



National Action Plans on Business and Human Rights

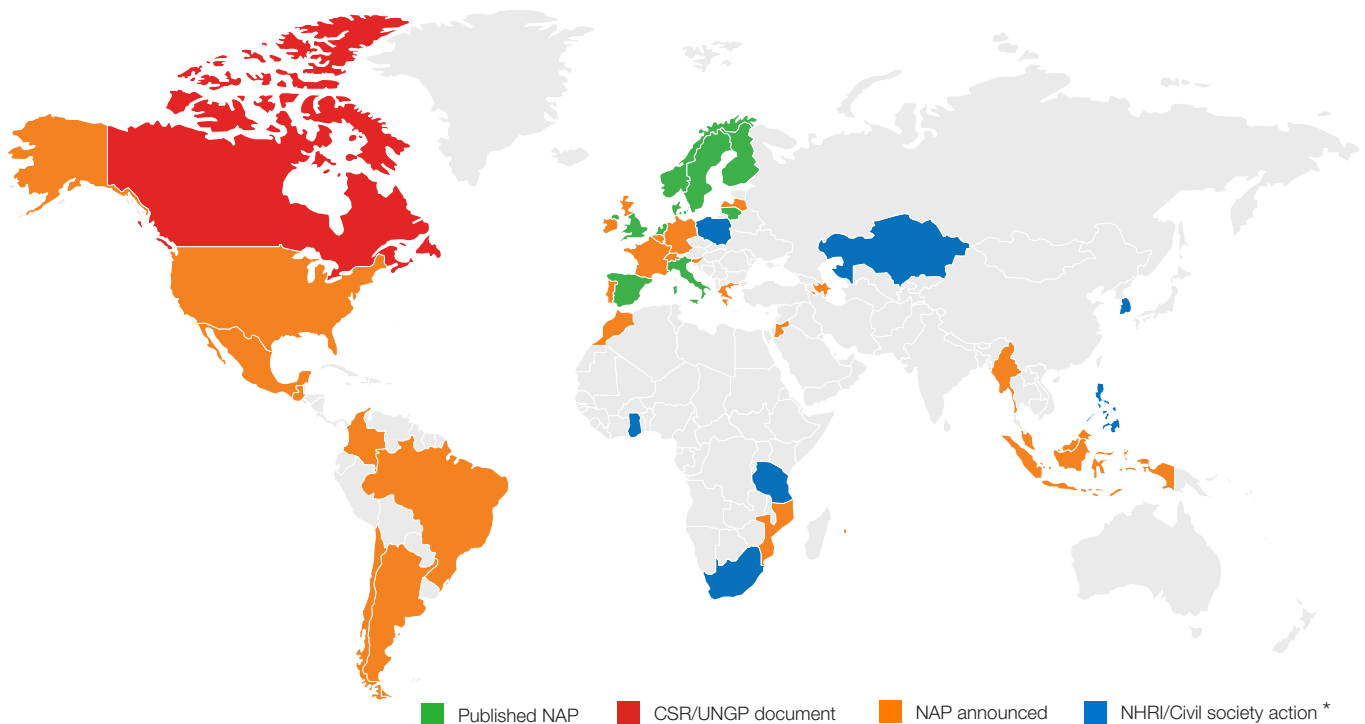
Increasingly, States publish national action plans on business and human rights (NAPs) setting out their policies for implementing the UN Guiding Principles on Business and Human Rights (UNGPs). It is important that the business community stays abreast of these developments to be prepared for any legislative or regulatory change, to take advantage of support offered by States in relation to companies' implementation of their responsibilities and to explore ways to contribute to the development of NAPs, including through consultation processes sponsored by States in connection with the development of their NAPs. In this joint briefing, the Global Business Initiative on Human Rights and Clifford Chance highlight some important features of the NAPs issued to date.

1 What do you need to know?

- NAPs set and articulate States' forward-looking policy agenda to progress implementation of the UNGPs, which includes legislative and other regulatory measures to promote, support and/or require business to respect human rights.
- NAPs and the processes through which they are developed (such as consultations and outreach) present opportunities for business to engage with States and other actors to share knowledge and experience, and to build collaborative and strategic partnerships.
- NAP processes can create clarity and consistency for business by strengthening States' internal capacity to address business and human rights issues, and by enabling greater coherence across government departments and agencies.
- NAP processes can promote increased collaboration between States to address business and human rights challenges, which may enhance convergence and consistency around expectations of business.
- NAPs can create momentum towards the full realisation of States' human rights obligations. State leadership is critical to achieving tangible and positive results for individuals and communities affected by business and other economic activity.

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2 Overview

Recent efforts to develop NAPs have partly been driven by requests from the European Union (EU) that all Member States issue NAPs that set out how they propose to implement the UNGPs, which have been echoed by similar calls from the UN Human Rights Council.¹ Given the EU lead, it is not surprising that the nine NAPs published to date all emanate from EU countries: the UK launched the first NAP in 2013, the Netherlands, Denmark and Finland followed suit in 2014 and Lithuania and Sweden both published NAPs this year. Italy has published a preliminary NAP

Who to watch

Public sources indicate that Argentina, Azerbaijan, Belgium, Brazil, Chile, Colombia, France, Germany, Greece, Guatemala, Indonesia, Ireland, Jordan, Latvia, Malaysia, Mauritius, Mexico, Morocco, Mozambique, Myanmar (Burma), Portugal, Scotland, Slovenia, Switzerland and the US have all announced the development of NAPs. In Ghana, Poland, Kazakhstan, South Africa, South Korea, Tanzania, and the Philippines, either national human rights institutions or civil society have promoted the development of an NAP by the government.*

and Spain has published a draft NAP, both in 2014. Most recently, Norway issued an NAP in October 2015.²

Of the States understood to be developing NAPs (or in which civil society organisations are leading efforts to progress the development of such plans), many are non-EU Member States and are found in North and Latin America, Africa, Asia and the Middle East. Canada has taken a different approach. In 2009, it adopted a CSR strategy which sets expectations for Canadian companies in the extractive industry. Since its' update in 2014, this now includes an expectation that Canadian extractive companies operating abroad should align their practices with international CSR guidelines, which include the UNGPs.

There is some coherence between the existing NAPs. Firstly, they all refer to the OECD Guidelines for Multinational Enterprises. These were revised in 2011 to better align with the UNGPs, and now include a chapter on human rights. The OECD Guidelines are supported by National Contact Points (NCPs) which receive complaints of corporate non-adherence to the OECD Guidelines (known as Specific Instances). Secondly, they all refer to the implementation of EU legislation (either relating to procurement or non-financial reporting).

* Public sources: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> last accessed on 28 October 2015 and <http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans> last accessed on 28 October 2015.

1 A/HRC/Res/26/22.

2 This briefing does not include any analysis of the Norwegian NAP, which is currently available in Norwegian only.

Beyond this, the NAPs vary significantly in both form and content. This briefing describes the key features of the NAPs issued to date. Each of the following headings identifies a component of the State's duty to protect against business-related human rights impacts as set out in Pillars 1 and 3 of the UNGPs.

Legislative initiatives

Some legislative developments relating to business and human rights are listed below. In the case of France and the US, this legislative action has been taken even though an NAP has yet to be published.

- The Federal Acquisition Regulation was amended in March 2015 to strengthen anti-human trafficking in relation to the US government's acquisition of goods and services.
- The UK Modern Slavery Act 2015 requires certain large UK and non-UK businesses who supply goods or services to publish an annual slavery and human trafficking statement on their website outlining the steps they have taken to prevent human trafficking and slavery in their businesses and throughout their supply chains (or a statement that no steps have been taken).
- A bill is progressing through the French Parliament that if passed, would require large French companies to undertake environmental and human rights due diligence.
- In July, a bill was introduced in the US which, if passed, would require companies to disclose efforts to address slavery, forced labour, and trafficking in their supply chains.

3 Expectations of business

Each of the NAPs (except Italy's) sets out an expectation that companies domiciled in the State should respect human rights. The Netherlands NAP provides expressly that this expectation extends to companies' operations abroad, and the UK NAP clarifies that the responsibility to respect applies wherever companies operate. By setting an expectation of business, States communicate a clear and coherent policy message to companies and flag future planned initiatives, including possible legislative developments.

4 Guidance and support available to business

The UNGPs encourage States to provide companies with guidance and assistance as to how to meet their responsibilities, and NAPs provide a forum through which the availability of such support can be communicated. So far, NAPs address the provision of support through training, guidance, toolkits and stakeholder discussions.

Tools and Guidance for Companies

- The UK has an Overseas Business Risk Service which provides companies with information on human rights issues in certain overseas countries.
- Sweden has run workshops on the implementation of the UNGPs and has developed a business analysis tool for State-owned companies that includes human rights.
- The Netherlands has developed the CSR Risk Check, an online tool that helps companies assess potential human rights impacts.
- The Danish Trade Council advises Danish companies and their local partners on how they should handle their social responsibility in a number of export markets. This includes a human rights due diligence service. Embassies also offer Danish SMEs a free CSR check of local partners (which includes human rights due diligence).

5 Policies and legislative action

In meeting their duty to protect, States should ensure that laws do not unduly constrain human rights and they should enforce existing laws aimed at requiring business to respect human rights.

Each of the NAPs identifies domestic policies and legislation relevant to business and human rights issues (such as employment legislation). Most NAPs also reference the international human rights treaties to which the State is a party. A number of States address future legislative proposals and outline plans to incorporate EU legislation relating to transparency and human rights issues into local legislation (see *Reporting and transparency* below). A number of NAPs also address the challenges associated with maintaining policy space for human rights in trade and investment agreements.

HRIAs for investment

The Finnish NAP specifically states that it will support the strengthening of human rights impact assessments (HRIAs) in third countries during EU trade negotiations and endorses the inclusion of human rights clauses in EU framework agreements.

6 Reporting and transparency

The State's role in incentivising companies to report on human rights issues has been acknowledged in several NAPs. Recent legislative initiatives focus on reporting and other requirements that promote better transparency from business. For example, large Danish companies are now required to report on the measures taken to respect human rights; both Sweden and the UK have introduced mandatory non-financial reporting requirements for large companies; and the European Non-Financial Reporting

Incentives for transparency and enhancing reporting

- The Danish trade organisation of auditing, accounting, tax and corporate finance annually recognises the company with the best CSR report. The adjudication includes whether or not the company addresses human rights impacts.
- The Dutch Ministry of Economic Affairs benchmarks the 500 largest Dutch companies, ranking them for transparency against criteria that reflect the UNGPs and EU non-financial reporting legislation.
- Lithuania issues a national responsible business award which honours businesses that have made progress on CSR.

Directive³ passed in 2014 (discussed in a previous [Clifford Chance briefing](#)) will have a significant impact in this area, as it requires EU Member States to enact legislation on mandatory non-financial reporting by 2016. As well as promoting transparency in business, non-financial reporting requirements also serve to accelerate implementation of other areas of corporate respect for human rights, such as the introduction and communication of policy commitments, implementation of human rights due diligence processes and establishment of grievance mechanisms.

7 State-owned entities (SOEs)

Each NAP (except Spain's) explains how the State will ensure that its' SOEs implement the UNGPs. The Danish and Finnish governments have taken the most extensive steps so far. Danish

SOEs have been required to report on human rights impacts and carry out human rights due diligence since 2009. Finland also mandates reporting from its SOEs, and makes clear that SOEs must assess human rights impacts both in their operations and in relation to their subcontractors. Uniquely, Finland has also introduced a separate accountability mechanism for managing human rights issues involving its SOEs.

8 Overseas investment

Many of the NAPs address the role of the government's trade and investment activities in the management of human rights challenges. The UNGPs recommend that States take additional steps to protect against abuses by companies that receive substantial support or services from Export Credit Agencies (ECAs) and other government-funded investment or guarantee agencies. Examples from NAPs to date include:

- Denmark requires its ECA to commit to the implementation of the UNGPs.
- Spain has committed to develop a specific action plan regarding the way in which its investment agencies operate.
- The UK reviews export licence applications relating to "strategic" goods and technology against EU licensing criteria for the export of arms. This entails an assessment of human rights impacts.
- Both the UK and Italy mention in their NAPs their commitment to the OECD Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (2012), which requires ECAs to take into account environmental and social impacts, including relevant adverse project-related human rights impacts and to consider statements made by NCPs where appropriate.

Effect of negative NCP decisions

The UK NAP states that UK Export Finance will consider any negative final NCP statement against a company when considering a project for export credit.

9 States' commercial transactions and procurement

Each NAP (except Lithuania's) focuses on steps that have been taken or will be taken to improve the social accountability of business through government procurement processes. In several cases, NAPs note European legislation that promotes respect for human rights in procurement processes. Other

³ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

voluntary measures include providing training or issuing guidelines to promote respect for human rights in procurement. The UK NAP expressly notes that companies may be excluded from bidding if they have been involved in “grave misconduct” (which might include cases where there are breaches of human rights).

Labour clauses

Denmark wishes to promote fair and reasonable pay and working conditions by increasing better use and enforcement of labour clauses in public contracts.

10 Sector and geography

Most States have not adopted a sector-specific approach in their NAPs. Some NAPs refer to specific industries. For example, the Netherlands refers to the finance, textile and agriculture sector, and Finland mentions raw materials. Many NAPs refer to activities abroad. For example, the UK NAP refers to the UK government’s collaboration with Columbia on a human rights statement. It also highlights a resource centre set up in Rangoon which aims to “sensitise incoming investors to the importance of human rights compliant business” in Burma (Myanmar). Sweden is particularly focused on inter-State collaboration and has carried out CSR activities in Colombia, China, Egypt, Zambia, the UAE, Saudi Arabia, Serbia, South Korea and the Czech Republic.

11 Government policy coherence

In most cases, the process of developing an NAP has proven to be a vehicle for inter-ministerial collaboration. Embedding business and human rights coherently across government departments will enable the State to better manage different societal needs through its policies. For example:

- Collaboration has taken the form of co-ownership of the NAP by two ministries (in the case of the UK), and involved the preparation of reports by diverse ministries (in the case of Italy).
- Denmark, the Netherlands and Spain each established working groups to manage their NAP process.
- The Finnish NAP specifically allocates actions to different ministries.
- The Swedish government received input on its draft NAP from all government departments, and more than 100 different companies, government agencies, trade unions, NGOs and other stakeholders.

- The US, which is currently in the process of developing its NAP, has established a number of interagency working groups on key issue areas such as transparency and anti-corruption, human rights, and investment and trade, to promote collaboration and cooperation across government agencies.

12 Access to remedy

None of the NAPs deal fully with the State’s duty to provide access to remedy for adverse human rights impacts. Generally, the NAPs provide some evaluation of whether the State’s judicial mechanisms are providing access to remedy for victims of human rights abuses. Some NAPs incorporate observations as to the barriers to accessing effective remedies. Some also refer to reports on access to remedy that they have commissioned or to work they are involved in at the international level. Each of the NAPs discusses the State’s OECD NCP process.

Improving victims’ remedies

- In 2012, the Danish Government set up the Mediation and Complaints-Handling Institution for Responsible Business Conduct.
- Finland plans to map proposals to improve its NCP’s processes.
- Lithuania aims to improve the procedure for providing State-funded legal aid.

13 How should business respond to these developments?

- Ensure relevant functions within your organisation are aware of these developments.
- Monitor processes to develop and implement NAPs in the State in which your organisation is headquartered and States in which it has operations.
- Identify opportunities to engage with processes to develop and review NAPs, for example by attending multi-stakeholder consultations, engaging directly with relevant State agencies and departments and/or forming strategic partnerships with States and other actors.

14 To find out more

Information on NAPs can be found through the Business and Human Rights Resource Centre available [here](#) and through the official page of the UN Office of the High Commissioner on Human Rights available [here](#).

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