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THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

**NATIONAL ACTION
PLANS ON BUSINESS
AND HUMAN RIGHTS
TOOLKIT** 2017 EDITION

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THE DANISH INSTITUTE FOR HUMAN RIGHTS (DIHR) is Denmark's National Human Rights Institution (NHRI), with an international mandate to promote and protect human rights and equal treatment in Denmark and abroad. The Human Rights and Development Department focuses on the intersection between economics and human rights and in particular on the role of business in relation to human rights.



THE INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE (ICAR) is a civil society organization that believes in the need for an economy that respects the rights of all people, not just powerful corporations. ICAR harnesses the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.

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ACRONYMS

ASEAN	Association of Southeast Asian Nations
AU	African Union
CoE	Council of Europe
CPRD	UN Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
DIHR	Danish Institute for Human Rights
EIDHR	European Initiative for Democracy and Human Rights
EU	European Union
FUR	Follow-up and review
FPIC	Free, Prior and Informed Consent
LGBTQI	Lesbian, gay, bi-sexual, transgender, queer and intersex
HLPF	High-Level Political Forum for voluntary review on SDG advancement
HRBA	Human Rights-Based Approach
HRDs	Human Rights Defenders
IACHR	Inter-American Commission on Human Rights
ICAR	International Corporate Accountability Roundtable
ICMM	International Council on Mining and Metals
ICT	Information and Communication Technologies
ILO	International Labour Organization
ISHR	International Service on Human Rights
IOE	International Organisation of Employers
NBA	National Baseline Assessment
NHRI	National Human Rights Institution
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
SDGs	Sustainable Development Goals of the 2030 Agenda for Sustainable Development
SMEs	Small and Medium Enterprises
UN	United Nations
UNDRIP	UN Declaration of the Rights of Indigenous Peoples
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Council
UNWG	United Nations Working Group on Business and Human Rights
UPR	Universal Periodic Review Process by the UNHRC
VNR	Voluntary National Review

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INTRODUCTION

The United Nations Guiding Principles on Business and Human Rights (UNGPs), endorsed by the United Nations Human Rights Council (UNHRC) in June 2011,¹ are a significant milestone in the evolution of normative standards on the responsibility and accountability of business actors.

Three years after the adoption of the UNGPs, the UNHRC called on all Member States to develop National Action Plans to support implementation of the UNGPs (hereafter NAPs on business and human rights or NAPs).² This call came in the wake of similar developments at the European level.³ Moreover, the Organization of American States (OAS) has encouraged its Member States to implement the UNGPs,⁴ while the African Union (AU) is currently drafting a policy framework on business and human rights.⁵ The UN Working Group on Business and Human Rights (UNWG), established in 2011, strongly encourages all states to develop, enact, and update NAPs on business and human rights.⁶ The G20 leaders have also articulated their support for NAPs.⁷

In June 2014, the UNHRC adopted a resolution to establish an inter-governmental working group to explore options for elaborating an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations.⁸ There is now an ongoing debate among states and global civil society on the relationship between NAPs on business and human rights and the treaty process. In practice, the development of NAPs is complementary to the treaty process, as they provide an essential tool for states to discharge their duty to protect human rights against adverse impacts of business articulated by the UNGPs, and in turn, help advance normative developments at the global level.⁹

The adoption of the 2030 Agenda for Sustainable Development in September 2015 recognises the role of business as a major driver for economic growth and infrastructure, necessary components for achieving the Sustainable Development Goals (SDGs), while at the same time, explicitly calling for business to act in accordance with the UNGPs.¹⁰ The Addis Ababa Action Agenda, which provides a global framework for financing the implementation of the 2030 Agenda by aligning financial flows and policies with economic, social, and environmental priorities, also refers to the UNGPs as a key framework to help realise this vision.¹¹

1.1 ABOUT THE TOOLKIT

In August 2013, the Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable (ICAR) launched a joint project to develop guidance on NAPs in the form of a toolkit for use by governments and other stakeholders.¹² DIHR and ICAR undertook a global programme of consultation with representatives of governments, civil society, business, investors, academia, NHRIs, and regional and international organisations,¹³ which fed into the contents of the first edition of this Toolkit, published in 2014.

Following publication, the different components of the Toolkit have been used by various stakeholders, including governments, NHRIs, academia, and civil society organisations to inform their work on NAPs on business and human rights, as well as to analyse published NAPs, autonomously or with the support of DIHR and/or ICAR. Thematic guidance relating to NAPs on business and human rights have also been developed by DIHR and/or ICAR in the area of children's rights with UNICEF¹⁴ and on human rights defenders with the International Service on Human Rights (ISHR).¹⁵ A thematic guidance on NAPs and the extractive sector, developed by ICAR and the Due Process of Law Foundation (DPLF) will be published in November 2017.

The Toolkit has also been referenced by inter-governmental organisations that have encouraged the development of NAPs, including the Council of Europe (CoE) and the UNWG.¹⁷

As part of the Toolkit revision process, in September 2016, DIHR and ICAR brought together business and human rights practitioners from fourteen countries who have utilised the Toolkit to gather user experiences in relation to the guidance materials, and collect feedback and suggestions for improvement. The 2017 update of the Toolkit attempts to reflect this feedback. It also recognises the UN Working Group on Business and Human Rights' guidance on NAPs and seeks to align and complement it.

1.2 OBJECTIVES AND TARGET AUDIENCE

The overall goal of this Toolkit is to promote implementation of the UNGPs and other relevant business and human rights frameworks by states and businesses.

The Toolkit provides guidance on how to:

- Undertake a national baseline assessment (NBA) of how the requirements of Pillars I, II, and III of the UNGPs are being met by state and business duty-bearers (see further Annex B);
- Plan an inclusive and participatory NAP process (see further Section 2.3.4);
- Undertake a fact-based analysis for determining the priorities and actions to be addressed in a NAP (see further Section 2.2);
- Establish effective follow-up measures for monitoring, reporting, and evaluating how the NAP is being implemented (see further Section 2.4.6);
- Enhance monitoring and reporting on NAPs at the national, regional, and international levels; and
- Measure progress in implementing the UNGPs (see further Section 2.4.6).

Multiple actors may find particular value in the Toolkit:

- **Government officials and elected representatives** may use this Toolkit to, for example, orient domestic policy-making, including at the local and sub-national levels; inform positions taken in international institutions or standard-setting processes; support alignment between NAPs and other national plans; and inform capacity-building efforts at all levels of government.
- **National Human Rights Institutions (NHRIs)** may use this Toolkit to undertake NBAs on business and human rights on their own accord or on request from their government. This Toolkit will also be helpful to NHRIs where they act as conveners of NAP development processes, including through NAP stakeholder committees. Principles and indicators contained within this Toolkit can further be utilised by NHRIs to inform monitoring, investigations, education, and reporting activities linked to business and human rights issues, in line with their UN Paris Principles mandates.¹⁸
- **Civil Society Organisations (CSOs)** may use this Toolkit to inform the standard of a NAP process or to help in the creation of shadow NBAs to monitor and evaluate state commitments and progress in implementing the UNGPs, thereby supporting advocacy and dialogue with states and businesses. They can also use this Toolkit when preparing reports and submissions to national, regional, or international supervisory bodies on topics relevant to business and human rights.
- **Businesses** may utilise this Toolkit to inform themselves about measures that can be expected of states in implementing the UNGPs, thereby preparing themselves for participation in NAP development processes. Businesses may also use the NBA template on the corporate responsibility to respect provided in the Toolkit to inform and benchmark their own implementation processes.
- **Multilateral and bilateral development agencies** may find this Toolkit useful when analysing country contexts and in designing and monitoring programmes and projects.
- **Media, researchers, and academia** may use this Toolkit to help orient investigations, analysis, research, and reporting on government responses to the UNGPs, corporate accountability, and sustainable development more broadly.

1.3 WHAT ARE NATIONAL ACTION PLANS?

National action plans are policy documents in which a state articulates priorities and actions that it will adopt to support the implementation of international, regional, or national obligations and commitments with regard to a given policy area or topic.

Calls for NAPs on the implementation of the UNGPs were inspired by the increasing use of national action plans to support a range of other policy areas including human trafficking, climate change, energy efficiency, health literacy, child accident prevention, and water quality. In the Vienna Declaration and Programme of Action,¹⁹ adopted in June 1993, the World Conference on Human Rights recommended states consider drawing up a national action plan on the promotion and protection of human rights.²⁰ Similarly, national action plans are increasingly being used in relation to implementation of the 2030 Sustainable Development Agenda (see Box 1 below).

In its 2011 strategy for corporate social responsibility (CSR), the European Commission called on EU Member States to develop NAPs to support the implementation of the UNGPs, as well as national plans on CSR.²¹ At the time of this Toolkit's publication, thirteen of twenty-eight EU Member States had developed NAPs on business and human rights.²² Although the EU's communication on CSR requested Member States to produce separate NAPs on CSR and the UNGPs, some CSR NAPs address the implementation of Pillar 2 of the UNGPs.²³

A challenge for states developing NAPs on business and human rights is addressing how these plans can be integrated or aligned with national action plans on other issues, particularly where there might be an overlap in subject matter. Through practical examples, this Toolkit will demonstrate how a NAP on business and human rights can build upon and be incorporated within other action plans, for example, on CSR, sustainable development, or human rights more broadly.

BOX 1

BUSINESS AND HUMAN RIGHTS AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

In 2015, the UN General Assembly unanimously adopted the 2030 Sustainable Development Agenda, which established seventeen SDGs, containing global targets and indicators, as well as follow-up and review mechanisms. The “2030 Agenda” seeks to achieve transformative change with respect to people, planet, prosperity, peace and partnership. Unlike the Millennium Development Goals, the precursor to the SDGs, the SDGs require all actors in society to take responsibility to fulfil this agenda. In particular, the SDGs call on business to act as a catalyst and an agent of change in the transition to a world where development is inclusive and sustainable for all.

DIHR has developed the Human Rights Guide to the SDGs to demonstrate the anchoring of the SDGs in human rights. This Guide highlights that over ninety percent of the 2030 Agenda’s 169 Targets are linked to provisions established in international human rights instruments and labour standards. Therefore, when engaging with the SDGs, businesses should consider their actual and potential impacts on underlying human rights. The UNGPs provide a vehicle for which to do so, as noted in paragraph 67 of the 2030 Agenda, which calls on business to act in line with the UNGPs. Business and Industry also constitute one of the nine Major Groups²⁴ which are major stakeholders in UN processes related to sustainable development.

In addition to minimising the adverse impacts of their core business on the human rights underlying the SDGs, businesses can play additional roles in the implementation of the SDGs, such as providing basic services, like health and education; participating in public-private partnerships; and paying taxes. In all cases, business conduct should be carried out with respect for human rights. Finally, the 2030 Agenda encourages businesses to adopt specific measures to comply with the SDGs, including target 12.6, which calls on states to encourage businesses to adopt sustainable practices and to integrate information on sustainability into their reporting cycles.

The links between the 2030 Agenda, human rights, and the role of business implies that states should ensure their efforts to implement the 2030 Agenda align with the standards laid out by the UNGPs. This can be achieved in a number of ways, including through NAPs on business and human rights that promote respect for human rights in relation to business’ contribution to implementation of the SDGs.

In the Follow up and Review (FUR)²⁵ of the 2030 Agenda, states are encouraged to conduct regular and inclusive reviews of progress at the national, regional, and international levels. In this context, states are encouraged to draw on contributions from various stakeholder groups. At the international level, the institutional framework for FUR revolves around the High-Level Political Forum (HLPF), which comprises both thematic debates and voluntary state reviews. These voluntary national reviews (VNRs) aim to facilitate experience sharing and lessons learned, accelerate the implementation of the 2030 Agenda, strengthen government policies and institutions, and mobilise multi-stakeholder engagement in the implementation of the SDGs. In 2016, twenty-two states volunteered for review, and in 2017 thirty-one states did so. At the national level, implementation processes will vary, but states’ human rights obligations can provide a starting point for the development of a human rights-based approach to national implementation.²⁶ Because implementation of both the UNGPs and the SDGs are facilitated through national action plans, there is considerable scope for these plans to be mutually reinforcing, or aligned to emphasise the contribution that responsible business can make to the achievement of the SDGs.

In a statement on the business and human rights dimension of the 2030 Agenda,²⁷ the UNWG called on Member States developing SDG implementation plans at the national level to ensure “coherence with national action plans for the implementation of the Guiding Principles. Conversely, national action plans focused on business and human rights should clarify how the Guiding Principles will be integrated in the context of SDG implementation.”²⁸

1.4. NAPs ON BUSINESS AND HUMAN RIGHTS: GLOBAL DEVELOPMENTS

There has been broad and strong uptake of the UNGPs following their adoption by the UN Human Rights Council in 2011. Since then, a number of regional and international organisations and other stakeholders have called for and endorsed the development of NAPs to implement the UNGPs.²⁹ The following is a summary of global developments in this regard.³⁰

1.4.1. African Union

In 2014, the AU and the EU held a joint seminar on the implementation of the UNGPs, where both organisations reiterated their commitment to promote and implement the UNGPs.³¹ Furthermore in 2017, the AU, with support from the EU, developed a Draft Policy Framework on Business and Human Rights.

1.4.2. Association of Southeast Asian Nations (ASEAN)

The ASEAN's Intergovernmental Commission on Human Rights (AICHR) has undertaken a thematic study on CSR and Human Rights, which reviews national measures with reference to the UNGPs. Two ASEAN-wide conferences have been organised, in November 2016 in Singapore and in June 2017 in Bangkok, to advance the implementation of the UNGPs and in particular NAPs on business and human rights in the region.

1.4.3. European Union

In 2011, the European Commission issued a Communication inviting all EU Member States to develop “national plans for the implementation of the UN Guiding Principles” by the end of 2012.³² This commitment to NAPs on business and human rights at the EU level was strengthened in 2012, when the European Council also called on all EU Member States to develop NAPs on the implementation of the UNGPs, with an extended deadline to the end of 2013.³³ In June 2016, the EU Council adopted its Conclusions on Business and Human Rights, renewing this commitment.³⁴ At the time of writing, thirteen EU Member States had published NAPs on business and human rights.³⁵

The 2011 EU CSR Strategy contained a commitment to develop an EU-level UNGPs implementation plan.³⁶ The European Commission further committed to the development of an EU Action Plan on Responsible Business Conduct in 2016.³⁷ However, this commitment has yet to be realised.³⁸

The 2015 EU Action Plan on Human Rights and Democracy³⁹ commits to promoting the adoption of NAPs on business and human rights by partner states. The European Parliament has also called on the European Commission to step up its efforts with regard to such NAPs.⁴⁰ A report published in February 2017 by the European Parliament's Sub-Committee on Human Rights on the Implementation of the UNGPs recommended “to establish NAPs' peer-to-peer review mechanism aimed at assisting and inspiring states to strive for continuous improvement.”⁴¹ Under the Presidency of the Netherlands in 2016, a peer review meeting was held amongst Member States to discuss progress in this area. Following suit, the Belgian government hosted a peer review meeting in May 2017.

1.4.4. Council of Europe (CoE)

In 2011, the CoE Committee of Ministers requested that the Steering Committee on Human Rights (CDDH) develop new standards on corporate responsibility and human rights.⁴² Following a Declaration of the Committee of Ministers in 2013 that advocated for the adoption by CoE Member States of NAPs on the implementation of the UNGPs, in March 2016, the Committee of Ministers adopted a Recommendation on Human Rights and Business. The recommendation calls on Members States to “share plans on the national implementation of the UN Guiding Principles on Business and Human Rights (“National Action Plans”),”⁴³ in a shared information system established by the Council of Europe. The recommendation also provides for a process within the Committee of Ministers for examining the implementation of the recommendation.

1.4.5 G7/G20

In 2015, the participating states of the G7 effectively committed to developing NAPs on business and human rights in the Leader’s Communiqué.⁴⁴ In 2017, the G20 followed suit, agreeing to “work towards establishing adequate policy frameworks in our countries such as national action plans on business and human rights.”⁴⁵

1.4.6. United Nations (UN)

In June 2011, the UN Human Rights Council established the UNWG and tasked it, inter alia, with facilitating the global dissemination and implementation of the UNGPs.⁴⁶ Based on this mandate, the UNWG has “strongly encourage[d] all states to develop, enact[,] and update a national action plan as part of the state responsibility to disseminate and implement the Guiding Principles on Business and Human Rights.”⁴⁷ To facilitate experience sharing amongst states in meeting this goal, the UNWG has established a collection of all published NAPs on business and human rights.⁴⁸ The UNWG also published guidance for states on NAPs in 2014,⁴⁹ which was updated in November 2016.⁵⁰

1.4.7. Organisation for Economic Co-operation and Development (OECD)

The OECD Guidelines for Multinational Enterprises are a set of state-supported recommendations relating to responsible business conduct applicable to multinational enterprises operating in or from adhering states. These Guidelines were revised in 2011 and, as part of this update, now include a chapter on human rights aligned with the UNGPs.⁵¹ Since 2015, the OECD has organised, in collaboration with the UNWG, an annual session for policy makers on NAPs on business and human rights.⁵² This session was upgraded in 2016 to a one-day High-Level Roundtable for Policy-Makers aimed at facilitating dialogue and exchanges of experiences in designing and implementing policies to enable responsible business conduct.⁵³

1.4.8. Organization of American States

The General Assembly of the OAS adopted a resolution in June 2014 supportive of the UNGPs, which triggered a set of measures to promote and implement them, including exchange of information and sharing of best practices.⁵⁴ In a 2016 resolution, the OAS called on Member States to implement the UNGPs and recognised “national action plans on human rights and business as one way of applying the Guiding Principles.”⁵⁵

1.4.9. Business Associations

Global business and industry associations have expressed their support for NAPs on business and human rights, including the International Organisation of Employers (IOE).⁵⁶ In November 2016, business organisations including the IOE, International Chamber of Commerce (ICC), the International Council on Mining and Metals (ICMM), the World Business Council for Sustainable Development (WBCSD), and the US Council for International Business (USCIB) issued a joint statement supportive of NAPs as a means to implement the UNGPs.⁵⁷

1.4.10 Civil Society Organisations

Many civil society organisations have expressed their support for and engaged in advocacy around NAPs on business and human rights. A number of civil society groups have published “shadow” NBAs, as a tool to advocate for increased efforts at the national level to address business impacts on human rights, including as a tool to advocate for the future creation of a NAP; this includes civil society in South Africa, Tanzania, Mozambique, Guatemala, and Burma/Myanmar. Civil society support for NAPs can also be seen in their engagement with NAPs processes, by participating in consultations, providing comments on drafts, and/or assessing the content and application of published NAPs. For example, over forty civil society organisations or individuals provided written comments to the NAP process in the United States. In Mexico, a group of seven civil society organisations formed the Mexican Focal Group on Business and Human Rights to advocate for the creation of a NAP in Mexico. This group authored the Mexican NBA, and formed part of the multi-stakeholder committee steering the NAP process.

1.5 NAPs ON BUSINESS AND HUMAN RIGHTS: NATIONAL DEVELOPMENTS

Since 2011, a number of states across all regions have embarked on processes to develop NAPs on business and human rights. As of November 2017, eighteen states had adopted a NAP, and many more countries are in the process of developing, or have committed to developing, a NAP on business and human rights.

States that have published NAPs have taken various approaches. Most processes have included numerous governmental agencies in the drafting of the NAPs content, either through the creation of official inter-governmental working groups or ad hoc consultations.⁵⁸ Most NAP processes have also provided for the participation of a variety of stakeholders before, during, and/or after the drafting process.⁵⁹ However, relatively few NAP processes have sought to facilitate the participation of at-risk

or marginalised stakeholders.⁶⁰ An increasing number of processes have undertaken NBAs by experts, governmental departments, academic institutions, or a combination of these to inform the content of their NAPs; however, this number is still limited.⁶¹

For further information on NAP developments worldwide, visit DIHR website⁶² and the ICAR, European Coalition for Corporate Justice (ECCJ), Dejustria compendium of assessments of existing NAPs.⁶³

1.6 BENEFITS AND CHALLENGES OF NAPs ON BUSINESS AND HUMAN RIGHTS

There are both benefits and challenges associated with the creation and implementation of NAPs on business and human rights. Some of the benefits can include:

- Stimulating national dialogue, mobilisation, and progress on implementing the UNGPs;
- Enhancing awareness and understanding of business and human rights issues and the UNGPs;
- Mobilising additional resources to promote the implementation of the UNGPs across society;
- Serving as a mechanism for holding governments accountable to stakeholders;
- Strengthening a culture of respect for human rights and of honouring international commitments;
- Supporting state reporting requirements to regional and international human rights supervisory and other bodies;
- Contributing to preventing and reducing business-related human rights abuses and improving remediation when abuses occur;
- Providing opportunities for stakeholders to come together to engage in meaningful dialogue, build trust, and improve communication between stakeholders on issues of business and human rights;
- Reducing business-related social conflicts;
- Empowering marginalised rights-holders and protecting human right defenders in relation to business impacts on human rights;
- Helping to align and improve synergies between state policies on business and human rights and other topics; and
- Promoting human rights-based sustainable development.

BOX 2

STATES THAT HAVE ADOPTED NAPs ON BUSINESS AND HUMAN RIGHTS (as of November 2017)

- | | |
|-------------------|--------------------|
| 1. Belgium | 11. Lithuania |
| 2. Chile | 12. Netherlands |
| 3. Colombia | 13. Norway |
| 4. Czech Republic | 14. Poland |
| 5. Denmark | 15. Spain |
| 6. France | 16. Sweden |
| 7. Finland | 17. Switzerland |
| 8. Germany | 18. United Kingdom |
| 9. Ireland | 19. United States |
| 10. Italy | |

Challenges related to the creation and implementation of NAPs can include:

- Considering how existing NAPs on other issues and a NAP on business and human rights can be integrated or aligned, particularly where overlap in subject matter may cause confusion and overstretch resources;
- Ensuring that NAP processes are inclusive and participatory;
- Ensuring that NAPs receive broad support and enduring buy-in and participation across stakeholder groups;
- Not exacerbating conflict between stakeholders in high-risk and/or conflict-affected contexts;
- Ensuring the adoption and implementation of robust NAP commitments where corporate capture of state institutions may inhibit the ability or political will of government actors to do so; and
- Adopting legislative or judicial measures due to the separation of powers between the executive, legislative, and judicial branches of government.

1.7 STRUCTURE OF THE NAPs TOOLKIT

DIAGRAM 1: STRUCTURE OF THE NAPs TOOLKIT



II

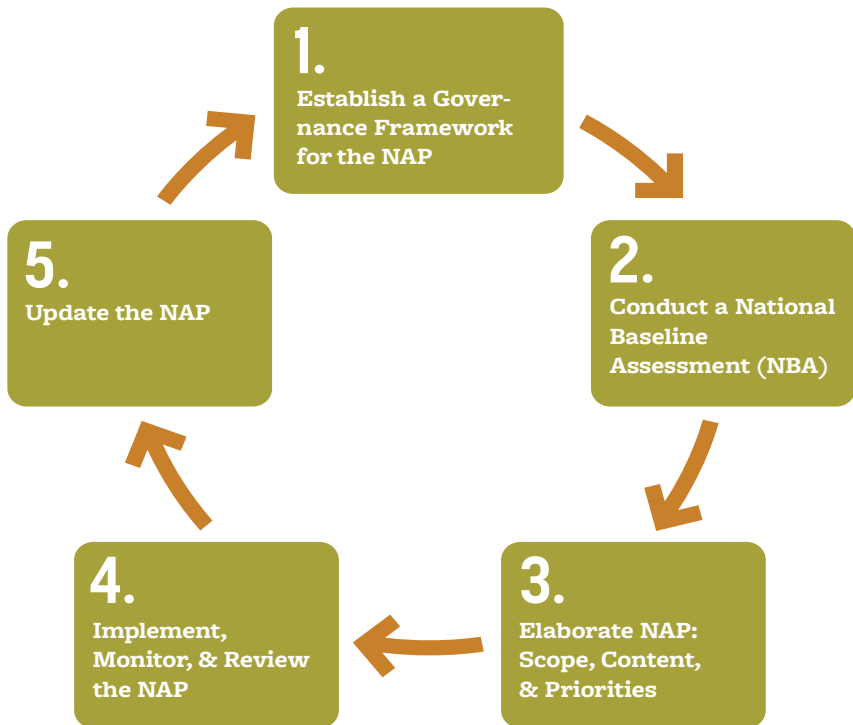
THE NAP LIFECYCLE: STEP-BY-STEP GUIDANCE ON THE NAP PROCESS AND CONTENT



A NAP lifecycle is generally comprised of five phases, though the specifics of each phase will vary. This section provides an overview of the main phases of a NAP lifecycle.

In line with a Human Rights-Based Approach (HRBA), as discussed in Chapter 3, each phase of the NAP lifecycle, summarised in Diagram 2 below, should be based on the principles of equality and non-discrimination, participation, transparency, and accountability.

DIAGRAM 2: OVERVIEW OF NAP LIFECYCLE



2.1 GOVERNANCE AND RESOURCES

2.1.1. Commit to the NAP Process and Assign Responsibility

A first and central step in a NAP process is for the government to set a firm and long-term commitment to the development and implementation of a NAP. This commitment will help ensure that the process to develop a NAP is adequately prioritised within the government.

There are various examples of leadership in NAP processes. In several countries, the development of the NAP on business and human rights have been led by the Foreign Ministry in cooperation with other ministries. This is often due to the nature of the mandate of Foreign Ministries, which includes representing the state in international human rights bodies, coordinating with other state institutions to ensure implementation of international commitments, and reporting to human rights bodies on the state's human rights compliance. These factors notwithstanding, the capacity of Foreign Ministries to lead a robust NAP process is somewhat limited in that their mandates to operate within the state are usually minimal compared to institutions with stronger internal mandates, such as Ministries of Interior, Economy, and Finance. In some cases, NAP processes have been led by the office of the Presidency through a Presidential Advisor on Human Rights, as in the case of Colombia.

As for any policy-making process, efficiency and accountability demand that there is clear leadership within the government for the development of a NAP. Responsibility for the NAP process should be unambiguously allocated to an entity or entities within the government (for example, to a specific government ministry, office, or agency), and this allocation of responsibility should be publicly communicated through an official announcement or published decision. The responsible entity should have the organisational capacity, political authority, and resources necessary to develop a NAP.

2.1.2. Ensure Coordination and Coherence across Government Actors

Almost all government departments, offices, and agencies have responsibilities that are relevant to the implementation of the UNGPs. In order to be comprehensive, and for the sake of its long-term success, a NAP on business and human rights should reflect input from, and enjoy the full support

BOX 3

FORMALLY COMMITTING TO A NAP

In 2015, the Kenyan Government officially accepted a recommendation during the Universal Periodic Review (UPR) process to develop a NAP on business and human rights. In February 2016, the Attorney General made a formal statement of commitment thereby initiating the process. Similarly, during its second UPR review in May 2016, the Royal Thai Government received a recommendation to develop, enact, and implement a NAP on business and human rights. The Thai government has accepted this recommendation, and the government agency responsible for the implementation of UPR recommendations at the domestic level, the Rights and Liberties Protection Department of the Ministry of Justice, is now leading the NAP process.

The Swiss NAP on business and human right was developed in response to a request from the Parliament (postulate 12.3503 “A Ruggie strategy for Switzerland”) to the Swiss Federal Council to develop a national strategy to implement the UNGPs.

of, departments and offices across government. Accordingly, a coordinating mechanism such as a cross-departmental advisory group or steering committee should be set up to meet periodically throughout a NAP process. Ministries responsible for trade, economy, energy, and state-owned enterprises, among others, should be engaged from the start of the NAP process to ensure holistic government commitment and policy coherence. A NAP on business and human rights should also build on and be articulated within other national action plans, such as national action plans on human rights and/or sustainable development. State and/or local governments should also be invited to input into the process.

2.1.3. Ensure Transparency at All Stages of the NAP Lifecycle

It is critical to the legitimacy of a NAP process, and in line with a human rights-based approach (HRBA), to ensure transparency at all stages of the NAP process; this includes the launch of the process, consultation, drafting period, and implementation.

At the beginning of a process, it is essential to publish terms of reference, objectives, a work plan, and a timeline to enable all stakeholders, both governmental and external, to plan and manage their participation in a NAP process. Accordingly, these materials should be published and disseminated through appropriate media sources in a timely fashion in order to provide adequate notice to all stakeholders.

In order to facilitate the effective participation of all stakeholders in the development of a NAP, states must ensure transparency throughout the planning process. This requires that stakeholders are adequately informed, with due notice, of key milestones in the NAP process and participation

BOX 4

COORDINATION ACROSS STATE INSTITUTIONS

The Chilean NAP on business and human rights stems from the National Plan on Social Responsibility 2015-2018 developed by the Council of Social Responsibility for Sustainable Development within the Ministry of Economy. The coordination for developing the NAP was assigned to the Directorate of Human Rights of the Ministry of Foreign Affairs. The NAP was developed by the Directorate, along with an Inter-Ministerial Committee comprised of the Ministries of Economy, Energy, Environment, Justice, Labour, Mining, Presidency, Social Development, and Women, as well as the National Contact Point of the OECD Guidelines. Several other public institutions were regularly engaged in the process, including the Ministry of Finance, the National Statistics Institute, and the National Human Rights Institution, as well as state-owned enterprises. Additionally, the NAP was launched by the President of Chile, Michelle Bachelet. While the Ministry of Interior did not participate in the process, periodic Committee meetings and bi-lateral engagement between ministries over two years resulted in a NAP with 158 actions that cut across numerous state institutions.

The Kenyan NAP process has made efforts to bring on board key government ministries and agencies including local governments. The key government body responsible for developing the NAP is the Ministry of Justice. In addition, a steering committee including the Kenya National Commission on Human Rights (Kenya's NHRI) and the Kenya Human Rights Commission has been established.

opportunities such as dialogues, workshops, consultation events, and comment periods. A consultation plan and timeline that is regularly updated throughout the process, and disseminated via appropriate channels, can assist in this regard. It is also important that timelines for submissions and feedback are realistic given the resources and capacities of all stakeholders.

States should also ensure that summaries of dialogues, workshops, and consultation events, in addition to written submissions provided by stakeholders to the process, are made publicly available to the extent possible. States should also take care not to divulge sensitive information that could put stakeholders involved in the process at risk.

Additionally, it is essential that states seek to publish and consult on a draft version of the NAP prior to the publication of the final product. Consultations on a draft NAP allow stakeholders to provide additional input and also raise concerns as to the contents of the plan, including clarifications on how stakeholder input was incorporated or is reflected in the draft text. Draft consultations also allow the state additional opportunities to reflect upon stakeholder input and adopt necessary changes before the final version is released. By publishing a draft version of a NAP, the state gives additional transparency to the development of the final plan.

2.1.4. Allocate Appropriate Financial Resources for the NAP Process

States should allocate adequate human and financial resources to the actors responsible for developing the NAP throughout the NAP lifecycle, including the development and completion of a NBA, as well as monitoring and review of the NAP's implementation.

BOX 5

ENSURING TRANSPARENCY THROUGHOUT THE NAP PROCESS

Germany's Steering Group for the NAP on business and human rights, developed and published a document outlining the process of the NAP, which included a timeline. Additionally, a NAP webpage with updated information about the process was attached to the website of the German Foreign Ministry, the government entity leading the German NAP process.

Similarly, the U.S. government published a webpage on its NAP process, which included terms of reference and an initial timeline for stakeholder consultations.

As part of Ireland's NAP process, the Department of Foreign Affairs and Trade of Ireland invited submissions from stakeholder on the development of the NAP on business and human rights, and received over thirty submissions from civil society and the business community. All submissions were made publicly available on the Department's website.

While the UK Government did not publish the stakeholder inputs which it received as part of the process to update its NAP, it did invite all stakeholders who wished to make their submissions to the update process public to submit them to the Business and Human Rights Resource Centre (BHRRC), which maintained a dedicated webpage to host these submissions.

BOX 6

BUDGETING FOR A NAP AND DONOR SUPPORT FOR NAPs

At the time of writing, no government that has developed a NAP on business and human rights has published the budget allocated for the development and/or the implementation of the NAP.

In some countries, civil society and/or the NHRI have contributed through their own resources to the NAP process, mainly through the elaboration of NBAs and the organisation of stakeholder consultations. For example, CSOs and/or NHRIs, led the development of NBAs in Kenya, Mexico, and Thailand as part of state-supported NAPs processes. In Mexico, UNICEF elaborated a baseline assessment on children's rights in the context of business activities to feed into the development of the NAP. ICAR and DIHR have both been involved in providing substantive expertise and financial resources in many of these projects.

Some states, including Sweden and the UK, have committed to encouraging the development of similar NAPs in other states in their own NAP on business and human rights, and have made funds available through their development cooperation agencies or regional representation. Development cooperation agencies from Spain, the United Kingdom, and Sweden provided financial and strategic support to the development of the Colombian NAP. Similarly, the Government of Norway is providing financial support to the Kenyan NAP process.

Additionally, in its 2015 Action Plan on Democracy and Human Rights, the European Commission committed to promoting NAPs on business and human rights in partner countries, the European Initiative for Democracy and Human Rights (EIDHR) has since put out calls for proposals to support the development of NAPs on business and human rights beyond the EU region.

2.1.5. Conduct a Stakeholder Mapping

All stakeholders should have the opportunity to participate on an equal basis during both the process of creating a NAP and its implementation. Many national stakeholders may be well-known to relevant government departments; however, others may not be. It is therefore advisable that a state undertake a stakeholder mapping at an early stage in the NAP process. The following stakeholder categories should be considered:

- Executive government, including all relevant government departments, agencies, offices, and state-owned enterprises, as well as police and other law enforcement agencies;
- Judiciary and administrative tribunals, alternative dispute resolution mechanisms, and informal justice actors;
- Parliament, including relevant committees;
- Businesses, including significant industry sectors, business associations, small and medium enterprises (SMEs), the self-employed, sole traders, cooperatives, non-profits, and informal sector actors;
- Labour unions and other workers' representative associations;

- Representatives of affected groups or communities of rights-holders and human rights defenders, inside and outside the state’s territorial jurisdiction, who may potentially be affected by the conduct of companies based in or controlled from the state;
- NHRIs, ombudsman institutions, statutory equality bodies, and other national accountability mechanisms with a human rights mandate;
- CSOs with mandates addressing relevant issues;
- Media, including general news and specialist sources;
- Academia, including research institutes, individual experts, and relevant educational institutions, such as business schools; and
- International and regional actors, including relevant UN agencies and country teams, the World Bank, regional development banks, and the OECD.

2.1.6 Consider Establishing a Multi-stakeholder Working Group or Advisory Committee

Given that the number of stakeholders relevant to the NAP process is often quite substantial, it is advisable to establish a multi-stakeholder working group or advisory committee composed of representatives from across stakeholder categories. Engaging through such multi-stakeholder groups is an effective way of ensuring a participatory approach and the representation of stakeholder views. To be legitimate, multi-stakeholder groups should include, at the least, civil society organisations, unions, businesses, and where they exist, an NHRI. Giving a multi-stakeholder group a formal role within a NAP process can further legitimise the process. Multi-stakeholder groups can help guide the development of a NAP process and the substantive issues to be addressed. Such groups may also play an important role in the follow-up and review process of a NAP, as they may form a multi-stakeholder platform familiar with business and human rights issues in a position to periodically review NAP implementation.

There are risks associated with insufficient stakeholder engagement. Businesses may be reticent to support state actions which might affect them without their involvement. The lack of participation by civil society and rights-holders may undermine the legitimacy of both the NAP process and content. Therefore, a “bottom-up” participatory approach is advisable to ensure that a NAP on business and human rights advances the larger goal of generating broad-based support among public, private, and civil society actors for rights-compatible, sustainable development in the country.

For further information on engagement with rights holders, see Chapter 3: A Human Rights-based Approach to NAPs.

2.1.7. Facilitate participation by marginalised or at-risk groups

Rights-holders from affected groups and communities, especially those from marginalised groups, human rights defenders, journalists, and members of civil society will often have relevant information and experiences to contribute to a NAP process. Yet these stakeholders may be weary of or prevented from participating due to factors such as lack of resources and capacity, government surveillance, intimidation, fear of reprisals, social hierarchies, stigma, or taboos that prevent equal access to the public sphere and effective communication of opinions in public dialogue. In line with the state duty to protect, it is incumbent on the state to ensure that marginalised stakeholders can effectively participate. Measures to facilitate effective communication may include: provision for confidential or anonymous submissions; providing financial support for travel and other consultation attendance costs; interpretation of materials and proceedings into minority languages; protection against negative repercussions for participation; and arrangements for local or stakeholder-specific dialogue events, such as gender-segregated events; and specific outreach to children and other groups.

For examples of the types of challenges faced by specific rights-holders, and how states can facilitate their participation in NAPs processes, see section 3.5 “Engaging Specific Rights-Holders in a NAP Process.”

BOX 7

MULTI-STAKEHOLDER PARTICIPATION

Germany developed two formats for public consultation: multi-stakeholder plenary conferences and hearings. In April 2014, the first conference was held to identify core themes for a NAP. The second conference, held in May 2015, focused on the discussion of the National Baseline Assessment. Between April and November 2015, a total of twelve hearings focused on the identified core themes were conducted. Each of these hearings was championed by a representative from the Steering Group. The third and final conference in December 2015 connected the results of the twelve hearings.

In the case of Mexico, a multi-stakeholder working group on human rights and business comprised of state institutions, civil society, business, and academia was set up at the start of the NAP process. This group met periodically through the NAP process to provide input and comment on the development, as well as the content, of the NAP. These participants were able to share insights into the process and its development with the broader range of actors within their respective shareholder groups.

In June 2013, the Prime Minister of France established the “CSR Platform,” a multi-stakeholder forum on corporate social responsibility that includes representatives from business, trade unions, civil society organisations, the NHRI, academic institutions, and public institutions. This platform actively participated in the elaboration of the NAP.

The Danish NAP was developed pursuant to a recommendation of the Danish Council for CSR, a multi-stakeholder body comprising business associations, civil society organisations, academics and trade unions. This group was also consulted in the drafting of the NAP.

2.1.8. Provide Capacity-building for State Actors and Relevant External Stakeholders

To ensure a more effective NAP process, it is important for stakeholders to share a common understanding of the UNGPs, including the roles and responsibilities of different actors. In many country contexts, the UNGPs, and business and human rights issues more widely, will be new to some stakeholders, both inside and outside of the government. Where this is the case, stakeholders may require information or capacity-building, such as training on the UNGPs, if they are to participate effectively in dialogue and contribute meaningfully to the formulation of a NAP.

BOX 8

CAPACITY BUILDING OF STAKEHOLDERS

The Government of Chile used international experts to build the capacity of representatives from all stakeholder groups. Starting the process, trainings were delivered to the Inter-Ministerial Committee tasked with developing the NAP, and later to key representatives within their respective institutions to facilitate the design of NAP actions. While not part of the committee, the National Statistics Institute also received training focused on human rights indicators, with the aim of helping them develop indicators on the implementation of NAP commitments.

In the case of external stakeholders, capacity building workshops and awareness-raising activities were carried out in a number of instances. For example, in the process of identifying issues and recommendations for the NAP, dialogue workshops that included capacity building were hosted in the country's three macro zones, including in San Pedro de Atacama, Santiago and Temuco with indigenous people. Similarly, businesses and trade unions participated in dialogue sessions in Antofagasta, Santiago, and Temuco.

2.2 NATIONAL BASELINE ASSESSMENT

2.2.1 Objectives of a National Baseline Assessment (NBA) on Business and Human Rights

A NBA on business and human rights has the primary objective of assessing the current level of implementation of the UNGPs in a given state. It brings together an analysis of the legal and policy gaps in UNGP implementation with an overview of the adverse human rights impacts of business to identify the most salient human rights issues in a given context. In this way, it serves to inform the formulation and prioritisation of actions in a NAP. Conducting a NBA is also an opportunity to build capacity on business and human rights topics among stakeholders involved in the research process, and to contribute to transparency and accountability in relation to the specific actions adopted in the NAP (for more on formulation of actions, see Chapter 2.3 on “Elaborating the NAP: Scope and Content”). The NBA should subsequently be used to monitor and evaluate whether these adopted actions had the desired effect.

2.2.2 NBA Methodology

NBAs, as a methodology of evaluation, are commonly conducted using a combination of quantitative and qualitative methods.⁶⁴ Quantitative methods include surveys to generate new data or, where resources are scarce or reliable data already exists, to extract secondary data, ideally with support from statisticians or specialists. Qualitative methods, such as interviews or focus groups, can be used to gather complementary information about values, opinions, behaviour, and context, such as social and cultural factors.

Building on standard approaches to developing NBAs, Annex B (“NBA Template”) contains a suggested methodology to evaluate the current level of implementation of the UNGPs and other relevant business and human rights frameworks by state and business actors. Originally developed by DIHR and ICAR in 2014, the NBA Template has been used in various national contexts (i.e. Chile, Denmark, Mexico, Germany, Kenya, Serbia, and Zambia). Annex B is a revised template, which incorporates user feedback and addresses all three pillars of the UNGPs. This is in contrast to the original template published in the 2014 version of the Toolkit, which only discusses the Guiding Principles under Pillars I and III that related specifically to state action.

The structure of the revised NBA Template consists of a set of tables that cover all of the UNGPs, though not individually or in consecutive order. Guiding questions are suggested to capture the wide-ranging nature of the UNGPs. In line with the indicator framework developed by the Office of the High Commissioner for Human Rights (OHCHR), these guiding questions seek to “assess the steps being taken by states in addressing their obligations – from commitments and acceptance of international human rights standards (structural indicators) to efforts being made to meet the obligations that flow from the standards (process indicators) and on to the results of those efforts (outcome indicators).”⁶⁵

2.2.3. Analysing the Implementation of the UNGPs by the State and Business

In order to systematically analyse state and business implementation of the UNGPs, as well as human rights enjoyment in practice, an NBA should be comprehensive and address the full range of economic, social, cultural, civil, and political rights. The NBA should include inputs from the most marginalised and excluded groups in society by addressing issues pertaining to gender, indigenous peoples’ rights, and minorities. It should also recognise individuals and communities potentially affected by business activities as rights-holders, including those outside of the state’s territorial jurisdiction, and focus on the ability of these stakeholders to claim their rights.

For all sections of the template which relate to the state duty to protect or provide access to effective remedy, the NBA should clearly identify measures taken by the state that support compliance with international and regional human rights standards, as well as any gaps where state measures are lacking or inadequate. Completing the NBA will therefore require research into provisions of a state’s constitution, domestic statutes, administrative regulations, policies, public programmes, and other interventions of public bodies. The NBA should cite and collate relevant recommendations of international bodies, such as the International Labour Organisation (ILO) and UN and regional human rights bodies. Data sources to consider when completing the NBA include official statistics, existing survey results, reports by the NHRI and intergovernmental organisations, civil society organisations, scholarly journals, and newspaper articles.

With regard to business enterprises active or based in the state's territory, their implementation of the UNGPs under Pillar II and the UNGPs relevant to business responsibility in Pillar III should be analysed in order to support the design of adequate measures within the NAP to address implementation gaps. This includes assessing to what extent businesses have committed to respecting human rights and carry out human rights due diligence and provide and/or collaborate in providing effective remedy.

2.2.4 Mapping Adverse Human Rights Impacts

In the NBA Template, guiding questions are included to help researchers capture information on adverse human rights impacts, or outcome indicators. In many contexts, this information will not be readily available. In this case, NAP processes offer a unique opportunity to engage businesses, industry associations, civil society organisations, and impacted individuals and communities in generating relevant data. In practice, researchers will likely hit a data gap if referring only to publicly available information, such as business websites, business-authored sustainability reports, or civil society and media reports. Therefore, when completing the NBA sections on the current levels of UNGPs implementation by businesses, researchers may utilise a variety of means for accessing information, including surveys and short questionnaires, stakeholder consultations, and bilateral interviews with business, as well as reviewing outcomes of court cases, grievance data, and reports of relevant enforcement agencies.

BOX 9

TOOLS TO MAP ADVERSE HUMAN RIGHTS IMPACTS

A NAP should address actual adverse business impacts on human rights. In conjunction with a legal and policy analysis, mapping adverse human rights impacts will enable drafters to identify salient human rights issues and prioritise actions in the NAP.

Complementary tools for evaluating human rights enjoyment include the Human Rights and Business Country Guide methodology⁶⁶ developed by DIHR to support stakeholders in identifying, assessing, and addressing the human rights impacts of companies across a range of thematic issues. This tool has been used to complement NAP processes and inform NAPs in a number of states, including Chile, Colombia, and Kenya.

Another tool is the Checklist for Documenting Corporate Human Rights Impacts, developed by ESCR-Net and the BHRRC⁶⁷ aimed at supporting communities adversely impacted by business activities. The Checklist helps to document corporate-related human rights abuses, including a single human rights abuse, as well as systematic and/or ongoing human rights situations. Mexican civil society organisations used the checklist to document over sixty cases of abuses involving companies in the country, which served as an input to inform the content of Mexico's NAP.

2.2.5. Transparency in the Methodology and Analysis of Information in the NBA

The NBA should be transparent in terms of the sources of information that have been used to develop it (except where disclosure of sources would, for example, present risks of reprisals to rights-holders, human rights defenders, whistleblowers, journalists, or others). If a NBA is incomplete, such as by omitting analysis in relation to a particular issue or UNGP, the reasons for this should be clearly stated.

BOX 10

TRANSPARENCY IN THE NBA PROCESS

The Guatemalan NBA was conducted by La Unidad de Protección de Defensoras y Defensores de Guatemala (UDEFEQUA), with technical support from La Asociación Centro de Análisis Forenses y Ciencias Aplicadas (CAFCA). It outlines and explicitly states in its methodology section what sources of information were used in the creation of the baseline assessment and the process used for methodologically obtaining such information. The researchers relied on publicly available information, coupled with government consultations, to complete the NBA.

2.2.6. Recommendations for the NBA Process

Undertake an NBA at the beginning of NAP processes

Ideally, the NBA should be completed, or at least its preliminary results made available to stakeholders, before any decision-making concerning the scope, content, and priorities of the NAP takes place.

BOX 11

NBA AT THE BEGINNING OF NAP PROCESSES

A number of states have commissioned the creation of an NBA before drafting a NAP. For example:

- The Mexican government arranged for the Civil Society Focal Group on Business and Human Rights to conduct a NBA prior to the creation of the Mexican NAP.
- The Norwegian government commissioned Mark Taylor, Senior Researcher at the Fafo Research Foundation to conduct an NBA before drafting its NAP.
- In Scotland, the Better World Action Group, a multi-stakeholder group tasked with the development of the NAP, commissioned experts at St. Andrews University to establish a robust evidence base to underpin a NAP.

Allocate the Task of Developing the NBA to an Appropriate Body

The task of developing an NBA should be allocated to an organisation or entity with relevant expertise and competence. It should be independent from political affiliation and corporate interests, such as the NHRI or an academic research institution. Relevant expertise in this context should include, at a minimum, knowledge and experience of national, regional, and international standards and issues in the areas of human rights, business and human rights, corporate social responsibility, and sustainable development.

The organisation or entity should be responsible for developing an initial draft of the NBA based on desktop research and stakeholder engagement for information gathering purposes.

BOX 12

NBA CONDUCTED BY AN NHRI

In Germany, the Foreign Ministry assigned the responsibility for elaborating a National Baseline Assessment to the German Institute for Human Rights (DIMR). The Institute developed this baseline between May 2014 and April 2015. The baseline offers a topical overview of the current status of implementation of the UNGPs in Germany, highlighting possible implementation gaps or requests for further elaboration in the form of questions to the state. The document went through two consultation rounds and the findings were discussed at a multi-stakeholder conference in May 2015. Germany's National Action Plan incorporated the baseline information as context for each action area.

Involve Stakeholders in the Development of the NBA

The NBA should be informed by stakeholder input. To facilitate the participation of all relevant stakeholders, the drafters of the NBA should conduct a stakeholder mapping exercise, as described under Section 2.1.5 on “Establish a Structure for Stakeholder Participation.”

Stakeholders may be engaged through, inter alia, bilateral interviews, multi-stakeholder consultations, training workshops, questionnaires, and access to information requests.

Different stakeholder groups may prefer different forms of engagement. For example, bilateral interviews, closed workshops, or personalised questionnaires may be more effective with businesses or civil society, whereas access to information requests, as well as review of publicly available state documents and data may be appropriate in the case of state actors. As highlighted in Chapter 3, in relation to engaging with indigenous peoples or other marginalised groups in the creation of a NBA, additional efforts might be required, including facilitating transportation, translation, and culturally appropriate means of dialogue.

Beyond providing input into the draft NBA, stakeholders' views should also be sought on a draft version or versions of a NBA through an inclusive and timely dialogue process. Such a process should take place prior to the NAP's drafting in order to validate provisional findings.

BOX 13

STAKEHOLDER PARTICIPATION IN NBA DEVELOPMENT

In the process of creating the Thailand NBA, organisers facilitated the consultations of a range of at-risk or under-represented stakeholders throughout the region, including elderly persons, members of the LGBTQI community, and migrant workers. Similarly, during the creation of the Mexican NBA, the organising civil society groups held three regional workshops to seek the inputs of at-risk and impacted stakeholders.

BOX 14

STAKEHOLDER INPUT ON DRAFT NBA

As part of the Mexican NBA process, the civil society group in charge of developing the NBA held an event prior to the publication of the NBA, in November 2016, to discuss the research compiled and receive input regarding the content of the document. The NBA researchers also conferred with a number of CSOs throughout the drafting process to inform the content of the analysis.

During the process of elaborating the German NBA, the DIMR conducted two rounds of consultations on the document, and the ultimate findings were discussed at a multi-stakeholder conference in May 2015.

Publication and Dissemination

The main purpose of a NBA is to inform the content of a NAP by helping identify the most salient issues in relation to business and human rights, and prioritise future actions to address gaps in UNGPs implementation. To make the link between the findings of the NBA and the content of a NAP explicit, some states have chosen to include relevant NBA information as well as input from stakeholder consultations in the final NAP text, or as an annex to the final report, to clearly communicate why an action was elaborated.

BOX 15

LINKING THE NBA AND THE CONTENT OF THE NAP

The Italian NAP explicitly links the results of its NBA and the issues it chose to focus on. The Italian Government commissioned a baseline study from the University of Sant'Anna. Based on the findings of this report, the Italian NAP focuses mainly on six priority areas identified as especially salient in the NBA.

NBAs can be lengthy and expansive. Therefore, the finalised NBA should be published and made accessible to all stakeholders, using forms of communication appropriate to relevant stakeholder categories, for example, by translating full or summarised findings into relevant languages, providing hard copies to stakeholders without access to internet, adapting the publication for persons with disabilities, and disseminating through government websites.

Many organizations that have already published NBAs have chosen to provide an executive summary, highlighting some of the main adverse business impacts and linking them to the identified legal and policy gaps. Another way to present information from the NBA in a digestible form is to create different communication products, such as pamphlets or short publications on specific issues, sectors, or regions; socialisation workshops targeting specific stakeholder group; or a user friendly and interactive website on the NBA.

BOX 16

PUBLICATION AND DISSEMINATION OF THE NBA

The Mexican NBA provides an executive summary to highlight the overall findings of an NBA. The full text of the Mexican NBA was over 350 pages long, however, the authors summarised the overall findings in a brief executive summary at the beginning of the document. In addition, the civil society focal group in charge of the NBA process created a summary document highlighting the major findings of the NBA to utilise in the socialisation of the document.

Another way to disseminate an NBA is to hold a public event after the NBA has been finalised to introduce the document, its purpose, and key findings to interested stakeholders. This occurred in both the Mexican and Guatemalan context. In Mexico, following the completion of the NBA, the Mexican government held an event in the capital city, inviting government actors, business representatives, and civil society organisations to learn more about the different documents created to inform the NAP process – including the NBA. Similarly, upon publication of the Guatemalan NBA, the researchers organised an event in Guatemala City to bring together interested stakeholders to present the methodology and key findings of the analysis.

Review and update the NBA

In order for the NBA to serve as a tool for monitoring and evaluating the effectiveness of a NAP, at a minimum, the relevant indicators in the NBA should be periodically updated and revised to reflect changes in the implementation of and gaps in implementing the UNGPs. In turn, a revision of the full NBA should inform any updated versions of a NAP.

DIAGRAM 3: NBA PROCESS

EXPERT

- Identify appropriate organisation with relevant expertise to develop NBA
- Conduct preliminary desk-based research

ENGAGE

- Engage stakeholders from the state, business, and civil society

PUBLISH

- Finalise and publish the NBA
- Make NBA information accessible to all stakeholders, including government

REVIEW

- Update the NBA to evaluate implementation of the NAP and inform subsequent NAP iterations

2.3. ELABORATING THE NAP: SCOPE, CONTENT, AND PRIORITIES

The previous sections have focused on the process of developing an NBA and a NAP. The current section addresses issues pertaining to the scope and content of a NAP on business and human rights.

2.3.1. Address the Full Scope of the UNGPs

A NAP on business and human rights should, in principle, address the major gaps in implementing all three pillars of the UNGPs. Based on the NBA and stakeholder consultation, priority actions may be identified in relation to specific UNGPs. A NAP should indicate how the actions identified in relation to a given UNGP contribute to its realisation.

2.3.2. Address the Full Scope of the State's Jurisdiction

In line with UNGP 2, a NAP should consider measures to regulate the actions of businesses based in its territory to prevent, address, and remedy business-related human rights abuses when these businesses are operating both at home and abroad.

2.3.3. Prioritise Actions to Address Major Gaps and Challenges

A NAP should focus on relevant thematic or sector-specific human rights issues. Such issues might include, for instance, women's rights, children's rights, indigenous and minorities' rights, labour rights, anti-trafficking and anti-slavery, security and conflict, revenue transparency and management, and information and communication technologies (ICT). The identification of such issues should emerge from the NBA, as well as from input received via stakeholder consultations.

Beyond the priorities identified in the NBA, stakeholder input should be systematically collected, analysed, and published by the government in the process of identifying priorities for the NAP. Governments may do this a number of ways, including by publishing minutes from consultations and written submission, and assigning responsibility for individual recommendations to the relevant state institution for review and possible adoption. The methodology for evaluating stakeholder input in the process of designing NAP actions should also be transparent.

BOX 17

ADDRESSING THE FULL SCOPE OF THE STATE'S JURISDICTION

The 2016 version of the U.K. NAP addresses the full scope of the state's jurisdiction. While the majority of the government's commitments emphasise external human rights concerns, Section 3 (corporate responsibility to respect) and Section 4 (access to remedy) also discuss domestic considerations.

Similarly, the Italian NAP addresses the full scope of the state's jurisdiction by focusing on promoting corporate responsibility and protecting human rights both domestically and abroad. The NAP has a number of domestically-focused planned measures, specifically in relation to addressing illegal hiring, and tackling discrimination and inequality, and also includes several internationally-focused planned measures such as elaborating "the concept of a 'human rights clause' to be included as a requirement for competing enterprises...with particular focus on i) enterprises operating abroad; ii) enterprises availing themselves of foreign suppliers; [and] iii) foreign enterprises."⁶⁸

2.3.4. Include a Particular Focus on Marginalised or At-Risk Groups

A NAP should include a particular focus on addressing the impacts of business on the most marginalised groups. These can include children; women; racial, ethnic, religious, or other minorities; LGBTQI people; persons living with disabilities; indigenous peoples; elderly persons; migrant workers and their families; persons affected by poverty, including homeless persons; rural or geographically isolated communities; and persons employed in the informal economy.

A NAP should clearly identify such individuals and communities as rights-holders, and identify measures to be taken by the state to enable these individuals and communities to claim and enjoy their human rights.

For more information on this, see Chapter 3: A Human Rights-based Approach to NAPs.

BOX 18

PRIORITISE ACTIONS TO ADDRESS THE MOST SERIOUS HUMAN RIGHTS ABUSES BY BUSINESS

The Colombian NAP prioritises the energy, mining, agro-industry, and road infrastructure sectors as they are seen to “generate the most social conflict in the state due to their impacts on human rights and the environment.”

BOX 19

INCLUSION OF MARGINALISED GROUPS IN A NAP

The Italian NAP commits to “protect, promote universal respect for, and observance of, all human rights fundamental freedom and non-discrimination principles, with special attention to the rights of most marginalised groups, such as women, children, disabled, LGBTQI people, migrants[,] asylum seekers[,] and persons belonging to ethnic and religious minorities.” Under specific UNGPs, the NAP also includes dedicated measures to address risks to the human rights of children, persons with disabilities, and trafficked and migrant workers.

2.3.5. Comprise Action Points that are Specific, Measurable, Achievable, Relevant, and Time-specific (SMART)

A NAP should identify a set of concrete actions to be taken by the government; these actions should be explicitly linked to the findings of the NBA. In particular, the NAP should respond to identified gaps in implementation of the UNGPs and aim to address these directly or, at a minimum, to contribute significantly to resolving them within a reasonable time period. Further, it should be ensured that each item is:

- **SPECIFIC:** The action item should address a specific gap or issue, and be tied to a relevant government department;
- **MEASURABLE:** The action item should be concrete enough to ensure that progress on the item can be measured and assessed;
- **ACHIEVABLE:** The action item should be realistic in terms of time and resources;
- **RELEVANT:** The action item should be linked to the UNGPs or other business and human rights frameworks, and to the realisation of specific rights; and
- **TIME-SPECIFIC:** The action item should have an indication of the timeline for realisation.

BOX 20

SMART ACTIONS IN NAPs

The Finnish NAP includes action(s) for each section with a responsible Ministry(s) and scheduled date explicitly identified. For example: “As a follow-up measure, the working group proposes that alternatives for the development of the NCP [National Contact Point] be mapped out. In the meantime, the procedures of the NCP shall be clarified and communications shall be made on them. Principal responsible party: Ministry of Employment and the Economy, schedule before the end of 2015.”⁷⁰

The U.S. NAP on Responsible Business Conduct adopts a tabular approach identifying specific outcomes, within which it lists “new actions” and “ongoing commitments and initiatives,” all of which explicitly identify an implementing department or agency.

The Swiss NAP includes an appendix, in table form, detailing an overview of implementation that provides a breakdown of which NAP commitments relate to which UNPG, the activities to be undertaken in each commitment, and which party leads in the implementation of the activity.

2.3.6. Ensure that NAP Action Points are Coherent with Other Relevant Frameworks

The UNGPs provide governments and businesses with a roadmap aimed at improving the enjoyment of human rights of individuals, workers, consumers, and communities. For NAPs on business and human rights to be effective in improving business conduct, they should consider how the successful implementation of the UNGPs may help improve the national implementation and functioning of other relevant frameworks and initiatives. NAP actions should therefore seek to adopt or improve the implementation of other relevant frameworks and initiatives. Likewise, state institutions responsible for other frameworks and initiatives should actively engage in developing the NAP on business and human rights, and commit to incorporating the human rights and business framework in their work. This not only contributes to strengthening the state's overall efforts at promoting human rights, but it also increases policy coherence, reduces duplication of efforts, and inefficient use of state funds.

RELEVANT FRAMEWORKS AND INITIATIVES TO CONSIDER IN THE CREATION OF A NAP:

- 2030 Sustainable Development Agenda and Sustainable Development Goals
- Extractive Industries Transparency Initiative
- Kimberley Process
- Open Government Partnership
- OECD Guidelines for Multinational Enterprises
- Paris Agreement on Climate Change
- Voluntary Principles on Security and Human Rights

2.4: IMPLEMENTATION, MONITORING AND REVIEW OF NAPs

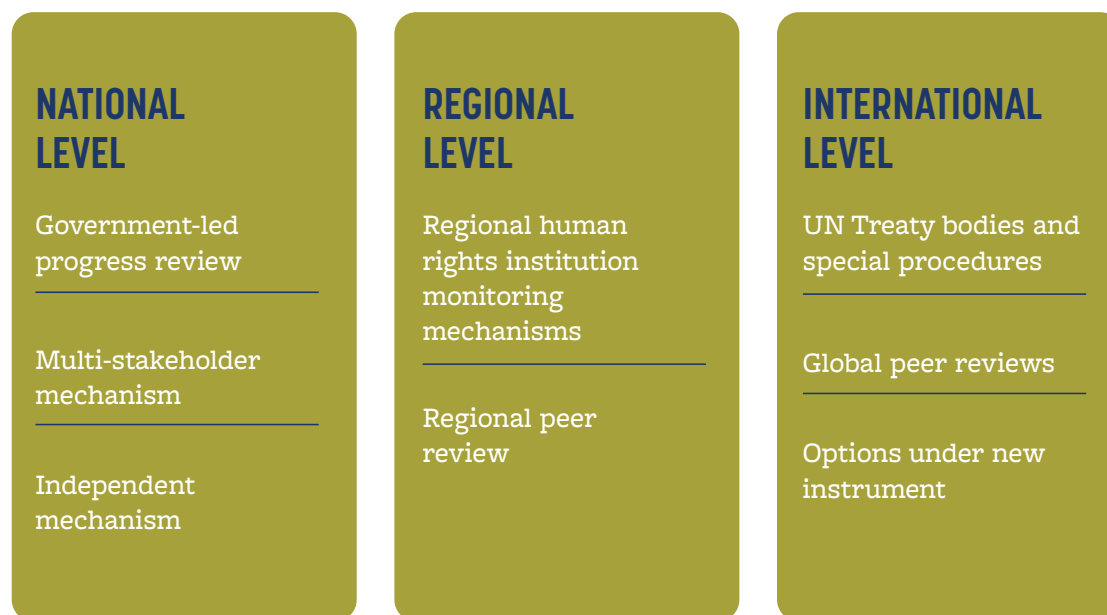
Publishing a NAP is not the end of the process, but rather the beginning of the implementation phase. Incorporating an implementation plan, monitoring and review mechanisms, and reporting mechanisms into a NAP increases the likelihood that the commitments made in the NAP will be implemented in practice. At the same time, monitoring, reviewing, and reporting on successes and failures can help foster an exchange of information and the sharing of best practices within and among states, as well as with wider society. Furthermore, incorporating a commitment to update a NAP allows the lessons learnt to be put into practice and demonstrates a commitment to progressively realise the “protect, respect, remedy” framework of the UNGPs.

BOX 21

SUSTAINABLE DEVELOPMENT GOALS AND NAPs

The implementation of the 2030 Agenda and its related goals and targets is gaining traction in many countries, including via the development of national follow-up and review mechanisms. Responsible business conduct has been highlighted as a critical component of the 2030 Agenda. The UNGPs and the SDGs are both implemented through national action plans, as such, the potential to integrate this work is vast. This points to a means of effectively integrating the human rights responsibilities of business, and national implementation of the SDGs through an integrated and mutually reinforcing approach, in order to capitalise on the momentum established by the 2030 Agenda, create synergies, and enhance impact.

DIAGRAM 4: MONITORING AND REVIEW OF NAP



2.4.1. Include an Implementation Plan

In addition to ensuring that each individual action item specifies a state actor responsible for implementing the measure and a timeline for completion, a NAP should include an overarching, yet detailed, implementation plan.

The implementation of new actions outlined in a NAP varies in complexity depending on the nature of the future action, the local context, and the uptake of the business and human rights agenda by state institutions and business. For example, a lack of political will or financial resources and/or a change of government may impact implementation efforts. NAP implementation processes have so far had mixed levels of success.

2.4.2. Establish Monitoring and Review Mechanisms at the National level

During a NAP lifecycle, it is important to periodically review and address what progress has been made in the implementation of the NAP as identified by stakeholders, including state institutions, business, and civil society. Reviews can help identify challenges and make recommendations to improve implementation measures. Review processes should be explicitly detailed in the NAP, along with who is to undertake reviews and when they will occur. There are a number of forms that reviews can take, including reviews led by the government, multi-stakeholder groups, or independent national monitoring mechanisms.

Establish Regular Progress Review Led by the Government

A government may itself lead a periodic review of progress in fulfilling the commitments made in a NAP. Typically, the body that coordinated the development of the NAP would undertake a progress review in conjunction with an inter-governmental working group and/or a multi-stakeholder steering

committee, where one is established. It is also advisable to include the legislative and judicial branches of government in the process of reviewing the executive branch's implementation of the NAP. A mid-term progress-review and, if the NAP is time-bound, a final review of the NAP, are common approaches. In both instances, general principles in Chapter 3 relating to a HRBA in NAPs processes, should be applied, particularly with regard to stakeholder participation and transparency.

During the review process, the state's performance in meeting targets and benchmarks established in the NAP should be assessed and reported on. On this basis, implementation measures contained in the NAP can be updated.

BOX 22

IMPLEMENTATION PLANS IN NAPs

Chile's NAP states that to "ensure an effective implementation... a supplementary document containing indicators has been prepared detailing the institution responsible for enforcing compliance of each measure, indicators, as well as the [timeline] defined for that purpose. The responsible institution shall report to the Inter-Ministerial Working Group about the implementation stage of their measures to facilitate the monitoring and follow up process of the Plan."⁷¹ It further states that, "at the national level, the Inter-Ministerial Working Group will be formalised by Decree."⁷² Among other things, this seeks to support the NAPs optimal implementation. This Working Group will have an Executive Secretariat responsible for coordinating its actions. The implementation plan will be made publicly available in due course.

BOX 23

PROGRESS REVIEW BY GOVERNMENT

The Italian NAP provides for the establishment of a Working Group on Business and Human Rights (GLIDU) (sitting within the Inter-Ministerial Committee for Human Rights) which, in 2018, "will conduct a mid-term review to assess the results achieved and identify the gaps in the actions undertaken to ensure the effective protection and advancement of human rights with regard to economic activities."

In Chile's NAP, the government commits to formalising the Inter-Ministerial Committee on Human Rights and Business by decree in order to implement, monitor, and follow up on the implementation of the NAP. This Committee will have an Executive Secretariat to coordinate the preparation of the annual report and the relationship with the Multi-Stakeholder Advisory Group. The Inter-Ministerial Committee will also prepare an annual report on compliance with NAP measures, according to established indicators. To prepare this report, a pre-meeting will be held to assess progress and challenges in implementing the NAP. The report will be published on the NAP's website and sent to each of the institutions involved in its implementation. The NAP also establishes that the annual report will be sent to the legislative and judicial branches of government.

The Colombian NAP includes a framework for evaluation and follow-up. According to this plan, before the first of March of every year, each institution detailed in the NAP should report to the Presidential Advisory Office for Human Rights on the steps it has taken to fulfil the actions committed to under the NAP. This information is then to be consolidated and published by the Presidential Advisory Office. The Office is also tasked with co-convening two regional rounds of review to assess the on-the-ground implementation of the NAP. Following through on this plan, in 2017, Colombia published its first Annual Report on implementation of the NAP.

The UK NAP states that "[w]e will report back each year on progress in the Annual Report on Human Rights and Democracy of the Foreign and Commonwealth Office." This commitment was also included in the 2016 NAP Update and the reports have been forthcoming. In 2017 the UK Parliament's Joint Committee on Human Rights undertook an Inquiry entitled "Human Rights and Business 2017: Promoting responsibility and ensuring accountability" which included a number of recommendations to improve future NAP updates.

Consider Establishing a Multi-Stakeholder Monitoring and Review Mechanism

As highlighted throughout this Toolkit, NAP processes should be based on the continuous engagement with, and participation of, stakeholders. Stakeholders can also be given responsibility, jointly or independently, for monitoring and reviewing the implementation of the NAP process, from drafting, to implementation, review, and the development of an updated NAP.

Periodic review meetings between stakeholders and those charged with the implementation of a NAP can be an effective, participative, and transparent way of tracking progress and can provide an understanding of where actions are not effectively implemented or have not had the intended effect.

BOX 24

MULTI-STAKEHOLDER MECHANISMS FOR REVIEW

The Swiss NAP commits the government to create a Monitoring Group with representatives from business, civil, society, and academia to ensure effective implementation of the NAP. The NAP leaves it up to this group to define their exact role and function upon creation, though with the guidance that it meets “regularly” to discuss progress on NAP implementation with the responsible government agencies for implementation.

The Chilean NAP commits to creating a Multi-Stakeholder Advisory Group with representatives of civil society, trade unions, business sector, indigenous peoples, academia, and the National Institute of Human Rights, in order to evaluate the progress contained in the Inter-ministerial Committee Progress Report, and provide comments and recommendations aimed at improving the effective implementation of the NAP.

In relation to monitoring, the Italian NAP gives the task of supervising implementation progress to the Working Group on Business and Human Rights (GLIDU), established within the NAP. Accordingly, and “with the aim of guaranteeing a multi-stakeholder approach, the GLIDU will work jointly with a consultative body composed of all relevant non-institutional stakeholders (business community, trade unions, civil society organizations, human rights defenders, individual experts[,] and representatives from academia).”⁷⁶

Consider Establishing or Mandating Independent National Monitoring Mechanisms to review the NAP

The UN Convention on the Rights of Persons with Disabilities (CPRD) requires the establishment by state parties of a framework to promote and monitor the CPRD’s implementation, which must include one or more “independent mechanisms.”⁷⁷ Under the CPRD, an existing body such as an NHRI or another entity set up for this purpose can be allocated this function.⁷⁸ Such an oversight model could be adapted to promote and monitor a NAP on business and human rights. Thus, an independent body, such as the NHRI, could be given the role of monitoring implementation of the NAP.

BOX 25

NHRI-LED FOLLOW-UP AND EVALUATION

The French NAP provides that the follow-up and evaluation of the NAP will be conducted by the NHRI as an independent administrative body, in line with the recommendation of the UNWG. Its mission will be to evaluate the implementation of the plan periodically. The details of the follow-up and review are not included in the NAP.

2.4.3 Reporting to International and Human Rights Mechanisms on NAP Implementation

Reporting on NAP efforts to international human rights mechanisms provides governments and local stakeholders with additional avenues for monitoring the state's human rights obligations in relation to business, thus helping to improve implementation of the UNGPs and ensuring accountability for state duty-bearers. Reporting to such mechanisms can also support the identification of gaps and the need for further normative developments at the regional⁷⁹ and/or global level, including in relation to the extra-territorial dimension of business and human rights issues.⁸⁰

Report on Progress through the Universal Periodic Review (UPR) Process by the UN Human Rights Council (UNHRC)

States should report on business and human rights through the UPR process. The UPR process is overseen by the UN Human Rights Council and examines the record of each of the UN Member States once every four and a half years. The scope of the review is in line with the human rights guaranteed by the Universal Declaration of Human Rights (UDHR) and set out in the UN Charter, other UN human rights instruments, ratified treaties, voluntary pledges, and applicable international humanitarian law.

The UPR is a peer review process based on: (1) information provided by the state in a report;

BOX 26

REPORTING THROUGH THE UPR PROCESS

The Danish NAP notes, in relation to UNGP 3a on reviewing the adequacy of laws requiring businesses to respect human rights, that: "Denmark actively takes part in the Universal Period Review process [sic] of the United Nations. Denmark also takes part in the review by the UN Treaty Body Monitoring mechanisms with regard to obligations arising under the United Nations core human rights conventions, and by relevant ILO and Council of Europe bodies. These processes provide a platform for systematic consideration of the compliance of Danish law, policies[,] and administration with international human rights law. Denmark duly takes account of findings and recommendations issued by such bodies."⁸¹

The Finnish NAP states that "[d]epending on the situation, Finland utilises the universal periodic review (UPR) of the human rights situation in the UN Human Rights Council states. In this review, questions may be asked and recommendations on the implementation of the guiding principles may be given to the state examined."⁸²

The Swiss NAP highlights the importance of the UPR process and notes as an activity "UPR reporting on business and human rights and formulation of UPR recommendations on business and human rights for other States."⁸³

(2) a report compiled by the OHCHR; and (3) information from other stakeholders, including civil society and a state’s NHRI, compiled by the OHCHR as a summary of stakeholder information. The UPR process proceeds via an interactive dialogue wherein UN Member States can pose questions and comments and make recommendations to the state under review. An outcome report is adopted following the interactive dialogue. The state under review can accept or note recommendations given by other states. The UN Human Rights Council will later adopt a final Plenary Session Report. States are responsible for implementing recommendations made by other states. States may voluntarily submit to a mid-term review, after around two years, in which stakeholders can again participate. The cycle continues and another full examination will occur four and half years after the last.

Accordingly, the UPR represents an opportunity to monitor progress towards the implementation of the UNGPs through NAPs. The state under review may report on NAP progress, while civil society, NHRIs, experts, other UN organs, as well as other governments, may highlight progress, or lack thereof, through a recommendation.

Report on Progress to UN Human Rights Treaty Monitoring Bodies and Special Procedures

A NAP may include a requirement to report on business and human rights through the UN human rights treaty monitoring, special procedures, or other UN accountability mechanisms. There are nine core human rights instruments which each establish a treaty body (Committee).⁸⁴

The Committees oversees the requirement for states which have acceded to a treaty to undertake a periodic report roughly every four years and based on constructive dialogue, publishes its concerns and recommendations, in the form of concluding observations. The UNGPs address all internationally recognised human rights and, as a result, business and human rights can be raised in discussion in any treaty body monitoring process, special procedures, or other UN accountability mechanisms.

The Committees also publish their interpretation of the content of human rights provisions, known as general comments, on thematic issues or methods of work. For example, in 2013 the Committee on the Rights of the Child adopted General Comment No. 16 (2013) on state obligations regarding the impact of the business sector on children’s rights. Additionally, in 2017 the Committee on Economic, Social and Cultural Rights adopted General Comment No. 24 (2017) on state obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

The UN Human Rights Council has established “Special Procedures” which are independent human rights

BOX 27

NINE CORE HUMAN RIGHTS INSTRUMENTS WITH A TREATY BODY

- Human Rights Committee (CCPR)
- Committee on Elimination of Discrimination against Women (CEDAW)
- Committee Against Torture (CAT)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearances (CED)
- Committee on Economic, Social, and Cultural Rights (CESCR)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)

experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the UN human rights machinery and covers all human rights: civil, cultural, economic, political, and social. As of 1 August 2017, there are forty-four thematic and twelve country mandates. Included as one of the thematic mandates is the UNWG, whose responsibilities include the effective and comprehensive dissemination and implementation of the UNGPs.

Special procedures undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to states and others in which they bring alleged violations or abuses to attention; conduct thematic studies and convene expert consultations; contribute to the development of international human rights standards; engage in advocacy; raise public awareness; and provide advice for technical cooperation. Special procedures report annually to the Human Rights Council; the majority of the mandates also reports to the UN General Assembly.

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BOX 28

THE UNWG REPOSITORY OF NAPs

The UNWG launched a Repository of NAPs in February of 2014, which collects all published NAPs in one location. In June 2014, the UN Human Rights Council, in renewing the UNWG's mandate, gave it the new task of seeking information from states on their NAPs and encouraged states and other stakeholders to provide relevant information to the UNWG. Specifically, the UNHRC “welcome[d] the efforts of the Working Group to build a database of national action plans” and “encourage[d] States to submit information on their national action plans”⁸⁵ by way of annual updates.

BOX 29

REPORTING TO INTERNATIONAL MECHANISMS

The Swiss NAP states that “Switzerland will include business and human rights appropriately in its periodic reports on the implementation of international conventions, such as the Convention on the Rights of the Child, and the Convention on the Elimination of all Forms of Discrimination Against Women.”⁸⁶

The Finnish NAP states that “Finland shall report to the UN Committee on the Rights of the Child on the implementation of the recommendation by the Committee on Business.”⁸⁷ The NAP also commits to “continue the dialogue related to the human rights impacts of business activities with the UN bodies for indigenous peoples.”⁸⁸

Although the Swedish NAP does not make an explicit reference to reporting on business and human rights issues, it states that: “Sweden has acceded to several of the inter-national organisations’ conventions on human rights, including UN, Council of Europe and International Labour Organisation conventions. Sweden is therefore obliged to report, at regular intervals, on its implementation of the provisions of the conventions. Sweden has been reviewed by the UN Human Rights Council’s Universal Periodic Review mechanism on two occasions (2010 and 2015).”⁸⁹

BOX 30

OPTIONS FOR REVIEWING NAPs UNDER AN INTERNATIONAL BUSINESS AND HUMAN RIGHTS INSTRUMENT

In 2014, the UN Human Rights Council decided “to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”⁹⁰ While the scope and focus of such an instrument is still being discussed, it has been suggested that a treaty on business and human rights or component of it could focus on NAPs on business and human rights.⁹¹ It is an established practice that human rights instruments make provision for scrutiny of state measures toward compliance and implementation of substantive obligations they have undertaken. As such, if a new legal instrument on business and human rights were realised, it will likely provide for a dedicated monitoring and review process on business and human rights.⁹²

There are a range of monitoring and review options that could be incorporated into such an international agreement:

- Review by the new independent expert monitoring body in the UN, or the UNWG;
- Review by an existing or new national mechanism states would be obliged to establish under the instrument; and
- Review via a new UN-based peer review mechanism.

2.4.4. Report to and Engage with Regional Human Rights Mechanisms

African Commission on Human and Peoples’ Rights (ACHPR)

The African Commission Working Group on Extractive Industries, Environment, and Human Rights violations was established in 2006. Its mandate includes, inter-alia, to “undertake research on the violations of human and peoples’ rights by non-state actors in Africa,” and “formulate recommendations and proposals on appropriate measures and activities for the prevention and reparation of violations of human and peoples’ rights by extractive industries.”⁹³ In carrying out its mandate, the Working Group has the platform to drive the implementation of the UNGPs in Africa’s extractives sector. Additionally, the Working Group is currently drafting State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to extractive industries.

Council of Europe

The CoE has set up various mechanisms for the promotion and monitoring of human rights in Member States. The Commissioner for Human Rights is an independent non-judicial institution established in 1999 by the CoE to promote awareness of and respect for human rights in the CoE Member States. The Commissioner is mandated to, inter-alia, foster the effective observance of human rights, assist Member States in the implementation of the human rights standards of the Council of Europe, and identify

possible shortcomings in law and practice concerning human rights.⁹⁴ As a follow-up to the adoption of a Recommendation on business and human rights, the Commissioner has begun integrating business and human rights into the agenda of country visits.⁹⁵

Inter-American Commission on Human Rights (IACHR)

The mandate of the IACHR provides opportunities for reviewing the progress of NAPs of OAS Member States, including through country visit outcome reports, periodic public hearings where states may be subject to a review on human rights and business, and in situations where states ask for IACHR advisory support on their NAP processes. Such an advisory role is in line with the 2014 and 2016 OAS Resolutions on business and human rights, which request increased IACHR engagement and support in this area.

2.4.5. Engage in Peer Dialogue and Review on NAPs at Regional and Global Level

Peer exchanges on NAPs, in particular at the regional level can help enhance dialogue amongst states that face similar business and human rights realities and challenges, and address regional frameworks relevant to business and human rights, in addition to global standards. Business and human rights is a relatively new area for many policy-makers, and the scope of business and human rights is very broad. Addressing human rights adverse impacts requires a “smart mix”⁹⁶ of measures ranging from encouraging businesses to integrate human rights into their operations and adopting policies and procedures within various government agencies, to revising existing legislation and adopting targeted regulatory measures.

Peer review processes, which should also allow for stakeholder participation, can therefore provide a platform to learn from experiences in developing and implementing NAPs and/or other policy measures to implement the UNGPs. There are a number of examples of peer review processes in other areas which could be further explored in relation to business and human rights. In relation to NAPs on business and human rights, opportunities for peer reviews are emerging as highlighted below.

OECD

The OECD conducts Investment Policy Reviews of states on the basis of the OECD Policy Framework for Investment. These reviews present an overview of investment trends and policies in the states assessed. In addition to a review of the investment promotion and facilitation, competition, trade, taxation, corporate governance, finance, and infrastructure policy, these reviews also consider policies to promote responsible business conduct.⁹⁷

The NCPs established by states adhering to the OECD Guidelines are also subject to a peer review. The NCP peer review process provides an important opportunity for NCPs to take stock of their achievements, acknowledge weaknesses, and implement strategies to strengthen their effectiveness and performance. Given that a number of NAPs have made commitments to strengthen NCPs, such as the NAPs of Sweden, Italy, and the United States, the peer review process can provide a platform to track NCP-related commitments.

With regard to NAPs on business and human rights, since 2015, the OECD, in collaboration with the UNWG, has organised peer dialogue sessions for policy-makers within the framework of the Global Forum on Responsible Business Conduct.

African Union

Through the AU's New Partnership for African Economic Development (NEPAD), the African Peer Review Mechanism operates on a voluntary basis, which covers the broad areas of economic and political governance. This could be an appropriate platform into which consideration of UNGPs could be integrated in the future.⁹⁸

Association of Southeast Asian Nations

ASEAN's Intergovernmental Commission on Human Rights completed a thematic study on CSR in 2014 that included a peer review exercise of national measures to promote CSR.⁹⁹ A similar system could be created to peer review the implementation of NAPs on business and human rights.

Council of Europe

The CoE, in addition to its human rights monitoring mechanisms on issues such as corruption,¹⁰⁰ human trafficking,¹⁰¹ anti-money laundering and the financing of terrorism,¹⁰² relies or has relied on a peer reporting exercise, based on standard questionnaires to be completed by its Member States, in order to promote follow-up and implementation of soft legal standards.¹⁰³

In the recommendation adopted in March 2016, the Committee of Ministers of the CoE recommended that Member States “share plans on the national implementation of the UN Guiding Principles on Business and Human Rights (“National Action Plans”), including revised National Action Plans and best practice concerning the development and review of National Action Plans in a shared information system, to be established and maintained by the Council of Europe, which is to be accessible to the public.”¹⁰⁴ The recommendation also provided for the examination “within the Committee of Ministers [of] the implementation of this recommendation no later than five years after its adoption [i.e. 2021], with the participation of relevant stakeholders.”¹⁰⁵ This provides opportunities to establish a strong review mechanism. Stakeholders have recommended that such a review could build on existing approaches for peer review at OECD, EU, or UN levels.¹⁰⁶

European Union

In relation to a number of areas, ranging from employment and education policies to culture, EU Member States participate in voluntary peer review processes under the “Open Method of Coordination” (OMC). The OMC is principally based on jointly identifying and defining objectives to be achieved (adopted by the Council); jointly established measuring instruments (statistics, indicators, guidelines); and benchmarking, i.e. comparison of EU countries' performance and the exchange of best practices (monitored by the Commission). The EU requires that its Member States produce national plans both on CSR and business and human rights. A one-time peer review exercise was undertaken by the EU to evaluate Member States' CSR NAPs in 2013, all Member States participated in several meetings organised in different Member States. Reports were published for each peer review

meeting, summarising the dialogue that the states engaged in, including a brief description of any NAP progress made in each state. There is no mention, however, of any input from or participation of other stakeholders in the final reports.¹⁰⁷ This experience and the OMC are opportunities for Member States to engage in peer learning regarding NAPs on business and human rights.

The EU Council conclusions of 2016 call on “the Commission and the EEAS [European External Action Service] to promote peer learning on business and human rights, including cross regional peer learning.”¹⁰⁸

Two informal peer exchange meetings have been held. The first was organised as a meeting of policy makers under the Dutch Presidency of the EU in May 2016. The second was organised in 2017 by the Belgian government as a one-day “Peer Exchange on Implementing the UN Guiding Principles on Business & Human Rights: National Action Plans and Addressing the issue of Remedy Sharing Experience and Best Practices.” Non-government stakeholders were invited to share their views during one session at the end of the meeting.

Organization of American States

The OAS has adopted two resolutions expressing support for the UNGPs and their implementation by states.¹¹⁰ In February 2018, the Committee on Juridical and Political Affairs will host a regional peer exchange session with OAS Member States on regional advances with regards to the implementation of the UNGPs.

2.4.6. Report on Progress in the Follow-up and Review of the 2030 Agenda and High-Level Political Forum (HLPF)

As noted previously, the 2030 Agenda’s FUR architecture is comprised of national, regional, and international levels. Nationally, states should conduct regular and inclusive progress reviews that draw on input from stakeholders, and regionally, they should undertake voluntary reviews based on national FUR processes for the purposes of peer learning and sharing of best practices. At the global level, the 2030 Agenda establishes the HLPF as the hub for review of state efforts to implement the SDGs.

States seeking to implement and voluntarily report on their efforts to implement the SDGs through the HLPF can also report on measures within their NAP on business and human rights which implement, or support the implementation of, the SDGs. States can also ensure coordination between the SDG FUR mechanism and the mechanisms set up to monitoring the implementation of their business and human rights NAP. To further integrate these reporting processes, states could incorporate national level indicators on the business and human right NAP as part of the national FUR mechanism.

BOX 31

PROMOTING PEER-REVIEW AT EU LEVEL

The Italian NAP states that Italy will “[e]ngage with other States for the establishment of a mechanism of peer review for the existing National Action Plans on Business and Human Rights (in line with EU Council resolution encouraging peer learning on BHR).”¹⁰⁹

2.5: UPDATING THE NAP

In order to effectively realise the UNGPs, NAPs should not only be monitored, reviewed, and reported on, but should also be periodically updated. Incorporating a commitment to update a NAP allows the lessons learnt during creation, implementation, and review to be put into practice and demonstrates a commitment to progressively realise the “protect, respect, remedy” framework of the UNGPs.

Once a NAP nears the end of its implementation period, planning should begin to develop a new or updated NAP. Subsequent NAPs should build not only on evaluating the extent to which the NAP’s own indicators were met, but also on input and recommendations from national, regional, and international monitoring and review mechanisms, as well as on domestic stakeholder feedback. Conditions on the ground are likely to have evolved over the implementation period of the NAP, so it may be necessary for the new NAP process to reflect such change. Updating the NBA to assess the current level of implementation of the UNGPs and the human rights impacts of business can provide a tool for achieving this.

BOX 32

UPDATING NAPs

The UK NAP states that “[w]e commit to bring out an updated version of the action plan by end 2015.”¹¹¹ The UK began a consultation process to update the NAP in 2015, and published the Updated NAP in 2016. The aims of the update were to: “record the achievements the Government has made, and actions we have taken, over the past two years; reflect the developments which have taken place at the international level since the UK’s National Action Plan was first published, including guidance on implementation and the experience of other countries; set out the role Government can play in helping business to fulfil its responsibility to respect human rights, and in creating a secure, predictable, and fair environment for UK companies, wherever they operate; support the role Government can play in supporting human rights defenders in this field and the provision of remedy which is available to those who feel they are victims of business-related human rights abuses.”¹¹²

In 2017 the UK Parliament’s Joint Committee on Human Rights undertook an Inquiry entitled “Human Rights and Business 2017: Promoting responsibility and ensuring accountability,”¹¹³ which included a number of criticisms of the updated NAP, as well as recommendations to improve future NAP updates.

The Swiss NAP states “[t]his NAP should be reviewed and updated every four years,” noting that the Federal Council will “present the first updated version of the National Action Plan in 2020.”¹¹⁴



A HUMAN RIGHTS-BASED APPROACH TO NAPS: PARTICIPATION, NON-DISCRIMINATION, TRANSPARENCY, AND ACCOUNTABILITY



This Toolkit’s content and recommended processes are aligned with a human rights-based approach (HRBA). According to the UN’s Statement of Common Understanding on HRBAs to Development Cooperation and Programming, a HRBA is:¹¹⁵

- Normatively and operationally based on international human rights standards and principles;
- Applies human rights-based principles in processes – including participation, non-discrimination, empowerment, transparency, and accountability; and
- Emphasises the importance of accountability by recognising entitlements of rights-holders and the obligations of duty bearers.

3.1. EQUALITY AND NON-DISCRIMINATION

All human beings are considered equal and entitled to the same human rights without discrimination on the grounds of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth, or other status.¹¹⁶

Implications for a NAP on business and human rights in relation to equality and non-discrimination include:

- Ensuring that consultation processes and the content of NAPs are gender sensitive, and that women and men are given equal opportunities to participate in the NAP process;
- Identifying and recognising the most marginalised groups in society, and ensuring the inclusion of those rights-holder groups who may be marginalised or discriminated against in the given context, especially those individuals subject to multiple forms of discrimination; and
- Ensuring that the NAP addresses issues of discrimination against women and other groups in society in the context of business activities.

3.2 PARTICIPATION

Participation enables all stakeholder groups to be involved in each phase of the process, and governments should take special measures to engage marginalised individuals and groups throughout a NAP process, particularly where indigenous peoples are present (see Section 3.1.2 on “Indigenous Peoples”). The goal of participation is to create ownership by right-holders over their development, which in turn requires access to information to ensure effective participation.

Implications for a NAP on business and human rights in relation to participation include:

- Enabling stakeholder participation through, for example, the establishment of a permanent multi-stakeholder structure tasked with providing input at all stages of the process;
- Facilitating consultation meetings throughout the NAP process from its inception, to the development of a NBA, drafting of the NAP, implementation and review;
- Ensuring that consultations take place in a manner appropriate to the stakeholder(s) in question, with attention paid to levels of knowledge and expertise in the subject matter and any potential language or social, cultural, financial, or other barriers to participation; and
- Undertaking capacity-building of stakeholders as necessary to enable meaningful participation for those rights-holders who are marginalised or discriminated against.

3.3. TRANSPARENCY

Access to information is necessary for ensuring effective stakeholder participation in NAP processes. Transparency requires governments to make available all information relevant to its decision-making processes. It is important that people know and understand how major decisions affecting their rights are made and how public institutions that are established for the protection of these rights are managed. However, the mere availability of information is not enough; this information must also be accessible and available in languages and formats that suit the needs and literacy levels of all.

Implications for a NAP on business and human rights in relation to transparency include:

- Publishing and regularly updating the plan for developing the NAP, including the timeframe for the different phases;
- Publicising key documents relevant to the NAP process, including the NBA, minutes of meetings, contributions from stakeholders, any drafts of the NAP, and reviews of implementation, in an accessible and timely manner; and
- Ensuring that the information published is adequate and accessible enough to ensure meaningful participation by rights-holders and other stakeholders in the NAP process.

3.4. ACCOUNTABILITY

Accountability in the HRBA framework entails recognising the entitlements of rights-holders and the obligations of duty-bearers, thereby enabling rights-holders to hold duty-bearers in government and business accountable for their actions.

Implications for a NAP on business and human rights in relation to accountability include:

- Clearly defining responsibilities within the government for the development of the NAP;
- Including a focus on implementation, follow-up, and review in the NAP that identifies clear responsibilities for its implementation and follow-up; and
- Ensuring that the NAP addresses the most serious impacts of business activities and the access to remedy for rights-holders adversely affected by business.

Taken together, the different elements of a HRBA also help governments command the confidence of all stakeholders, which is a prerequisite to the legitimacy and credibility of NAPs on business and human rights.

3.5. ENGAGING SPECIFIC RIGHT-HOLDERS IN A NAP PROCESS

To be rights-compatible, a NAP process needs to be open and inclusive for all relevant stakeholders. As discussed above in Section 2.1.7, rights-holders from affected groups and communities, especially those from vulnerable or marginalised groups, may often face challenges in participating fully and effectively in NAPs processes. The following is a discussion of the types of challenges faced by a non-exhaustive list of particular rights-holders.

3.5.1. Children

Children interact with businesses every day, whether as consumers of goods and services, members of communities in which they operate, family members of their employees, or as workers themselves. At the same time, childhood is characterised by progressive stages of development that leave children far more susceptible to negative business impacts than adults. Yet despite this vulnerability, businesses and governments rarely involve or seek the input of the children they affect, and children face many legal, practical, and cultural barriers to having their voices heard.

According to the Convention on the Rights of the Child, all children capable of forming their own views should be able to freely express themselves and have their views taken into account in line with their age and maturity.¹¹⁷ Additionally, there are a number of children's rights stakeholders within and outside of government that are also able to help express the needs and desires of children. These stakeholders might include children's ombudspersons or individuals within ministries for youth, family, social affairs, health or education. Other children's rights stakeholders include youth organisations, civil society groups, parents and/or caregivers, and community leaders.

It is essential that states specifically consider children’s rights when developing and implementing a NAP, and that they involve children and children’s rights stakeholders in this process, in order to effectively address issues of concern relevant to children’s rights within the business and human rights context.

3.5.2. Indigenous Peoples

NAP processes need to ensure the effective participation and respect of indigenous peoples and their specific rights, in accordance with ILO Convention No.169 on the rights of indigenous peoples, the UN Declaration of the Rights of Indigenous Peoples (UNDRIP), and region-specific standards and jurisprudence.

Lack of adequate consultation with indigenous peoples often results in their rights, priorities, needs, and aspirations not being reflected in government initiatives, as well as to negative development outcomes for indigenous peoples. The obligation to consult indigenous peoples is a general requirement in situations where legislative, administrative, and/or developmental initiatives may affect them,¹¹⁸ including in the context of the creations of NAPs on business and human rights. This is a broad understanding of the obligation to consult which not only refers to the development of national laws, policies, and programmes, but also to regional and local administrative regulations, programmes, and projects. In the context of international law, the obligation to consult is read in line with the right of indigenous peoples to decide their own priorities for the process of development,¹¹⁹ the right of indigenous peoples to maintain and strengthen their distinct and representative institutions,¹²⁰ and the right of indigenous peoples to participate at all levels of decision-making which concern them.¹²¹

According to international law, consultation should be undertaken with the objective of achieving agreement or consent.¹²² Free, prior, and informed consent (FPIC) is recognised in the UN Declaration on the Rights of Indigenous Peoples.¹²³ Consultation should also be undertaken in good faith with the representative institutions of indigenous peoples, through procedures that are appropriate for them. This implies that the nature and scope of the consultation process should be agreed on with indigenous peoples in advance of consultation procedures taking place. Consultations should also be initiated prior to any form of government decision-making, providing indigenous peoples with a real possibility of influencing decisions throughout the cycle of conception, planning,

BOX 33

SPECIAL FOCUS ON CHILDREN IN NAPS

In Mexico, UNICEF led the creation of a thematic supplement to the NBA in relation specifically to children’s rights and NAPs. UNICEF utilised a thematic baseline supplement authored by their own organisation in collaboration with DIHR and ICAR.

In Colombia’s NAP, the Ministry of Labour commits to strengthening actions to prevent the sexual and commercial exploitation of children and adolescents, and to generating strategies linking the private sector to the actions for the prevention of violations of the rights of children and adolescents.

As part of the process of creating a NAP in Indonesia, the NHRI worked with UNICEF to conduct online and in-person consultations with children to understand what business impacts children experience and what roles and responsibilities they believe businesses and the government have to protect and respect their rights.

monitoring, and evaluation of a process, such as the context of a NAP. Consent in this context is not understood to be a discrete one-time action, but an ongoing process throughout the life-cycle of any action that is likely to have an impact on indigenous peoples, in accordance with the steps in the process agreed upon with indigenous peoples. Adequate consultation processes can be extremely valuable in ensuring that appropriate actions are developed that can respond to indigenous peoples' specific needs and concerns.

In practice, conducting appropriate consultation with indigenous peoples in NAP processes has been a challenge thus far for governments given diverging interpretations by civil society, indigenous representatives and state actors with respect to the right to consultation and what this implies for each step of the process.

Challenges notwithstanding, governments developing NAPs should observe the relevant human rights standards regarding indigenous peoples throughout the entire NAP process and within the content of the NAP itself. In some contexts, it may be advisable to pursue a consultation track specifically for indigenous peoples to effectively achieve this. Once a draft NAP has been developed, governments should engage indigenous peoples in a consultation along with other stakeholders to evaluate and provide feedback on the NAP, in accordance with the international standards described above.

3.5.3 Human Rights Defenders

Human rights defenders (HRDs) play a critical role in the area of business and human rights, by monitoring state and business conduct, identifying human rights concerns, and advocating for redress and accountability of government and business actors involved in human rights abuses. However, in practice, HRDs may be subject to persecution and harassment, arbitrary arrest, or detention, especially in states lacking effective rule of law for their legitimate work in promoting human rights and seeking to protect against corporate-related human rights abuses. The UNGPs acknowledge the risks faced by HRDs, by requiring states to ensure that “the legitimate and peaceful activities of human rights defenders are not obstructed.”¹²⁵

Given the important role of HRDs in identifying, preventing, mitigating, and ensuring accountability for corporate human rights abuses, it is critical for governments to consult with HRDs in the process of creating a NAP. It is of equal, if not greater, importance, that governments ensure the effective protection of defenders throughout NAPs processes, and address the dangers faced by defenders in their legitimate work in the content of the NAP.

3.5.4. Women

Recognising the “different risks that may be faced by women and men,” the UNGPs also call for explicit attention to gender.¹²⁷ Women’s rights to non-discrimination and equality are protected by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and ILO conventions.¹²⁸

BOX 34

INDIGENOUS PEOPLES' PARTICIPATION IN NAP PROCESSES

In July 2016, the Chilean Ministry of Foreign Affairs, with support from international experts on indigenous rights and business and human rights, hosted three dialogues with indigenous peoples in San Pedro de Atacama, Santiago, and Temuco to collect information on business and human rights impacts, challenges, and recommendations for consideration in its NAP.

Example impacts identified by indigenous peoples in the dialogues include:¹²⁴

- The profound impacts on territory of mining, water systems and other projects initiated by the state or private businesses that have led to cultural, social and economic changes;
- The lack of clarity around whether to negotiate with the state or with businesses;
- The lack of businesses respect for sacred sites of indigenous peoples and the destruction of local ecosystems;
- The negative impact of the differences between the Chilean calendar and the Mapuche calendar on the lives of indigenous workers;
- The existence of multiple types discrimination in the labour market based on gender and on indigenous identity; and
- The systematic discrimination against indigenous peoples right to work based on indigenous names in job applications.

Example recommendations made by indigenous peoples during the dialogues include for the state to:

- Conduct human rights impact assessments with a particular focus on indigenous peoples' rights;
- Conduct consultations for business operations already started. These consultations should be undertaken as a continuous process, and not only for business entry
- Conduct community training for effective dialogue with the state and businesses;
- Create a corporate transparency law in line with the UNGPs;
- Organise seminars and periodic training sessions with state officials and businesses on the rights of indigenous peoples;
- Recognise customary law of indigenous peoples, including as mechanisms for mediation and conflict resolution; and
- Ensure the participation of indigenous peoples in the negotiations of free trade agreements and investment decision-making.

Integrating a gender approach means analysing how business may have different, disproportionate, or unanticipated impacts on women or men, as a result of their different gender-based social, legal, and cultural roles and rights.

NAPs processes provide an opportunity to understand and address the ways in which corporate activities perpetuate widespread discrimination against women in workplaces, contribute to unstable and vulnerable working conditions, and give rise to gender-specific human rights impacts.

Women and men often experience business-related human rights impacts in different ways. Frequently, women bear a disproportionate burden of negative social, economic, and environmental impacts while having less access to the benefits, such as job creation, supply contracts, or compensation, which may be generated by private sector development. For example, in the garment sector, where women represent the vast majority of workers, they may be more vulnerable to negative human rights impacts. While all workers may be affected by certain abuses (such as fire and building safety risks, low wages etc.), women face additional risks of abuses, such as sexual harassment, assault, and rape; pregnancy-based discrimination.

Similarly, in the context of mineral development, community governance processes often de facto exclude women from participating effectively in consultations and engagement in decision-making. Women's property rights may be adversely affected as they are less likely to be compensated for loss of, or damages to, property and assets.

In all actions relating to women, human rights, and business, it is fundamental to recognize and take appropriate measures to address the particular impacts experienced by marginalised women and women affected by multiple or intersectional forms of discrimination.

BOX 35

HUMAN RIGHTS DEFENDERS CONTENT IN NBA IN THAILAND

The Manushya Foundation, an NGO who is heavily involved in the Thai NAP process, and leading the creation of an NBA to input into the official NAP process, has utilised the thematic supplement to the DIHR-ICAR Toolkit on human rights defenders, published by ICAR and the International Service for Human Rights (ISHR) to create a thematic NBA on implementation of the UNGPs in relation to HRDs.

Additionally, a few NAPs have specifically addressed HRDs in the content of their plans. For example, in both versions of the UK NAP, the government commits to supporting human rights defenders. The 2016 iteration commits the government to “continue to work through [their] embassies and high commissions to support human rights defenders.”¹²⁶

BOX 36

ADDRESSING WOMEN'S RIGHTS IN NAPs

Recognising that “there remains a substantial pay gap between women and men” in Germany, the NAP recalls that the Federal Government has initiated a dialogue between employers' and employees' organisations on this issue and has introduced numerous non-legislative measures such as the Equal Pay Day and a new computer-assisted assessment procedure for the identification of corporate pay discrimination.

With regard to human rights in conflict areas, the Norwegian NAP states that it will intensify the dialogue on the risk of gender-based and sexual abuses where appropriate.

The Polish NAP also includes measures to promote gender equality in the workplace.

3.6. CONFLICT AFFECTED-CONTEXTS

In conflict-affected areas, extreme polarisation among actors requires a highly participatory approach based on trust-building and, in some cases, peace-building. The traditional models of multi-stakeholder engagement that work in non-conflict contexts may not be useful, or instead be counterproductive. Where possible, professional conflict mediators should be involved in the process, design, and implementation of multi-stakeholder engagement. Where situations do not allow for such engagement, engagement with separate stakeholder groups can be an option.

In conflict-affected areas, states may be unable to protect human rights adequately due to a lack of effective control in these areas. The UNGPs highlight that home states of multinational enterprises operating in conflict-affected areas have a role to play in assisting both these corporations and host states in ensuring that businesses are not involved in human rights abuses.¹²⁹ In the context of the development of NAPs, this implies that both home and host states bear responsibility for ensuring companies domiciled in the territory respect human rights by including specific actions targeting businesses in these areas. Among other efforts, home states have a role in supporting host state efforts to develop NAPs, including through technical and financial support. NAP processes in countries with conflict-affected areas have seen some home state governments and local embassies contributing to host government NAP efforts, in line with the standards established by UNGP 7.

BOX 37

ADDRESSING THE ROLE OF BUSINESS IN CONFLICT-AFFECTED CONTEXTS

One of the overall objectives of Colombia's NAP on business and human rights is to contribute to the country's post-conflict peacebuilding efforts, particularly in relation to social conflict stemming from business activities that could be exacerbated in the post-conflict context. While Colombia's NAP process did not include sufficient consultation with people impacted by the conflict, the NAP does contain specific actions aimed at addressing the role of business in the country's armed conflict and encourages companies to participate in the transitional justice process. Action 6.3 states: "The Integral Care and Reparation for Victims Unit, as coordinator of the National System of Comprehensive Care and Reparation to Victims (SNARIV), together with the Post-Conflict Directorate, will develop strategies for companies to contribute to the recovery of memory for peacebuilding, reconciliation[,] and the promotion of human rights and reconstruction of the social fabric, for which they can develop initiatives of memory and construction of a culture of peace."³⁰

ANNEX A: NAPs CHECKLIST

1. GOVERNANCE AND RESOURCES

a. Leadership and Ownership of NAP Process

- Commit to the NAP process
- Ensure responsibility for the NAP process is clearly established and communicated
- Ensure coordination and coherence across government actors

b. Transparency at All Stages of the NAP Process

- Devise and publish terms of reference and a timeline for the NAP process
- Publish the NBA, stakeholder submissions, and any other significant analyses informing the NAP
- Publish and consult on a draft NAP

c. Adequate Resourcing

- Allocate appropriate financial resources to the NAP process

2. STAKEHOLDER PARTICIPATION

a. Effective Participation by All Relevant Stakeholders

- Conduct a stakeholder mapping
- Provide adequate information and capacity-building where needed
- Facilitate participation by marginalised or at-risk groups
- Consider establishing a stakeholder steering group or advisory committee

3. NATIONAL BASELINE ASSESSMENT

a. The NBA as a Foundation for the NAP

- Undertake a NBA as the first step in the NAP process
- Allocate the task of developing the NBA to an appropriate body
- Fully involve stakeholders in the development of the NBA
- Publish and disseminate the NBA
- Review and update the NBA periodically

4. SCOPE, CONTENT, AND PRIORITIES

a. Scope of NAPs

- Address the full scope of the UNGPs
- Address the full scope of the state's jurisdiction

b. Content of NAPs

- Include action points that are specific, measurable, achievable, relevant, and time-specific
- Ensure coherency with other relevant frameworks

c. Priorities for NAPs

- Prioritise for action the most serious business-related human rights abuses
- Include a particular focus on marginalised or at-risk groups

5. ACCOUNTABILITY AND FOLLOW-UP

a. Holding Duty-Bearers Accountable for Implementation

- Identify who is responsible for implementation of individual action points and overall follow-up
- Lay out a framework for monitoring of and reporting on implementation

b. Updating the NAP

- Identify a period for implementation and include a commitment to updating the NAP

ENDNOTES

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⁵¹ OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 31–34 (2011), <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

⁵² OECD, *Workshop on Developing National Action Plans on Responsible Business Conduct Including National Action Plans on Business and Human Rights* (June 17, 2015), http://www.ohchr.org/Documents/Issues/Business/Agenda_OECD_UN_NAP_Workshop.pdf; OECD Global Forum on Responsible Business Conduct, *High-Level Roundtable for Policy-Makers* (June 7, 2016), <https://nhri.ohchr.org/EN/News/Documents/Roundtable%20for%20Policy%20Makers%20-%20Agenda%20-%207%20June%202016%20-%20for%20distribution.pdf>; OECD, *National Action Plans on Business and Human Rights to Enable Policy Coherence for Responsible Business Conduct* (June 2017), <http://mneguidelines.oecd.org/NAP-to-enable-policy-coherence-for-RBC.pdf>.

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⁵⁵ OAS AG/RES. 2887, *supra* note 4.

⁵⁶ International Organization of Employers, Input to the Open Consultation on Substantive Elements to be Included in Guidance on National Action Plans (NAPs) to Implement the UN Guiding Principles on Business and Human Rights (Aug. 27, 2014), http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/business_and_human_rights/EN/_2014-08-28_G-608_IOE_Input_to_NAPs_Consultation_Process_final_.pdf.

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⁵⁸ INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, ECCJ, DEJUSTICIA, ASSESSMENT OF EXISTING NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS (2017) [hereinafter *ICAR-ECCJ-Dejusticia NAPs Assessments*].

⁵⁹ *Id.*

⁶⁰ *Id.* at 42–43.

⁶¹ See, e.g., GOVERNMENT OF ITALY, THE FOUNDATIONS OF THE ITALIAN ACTION PLAN ON THE UNITED NATIONS “GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS” (2014), <http://business-humanrights.org/media/documents/foundations-ungps-nap-italy.pdf> [hereinafter ITALY DRAFT NAP]; GOVERNMENT OF SPAIN, DRAFT OF NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS (2013), <http://www.business-humanrights.org/UNGuidingPrinciplesPortal/ToolsHub/Governments/TypeInitiative/natlactionplans>; see also ANDREAS GRAF, SWISSPEACE, DEVELOPING NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS (2013), http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_4_2013.pdf.

⁶² *National Action Plans on Business and Human Rights*, DANISH INSTITUTE FOR HUMAN RIGHTS, <https://globalnaps.org/>.

⁶³ *ICAR-ECCJ-Dejusticia NAPs Assessments*, *supra* note 58.

⁶⁴ FOOD AND AGRICULTURE ORGANIZATION INVESTMENT LEARNING PLATFORM, OVERVIEW OF METHODS FOR BASELINE ASSESSMENTS, http://www.fao.org/fileadmin/templates/tc/spfs/pdf/Methods_Baseline_Assessments.pdf.

⁶⁵ Human Rights Indicators - Main Features of OHCHR Conceptual and Methodological Framework, OFF. OF THE U.N. HIGH COMM. FOR HUM. RTS., <http://www.ohchr.org/EN/Issues/Indicators/Pages/framework.aspx>.

⁶⁶ *Human Rights and Business Country Guide*, DANISH INSTITUTE FOR HUMAN RIGHTS, www.hrbcountryguide.org (last visited Nov. 6, 2017).

⁶⁷ *Checklist: Documenting Corporate Human Rights Impacts*, BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, <https://business-humanrights.org/en/checklist-documenting-corporate-human-rights-impacts> (last visited Nov. 6, 2017).

⁶⁸ ITALIAN MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION, ITALIAN NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS: 2016-2021 (English Version) 8 (2016), http://www.cidu.esteri.it/resource/2016/12/49117_f_NAPBHRNGFINALEDEC152017.pdf [hereinafter ITALIAN NAP].

⁶⁹ *Id.*

⁷⁰ MINISTRY OF EMPLOYMENT AND THE ECONOMY, NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2014), http://www.tem.fi/files/41214/TEMjul_46_2014_web_EN_21102014.pdf [hereinafter FINNISH NAP].

⁷¹ PLAN DE ACCIÓN NACIONAL DE DERECHOS HUMANOS Y EMPRESAS DE CHILE (2017) [hereinafter CHILEAN NAP], https://business-humanrights.org/sites/default/files/documents/plan_de_accio_n_nacional_de_derechos_humanos_y_empresas.pdf.

⁷² *Id.*

⁷³ This is also in line with the UNCRPD, the most recent of the UN’s core human rights conventions, which states: “Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.” Convention on the Rights of Persons with Disabilities art. 33, ¶ 3, 2515 U.N.T.S. 3 (December 13, 2006), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> [hereinafter Convention on the Rights of Persons with Disabilities].

⁷⁴ ITALIAN NAP, *supra* note 68.

⁷⁵ FOREIGN & COMMONWEALTH OFFICE, GOOD BUSINESS: IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2013), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [hereinafter UK NAP 2013].

⁷⁶ ITALIAN NAP, *supra* note 68.

⁷⁷ Convention on the Rights of Persons with Disabilities, *supra* note 73, at art. 33, ¶ 2.

⁷⁸ For example, the German Institute for Human Rights (DIMR) houses the National Convention on the Rights of Persons with Disabilities (CRPD) Monitoring Body. *National CRPD Monitoring Body*, DEUTSCHES INSTITUT FÜR MENSCHENRECHTE, <http://www.institut-fuer-menschenrechte.de/en/national-crpd-monitoring-mechanism/> (last visited Nov. 3, 2017). This body is tasked with reviewing and providing recommendations about political, judicial, and administrative decisions that impact aspects of the CRPD. It also participates in experience and information exchanges with other NHRIs and monitoring bodies that oversee the CRPD in other states.

⁷⁹ Press Release, Organization of American States, IAHCRC Presents Report on Extractive Industries and Human Rights (Apr. 6,

2016) (http://www.oas.org/en/iachr/media_center/PReleases/2016/048.asp); Daniel Cerqueira, *IACHR Takes Important Step in the Debate on Extraterritorial Responsibility and States' Obligations Regarding Extractive Companies*, DPLF BLOG (May 11, 2016), <https://dplfblog.com/2016/05/11/iachr-takes-important-step-in-the-debate-on-extraterritorial-responsibility-and-states-obligations-regarding-extractive-companies/>.

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⁸¹ GOVERNMENT OF DENMARK, DANISH NATIONAL ACTION PLAN—IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2014), http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf [hereinafter DANISH NAP].

⁸² FINNISH NAP, *supra* note 70.

⁸³ REPORT ON THE SWISS STRATEGY FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS 4 (Dec. 9, 2016) [hereinafter SWISS NAP].

⁸⁴ *Human Rights Bodies – Complaints Procedures*, OFF. OF THE U.N. HIGH COMM. FOR HUM. RTS., <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>.

⁸⁵ H.R.C. Res. 26/22, *supra* note 2.

⁸⁶ SWISS NAP, *supra* note 83.

⁸⁷ FINNISH NAP, *supra* note 70.

⁸⁸ *Id.*

⁸⁹ GOVERNMENT OFFICES OF SWEDEN, ACTION PLAN FOR BUSINESS AND HUMAN RIGHTS (2015), <http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf> [hereinafter SWEDISH NAP].

⁹⁰ H.R.C. Res. 26/22, *supra* note 2.

⁹¹ Douglass Cassell & Anita Ramasastry, *White Paper: Options for a Treaty on Business and Human Rights*, 6 NOTRE DAME J. OF INT'L & COMP. L. 1 (2016); Blackwell & Meulen, *supra* note 9.

⁹² For some suggestions proposed for the monitoring of a future treaty provided in elements for a treaty, see *Elements for the Draft Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights*, Chairmanship of the OEIGWG, http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/LegallyBindingInstrumentTNCs_OBEs.pdf.

⁹³ *Working Group on Extractive Industries, Environment and Human Rights Violations*, AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS, <http://www.achpr.org/mechanisms/extractive-industries/> (last visited Nov. 3, 2017).

⁹⁴ Commissioner for Human Rights, COUNCIL OF EUROPE, <https://www.coe.int/en/web/tbilisi/commissionerforhumanrights> (last visited Nov. 3, 2017).

⁹⁵ Human Rights Comment from Nils Muiznieks, Commissioner for Human Rights, *Business Enterprises Begin to Recognize Their Human Rights Responsibilities* (Apr. 4, 2016), <https://www.coe.int/en/web/commissioner/-/business-enterprises-begin-to-recognise-their-human-rights-responsibilities>.

⁹⁶ Guiding Principles, *supra* note 1, at 8.

⁹⁷ *The Policy Framework for Investment (PFI)*, OECD, <http://www.oecd.org/daf/inv/investment-policy/pfi.htm>.

⁹⁸ *African Peer Review Mechanism (APRM)*, AFRICAN UNION, <https://au.int/en/organs/aprm> (last visited Nov. 3, 2017).

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¹⁰⁴ CoE Committee of Ministers March 2016 Recommendations, *supra* note 43.

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¹⁰⁷ See, e.g., EUROPEAN COMMISSION, PEER REVIEW REPORT: PEER REVIEW ON CORPORATE SOCIAL RESPONSIBILITY—ROME (ITALY) (June 5, 2013), <http://ec.europa.eu/social/main.jsp?langId=en&catId=22> (search “CSR report” in keyword search bar). There is no mention of any input from or participation of other stakeholders in the final reports currently available.

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¹¹⁰ OAS Resolution, *supra* note 54.

¹¹¹ UK NAP 2013, *supra* note 75.

¹¹² FOREIGN & COMMONWEALTH OFFICE, GOOD BUSINESS: IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2016), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf [hereinafter UK NAP 2016].

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¹¹⁹ ILO C169, *supra* note 118, at art. 7.1; UNDRIP, *supra* note 118, at art. 23.

¹²⁰ ILO C169, *supra* note 118, at art. 4.1, 6.1; UNDRIP, *supra* note 118, at art. 5, 18–20.

¹²¹ ILO C169, *supra* note 118, at art. 6.1(b).

¹²² ILO C169, *supra* note 118, at art. 6; UNDRIP, *supra* note 118, at art. 19.

¹²³ UNDRIP, *supra* note 118, at art. 10, 19, 28–9.

¹²⁴ CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, PLAN NACIONAL DE ACCIÓN DE DERECHOS HUMANOS Y EMPRESAS (2015), <http://www.derechoshumanos.gov.co/Prensa/2015/Documents/Plan%20Nacional%20de%20Accion%20DDHH%20Empresa.pdf> [hereinafter COLOMBIAN NAP].

¹²⁵ Guiding Principles, *supra* note 1, at 26.

¹²⁶ UK NAP 2016, *supra* note 112, at 11.

¹²⁷ In exercising the duty to protect, States are called on to pay attention to gender in guidance to business, as well as paying special attention to gender-based and sexual violence when supporting business respect for human rights in conflict-affected areas (Principles 3 and 7); and Corporate responsibility to respect: In exercising human rights due diligence and showing respect for human rights, businesses are expected to bear in mind the different risks that may be faced by women and men, including through collection and use of sex-disaggregated data (Principles 18 and 20). Guiding Principles, *supra* note 1.

¹²⁸ The Discrimination (Employment and Occupation) Convention, June 15, 1960, ILO C111; The Equal Remuneration Convention, May 23, 1953, ILO C100; The Workers with Family Responsibilities Convention, Aug. 11, 1983, ILO C156; The Maternity Protection Convention, Feb. 7, 2002, ILO C183.

¹²⁹ Guiding Principles, principle 7, *supra* note 1.

¹³⁰ COLOMBIAN NAP, *supra* note 124 at 18.