



**GENDER IN NATIONAL ACTION PLANS ON BUSINESS AND
HUMAN RIGHTS: WHERE ARE WE AND WHERE ARE WE HEADING?
REFLECTIONS FROM PERU, THAILAND AND UGANDA**

PRACTICE NOTE

PRACTICE NOTE – FEBRUARY 2023

**GENDER IN NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS:
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REFLECTIONS FROM PERU, THAILAND AND UGANDA

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Acknowledgements: This practice note was compiled with input and advice from Danish Institute for Human Rights (DIHR) colleagues Nora Götzmann, Daniel Morris, Elin Wrzoncki, Alvaro Amaya and Fernando Porto de Sa. The DIHR would like to thank all the interviewees who shared insights into the NAP process as well as the reviewers who have provided feedback on this report.

This publication was made possible thanks to a project grant from the Swedish International Development Cooperation Agency (SIDA). The views and positions reflected in this publication are the views of the DIHR.

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e-ISBN: 978-87-7570-143-8

Cover photo: Isaac Caffaina, unsplash.com
Layout: Michael Länger

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1 INTRODUCTION

This practice note looks at how gender is incorporated into National Action Plans on Business and Human Rights (NAPs), drawing insights from the cases of Peru, Uganda and Thailand. The aims of the practice note are to:

1. Share experiences of stakeholders involved in the integration of gender in NAP processes.
2. Highlight challenges and obstacles impeding further integration of gender in NAPs and share lessons learned on how these challenges may be overcome.

1.1 WHO IS THIS PRACTICE NOTE FOR?

The practice note is intended to be a resource for:

1. Policymakers and government officials leading or involved in the process of developing NAPs.
2. Actors who wish to advocate a focus on gender in NAPs, including national human rights institutions, civil society organisations, trade unions, businesses and international actors.

1.2 METHODOLOGY

This practice note focuses on the NAP experiences of Peru, Uganda and Thailand. Three key criteria informed the selection of these states in order to gather insights into gender integration in NAP processes. First, all three countries have recently developed their NAPs and information is consequently more easily available and up to date. Second, the selection provides a geographical spread. Third, initial evidence indicated that gender-related conversations had taken place during these three NAP processes. The main sources of data informing this guidance note are:

1. A brief review of the NAPs of Peru, Uganda and Thailand.
2. A desktop review of selected reports, studies and case studies on gender in the context of business and human rights (BHR).
3. Interviews with key informants involved in the NAP processes of Peru, Uganda and Thailand.

A desktop review of NAPs, policy documents, as well as reports produced by non-governmental organisations (NGOs) aimed at identifying evidence of the integration, or lack of integration, of gender in the NAPs processes of the selected countries. The complementary semi-structured interviews focused on documenting good practice and identifying lessons learned on integrating gender in NAPs processes. In total, 16 phone interviews were conducted with relevant experts and key stakeholders between January and June 2022 (Thailand: 7, Peru: 3, Uganda: 5). Informants were drawn from a range of regional and national civil society organisations (CSOs) and governmental and intergovernmental organisations.

1.3 CONTENT OF THIS PRACTICE NOTE

This practice note contains four sections. Focussing on both NAP development and implementation, the first three sections examine in turn each country's experience of integrating gender in their NAP. Each section i) introduces the background to the NAP and describes the key gender references identified when reviewing the content of the NAP; ii) summarises learning shared by the practitioners interviewed; and iii) outlines opportunities and shortcomings in relation to the integration of gender in the NAP. The final section of the practice note offers a synthesis of reflections on lessons learned across the countries and sets out key points for consideration that may be of relevance for actors involved in future NAP processes, with a view to generating more gender-responsive NAPs.

Covering a relatively limited number of sample countries as it does, this practice note is neither a quality assessment of NAPs nor a systematic review of gender integration in the process, content and implementation of NAPs. Rather, the analysis provides insights into the barriers and enabling factors for the integration of gender in NAP processes. Ultimately, the aim is to identify trends in country approaches, drawing out lessons that may be relevant across contexts and at different stages of a NAP process. We hope that the lessons learned from these early experiences can support learning and improved practice over time as countries iteratively advance their NAP processes.

1.4 WHY IS THERE A NEED FOR INCREASED FOCUS ON GENDER IN NAPs?

A NAP is a policy document in which a state articulates priorities and actions that it will adopt to support the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs).¹

While both NAP processes and gender dynamics are context-specific, the overall lack of attention to gender in NAPs has been increasingly documented. For example, a 2018 study by the Danish Institute for Human Rights (DIHR) highlighted the absence of a comprehensive approach to gender in NAPs, and specific shortcomings on gender in the areas of employment, natural resources, essential services, investment, and access to remedy.²

The omission of comprehensive attention to gender within NAPs constitutes an area of concern, particularly because women and LGBTI individuals tend to be among the stakeholders disproportionately affected by the negative impacts of business activities. Furthermore, gender relations and how these contribute to differentiated experience in specific contexts, is rarely analysed in NAP processes. This means that important power dynamics, gender stereotypes, the gendered division of labour and systemic discrimination may be missed in NAP consultations, issue prioritisation and in implementation actions.

For example, women are frequently overrepresented in precarious, informal or casual forms of work within the labour market. Often, they are vulnerable to sexual harassment and violence in the workplace. According to the International Labour Organization (ILO), only 49.4% of women participated in the global workforce in 2017. As such, women's participation is 26.7% lower than men's.³ Furthermore, despite the

narrowing of the gender gap in most regions of the world, it is estimated that women still earn 77% of what men earn on average.⁴ To take another example, when it comes to land issues, direct and indirect discriminatory laws and practices at the national level may lead to the displacement of women without due compensation, or the encroachment of business projects on Indigenous and communal lands.⁵

Documented workplace-related harm affecting LGBTI people includes discrimination in recruitment, hiring, retention, promotion, pay and benefits; as well as discriminatory conditions including lack of accommodation, harassment and gender-based violence.⁶ Although these may receive less attention, there are also distinct patterns of adverse, business-related human rights impacts on LGBTI people outside the workplace. These include the specific targeting of LGBTI people through harmful activities such as conversion 'therapy' and marketing campaigns. Violence, discrimination, and inequality in the provision of services related to human rights may implicate private actors, including in the areas of education, health, housing, and water and sanitation; as well as discrimination in consumer goods and other services.⁷

Frequently, such risks and impacts are exacerbated further when gender intersects with other forms of identity-based discrimination such as age, ethnicity, caste, sexuality, and HIV AIDS status. Fundamentally, if such gendered issues and gender relations are not explicitly addressed in NAPs there is a risk that NAPs perpetuate and normalise existing gender inequalities and the systemic discrimination faced by women and LGBTI people in societies.

Drawing attention to these muted challenges at the intersection of gender and business activities, the United Nations Working Group on Business & Human Rights (UNWG) issued a gender guidance for states and businesses in 2019. The guidance makes the case for specific attention to the rights of women and girls in NAPs, with a view to addressing the structural gender discrimination that underpins workplaces and communities globally.⁸ Importantly, it advocates not only greater attention to gender in the content of NAPs but also ensuring the participation of women and women's organisations in their development. In terms of discrimination against LGBTI people, the Standards of Conduct for Business, developed by the Office of the United Nations High Commissioner for Human Rights in 2017, provides an authoritative framework for how businesses can address LGBTI rights in the context of their activities and the implementation of the UNGPs.⁹

It is also critical to consider gender in context. In the countries studied to develop this practice note for example, laws and attitudes on sexual orientation and gender identity are divergent. In Uganda, for example, homosexuality is currently prohibited by law. For this reason, focus on 'gender' in the context of the Ugandan NAP has meant addressing the situation of women and girls, rather than addressing gender more comprehensively. The analysis and interview data included in this practice note reflects this situation while not endorsing it. In Peru and Thailand, both the NAP and interview data took a broader approach to gender and encompassed issues related to the situation of LGBTI people as well as women and girls. Notably, however, both processes tended to focus more on disadvantages and discrimination attributable to gender identity, rather than interrogating the power dynamics at play in gendered social relations.

Overall, while there is growing recognition – and action – by policymakers of and on the importance of gender in the processes and content of NAPs,¹⁰ the question of how gender should be addressed in NAPs, as part of contributing to redressing entrenched inequalities, is yet to be further explored. There is arguably a need for better understanding of the steps taken to integrate gender in NAPs to date, with a view to sharing learnings and highlighting obstacles as well good practice in NAPs going forward. By documenting insights from national processes in three different global regions, this practice note seeks to contribute towards this goal.



Photo credit: Robin Noguier



2 PERU NAP

2.1 BACKGROUND TO THE NAP IN PERU

The process of the NAP in Peru was initiated following a visit from the UN working group on business and human rights in 2017.¹¹ In 2018, the government of Peru committed to developing a NAP in their 2018 National Action Plan of Human Rights.¹² This action was entrusted to the Ministry of Justice and Human Rights. To do so, the Ministry of Justice and Human Rights had to undertake two assignments: first, the ministry was tasked with identifying a methodology that allowed a comprehensive analysis of the current business and human rights challenges in Peru. Second, using this analysis the Ministry was expected to lead on the drafting of the NAP while ensuring broad consultation with all relevant stakeholders.

To deliver on the above, the government opened a wide consultation on the methodology and priority issues to be included in the NAP. The process of drafting started in 2019 and ended in 2021 and was led by the General Directorate of Human Rights of the Ministry of Justice. More than 250 contributions from stakeholders were considered. Additionally, meetings were organised across different regions of the country. The focus groups for such consultations consisted of Afro-Peruvian people, migrant persons, human rights defenders, Indigenous Peoples, LGBTI people, older people, people with disabilities and women.¹³ Moreover, a variety of actors were involved in dialogues throughout the development phase of the NAP. These included various state institutions, CSOs, unions, public and private businesses, and Indigenous Peoples' organisations.¹⁴

As a result of these consultations, the Ministry of Justice and Human Rights, along with its partners (including Peruvian universities and international agencies), successfully undertook 22 analyses of 23 key relevant issues in Peru. The 22 studies were compiled to form the published National Baseline Assessment on business and human rights.¹⁵ One of the studies focused on the rights of women and one on the rights of LGBTI persons.

The Peruvian NAP (2021–2025) was published on 10 June 2021.¹⁶ The NAP focuses on agroindustry, mining, oil and gas, and private security sectors, and has a particular focus on the responsibilities of employers, especially large business enterprises.¹⁷ The Ministry of Justice and Human Rights is in charge of coordinating the implementation of the NAP.



Photo credit: Persnickety Prints

2.2 GENDER REFERENCES IN THE PERUVIAN NAP

In terms of content, the NAP has a strong focus on workplace inequality and violence against women. Some of the main issues covered are unequal pay, sexual violence and other forms of harassment, and the balance of family life and work. The NAP includes actions to address these human rights issues with measures such as increased access to childcare, more balanced work contracts and the prohibition against pregnancy discrimination. As for LGBTI people, the NAP seeks to tackle rampant discrimination and insufficient access to stable employment.¹⁸ The NAP recognises historical and structural discrimination against LGBTI people and identifies the workplace as offering a window of opportunity to remedy these harms.¹⁹

The Peruvian NAP includes six actions (9, 12, 56, 72, 75 and 78) on the rights of women, out of a total of 97 actions in the plan. These six actions include: a regulatory proposal to implement childcare services as a measure to balance work and family life, including the expectation that the Ministry of Women and Vulnerable Groups gives an annual report on these centres (action 56); the implementation of a gender equality seal or certification to recognise companies that fight against gender violence and create conditions for the effective inclusion of women in the labour market (action 75); development of training material by the Ministry of Women aimed at the business sector to raise awareness about the importance of including women in the labour market (actions 78 & 12).

Regarding LGBTI persons, the NAP recognises the lack of a solid and specific normative framework to fight violence and discrimination against this group.²⁰ The NAP includes six actions that specifically mention LGBTI persons (9, 18, 26, 62, 72 and 92). These consist of: the obligation of the Ministry of Justice to develop a normative proposal on the recognition of the gender identity of transgender persons in their official documents (action 18); the mandating of the Ministry of Justice and Ministry of Labour to propose normative reforms to recognise the legal protection of LGBTI persons and the recognition of labour and social security rights to same-sex couples and LGBTI individuals (action 26); the labour inclusion of LGBTI persons in the evaluation criteria of a gender equality seal or certification under the charge of the Ministry of Women and Vulnerable Groups (action 62); and the formulation of a guide by the Ministry of Justice and Human Rights on reparation mechanisms in cases of human rights violations against LGBTI individuals in the context of business activities (action 92).

2.3 LESSONS LEARNED ON INTEGRATING GENDER IN THE PERUVIAN NAP

Process: stakeholder participation and consultations

All the interviewed stakeholders praised the process of participation which shaped the Peruvian NAP, and all noted the highly inclusive, democratic and decentralised character of the process. Civil society organisations interviewed considered the NAP process a unique experience in a country where, often, government decisions are made centrally with only limited consultation.

The process of consultation and participation was led by the Ministry of Justice and Human Rights. In 2019, after consulting and discussing with representatives of the

government, business, universities, CSOs and workers' unions, among others, the ministry approved the methodology to develop the NAP.

This methodology included an explicit mandate to incorporate a gender perspective in the NAP process, which meant recognising the power imbalance between men and women, while taking into account gender roles and the unequal distribution of care work. In the context of the Peruvian NAP a gender perspective also meant taking special measures to promote the participation of women in the process of discussing and drafting the NAP.²¹

The process of dialogue and discussion was held through the **Mesa Multiactor** ('multi-stakeholder round table'); where members of the government and representatives of CSOs, business, academia and international cooperation agencies shared their perceptions and experiences in the process of drafting the NAP, as well as proposing actions, indicators and goals. In addition to their participation in this round table, all of the participants were able to comment on the draft documents for the National Baseline Assessment (NBA).²²

The **Mesa Multiactor** had a clear mandate to incorporate an intersectional gender perspective in its work as a result of the abovementioned methodology, which is perceived by the interviewees as having been key to the promotion of a gender-responsive NAP process that resulted in a strong outreach and succeeded in mobilising state actors to listen to and incorporate the voices and experiences of women's and LGBTI organisations.

One interviewee further clarified that the **Mesa Multiactor** mandate is also derived from a pre-existing normative framework that makes it mandatory for every state actor to address human rights issues from a gender perspective, namely the National Policy on Gender Equality²³ and the National Human Rights Plan.²⁴

Interviewees also highlighted the role played by CSOs in ensuring that the Peruvian NAP includes the interests and voices of women and LGBTI people. In 2020, civil society actors created a gender 'mini-platform' to enhance women's participation in the NAP process, collect women's testimonies on business and human rights issues and facilitate cooperation with women social leaders.²⁵

Despite the commendable steps taken to foster stakeholder consultation in the NAP, the process of engaging with the most vulnerable was halted by several challenges linked to the impact of COVID-19. Many engagement activities had to be held online, which limited outreach as access to the internet remains patchy in rural areas.

One interviewee mentioned that despite the COVID-19 related challenges, the Ministry of Justice, with support from CSOs and international donors, was able to successfully conduct conversations in different regions of Peru, with a focus on vulnerable groups and disadvantaged communities. One interviewee highlighted that it was possibly the first time that the Peruvian government had openly given the floor to social organisations to discuss topics such as gender identity and workplace discrimination against women.

The Ministry of Justice successfully held fifteen sessions of the multi-stakeholder round tables, twenty-two regional dialogues and eleven nationwide conversations; one of which was exclusively on the rights of LGBTI people, and one on the rights of women.²⁶

It was further noted by interviewees that the formulation of the NBA and the entire NAP process was informed by an intersectional approach. As explained by one interviewee, the Ministry of Justice successfully achieved a balance between driving dialogues exclusively on the gender aspects of the NAP and mainstreaming gender across the other thematic priorities. Hence, the different spaces for dialogue and consultation had prominent discussions around gender when addressing Indigenous rights, labour informality and other topics. As a result, the NBA documents had a strong intersectional approach in their development, addressing topics such as women with disabilities, Indigenous women, and discrimination against trans persons.



Content: gender-relevant provisions in the NBA and the NAP

As already mentioned, the NBA included a study on the rights of LGBTI persons and a study on the rights of women. The study on women describes the NAP as a tool to improve their life quality in Peru, a country where gendered social inequalities are constantly fuelled in a patriarchal society. The NBA study analyses the main human rights issues that women face in relation to each of the three pillars of the UNGPs and makes recommendations for potential actions and indicators for the NAP.²⁷

As for the duty to protect, the study shows a lack of effective supervision of the existing legal framework to protect women in the context of business activities. According to the study, public policies in Peru failed to address the private sector as an important actor and ally in the implementation of gender equality measures.²⁸

In relation to the responsibility to respect, the main concern of the study is labour informality and illegality and its impacts on the rights of women. According to this document, labour informality is associated with higher levels of gender-based violence and discrimination. Hence, the study puts the fight against informality, and the development of formalisation mechanisms, at the forefront of concerns around the NAP process, with a special focus on monitoring and supervision of gender equality standards in the business sector.²⁹

With respect to access to remedy, the study highlights the persistent gender stereotypes in the judicial system and the excessive focus on domestic violence cases. Even though this is a crucial topic, the NBA highlights the imperative of developing reparation mechanisms for business-related human rights violations against women.³⁰

Concerning LGBTI individuals, the NBA recognises a lack of legal protection against violence, discrimination and stigmatisation in labour environments. Peruvian law does not contemplate an LGBTI perspective, which implies that sexual and gender minorities are often left out of frameworks of protection and reparation.³¹

One of the main characteristics of the Peruvian context, according to the NBA, is the lack of official information on the situation of LGBTI persons, which is an important barrier to the protection of their rights. The NBA advises the inclusion of a comprehensive legal framework which recognises gender identity, social security rights for same-sex couples, and anti-discrimination provisions on the basis of solid data, as part of the state duty to protect.³²

Regarding the responsibility to respect, the NBA found that there are no concrete obligations for the business sector in relation to the protection of LGBTI rights. Some businesses have adopted specific measures in connection with private sector initiatives such as rankings and certifications; but these are not part of a responsible business conduct framework.³³

Concerning access to remedy, the study found that the business sector has not implemented mechanisms of remedy for LGBTI workers. The main reason for this absence is precisely the lack of legal regulation on the matter. The incorporation of an LGBTI perspective is not mandatory in the justice system. The lack of an understanding of the specific needs of this population amounts to the perpetuation of discrimination in services such as legal representation, which are fundamental to access the right to reparation and remedy.³⁴

Interviewees positively recognised the inclusion of many of the NBA findings and recommendations in the NAP. They highlighted the very strong focus of the NAP on addressing workplace inequality and violence towards women. It was noted that the NAP recognises the main issues linked to women in the workplace, including unequal pay, sexual violence and other forms of harassment, and the balance of family life and work. The commitments made by the government to address some of these issues were also mentioned by some of the interviewees.

Additionally, interviewees noted that the Peruvian NAP seeks to tackle the rampant workplace-based discrimination against LGBTI individuals along with

their insufficient access to stable employment. As explained by one interviewee, in making commitments to the improvement of the situation for LGBTI people, the NAP recognises historical and structural discrimination against this group and highlights the necessity of drafting a law on gender identity in the country. Hence, the process of drafting a NAP can also lead to actions that go beyond the spectrum of BHR to address structural inequalities found in all domains of life.

While the interviewed stakeholders viewed the NAP content on gender favourably, they noted that two fundamental elements were left outside the scope of the NAP.

First, noting the size of the informal economy in Peru, interviewees regretted that the NAP commitments do not extend beyond those economic activities that are regulated under the scope of the law. According to one interviewee this is a missed opportunity, especially since actions to improve the human rights situation for women and LGBTI people who work in the informal economy was a priority demand raised by stakeholders. It was considered furthermore regrettable because a large percentage of the population does not work under formal labour contracts, including a considerable number of women and LGBTI people, who have fewer chances to access the formal labour market.

The second element that was left out of the NAP, according to interviewed stakeholders, were the business activities relating to essential services. One interviewee agreed on the benefits of the NAP but regretted the excessive focus on the workplace and labour environment as a missed opportunity to tackle the negative consequences of business activities for the rights of women and LGBTI people outside the workspace. For instance, the NAP did not mention specifically the duty of essential service providers such as hospitals and universities to prevent discrimination against LGBTI patients or students.

Many of the interviewees agreed that the NAP could have taken a more comprehensive approach to gender issues in business-related activities.

Implementation and monitoring

Interviewed stakeholders highlighted challenges to implementation, some of the most prominent being the impact of COVID-19, the political transition as a result of a newly-elected government, the excessive centralisation of monitoring and the lack of sufficient economic and human resources.

Regarding COVID-19, many governmental efforts had to be directed towards overcoming the crisis. As one of the interviewees put it, even if human rights were a fundamental topic in the recovery process, it seems that human rights in the business sector were not as important as tackling economic loss. This had gendered effects because, as mentioned by one of the interviewees, the rights of women and LGBTI people tend to become less important for governments at times of crisis and political unrest.

The political transition also had an important effect on the process of implementation. The current government came into office in July 2021, just one month after the NAP was adopted by the outgoing administration by presidential decree, which left very little



space for discussion and accommodation of the new government. According to one of the interviewees, the situation was perceived as an imposition by the newly-elected government, which resulted in limited political will to get behind the implementation of the NAP.

Reflecting on the obstacles to the gender-responsive implementation of the Peruvian NAP, one interviewee noted the need to enhance gender awareness among all actors in charge of delivering and implementing on the various NAP targets. This was considered particularly relevant given staff turnover due to the political change, both in ministries and of the politicians and political appointees leading processes. According to one interviewee, this meant that training in gender concepts had to start all over again. Interviewees perceived that the progress made on gender with the previous government had to be explained all over again to the recently elected political leaders.

In addition to the above, one interviewee mentioned insufficient budget allocation and lack of human resources for NAP implementation. The interviewee noted that the Ministry of Justice has only a few people working with NAP implementation and none of them have solid experience on gender.

Another barrier to the implementation, according to interviewees, is the excessive centralisation of monitoring and implementation. Even though the dialogues in the process of discussing and drafting the NAP were collective and had a regional focus, the process of implementation has been centralised and not many people in the regions know about the content of the NAP. The efforts to 'democratise the NAP knowledge', as one of the interviewees put it, have been mainly led by social organisations.

In April 2022 the Ministry of Justice approved a guideline for the implementation of the NAP which regulates five different instances of implementation (i) multi-stakeholder round table; ii) multi-stakeholder committee; iii) governmental working group; iv) Indigenous Peoples technical working group and; v) labour issues technical working group). None of these groups contemplate a specific instance for the participation of women's organisations or LGBTI groups. However, the guideline does include a gender perspective as one its pillars.³⁵

As of September 2022, the Peruvian government has been conducting regional seminars with local authorities to articulate the NAP provisions and actions as part of the first stage of a decentralisation of the NAP.³⁶



3 THAILAND NAP

3.1 BACKGROUND TO THE NAP IN THAILAND

The government of Thailand initiated the NAP process in 2016 following a Universal Periodic Review (UPR) recommendation from Sweden accepted by Thailand.³⁷ The Rights and Liberties Protection Department of the Ministry of Justice led the process to develop a NAP. In addition, a national committee comprising of representatives of the Ministry of Justice, other government ministries and the National Human Rights Commission of Thailand (NHRCT) was created to oversee the NAP process.³⁸

In 2017 and 2018, the Thai BHR Network – a coalition of more than 70 BHR experts comprising community leaders, academics and NGO representatives – initiated the development of an NBA under the supervision of the Manushya Foundation.³⁹ The consultations were conducted in four sub-regions of Thailand, and included dialogue with marginalised communities in the context of BHR as well as with Indigenous Peoples, environmental human rights defenders, migrant workers, formal and informal workers, LGBTI activists, persons living with HIV AIDS, sex workers, persons with disabilities and the elderly.⁴⁰

Although the NBA was conducted independently, the government utilised it to inform the development of the first draft of the Thai NAP, which was released in June 2018. However, when examining version zero, the Thai BHR network found that, while the NBA was utilised to define the four priority areas, in terms of the overall content, the commitments of the zero draft NAP did not contain the recommendations provided in the NBA.⁴¹ Consequently, some Thai CSOs perceived that they had been left out of the process and sent an open letter to the Ministry of Justice, the UNDP and the NHRCT raising their concerns about the process.⁴² Thus, in December 2018 and February 2019, a redraft of the NAP was presented to CSOs for their input. Subsequently, the final version of the NAP (2019–2022) was published in October 2019.⁴³ It includes the four priority areas identified by communities through the NBA:

1. Labour rights and standards.
2. Communities, land, natural resources and the environment.
3. Human rights defenders.
4. International investments and transnational corporations.

Currently, the Ministry of Justice is in charge of implementing the NAP. More recently, Thailand began developing a second NAP (2023–2027), the draft of which was considered in a public hearing in August–September 2022.⁴⁴

3.2 GENDER REFERENCES IN THE THAI NAP

The Thai NAP contains commitments aimed at reducing gender inequality across each of the four identified priority areas. In the area of employment, the NAP includes commitments to achieving equal opportunities in the workplace. It assigns the

responsibility to eliminate employment-based discrimination to the Ministry of Labour, and tasks it with conducting a study to assess whether the Labour Law should be amended in line with the Gender Equality Act.⁴⁵

When it comes to business committing to gender equality, the Thai NAP encourages companies to adopt anti sexual harassment measures and to consider new means of integrating women in the workplace.⁴⁶ In addition, the Ministry of Social Development and Human Security, and the Ministry of Justice, are tasked with disseminating knowledge and understanding of the Gender Equality Act 2015 and the existing mechanisms under the act to all stakeholders, including to businesses.⁴⁷

On remedy, the Thai NAP includes provisions on adopting gender-sensitive remedies for victims of abuse of power in accordance with international standards.⁴⁸ It requires the Ministry of Land to adopt gender-specific land policies. For example, noting that when there are adverse consequences for women and for SOGI (sexual orientation and gender identity minorities), evictions of rights-holders as a result of business activities should be stopped. The NAP further emphasises the importance of consulting women when facing issues pertaining to natural resource governance and environmental management. Specifically, it commits to integrating the perspectives of women from minority ethnic groups in the upcoming review of an existing remedy mechanism currently used by the Ministries of Agriculture, Environment and Interior, aimed at managing the adverse impacts of natural resource extraction.⁴⁹ To enhance the protection of women human rights defenders, the NAP tasks the Ministry of Justice, the Ministry of Defence, the Royal Thai Police, the Office of the Attorney General, the Office of the Court of Justice and the Ministry of Foreign Affairs to jointly conduct gender training for law enforcement officers.⁵⁰

Finally, in the NAP the Thai government commits to repealing the Prostitution Prevention and Suppression Act of 1996 and to engaging in monitoring labour standards in the entertainment industry following UN CEDAW Committee recommendations.⁵¹



3.3 LESSONS LEARNED ON INTEGRATING GENDER IN THE THAI NAP

Process: stakeholder participation and consultations

When reflecting on the NAP process in Thailand, interviewees recognised the broad consultation, which took place at the inception phase. One CSO engaged in the process played a key role in ensuring the wide participation of marginalised communities, women human rights defenders, and other affected communities, including Indigenous women.

The availability of a dedicated, state-provided fund to support the representation of remote communities at the consultations taking place in the capital was recognised by interviewees as having been a good practice.

Additionally, interviewees indicated that civil society actors were particularly engaged in defining the priorities of the NAP from a gender perspective. For example, a coalition of NGOs undertook a gender analysis of the UNGPs in the context of Thailand which demonstrated how gender can be integrated in each identified priority area of the draft NAP. This gender analysis was submitted to the drafting committee and was also used by CSOs to influence the integration of gender in the NAP by pointing to specific omissions and improvement possibilities in each area of the NAP.⁵²

Reflecting on additional good practices, one interviewee noted that the organisation of specific consultations with women human rights defenders (WHRDs), including labour union leaders, land and environmental defenders, affected community members, anti-corruption activists and journalists, marked a milestone in government recognition of the role of WHRDs in raising significant concerns about irresponsible business practices in Thailand as part of the NAPs process.

Two interviewees welcomed that the priority areas captured in the NAP were identified **by communities themselves** through the NBA. According to them, the selection of topics by communities was a key win as it signals that the process of consultation went as far as to not only ensure the participation of diverse groups but also extended to expressing the concerns of the various groups in the text itself.

Content: gender-relevant provisions in the NAP

Reflecting on the content of the NAP in terms of gender, interviewees particularly welcomed the state commitment to develop gender-sensitive remedies. They viewed this as a key opportunity for overcoming barriers faced by women and minorities in accessing justice for business-related human rights harms.

Interviewees shared mixed perspectives on whether the provisions on gender included in the NAP – a mainstreaming approach rather than a separate section on gender in the NAP – were sufficient to comprehensively capture all relevant issues women and LGBTI people are exposed to. One interviewee noted that the mainstreaming approach adopted allowed for gender to be taken as a cross-cutting parameter across all thematic areas. Another interviewee considered that the cross-cutting approach was insufficient stating that the as yet embryonic understanding and perception of gender-

related issues of the stakeholders in charge of developing and implementing the NAP means there is a risk that this approach leads to the omission of gender priorities in the implementation phase.

Reflecting on shortcomings of the NAP, interviewed stakeholders noted that despite best attempts to include all stakeholders in the consultations, the interests of the most vulnerable stakeholders were not sufficiently captured in the content of the NAP. A key concern raised by two interviewees was that the final NAP still does not explicitly mention sex workers, a particularly vulnerable group in the context of Thailand, risking their exposure to various human rights violations. Similarly, another interviewee described the absence of specific recommendations directed towards migrant workers as a missed opportunity given the number of migrant workers in the Thai economy, and noted the particular vulnerability of women migrant workers.

One interviewee expressed concerns about the NAP not articulating actions to establish specific measures for the protection of vulnerable populations and not promoting any affirmative action to protect stakeholders who are particularly vulnerable to the impacts of business activities. For example, Indigenous Peoples are not explicitly mentioned, nor are the rights of rural and Indigenous women to access to information and participation in decision-making processes, including management of land, natural resources and the environment.

Implementation and monitoring

Interviewees agreed that progress on the NAP has been slow and stalled by a range of challenges. According to one interviewee, a fundamental issue are the existing inefficiencies within the NAP monitoring mechanism chaired by the Ministry of Justice's Rights and Liberties Protection Department. The gaps in monitoring were amplified by the surge of the COVID-19 pandemic during the implementation period, making it difficult for state administrations to operate routinely. In the context of a stalled NAP, it is difficult to track any specific progress on gender-related targets.

One interviewee mentioned the lack of specific follow-up on gender-related targets and attributed it mostly to the absence of a gender-responsive budget allocation for the implementation. The same interviewee noted that there was some budget allocated for training NAP implementors on gender-responsive budgeting, but that the activity did not take place in light of the abovementioned challenges.

Interviewees had mixed opinions on whether the NAP in Thailand has contributed to uplifting the life of women rights-holders and impacted communities. One interviewee expressed disappointment with the outcome of the NAP for the most vulnerable generally, and for women and LGBTI people specifically. According to them, no meaningful reform targeting women or LGBTI people has been adopted since the launch of the NAP. The interviewee also expressed concerns about the rising number of strategic lawsuits against public participation (SLAPPs) against women human rights defenders.⁵³

Reflecting on the same question, one interviewee had a different perspective: they noted that both NAPs and gender dynamics are constant 'work in progress' and suggested that there is value in the progress achieved just through the process of consultation and development of the NAP itself. Another interviewee noted that the Thai NAP process had successfully triggered crucial discussions, and put gender concerns (i.e., the recognition of women human rights defenders, the discussion on sex workers) into the conversations underpinning the development of the NAP, and on the table for key policymakers. The same interviewee highlighted that such discussions foster awareness raising on gender and may incrementally lead to behavioural change and shift of attitudes on gendered stereotypes and misconceptions.



Photo credit: Norbert Braun



4 UGANDA NAP

4.1 BACKGROUND TO THE NAP IN UGANDA

Uganda's journey towards a NAP began in 2016, following the acknowledgement of a UPR recommendation from Norway.⁵⁴ The NAP process in Uganda was led by the Ministry of Gender, Labour and Social Development (MGLSD), which established a technical working committee, convening members from various government ministries, departments and agencies, civil society organisations and international development partners, such as the ISER – The Initiative for Social and Economic Rights.⁵⁵

The content and methodology of the NAP was informed by 11 country-wide consultations conducted between March and October 2019. The NAP committee set a target to place special focus on recording the perspectives of the vulnerable persons in the communities. Over 600 participants from 99 districts in 11 sub-regions of Uganda were consulted.⁵⁶ Specific and exclusive meetings were also held between government officials and women in the Kaabong and Moroto mining region.

Following the consultations and research, the NAP leaders synthesised and deliberated on the eight following priorities to guide the formulation of the NAP: i) land and natural resources; ii) environment; iii) labour rights; iv) revenue transparency; v) tax exemptions and corruption; vi) social service delivery by private actors; vii) consumer protection and access to remedy; viii) and women, vulnerable and marginalised groups.⁵⁷

On 31 July 2021 Uganda published its first NAP (2021–2025). The NAP analyses the eight priority areas, then makes commitments to addressing issues in each area. While the Ministry of Gender, Labour and Social Development is responsible for the effective implementation of the NAP, the implementation stage is a 'shared responsibility' between the government, the private sector and other non-state actors.⁵⁸ The NAP mentions that periodic reviews are to be carried out to track implementation of interventions, results and change outcomes.

4.2 MAIN GENDER REFERENCES IN THE UGANDAN NAP

As flagged in the introduction to this practice note, gender references in the Uganda NAP pertain to the situation of women and girls, and do not address the situation of LGBTI persons. The NAP acknowledges the differentiated harm women are exposed to in the context of business activities.⁵⁹ It starts by addressing how business-related human rights violations have contributed to increased sexual and gender-based violence.⁶⁰ It also highlights the gender-related issues in specific sectors such as the extractive or the agriculture sectors. In particular, it mentions the particularly unsafe conditions for women working in the mining sector.⁶¹ Likewise, it emphasises that women make up the majority of agricultural wage workers and these are among the lowest earners in the economy.⁶² It also points to the enhanced vulnerability of women as victims of human trafficking, of environmental impacts generated by business activities (especially in relation to food and water security) and in land ownership.

Furthermore, it recognises women with disabilities as a particular category of vulnerable persons.⁶³

The NAP makes gender-specific commitments in the areas of land rights; protection of human rights defenders; free, prior and informed consent (FPIC); access to remedy; and workplace inclusion. The collated gender-responsive commitments found in the NAP are:

- Enacting gender-sensitive legislation to protect human rights defenders
- Promoting gender-sensitive training for land investors
- Promoting the gender equality seal programme and other workplace inclusion actions in coordination with businesses
- Guaranteeing that businesses apply gender-sensitive internal grievance mechanisms
- Strengthening the legal framework for gender-sensitive remedies
- Providing subsidised legal aid services for vulnerable groups, including women
- Promoting BHR knowledge for women and other vulnerable groups
- Developing a policy framework for land acquisition, compensation and resettlement with a focus on vulnerable groups, including women
- Ensuring meaningful FPIC consultations by applying a gendered perspective.



4.3 LESSONS LEARNED ON INTEGRATING GENDER IN THE UGANDAN NAP

Process: stakeholder participation and consultations

Interviewees reiterated the unique level of engagement between duty-bearers and civil society organisations, which shaped the NAP development process in Uganda. All interviewees acknowledged the enhanced participatory approach adopted by the MGLSD, custodian of the NAP. The presence of three organisations with gender equality-related mandates, namely the Equal Opportunity Commission, the Ministry of Gender, Labour and Social Development, and the Uganda Association of Women Lawyers (FIDA – an NGO working towards advancing women’s rights), was assessed by interviewees to have been a key enabling factor that favoured the visibility of issues at the intersection of gender and business, as their expertise was useful to ensure that gender aspects were not forgotten, but rather were strongly embedded in NAP processes.

To ensure effective community outreach and participation of stakeholders in the process, one interviewee noted the importance of gender-responsive and culturally appropriate planning. The women-only meetings held as part of the consultation process in the Kaabong and Moroto mining regions were deemed crucial to fostering a safe space where marginalised individuals came together, and safely shared insights

into their lived experiences. According to the same interviewee, a key successful factor of these meetings was the effort made by those developing the NAP to accommodate meeting times in order to suit the schedules of women community members. Another good practice mentioned was that the organisers of the consultations secured resources to ensure the availability of translators in local languages during the consultation, supporting meaningful participation of the consulted communities.

However, there were criticisms of the consultation process. A women's grassroots organisation, which was not directly part of the process, noted that the tight schedule for the process prevented actors like themselves from meaningfully engaging by means of advocacy or strong, data-backed, gender-related research. According to the same interviewee, both the short timeline and the funding set-up of these consultations – where only well-funded organisations could participate – worked against the participation of under-resourced organisations in the consultation discussions, and they noted that most consultations were attended only by well-resourced and established organisations in the BHR space.



Photo credit: Chris Lutanga

Furthermore, one interviewee mentioned that to date there is no trace of any recorded consultation with representatives of Indigenous populations. This interviewee also noted that the local government actors retained the lead on most of the consultations, noting that although this approach is reasonable, as NAPs are state-governed processes, it does create issues in that rights-holders may not be able to share equivalent information with local government representatives, in comparison to other trusted stakeholders, such as CSOs.

Content

All interviewees noted the concrete commitments within the NAP to tackling salient issues related to women and girls at the centre of BHR. These include the focus on improving women's situation in the labour market, the increase of remedy provision for vulnerable groups including women, and the commitment to develop a policy framework for land acquisition.

A practice commended by interviewees is the formulation of already budgeted outputs seeking to achieve gender-related targets, in particular the elimination of sexual harassment and the strengthening of social protection for vulnerable groups. According to interviewees, the dual approach of mainstreaming gender in the NAP and of taking a targeted approach to specific issues of women and vulnerable groups set out in a standalone chapter proved successful at highlighting attention to women and girls throughout the analysis. The Ugandan NAP recognises the wealth of issues around the unequal impact of business activities on women and vulnerable stakeholders (including the rights to land and to a safe environment). The NAP further addresses and recognises risks associated with business activities for the most vulnerable stakeholders such as persons with HIV AIDS, and risks for women in the agriculture sector or women in mining.

Reflecting on shortcomings, one interviewee noted that the NAP did not sufficiently address the burden of unpaid care and domestic work which disproportionately impacts on women, especially given the increasing recognition that the gender gap in unpaid care work carries significant implications for women's ability to actively take part in the labour market and for the type/quality of employment opportunities available to them.⁶⁴

Implementation and monitoring

Since the Ugandan NAP was only adopted and launched in August 2021 (six months before the data for this document was collected), there are few reflections on its implementation and monitoring. More time is needed to assess whether the NAP addresses the situation of women and girls effectively in its implementation.

Reflecting on the anticipated challenges of implementing the NAP in a gender-responsive manner, all interviewees indicated that the lack of budget and dedicated resources will be barriers. However, it was noted that training in gender-responsive budgeting delivered by the Equality Commission to all the relevant ministries in charge of implementing the NAPs will have a positive impact in ensuring that gender aspects are considered in the delivery of the NAP.

5 KEY CHALLENGES AND LESSONS LEARNED

Based on the above country insights about how gender is (and is not) currently considered in the development and content of NAPs, this section presents reflections on five common challenges and lessons learned, and is aimed at practitioners seeking to generate more gender-responsive NAPs.

1. Strengthening content and action on gender within NAPs

In each of the three countries considered in this practice note we observe that increasing efforts to ensure that NAPs are centred on principles of inclusion, non-discrimination and transparency were mentioned by interviewees. These are positive developments in light of earlier analyses pointing to significant gaps and shortcomings in attention to gender in NAPs processes and content.

However, interviewees also signalled that the focus on ensuring participation of women and other groups during the process of developing a NAP remains insufficient for addressing challenges at the intersection of gender and business. While attention to gender, and participation in the development phase of a NAP are key prerequisites for achieving gender-responsive NAPs, ensuring participation of women and LGBTI people in consultations is not enough to deliver on outcomes of non-discrimination and gender equality. As such, the country insights presented in this practice note demonstrate that there is a need to further act on gender issues identified during the consultations and to translate them into tangible commitments during the formulation of NAPs. This is an important insight for future NAP processes that seek to contribute meaningfully to addressing discrimination and gender inequality.

Relatedly, the importance of delivering tangible results on actions related to gender was brought to light in all three countries. This highlights that lack of action and effective implementation of measures addressing gender is not only a major challenge in terms of achieving gender equality but also risks undermining the trust between duty-bearers and rights-holders built throughout the NAP development process, including through stakeholder consultations. Incidentally, this stresses the point that policymakers would do well to further prioritise implementation of NAP actions, including those related to gender, and to strengthen attention to public reporting on the progress of NAPs.

2. Consulting with women, LGBTI people, their representatives and gender experts throughout the NAP phases

All interviewees noted the importance of meaningful consultations with women and LGBTI people, their representatives, and with gender experts, as part of the NAP process. Strategies emerging to support effective participation of women and LGBTI people include: i) providing dedicated and exclusive spaces for deliberation on issues and priorities; ii) consultation timings, processes and agendas should be adapted to the needs of women and LGBTI people (i.e., by considering parameters such as domestic

work and family care responsibilities when organising consultations); iii) funding needs to be allocated by state actors to ensure the participation and representation of rights-holders themselves, of under-resourced local rights groups and of remote communities by coordinating with relevant civil society actors and; iv) local/regional knowledge needs to be harnessed to ensure a broad scope of representation. Representative institutions and gender experts may include the NHRI, the government ministry responsible for gender issues, civil society organisations, academic institutions and women's groups.

These insights align with earlier research on gender in NAPs, once again emphasising the importance of specific and targeted efforts to engage with and reflect the views of different rights-holder groups in NAP processes and consultations. Interestingly, interviewee reflections on participation and consultation focused primarily on the NAP process itself, rather than the governance structure of the NAP. How women, LGBTI people and their representatives might be included within actual NAP governance structures might therefore be a point of attention for further research and practice in working towards more gender-responsive NAPs.



Photo credit: Antoine Pluss

3. Enhancing gender awareness of policymakers in charge of NAP processes

Across the three countries, the insights gathered converge on the need for additional investment in capacity development of duty-bearers on gender and in setting out what a gender-responsive NAP might look like. This is of particularly high relevance to those leading NAP processes, such as the steering committee or lead ministries. While the NAPs across all three countries explicitly recognise the need for and commit to building capacity on gender among ministries, line agencies and departments responsible for the NAP, it is useful to assess whether such commitments should be an integral part of the NAP lifecycle, particularly the inception phase, rather than solely a commitment during the implementation phase. A proactive and forward focus on sharing gender learnings and strengthening awareness at an early stage (by bringing in experts, facilitating gender awareness workshops etc.) would guarantee that those in charge of NAP governance, such as steering committees, pay attention to gender throughout the NAP lifecycle, including when establishing the governance framework, the methodology and when drafting the content of the NAP.

Another area for attention in future NAP processes might be to prioritise learnings and capacity building of the leading NAP stakeholders on gender-responsive budgeting prior to agreeing on the budgeting of the NAP. Ensuring that those discussing resource allocation of NAPs are well aware of gender dynamics would ensure that the resource allocation is informed by a gender mainstreaming approach. Ultimately, this ensures the inclusive implementation of NAP objectives.

4. Conducting informed and refined gender analysis

In order to effectively account for gender in NAPs, interviewees stressed the importance of conducting refined gender analysis as part of the NAP processes. Such analysis is essential to providing information on the specific experiences of women and LGBTI people, as well as on gender relations and how these affect and are reflected in the context of BHR. Gender analysis can shed light, for example on the situations of women and LGBTI people with regard to the human rights impacts of business activities, and the different effects that policies may have on them because of their situations. Through capturing the workings of gender relations and specific gendered impacts, comprehensive gender analysis can also be critical for guiding the prioritisation of issues in a NAP in a gender-responsive manner.

The insights gained through looking at these three country examples indicate that a thorough gender analysis, and any existing gender-related data and research, should be fostered and included within NAPs to inform critical documents such as the NBA, the NAP terms of reference and the various interim deliverables generated in developing and implementing the NAP. Future research and practice on developing gender-responsive NAPs might usefully throw further light on how existing gender resources can be most meaningfully brought into NAPs processes, as well as on what type of additional gender data is likely to be needed to deliver a truly gender-responsive NAP in a particular country context.

5. Devoting space and attention to critical, context-specific, gender issues

The three country contexts studied in this practice note reinforce the message that meaningful attention to gender in NAPs, like all other BHR issues addressed, must adjust to country context, while not losing sight of international human rights norms. In some jurisdictions the most critical gender issue might be the gender pay gap, in another women's land rights, or in a third discrimination against LGBTI people in the workplace. This said, supporting previous findings on gender and NAP research, the insights gained in this practice note also demonstrate that many of these gender issues are likely to be at play in most jurisdictions, albeit playing out differently depending on the context.

For example, across the three countries interviewees underscored the need for NAPs to expand their scope beyond the formal sector. Reflecting earlier analysis on gender and NAPs, such consideration is crucial and carries significant gender implications because women and LGBTI people frequently make up a disproportionate percentage of workers in the informal economy – from street vendors and domestic workers to subsistence farmers and seasonal agricultural workers. In order to foster credibility by addressing the most salient issues, it is important that NAP processes pay sufficient attention to the gendered division of labour and to the informal economy. To do so, policymakers may consider analysing the various potential bottlenecks and pathways to achieving decent work goals in the contexts of their local economies and establish incentives to facilitate transition to formality for both workers and enterprises.



A further example observable from the three country insights is that NAPs frequently take a simplistic view of gender to mean a focus on women and girls. As such, NAPs may unintentionally perpetuate gendered stereotypes and omit the inclusion of key vulnerable stakeholders across the gender spectrum. This points to a need for future NAPs to take a more comprehensive approach to gender, that pays close attention to the situation of women and girls, but also to LGBTI rights and the role of gender relations in BHR.

A critical concluding point here is that holistic integration of gender in NAP processes must combine a 'gender mainstreaming' approach with not losing sight of devoting specific space and attention to the most salient gender issues in the given context.

6 GENDER GLOSSARY

Sex: 'Refers to the biological and physiological characteristics that define humans as female or male. These sets of biological characteristics are not mutually exclusive, as there are individuals who possess both, but these characteristics tend to differentiate humans as females or males'.⁶⁵

Gender: 'Refers to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. The concept of gender includes five important elements: relational, hierarchical, historical, contextual and institutional. While most people are born either male or female, they are taught appropriate norms and behaviours – including how they should interact with others of the same or opposite sex within households, communities and workplaces. When individuals or groups do not “fit” established gender norms they often face stigma, discriminatory practices or social exclusion'.⁶⁶

Gender identity: 'Gender identity refers to a person's innate, deeply felt internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth'.⁶⁷

Gender analysis: 'Critical examination of how differences in gender roles, activities, needs, opportunities and rights/entitlements affect women, men, girls and boys in a given policy area, situation or context'.⁶⁸

Gender responsive: 'Refers to outcomes that reflect an understanding of gender roles and inequalities and which try to encourage equal participation and equal and fair distribution of benefits. Gender responsiveness is accomplished through gender analysis and gender inclusiveness'.⁶⁹

Gender equality: 'Equality between men and women, or gender equality, refers to the equal rights, responsibilities and opportunities of women and men, boys and girls. Equality does not mean that women and men will become the same but that their rights and opportunities will not depend on whether they were born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognising the diversity of different groups of women and men'.⁷⁰

Gender mainstreaming: 'An analytical tool and a means to achieve results, not a goal in itself. It involves considering the specific needs and situations of people of different genders in the design, implementation, monitoring and evaluation of interventions'.⁷¹

Gender transformative: 'Initiatives transform the existing distribution of resources and responsibilities in order to create a more equal relationship between women and men. Women and men may be targeted or one group alone may be targeted by the intervention'.⁷²

Intersectionality: 'Analytical tool for studying, understanding and responding to the ways in which sex and gender intersect with other personal characteristics/identities, and how these intersections contribute to unique experiences of discrimination'.⁷³

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