

NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

A Toolkit for the Development, Implementation, and Review of
State Commitments to Business and Human Rights Frameworks



National Action Plans on Business and Human Rights

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Frameworks**

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**The Danish Institute for Human Rights (DIHR)
The International Corporate Accountability Roundtable (ICAR)**

The Danish Institute for Human Rights (DIHR) is Denmark's national human rights institution. Its mandate is to promote and protect human rights and equal treatment in Denmark and abroad. The Human Rights and Business Department is a specialized unit within DIHR focusing on the role of the private sector in respecting human rights.

The International Corporate Accountability Roundtable (ICAR) is a coalition of human rights, environmental, labor, and development organizations that creates, promotes, and defends legal frameworks to ensure corporations respect human rights in their global operations.

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GLOSSARY

ASEAN	Association of Southeast Asian Nations
BHR	business and human rights
CoE	Council of Europe
CSO	civil society organization
CSR	corporate social responsibility
DIHR	Danish Institute for Human Rights
EU	European Union
HRBA	human rights-based approach
ICAR	International Corporate Accountability Roundtable
NAP	National Action Plan
NBA	National Baseline Assessment
NHRI	national human rights institution
NGO	non-governmental organization
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Council
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNWG	United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises

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Dejusticia	Government of Spain, the Spanish Agency for International Development Cooperation (AECID)
Defensoría del Pueblo (National Human Rights Institute of Colombia)	Government of Switzerland, Swiss Embassy in Colombia
Due Process of Law Foundation (DPLF) –ENDESA	Government of the United Kingdom, Foreign and Commonwealth Office, Human Rights and Democracy Department
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DIHR and ICAR would also like to recognize the Business & Human Rights Resource Centre (BHRRC) for hosting and managing a special webpage dedicated to providing updates and materials related to the Project. The page can be found at:

<http://www.business-humanrights.org/Documents/DIHR-ICAR-naps-project>

EXECUTIVE SUMMARY

Background

In June 2011, the United Nations Human Rights Council (UNHRC) unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs).¹ Three years later, in June 2014, the UNHRC called on all Member States to develop National Action Plans (NAPs) to promote the implementation of the UNGPs within their respective national contexts.² This development followed similar requests to Member States made by the European Union (EU) in 2011³ and 2012⁴ and by the Council of Europe (CoE) in 2014.⁵ Since 2011, and due in part to these initiatives, a number of individual States have developed and published NAPs on business and human rights, and many more are currently in the process.⁶

This report aims to support the development, implementation, and review of NAPs on business and human rights. It does so by providing a “NAPs Toolkit” that is intended to guide and assist governments and other actors in producing both National Baseline Assessments (NBAs) of current State implementation of the UNGPs and actual NAPs on business and human rights. It also presents a mapping and analysis of options at the international and regional levels for monitoring and review of NAPs once they are developed in order to optimize their value within and between countries as a means for improving governance, regulation, and, ultimately, respect for human rights.

The NAPs Toolkit is also aimed at informing the current development of guidance on NAPs by the UN Working Group on the issue of human rights and transnational corporations and other business enterprises (UN Working Group on Business and Human Rights), as well as other initiatives and projects focused on analyzing existing NAPs and issuing guidance for their development, implementation, and review.

The Project

In August 2013, DIHR and ICAR launched a joint Project to develop guidance on NAPs in the form of a Toolkit for use by governments and other stakeholders.⁷ This collaboration took place alongside further interventions, by both organizations, highlighting the need for NAPs and for their development in line with a human rights-based approach.⁸

The DIHR-ICAR Project and this report, which presents the Project’s key findings and recommendations, are intended to be major contributions, first, to the analysis of State duties under Pillars I and III of the UNGPs and thereby also in relation to Pillar II; second, to the development of principles and methodologies for NAPs; and third, to discussions of modalities for progressing the business and human rights agenda at the international, regional, and national levels, now and in the future.

In developing this report, DIHR and ICAR undertook a global program of consultation with representatives of governments, civil society, business, investors, academia, national human rights institutions (NHRIs), and regional and international organizations. Made possible through the support of a wide range of partner organizations, this consultation process aimed to gather views on the role and function of NAPs in advancing the protection of and respect for human rights in the context of business activity.⁹ Approximately 280 experts and practitioners contributed to the Project's findings.

The NAPs Toolkit aims to provide the first building blocks toward a common framework for developing and evaluating NAPs. Doubtless, further deliberation and analysis are required, and guidance on NAPs and implementation of the UNGPs should continue to evolve in response to changing global and local issues and circumstances, as they emerge. Recognizing this, DIHR and ICAR warmly invite responses to this report and the guidance it provides from all parties, and look forward to engaging and supporting continued dialogue on these issues in the future.

The NAPs Report and Toolkit

The report is structured as follows:

Chapter 1: Introduction

This Chapter provides an overview of the context for the report. It addresses developments at the international and regional levels that have sparked dialogue and debate around State implementation of business and human rights frameworks, including the use of NAPs as a means of contributing to the implementation of such frameworks, such as the UNGPs, at the national level. Against this background, the Chapter then introduces the joint DIHR-ICAR project on NAPs, summarizing the overall aims, objectives, and methodology of the Project.

Chapter 2: National Action Plans (NAPs)

This Chapter looks at the broader landscape surrounding NAPs on business and human rights, focusing on what NAPs are, why NAPs on business and human rights should be developed, other types of NAPs that are relevant to business and human rights NAPs (such as NAPs on human rights, corporate social responsibility, and development), and main lessons learned from these other NAPs. This Chapter then summarizes developments at the international, regional, and national levels in terms of NAPs on business and human rights. This section is supplemented by a summary of country-by-country developments on NAPs in Annex 2 to this report.

Chapter 3: Stakeholder Perspectives

This Chapter summarizes perspectives on NAPs on which there was broad agreement among participants across the Project's extensive program of consultations. Commanding the confidence of stakeholders is an important prerequisite to the legitimacy, credibility and effectiveness of NAPs. These shared perspectives have accordingly informed the approach and content of the NAPs Toolkit. This Chapter is supplemented by Annex 3, which provides the summary reports of each of the dialogue events that took place as part of the Project's consultation process.

Chapter 4: The National Action Plans (NAPs) Toolkit

This Chapter contains an introduction to the NAPs Toolkit. The Toolkit aims to support the development, implementation, and review of NAPs. The Chapter elaborates on how the NAPs Toolkit can be used by States, civil society, NHRIs, business, and other stakeholders to support national implementation by States of frameworks on business and human rights. It then describes in outline each of the three key components of the NAPs Toolkit, which are then individually presented in Chapters 5 through 7 of the report. The three key components of the Toolkit, which are illustrated in Figure 1, are: (1) the National Baseline Assessment (NBA) Template, (2) the National Action Plan (NAP) Guide, and (3) Monitoring and Review of NAPs.

Chapter 5: The National Baseline Assessment (NBA) Template

Taking each UNGP in turn, and drawing on other business and human rights frameworks and existing approaches to human rights measurement, the NBA Template provides criteria, indicators, and scoping questions by which to assess how far current law, policy, and other measures at the national level give effect to the State's duty to protect human rights under the UNGPs and other international business and human rights standards. While permitting a standardized approach to baseline analysis across countries, the Template is also designed to be adapted by local users to ensure that it can be used in a context-sensitive way. The NBA Template itself is found at Annex 4 to this report.

Chapter 5 also contains an introduction to the Thematic Templates, which will be developed and published subsequent to the release of this report as a supplement the current NBA Template.

Chapter 6: The National Action Plan (NAP) Guide

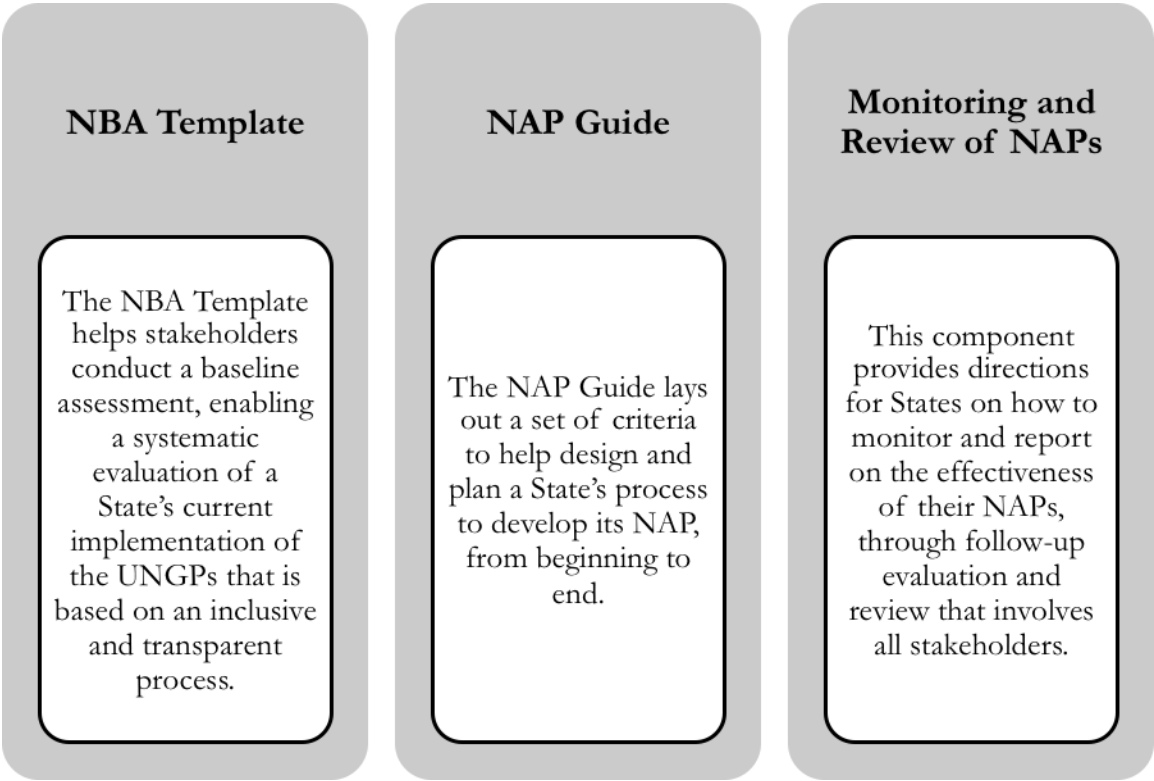
Using a step-by-step approach and drawing on the NBA Template, the NAP Guide provides a roadmap for governments and other stakeholders on how to design and implement a process to develop, implement, and review a NAP on business and human rights that is consistent with the principles required for a human rights-based approach. The NAP Guide also addresses the scope

and content of NAPs, and the identification of priorities within them. A checklist based on the NAP Guide is located at Annex 5 to this report.

Chapter 7: Monitoring and Review of NAPs

The production of NAPs across a range of countries offers a valuable opportunity for States and other actors to share experiences; learn from each other’s efforts; and capture policies, legal changes, and other interventions that can contribute to improved prevention of and remedy for business-related human rights abuses. Correspondingly, the last component of the Toolkit analyzes options at the international and regional levels for follow-up processes on NAPs that could help States and other stakeholders to extract the most value from the exercise of NAPs and to use them as a platform for progressive policy transfer on business and human rights.

FIGURE 1: OUTLINE OF NAPs TOOLKIT



CHAPTER 1: INTRODUCTION

The United Nations Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council (UNHRC) in June 2011,¹⁰ were a significant marker in the evolution of norms and standards on the responsibility and accountability of corporate actors. They exposed the foundations of duties and responsibilities for preventing and redressing business-related human rights abuses as lying in fundamental, legally binding human rights standards to which all States have committed. Moreover, the UNGPs reflect decades of struggle by affected communities, human rights defenders, and civil society organizations to secure recognition of the human rights impacts of corporations, justice, and redress.

Three years after the adoption of the UNGPs, the UNHRC issued a call to all Member States in June 2014 to develop National Action Plans (NAPs) to support implementation of the UNGPs within their respective national contexts.¹¹ This call from the UNHRC came in the wake of similar developments at the European regional level.¹² It followed swiftly upon the adoption by the UNHRC, on 26 June 2014, of a resolution to establish an inter-governmental process to work toward the development of a treaty to address the human rights obligations of transnational corporations.¹³

There has thus been a renewed discussion and debate among States and global civil society about what might be the value and viability of a new international treaty on business and human rights.¹⁴ On the one hand, some States, academics, and many civil society organizations have expressed support for a fresh examination of the merits of a dedicated, legally binding instrument on business and human rights at the international level. These voices argue that progress in implementing the UNGPs remains meager and much too slow, and that effective corporate accountability requires legal sanctions for human rights abuses to be in place.¹⁵

On the other hand, a second group of States, business representatives, and other academics and civil society voices have expressed opposition or reservations to this initiative.¹⁶ Some cite in this context the failure to win wide support of the UN Draft Norms on the Responsibilities of Transnational Companies and Other Business Enterprises with Regard to Human Rights.¹⁷ Others suggest that the development of a treaty in this area is premature, given the relatively recent adoption of the UNGPs, and the need to build greater understanding and consensus around their implications before their “legalization” can take place.¹⁸ Others again have suggested that NAPs or similar processes ought to be complementary to any binding treaty on business and human rights.¹⁹

In the context of this report, this debate makes the development of guidance on NAPs all the more important. For those favoring a treaty, the inclusive process of national dialogue, research, and analysis recommended in this report, if carried out, should give an accurate picture of current challenges in terms of where businesses are negatively impacting human rights, as well as existing gaps in law, policy, and institutions that contribute to such impacts and that fail to ensure that

prevention and redress take place. For those preferring other approaches, a sustained commitment to the UNGPs among stakeholders will require stronger strategies for their implementation than can be observed now, in support of which NAPs seem likely to play a key part.

There are further considerations weighing in favor of a focus on NAPs. Since the adoption of the UNGPs, and parallel to the ongoing treaty debate, there has been extensive consideration of the character, scope, and precise content of the corporate responsibility to respect human rights as articulated under Pillar II of the UNGPs. This has resulted in the publication of numerous tools to support companies in putting the UNGPs into practice.²⁰ A series of studies have further analyzed access to remedy, and obstacles to it, as articulated under Pillar III of the UNGPs.²¹

Moreover, UN human rights treaty bodies, the UN Working Group on Business and Human Rights (UNWG), national human rights institutions (NHRIs), and civil society groups have begun to supply some thematic guidance on business and human rights that is directed toward States and that takes the UNGPs into account.²² Yet, there have been no studies so far that directly address the full scope of Pillar I of the UNGPs.²³ As such, tools for those within governments who are given responsibility for the UNGPs portfolio are lacking, as are benchmarks for those outside government who are tasked with monitoring implementation by the government and holding the State to account.

Against this background, calls for the development of guidance on State implementation of the UNGPs, and in particular on NAPs, have intensified.²⁴ In response, the UNWG held an Open Consultation and an Expert Meeting on NAPs in February 2014 and May 2014, respectively. It reported on its activities relating to NAPs to the UNHRC in June 2014,²⁵ and is due in September 2014 to elaborate on the issue of NAPs in its report to the UN General Assembly.²⁶ It published a roadmap outlining its work toward the development of guidance on NAPs by the end of 2015.²⁷

In August 2013, DIHR and ICAR launched a joint Project to develop guidance on NAPs in the form of a Toolkit for use by governments and other stakeholders.²⁸ This collaboration took place alongside previous and additional interventions, by both organizations, highlighting the need for NAPs and for their development in line with a human rights-based approach.²⁹

The DIHR-ICAR Project, and this report, which presents the Project's key findings and recommendations, are hoped to be major contributions, first, to the analysis of State duties to protect against and remedy business-related human rights abuses under Pillars I and III of the UNGPs; second, to the expansion of principles and methodologies for the development, implementation, and review of NAPs; and third, to discussions on the future of business and human rights standards and the way in which they are monitored and promoted at the international, regional, and national levels.

In developing this report, DIHR and ICAR undertook a global program of consultation with representatives of governments, civil society, business, investors, academia, national human rights

institutions (NHRIs), and regional and international organizations. Made possible through the support of a wide range of partner organizations, this consultation process aimed to gather views on the role and function of NAPs in advancing the protection of and respect for human rights in the context of business.³⁰ Approximately 280 experts and practitioners in total contributed to the Project's findings.

A clear consensus emerged from this global program of engagement. Across all world regions and across all stakeholder categories, a unanimous view was expressed that States should undertake inclusive, rights-based processes to implement and embed the UNGPs and other business and human rights standards that help to give effect to them, within national laws, policies, and institutions and to foster understanding, engagement, and effective action by all stakeholders.³¹

The need for adaptation and sensitivity to the diversity of national settings was also widely recognized by those consulted, in particular, to ensure coordination between NAPs and preexisting policies and processes such as national action plans on human rights, CSR, or development, where these exist. At the same time, there was wide consensus on the need for clear, universal guidance and tools to support the gradual streamlining of approaches to developing NAPs and NBAs across States and regions.

The NAPs Toolkit is intended to provide the first building blocks toward a shared approach and common guidelines on NAPs. Doubtless, further deliberation, analysis, refinements, and improvements are required. Guidance on NAPs and implementation of the UNGPs should continue to evolve in response to changing global and local issues and circumstances, as they emerge. Recognizing this, DIHR and ICAR warmly invite responses to this report and the Toolkit it provides from all parties and look forward to engaging in and supporting continuing dialogue on NAPs in the future.

1.1. METHODOLOGY

This report was produced on the basis of desk-based research and analysis, as well as a global program of consultation.

Desk-Based Research and Analysis

The desk-based research and analysis undertaken for the development of this report addressed the following subjects:

- National action plans on human rights, CSR, and development;
- NAPs as a governance tool in general;
- Policy developments in relation to business and human rights NAPs at the international and regional levels;

- Published NAPs and the processes for developing them;
- Business and human rights standards, instruments, and initiatives beyond the UNGPs by which States give effect to their obligations under the UN Framework;³²
- The human rights-based approach (HRBA) to development as applied to human rights monitoring at the national level;
- Approaches to human rights measurement and the development of human rights indicators;
- Potential approaches to review and monitoring of national implementation of the UNGPs in the context of the UN human rights system and regional and other systems.

Informed by this research and analysis, the approach taken in the Toolkit is intended broadly to align with established approaches for the development of human rights NAPs (as elaborated on in Chapter 2), which States have been recommended to produce since the 1993 World Conference on Human Rights. However, the Toolkit necessarily contains modifications to these approaches to reflect the specificities of the business and human rights field and existing business and human rights standards, in particular the UNGPs. On the other hand, in recognition of the legitimately different approaches adopted by States for developing human rights NAPs, it is not the aim of this report to present a single model for States on the basis of which to produce a unified NAP, comprising both a general human rights NAP and a business and human rights NAP. Rather, this Toolkit can be used to inform the development of a robust national baseline assessment (NBA) and corresponding NAP on business and human rights, regardless of the specific form a State selects for a general human rights NAP or whether it has one at all.

The Toolkit's approach is further inspired by existing approaches to measuring human rights and developing human rights indicators, as further described in Chapter 4. It should be noted that, ideally, the selection of such indicators should be identified through dialogue between States and other stakeholders, as well as through assessment following the use of such indicators after a trial period has taken place. The indicators included in the NBA Template of the NAPs Toolkit, then, are intended to serve as the launch pad for such a process, rather than its final word.

Finally, the Toolkit's content and the processes it recommends are aimed to align with the human rights-based approach (HRBA). It is assumed for the purposes of this report that States undertake to apply the HRBA, as a consequence of their commitments under human rights treaties and in light of the emerging consensus on the value of the HRBA across relevant international and development organizations. The basis of this assumption and the relevance of the HRBA to the business and human rights field and NAPs is further explained in Chapter 4.

Consultations

From September 2013 to April 2014, DIHR and ICAR engaged in a global program of consultation to secure stakeholder inputs into the Project. This program gathered inputs from approximately 280

experts and practitioners across stakeholder categories and world regions. Each consultation addressed:

- Current implementation of business and human rights frameworks at the national and regional levels;
- The scope and content of NAPs;
- Processes for developing NAPs, including National Baseline Assessments (NBAs);
- Mechanisms for review, monitoring, and reporting on NAPs, once developed by a State.

A summary of perspectives expressed throughout the project's global program of consultation can be found in Chapter 3 of this report.

DIHR and ICAR take this opportunity to express their thanks once again to all participants, host institutions, and supporters for sharing their valuable insights, experiences, and resources.

Dialogue Events

DIHR and ICAR initiated a total of six dialogue events on NAPs and the broader topic of national implementation of business and human rights frameworks:

1. EUROPEAN CIVIL SOCIETY DIALOGUE: Supported by the European Coalition for Corporate Justice (ECCJ) in Brussels, Belgium on 11 October 2013. Participants included thirteen civil society and NHRI representatives from nine European countries.
2. AFRICAN CIVIL SOCIETY DIALOGUE: Supported by Global Rights in Accra, Ghana on 25 November 2013. Participants included twenty-one civil society leaders from thirteen African countries.
3. DIALOGUE WITH NANHRI MEMBERS: Supported by the Network of African National Human Rights Institutions (NANHRI) and the German Institute for Human Rights in Accra, Ghana on 28 November 2013. Participants included over fifty NHRI representatives from across the African region.
4. LATIN AMERICA DIALOGUE ON NATIONAL IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS FRAMEWORKS: Supported by AECID of the Government of Spain, CIDSE, DCAF, Dejusticia, the German Institute for Human Rights, IIE, IWGIA, the Presidential Program for Human Rights and International Humanitarian Law of the Government of Colombia, and Sustentia Innovación Social in Bogotá, Colombia on 17-18 March 2014. Over sixty participants from inside and outside Latin America included representatives from governments, civil society, indigenous organizations, academia, business, investors, NHRIs, and regional and international organizations.

5. **ASIA-PACIFIC DIALOGUE ON NATIONAL IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS FRAMEWORKS:** Supported by the City University of Hong Kong's School of Law, DCAF, the German Institute for Human Rights, IIE, IWGIA, Jindal Global Law School, and O.P. Jindal Global University in Delhi, India on 11-12 April 2014. Over fifty participants from inside and outside the Asia-Pacific region included representatives from governments, civil society, indigenous organizations, academia, business, investors, NHRIs, and regional and international organizations.
6. **DIALOGUE WITH BUSINESS PRACTITIONERS:** Supported by the Global Business Initiative on Human Rights (GBI) in London, United Kingdom on 9 April 2014. Over forty participants included representatives of companies and business associations from a variety of industry sectors and geographical regions.

Each dialogue event contributed substantially to informing the development of the Project's research and findings.

Summary reports of each dialogue event are included in Annex 3 to this report.³³

Expert and Practitioner Consultations

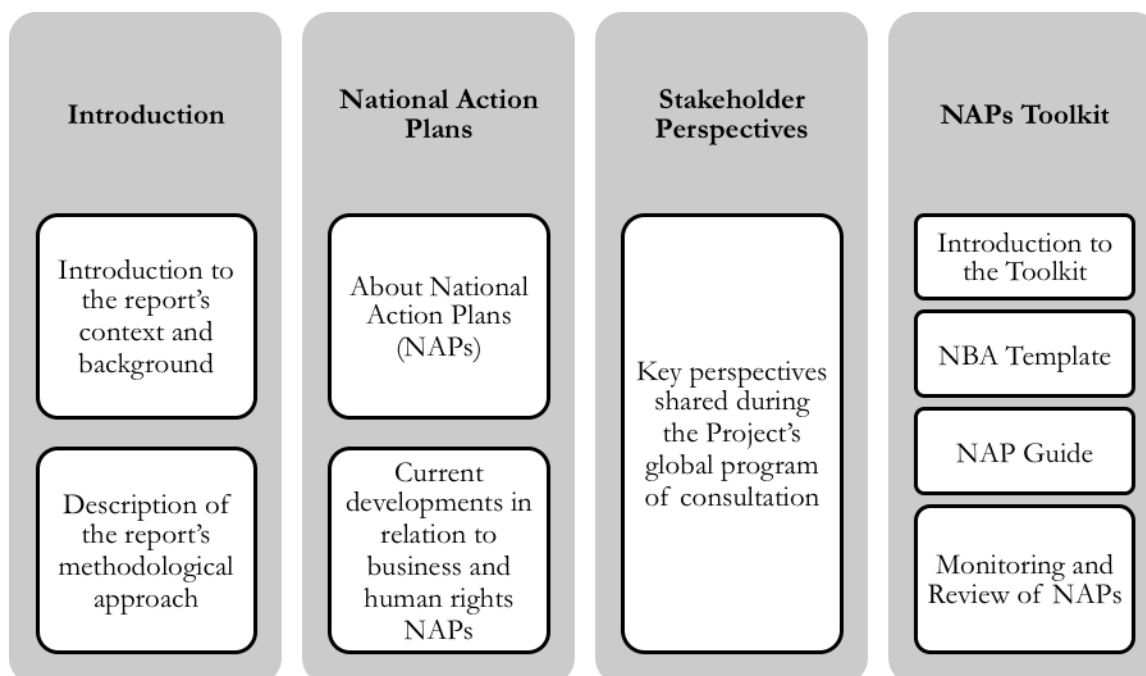
Additional consultations were conducted in person and via phone and e-mail with twenty selected experts and practitioners on the basis of a semi-structured questionnaire. Individuals consulted included government offices, civil society actors, members of academia, business organizations, investor associations, and NHRIs.

E-Consultation

A sixteen-day e-consultation took place in May 2014 to allow additional stakeholders and interested parties to contribute views on NAPs. Notice of the e-consultation was given via e-mail networks and through the website of the Business & Human Rights Resource Centre (BHRRC). Four full responses were received.

1.2. REPORT OVERVIEW

FIGURE 2: OVERVIEW OF NAPs REPORT AND TOOLKIT



The above diagram outlines the content and structure of the rest of this report. Following the Introduction, Chapter 2 examines the broader landscape surrounding NAPs on business and human rights, including what NAPs are, why they should be developed, how NAPs have been used in other policy areas, recent developments in NAPs on business and human rights, and the benefits and challenges of developing such NAPs.

Inn Chapter 3, the report summarizes perspectives voiced by stakeholders consistently across this Project's global program of consultations. Chapter 4 then introduces the NAPs Toolkit, elaborating on how the Toolkit can be used by different actors and on key concepts and perspectives that have influenced the development and content of the Toolkit, including the human rights-based approach to development and human rights measurement.

Finally, Chapters 5 through 7 present the three components of the NAPs Toolkit: the National Baseline Assessment (NBA) Template, the NAP Guide, and Monitoring and Review of NAPs.

CHAPTER 2: NATIONAL ACTION PLANS (NAPS)

2.1. WHAT ARE NAPS?

National Action Plans (NAPs) 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. Reliance on NAPs as a policy approach and governance tool is not limited to the area of business and human rights. On the contrary, calls for NAPs based on the UNGPs follow from their increasing use in a range of other policy areas in recent decades, as considered further in this section.

National Human Rights Action Plans

The idea of national plans on human rights arose during the 1993 World Conference on Human Rights. In the Vienna Declaration, its closing document, the World Conference “recommend[ed] that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.”³⁴ It further requested that the UN should establish comprehensive support for States inter alia to assist them with “the implementation of plans of action for the promotion and protection of human rights.”³⁵

The UN Office of the High Commissioner for Human Rights (OHCHR) later developed guidance on human rights NAPs.³⁶ Drawing on a review of NAPs from eleven different States, this guidance sets out general principles for human rights NAPs; describes a process for developing NAPs; and gives directions on the scope and content of NAPs, as well as measures to support their implementation, monitoring, and evaluation. Anticipated benefits resulting from State development of NAPs, identified by OHCHR, are summarized in Figure 3. At the time of this report’s publication, thirty-two countries from across all regions of the world had published human rights NAPs.³⁷

FIGURE 3: BENEFITS OF NATIONAL HUMAN RIGHTS ACTION PLANS

A human rights NAP will:

- Review a country's human rights needs;
- Raise awareness of human rights issues among government officials, security authorities, civil society organizations, and the general public;
- Mobilize a broad spectrum of society in a cooperative atmosphere;
- Propose realistic activities;
- Set achievable targets;
- Promote linkages with other national programs, particularly in the areas of development and education;
- Generate commitment to action.

The outcomes of a human rights NAP will include:

- Stronger legal frameworks, embracing firmer adherence to international norms, more effective incorporation of human rights standards in domestic law, enhanced independence of the judiciary, and more effective rule of law;
- Better protection for individuals;
- A stronger culture of human rights;
- Stronger national institutions for the promotion and protection of human rights;
- More effective social programs that enhance the quality of life for all, particularly vulnerable groups;
- Improved national harmony, reducing risks of internal conflict.

Source: UN OHCHR, Handbook on National Human Rights Plans of Action, Professional Training Series No.10 (OHCHR; New York and Geneva, 2002), <http://www.ohchr.org/Documents/Publications/training10en.pdf>.

Corporate Social Responsibility (CSR) NAPs

In its 2011 policy on CSR, the European Commission called on Member States of the European Union (EU) to develop NAPs on corporate social responsibility (CSR), as well as for the development of NAPs to support the UNGPs.³⁸ At the time of this report's publication, 24 of 28 EU Member States had already developed, or were in the process of developing, a CSR NAP.³⁹ Although the EU's Communication on CSR requested Member States to produce separate CSR and UNGPs NAPs, a few of these CSR NAPs address UNGPs implementation.⁴⁰ To support Member States in implementing and improving their respective plans, the European Commission set up a process of peer review of CSR NAPs in 2013, entailing collaborative working among small groups of States to scrutinize measures taken, on a constructive basis, and share best practices.⁴¹

Other NAPs

States have devised NAPs to address a broad range of other topics. One common usage is as a vehicle for policies and commitments on national economic and social development and, in some cases, sustainable development.⁴² States have also published, on their own motion, NAPs on topics as diverse as human trafficking, climate change, energy efficiency, health literacy, child accident prevention, and water quality.⁴³ NAPs are advocated by international organizations and initiatives to support implementation of commitments in a number of areas, apart from human rights and CSR, such as women's rights, renewable energy, and open government.⁴⁴

2.2. BUSINESS AND HUMAN RIGHTS NAPs: RECENT DEVELOPMENTS

As mentioned earlier, calls for States to develop NAPs to implement the UNGPs have now been made by the UN, the EU, and the Council of Europe, as well as by multiple civil society actors. These developments, and the response to them by some States, in embarking on the development and publication of NAPs are described in this section.

The United Nations

In June 2011, the UN Human Rights Council established the Working Group on Business and Human Rights (UNWG) and tasked it, inter alia, with facilitating the global dissemination and implementation of the UNGPs.⁴⁵ Under its 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.”⁴⁶

To support States in meeting this goal, the UNWG has established a repository of all published NAPs on business and human rights.⁴⁷ Additionally, the UNWG hosted an Open Consultation on NAPs in February 2014 and an Expert Workshop to discuss the “strategic elements” of NAPs in May 2014.⁴⁸ DIHR and ICAR took part in both of these events. It is also developing guidance on NAPs that will be presented, on a conceptual basis, to the UN General Assembly in September 2014.⁴⁹ Members of the UNWG and its Secretariat took part in three of the DIHR-ICAR NAPs Project's dialogue events, providing valuable insights.⁵⁰

The European Union

In 2011, the European Commission issued a Communication inviting all EU Member States to develop NAPs for UNGPs implementation by the end of 2012.⁵¹ As mentioned above, the Communication (known as the EU Strategy for Corporate Social Responsibility) also called on EU Member States to develop or update lists of national CSR actions, or CSR NAPs, by the same date.⁵² Shortly afterwards, in 2012, the commitment to UNGPs NAPs at the EU level was strengthened,

when the European Council called on all EU Member States to develop NAPs on UNGPs implementation, with a new, extended deadline of the end of 2013.⁵³ At time of this report's publication, three EU Member States have published NAPs on business and human rights and three others have released draft NAPs.⁵⁴ In addition, the European Commission is developing an EU-level UNGPs implementation plan, also pursuant to a commitment contained in the 2011 EU CSR Strategy.⁵⁵ Moreover, EU representatives and officials regularly emphasize the significance of the UNGPs and the EU's commitment to NAPs in public statements.⁵⁶

The Council of Europe

The Council of Europe (CoE) is the European region's principal human rights organization. Within the CoE, the Steering Committee on Human Rights (CDDH) has the function of setting standards to develop and promote human rights in Europe. Since 2011, at the request of the CoE Committee of Ministers, a process has been underway in the CDDH toward the development of new standards on corporate responsibility and human rights.⁵⁷ Following a Declaration of the Committee of Ministers in 2013 that advocated for the adoption by CoE Member States NAPs on the UNGPs, such new standards are likely to include a formal Recommendation that includes guidance on the development and implementation of UNGPs NAPs.⁵⁸ Such a Recommendation could provide the basis for a peer dialogue or peer review process based on UNGPs NAPs at the European regional level.⁵⁹

Other Regions

Beyond Europe, there have not yet been explicit calls from regional bodies for States to develop NAPs on the UNGPs and relevant business and human rights frameworks. However, other regional bodies have issued resolutions, statements, and studies supportive of the UNGPs and their implementation by States. The General Assembly of the Organization of American States (OAS), for example, adopted a Resolution in June 2014 strongly supportive of the UNGPs, which triggered a set of measures to promote and implement them, including exchange of information and sharing of best practices.⁶⁰ Moreover, 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.⁶¹ During the annual UN Forum for Business and Human Rights in 2013, representatives of the ASEAN Intergovernmental Commission on Human Rights and the Inter-American Commission on Human Rights, as well as the Council of Europe, expressed support for national implementation of the UNGPs and the role of regional organizations in encouraging such implementation through measures at the regional level.⁶²

States

Since 2011, a number of States have embarked on processes to develop NAPs or other government-led strategies to promote the uptake and embedding of the UNGPs and relevant business and

human rights frameworks, at the national level. A summary detailing all NAPs and NAPs processes completed or now underway, based on the Project's desk-based research and global program of consultation, is included at Annex 2.

States that have completed NAPs to date have deployed various processes to reach their goal. Some, for example, have insisted on broad involvement in the process across government departments in order to ensure that the resulting NAP reflects all perspectives and concerns.⁶³ Most have provided for the participation of stakeholders throughout the process.⁶⁴ None so far have incorporated national baseline studies, though others still in preparation provide for baseline exercises conducted by experts, governmental departments, academic institutions, or a combination of these.⁶⁵

Published NAPs also vary in scope, content, and focus. Most, for example, lay a stronger emphasis on promoting respect for human rights by businesses when operating abroad, rather than inside the State in question.⁶⁶ Some are organized around the three pillars of the UNGPs⁶⁷ while others are structured around thematic topics addressed during preparatory consultations.⁶⁸ Some focus on guidance and support to be provided by the State to businesses to promote corporate respect for human rights under Pillar II of the UNGPs,⁶⁹ while others highlight measures to protect human rights under Pillar I.⁷⁰ Some offer new support for non-judicial grievance mechanisms. Yet none manages adequately to address the topic of judicial remedy for business-related human rights abuses.⁷¹ None, either, provides a comprehensive appraisal of State performance with regard to all individual GPs, and only one indicates how progress in implementing the NAP will be monitored and evaluated.⁷²

Conclusion: Benefits and Challenges of NAPs

An evaluation of the success of different kinds of NAPs in achieving their policy objectives, or of the relative merits of NAPs in general as compared to other policy approaches, is beyond the scope of this report. Likewise, it is too early to attempt to assess the strengths and weaknesses of individual NAPs and their respective processes and outcomes.

However, with reference to the practice of individual countries and international and regional organizations, this Chapter has shown, first, that NAPs are by now firmly established as a form of policy response used by States to address challenges in particular thematic areas. Second, it has demonstrated broad support, again across individual countries and regions, for the development of dedicated NAPs to promote the uptake and implementation of the UNGPs and relevant business and human rights frameworks.

Also emerging from this discussion, however, are a number of distinct challenges related to NAPs and business and human rights NAPs in particular. One such challenge is the likelihood that, at least in some countries, NAPs on human rights or national development (or sustainable development) plans may already be in place or in development. If so, this may necessitate careful consideration of

how these NAPs and a business and human rights NAP can be integrated or at least aligned, not least because of the significant resources invested in any NAPs development process. This point was particularly emphasized in regional consultations for this Project. Further challenges are to ensure that NAPs are truly enlivening of participation from relevant stakeholders and to secure wide approval and enduring buy-in and participation across stakeholder categories. With a proliferation of NAPs in an individual country, particularly where these overlap in subject matter, there would be a risk, for example, of confusion and overstretching resources.

Ultimately, however, it is already clear, from their practice individually and through international and regional organizations, that there is strong support among States for the development of dedicated UNGPs NAPs. Consultations for this project found this to be the case among business, civil society, and NHRIs as well. Stakeholders clearly expressed the view that the relative complexity of business and human rights issues, and the specificity of the UNGPs, required a systematic approach and sustained engagement by States that would be untenable as part of a broader human rights or development NAP-making process.

As a consequence, analysis and guidance on how to develop NAPs are of potentially high value and impact and are widely relevant across all geographic regions and segments of society. It is this insight that has prompted the development of the NAPs Toolkit, outlined in Chapter 4.

The following figure summarizes key benefits of developing NAPs.

FIGURE 4: BENEFITS OF NAPs



CHAPTER 3: STAKEHOLDER PERSPECTIVES

Commanding the confidence of stakeholders is an important prerequisite to the legitimacy and credibility of NAPs. The Project's global program of consultations solicited stakeholders' views on NAPs. Accordingly, the perspectives and insights gathered through this process have substantially informed the approach of the Project and development of the NAPs Toolkit. While Annex 3 of this report contains individual summary reports of the dialogues, this Chapter presents a synthesis of only the most widespread observations that arose throughout the Project's consultations. A figure summarizing these observations is included at the end of this Chapter.

3.1. PROCESS AND RESOURCES

NAPs should support State protection of human rights.

Consultation participants highlighted NAPs as a key opportunity for creating a centralized system for holding governments to account for their protection of human rights in relation to business activities. In particular, this includes the implementation of international and regional treaties, as well as development and enforcement of national laws pertaining to business and human rights.

NAPs development and implementation should be a government-wide effort and involve key divisions responsible for business activity.

Participants noted that the development of existing NAPs and draft NAPs has so far primarily involved State-level ministries, departments, offices, or other entities that are directly focused on human rights. However, participants stressed the need for various government divisions (such as ministries of business, trade, or justice) to be involved at an early stage and throughout the process. Government-wide participation in NAPs developments, it was suggested, will afford better communication between all stakeholders during the development process, will lead to a higher level of efficiency in gaining consensus on what activities are to be included in NAPs, and will facilitate broader buy-in once NAPs are developed. Furthermore, a government-wide approach, it was suggested, properly recognizes the various ways that government interacts with business enterprises, from such wide-ranging forms as trade and investment support to more regulatory efforts, including those linked to environmental protection and financial regulation.

NAPs development forms a basis for communication and coordination, both within and outside of the government.

Participants noted that NAPs development is most successful when it is public, transparent, and engages with as many relevant stakeholders as is feasible. Such processes should be led by government, but developed closely with civil society and other non-governmental stakeholders, participants argued. The NAPs development process was seen by participants as an opportunity to

help coordinate cross-departmental efforts to implement key commitments by outlining and assigning tasks to the diverse array of government bodies tasked with addressing the policy areas covered by a NAP. This, in turn, will help reduce duplication in a government's use of resources and will help to ensure that public funding is effectively allocated. Furthermore, participants suggested, the NAPs process supports cross-departmental learning on issues pertaining to specific areas of expertise and decision-making by various governmental departments.

NAPs development should be used as a process to raise awareness of business and human rights.

Participants also viewed NAPs development processes as promising avenues for building awareness and capacity among all stakeholder groups and for developing multi-stakeholder approaches that are inclusive, transparent, and designed to ensure opportunities for stakeholders to provide feedback from the outset. Participants noted that in some regions there is a general lack of awareness among all stakeholder groups of established business and human rights frameworks, including the UNGPs. Participants stressed that capacity-building initiatives that educate and raise the awareness of government, business, and civil society actors in relation to business and human rights issues must be a foundational component of NAPs development processes.

NAPs development should be a venue to gather and consolidate stakeholder views and input.

Participants mentioned that governments should conduct regular and ongoing consultations with both government and non-government stakeholders in their development of NAPs. Moreover, participants expressed that governments should conduct these consultations on an inclusive basis in order to draw from a broad range of issues, experiences, and expertise that are relevant to UNGPs implementation at the national level. In addition, in order to be in line with a human rights-based approach, consultations must include rights-holders and/or their representatives, participants argued. In particular, communities impacted by corporate activities and at risk of vulnerability or marginalization must be involved in order to lend legitimacy to NAPs processes and to reflect the needs and experiences of rights-holders. For instance, such groups may include those representing or comprised of persons with disabilities, ethnic or other minorities, and women. Moreover, participants felt that governments must conduct NAPs consultations in a transparent manner, including making summaries of consultations publicly available so that stakeholders may later assess governments' incorporation of those inputs into periodic or final drafts of NAPs.

National Baseline Assessments (NBAs) should be an essential component of the process for developing NAPs.

Participants agreed that conducting National Baseline Assessments (NBAs) of States' current implementation of business and human rights frameworks, including the UNGPs, is a prerequisite

to the development and implementation of NAPs. Such assessments should address State actions to date under each of the UNGPs and may incorporate other standards from international or regional instruments that address business-related human rights. Participants felt that completion of NBAs will facilitate knowledge-sharing with regard to progress by States so far, will afford transparency and understanding of where gaps exist and where further efforts are needed, and should provide a central reference point for future, periodic evaluations of State progress in implementing business and human rights frameworks, including the UNGPs.

A NAP should be an ongoing process and should be monitored and reviewed over time.

Several participants mentioned that NAPs should not be viewed as an end in themselves as much work will remain to be done even after a State has completed the development of its first NAP. Participants therefore agreed that NAPs processes must be ongoing and include monitoring and reporting mechanisms to ensure that national implementation is progressive, transparent, and responsive to feedback and changing circumstances.

NAPs should strengthen existing regional and international collaboration.

Finally, in terms of process and resources, participants noted that experiences from NAPs developments in areas distinct from business and human rights have shown the significant role of NAPs in developing new and in strengthening existing regional and international frameworks and collaboration. For example, NAPs have provided opportunities for “cross-learning” or “twinning” between governments,⁷³ whereby development processes and content have been shared between countries in strategic ways to help provide capacity, technical support, and training. Moreover, participants felt that individual NAPs could build momentum for Regional Action Plans (RAPs), which would provide an opportunity for neighboring countries to share economic resources, experiences, and strategies going forward. This was seen by participants to be particularly important in the context of NAPs on business and human rights given the cross-border nature of business operations and relationships.

3.2. SCOPE, CONTENT, AND PRIORITIES

NAPs should identify and address key national issues.

Participants pointed out that NAPs provide a valuable opportunity to identify challenges within a particular country and to develop and communicate strategies to address those challenges. In order to ensure that the content developed in a NAP is relevant to the country’s specific national context, participants argued that the specific content for a NAP must be based on a NBA so that the NAP might: (1) be based on a clear understanding of existing international, regional, and national legal obligations related to the areas covered by the NAP, (2) respond to identified gaps in the State’s

fulfillment of those obligations, and (3) recognize priority areas for policy development in response to identified on-the-ground impacts of existing frameworks and policy gaps.

NAPs should focus on internal and external issues.

The State duty to protect human rights under international human rights law and the UNGPs applies both within and, subject to certain conditions, beyond a State's territorial borders. Some participants noted that NAPs should not only focus externally, but must also address impacts that corporate activities have on human rights inside the State's territorial jurisdiction. Within their respective NAPs, it was suggested, States should thus address business involvement in human rights abuses at home, such as those stemming from human trafficking or discrimination based on race, gender, or disability in the labor market. However, for States that function as headquarters for companies operating abroad, a key component of NAPs must also be addressing the extraterritorial impacts of such companies and how those impacts can be addressed by the application of national laws and policies. Some participants expressed the view that NAPs should include commitments to develop legally binding mechanisms that would require companies incorporated within the State to conduct human rights impact assessments before, during, and after operations taking place outside of the State's territory. Participants also felt that consultations with impacted communities are an integral component of such human rights impact assessments and that States should utilize embassies or other representatives abroad in order to facilitate consultations with host communities as part of developing their respective NAPs.

NAPs should not only focus on voluntary measures.

Participants noted that NAPs developments to date have been mainly limited to the promotion of guidance from States and other voluntary, rather than legally enforceable, mechanisms. While targeted guidance on the UNGPs from governments to companies is a necessary component in implementation of business and human rights frameworks, participants stressed that a model of voluntary guidelines and self-regulation by companies is not an adequate approach in fulfilling the State duty to protect human rights. Instead, exploration and elaboration of legally binding requirements in the form of legal and regulatory reforms should be key components of NAPs. Examples of such reforms include mandatory non-financial reporting requirements, sanctions for non-compliance with due diligence requirements, and legal liability for parent companies, among others.

NAPs should reference existing national and regional laws and regulation.

Participants felt that NAPs could provide much-needed clarity on existing laws and regulations within States. In particular, NAPs could serve to clarify the human rights responsibilities of companies within existing corporate law and criminal law frameworks, the human rights dimensions

of consumer protection and labor laws, the human rights implications of the growing information and communications technology (ICT) sector, and avenues for judicial remedy.

NAPs should build on existing standards, models, and tools.

A view was expressed that States should not start from “square one” in formulating and prioritizing NAPs content. Rather, States should look to existing standards established by multi-stakeholder initiatives or industry associations, such as the Extractive Industries Transparency Initiative (EITI) and the International Council on Mining and Metals (ICMM), that are active at the international and/or regional levels. Other participants emphasized the need for governments to adopt and implement existing international human rights standards, including the core ILO Conventions.

NAPs should clarify the relationship between business and human rights and CSR, including the concept of human rights due diligence.

Many participants expressed frustration with inconsistencies in the way that governments and other stakeholder groups in the region communicate about the distinct yet interrelated concepts of business and human rights and corporate social responsibility (CSR). Participants also highlighted the need for clarification of the concept of human rights due diligence and government expectations of business in this regard. NAPs were observed as affording an opportunity to provide such clarification in a systematic, horizontally coherent way as NAPs processes and content could help to generate a common language and mutual understanding around business and human rights that can be drawn on more widely, including in future initiatives to address corporate impacts on individuals and communities.

The State-business nexus should be a priority.

It was observed that, in many Global South regions in particular, there is a high level of State involvement in investment and development projects. Commonly, there is also confusion about where government action ends and business activity begins, and there is a correlated risk that government entities may negatively impact human rights as a result of commercial activities. In particular, this was felt to be the case in the extractive sector with regard to States’ involvement in development banks and other financial institutions and in the negotiation of trade agreements. Some participants felt that State involvement in these areas undermined political will to develop robust laws and policies regulating business activities. Accordingly, participants stressed that NAPs in these regions in particular should not only address private sector policies and practices, but should also commit the public sector to fully integrating human rights considerations into all facets of its business operations and relationships.

Access to remedy should be centrally placed in NAPs.

Most participants stressed that Pillar III of the UNGPs, which deals with access to remedy, needs to be more directly addressed in the development of NAPs. When business-related human rights impacts have occurred, access to judicial and/or non-judicial remedy for impacted individuals and communities is crucial. Participants noted that, so far, NAPs developments have not adequately covered this pillar of the UNGPs. NAPs should thus do more to clarify State measures required to establish robust remedy frameworks that address business-related human rights abuses and alleviate key barriers that victims face in seeking and gaining recourse for such abuses.

NAPs should include concrete targets and timelines.

If NAPs do not include explicit targets and timelines, as well as an explicit period of applicability, there is a risk of divergences in interpreting the commitments contained in NAPs due to vagueness. This may, in turn, undermine government accountability for UNGPs implementation. Participants discussed the need for concrete, measurable targets within NAPs that can be periodically assessed by both government and non-government stakeholders. Having such concrete and measurable targets in place and setting timelines for achieving those targets may help to ensure that governments and other stakeholders have a clear understanding of specific State actions to be undertaken.

FIGURE 5: SUMMARY OF STAKEHOLDER PERSPECTIVES

Process and Resources	NAPs should support State protection of human rights.
	NAPs development and implementation should be a government-wide effort and involve key divisions responsible for business activity.
	NAPs development forms a basis for communication and coordination, both within and outside of the government.
	NAPs development should be used as a process to raise awareness of business and human rights.
	NAPs development should be a venue to gather and consolidate stakeholder views and input.
	National Baseline Assessments (NBAs) should be an essential component of the process for developing NAPs.
	A NAP should be an ongoing process and should be monitored and reviewed over time.
	NAPs should strengthen existing regional and international collaboration.
Scope, Content, and Priorities	NAPs should identify and address key national issues.
	NAPs should focus on internal and external issues.
	NAPs should not only focus on voluntary measures.
	NAPs should reference existing national and regional laws and regulation.
	NAPs should build on existing standards, models, and tools.
	NAPs should clarify the relationship between business and human rights and CSR, including the concept of human rights due diligence.
	The State-business nexus should be a priority.
	Access to remedy should be centrally placed in NAPs.
	NAPs should include concrete targets and timelines.

CHAPTER 4: THE NATIONAL ACTION PLANS (NAPS) TOOLKIT

This Chapter presents the NAPs Toolkit. First, it gives an overview of the Toolkit's aims and objectives. Second, it outlines the Toolkit's structure and provides a short introduction to each of the Toolkit's main components. Third, it explains who can use the Toolkit, and how. Finally, it describes key concepts that provide relevant context for the Toolkit and that have informed its design. These concepts include the human rights-based approach to development and human rights measurement, including indicators.

4.1. AIMS OF THE TOOLKIT

The overall goal of the NAPs Toolkit is to promote implementation of the UNGPs and relevant business and human rights frameworks at the national level. It aims to achieve this goal by providing a set of easy-to-use resources that allow for a systematic, comprehensive, and human rights-based analysis of how far a given State is already implementing the UNGPs and relevant business and human rights frameworks and that may guide a national process toward measures that close any identified gaps in implementation.

Since 2011, extensive guidance has been developed to address Pillar II of the UNGPs. Numerous guides produced by business associations, civil society, and others elaborate on the corporate responsibility to respect and the steps required to fulfill this responsibility within different contexts.⁷⁴ By contrast, Pillar I of the UNGPs has, so far, not been the target of any general guidance, with tools relating to specific elements of it also remaining few and far between. This deficit poses an obstacle to the uptake and embedding of the UNGPs. The following figure elaborates on the value of using the NAPs Toolkit, with reference to the content of the UNGPs themselves, established approaches to developing human rights monitoring frameworks based on indicators, and existing guidance on business and human rights NAPs.⁷⁵

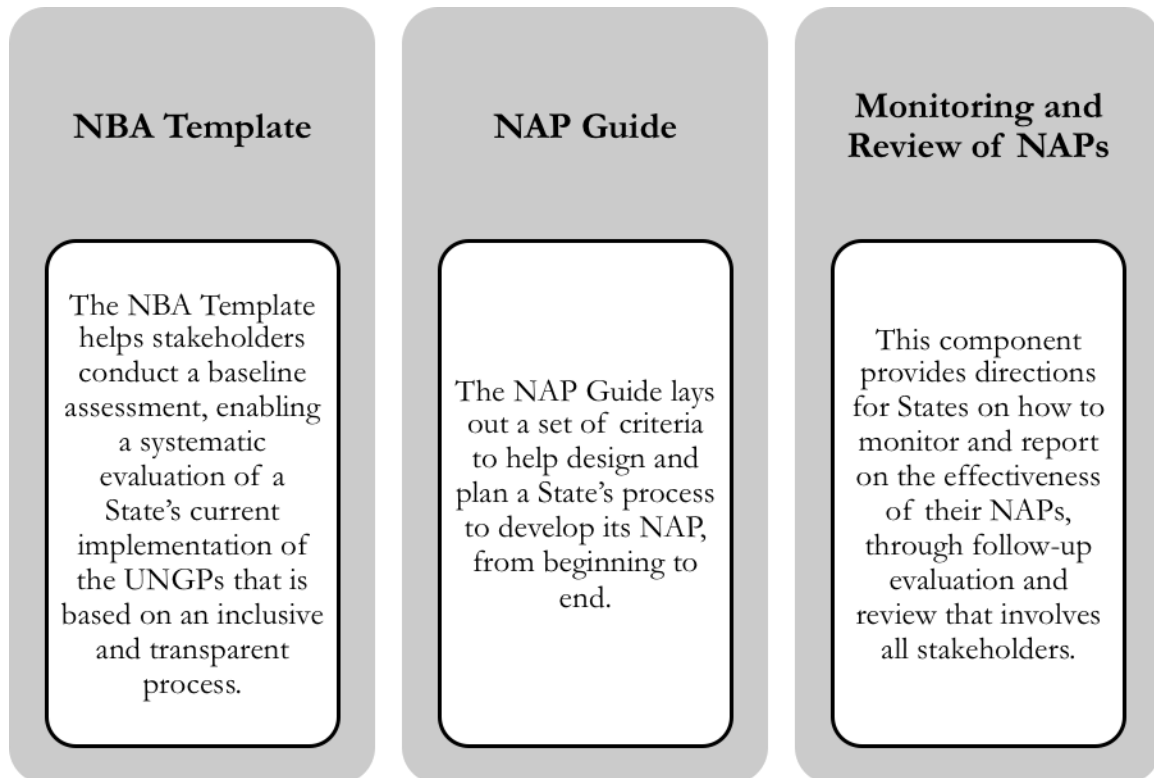
FIGURE 6: THE VALUE OF THE NAPs TOOLKIT



4.2. STRUCTURE OF THE TOOLKIT

The NAPs Toolkit consists of three components.

FIGURE 7: OUTLINE OF NAPs TOOLKIT



1. National Baseline Assessment (NBA) Template

Undertaking a National Baseline Assessment (NBA) should be one of the first steps taken toward development of a NAP. The NBA Template is a tool to help actors conduct a NBA, which should be a broad yet careful and systematic evaluation of a State's current implementation of the UNGPs, based on an inclusive and transparent process.

The NBA Template addresses each Guiding Principle under Pillars I and III, in turn. For each Guiding Principle, the Template sets out a fixed number of concrete criteria, indicators, and scoping questions that relate to it. Giving effect to the UNGPs at the national level depends on a particular State's legislation, policies, programs, and initiatives. Each indicator therefore interrogates a State's fulfillment of the UNGPs by asking questions about legislation, policies, institutions, and interventions to find out if such measures meet the requirements of the UNGP in question.

Completing the Template, then, requires access to wide-ranging information about the State and its measures relevant to business and human rights. Even for officials within government, completion of the NBA may therefore require making internal inquiries, researching, and consulting with colleagues or external parties. This means that a reasonable period of time and sufficient resources should be provided in order to complete the Template in full.

Using the Template in this way will result in a comprehensive assessment. However, the Template has also been designed for use by those who wish only to explore more specific areas of UNGPs implementation. It is therefore possible to make use of the indicators for only one UNGP; there is no requirement to use the Template in its entirety.

It should be noted that the NBA Template, like the UNGPs, is general in nature. In other words, the criteria address each UNGP in general and do not zero in on particular industry sectors, thematic issues (such as land, information and communication technologies, or security and conflict), or groups of rights-holders.

Where such issues are particularly relevant in a given national setting, there is value in giving them additional scrutiny to establish, for example, whether the State has adopted a government-wide strategy to address the issue in question. DIHR and ICAR therefore intend, during the second phase of the Project, to supplement the NBA Template presented in this report with additional “Thematic Templates.” Some Thematic Templates will focus on particular groups of rights-holders, such as children, indigenous peoples, and women. Others will focus on thematic topics, such as those mentioned above. DIHR and ICAR aim to develop the Thematic Templates, in collaboration with partner organizations, between the release of this report and the 3rd Annual UN Forum on Business and Human Rights in December 2014.

2. National Action Plan (NAP) Guide

The NAP Guide lays out a set of criteria to help design and plan a State’s process to develop its NAP, from beginning to end. The criteria address six areas:

1. Governance and resources;
2. Stakeholder participation;
3. National Baseline Assessment (NBA);
4. Scope, content, and priorities;
5. Transparency; and
6. Accountability and follow-up.

An easy-to-use NAP Checklist, based on the NAP Guide, is found in Annex 5 to this report.

As the NAP Guide addresses the entire process of developing a NAP, it should be consulted before a NAP process is initiated and in conjunction with the NBA Template. However, the NAP Checklist may also be used:

- In countries that have already developed a NAP, to evaluate the NAP and support development of new versions of or revisions to the NAP in the future; and
- In countries that have already developed a NAP without first completing a NBA, or that have developed a NAP based on a NBA that substantially diverges from the NBA Template, to evaluate the existing NAP.

As with the rest of the Toolkit, the NAP Guide strives to align with NAPs processes that are consistent with the human rights-based approach to development and that address issues both within and beyond a State's territorial jurisdiction.

3. Monitoring and Review of NAPs

To have value in terms of human rights protection, good governance, and democratic accountability, a NAP must have a significant and positive impact in the form of stronger implementation and institutionalization of the UNGPs in a country, as well as enhanced prevention and remedy of business-related human rights abuses. In turn, this requires that there be a process, or processes, for periodically assessing and reporting on whether the policy commitments made in the NAP are put into practice. In addition, if the commitments contained within the NAP are put in effect, whether or not they have the intended results needs to be analyzed. If not, there should ideally be a discussion to consider why not and to identify alternative or additional measures that can resolve persisting problems.

The NAP Guide provides directions for States on how to conduct monitoring and reporting on the effectiveness of their own NAP through follow-up evaluation and review that includes stakeholders. However, during the Project's global program of consultations, there was strong consensus on the need for reporting and review of State efforts to "bring home" the UNGPs and relevant business and human rights frameworks at the regional and/or international levels. Some of the potential benefits of this, stakeholders suggested, would be increased policy-transfer, in the case of successful approaches; the possibility of independent and expert analysis on NAPs and their appropriateness to problems at hand; and chances for prompt interventions by other States (for example, home States of TNCs) and relevant international actors.

The last component of the Toolkit, therefore, maps potential avenues for follow-up monitoring, reporting, and evaluation of NAPs, at the regional and international levels. The mapping considers existing human rights processes and evaluates whether they could provide a good forum for review of NAPs. Mechanisms included in the analysis are Universal Periodic Review (UPR) by the UN Human Rights Council (UNHRC), human rights treaty-based models, national expert body review,

peer review at the regional level, and the UNWG’s existing NAPs Repository. The Mapping concludes with recommendations for a “three-prong approach” that incorporates monitoring and review by both internal and external actors, on both a continuing and periodic basis.

4.3. WHO CAN USE THE TOOLKIT?

This Toolkit is meant for use by individuals and institutions that are:

- Leading processes to develop NAPs on business and human rights;
- Taking part as stakeholders in NAPs development; and/or
- Undertaking advocacy and research on, or who are interested in, NAPs.

Hence, the Toolkit is intended for use across stakeholder categories in relation to NAPs processes. However, different types of actors may use and find particular value in the Toolkit beyond the preparation of NAPs.

Government officials and elected representatives may use the Toolkit to orient domestic policy-making, including at the local and provincial levels, in specific areas (for example, access to justice, trade promotion, and development assistance). Likewise, it can be used to inform positions taken by governments in international institutions or standard-setting processes. The Toolkit can help to support alignment between NAPs and other national plans, including those on human rights and development. It may also be helpful for capacity-building efforts at all levels of government. Multilateral and bilateral development agencies may find use in the Toolkit when undertaking baseline assessments and in designing and monitoring programs and projects.

Civil Society can use the Toolkit as a benchmark standard to monitor and evaluate State commitments and progress in implementing the UNGPs and related business and human rights frameworks. CSOs can thus use the Toolkit to support advocacy and dialogue with States and businesses. They can also use it in preparing reports and submissions on State compliance with international and regional human rights obligations for submission to supervisory bodies.

National Human Rights Institutions (NHRIs) can use the Toolkit to perform NBAs on their own accord where they have been requested to take on this role by the government. The Toolkit will also be helpful to NHRIs where they act as conveners of NAPs development processes or stakeholder committees. Principles and indicators contained in the Toolkit can further be used by NHRIs to inform monitoring, investigations, education, and reporting activities linked to human rights and business issues, in line with their UN Paris Principles mandates.⁷⁶

Businesses should find the Toolkit a helpful resource in informing themselves about measures that can be expected of States in implementing the UNGPs, thereby preparing themselves for

participation in NAPs development processes. The Toolkit may also be used by corporations to support comparisons, on a consistent basis, between approaches taken to UNGPs implementation across States, again with a view to encouraging informed and effective participation in NAPs processes and other human rights and business dialogues.

Media, researchers, and academia should find in the NAPs Toolkit valuable data to help orient investigations, analysis, and reporting on government responses to the UNGPs, corporate accountability, and sustainable development more broadly.

4.4. KEY CONCEPTS BEHIND THE TOOLKIT

This section briefly outlines ideas in two important areas that have informed the approach taken in developing the NAPs Toolkit: (1) the human rights-based approach to development and (2) human rights measurement. With respect to each, a short explanation is provided for why the concept holds significance for NAPs on business and human rights and how it has influenced the contents of the NAPs Toolkit.

The Human Rights-Based Approach to Development

The human rights-based approach (HRBA) to development seeks to empower people by transforming them from passive targets to active subjects of development.⁷⁷ It defines the relationship between the State and the citizen through the human rights concepts of duty-bearer and rights-holder and sets the respective abilities of the State to meet human rights obligations and the citizen to claim human rights as the overall goals of development cooperation.⁷⁸ Over the last decade, there has been increasing effort by States and international organizations to integrate the HRBA into policies and programs relating to development and development assistance.⁷⁹

To secure its goals, the HRBA applies a set of five principles to all stages of development processes: (1) participation, (2) accountability, (3) non-discrimination and equality, (4) empowerment, and (5) legality of rights.⁸⁰ Participation is important because participation in government is an entitlement in a democratic society and can bring ownership and sustainability to development.⁸¹ Accountability requires that duty-bearers are answerable to laws and policies in place and responsible for adherence to human rights standards. It also demands that rights-holders can seek and obtain redress for failures of compliance.⁸² Equality and non-discrimination are fundamental norms within a human rights framework; in a development context, they imply that everyone should have equal access to the process and benefits of development. Lastly, legality means that human rights must be recognized and given effect to as legal entitlements, whose content stems from international as well as national standards.

How do the principles of the HRBA translate into practice? Participation of rights-holders, which can take a range of forms, from consultation to sharing of information to full collaboration, is key.

Steps should be taken so that rights-holders can participate in the design and implementation of development interventions and assessment of their impacts on a basis of equality, with particular attention paid to ensuring that the voices of vulnerable and marginalized groups are heard. The benefits of the HRBA should include improved quality and reliability of information, proper reflection of social and cultural factors in policies and program design, better and wider understanding of interventions, improved ownership and outcomes, and higher levels of efficiency and effectiveness in the use of public resources.

The HRBA to development is understood in this report to be relevant to business and human rights, and to the development of NAPs, for the following reasons. Business activities and behavior can influence development outcomes for individuals and communities, and hence human rights. Historically, though, the HRBA has focused on government-led development efforts while not directly addressing the private sector. The UNGPs, then, can be seen as a necessary complement to the HRBA, in that they should help to reconcile business-led development with human rights. However, achieving this goal in practice will require that national implementation of the UNGPs and relevant business and human rights frameworks also comply with the HRBA's principles of participation, accountability, equality, empowerment, and legality.

Accordingly, it is appropriate and in the interests of coherence and efficiency, as well as human rights, that national measures to implement the UNGPs and other related business and human rights frameworks are devised and applied consistently with the HRBA and, vice versa, that development policies and programs fully integrate these standards.

Human Rights Measurement and Human Rights Indicators

Another discernible trend in recent years has been toward the measurement of compliance with human rights. For instance, many development actors now use human rights indicators to screen or assess potential aid recipients.⁸³ Accordingly, public agencies are often required to measure and report on the human rights impacts of their activities, while CSOs use indicators in monitoring and advocacy.⁸⁴ In the business sector, techniques developed in other areas are being adapted and applied to measure the human rights impacts of corporate social responsibility (CSR) activities.⁸⁵

When human rights are subject to measurement, quantitative or qualitative markers are linked to the different elements of their underlying concepts.⁸⁶ The purpose in doing so is to establish a basis for assessing progress made by duty-bearers in meeting their obligations under human rights treaties and likewise to assess the level and degree of enjoyment of human rights by individuals and communities.⁸⁷

The process of attaching specific markers to human rights concepts is known as “operationalization.”⁸⁸ Markers, or “indicators,” can, as mentioned, be quantitative (e.g., numbers,

percentages, or indices) or qualitative, taking narrative form (e.g., checklists or questions). They may also focus on one of three “levels” of human rights implementation:

Structure indicators focus on domestic law, policy, and institutions and on whether and how these meet specific human rights requirements;

Process indicators relate to public programs and specific interventions taken by the State to give effect to commitments and achieve outcomes that contribute to the realization of a given human right; and

Outcome indicators reflect the level of enjoyment of human rights as a cumulative impact of structures and processes.

Regardless of type, human rights indicators should, as far as possible, be relevant, reliable, simple, few in number, suitable for comparison over time and among countries, and allow disaggregation to show disparate impacts on vulnerable or marginalized groups.⁸⁹

Human Rights Indicators and NAPs

Like other human rights instruments, the UNGPs are broad in scope, complex, and at many points use open language. For States, knowing what UNGPs implementation requires may not be self-evident without a more concrete expression of their contents. Likewise, for rights-holders, CSOs, and others, including regional or international supervisory bodies, holding States accountable to the UNGPs in a consistent manner may also be a challenge. However, if specific markers in the form of indicators can be attached to the UNGPs, both States and other stakeholders will be in a better position to document, monitor, evaluate, and communicate about UNGPs implementation on a shared and transparent basis. Because other business and human rights frameworks, such as the OECD Guidelines, can contribute to a State’s implementation of the UNGPs, indicators for UNGPs implementation can be formulated in terms of steps to implement these other frameworks. This is the rationale behind the development and design not just of the NBA Template, but of the NAPs Toolkit as a whole. While the NBA Template aims to give the means to individual States and stakeholders to discuss and formulate appropriate legal and policy responses at the national level, it should also provide the necessary basis for more granular, better-informed, and more constructive processes of review than would otherwise be possible.

CHAPTER 5: THE NATIONAL BASELINE ASSESSMENT (NBA) TEMPLATE

The National Baseline Assessment (NBA) Template is a tool for evaluating a State's current implementation of the UNGPs and relevant business and human rights frameworks. Using the Template to develop a NBA will help a State identify and select measures to be included in a NAP in a coherent and transparent manner. It will also make it easier for States to report on the impact of NAPs over time.

This Chapter first introduces the general idea of baseline assessments. It then explains the approach and structure of the NBA Template and provides guidance on its use.

5.1. WHAT IS A BASELINE ASSESSMENT?

In general, a baseline assessment is a study conducted at the start of an intervention to analyze current conditions. The results of the baseline assessment can then be used to compare future conditions with the initial status after a particular intervention or program has taken place, with the aim to help understand its effects and results; in other words, to assess impact.⁹⁰

Baseline assessments therefore need to be designed so that the assessment can be undertaken in the same or similar manner both before and after the intervention takes place.⁹¹ This entails using a standardized format and a clear methodology.⁹² Frequently, baseline assessments are conducted using a combination of quantitative and qualitative methods.⁹³ Quantitative methods include surveys to generate new data or, where resources are scarce or good data already exists, to extract secondary data, ideally with specialist support from statisticians or assessors.⁹⁴ Qualitative methods, such as interviews or focus groups, can be used to gather complementary information about values, opinions, behavior, and context, such as social and cultural factors.⁹⁵

The NBA Template, presented in Annex 4, primarily uses qualitative indicators. However, these could in principle be supplemented by quantitative indicators and benchmarks at the national level and, eventually, at the regional or international levels if resources permit and States and other stakeholders desire.

5.2. APPROACH AND STRUCTURE

As stated above, the aim of the NBA Template is to allow for the evaluation of a State's current implementation of the UNGPs and relevant business and human rights frameworks on a transparent and consistent basis and in line with the general principles of the HRBA and human rights measurement, as set out in Chapter 4 of this report.

Accordingly, the structure of the NBA Template mirrors that of the UNGPs: the Template is made up of a set of tables, one for each UNGP under Pillars I and III.

Because the UNGPs are wide-ranging in nature, each UNGP is broken down further into a number of elements. Indicators are then defined for each element identified.

Many of the indicators in the NBA Template are derived from relevant international law and standards from inter-governmental organizations. However, because they provide increased clarity and can contribute to the State's duty to protect human rights, some of these indicators are based on or refer to other business and human rights frameworks, such as those devised through multi-stakeholder initiatives and those addressing specific thematic concerns or industry sectors.

The indicators in the NBA Template operationalize the UNGPs by earmarking a concrete piece of information that can be examined, at the national level, as a marker of the State's compliance with the UNGP in question. In order to aid someone who is using the Template to assess whether or not a given indicator is met, a short set of scoping questions are included for each indicator.

It should also be noted that, in contrast to human rights indicators in other contexts, a longer list of indicators is included in the NBA Template. This is because, rather than focusing on a single human right (e.g., the right to water), the UNGPs have an open-ended and overarching nature across all human rights. Thus, a wide variety of national measures will usually be relevant to satisfying a given indicator. Consequently, the list of indicators is not meant to be exclusive or exhaustive, and there is less expectation that a given State will be able to answer positively in relation to all of them.

Related to this point, and as mentioned earlier in this report, where specific business and human rights issues are particularly relevant in a given national setting, there is value in giving them additional scrutiny to establish, for example, whether the State has adopted a government-wide strategy to address the issues in question. DIHR and ICAR therefore intend, during the second phase of the Project, to supplement the NBA Template with additional "Thematic Templates." Some Thematic Templates will focus on particular groups of rights-holders, such as children, indigenous peoples, and women. Others will focus on thematic topics, such as those mentioned above. DIHR and ICAR aim to develop the Thematic Templates, in collaboration with partner organizations.

In addition, as mentioned above, most indicators included are qualitative, rather than quantitative. The NBA Template has been designed so that respondents can, if they wish, complete a narrative account based on the elements and their corresponding indicators. Indicators that focus on outcomes, as opposed to structures or process, have not been included at this stage because their identification and selection should proceed from a process of dialogue among States and other stakeholders in order to take into account, for instance, existing available data sources across countries, the collection of which was beyond the scope of this report.

Moreover, whereas it is advised that the NBA should be as comprehensive as possible, users of the Toolkit will note that the NBA Template includes indicators in relation to Pillar I and the State remedy aspects of Pillar III only. The reasons for the NBA Template's exclusion of Pillar II and aspects of Pillar III that are directed at companies are largely practical. For most States, it is unlikely that the data needed to respond to indicators under Pillar II would, at the present time, be available. For example, few countries currently gather data on the number of companies within their territory or jurisdiction that have a human rights policy or that publicly report on human rights, and many lack the resources to do so. Moreover, data on the extent of business-related human rights abuses is not typically gathered en bloc and would usually need to be extracted from a diverse array of existing sources such as court cases and media reports which would also be an exercise beyond the resources likely to be allocated to NAPs processes. Yet, while States cannot directly control the conduct of all companies within their territory or jurisdiction through regulatory action, they can influence businesses' behavior. Therefore, Pillar II will be indirectly addressed in the development and completion of both an NBA and a NAP through data collection and measures included relating to Pillars I and III.

Finally, it should be reiterated that the analysis and approach that have been adopted in developing the NBA Template take inspiration from established approaches to developing human rights monitoring frameworks based on indicators, as well as existing guidance on NAPs.⁹⁶

The following is an excerpt from the NBA Template, found in full in Annex 4.

FIGURE 8: EXCERPT FROM THE NBA TEMPLATE

GUIDING PRINCIPLE 5	
States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.	
Commentary to Guiding Principle 5	
States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State’s human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State’s expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises’ activities, including through the provision of adequate independent monitoring and accountability mechanisms.	
5.1. Public Service Delivery Does the State ensure that human rights are protected in situations where private enterprises provide for government services that may impact upon the enjoyment of human rights?	
Indicators	Scoping Questions
Legislative or Contractual Protections	Has the State adopted legislative or contractual protections for human rights in delivery of privatized services by the central or local government, for example, for the provision of services related to health, education, care-delivery, housing, or the penal system? Do such protections include a State-performed human rights impact assessment of the potential consequences of a planned privatization of provision of public services, prior to the provision of such services? Do public procurement contracts clarify the State’s expectation that businesses respect human rights in delivering services and comply with human rights standards?
Awareness-Raising	What measures does the State take to promote awareness of and respect for human rights by businesses that the State commercially contracts with?
Screening	What kind of screening processes does the State have in place to promote business respect for human rights? Does the State engage in selective processes that give preferential treatment to companies that demonstrate respect for human rights? Does the State exclude from the bidding process those companies that have demonstrated poor respect for human rights (such as poor and hazardous working conditions, as well as excessive use of force or maltreatment of individuals receiving care)?

GUIDING PRINCIPLE 5

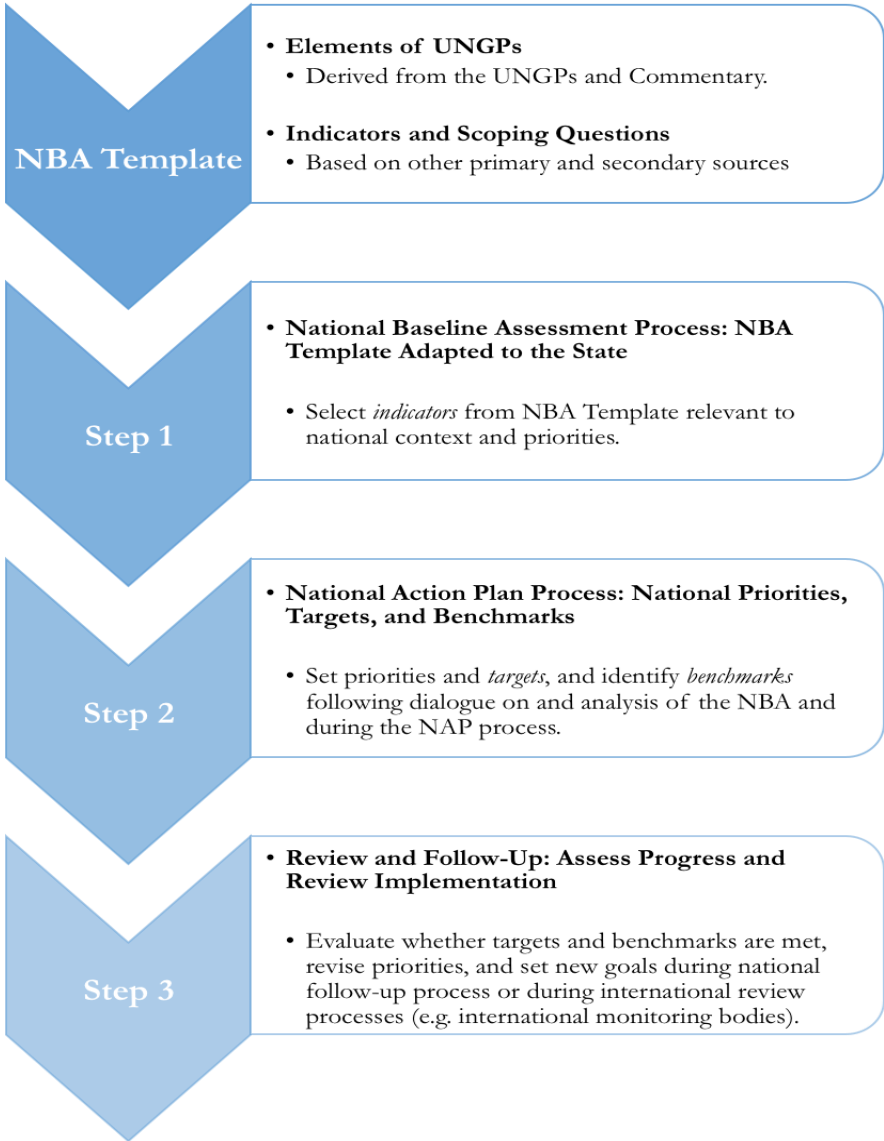
Monitoring and Oversight	Do relevant State agencies effectively oversee the activities of the enterprises that are providing services on behalf of the State? Does the State provide for adequate independent monitoring and accountability mechanisms of the activities of the private providers? Does the State provide for specific oversight of high-risk services, such as those related to health and security?
Other Measures	Is the State a party to the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict? If so, how does it incorporate commitments into national laws? Is the State party to the International Code of Conduct for Private Security Providers, and if so, how does it incorporate commitments into national laws and procurement processes? Is the State party to the Voluntary Principles on Security and Human Rights? If so, how does it incorporate commitments into national laws, including around the provision of public security? Has the State put any other measures in place to ensure that public service delivery by private enterprises does not have any negative human rights impacts?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption and/or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

5.3. ADAPTING THE TEMPLATE TO NATIONAL CONTEXTS

The indicators included in the NBA Template have been selected to be generally appropriate and applicable across countries. Where resources allow, the NBA Template can be completed in full to perform a comprehensive NBA. However, it can also be used selectively to support dialogue on or analysis of State alignment with individual UNGPs or on particular issues. Once a selection of indicators has been made, States can set targets for improvement based on the indicators, as well as benchmarks that act as milestones to show whether the State is on track to reach its chosen target within a given time period.

The following figure presents the process of adapting the NBA Template to national contexts.

FIGURE 9: PROCESS FOR ADAPTING THE NBA TEMPLATE TO NATIONAL CONTEXTS



5.4. RECOMMENDATIONS FOR THE NBA PROCESS

A NBA should be, as far as possible, consistent with the HRBA and accepted approaches to human rights measurement, as described in Chapter 4. With this goal in sight, and drawing on a review of baseline assessments by States to date and stakeholder responses to these, the following recommendations for NBA processes are suggested.⁹⁷

1. Undertake the NBA as the first step in the NAP process.

The process of developing a NAP should begin with the development of the NBA. 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.

2. Allocate the task of developing the NBA to an appropriate body.

The task of developing a NBA should be clearly allocated to a body with relevant expertise and competence. Ideally, it should be viewed as independent from political affiliation or special interests. Relevant expertise in this context must 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, and/or CSR.

3. Involve stakeholders in the development of the NBA.

Input should be solicited from stakeholders to inform the development of the NBA. A stakeholder analysis, with its point of departure in the categories of rights-holder and duty-bearer, should be undertaken to identify those stakeholders who should be engaged. The following categories of stakeholders should be addressed in this mapping:

- **Government**, including all departments and units relevant to business and human rights;
- **Businesses**, including those representing the largest sectors within the country, small and medium enterprises (SMEs), and business associations;
- **National human rights institutions, ombudsmen, and equality bodies**, if in existence within the country;
- **Civil society**, including groups dealing with specific business and human rights issues of particular concern within the national context; and
- **International and regional actors**, including representatives of UN institutions, OECD, WTO, the World Bank, and others.

Consultation should take place in a manner appropriate to the stakeholder in question, with attention paid to levels of knowledge and expertise and any potential language or social, cultural, financial, or other barriers to participation.

Consultation processes should be transparent at all stages, including publication of summary reports through appropriate media sources, such as local newspapers, the Internet, or the radio.

It may also be beneficial to establish a cross-departmental steering committee to help coordinate inputs to the NBA from government stakeholders.

4. Identify areas of compliance and gaps for all UNGPs addressed under Pillars I and III.

The NBA should clearly identify, for each UNGP under Pillar I and all UNGPs relating to State remedy under Pillar III, national measures that support compliance with its requirements, as well as any gaps where national measures are lacking or inadequate. Completing the NBA will therefore require research into provisions of the constitution, domestic statutes, administrative regulations, policies, public programs, and other interventions of public bodies, as well as into business conduct.

In relation to gaps, the NBA should gather and reflect information documenting abuses and data on remediation, including court cases, grievance data, reports of relevant enforcement agencies, and reports from NHRIs, trade unions, business associations, NGOs, media, and academic studies. Finally, the NBA should cite and collate relevant recommendations of international human rights bodies, such as the ILO and other UN and regional human rights bodies. Data sources to consider when completing the NBA include official statistics, existing survey results, scholarly journals, and newspaper articles. In some cases, it may be necessary to conduct new baseline research to address specific issues on which there is limited existing data.

5. Address all human rights.

To align with the HRBA, the NBA should be comprehensive, considering impacts on the full range of rights, economic and social, as well as civil and political, and considering the principles of universality, indivisibility, and the interdependence of human rights.

6. Focus on rights-holders.

At the same time, the NBA must focus on and facilitate inputs from the most vulnerable and excluded groups by addressing issues such as gender, discrimination, and indigenous peoples. It must also recognize individuals and communities potentially affected by business activities, including those outside the State's territorial jurisdiction, as rights-holders and target their ability to claim rights.

7. Ensure the NBA analysis is transparent.

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 present risks of reprisals to rights-holders, human rights defenders, whistle-blowers, media, or others). If a NBA is incomplete, for example omitting analysis in relation to a particular UNGP, the reasons for this should be clearly stated.

8. Consult stakeholders on the draft NBA.

Stakeholders' views should be sought on a draft version of the NBA through an inclusive and timely consultation process. Such a process should take place prior to the NAP's finalization in order to validate provisional findings.

9. Disseminate the NBA.

The finalized 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 summarized findings into relevant languages and posting on government websites.

10. Review and update the NBA.

The NBA, along with the NAP itself, should be subject to periodic updating and revision.

CHAPTER 6: THE NATIONAL ACTION PLAN (NAP) GUIDE

This Chapter presents guidance, first, on how to develop a NAP and, second, as to the scope, content, and priorities to be addressed by NAPs.

The aim of the NAP Guide is to promote NAPs processes that lead to coherent, robust NAPs that are meaningful in advancing respect for human rights in the business sector, that are viable and valuable governance tools, and which contribute to progressive and durable changes at the national level and beyond. At the same time, the Guide is intended to promote NAPs processes that are inclusive, transparent, and empowering for rights-holders.

The Guide identifies a set of criteria for NAPs in six areas:

- 1. Governance and resources;**
- 2. Stakeholder participation;**
- 3. National Baseline Assessment (NBA);**
- 4. Scope, content, and priorities;**
- 5. Transparency; and**
- 6. Accountability and follow-up.**

The Guide is informed by a desk-based review of published NAPs and related materials, including stakeholder commentaries on these, as well as this Project's global program of consultation with stakeholders, as summarized in Chapter 3 and in Annex 3. A figure summarizing the main elements of the NAP Guide can be found at the end of this Chapter.

An easy-to-use NAP Checklist, based on this Guide, is found in Annex 5 to this report. The Checklist should be used in conjunction with this Guide and the rest of the NAPs Toolkit.

- Where a NAP has not yet been developed, the NAP Checklist should be used in conjunction with the NBA Template;
- For countries that have already developed a NAP, the NAP Checklist should be used to evaluate the NAP and to support development of new versions or revisions to the NAP in the future;
- For those countries that have already developed a NAP without first completing a NBA, or which have developed a NAP based on a NBA that substantially diverges from the NBA Template, the NAP Checklist should be used to evaluate the existing NAP, while a full NBA should be undertaken, referencing the NBA Template, before a new NAP is developed or revisions undertaken.

The NAP Checklist is also directly linked to the Monitoring and Review of NAPs component of the NAPs Toolkit, found in Chapter 7 of this report, in that it explicitly calls for a follow-up process to

be identified within the NAP itself in order to ensure that there is continuous and periodic review of the NAP and that there is accountability for the commitments made therein.

6.1. GOVERNANCE AND RESOURCES

Leadership and Ownership of NAP Process

6.1.1. COMMITMENT TO THE NAP PROCESS.

A first, and central, step is for the government to set a firm and long-term commitment to the development and implementation of a NAP. This commitment will ensure that the NAP process is adequately resourced and prioritized within the government. Furthermore, the commitment should be developed jointly with other societal actors, including experts such as NHRIs and academia, ensuring their support throughout the process.

6.1.2. ENSURE RESPONSIBILITY FOR THE NAP PROCESS IS CLEARLY ESTABLISHED AND COMMUNICATED.

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 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 organizational capacity, political authority, and resources necessary to develop the NAP, as well as to promote and subsequently monitor its implementation effectively.

6.1.3. ENSURE AN INCLUSIVE APPROACH ACROSS ALL AREAS OF GOVERNMENT.

Almost all government departments, offices, and agencies have responsibilities that are relevant to the implementation of the UNGPs. In order to be material and complete, and for the sake of its long-run success, a NAP should reflect input from and enjoy the full support of departments and others across government, as well as from external stakeholders. 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.

6.1.4. DEVISE AND PUBLISH TERMS OF REFERENCE AND A TIMELINE FOR THE NAP PROCESS.

Clear terms of reference, objectives, and at least a provisional timeline are essential to enable all stakeholders, internal and external, to plan and manage their participation in a NAP process. Accordingly, these should be published in a draft form for consultation prior to the development of

the NAP itself and, once finalized, disseminated through appropriate media sources in a timely fashion in order to ensure adequate notice for all parties.

Adequate Resourcing

6.1.5. DETERMINE AN APPROPRIATE BUDGET FOR THE NAP PROCESS.

Adequate human and financial resources to complete the entire NAP process, including the development and completion of a NBA and monitoring and review of the NAP's implementation once complete, should be allocated to those responsible for the NAPs development process.

6.2. STAKEHOLDER PARTICIPATION

Effective Participation by All Relevant Stakeholders

6.2.1. CONDUCT AND PUBLISH A STAKEHOLDER MAPPING.

Many of the relevant national stakeholders may be obvious and well-known to relevant government departments, such as business associations, trade unions, or individual companies that have a significant footprint on the national economy, workforce, or environment. Others, however, may not be. This is more likely to be the case, for instance, with regard to marginalized or at-risk groups, such as indigenous peoples, representatives of affected communities, or migrant workers' associations. A prerequisite of respecting the right to participation is ensuring that all rights-holders and other stakeholders are identified from the start so that their input can later be sought. The following categories should be considered in the stakeholder mapping exercise:

- 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, SMEs, the self-employed, sole traders, cooperatives, non-profits, and informal sector actors;
- Labor 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, and statutory equality bodies;
- Civil society organizations 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;
- International and regional actors, for example, relevant UN agencies and country teams, the World Bank, regional development banks, and the OECD.

A draft stakeholder mapping should be made public and disseminated for comment and validation.

6.2.2. DEVELOP AND PUBLISH A CLEAR PLAN AND TIMELINE FOR STAKEHOLDER PARTICIPATION.

In order to be able to take part effectively in a NAP process, stakeholders must be adequately informed, with due notice, of key milestones in the NAP process and of all consultation events and periods. A consultation plan and timeline should be produced, regularly updated throughout the process, and disseminated via appropriate channels. It is also important that timelines for submissions and feedback should be realistic given the time, resources, and capacities of all stakeholders.

6.2.3. PROVIDE ADEQUATE INFORMATION AND CAPACITY-BUILDING WHERE NEEDED.

In many country contexts, the UNGPs, and business and human rights issues more widely, will be new to many stakeholders, both inside and outside of the government. Where this is the case, stakeholders may require information or capacity-building, for example, in the form of introductory training, if they are to participate effectively in dialogue and contribute meaningfully to the formulation of the NAP.

6.2.4. FACILITATE PARTICIPATION BY DISEMPOWERED OR AT-RISK STAKEHOLDERS.

Rights-holders from affected groups and communities, especially those from vulnerable or marginalized groups, human rights defenders, journalists, and CSO personnel will often have relevant information and experiences to contribute to a NAP process. Yet, these stakeholders may be prevented from participating due to factors such as lack of resources, intimidation, fear of reprisals, social hierarchies, stigma, or taboos that prevent equal access to the public sphere and effective voicing of opinions in public dialogue.

In line with the State duty to protect under Pillar I of the UNGPs and the HRBA, it is incumbent on the government to ensure that at-risk stakeholders can participate effectively. All appropriate measures should therefore be in place to facilitate this. Required steps 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; police or other protection; and arrangements for local or stakeholder-specific dialogue events, such as separate events for children or gender-segregated events.

6.2.5. CONSIDER ESTABLISHING A STAKEHOLDER STEERING GROUP OR ADVISORY COMMITTEE.

In any country, the relevant stakeholders for a NAP process will be numerous. While all stakeholders should have the opportunity to participate on an equal basis during the process, in some circumstances more effective representation of stakeholder views may result from the establishment of a stakeholder steering group or advisory committee, composed of members drawn from across stakeholder categories on a representative basis.

6.3. NATIONAL BASELINE ASSESSMENT (NBA)

The NBA as the Foundation for the NAP

6.3.1. UNDERTAKE A NBA AS THE FIRST STEP IN THE NAP PROCESS.

To facilitate a coherent approach to identification, prioritization, and selection of UNGP implementation measures to be included in a NAP, the process of its development should start with the completion of a comprehensive National Baseline Assessment (NBA) (see Chapter 5 and Annex 4). Ideally, the NBA should be completed, or at least its preliminary results made available, before any decision-making concerning the scope, content, and priorities of the NAP begins.

6.3.2. ALLOCATE THE TASK OF DEVELOPING THE NBA TO AN APPROPRIATE BODY.

As with any policy-making process, there will be competing views among stakeholders on what issues should be prioritized for action in the NAP and what measures are most appropriate to addressing its objectives. It is therefore crucial that stakeholders see the NAP as an accurate and impartial assessment of the status quo. To achieve this, the task of developing a NBA should be allocated to a body with relevant expertise and competence and which is also viewed as independent from political affiliation or special interests. Relevant expertise in this context must 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, and/or CSR.

6.3.3. FULLY INVOLVE STAKEHOLDERS IN THE DEVELOPMENT OF THE NBA.

As further elaborated in Chapter 5, government stakeholders, rights-holders, and other external stakeholders should be solicited for input to the development of the NBA. Their views should also be sought on a draft version of the NBA prior to its finalization to validate provisional findings.

6.3.4. PUBLISH AND DISSEMINATE THE NBA.

In line with the principle of transparency, the NBA should be published and made accessible to all stakeholders once finalized, using forms of communication appropriate to relevant stakeholder

categories, such as translation of full or summary findings into relevant languages and posting on government websites.

6.4. SCOPE, CONTENT, AND PRIORITIES

Scope of NAPs

6.4.1. A NAP SHOULD ADDRESS THE FULL SCOPE OF THE UNGPs.

In line with the NBA, the measures contained in the NAP should, in principle, address all of the UNGPs. The NAP should also give a clear indication of how the actions identified contribute to the realization of each UNGP in question.

6.4.2. A NAP SHOULD ADDRESS THE FULL SCOPE OF THE STATE'S JURISDICTION.

Also in line with the scope of the NBA, the NAP should extend to all matters in the State's jurisdiction, including matters outside the State's territorial jurisdiction.

6.4.3. A NAP SHOULD ADDRESS INTERNATIONAL AND REGIONAL ORGANIZATIONS AND STANDARDS.

While the primary focus of the NAP should be legislation, policy, public programs, and institutions within the State in question, the NAP should likewise extend in scope to the State's interactions with relevant regional and international organizations, such as international financial institutions (IFIs), trade bodies, and regional organizations.

6.4.4. A NAP SHOULD ADDRESS THEMATIC AND SECTOR-SPECIFIC HUMAN RIGHTS ISSUES.

Even while taking a principle-by-principle approach, NAPs must not neglect relevant thematic or sector-specific human rights issues. Such issues might include, for instance, women's rights, children's rights, indigenous and minorities' rights, labor rights, anti-trafficking and anti-slavery, security and conflict, revenue transparency and management, and information and communication technologies (ICT).

Content of NAPs

6.4.5. THE NAP SHOULD INCLUDE A STATEMENT OF COMMITMENT TO THE UNGPs.

A NAP should clearly state the government's commitment to the UNGPs, following from its commitments under the UDHR and other international and regional human rights instruments, and to taking necessary steps toward their full implementation.

6.4.6. A NAP SHOULD COMPRISE ACTION POINTS THAT ARE SPECIFIC, MEASURABLE, ACHIEVABLE, RELEVANT, AND TIME-SPECIFIC.

The NAP should identify a set of concrete actions to be taken by the government. The measures to be taken should be explicitly linked to the results of the NBA. In particular, the NAP should respond to identified gaps in implementation 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;
- 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 realization of specific rights;
- TIME-SPECIFIC: The action item should have an indication of the timeline for realization.

Priorities for NAPS

6.4.7. A NAP SHOULD PRIORITIZE FOR ACTION THE MOST SERIOUS BUSINESS-RELATED HUMAN RIGHTS ABUSES.

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

6.4.8. IN LINE WITH THE HRBA, THE NAP SHOULD INCLUDE A PARTICULAR FOCUS ON THE MOST VULNERABLE AND EXCLUDED GROUPS.

A NAP should include a particular focus on the most vulnerable and excluded groups. This includes children and, depending on the context, women; racial, ethnic, religious, or other minorities; LGBTs; persons with disabilities; indigenous peoples; the elderly; migrant workers and their families; persons affected by poverty; homeless persons; rural or geographically isolated communities; and persons employed in the informal economy. The NAP should clearly identify such individuals and communities as rights-holders, and should explicitly lay out measures to be taken by the State to enable these individuals and communities to claim and enjoy their human rights.

6.5. TRANSPARENCY

Full Transparency With All Stakeholders

- 6.5.1. THE NBA AND ANY OTHER SIGNIFICANT ANALYSES AND SUBMISSIONS INFORMING THE NAP SHOULD BE PUBLISHED.

All information produced and contributing to the development of the NAP should be published and accessible to all interested parties, both domestically and abroad, subject to any need to withhold material from publication to safeguard human rights defenders or others at risk from unlawful harassment, intimidation, or reprisals.

6.6. ACCOUNTABILITY AND FOLLOW-UP

Holding Duty-Bearers Accountable for Implementation

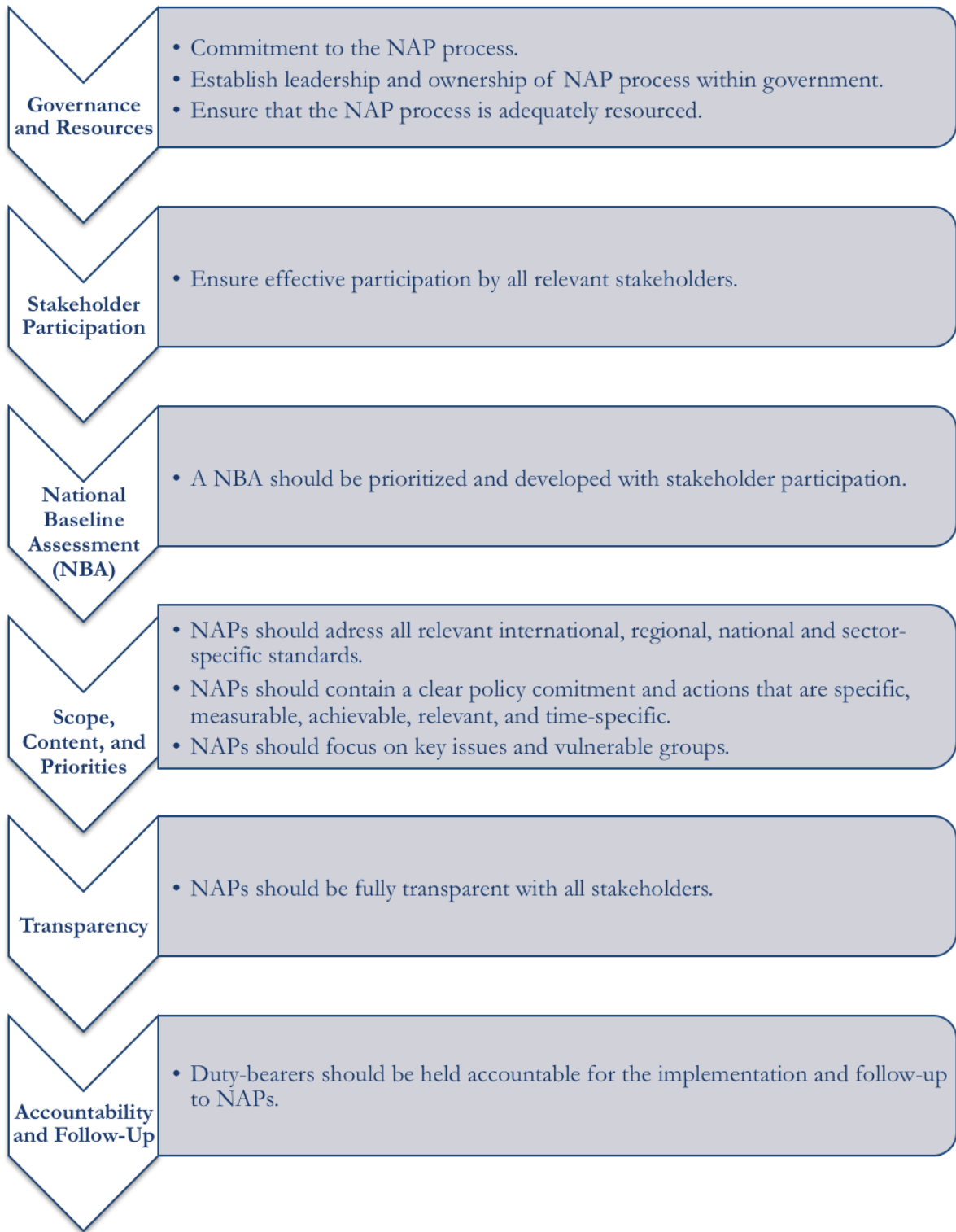
- 6.6.1. NAPs SHOULD IDENTIFY WHO IS RESPONSIBLE FOR IMPLEMENTATION OF INDIVIDUAL ACTION POINTS AND OVERALL FOLLOW-UP.

Every action point included in the NAP should have its ownership within government clearly identified. Overall responsibility for coordinating implementation of the NAP, reporting, and other follow-up measures should also be clearly allocated.

- 6.6.2. NAPs SHOULD LAY OUT A FRAMEWORK FOR MONITORING AND REPORTING OF IMPLEMENTATION.

Monitoring and reporting on progress in giving effect to commitments made in their NAPs should be undertaken on a periodic basis. A mapping of follow-up options and short- and long-term goals for follow-up on the NAP is provided in Chapter 7 of this report. Regardless of the follow-up mechanisms to be utilized by the State in reporting on its NAP, the NAP itself should clearly identify which mechanisms are to be used to indicate the State's clear plan going forward.

FIGURE 10: STAGES OF NAPs DEVELOPMENT, IMPLEMENTATION, AND REVIEW



CHAPTER 7: MONITORING AND REVIEW OF NAPs

Finalizing a NAP should not be seen as the end of a process, but as the beginning of its implementation phase. The incorporation of monitoring and review processes into this implementation phase increases the likelihood that the commitments made in the NAP will be carried out in practice. At the same time, by scrutinizing successes and failures, monitoring and review can foster information exchange and the sharing of best practices within and among governments, as well as with wider society.

This Chapter maps and analyzes a range of potential routes for tracking progress toward the fulfillment of NAPs commitments at the national and international levels.⁹⁸ Concerning the international level, the mapping addresses existing human rights reporting mechanisms, such as the UN Human Rights Council's Universal Periodic Review (UPR) process. In addition, the Chapter considers the potential for new, dedicated mechanisms to review business and human rights NAPs and efforts by stakeholders to put them into effect.

7.1. MAPPING OF OPTIONS

National Level

Progress Review Led By Government

The first option is for the government itself to lead a periodic review of progress toward fulfillment of the NAP. Typically, the body that coordinated the NAP process would be expected to undertake this task in conjunction with a government or stakeholder Steering Committee, where one is established. Usually, it would be appropriate for a progress review of some kind to take place at mid-term, as well as at the end of the NAP period. In both cases, general principles relating to NAPs processes, as set out in Chapter 6, should be applied, particularly with regard to stakeholder participation and transparency.⁹⁹

During review, the State's performance in meeting targets and benchmarks set down in the NAP should be assessed and reported on. On this basis, goals and commitments contained in the NAP can be updated, and a revised version of the NAP can be released to stakeholders.

Independent National Monitoring Mechanisms

Here, inspiration is taken from the most recently concluded of the UN's seven core human rights treaties, the UN Convention on the Rights of Persons with Disabilities (CPRD).¹⁰⁰ The CPRD requires the establishment, by States Parties, of a framework to promote and monitor the Convention's implementation, which must include one or more "independent mechanisms."¹⁰¹

Under the CPRD, an existing body such as the State's NHRI¹⁰² or another entity set up for this purpose can be allocated this function.

States could adopt this model also in relation to business and human rights. Thus, an independent body, such as the NHRI, another existing body, or a body to be newly established, could be given the role of monitoring implementation of the NAP. If established across a number of jurisdictions, these monitoring bodies could be engaged, for example, through networks at the regional or international levels in dialogue, information-exchange, and the sharing of best practices with other governments and stakeholders. Such a process of dialogue could also have the effect of gradually promoting convergence in approaches, increased transnational cooperation on problems of common concern and the normative consensus and mutual confidence needed to prepare the ground for discussion of the development of binding legal standards.

International Level

Universal Periodic Review (UPR) by the UN Human Rights Council (UNHRC)

The UN Human Rights Council (UNHRC) has a broad mandate to promote and protect human rights and fundamental freedoms. One of the key functions of the UNHRC is to facilitate the Universal Periodic Review (UPR) process. Through the UPR, the human rights record of each of the UN's 192 Member States is reviewed once every four years.¹⁰³ 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.¹⁰⁴ It is conducted by a UPR Working Group, made up of forty-seven Member States of the UNHRC, with assistance from a group of three States who serve as rapporteurs. Each State's appraisal is based on: (1) information provided by the State in a report; (2) information from experts and other UN organs; and (3) information from other stakeholders, including NGOs and the State's NHRI.

The UPR proceeds via an interactive discussion wherein UN Member States can pose questions and comments and make recommendations to the State under review. A final report, the "outcome report," provides a summary of the discussion. States are then responsible for implementing those of the recommendations which they accept. States are then subject to a mid-term review, after two years, in which stakeholders can again participate. After four years, the State must provide information on progress made.

In the current context, the question is whether a review of a State's business and human rights NAP and any progress or review reports could be incorporated into the UPR process in a meaningful and valuable way. Advantages of this approach would include increasing the profile and political

significance of business and human rights issues by raising them routinely in the UN's principal human rights dialogue process. A drawback of this approach, on the other hand, would be the likelihood that business-related abuses and issues are excluded to make way for other human rights issues which are in fact or are perceived to be more pressing. Another potential weakness is that a reviewing State might deliberately choose not to highlight business and human rights issues where these are of a politically sensitive nature or to avoid business-related issues being raised by other States when it, in turn, is under review.

UN Human Rights Treaty Monitoring Bodies

Of the UN's core human rights conventions, ten provide for the establishment of a treaty monitoring body to promote implementation by States of their obligations under the instrument in question.¹⁰⁵ Treaty bodies' members are independent experts,¹⁰⁶ and they have the task, *inter alia*, of reviewing the compliance of States Parties with their treaty obligations on a four- or five-year basis.

The review process differs in its details across treaty monitoring bodies but in general consists of two steps. First, a report prepared by the State is considered by a sub-group of the committee. On the basis of this report and other information received, for instance, from CSOs and the NHRI, this sub-group compiles a "list of issues" that it would like the State to address.¹⁰⁷ The State under review then submits a written response to the "list of issues." At the second session, the State's delegation presents its report and responds to questions posed by Committee members. This is intended to be a "public and constructive dialogue" between the delegation and the Committee. Finally, the Committee develops its Concluding Observations, which detail the extent to which the State is in compliance with its substantive obligations, as well as recommendations for improvements.

The UNGPs address all internationally recognized human rights and, in principle, can be raised in discussion in any treaty body. In addition, two of the UN's treaty monitoring bodies, the Committee on the Rights of the Child and the Economic and Social Rights Committee, have already produced guidance relating to business and human rights issues. It might be considered, then, that review of State implementation of the UNGPs could be considered step-by-step, and with regard to impacts on the different types of rights and categories of rights-holders addressed by each of the different UN conventions in the course of the State's successive review by each of the treaty bodies.

Such an approach would have the value of disaggregating business-related human rights abuses and supporting the formulation of specific actions to prevent and remedy such impacts across vulnerable and marginalized groups and in line with the requirements of the HRBA.

On the other hand, a segmented analysis with a focus on specific rights or groups would be less likely to seek or identify weaknesses in a State's approach to business regulation in general or deficits in regulation affecting all categories of rights-holders equally. Moreover, in practical terms, there would rarely be the scope for a detailed engagement with the concepts and standards of the UNGPs

given time and resource constraints on the review process. A further issue might be the generation of a range of divergent interpretations of the UNGPs, with no one body capable of advancing authoritative jurisprudence.

While a narrow-scope, specialized review of States' implementation of the UNGPs by treaty monitoring bodies could thus constitute an invaluable and necessary supplement to other processes, it seems unlikely that, alone, it could achieve an adequate or consistent scrutiny of States' steps toward UNGPs implementation.

Regional Peer Review and Reporting Processes

The European Union, as mentioned in Chapter 2, already requests its Member States to produce national plans both on CSR¹⁰⁸ and business and human rights, as well as on a range of other, unrelated topics, though with the shared element that a common policy framework in relation to the topic in question has been established at the EU level.¹⁰⁹ A one-time peer review exercise has been deployed by the EU to evaluate Member States' CSR NAPs, in which all Member States participated in 2013.¹¹⁰ In relation to some other NAPs, Member States participate in voluntary peer review processes, under the so-called "Open Method of Coordination."¹¹¹

In general, this mechanism proceeds as follows. First, Member States take measures intended to meet the goals and objectives of the stated community-level policies. Subsequently, Member States supply reports on the basis of a common format, benchmarks, and indicators, which are subject to scrutiny and discussion through a structured dialogue process.¹¹² General reports may then be produced that compare approaches taken toward reaching common goals and make recommendations.

For some human rights policy areas, the Council of Europe relies on a less demanding 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.¹¹³

Any of these models could be replicated in Europe or by regional organizations in other continents, such as the OAS, ASEAN, or African Union, to supply a follow-up and monitoring process based on NAPs on business and human rights. ASEAN's Intergovernmental Commission on Human Rights has, indeed, recently completed a peer review exercise of national measures to promote CSR,¹¹⁴ while the OAS has adopted a decision expressing support for the UNGPs and States' implementation of them.¹¹⁵ The African Union, through its New Partnership for African Economic Development (NEPAD), operates on a voluntary basis the African Peer Review Mechanism, which covers the broad areas of economic and political governance, thus appearing to providing an appropriate platform into which consideration of UNGPs could be integrated.¹¹⁶

Among strengths of this kind of approach to follow-up and oversight of NAPs are that they allow for monitoring and evaluation informed by, and that address, regional frameworks relevant to business and human rights, in addition to global standards. In a global-level review, for example in the UN setting, the role and impact of such rules may not be fully considered. Too much regionalization, on the other hand, could arguably undermine the UNGPs as a common global framework, were the UNGPs to be subject to divergent interpretations at the regional level.

Existing peer review procedures have also been criticized for failing to provide for sufficient participation by civil society and other stakeholders.¹¹⁷ Careful consideration would then need to be given to how the voices of affected rights-holders or their representatives, especially those from beyond the borders of participating States, would be heard in regionally-focused monitoring processes. On the other hand, in terms of practical arrangements, for instance travel and working languages, regional processes may be more readily accessible and cost-effective.

Review by the UN Working Group on Business and Human Rights (UNWG)

The UN Working Group on Business and Human Rights (UNWG) launched a Repository of NAPs in February of 2014.¹¹⁸ The Repository gathers all finalized NAPs published by States. In June 2014, the Human Rights Council, in renewing the UNWG's mandate, gave it the new tasks of seeking information from States on their NAPs and encouraged States and other stakeholders to provide relevant information to the UNWG.¹¹⁹ 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,”¹²⁰ by way of annual updates. Arguably, the terms of the UNHRC Resolution provide a sufficient basis for the UNWG now to undertake a regular review of States' NAPs, at least in relation to those States that are willing to cooperate with such an exercise.

As regards participation by “relevant stakeholders,” such as civil society groups and companies, this could be accomplished by the UNWG providing an area of the Repository for such stakeholders to submit “shadow reports” or assessments of a particular State's NAP, which would then be considered alongside the NAP and other information presented by the government, by the UNWG. .

Review Under a New International Business and Human Rights Instrument

If a new legal instrument on business and human rights were concluded by States, it might provide for a dedicated monitoring and review process on business and human rights. Indeed, as illustrated by the foregoing mapping and discussion, it is now an established norm that human rights instruments should make provision for scrutiny of State measures toward compliance and implementation of substantive obligations they have undertaken. Based on this Chapter's analysis, it can be seen that there are a range of monitoring and review options, each with strengths and weaknesses that could be incorporate into such an international agreement:

- Review by a new independent expert monitoring body in the UN, or by the UNWG;
- Review by a national mechanism States would be obliged to establish under the instrument;
- Review via a new UN-based peer review mechanism; and/or
- Review via peer mechanisms or voluntary reporting at regional level

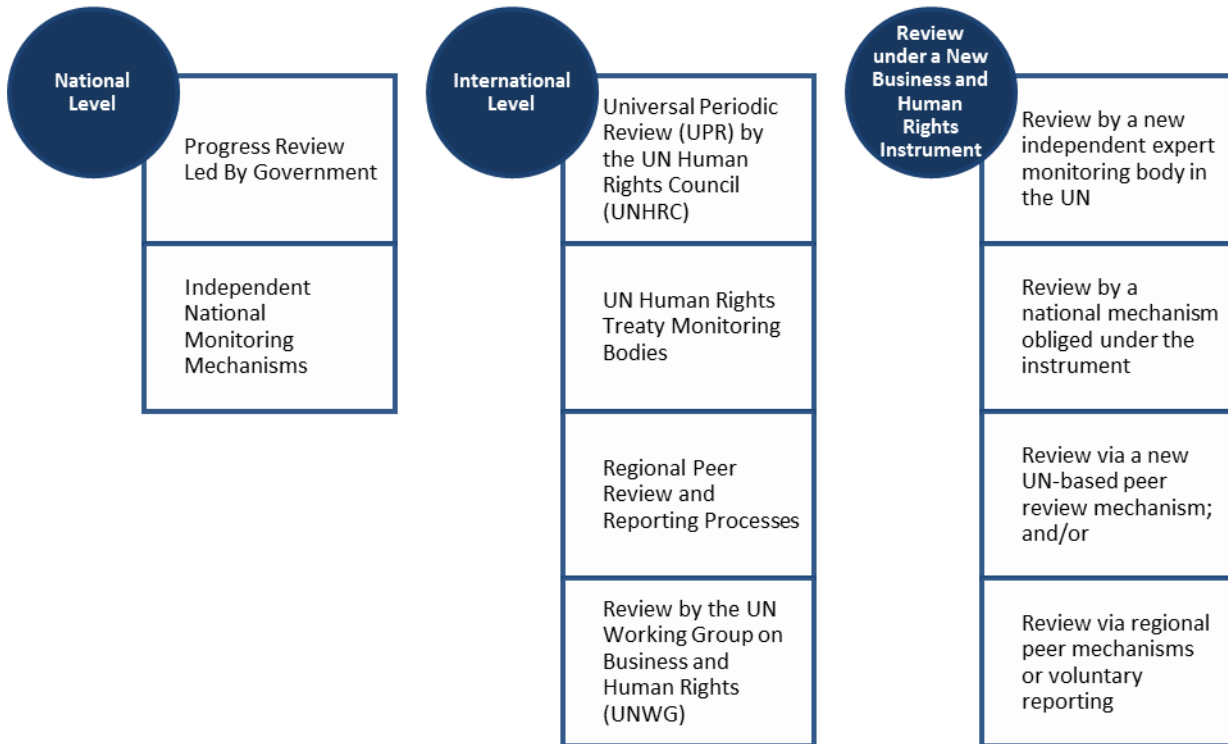
7.2. NAPS FOLLOW-UP: SHORT- AND LONG-TERM GOALS

In Chapter 6, principles were identified for follow-up on NAPs. These included the principles that: (1) NAPs should identify who is responsible for implementation of individual action points and overall follow-up, and (2) NAPs should lay out a framework for monitoring and reporting of implementation.

In addition, it is suggested that, in the short-term and at a minimum, States should also cooperate with the UNWG and its NAPs Repository. They should make provision for review and monitoring of their NAPs by an independent body, as described above, taking inspiration from the model to promote implementation of the UNCRRPD. States should also integrate reporting on development and implementation of NAPs commitments into the existing UPR process in their roles both as subjects and scrutinizers of other countries' track records. At the same time, wherever relevant, States should report on relevant implementation measures before UN treaty-monitoring bodies and through regional mechanisms.

In the longer term, measures to monitor implementation and review should be supplemented by additional oversight mechanisms at the regional or international level, or both, and States should seek to take steps toward this objective.

FIGURE 11: FOLLOW-UP MODALITIES TO NAPs



CONCLUSION

While business entities themselves must take responsibility for their impacts and amend their policies and practices to better respect human rights, it is ultimately up to States, individually and collectively, to protect the human rights of individuals and communities.

The evidence and analysis contained in this report demonstrate that NAPs can be a valuable means for States to move toward fulfillment of their duty to protect. The NAPs Toolkit is intended to provide the first building blocks toward a shared approach and common guidelines on NAPs. It is hoped that this report and Toolkit will inspire and help to facilitate substantial progress by States in this area, including through elaborating the concrete steps that the government should take to promote and develop laws, regulations, policies, and practices at the national level to facilitate business respect for human rights and the right to remedy. The process for developing NAPs must be clearly owned, adequately resourced, transparent, and involve the full spectrum of relevant stakeholders, including businesses, civil society actors, affected communities, and rights-holders.

Doubtless, further deliberation, analysis, refinements, and improvements are required. Guidance on NAPs and implementation of the UNGPs should continue to evolve in response to changing global and local issues and circumstances, as they emerge. Recognizing this, DIHR and ICAR reiterate our invitation for responses to this report and the Toolkit it provides from all parties and look forward to engaging in and supporting continuing dialogue on NAPs in the future.

ANNEX 1: KEY BUSINESS AND HUMAN RIGHTS FRAMEWORKS

As highlighted throughout the report, NAPs provide a valuable space for States to consolidate efforts and formulate priorities for the implementation of international and regional frameworks and commitments. Against this background, the following Annex outlines key business and human rights frameworks, including the UNGPs, other instruments and standards, and multi-stakeholder initiatives, that facilitate State implementation of the duty to protect against business-related human rights abuses. NAPs on business and human rights should be used as a platform for highlighting and elaborating State commitment and implementation of such standards and initiatives.

The following list of business and human rights frameworks is not exhaustive, but aims to reflect key frameworks with a high level of relevance and applicability to NAPs on business and human rights.

THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The UNGPs are intended to clarify existing human rights standards and practices for States and businesses by integrating such standards and practices into a single document.¹²¹ The UNGPs cover all States and all enterprises, including transnational and domestic businesses and regardless of size, sector, geographic location, ownership, and structure.¹²² The UNGPs form the basis on which a NAP on business and human rights should be developed, focusing both on the role of the State in protecting human rights as well as its role in promoting respect for human rights among business actors, both domestically and internationally.¹²³ Further, they provide a foundation on which to develop national baseline assessments (NBAs) to monitor current levels of implementation.

The UN Human Rights Council unanimously endorsed the UNGPs in 2011.¹²⁴ Both the Framework and the UNGPs rest on three complementary and interrelated pillars:¹²⁵

- **PILLAR I: THE STATE DUTY TO PROTECT** against human rights abuses by third parties, including businesses, by taking appropriate steps to prevent, investigate, punish, and redress such abuses through effective policies, legislation, regulations, and adjudication.
- **PILLAR II: THE CORPORATE RESPONSIBILITY TO RESPECT** human rights, which means that companies are expected to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved.
- **PILLAR III: ACCESS TO REMEDY**, which requires both States and businesses to ensure that victims of business-related human rights abuses have greater access to effective remedy, both judicial and non-judicial.

OTHER INSTRUMENTS AND STANDARDS

A number of other international instruments have focused on the human rights impacts of businesses, providing foundational frameworks from which NAPs on business and human rights should be built. In particular, NAPs should be used as a platform for highlighting and elaborating on such initiatives and how they contribute to the protection of, and respect for, human rights. The following summary provides a short introduction to several of these key initiatives. As mentioned above, this summary should not be considered to be an exhaustive list of all instruments and standards that relate to business and human rights.

Children’s Rights and Business Principles

The Children’s Rights and Business Principles were developed by UNICEF, the UN Global Compact, and Save the Children. They are the first comprehensive set of principles to guide companies on the actions they should take in the workplace, marketplace, and community to respect and support children’s rights. Building on existing standards, initiatives, and best practices related to business and children, the Principles seek to elaborate both expectations of, and opportunities for, business in relation to children, who are often overlooked as stakeholders of business.¹²⁶

General Comment No. 16 of the UN Committee on the Rights of the Child

On 15 March 2013, the UN Committee on the Rights of the Child adopted General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights.¹²⁷ Mirroring the “protect, respect, remedy” frameworks of the UNGPs, General Comment No. 16 aims to “provide States with guidance on how they should: ensure that the activities and operations of business enterprises do not adversely impact on children’s rights; create an enabling and supportive environment for business enterprises to respect children’s rights including across any business relationships linked to their operations, products or services and across their global operations; and ensure access to effective remedy for children whose rights have been infringed by a business enterprise acting as a private party or as a State agent.”¹²⁸

The IFC Performance Standards

The International Finance Corporation (IFC), the private sector arm of the World Bank Group, is an international financial institution (IFI) that aims to advance economic growth in developing countries by investing in for-profit and commercial projects which reduce poverty and promote development.¹²⁹ The IFC Performance Standards on Environmental and Social Sustainability are a set of standards that apply to IFC clients, which are private businesses that receive an investment from IFC to carry out specific projects.¹³⁰ There has been strong uptake of the IFC Performance Standards within both the private and public sectors. To date, thirty-two export credit agencies of the OECD member countries measure private sector projects against the Performance Standards,¹³¹

and nearly seventy banks and financial institutions have adopted the Equator Principles,¹³² which are based on the Performance Standards.¹³³

The ILO Core Conventions

The governing body of the ILO has identified a set of “core” ILO conventions that cover the four subjects that are considered as fundamental principles and rights at work: (1) freedom of association and the effective recognition of the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labor; (3) the effective abolition of child labor; and (4) the elimination of discrimination in respect of employment and occupation.¹³⁴ In 1995, the ILO launched a campaign to achieve universal ratification of these core conventions; to date, there are currently over 1,200 ratifications of these conventions, representing 86% of the possible number of ratifications.¹³⁵

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

The ILO Tripartite Declaration, adopted by the International Labor Organization (ILO) in 1977, is a non-binding, international agreement that applies to multinational enterprises (MNEs), governments, and employers’ and workers’ organizations.¹³⁶ The ILO Tripartite Declaration offers guidance on labor and social policies related to employment, training, conditions of work and life, and industrial relations.¹³⁷ The Declaration is particularly focused on businesses that operate outside of the country in which they are based (the ‘home State’).¹³⁸ As such, the Declaration has been praised for encouraging businesses to uphold high national standards of home states abroad, even in countries where the national law does not enforce those standards.

The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Securing Companies during Armed Conflict

The Montreux Document is the result of an initiative launched jointly by Switzerland and the International Committee of the Red Cross.¹³⁹ It was developed in consultation with representatives of civil society and private military and security companies (PMSCs).¹⁴⁰ The Document is a non-binding¹⁴¹ intergovernmental statement that articulates the most pertinent international legal obligations with regard to PMSCs and debunks the prevailing misconception that private contractors operate in a legal vacuum.¹⁴² It reaffirms States’ obligation to ensure that the private military and security companies with which they contract uphold international humanitarian and human rights law and sets forth approximately seventy recommendations for States in their dealings with PMSCs.¹⁴³

The OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High Risk Areas

The OECD Due Diligence Guidance was the first example of a collaborative, government-backed multi-stakeholder initiative that provides detailed due diligence and reporting recommendations for businesses potentially sourcing minerals or metals from conflict-affected and high risk areas.¹⁴⁴ The purpose of the OECD Due Diligence Guidance is “to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices” and to help “cultivate transparent mineral supply chains.”¹⁴⁵ The OECD Due Diligence Guidance has been endorsed by the eleven member states of the International Conference on the Great Lakes Region (ICGLR),¹⁴⁶ an inter-governmental organization of the countries in the African Great Lakes Region, which is a region that has been plagued by the disastrous effects of armed conflicts related to natural resource extraction.¹⁴⁷ On 22 August 2012, the U.S. Securities and Exchange Commission recognized the OECD Guidance as an international framework for due diligence measures undertaken by companies that are required to file a conflict minerals report under the final rule implementing Section 1502 of the Dodd-Frank legislation.¹⁴⁸

The OECD Guidelines for Multinational Enterprises

The OECD Guidelines, which are based on internationally recognized standards and applicable local laws, provide corporations with a set of non-binding principles and standards for responsible business conduct.¹⁴⁹ The OECD Guidelines provide recommendations for business policies and procedures, encouraging businesses to “contribute to economic, environmental and social progress,”¹⁵⁰ to “respect the internationally recognized human rights of those affected by their activities,”¹⁵¹ and to “support and uphold good corporate governance principles,” among other general policies.¹⁵² The recommendations included in the OECD Guidelines cover business ethics on employment, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.¹⁵³

Statement by the Committee on Economic, Social, and Cultural Rights on the Obligations of State Parties Regarding the Corporate Sector and Economic, Social, and Cultural Rights

On 20 May 2011, the Committee on Economic, Social, and Cultural Rights, the body of eighteen experts that monitors implementation of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), released a “Statement on the obligations of State Parties regarding the corporate sector and economic, social, and cultural rights.”¹⁵⁴ The statement declares that a State has the primary obligation to respect, protect, and fulfill the economic, social, and cultural rights of all persons within its jurisdiction and in business activities.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169

UNDRIP, an international instrument to recognize indigenous peoples' individual and collective rights, was adopted by the UN General Assembly in 2007. Among other provisions relevant to business activities, Article 10 of UNDRIP requires that indigenous peoples not be forcibly removed from their lands or territories under any circumstances and that the free, prior, and informed consent (FPIC) of indigenous peoples concerned must be obtained before any relocation takes place.¹⁵⁵ Reiterating and reinforcing many of the principles outlined in UNDRIP, ILO Convention No. 169, a legally binding international instrument that has to date been ratified by twenty countries, also deals specifically with the rights of indigenous and tribal peoples and requires consultation of and participation from indigenous and tribal peoples on issues that affect them, as well as the promotion and protection of the right of indigenous and tribal peoples to decide their own priorities for the process of development as it affects them.¹⁵⁶

The United Nations Global Compact

The UN Global Compact,¹⁵⁷ a voluntary initiative launched in July 2000, is a “platform for the development, implementation and disclosure of responsible and sustainable corporate policies and practices.”¹⁵⁸ The UN Global Compact calls on corporations to join the Compact and commit to its Ten Principles, which cover human rights, labor, environment, and anti-corruption standards.¹⁵⁹ The Principles were drawn from other recognized international law instruments, including the Universal Declaration of Human Rights, the International Labor Organization's Declaration of Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.¹⁶⁰ The Compact now has over 10,000 participants, including 7,000 businesses from over 145 countries.¹⁶¹ The UN Global Compact has stated that the two Global Compact principles on human rights should be interpreted according to the definitions set out in the UNGPs.¹⁶²

The United Nations Principles for Responsible Investing (PRI)

The UN Principles for Responsible Investing (PRI) are a set of guidelines that make clear that environmental, social, and governance issues are financially significant and material to investors.¹⁶³ Since the PRI was launched in 2006, it has grown to include almost 1,200 investors, including institutional investors, with assets under management totaling more than \$34 trillion, or more than 15% of the world's investable assets.¹⁶⁴

MULTI-STAKEHOLDER INITIATIVES

A number of multi-stakeholder initiatives have also focused on the human rights impacts of businesses, providing foundational frameworks from which NAPs on business and human rights should be built.

The Global Network Initiative (GNI)

The Global Network Initiative (GNI) is a multi-stakeholder initiative focused on the information and communications technology (ICT) sector.¹⁶⁵ Participation in the GNI is voluntary, but businesses who join must commit to implementing the GNI Principles on Freedom of Expression and Privacy, which provide guidance to businesses on how to respect, protect, and advance users' rights to freedom of expression and privacy.¹⁶⁶ The GNI also provides Implementation Guidelines¹⁶⁷ and a Governance, Accountability, and Learning Framework¹⁶⁸ to foster collaboration and aid businesses in implementing the GNI Principles.

The ISO Standard 26000

The ISO Standard 26000 for Social Responsibility reflects the best-practice standard to assist businesses in contributing to sustainable development through socially responsible business practices.¹⁶⁹ ISO 26000 provides practical guidance on how to recognize responsibility, adopt principles of responsibility, and engage with stakeholders.¹⁷⁰ Specific to human rights, ISO 26000 guides businesses to implement due diligence, monitor and mitigate risks, avoid complicity, and support the resolution of grievances.¹⁷¹

International Code of Conduct for Private Security Service Providers (ICoC)

The International Code of Conduct for Private Security Service Providers (ICoC) is a Swiss government-convened, multi-stakeholder initiative, the aim of which is to clarify international standards for the private security industry operating in complex environments, as well as to improve oversight and accountability of these companies. The code is based on international humanitarian and human rights law and was developed through a transparent and inclusive multi-stakeholder process. The ICoC was signed by fifty-eight private security companies from fifteen countries at a signing ceremony in Geneva on 9 November 2010. By 1 February 2013, the number of Signatory Companies had risen to 708 from seventy countries. The Swiss government is the convener of the initiative. The Privatization of Security Program at the Geneva Centre for the Democratic Control of Armed Forces (DCAF) operates under a mandate from Swiss government to facilitate the development of the ICoC.¹⁷²

Voluntary Principles on Security and Human Rights (VPs)

The Voluntary Principles on Security and Human Rights (VPs) are non-binding principles that offer guidance to oil, gas, and mining companies in maintaining the safety and security of their operations while ensuring respect for human rights and humanitarian law.¹⁷³ They were developed in 2000 by a tripartite multi-stakeholder initiative comprised of governments, companies in the extractive and energy sector, and NGOs.¹⁷⁴ The VPs apply to companies' interactions with both public and private security forces.¹⁷⁵

ANNEX 2: RECENT NAPS DEVELOPMENTS

EXISTING NAPS

Denmark

In 2012, the Danish government was already taking initiatives to implement the UNGPs, which were included in the 2012 CSR NAP of Denmark Responsible Growth.¹⁷⁶ However, pursuant to the Danish CSR Council's recommendation, the Danish government decided to create a separate NAP on the implementation of the UNGPs.¹⁷⁷ This NAP was published in March 2014, following a short consultation process with the Danish CSR Council.¹⁷⁸ The Danish CSR Council, which represents Danish trade unions, local municipalities, NGOs, business, and financial organizations, provided recommendations on all three pillars of the UNGPs.¹⁷⁹ The main purpose of the NAP is to provide a summary of the actions that the Danish government has already taken to implement the UNGPs.¹⁸⁰ In addition to summarizing actions already taken, the NAP provides a summary of the UNGPs, the Danish CSR Council's recommendations, and the initiatives the Danish government plans to take to implement the UNGPs.¹⁸¹

The Netherlands

After the European Commission requested that States create a NAP on business and human rights, the Dutch Parliament requested that the government begin the process.¹⁸² An inter-ministerial Working Group was then created in mid-2012 and was led by the Ministry of Foreign Affairs.¹⁸³ Other government agencies involved included the Ministries of Economic Affairs, Finance, Security and Justice, and Social Affairs and Employment.¹⁸⁴ In addition to an internal mapping of how Dutch policy at the time lined up with the UNGPs, the Working Group sought the input of business community representatives, civil society organizations, implementing agencies, and other experts.¹⁸⁵ To facilitate this process, the Working Group hired an external expert to conduct twenty-seven interviews with fifty representatives of the stakeholders listed.¹⁸⁶ These interviews were followed by three consultation meetings which were organized by the Ministry of Foreign Affairs.¹⁸⁷ Business representatives, civil society organizations, and implementing organizations each had a separate consultation to ensure that each group was able to voice their opinions adequately.¹⁸⁸ After this process, the National Action Plan of the Netherlands was published in December 2013.¹⁸⁹ It provides information on the existing policies in place and the results of the Working Group's consultations, and it describes the additional steps that the Dutch government plans to take to implement the UNGPs.¹⁹⁰ Specifically, it focuses on the "five main points" that came up during the consultation process: (1) an active role for the government; (2) policy coherence; (3) clarifying due diligence; (4) transparency and reporting; and (5) scope for remedy.¹⁹¹ The Dutch NAP also adopts a risk-based approach, which will be facilitated by a project to identify and prioritize policy reform in high-risk sectors.¹⁹²

The United Kingdom

The U.K. government released its NAP on business and human rights on 4 September 2013.¹⁹³ While creating the NAP, a steering group, which was made up of different ministries, conducted workshops where stakeholders were able to provide their input.¹⁹⁴ Worldwide, it is the first government to have adopted a NAP that is explicitly framed in terms of implementing the UNGPs.¹⁹⁵ The plan sets out actions taken by the United Kingdom to date on business and human rights, as well as measures to be taken over the next two years.¹⁹⁶ The plan applies to all U.K. government departments and addresses all businesses “domiciled” within the United Kingdom.¹⁹⁷

Among specific measures included in the U.K. NAP, the plan reiterates responsible business investment guidelines for companies that invest in Burma, presses for all private security service providers to comply with human rights, and requires that new bilateral investment treaties incorporate a company’s responsibility to respect human rights.¹⁹⁸ The plan also commits the U.K. government to ensuring that all government departments operating within the United Kingdom and abroad provide appropriate and consistent support and advice to companies about their human rights responsibilities.¹⁹⁹ The United Kingdom acknowledges that its NAP is only a starting point and that reviews of the NAP and its implementation will need to be conducted, especially as more States begin to create NAPs and new ideas are generated.²⁰⁰ In fact, there is an express commitment in the NAP to creating an updated NAP in 2015.²⁰¹

DRAFT NAPs

Italy

In Italy, a first inter-ministerial meeting on the development of a NAP for UNGPs implementation was convened by the Ministry of Foreign Affairs in 2012.²⁰² The Dirpolis Institute was commissioned to conduct a baseline study, which was completed and launched in November 2013.²⁰³ This baseline was then shared with stakeholders and presented at the Chamber of Deputies in October 2013.²⁰⁴ In March 2014, the Italian government released its draft NAP, titled Foundations of the Italian Action Plan on the United Nations Guiding Principles on Business and Human Rights.²⁰⁵ This NAP is currently being reviewed and re-drafted, and is scheduled for release in July 2014.²⁰⁶

Finland

On 22 November 2012, the government of Finland committed to drafting a NAP.²⁰⁷ Thereafter, the government established an inter-ministerial Working Group, headed by the Ministry of Employment and Economy, to draft its NAP and to report on progress by March 2014.²⁰⁸ In late 2013, prior to releasing its draft, the Working Group published a memo on Finnish law and policy as it relates to business and human rights.²⁰⁹ Stakeholders were invited to comment on this memo, and the

government held two consultations, one with civil society and one with business.²¹⁰ The Working Group released its draft NAP in April 2014.²¹¹

Spain

In Spain, initial consultations with stakeholders began in December 2012.²¹² These consultations were led by the Office for Human Rights of the Spanish Ministry of Foreign Affairs, which was assisted by two external experts.²¹³ After these consultations, the external experts created a work plan for the creation of a NAP draft and brought together an ad hoc group of academics from various fields to act as advisors on sections of the draft NAP, relevant to their expertise.²¹⁴ Stakeholders submitted their comments on the draft, which was then published in June 2013.²¹⁵ However, due to criticisms of the draft, consultations were held again in September 2013, and a second draft NAP was released in November 2013.²¹⁶ The government hopes to finalize its NAP in the near future.²¹⁷

NAPS UNDERWAY

Colombia

In November 2013, Sustentia Innovación Social and DIS Foundation released the “Guide to the UNGPs.”²¹⁸ This guide was informed by their joint project, “Training and Dialogue on the Framework of Business and Human Rights in Colombia—2012-2013.”²¹⁹ In total, 120 individuals representing business, public administrations, civil society organizations, academia, and international agencies participated in this project, which was carried out in Cali, Bogotá, and Medellín.²²⁰ These representatives were split into two technical working groups, in which participants discussed and debated the UNGPs in the Colombian context and made conclusions.²²¹ Their conclusions were incorporated into the Guide, which provides business and human rights policy guidelines to assist the Colombian government in the development of its NAP.²²²

France

In France, the government requested La Commission Nationale Consultative des Droits de L’Homme (CNCDH), the French national human rights institution (NHRI), to develop recommendations for the government on national implementation of the UNGPs.²²³ In response, CNCDH created a working group, which conducted consultations with various representatives from business, academia, civil society, and trade unions.²²⁴ In October 2013, CNCDH published an Advisory Opinion outlining its recommendations.²²⁵ In early 2014, the drafting of a NAP based on these recommendations began.²²⁶

Ghana

In Ghana, the Commission on Human Rights and Administrative Justice (CHRAJ), Ghana's NHRI, is working with Shift to push for the implementation of the UNGPs in Ghana.²²⁷ In the first phase, the two groups will work with the Centre for Research on Multinational Enterprises (SOMO), a Dutch NGO, to organize and conduct three capacity-building workshops on the UNGPs for stakeholders.²²⁸ These workshops will take place in Accra in July 2014.²²⁹ During the second phase of the initiative, Shift and CHRAJ will facilitate a multi-stakeholder dialogue on business and human rights, which will be used to support the creation of Ghana's NAP in 2015.²³⁰

Norway

In 2013, the Norwegian government commissioned a mapping study and gap analysis of existing measures in Norway relevant to UNGPs implementation.²³¹ The study was conducted by Mark Taylor and involved interviews with different ministries, government institutions, and select NGOs and associations, as well as a review of various White Papers, ministry web pages, laws, regulations, and official strategy documents.²³² The study is intended to be a base for further work in creating the Norwegian NAP and highlights areas on which the government should focus during that process.²³³

Switzerland

In December 2012, the Swiss Parliament passed a motion requesting that the government develop a national strategy for implementing the UNGPs.²³⁴ Subsequently, the Swiss government commissioned a mapping study of other States' NAPs processes²³⁵ and created an inter-departmental task force, led by the Federal Department of Foreign Affairs and the State Secretariat for Economic Affairs.²³⁶ The task force outlined the process for the creation of the Swiss NAP, which included an internal mapping of the current situation in Switzerland and participation by other stakeholders.²³⁷ To engage with stakeholders, the task force commissioned the Swiss research organization, Swisspeace, to conduct consultations. From December 2013 to January 2014, Swisspeace interviewed thirty-one representatives of business, civil society, and academia.²³⁸ The consultations and internal analysis will inform the NAP, which is expected to be approved in December 2014.²³⁹

OTHER DEVELOPMENTS

Australia

Australia has not begun the process of creating a NAP, nor has it committed to doing so. Australia has, however, taken certain steps that illustrate its commitment to the UNGPs, for example, by announcing a policy reform in government procurement practices to ensure there is no slavery or human trafficking in the supply chain. Despite these initiatives, there has been a call from Rachel Ball at the Human Rights Law Centre for the creation of an Australian NAP.²⁴⁰

Germany

Although the German government has committed to implementing the UNGPs at the national level, Germany has yet to identify a specific agency, ministry, or department to be responsible for developing its NAP.²⁴¹ In this context, a group of German NGOs released a position paper in April 2013 that lays out civil society expectations for a German NAP on business and human rights.²⁴² Additionally, the Federal Ministry of Labour and Social Affairs commissioned and published a study on potential ways the second pillar of the UNGPs could be implemented.²⁴³

Ireland

Ireland's submission to the Human Rights Committee in May 2014 stated that Ireland is "considering how best to implement the 'Guiding Principles on Business and Human Rights.'"²⁴⁴ There has to date been no announcement of any formal consultation process.²⁴⁵

Palestine

Although there is no Palestinian Authority commitment to creating a NAP to date, the Palestinian NGO Al Haq has created a brief paper providing recommendations for NAPs.²⁴⁶

Scotland

In Scotland's NAP on human rights, released in early 2014, the government explicitly committed to developing a NAP to implement the UNGPs.²⁴⁷

The United States

The U.S. government has not yet developed a NAP to implement the UNGPs, nor has it formally announced a specific process or clear intention to develop such a plan. However, on 19 April 2013, it did publish the U.S. Government Approach on Business and Human Rights.²⁴⁸ Upon the release of the Approach, Secretary of State John Kerry expressed the need for the U.S. government to "encourag[e] businesses to respect human rights wherever they operate."²⁴⁹ Under the Approach, the U.S. Department of State and other U.S. government agencies are called upon to: "(1) support the innovations and activities of business that help solve global challenges and improve the welfare of the people; (2) partner with business on projects in which business and government have comparative advantages that can be harnessed by working together [such as in public procurement policies]; (3) and promote the rule of law, respect for human rights, and a level playing field by encouraging responsible business behavior and inviting the participation of business in venues that advance best practices."²⁵⁰ The Approach reiterates the U.S. government's commitment to the UNGPs and outlines a number of U.S. laws, regulations, and policies that are relevant to UNGPs implementation.²⁵¹

ANNEX 3: SUMMARY REPORTS OF DIALOGUES

EUROPEAN CIVIL SOCIETY DIALOGUE

On 11 October 2013, the European Coalition for Corporate Justice (ECCJ) hosted the project's European Civil Society Dialogue in Brussels, Belgium. The dialogue included thirteen civil society and national human rights institution (NHRI) representatives from nine different European countries. ICAR and DIHR extend thanks to all participants for their time and for sharing their insights and experiences, as well as special thanks to ECCJ for its excellent leadership and collaboration in this endeavor.

SUMMARY OF PARTICIPANTS' OBSERVATIONS

Voluntary mechanisms are not enough.

Participants noted that NAPs developments to date have been mainly limited to the promotion of guidance from States and other voluntary—rather than legally enforceable—mechanisms. While targeted guidance on the UNGPs from governments to companies is a necessary component in UNGPs implementation, participants stressed that a model of voluntary guidelines and self-regulation by companies is not an adequate approach in fulfilling the State duty to protect human rights. Instead, exploration and elaboration of legally binding requirements in the form of legal and regulatory reforms should be key components of NAPs. Examples of such reforms include mandatory non-financial reporting requirements, sanctions for non-compliance with due diligence requirements, and legal liability for parent companies, among others.

Involvement in developing NAPs should be government-wide.

Some participants noted the robust nature of draft NAPs that have been developed by State-level ministries, departments, offices, or other entities that are directly focused on human rights. However, in the experience of others, there is a need for other government divisions (such as ministries of business, trade, or justice) also to be involved at an early stage and throughout the process. Government-wide participation in NAPs developments, it was suggested, will afford better communication among all stakeholders during the development process, will lead to a higher level of efficiency in gaining consensus on what activities are to be included in NAPs, and will facilitate broader buy-in once NAPs are developed. Furthermore, a government-wide approach, it was suggested, properly recognizes the various ways that government interacts with business enterprises, from such wide-ranging forms as trade and investment support to more regulatory efforts, including those linked to environmental protection and financial regulation.

NAPs should have both internal and external dimensions.

The State duty to protect human rights under international human rights law and the UNGPs applies both within and, subject to certain conditions, beyond a State's territorial borders. Some participants noted that NAPs should not only focus externally, but must also address impacts that corporate activities have on human rights inside the State's territorial jurisdiction. Within their respective NAPs, it was suggested, States should thus address business involvement in human rights abuses at home, such as those stemming from human trafficking or discrimination based on race, gender, or disability in the labor market. However, for European countries and other States that function as headquarters for companies operating abroad, a key component of NAPs must also be addressing the extraterritorial impacts of such companies, and how those impacts can be addressed by the application of national laws and policies. Some participants expressed the view that NAPs should include commitments to develop legally binding mechanisms that would require companies incorporated within the State to conduct human rights impact assessments before, during, and after operations taking place outside of the State's territory. Participants also felt that consultations with impacted communities are an integral component of such human rights impact assessments, and that States should utilize embassies or other representatives abroad in facilitating consultations with host communities as part of developing their respective NAPs.

Access to remedy.

Most participants stressed that Pillar III of the UNGPs—which addresses access to remedy—needs to be more directly addressed in the development of NAPs. When business-related human rights impacts have occurred, access to judicial and/or non-judicial remedy for impacted individuals and communities is crucial. Participants noted that, so far, NAPs developments in Europe have not adequately covered this pillar of the UNGPs. NAPs should thus do more to clarify State measures required to establish robust remedy frameworks that address business-related human rights abuses and alleviate key barriers that victims face in seeking and gaining recourse for such abuses.

Importance of baseline assessments.

Participants agreed that conducting baseline assessments of States' current UNGPs implementation is a prerequisite to the development and implementation of NAPs. DIHR/ICAR indicated that, when information on national laws, regulations, and policies are easily available, baseline assessments may be conducted through desk-based research (i.e. through "top-down" methodologies). However, when such information is not readily available, such as in developing countries where research databases and transparency are lacking, community-led research processes may be more suitable in conducting baseline assessments (i.e. through "bottom-up" methodologies). Such assessments should address State actions to date under each of the UNGPs and may incorporate other standards from international or regional instruments that address business-related human rights. Completion of baseline assessments will facilitate knowledge-sharing with regard to progress by States so far, will

afford transparency and understanding of where gaps exist and where further efforts are needed, and should provide a central reference point for future, periodic evaluations of State progress in implementing the UNGPs.

NAPs should include concrete targets and timelines.

If NAPs do not include explicit targets and timelines, there is a risk of divergences in interpreting the commitments contained in NAPs due to vagueness. This may, in turn, undermine government accountability for UNGPs implementation. Participants discussed the need for concrete, measurable targets within NAPs that can be periodically assessed by both government and non-government stakeholders. Having such concrete and measurable targets in place and setting timelines for achieving those targets may help to ensure that governments and other stakeholders have a clear understanding of specific State actions to be undertaken.

Improved consultation processes.

In the view of participants, governments should conduct regular and ongoing consultations with both government and non-government stakeholders in their development of NAPs. Moreover, participants expressed that governments should conduct these consultations on an inclusive basis in order to draw from a broad range of issues, experiences, and expertise that are relevant to UNGPs implementation at the national level. Civil society consultations should include groups dealing with business and human rights explicitly, but should also identify and include relevant groups outside this community in order to generate a better understanding of the broader range of business impacts on human rights that NAPs need to address. In addition, in line with a human rights-based approach, consultations must include rights-holders and/or their representatives. In particular, communities impacted by corporate activities and at risk of vulnerability or marginalization must be involved in order to lend legitimacy to NAPs processes and to reflect the needs and experiences of rights-holders. For instance, such groups may include those representing or comprising persons with disabilities, ethnic or other minorities, and women. Moreover, participants felt that governments must conduct NAPs consultations in a transparent manner, providing publicly available summaries of consultations so that stakeholders may later assess governments' incorporation of those inputs into periodic or final drafts of NAPs.

AFRICAN CIVIL SOCIETY DIALOGUE

On 25 November 2013, Global Rights hosted the project's African Civil Society Dialogue in Accra, Ghana as part of its African Regional Civil Society Convening on Human Rights and Business. The dialogue included twenty-one civil society leaders from 13 different African countries. ICAR and DIHR extend thanks to all participants for their time and for sharing their insights and experiences, as well as special thanks to Lien De Brouckere from Global Rights for her excellent leadership and collaboration in this endeavor.

SUMMARY OF PARTICIPANTS' OBSERVATIONS

Education and awareness-raising on business and human rights as a first step.

Participants noted that, across the African region, there is a general lack of awareness among all stakeholder groups—from national government offices to rural communities—of established business and human rights frameworks, including the UNGPs. Participants stressed that capacity-building initiatives that educate and raise the awareness of government, business, and civil society actors in relation to business and human rights issues must be a foundational component of NAPs development processes.

Some participants highlighted the potential role of civil society groups that operate at national and local levels in facilitating such initiatives and in creating a common platform for the development of NAPs. However, others pointed out that civil society groups currently lack the necessary advocacy tools and resources to adequately conduct such initiatives. As a result, National Human Rights Institutions (NHRIs) and governmental departments or ministries that focus on human rights issues could, in some cases, be well-positioned to take the initial lead in building capacity and raising awareness among all relevant actors in terms of major challenges and best practices in addressing business and human rights issues.

Implementation and enforcement at the national level of sub-regional, regional, and international commitments as a major challenge.

Participants stated that African governments have made commitments to numerous sub-regional, regional, and international instruments that touch upon a variety of human rights concerns. However, national implementation and enforcement of those commitments are not carried out in an effective manner throughout the African region.

Participants flagged this discrepancy as a major obstacle to local effectiveness of human rights standards—including in the business and human rights context—and reiterated the importance of maintaining pressure on governments to implement broader human rights commitments. National implementation through laws and policies—and in the form of NAPs—would also strengthen the position of civil society organizations in their advocacy work and in their other efforts to hold their respective governments accountable.

The State-business nexus as a priority issue in the African context.

Within African countries, there is often a high level of State involvement in business projects, meaning that governments and other public authorities run the risk of negatively impacting human rights as a result of commercial activities. This is articulated in the UNGPs as the “State-business nexus.”

Many participants felt that, when governments are involved in joint ventures or establish State-owned enterprises, this leads to a heightened risk of business-related human rights harms because such involvement can undermine political will to develop robust laws and policies that regulate business activities. Participants stressed the need, therefore, for NAPs to address the State-business nexus by calling for the development of laws, policies, and regulations that not only provide guidance to corporate actors on how to conduct business operations, but that promote transparency and accountability to human rights standards on the part of States as well.

The role of international stakeholders in the development of African NAPs.

Given the scarcity of resources often experienced by civil society and other actors in the African context, many participants thought that stakeholders from outside the African region should develop model NAPs that outline laws, regulations, and policies for African States to consider when addressing business and human rights issues. Participants stated that these templates would reduce the burden of national implementation, thereby increasing the likelihood that African governments will move efficiently and effectively to develop NAPs. At the same time, participants felt that State action on business and human rights should not be seen as imposed by the “Global North” on the African region. Rather, guidance should be presented in the form of case studies and examples that actors within the African context can consider and adapt to their own countries’ and communities’ specific needs and priorities before formulating recommendations for their own governments.

The role of National Human Rights Institutions (NHRIs) in the development of African NAPs.

A number of participants pointed to NHRIs as potential leaders in developing NAPs on business and human rights due to the fact that many African NHRIs have been closely involved in developing NAPs on other policy issues, such as education, women’s rights, and human rights more generally. A number of participants felt that a leadership role for NHRIs in this area would be preferable to allocation of the task of developing NAPs to specific departments or ministries within African governments.

To facilitate NHRIs’ fulfillment of this role, participants recommended that NHRIs should create a distinct section or “desk” within each institution that would be specifically dedicated to building capacity, monitoring, developing research, and conducting advocacy toward governments around business and human rights issues.

Participants further suggested that allocating responsibility for the development of NAPs on business and human rights to African NHRIs might help to avoid the problem that NAPs development processes may not be backed by adequate resources. As such, having a single body responsible for developing a NAP—rather than distributing this task across a wide range of

government departments or ministries—would make it easier to map out and assess the adequacy of available resources.

Baseline assessments and reporting and monitoring mechanisms.

Participants highlighted the importance of conducting national baseline assessments of existing State actions on business and human rights before developing NAPs. According to participants, baselines should include a thorough assessment of the social context within each region of a country, as relevant to business and human rights issues and in addition to an assessment of the legal framework that a NAP would be situated within. Moreover, participants stressed the need for a robust system of reporting at both the local and national levels to ensure that NAPs remain relevant and impactful on a continuing basis. Participants also emphasized the need for periodic assessments of State progress in addressing business-related human rights harms.

NAPs as an opportunity to clarify existing laws and regulations.

Participants felt that NAPs could provide much-needed clarity on existing laws and regulations within African countries. In particular, NAPs could serve to clarify the human rights responsibilities of companies within existing corporate law and criminal law frameworks, the human rights dimensions of consumer protection and labor laws, the human rights implications of the growing information and communications technology (ICT) sector in Africa, and avenues for judicial remedy within African jurisdictions. Another observation shared was that some African Constitutions apply to non-state actors, entailing a possible status for companies as duty-bearers in relation to constitutional rights, which is an additional matter for States to address in national baseline assessments and in NAPs.

Business and human rights coalition-building in Africa.

During the African Regional Civil Society Convening on Human Rights and Business, hosted by Global Rights, participants formed a new regional network called the “African Coalition on Corporate Accountability” (ACCA). This was felt by participants to illustrate a high level of interest and will among African civil society organizations to engage on business and human rights issues.

While recognizing that there remain substantial governance challenges across the African continent, participants noted that a range of stakeholder groups are starting to collaborate with the aim of encouraging State initiatives on business and human rights. Such initiatives indicate the strong potential to build the capacity of stakeholders on business and human rights issues, through participatory and inclusive processes and through rights-based processes of participation by local communities and their representatives during human rights and environmental impact assessments.

DIALOGUE WITH NANHRI MEMBERS

On 28 November 2013, the Network of African National Human Rights Institutions (NANHRI) hosted the project's Dialogue with NANHRI Members in Accra, Ghana as part of its 9th Biennial Conference on the theme of Business and Human Rights: Challenges, Opportunities, and the Role of National Human Rights Institutions (NHRIs). The dialogue involved over fifty NHRI representatives from across the African region. ICAR and DIHR extend thanks to all participants for their time and for sharing their insights and experiences, as well as special thanks to NANHRI for its excellent leadership and collaboration in this endeavor.

SUMMARY OF PARTICIPANTS' OBSERVATIONS

Integrating business and human rights into general human rights processes.

Participants noted that a number of African governments have already committed to or are currently in the process of developing NAPs on human rights in general. Depending on the national context, responsibility for developing, vetting, and approving such plans may rest with NHRIs, parliaments, ministerial bodies, or other government entities.

Against this background, some participants raised concerns that the development of freestanding NAPs on business and human rights could, in some countries, duplicate existing exercises, create potential redundancies, and result in inefficient uses of resources. Participants therefore suggested that integrating business and human rights issues into existing processes for general human rights NAPs should be considered.

Value of national baseline studies.

Participants drew attention to the wide dispersal of responsibilities across government ministries, regulatory agencies, and other public bodies in relation to business and human rights issues at the national level. At the same time, a very large volume of legislation and policies remain relevant to business and human rights, given the wide scope of the UNGPs.

Participants therefore emphasized the potential value of baseline studies on business and human rights to all stakeholders in collating and rationalizing this body of information. As such, national baseline studies and NAPs could constitute an authoritative “one-stop shop” for government agencies, businesses, and civil society—as well as NHRIs themselves—when in need of information on the regulatory framework for business and human rights.

Potential roles for NHRIs in the development of NAPs.

Participants noted that, given their mandates to promote and protect human rights, NHRIs have a major role to play in advising and supporting governments in the development of NAPs and in designing human rights-based NAPs processes. NHRIs should also be able to lay the groundwork for the development of NAPs, particularly in terms of undertaking baseline research. However, participants noted that many NHRIs—and many African NHRIs in particular—face tremendous resource constraints that would pose significant challenges in executing these tasks.

Lowering “barriers to entry” for governments on NAPs.

In addition to resource constraints, participants noted a lack of engagement, to date, by African governments in the area of NAPs on business and human rights. To mitigate these constraints, it was therefore suggested that knowledge-sharing or “twinning” approaches could be adopted in the African context, in which two or more governments would coordinate their efforts to develop baseline assessments and NAPs. A further suggestion was that the African Commission on Human and Peoples’ Rights could promote the development of NAPs at the regional level, such as through a requirement or invitation to States to report to the Commission on measures and progress in national implementation of business and human rights standards, such as those outlined in the UNGPs.

Key issues to include in NAPs.

Participants highlighted the following among issues that should be addressed by baseline studies and NAPs on business and human rights in the African context:

- International investment agreements and the integration of human rights protections into the terms and procedures for enforcement of such agreements;
- Environmental impact assessment legislation and the need for integration of human rights considerations, effective participation, and transparency in relation to the performance of such assessments;
- The need to strengthen capacity with regard to business and human rights issues across all stakeholder groups in the region; and
- The influx of foreign direct investment from Asian countries, particularly China.

Participants commented that the generation of national baseline studies on business and human rights could help to clarify the above issues and other underlying issues and provide an informed basis for the development of NAPs that strategically address those issues.

Participants further noted that, in relation to common concerns across African jurisdictions, best practices and guidance could be developed at the regional level in addition to being developed within context-specific implementing measures included in each country's NAP.

NAPs are not a checklist approach and should be iterative.

As noted above, participants assessed that the development of NAPs offers a significant benefit to African States as an opportunity to bring into one consolidated space a range of governmental activities and policies related to business and human rights. However, at the same time, participants cautioned that NAPs should not become a “checklist” for governments that are completed on a one-time basis only. Rather, participants suggested that NAPs processes should be iterative and continue over time, with reporting elements to be developed in conjunction with NAPs in order to ensure that national implementation is continuous, progressive, and consistently communicated to stakeholders.

LATIN AMERICA DIALOGUE ON NATIONAL IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS FRAMEWORKS

On 17-18 March 2014, the project held its Latin America Dialogue on National Implementation of Business and Human Rights Frameworks in Bogotá, Colombia. This multi-stakeholder event brought together approximately sixty-four participants from inside and outside the Latin America region, including representatives from governments, civil society, indigenous organizations, academia, the business and investor communities, NHRIs, and international organizations. The objective of the event was to share experiences and progress to date on States' implementation of the UNGPs since their adoption in 2011, including through the development of NAPs on business and human rights.

ICAR and DIHR extend thanks to all participants for their time and for sharing their insights and experiences, as well as special thanks to the following co-organizers for their excellent support and collaboration in this endeavor: Dejusticia, the Presidential Program for Human Rights and International Humanitarian Law of the Government of Colombia, Sustentia Innovación Social, the Spanish Agency for International Development Cooperation (AECID) of the Government of Spain, CIDSE, the German Institute for Human Rights, the International Work Group for Indigenous Affairs (IWGIA), the Geneva Centre for the Democratic Control of Armed Forces (DCAF), and the Institute for International Education (IIE).

SUMMARY OF PARTICIPANTS' OBSERVATIONS

Governments are engaging with the business and human rights agenda, but more awareness-raising and capacity-building are needed.

Participants agreed that the majority of States within the Latin America region are, to some extent, engaging with business and human rights issues at the national, regional, and international levels. However, there remain significant gaps in governments' awareness of, understanding of, and engagement with existing business and human rights frameworks, such as the UNGPs. Participants highlighted NAPs as a promising means for closing these gaps as NAPs processes could provide a platform to discuss how governments should give effect to their commitments on the ground, including through national laws, regulations, policies, and programs.

Multi-stakeholder consultation is a necessity.

Across stakeholder groups, participants felt that inclusive and transparent consultation processes must be an integral part of NAPs development and implementation. At the same time, it was noted that achieving multi-stakeholder dialogue that is constructive, rather than confrontational, can be a challenge in the region given historical conflicts and persisting tensions between governments, businesses, civil society actors, and communities. In this context, NAPs were seen as offering a promising avenue for renewed and positive engagement, on the condition that a diverse array of stakeholders is brought to the table and then consistently included throughout the development, implementation, and review of NAPs.

NAPs processes should clarify the relationship between business and human rights and CSR, including the concept of human rights due diligence.

Many participants expressed frustration with inconsistencies in the way that governments and other stakeholder groups in the region communicate about the distinct yet interrelated concepts of business and human rights and corporate social responsibility (CSR). Participants also highlighted the need for clarification of the concept of human rights due diligence and government expectations of business in this regard. NAPs were observed as affording an opportunity to provide such clarification in a systematic, horizontally coherent way as NAPs processes could help to generate a common language and mutual understanding around business and human rights that can be drawn on more widely, including in future initiatives to address corporate impacts on individuals and communities.

Indigenous populations are uniquely vulnerable to business-related harms.

The importance of including indigenous peoples and their representatives in the process of developing and implementing NAPs in the region was underlined. NAPs could support stronger

awareness and better utilization of existing international and regional standards that support indigenous rights, such as the Declaration on the Rights of Indigenous Peoples (DRIP) and ILO Convention 169. Such frameworks give concrete content to NAPs, for example with regard to the standard of free, prior, and informed consent and effective access to justice for indigenous peoples in relation to harms that have already occurred. The importance of empowering vulnerable populations through the NAPs process was also highlighted, with participants pointing in this regard to the need for appropriate communication methods, including translation into local and indigenous languages, in NAPs-related consultations.

The State-business nexus is a priority in Latin America.

It was observed that, in many Latin American countries, there is a high level of State involvement in investment and development projects. Commonly, there is also confusion about where government action ends and business activity begins, and there is a correlated risk that government entities may negatively impact human rights as a result of commercial activities. In particular, this was felt to be the case in the extractive sector, with regard to States' involvement in development banks and other financial institutions, and in the negotiation of trade agreements. Some participants felt that State involvement in these areas undermined political will to develop robust laws and policies regulating business activities. Accordingly, participants stressed that NAPs in the region should not only address private sector policies and practices, but should also commit the public sector to fully integrating human rights considerations into all facets of its business operations and relationships.

Targeted guidance on UNGPs implementation in relation to specific human rights, rights-holders, and sectors would be highly valuable.

Several participants expressed the need for more specific guidance on how the UNGPs address specific human rights, rights-holders, and sectors that are of primary concern in the region. Such guidance would help to assess domestic implementation of business and human rights frameworks. Further to this, strong interest was expressed in the development of NAPs-related tools or guidelines that break down the UNGPs in terms of specific themes. Such tools could be utilized inside and outside the government to evaluate and monitor government performance in priority areas with reference to existing legal and policy frameworks.

NAPs would increase policy coherence inside and among governments.

There was frustration among participants at a perceived lack of coordination and communication across government ministries, departments, and/or agencies, as well as among governments and intergovernmental bodies in the region. This lack of coordination and communication was seen as obstructing the development and implementation of coherent policies relating to business and human rights. NAPs, it was urged, should facilitate government-wide and cross-departmental efforts on business and human rights frameworks by identifying and assigning specific tasks to all

government bodies whose work touches upon business and human rights-related issues. Participants further recommended that increased efforts were needed at the regional level to coordinate and communicate best practices and lessons learned in developing and implementing NAPs.

NAPs can be integrated into existing human rights processes.

Some governments in the Latin American region have already developed or are in the process of developing NAPs on human rights or national development plans. Given this, concerns were raised by some participants that the development of distinct NAPs on business and human rights might duplicate existing processes, create potential redundancies, or result in inefficient uses of resources. It was therefore suggested that, according to the local context, consideration should be given to integrating business and human rights NAPs processes into relevant State initiatives, where they exist, or at least to referencing and aligning with these initiatives during the development of specific business and human rights NAPs, rather than running two or more parallel processes.

The role of governments outside the region.

Given the progress made by governments in Europe toward the development of NAPs on business and human rights, several participants highlighted the potential for partnering or cross-learning among States in order to maximize capacity and resource-efficiency in developing, implementing, and periodically reviewing NAPs. The need for coordinated efforts and information-sharing was stressed as particularly important given the cross-border nature of business and human rights issues and the significant impacts of policies and practices of governments outside Latin America (for example, China and Canada) that must be addressed within the NAPs of governments in the region.

NAPs as a means, not an end, toward fulfilling the State duty to protect human rights.

Most participants agreed that NAPs are an important tool for Latin American governments in engaging with their duty to protect human rights from business-related harms. NAPs were also seen as a valuable mechanism for all stakeholder groups in holding States accountable for making progress toward fulfillment of this duty. However, several participants made the caveat that NAPs should not be viewed as an end in themselves, as much work will remain to be done even after a State has completed the development of its first NAP. Participants therefore agreed that NAPs processes must be ongoing and include monitoring and reporting mechanisms to ensure that national implementation is progressive, transparent, and responsive to feedback and changing circumstances.

ASIA-PACIFIC DIALOGUE ON NATIONAL IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS FRAMEWORKS

On 11-12 April 2014, the NAPs Project held its Asia-Pacific Dialogue on National Implementation of Business and Human Rights Frameworks in Delhi, India. This multi-stakeholder event brought together approximately fifty-two participants from inside and outside the Asia-Pacific region, including representatives from governments, civil society, indigenous organizations, academia, the business and investor communities, NHRIs, and international organizations. The objective of the event was to share experiences and progress to date on States' implementation of the UNGPs since their adoption in 2011, including through the development of NAPs on business and human rights.

ICAR and DIHR extend thanks to all participants for their time and for sharing their insights and experiences, as well as special thanks to the following co-organizers for their excellent support and collaboration in this endeavor: the City University of Hong Kong's School of Law, O.P. Jindal Global University, Jindal Global Law School, the German Institute for Human Rights, the International Work Group for Indigenous Affairs (IWGIA), the Geneva Centre for the Democratic Control of Armed Forces (DCAF), and the Institute for International Education (IIE).

SUMMARY OF PARTICIPANTS' OBSERVATIONS

Governments across the Asia-Pacific region should more actively engage with the business and human rights agenda.

Participants consistently noted that, although there are active intergovernmental entities throughout the Asia-Pacific region, these entities and the individual governments that comprise their membership have not yet effectively engaged with the topic of business and human rights. It was also reiterated by participants throughout the Dialogue that, while there are in many cases strong national laws on the books, implementation and enforcement is often lacking in practice. It was recognized, however, that National Human Rights Institutions, civil society organizations, and academia are active and are bringing more attention to the business and human rights agenda.

The NAPs process is key to public accountability and to centralizing knowledge and understanding around business and human rights.

The development and implementation of NAPs were seen by many participants as key opportunities for creating a centralized system for holding governments to account for their protection of human rights in relation to business activities. This includes in particular the implementation of international and regional treaties, as well as national laws.

Many participants also viewed NAPs processes as promising avenues for building awareness and capacity among all stakeholder groups and for developing multi-stakeholder approaches that are

inclusive, transparent, and designed to ensure opportunities for stakeholders to provide feedback from the outset.

National implementation of business and human rights frameworks should be integrated into broader human rights processes.

Participants noted that a number of governments in the Asia-Pacific region have already developed, or are in the process of developing, NAPs on human rights or development. Some participants raised concerns that the development of stand-alone NAPs on business and human rights could, in some countries, duplicate existing processes, create potential redundancies, or result in inefficient uses of resources. Participants therefore suggested that integrating business and human rights issues into existing and related State initiatives should be considered, according to the local context.

The State-business nexus and political corruption are major challenges throughout the region.

Participants discussed the State-business nexus as a key issue in the region, with many governments playing a direct role in the extractive sector and natural resource projects more widely. Economic opportunities from mining, crony capitalist networks, and close ties between States and corporations operating in the region were identified among reasons why States are often narrowly focused on short-term financial gains from investment without adequate consideration of corresponding human rights impacts or concern for development that is socially and environmentally sustainable. Participants expressed that NAPs are needed to help address this challenge and should do so by promoting the recognition in law and policy of human rights as indispensable to sustainable development across the region. NAPs should also help by focusing on human rights due diligence within public-private partnerships, public procurement processes, export credit agencies, pension funds, and other areas where the State plays a key business role.

A further important point made by participants was corruption within governments across the Asia-Pacific region. In particular, several participants expressed frustration with frequent gaps between the expressed policies of government officials, promised resources and processes to affected communities within government contracts with businesses, and the actual activities of businesses on the ground. Participants felt that NAPs should target these gaps by committing governments to better monitor and publicly report on government-sponsored or government-supported business projects.

Clarifying the distinction between business and human rights and CSR.

Participants highlighted that governments in the region, as well as other stakeholders, are often operating according to different definitions of business and human rights and in many cases fail to distinguish the concept of business and human rights from corporate social responsibility (CSR).

Participants saw NAPs processes as an opportunity for dialogue at the national level that could clarify these respective concepts and that could develop a common conceptual framework and language across stakeholder groups going forward.

A central agency or entity should manage the NAPs process.

Clear ownership of a country's NAP, and legitimacy around the NAPs development process, were underlined by participants as being essential to the success of a NAP. To this end, several participants recommended that a central government agency or entity should be designated to lead and carry out all stages of the NAPs development process or, if necessary, one should be created for this purpose. While some participants suggested that the central agency or entity should have representation from all government ministries or departments in order to ensure policy coherence, others argued that such an entity must also involve impacted communities who could provide inputs from the bottom-up on the substantive content of NAPs.

Participants further felt that, whichever body was ultimately responsible for the NAP, it must be both financially and politically independent. It should also have a mechanism for monitoring implementation of the NAP. For example, a number of participants suggested that a NAP monitoring mechanism could be based on the Universal Periodic Review model, with regular multi-stakeholder consultations on progress and recommendations developed to support continuing implementation in the future. It was also suggested that National Human Rights Institutions might be able to support such a process by drafting NAPs and working directly with governments in order to implement them.

Regional and local levels must be considered in developing national implementation strategies.

Several participants pointed out that regional or local governments within countries might not automatically be subsumed by national strategies, such as where regional or local governments operate autonomously from national government structures. Accordingly, the importance of involving stakeholders from these various levels in NAPs development and implementation was emphasized.

NAPs should build on existing standards, models, and tools.

A view was expressed that States should not start from “square one” in formulating and prioritizing NAPs content. Rather, States should look to existing standards established by multi-stakeholder initiatives or industry associations, such as the Extractive Industries Transparency Initiative (EITI) and the International Council on Mining and Metals (ICMM), that are active in the region. Other participants emphasized the need for governments to adopt and implement existing international human rights standards, including the core ILO Conventions. NAPs should also be informed by

successful interventions in the region to date, such as Japan's anti-Yakuza framework, under which the Japanese government required companies to integrate clauses into their contracts that were designed to help eliminate a national crime syndicate associated with adverse human rights impacts.

The human rights of indigenous peoples are at high risk from business activities.

More than two-thirds of the world's approximately 350 million indigenous peoples live in the Asia-Pacific region. As such, there was strong agreement among participants that indigenous rights should be prioritized in Asia-Pacific NAPs processes. Participants urged that indigenous peoples must be able to influence trajectories of development affecting areas they inhabit and that NAPs should clearly articulate that free, prior, and informed consent of impacted communities is mandatory for relevant development projects.

Participants also recommended that NAPs should address the unique challenges faced by indigenous populations with regard to access to justice. Specifically, NAPs should call for informal and customary forms of dispute resolution to be factored into the development of mechanisms providing remedy to indigenous peoples for business-related human rights abuses.

NAPs must address the informal sector.

The informal economy comprises a large component of total economic activity in the Asia-Pacific region. While some participants recommended that NAPs should directly address the informal sector and consider measures that could be taken to mitigate its adverse human rights impacts, others felt that NAPs should focus primarily on businesses in the formal economy and therefore restrict NAPs' engagement with the informal sector to areas where it intersects with the formal sector, such as through supply chains.

DIALOGUE WITH BUSINESS PRACTITIONERS

On 9 April 2014, the Global Business Initiative on Human Rights (GBI) hosted the Project's Dialogue with Business Practitioners in London, United Kingdom. The dialogue brought together approximately forty-eight participants, including representatives of companies and business associations, from a wide array of sectors and geographical regions. ICAR and DIHR extend special thanks to GBI for its support and collaboration.

SUMMARY OF PARTICIPANTS' OBSERVATIONS

Support for State implementation of the UNGPs and support for NAPs, alongside ongoing efforts to strengthen good governance and rule of law.

Participants in general expressed a strong interest in, and support for, State implementation of the UNGPs. Many felt that NAPs are a promising means of clarifying expectations and supporting businesses in their efforts toward achieving respect for human rights. Participants also stated that, in parallel, States should continue to support programs that build government capacity in other States to address fundamental rule of law and governance issues, which were also seen as highly relevant, contextual factors for UNGPs implementation.

Multi-stakeholder processes are important for developing and implementing NAPs.

Participants felt that a credible and well-managed multi-stakeholder process at the national level was key, both to inform the content of a NAP and to support its implementation. In particular, participants noted that a transparent and inclusive process would be necessary if the content of a NAP was to be appropriate, relevant, and authoritative in its priorities.

Support for focusing resources on the most urgent, systemic, and severe human rights risks.

Participants identified some recurring business and human rights impacts and risks, understood by participants as risks to people as well as business risks, that exist in the value chains of most industries. These included land rights, trafficking, security, child labor, privacy, and conflict of laws, among others. Participants expressed that these issues often involve the most severe and irremediable human rights impacts and stated that corporate human rights due diligence can only go so far. It was therefore noted that States should prioritize supporting outcomes in these areas to develop consistent expectations, standards, requirements, and interventions that lead to positive and demonstrable human rights outcomes.

NAPs should not focus solely on business conduct and activities, but should also address the full range of a State's economic policies, strategies, and activities.

With regard to the possibility that NAPs could focus mainly or exclusively on the activities of private enterprises, participants stressed the need for NAPs to address the full scope of Pillar I of the UNGPs, such as the State's own economic growth plans, investment strategies, bilateral agreements, trade promotion efforts, and development aid. Participants stated that this also applies to situations where States are involved in planning and rule-making in multilateral contexts, such as regional economic communities and international finance and trade institutions.

When it comes to business conduct, NAPs should include a focus on legislation and regulation, but not exclusively so.

Participants expressed the view that NAPs should not focus exclusively on the development of legislation and regulation regarding the corporate responsibility to respect human rights, as defined under Pillar II of the UNGPs. Participants argued that, while laws and regulations may be required and effective in certain situations, NAPs should actively consider other measures that can be used by States to set expectations and incentivize and reward responsible conduct by corporations. It was suggested that this could involve developing guidance, as well as convening CEOs and other senior business leaders to set out clear expectations consistent with the UNGPs (for example, in relation to clarifying the concept of corporate social responsibility (CSR) and how it relates to the concept of business and human rights). Further, licensing and public procurement were noted as examples where States already apply their leverage to influence business practices, for instance by rewarding businesses that clearly evidence respect for human rights in their operations. Participants suggested that NAPs might therefore valuably include commitments by governments to review and identify good practices and lessons learned concerning the use of licensing and public procurement in the business and human rights context.

NAPs, and State implementation of the UNGPs more broadly, could draw on existing methodologies and tools from industry and multi-stakeholder initiatives.

Participants observed that, over the past two decades, industry and multi-stakeholder initiatives have generated a range of methodologies and tools to support business respect for human rights. It was therefore suggested that States may be able to build on these existing methodologies and tools and integrate them into their own UNGPs implementation efforts. Examples given by participants included: 1) States focusing on licensing in the extractive industry may be able to draw on impact assessment tools developed by relevant initiatives from the sector; and 2) States including measures on procurement in their NAPs may be able to learn from approaches to supply chain management from the private sector and sector-specific initiatives.

Consistent with the “Protect, Respect, Remedy” Framework, access to remedy should be addressed within NAPs, and all types of remedy should be explored.

Participants highlighted that NAPs should address both judicial and non-judicial remedies for business-related human rights abuses. At the same time, participants emphasized that, while relevant legislation is often in place and remedies are technically available in many countries, one substantial obstacle to access to justice is the lack of implementation and enforcement at the national level. It was also recommended that NAPs should contain measures supporting the development and implementation of non-judicial mechanisms, such as alternative dispute resolution.

Support for knowledge-sharing and capacity-building among States.

Participants expressed the hope that NAPs will be developed by States in all regions of the world in order to accelerate global uptake of the UNGPs. It was discussed that, in order to help create a level playing field, States that have already developed NAPs and/or are implementing aspects of the UNGPs should support other States to develop their own practices via peer learning and dissemination of good practice. However, it was reflected that this should be viewed in light of the fact that UNGPs implementation processes will necessarily be different across diverse national contexts. Further, participants stressed that NAPs should not have an exclusively “outward” focus, but should aim to adequately address business-related human rights impacts at home as well.

Moreover, participants representing businesses that operate in multiple contexts emphasized that NAPs processes should, as far as possible, be coherent and complimentary across States, with the aims of ensuring that requirements on businesses are similar in different countries and of easing investments, business operations, and business relationships.

ANNEX 4: THE NATIONAL BASELINE ASSESSMENT (NBA) TEMPLATE²⁵²

PILLAR I

GUIDING PRINCIPLE 1	
States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.	
Commentary to Guiding Principle 1	
States' international human rights law obligations require that they respect, protect and fulfil the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.	
The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication. States also have the duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency.	
1.1. International and Regional Legal Instruments Has the government signed and ratified relevant international and regional legal instruments?	
Indicators	Scoping Questions
International Human Rights Legal Instruments	Has the government signed and ratified relevant international human rights legal instruments, such as ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, ICMW, CPED, CRPD, the core ILO conventions, and any corresponding protocols?

GUIDING PRINCIPLE 1	
Regional Human Rights Legal Instruments	Has the government signed and ratified relevant regional human rights legal instruments, such as the African (Banjul) Charter on Human and Peoples’ Rights; the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; and any corresponding protocols?
Other Human Rights Legal Instruments	Are there any other relevant human rights legal instruments that the government has signed and ratified?
Implementation Status	Gaps
List all relevant international and regional legal instruments that the government has signed and ratified and list any reservations, understandings, or declarations by the State in relation to such instruments.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
1.2. International and Regional Soft Law Instruments Has the government signed relevant international and regional soft law instruments?	
Indicators	Scoping Questions
International Human Soft Law Rights Instruments	Has the government signed relevant international human rights soft law instruments, such as the UDHR, other UN declarations and/or resolutions, and the ILO Tripartite Declaration?
Regional Human Rights Soft Law Instruments	Has the government signed relevant regional human rights soft law instruments, such as the American Declaration of the Rights and Duties of Man and the ASEAN Human Rights Declaration?

GUIDING PRINCIPLE 1	
Other Human Rights Soft Law Instruments	Are there any other relevant human rights soft law instruments that the government has signed?
Implementation Status	Gaps
List all relevant international and regional soft law instruments that the government has signed.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
1.3. UN Guiding Principles on Business and Human Rights Is the State actively implementing the UNGPs?	
Indicators	Scoping Questions
Formal Statement of Support	Has the State given a formal statement of support for the UNGPs?
Implementation Structures	Has the State put in place relevant structures to ensure implementation of the UNGPs, for example, through the establishment or designation of a body tasked with implementation measures or through the allocation of internal resources?
Capacity-Building	Has the State put in place measures to capacitate government actors and local citizens with knowledge and information on the UNGPs, for example, through workshops, conferences, or other events?

GUIDING PRINCIPLE 1	
Information	Has the State disseminated information about the UNGPs through public media sources, internal guidance documents, or other materials?
Other UNGPs Implementation Measures	Has the State taken any other measures to implement the UNGPs within the State?
Implementation Status	Gaps
List all State activities relevant to UNGPs active implementation, as clarified in the indicators above.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
1.4. Other Relevant Standards and Initiatives	
Is the State supporting or participating in other standards and initiatives relevant to business and human rights?	
Indicators	Scoping Questions
Standards	Has the government supported other standards on business and human rights, such as the IFC Performance Standards, the OECD Guidelines for Multinational Enterprises, and the UN Global Compact?
Initiatives	Has the government participated in initiatives, multi-stakeholder or otherwise, on business and human rights, such as the Global Network Initiative (GNI), the International Code of Conduct for Private Security Service Providers Association (ICoCA), and the Voluntary Principles on Security and Human Rights (VPs)?

GUIDING PRINCIPLE 1	
Implementation Status	Gaps
List all relevant State support and/or participation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
1.5. National Laws and Regulations	
Does the general law of the State provide protection against business-related human rights abuses?	
Indicators	Scoping Questions
Constitution	Does the constitution contain wording aimed at human rights protection?
Labor Law	Has the government put in place labor laws and regulations to ensure the protection and promotion of workers' rights?
Environmental Law	Has the government put in place environmental laws and regulations to ensure the protection and promotion of the rights of its citizens to health, a healthy environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?
Property and Land Management Law	Has the government put in place land management laws and regulations to ensure the protection of the rights of its citizens, including the recognition of customary land rights and the incorporation of human rights considerations into environmental and social impact assessments and related licensing practices?

GUIDING PRINCIPLE 1	
Health and Safety Law	Has the government put in place health and safety laws and regulations to ensure the physical and mental health of workers and communities?
Corporate and Securities Law	Has the government put in place corporate and securities laws and regulations to support ethical corporate behavior and business respect for human rights, such as through financial reporting, incorporation/registration, and stock exchange listing requirements?
Tax Law	Has the government put in place tax laws and regulations to support ethical corporate behavior?
Trade Law	Has the government put in place trade laws and regulations to support the protection and promotion of human rights within trade practices?
Disclosure and Reporting	Has the government put in place law to support disclosure and reporting by corporations on human rights, labor rights, environmental impacts, corporate social responsibility, or other ethical issues?
Procurement Law	Has the government put in place laws and regulations to support the incorporation of human rights considerations into the procurement by the State of goods and services from the private sector?
Anti-Bribery and Corruption	Has the government put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across governments?
Human Rights Defender and/or Whistleblower Protection	Has the government put in place laws and regulations aimed at protecting the rights of human rights defenders and/or whistleblowers?

GUIDING PRINCIPLE 1	
Information and Communications Technologies (ICT) Law	Has the government put in place laws and regulations to ensure the protection of access to information, freedom of expression, privacy, and other information- and communication-based rights, online as well as offline?
Other Laws and Regulations	Has the government put in place any other relevant laws and regulations aimed at protecting and promoting human rights from business-related harms, including torture, genocide, and crimes against humanity? Do such laws and regulations extend extraterritorially, as permitted by the UNGPs and international human rights law?
Implementation Status	Gaps
List all relevant national laws and regulations.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
1.6. Investigation, Punishment, and Redress Measures	
Do relevant State agencies responsible for law enforcement address business and human rights?	
Indicators	Scoping Questions
Sector Risk Assessment	Is the State undertaking or supporting any specific activities to identify specific business sectors or activities that may have particularly negative impacts on human rights, such as the extractive, apparel, and other sectors?

GUIDING PRINCIPLE 1	
Vulnerable Group Assessment	Is the State undertaking or supporting any specific activities to identify specific impacts on particularly vulnerable groups, such as women, children, minorities, and indigenous peoples?
Police	Have police authorities been provided with information and training on issues related to business and human rights? Are the police given statutory authority to address business-related human rights harms?
Labor, Health, and Safety	Are relevant labor, health, and safety authorities aware of potential or actual adverse impacts by business on labor, health, and safety? Are such State actors given statutory authority to address business-related human rights harms?
Environment	Have relevant environmental authorities been provided with information and training on issues related to business and human rights? Are such State actors given statutory authority to address business-related human rights harms?
Tax	Have relevant tax authorities been provided with information and training on issues related to business and human rights and connections to local tax laws? Are such State actors given statutory authority to address business-related human rights harms?
Judicial Grievance Mechanisms	Are the judiciary, including civil, criminal, and commercial courts, as well as employment and other administrative tribunals, and those with prosecuting authority informed and trained on issues related to business and human rights? Is the judiciary given statutory authority to address business-related human rights harms, including through civil, criminal, or administrative penalties for business-related human rights harms?

GUIDING PRINCIPLE 1	
Non-Judicial Grievance Mechanisms	Does the State support and/or participate in non-judicial grievance mechanisms aimed at securing redress for business-related human rights harms, including through entities such as National Human Rights Institutions, OECD National Contact Points, or ombudsmen?
Legal Aid and Assistance	Does the State support legal aid and assistance that aims to address barriers in accessing remedy for business-related human rights harms?
Other Measures	Are there any other measures taken by the State to promote the investigation, punishment, and redress of business-related human rights harms?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their corresponding statuses of adoption.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 2

States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

Commentary to Guiding Principle 2

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.

States have adopted a range of approaches in this regard. Some are domestic measures with extraterritorial implications. Examples include requirements on "parent" companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement.

2.1. Home State Measures with Extraterritorial Implications

Has the State adopted domestic measures which set out clearly the expectation that businesses domiciled in their territory and/or jurisdiction respect human rights abroad?

Indicators

Scoping Questions

GUIDING PRINCIPLE 2	
Expectation setting	Has the State set out and fully disseminated to relevant government agencies (including embassies and consulates) clear policy statements on the expectation that all companies domiciled in its territory and/or jurisdiction respect human rights?
Criminal or civil liability regimes	Has the State introduced criminal or civil liability regimes that allow for prosecutions or civil lawsuits against corporations based on where the corporation is domiciled, regardless of where the offense occurs?
“Duty of care” for parent companies	Has the State established a “duty of care” for parent companies in terms of the human rights impacts of their subsidiaries, regardless of where the subsidiaries operate?
Reporting requirements	Has the State introduced requirements on companies to publicly report on their operations abroad, including on human rights and labor issues?
Support for soft law measures	Does the State support and participate in relevant soft-law instruments, such as the OECD Guidelines and the Due Diligence Guidance for Responsible Supply Chains?
Performance standards for over-seas investments	Do State institutions that support overseas investment have and enforce performance standards that support the protection and promotion of human rights?
Implementation Status	Gaps
List all relevant statements, plans of action, policies, legislation, and regulations already in place, as well as any in progress and their corresponding statuses of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 2

2.2. Implementation of Recommendations from International or Regional Bodies

Has the State received and followed-up on recommendations from international or regional bodies, such as the UN Human Rights Council and UN treaty bodies, regarding steps to prevent abuse abroad by business enterprises domiciled within the State's territory or jurisdiction?

Indicators	Scoping Questions
Human Rights Council Recommendations	Has the State noted and accepted recommendations from the UN Human Rights Council, such as through the Universal Periodic Review (UPR) process, that are relevant to preventing abuses abroad by companies domiciled within the State's territory or jurisdiction? How has the State followed up on these recommendations and has the State monitored its implementation of the recommendations?
UN Treaty Body Recommendations	Has the State noted and accepted recommendations from UN treaty bodies that are relevant to preventing abuses abroad by companies domiciled within the State's territory or jurisdiction? How has the State followed up on these recommendations? Has the State monitored its implementation of the recommendations?
Other International or Regional Body Recommendations	Has the State noted and accepted recommendations by any other international or regional bodies regarding steps to prevent business-related human rights abuses abroad?
Implementation Status	Gaps
List all relevant recommendations and follow-up and monitoring measures taken by the State.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 3

In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Commentary to Guiding Principle 3

States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures—national and international, mandatory and voluntary—to foster business respect for human rights.

The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labour laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation.

It is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises.

Laws and policies that govern the creation and ongoing operation of business enterprises, such as corporate and securities laws, directly shape business behaviour. Yet their implications for human rights remain poorly understood. For example, there is a lack of clarity in corporate and securities law

GUIDING PRINCIPLE 3

regarding what companies and their officers are permitted, let alone required, to do regarding human rights. Laws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards.

Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.

National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.

Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. State encouragement of, or where appropriate requirements for, such communication are important in fostering respect for human rights by business enterprises. Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications.

Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures.

Financial reporting requirements should clarify that human rights impacts in some instances may be "material" or "significant" to the economic performance of the business enterprise.

GUIDING PRINCIPLE 3

3.1. Development and Enforcement of Relevant Laws and Regulations

What laws and regulations exist that directly or indirectly regulate business respect for human rights?

Indicators	Scoping Questions
Corporate and Securities Law	Has the State put in place corporate and securities laws and regulations to support ethical corporate behavior and business respect for human rights, such as those relating to financial reporting, articles of incorporation, registration, corporate board, director, and stock exchange listing requirements?
Labor Law	Has the State put in place labor laws and regulations to ensure business respect for workers' rights?
Environmental Law	Has the State put in place environmental laws and regulations to ensure business respect for the rights of its citizens to health, a healthy environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?
Property and Land Management Law	Has the State put in place land management laws and regulations to ensure business respect for the rights of its citizens, including the recognition of customary land rights and the incorporation of human rights considerations into environmental and social impact assessments and related licensing practices?
Health and Safety Law	Has the State put in place health and safety laws and regulations to ensure business respect for the physical and mental health of workers and communities?

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Consumer Law	Has the State put in place consumer laws and regulations to ensure business respect for human rights and to promote consumer interest in the human rights impacts of purchased products and services?
Non-Discrimination Law	Has the State put in place anti-discrimination laws and regulations to support ethical corporate behavior and business respect for human rights?
Tax Law	Has the State put in place tax laws and regulations to support ethical corporate behavior and business respect for human rights?
Trade Law	Has the State put in place trade laws and regulations to support business respect for human rights within trade practices?
Privacy and Technology Law	Has the State put in place information security and privacy laws and regulations to support ethical corporate behavior and business respect for human rights?
Disclosure and Reporting	Has the State put in place laws and regulations to support disclosure and reporting by corporations on human rights, labor rights, environmental impacts, corporate social responsibility, or other ethical issues?
Procurement Law	Has the State put in place laws and regulations to support the incorporation of human rights considerations into the procurement by the State of goods and services from the private sector?
Anti-Bribery and Corruption	Has the State put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across governments?

GUIDING PRINCIPLE 3	
Human Rights Defender and/or Whistleblower Protection	Has the State put in place laws and regulations aimed at supporting business respect for the rights of human rights defenders and/or whistleblowers?
Criminal Law	Has the State put in place criminal laws and regulations to ensure that corporate crimes that are related to human rights are investigated, prosecuted, and properly sanctioned?
Civil Law	Has the State put in place civil laws and regulations to ensure investigation, punishment, and redress of business-related human rights harms?
Other Law	Has the State put in place any other laws and regulations to ensure business respect for human rights?
Implementation Status	Gaps
List all relevant laws and regulations that are adopted by the State, the status of implementation, how the law or regulation is implemented in practice, factors that constrain effective enforcement of the law or regulation, and any measures in place to improve the efficacy of implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
3.2. Relevant Policies	
Have policies that seek to foster business respect for human rights been adopted and publicly communicated by the State?	
Indicators	Scoping Questions

GUIDING PRINCIPLE 3	
National Action Plans (NAPs)	Has the State introduced and/or implemented policies to help facilitate business respect for human rights through the adoption of National Action Plans (NAPs) on business and human rights, corporate social responsibility, development, anti-discrimination, government transparency, women’s rights, or human rights in general?
Sector-Specific Policies	Has the State introduced and/or implemented sector-specific policies to help facilitate business respect for human rights within particularly high-risk industries, such as the extractive, apparel, and other sectors?
Other Policies	Have other policies been adopted by the State that aim to foster business respect for human rights?
Implementation Status	Gaps
List all relevant policies of the State and measures for public communication and implementation of those policies. List all new legislation resulting from the establishment of those policies, as well as any follow-up or reporting on those policies.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
3.3. Corporate Reporting and Public Communications What type of reporting and public communications by business enterprises on how they address their human rights impacts is required by law?	
Indicators	Scoping Questions
Financial Reporting	Is corporate financial reporting required the State? Is the law clarifying that, in some cases, human rights impacts are “material” to the economic performance of the reporting company?

GUIDING PRINCIPLE 3	
Non-Financial Reporting	Is corporate non-financial reporting required and enforced by the State? Is the law clarifying that, in some cases, human rights impacts are “material” to the performance and operations of the reporting company?
Public Consultations	Are there legal requirements for companies to have public consultations before, during, and after the commencement of a major project that may impact local communities? Is there a requirement for the free, prior, and informed consent (FPIC) of impacted communities? Is there a mandatory public release of environmental and social impact assessments by companies?
Other Public Communications	Are there any other legal requirements on companies in terms of public communications?
Implementation Status	Gaps
List all relevant reporting requirements, as well as all corresponding enforcement and compliance measures, auditing or verification measures, and measures for public dissemination of corporate reports. List all legal requirements on companies in terms of consultations and other public communications.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
3.4. Guidance and Incentives	
Does the State provide guidance and incentives for companies in terms of business respect for human rights?	
Indicators	Scoping Questions
Guidance based on industry sectors, human rights issues and company size	Has the State developed guidance for businesses on respecting human rights that is appropriate to different industry sectors (for example, high-risk sectors such as extractives), particular human rights issues (for example, working conditions, discrimination), and different types of corporations (for example, MNEs, SMEs)?

GUIDING PRINCIPLE 3	
Guidance on expected outcomes and best practice	Has the State provided indicators of expected human rights outcomes, information regarding relevant national laws and regulations, and examples of best practice and due diligence methods?
Incentives	Has the State provided incentives for business respect for human rights, such as favorable treatment following non-mandatory self-reporting by companies of human rights policies and practices?
Implementation Status	Gaps
List all guidance and incentive measures taken by the State and any relevant outcomes.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
3.5. National Human Rights Institutions (NHRIs) Has the State formally recognized and supported the role of NHRIs in promoting implementation of the UNGPs?	
Indicators	Scoping Questions
NHRI Establishment, Recognition, and Support	Has the State established a National Human Rights Institution (NHRI)? If so, how was the NHRI established, and what kind of recognition and support does the State provide for the NHRI?

GUIDING PRINCIPLE 3	
NHRI Focus on Business and Human Rights	Does the NHRI's mandate include business and human rights? Does the State finance NHRI activities within the field of business and human rights? Does the State support the NHRI in providing guidance on human rights to business enterprises? Does the State support the NHRI in monitoring the national business and human rights situation and to provide access to justice for victims of corporate-related human rights abuses? Has the role of the NHRI in promoting implementation of the UNGPs been formally recognized, and, if so, does the State support the NHRI in that role?
Implementation Status	Gaps
List all measures taken by the State to formally recognize and support the role of NHRIs in relation to business and human rights.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 4

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

Commentary to Guiding Principle 4

States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights.

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in Chapter II.)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk—in reputational, financial, political and potentially legal terms—for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

4.1. Businesses Owned or Controlled by the State

Does the State exercise special measures to support the human rights performance of State-owned or -controlled business enterprises?

Indicators

Scoping Questions

GUIDING PRINCIPLE 4	
Human Rights Due Diligence Requirements	What types of human rights due diligence measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of human rights performance information in management reports to relevant State agencies)?
Supply Chain Management Requirements	What types of supply chain management measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective supply chain management is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of supply chain information in management reports to relevant State agencies)?
Other Measures	Has the State set out any other special measures to support the human rights performance of State-owned or -controlled business enterprises?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their corresponding status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 4

4.2. Businesses Receiving Substantial Support and Services from State Agencies

Does the State exercise special measures to support the human rights performance of businesses receiving substantial support and service from State agencies (for example, export credit agencies, public banks, public pension funds, official investment insurance or guarantee agencies, development agencies, or development finance institutions)?

Indicators	Scoping Questions
Human Rights Considerations	Has the State required that businesses receiving substantial support and services from State agencies take into account human rights considerations?
Human Rights Due Diligence Requirements	What types of human rights due diligence measures by State-supported businesses are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight do such government departments have over these businesses?
Other Measures	Has the State set out any other special measures to support the human rights performance of State-owned or -controlled business enterprises?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 5

States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

Commentary to Guiding Principle 5

States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.

5.1. Public Service Delivery

Does the State ensure that human rights are protected in situations where private enterprises provide for government services that may impact upon the enjoyment of human rights?

Indicators

Scoping Questions

Legislative or Contractual Protections

Has the State adopted legislative or contractual protections for human rights in delivery of privatized services by the central or local government, for example, for the provision of services related to health, education, care-delivery, housing, or the penal system? Do such protections include a State-performed human rights impact assessment of the potential consequences of a planned privatization of provision of public services, prior to the provision of such services? Do public procurement contracts clarify the State's expectation that businesses respect human rights in delivering services and comply with human rights standards?

GUIDING PRINCIPLE 5	
Awareness-Raising	What measures does the State take to promote awareness of and respect for human rights by businesses that the State commercially contracts with?
Screening	What kind of screening processes does the State have in place to promote business respect for human rights? Does the State engage in selective processes that give preferential treatment to companies that demonstrate respect for human rights? Does the State exclude from the bidding process those companies that have demonstrated poor respect for human rights (such as poor and hazardous working conditions, as well as excessive use of force or maltreatment of individuals receiving care)?
Monitoring and Oversight	Do relevant State agencies effectively oversee the activities of the enterprises that provide services on behalf of the State? Does the State provide for adequate independent monitoring and accountability mechanisms of the activities of the private providers? Does the State provide for specific oversight of high-risk services, such as those related to health and security?
Other Measures	Is the State a party to the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict? If so, how does it incorporate commitments into national laws? Is the State party to the International Code of Conduct for Private Security Providers, and if so, how does it incorporate commitments into national laws and procurement processes? Is the State party to the Voluntary Principles on Security and Human Rights? If so, how does it incorporate commitments into national laws, including around the provision of public security? Has the State put any other measures in place to ensure that public service delivery by private enterprises does not have any negative human rights impacts?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption and/or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 6	
States should promote respect for human rights by business enterprises with which they conduct commercial transactions.	
Commentary to Guiding Principle 6	
States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States—individually and collectively—with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.	
6.1. Public Procurement Which types of requirements or incentives to respect human rights can be found in legislative measures or in terms of public procurement?	
Indicators	Scoping Questions
Planning for Procurement Needs and Risks	Have State agencies decided whether their contractors must comply with specific human rights or protect against defined human rights harms as a contract obligation? If so, have State agencies made an effort to expand the scope of protection and clarify specific human rights definitions to resolve vagueness?
Providing Notice During Bid Solicitation	Do State agencies notify potential contractors when there is a significant risk of a human rights violation that undermines fair competition? Does such notice trigger specific disclosure and compliance obligations?

GUIDING PRINCIPLE 6

Screening and Selection	In addition to evaluating price and capacity, do State agencies evaluate whether potential contractors are responsible, based on integrity and business ethics and on compliance with domestic law that protects the safety and health of workers and communities? Do State agencies engage in selective or targeted public procurement, such as preferential award to discriminated groups (for example, ethnic minorities) or to companies working to achieve specific human right objectives (for example, gender equality)? Do State agencies require contractors to certify that they know their subcontractors, including specific locations of production or supply, and that they have management systems to ensure compliance? Do State agencies exclude companies with commercial contracts in high-risk countries or a bad human rights record from public procurement?
Award Stage	Do State agencies have criteria and sub-criteria for what constitutes the most economically advantageous tender, including human rights criteria? Have State agencies taken steps to clarify how human rights standards and policies might be used to form part of the award criteria for a particular contract? Do State agencies require contractors to disclose information on their supply chain, including specific subcontractors and the addresses of factories or sites of supply? Do State agencies confirm a contractor's assurances and required development of compliance plans during the award stage?
Contract Terms	Is the State taking steps to ensure that human rights requirements, material to the procured good or service, are a part of contractual performance clauses? Have State agencies inserted compliance obligations into contract terms? When a State agency identifies a risk of harm or human rights violations, does it authorize contract officers to insert into the contract an obligation to comply with the domestic law of the country of production or supply?

GUIDING PRINCIPLE 6	
Auditing and Monitoring	Do State agencies have information systems to audit and monitor contractors to ensure that the contractor meets its performance or compliance obligations and does not adversely impact human rights? Do such systems respond to work complaints? Are such systems independent from, yet accountable to, the State?
Enforcement of Contract Terms and Corrective Action	Do State agencies dedicate staff to enforcement of the contract terms and provide them with detailed policies? Have State agencies put in place procedures to correct adverse human rights impacts identified, such as financial or other remedies if a contractor violates human rights? Do the procedures favor changing the behavior of the contractor to improve their human rights performance rather than simply terminate the relationship? Do State agencies provide for due diligence as both a defense and as a remedy for breach of compliance standards?
Other Measures	Have State agencies put any other measures in place to ensure that public procurement complies with human rights protection?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
6.2. Other Commercial Activities Has the State taken measures to promote awareness of and respect for human rights by other enterprises with which the State conducts commercial activities?	

GUIDING PRINCIPLE 6	
Indicators	Scoping Questions
Business Partnerships	Does the State take measures to promote respect for human rights among other businesses with which it engages in commercial relationships, such as through business partnerships for economic development and innovation (for example, growth funds, or strategic support for innovation in certain sectors, such as green energy or medical technology)?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 7

Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- (d) Ensuring that their current practices, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Commentary to Guiding Principle 7

Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself—where the human rights regime cannot be expected to function as intended. Responsible businesses increasingly seek guidance from States about how to avoid contributing to human rights harm in these difficult contexts. Innovative and practical approaches are needed. In particular, it is important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict.

It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the “host” State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their “home” States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighboring States can provide important additional support.

To achieve greater policy coherence and assist business enterprises adequately in such situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert Government agencies and business enterprises to

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problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision.

States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas. They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business. Where they identify gaps, States should take appropriate steps to address them. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses. Moreover, States should consider multilateral approaches to prevent and address such acts, as well as support effective collective initiatives.

All these measures are in addition to States' obligations under international humanitarian law in situations of armed conflict, and under international criminal law.

7.1. Guidance

Does the home State play a role in assisting both corporations and host States to ensure that businesses are not involved with human rights abuse in conflict-affected areas?

Indicators	Scoping Questions
Host State relationship	Does the State seek to ensure that it is informed of the role of corporations headquartered within its jurisdiction in conflict-affected areas? Does the home State engage with the host State in ensuring that businesses are respecting human rights?
Business Guidance	Does the State provide guidance for companies operating in conflict-affected areas on what specific human rights issues that the companies should be aware of and pay specific attention to in their due diligence process (such as gender and sexual violence, discrimination, and contributing to conflict through finance)?

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Implementation Status	Gaps
List all relevant measures already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
7.2. International Frameworks and Initiatives	
Has the State officially supported or implemented international frameworks and initiatives on the private sector role in conflict-affected areas?	
Indicators	Scoping Questions
Promotion of Initiatives	Does the State participate in and/or promote relevant initiatives (for example, the Voluntary Principles or the International Code of Conduct for Private Security Service Providers)?
Implementation Status	Gaps
List all relevant initiatives and formal support by the State.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
7.3. Supportive Measures	
Does the State investigate company activities in conflict-affected areas, act upon these investigations, and provide redress?	
Indicators	Scoping Questions

GUIDING PRINCIPLE 7	
Investigative Measures	Does the State have a procedure for investigating company activities in conflict-affected areas (for example, through the appointment of a mission that may report to the Parliament or asking the local embassy to investigate in the host State and report to relevant authorities in the home State)?
Follow-Up and Remedial Measures	Does the State have a procedure for follow-up on issues identified through the investigative process (for example, through the denial or withdrawal of existing public support or services to business enterprises that are involved in human rights abuse or other crimes)? Has the State developed mechanisms of extraterritorial criminal liability? Is it possible for the State to impose sanctions on persons and entities for example, by seizing equipment or freezing assets?
Implementation Status	Gaps
List regulatory requirements, procedure statements, etc.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
7.4. Gross Human Rights Abuses Has the State put in place measures for addressing the risk of business involvement in gross human rights abuses?	
Indicators	Scoping Questions
Early-Warning Procedures	Has the State put in place procedures to warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas?

GUIDING PRINCIPLE 7	
Cross-Unit Cooperation	Has the State put in place efforts with the aim of fostering closer cooperation among its development assistance agencies, foreign and trade ministries, and export finance institutions in its capitals and within its embassies, as well as between these agencies and host State actors?
Civil and/or Criminal Liability	Has the State introduced civil or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses, including abuses outside of its territorial jurisdiction, as permitted by the UNGPs and international human rights law?
Multilateral Approach	Has the State engaged in multilateral approaches to prevent and address acts of gross human rights abuses? Does the State accept the jurisdiction of the International Criminal Court (ICC)?
Implementation Status	Gaps
List all relevant procedural measures taken by the State.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
7.9. Role of Export Credit Agencies and Insurance Agencies Does the State ensure that Export Credit Agencies and Insurance Agencies do not contribute or financially benefit from negative human rights impacts and abuse?	
Indicators	Scoping Questions

GUIDING PRINCIPLE 7	
Special Measures	Has the State put in place special measures to ensure that export credit agencies and insurance companies are not contributing to, or financially benefitting from, negative human rights impacts and abuse? Are there rules and incentives for such institutions to take human rights impacts into consideration in their financing and investment procedures?
Implementation Status	Gaps
List all relevant State measures.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 8

States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

Commentary to Guiding Principle 8

There is no inevitable tension between States’ human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.

Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national and subnational levels, that shape business practices—including those responsible for corporate law and securities regulation, investment, export credit and insurance, trade and labour—to be informed of and act in a manner compatible with the Governments’ human rights obligations.

8.1. Policy Coherence

Have efforts been made within the State to support knowledge and understanding for human rights and business and the State duty?

Indicators

Scoping Questions

Clear Commitment

Has the State developed a firm written commitment to business and human rights, and has this commitment been communicated to governmental departments? Further, does this commitment help to clarify the role of different departments (for example, labor, business, development, foreign affairs, finance, or justice)?

GUIDING PRINCIPLE 8	
Roles and Responsibilities	Has the State developed a clear division of responsibilities to help coordinate human rights and business issues between and across different government agencies and departments?
Resources	Has the State provided the responsible entity or office with adequate resources in terms of economic funding and political backing, in order for it to work actively in contributing to meeting the duty of the State to protect human rights within individual areas of responsibility and expertise?
Guidance and Training	Has the State developed guidance material and training to help clarify the roles of different departments in promoting and protecting human rights with regard to the role of business? Does this guidance include specific information on protection of human rights and how this relates to international and regional obligations and commitments (for example, UN, OECD, and regional obligations and commitments)? Does this guidance include specific information on the protection of human rights in trade, with an emphasis on the role of regional bodies and international organizations (for example, the WTO, IFIs (WB, IFC, etc.), and regional IFIs (EBRD, EIB, etc.))? Further, does the guidance provide information on the roles and responsibilities across ministries or agencies (for example, enterprise, labor, development, foreign affairs, agriculture, environment and climate change, financial sector, health, information society policy, and national financial institutions and funds)?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 9

States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

Commentary to Guiding Principle 9

Economic agreements concluded by States, either with other States or with business enterprises—such as bilateral investment treaties, free-trade agreements or contracts for investment projects—create economic opportunities for States. But they can also affect the domestic policy space of Governments. For example, the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements, while providing the necessary investor protection.

9.1. Bilateral and Multilateral Investment Agreements and Arbitration of Disputes

Has the State put in place policies, guidance, monitoring, and reporting for relevant ministries or agencies with regard to the conclusion of bilateral and multilateral investment agreements and with regard to the arbitration of disputes?

Indicators	Scoping Questions
Human Rights Provisions in IIAs and BITs	Has the State worked at promoting the inclusion of specific human rights provisions in International Investment Agreements (IIEs) and Bilateral Investment Treaties (BITs)?
Inclusion of Social Issues in IIAs and BITs	Has the State worked at promoting the inclusion of social issues, such as the environment, labor rights, or social rights, in International Investment Agreements and Bilateral Investment Treaties?
Stabilization Clauses	Has the State put in place measures to ensure that stabilization clauses do not limit the host government's ability to meet its human rights obligations?

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Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
9.2. Government Agreements Has the State put in place policies and guidance for relevant ministries and agencies with regard to the conclusion of government agreements?	
Indicators	Scoping Questions
Human Rights in Government Agreements	Does the State take measures to ensure that human rights considerations are made in agreements between the State and corporations? Are such agreements aligned with the UN's principles for responsible contracts? ²⁵³
The Role of the Home State	How does the home State ensure that companies headquartered within its jurisdiction respect the principles of responsible contracting when those companies enter into agreements with host States?
Implementation Status	Gaps
List all relevant efforts for the promotion of business respect for responsible contracting principles.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 10

States, when acting as members of multilateral institutions that deal with business-related issues, should:

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;
- (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

Commentary to Guiding Principle 10

Greater policy coherence is also needed at the international level, including where States participate in multilateral institutions that deal with business-related issues, such as international trade and financial institutions. States retain their international human rights law obligations when they participate in such institutions.

Capacity-building and awareness-raising through such institutions can play a vital role in helping all States to fulfil their duty to protect, including by enabling the sharing of information about challenges and best practices, thus promoting more consistent approaches.

Collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights, but it should do so by raising the performance of laggards. Cooperation between States, multilateral institutions and other stakeholders can also play an important role.

These Guiding Principles provide a common reference point in this regard, and could serve as a useful basis for building a cumulative positive effect that takes into account the respective roles and responsibilities of all relevant stakeholders.

GUIDING PRINCIPLE 10

10.1. Membership in Multilateral Institutions

How does the State seek to ensure that the institutions it is a member of neither restrain its duty to protect nor hinder the business responsibility to respect?

Indicators	Scoping Questions
Internal Procedures and Commitment	Has the State established procedures and measures to ensure support for business and human rights frameworks, including the UNGPs, in positions taken internationally and regionally (for example, on human rights screening and documenting of negotiating positions, as well as training of trade and development officials on business and human rights frameworks)?
Promotional Activities	Does the State promote its duty to protect and the corporate responsibility to respect in multilateral institutions, including international trade and financial institutions, the UN system, regional institutions, and with business organization and workers associations? Has the State taken measures to promote awareness of the UNGPs and the broader business and human rights agenda?
Implementation Status	Gaps
List all relevant procedures, commitments, and activities already in place, as well as any in progress and their status of implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

PILLAR III

GUIDING PRINCIPLE 25

As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

Commentary to Guiding Principle 25

Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.

Access to effective remedy has both procedural and substantive aspects. The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.

State-based grievance mechanisms may be administered by a branch or agency of the State, or by an independent body on a statutory or constitutional basis. They may be judicial or non-judicial. In some mechanisms, those affected are directly involved in seeking remedy; in others, an intermediary seeks remedy on their behalf. Examples include the courts (for both criminal and civil actions), labour tribunals, national human rights institutions, National Contact Points under the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development, many

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ombudsperson offices, and Government-run complaints offices.

Ensuring access to remedy for business-related human rights abuses requires also that States facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support (financial or expert) for doing so.

State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution. State-based and operational-level mechanisms, in turn, can be supplemented or enhanced by the remedial functions of collaborative initiatives as well as those of international and regional human rights mechanisms. Further guidance with regard to these mechanisms is provided in Guiding Principles 26 to 31.

25.1. Redress for Business-Related Human Rights Abuses

Has the State put in place measures to ensure redress for business-related human rights abuses?

Indicators	Scoping Questions
Sanctions	Has the State put in place mechanisms that introduce civil liability, criminal sanctions, and administrative sanctions, such as fines or limited access to government funding, for human rights abuses?
Financial or Non-Financial Compensation	Has the State put in place mechanisms that introduce compensation, such as fines or restoration of livelihoods, for human rights abuses?
Prevention of Harm	Has the State put in place mechanisms that introduce processes for the prevention of harm, such as injunctions or guarantees of non-repetition, for human rights abuses?
Apologies	Has the State put in place mechanisms to promote apologies for human rights abuses?

GUIDING PRINCIPLE 25	
State-Based Mechanisms	Has the State put in place judicial and non-judicial, criminal and civil mechanisms where grievances can be raised and addressed? Has the State identified and removed barriers (financial, legal, practical, and evidentiary) to accessing those mechanisms? Are such mechanisms available to address extraterritorial harms, as permitted by the UNGPs and international human rights law?
Non-State-Based Mechanisms	Has the State supported non-State based mechanisms?
Other Measures	Has the State put in place other measures to ensure redress for business related human rights abuses?
Implementation Status	Gaps
List all relevant policies, legislation, and regulations already in place, as well as any in progress and their corresponding statuses of adoption.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
25.2. Roles and Responsibility Within States	
Has the State defined clear roles and responsibilities within the State on access to effective remedy?	
Indicators	Scoping Questions
Competent Authorities	Has the State defined competent authorities to investigate allegations of business-related human rights abuse? If so, are these authorities equipped with the knowledge necessary in order to attribute the abuses to the relevant redress mechanism?
Implementation Status	Gaps

GUIDING PRINCIPLE 25	
<p>List all relevant authorities tasked with this reflecting on the different types of abuses for example, labor rights abuses, and community impacts.</p>	<p>Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.</p>
<p>25.3. Public Information-Sharing and Accessibility Has the State developed measures through which to inform about grievance mechanisms available, grievances received, and relevant processes?</p>	
Indicators	Scoping Questions
<p>Public Information on the Mechanism</p>	<p>Has the State made efforts to promote public awareness and understanding of remediation mechanisms, including how they can be accessed and their accessibility? Does the State inform about the outcome of grievances and actions for follow-up when systemic issues are identified?</p>
<p>Accessibility</p>	<p>Does the State ensure that the mechanisms are available to all affected stakeholders (including, for example, women, peoples with disabilities, children, and indigenous peoples)? This includes providing services such as legal aid and legal counseling, as well as support to, for example, the NHRI, CSOs, or trade unions that work to ensure greater accessibility within grievance mechanisms.</p>
Implementation Status	Gaps
<p>List all relevant State policies, regulation, and measures to promote public information and accessibility.</p>	<p>Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.</p>

GUIDING PRINCIPLE 26

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

Commentary to Guiding Principle 26

Effective judicial mechanisms are at the core of ensuring access to remedy. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process.

States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable. They should also ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed.

Legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example:

- The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability;
- Where claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim;
- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.

Practical and procedural barriers to accessing judicial remedy can arise where, for example:

- The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support, “market-based” mechanisms (such as litigation insurance and legal fee structures), or other means;

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- Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;
- There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants;
- State prosecutors lack adequate resources, expertise and support to meet the State’s own obligations to investigate individual and business involvement in human rights-related crimes.

Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights claims, such as in their financial resources, access to information and expertise. Moreover, whether through active discrimination or as the unintended consequences of the way judicial mechanisms are designed and operate, individuals from groups or populations at heightened risk of vulnerability or marginalization often face additional cultural, social, physical and financial impediments to accessing, using and benefiting from these mechanisms. Particular attention should be given to the rights and specific needs of such groups or populations at each stage of the remedial process: access, procedures and outcome.

26.1. Judicial Mechanisms

Has the State put in place a judicial mechanism with the competency to adjudicate business-related human rights abuses within the national jurisdiction of the State? If so, are these mechanisms in line with the criteria of impartiality, integrity, and ability to accord due process?

Indicators	Scoping Questions
National and Regional Courts	Do the national and regional courts have the competency to adjudicate business and human rights abuses, including for abuses that take place outside of their territorial jurisdiction, as permitted by the UNGPs and international human rights law? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?
Labor Tribunals	Do national labor tribunals have the competency to adjudicate business and human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?

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Other Mechanisms	Do other judicial mechanisms have the competency to adjudicate on business related human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?
Implementation Status	Gaps
List all relevant judicial mechanisms and how they are able to adjudicate business-related human rights abuses in a way that is impartial and with integrity and ability to accord due process.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
26.2. Barriers for Access to Judicial Remedy	
Has the State taken measures to ensure that there are no barriers to access to judicial remedy for addressing business-related human rights abuses?	
Indicators	Scoping Questions
Legal Barriers	Has the State taken measures to ensure that there are no legal barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring that it is possible to hold corporations accountable under domestic criminal and civil laws, meaning that liability exists under the law; (2) ensuring that all members of society can raise complaints, including indigenous peoples, migrants, women, and children, and are afforded the same legal protection as for the wider population; (3) ensuring that extraterritorial harms can be addressed within the courts, as permitted by the UNGPs and international human rights law; and (4) ensuring that issues such as conflicts of law, statutes of limitations, parent company liability, and standards of liability do not result in barriers to victims of business-related human rights harms in accessing the courts?

GUIDING PRINCIPLE 26	
Practical and Procedural Barriers	Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring financial support, (2) providing legal representation or guidance, (3) providing opportunities for class-actions and multi-party litigation; (4) allowing for recovery of attorneys' fees; (5) preventing retaliatory actions against claimants; (6) reforming access to evidence; and (7) providing training for prosecutors and judges.
Social Barriers	Has the State taken measures to ensure that there are no social barriers to prevent legitimate cases from being brought before the courts? This includes: (1) addressing imbalances between the parties, (2) targeted awareness-raising among vulnerable groups (for example, women, indigenous people, and children), (3) availability of child-sensitive procedures to children and their representatives, (4) legal aid and other type of assistance, (5) efforts to combat corruption, and (6) protection of human rights defenders.
Implementation Status	Gaps
List all measures in place to combat barriers to access to judicial remedy.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
26.3. Remedy for Abuses Taking Place in Host-States Has the State taken measures to address the issue of access of victims to judicial remedy for abuses by domiciliary companies in host States?	
Indicators	Scoping Questions

GUIDING PRINCIPLE 26	
Remedy of Extraterritorial Effect	Has the State put in place measures to promote access to remedy of claimants (including vulnerable groups such as indigenous peoples, women, and children) that have been denied justice in a host State, enabling them to access home State courts?
Forum Non Conveniens	Does the State allow a court considering a forum non conveniens motion to consider factors against dismissal in addition to factors in favor of dismissal?
Implementation Status	Gaps
List information on mechanisms put in place to promote access to remedy for claimants of abuses taking place in host States.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 27

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Commentary to Guiding Principle 27

Administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favored approach for all claimants.

Gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms. These may be mediation-based, adjudicative or follow other culturally appropriate and rights-compatible processes—or involve some combination of these—depending on the issues concerned, any public interest involved, and the potential needs of the parties. To ensure their effectiveness, they should meet the criteria set out in Principle 31.

National human rights institutions have a particularly important role to play in this regard.

As with judicial mechanisms, States should consider ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalization.

27.1. Types of Non-Judicial Mechanisms

Has the State provided effective and appropriate non-judicial grievance mechanisms?

Indicators	Scoping Questions
Mediation-Based Mechanisms	Does the State provide access of claimants to mediation-based non-judicial mechanisms such as National Contact Points under the OECD Guidelines? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?

GUIDING PRINCIPLE 27	
Adjudicative Mechanisms	Does the State provide access of the claimant to adjudicative mechanisms such as government-run complaints offices? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?
Other Mechanisms	Does the State provide access to other types of non-judicial mechanisms? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?
Implementation Status	Gaps
List the mechanisms in place, each mechanism's mandate on dealing with business-related human rights abuses, and the level of implementation.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
27.2. Role of the NHRI	
Has the State provided specific competency to the national human rights institution (NHRI) to perform the role as a non-judicial mechanism for addressing grievances?	
Indicators	Scoping Questions
Complaints-Handling Role	Has the State given the NHRI the mandate that allows it to receive and handle complaints relating to corporate human rights abuses?

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Supportive Role	Has the State given the NHRI the mandate that allows the NHRI to be in a supportive role to claimants, such as through mediation, conciliation, expert support, or legal aid?
Awareness-Raising	Has the State given the NHRI the mandate to promote awareness on remedy to and redress for corporate human rights abuses?
Training	Has the State given the NHRI the mandate to provide training of relevant stakeholders on their access to remedy for corporate human rights abuses?
Counseling	Has the State given the NHRI the mandate to provide counselling on which remedy to access?
Implementation Status	Gaps
List all relevant competencies given to the NHRI by the State.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.
27.3. Barriers for Access to Non-Judicial Remedy	
Has the State taken measures to ensure that there are no barriers to access to non- judicial remedy for addressing business-related human rights abuses?	
Indicators	Scoping Questions

GUIDING PRINCIPLE 27	
Practical and Procedural Barriers	<p>Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being heard by non-judicial mechanisms? Measures to prevent procedural barriers include:</p> <ol style="list-style-type: none"> 1. Financial support; 2. Providing guidance; 3. Ensuring that the information on the mechanism is provided in a language that is understandable to potential claimants; 4. Ensuring accessibility despite geographical issues or difficulties (for example, long distances).
Other Barriers	<p>Has the State taken measures to ensure that there are no other barriers to prevent legitimate cases from being heard by non-judicial mechanisms? Measures to prevent other barriers include:</p> <ol style="list-style-type: none"> 1. Addressing imbalances between the parties; 2. Targeted awareness-raising among vulnerable groups (such as women, indigenous peoples, or children); 3. Expert advice or type of assistance; 4. Efforts to combat corruption; 5. Protection of human rights defenders.
Implementation Status	Gaps
List all measures to reduce barriers to access to non-judicial remedy.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 28

States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

Commentary to Guiding Principle 28

One category of non-State-based grievance mechanisms encompasses those administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

Another category comprises regional and international human rights bodies. These have dealt most often with alleged violations by States of their obligations to respect human rights. However, some have also dealt with the failure of a State to meet its duty to protect against human rights abuse by business enterprises.

States can play a helpful role in raising awareness of, or otherwise facilitating access to, such options, alongside the mechanisms provided by States themselves.

28.1. Facilitating Access to Mechanisms

Has the State supported access to effective non-State-based grievance mechanisms dealing with business-related human rights harms?

Indicators

Scoping Questions

Business-Based Grievance Mechanisms

Has the State supported access to business-based grievance mechanisms (such as whistleblower mechanisms or project-level grievance mechanisms) through efforts such as dissemination of information and support for access (for example, through guidance documents and tools)?

GUIDING PRINCIPLE 28	
Multi-Stakeholder Grievance Mechanism	Has the State supported access to multi-stakeholder grievance mechanisms through efforts such as dissemination of information and support for access?
Organizational-Based Grievance Mechanisms	Has the State supported access to organizational-based grievance mechanisms (including the union systems) through efforts such as dissemination of information and support for access?
International Grievance Mechanisms	Has the State supported access to international grievance mechanisms through efforts such as dissemination of information, support for access (for example, through legal aid) as well as support for establishing contact between the claimant in international system?
Regional Grievance Mechanisms	Has the State supported access to regional grievance mechanisms through efforts such as dissemination of information and support for access (for example, through legal aid)?
Other Mechanisms	Has the State supported access to other grievance mechanisms through efforts such as dissemination of information and support for access?
Implementation Status	Gaps
List the mechanisms that the State has supported access to, including how support was given.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

GUIDING PRINCIPLE 31

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) **legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

- (h) **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Commentary to Guiding Principle 31

A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. These criteria provide a benchmark for designing, revising or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance among affected stakeholders by heightening their sense of disempowerment and disrespect by the process.

GUIDING PRINCIPLE 31

The first seven criteria apply to any State-based or non-State-based, adjudicative or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that business enterprises help administer.

The term “grievance mechanism” is used here as a term of art. The term itself may not always be appropriate or helpful when applied to a specific mechanism, but the criteria for effectiveness remain the same. Commentary on the specific criteria follows:

- (a) Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust;
- (b) Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;
- (c) In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;
- (d) In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;
- (e) Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism’s performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals’ identities should be provided where necessary;
- (f) Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;
- (g) Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm;
- (h) For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

GUIDING PRINCIPLE 31

31.1. Alignment with the Effectiveness Criteria

Does the State ensure that State-based non-judicial grievance mechanisms meet the effectiveness criteria?

Indicators	Scoping Questions
1. Legitimate	Has the State taken measures to ensure that the mechanisms enable trust from the stakeholder groups for whose use they are intended (including that it has a firm mandate, is independent and transparent, includes ensuring non-interference with fair conduct, and includes feedback mechanisms for when foul play is detected)?
2. Accessible	Has the State taken measures to ensure that the mechanisms are accessible (including language and literacy issues, cost associated with raising complaints, geographical issues, fear of reprisal, and vulnerability of claimant, for example, due to gender, age, religion, or minority status)?
3. Predictable	Has the State taken measures to ensure that the mechanisms are predictable (including clear and public information about the procedure, timeframes for the procedure, and information on the process and outcome of the mechanism)?
4. Equitable	Has the State taken measures to ensure that the mechanisms are equitable (including access of all parties to information, advice, and expert resources)?
5. Transparent	Has the State taken measures to ensure that the mechanisms are transparent (including regular communication about grievance resolution progress as well as wider public information on cases received and in process in order to identify and address societal trends)?

GUIDING PRINCIPLE 31	
6. Rights compatible	Has the State taken measures to ensure that the mechanisms are rights-compatible (including that grievances are framed in terms of human rights when they do raise human rights concerns and that the institutions and authorities managing the mechanisms are aware of human rights and how these relate to the cases dealt with)?
7. A source of continuous learning	Has the State taken measures to ensure that the mechanisms are a source of continuous learning (including State support for regular analysis of the frequency, patterns, and causes of grievances to promote a strengthening of the mechanism)? Has the State incorporated lessons learned through operation of the mechanisms to improve the mechanisms' effectiveness?
Implementation Status	Gaps
For each of the criteria above, provide details as to how the State is working on meeting the criteria.	Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

ANNEX 5: THE NATIONAL ACTION PLAN (NAP) CHECKLIST

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
1.1. Commitment to the NAP process.	
1.2. Ensure responsibility for the NAP process is clearly established and communicated.	
1.3. Ensure an inclusive approach across all areas of government.	
1.4. Devise and publish terms of reference and a timeline for the NAP process.	
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	
2.3. Provide adequate information and capacity-building where needed.	
2.4. Facilitate participation by disempowered or at-risk stakeholders.	
2.5. Consider establishing a stakeholder steering group or advisory committee.	

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
3.2. Allocate the task of developing the NBA to an appropriate body.	
3.3. Fully involve stakeholders in the development of the NBA.	
3.4. Publish and disseminate the NBA.	

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	
4.2. A NAP should address the full scope of the State's jurisdiction.	
4.3. A NAP should address international and regional organizations and standards.	

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
4.4. A NAP should address thematic and sector-specific human rights issues.	
Content of NAPs	
4.5. The NAP should include a statement of commitment to the UNGPs.	
4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.	
Priorities for NAPS	
4.7. A NAP should prioritize for action the most serious business-related human rights abuses.	
4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.	

5. TRANSPARENCY	COMMENTS
Full Transparency With All Stakeholders	
5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.	

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.	
6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.	

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ENDNOTES

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- ² Human Rights Council Res. A/HRC/26/L.1. Rep. of the Human Rights Council, 26th Sess., June 10-27, 2014 (June 27, 2014) available at <http://www.norway-geneva.org/EFTA1/Statements/26th-Session-of-the-Human-Rights-Council/Item-3-Promotion-and-protection-of-human-rights/Business-and-Human-Rights-Resolution-/#.U63LWGSxPg> [hereinafter UNHRC Res. June 27].
- ³ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility*, COM (2011) 681 final (October 25, 2011), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF> [hereinafter EU CSR Strategy 2011].
- ⁴ European Parliament, Committee on Foreign Affairs, *Report on the Review of the EU's Human Rights Strategy*, EUR. PARL. DOC. A7-0378/2012 (November 19, 2012), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2012-0378+0+DOC+PDF+V0//EN> [hereinafter EU HR Strategy 2012].
- ⁵ Eur. Consult. Ass., *Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights* (Apr. 16, 2014), available at <https://wcd.coe.int/ViewDoc.jsp?id=2185745&Site=CM> [hereinafter CoE UNGPs Declaration 2014].
- ⁶ See summaries of recent business and human rights NAPs developments *infra* Chapter 2 and Annex 2.
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¹⁰ UNGPs, *supra* note 1.

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¹⁷ Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12 (2003).

¹⁸ See, e.g., Taylor, *supra* note 16; IOE Statement, *supra* note 16.

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- ³⁰ See Methodology *infra* sect. 1.1.; Summary Reports of Dialogues *infra* Annex 3.
- ³¹ See Stakeholder Perspectives *infra* Chapter 3.
- ³² See summary of Key Business and Human Rights Frameworks *infra* Annex 1.
- ³³ Summary reports of the NAPs Project's 6 regional dialogues can also be found online on the Project's webpage, hosted by the Business & Human Rights Resource Centre, at <http://www.business-humanrights.org/Documents/DIHR-ICAR-naps-project>.
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⁷⁸ “By framing development in human rights terms and subsequently in legal entitlements, what were previously seen as ‘needs’ are now translated into rightful ‘claims’” Emilie Filmer-Wilson, *The Human Rights-based Approach to Development: The Right to Water*, 23/2 NETHERLANDS QUARTERLY OF HUMAN RIGHTS 213, 217 (2005), *available at* <http://www.crin.org/docs/right-to-water.pdf>.

⁷⁹ The UN, for example, formalized its commitment in 2003, in the *Stamford Common Understanding*. U.N. Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform, May 5-7, 2003, *Attachment 1: The Human Rights-Based Approach to*

Development Cooperation Towards a Common Understanding Among UN Agencies (May 2003), available at http://www.undg.org/archive_docs/6959-

[The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf](http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf)

⁸⁰ See Scottish Human Rights Commission, *Rights in Practice*, SCOTTISHHUMANRIGHTS.COM, <http://www.scottishhumanrights.com/ourresources/promotinghrba> (last visited June 16, 2014).

⁸¹ KIRKEMANN BOESEN & MARTIN, *supra* note 77.

⁸² *Id.* at 43.

⁸³ “International donor agencies and donor countries increasingly see human rights measures as a crucial aspect of their work in analysing areas of government performance that can be improved or areas of governance that are in need of foreign assistance.” TODD LANDMAN & EDZIA CARVALHO, *MEASURING HUMAN RIGHTS* 5 (2010), available at http://www.direitoshumanos.ufsc.br/wp-content/uploads/2013/07/Measuring_Human_Rights.pdf. Donors have used indicators as a basis for qualification for aid and to identify areas of need “which are then linked to different aid modalities such as government budget support, sector-wide funding and particular project funding.” *Id.* at 41.

⁸⁴ *Id.* at 3.

⁸⁵ Sally Engle Merry, *Measuring the World: Indicators, Human Rights, and Global Governance*, 52 CURRENT ANTHROPOLOGY S83, S83-S95 (2011), available at [http://www.law.berkeley.edu/files/cslls/Merry_-_Measuring_the_World\(2\).pdf](http://www.law.berkeley.edu/files/cslls/Merry_-_Measuring_the_World(2).pdf).

⁸⁶ LANDMAN & CARVALHO, *supra* note 83, at 32.

⁸⁷ *Id.* at 6, 7.

⁸⁸ *Id.* at 32.

⁸⁹ *Id.* at 41-44.

⁹⁰ See, e.g., FAO Integrated Food Security Support Service, M&E Technical Advisory Notes Series: Overview of Methods for Baseline Assessments, http://www.ideas-int.org/documents/docs/Methods_Baseline_Assessments.pdf.

⁹¹ See *id.*

⁹² *Id.*

⁹³ *Id.* at 4.

⁹⁴ *Id.* at 3.

⁹⁵ *Id.*

⁹⁶ See, e.g., OHCHR Handbook on Human Rights NAPs, *supra* note 36; European Group of NHRIs Discussion Paper, *supra* note 8; UNWG Draft Country Visit Template, *supra* note 75.

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- ⁹⁷ The Recommendations for the NBA Process incorporate the broader principles for NAPs processes, found in Chapter 6 of this report. *See also* European Group of NHRIs Discussion Paper, *supra* note 8.
- ⁹⁸ *See generally* Claire Methven O’Brien, *Transnational Business and Human Rights: The Case for a Multi-Level Governance Approach* (2007), available at <http://www.humanrightsbusiness.org/files/About%20us/NYU%20WP%20Outline%20O%27Brien.pdf>; Claire Methven O’Brien, *Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011), available at <http://www.humanrightsbusiness.org/files/About%20us/Methven%20OBrien%20UNWG%20sub280212.pdf>.
- ⁹⁹ This is also in line with the UNCRPD, the most recent of the UN’s core human rights conventions, which provides under Art 33(3) that: “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*, UN.ORG (December 13, 2006), <http://www.un.org/disabilities/convention/conventionfull.shtml>.
- ¹⁰⁰ *Id.*
- ¹⁰¹ *Id.* at art. 33(2).
- ¹⁰² For example, the German Institute for Human Rights (DIMR) houses the National Convention on the Rights of Persons with Disabilities (CRPD) Monitoring Body. *Monitoring Body*, DEUTSCHES INSTITUT FÜR MENSCHENRECHTE, <http://www.institut-fuer-menschenrechte.de/en/monitoring-body/frequently-asked-questions.html#c12635> (last visited June 6, 2014). 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 countries.
- ¹⁰³ *Basic Facts About the UPR*, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, , <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited May 29, 2014).
- ¹⁰⁴ The OECD has for many years relied on peer review to compare experiences and examine best practices in a number of policy areas. *Examples of Peer Review*, OECD.ORG, <http://www.oecd.org/site/peerreview/examplesofpeerreviews.htm> (last visited June 28, 2014).
- ¹⁰⁵ *See Monitoring the Core International Human Rights Treaties*, OFF. HIGH COMM’R FOR HUM. RTS., <http://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx> (last visited May 29, 2014). *See also* Michael O’Flaherty & Claire O’Brien, *Reform of the UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body*, HUM. RTS. L. REV. 2007 7(1), 141.
- ¹⁰⁶ *Id.*

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- ¹⁰⁷ OFF. HIGH COMM’R FOR HUM. RTS., FACT SHEET NO. 16: THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 16 (1991), *available at* <http://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>.
- ¹⁰⁸ EU CSR Strategy 2011, *supra* note 3.
- ¹⁰⁹ *Id.*
- ¹¹⁰ *See, e.g., Peer Review Report: Peer Review on Corporate Social Responsibility—Rome (Italy)* (June 5, 2013), *available at* <http://ec.europa.eu/social/main.jsp?langId=en&catId=22> (search “CSRpreport” in keyword search bar). Peer groups are comprised of representatives of four different Member States and a representative of a relevant Directorate-General (DG), such as DG Enterprise and Industry. At the end of each peer review meeting, a report is created and published on the website of DG Employment, Social Affairs, and Inclusion. The report summarizes the dialogue that the States engaged in and includes a brief description of any NAP progress made in each State, the questions posed by the other States, and the answers or explanations provided. The report includes a discussion on the common themes addressed during the meeting and proposals made for more effective ways of enhancing “the credibility and visibility of CSR.” These peer review meetings are intended to help Member States learn from one another’s initiatives and to identify and discuss common issues. There is no mention of any input from or participation of other stakeholders in the final reports currently available.
- ¹¹¹ This is known as the “Open Method of Coordination.”
- ¹¹² *See, e.g., Communication from the European Comm’n, European Governance—A White Paper*, C 287/1 (2001), *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001DC0428&rid=2>; *Social Protection & Social Inclusion*, EUROPEAN COMMISSION: EMP., SOC. AFF. & INCLUSION, <http://ec.europa.eu/social/main.jsp?langId=en&catId=750> (last visited June 28, 2014); *Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion*, EUROPA: SUMMARIES OF EU LEGISLATION http://europa.eu/legislation_summaries/employment_and_social_policy/social_inclusion_fight_against_poverty/em0011_en.htm (last updated February 17, 2009).
- ¹¹³ *Armed Forces: Conscientious Objection*, COUNCIL EUR., http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/Armed_Forces/Default_en.asp (last visited June 28, 2014); http://www.coe.int/t/dghl/standardsetting/hrpolicy/Others_issues/LGBT/LGBT_en.asp.
- ¹¹⁴ *See* ASEAN Workshop on CSR Thematic Study, *supra* note 61.
- ¹¹⁵ OAS Resolution, *supra* note 60.
- ¹¹⁶ *African Peer Review Mechanism (APRM)*, NEPAD.ORG, <http://www.nepad.org/economicandcorporategovernance/african-peer-review-mechanism/about> (last visited June 28, 2014).

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- ¹¹⁸ *State National Action Plans*, OFF. HIGH COMM'R HUM. RTS. <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> (last visited May 30, 2014).
- ¹¹⁹ UNHRC Res. June 27, *supra* note 2.
- ¹²⁰ *Id.*
- ¹²¹ UNGPs, *supra* note 1, at ¶ 4.
- ¹²² *Id.* at ¶ 6.
- ¹²³ *See generally id.*
- ¹²⁴ *Id.* at ¶ 5.
- ¹²⁵ *Id.* at ¶ 6.
- ¹²⁶ *The Principles*, CHILD. RTS. & BUS. PRINCIPLES, http://childrenandbusiness.org/?page_id=99 (last visited June 11, 2014).
- ¹²⁷ United Nations, Committee on the Rights of the Child, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, U.N. Doc. CRC/C/GC/16 (Apr. 17, 2013), available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>.
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- ¹²⁹ *See Our Goals and Values*, INT'L FINANCE CORP., http://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc/vision (last visited May 12, 2014).
- ¹³⁰ PERFORMANCE STANDARDS ON ENVIRONMENTAL AND SOCIAL SUSTAINABILITY, IFC (2012), available at http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES [hereinafter IFC PERFORMANCE STANDARDS].
- ¹³¹ *See Performance Standards Community of Learning*, IFC, http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Risk+Management/Performance+Standards+Community+of+Learning/ (last visited May 12, 2014).

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- ¹³⁵ Conventions and Recommendations, INT'L LABOR ORG., <http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (last visited June 10, 2014).
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- ¹³⁸ *Id.* at 1–2.
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- ¹⁴³ *Id.*
- ¹⁴⁴ OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS, OECD (2013), *available at* <http://www.oecd.org/daf/inv/mne/GuidanceEdition2.pdf> [hereinafter OECD DUE DILIGENCE GUIDANCE].
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- ¹⁴⁶ *Id.* at 3.
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- ¹⁴⁹ OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, OECD (2011), *available at* <http://www.oecd.org/daf/inv/mne/48004323.pdf> [hereinafter OECD GUIDELINES].
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- ¹⁵⁴ United Nations, Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2011/1, *available at* <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.2011.1-ENG.doc>.
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http://globalnetworkinitiative.org/sites/default/files/GNI_-_Governance_Accountability_Learning.pdf (last visited May 1, 2014).
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- ¹⁷⁰ DISCOVERING ISO 26000, ISO 26000 4–10 (2010), *available at*
http://www.iso.org/iso/discovering_iso_26000.pdf.
- ¹⁷¹ *Id.*
- ¹⁷² See *About the ICoC*, INT’L CODE CONDUCT FOR PRIVATE SEC. SERV. PROVIDERS,
http://www.icoc-psp.org/About_ICoC.html (last visited May 30, 2014).
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<http://www.voluntaryprinciples.org/> (last visited May 12, 2014).
- ¹⁷⁴ See *What Are The Voluntary Principles*, VOLUNTARY PRINCIPLES ON SECURITY & HUM. RTS.,
<http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/> (last visited May 12, 2014).
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- ¹⁷⁶ DENMARK CSR NAP, *supra* note 40.
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GLOBALGOVERNANCEWATCH.ORG,
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- ¹⁸⁴ *Id.*
- ¹⁸⁵ *Id.*
- ¹⁸⁶ Janneke Faber, Presentation on Dutch National Action Plan on Business and Human Rights (Feb. 2014), *available at*
http://www.ohchr.org/Documents/Issues/Business/NationalPlans/JannekeFaber_statement.pdf.
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¹⁹⁰ *Id.*

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¹⁹⁴ RACHEL BALL, HUMAN RIGHTS LAW CTR., AN AUSTRALIAN NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: BACKGROUND PAPER 12 (Apr. 24, 2014), *available at* http://hrlc.org.au/wp-content/uploads/2014/04/National_Action_Plan_on_Business_and_Human_Rights_backgroundpaper_2014.pdf.

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¹⁹⁶ U.K. NAP, *supra* note 63, at 19.

¹⁹⁷ *Id.* at 7.

¹⁹⁸ *Id.* at 9, 11, 12.

¹⁹⁹ *Id.* at 6.

²⁰⁰ *Id.* at 8, 11, 19.

²⁰¹ *Id.* at 19.

²⁰² Scuola Superiore Sant'Anna, *Business and human rights: The Italian case—a gap analysis of the regulatory framework and safeguard policies*, SANTANNASCHOOL.EU, <http://www.santannaschool.eu/business-and-human-rights-the-italian-case-a-gap-analysis-of-the-regulatory-framework-and-safeguard-policies/> (last visited June 13, 2014).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ ITALY DRAFT NAP, *supra* note 65.

²⁰⁶ According to information gathered during consultations with European civil society stakeholders as part of the NAPs Project. For an analysis of the approach in Italy, as well as in the U.K. and Spain, to the implementation of the UNGPs, *see* Marta Bordignon, *The Challenge of Implementing the UN “Protect, Respect and Remedy” Framework by States and the European Union Through the Guiding Principles: The British, Spanish and Italian Cases* (June 1, 2014), *available at* <http://business-humanrights.org/en/pdf-the-challenge-of-implementing-the-un->

protect-respect-and-remedy-framework-by-states-and-the-european-union-through-the-guiding-principles-the-british-spanish-and-italian-cases.

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²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ The Finnish draft NAP is currently only available in Finnish, with a summary available in English.
Id.

²¹² BALL, *supra* note 194, at 15.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ According to information gathered during consultations with European civil society stakeholders as part of the NAPs Project.

²¹⁸ Sustentia Innovación Social, *Cuaderno-Guía of the UN Guiding Principles on Business and Human Rights*, SUSTENTIA.COM, <http://www.sustentia.com/en/cuaderno-guia-principios-rectores-onu/> (last visited June 13, 2014).

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME, ENTREPRISES ET DROITS DE L'HOMME: OPINION ON THE ISSUES ASSOCIATED WITH THE APPLICATION BY FRANCE OF THE UNITED NATIONS' GUIDING PRINCIPLES (2013), *available at* <http://business-humanrights.org/media/documents/cncdh-opinion-france-ungp-oct-2013.pdf>.

²²⁴ *Id.* at 4, 28.

²²⁵ *Id.*

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²³⁰ *Id.*

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²³⁵ ANDREAS GRAF, SWISSPEACE, DEVELOPING NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS (2013).

²³⁶ *Id.* at 3.

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ BALL, *supra* note 194.

²⁴¹ CORNELIA HEYDENREICH ET AL., GERMANWATCH & MISEREOR, EXECUTIVE SUMMARY—GLOBAL BUSINESS AND HUMAN RIGHTS : PUTTING GERMANY TO THE TEST 4 (2014), *available at* <http://germanwatch.org/en/download/8874.pdf>.

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²⁴³ CORNELIA HEYDENREICH ET AL., *supra* note 241.

²⁴⁴ Shane Darcy, *National Plans on Business and Human Rights and the Latest from Ireland*, BUS. & HUM. RTS. IRELAND BLOG (March 13, 2014), <http://businesshumanrightsireland.wordpress.com/2014/03/13/national-plans-on-business-and-human-rights-and-the-latest-from-ireland/>.

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²⁴⁶ AL-HAQ, LANGUAGE TO BE INCLUDED IN A TEMPLATE FOR STATES' NATIONAL ACTION PLANS (2012) http://www.alhaq.org/images/stories/PDF/2012/Al-Haq_Template_for_States_National_Action_Plans.pdf.

²⁴⁷ SCOTTISH HUMAN RIGHTS COMM'N, SCOTLAND'S NATIONAL ACTION PLAN FOR HUMAN RIGHTS 14 (2013), *available at*

<http://www.scottishhumanrights.com/application/resources/documents/SNAP/SNAPpdfWeb.pdf>.

²⁴⁸ U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. GOVERNMENT APPROACH ON BUSINESS AND HUMAN RIGHTS (2013), *available at* <http://www.humanrights.gov/wp-content/uploads/2013/06/USG-Approach-on-Business-and-Human-Rights-updatedJune2013.pdf> [hereinafter *U.S. Approach*].

²⁴⁹ John Kerry, Remarks on the Release of the Human Rights Report (Apr. 19, 2013), *available at* <http://www.state.gov/secretary/remarks/2013/04/207791.htm>.

²⁵⁰ *U.S. Approach*, *supra* note 248, at 5-6.

²⁵¹ *Id.* at 3-5.

²⁵² The NBA Template draws from and aims to be consistent with existing guidance on assessment of current State implementation of the UNGPs. *See, e.g.*, European Group of NHRIs Discussion Paper, *supra* note 8; UNWG Draft Country Visit Template, *supra* note 75.

²⁵³ Report of the Special Representative of the Secretary-General on the Issue of Human rights and Transnational Corporations and Other Business Enterprises, John Ruggie, United Nations (2011), Principles for Responsible Contracts: Integrating the Management of Human Rights Risks Into State-Investor Contract Negotiations: Guidance for Negotiators, (A/HRC/17/31/Add.3).

The UN's principles for responsible contracts are:

- Project negotiations preparation and planning: The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
- Management of potential adverse human rights impacts: Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
- Project operating standards: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
- Stabilization clauses: Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.
- "Additional goods or service provision": Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be

carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.

- Physical security for the project: Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
- Community engagement: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
- Project monitoring and compliance: The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.
- Grievance mechanisms for non-contractual harms to third parties: Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism
- Transparency/Disclosure of contract terms: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.