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Interim Briefing:

National Action Plans (NAPs) on Business and Human Rights

**A JOINT PROJECT OF THE INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE (ICAR) AND THE
DANISH INSTITUTE FOR HUMAN RIGHTS (DIHR)**



**THE DANISH
INSTITUTE FOR
HUMAN RIGHTS**

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1. Context and Background

1.1. The UNGPs and the State Duty to Protect

In our globalizing world, in which corporate mobility, complexity, and power continue to increase, many governments struggle to ensure that their duty to protect human rights translates into effective measures to ensure that businesses respect the rights of individuals, communities, and societies in practice.

Since the 1970s, the United Nations (UN) has made various attempts to address this challenge. Most recently, in 2005, Professor John Ruggie was appointed as Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises with a mandate to respond to the apparent lack of clarity on the roles and obligations of States and businesses with regard to human rights.¹ This three-year mandate resulted in the UN's "Protect, Respect, and Remedy" Framework for Business and Human Rights.² The mandate was subsequently extended by a further three years to "operationalize" the Framework by providing practical guidance on steps that can be taken by States, businesses, and other actors for the Framework's implementation.³ This second mandate yielded the UN Guiding Principles on Business and Human Rights (UNGPs).⁴

The UN Human Rights Council unanimously endorsed the UNGPs in 2011.⁵ Both the Framework and the UNGPs rest on three complementary and interrelated Pillars:

- **PILLAR 1: 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 2: 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 3: 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.

¹ Press Release, Sec'y-Gen., Secretary-General Appoints John Ruggie of United States Special Representative on Issue of Human Rights, Transnational Corporations, Other Business Enterprises, ¶ 9, U.N. Press Release SG/A/934 (July 25, 2005), available at <http://www.un.org/News/Press/docs/2005/sga934.doc.htm>.

² John Ruggie, Special Representative of the Sec'y-Gen. on the Issue of Human Rights & Transnational Corps. & Other Bus. Enters., *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, ¶ 5, U.N. Doc. A/HRC/17/31 (2011), available at <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> [hereinafter UNGPs].

³ *Id.* at ¶ 9.

⁴ See generally *id.*

⁵ *Id.* at ¶ 5.

Since 2011, much attention has focused on the corporate responsibility to respect human rights under Pillar 2 of the UNGPs. At a minimum, the responsibility to respect extends to all internationally recognized human rights, as expressed in the International Bill of Human Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.⁶ The content of the corporate responsibility to respect, in individual cases, is then defined with reference to the activities, impacts, and relationships of the business in question, while human rights “due diligence” is identified as the process which all businesses must use to prevent and address involvement in human rights abuses.⁷

However, as noted above, the UN Framework and the UNGPs also assert the duty of States to protect against business-related human rights abuses. Under Pillar 1, the State duty to protect is defined as a general duty to prevent business-related human rights violations and, if prevention fails, to remedy such violations.⁸ This duty extends to all organs of the State and requires governments to take all reasonable measures to investigate, prevent, punish, and redress business-related human rights violations through adjudication, legislation, policies, and regulations.⁹

Since 2011, many governments have expressed support for the UNGPs. Some have backed these expressions of support with policy commitments and initial implementation measures. However, by comparison with Pillar 2 of the UNGPs, much less attention has been devoted to understanding and unpacking the content of the State duty to protect under Pillar 1. Likewise, while guidance on human rights due diligence is now available in abundance for companies, according to their size, sector, and location, almost no work has been done to identify methods and heuristics to assist States towards fulfilling the State duty to protect. Given the interrelated nature of Pillars 1, 2, and 3, this gap, if left unaddressed, is likely to undermine implementation of the entire UN Framework.

1.2. National Action Plans (NAPs) for UNGPs Implementation: Recent Developments

In general, National Action Plans (NAPs) include State-level policy documents that outline a government’s priorities, commitments, and proposed initiatives to address a specific policy area. Worldwide, various governments have utilized NAPs as a tool to articulate strategies for implementing regional and international treaties, agreements, and other standards across a

⁶ *Id.* at Princ.12, Cmt.

⁷ *Id.* at Princ. 13, 17-21.

⁸ *Id.* at Princ. 1.

⁹ *Id.*

range of policy areas, including corporate social responsibility (CSR),¹⁰ women's rights,¹¹ renewable energy,¹² open government partnerships,¹³ and human rights in general.¹⁴

Since 2011, a number of States have embarked on processes to develop NAPs or other government-led strategies on business and human rights, with reference to the UNGPs. Based on the ICAR/DIHR NAPs Project's research thus far,¹⁵ the following summary outlines such developments across a number of jurisdictions, including at the European Union (EU) level, within the United Kingdom and a number of other European countries, and within the United States.

The European Union

To date, the European Union has seen a higher level of activity in terms of national implementation measures regarding the UNGPs than any other world region. This trend was sparked in part by the European Commission's 2011 White Paper on CSR, which invited all EU Member States to develop NAPs for UNGPs implementation by the end of 2012.¹⁶ The 2011 White Paper also called on EU Member States to develop or update lists of national CSR actions by the end of 2012.¹⁷ Examples of CSR NAPs can be found in many EU countries, including Denmark¹⁸ and Cyprus.¹⁹ Subsequently, in 2012, the European Council included a requirement on all EU Member States to develop NAPs for UNGPs implementation by the end of 2013,²⁰ and the European Commission has recently confirmed that it will also develop a plan for UNGPs

¹⁰ See, e.g., PLANNING BUREAU, NATIONAL ACTION PLAN FOR CORPORATE SOCIAL RESPONSIBILITY, 2012 (Cyprus) [on file with ICAR] [hereinafter CYPRUS NAP].

¹¹ See *National Action Plans*, UN WOMEN, http://www.unifem.org/gender_issues/women_war_peace/national_action_plans.html? (last visited Nov. 23, 2013).

¹² See, e.g., Commission Decision, 2009/548, Commission Decision of 30 June 2009 Establishing a Template for National Renewable Energy Action Plans Under Directive 2009/28/EC of the European Parliament and of the Council, 2009 O.J (L 182), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:182:0033:0062:EN:PDF>.

¹³ See, e.g., U.S. GOV'T, THE OPEN GOVERNMENT PARTNERSHIP: NATIONAL ACTION PLAN FOR THE UNITED STATES OF AMERICA (2011), available at http://www.whitehouse.gov/sites/default/files/us_national_action_plan_final_2.pdf.

¹⁴ See, e.g., COMMONWEALTH OF AUSTRALIA, AUSTRALIA'S NATIONAL HUMAN RIGHTS ACTION PLAN, 2012 (Austl.), available at <http://www.ag.gov.au/consultations/pages/NationalHumanRightsActionPlan.aspx>.

¹⁵ For an introduction to and more details on the NAPs Project, see *infra* Section 2: The ICAR/DIHR National Action Plans (NAPs) Project. The next phases of the NAPs Project will focus on developments in the African, Latin American, and Asian regions.

¹⁶ *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 (Oct. 25, 2011), available at http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf.

¹⁷ *Id.*

¹⁸ DANISH GOV'T, RESPONSIBLE GROWTH – ACTION PLAN FOR CORPORATE SOCIAL RESPONSIBILITY 2012-2015 (2012), available at http://erhvervsstyrelsen.dk/file/318420/uk_responsible_growth_2012.pdf [hereinafter DENMARK CSR NAP].

¹⁹ CYPRUS NAP, *supra* note 10.

²⁰ Council Decision 11855/12, *EU Strategic Framework and Action Plan on Human Rights and Democracy*, at 20 (June 25, 2012).

implementation at the EU level.²¹ Although, to date, only the United Kingdom has published a UNGPs NAP, a number of other EU Member States—including the Netherlands, Spain, Italy, Finland, and Denmark—have taken significant steps towards the development of such a NAP, with a view toward publication in December 2013 or in 2014.

United Kingdom

The U.K. government released its NAP on business and human rights on 4 September 2013.²² Worldwide, it is the first government to have adopted a NAP that is explicitly framed in terms of implementing the UNGPs.²³ 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.²⁴ The plan applies to all U.K. government departments and addresses all businesses “domiciled” within the United Kingdom.²⁵

Amongst 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.²⁶ 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.²⁷

Other European States

In light of the EU’s call for CSR NAPs in its 2011 White Paper, and prior to the release of the U.K. NAP, a number of EU Member States have developed and released CSR NAPs that integrate aspects of UNGPs implementation. For example, the Republic of Cyprus published a *National Action Plan for Corporate Social Responsibility* in 2012 that outlines measures for implementing

²¹ According to information gathered during consultations with European civil society stakeholders as part of the NAPs Project.

²² FOREIGN & COMMONWEALTH OFFICE, GOOD BUSINESS: IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, 2013, Cm. 8695 (U.K.), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [hereinafter U.K. NAP]. The NAPs Project Team would like to thank Professor Robert McCorquodale and Marilyn Croser for their assistance in conducting a detailed analysis of the U.K. NAP.

²³ It is important to note, however, that the United Kingdom is not the first country to adopt a NAP that includes a focus on implementing the UNGPs. Prior to the United Kingdom’s adoption of its NAP on business and human rights in 2013, a number of other countries developed and released NAPs that include a non-exclusive focus on UNGPs implementation, most often as part of a NAP on corporate social responsibility. For example, the Republic of Cyprus released a *National Action Plan for Corporate Social Responsibility* in 2012 that outlines State measures for implementing the UNGPs. See CYPRUS NAP, note 10.

²⁴ The U.K. NAP includes a commitment by the government to develop an updated version of the plan by the end of 2015. U.K. NAP, *supra* note 22, at 19.

²⁵ *Id.* at 7.

²⁶ *Id.* at 9, 11, 12.

²⁷ *Id.* at 6.

the UNGPs.²⁸ The Danish CSR Action Plan for 2012-2015, entitled *Responsible Growth*, also contains actions for UNGPs implementation.²⁹ Although no other European States besides the United Kingdom have so far published a NAP on business and human rights, as noted above, many governments throughout Europe have begun the process of developing such a NAP or have expressed a clear intention to do so.

Parliaments in Switzerland and the Netherlands passed motions requesting their respective governments to develop national strategies for implementing the UNGPs.³⁰ Subsequently, both countries' governments initiated engagement with stakeholders from civil society and the business community.³¹ In addition, the Swiss government commissioned a mapping study of other States' NAPs processes,³² and the Dutch government has established an interdepartmental working group to undertake the drafting of its national plan.³³

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.³⁴ In October 2013, CNCDH published an Advisory Opinion outlining its recommendations.³⁵ Also in 2013, the Norwegian government commissioned a mapping study and gap analysis of existing measures in Norway relevant to UNGPs implementation.³⁶

In Finland, the government has established a working group to draft its NAP and to report on progress by March 2014.³⁷ In Italy, a baseline study was completed, shared with stakeholders, and presented at the Chamber of Deputies in October 2013.³⁸ In Denmark, the government

²⁸ CYPRUS NAP, *supra* note 10.

²⁹ DENMARK CSR NAP, *supra* note 18.

³⁰ According to information gathered during consultations with European civil society stakeholders as part of the NAPs Project. *See also, e.g., Dutch Parliament Orders Plan for UN Principles on Business and Human Rights*, GLOBALGOVERNANCEWATCH.ORG, http://www.globalgovernancewatch.org/spotlight_on_sovereignty/dutch-parliament-orders-plan-for-un-principles-on-business-and-human-rights (last visited Nov. 7, 2013).

³¹ According to information gathered during consultations with European civil society stakeholders as part of the NAPs Project.

³² *Id.*; *see also* ANDREAS GRAF, SWISSPEACE, DEVELOPING NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS (2013), *available at* http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_4_2013.pdf.

³³ According to information gathered during consultations with European civil society stakeholders as part of the NAPs Project.

³⁴ *Id.*

³⁵ COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME, ENTREPRISES ET DROITS DE L'HOMME: AVIS SUR LES ENJEUX DE L'APPLICATION PAR LA FRANCE DES PRINCIPES DIRECTEURS DES NATIONS UNIES (2013), *available at* http://www.cncdh.fr/sites/default/files/13.10.24_avis_entreprises_et_droits_de_lhomme.pdf.

³⁶ MARK B. TAYLOR, FAFO INST. FOR APPLIED INT'L STUDIES, EXECUTIVE SUMMARY: KARTLEGGINGS - OG AVVIKSANALYSEN: STATENS PLIKT TIL Å BESKYTTE (2013) (English translation by Mark B. Taylor), *available at* <http://www.faf.no/pub/rapp/10178/10178-summary.pdf>.

³⁷ According to information gathered during consultations with European civil society stakeholders as part of the NAPs Project.

³⁸ *Id.*

aims to publish its UNGPs NAP before the end of 2013, following a short consultation process.³⁹ In Spain, consultations have taken place with stakeholders throughout 2013, and the government aims to publish its NAP in the near future.⁴⁰

On the other hand, Germany has yet to identify a specific agency, ministry, or department to be responsible for developing its NAP.⁴¹ 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.⁴²

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*.⁴³ Upon the release of the *Approach*, Secretary of State John Kerry expressed the need for the U.S. government to “encourage[e] businesses to respect human rights wherever they operate.”⁴⁴ 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 engagement by business in venues that advance best practices.”⁴⁵ 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.⁴⁶

2. The ICAR/DIHR National Action Plans (NAPs) Project

Since 2012, the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR) have been actively engaged in policy discussions and research

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² CORA-NETZWERK FÜR UNTERNEHMENSVERANTWORTUNG ET AL., POSITION PAPER ON BUSINESS AND HUMAN RIGHTS – EXPECTATIONS OF A GERMAN ACTION PLAN (2013), available at <http://germanwatch.org/en/download/7793.pdf>.

⁴³ 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*].

⁴⁴ 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>.

⁴⁵ *U.S. Approach*, *supra* note 43, at 5-6.

⁴⁶ *Id.* at 3-5.

relating to NAPs on business and human rights as a platform for holding governments to account for progress in implementing the UNGPs.⁴⁷

Against this background, ICAR and DIHR launched a joint project—*National Action Plans: State Strategies for the Implementation of the UN Guiding Principles on Business and Human Rights*—in August 2013. The goal of the Project is to produce a robust Toolkit for NAPs to support the development and evaluation of State-level measures to implement the UNGPs.

The NAPs Toolkit will comprise three parts:

1. A model National Baseline Assessment (NBA):

- Organized systematically with reference to each of the UNGPs and the sub-components of individual UNGPs under the first and third Pillars, which most directly require State action
- Reflecting bottom-up (community-led) and top-down (desk-based) methodologies in assessing a State's point-of-entry in implementing the UNGPs; and
- Providing a framework for assessing State progress in UNGPs implementation over time.

2. A model National Action Plan (NAP):

- Building on the model NBA;
- Addressing both minimum content and a human rights-based consultation process for developing NAPs;
- Addressing issues both within and beyond the State's territorial jurisdiction; and
- Addressing all relevant aspects of State regulation, including law, policy, procurement, investigation, monitoring, auditing, reporting, incentives and penalties regimes, and public information.

3. Proposals for reporting and reviewing States' implementation of the UNGPs:

- At sub-regional, regional, and/or global levels;
- On a periodic basis; and
- Addressing alternative modalities, such as peer review and expert review.

⁴⁷ See, e.g., Statement from the Int'l Corporate Accountability Roundtable (ICAR) to U.S. State Dep't on UN Framework and Guiding Principles Implementation (July 31, 2012), *available at* <http://www.scribd.com/doc/101638952/ICAR-Statement-to-State-Department-on-UN-Guiding-Principles-Implementation>; EUROPEAN GRP. OF NAT'L HUMAN RIGHTS INSTITUTIONS, IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: DISCUSSION PAPER ON NATIONAL IMPLEMENTATION PLANS FOR EU MEMBER STATES (2012), *available at* <http://www.humanrightsbusiness.org/files/About%20us/file/EU%20NHRIs%20Paper%20on%20National%20Implementation%20Plans%20for%20UNGPs%2010612%20SHORT.pdf>. In 2012, DIHR commenced research for the completion of a national baseline assessment of UNGPs implementation in Denmark.

2.1. Objectives

Combining research and consultations with stakeholders across Europe, Africa, the Americas, and Asia, the NAPs Project aims to deliver tools to support progress by States toward effective implementation of the duty to protect human rights under the UNGPs.

The Project will actively seek to inform and complement actions and initiatives in this area by all relevant actors, including individual States and the UN Working Group on Business and Human Rights, which was established by the UN Human Rights Council in 2011 to promote the effective and comprehensive dissemination and implementation of the UNGPs.

2.2. Timeline

August 2013	Project Team established and Project launched
September 2013	Informal consultations with stakeholder groups at Third Annual ICAR Meeting in Washington, DC
October 2013 to April 2014	Phone/online/in-person consultations with governments, civil society, businesses, the investment community, academia, and national human rights institutions
October 2013	European Civil Society Dialogue in Brussels, Belgium
November 2013	African Civil Society Dialogue in Accra, Ghana Consultation with Network of African National Human Rights Institutions (NANHRI) Members in Accra, Ghana
December 2013	Global Consultation at the UN Forum on Business and Human Rights in Geneva, Switzerland
February 2014	Latin America Consultation
March 2014	Asia Consultation
April 2014	Online consultation on draft tool-kit

2.3. Scope

In addition to the UNGPs, the NAPs Toolkit will draw on other internationally recognized standards that address responsible business conduct in order to give specific content to the

UNGPs—with reference to specific rights and topics—and to assist in the development of benchmarks for State implementation measures. Such standards include:

- International human rights instruments, including the International Bill of Rights and the ILO Core Labour Standards, as well as other standards, such as the CRC, CEDAW, CERD, and UNDRIP;
- Regional human rights instruments;
- Other relevant international legal standards or policies; and
- Other voluntary or private sector-based and thematic standards.

2.4. Progress to Date

As indicated in the timeline above, the NAPs Project has already completed two regional consultations with stakeholders and numerous bilateral consultations with a range of experts and other actors, gaining valuable inputs into the Project. In addition, draft analytical frameworks to support the preparation of national baseline studies on business and human rights have been developed and are currently being piloted by DIHR in two different country contexts—Denmark and Niger.

European Regional Consultation

On 11 October 2013, the European Coalition for Corporate Justice (ECCJ) and ICAR/DIHR hosted a European Civil Society Dialogue on the NAPs Project, which included 13 civil society leaders and representatives of European NHRIs. The Project Team is grateful to ECCJ for partnering with ICAR and DIHR on this convening. See Annex I of this Briefing for a summary of the European Civil Society Dialogue.

Stakeholder/Expert Consultations

Since late October 2013, the NAPs Project has consulted with approximately 40 other leaders from civil society, governments, businesses, the investment community, academia, and national human rights institutions. The Project will continue these broad-based consultations into 2014.

African Regional Consultations

During the week prior to the Second Annual UN Forum on Business and Human Rights, two NAPs Project consultation events were held in Accra, Ghana.

On Monday, 25 November 2013, Global Rights and ICAR/DIHR hosted a dialogue on the NAPs Project with approximately 30 African civil society leaders. On Thursday, 28 November 2013, the Network of African National Human Rights Institutions (NANHRI) and ICAR/DIHR hosted a consultation on the NAPs Project with NANHRI members. ICAR and DIHR are grateful to these organizations for their partnership in hosting both of these meetings.

A summary of these consultation events will be available before the end of 2013. Meanwhile, interested parties may visit <http://accountabilityroundtable.org/analysis/upcoming-african-civil-society-dialogue-and-consultation-with-nanhri-members-on-the-national-action-plans-naps-project/> for more information.

Latin American and Asian Consultations

Two further regional dialogue events will be held in early 2014 to gather inputs from stakeholders in Latin America and Asia.

The NAPs Project final report, including recommendations, is scheduled for publication and launch in June 2014.

3. Conclusion

As described in this briefing, the movement for the development of NAPs for UNGPs implementation is acquiring momentum. While many countries have yet to initiate the process of developing a NAP or have only recently started to do so, others have already taken concrete steps intended to turn the standards articulated in the UNGPs into national laws, policies, and regulations.

The ICAR/DIHR NAPs project aims to gather stakeholder and expert inputs, as well as data on existing State practices, from a wide variety of world regions. In turn, these will then be utilized to inform the development of a Toolkit that can be used by States, civil society, NHRIs, businesses, and other stakeholders to support UNGPs implementation at the national level.

The Second Annual UN Forum on Business and Human Rights presents an important opportunity to consider progress made by States and other stakeholders in implementing the UNGPs. ICAR and DIHR look forward to engaging in a robust dialogue regarding such progress in Geneva and into 2014.

Annex I: Summary of the European Civil Society Dialogue on the NAPs Project

On October 11, 2013, the European Coalition for Corporate Justice (ECCJ) hosted the Project's European Civil Society Dialogue in Brussels, Belgium, which included 13 civil society leaders working in the region. The Project Team extends its thanks to ECCJ for their 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, amongst 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 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 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 3 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.

Participants' responses in the European Civil Society Dialogue—as well as all other dialogues and consultations held as part of the NAPs Project—will be reflected in the development of the NAPs Project Toolkit and Final Report, which will be released in June 2014.

Annex II: NAPs Project Team Biographies

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Amol Mehra, Esq. is the Director of the International Corporate Accountability Roundtable (ICAR), a coalition of leading human rights, development, labor, and environmental organizations working to ensure businesses respect human rights in their global operations. Amol is an international human rights lawyer by training, focusing on business and human rights and corporate social responsibility (CSR). Amol received his Juris Doctor Degree with an Honors Certificate in International and

Comparative Law from the University of San Francisco School of Law and also holds a Bachelor of Commerce with a concentration in Global Strategic Management and the Social Context of Business from McGill University. In addition to his work as Director of ICAR, Amol serves on the Advisory Council for the American Bar Association's Center for Human Rights, is a Coordinating Member and Thematic Specialist for Amnesty International USA, is an Advisory Board Member of Lawyers for Better Business (L4BB), and serves on the Advisory Council for the Ranking Digital Rights Project. Amol writes for the Huffington Post, Forbes Corporate Social Responsibility and Leadership, CSRWire, and the Guardian Sustainable Business Section. He is fluent in French and conversant in Hindi.

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Claire Methven O'Brien is Chief Consultant at the Danish Institute for Human Rights. Claire holds a BA in Natural Sciences and Philosophy from the University of Cambridge, an LLM in Public Law from the London School of Economics, and a PhD in Law from the European University Institute, Florence. She has been called to the London Bar. Claire has extensive experience in the area of business and human rights, including working with multinational enterprises, national governments,

international financial institutions, civil society organizations, international organizations, and other national human rights institutions. Claire publishes, speaks, and teaches across a wide range of human rights topics. She is a member of the Board of the International Work Group for Indigenous Affairs.

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Sara Blackwell is an international human rights lawyer and recent graduate of Georgetown University Law Center. She currently serves as Legal and Policy Fellow at the International Corporate Accountability Roundtable (ICAR), where she contributes to ICAR’s work examining National Action Plans for implementing the UN Guiding Principles on Business and Human Rights. While at Georgetown, Sara worked as a Student Attorney with the law school’s International Women’s Human Rights Clinic, advocating for women’s reproductive rights in Uganda. Sara has previously worked with the Fair Labor Association; EarthRights International; the Center for International Environmental Law; and Green Advocates International in Liberia. Prior to attending law school, Sara served as a Peace Corps Volunteer in Zambia, where she lived and worked with rural agrarian communities to enhance food security and improve natural resource management. She holds a B.A., *summa cum laude*, from Barnard College of Columbia University. She is proficient in Bemba, a Bantu language spoken primarily in northern Zambia, and conversant in Swahili.

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Cathrine Bloch Poulsen-Hansen joined the Human Rights and Business Department in 2010. Cathrine manages and advises on the Corporate Engagement projects of the department and acts as the manager of the Human Rights Compliance Assessment tools of the department. Further to this, Cathrine leads the national work of DIHR on human rights and business, including engagement with the Danish Government, as well as business and civil society actors. Cathrine further supports the work of DIHR in the Working Group on Business and Human Rights of the International Coordinating Committee of National Human Rights Institutions. Cathrine holds a BSc. in Public Administration with a specialization in European Union Studies and a MSocSc in Political Communication and Management with a specialization in corporate social responsibility and sociology of law.