



Open Public Consultation on Substantive Elements to be Included in Guidance on National Action Plans to Implement the UN Guiding Principles on Business and Human Rights

Submission to the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises

1 September 2014

Dear Members of the UN Working Group,

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

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

This submission offers the perspectives of ICAR and DIHR—with the support of the [Corporate Responsibility Coalition \(CORE\)](#), the [Centre for Research on Multinational Corporations \(SOMO\)](#), and the [European Coalition for Corporate Justice \(ECCJ\)](#)—on the open public consultation document released by the UN Working Group, entitled [*Practical and Substantive Considerations in the Development and Enactment of a National Action Plan to Implement the UN Guiding Principles on Business and Human Rights*](#).

ICAR and DIHR strongly support the UN Working Group's aim to develop guidance on National Action Plans (NAPs) to implement the UN Guiding Principles on Business and Human Rights (UNGPs). Such guidance has the potential to serve as a valuable resource for governments and other stakeholders in working towards the achievement of full respect for human rights in the business sector, in each State's respective national context.

Several States have released final or draft NAPs to implement the UNGPs in the past year. However, to date, the vast majority of States have not yet publically committed to taking this important step toward UNGPs implementation. Providing guidance for States can help to widen the net of those committed to developing, implementing, and reviewing NAPs across geographic contexts.

For this reason, since August 2013, ICAR and DIHR, with the support of numerous partner organizations across the African, Asia-Pacific, European, Latin American, and North American regions, have jointly undertaken a project to develop guidance and tools on NAPs.¹ This project's principal output to date is the ICAR-DIHR report, entitled [*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 \(NAPs Toolkit\)*](#), which was published in June this year.

The ICAR-DIHR NAPs Toolkit is presented to the UN Working Group as part of this submission. Its conclusions and recommendations are based on desk research and consultations with representatives of governments, civil society, business, investors, academia, national human rights institutions (NHRIs), and regional and international organizations, including Members of the UN Working Group and its Secretariat. Approximately 280 experts and practitioners contributed to the report's findings.

The NAPs Toolkit aims to provide guidance and the first building blocks of a common global framework of reference for the preparation and evaluation of NAPs. The ICAR-DIHR NAPs Toolkit is already being used and referred to by governments, NHRIs, and civil society organizations across a range of jurisdictions, including in Europe, the Americas, and Africa.²

Based on the conclusions of the NAPs Toolkit and our global program of consultation with stakeholders, ICAR and DIHR offer the following responses to the questions included in the UN Working Group's consultation document.

1. What substantive elements should be addressed in a national action plan?

A NAP's specific content must respond to a State's own context, particularly in terms of the profile of actual and potential business-related human rights abuses in and connected to each State's jurisdiction; the State's existing constitutional, legal, policy, and institutional frameworks; and relevant economic, social, and cultural factors. Moreover, the primary objective of each NAP should be to realize concrete improvements in the protection of actual or potential victims of business-related human rights abuses.

Accordingly, which substantive matters are addressed and prioritized by a NAP must follow from a wide-ranging and systematic assessment, in the form of a National Baseline Assessment (NBA) or other comparable type of mapping and gap analysis, as well as an inclusive and participatory national dialogue process that is based on the UNGPs and other relevant business and human rights standards. On this basis, the specific substantive elements to include in a NAP should then be determined by each State individually.

It is therefore our view that the UN Working Group's guidance should not seek to identify a set of substantive "essential elements" or checklist of items that every State must include in its NAP. This approach, in our view, could jeopardize the relevance of the UN Working Group's guidance across all

¹ For an overview of the ICAR-DIHR NAPs Project and links to the NAPs Toolkit, the Project's concept note, summaries of each of the Project's regional dialogues, and copies of final and draft versions of existing NAPs, see the NAPs Project webpage, hosted by the Business & Human Rights Resource Centre (BHRRC), *available at* <http://www.business-humanrights.org/Documents/icar-dihr-naps-project>.

² For example, stakeholders in Chile, Colombia, Ghana, Ireland, Mozambique, Scotland, and the United States, as well as civil society coalitions across the European and North American regions, have already begun using and referring to the NAPs Toolkit.

States, given their diverse situations. For example, countries that are large purchasers of goods and services have a large footprint and potential impact on the market through their procurement activities. In such countries, public procurement may be a key area to target for UNGPs implementation. For others, by contrast, there may be valid reasons in the short-term to concentrate efforts elsewhere, such as where public purchasing budgets are small or where purchasing systems are less formalized.

Accordingly, we recommend that the UN Working Group's guidance should address:

- i. The *process* by which governments, in conjunction with stakeholders, develop their NAPs, with the aim of ensuring that this is inclusive, transparent, and human rights-based while simultaneously being built on robust analysis of law, policy, and current practices and abuses; and
- ii. The parameters for National Baseline Assessments (NBAs), in relation to the various substantive issues addressed by the UNGPs.

The ICAR-DIHR NAPs Toolkit provides tools and guidance in relation to both of these elements.

Adopting this approach, we suggest, will provide States with the practical tools they need to make a robust assessment of the extent to which they currently meet UNGP requirements in different substantive areas. From this, States can then make informed decisions about what substantive matters need to be included in their NAP at a given point in time and in response to their evolving contexts.

2. Amongst those elements, which have the greatest potential to prevent, mitigate, and redress adverse business-related human rights impacts?

The National Baseline Assessment (NBA) Template included in the ICAR-DIHR NAPs Toolkit provides indicators for each of the State-focused UNGPs under Pillars I and III. These indicators aim to support governments, or other stakeholders, in assessing the current level of a State's implementation across the UNGPs.

As outlined above, it is our view that it should be left to each State to determine the specific substantive elements to be prioritized in the short term and included in a NAP, based on a comprehensive assessment of the State's current implementation of the full scope of the UNGPs, such as that provided by the NBA Template.

We would therefore recommend that, if the UN Working Group wishes to select certain substantive elements to highlight in its guidance, it should clearly indicate that *these elements need to be considered during the NBA process, and whether or not they are to be ultimately included in the NAP is a decision to be taken by the State and informed by a full NBA process and stakeholder inputs.*

3. What are concrete examples of good practice concerning the substantive elements identified?

In line with our comments and recommendations above, we here consider several examples of good practice with reference to NAPs processes, rather than their content.

To date, a number of States have undertaken NAPs processes that resemble, to varying extents, that which is recommended in the ICAR-DIHR NAPs Toolkit:

- France: The French government sought an independent opinion from the French NHRI on matters to be addressed by a French NAP;
- Italy: The Italian government released a document, entitled *The Foundations of the Italian Action Plan on the United Nations Guiding Principles on Business and Human Rights*, outlining existing policies and remaining protection gaps at the national level that are relevant to Italy's implementation of Pillars I and III of the UNGPs;
- Mozambique: The Mozambique government has commissioned a civil society group to complete a National Baseline Assessment (NBA) of the country's current UNGPs implementation, which is scheduled for release in the coming months;
- The Netherlands, Norway, and Spain: The governments of the Netherlands and Spain individually engaged consultants or experts to solicit inputs from stakeholders, such as through interviews and seminars. Moreover, Norway commissioned an expert to complete a mapping and gap analysis of current UNGPs implementation, in preparation for its NAP;
- Switzerland: The Swiss Federal Council published a comparative law study and report on business and human rights issues, following a request by the Swiss parliament and advocacy for such by Swiss NGOs. The Swiss government also engaged a consultant to review the processes relied on by other governments in developing their NAPs;
- Tanzania: Tanzania's National Action Plan on Human Rights calls for research into human rights and business issues with a view to preparation of a NAP on business and human rights; and
- United Kingdom: The UK government's NAP was informed by a series of stakeholder seminars.

Such examples show that most governments that have produced NAPs or that are in the process of doing so view a NBA process, including systematic analysis and consultation with stakeholders, as important for the technical validity and public legitimacy of their NAPs. In turn, such examples counsel the need to develop guidance on NAPs processes, identify a floor standard, and promote best practice.

4. Comments on the draft list of practical and substantive considerations to help States to develop and enact a national action plan to implement the Guiding Principles.

ICAR and DIHR recommend that the UN Working Group's draft list of practical and substantive considerations to help States to develop and enact NAPs for UNGPs implementation should be re-framed as *subject matter for consideration during the NBA process*, rather than a list against which the ultimate content of NAPs will be assessed.

Framed in this way, the draft list of elements contained in the consultation document provides a good initial starting point from which further guidance and indicators may be developed.

ICAR and DIHR would suggest to the UN Working Group that a good process for further developing NBA templates and indicators would be to consult with stakeholders on these one at a time, while providing information on good practices in relevant areas from States across different regions, in order to ensure that the resulting tools are both robust and relevant.

In terms of specific recommendations in relation to the elements included in the consultation document, ICAR and DIHR recommend that these need to:

- Address the *full scope* of the UNGPs, as well as issues addressed in the commentary to each of these UNGPs, rather than the UN Working Group making its own selection from amongst these, which could undermine the authority and clarity of the UNGPs. Specially, the UN Working Group’s guidance should be modified to:
 - Include UNGP 31 as it pertains to State-based non-judicial grievance mechanisms, as well as other business and human rights frameworks;
 - Include Pillar II to the extent that each State has a duty to provide effective legislation, regulation, and guidance to induce companies to comply with and implement the responsibility to respect human rights;
- Address implementation and enforcement, as well as an assessment of existing measures;
- Under Section 1: General Principles, align with the principles of a human rights-based approach to development, as articulated in key standards of relevant international organizations;³ and
- Revise recommendations in relation to NHRIs to align fully with the UN Paris Principles.

ICAR and DIHR have endeavored to meet the above criteria in the NBA Template included in the NAPs Toolkit, which we recommend to the UN Working Group.

Conclusion

ICAR and DIHR welcome the efforts of the UN Working Group in developing practical guidance for States in their development, implementation, and review of NAPs for UNGPs implementation.

Along with ICAR’s partners and allies supporting this letter, ICAR and DIHR emphasize again that a “checklist” approach, which might lead to evaluation of NAPs based on a selective portion of the substantive content of the UNGPs is, in our view, not recommendable. Further, we emphasize that guidance on NAPs processes, accompanied by templates and indicators for NBAs, is a better route.

The specific content and near-term priorities of NAPs will, and should, vary across States if NAPs are to succeed in tackling the most urgent business-related human rights abuses, capturing the closest opportunities to promote business respect for human rights, and improving access to remedy for victims within each national context. In our view, it is thus within the NBA process that the UN Working Group’s work on substantive elements best fits.

We do, however, strongly support the goal of establishing human rights-based guidance for States on NAPs processes, as well as guidance and indicators to support the completion of comprehensive NBAs.

³ See DANISH INST. FOR HUMAN RIGHTS & INT’L CORPORATE ACCOUNTABILITY ROUNDTABLE, 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 28 -30 (2014), *available at* <http://accountabilityroundtable.org/analysis/napsreport/>.

Based on these two types of guidance, and with the benefit of input and support from stakeholders, every State should be able to soundly and legitimately identify national priorities and areas for action to be included in its NAP.

We look forward to continuing to engage with the UN Working Group throughout the course of this important work.

With the support of:

