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Policy Paper on an Australian National Action Plan (NAP) to implement the UN Guiding Principles on Business and Human Rights (UNGPs)

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1. Introduction

Australian Lawyers for Human Rights (ALHR) was established in 1993 and is a national legal network of over 2600 Australian solicitors, barristers, academics, judicial officers and law students who practice and promote international human rights law in Australia and overseas. ALHR is active on a national, state and territory-level throughout Australia and has a secretariat residing at La Trobe University Law School, Melbourne. Through advocacy, media engagement, education, research and events ALHR promotes, practices and protects internationally-accepted human rights standards in Australia.

This policy paper examines the international human rights principles and obligations relevant to the development of a National Action Plan (NAP) to implement the UN Guiding Principles on Business and Human Rights (UNGPs) in Australia. It provides a review of NAP processes conducted in other jurisdictions and presents recommendations for best practice. It sets out ALHR's expectations regarding the process and content for an Australian NAP.

If you have any questions on this policy paper, please contact Amy Sinclair, Chair of ALHR's Business and Human Rights Sub-Committee, at bhr@alhr.org.au.

2. Executive Summary

ALHR calls on the Australian Government to make a formal commitment to develop a NAP to implement the UN Guiding Principles on Business and Human Rights (UNGPs)¹ in Australia.

The development of a NAP is essential for improving the legal, regulatory and policy framework in Australia required to successfully implement the UNGPs. This will assist in protecting and promoting internationally-recognised human rights standards in Australia. In developing a NAP for Australia, an effective process is key to ensuring a successful outcome.

ALHR's expectations for the NAP process include:

- a consultative, multi-stakeholder process that includes civil society;
- transparency;

¹ Accessible here:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

- an evidence-based process: NAP development to include a national baseline assessment of existing legislative gaps in UNGP implementation in Australia; and
- provision for ongoing monitoring and review of the NAP.

ALHR's expectations for the content of a NAP include:

- comprehensive nature: NAP must cover all the UNGPs;
- extends beyond a statement of current policy or commitments and contains forward-looking action points; and
- a human rights-based focus: aimed at protecting the human rights of all, including the most vulnerable groups in society.

3. Business and Human Rights - Australian Context

Australian companies potentially impact nearly all internationally-recognised human rights either directly, or through their operations, products or services, both in Australia and abroad. The responsibility of business to respect human rights extends to all internationally-recognised human rights² and to all companies.

Domestic laws regulate the activities of companies in Australia. However, gaps in regulation, application and oversight facilitate human rights abuses by companies in Australia. Overseas, Australian companies often operate in jurisdictions in which protective laws either do not exist, or are inadequately enforced, due to limited resources or political will. The resulting governance gaps facilitate the abuse (sometimes unwittingly) of human rights by Australian companies operating in foreign jurisdictions.

As a result, human rights abuses by Australian companies, both at home and abroad, continue to occur. A significant area of concern is labour abuse, occurring both domestically (particularly in relation to temporary migrant workers) and internationally (in the supply chain networks of Australian businesses). Other areas of concern relate to the overseas activities of Australian extractives companies and the operation of offshore immigration detention centres by Australian businesses. Access to legal remedy for those experiencing the negative human rights impacts of Australian business activities is extremely limited (particularly where the victims are located in foreign jurisdictions).

² Understood, at a minimum, to include those identified at UNGP 12.

Australia needs to strengthen its efforts to prevent and protect against the adverse human rights impacts of Australian companies, both domestically and internationally.

4. Business and Human Rights - Global Context

Corporations have a responsibility to respect human rights – they must not only ensure compliance with national laws, but also manage risks of human rights harms with a view to avoiding them.

John Ruggie, Harvard University
(former UN Special Representative on Business and Human Rights)

UN Guiding Principles

In June 2011, the United Nations Human Rights Council (UNHRC) unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs). The Australian Government co-sponsored this resolution. The UNGPs provide an international standard for addressing and preventing human rights impacts associated with business activity.

The UNGPs are structured on three pillars - 'Protect, Respect and Remedy', comprising:

- a. the State duty to **protect** human rights (UNGP 1-10): international law requires States to protect individuals from human rights abuse by business enterprises through 'appropriate policies, regulation and adjudication';
- b. the corporate responsibility to **respect** human rights (UNGP 11-24): this requires business enterprises to act with 'due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved'; and
- c. access to appropriate and effective **remedy** for victims of business-related abuse (UNGP 25-31): this applies to both judicial and non-judicial, State and non-State based methods of remedy.³

The UNGPs contain 31 principles, together with accompanying commentary. They aim to provide concrete steps to operationalise the three pillars of the

³ UNGP Introduction paragraph 6, p4.

'Protect, Respect and Remedy' framework. The UNGPs articulate the State duty to protect against business-related human rights abuse. In order to do this, States must create and implement corresponding laws, practices and policies. The UNGPs also articulate the distinct responsibility of companies to respect human rights. This entails businesses knowing what their potentially adverse human rights impacts are and showing, via public disclosure, how they are addressing them, in addition to providing grievance mechanisms.

Since 2011, the UNGPs have been adopted by numerous governments and across a range of business sectors. The rapid and widespread uptake of the UNGPs indicates a growing awareness in the business community that, in order to maintain a social licence to operate, it must address and mitigate its adverse human rights impacts.

Whilst the UNGPs are not legally binding per se, they represent a strong moral and commercial consensus on the responsibility of companies to respect human rights. The UNGPs increasingly represent globally accepted terms of business. This is reflected in their widespread adoption and incorporation into international business guidelines⁴ and standards⁵, corporate policies⁶ and procedures, commercial contracts⁷ and public disclosure requirements⁸. They represent a new *lex mercatoria*.

National Action Plans

The development of business and human rights-related NAPs is a corresponding process to the uptake of the UNGPs and one that has been encouraged by the UNHRC. In June 2014, the UNHRC called on member States to adopt NAPs as a means of implementing the UNGPs within their respective territories and jurisdictions.⁹ It is notable that the Australian Government supported this UNHRC resolution.

Since the UNGPs were endorsed by the UNHRC in 2011, numerous governments and non-State actors, including national human rights institutions, have either launched or commenced the development of a NAP, or NAP-related process, as a means of implementing the UNGPs. Currently,

⁴ *OECD Guidelines on Multinational Enterprises* (2011).

⁵ ISO 26000 and (draft) ISO 20400.

⁶ See, for example, Rio Tinto, *Human Rights Policy* (May 2012) is accessible here: http://www.riotinto.com/documents/ReportsPublications/Human_rights_policy.pdf.

⁷ Common examples being supply, distribution and joint venture agreements.

⁸ UK *Modern Slavery Act* 2015.

⁹ Human Rights Council Res. A/HRC/26/L.1. Rep. of the Human Rights Council, 26th Sess., June 10-27, 2014 (27 June 2014).

36 such NAP processes have been completed, or are underway, across the world.¹⁰

NAPs are statements of policy which provide an overall strategy and set of concrete commitments by the State in connection with a particular topic or policy area. In relation to business and human rights issues, the UN Working Group on Business and Human Rights (UNWG) has defined NAPs as:

"An evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights."¹¹

The central element of a NAP is the articulation of a government's response to the adverse human rights impacts of business activities. The UNWG recommends that governments take four underlying principles into consideration when developing a NAP:

- I. Focus on addressing concrete impacts of business on human rights (and prioritise by reference to severity and government leverage to bring about change).
- II. Use UNGPs to identify how to address adverse impacts (via concrete measures).
- III. Identify a 'smart mix' of voluntary and mandatory, domestic and international measures to influence corporate impacts on human rights.
- IV. Ensure effective protection from gender-specific impacts (and incorporate gender analysis into consideration of potential and actual adverse impacts of business on human rights).¹²

The UNWG has identified four essential criteria that a NAP must meet in order to be effective:

- I. UNGPs as the foundation for the NAP.

¹⁰ 'State National Action Plans, 'Office of the High Commissioner for Human Rights (information accessed on 12 February 2016):

<http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

¹¹ UNWG *Guidance on National Action Plans on Business and Human Rights*, p3, accessible here: http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf

¹² Ibid p12.

- II. NAP must respond to national circumstances and be context-specific.
- III. Inclusive and transparent process: relating to development, monitoring and update of the NAP.
- IV. Continuous process of regular review and update.¹³

We refer to Australia's Universal Periodic Review before the Human Rights Council in November 2015 and note that both Norway and the Netherlands issued recommendations calling on the Australian Government to adopt a NAP.

The UNGPs establish a common global platform for action on corporate accountability for human rights abuses. If Australia is to participate in this global process and join ranks with fellow actors in the international community, it is essential that we immediately commence our own plan of action.

A NAP will strengthen efforts to prevent and protect against adverse impacts on human rights by Australian businesses, both domestically and internationally.

5. Australian NAP - Critical

ALHR considers a NAP for Australia to be critical for the following reasons:

- a. raises **awareness** of business and human rights issues in Australia;
- b. represents a concrete way in which to communicate and implement the **commitments** undertaken in Australia's endorsement of the UNGPs and to translate the State's duty to protect human rights into preventative and remedial measures;
- c. articulates **expectations of business** in regard to implementing the UNGPs;
- d. **protects the human rights** of all Australians, particularly the most vulnerable members of society;
- e. provides **focus** and momentum which helps to support an ongoing dialogue on the relationship between business and human rights and the efficacy of current regulatory approaches in Australia;
- f. establishes and maintains **credibility** for the business and human rights agenda and demonstrates leadership by the Australian Government with respect to these critical emerging issues;

¹³ Ibid n11, p3-4.

- g. communicates a clear, **coherent State-level policy** message to all stakeholders, including civil society, companies and trade unions;
- h. builds **public accountability** of the Australian Government in relation to its business and human rights obligations to protect people from abuse of their human rights by business;
- i. creates **guidance** for business from the State (via toolkits, training, guidance papers, discussions and workshops). This enables business to better meet its human rights-related responsibilities and enables the State to fulfil its duty to protect human rights; and
- j. flags future legislative and regulatory initiatives or developments which provides greater **certainty** for all stakeholders and helps establish a level playing field for responsible business practices. We note that many businesses in Australia are openly supportive of a NAP process. Following the success of the Australian Dialogues on Business and Human Rights (2014 and 2015), the UN Global Compact Network Australia announced in December 2015 that it would be holding roundtable sessions with business representatives from early 2016 to progress the NAP process.¹⁴

6. NAP Development - Global Context

It is disappointing that the Australian Government has yet to initiate a NAP. However, Australia can benefit from being a latecomer to the NAP development process by applying key lessons learned from the NAP experiences of others.

To date, the following countries have introduced a NAP:¹⁵

- **UK** - September 2013
- **Netherlands** - December 2013
- **Italy** - March 2014
- **Denmark** - March 2014
- **Spain** - (European) summer 2014 (pending approval by the Spanish Council of Ministers)
- **Finland** - October 2014
- **Lithuania** - February 2015
- **Sweden** - August 2015
- **Norway** - October 2015
- **Colombia** - December 2015

¹⁴ <http://www.unglobalcompact.org.au/2015/12/10/human-rights-day-top-10-business-human-rights-developments-from-2015/>.

¹⁵ Bold indicates the countries for which we have conducted a NAP review.

The following countries are in the process of developing a NAP, or have committed to doing so:

- Argentina
- Azerbaijan
- Belgium
- Chile
- **Germany**
- Guatemala
- Greece
- **Ireland**
- Jordan
- **Malaysia**
- Mauritius
- Mexico
- Mozambique
- **Myanmar**
- Portugal
- Slovenia
- **Switzerland**
- **US**

The following are countries in which either the National Human Rights Institution, or civil society, have taken steps towards developing a NAP:

- Ghana
- Kazakhstan
- Nigeria
- Republic of Korea
- South Africa
- Tanzania
- Philippines¹⁶
- Indonesia¹⁷

The following section provides an overview of others' experiences in developing NAPs and identifies the areas of strength and weakness in those processes that can be applied in Australia.

In conducting our global review of NAP processes, we have undertaken an assessment of (a) all existing NAPs; and (b) a selection of NAPs that are in

¹⁶ <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> (information last accessed on 12 February 2016).

¹⁷ Launch of NAP by National Commission on Human Rights, Komnas, announced January 2016 <http://www.thejakartapost.com/news/2016/01/20/komnas-launch-rights-guidelines-business.html>.

progress in countries that are either similarly placed to Australia, or of regional significance (see countries indicated above in bold).

Comprehensive summaries for each of the NAP reviews conducted are provided at Annexure A (Existing NAPs) and Annexure B (NAPs In Progress) to this paper.¹⁸

a. Existing NAPs - Overview

i. UK

The UK was the first country to develop a NAP. It is entitled *'Good Business: Implementing the UN Guiding Principles on Business and Human Rights'*¹⁹ and was launched in September 2013.

The UK NAP's development process involved consultation with a wide range of stakeholders, including government agencies, non-governmental organisations, trade unions, multinational companies and small businesses. However, disempowered and at-risk stakeholders were not given adequate opportunity to participate.

The UK NAP applies to all government departments and businesses domiciled within the UK. It sets out the measures already undertaken by the government to implement the UNGPs and plans for further action. Details on these future plans lack specificity and relate mainly to voluntary measures.

The UK NAP process has attracted criticism for being conducted too quickly, involving insufficient consultation and failing to include a national baseline assessment. The 2013 NAP is currently being revised. This underscores the importance of a comprehensive approach to NAP development.

¹⁸ This document contains high level overviews of selected NAP processes. It is intended as a guide only and should not be relied upon for legal advice. Our reviews relied on publicly available information, which has not been independently verified. Whilst every effort has been made to ensure that information is referenced and refers to the latest versions of relevant documents, inaccuracies may arise.

¹⁹ Accessible here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf.

ii. Netherlands

The [Dutch NAP](#)²⁰ was launched in December 2013. It commits to the full scope of the UNGPs and provides an overview of current policy relating to the prevention of human rights abuses by companies. The consultation process involved 50 representatives from the business community, civil society organisations and experts. The NAP development process included an 'internal mapping' of relevant government policies but a comprehensive national baseline assessment was not conducted.

It lacks detail on how implementation of the NAP will be monitored.

iii. Spain

The Spanish NAP was released on 26 June 2014. However, it remains subject to approval by the Spanish Council of Ministers.

The NAP calls for measures to target the operation of specific sectors (such as investment agencies). There is a particular emphasis on ensuring the availability of effective judicial and non-judicial remedies for corporate human rights abuses. The NAP includes a recommendation to extend the authority of Spanish courts to include corporate human rights abuses overseas. The NAP also focuses on promoting human rights and due diligence standards within the business sector and appropriately resourcing the Spanish OECD National Contact Point.

The development process involved an extensive series of consultations and meetings involving government representatives, the business community and civil society.

The Spanish NAP includes provision for an annual review, to be conducted by a government supervisory body, and on-going multi-stakeholder input regarding its implementation.

²⁰ Accessible here:

http://www.netherlandsmission.org/binaries/content/assets/postenweb/v/vereniigde_staten_van_amerika/the-permanent-mission-to-the-un/actionplanbhr.pdf.

iv. Italy

In November 2013, the Scuola Superiore Sant'Anna and the Italian Ministry of Economic Development published the findings of a baseline study on business and human rights in Italy. Following this, a document entitled '*Foundations of the Italian Action Plan on the United Nations Guiding Principles on Business and Human Rights*'²¹ (Foundations) was released in March 2014.

The [Foundations](#) document was drafted by nine government agencies and involved limited external input. It outlines existing Italian laws and policies generally impacting on human rights under Pillars I and III of the UNGPs, but does not have a strong nexus to the Ruggie Framework. The Foundations document is generally understood to be Italy's draft NAP. However, it lacks significant forward-looking initiatives.

The Italian government is working towards finalising its draft NAP. The process of drafting the final NAP involves multiple government agencies, ad hoc working groups with non-government and business members.

v. Denmark

The [Danish NAP](#) is entitled '*Danish National Action Plan - implementation of the UN Guiding Principles on Business and Human Rights*'²². It was released in March 2014. Many of the action points addressed in the NAP are vague and lack timelines for implementation. The NAP lacks forward-looking commitments. A notable action point relates to the creation of an inter-ministerial working group to consider the feasibility of adopting legislation with extraterritorial scope.

Consultations were held as part of the NAP development process. However, the consultations were not extensive and did not include disempowered groups.

²¹ Accessible here:

<http://www.ohchr.org/Documents/Issues/Business/NationalPlans/NationalPlanActionItaly.pdf>.

²² Accessible here:

http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf.

The development process lacked transparency. Limited information was provided publicly about the NAP's development or contents.

vi. Finland

The [Finnish NAP](#) is entitled '*National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights*'²³ and was published in October 2014.

In developing its NAP, the Finnish government created a working group and held two separate public consultations: one with civil society organisations and the other with business representatives.

A legislative review was conducted in advance of drafting the NAP to identify existing gaps in the State's policies, procedures and laws associated with UNGP implementation. Its findings were published as a memorandum. The NAP is notable for containing forward-looking action points (identifying the relevant ministry and timeframe for implementation), containing information on how the NAP's implementation will be monitored and considering the interests of vulnerable groups.

The NAP lacks focus on measures to enhance access to remedy (although it does mention an intention to develop the OECD National Contact Point) and mainly focuses on voluntary measures.

vii. Lithuania

The [Lithuanian NAP](#) is entitled '*Action Plan on the implementation of the United Nations Guiding Principles on Business and Human Rights*'²⁴. It was published in February 2015. It provides an overview of past and current steps taken to implement the UNGPs as well as plans for future actions, such as measures to encourage transparency in the legislative process. Among the issues considered are anti-corruption policies for the public sector and, for the private sector, the promotion and

²³ Accessible here: http://www.tem.fi/files/41214/TEMjul_46_2014_web_EN_21102014.pdf.

²⁴ Accessible here: http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania_NationalPlanBHR.pdf.

development of corporate social responsibility in business operations.

It is unclear whether the NAP extends to enterprises with an international reach. There is no information available (in English) about the NAP's development process, including whether or not public consultations were held.

viii. Sweden

The [Swedish NAP](#) was launched in August 2015. It is called an 'Action Plan for Business and Human Rights'²⁵ and is aimed at implementing the UNGPs. The NAP development process involved four public consultations in which over 100 companies, government agencies, trade unions, NGOs and other stakeholders participated.

A national baseline assessment was not conducted prior to the NAP's development. However, the NAP does commit to a future review of Swedish legislation, compared against the UNGPs, to identify gaps that need to be addressed. The NAP is notable for containing forward-looking action points. There is no monitoring mechanism but the NAP does contain a commitment to assess implementation progress in 2017.

ix. Norway

Norway launched its NAP²⁶ in October 2015. A baseline assessment to identify gaps in implementation of the UNGPs was conducted in advance of developing the NAP.

The [Norwegian NAP](#) seeks to review and compare current domestic legislation against each UNGP and provides suggestions for improved UNGP implementation. The NAP states an expectation that companies will safeguard human rights and promote corporate social responsibility. The NAP lacks explicit monitoring and review mechanisms.

²⁵ Accessible here:

<http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf>.

²⁶An English translation of the Norwegian NAP is accessible here:

https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/mr/business_hr.pdf.

x. Colombia

Colombia is the most recent country to launch its [NAP](#)²⁷ (in December 2015). Plans to initiate the NAP process were only announced in March 2015. This represents a very short timeframe and raises questions over the adequacy of the process. Colombia is the first country in the Americas to publish its NAP.

As far as we are aware, there is no publicly available English translation of the NAP.

b. NAPs-in-progress - Overview²⁸

i. Germany

The German NAP has been developed over a period of two years.

The German experience exemplifies a comprehensive and inclusive NAP process. A thorough baseline assessment exercise has been conducted. This results of this were released (in German) in May 2015. Stakeholder participation has been broad-based and extensive consultation has formed an integral part of the German NAP process.

It is anticipated that the scope of the NAP will be wide, covering obligations arising from all UNGPs, and that it will be adopted in the first quarter of 2016.

ii. Ireland

The development of Ireland's NAP is well advanced and an outline working document, structured on the three pillars of the UNGPs, was released in December 2015. This outline includes future action items aimed at further implementing the UNGPs in Ireland.

A legislative review was conducted as part of this process to identify target areas to be addressed. Active multi-stakeholder input was sought and the development process has a high level of transparency. The working outline was published online.

²⁷ Accessible here:

http://www.ohchr.org/Documents/Issues/Business/NationalPlans/PNA_Colombia_9dic.pdf.

²⁸ In conducting our review of NAPs in progress, we selected countries that are either similarly placed to Australia, or are regionally significant.

iii. Malaysia

In March 2015, the Malaysian government announced the '[Strategic Framework on a National Action Plan on Business and Human Rights for Malaysia](#)'²⁹ (Framework). This was developed by SUHAKAM, the National Human Rights Commission of Malaysia, in collaboration with the UN Country Team in Malaysia.³⁰ The object of the Framework is to provide proposals for Malaysia's NAP. The Framework sets out a roadmap for identifying the steps required, including stakeholder engagement, to develop a NAP in Malaysia.³¹

The Framework calls on the Malaysian government to ensure transparency in the NAP development process by publicly disclosing research findings, stakeholder submissions, outcomes of stakeholder consultations and information relating to implementation progress. It also recommends that the government requires companies to be transparent about their human rights risks and impacts and the due diligence measures taken to address them.

Priority areas identified in the Framework for inclusion in Malaysia's NAP include: the abuse and exploitation of migrant workers; human trafficking; child labour; forced labour; infringements on indigenous peoples' rights and environmental rights. Examples of sectors with known human rights challenges cited in the Framework include electronics, hydropower and plantations (palm oil and timber).

iv. Myanmar

The government of Myanmar announced its intention to develop a NAP in February 2015. The process is in its early stages. Responsibility for developing the framework for the NAP resides with Myanmar National Human Rights Commission (MNHRC).

²⁹ Accessible here: <http://business-humanrights.org/sites/default/files/documents/Malaysia-Strategic-Framework.pdf>.

³⁰ Ashwin Kumar, 'Government prepared to engage with NGOs' (24 March 2015) The Sun Daily <http://www.thesundaily.my/news/1364271>.

³¹ Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 'New Action Plan for Business and Human Rights in Malaysia' (13 May 2015) <http://rwi.lu.se/2015/05/new-action-plan-for-business-and-human-rights-in-malaysia/#more-6217>.

MNHRC is currently building its capacity to develop a framework for the NAP. In October 2015, MNHRC members attended a training session conducted by the Danish Institute for Human Rights and the Myanmar Centre for Responsible Business on the UNGPs and role of a National Human Rights Institution in relation to business and human rights.

The Foreign Economic Relations Department of the Republic of the Union of Myanmar (FERD) has reported that the most significant factors impeding the ability of the Myanmar government to take action on business and human rights are opposition by economic interest groups or business associations and the challenges of inter-departmental coordination.³² A lack of resources for enforcement, monitoring and prosecution, as well as a lack of understanding or awareness of business and human rights in government, are significant impediments to the government's ability to take action on business and human rights.³³

v. Switzerland

The Swiss NAP has advanced to the drafting stage. It is structured on the UNGP framework. The NAP process has involved a comparative analysis of NAP processes in other countries, an internal administrative review of the current situation in Switzerland and broad-based consultation with stakeholders from business, civil society and academia.

The process has been criticised for lack of transparency and the absence of a comprehensive mapping exercise to identify legal gaps.³⁴

vi. United States (US)

President Obama announced plans to initiate a NAP in September 2014. The NAP process is at the drafting phase.

The US NAP aims to integrate responsible investment and business practices into corporate management decision-

³² Foreign Economic Relations Department of the Republic of the Union of Myanmar, *Myanmar* (February 2015) Business & Human Rights Resource Centre at <http://business-humanrights.org/en/myanmar-3?keywords=myanmar&filtertype=government>.

³³ *Ibid.*

³⁴ KOFF Newsletter No. 125, March 2014, p7, <http://www.ohchr.org/Documents/Issues/Business/NationalPlans/SwitzerlandNationalPlan.pdf>

making and ensure transparency and accountability in corporate conduct. It aims to provide clear expectations for the human rights and anti-corruption obligations of US companies in their global operations.³⁵

Four multi-stakeholder NAP consultations have been hosted around the US and feedback has been sought through written submissions and informal consultation. The US government has also stated an intention to run webinars and video conferences, through its embassies and consulates, in order to engage with advocates for the most vulnerable individuals and communities who may be impacted by the conduct of US companies abroad.

It is anticipated that the US NAP will be launched in 2016.

7. Recommendations for Process - Australian NAP

Based on our review of NAP development processes in other jurisdictions, ALHR recommends that the following criteria are met in Australia's NAP process:

- a. ensure **transparency** around the NAP process and information generated by it. This includes details of those conducting the NAP process (government departments and office holders);
- b. establish open **lines of communication** between government and participants in the development process;
- c. develop an **inclusive**, informed and participatory dialogue process via **multi-stakeholder consultation**, engagement and input. This should extend to representatives from business, the Australian Human Rights Commission, the Australian Government, NGOs, academia, trade unions and other industry bodies, civil society, rights-holders, impacted communities and victims of adverse corporate human rights impacts. This could occur via seminars, consultations, workshops, webinars, interviews or roundtable discussions;
- d. adopt a **human-rights based** approach;
- e. adopt an **evidence-based** approach: the process should involve a rigorous **National Baseline Assessment** (NBA) or formal legal review exercise³⁶ to identify **existing gaps in UNGP implementation** and

³⁵ US Department of State Bureau of Democracy, Human Rights, and Labor, *USA* (February 2015) Business & Human Rights Resource Centre <http://business-humanrights.org/en/usa>.

³⁶ As contemplated by The Office of the High Commissioner for Human Rights 'The Accountability and Remedy Project' draft Discussion paper for consultation 19-20 November 2015.

- establish the key areas to be included and prioritised in an ensuing NAP.³⁷ Civil society should be fully involved in this NBA process;
- f. develop clear, concise and agreed **language** and **terms of reference**;
 - g. establish and publish a **timeline** for implementation (including for NAP updates);
 - h. provide adequate **opportunity to review** and comment on consecutive draft NAP documents;
 - i. ensure **policy coherence**: the process needs to be transparent and consultative to ensure policy uniformity and coherence (the development process requires Government-wide and cross-departmental coordination, collaboration and participation to ensure a coherent NAP development process). The establishment of an inter-ministerial NAP working group is recommended;
 - j. allocate adequate **resources**: publish details of NAP budget and other resources to be allocated to cover costs of preparation, consultation and reporting; and
 - k. ensure **flexibility** and **accountability** via ongoing **monitoring, review and evaluation** of the impact of the NAP and its effectiveness in protecting human rights in Australia. Include concrete targets and timelines for provision of reports, consultations and other methods of tracking progress. Consider both long and short term NAP impact review mechanisms.

8. Recommendations for Content - Australian NAP

Based on our review of NAP content in other jurisdictions, ALHR recommends that the following criteria are met with respect to the content of an Australian NAP:

- a. include an unambiguous **statement** of commitment by the Australian Government to implementing the UNGPs. Include a statement that companies domiciled in Australia are expected to respect human rights (at home and overseas) and so are their subsidiary companies (wherever operating). Include a statement that Australian companies are expected to seek to prevent human rights abuses by other parties with which they are connected (including contractors, business partners, joint venture partners and supply chain entities);

³⁷ Noting Annex 4 (National Baseline Assessment Template), p88-145, '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' DIHR ICAR: <http://icar.ngo/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf>.

- b. include Australia's **national priorities** and areas for action (as identified by the NBA) and prioritise those areas that have greatest potential for human rights abuses. The priorities identified must be action-orientated and those responsible for carriage of the NAP and realisation of specific NAP commitments (ie: relevant government department) need to be identified. Action points should be unambiguous, time specific and measurable;
- c. identify Australia's existing **policies, legislation and regulation** that discharge the State's duty to protect human rights against abuse by business and are aimed at ensuring respect for human rights by business;
- d. reference **international human rights conventions** and treaties to which Australia is a signatory;
- e. **identify gaps** in domestic legislation that need addressing, or necessary amendments to existing legislation, to encourage corporate compliance with the UNGPs;
- f. include specific, **forward-looking policy commitments** (to establish and enforce laws and regulations to protect against corporate human rights abuses) and avoid referencing past initiatives. Set out **concrete steps** that the Australian Government plans to take in order to discharge its duty to protect against business-related human rights abuses. This should represent a mix of mandatory and voluntary, national and international measures;
- g. acknowledge the State's role in incentivising companies to **report** on human rights issues and in creating enhanced transparency regimes³⁸;
- h. ensure **comprehensive content**: an Australian NAP should be founded on and address the **full scope of the UNGPs**;
- i. address and protect the human rights of all members of society, particularly **vulnerable groups** and those facing discrimination (including children, women, persons with disabilities, indigenous Australians, LGBTI, migrant workers and older Australians);
- j. adequately address **Pillar III** of the UNGPs (access to **remedy** in cases where companies adversely impact human rights). Include an evaluation of Australia's judicial and non-judicial mechanisms and measures directed at providing remedy to victims. Include details of **barriers** to accessing justice.³⁹ Identify measures to effectively remove or reduce barriers (such as measures to assist financially disadvantaged claimants)⁴⁰;

³⁸ Noting current corporate disclosure requirements in the UK, US and EU (draft) relating to conflict minerals and modern slavery.

³⁹ These include financial, legal, practical and administrative barriers.

⁴⁰ Noting 'good practice indicators', Box 2, p21 in The Office of the High Commissioner for Human Rights 'The Accountability and Remedy Project' draft Discussion paper for consultation 19-20 November 2015, accessible here:

- k. reference **specific sectors**: the extractives sector will play a significant role in Australia's NAP due to its associated human rights risks and impact on indigenous Australians;
- l. include a reference to the **OECD Guidelines on Multinational Enterprises (2011)** and expectation of compliance with the same;
- m. take special steps to protect against corporate human rights abuses in **conflict-affected** areas. This may include governmental policies, guidance, support and training;
- n. include a statement explaining how UNGP-compliance will be achieved with respect to **State-owned and controlled enterprises**;
- o. address the issue of human rights protection in the Australian Government's **trade and investment activities** (and other areas in which governmental support, services or assistance is provided to business in overseas activities); and
- p. address human rights compliance in **public procurement** policies.

9. Conclusion

States have a duty to protect against the abuse of human rights by business enterprises and to provide effective access to remedy where such abuse occurs. States are required to take appropriate steps to prevent and redress abuse through policy and legislation.

In order to fulfil these obligations, nearly 40 States around the world have now either launched, or initiated, NAPs to implement the UNGPs. NAPs represent a common global approach to the development of business and human rights policy.

ALHR calls on the Australian Government to make a formal commitment to develop a NAP to implement the UNGPs in Australia.

ALHR further calls on the Australian Government to commence an inclusive, multi-stakeholder consultation process as the first step towards developing an Australian NAP.

10. Acknowledgements

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Annexure A - Existing NAPs

Note on approach:

The NAPs reviewed were assessed as follows:

- I. firstly, on the development process (including whether a baseline assessment was conducted, transparency of process, availability of budget information and the extent to which external stakeholders were consulted); and
- II. secondly, on the NAP content itself (including scope and priorities, extent to which forward-looking measures are included and details of any monitoring process).⁴¹

United Kingdom

Process

'Good Business: Implementing the UN Guiding Principles on Business and Human Rights' was launched by the UK government on 4 September 2013. The UK was the first country to publish its NAP.

The Human Rights and Democracy Department of the Foreign Office was responsible for drafting the NAP assisted by inter-ministerial working groups, comprising a broad range of government agencies. The mandate of these inter-ministerial working groups was to lead the development of the NAP.

A series of separate workshops were held, pre drafting, with interested non-governmental stakeholders, multinational companies, small and medium-sized businesses and civil society groups. Stakeholder input was sought at these workshops. International experts from other governments, inter-governmental organisations and civil society groups were also invited to participate. No further formal consultations with stakeholders were conducted.

Whilst a wide range of stakeholders were included in the initial consultations, there was a lack of consultation overall. Formal consultations only occurred once during the process and no draft document was published. This limited the groups that had an opportunity to comment and provide feedback on the draft NAP and excluded disempowered and at-risk stakeholders.

No national baseline assessment was conducted to evaluate the level of UNGP implementation and identify governance gaps. The absence of this information

⁴¹ Noting Annex 5 (NAP Checklist) to ICAR, *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* (June 2014), p149-153.

prevented the UK government from adequately tailoring the content of the NAP to its context.

The UK NAP is notable for containing a monitoring and review mechanism. It makes provision for a regular follow-up procedure requiring a report on progress to be included in the Annual Report on Human Rights and Democracy of the Foreign and Commonwealth Office. A NAP review process began in March 2015 and issue-specific workshops were held in June and July 2015. A revised NAP was anticipated in late 2015. To our knowledge, the revised NAP has yet to be released.

United Kingdom

Content

The UK NAP applies to all UK government departments and all businesses domiciled within the UK. The NAP is structured around the UNGPs' three pillars. Under each of these pillars, the NAP sets out actions already taken to support the implementation of the UNGPs and provides details of planned actions. The NAP states that the UK government is committed to support, motivate and incentivise UK businesses who operate both in the UK and abroad to respect human rights in their operations.

The NAP explicitly commits to the full scope of the UNGPs and references some thematic and sector-specific human rights issues (such as procurement and investment agreements). The NAP also includes information on implementation, monitoring and updating. It provides a range of future actions to be taken by the UK government and identifies the responsible government entities, acknowledging that there is much to be done before the UNGPs are fulfilled.

These future actions are ambiguous and lack specificity around implementation, including who, how and when. Whilst some measures are allocated to specific ministries, most are not. These details are important for establishing accountability and monitoring how effectively the NAP is being implemented.

Many of the future actions set out in the NAP are focused on voluntary initiatives (awareness-raising, training and research) rather than binding measures. For example, one of the future actions is to 'support dialogue between business people, parliamentarians and civil society on the implementation of the business and human rights agenda'.⁴² This is a vague, voluntary measure that provides no definition or guidance as to what form of 'support' is required, who is responsible for giving the 'support' or when it should be given.

In addition, there is a greater emphasis on past actions than on future steps to implement the UNGPs. There is insufficient emphasis on Pillar III of the UNGPs (access to remedy). The NAP does not consider an approach to addressing the

⁴² 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights', part 3.

circumstances of vulnerable and at-risk stakeholders. This is likely to be a direct consequence of the fact that these groups were not sufficiently involved in the development process.

We note that the UK NAP is currently being revised to address these inadequacies.

Netherlands

Process

The Netherlands government announced its '*National Action Plan on Business and Human Rights*'⁴³ on 10 December 2013. The NAP focuses on five main areas: an active role for the government; policy coherence; clarifying due diligence; transparency and reporting and scope of remedy.

The Ministry of Foreign Affairs was responsible for coordinating the process leading to the NAP. An inter-ministerial working group was formed in mid-2012 representing the Ministries of Economic Affairs, Finance, Security & Justice, and Social Affairs & Employment. The lead up to the creation of the NAP included an 'internal mapping' of relevant government policies, comparing them against the UNGPs, but no comprehensive national baseline assessment was conducted. In the NAP, an independent committee is charged with the future task of examining whether Dutch law adequately regulates Dutch companies with respect to CSR obligations.

As part of the NAP development process, stakeholder interviews were carried out with approximately 50 representatives of the Dutch business community, civil society organisations and other experts. These interviews were followed by three consultations organised by the Ministry of Foreign Affairs (and held with (i) representatives of civil society, (ii) members of the business community and (iii) 'implementing organisations').

However, there were no public consultations and the terms of reference and timeline for the NAP development process were not made public. The involvement of vulnerable stakeholders in the consultation process was not prioritised. Although no detailed analysis of the results of this consultative process is provided in the NAP, the general views of stakeholders are referenced.

Netherlands

Content

The Dutch NAP states that putting the UNGPs into practice is a priority for the Netherlands and that the aim of the NAP is to prevent companies from abusing

⁴³ Accessible here: <http://business-humanrights.org/sites/default/files/documents/netherlands-national-action-plan.pdf>

human rights either directly or within supply chains.⁴⁴ It gives information on existing policies and sets out areas for future action. The NAP addresses companies operating both nationally, and internationally, as well as the sectors in which the risk of human rights abuses is high.

The NAP provides an overview of current Dutch policy and laws aimed at preventing human rights abuses by the private sector. The NAP also refers to the integration of regional and international human rights standards within the Netherlands (for example, in trade and investment agreements).

Overall, the Dutch NAP focuses on UNGP Pillar II (the corporate responsibility to respect human rights) and lacks adequate emphasis on Pillars I and III. The NAP lacks detailed information on how its implementation will be reviewed and monitored. A number of the action items in the NAP lack specificity (for example, in relation to timelines) and there is a strong emphasis on training, raising awareness and risk assessment rather than on forward-looking action points relating to regulation and enhanced access to remedy. However, a notable initiative referenced in the NAP is the government's Sector Risk Analysis.⁴⁵ This involves identifying the sectors that present the greatest risk of adverse social impacts and putting in place (voluntary CSR) agreements with businesses in these sectors to address such risks.

The NAP does not set out budget details or specific timelines for many action items.

Italy

Process

In November 2013, the Scuola Superiore Sant'Anna (academic researchers) and the Italian Ministry of Economic Development submitted the findings of a baseline study on business and human rights in Italy (*'Business and human rights: The Italian case—a gap analysis of the regulatory framework and safeguard policies'*) to the Italian Parliament. The baseline study was also published online. The baseline study analysed the adequacy of Italy's legal framework against the UNGPs and relevant international and European law and practice. Topics covered by the baseline study include: children's rights; freedom of religion; gender discrimination; labour rights of irregular migrant workers; environmental protection and access to remedies under Pillar III of the UNGPs.

The *'Foundations of the Italian Action Plan on the United Nations Guiding Principles on Business and Human Rights'* was published online by the Italian government in March 2014.⁴⁶ It outlines existing policies and laws in Italy that impact on human

⁴⁴ Ibid p1.

⁴⁵ Ibid n43, p8.

⁴⁶ Available at:

<http://business-humanrights.org/media/documents/foundations-ungps-nap-italy.pdf>.

rights. It is generally considered to be Italy's draft NAP, but is more correctly characterised as a preliminary report akin to a baseline study from which the NAP will be developed.

The Ministry of Foreign Affairs led the drafting of the Foundations with input from nine Italian government ministries. Only the UN Global Compact network was invited to meetings regarding drafting of the Foundation document.⁴⁷ The same nine government agencies, coordinated by the Ministry of Foreign Affairs, are drafting the final NAP. They are assisted by ad hoc working-groups comprising non-government and business representatives.⁴⁸ The Italian government was working towards finalising its NAP by the end of 2015,⁴⁹ but it has not yet been released.

Italy

Content

The Foundations document was published in March 2014. It is divided into two sections relating to Pillars I and III of the UNGPs as well as final observations. The document covers the national legal framework and policies, yet there is little nexus between its scope, content and priorities and the Ruggie Framework. The Foundations document has been criticised for insufficiently taking the findings of the baseline study into account, for failing to address Pillar II of the UNGPs⁵⁰ and for its dominant focus on current protections in place to protect human rights in Italy.⁵¹

The introduction to the Foundations document notes the international labour and human rights treaties signed by Italy. The first section on Pillar I of the UNGPs outlines a wide range of existing Italian policies, initiatives and laws which have some impact on human rights including those relating to: the agricultural sector (with a focus on youth, women and immigrant employment, poverty reduction and corporate social responsibility); the environment and sustainable development; labour and equal

⁴⁷ Damiano de Felice and Andreas Graf 'The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights' (2015) 7 *Journal of Human Rights Practice* 40, p56.

⁴⁸ Government of Italy's response to the OCHR's '2015 UN Working Group survey on States as economic actors,' *Working Group surveys on the implementation of the Guiding Principles*, 13 November 2015, available at:

<http://www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx> .

⁴⁹ United Nations Human Rights Council, 'Report of the Working Group on the Universal Periodic Review: Italy' *Twenty-eighth session Agenda item 6, Universal Periodic Review*, UN Doc A/HRC/28/4 (10 December 2014), paragraph 10.

⁵⁰ 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*, (Universita` degli Studi di Roma Tor Vergata: 1 June 2014), p128 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>; *ibid* n47, p54.

⁵¹ Jena Martin and Karen Bravo, *The Business and Human Rights Landscape: Moving Forward, Looking Back* (Cambridge: 2015), p524.

opportunity (including children's rights); foreign direct investment and export credit; public procurement; freedom of religion and training for public officials (in anti-corruption and anti-discrimination).

The second section addresses Pillar III of the UNGPs and analyses judicial and non-judicial remedies available to victims of corporate human rights violations, as well as barriers to accessing them. There is consideration of the OECD Guidelines on Multinational Enterprises as a non-judicial remedy. The discussion on access to extraterritorial judicial remedies focuses on whether foreign enterprises are entitled to access Italian courts, not whether victims of corporate human rights abuses by companies overseas have access to remedies in Italian courts.

The Foundations document suggests that a final NAP, based on the UNGPs, will be developed in 2014 and that it will contain 'actions' and 'deliverables'. A range of issues are identified for consideration in public consultation including a model tender with a clause for compliance with human rights and the extension of the UNGPs to supply chains.⁵² It is unclear whether there has been general public consultation on these points.⁵³ No specific details are given about how these measures will be actioned and by whom. The Foundations document is insufficiently linked to the UNGPs, fails to include future measures and simply describes the current legislative framework. There is no information in the Foundations document about a future budget for implementing Italy's finalised NAP (or drafting process) or how the NAP's implementation will be reviewed.

Denmark

Process

The '*Danish National Action Plan – Implementation of the UN Guiding Principles on Business and Human Rights*' was published in March 2014. The Ministry of Business and Growth and the Ministry of Foreign Affairs were responsible for the development process. The Ministry of Employment, the Ministry of Justice, the Export Credit Agency and the Danish National Institute for Human Rights all contributed to the content of the NAP. The Danish Council on Corporate Social Responsibility (CSR) (which represents Danish businesses and financial organisations, NGOs, trade unions and local municipalities) was also involved and provided recommendations on the implementation of the three pillars of the UNGPs.

The development process lacked transparency. Limited information was provided publicly about the NAP's development or contents. The stakeholder consultation process would have benefited from being more extensive and from including at-risk groups. The NAP includes some information on how Denmark's current laws and

⁵² Ibid n 46, p79.

⁵³ Ibid n47,p56.

policies implement the UNGPs. However, no national baseline assessment was conducted.

Denmark

Content

The Danish NAP is structured around the three pillars of the UNGPs. It sets out the relevant principle(s), together with recommendations from the Danish Council for CSR and actions taken with respect to implementation. The section relating to Pillar I of the UNGPs also includes a list of forward-looking governmental commitments. Appendix 1 (State duty to protect) and 2 (access to remedy) to the NAP set out, by reference to each UNGP, the past, current and future initiatives that have contributed, or will contribute, to the implementation of Pillars I and III of the UNGPs. This structure is more comprehensive than other NAPs reviewed and is to be commended. The Danish NAP states that Denmark supports the UNWG in promoting the implementation of the UNGPs.⁵⁴

The NAP does not include details of follow-up or monitoring measures to ensure that planned action is implemented which reduces accountability. Also, no date is specified as to when the NAP will be updated or revised. As a result of vulnerable groups not being included in the development process, the NAP does not address the circumstances of these groups.

The Danish NAP places a greater focus on past actions of the Danish government in implementing the UNGPs and the NAP lacks forward-looking commitments. The future action points that are included are somewhat vague and do not include implementation dates. Only a few of the future action points have been allocated to specific ministries with most not stating the responsible ministry. Again, this reduces accountability. One of the more significant initiatives included is the creation of an inter-ministerial working group to consider the need for, and feasibility of, legislation with extraterritorial effect.⁵⁵ Again, information about this measure lacks detail.

Spain

Process

Spain published a draft NAP for the implementation of the UNGPs on 26 June 2014.⁵⁶ This remains subject to the approval of the Spanish Council of Ministers.

⁵⁴ 'Danish National Action Plan – Implementation of the UN Guiding Principles on Business and Human Rights' p6.

⁵⁵ Ibid p16, p24-25.

⁵⁶ Accessible here:

The Ministry of Foreign Affairs and Cooperation (and the Office of Human Rights within it) had carriage of the development of Spain's NAP, which has entailed an extensive consultation process. Commencing in December 2012, the Ministry of Foreign Affairs arranged a series of consultations and meetings on implementing the UNGPs with government administrations, business representatives, NGOs and civil society. The foreign ministry was assisted in this task by two external experts from the Spanish NGO 'Business and Human Rights'. The two experts (supported by the Office of Human Rights) developed a process for the creation of the NAP, including the appointment of academics from a range of sectors to act as advisers on the drafting of the NAP and the conduct of consultations. Stakeholders provided written comments prior to the publication of the first draft NAP in June 2013.

The consultation process was resumed in September 2013 following a poor reception to the first draft. After completion of the second round of consultations, a second draft NAP was published in November 2013. Further comment was sought from stakeholders, before the subsequent publication of the current draft NAP in June 2014.⁵⁷

Spain

Content

The NAP outlines the Spanish government's commitment to engaging with companies to ensure they respect human rights and implement the UNGPs. It provides background information on the UNGPs and measures relating to each of the UNGPs, including regulatory and tax-related measures as well as commercial incentives.⁵⁸ In the NAP, the Spanish government refers to its international, European and domestic human rights obligations. These include obligations in respect of the ILO Declaration on Fundamental Principles and Rights at Work and the OECD Guidelines on Multinational Enterprises.

The NAP provides for the creation of an inter-ministry Monitoring Committee. This body has responsibility for overseeing the implementation of the NAP and carrying out a number of measures set out in the NAP. The Monitoring Committee will use

<http://humanrightsinbusiness.eu/wp-content/uploads/2015/02/February-20-Preparatory-Materials.-Spanish-National-Action-Plan-ESP.pdf>.

⁵⁷ 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*, (Universita` degli Studi di Roma Tor Vergata: 1 June 2014), p115: <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>.

⁵⁸ Alvaro Amaya and Estela Casajuana, *Submission to the OCHR Working Group on the issue of Human Rights and transnational corporations and other business enterprises: Working Group's public consultation document on substantive elements to be included in a national action plan to implement the Guiding Principles* (1 September 2014), p4: <http://business-humanrights.org/fr/node/105285>.

experts from a wide range of disciplines (including academia, human rights, business, the public sector, trade unions and civil society) to support its work.

The Spanish NAP commits to the Monitoring Committee undertaking an initial baseline assessment within one year (of the NAP receiving approval) to identify hurdles to enforcing corporate responsibility for human rights. In this review, the Monitoring Committee will consider, among other things, the adequacy of judicial and non-judicial mechanisms to deal with corporate human rights issues. This includes a consideration of existing and potential non-judicial mediation and complaint processes for the investigation, enforcement and redress of grievances. Grievance mechanisms will be developed to deal with business-related human rights abuses in Spain and abroad. The Spanish NAP recommends extending extraterritorial jurisdiction for human rights abuses outside Spain.⁵⁹ The NAP provides for capacity building within diplomatic missions overseas, which will be used to receive complaints and issue information regarding appropriate conduct within the relevant country. The Monitoring Committee will also report on potential options for access to remedies for human rights violations committed by businesses, including civil liabilities, for failing to undertake due diligence to prevent abuses.

The NAP commits the government to promoting awareness about State and non-State mechanisms available for making complaints and identifying relevant legal aid resources to assist access to these mechanisms. The NAP also commits the government to communicating to the business sector (through campaigns and dialogue) the government's expectations regarding respect for human rights, particularly in relation to due diligence and vulnerable groups. The Spanish government also undertakes to encourage human rights education in schools and higher education (particularly in law and business) and in corporate training. The NAP provides for the Spanish OECD NCP to be strengthened. A commission of independent experts will be created to consider the NCP's functionality and it will be granted official status and appropriate resourcing. The Spanish government also commits to take action regarding the way in which its investment agencies operate. However the NAP does not consider State-run enterprises.

The NAP provides for a fairly thorough monitoring and reporting process. The Monitoring Committee is responsible for an annual assessment of the NAP's implementation. Each measure contained in the NAP will be tracked in a report with information regarding performance indicators, deadlines, tools and resources for its implementation and relevant government responsibilities in relation to the measure. The Ombudsman will also be invited to the Monitoring Committee's meetings regarding NAP implementation. The Monitoring Committee will report annually to a Parliamentary Committee on the status of implementation of the NAP. The NAP also

⁵⁹ Marta Bordignon and Giacomo Marta Cremonesi, *The UNGPs Third Pillar in the Italian Action Plan: an assessment of the existing NAPs and of the barriers to the Italian judicial system*, Human Rights International Consultancy (15 January 2016), p3: <http://business-humanrights.org/en/italy-contribution-to-natl-action-plan-recommends-ways-to-overcome-barriers-to-access-to-remedy-in-judicial-system>.

suggests that different stakeholders, including the Parliament, will be regularly consulted during the NAP's implementation.

A clear timeframe of three years from approval is set for review of implementation by the Monitoring Committee (and some individual tasks are to be completed within one year from approval). No definite budget for the NAP is provided.

Finland

Process

The 'National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights' was launched in October 2014. The Labour and Trade Department of the Ministry of Employment and Economy was the lead agency responsible for the Finnish NAP. An inter-ministerial working group assisted in the development process.

The working group prepared a background memorandum which was published. It examined the existing Finnish regulatory framework in the context of the UNGPs. However, the memorandum did not amount to a comprehensive baseline assessment. The Finnish government held two public consultations with stakeholders (one with civil society and the other with businesses) and written submissions were also sought.

Other than in respect of the memorandum, there was a lack of publicly available information about the NAP's development process and it has been criticised for lacking transparency.⁶⁰ There was also a failure to facilitate participation in the consultation process by a sufficiently wide range of stakeholders.

Finland

Content

The Finnish NAP proposes that Finland supports the UNGPs.⁶¹ It is organised around the three pillars of the UNGPs. The NAP proposes a number of follow-up measures to build a greater connection between business and human rights and to assist businesses in better protecting human rights. Key aims of the NAP are to conduct an investigation into and report on the application of Finnish legislation to international business activities, to provide guidance around corporate due diligence requirements (via roundtables and best practice sharing) and the application of social responsibility criteria in public procurement. The NAP references international

⁶⁰ ICAR, DIHR 'Assessments of Existing National Action Plans (NAPs) on Business and Human Rights' November 2015 Update, p18 available at: <http://icar.ngo/wp-content/uploads/2014/10/ICAR-ECCJ-Assessments-of-Existing-NAPs.pdf>.

⁶¹ 'National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights' p15.

and regional organisations and standards and addresses thematic human rights issues (including children's rights and extractive activities).

The NAP is notable for including details of a monitoring mechanism, stating that the Committee on Corporate Social Responsibility will monitor the NAP's overall implementation on an annual basis. The NAP also identifies the principal responsible entities assigned to specific follow-up measures and many action points have a target date for completion. Vulnerable groups (including indigenous peoples and children) are referenced and the NAP contains action points directed toward these groups.

Many of the future action points in the NAP do, however, lack detail and focus on voluntary rather than binding measures.

Lithuania **Process**

Lithuania's *'Action Plan on the Implementation of the United Nations Guiding Principles on Business and Human Rights'* was launched in February 2015. We note that there is no publicly available information (in English) about Lithuania's NAP development process, such as whether it involved public consultations or working groups. This has limited our review of Lithuania's NAP development process.

Lithuania **Content**

The NAP includes a summary of general actions (former, current and future) and measures taken by the Lithuanian government to implement the UNGPs.

The NAP states that Lithuania's objectives are: (i) ensuring the State's duty to protect; defend and respect human rights; (ii) promoting corporate responsibility and respect in the field of human rights and (iii) ensuring access to effective remedy. For the public sector, implementation of anti-corruption policy and research and measures relating to research and training on non-discrimination and equality are a key focus. For the private sector, the promotion and development of CSR in Lithuania is a priority. The NAP also includes information on the role of international organisations (such as the OECD), the treatment of vulnerable groups (including people with disabilities) and access to remedy through judicial reform (in relation to Pillar III). However, the judicial reforms proposed do not relate specifically to human rights abuses by businesses.

The NAP expresses an intention to review and improve current legislative processes by adding openness and transparency.⁶² However, this is not tied to business and human rights issues. The NAP is domestic in outlook and the question of whether remedies are available in multinational cases is not addressed.

The measures contained in the NAP are voluntary and vague with a focus on training and seminars, rather than forward-looking corporate regulation. The NAP is silent as to budget and does not set out a review mechanism for measuring the effectiveness of its impact or a timeline for its revision. The NAP does, however, specify the government ministry, or other institution, responsible for implementing different NAP action points. Overall the NAP lacks clarity and commitment to mandatory, forward-looking measures.

Sweden

Process

Sweden launched its 'Action Plan for Business and Human Rights' in August 2015. The NAP sets out the measures taken and planned under each of the three pillars of the UNGPs. It expresses an intention to translate the UNGPs into practical action.⁶³ No baseline assessment was conducted prior to the NAP development process. However, the NAP includes a planned measure to review Swedish legislation and to identify 'immediate or obvious'⁶⁴ gaps that need to be addressed in order to achieve UNGP implementation.

The NAP development process was led by the Ministry for Foreign Affairs. This process included seeking public comment on the draft (which was published online) and holding four public consultation meetings involving over 100 different companies, government agencies, trade unions, NGOs and other stakeholders. Unfortunately, only a few of the comments made by participating NGOs were addressed in the NAP. Moreover, there was no facilitation of the involvement of at-risk or disempowered stakeholders in the NAP consultation process. In particular, Sweden's indigenous Sami community was not represented, despite a recent case before Sweden's NCP relating to Sami rights.⁶⁵

⁶² 'Action Plan on the Implementation of the United Nations Guiding Principles on Business and Human Rights' p2.

⁶³ 'Action Plan for Business and Human Rights' p6 available at: <http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf>.

⁶⁴ Ibid p28.

⁶⁵ ICAR, DIHR 'Assessments of Existing National Action Plans (NAPs) on Business and Human Rights' November 2015 Update, p23 available at: <http://icar.ngo/wp-content/uploads/2014/10/ICAR-ECCJ-Assessments-of-Existing-NAPs.pdf>.

The Swedish government did not provide public terms of reference or a timeline for the NAP creation process. Only one of the 27 NAP measures has a definite timeline for implementation. However, there is a commitment to review implementation of the NAP in 2017. The NAP fails to outline monitoring and assessment mechanisms. Nor does the NAP identify which government body is responsible for implementing the majority of the measures proposed. No details of a NAP development budget are provided.

Sweden

Content

The NAP expresses an intention for Sweden to support Swedish businesses by transforming the UNGPs into concrete action and for Swedish businesses to respect human rights and comply with the UNGPs (and other relevant guidelines) both in Sweden and overseas. The NAP contains two Annexes - one relates to measures already taken, and the other to measures planned, by the Swedish government to implement the UNGPs.

The NAP does not include adequate concrete, specific and measurable action points for future State action. The focus of the NAP is on Pillar I and, to a lesser extent, Pillar III of the UNGPs. Unfortunately, some of the measures in the NAP are vague and only two of them relate specifically to corporate regulation. Some of the NAP measures do not relate directly to business and human rights (for example, those relating to judicial reform). The NAP contains a (vague) commitment to consider bolstering its NCP under the OCED Guidelines on Multinational Enterprises.

Norway

Process

Norway launched its Business and Human Rights: '*National Action Plan for Implementation of UN Guiding Principles*' in October 2015.

The Ministry of Foreign Affairs had main responsibility for coordinating and developing the NAP. All ministries were involved, particularly the Ministry of Trade, Industry and Fisheries, Ministry of Finance and Ministry of Justice. The business community and civil society organisations were invited to participate in the NAP development process, both via meetings and written submissions. The government engaged an external consultant to conduct a mapping and gap analysis of government involvement in business and human rights prior to developing the NAP.

Norway

Content

The NAP is structured around the three pillars of the UNGPs. For each UNGP, the NAP first highlights the relevant Norwegian legislation and/or references current business practices and then identifies improvement measures. Chapters 2 and 4 set out the measures that the Norwegian government has already taken, as well as those that it intends to take, to implement the UNGPs. The forward-looking action points lack specificity, have no completion date and relate to voluntary measures.

The NAP also sets out the expectations of the Norwegian government with respect to business enterprises (Chapter 3). It emphasises the responsibility of Norwegian companies to respect human rights wherever they operate and encourages them to incorporate the UNGPs (including an effective complaint mechanism) into their strategies, policies and operations. The measures outlined in the final section (Access to Remedy - Chapter 4) are vague and lack concrete action points or timelines.

The Norwegian government states an intention to establish an inter-ministerial working group, headed by the Ministry of Foreign Affairs, to undertake regular legislative reviews to ensure compliance with international developments, implementation of the NAP and policy coherence. No details are given about methods, timelines or a NAP review process.

No budgetary information regarding resources for implementing the NAP is provided.

Colombia

The Colombian NAP was launched in December 2015. Colombia is the first country in the Americas to publish its NAP. Plans to initiate the NAP process were announced in March 2015. This represents a very short timeframe within which to develop a NAP and raises questions over the adequacy of the process. The timeline for developing the NAP was made publicly available and an intention was expressed that its content would be informed by earlier guidelines (published in July 2014)⁶⁶ that were developed following multi-stakeholder consultations. As far as we are aware, there is no publicly available English translation of the NAP.

⁶⁶ Accessible here:

http://www.derechoshumanos.gov.co/Observatorio/Publicaciones/Documents/2014/140724-lineamientos-politica_web.pdf.

Commentators have noted that a lack of political will and capacity, as well as an environment of austerity and suspicion toward human rights, are likely to impede the implementation of Colombia's NAP.⁶⁷

As a precursor to the NAP, Sustentia Innovación Social and DIS Foundation released the '*Guide to the UNGPs*' in November 2013. This guide was produced following an earlier joint project, '*Training and Dialogue on the Framework of Business and Human Rights in Colombia—2012-2013*'. In total, 120 individuals representing business, public administrations, civil society organisations, academia and international agencies participated in this project, which was carried out during three consultations in Cali, Bogotá, and Medellín.⁶⁸

⁶⁷ Paloma Muñoz Quick, '*Why implementing the UN Guiding Principles is an uphill battle*', 27 July 2015, accessible here: <https://bhramericasblog.wordpress.com/2015/07/27/colombia-why-implementing-the-un-guiding-principles-is-an-uphill-battle/>.

⁶⁸ '*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*' DIHR ICAR, p66 available at <http://icar.ngo/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf>.

Annexure B - NAPS in Progress

Note on approach:

NAPs currently in progress are arranged by reference to their phase of development, from early advocacy, through to consultation or drafting.

To the extent practicable (given the stage of NAP development), the NAPs in progress were assessed as follows:

- I. firstly, on the development process (including whether a baseline assessment was conducted, transparency of process, availability of budget information and the extent to which external stakeholders were consulted); and
- II. secondly, on the content of the (draft) NAP.⁶⁹

Early Advocacy

Myanmar

In February 2015, Professor Aung Tun Thet, the Economic Advisor to the President of Myanmar, announced Myanmar's intention to develop a NAP to implement the UNGPs.⁷⁰ The development of the Myanmar NAP is still in its early stages.

In October 2015, members of the Myanmar National Human Rights Commission (MNHRC) attended a three-day training session on business and human rights and the UNGPs conducted by the Danish Institute for Human Rights and the Myanmar Centre for Responsible Business. The role of a National Human Rights Institution in relation to business and human rights was also examined.

Scope, content and priorities

Certain business and human rights issues have been identified as being priority issues that Myanmar government has taken steps to address since the UNGPs were endorsed.⁷¹ These include health (including environmental and workplace health and safety), forced labour and trafficking, housing, children (including child labour)

⁶⁹ Noting Annex 5 (NAP Checklist) to ICAR, *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* (June 2014), p149-153.

⁷⁰ ASEAN Next-Gen CSR Forum, *Business & Human Rights agenda in ASEAN takes a leap forward* (4 February 2015) ASEAN CSR Network <<http://asean-csr-network.org/c/news-a-resources/csr-news-from-around-asean/203-asean-next-gen-csr-forum>>.

⁷¹ Foreign Economic Relations Department of the Republic of the Union of Myanmar, *Myanmar (February 2015) Business & Human Rights Resource Centre* <<http://business-humanrights.org/en/myanmar-3?keywords=myanmar&filtertype=government>>.

and migrant workers. The Foreign Economic Relations Department of Myanmar (FERD) has stated that the government has also taken action on matters involving State finance, such as export credit agencies, foreign government loans or guarantees, company reporting requirements on human rights and investment and trade treaties.⁷²

Stakeholder consultation

We are not aware of any formal stakeholder consultations on a NAP.

Resources

FERD has stated that a lack of resources for enforcement, monitoring and prosecution, as well as a lack of understanding or awareness of business and human rights in government are significant impediments to the government's ability to take action on business and human rights.⁷³

Drafting Stage

Malaysia

In March 2015, the Malaysian government welcomed the '*Strategic Framework for a National Action Plan on Business and Human Rights*' (Framework)⁷⁴. The Framework was developed by SUHAKAM, the National Human Rights Commission of Malaysia (Commission), in collaboration with the UN Country Team in Malaysia. The Framework aims to provide a structure for a Malaysian NAP and to guide the implementation of the UNGPs by State and non-State actors in Malaysia. It serves as a roadmap to identifying the steps that must be taken, and the stakeholders that should be included, in the NAP development process.

Scope, content and priorities

Significant business and human rights issues in Malaysia include: work conditions; non-discrimination; exploitation of migrant workers; environmental and social impacts of hydropower and other development projects on indigenous peoples;

⁷² Business & Human Rights Resource Centre (BHRRRC), *Action on business & human rights: Where are we now? Key findings from our Action Platforms* (2015) 4 <http://business-humanrights.org/sites/default/files/Action_Platform_Final.pdf>.

⁷³ Ibid.

⁷⁴ Human Rights Commission of Malaysia, *Strategic Framework on a National Action Plan on Business and Human Rights for Malaysia* (March 2015) <<http://business-humanrights.org/sites/default/files/documents/Malaysia-Strategic-Framework.pdf>>.

human rights risks and challenges posed by the plantations sector; sexual harassment in the workplace; gender discrimination in private sector wages and the low rate of employment of persons with disabilities.⁷⁵ The Commission recommends that the NAP prioritises actions that address these challenges.

Stakeholder consultation

Business groups, civil society and government agencies were consulted in the preparation of the Framework.

Transparency

The Framework calls on the Malaysian government to ensure transparency in the development of the NAP by publicly disclosing research findings, stakeholder submissions, outcomes of stakeholder consultations and information relating to the progress of implementation.

Accountability

The office of YB Senator Datuk Paul Low Seng Kuan, Minister in the Prime Minister's Department responsible for promoting governance and integrity, will lead the development of the Malaysian NAP.

Resources

The Commission recommended that the government allocates adequate resources for the NAP process from the outset. It also suggested that businesses and non-governmental initiatives may be willing to contribute resources to the NAP process and support its implementation. Further details of the proposed NAP development budget are not publicly available.

Drafting Stage

United States

On 24 September 2014, President Obama announced plans to develop a US 'National Action Plan on Responsible Business Conduct' which aims "to promote and incentivize responsible business conduct, including with respect to transparency and anticorruption, consistent with the UN Guiding Principles on Business and Human

⁷⁵ Ibid n74, p3.

Rights and the OECD Guidelines on Multinational Enterprises".⁷⁶ The initial deadline for releasing the NAP was December 2015. Commentators have noted that it is likely that the NAP will be released in late 2016.⁷⁷

The US NAP process has been led by the White House and has a 'whole-of-government' approach. The approach involves collaboration between numerous US agencies including White House offices, the Departments of Agriculture, Commerce, Labor, State, Homeland Security Treasury, the General Services Administration, the Office of the US Trade Representative, US Agency for International Development, the Millennium Challenge Corporation, the Overseas Private Investment Corporation and Export-Import Bank. This inter-agency approach is a significant feature of the US NAP process.

Scope, content and priorities

The US NAP on Responsible Business Conduct is to be distinguished from NAPs for Business and Human Rights. The US Department of State has been careful to avoid drawing a sharp distinction between the features of 'responsible business conduct' and those of 'business and human rights'. However, the scope of the US NAP can be distinguished from many existing NAPs in that it also encompasses the anti-corruption agenda and extends beyond a human rights framework.

It is intended that the US NAP will set clear expectations for US companies in their global operations, facilitate internal government communication and coordination and assist in creating a rights-respecting environment for businesses operating abroad.⁷⁸ The Department of State has acknowledged that, in the process of promoting responsible business conduct, it may come across issues that may be best addressed through legislation. Top priority issues will be determined through the NAP development process.

⁷⁶ Business & Human Rights Resource Centre (BHRRRC), *US Govt. holds final consultation for National Action Plan on business & human rights – submissions & commentary* <<http://business-humanrights.org/en/us-govt-holds-final-consultation-for-national-action-plan-on-business-human-rights-submissions-commentary>>. See White House, *Fact Sheet: The US Global Anticorruption Agenda* (24 September 2014) <<http://www.whitehouse.gov/the-press-office/2014/09/24/fact-sheet-us-global-anticorruption-agenda>>; Letter from Keith M. Harper to Michael K. Addo, 31 August 2015. <<http://www.ohchr.org/Documents/Issues/Business/2015Survey/USA.pdf>>.

⁷⁷ Ariel Meyerstein, UN Global Compact Webinar 'Key trends in business and human rights for 2016', 10 February 2016.

⁷⁸ US Department of State Bureau of Democracy, Human Rights, and Labor, *USA* (February 2015) Business & Human Rights Resource Centre <<http://business-humanrights.org/en/usa>>.

National baseline assessment

The US government does not plan to conduct an NBA per se:

"When considering whether to create an NBA, a number of issues arise. First is the fact that the NBA model, at least as proposed by some, is focused on the UN Guiding Principles. While the Guiding Principles will be a core part of our NAP, our aperture is wider. And since our NAP is broader than the Guiding Principles, it would take a significant amount of time that would be required to conduct a comprehensive NBA that covers so many issues. None of this is to say that we cannot or will not do some form of structured gap analysis."⁷⁹

Other entities have conducted business and human rights assessments of the US legislative context. The International Corporate Accountability Roundtable (ICAR) conducted a 'shadow' NBA by reference to Pillar I of the UNGPs. The shadow NBA was published in March 2015. It identifies protection and enforcement gaps and provides 110 recommendations for the US government to consider in developing its NAP.⁸⁰ ICAR has also reviewed the US Federal Acquisition Regulation to identify gaps at each stage of procurement, note effective policies and identify best practices.

In a follow-up submission to the US government in September 2015, ICAR provided further guidance for establishing human rights protections in US federal procurement policy, which was recently amended to address trafficking. The submission outlines how the US NAP could engage in a process of reform to expand the procurement policy's current scope of protection beyond trafficking and forced labour to include child labour, discrimination, illegal wages and hours, unsafe working conditions and the denial of fundamental freedoms.

Stakeholder consultation

The US NAP development process has involved four multi-stakeholder consultations hosted around the US and feedback through written submissions and informal consultation. It has involved collaboration with State bodies, civil society organisations, business associations, labour unions, academic experts, international organisations and affected communities. The final consultation was held in April 2015.

⁷⁹ See [humanrights.gov](http://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/) website at: <http://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/>.

⁸⁰ The full text with recommendations is available at: <http://accountabilityroundtable.org/wp-content/uploads/2015/03/ICAR-Shadow-U.S.-NBA-Pillar-I.pdf>.

Drafting Stage

Germany

The German Federal Government is presently involved in developing its NAP through the Task Force on Business and Human Rights at the Federal Foreign Office. It has been a supporter of the research and consultation process under UN Special Representative John Ruggie. It aims to adopt the NAP in Federal Cabinet in 2016.⁸¹

Scope, content and priorities

Germany's NAP is intended to cover all of the UNGPs. The German government would like to build a NAP that:

- is supported by all participants;
- allows all stakeholders to participate; and
- is implemented in the first legislative term (2016).

The scope of the German NAP has been outlined by the German Foreign Minister, Frank-Walter Steinmeier:

"Not only governments, but also companies, must take responsibility for human rights in their global business activities. What is profitable for some should not harm anyone else. We intend to create a framework for this with the National Action Plan for Business and Human Rights. Our aim is that we all, the Federal Government as well as civil society, academia and enterprises, critically examine our behaviour and become active when we identify areas in need of improvement."⁸²

National baseline assessment

Germany's NBA which focuses on assessing existing national mechanisms for protecting human rights and business, and targeting areas for reform, was presented and released on 6 May 2015. The NBA forms a key part of the broader stakeholder discussions and procedures for developing the German NAP.

On presentation of the NBA, various stakeholders were involved in a series of workshops to address the specific steps to be taken to implement the UNGPs. The results of the workshop process were to be collected in December 2015, with a view

⁸¹ Federal Foreign Office website:

http://www.auswaertigesamt.de/EN/Aussenpolitik/Aussenwirtschaft/Wirtschaft-und-Menschenrechte/Wirtschaft-und-Menschenrechte_node.html.

⁸² Ibid.

to publishing the first draft of the NAP in March 2016.⁸³ Currently, Germany's NBA is only available in German.⁸⁴

Stakeholder consultation

Stakeholder consultation is a key component of Germany's NAP process. Since the NAP process was initiated on 6 November 2014, there has been "broad-based dialogues with all sections" of German society. It has included politicians, the business community, trade unions, civil society associations and academia. The aim is to "achieve the broadest possible support from society for the Federal Government's national action plan" through a two year process which, it is hoped, will provide sufficient time for all stakeholders to engage in the dialogue process.⁸⁵

The NAP also encourages civil society to take part in the dialogue process on social media by using the hashtag #NAPWiMr.

The generous overall timeline for the NAP is aimed at maximising stakeholder consultation:

- **November 2014:** opening conference;
- **by April 2015:** drafting of the NBA;
- **May 2015:** conference – presentation of the NBA;
- **by November 2015:** holding of workshops on selected fields of action;
- **early December 2015:** conference – putting the results together;
- **March 2016:** presentation of the draft NAP; and
- **(European) spring 2016:** discussion in the Cabinet and approval of the NAP by the German government.⁸⁶

Transparency

The development of Germany's NAP aims to be transparent, inclusive and participatory and to include all relevant sections of German society. The NBA is also available online (although there is no official English translation available).

⁸³ <http://business-humanrights.org/en/germany-german-institute-for-human-rights-presents-baseline-assessment-for-natl-action-plan-on-business-human-rights>.

⁸⁴ Accessible here:

http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/National_Baseline_Assessment_Umsetzung_der_UNLeitprinzipien_fuer_Wirtschaft_und_Menschenrechte.pdf.

⁸⁵ Ibid n81.

⁸⁶ *Suggested Process for a NAP in Germany*, p4, accessible here:

http://www.auswaertigesamt.de/cae/servlet/contentblob/706642/publicationFile/205792/150506_NAP-Prozess-Umsetzung.pdf.

Whilst led by the Foreign office, the Federal Ministry of Labour and Social Affairs, the Federal Ministry for Economic Cooperation and Development, the Federal Ministry of Justice and Consumer Protection, the Federal Environment Ministry and the Federal Economic affairs Ministry are also involved in the development of the NAP.⁸⁷

Resources

We are not aware of publicly available information on the NAP budget. The comprehensive nature of the German NAP experience reflects the importance attached to corporate accountability issues by the German government and a desire to achieve an effective outcome. The process has been well planned and thoroughly conducted via an extensive series of conferences, workshops, assessments and discussions.

Drafting Stage

Ireland

The NAP development process is well underway in Ireland. A 'Working Outline of Ireland's National Plan on Business and Human Rights 2016-2019' (Working Outline) was released on 10 December 2015.⁸⁸ This is essentially a draft of Ireland's proposed NAP. Submissions on the outline closed in January 2016.

Scope, content and priorities

The ultimate objective of the NAP is to "inform public and private policy making in relation to the impact of business activities on human rights."⁸⁹ Ireland's business and human rights priorities are consistent with the three pillars of the UNGPs:

- Pillar I - the State duty to protect human rights;
- Pillar II - the corporate responsibility to respect human rights; and
- Pillar III - access to remedy.

The NAP serves two major purposes:

- to set out the current state of play in Ireland in relation to actions which can already assist in the implementation of the UNGPs; and

⁸⁷ Ibid n81.

⁸⁸ 'Working Outline of Ireland's National Plan on Business and Human Rights (2016-2019)', accessible here: <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/humanrights/Working-Outline-of-Irelands-National-Plan-on-Business-and-Human-Rights-2016---2019.pdf>

⁸⁹ Ibid p4.

- to set out actions which can be taken over a 2/3 year period in order to further implement the UNGPs.

More broadly, the scope of the NAP is guided by a series of principles, which are set out below:

- to build upon Ireland's reputation in the promotion and protection of human rights;
- the first step on the road to implementing the UNGPs as informed by recommendations of international human rights bodies, the International Labour Organisation (ILO), the European Union and the Council of Europe;
- developing a plan focused heavily on engagement with stakeholders, including business enterprises, civil society, government departments and international partners;
- promoting an understanding of how addressing human rights risks and impacts can help build business success and contribute to sustainable development;
- aiming to develop a NAP that is pragmatic and practicable;
- building on best practice and existing initiatives in the field of business and human rights, particularly through building on and encouraging the use of existing national and transnational initiatives and industry programmes, such as the Business Working Responsibly Mark, the Global Reporting Initiative and the UN Global Compact; and
- encouraging and providing space for companies to meet their responsibility to respect human rights above and beyond legal requirements.⁹⁰

The draft NAP contains specific, forward-looking action points for State measures. Its main focus is on Pillar I of the UNGPs.

National baseline assessment

The NAP includes a section that assesses the current legislative and regulatory environment in Ireland in respect of business and human rights. This focuses on different existing protections under Irish legislation across the following sectors, identifying several action points to address current inadequacies:

- workers' rights;
- anti-corruption;
- equality;
- anti-trafficking;

⁹⁰ Ibid n88, p5.

- data protection and privacy online;
- public health;
- occupational health and safety;
- environment;
- extraction industries;
- non-financial reporting;
- military technology and equipment;
- humanitarian law; and
- private military and security companies.

As a follow up to the NAP, it is also intended that a comprehensive baseline evaluation of Ireland's legislative and regulatory framework will be conducted to identify areas for improvement. This will be provided to the Business and Human Rights Implementation Group which will have responsibility for reviewing implementation of the NAP. This group will use the baseline assessment and work towards "identifying the size, nature and context of operations and severity of risks applicable in the Irish business context to encourage the relevant business sectors and operations to develop human rights due diligence policies."⁹¹

Stakeholder consultation

Stakeholder consultation is a key feature of the development of Ireland's NAP. The Human Rights Unit of Ireland's Department of Foreign Affairs and Trade worked in consultation with other government departments, State agencies, businesses and broader civil society to develop the NAP. As the Working Outline states, the "wide consultation undertaken by the Government has enabled the Plan to reflect the experience of stakeholders and to present action points that are based on best practice."⁹²

Additionally, the identification of 'Action Points', or areas for improvement, will assist the government in engaging with different stakeholders going forward. This is why the NAP is labelled as a 'Multi-Stakeholder Process' that is both progressive and inclusive.

Below are some of the consultations that have taken place in developing the NAP:

- Department of Foreign Affairs and Trade NGO Forum was held on Human Rights on 7 November 2014 focusing on business and human rights;

⁹¹ Ibid n88, p8.

⁹² Ibid n88, p4.

- an inter-departmental working group on business and human rights was established in October 2014;
- Ireland's National Plan on Corporate Social Responsibility – Good for Business, Good for the Community was published in 2014;
- Corporate Social Responsibility (CSR) Stakeholder Forum was established to drive the National CSR Plan's objectives;
- a workshop for business enterprises on the UNGPs and the NAP was held on 13 February 2015; and
- Ireland is continuing to participate in the annual UN Forum on Business and Human Rights.

Transparency

The development of Ireland's NAP has been a very transparent process and one which has involved active consultation with the broader community. The Working Outline was made publicly available on the Department of Foreign Affairs and Trade's website and parties were invited to make submissions both prior to, and following, the release of the Working Outline.

Civil society, business and individual submissions on the development of the NAP can be found at the following website: <https://www.dfa.ie/our-role-policies/international-priorities/human-rights/human-rights-in-ireland/national-plan-on-business-and-human-rights/>

Accountability

The development of Ireland's NAP was spearheaded by the Human Rights Unit of the Department of Foreign Affairs and Trade. However, this took place in close consultation with other government departments, State agencies, businesses and civil society. An inter-departmental working group on business and human rights was also created to ensure policy coherence. As highlighted in the Working Plan, "government-wide participation also recognises the various ways the State interacts with business enterprises and assists in identifying responsibility amongst departments for different elements of the UNGPs."⁹³

Resources

We are not aware of publicly available information on the Irish NAP budget.

⁹³ Ibid n88.

Drafting Stage

Switzerland

Switzerland is currently in the process of developing its NAP and has engaged in a baseline study on the business and human rights framework in Switzerland. A finalised NAP was expected in 2015.

Scope, content and priorities

Switzerland's NAP is based on a recommendation by a postulate issued by Alec von Graffenried of the Swiss National Council that the UNGPs be implemented in Switzerland. Following the lead of other European countries, the development of the Swiss NAP is spearheaded by both the Federal Department of Foreign Affairs (FDFA) and the State Secretariat for Economic Affairs (SECO). The NAP process includes:

- internal administrative analysis of the current frameworks in Switzerland; and
- consultation with non-governmental stakeholders.⁹⁴

It is thought that the focus of the Swiss NAP will be on Pillar I of the UNGPs (including governmental measures to provide protection against human rights violations occurring abroad) and Pillar III (the joint responsibility of States and businesses to ensure access to remedy for victims).⁹⁵

National baseline assessment

A baseline study on existing business and human rights frameworks in Switzerland was conducted by the Swiss Centre of Expertise in Human Rights (SCHR) and was intended to provide a 'snapshot' of the current legal framework.⁹⁶

It focused on the State's duties in respect of business and human rights, serving as a mapping of the current legal status quo and, consequently, reflects the approach encouraged by the UN Working Group on Business and Human Rights.⁹⁷

⁹⁴ KOFF Newsletter No. 125, March 2014, p3:

<http://www.ohchr.org/Documents/Issues/Business/NationalPlans/SwitzerlandNationalPlan.pdf>

⁹⁵ Ibid p3.

⁹⁶ Swiss Centre of Expertise in Human Rights (SCHR) *Human Rights Implementation in Switzerland: A Baseline Study on the Business and Human Rights Situation in Switzerland (2014)* accessible here:

<http://www.ohchr.org/Documents/Issues/Business/NationalPlans/HRAndBusinessBaselineSwitzerland.pdf>.

⁹⁷ Additional information on the UN Working Group on the issue of human rights and transnational corporations and other business enterprises at:

<http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>.

In particular, the baseline assessment covers the following areas:

- Switzerland's duty to protect against human rights abuses;
- remedies in cases of human rights abuses; and
- sensitive areas of the labour market in respect of human rights.

Stakeholder consultation

The development of Switzerland's NAP has involved stakeholder consultation with representatives of civil society, companies and academia. As part of its Business & Peace programme, "swisspeace" was commissioned by the FDFA and SECO to carry out a consultation process involving stakeholders from business, civil society and academia. This consultation process made an "extremely wide range of options available to the Federal Government for taking action" and enabled capture of "a nuanced view of the differing expectations stakeholders have of the NAP, which are far less contradictory than the public debate would suggest."⁹⁸

The stakeholder consultations resulted in a comprehensive set of recommendations that encompass:

- providing information and support for companies;
- requirements for companies which benefit from State support or enter into business relationships with the State;
- legally binding measures for reporting on or requiring due diligence;
- corporate responsibility in State-controlled companies; and
- measures for ensuring judicial and non-judicial remedy.

Transparency

The Swiss NAP experience has attracted criticism for lack of transparency. The swisspeace report and baseline study are both available online. However, the swisspeace report has criticised the NAP process, stating that, whilst various stakeholder consultations were carried out and a mapping of the existing legal situation was conducted by the Federal Council, the mapping document has remained a purely internal administrative instrument, despite calls to have it published.⁹⁹ It is unclear when the NAP will be adopted.

⁹⁸ Ibid n94.

⁹⁹ KOFF Newsletter No. 125, March 2014, p7.

Accountability

The development of Switzerland's NAP was initiated by the Swiss National Council and subsequently taken up by the Swiss Federal Government. FDFA and SECO are the arms of the Federal Government that are responsible for developing the NAP.¹⁰⁰

Resources

There is no specific reference to the funding received for the broader NAP process. However, in the baseline study, which was conducted by the SCHR, it is noted that:

"SCHR is financed with a basic contribution by the Federal Department of Foreign Affairs (FDFA) and the Federal Department of justice (FDJP). Moreover, the SCHR is supported by mandates from public authorities, NGOs and private businesses, as well as the resources of the network institutions. This Study on Human Rights Implementation in Switzerland is based on the SCHR's own initiative, and the network partners financed its publication. At the end of the pilot phase in 2015, the Swiss Federal Council will decide on the future of the SCHR, and consider whether the Centre should be converted into an independent human rights institution."¹⁰¹

¹⁰⁰ Ibid p3.

¹⁰¹ Ibid n96.