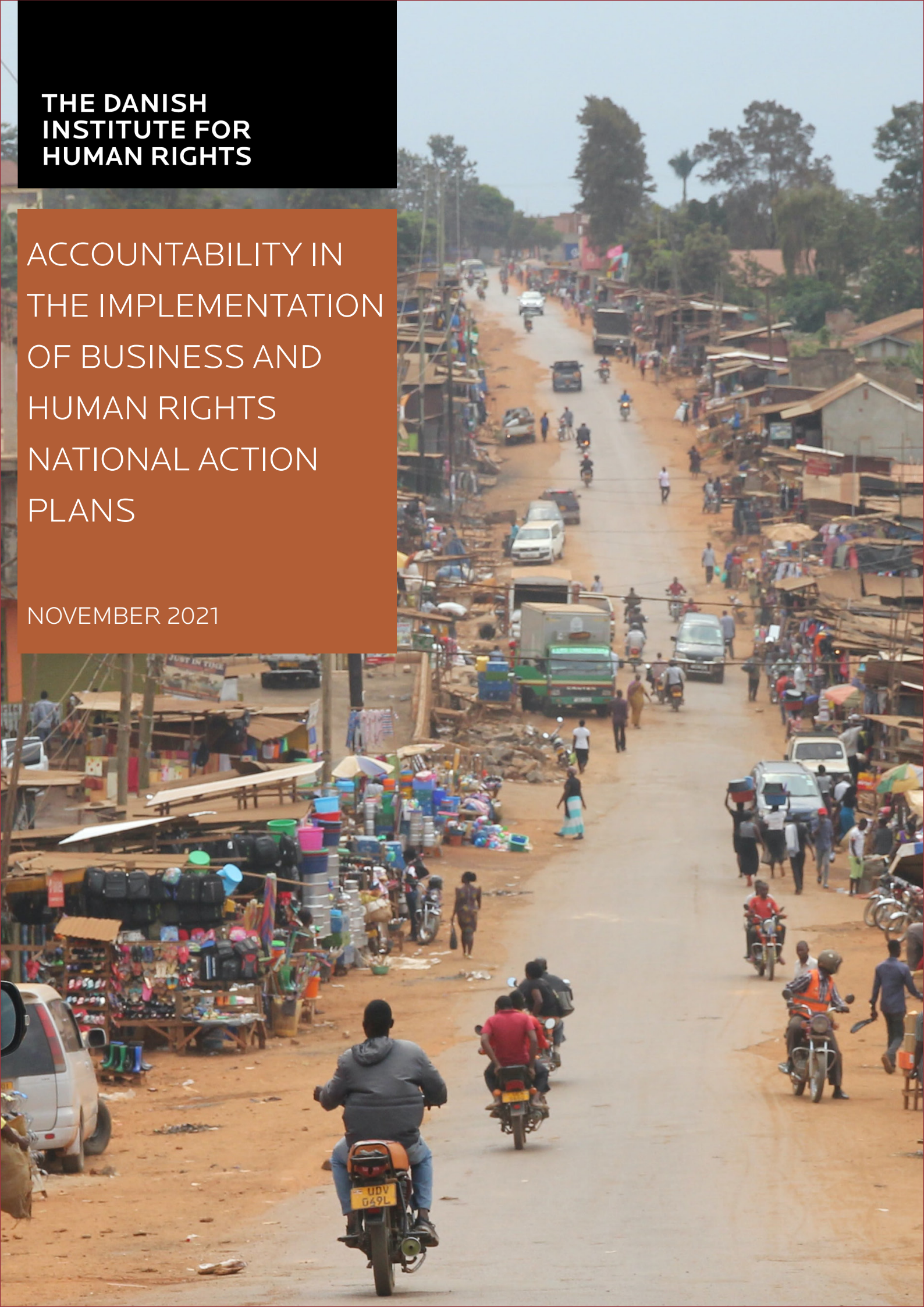


**THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS**

ACCOUNTABILITY IN  
THE IMPLEMENTATION  
OF BUSINESS AND  
HUMAN RIGHTS  
NATIONAL ACTION  
PLANS

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# ACCOUNTABILITY IN THE IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS NATIONAL ACTION PLANS

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# INTRODUCTION

The [United Nations Guiding Principles on Business and Human Rights](#) (UNGPs) were endorsed by the United Nations Human Rights Council in June 2011. Since then, a number of regional and international organisations and other stakeholders have called for and endorsed the development of National Action Plans to implement the UNGPs (hereafter NAPs). The development of a NAP is an opportunity to review the extent of the UNGPs' implementation at the national level, identify gaps and design actions to address these.

Accountability in this analysis refers to the ability of rights-holders to hold duty-bearers in government to account for their commitments and actions. Ensuring accountability in NAP development and implementation processes can be critical to their legitimacy, to their success in protecting rights-holders against business-related human rights abuses and providing remedy to victims. Ensuring accountability can build trust in the NAP, which in turn can lead to greater engagement from civil society organisations (CSOs) and business to support implementation of specific actions. The [UN Working Group on Business and Human Rights'](#) (hereafter UN Working Group) [Guidance on National Action Plans on Business and Human Rights](#) notes that NAPs are only as effective as the implementation of the actions committed to by the Government.

NAPs have however been criticised for lacking adequate accountability mechanisms ([Claire Methven O'Brien, et al. 2016](#), [Judith Schönsteiner 2019](#), [Rivera 2019](#)). Recent reports, including the 2021 Diakonia-Danish Institute for Human Rights (DIHR) report on [civil society engagement in the development of a NAP in Peru](#), the 2020 DIHR case study on [the NAP development process in Kenya](#), and [two short DIHR analyses](#) from 2018 and 2020, highlight some of the challenges related to accountability in NAP development processes. Building on these, the objective of this analysis is to highlight what mechanisms exist in order to ensure accountability during NAP implementation while highlighting some challenges and good practices. Further research would be necessary to assess the efficacy of such mechanisms.

The 7 accountability mechanisms explored in this analysis have been identified and grouped based on the UN Working Group's [Guidance on National Action Plans on Business and Human Rights](#), the [DIHR-ICAR National Action Plans on Business and Human Rights Toolkit](#), and from real-life examples, and do not constitute an exhaustive list. The mechanisms explored are:

1. SMART (specific, measurable, achievable, realistic and time-bound) actions and indicators;
2. A body responsible for implementation;
3. A body responsible for oversight;
4. Stakeholder participation in monitoring, follow-up and review mechanisms;
5. State reporting;
6. Commitment to a mid-term review and to an update at the end of the life-cycle;
7. Embedding progress on business and human rights beyond changes of government.



8 NAPs, published from December 2019 to August 2021, form the main focus of this analysis. These were the most recently published NAPs at the time this analysis was conducted and include countries from different continents and regions.



[Colombia](#) published its second NAP in December 2020 which was presented by the government as being the result of a participatory process, with 15 territorial meetings, a multi-stakeholder Technical Roundtable and seven regional workshops, among other initiatives. [Other actors have questioned](#) how participatory the process was. To date, a National Baseline Assessment (NBA) has not been published.



[Japan](#) launched its NAP in October 2020. Relevant stakeholders and government ministries, actively participated in the NAP development process. Still, [Japanese CSOs](#) have criticised the limited opportunities to truly engage with the government. NAP policy actions are preceded by an explanation on the existing measures/ framework but it does not contain explicit indicators for measuring performance.



[Kenya](#) formally adopted a final version of a NAP in April 2021, becoming the first African country to adopt a NAP. The NAP underwent significant changes as it progressed through the formal sign-off process, including additional sections, revised policy actions, and reduced commitments, which were not clearly communicated to stakeholders. In 2020, the Danish Institute for Human Rights [published a case study](#) that outlines and reflects upon the process of developing the Kenyan National Action Plan on Business and Human Rights.



[Luxembourg](#) announced the adoption of an updated NAP in January 2020. According to the text, this second edition was based on a sector-specific and operational approach, taking onboard the lessons learned during the implementation of the first NAP. It engages particular business enterprises and NGOs for the implementation of some action points.



[Peru](#) published its first NAP in June 2021. A [Diakonia-DIHR report on civil society engagement in the development of a NAP in Peru](#) published 2021 highlights the regulatory strength of the NAP, and how a greater participation of women was encouraged through a mini-platform on gender and human rights, formed as a space for making visible gendered impacts and for sharing a gender-based approach. Peru's national baseline assessment report contains 23 studies (known locally as diagnoses), which address specific groups, rights, sectors and cross-cutting issues.



[Switzerland](#) adopted a second NAP in January 2020 together with an action plan on corporate social responsibility. This second NAP is informed by feedback of the first NAP. All measures include concrete performance indicators to gauge the progress made on implementation the NAP and to improve the transparency of the outcomes.



[Thailand](#) launched a NAP in December 2019. Thailand was the first Asian country to adopt a NAP. Thailand's NBA was conducted by the [Manushya Foundation](#), an independent CSO which has criticised the government for not undertaking additional regional consultations with meaningful engagement of all relevant stakeholders in the NAP process. Each action point was linked to particular SDGs and specific principles in the UNGPs. However, according to Manushya Foundation, the NAP fails to provide an effective gender lens.



[Uganda](#) published its first NAP in July 2021. The NAP contains a set of budgetary tables in the annex and is the first NAP to include this. The NAP contains well-defined objectives and clear expected results to be evaluated by strong performance indicators.

# SELECT ACCOUNTABILITY MECHANISMS IN RECENT NAPS

## 1. SMART actions and indicators

NAPs should include specific, measurable, achievable, realistic and time-bound (SMART) actions. SMART actions are crucial to ensuring accountability and transparency in the NAP implementation. Actions should be defined when setting objectives specifically aiming at addressing the differentiated impacts on vulnerable populations. And to ensure action points are fully SMART, each action should be supplemented with information on the responsible body and indicators to evaluate success. Also, apart from building capacity of those entities charged with implementing NAP policy actions, governments should consider providing them with adequate financial resources.

Action points in NAPs are often not fully SMART. Although all 8 NAPs assign responsibility for actions to named entities, only 4 include dates for some or all actions and only 5 include explicit indicators to measure action completion. Luxembourg is a good practice example on making actions SMART and Peru has extended the use of SMART action points to the Follow-up, monitoring, reporting and review section.

Including clear, evidence-based and gender-responsive targets, milestones, and indicators, provides a solid basis for holding governments to account and allows for the measurement of progress towards UNGP implementation. The Office of the High Commissioner for Human Rights (OHCHR) has defined [3 types of human rights indicators](#):

- Structural indicators reflect states' commitments and acceptance of international human rights standards, reflected on the ratification and adoption of legal instruments and the existence as well as the creation of basic institutional mechanisms deemed necessary for the promotion and protection of human rights;
- Process indicators refer to the efforts being made to meet the obligations that flow from the standards or in other words, the specific measures taken to implement its commitments on the ground; and,
- Outcome or performance indicators which measure the results of those efforts and can be consolidate over time due to the impact of various underlying processes.

5 NAPs include explicit outcome or performance indicators to measure action completion (Thailand, Luxembourg, Peru, Switzerland and Uganda). Uganda's NAP differentiates between outcome indicators and output indicators. Kenya's NAP urges All Ministries, Counties, Departments and Agencies (MCDAs) to report on the relevant monitoring indicators identified by the Kenya National Bureau of Statistics. All 8 NAPs use process indicators indirectly since they all define specific measures taken to meet their actions on the ground. Indeed, process indicators are often referred to as "strategic activities". Likewise, structural indicators are included in all 8 NAPs. States' commitments and acceptance of international human rights standards are reflected either as part of the context justifying each measure (Switzerland, Luxembourg, Japan) or in separate sections (Peru, Uganda, Kenya and Colombia). Thailand, for instance, uses structural indicators by linking each action point to its National Strategy (i.e., commitments at a national level), the 2030 Agenda for Sustainable Development, and individual principles of the UNGPs.

Presenting the data in a coherent way within a single document can be a challenge. Employing structured tables for the compilation of action points and their modalities of implementation can be useful to avoid overlapping, to identify cross-cutting challenges, to improve policy coherence and to allow for a clearer comprehension of states' commitments. Despite states increasingly adopting the SMART method to define their NAP action points, some still fail to present action points in an organised way and spread information in different sections within the same document.

Peru, Luxembourg and Thailand are good practice examples of well-structured NAPs which are easy to read and understand.

The implementation of a NAP requires financial resources. Adequately resourcing departments, agencies, bodies and institutions responsible for implementation can help ensure they are able to play an active role and ensure accountability. Likewise, resources need to be mobilised to ensure accountability and stakeholder participation in monitoring, follow-up and review mechanisms as well as oversight bodies or bodies responsible for reporting on NAP implementation progress. Moreover, since process indicators can be based on budget allocations, a budget can facilitate the definition of expectations and be a way of assessing the policies and specific measures taken by the duty bearer to implement its commitments and actions on the ground.

Uganda's NAP is the first NAP to contain a budget. This budget is broken down by each action and broken down by each year the NAP covers.

## GOOD PRACTICES ON SMART ACTIONS AND INDICATORS

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The following points are a consolidated example of how to develop and shape strong SMART actions and indicators, based on existing good practices and building from the UN Working Group's guidance:

- **Objective:** A NAP should summarise the main goal pursued by a series of strategic actions within a given policy area or topic. Clear objectives with an emphasis on impacts to rights-holders can help structure NAP actions.
- **Strategic actions (outputs):** A NAP should include a list of activities and policy actions to be taken to achieve an outcome. These should be as SMART as possible.
- **Expected outcome:** A NAP should state what outcome should be achieved by a particular action (output). Luxembourg's NAP defines "expected results" under each objective.
- **Performance indicators:** A NAP should include indicators to ensure that the commitments and actions detailed in the NAP are realised in practice. Uganda's NAP makes a distinction between outcome and output indicators.
- **Responsibility for the action:** A NAP should attribute clear responsibilities to relevant entities (see "implementation body" below). It is useful to indicate a leading entity when there are multiple implementing entities.
- **Responsibility for the indicator:** A NAP should indicate who is responsible for the development indicators and targets. Luxembourg refers to this aspect as "verification sources".
- **Completion target date:** A NAP should clearly identify a timeframe for the implementation of actions. Thailand, for instance, refers to short-term and long-term implementation. The short-term implementation focuses on the projects and urgent activities that can achieve outcomes in a timely manner while the long-term implementation includes projects and activities that require more time or are continuous.
- **Budget:** A NAP should indicate financial resources in as much detail as possible. Process indicators can be based on budget allocations thus facilitating the definition of expectations and the assessment of progress. Uganda's NAP contains a set of budgetary tables in the annex with budget allocations for each action by year.
- **Sustainable Development Goals (SDGs):** A NAP can link objectives and/ or actions to particular SDGs to ensure coherence with the 2030 Agenda. Both Thailand and Pakistan refer to relevant SDGs in their NAP action tables.

## 2. A body responsible for implementation

Clear allocation of responsibility for NAP actions is essential to promote stakeholder engagement with governments and to hold them to account. Often there is need to attribute responsibility for the implementation of certain actions to more than one entity. Consequently, NAPs should provide for cross-government collaboration in implementation and should explicitly identify which government entity (or entities) is responsible for its overall implementation, as well as for the delivery of specific NAP actions. The body responsible for the NAP development can also be developed into the body responsible for implementation.

All 8 NAPs allocate responsibility to existing ministries and other relevant government agencies for implementing action points, designating focal agencies for each. None of the NAPs establish a unique body to lead implementation. 4 NAPs (Colombia, Switzerland, Peru and Uganda) have allocated a lead ministry or government agency to coordinate the implementation of all NAP action points. In Peru, for instance, the Ministry of Justice and Human Rights is responsible for the overall implementation of the NAP.

## 3. A body responsible for monitoring and evaluating

Creating a body responsible for monitoring and evaluating NAP outcomes is key to ensure implementing entities are held accountable. Monitoring bodies can take various forms, including those led by the government (including the legislature), multi-stakeholder groups, or independent national monitoring mechanisms.

3 NAPs (Colombia, Luxembourg and Japan) allocate oversight functions to inter-departmental arrangements led or coordinated by specific ministries. In Luxembourg and Japan, the Ministry of Foreign Affairs leads the inter-ministerial arrangements. In Colombia, it is the Presidential Advisory Office for Human Rights and International Affairs. In addition, Luxembourg assigns oversight responsibilities to specialised agencies for each objective, including the main trade union in the country. And, for its part, Japan's Inter-Ministerial Committee, which coordinated the development phase, has a clear working plan for monitoring implementation. Only 1 NAP (Peru) assigns the majority of oversight functions to a single Ministry (the Ministry of Justice and Human Rights). 4 NAPs (Kenya, Thailand, Luxembourg and Colombia) commit to the creation of multi-stakeholder committees or rely on specialised working groups to undertake monitoring functions. There is no information available regarding the constitution of Kenya's NAP Implementing Committee or Thailand's Sub-Committee on Driving Forward Human Rights Work. Colombia's Monitoring Commission has not yet defined its members and has not yet met. Luxembourg's working group 'Entreprises et droits de l'Homme' has met on a regular basis and has published its activity on a public website. For greater accountability, Thailand commits to procure impartial external experts to evaluate the results of NAP implementation. Although not a focus of this analysis, France allocated responsibility to their National Human Rights Institution (the National Consultative Commission on Human Rights, CNCDH) as an independent administrative authority to oversee the implementation of the NAP.

When determining the composition of oversight bodies, NAPs should provide for gender balance, territorial representation and, where indigenous peoples are present, provide indigenous peoples with a real possibility of influencing decisions. Rights-holders can face challenges in accessing publicly available information on the composition of oversight bodies.

Only Colombia and Kenya out of the 8 selected NAPs articulate how their monitoring body will be composed.



#### 4. Stakeholder participation in monitoring, follow-up and review mechanisms

The UN Working Group has highlighted the need for an independent multi-stakeholder monitoring group as a form of accountability. Periodic review meetings between all relevant stakeholder groups and those charged with the implementation of a NAP can be an effective, participative, and transparent way of tracking progress and can provide an understanding of where actions are not effectively implemented or have not had the intended impact. Some NAPs allocate stakeholders joint or independent responsibility for monitoring and reviewing the NAP process. Governments can report on progress relating to NAP implementation to the multi-stakeholder monitoring group regularly and take their feedback into account, including feedback from non-governmental stakeholders.

7 NAPs articulate stakeholder engagement in follow-up and review mechanisms. The NAPs of Peru and Japan contain a commitment to establish a framework for continued dialogue and/or coordination spaces between relevant ministries and agencies and stakeholders. 4 NAPs (Kenya, Thailand, Luxembourg and Colombia) commit to the creation of multi-stakeholder committees or rely on specialised working groups to undertake monitoring functions. 2 NAPs attribute a broad responsibility for monitoring and evaluating implementation to both governmental and non-governmental stakeholders. Only 2 NAPs (Colombia and Kenya) contain explicit information regarding the composition of monitoring bodies.

#### 5. State reporting

States should report progress on implementing the NAP to enhance accountability. This can include national level reporting (e.g. reporting to the legislature) or international reporting (e.g. the Universal Periodic Review (UPR) process, United Nations treaty bodies, regional human rights bodies, and the High-level Political Forum on Sustainable Development (HLPF)). NAPs should detail reporting processes, along with who is responsible and when should reports be submitted. A [peer review mechanism at a regional or international level](#) has been suggested to ensure greater accountability in NAP implementation.

The involvement of national legislatures in NAPs accountability measures is not common among the selected NAPs. Only 1 NAP (Uganda) mandates the Parliament to provide oversight role in the implementation of the NAP in its institutional framework chapter. Switzerland, as part of specific indicators, mandates implementing agencies to report on their activities to the parliamentary Control committees. For instance, it mandates the Federal Department of Economic Affairs, Education and Research (EAER) to report on Federal Council activities to the parliamentary Control Committees detailing exports of war material. None of the selected NAPs commit to submitting reports to human rights bodies be it their respective National Human Rights Institution or international/ regional entities. Only 2 NAPs (Colombia and Kenya) contain explicit information regarding the composition of monitoring bodies.

The 8 countries focused on in this analysis have had 26 opportunities to report to UN human rights treaty bodies and the High-level Political Forum (HLPF) Voluntary National Reviews (VNR) since their inaugural NAPs were adopted (based on the latest information available on UN websites). From these 26 opportunities, NAPs were highlighted in 13 reports. However, only 3 of these 13 reports (Colombia twice, Japan once) contain information on NAP implementation.

## 6. Commitment to a mid-term review and to an update at the end of the life-cycle

Periodic or mid-term reviews of NAP implementation can produce evidence on the progress towards individual actions and help identify challenges which can be addressed during further implementation measures. Final reviews can be used to inform the development and actions within future NAPs. Stakeholders, including state institutions, businesses, and civil society, are a valuable source of information on challenges to implementation. Engaging these stakeholders, in turn, enhances accountability. Incorporating a commitment to update a NAP ensures that lessons learnt during implementation and at the review stage to have a clear objective; informing future actions. Governments should define a guideline date for a future update. A mid-term progress-review and, if the NAP is time-bound, a final review of the NAP, are common approaches.

All 8 NAPs commit states to provide follow-up reports on the implementation of NAP commitments and actions. 4 NAPs ask implementation bodies to present annual reports on the progress made (Colombia, Luxembourg, Japan and Peru) and in one case it is the oversight body which has the responsibility to follow the progress of implementation of the NAP on annual basis (Japan's Inter-Ministerial Committee). Peru's NAP commits to the development of a Follow-up, Monitoring, Evaluation and Updating System, which will include processes for collecting and using information with evidence of the changes generated to guide the actions and objectives towards the desired impact. Only Thailand commits to a mid-term review. However, all the other NAPs contain commitments to conduct periodic reviews. According to Colombia's NAP, the Monitoring Commission will meet every 3 months. Yet, to date, Colombia's Monitoring Commission has not yet defined its members or convened. Japan's NAP commits the Inter-Ministerial Committee to exchanging views on relevant international trends and the status of efforts by Japanese business enterprises around three years from the issuing of the NAP with the view to assess the status of the efforts of Japanese companies. And Kenya's NAP Implementing Committee shall, within six months of the adoption of the NAP, come up with a detailed work plan on how to implement and monitor NAP policy actions. Luxembourg's inaugural NAP outlined a review process once per legislative period (i.e. every four years), but upon a parliamentary request, the Federal Council agreed on an initial review two years after the publication of the NAP. 7 NAPs commit to undertake a final evaluation and revision of the NAP with the view to inform the subsequent NAP.

NAPs should also consider the possibility of regulatory intervention in those cases where businesses fail to comply with voluntary measures to ensure they respect human rights. In Germany, due to the low compliance with NAP requirements by companies a process was triggered that culminated in the adoption of new national corporate human rights due diligence law ([Claire Methven O'Brien et al., 2021](#)).

## 7. Embedding progress on business and human rights beyond changes of government

As with any public policy, a NAP can be side-lined by an incoming government. However, given that a NAP is a means of implementing the UNGPs and realising a state's human rights obligations, it is important to keep implementation measures in focus. Strengthening the legal basis of a NAP can help guaranteeing a continued focus on the NAP independently of institutional changes.

Peru's 2021 NAP was adopted by a Supreme Decree, which is the [highest executive act in Peru's legal system](#). Kenya's 2021 NAP was approved and formally adopted by the cabinet. However, it was voluntarily presented to Parliament to ensure dissemination among lawmakers.

One way to keep a NAP on the agenda during a change in government is to engage and empower non-state actors to help support implementation. States are increasingly engaging non-state actors

in the implementation of the UNGPs and the 2030 Agenda also recognising the role of business in supporting and guiding NAPs. Improving collaboration between state authorities and the private sector in NAP implementation implies a sustained focus on the corporate responsibility to respect human rights (UNGP Pillar II). Belgium's 2nd NBA assessed the implementation of UNGP Pillar II using a screening of Belgian companies from 11 sectors, a mapping of human rights abuses (allegedly) implicating Belgian companies, and a consultation of key stakeholders with the purpose of identifying gaps and providing for policy recommendations.

Of the 8 NAPs in this analysis, only Uganda and Luxembourg mention businesses as implementing parties for some specific action points. Luxembourg's NAP makes specialised NGOs (notably UNICEF and Droits des enfants et principes commerciaux) responsible for the implementation of an action point related to awareness raising and training of companies on Business and Human Rights. Colombia engages private actors in implementation through business associations in few action points such as promoting responsible supply chain management and due diligence in business activities or generating spaces for the exchange of good business practices in the field of human rights. Thailand has many action points that are to be implemented by specific state-owned enterprises related to the compliance with laws, standards and principles of human rights relating to a wide range of policy areas (e.g., labour rights, cross-border investment, the protection of human rights defenders, the environment, etc.).