better cooperation and dialogue between the NCP and civil society and increase awareness of the NCP mechanism and the broader content of the OECD Guidelines in the United States.

57. The following recommendations aim to enhance the **effectiveness, inclusivity, and transparency** of the U.S. NCP's structure and operations. If adopted, these recommendations will significantly enhance the U.S. NCP's performance of its mandate under the OECD Guidelines. The U.S. NAP 2016 identifies in Outcome 5.1 that the United States needs to improve the performance of the U.S. NCP for the OECD Guidelines. At the very least, these reforms will help achieve this key objective; it is also the hope of the NYCBA and the Vance Center that the aforementioned changes to the U.S. NCP will facilitate the 2016 NAP's Action Plan Goal #3 ("Facilitating RBC by Companies"). The proposed recommendations to make the U.S. NCP more effective, inclusive, and transparent may be achieved through engagement with members of the legal profession and bar associations. Therefore, the recommendations in this category are harmonious with and form part of the recommendations in category 1 above (at Section II a.).

ii. Reforms to Strengthen Access to Remedies (Action Plan Goal #5)

1. The U.S. NCP Should Make Determinations on Whether an MNE Has Violated the OECD Guidelines in its Final Statements

58. The U.S. NCP should include in its Final Statements determinations on whether an MNE has violated the OECD Guidelines, even if the MNE refuses mediation, conciliation, or other dispute resolution measures during the course of a specific instance. Such determinations have been established as an RBC best practice at other leading, peer NCPs. For example, the U.K. NCP's rules of procedure provide that it may make a finding or determination on whether an MNE has breached the OECD Guidelines, even when conciliation or mediation is refused or fails.<sup>47</sup> The U.K. NCP has found in various specific instances, including at least three of the most recent, that U.K.-related MNEs breached the OECD Guidelines and failed to observe RBC best practices.<sup>48</sup>

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<sup>47</sup> U.K. National Contact Point Procedures for Dealing with Complaints Brought Under the OECD Guidelines for Multinational Enterprises, September 2019, p. 13, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/851589/uk-ncp-specific-instance-procedures.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851589/uk-ncp-specific-instance-procedures.pdf).

<sup>48</sup> "Final statement: IDI, EC and LICADHO complaint to UK NCP about Bonsucro Ltd.", 11 January 2022, available at <https://www.gov.uk/government/publications/idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd/final-statement-idi-ec-and-licadho-complaint-to-uk-ncp-about-bonsucro-ltd>; "Lawyers for Palestinian human rights (LPHR) & G4S PLC: Final Statement after examination of complaint", March 2015, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/846880/bis-15-](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/846880/bis-15-)

59. The Norwegian NCP's procedural guidelines contain a similar provision and oblige the NCP to include a brief, reasoned explanation in its Final Statement as to whether an MNE has violated the OECD Guidelines.<sup>49</sup> The Norwegian NCP's Final Statement in the specific instance about POSCO India is illustrative.<sup>50</sup> In its Final Statement, the Norwegian NCP concluded that Norwegian Bank Investment Management, as a shareholder of a Korean company, had violated the Guidelines in two ways: *first*, it had refused to cooperate with the NCP; and *second*, it had failed to develop any official corporate strategy or policies to mitigate human rights risks related to its investments, apart from child labor violations.<sup>51</sup>
60. The U.S. NCP's rules of procedure do not expressly authorize the NCP to make determinations on whether an MNE has violated the OECD Guidelines; nor has the NCP issued any such determinations since its establishment in 2000. The U.S. NCP rules of procedure should be reformed to authorize the NCP to include in its Final Statement determinations on whether an MNE has breached the OECD Guidelines, even if mediation, conciliation, or other dispute resolution procedures initiated during a specific instance did not end successfully. The U.S. NCP would base its determination on all information presented to it. To ensure due process, like in other countries, including the U.K., the U.S. NCP should advise all MNEs against which complaints are made that: (1) the MNE has the opportunity to assess and contest any allegations and facts, (2) if the MNE does not do so, the NCP may make determinations even if the MNE chooses to waive that opportunity, and (3) the determinations are non-judicial and do not have a binding effect.<sup>52</sup>

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[306-lawyers-for-palestinian-human-rights-final-statement-after-examination-of-complaint-uk-national-contact-point.pdf](#); "Final Statement: Lawyers for Palestinian Human Rights complaint to U.K. NCP about JCB", 12 November 2021, available at <https://www.gov.uk/government/publications/lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb/final-statement-lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb>.

<sup>49</sup> "Procedural Guidelines for Handling Complaints", Norwegian National Contact Point, 1 October 2013 p. 9, available at [https://www.regjeringen.no/globalassets/upload/ud/vedlegg/ncp/complaints\\_guidelines.pdf](https://www.regjeringen.no/globalassets/upload/ud/vedlegg/ncp/complaints_guidelines.pdf).

<sup>50</sup> POSCO India is the Indian subsidiary of the Korean iron and steel conglomerate POSCO, two of whose minority investors are a Dutch pension fund and Norwegian Bank Investment Management (NBIM). In 2012, an Indian-based NGO filed complaints to the South Korean, Dutch, and Norwegian NCPs alleging that POSCO had not conducted adequate due diligence or meaningful stakeholder negotiations regarding the negative human rights impacts of a proposed US\$ 12 billion integrated steel project that POSCO India was to undertake in the State of Odisha, India. Specifically, the submitter to the Norwegian NCP complained that POSCO and POSCO India had omitted to prevent or mitigate human rights abuses perpetrated by the Indian governmental authorities in their violent efforts to acquire the land on behalf of POSCO.

<sup>51</sup> Final Statement - Complaint from Lok Shakti Abhiyan, Korean Transnational Corporations Watch, Fair Green and Global Alliance and Forum for Environment and Development vs. POSCO (South Korea), ABP/APG (Netherlands) and NBIM (Norway), The Norwegian National Contact point for the OECD Guidelines for Multinational Enterprises, 27 May 2013, p. 6, available at [https://files.nettsteder.regjeringen.no/wpuploads01/blogs\\_dir/263/files/2013/12/nbim\\_final.pdf](https://files.nettsteder.regjeringen.no/wpuploads01/blogs_dir/263/files/2013/12/nbim_final.pdf).

<sup>52</sup> U.K. National Contact Point Procedures for Dealing with Complaints Brought Under the OECD Guidelines for Multinational Enterprises, September 2019, p. 13, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/851589/uk-ncp-specific-instance-procedures.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851589/uk-ncp-specific-instance-procedures.pdf) ("The NCP's Final Statement will include the following ... the results of examination (if any), which will include an argued rationale behind each conclusion including a clear statement as to whether or not the company is in breach of the Guidelines...").

2. The U.S. NCP Should Encourage MNEs to Offer Compensation, Restitution, Satisfaction or Other Remedies to Submitters Where Appropriate

61. In accordance with the OECD Guidelines and the UNGPs, the U.S. NCP should be able to recommend the full scope of remedies available to submitters available under IHRL and dispute resolution best practices. Courts, tribunals, commissions, and other dispute resolution bodies apply IHRL to offer a variety of remedies to human rights claimants, including (a) compensation; (b) restitution; (c) rehabilitation; (d) satisfaction;<sup>53</sup> (e) guarantees of non-repetition; and (f) other forms of compulsory dialogue, truth-seeking, or restorative justice.

62. The U.S. NCP does not appear to have ever encouraged an MNE against whom a specific instance has been brought and who wishes to address this challenge to either (1) pay monetary compensation to the submitter; (2) make an apology to the submitter; or (3) provide restitution to the submitter.<sup>54</sup> Although the U.S. NCP is not an adversarial body, it can work with U.S. companies to advance remedies common in IHRL and dispute resolution practices that may serve the NCP's mandate and address the perceived lack of accessible and effective remedies available to those wrongly impacted.<sup>55</sup> Having regard to such measures may not only further the NCP's mission to facilitate mediation and conciliation between the parties but also provide concrete relief to individuals or groups that may suffer adverse human rights consequences as a result of MNEs' business practices.

3. The U.S. NCP Should Regularly Call on Submitters and MNEs to Provide Follow-Up Reports to the NCP Following the Conclusion of Specific Instances

63. The U.S. NCP should, as it did in its 14 March 2022 Final Statement on the specific instance involving McDonalds Corporation, regularly call on submitters and MNEs to agree to submit follow-up reports to the NCP after the conclusion of good offices, mediation, or other dispute resolution procedures. Although follow-up is not mandated by the OECD Guidelines, the current U.S. NCP procedures provide for the possibility of

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<sup>53</sup> Satisfaction can include public apologies or admissions of responsibility by the party found to have violated IHRL.

<sup>54</sup> By, *inter alia*, covering the submitter's administrative and/or legal costs in bringing the specific instance or restoring the submitter to their previously held position or job.

<sup>55</sup> We note, in this regard, that some NCPs, including the NCPs of the U.K. and Australia, allow, in effect, for a motion for reconsideration on procedural issues, and all NCP determinations are subject to "substantiated submission" review by the OECD Investment Committee at the request of an adhering country, an advisory body or OECD Watch if either of these bodies considers that an NCP has failed to fulfill its responsibilities regarding the handling of a specific instance. See, for example, a recent OECD Watch substantiated submission against the Canadian NCP, "OECD Watch challenges Canadian NCP's failure to abide by international commitments", OECD Watch, 22 September 2021, available at <https://www.oecdwatch.org/oecd-watch-challenges-canadian-ncps-failure-to-abide-by-international-commitments/>. However, because the NCP does not have authority to order a denial of entitlements, only of discretionary benefits on a rational basis, any due process concerns are minimal, at best.

“follow-up” on an “exceptional basis” and at the discretion of the U.S. NCP following the conclusion of a specific instance.<sup>56</sup>

64. The U.S. NCP procedures should be revised to remove the caveat that “follow-up” by MNEs and submitters is only permitted on an “exceptional basis”. Such limitations do not further the U.S. NCP’s mandate to achieve resolutions between claimants and MNEs and to encourage MNEs to better implement the Guidelines in their business practices. “Follow-up” from the parties after the conclusion of a specific instance—whether the instance has been successful or not—would allow the NCP to evaluate and ensure that the parties are implementing any recommendations the NCP has made in its Final Statement.
65. Other NCPs that solicit follow-up from submitters and MNEs include at least the Australian, Belgian, Canadian, Dutch, and French NCPs.<sup>57</sup> Like the Dutch NCP, the U.S. NCP should also publish a Final Evaluation after its receipt and review of the submitter and the MNEs’ follow-up reports, in which the NCP would discuss whether and how effectively the parties had implemented the recommendations made in its Final Statement.<sup>58</sup>

#### 4. The U.S. NCP Should Adopt a Lower Standard of Admissibility of Claims in the Specific Instance Process

66. The U.S. NCP rules of procedure should be reformed to adopt a “credible and plausible” standard of evidence for admissibility of specific instances. Currently, the NCP lists the criteria for determining the admissibility of a specific instance as being: (a) identity of the party and its interest in the matter; (b) whether the issue is material and substantiated; (c) likely link between the MNE’s activities and the issue(s) raised; (d) relevance of applicable law and procedures, including court rulings; (e) treatment of similar issues in other domestic or international proceedings; and (f) contribution of the specific issue to the purposes and effectiveness of the OECD Guidelines.<sup>59</sup> The U.S. NCP should change criteria (b) in the aforementioned list to read “whether there is a credible and plausible allegation that the issue is material and substantiated.”

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<sup>56</sup> “U.S. NCP Procedures for Specific Instance Under the OECD MNE Guidelines”, U.S. Department of State, available at <https://2009-2017.state.gov/e/eb/ocwd/usncp/links/rls/166661.htm?msclkid=e25f80eeced411ecb40340e6dc93ef70>.

<sup>57</sup> “NCP Australia”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-australia/>; “NCP France”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-france/>; “NCP Canada”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-canada/>; “NCP Belgium” OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-belgium/>; NCP Netherlands”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-the-netherlands/>.

<sup>58</sup> Netherlands Ministry of Affairs, “The Procedure for Submitting Specific Instances to the Netherlands NCP”, 26 July 2021, available at <https://www.oecdguidelines.nl/notifications/documents/publication/2021/07/26/specific-instance-procedure>.

<sup>59</sup> U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises – “Specific Instance Process”, United States Department of State, available at <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/specific-instance-process/>.

67. Additionally, the U.S. NCP should deploy a broad understanding of criteria (a)'s concept of "interest in the matter" when it decides the admissibility of a specific instance. This is the practice of the Dutch NCP, whose rules of procedure provide that a "party can have a legitimate interest" in the specific interest if "its business activities are directly impacted."<sup>60</sup> The Dutch NCP also allows third parties to represent a party that is "directly impacted" but may not want to act as the submitter in a specific instance itself; NGOs "whose objectives are related to the problem [at issue in the specific instance] may likewise" be said to "have an interest" under the Dutch rules of procedure. Other peer NCPs that use a plausibility standard or a standard equivalent to plausibility to determine the admissibility of specific instances include the Australian, Danish, French, and German NCPs.<sup>61</sup>

iii. Reforms to Increase Inclusivity (Collaboration with Stakeholders – Action Plan Goal #2)

5. The U.S. NCP Should Adopt an Inter-Agency, Democratic Decision-Making Process Involving Independent Stakeholders

68. Since its establishment in 2000, the U.S. NCP has maintained a unitary structure and its activities are managed by a single DoS appointee, who makes final decisions on whether to (1) accept specific instances; and (2) issue Final Statements on specific instances.<sup>62</sup> The U.S. NCP may seek input from an Inter-Agency Working Group, comprised, *inter alia*, of representatives from (a) the United States Agency for International Development ("U.S. AID"); (b) the U.S. Department of Agriculture; (c) the U.S. Department of Commerce; (d) the U.S. Department of Labor; (e) DoS; (f) the U.S. Department of the Treasury; (g) the U.S. Export-Import Bank; and (h) the U.S. Trade Representative.<sup>63</sup> From 2012 to 2021, the NCP also maintained a Stakeholder Advisory Board (the "SAB"), which included representatives from the AFL-CIO, United Steelworkers Union, Barrick Gold, The Coca-Cola Company, Cornell University, Yahoo, the U.S. Council for International Business and other corporations and non-profit organizations.<sup>64</sup> However, the U.S. NCP disbanded the SAB in March 2021 and since then, the SAB has not been replaced by any

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<sup>60</sup> Netherlands Ministry of Affairs, "The Procedure for Submitting Specific Instances to the Netherlands NCP", 26 July 2021, available at <https://www.oecdguidelines.nl/notifications/documents/publication/2021/07/26/specific-instance-procedure>.

<sup>61</sup> "NCP Australia", OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-australia/>; "NCP France", OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-france/>; "NCP Germany", OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-germany/>; "NCP Denmark", OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-denmark/>.

<sup>62</sup> U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises – "A Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises" - United States Department of State, available at <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/a-guide-to-the-u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/>.

<sup>63</sup> U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises – "A Guide to the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises" - United States Department of State, available at <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/a-guide-to-the-u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/>.

<sup>64</sup> "Stakeholder Advisory Board", U.S. Department of State, available at <https://2017-2021.state.gov/advisory-committee-on-international-economic-policy/aciep-subcommittees/stakeholder-advisory-board/index.html>.

corresponding structure. Neither the IAWG nor the SAB when they existed were empowered to give binding or final advice to the U.S. NCP.<sup>65</sup> In its 2021 Annual Report, the U.S. NCP observed that the IAWG did not meet in 2021 and “was [only] consulted by email as needed.”<sup>66</sup>

69. The U.S. NCP could achieve better stakeholder participation and enhance its implementation and promotion of the Guidelines by reforming its structure. Specifically, the U.S. NCP should do away with its reliance on a sole DoS official and instead adopt a multi-agency and multi-disciplinary structure. For example, the U.S. NCP might be restructured to include representatives of U.S. AID, the Departments of Commerce and Labor, and relevant NGO representatives, in deciding and mediating specific instances. The U.S. NCP could examine the NCPs of France, Finland, Germany, Italy, the Netherlands, and Norway, which all have inter-ministerial decision-making structures that involve civil society and academic representatives. Together they take majority rule decisions on (1) accepting specific instances and offering good offices, mediation, or other remedies; (2) issuing Final Statements; and (3) drafting the content of Final Statements.<sup>67</sup>

6. An Independent Expert Panel (or Ombudsman) Should Oversee the U.S. NCP’s Performance

70. An independent expert panel or ombudsman should oversee and evaluate the U.S. NCP’s performance. The NCPs of Australia, Denmark, Lithuania, the Netherlands, and Norway all have independent governance structures that include non-governmental experts in the fields of RBC, BHR and IHRL. These NCPs are consistently ranked by NGOs and academics as some of the best-performing NCPs.<sup>68</sup> The U.S. NCP’s incorporation of an independent panel structure could ensure broad expertise in the handling of complaints, as well as independence from pressures within the DoS or elsewhere in the U.S. government that might favor a party’s perspective in handling complaints. The establishment of a neutral, independent expert panel to oversee and guide the U.S. NCP may also (1) build political will within the NCP to intervene more forcefully between submitters and MNEs

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<sup>65</sup>“Resources – U.S. National Contract Point for the OECD Guidelines for Multinational Enterprises”, 2015-2021, U.S. Department of State, available at <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/resources/>.

<sup>66</sup> U.S. NCP Annual Reporting Questionnaire 2021 and Annex, available [https://files.nettsteder.regjeringen.no/wpuploads01/sites/263/2022/02/NCP-Annual-Reporting-Questionnaire-2021\\_inkl\\_annex.pdf](https://files.nettsteder.regjeringen.no/wpuploads01/sites/263/2022/02/NCP-Annual-Reporting-Questionnaire-2021_inkl_annex.pdf).

<sup>67</sup> “NCP Germany”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-germany/>; “NCP France”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-france/>; “NCP Norway”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-norway/>; “NCP Finland”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-finland/>; “NCP Italy”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-italy/>; “NCP Netherlands”, OECD Watch, available at <https://www.oecdwatch.org/ncp/ncp-the-netherlands/>.

<sup>68</sup> “NCP structure”, OECD Watch, available at <https://www.oecdwatch.org/indicator/ncp-structure/>.



to achieve conciliation; (2) ensure predictability in case outcomes at the NCP; and (3) avoid other potential shortcomings.<sup>69</sup>

7. The U.S. NCP Should Invite Peer Review by Outside NGOs and Experts and Public Comment on Its Activities in the Federal Register

71. The U.S. NCP should also invite NGOs, academics, and other external parties to engage in peer review of its performance on a regular time interval. The U.S. NCP could open up an annual or biannual period for comment on its activities in the U.S. Federal Register. This would allow NGOs, citizens, corporations, and other stakeholders with interests in the OECD Guidelines and RBC to deliver feedback and constructive criticism. Regular periods for public comment would also broadcast the contents of the OECD Guidelines and make the availability of the specific instance mechanism at the NCP known to a broader audience within the United States.

iv. Reforms to Increase Transparency (Action Plan Goal #1)

1. The U.S. NCP Should More Actively Promote the Guidelines and Use of the Specific Instance Process

72. A critical aspect of ensuring the effectiveness of the NCP mechanism is publicizing its availability to stakeholders, including NGOs, legal counsel, and individuals, who may wish to avail themselves of the NCP mechanism and to educate themselves and others on its functions. Some national NCPs actively disseminate information about the NCP mechanism through both national channels and in cooperation with interested parties. For example, the Colombian NCP organizes government-sponsored events and also has a standing invitation to stakeholders (described in a non-exclusive list as “universities, NGOs, guilds, academia, etc.”) to contact the NCP to coordinate joint events.<sup>70</sup> The U.S. NCP should consider engaging proactively with interested parties, including bar associations, and offering to attend and participate in events intended to educate interested parties about the NCP mechanism. It is the NYCBA and the Vance Center’s experience that lawyers in particular tend to resist having recourse to grievance mechanisms such as the NCP in part due to lack of familiarity. More promotion of the U.S. NCP process by the DoS and other appropriate U.S. government entities, especially in collaboration with local and state bar associations interested in BHR and RBC, could remedy this problem.

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<sup>69</sup> Stéfanie Khoury and David Whyte, “Sideline Corporate Human Rights Violations: The Failure of the OECD’s Regulatory Consensus”, 18:4 Journal of Human Rights, 2018, p. 363, pp. 369-76.

<sup>70</sup>Punto Nacional de Contacto (PNC) de Colombia, available at <https://www.mincit.gov.co/mincomercioexterior/temas-de-interes/colombia-en-la-ocde/punto-nacional-de-contacto-pnc-de-las-directrices/punto-nacional-de-contacto-pnc-de-colombia>.

2. The U.S. NCP Should Provide Regular Reports to Congress and the Executive Branch on Its Activities

73. The U.S. NCP should increase transparency with respect to reporting and oversight. The U.S. NCP does not currently report to the executive or the legislature on its activities.<sup>71</sup> By contrast, other national NCPs report to both their national executive and legislative branches. For example, the Costa Rican NCP reports to the executive and legislative bodies once a year and also periodically reports to the Ministry of Foreign Trade.<sup>72</sup> Similar reporting would increase transparency and visibility for the U.S. NCP.

3. The U.S. NCP Should Publish Its Initial Assessments of Specific Instances

74. Initial Assessments are, in essence, admissibility decisions—they do not prejudge the merits of the allegations underlying the instance. Rather, they address whether the allegations in issue are admissible and deserve to be addressed, assuming they are true. Before an Initial Assessment is rendered, the MNE has the opportunity to address, and if it wishes, to contest the allegations against it, ensuring that the MNE has the opportunity to be heard before the Initial Assessment. The U.S. NCP should increase transparency in the specific instance mechanism by publishing initial assessments. According to the U.S. NCP’s Annual Reports (available online<sup>73</sup>), initial assessments are not publicly available. Publishing the initial assessments gives interested parties insight into the kinds of situations that may be suitable for resolution through the specific instance mechanism<sup>74</sup> and increases public confidence in the NCP’s work by ensuring transparency.

75. Because the MNE has the opportunity to be heard before the Initial Assessment would be made public, and because the Initial Assessment itself does not address the merits of the instance, there is little risk of any prejudice to the MNE by making Initial Assessments publicly available. Indeed, “[s]ince 2011, 26 NCPs have either published an initial statement or mention the publishing of initial statements in their rules of procedure.”<sup>75</sup>

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<sup>71</sup> NCP Annual Reporting Questionnaire, 2021, available at <https://www.state.gov/wp-content/uploads/2022/02/NCP-Annual-Reporting-Questionnaire-2021-Questionnaire-and-Annex.pdf>, at Questions 13-14.

<sup>72</sup> NCP Annual Reporting Questionnaire, 2020, available at <https://www.comex.go.cr/media/8889/costa-rica-ncp-annual-reporting-questionnaire-2020.docx>, at Questions 13-14.

<sup>73</sup> “Resources – U.S. National Contract Point for the OECD Guidelines for Multinational Enterprises”, 2015-2021, U.S. Department of State, available at <https://www.state.gov/u-s-national-contact-point-for-the-oecd-guidelines-for-multinational-enterprises/resources/>.

<sup>74</sup> Some initial assessments accept certain claims and reject others, which may be instructive for potential interested parties regarding the kinds of claims that are appropriate for the NCP process. For example, the U.K. NCP accepted further examination of certain issues in respect of the Guidelines, and rejected others, U.K. NCP Initial Assessment in Americans for Democracy & Human Rights in Bahrain and Formula One World Championship Limited, Issues for Further Examination, October 2014, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/847019/bis-14-1171-uk-ncp-assessment-complaint-by-americans-for-democracy-and-human-rights-in-bahrain.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/847019/bis-14-1171-uk-ncp-assessment-complaint-by-americans-for-democracy-and-human-rights-in-bahrain.pdf).

<sup>75</sup> OECD Guidelines for Multinational Enterprises, 2019 available at <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>, p. 20.

Doing so would also be in accordance with the OECD Guide for National Contact Points on the Initial Assessment of Specific Instances, which points out that “[o]ver 50% of NCP peer review reports contain a recommendation related to the initial assessment process[, including] recommendations to publish initial assessments for increased transparency[.]”<sup>76</sup>

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May 2022

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<sup>76</sup> OECD Guidelines for Multinational Enterprises, 2019 available at <https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf>, p. 5.

## APPENDIX #1: BACKGROUND ON THE VANCE CENTER

1. Despite the widely acknowledged role of lawyers in promoting RBC, in the United States, the legal profession's engagement with the UNGPs and the OECD Guidelines has been limited. A study conducted by the Cyrus R. Vance Center for International Justice<sup>77</sup> shows that, ten years after the adoption of the UNGPs, very few state and local bar associations in the United States have engaged with the UNGPs.<sup>78</sup> While, at the state level, several bar associations have taken steps to provide BHR training and resources, only the NYCBA has formally endorsed the UNGPs. Overall, with the exception of the State Bar of Texas<sup>79</sup> and the NYCBA, engagement by state and city bar associations in the United States has been limited.
2. In an effort to fill this gap, in 2015, the Vance Center's Human Rights and Access to Justice Program launched a Business and Human Rights Initiative ("**the Initiative**"), grounded in the UNGPs. Through the Initiative, the Human Rights Program draws on the expertise of law firms in the United States and abroad to contribute to the continuing development of best practices in BHR. In February 2018, the Vance Center's BHR initiative convened the New York City Bar Association's first Continuing Legal Education (CLE) program on BHR, "Business and Human Rights – What Do They Mean for Lawyers?" bringing together law firms and NGO practitioners. The Initiative has advised international NGOs and organized conferences on these issues.
3. The Vance Center's BHR Initiative informed the establishment in August 2019 of the NYCBA's Business and Human Rights Working Group. The Working Group is comprised of members from various committees of the NYCBA with expertise in international human

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<sup>77</sup> The Cyrus R. Vance Center for International Justice is a non-profit program of the New York City Bar Association bringing together leading law firms and other partners worldwide to pioneer international justice initiatives and provide pro bono legal representation to social justice NGOs.

<sup>78</sup> The research was conducted in 2019 and updated in 2021. The research is on file at the Vance Center and available upon request; The American Bar Association (ABA) endorsed the UNGPs in 2012. In 2015, the ABA initiated and signed on to – together with several other national bar associations – a "Joint Declaration of Commitment on Business and Human Rights".

<sup>79</sup> The State Bar of Texas International Law Section has an International Human Rights Committee, established in 2015, which provides information and guidance to lawyers whose clients are involved in international business and who may encounter the human, legal, and reputational risk associated with the violations of internationally recognized human rights.<sup>79</sup> In a paper on the Impact on International Commercial Law Practices by the New Ethics of Human Rights" (2016), the Committee noted the importance of the UNGPs. The State Bar of Texas has also issued advice to members to consider the implications of BHR and UNGPs in the course of their professional responsibilities. It has commissioned advice from the University of Texas Human Rights Clinic on possible amendments to the Texas 28 Disciplinary Rules of Professional Conduct to better align them with the UNGPs. The IHR Committee maintains a web-based resource library which refers to the UNGPs as general guidance for members of the State Bar of Texas. However, the Committee does not appear to have formally endorsed the UNGPs.

rights as well as business lawyers and practitioners from a range of legal communities including, but not limited to, academia, in-house counsel, non-profit organizations, foreign New York-based lawyers, and private firms. An Advisory Committee composed of experts in the field of BHR across several industries and countries provides strategic guidance to the Working Group.

4. In the first phase of its mandate, the Working Group set out to consider whether NYCBA should formally endorse the UNGPs. It ultimately proposed, and the NYCBA approved, a policy statement on BHR. In the statement, the first of its kind by a local bar association in the United States, the NYCBA resolved to endorse the U.N. Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Acknowledging New York City's role as a hub for global business and the impact that business decisions in New York have both locally and globally on human rights, the NYCBA, through the policy statement, also resolved to adopt a strategy to guide the legal profession to consider the growing impact of commercial activities on human rights, environmental sustainability, and the rule of law.
5. The NYCBA BHR Working Group is implementing the Policy Statement through a series of activities to educate and engage the legal community and the broader public with regard to BHR. In that phase, the Working Group has focused particularly on providing guidance for engagement with the UNGPs, Human Rights and the Environment, BHR and COVID-19 recovery, and Digital Rights.

## **APPENDIX #2: BACKGROUND ON KING & SPALDING LLP**

1. King & Spalding LLP (“K&S”) is an international corporate law firm headquartered in Atlanta, Georgia. King & Spalding has over 1,100 lawyers in 23 offices globally, spread across North America, Europe, and Asia.<sup>80</sup>
2. K&S’ Business and Human Rights Practice<sup>81</sup> works proactively with clients to identify and address risks in relation to human rights and ESG issues in their operations and value chains, thereby mitigating risk and boosting stakeholder confidence. K&S also advises businesses on their compliance with evolving regulatory requirements, and represents companies and their directors in human rights and ESG-related disputes.

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<sup>80</sup> <https://www.kslaw.com/?locale=en>.

<sup>81</sup> <https://www.kslaw.com/smart-tags/business-human-rights>.