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# National Action Plans on Business and Human Rights: Peer Review?

## WHAT ARE BUSINESS AND HUMAN RIGHTS NATIONAL ACTION PLANS (NAPS)?

NAPs are policy documents/instruments developed by states to articulate actions to implement the UN Guiding Principles on Business and Human Rights (UNGPs) and other frameworks addressing business-related human rights issues. As of early November 2019, 24 states have adopted NAPs, and more states are in the process of developing NAPs.

## WHAT IS THE STATE OF PLAY ON REVIEW OF PROGRESS OF NAPS?

Analysis of NAPs conducted by independent actors<sup>1</sup> reveals weak mechanisms for implementation of action points. There are a number of levels at which mechanisms to increase accountability could be situated (see graphic).

One form of addressing the accountability challenge of NAPs could be through a peer review at a regional or international level.

Policy makers dialogues on business and human rights and National Action Plans have occurred at EU and OECD levels since 2015.<sup>2</sup> The Council of Europe Recommendation CM/Rec(2016)3 provides that:

“With the participation of all stakeholders, member States should continuously monitor the implementation of their National Action Plans and, periodically evaluate and update them. Bearing in mind that a suitable model may vary from State to State, member States should share their best practices concerning the development and review of National Action Plans with each other, with third countries and relevant stakeholders”.<sup>3</sup>

### NATIONAL LEVEL

Government-led progress review

Multi-stakeholder mechanism

Independent mechanism

### REGIONAL LEVEL

Regional human rights institution monitoring mechanisms

Regional peer review

### INTERNATIONAL LEVEL

UN Treaty bodies and special procedures

Global peer reviews

Options under new instrument

## WHAT IS A PEER REVIEW?

A peer review evaluates individual performance or practice in a specific area by other practitioners.<sup>4</sup> A review can help ensure accountability and maintain a high standard of implementation amongst international parties and is an early warning system for emerging issues and potential crisis. Some examples of peer review mechanisms include:

- [Implementation Review Mechanism of the UN Convention against Corruption](#)

The Implementation Review Mechanism (IRM) is a peer review process that assists State parties to effectively implement the UN Convention Against Corruption. Based on the terms of reference,<sup>5</sup> each State party is reviewed by two peers - one from the same regional group - which are selected by a drawing of lots at the beginning of each year of the review cycle. The functioning and the performance of the IRM is guided and overseen by the Implementation Review Group, an open-ended intergovernmental group of States parties which is a subsidiary body of the Conference of the States Parties. UNODC is the secretariat of the Review Mechanism. The Mechanism provides the Conference of the States Parties with information on measures taken by State parties in implementing the Convention and the difficulties encountered by them in doing so and helps State parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of such assistance.<sup>6</sup>

- [Universal Periodic Review](#)

The Universal Periodic Review (UPR) involves a periodic review of the human rights records of all UN Member States every four-and-a-half years. The reviews are conducted by the UPR Working Group which consists of the 47 members of the Human Rights Council. Any UN Member State can take part in the discussion with the reviewed States. Each State review is assisted by groups of three States, known as “troikas”, which serve as

rapporteurs. NGOs, national human rights institutions (NHRIs), and other stakeholders can submit reports on the country reviewed during the information gathering stage of the UPR process. These stakeholders are also allotted time to express their opinions on the outcome during the adoption stage of the review. Following the review by the Working Group, the outcome report is prepared by the troika with the involvement of the State under review and assistance from the OHCHR. This report consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State which can ‘support’ or ‘note’ recommendations. The State has the primary responsibility to implement the recommendations contained in the final outcome report.

- [The Financial Stability Board \(FSB\) Peer Review](#)

The Financial Stability Board (FSB) is an international body that monitors and makes recommendations about the global financial system. FSB coordinates national financial authorities and international standard-setting bodies as they work toward developing strong regulatory, supervisory and other financial sector policies. The FSB began a regular programme of peer reviews in 2010, consisting of thematic reviews and country reviews. FSB peer reviews focus on the implementation and effectiveness of international financial standards developed by standard-setting bodies (SSBs) and of policies agreed within the FSB.<sup>7</sup>

- [Open Method of Coordination \(OMC\) of the European Union \(EU\)](#)

The OMC is an EU policy-making process. The EU Parliament has stated that “The OMC does not result in EU legislation, but is a method of soft governance which aims to spread best practice and achieve convergence towards EU goals in those policy areas which fall under the partial or

full competence of Member States”<sup>8</sup> and noted that the OMC is principally based on:

- “jointly identifying and defining objectives to be achieved (adopted by the Council);
- jointly established measuring instruments (statistics, indicators, guidelines);
- benchmarking, i.e. comparison of EU countries' performance and the exchange of best practices (monitored by the Commission).”<sup>9</sup>

OMC objectives are not legally binding and there are no formal sanctions available if Member States fail to adopt or achieve OMC objectives.

○ [African Peer Review Mechanism \(APRM\) of the African Union](#)

Established in 2003, the APRM is a tool for sharing experiences, reinforcing best practices, identifying deficiencies, and assessing capacity-building needs to foster policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration. There are 4 types of country reviews; a base review (carried out when a country joins the APRM), a periodic review every 4 years, a requested review, and a review commissioned by the APR Forum. A review occurs in five stages; consultation, a review mission, a draft report, the peer review, and the final report.<sup>10</sup>

○ [OECD Development Assistance Committee](#)

The OECD Development Assistance Committee (DAC) functions as a forum where bilateral donors come together to exchange experience and to address issues of common interest or concern. Its overarching objective is the continuous improvement of member efforts in all areas of development co-operation, through the exchange of good practices and the promotion of coordination and collaboration. Every four to five years on average, the DAC reviews and assesses each member’s development cooperation system. The Review makes recommendations and suggestions for improvement and a follow up

process ensures that lessons are translated into policies, programmes, and practices of the DAC member.<sup>11</sup>

○ [OECD National Contact Point \(NCP\) Peer Review](#)

Since the 2011 update of the OECD Guidelines for Multinational Enterprises,<sup>12</sup> National Contact Points have reinforced peer learning activities with the objectives of:

- Assess that the functioning and operation of the NCPs are in accordance with the core criteria set out in the Implementation Procedures;
- Identify the NCP’s strengths and positive results as well as any gaps and possibilities for improvement;
- Make recommendations for improvement; and
- Serve as a learning tool for reviewed and participating NCPs. The overarching goal is to promote functional equivalence of all NCPs, and to ensure that the network of NCPs operates to its full capacity in helping implement the Guidelines.<sup>13</sup>

○ [Global Alliance of National Human Rights Institutions \(GANHRI\) Peer Review](#)

GANHRI is mandated to review and accredit NHRIs in compliance with the Paris Principles. This is done through a peer review process undertaken by GANHRI's Sub-Committee on Accreditation (SCA). This process is conducted under the auspices of the Office of the United Nations High Commissioner for Human Rights (OHCHR), which is a permanent observer and serves as GANHRI’s secretariat. NHRIs are reviewed on a periodic basis of 5 years.<sup>14</sup>

○ [Peer Review of Germany’s Sustainable Development Strategy](#)

In 2017, the German Government called for a third international peer review of the German Sustainable Development Strategy (GSDS).<sup>1</sup> The GSDS is the main framework for national

implementation of the 2030 Agenda for Sustainable Development. The Government mandated the German Council for Sustainable Development (RNE) to facilitate and provide staff and budget for the review.<sup>15</sup>

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The Danish Institute for Human Rights published a Toolkit providing guidance on how to develop, implement, and monitor a NAP in 2017. This Toolkit and other useful resources including updates on NAPs worldwide are available at <https://globalnaps.org/resources/>

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<sup>1</sup> Scottish Human Rights Commission, Business and Human Rights National Action Plans, [Comparative Review of Global Best Practice](#) (2019), International Corporate Accountability Roundtable (ICAR) and European Coalition for Corporate Justice (ECCJ) (2017) [Assessments of Existing National Action Plans \(NAPs\) on Business and Human Rights](#), European Parliament, Directorate-General for External Policies, Policy Department (2017) [Implementation of the UN Guiding Principles on business and Human Rights; Danish Institute for Human Rights, Initial Analysis of Plans from 2013-2018 \(2018\)](#)

<sup>2</sup> Under the Presidency of the Netherlands in 2016, a peer review meeting was held amongst EU Member States to discuss progress in this area. Following suit, the Belgian government hosted a peer review meeting in May 2017, and Belgium and Finland organised a similar event in May 2019.

Also see the OECD, [Workshop on Developing National Action Plans on Responsible Business Conduct Including National Action Plans on Business and Human Rights](#) (June 17, 2015); [OECD Global Forum on Responsible Business Conduct, High-Level Roundtable for Policy-Makers](#) (June 7, 2016); OECD, [National Action Plans on Business and Human Rights to Enable Policy Coherence for Responsible Business Conduct](#) (June 2017), OECD, [Global Forum on Responsible Business Conduct, Roundtable for Policy Makers](#) (June 28, 2017)

<sup>3</sup> Council of Europe, [Recommendation on Human Rights and Business](#), CM/Rec(2016)3, at 7 (Mar. 2016)

<sup>4</sup> The Organization for Economic Co-operation and Development (OECD) (2019). [What is peer review?](#)

<sup>5</sup> UNODC, [Mechanism for the Review of Implementation of the United Nations Convention against Corruption—Basic Documents: Terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption](#), pg. vii, June 2011,

<sup>6</sup> UNODC, [Implementation Review Mechanism](#)

<sup>7</sup> FSB, [Peer Reviews](#)

<sup>8</sup> Martina Prpic, The Open Method of Coordination, European Parliamentary Research Service, October 2014: <http://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf>

<sup>9</sup> EUR-Lex, [https://eur-lex.europa.eu/summary/glossary/open\\_method\\_coordination.html](https://eur-lex.europa.eu/summary/glossary/open_method_coordination.html)

<sup>10</sup> African Union, [African Peer Review Mechanism](#)

<sup>11</sup> OECD, [Information Note on the Development Assistance Committee \(DAC\) Peer Review Process](#)

<sup>12</sup> OECD [Guidelines for Multinational Enterprises](#), 2011

<sup>13</sup> OECD [Working Party on Responsible Business Conduct, Core Template for Voluntary Peer Reviews of National Contact Points](#), 2015

<sup>14</sup> GANHRI, [Report and Recommendations of the Session of the Sub-Committee on Accreditation](#), March 2019

<sup>15</sup> International Peer Review, [2018 Peer Review of German Sustainability Strategy](#), May 2018