

Assessment of the National Action Plan (NAP) on Business and Human Rights of THE NETHERLANDS



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INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE



In December 2013, the Dutch government launched a National Action Plan (NAP) on business and human rights. In response, the International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ) conducted a structured assessment of the Dutch NAP, using the NAPs Checklist developed and published by ICAR and the Danish Institute for Human Rights (DIHR).¹ The NAPs Checklist lays out a set of twenty-five criteria that address both the content of NAPs and the process for developing them.

This assessment is part of a larger effort by ICAR to assess all existing NAPs on business and human rights. In November 2014, ICAR and ECCJ published its first version of a joint report *Assessments of Existing National Action Plans (NAPs) on Business and Human Rights*,² which systematically assessed the published NAPs from the United Kingdom, the Netherlands, Denmark, and Finland. In November 2015, ICAR and ECCJ published an update of this report including the assessments of the Lithuanian and Swedish NAPs. This report was updated a further time in August 2017, in conjunction with both ECCJ and Dejusticia, to include assessments of the Colombian, Norwegian, United States, United Kingdom (second iteration), Italian, and Swiss NAPs.

SUMMARY ASSESSMENT DUTCH NATIONAL ACTION PLAN

Introduction

The Netherlands was the second country to publish a NAP on business and human rights. The Dutch House of Representatives requested that this NAP be developed, and the final product was published in December 2013.³ Notably, extensive stakeholder interviews were conducted prior to drafting the Dutch NAP. However, while the content of the NAP responds to concerns raised during the stakeholder interviews, it is primarily a backward-looking document with little attention given to commitments to future action. The few commitments for future action that are included in the NAP could also be improved, as they are mostly vague and mainly focused on awareness raising, funding, risk-assessment, and training instead of regulatory action and concrete measures for improving access to remedy.

This summary provides key trends in terms of process and content, as identified through the attached assessment of the Dutch NAP.

Process

The positive aspects of the NAP drafting process include the facts that the government entity tasked with overseeing the process was clearly identified and various entities of the government were included in the process through an inter-ministerial working group. Moreover, there were extensive pre-drafting interviews with stakeholders (i.e. business, civil society, and “implementing organizations”), as well as one round of single stakeholder consultations during the drafting process.

One weakness of the Dutch NAP drafting process is that no national baseline assessment (NBA) was conducted and/or published. Although there was an “internal mapping” of government policies carried out by the inter-ministerial working group, it did not rise to the level of a NBA and was not made publicly available.⁴ The interviews appear to have highlighted main issues of concern for the various stakeholders. However, an NBA is required to fully see the State’s unique context, progress in implementation, and governance gaps that could be filled to better protect human rights in relation to business activities.

The stakeholder interviews prior to the NAP drafting process were relatively extensive, involving interviews conducted by an external expert and then follow-up meetings with the three stakeholder groups (i.e. business, civil society, and implementing organizations)

separately. However, only a total of 50 external stakeholders were interviewed, no public consultations took place, no capacity-building measures were included in the interview process, and an overall timeline and terms of reference for the entire NAP process were never made publicly available. In addition, participation by disempowered or at-risk stakeholders was neither prioritized nor facilitated during the NAP process.

Finally, the NAP does not specify any follow-up procedures for implementation of the commitments made within the NAP, and it does not provide any timeline for re-writing or updating the NAP. This is problematic because most of the action points were meant to occur in 2014, so the lack of commitment to revisiting the NAP could mean that nothing occurs after the end of 2014. It also means that it is unclear whether there will be any assessment of how effectively the listed action points have been put in place in the future, if at all.

Content

It is positive that the NAP recognizes that businesses need to respect human rights both abroad and domestically, that it includes an explicit commitment to the UNGPs, and that it integrates a careful review of the CSR activities and intentions of the government. The NAP also discusses several thematic issues and how the Netherlands interacts with international and regional organizations and standards. For instance, it aims to improve policy coherence by integrating human rights and business concerns in trade and investment agreements, including at the EU level.⁵ Another positive government initiative is the Sector Risk Analysis, which was announced earlier in the Dutch CSR policy letter but referenced in the NAP. The Sector Risk Analysis entails conducting a study to define the sectors that run the greatest risk of human rights abuses. As a follow-up, the government plans to reach agreements to address these risks with business enterprises that operate in these sectors. This approach is both promising and innovative. Its success, however, depends on the quality of the study, the degree to which the agreements are binding, the manner in which they will be monitored, and whether a failure to respect them will entail consequences.

The Dutch NAP's content is mostly focused on current policy measures related to business and human rights, the issues raised during the stakeholder interview process, and the government's response to those issues. The section that is dedicated to forward-looking action points is very short, however, at only two pages out of the 44-page document. The action points listed are also unsatisfactory as the emphasis is on awareness-raising, training, risk assessment, and funding. While these initiatives are certainly important, there should be action points that are also more regulatory in nature.⁶ The Dutch NAP is also focused mostly on Pillar II, with much less attention given to Pillars I and III, which is problematic as the full scope of the UNGPs should be

addressed. The NAP also does not prioritize the most serious business-related human rights abuses, and it does not mention marginalized or at-risk groups.

Moreover, many of the action points are overly vague and do not identify a clear timeline for implementation or a responsible government entity. For example, although the NAP states that “credibility is an important element of the Dutch human rights policy,”⁷ there is no concrete commitment to change policies or legislation if implementation and enforcement with the government’s human rights policy is not actually achieved. Furthermore, although the NAP states that CSR is an integral part of trade missions and “expects companies represented in trade mission to look into the possible adverse effects of their operations on communities,”⁸ the government only expresses an expectation towards companies or trade missions and embassies, not a clear path toward doing so.

**ASSESSMENT SUMMARY:
DUTCH NATIONAL ACTION PLAN**

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
1.1. Commitment to the NAP process.	<p>The Dutch parliament and representatives of the Ministry of Foreign Affairs (MFA), which has been tasked with leading the Dutch NAP process, have made clear requests that the UNGPs be implemented nationally.⁹ The interviews with stakeholders conducted throughout the NAP's development are also a sign of commitment to the process. However, the lack of a national baseline assessment and a plan for oversight and monitoring of implementation of the NAP indicates that the government's commitment to a comprehensive process, meaning one that involves structured evidence gathering to inform the content of the NAP and follow-up to the NAP, may be significantly limited.¹⁰</p>
1.2. Ensure responsibility for the NAP process is clearly established and communicated.	<p>The Ministry of Foreign Affairs (MFA) was put in charge of coordinating the NAP process and was the chair of the inter-ministerial working group.¹¹ The MFA also hired a consultant to conduct the stakeholder interviews that took place prior to the drafting of the NAP.</p>
1.3. Ensure an inclusive approach across all areas of government.	<p>An inter-ministerial working group was created in 2012 to coordinate the efforts to develop the NAP. The working group was chaired by the MFA.¹² It included representatives from the Ministry of Economic Affairs, Ministry of Finance, Ministry of Security & Justice, and the Ministry of Social Affairs & Employment.¹³ Departments from the MFA that were involved were the Legal Department, the Department for Sustainable Economic Growth, the Department for Human Rights, and the Department for Internal Market.¹⁴ This group stayed active throughout the NAP's drafting process, responding to 95 questions from the Dutch parliament about the plan prior to the parliamentary debate on the NAP.¹⁵</p>

1. GOVERNANCE AND RESOURCES	COMMENTS
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>An overall timeline and terms of reference for the entire NAP process were never made publicly available.¹⁶</p> <p>The terms of reference for the consultant hired to conduct the stakeholder interviews that took place prior to the drafting of the NAP were not published, but were shared with the interview participants.¹⁷ The terms of reference indicated that the consultant was hired for a fixed-term assignment.¹⁸</p> <p>The timeline and terms of reference for the remainder of the NAP development process remained unclear throughout the process.¹⁹ If such information was developed, it was never shared publicly or with interview participants.²⁰</p> <p>After the stakeholder interviews took place, the drafting of the NAP began, yet the timeline for this development process was never made publicly available.²¹ The only public commitment made in terms of a timeline for the NAP came from the MFA to the Parliament, initially indicating a specific date for the publishing of the NAP.²² However, this date was postponed several times throughout the development process, allegedly due to differences in opinion among various ministries concerning the content of the NAP.²³</p> <p>During the drafting of the NAP, one consultation was conducted with each stakeholder group (i.e. business, civil society/academia, and “implementing organizations”).²⁴</p>
Adequate Resourcing	
<p>1.5. Determine an appropriate budget for the NAP process.</p>	<p>Unknown.</p>

2. STAKEHOLDER Participation	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	The consultant hired to conduct the stakeholder interviews completed a stakeholder mapping. However, this stakeholder mapping was not published. ²⁵
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	<p>See 1.4. above.</p> <p>A select number of external stakeholders were invited to participate in the interviews, during which a total of 50 representatives of civil society organizations, business, implementing organizations, and experts were asked for inputs. In an attempt to ensure that participants felt that they could be as open and honest as possible, an external consultant conducted the interviews.²⁶ While the NAP was being drafted, three additional interviews were held to further discuss specific issues raised during the initial interviews. Each meeting was made up of only one group of stakeholders (i.e. business, civil society/academia, and implementing organizations). This division of groups was also intended to ensure open and honest dialogue during the stakeholder interviews.²⁷</p> <p>No broad, public consultations took place. As noted above, no clear timeline for the stakeholder consultations was publicly communicated, apart from the fixed timeline of the consultant conducting the interviews, which was only shared with participants, and the publication date of the NAP, which was postponed several times.²⁸</p>
2.3. Provide adequate information and capacity-building where needed.	No capacity-building measures were included in the NAP process. ²⁹ Relatively well-informed stakeholders were part of the stakeholder interview process. ³⁰ Although the number of consultation participants was significantly limited, those who did participate were well-equipped to do so. ³¹
2.4. Facilitate participation by disempowered or at-risk stakeholders.	Participation by disempowered or at-risk stakeholders was not prioritized nor facilitated during the NAP process. ³²

2. STAKEHOLDER Participation	COMMENTS
2.5. Consider establishing a stakeholder steering group or advisory committee.	The Netherlands did not establish a multi-stakeholder steering group or advisory committee, only a governmental, inter-ministerial working group. ³³

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	A full NBA was not conducted by the Dutch government. Although there was an “internal mapping” of government policies, it did not rise to the level of an NBA. ³⁴
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable. However, the “internal mapping” was assigned to the inter-ministerial working group. ³⁵
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable. The “internal mapping” did not involve external stakeholders. ³⁶
3.4. Publish and disseminate the NBA.	Not applicable. The “internal mapping” was not published. ³⁷

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	The Dutch NAP does not go through the UNGPs principle-by-principle or even Pillar-by-Pillar. Instead, it is organized around five points that the NAP claims were the main points brought up during the stakeholder interviews: (1) an active role for the government, (2) policy coherence, (3) clarifying due diligence, (4) transparency and

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>reporting, and (5) scope for remedy. The main body of the NAP includes information on past actions, with commitments for future actions interspersed. These action points are then listed in bullet point form and organized by the five topics listed above in section 4 of the NAP on pages 41 and 42.</p> <p>There is no clear indication of how the action points listed will contribute to the realization of a particular UNGP. Unfortunately, the Dutch NAP is mostly a discussion of the status of current policy, the results of the stakeholder discussions, and the government's response to the various concerns raised during the consultations, rather than an articulation of specific, concrete, and measurable commitments that the government plans to undergo to further implementation of the UNGPs or other business and human rights frameworks.³⁸</p> <p>The NAP does not systematically address the State duty to protect human rights under Pillar I and instead focuses mostly on Pillar II. The NAP primarily focuses on voluntary, instead of regulatory, mechanisms for engaging with the State duty to protect human rights. Pillar III on access to remedy is also insufficiently addressed as the actions listed primarily look into non-judicial grievance mechanisms, rather than judicial reforms.³⁹ The actions listed also explicitly exclude legislation with an extraterritorial effect. One governance gap that should have been addressed by the NAP is that the government could be much more active in cases of suspected violations of criminal or administrative human rights norms by Dutch companies abroad.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the Dutch NAP's coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP's fulfillment of each UNGP, which is a task to be completed during the national baseline assessment (NBA) process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights.)⁴⁰ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content. The Dutch NAP is unsatisfactory under each of these sub-criteria:</p> <p><u>(1) Positive and Negative Incentives for Due Diligence</u></p> <p>Although the NAP indicates that the Dutch government is willing to assist companies that choose to conduct due diligence, the action points do not contain any positive or negative incentives for companies to do so. For example, in section 4, where the action points are listed, under Clarifying due diligence: bullet point one, the government commits to talking with relevant schools about incorporating CSR issues into their curriculum.⁴¹ Bullet point two under this same heading says that the government gives a grant to the SER to “help companies shape the human rights component of their CSR policies.”⁴² While both of these are positive developments and may help to encourage due diligence, they do not provide concrete incentives, either positively or negatively, for conducting due diligence.</p> <p>Notably, the main body of the NAP further discusses the ways in which the government is already providing assistance to companies that wish to conduct due diligence. For example, the government provided a grant to CSR Netherlands that developed a CSR Risk Check—an online tool that assists companies in figuring out their possible adverse social impacts based on the sector and country in which they work.⁴³</p> <p>The government also started a “Sector Risk Analysis Project” to identify the sectors most at risk to be associated with negative societal impacts. The government has announced that it will develop a number of CSR agreements with the sectors most at</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>risk, starting with the textile, energy, and financial sectors.⁴⁴ However, there is no information included in the NAP about the likely content of these agreements. Although it appears that it would be possible for one of the agreements to include due diligence or a mechanism to incentivize due diligence, without more information it cannot be assumed that this is the case. The government has furthermore said that it will assist by removing obstacles to due diligence identified by companies.⁴⁵</p> <p><u>(2) Disclosure of Due Diligence Activities</u></p> <p>Transparency and reporting: bullet point two says that the government thinks that management and supervisory boards “should include more information on their CSR policies” in their reports.⁴⁶ However, in the section on action points there is no mention of any requirements for disclosure of CSR policies in general, or of due diligence activities in particular, and there is no mention of what information these management and supervisory boards should specifically include.</p> <p>In the NAP, the government also gives its support to the idea that companies should communicate the risks it finds through due diligence to stakeholders and investors.⁴⁷ The government also stressed that the CSR agreements that it enters into with different sectors will emphasize transparency and stakeholder dialogue.⁴⁸</p> <p>The government also points out that it supports the European Commission’s proposal that would require large companies to include non-financial reporting on issues such as human rights and environmental impacts.⁴⁹ This would potentially apply to 600 Dutch companies.⁵⁰ Another way that the government says it encourages reporting on social issues is through the transparency benchmark, which rates the largest 500 Dutch companies on transparency.⁵¹ However, as MVO Platform points out with regard to both the Transparency Benchmark and the European Commission’s future non-financial reporting regulation, the “due diligence principle has not yet found its way</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>into these transparency initiatives.”⁵²</p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are no action points that would require due diligence as part of compliance with a legal rule. However, the government does commit to creating an independent committee to assess whether more legal regulation related to Dutch companies’ CSR is necessary in one of the action points (Clarifying due diligence: bullet point five).⁵³ This future action point does not state that the government will consider legal regulation related specifically to human rights due diligence, but this could be inferred based on the fact that it is included under the clarifying due diligence section.</p> <p><u>(4) Regulatory Mix</u></p> <p>Although the government commits to analyzing the current regulatory mix in the Netherlands (Clarifying due diligence: bullet point five),⁵⁴ the action points do not contain any mandatory measures to ensure that businesses respect human rights. Instead, the action points are comprised of commitments to provide training, funding, and assessments and to enter into CSR agreements.⁵⁵ The main emphasis of the Dutch NAP is on awareness raising and capacity building, it does not include legislative or enforcement measures. Therefore, the regulatory mix is unsatisfactory.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The Dutch NAP states that “the guiding principle is that businesses have a social responsibility to apply the same human rights norms both in the Netherlands and elsewhere.”⁵⁶ Despite this statement, however, the NAP explicitly rejects legislation with extraterritorial application, stating that “[t]he government would point out that extraterritorial application alone is not enough. A court judgment must also be enforceable, and it is not up to the Netherlands to decide for other countries whether this is possible. The government is therefore not convinced that legislation with extraterritorial impacts will contribute to preventing human rights abuses by foreign companies in the countries in which they are active. There is also too little international</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	support for an international, legally-binding instrument.” ⁵⁷ On the other hand, the Netherlands Institute for Human Rights believes that the NAP does not give enough attention to human rights abuses committed domestically. ⁵⁸
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The Dutch NAP addresses international and regional organizations and standards by pointing out how the Netherlands currently works through those organizations and standards. Specifically, the NAP points out that the Netherlands pushes for the implementation of the UNGPs in multilateral organizations and also pushes for “universal ratification” of the core ILO standards in order to ensure a “level playing field” for business.⁵⁹ The NAP also points out that the Dutch government works through various multilateral institutions, such as the ILO’s Better Work Programme, to encourage the protection of human rights.⁶⁰ The NAP mentions that both civil society and the business community brought up that the Dutch should use multilateral forums to push for the implementation of the UNGPs more often.⁶¹</p> <p>There are two action points that refer to international and regional organizations and standards. The government commits to consulting with like-minded member states at the EU-level before 2016, when the Dutch will be in the EU presidency, and to conducting an evaluation of whether the sustainable procurement policy complies with the OECD Guidelines.⁶²</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP notes that the importance of thematic and sector-specific human rights issues were brought up during the stakeholder interviews, particularly with reference to sector risk analysis. It also mentions that the Dutch government introduced “Sector Risk Analysis” in its CSR policy letter, which the government said it would report progress on in early 2014.⁶³ This project is an attempt to identify the five sectors that have the highest number of CSR risks, including insight into those risks. At the time of this assessment, the Sector Risk Analysis has been performed by KPMG, and the results are expected soon. However, some CSR platform members have been cautious about the process employed by KPMG and are not optimistic about the quality of the forthcoming</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>report.⁶⁴</p> <p>Two of the fourteen action points in the NAP address thematic or sector-specific human rights issues. Transparency and reporting: bullet point one says that CSR agreements will be made with certain sectors based on the results of the Sector Risk Analysis project.⁶⁵ Scope for remedy: bullet point two addresses an amendment (which has since been passed) to the National Contact Point (NCP) decree which would allow the government, in serious situations, to request that the NCP assesses CSR issues for a particular sector.⁶⁶</p>
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The Dutch NAP does include a statement of commitment to the UNGPs. Specifically, it says that “[p]utting the UN Guiding Principles into practice is an important priority for the Netherlands.”</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Out of fourteen action points included in the NAP, only five have specific timetables. These can be found under Policy coherence: bullet points one and three, Clarifying due diligence: bullet point five, and Scope for remedy: bullet points two and three. For example, the government commits to organizing a conference on access to remedy in 2014 and to have an independent committee assess whether Dutch law is in line with the UNGPs during that same year. The remaining action points are much more open-ended. For example, Clarifying due diligence: bullet point one, commits the government to “enter into dialogue with educational institutions . . . on including business ethics and/or CSR in their curriculums,” yet there is no timeline provided for this initiative or articulation of how exactly such dialogue will be achieved or carried out.</p> <p>There are some action points that are relatively specific and measurable. For example, under Policy coherence: bullet point two is moderately specific in that it commits to the</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>creation of an e-learning course for “ministries and implementing organisations.”⁶⁷ In the body of the report, it says this would be for civil servants at the international level as well.⁶⁸ However, this action point could be made even more specific by laying out the type of information to be included in the e-learning course, whether it would be mandatory for relevant ministries and civil servants to complete the course, whether there will be any follow-up after the e-course, when it will be completed, and what institution would be in charge of creating the course.</p> <p>Policy coherence: bullet point three, which commits to evaluating whether procurement policy is consistent with the UNGPs and OECD Guidelines, is specific relative to the other bullet points because it provides a general timeline and names the ministry in charge of implementation (the Ministry of the Interior and Kingdom Relations). However, it is unclear how measurable this action point is, as it may depend on whether the Ministry of the Interior and Kingdom Relations publishes its findings in a report or merely says that this analysis was completed. This action point could have been further improved by committing to the release of such a report so that civil society and other stakeholders could access it and determine whether the action was completed. This action point also should have explained how this analysis would be used, meaning whether the results would lead to the consideration of procurement policy reform and when/how that consideration would take place (e.g. whether the results will be presented to a particular relevant government body).</p> <p>The most specific and measurable action point is under Scope for remedy: bullet point three, which relates to the Dutch National Contact Point (NCP). This bullet point says that the government will “acquire scope to ask the NCP to carry out a sector-wide investigation into CSR issues” in very serious situations. The action point also explains how this power will be acquired and when (namely, through amendments to the NCP decree in the summer of 2014). Although it does not explain what criteria will be used</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>to determine “very serious situations,” this action point is arguably the most concrete, specific, and measurable commitment in the Dutch NAP. This action point was indeed achieved during summer 2014.⁶⁹ However, one of its limitations is that the NCP cannot initiate these investigations on its own but rather must be requested by the Cabinet.⁷⁰</p> <p>One of the action points, Scope for remedy: bullet point one, would be a reasonably specific and measurable action point if it were outlined differently. At this time, it does not include any future commitment. It merely states that the government has already given start-up funding to ACCESS Facility, with no commitment for future funding or support.</p> <p>There are many action points that are overly vague, however. For example, Transparency and reporting: bullet point two commits to “call companies’ attention” to the importance of including information about CSR policies in their reports and complying with the Corporate Governance Code. Apart from the fact that this action point will likely not achieve much change, it does not specify what steps the government will take to do this. Instead, it could have detailed that the government would create a guidance document or report that would then be disseminated to companies or that the government would hold conferences or do presentations for companies on the benefits of including CSR policy information in their reports, amongst other possibilities.</p> <p>Another vague action point is Scope for remedy: bullet point two. This action point says that the Dutch government “will organize a conference on judicial and non-judicial grievance mechanisms” with ACCESS Facility in 2014. Although it does identify a partner organization and gives a timeframe, the NAP should have specified who else would be invited to this conference (e.g., is it for government, civil society, and/or business?), what the desired outcomes would be, how the government will prepare for</p>

4. SCOPE, CONTENT, AND PRIORITIES		COMMENTS
		<p>the conference (will there be an assessment of existing judicial and non-judicial grievance mechanisms?), and what entity within the government will be in charge of the conference.</p> <p>Policy coherence: bullet point one simply commits to “consult” with other EU Member States prior to the 2016 Dutch EU Presidency. This is very open-ended and could have been improved by identifying key issues related to business and human rights that the government will consult on and how those consultations will inform the 2016 Dutch EU Presidency.</p> <p>Other overly vague action points include Clarifying due diligence: bullet points one and three, and Transparency and reporting: bullet point one.</p>
Priorities for NAPs		
4.7.	A NAP should prioritize for action the most serious business-related human rights abuses.	The NAP does not appear to prioritize any human rights abuses above others.
4.8.	In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.	There is no mention of vulnerable and excluded groups in the Dutch NAP.
5. TRANSPARENCY		COMMENTS
Full Transparency With All Stakeholders		
5.1.	The NBA and any other significant analyses and submissions informing the NAP should be published.	No NBA was conducted, and the “internal mapping” was not made public. The summaries of consultations were not made publically available. ⁷¹

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>Three of the fourteen action points identify the specific entity responsible for implementation of and follow-up to the action point. These action points can be found under Policy coherence: bullet point three, Clarifying due diligence: bullet point four (although bullet point five says an “independent committee” will be developed, it does not say who will be part of that committee), and Scope for remedy: bullet point four. The other action points are more vague and instead either say that “the government” will complete the task or leave out assignment of responsibility entirely. For example, Policy Coherence: bullet point two says that “an e-learning course will be developed” without mentioning who it will be developed by. Even the action points that are clearly assigned to a particular entity within the government do not specify who will be in charge of follow-up or how such follow-up will be conducted.⁷²</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>There is no framework laid out in the NAP itself regarding monitoring and reporting on implementation of the commitments made therein. The fact that many of the action points were set to occur in 2014 has led some stakeholders to question whether a new NAP will be written in 2015 or later.⁷³ However, there is no commitment in the NAP itself for updating the document or writing a new NAP in the future.⁷⁴</p>

ENDNOTES

¹ DANISH INSTITUTE FOR HUMAN RIGHTS & INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A TOOLKIT FOR THE DEVELOPMENT, IMPLEMENTATION, AND REVIEW OF STATE COMMITMENTS ON BUSINESS AND HUMAN RIGHTS (2014) [*hereinafter* NAPs TOOLKIT].

² INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE & EUROPEAN COALITION FOR CORPORATE JUSTICE, ASSESSMENTS OF EXISTING NATIONAL ACTION PLANS (NAPS) ON BUSINESS AND HUMAN RIGHTS, NOVEMBER 2015 UPDATE (2015).

³ DUTCH NAP, *supra* note 7, at 6.

⁴ DUTCH NAP, *supra* note 7, at 6; based on the experience of SOMO and the CSR Platform.

⁵ *Id.* at 20.

⁶ These sub-criteria are laid out in Kristin Jesnes, Statens plikt til å beskytte menneskerettighetene: En analyse av nasjonale handlingsplaner for oppfølging av FNs veiledende prinsipper for menneskerettigheter og næringsliv. (The State Duty to Protect: An Analysis of National Action Plans on Business and Human Rights). Fafo-notat 2014:15 (2014), *available at* <http://www.fafo.no/pub/rapp/10199/index.html>.

⁷ DUTCH NAP, *supra* note 7, at 10.

⁸ *Id.* at 15.

⁹ Janneke Faber, Multilateral Organisations and Human Rights Department, Netherlands, Presentation at the 7th Session of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (Feb. 17-21, 2014), transcript *available at* http://www.ohchr.org/documents/issues/business/nationalplans/jannekefaber_statement.pdf.

¹⁰ DUTCH NAP, *supra* note 7.

¹¹ *Id.* at 6.

¹² Faber, *supra* note 64.

¹³ DUTCH NAP, *supra* note 7, at 6.

¹⁴ Faber, *supra* note 64.

¹⁵ *Id.*

¹⁶ Based on the experience of SOMO and the CSR Platform.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ DUTCH NAP, *supra* note 7, at 13.

²⁷ Faber, *supra* note 64, at 2.

²⁸ Based on the experience of SOMO and the CSR Platform.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ See DUTCH NAP, *supra* note 7, at 6 (inter-ministerial group compared current policy with the UNGPs).

³⁵ *Id.* at 6.

³⁶ Based on the experience of SOMO and the CSR Platform.

³⁷ *Id.*

³⁸ MVO Platform, *Dutch National Action Plan on Business and Human Rights* (Feb. 17, 2014), <http://mvoplatfom.nl/news-en/dutch-national-action-plan-on-business-and-human-rights>.

³⁹ It does commit to holding a conference where the topics of judicial and non-judicial grievance mechanisms will be discussed. DUTCH NAP, *supra* note 7, at 42.

⁴⁰ Jesnes, *supra* note 23.

⁴¹ DUTCH NAP, *supra* note 7, at 41.

⁴² *Id.* at 41.

⁴³ *Id.* at 23.

⁴⁴ *Id.* at 25.

⁴⁵ *Id.*

⁴⁶ *Id.* at 42.

⁴⁷ *Id.* at 28.

⁴⁸ *Id.* at 29.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* (the transparency benchmark would be extended to the 600 largest Dutch companies under the European Commission's proposal).

⁵² MVO Platform, *supra* note 93.

⁵³ DUTCH NAP, *supra* note 7, at 41.

⁵⁴ *Id.* at 41.

⁵⁵ *See id.* at 41-42.

⁵⁶ *Id.* at 5.

⁵⁷ *Id.* at 39.

⁵⁸ NETH. INST. FOR HUMAN RIGHTS, *ADVICE: RESPONSE TO THE NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS "KNOWING AND SHOWING"* 6 (2014).

⁵⁹ DUTCH NAP, *supra* note 7, at 15.

⁶⁰ *Id.* at 19.

⁶¹ *Id.* at 18.

⁶² *Id.* at 41-42.

⁶³ *Id.* at 24.

⁶⁴ Based on the experience of SOMO and the CSR Platform.

⁶⁵ DUTCH NAP, *supra* note 7, at 42, 34-35.

⁶⁶ *Id.* at 42.

⁶⁷ *Id.* at 41.

⁶⁸ *Id.* at 17.

⁶⁹ *See* Ministry of Foreign Affairs, *Netherlands NCP Strengthened With Revised Government Decree*, <http://www.oesorichtlijnen.nl/en/news/netherlands-ncp-strengthened-revised-government-decree> (last visited Nov. 17, 2014).

⁷⁰ *See id.*

⁷¹ Based on the experience of SOMO and the CSR Platform.

⁷² *See* DUTCH NAP, *supra* note 7, at 41-42.

⁷³ *See, e.g.*, MVO Platform, *supra* note 93.

⁷⁴ NETH. INST. FOR HUMAN RIGHTS, *supra* note 113, at 13.