



THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS TOOLKIT

2024 EDITION

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The Danish Institute for Human Rights (DIHR) is Denmark's National Human Rights Institution (NHRI), with a mandate to promote and protect human rights and equal treatment in Denmark and abroad. The Human Rights, Business and Technology Department focuses on the intersection between economics and human rights and in particular on the role of business in relation to human rights.

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ACRONYMS

CSO	Civil Society Organisation
DIHR	Danish Institute for Human Rights
EU	European Union
LGBTI+	Lesbian, Gay, Bisexual, Transgender, and Intersex
ILO	International Labour Organization
NAP	National Action Plan on Business and Human Rights
NBA	National Baseline Assessment on Business and Human Rights
NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
SDGs	Sustainable Development Goals of the 2030 Agenda for Sustainable Development
SMART	Specific, measurable, achievable, relevant, and time-specific
UN	United Nations
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNWG	United Nations Working Group on Business and Human Rights
UPR	Universal Periodic Review Process by the UN Human Rights Council
2030 Agenda	2030 Agenda for Sustainable Development

FOREWORD



Robert McCorquodale

Member, UN Working Group on Business and Human Rights

The initial idea for National Action Plans on Business and Human Rights (NAPs) was developed in 2012 by the UN Working Group on Business and Human Rights, of which I am honoured to be a current member. In its 2014 report, the Working Group took the view that NAPs provide an opportunity for “States [to] take stock of what they are already doing to implement the [UN] Guiding Principles [on Business and Human Rights (UNGPs)] and identify gaps which require further policy action to implement the Guiding Principles”. It also made clear that “[t]he fundamental purpose of a national action plan is to prevent and strengthen protection against human rights abuses by business enterprises through an inclusive process of identifying needs and gaps and practical and actionable policy measures and goals.”¹ Through its usual process of consultations, research and analysis, the Working Group produced a 15-step guidance on NAPs in 2016.

Over 10 years after the idea of NAPs emerged, there have been significant developments in the business and human rights field – in legislation, business practices and case law, for example. NAPs are still a relevant and important part of the activity that all States could undertake to implement the UNGPs. The Working Group’s stocktake at the 10th anniversary of the UNGPs indicated the valuable role of NAPs in ensuring policy coherence and benchmarks on business and human rights, and as a way towards increased regulation in this field. The Working Group also noted that “all States should take action to develop national action plans’ and that States which have NAPs should review them and develop ‘more mature approaches (“NAPs 2.0”)”.²

This 2024 edition of the Danish Institute for Human Rights’ Toolkit includes analysis of past and present NAPs (which now number about 50) across various regions and offers guidance on themes (such a gender lens, environmental issues and monitoring) and useful case studies, as well as practical considerations in bringing together a wide variety of departments and other actors to draft a coherent NAP, and then to update it. It also places the NAPs in a context of the developments in business and human rights more generally, which is important as legislative developments, business and public expectations, human rights issues, and international situations, change over time and these should be reflected in the content of NAPs.

In doing so, the Toolkit provides some good practice examples, and highlights concerns about some of the NAPs. These include the failure by so many NAPs to provide a commitment to, and actual implementation of, access to effective remedies for victims of adverse human rights impacts from business activities. All of these elements of the Toolkit are of immense value to government officials when drafting NAPs, as well as national human rights institutions, businesses, civil society organisations, trade unions, academics, the media and others – including the Working Group - when engaging with the State both during and after the publication of a NAP.

1. INTRODUCTION

1.1 ABOUT THE TOOLKIT

This 2024 edition of the National Action Plan on Business and Human Rights (NAP) Toolkit builds on two previous editions:

- The 2014 edition of the Toolkit developed by the Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable. This was developed following extensive consultations.³
- The 2017 edition of the Toolkit developed by the DIHR and the International Corporate Accountability Roundtable. This was developed based on feedback from fourteen practitioners who had utilised the Toolkit to support NAP development processes. It further reflected the UN Working Group on Business and Human Rights' (UNWG) guidance on NAPs and sought to align with and complement it.⁴

Both of these previous editions have been widely used by various stakeholders, including governments, national human rights institutions (NHRIs), academia, and civil society organisations (CSOs) to inform their work on NAPs on business and human rights. The Toolkit has also been referenced by inter-governmental organisations that have encouraged the development of NAPs, including the Council of Europe⁵ and UNWG.⁶

This 2024 edition brings together in one document the array of supplementary material developed since 2017, including thematic guidance, case studies, and analysis on NAPs.⁷ It further incorporates normative, legislative, and NAP-related policy developments, as well as recent national developments to provide up-to-date real-world examples.

This Toolkit highlights real-life good practice examples and innovative approaches. It also highlights challenges faced by those working with NAPs, and lessons learned addressing these.

BOX 1: THE GLOBALNAPS WEBSITE

The website www.globalnaps.org is an online “one-stop-shop” for information regarding National Action Plans on Business and Human Rights. This website is continually updated and provides information on the processes around the world to develop NAPs. It also provides information on how each published NAP addresses (or does not address) over 40 business and human rights topics and sectors. Further information on NAPs, and the sources for information provided in examples in this Toolkit, can be found on the globalnaps website.

BOX 2: THE NATIONAL BASELINE TOOL

The National Baseline Tool on Business and Human Rights was launched in 2023 by the DIHR to support organisations conduct a baseline assessment on the status of the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) by a State, and identify legal and policy gaps and patterns of adverse human rights impacts by businesses.⁸ It is composed of an online questionnaire structured in 10 thematic domains to support users to identify relevant information regarding the implementation by the State of Pillars I and III of the UNGPs. It can be accessed at bhrbaseline.humanrights.dk.

1.2 OBJECTIVES AND TARGET AUDIENCE

The overall goal of this Toolkit is to promote implementation of the UNGPs and other relevant business and human rights frameworks by States and businesses.

This Toolkit provides guidance on how to:

- Plan an inclusive and participatory NAP development and implementation process;
- Consider gender issues across the NAP lifecycle;
- Undertake a national baseline assessment on business and human rights (NBA) to identify adverse business-related human rights impacts and the gaps in the policies and practices of States and business to implement Pillars I, II, and III of the UNGPs;
- Ensure a NAP addresses gaps in the implementation of the UNGPs, based on the severity of the impacts (considered according to their scale, scope and irremediable character), through action points and indicators that are specific, measurable, achievable, relevant, and time-specific (SMART); and
- Establish implementation mechanisms and multi-stakeholder accountability measures to monitor, report, and evaluate the effectiveness of NAP implementation at national, regional, and international levels.

Multiple actors may find particular value in the Toolkit:

- **Government officials and elected representatives** may use this Toolkit to, for example, orient domestic policy-making, including at the local and sub-national levels, support alignment between a NAP and other national level legislation, policies, and action plans which articulate business respect for human rights, and inform capacity-building efforts at all levels of government and inform positions taken in international institutions or standard-setting processes.
- **National human rights institutions (NHRIs)** may use this Toolkit to undertake NBAs on business and human rights on their own accord or on request from their government. This Toolkit will also be helpful to NHRIs where they act as conveners of a NAP development process, including through NAP stakeholder committees. Principles and indicators contained within this Toolkit can further be utilised by NHRIs to inform promotion, education, reporting, and monitoring activities linked to the NAP and/ or business and human rights issues, in line with their UN Paris Principles mandates,⁹ and articulated in the Edinburgh Declaration.¹⁰

- **Civil society organisations** may use this Toolkit to inform the standard of a NAP development and implementation process. This Toolkit can also help CSOs in the creation of NBAs to monitor and evaluate State commitments and progress in implementing the UNGPs, thereby supporting advocacy and dialogue with the State and businesses. They can also use this Toolkit when preparing reports and submissions to national, regional, or international supervisory bodies on topics relevant to business and human rights.
- **Individual rightsholders and communities/ groups of rightsholders**, including those who are vulnerable, marginalised, and/ or discriminated against, may use this Toolkit to understand how they should be engaged in a NAP development and implementation process, and identify what opportunities to engage may exist in practice.
- **Businesses and business organisations** may utilise this Toolkit to inform themselves about measures that can be expected of States in implementing the UNGPs, thereby preparing themselves for participation in a NAP development and implementation process.
- **International and regional organisations** may utilise this Toolkit when developing standards and guidance on the implementation of the UNGPs/ developing NAPs, supporting States develop NAPs, and when monitoring and evaluating UNGP and/ or NAP implementation.
- **Multilateral and bilateral development agencies** may find this Toolkit useful when analysing country contexts, when designing and monitoring programmes and projects to implement the UNGPs, and when funding and supporting NAP development and implementation processes.
- **Media, researchers, and academia** may use this Toolkit to help orient investigations, analysis, research, and reporting on government responses to the UNGPs, corporate accountability, and sustainable development more broadly.

1.3 WHAT ARE NATIONAL ACTION PLANS?

National action plans are policy documents in which a State articulates priorities and actions that it will adopt to support the implementation of international, regional, and/ or national obligations and commitments with regard to a given policy area or topic.

Calls for NAPs on the implementation of the UNGPs were inspired by the increasing use of national action plans to support a range of other policy areas including human trafficking, climate change, energy efficiency, health literacy, child accident prevention, and water quality. In the Vienna Declaration and Programme of Action,¹¹ adopted in June 1993, the World Conference on Human Rights recommended States consider drawing up a national action plan on the promotion and protection of human rights.¹² Similarly, national action plans are increasingly being used in relation to implementation of the 2030 Agenda.

The UNWG has defined a NAP on business and human rights as an “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs).”¹³

The UNGPs were unanimously endorsed by the UN Human Rights Council in June 2011 and are the first universally accepted international framework on business and human rights.¹⁴ The three-pillar framework of the UNGPs articulates the respective duties and responsibilities of States and businesses vis-à-vis human rights, reiterating the State duty to protect, outlining the business responsibility to respect, and articulating the roles of both States and businesses in ensuring access to effective remedy for business-related human rights harms.

1.4 INTERNATIONAL DEVELOPMENTS

There has been broad and strong uptake of the UNGPs following their endorsement by the UN Human Rights Council in 2011. Since then, a number of regional and international organisations and other stakeholders have called for and endorsed the development of NAPs to implement the UNGPs. The following is a summary of international developments in this regard.

1.4.1 United Nations (UN)



In June 2011, the UN Human Rights Council established a Working Group on Business and Human Rights (UNWG) and tasked it, inter alia, with facilitating the global dissemination and implementation of the UNGPs.¹⁵ Based on this mandate, the UNWG has “strongly encourage[d] all states to develop, enact[,] and update a national action plan as part of the state responsibility to disseminate and implement the Guiding Principles on Business and Human Rights.”¹⁶

In 2014, the UNWG published guidance on NAPs, which was updated in November 2016, which provides recommendations on developing, implementing, and updating NAPs.¹⁷ This guidance was designed to support all stakeholders involved in NAP processes based on the recognition that there is no ‘one-size-fits-all’ approach to NAPs. It also recognises that NAPs may be stand-alone documents or integrated with other relevant frameworks. To facilitate experience sharing amongst States, the UNWG has developed a website which lists which States have published NAPs on business and human rights.¹⁸

The CESCR General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities welcomes NAPs, particularly when they set specific and concrete targets, allocate responsibilities across actors, define the time frame and necessary means for their adoption, and incorporate human rights principles, including effective and meaningful participation, non-discrimination and gender equality, and accountability and transparency.¹⁹

In May 2019, the UNWG published a report on the Gender Dimensions of the Guiding Principles on Business and Human Rights which notes the “limited integration of a gender perspective in existing national action plans on business and human rights”. The report recommends that States “apply the gender framework and guidance [contained within the report] in developing or revising all initiatives and measures, including national action plans on business and human rights”.²⁰

In 2021, the ILO released a briefing note in cooperation with the UNWG underscoring the relationship between NAPs and international labour standards.²¹

In June 2021, a UNWG report on ensuring respect for human rights defenders concluded that States “should enable human rights defenders to play an active role in processes to develop and implement national action on business and human rights, and ensure that such plans address the issues facing defenders.”²²

In January 2022, the OHCHR recommended that G7 Member States “lead by example” by adopting their own NAPs, periodically review these, and provide technical and financial support to partner countries to support NAP development.²³

In June 2022, a UNWG report published on the 10th anniversary of the UNGPs setting out a roadmap for the next decade, highlights the role of NAPs in ensuring policy coherence on business and human rights, providing benchmarks upon which State implementation of the UNGPs can be assessed, and as a stepping stone towards mandatory human rights and environmental due diligence legislation. The UNWG notes that “all States should take action to develop national action plans”,²⁴ and that States which have NAPs should review them and developed “more mature approaches (“NAPs 2.0”)”.²⁵ See section 2.4.6 for more information on communications and recommendations on NAPs to individual States by the UNWG, UN Special Procedures, and UN Committees.

In 2024, the OHCHR published an interpretative guide on Access to Remedy in Cases of Business-related Human Rights Abuse which highlights that States can develop national action plans on business and human rights to help ensure access to effective remedies in business and human rights cases.²⁶

1.4.2 European Union



In 2011, the European Commission issued a Communication inviting all EU Member States to develop “national plans for the implementation of the UN Guiding Principles” by the end of 2012.²⁷ This commitment to NAPs on business and human rights at the EU level was strengthened in 2012, when the European Council also called on all EU Member States to develop NAPs on the implementation of the UNGPs, with an extended deadline to the end of 2013.²⁸ In June 2016, the EU Council adopted its Conclusions on Business and Human Rights, renewing this commitment.²⁹

The European Commission's EU Action Plan on Human Rights and Democracy (2020-2024) commits to "actively promote and support global efforts to implement the UN Guiding Principles on Business and Human Rights, including through fostering the development and implementation of national action plans in Member States and partner countries".³⁰ The Council of the European Union has committed to continue supporting the adoption of National Action Plans in Member States and partner countries through its 2021, 2022, 2023, and 2024 Conclusions on EU Priorities in UN Human Rights Fora.³¹ The EU is providing funding for a range of projects related to business and human rights (see box 11 for more information).

The European Parliament has called on the European Commission to step up its efforts with regard to NAPs in third countries.³² A report published in February 2017 by the European Parliament's Sub-Committee on Human Rights on the Implementation of the UNGPs recommended "to establish NAPs' peer-to-peer review mechanism aimed at assisting and inspiring states to strive for continuous improvement."³³ Under the Presidency of the Netherlands in 2016, a peer review meeting was held amongst Member States to discuss progress in this area. Following suit, the Belgian government hosted a peer review meeting in May 2017 and a peer exchange in June 2022 (see box 72 for more information).

The 2011 EU Corporate Social Responsibility Strategy contained a commitment to develop an EU-level UNGPs implementation plan.³⁴ The EU Council conclusions of 2016 call on "the Commission and the EEAS [European External Action Service] to promote peer learning on business and human rights, including cross regional peer learning."³⁵ The European Commission further committed to the development of an EU Action Plan on Responsible Business Conduct in 2016,³⁶ and reiterated their commitment to "a comprehensive EU framework for the implementation of the Guiding Principles in order to enhance coordination and coherence of actions at EU level" in the EU Action Plan on Human Rights and Democracy (2020-2024).³⁷ However, an Action Plan has not been published as of June 2024.

As of June 2024, fifteen EU Member States had published NAPs on business and human rights,³⁸ although only four Member States have NAPs that are currently active.³⁹ In recent years, the EU and EU Member States have focused efforts on implementing sustainability disclosure legislation and developing mandatory human rights and environmental due diligence legislation.⁴⁰ The EU Corporate Sustainability Due Diligence Directive entered into force in July 2024 and Member States will focus on transposition and developing accompanying measures. The role of NAPs vis-à-vis mandatory human rights due diligence is explored in Section 4.2.⁴¹

1.4.3 Council of Europe

In 2011, the Council of Europe Committee of Ministers requested that the Steering Committee on Human Rights develop new standards on corporate responsibility and human rights.⁴² In April 2014, the Committee of Ministers adopted a Declaration calling on Member States to develop NAPs.⁴³ In March 2016, the Committee of Ministers adopted a Recommendation on Human Rights and Business which calls on Member States to adopt NAPs to implement the UNGPs which address all three

pillars of the UNGPs, consider the rights of children, pay special attention to the rights of Indigenous Peoples, ensure their publication and wide distribution, and share best practice concerning the development and review of National Action Plans in a shared information system.⁴⁴ To support the implementation of 2016 Recommendation, the Council of Europe established an online platform on human rights and business in 2019 where information on national action plans adopted by Member States can be shared.⁴⁵ In 2018, the Council of Europe published a Business and Human Rights Handbook for Practitioners which highlights that “[o]ne of the concrete steps Council of Europe member states should take to promote policy coherence in the business and human rights area, in line with UNGPs 8-10, is to develop a NAP on business and human rights.”⁴⁶

The 2016 Recommendation also provided for a process within the Committee of Ministers for examining the implementation of the recommendation. In February 2022, the Steering Committee for Human Rights issued a report on the implementation of 2016 Recommendation after issuing questionnaires to member States and NHRIs regarding their implementation of the Recommendation, which were replied by 14 out of 47 member States and 5 NHRIs.⁴⁷ The report concluded that the 14 responding States had developed a structured NAP with clear information and the Steering Committee pledged to “continue the review of the implementation of Recommendation CM/Rec(2016)3 with a thematic focus on the implementation of the standards of the Recommendation on due diligence and access to effective remedies in particular in the field of environmental protection while ensuring the participation of relevant stakeholders in the review process.”⁴⁸ As of June 2024, only four Member States have NAPs that are currently active.⁴⁹

1.4.4 African Union



In 2014, the African Union and the EU held a joint seminar on the implementation of the UNGPs, where both organisations reiterated their commitment to promote and implement the UNGPs.⁵⁰ Furthermore, in 2017, the African Union, with support from the EU, developed a Draft Policy Framework on Business and Human Rights with the aim to encourage African States to adopt national policies on business and human rights, including NAPs.⁵¹ In 2023, the African Commission on Human and People’s Rights issued a resolution on business and human rights reiterating the need to “update and finalize” the African Policy Framework on Business and Human Rights,⁵² although this resolution does not reference member states developing their own NAPs.

1.4.5 Association of Southeast Asian Nations



In 2014, the Association of Southeast Asian Nations' Intergovernmental Commission on Human Rights undertook a thematic study on Corporate Social Responsibility and Human Rights, which reviews national measures with reference to the UNGPs.⁵³ Five region-wide conferences have been organised, in November 2016 in Singapore, in June 2017, June 2018, August 2022, and June 2023 in Bangkok, to advance the implementation of the UNGPs and in particular NAPs on business and human

rights in the region. Furthermore, two special sessions were held to advance the business and human rights agenda. The first, in collaboration with the United Nations Development Programme (UNDP) in December 2020 in Bangkok to provide training for Association of Southeast Asian Nations' institutions on business and human rights topics, including NAP development, and the second in May 2023 in collaboration with the EU to discuss strengthening local policies in light of new business and human rights developments, such as the EU Corporate Sustainability Due Diligence Directive.

1.4.6 Organization of American States



The General Assembly of the Organization of American States adopted a resolution in June 2014 supportive of the UNGPs, which triggered a set of measures to promote and implement them, including exchange of information and sharing of best practices.⁵⁴ In a 2016 resolution, the Organization of American States called on Member States to implement the UNGPs and recognised “national action

plans on human rights and business as one way of applying the Guiding Principles.”⁵⁵ In March 2018, the Inter-American Commission on Human Rights hosted a panel on experience-sharing on the development of NAPs.⁵⁶ In November 2019, the Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights published a report entitled “Business and Human Rights: Inter-American Standards”, which recognised the effort of States in the region to develop NAPs.⁵⁷

1.4.7 Organisation for Economic Co-operation and Development (OECD)



The OECD Guidelines for Multinational Enterprises are a set of state-supported recommendations relating to responsible business conduct applicable to multinational enterprises operating in or from adhering States. These Guidelines were revised in 2011 to include a chapter on human rights aligned with the UNGPs. In 2023, a further revision highlighted the role of National Contact Points in supporting the development of NAPs.⁵⁸

The annual reports on the OECD Guidelines for Multinational Enterprises (available until 2020) provide details on how Adherent States have developed NAPs. These reports also detail the annual OECD-hosted Roundtables for Policy Makers on RBC where NAPs were a common theme.⁵⁹

In 2022, the OECD recognised “that National Action Plans on Responsible Business Conduct or Business and Human Rights can provide an important overarching policy framework for concrete state action for RBC, developed through inclusive stakeholder engagement”.⁶⁰ See section 2.4.7 for information on OECD Policy Reviews.

1.4.8 G7/ G20

In 2015, the participating States of the G7 effectively committed to developing NAPs on business and human rights in the Leader’s Communique.⁶¹ In 2017, the G20 followed suit, agreeing to “work towards establishing adequate policy frameworks in our countries such as national action plans on business and human rights.”⁶² In 2023, the G7 committed to “deepen discussions within and beyond the G7 on business and human rights”, although this does not explicitly reference NAPs.⁶³

1.5 NATIONAL DEVELOPMENTS

As of June 2024, 36 States have adopted a first NAP, 11 States have published a second NAP, and more are in the process of developing or updating, or have committed to developing or updating, a NAP on business and human rights.

BOX 3: STATES WITH NAPS ON BUSINESS AND HUMAN RIGHTS

As of June 2024, the following States have adopted NAPs:

Argentina (2023-2026)
Belgium (2017-open) (2024-2029)
Chile (2017-2020) (2022-2025)
Colombia (2015-2018) (2020-2022)
Czech Republic (2017-2022)
Denmark (2014-open)
Finland (2014-2016)
France (2017-open)
Georgia* (2018-2020)
Germany (2016-2020)
Indonesia (2023-open)
Ireland (2017-2020)
Italy (2016-2021) (2021-2026)
Japan (2020-2025)
Kenya (2020-2025)
Lithuania (2015-open)
Luxembourg (2018-2019) (2020-2022)
Mongolia (2023-2027)
Netherlands (2014-open) (2022-2026)
Nepal (2024-2028)
Nigeria (2024-2028)
Norway (2015-open)
Pakistan (2021-2026)
Peru (2021-2025)
Poland (2017-2020) (2021-2024)
Slovenia (2018-open)
South Korea* (2018-2022)
Spain (2017-2020)
Sweden (2017-open)
Switzerland (2016-2019) (2020-2023)
Taiwan⁶⁴ (2020-2024)
Thailand (2019-2022) (2023-2027)
Uganda (2021-2026)
United Kingdom (2013-open) (2016-open)
United States (2016-open) (2024-open)
Vietnam (2023-2027)

* States which have a chapter on business and human rights within broader National Action Plans.

For up-to-date information on NAP developments, visit the [globalnaps](https://www.globalnaps.org/) website.⁶⁵

At the time of this Toolkit’s initial publication in 2014, 13 of 28 EU Member States had developed NAPs on business and human rights. As of 2024, this number has risen to 15 of 27. In the Americas, Colombia adopted a NAP in 2015, and was followed by the USA, Chile, Peru, and Argentina. Colombia, Chile, and the USA subsequently developed second NAPs. Kenya published a NAP in 2019 (formally adopted by the Cabinet in 2021), followed by Uganda in 2021. As of June 2024, at least 7 other African States are developing inaugural NAPs. In Asia, Thailand adopted a NAP in 2019, and has been followed by a range of States including Pakistan, Mongolia, and Japan.

The first generation of NAPs, which were adopted from 2013 onwards, has reached the end of their lifespans or activity periods. Some States have ‘updated’ or developed subsequent NAPs (for example, Colombia, Chile, Italy, Switzerland, and the UK), but a number have not (for example, Denmark, Finland, Spain, and Sweden).

1.6 RELEVANT DEVELOPMENTS IN THE INTERNATIONAL BUSINESS AND HUMAN RIGHTS REGULATORY AND POLICY LANDSCAPE

The regulatory framework around business and human rights has evolved significantly since the adoption of the UNGPs in 2011.

In June 2014, the UN Human Rights Council adopted a resolution to establish an inter-governmental working group to explore options for elaborating an **international legally binding instrument** to regulate, in international human rights law, the activities of transnational corporations.⁶⁶ Negotiations are still ongoing as of June 2024, and there is no agreement on the role of NAPs in implementing any future instrument.



The adoption of the **2030 Agenda for Sustainable Development** (2030 Agenda) in September 2015 recognised the role of business as a major driver for economic growth and infrastructure, necessary components for achieving the Sustainable Development Goals (SDGs), while at the same time, explicitly calling for businesses to act in accordance with the UNGPs.⁶⁷ The implementation of the UNGPs can be the single most important contribution by business to the realisation of the SDGs. Furthermore, a business cannot offset human rights abuses with commitments or activities to

support the SDGs or promote human rights in another area.⁶⁸ The Addis Ababa Action Agenda, which provides a global framework for financing the implementation of the 2030 Agenda by aligning financial flows and policies with economic, social, and environmental priorities, also refers to the UNGPs as a key framework to help realise this vision.⁶⁹ The UNWG has called on Member States developing SDG implementation plans at the national level to ensure “coherence with national action plans for the implementation of the Guiding Principles. Conversely, national action plans focused on business and human rights should clarify how the Guiding Principles will be integrated in the context of SDG implementation.”⁷⁰

There have been a number of developments around **mandatory human rights and environmental due diligence**. At the EU-level, the Corporate Sustainability Due Diligence Directive entered into force in July 2024, and after 2 years will be transposed in the 27 Member States. This supplements several EU sustainability disclosure and sector-specific instruments mandating elements of human rights due diligence.⁷¹ In addition, domestic laws mandating businesses to conduct human rights and environmental due diligence are increasingly being adopted.⁷² While there are many developments in Europe, legislation to implement the UNGPs, including mandatory human rights and environment due diligence laws, are also being proposed at the national level in a number of countries.⁷³ In practice, many of these legislative initiatives depart from the full range of businesses responsibilities articulated the UNGPs, and their adoption is not a perfect proxy for implementation of the UNGPs. A NAP can be utilised to introduce measures to address limitations in these legislative initiatives, and to articulate accompanying measures to support their implementation. The role of NAPs vis-a-vis mandatory human rights and environment due diligence laws is explored further in Section 4.2.

1.7 BENEFITS, CHALLENGES, AND CRITICISMS

There are a range of benefits and challenges associated with the development and implementation of NAPs on business and human rights. Likewise, there is criticism of NAPs. These are not unique to the development of NAPs and can vary based on the national context and the perspective of different actors.

Some of the **benefits** can include:

- Stimulating national dialogue, mobilisation, and progress on implementing the UNGPs, including incentivising and informing the development of mandatory human rights and environmental due diligence legislation;
- Enhancing awareness, understanding, and capacity of stakeholders on business and human rights issues and the UNGPs;
- Mobilising additional resources to promote the implementation of the UNGPs across society;
- Establishing a baseline to measure future progress on business and human rights;
- Serving as a mechanism for holding governments accountable to stakeholders;
- Strengthening a culture of respect for human rights and of honouring international commitments;
- Supporting State reporting requirements to regional and international human rights supervisory and other bodies;

- Contributing to preventing and reducing business-related human rights abuses and improving remediation when abuses occur;
- Providing opportunities for stakeholders to come together to engage in meaningful dialogue, build trust, and improve communication between stakeholders on issues of business and human rights;
- Reducing business-related social conflicts;
- Empowering vulnerable, and marginalised peoples and communities of rightsholders and protecting human rights defenders in relation to business impacts on human rights;
- Helping to align and improve synergies between State policies on business and human rights and other topics; and
- Promoting human rights-based sustainable development.

Some of the **challenges** can include:

- Identifying financial resources to both develop and implement a NAP;
- Ensuring coherence in development timelines and content between NAPs on other issues and a NAP on business and human rights, particularly where overlap in subject matter may cause confusion and overstretch resources
- Ensuring coherence and value add between NAPs and other policy and regulatory developments on business and human rights, including at national, regional, and global levels;
- Ensuring all relevant stakeholders are aware of the NAP;
- Implementing a multi-stakeholder approach, including capacity building, for stakeholders with broad differences in their initial level of understanding of NAPs and the UNGPs;
- Ensuring that a NAP development process is inclusive and participatory while maintaining realistic timelines and avoiding stakeholder fatigue;
- Developing a clear timeline while maintaining a level of flexibility to respond to the NBA findings, which may, for example, identify further research and data collection needs;
- Ensuring that NAPs receive broad support and enduring buy-in and participation across stakeholder groups, while managing stakeholder expectations;
- Not exacerbating conflict between stakeholders in high-risk and/or conflict-affected contexts;
- Ensuring that NAPs survive changes of governments and administrations;
- Developing SMART actions for legislative or judicial changes in a NAP, due to the separation of powers between the executive, legislative, and judicial branches of government; and
- Ensuring the effectiveness of NAP actions on the enjoyment of human rights related to business activities, including on remedy.

Some of the **criticisms** can include:

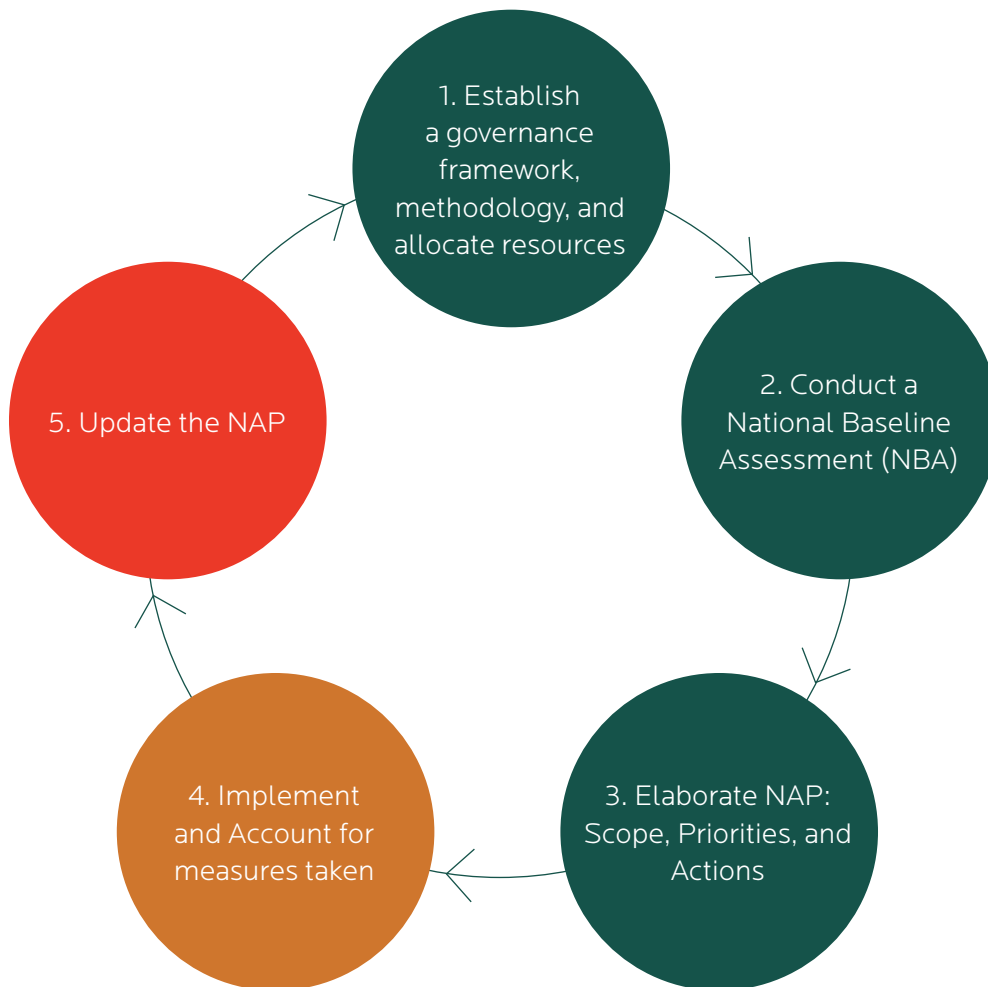
- NAP development processes are not grounded in a national baseline assessment, do not include sufficient stakeholder participation, and do not address key issues in a State (for example, remedy and gender);
- NAPs are overly focused on existing measures, international developments and commitments, and on business and human rights issues abroad;
- Actions are unambitious (for example, actions focus predominantly on capacity building), ambiguous and vague;

- NAP accountability measures are weak, and/or implementation is felt to be lacking;⁷⁴ and
- Limited evidence on the impacts of NAPs on rightsholders and increasing questions and criticisms on their effectiveness.

Implementing all the steps detailed in this Toolkit can help to maximise the benefits and overcome the challenges.

2. THE NAP LIFECYCLE

A NAP lifecycle is generally comprised of five phases, though the specifics of each phase will vary.



The NAP development process consists of the three green coloured stages.

The process to develop a NAP is as important as the NAP itself. A well-constructed development process can build capacity and trust among stakeholders, identify gaps and priorities which the NAP responds to, and ensure that implementation and accountability measures and mechanisms are designed and resourced in advance. Skipping key steps in the NAP development process can undermine any positive contributions a NAP can have.

In line with a human rights-based approach (as articulated in Chapter 3) each phase of the NAP lifecycle should be based on the principles of equality and non-discrimination, participation, transparency, and accountability.

BOX 4: NAP CHECKLIST

GOVERNANCE, METHODOLOGY, AND RESOURCES

- Commit to develop a NAP and assign responsibility;
- Develop a governance structure and methodology/ roadmap;
- Allocate appropriate resources;
- Ensure stakeholder participation;
- Provide capacity-building for government entities and relevant external stakeholders;
- Ensure transparency and accountability in the NAP development.

UNDERTAKING A NATIONAL BASELINE ASSESSMENT

- Programme the NBA as the first step in the NAP process and establish a clear governance structure;
- Identify an independent actor to conduct the NBA;
- Define the methodology and scope;
- Gather stakeholder input;
- Ensure transparency and accountability;
- Update the NBA.

ELABORATING THE CONTENT OF THE NAP: SCOPE, PRIORITIES, AND ACTIONS

- Address the full scope of the UNGPs;
- Address the full scope of the State's jurisdiction;
- Prioritise actions based on the severity of the impacts;
- Include a particular focus on affected, vulnerable and marginalised peoples and communities of rightsholders;
- Include action points that are specific, measurable, achievable, relevant, and time-specific (SMART);
- Ensure coherency with other relevant frameworks;
- Articulate implementation and coordination measures and mechanisms;
- Articulate accountability mechanisms and measures;
- Commit to updating the NAP.

IMPLEMENTATION AND ACCOUNTABILITY

- Adopt the NAP;
- Establish and constitute implementation and coordination mechanisms;
- Disseminate the NAP;
- Establish and engage with national accountability mechanisms and measures;
- Implement the actions;
- Report to/ engage with international accountability mechanisms and measures;
- Participate in peer exchanges and reviews.

UPDATING THE NAP

- Plan the update before the end of the current NAP implementation period;
- Repeat the previous steps.

2.1 GOVERNANCE, METHODOLOGY, AND RESOURCES

CHECKLIST:

- Commit to develop a NAP and assign responsibility;
- Develop a governance structure and methodology/ roadmap;
- Allocate appropriate resources;
- Ensure stakeholder participation;
- Provide capacity-building for government entities and relevant external stakeholders;
- Ensure transparency and accountability in the NAP development.

2.1.1 Commit to develop a NAP and assign responsibility

A first and central step in a NAP process is for the government to set a firm and long-term **commitment** to the development and implementation of a NAP. This commitment will ensure that the process of developing a NAP is adequately prioritised within the government.

BOX 5: FORMALLY COMMIT TO A NAP



In the USA, the Secretary of State formally announced a process of updating the US NAP on Responsible Business Conduct in June 2021.⁷⁵ The US representative reiterated the commitment at the 11th UN Business and Human Rights Forum in November 2022. A second NAP was published on 25 March 2024.



The Kyrgyzstani Cabinet of Ministers committed to develop a NAP in June 2022 through the publication of an official note.

As for any policy-making process, efficiency and accountability demand that there is clear leadership within the government for the development of a NAP. Responsibility for the NAP development process should be unambiguously allocated to an entity or entities within the government (for example, to a specific government ministry, office, or agency), and this allocation of responsibility should be publicly communicated through an official announcement or published decision. The responsible entity should have the organisational capacity, political authority, and resources necessary to develop a NAP, or focus initial efforts to develop these.

BOX 6: ASSIGNING RESPONSIBILITY TO DEVELOP THE NAP

In several States, the development of a NAP on business and human rights has been led by the Foreign Ministry in cooperation with other ministries (for example, Germany, Ireland, Luxembourg, the Netherlands, the USA, and Argentina). This is often due to the nature of the mandate of Foreign Ministries, which includes representing the State in international human rights bodies, coordinating with other State institutions to ensure implementation of international commitments, and reporting to human rights bodies on the State's human rights compliance. These factors notwithstanding, the capacity of Foreign Ministries to lead a robust NAP process is somewhat limited in that their mandates to operate within the State are usually minimal compared to institutions with stronger internal mandates.

In other States, the process to develop a NAP has been led by the Human Rights Ministry (for example, Pakistan), Sustainable Development (for example, Belgium), Justice (for example, Kenya), Corporate Affairs (for example, India), Labour (for example, Nepal), Economy (for example, Finland), or the Office of the President (for example, Colombia).

2.1.2 Develop a governance structure and methodology/ roadmap

Almost all government ministries, offices, and agencies have responsibilities that are relevant to the implementation of the UNGPs. In order to be comprehensive, and for the sake of its long-term success, a NAP on business and human rights should reflect input from, and enjoy the full support of, ministries and offices across government. Accordingly, a **coordinating mechanism such as an inter-ministerial advisory group or steering committee** should be utilised/ established to coordinate the NAP development process. Ministries responsible for trade, economy, energy, infrastructure, and state-owned enterprises, among others, should be engaged from the start of a NAP process to ensure holistic government commitment and policy coherence. Ministries responsible for specific rightsholder groups (for example, women, LGBTI+, Indigenous Peoples, ethnic/religious minorities) should also be engaged. Ministry representatives should be designated through a formal process (for example a Ministerial resolution) to facilitate decision making process and final validation of commitments within corresponding areas. Other governance structures in the State, such as federated states and/or local city and municipal governments, can be invited to input into the process. This ensures that human rights issues and abuses, which often are most severe at local levels, inform the development of the NAP, and that actions are designed to be effective and implementable at the local level by local actors who will implement them. Government ministries and entities may require capacity building to ensure they can participate effectively (see section 2.1.5).

BOX 7: COORDINATION ACROSS STATE INSTITUTIONS



In the Netherlands, the process of developing the second NAP (2022-2026) was led by the Ministry of Foreign Affairs with support from an inter-ministerial working group consisting of the Ministries of Economic Affairs & Climate Policy, Infrastructure & Water Management, Finance, Interior & Kingdom Relations, Justice & Security, and Social Affairs & Employment.



In Italy, a Working Group on Business and Human Rights (GLIDU) was set up by the Ministry of Foreign Affairs and the Inter-ministerial Committee for Human Rights to oversee the NAP development and implementation of the inaugural NAP (2016-2021). The GLIDU continued its work to develop and implement a second NAP (2021-2026).

A NAP on business and human rights should build on and be coordinated/ coherent with other national action plans, for example, on sustainable development, or human rights more broadly.

Given that the number of stakeholders relevant to a NAP development process is often quite substantial, it is advisable to establish a **multi-stakeholder working group or advisory committee** composed of representatives from across stakeholder categories. Engaging through such multi-stakeholder groups is an effective way of ensuring a participatory approach and the representation of stakeholder views. To be legitimate, multi-stakeholder groups should include representatives from civil society, trade unions, businesses, and the NHRI (where it exists), and aim to ensure a gender balance. The composition should also consider the presence of vulnerable, and marginalised peoples and communities of rightsholders, and Indigenous Peoples and ethnic minorities where present in the State. Multi-stakeholder groups should facilitate broad representation while remaining at manageable and effective size. The national context will shape which groups and sectors should be represented and the process to select representatives. Multi-stakeholder groups can help guide the development of a NAP process and the substantive issues to be addressed. Ensuring a multi-stakeholder group has a formal role within a NAP process can further legitimise the process.

Consideration should be given at an early stage as to how **multi-stakeholder mechanisms guiding the development of a NAP could transition into mechanisms to support NAP implementation and accountability** (see sections 2.3 and 2.4 for more information). Further considerations regarding stakeholder participation are addressed in Section 2.1.4.

BOX 8: MULTI-STAKEHOLDER GOVERNANCE MECHANISMS



The Japanese NAP (2020-2025) was developed through a two-tiered system consisting of an Inter-Ministerial Working Group and a multi stakeholder Advisory Committee. The working group included the Secretariat of the Cabinet of Ministers and several relevant ministries and agencies. The multi stakeholder Advisory Committee was constituted by CSOs, industry federations, small and medium-sized enterprises representatives, consumer organisations, trade unions, academia, and international organisations. CSOs praised the Ministry of Foreign Affairs (MFA) for leading the process, involving other ministries, and being open during meetings, but criticised other ministries for not actively engaging at the events they attended, and criticised the MFA for not actively involving victims of business-related human rights abuses.⁷⁶



The second Luxembourg NAP (2020-2022) adopted a single working group model. The group consisted of 6 government ministries and agencies, 4 human rights institutions including the NHRI (Commission consultative des Droits de l'Homme), 11 CSOs, 3 trade unions, 1 university, 8 industry associations and major companies based in Luxembourg. The working group had regular meetings every six weeks and was also tasked with reviewing the progress on the implementation of the first NAP.



In Peru, a multi-stakeholder approach was adopted to develop the NAP (2021-2025). Twelve working groups were established, coordinated by the Ministry of Justice and Human Rights. An Executive Branch Working Group was created to coordinate government entities in the preparation of the NAP with representatives of over 21 ministries and government agencies. CSOs, representatives from Indigenous People's organisations, trade unions, and academia participated in the working groups. Decisions taken by these working groups were taken on 'reasonable consensus' rather than by voting.



In Kenya, the Department of Justice led the process to develop a NAP (2020-2025; published in 2019 and formally adopted by the Cabinet of the Republic in 2021). A National Steering Committee was established as the main coordinating organ and was co-chaired by the Department of Justice and the Kenya National Commission on Human Rights (Kenya's national human rights institution). Its mandate was to provide overall strategic guidance and direction for the development of the NAP. Membership of the National Steering Committee included:

- State Law Office and the Department of Justice;
- Kenya National Commission on Human Rights;
- National Gender and Equality Commission;
- Ministry of Labour and Social Protection;
- Ministry of Energy and Petroleum;
- Central Organization of Trade Unions;
- Kenya Human Rights Commission;

- Federation of Kenya Employers;
- Kenya Private Sector Alliance;
- Global Compact Network Kenya;
- Council of Governors;
- Office of the UN High Commissioner for Human Rights; and
- Institute for Human Rights and Business (they withdrew from the National Steering Committee during the NAP development process).

The National Steering Committee was supported by a standing secretariat housed at Kenya National Commission on Human Rights, which conducted the day-to-day NAP activities such as drafting key documents, maintaining records and organising meetings. Thematic working groups also worked on background papers to inform the NAP. By adopting a mostly consensual approach to decision-making, the steering committee aimed to ensure a reliable environment for all stakeholders to develop the NAP.

See Box 44 on NAP commitments to establish multi-stakeholder implementation mechanisms and measures and Box 55 on examples of such mechanisms in practice.

Developing a NAP requires developing frameworks, conducting studies, gathering input and engaging with stakeholders. A realistic **methodology/ roadmap with a clear timeline** should be publicly available to ensure transparency, accountability, and effective participation. A clear process, with multi-stakeholder buy-in, can help ensure that a NAP development process will be more resistant to changes which can arise during the process (such as changes in the political environment and/ or senior staff).

The methodology and/or roadmap should address the full NAP development process, including the national baseline assessment phase (see section 2.2), to avoid unnecessary repetition, delays, and stakeholder fatigue (see section 2.1.4).

BOX 9: DEVELOPING A METHODOLOGY/ ROADMAP AND TIMEFRAME⁷⁷



In Peru, an overarching methodology was developed at the outset of covering the full NAP development process, including the national baseline assessment. The process of development a NAP included a:

1. Call for interested stakeholders, stakeholder training, and the development of a methodology (January-August 2019);
2. Development and dialogue on diagnostics and baseline (September 2019-March 2021);
3. Elaboration of actions, indicators and goals (January-June 2021);
4. Approval and publication of the NAP (June 2021).



In the Netherlands, the second NAP development process included 3 phases:

Phase 1: Making preparations and gathering ideas;

Phase 2: Analysis and elaboration of the NAP;

Phase 3: NAP decision.

The official government website contains a timeline detailing phases, key steps, dates for the activity and a description of what each step entailed. The website also contains contact information and relevant links to other business and human rights initiatives of the Dutch government.⁷⁸



In Argentina, the Ministry of Foreign Affairs convened two meetings in November 2021 with other governmental agencies and stakeholders from civil society, trade unions, business, and academia to develop a roadmap for the NAP. The roadmap with an agenda was then published on the Ministry's website. The roadmap contained a detailed description of the four stages of NAP development (developing an NBA, strengthening key stakeholders' capacities, writing and approving the NAP, and publishing the NAP). The roadmap also announced priority themes to be addressed by the NAP, and the process to identify these including validation with external stakeholders.

Businesses can impact a broad range of human rights and rightsholders. A **methodology** should be adopted to ensure that the NAP is coherent with, and informed, by progress in other areas of human rights, and is not developed in a silo. In practice, this requires that the representative in the coordinating mechanism facilitate ongoing engagement between, and within, key ministries, entities, and the multi-stakeholder working group or advisory committee.

BOX 10: ADOPTING A METHODOLOGY



In Peru, the methodology included an explicit mandate to incorporate a gender approach, disability perspective, intercultural approach, age approach, territorial approach, differential approach, gerontological approach, life-course approach, intergenerational approach, and an intersectional approach.



In Argentina, the NAP roadmap detailed that the NAP would be developed through priority intersectional, differential, and federal approaches.

2.1.3 Allocate appropriate resources

States should allocate adequate **human and financial resources** to the actors responsible for developing the NAP, including the development and completion of an NBA. Ensuring adequate resources should be an initial priority as shortfalls in resources are a major cause of delays in NAP development processes. Resources should be allocated to facilitate stakeholder participation, including capacity building (see section 2.1.5). Consideration should be given from the outset on how to ensure resources are available to implement the NAP and ensure accountability, including through monitoring progress.

International organisations and donors can provide an alternative route of funding the development of a NAP. However, such funding often does not cover the full costs of developing a NAP and is often only available for specific and targeted activities.

BOX 11: RESOURCING FOR A NAP AND DONOR SUPPORT



In Kenya, the NAP development process undertaken by the National Steering Committee utilised donor funding. The process was supported through development cooperation funding from Denmark, Norway, and Sweden. Without central funding, the range of originally envisaged activities, such as regional consultations and funding for thematic leads, had to be scaled down, and delays occurred.



In Peru, the decision to divide the NBA into 23 thematic studies provided a clear framework for state budget allocation and donor-funded support (22 studies were published as 2 were merged). The themes were selected based on the recommendations of the UNWG during its official visit to Peru in 2017. The NAP contains an overview of the respective studies and the donor/partner responsible for financing each of them. In 7 studies, the funding was provided entirely by the entity conducting them, 5 of which were undertaken by the Ministry of Justice and Human Rights, 1 by the OECD and 1 by the OHCHR.



In Argentina, technical assessment and funding for the elaboration of a technical study which served as input to the NBA led by the NHRI (Defensoría del Pueblo), was provided by international cooperation and a UN inter-agency alliance.

In some States, civil society and/or the NHRI have contributed through their own resources and with the help of external donors for specific activities related to the NAP process, mainly through the elaboration of NBAs and the organisation of stakeholder consultations. CSOs and/or NHRIs, led the development of NBAs in Zambia, and Thailand as advocacy tools which were later incorporated into state-supported NAP development processes. In Zambia, the NHRI produced an NBA in 2016 and followed up with a supplementary analysis of Pillar II of the UNGPs in 2021.

The European Commission, through its 2020-2024 Action Plan on Democracy and Human Rights, committed to promoting NAPs on business and human rights in partner countries. As an example, between 2019 and 2022, the European Initiative for Democracy and Human Rights funded the “Workers Watch: Community-Based Response in Advancing Human Rights and Corporate Ethical Practice in Mindanao” project with a goal to develop a NAP in the Philippines.

The OHCHR, OECD, and ILO, in collaboration with the UNWG, implemented an EU-funded Joint Project on Responsible Business Conduct in Latin America and the Caribbean (RBCLAC) between 2019-2024. This Project aimed, inter alia, to support the development and implementation of NAPs in Latin America and the Caribbean.⁷⁹ A second phase of this project will run from mid-2024 until mid-2028. One of the three main components of the RBCLAC Project is improving regulatory and legislative frameworks, and policy coherence on business and human rights and responsible business conduct, with a strong emphasis on promoting NAPs in the region.

The UNDP, supported by Sweden, Japan and the EU, has developed a multi-year ongoing Business and Human Rights B+HR project to promote the UNGPs by, inter alia, supporting the development of NAPs and other business and human rights instruments in the Global South.⁸⁰

2.1.4 Ensure stakeholder participation

Stakeholder participation is an essential element in the NAP development process as it:

- Is a fundamental component of a human rights-based approach (as articulated in Section 3.2) and provides legitimacy;
- Provides up to date information on the actual impacts on human rights connected to business activities to ensure that a NAP responds to local realities and needs;
- Ensures that rightsholders close to human rights impacts are involved in the design of effective and realistic responses;
- Ensures duty-bearers responsible for implementing actions are involved in the design of actions and understand what is expected/ required of them;
- Develops stakeholder buy-in and ownership which can in turn help the NAP development process (and implementation) survive political changes; and
- Ensures that a NAP on business and human rights advances the larger goal of generating broad-based support among public, private, and civil society actors for rights-compatible, sustainable development in the State.



BOX 12: OHCHR GUIDELINES FOR STATES ON THE EFFECTIVE IMPLEMENTATION OF THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

The guidelines refer to a number of basic principles that should guide the effective implementation of the right to participate in public affairs which can guide meaningful stakeholder participation in the development of a NAP.⁸¹

All stakeholders should have the opportunity to meaningfully and effectively participate during both the process of developing a NAP and its implementation. Many national stakeholders may be well-known to relevant government ministries; however, others may not be. It is therefore advisable that a State undertake a **stakeholder mapping** at an early stage in the NAP process. The stakeholder mapping should strive to ensure equal gender balance and representation in the NAP development. The following stakeholder categories should be considered:

- Executive government, including all relevant government ministries, agencies, offices, and state-owned enterprises, as well as police and other law enforcement agencies;
- Judiciary and administrative tribunals, alternative dispute resolution mechanisms, and informal justice actors;
- Parliament, including relevant committees;
- Businesses, including significant industry sectors, business associations, small and medium-sized enterprises, the self-employed, sole traders, cooperatives, non-profits, and informal sector actors;
- Trade unions and other workers' representative associations;
- Indigenous Peoples and, where appropriate, their representative organs or associations;⁸²
- Representatives of affected, vulnerable, and marginalised peoples and communities of rightsholders (for example, persons with disabilities, LGBTI+ individuals and migrant workers) and human rights defenders, inside and outside the State's territorial jurisdiction, who may potentially be affected by the conduct of companies based in the State;
- NHRIs, ombudsman institutions, statutory equality bodies, and other national accountability mechanisms with a human rights mandate;
- CSOs with mandates addressing relevant issues;
- Media, including general news and specialist sources;
- Academia, including research institutes, individual experts, and relevant educational institutions, such as business schools; and
- International and regional actors, including relevant UN agencies and country teams, regional human rights bodies, and development banks.

BOX 13: CONDUCTING A COMPREHENSIVE STAKEHOLDER MAPPING



In Kenya, an initial mapping of rightsholders and other stakeholders to participate in the NAP process was conducted based on the 2017 Human Rights and Business Country Guide for Kenya.⁸³ Through an analysis of human rights impacts of businesses in Kenya, the following rightsholder groups were identified as being vulnerable to human rights impacts of business and prioritised to ensure they were included:

- Women;
- Persons Living with Disabilities;
- Persons Living with HIV/AIDS;
- Persons Living with Albinism;
- Sexual minorities;
- Religious minorities;
- Migrant workers;
- Indigenous Peoples.

Geographical diversity should be considered in stakeholder participation. While the Ministries and/or organisations developing the NAP are often located in the capital or a major city, business activity frequently impacts groups living in rural or isolated areas. As such, identifying and engaging with local stakeholders through regional activities is important to ensure that the NAP region-specific issues and risks are captured.

BOX 14: ENSURING GEOGRAPHIC DIVERSITY IN STAKEHOLDER PARTICIPATION



In Pakistan, the development of the NAP (2021-2026) included multi-stakeholder consultations during the NBA and after a draft version of the NAP was published. The consultations for the NBA took place in Islamabad, Quetta, Peshawar, Karachi, Lahore, Sialkot, Faisalabad, and Gilgit-Baltistan and later in Quetta, Karachi, and Peshawar on the draft NAP. In March 2021, the draft NAP was also disseminated for comments to various Federal Ministries and Provincial Departments, as well as the NHRI (National Commission for Human Rights), and other stakeholders.



- In Kenya, 9 three-day consultations with key rightsholders and other stakeholders were held at the outset of the NAP development process (by September 2017) in the locations illustrated in the map.



The mapping of regional level participants was conducted by the government, private sector organisations, CSOs and trade unions. Participants at regional consultations included:

- Members of the public – including women and youth groups and community and religious leaders and some special interest groups;
- Government officials;
- Local CSOs; and
- Local businesses.

Indigenous Peoples were separately consulted.



In Peru, between March 2019 and May 2021, 18 on-site and 5 virtual regional dialogues were held with regional stakeholders to provide them with information on the process, promote coordination with their national organizations and gather contributions, with emphasis on groups directly related to business activities. These were supplemented by 6 on-site (in Lima) and 6 virtual national discussion on specific rightsholders and human rights subjects.



In Argentina, in March 2023, a virtual meeting was held with subnational governments to provide them with an update on the NAP development process, and discuss their active participation in the implementation stage. The event was co-organised by the Argentinean NHRI, the OHCHR, Sustentia, and the Alliance of Responsible Territories Latin America – Europe. An invitation was sent to all provinces through the Federal Human Rights Council and the Undersecretary of National Affairs of the Ministry of Foreign Affairs try and maximise attendance. In attendance were representatives from the governments in the provinces of Buenos Aires, Chaco, Chubut, Corrientes, Jujuy, La Pampa, La Rioja, Mendoza, Salta, San Juan, Santa Fe, Tucumán, and the Autonomous City of Buenos Aires.

Stakeholder participation should be considered throughout the NAP

development process, especially at key project gateways. It is a key element of the NBA (See Chapter 2) but should be considered at later stages as well (for example, designing specific actions, receiving feedback on a draft NAP). Any action point in a NAP directed towards a specific community, rightsholder group, Ministry, Agency, or type of business (such as SMEs) should, at the least, involve consultation with these actors on the content of the action. Consideration should be given at the outset as to how mechanisms to support the participation of stakeholders in a NAP development process could transition into structures and mechanisms to support the participation of stakeholders in NAP implementation, coordination, and accountability (see sections 2.3 and 2.4).

BOX 15: STAKEHOLDER PARTICIPATION THROUGHOUT THE NAP DEVELOPMENT PROCESS



In Peru, an overarching methodology was developed to guide the NAP development process. This was shared with stakeholders for consultation and more than 250 contributions were received. The methodology states that “both, the NBA and NAP itself will include a balance of the contribution from the actors” and “will be undertaken in a wide, participative, consensual and decentralised way amongst the state, business, academia, workers, civil society and indigenous people’s sectors”. In total during the NAP development process, 426 working meetings and stakeholder consultations with over 100 organisations were facilitated by 12 thematic working groups.

The UNGPs recognise “strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses”.⁸⁴ Therefore, States which are home to businesses with significant human rights impacts in other jurisdictions should consider how **relevant stakeholders from abroad can participate in a NAP process.**

BOX 16: STAKEHOLDERS FROM ABROAD



In the Netherlands, Dutch embassies consulted with CSOs in Africa and Asia to assess the potential cross-border impacts and proposed actions for the second NAP (2022-2026).

It is important to **encourage and/or support stakeholders** to stimulate their participation in a NAP development process. This can include through platforms, working groups, and capacity building.

BOX 17: COORDINATED ENGAGEMENT BY CSOS



In Peru, twenty-five CSOs, twelve groups of Indigenous Peoples and four trade unions created a self-organised CSO Platform on Business and Human Rights to engage collectively throughout the NAP development process. CSOs also created a gender ‘mini-platform’ to enhance women’s participation in the NAP process, collect women’s testimonies on business and human rights issues and facilitate cooperation with women social leaders.

Rightsholders from vulnerable and marginalised peoples and communities, Indigenous Peoples, human rights defenders, women, journalists, minority groups, and members of civil society will often have relevant information and experiences

to contribute to a NAP process (see box 75 for more information on rightsholder groups which may require increased focus). Yet these stakeholders may be weary of, or prevented from, participating due to factors such as lack of resources and capacity, government surveillance, intimidation, fear of reprisals, social hierarchies, stigma, or taboos that prevent equal access to the public sphere and effective communication of opinions in public dialogue.

In line with the State duty to protect, it is incumbent on the State to ensure the **effective participation of rightsholders from vulnerable and marginalised peoples and communities**. Measures to facilitate this can include:

- Provision for confidential or anonymous submissions;
- Providing financial support for travel and other consultation attendance costs;
- Interpretation of materials and proceedings into minority languages;
- Protection against negative repercussions for participation, including threats, intimidation, criminalisation, or physical attacks;⁸⁵
- Arrangements for local or stakeholder-specific dialogue events, such as gender-segregated events; and
- Outreach to specific rightsholders from affected groups and communities; and
- When needed, special efforts to address power imbalances between different stakeholder groups.

For examples of the types of challenges faced by specific rightsholders, and how States can facilitate their participation in a NAP development and implementation process, see section 3.5.

Stakeholder expectations should be managed on what can be achieved with a NAP. Developing and implementing a NAP can be a challenging process and a NAP itself is not a quick-fix or silver-bullet which will immediately resolve all business-related human rights issues in a State. Furthermore, a NAP is an executive/ government-led process which results in range of actions executive/ government-led actions which cannot bind the legislative or judiciary.

Stakeholders can invest significant time and resources into a NAP process. When stakeholder expectations are not met, participation is not felt to be meaningful, processes are beset by significant delays and long-periods of inactivity, and/ or there is a lack of transparency and accountability, then **stakeholder fatigue** can occur. This can lead to key stakeholders disengaging from NAP processes or actively protesting against a NAP.

BOX 18: CIVIL SOCIETY DISENGAGEMENT



In Mexico, a process to develop a NAP was undertaken between 2015-18. Shortly after a second draft of the NAP was published in July 2017, the civil society focal group decided to formally leave the multi-stakeholder Working Group and the NAP development process, citing concerns over the lack alignment of the draft with recommendations made by civil society.⁸⁶ The 2015-2018 process to develop a NAP was ultimately unsuccessful, and a new process to begin a NAP began in 2022 and is still ongoing.



In Thailand, the CSO which conducted the NBA used to inform the first NAP launched a campaign to #StopNAPping based on perceived negative experiences in November 2022.⁸⁷



In May 2023, the Luxembourg Duty of Vigilance Initiative, made up of 17 civil society organisations, which was a member of the Business and Human Rights Working Group since its creation in 2019, and had participated in the development of two NAPs and the implementation of certain actions through its analyses and proposals, withdrew from the Working Group due to a perceived lack of transparency and non-compliance with commitments made in the second NAP.⁸⁸

All stakeholders, including **critical voices**, should be included in the NAP development process. This ensure legitimacy and, even when agreement cannot be reached, ensures a broad range of information informs both the development process and content of a NAP.

See section 3.2 for information on participation as part of a human rights-based approach and engagement with specific rightsholder groups.

2.1.5 Provide capacity-building for government entities and relevant external stakeholders

To ensure an effective NAP development process, stakeholders need to share a common understanding of the UNGPs, including the roles and responsibilities of different actors. In many country contexts, the UNGPs, and business and human rights issues more widely, will be new to some stakeholders, both inside and outside of the government. Where this is the case, stakeholders may require information or capacity-building, such as training on the UNGPs, if they are to participate effectively in dialogue and contribute meaningfully to the formulation of a NAP.⁸⁹

BOX 19: CAPACITY BUILDING OF STAKEHOLDERS



In Ghana, a training workshop was held for members of the Steering Committee tasked with developing the NAP. This was delivered by the Attorney-General and Ministry of Justice, the NHRI (Commission on Human Rights and Administrative Justice), with support from the UNDP.



In Ecuador, the Ministry of Foreign Relations and Human Mobility delivered training for 250 public officials on business and human rights during the (ongoing) process to develop an inaugural NAP. The training was the first step Ecuador took after committing to developing a NAP in 2020.



In Kenya, multi-stakeholder sensitisation and capacity building sessions on the UNGPs and other relevant human rights standards were held before the substantive part of stakeholder consultations with the aim to guarantee their effective participation. The 9 regional consultations (see box 14 for more information) included an initial awareness-raising session on the UNGPs and other human rights frameworks. Designing the consultations with an initial capacity-building session was seen as a positive lesson learned from the Kenya NAP process.⁹⁰



In Argentina, the NHRI developed an online training course to build knowledge on responsible business conduct and participate in the NAP development process. It was primarily aimed at state actors but was designed to be useful and publicly accessible to all stakeholders.

2.1.6 Ensure transparency and accountability in the NAP development

It is critical to the legitimacy of a NAP process, and in line with a human rights-based approach (as articulated in Chapter 3), to ensure transparency at all stages of the NAP development process; this includes the launch of the process, consultation, the drafting period, and finalisation and launch of the plan.

At the beginning of a NAP process, a **communication/ consultation plan and timeline** should be developed and updated throughout the process. Information about events and documents outlining the governance framework, methodology, and timeline should be published and disseminated via appropriate media sources and channels to enable all stakeholders, both governmental and external, to plan and manage their participation. Further key documents developed during the process should be published and disseminated to provide adequate notice to all stakeholders. This includes summaries of dialogues, workshops, and consultation events, in addition to written submissions provided by stakeholders to the process. Timelines for submissions and feedback should be realistic given the resources and capacities of all stakeholders. States should also take care not to divulge sensitive information which could put at risk stakeholders involved in the process.

To ensure effective access to information and that people know and understand how major decisions affecting their rights are made, certain groups of stakeholders may require increased focus, such as vulnerable and marginalised peoples and communities of rightsholders (for example, persons with disabilities, LGBTI+ individuals and migrant workers), human rights defenders, and small and medium-sized enterprises. **Proactive and targeted dissemination efforts** should be undertaken to ensure these stakeholders are adequately informed, with due notice, of key milestones and events in the NAP process and participation opportunities such as dialogues, workshops, consultation events, and comment periods, as well as summaries of these.

States should consider employing **differentiated outreach** strategies to ensure that information is accessible and available in languages and formats that suit the needs and literacy levels of all. This could include offering translated versions of key documents in local and/ or indigenous languages, as well as ensuring they are also available in understandable language. Consideration should be given to additional barriers that certain stakeholders face (for example, due to their rate of literacy and access to public services and information).

Additionally, it is integral that States seek to **publish and consult on a draft version of the NAP** prior to the publication of the final product. Consultations on a draft NAP allow stakeholders to provide additional inputs and also raise concerns as to the contents of the plan, including clarifications on how stakeholder input was incorporated or is reflected in the draft text. Draft consultations also allow the State additional opportunities to reflect upon stakeholder input and adopt necessary changes before the final version is released. By publicising a draft version of a NAP, the State gives additional transparency to the development of the final plan.

BOX 20: ENSURING TRANSPARENCY ACROSS THE NAP LIFECYCLE



In Peru, an overarching methodology was developed to guide the development of both the NBA and the NAP, which adopted a principle of maximum transparency. During the development process, all relevant documents and processes were published on the Human Rights Observatory in the Ministry of Justice and Human Rights' website. This website also lists the meetings that the Executive Branch Working Group had on a central website. On January 2021, the government published the list of Working meetings for the elaboration of the NAP. The government also published a consolidated overview of comments received, the paragraph number of where they were incorporated or acknowledgement they were not incorporated, alongside observations providing a brief rationale.



In Kenya, the Kenyan National Human Rights Commission created a website with information on the NAP process. In order to identify key stakeholders and give transparency to the process, Kenya conducted a Stakeholder Forum on the Development of a NAP in late 2016.



In the USA, an online public portal was established in February 2022 providing a range of information on the NAP development process including stakeholder engagement events. Stakeholders were also invited to provide contributions through a public online form between February and May 2022. 48 submissions were received from a wide range of stakeholders and covering a wide range of themes and were published on the portal.

2.2 UNDERTAKING A NATIONAL BASELINE ASSESSMENT

CHECKLIST:

- Programme the NBA as the first step in the NAP process and establish a clear governance structure;
- Identify an independent actor to conduct the NBA;
- Define the methodology and scope;
- Gather stakeholder input;
- Ensure transparency and accountability;
- Update the NBA.

The main objective of an NBA is to identify adverse business-related human rights impacts and the gaps in the policies and practices of States and business to implement the UNGPs in a given State. It should inform the content of the NAP and guide the prioritisation of actions to address gaps, based on the severity of the impacts (considered according to their scale, scope and irremediable character). An NBA should subsequently be used to monitor and evaluate whether these adopted actions had the desired effect (See accountability Section 2.4.5).

An NBA sets the tone for the NAP development process. In addition to providing a solid evidence base, it can galvanise stakeholder engagement for the remaining development process and the implementation stage by building stakeholder capacity, contributing to transparency and accountability, and creating trust in the process.

2.2.1 Programme the NBA as the first step in the NAP process

The NBA should be considered within the overarching NAP development process and associated planning. It should ideally be conducted at an early stage to inform both the NAP development process and content.

Stakeholders engaged through the NBA should have knowledge of the UNGPs. Therefore, initial capacity building activities should occur before, or at the outset, of an NBA process, and built into timelines and budgets.⁹¹

While the NBA is the primary research phase in the development of a NAP, it may identify further research and data collection needs which can be addressed through targeted activities at later stages of the NAP development process. Consequently, there needs to be a certain level of flexibility built into the NAP development process.

Ideally, the NBA should be completed, or at least its preliminary results made available to stakeholders, before any decision-making concerning the scope, content, and priorities of the NAP takes place.

2.2.2 Identify an independent actor to conduct the NBA

Allocating the task of developing an NBA to an **independent actor** with relevant expertise and competence is a good practice which can bring credibility and strengthen

legitimacy. The actor should be free from political affiliation and corporate interests, such as an NHRI or an academic research institution. Relevant expertise in this context should include, at a minimum, knowledge and experience of national, regional, and international standards and issues in the areas of human rights, business and human rights, corporate social responsibility, and sustainable development.

BOX 21: TYPES OF ACTORS CONDUCTING NBAS



The Peruvian NBA consisted of 23 thematic studies conducted between September 2019 and March 2021, each conducted by a different actor as part of the broader plan to develop the NAP, coordinated by the Ministry of Justice and Human Rights. 5 studies were conducted by the Ministry of Justice and Human Rights, 15 were conducted by universities and 2 by the OECD and the OHCHR. The studies conducted by universities were funded by international organisations, foreign States through their embassies, and the Peruvian Environmental Law Society.



The Ghanaian NBA was published in July 2022 by academics at the Ghana Institute of Management and Public Administration. After conducting desktop-based research with the input of key stakeholders (including business and CSO representatives, academics, and industry regulators), the Ghana Institute of Management and Public Administration circulated a draft for review and inputs. The Commission on Human Rights and Administrative Justice and the DIHR helped in the development of the NBA methodology and in the review stage.



The Netherlands' NBA was published in August 2020 and was conducted by the NHRI (College voor de Rechten van de Mens). The NBA was fully funded by the Dutch Ministry of Foreign Affairs with the objective of providing recommendations for the second Dutch NAP. It involved a desktop-based analysis followed by stakeholder interviews.



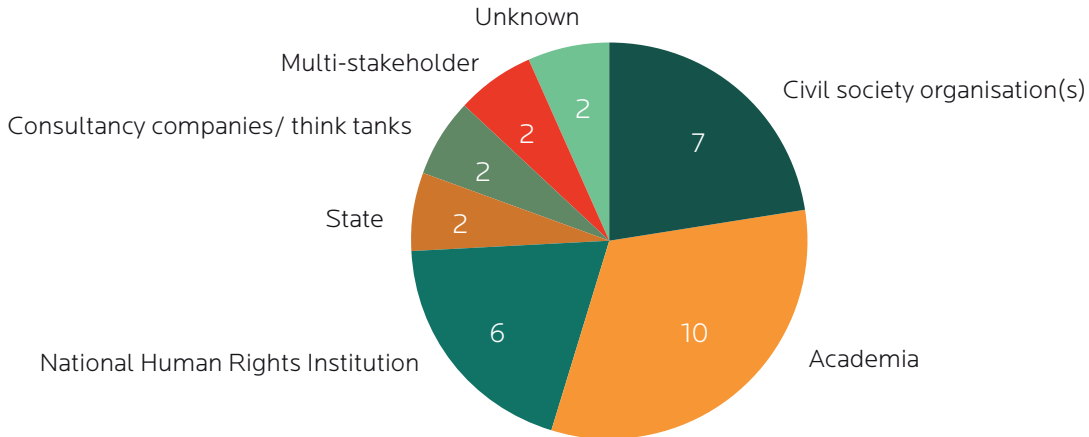
The NBA in Thailand was developed as an independent initiative by a CSO to inform the development of the first NAP. Published in March 2019, the State later utilised the NBA to inform the development of the first NAP. The NBA in Thailand was composed of 11 thematic assessments and 2 cross-cutting working papers on gender and Indigenous Peoples.

Where an independent organisation or entity is sought to undertake the NBA, their roles and responsibilities should be defined through a terms of reference to ensure the NBA can be conducted without delays and dovetails with the broader NAP process. This includes clarifying who the independent actor reports to (for example, a contract holder vis-à-vis a multistakeholder committee), their ability to develop a methodology and scope, expectations around stakeholder engagement and capacity building, and transparency requirements. The independent organisation or entity conducting the NBA should have full editing control.

BOX 22: THE TYPE OF ACTORS UNDERTAKING NBAS

A DIHR study from February 2023 identified that a range of actors had conducted the 31 NBAs conducted to that date.⁹²

ACTORS WHICH CONDUCTED THE 31 NBAS



2.2.3 Define the methodology and scope

NBAs commonly consist of a research phase, a drafting phase, a validation phase, and a finalisation stage. The research phase and validation phase often consist of desktop research and stakeholder engagement.

NBAs may use a combination of **quantitative and qualitative** methods of evaluation.⁹³ Quantitative methods include surveys to generate new data or, where resources are scarce or reliable data already exists, to extract secondary data, ideally with support from statisticians or specialists. This can include, for example, data on how businesses respect human rights, ILO data on labour rights, and data on gender equality in the workplace. Qualitative methods, such as interviews or focus groups, can be helpful in gathering experiences from rights holders and other stakeholders, which can play an important role in interpreting qualitative data.

BOX 23: TOOLS TO SUPPORT AN NBA

A National Baseline Tool on Business and Human Rights was launched as an online tool in 2023 by the DIHR to support organisations conduct a baseline assessment on the status of the implementation of the UNGPs by a State, and identify legal and policy gaps and patterns of adverse human rights impacts by businesses.⁹⁴ It is composed of an online questionnaire structured in 10 thematic domains to support users to identify relevant information regarding the implementation by the State of Pillars I and III of the UNGPs. The National Baseline Tool builds onto the NBA Template developed by the DIHR and the International Corporate Accountability Roundtable in 2014 and updated as an annex to the 2017 update of this Toolkit. It can be accessed at bhrbaseline.humanrights.dk.

In addition, there are some methodologies that have been used to assess how businesses conduct and/or report on human rights due diligence that can be useful in the context of a NAP process. Assessments have been published in a range of States, including Australia (2017),⁹⁵ Germany (2019),⁹⁶ Denmark (2020 and 2022),⁹⁷ Ireland (2020 and 2024),⁹⁸ Belgium (2021),⁹⁹ Finland (2020),¹⁰⁰ Spain (2021, 2022, and 2023),¹⁰¹ Chile (2022 and 2023),¹⁰² Scotland (2022),¹⁰³ Luxembourg (2023),¹⁰⁴ Kenya (2024),¹⁰⁵ Colombia (2024),¹⁰⁶ and South Korea (2024).¹⁰⁷

Many of these assessments utilised the Core UNGP Indicators of the Corporate Human Rights Benchmark.¹⁰⁸ These have been developed by the World Benchmarking Alliance (WBA) to assess, measure, and benchmark companies against 12 indicators on human rights due diligence based on human rights information publicly disclosed by companies.

In order to systematically analyse State and business implementation of the UNGPs, as well as human rights enjoyment in practice, an NBA should be comprehensive and **address the full range of economic, social, cultural, civil, and political rights**, and address all three pillars of the UNGPs; measures taken by the State, measures taken by businesses, and access to effective remedy.

Human rights indicators should be developed to identify measures taken by the State that support compliance with international and regional human rights standards, as well as any gaps where State measures are lacking or inadequate. Where relevant, the phrasing of indicators should be amenable to disaggregation, in line with a human rights-based approach (for example, by gender, age, ethnicity, disability) and be tailored to the national context.¹⁰⁹

BOX 24: HUMAN RIGHTS INDICATORS

According to the OHCHR, “[a] human rights indicator is specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion or implementation of human rights.”¹¹⁰ The OHCHR has identified 3 types of human rights indicators:

Structural indicators, which measure the acceptance, intent, and commitment of the State to undertake measures in keeping with its human rights obligations. They reflect 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. Structural indicators have to focus first and foremost on the nature of domestic law in relation to a specific right—i.e., whether it incorporates the required international standards—and the institutional mechanisms that promote and protect those standards. Structural indicators also need to look at the State’s policy framework and strategies as applicable to that right.

Process indicators, which measure a State's ongoing efforts to transform their human rights commitments into the desired results through policies and specific measures. Policies include public programmes for development and governance, budget allocations and specific regulatory or redress interventions, that a State is willing to take to give effect to its intent or commitments to attain outcomes associated with the realization of a given human right.

Outcome indicators, which measure individual and collective attainments that reflect the state of enjoyment of human rights in a given context. An outcome indicator consolidates over time the impact of various underlying processes (that can be captured by one or more process indicators).¹¹¹

Completing an NBA requires research into provisions of a State's constitution, legislation, administrative regulations, policies, public programmes, and other interventions of public bodies. It also requires research into judgments and opinions of judicial, quasi-judicial, and advisory bodies. Data sources to consider include official statistics, existing survey results, reports by the NHRI (where it exists) and intergovernmental organisations, grievance data, reports of relevant enforcement agencies, reports by CSOs, scholarly journals, and newspaper articles.

The NBA should cite and collate relevant recommendations and conclusions of international bodies, such as the ILO, UN human rights bodies (considering the 10 treaty-based bodies, 58 special procedures, and the Universal Periodic Review), as well as regional human rights bodies. It should consider judgments and opinions of relevant international and regional courts and commissions. An NBA should identify how the State has responded to these recommendations, conclusions, judgments, and opinions.

An NBA should look how laws and policies are implemented in practice. This includes identifying the ecosystem of bodies which have responsibility to ensure business respect for human rights, what concrete actions and activities have been implemented, what resources have been allocated to ensure business respect for human rights, and whether actions are being monitored. It also includes identifying the state of enjoyment of human rights by rightsholders in practice.

Indicators should identify business implementation of their responsibility to respect human rights in order to support the design of adequate measures within the NAP to address implementation gaps. This includes assessing to what extent businesses have committed to respecting human rights have conducted human rights due diligence and have enabled the remediation of human rights impacts they have caused and/ or contributed to.

BOX 25: EFFORTS TO CAPTURE HOW BUSINESSES RESPECT HUMAN RIGHTS



In Belgium, two research teams were formed to conduct the NBA (published in March 2021). The first team, with a focus on the implementation of the UNGPs by State authorities (Pillar I) and available remedies for corporate abuses (Pillar III), followed a methodology developed in earlier versions of this Toolkit. The second team, focused on the implementation of Pillar II by companies based or operating in Belgium, utilised the World Benchmarking Alliance's Corporate Human Rights Benchmark core indicators methodology to evaluate business' reporting on the UNGPs.¹¹²

An NBA should address how business enterprises domiciled in a State's territory and/or jurisdiction respect human rights throughout their operations, including abroad. Drafters can consider information from various sources to assess the implementation gaps of the UNGPs in the conduct of business abroad, such as consulting with international development agencies, embassies, and delegations in international fora such as the UN and the regional organisations such as the EU, African Union, and Organization of American States. Drafters can also consider

international trade agreements and investment treaties that contain human rights provisions, and reviews on their implementation. In terms of Pillar III, barriers to remedy on transboundary cases should be addressed.

BOX 26: ANALYSING DOMESTIC AND INTERNATIONAL BUSINESS AND HUMAN RIGHTS ISSUES



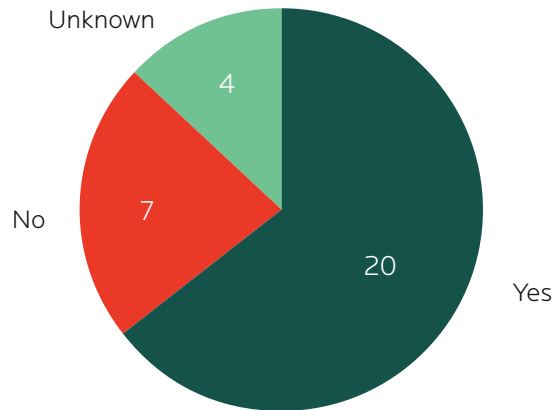
In the Netherlands, the NBA (published in 2020) contained a section on Pillar I considering the Dutch commitments and activities in foreign policy relating to the UNGPs. The section analysed Dutch State activities in relation to business conflict-affected areas, international trade and investment treaties, and diplomatic efforts to develop EU-level due diligence regulations and in drafting an international legally binding treaty on business and human rights. The NBA considered gaps in the implementation of remedies for cross-border cases under Pillar III, such as complexity, cost and availability. Pillar II was not a component of the Dutch NBA.

An NBA can supplement its findings with explicit **recommendations** for legal, policy and institutional changes, as well as recommendations on measures to implement laws and policies, and monitoring.

BOX 27: INCLUDING RECOMMENDATIONS IN THE NBA

A 2023 survey of 31 NBAs identified that the majority contain recommendations.¹¹³

INCLUDE RECOMMENDATIONS

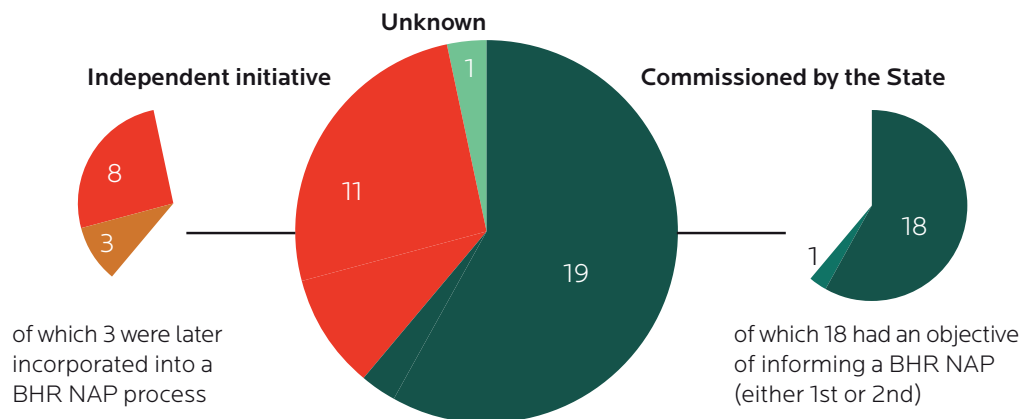


While NBAs are an integral step in a NAP development process, they can occur as independent initiatives outside of a NAP development process.

BOX 28: NBAS AS AN INDEPENDENT INITIATIVE

NBAs can be conducted outside of an official NAP process by organisations such as an NHRI or CSOs as a tool to advocate for increased efforts at the national level to address business impacts on human rights, including as a tool to advocate for the future creation of a NAP. In addition, NBAs can also identify further research and data collection needs on business and human rights or help prepare reports to regional and international human rights bodies on business and human rights.

COMMISSIONED OR INDEPENDENT INITIATIVE?





The Zambian Human Rights Commission published an NBA in July 2016, which was supplemented with a Pillar II analysis in July 2021. These were developed as independent initiatives to inform the development of an inaugural NAP.

2.2.4 Gather stakeholder input

An NBA should be informed by stakeholder input. To facilitate the participation of all relevant stakeholders, the drafters of the NBA should utilise the stakeholder mapping exercise (as described under Section 2.1.4), or conduct their own.

Stakeholders may be engaged through, inter alia, bilateral interviews, multi-stakeholder consultations, workshops, questionnaires, and access to information requests.

BOX 29: GATHERING STAKEHOLDER INPUT



The Scottish NBA (published in October 2016) was conducted by academics of the University of St. Andrews and the University of Dundee, consultations with stakeholders were held in 2016 to develop the initial draft and then to confirm the findings of the initial draft.¹¹⁵ Consultations were held in focus groups, one-on-one meetings, telephone interviews and surveys of business, public bodies and local authorities. On 10 May 2018 a specific workshop was held with businesses to develop the NAP and contained a discussion point on the relevance of the draft NBA.



In Argentina, UNICEF and the National Ombudsman's Office carried out an online survey of adolescents and young people in November 2022 to inform the NBA (published May 2023).

The NBA should seek inputs from vulnerable and marginalised peoples and communities of rightsholders to help inform the NBA content pertaining to, inter alia, gender and Indigenous Peoples' and minority group's rights. It should also recognise individuals and communities potentially affected by business activities as rightsholders, including those outside of the State's territorial jurisdiction, and focus on the ability of these stakeholders to claim their rights.

BOX 30: INTERSECTIONALITY



The Thai NBA (published in 2019) was developed based on consultations with rightsholders and CSOs through three regional workshops to directly engage the at risk and impacted rightsholders and grassroots organisations. Conducted by CSOs, the NBA considered the intersectional impact of gender and Indigenous People's issues.

Different approaches may be needed to collect data from different stakeholder groups. For example, bilateral interviews, closed workshops, or personalised questionnaires may be more effective with businesses or civil society, whereas access to information requests, as well as review of publicly available State documents and data may be appropriate to gather data from State actors. As articulated in Chapter 3, in relation to engaging with vulnerable and marginalised peoples and communities of rightsholders in the creation of an NBA, additional efforts might be required, including facilitating transportation, translation, and culturally appropriate means of dialogue. Where possible, affected communities should be engaged directly through consultations.

There may be situations where stakeholders and/ or groups of stakeholders disagree on what information and recommendations (where they are present) are included in the final NBA document. The organisation or entity conducting the NBA is ultimately responsible for its content, but can engage in dialogue to try find consensus between stakeholders. If consensus cannot be found, the NBA can note what the contentious issue is and the position of each stakeholder and/ or group of stakeholders.¹¹⁶

BOX 31: CONSENSUS AND DIVERSITY OF VIEWS



The Belgian NBA (published in March 2021) was conducted by academics from KU Leuven and the University of Antwerp. They prioritised finding consensus through stakeholder consultations rather than relying on only submissions and opinions.



The second German NBA (published in August 2022) was conducted by the NHRI (Deutsches Institut für Menschenrechte). Stakeholder consultations took place between November 2021 and mid-January 2022. The final NBA included all recommendations suggested by the stakeholders, highlighting which were supported by the German NHRI.

Beyond providing input into the draft NBA, stakeholders' views can also be sought on a draft version or versions of an NBA through an inclusive and timely dialogue process. Such a process should take place prior to the NAP's drafting in order to validate provisional findings. However, management of stakeholder expectations and potential stakeholder fatigue should be considered.

2.2.5 Ensure transparency and accountability

The NBA should be transparent in terms of the sources of information that have been used to develop it (except where disclosure of sources would, for example, present risks of reprisals to rightsholders, human rights defenders including whistleblowers, journalists, or others). If an NBA is incomplete, such as by omitting analysis in relation to a particular issue or UNGP, the reasons for this should be clearly stated.

BOX 32: TRANSPARENCY IN THE NBA PROCESS



The organisations which conducted Belgium's NBA published a website with relevant information on the NBA development process and where stakeholders could submit new information. Belgian embassies, international NGOs and trade representatives present in other States were informed of the website in attempt to increase the outreach to foreign stakeholders affected by Belgian businesses.



The Argentinean NBA (published in March 2023) was conducted by the NHRI which developed a website to ensure stakeholders could access to information. An email address was also created to receive contributions from relevant stakeholders, to complement the online multistakeholder online consultations.

A 2023 study identified that of 31 NBAs conducted, 26 had been made publicly available.¹¹⁷

NBAs can be lengthy and expansive. Therefore, the finalised NBA should be published and made accessible to all stakeholders, using forms of communication appropriate to relevant stakeholder categories, for example, by translating full or summarised findings into relevant languages, providing hard copies to stakeholders without access to internet, adapting the publication for persons with disabilities, and disseminating through government websites.

Many organisations that have published NBAs have provided an executive summary, highlighting some of the main adverse business impacts and linking them to the identified legal and policy gaps. Another way to present information from the NBA in a digestible form is to create different communication products, such as pamphlets or short publications on specific issues, sectors, or regions; socialisation workshops targeting specific stakeholder group; or a user friendly and interactive website on the NBA.

Publishing an NBA can help to place and/ or maintain business and human rights issues on the agenda with the change in political environment. If a NAP process is interrupted or cancelled due to political issues or unforeseen event, a published NBA can help inform the start of a new process.

BOX 33: PUBLICATION AND DISSEMINATION OF THE NBA



The Belgian NBA was published as both a 184-page report and a 24-page executive summary. On 10 February 2021 the NBA research team conducted a final online stakeholder consultation to present the NBA findings. A video summary of the presentations in the final consultation is available online.



The Ghanaian NBA was publicly launched by the Attorney General and Minister of Justice in an in-person event on 5 July 2022 and communicated through national news networks.



The thematic studies which constituted the Peruvian NBA were published on the website of the Human Rights Observatory of the Ministry of Justice and Human Rights in October 2021.

The government has a responsibility to ensure that the NBA meaningfully informs the NAP development process (see section 2.3.3).

BOX 34: GOVERNMENT RESPONSE TO THE NBA FINDINGS



In the Netherlands, the Minister for Foreign Trade and Development Cooperation published an official Cabinet response to the House of Representative on the NBA conducted by Netherlands Institute for Human Rights (published August 2020). The response (published December 2020) outlined whether the government agreed or disagreed with particular findings, and detailed how the NBA findings would be incorporated into the new NAP (both on process and content).

2.2.6 Update the NBA

In order for an NBA to serve as a tool for monitoring and evaluating the effectiveness of a NAP it can be periodically updated to reflect changes in the implementation of, and gaps in implementing, the UNGPs. A full process (as detailed above) to revise the NBA should inform the development of subsequent NAPs.

The consistent use of specific indicators can facilitate comparative analysis between NBAs over time (see section 2.2.3 on indicators).

BOX 35: ADDITIONAL NBAS



In Argentina, an NBA was undertaken in 2019 (but never published) with the objective of informing the development of an inaugural NAP, which was discontinued due a change of government. In 2023, a new process was launched to develop a NAP and a second NBA a was commissioned to inform the process. The second Argentinean NBA was conducted by the National Human Rights Institution (Defensoría del Pueblo) and published in May 2023. It built from a Technical Study for a National Baseline on Business and Human Rights in Argentina, conducted by Conectando Derechos. The NBA and the technical study were undertaken with support from the OHCHR, ILO, and OECD through the EU funded 'Responsible Business Conduct in Latin America and the Caribbean' project, together with UNICEF. Additionally, a UN interagency taskforce worked together to provide consolidated technical support and feedback.



In Mexico, an NBA was published by civil society organisations in 2016 as an independent initiative to inform the development of an inaugural NAP. This initial process was discontinued. In 2019 civil society organisations published a supplementary analysis updating the 2016 NBA, with the objective of informing the development of National Human Rights Programme's content on business and human rights. Funded by the EU, the supplement compiled legislative and political advances in the area of business and human rights while incorporating the gender perspective. When Mexico restarted its efforts to develop a NAP in 2022 the State commissioned a new NBA, which was published in March 2023.



In Germany, a second NBA (published in August 2022) was conducted to serve as a stocktaking exercise of the first NAP and gather stakeholder inputs and recommendations to shape the development and focus areas of the second NAP.

2.3 ELABORATING THE CONTENT OF THE NAP: SCOPE, PRIORITIES, AND ACTIONS

CHECKLIST:

- Address the full scope of the UNGPs;
- Address the full scope of the State's jurisdiction;
- Prioritise actions based on the severity of the impacts;
- Include a particular focus on affected, vulnerable and marginalised peoples and communities of rightsholders;
- Include action points that are specific, measurable, achievable, relevant, and time-specific (SMART);
- Ensure coherency with other relevant frameworks;
- Articulate implementation and coordination measures and mechanisms;
- Articulate accountability mechanisms and measures;
- Commit to updating the NAP.

The previous sections have focused on the process and methodology to develop a NAP and an NBA. This section addresses issues pertaining to the scope, priorities, and actions within a NAP on business and human rights. It also addresses the need to include accountability mechanisms and measures with the NAP and an implementation plan.

A brief background on the business and human rights challenges and state of play in a State can help frame and provide context for actions. However, a NAP should not be primarily composed of a situational analysis, a list of existing legislation, previously undertaken actions, or international and regional developments.

2.3.1 Address the full scope of the UNGPs

A NAP should, in principle, address the major gaps in implementing all three pillars of the UNGPs. Based on the NBA and stakeholder consultation, priority actions may be identified in relation to specific UNGPs. A NAP should indicate how the actions identified in relation to a given UNGP contribute to its realisation.

As State policy documents NAPs often address, as a minimum, action points aimed at realising the State duty to protect human rights under Pillar I of the UNGPs. Frequently, NAPs also address actions to sensitise, disseminate and capacitate business operating or headquartered in the State to respect human rights as per Pillar II of the UNGPs. A NAP should also address the full scope of Pillar III, access to remedy, including state-based judicial mechanisms, state-based non-judicial grievance mechanisms and non-state-based grievance mechanisms.¹¹⁸ This includes addressing challenges that victims have in accessing remedy, including cross-border cases.

BOX 36: OHCHR “ACCOUNTABILITY AND REMEDY PROJECT”



In 2014, the OHCHR launched the “Accountability and Remedy Project” (ARP) to help States strengthen implementation on “Access to Remedy”, Pillar III of the UNGPs.¹¹⁹

The project has resulted in numerous reports identifying (i) key challenges in relation to each type of remedial mechanism referred to in the UNGPs and (ii) recommendations for improving the effectiveness of such mechanisms, which can be incorporated into NAPs. Additionally, the OHCHR has proposed model terms of reference States can use to review the scope, functions and effectiveness of these mechanisms within their jurisdiction. In its 2022 report from the project, the OHCHR made a number of recommendations on how to ensure issues of remedy are properly integrated into NAPs:

(1) Carry out a mapping exercise to clarify the roles of each type of mechanism referred to in the UNGPs	Judicial mechanisms	State-based non-judicial grievance mechanisms (going beyond NHRIs and National Contact Points)	Non-State-based grievance mechanisms
(2) Undertake a review of the effectiveness of these mechanisms and of the effectiveness of surrounding domestic laws and policies, using ARP resources	Model terms of reference: ARP I addendum, fig.1 (p. 4)	Model terms of reference: ARP II addendum, fig.1 (p. 5)	Model terms of reference: ARP III addendum, fig.1 (p. 4)
(3) Apply the findings from the review process to inform strategies for addressing any deficiencies in relevant domestic laws, policies and institutions, and incorporate these into NAPs	Issues to consider and recommended actions: ARP I guidance (Annex, pp. 12-21), with further explanation in ARP I addendum (pp. 5-19)	Issues to consider and recommended actions: ARP II guidance (Annex, pp. 9-17), with further explanation in ARP II addendum (pp. 6-17)	Issues to consider and recommended actions: ARP III guidance (Annex, pp. 8-19), with further explanation in ARP III addendum (pp. 5-17)

The Accountability and Remedy Project is ongoing and OHCHR continues to support States to strengthen access to remedy in NAPs.

In 2024, the OHCHR published an interpretative guide on Access to Remedy in Cases of Business-related Human Rights Abuse which can help inform the development of NAPs.¹²⁰

2.3.2 Address the full scope of the State's jurisdiction

In line with UNGP 2, a NAP should consider measures to clarify the expectations of businesses based in a State's territory to prevent, address, and remedy business-related human rights abuses when these businesses are operating both at home and abroad.

BOX 37: ADDRESSING THE FULL SCOPE OF THE STATE'S JURISDICTION



The second Italian NAP (2021-2026) continues the policy stated in the first NAP (2016-2021) to address human rights abuses both domestically and abroad by Italian companies. The NAP is broken down in several thematic sessions, some of which target domestic issues such as workplace gender discrimination and prevention of forced labour ('caporalato') in the agricultural industry. An entire section is dedicated to measures aimed at Italian companies operating abroad or with foreign suppliers.



The Netherlands has situated its second NAP (2022-2026) as part of the State's national and foreign human rights policy. The NAP explicitly states as one of its aims that it should promote respect for human rights by Dutch companies nationally and abroad.

2.3.3 Prioritise actions based on the severity of the impacts

A NAP can prioritise relevant thematic or sector-specific human rights issues. Such issues might include, for instance, women's rights, children's rights, Indigenous Peoples' rights, the rights of minority groups, labour rights, anti-trafficking and anti-slavery, security and conflict, revenue transparency and management, and information and communication technologies.

Priorities should be selected based on the severity of the impacts on rightsholders, considered according to their scale (the gravity or seriousness of the impact), scope (how many rightsholders are impacted), and irremediable character (the ability to restore those affected to at least the same or equivalent situation as before the impact), as well as where they have most leverage to change the situations on the ground.

The NBA should meaningfully inform NAP priorities and actions. If not, it can result in backlash and generate a lack of trust between government authorities responsible for the NAP development and the stakeholders who engaged in the NBA development.¹²¹ It is good practice for the NAP to include access to the NBA through links, or by annexing it to the final NAP. To make the link between the findings of the NBA and the content of a NAP explicit, some States have included reference to relevant NBA findings in the final NAP text to clearly communicate why an action was elaborated.

BOX 38: LINKING THE NAP TO THE NBA AND STAKEHOLDER INPUT



The Kenyan NAP (2020-2025) credits the NBA (published in July 2019) with the identification of the prioritised thematic areas in the NAP.



The Luxembourg NAP (2020-2022) acknowledges that NBA (published in January 2020), which was commissioned by the Ministry of Foreign Affairs to assess the implementation of the first NAP and inform the second NAP, provided the starting point in identifying the NAP priorities and lists the NBA as an indicator to measure progress against.



The Japanese NAP (2020-2026) was developed around 6 cross-cutting areas identified in the NBA (published in 2018); labour, children's rights, technology, consumer rights, equality and vulnerable groups, and migrant workers.



The Peruvian NAP (2021-2025) contains a short summary of the conclusions of each of the thematic studies which constituted the NBA.



In Thailand, a civil society organisation has publicly stated that the NAP (2019-2022) does not reflect CSO and local communities concerns identified in the NBA (published in March 2019), and since have campaigned to #StopNAPping.



At the launch of the second US NAP in March 2024, it was noted that public procurement received the third number of recommendations from external stakeholders, with over 80% of the recommendations focused on strengthening prohibitions against trafficking in persons and labour rights abuses. The NAP has a chapter focused on public procurement detailing 10 actions.

Beyond the priorities identified in the NBA, stakeholder input should be systematically collected, analysed, and published by the government in the process of identifying priorities for the NAP. Governments may do this a number of ways, including by publishing minutes from consultations and written submissions, and assigning responsibility for individual recommendations to the relevant State institution for review and possible adoption. The methodology for evaluating stakeholder input in the process of designing NAP actions should also be transparent.

BOX 39: PRIORITISE ACTIONS TO ADDRESS THE MOST SERIOUS HUMAN RIGHTS ABUSES BY BUSINESS



In Uganda, stakeholder consultations informing the NAP development identified 8 focus areas: land and natural resources, environment, labour rights, revenue transparency and corruption, privatisation, consumer protection, access to remedy, and women, vulnerable, and marginalised groups. The 8 focus areas are reflected as priorities in the NAP (2021-2026).

2.3.4 Include a particular focus on affected, vulnerable, and marginalised peoples and communities of rightsholders

A NAP should include a particular focus on addressing the impacts of business on affected, vulnerable, and marginalised peoples and communities of rightsholders. These can include children, women, racial, ethnic, religious, or other minority groups, LGBTI+ people, persons living with disabilities, Indigenous Peoples, elderly persons, migrant workers and their families, persons affected by poverty, including homeless persons, rural or geographically isolated communities, and persons employed in the informal economy.

A NAP should clearly identify such individuals and communities as rightsholders and identify measures to be taken by the State to enable these individuals and communities to claim and enjoy their human rights.

For more information on including a focus on affected, vulnerable, and marginalised peoples and communities of rightsholders, see Chapter 3 which provides information on taking a human rights-based approach to NAPs.

BOX 40: INCLUSION OF AFFECTED, VULNERABLE, AND MARGINALISED PEOPLES AND COMMUNITIES OF RIGHTSHOLDERS



The Peruvian NAP (2021-2025) singled out 9 action areas for vulnerable groups identified by the 23 thematic studies which constituted the NBA. Children, women, older adults, Afro-Peruvian people, persons with disabilities, human rights defenders, LGBTI people, migrant workers and Indigenous Peoples were identified as being in particular risk of suffering business human rights abuses. The NAP contained specific actions to target those groups.



The Pakistani NAP (2021-2026) defines child labour and anti-discrimination as priority areas. Drawing from NBA conclusions and stakeholder consultations, the NAP lists women, transgender persons, persons with disabilities, minorities, and migrant and refugee workers as particular at-risk groups for business discrimination. The NAP also contains specific actions relating to those groups.

2.3.5 Include action points that are specific, measurable, achievable, relevant, and time-specific (SMART)

A NAP should identify a set of concrete actions to be taken by the government. In particular, the NAP should respond to gaps in implementation of the UNGPs identified in the NBA, and aim to address these directly or, at a minimum, to contribute significantly to resolving them within a reasonable time period. Further, it should be ensured that each action item is:

Specific: The action item should address a specific gap or issue, and be tied to a relevant government ministry;

Measurable: The action item should be concrete enough to ensure that progress on the item can be measured and assessed;

Achievable: The action item should be realistic in terms of time and resources;

Relevant: The action item should be linked to the UNGPs or other business and human rights frameworks, and to the realisation of specific rights; and

Time-specific: The action item should have an indication of the timeline for realisation.

BOX 41: SMART ACTIONS AND INDICATORS¹²²

Strategic objective: A NAP should summarise the main goal pursued by a series of actions within a given policy area or topic. These can help structure the NAP.

Strategic actions/ outputs: A NAP should include a list of activities and policy actions to be taken to achieve an objective. These should be as SMART as possible.

Expected outcome: A NAP should articulate what should be achieved by a particular action/ output, with an emphasis on expected outcomes for rightsholders. Luxembourg's NAP defines "expected results" under each objective. Each action in Peru's NAP is accompanied by a justification.



Responsibility for the action/ output: A NAP should attribute clear responsibilities to relevant entities. It is useful to indicate a leading entity when there are multiple implementing entities.



Indicators: A NAP should include indicators to ensure that the commitments and actions detailed in the NAP are realised in practice. This should include a range of structural, process, and outcome/ performance indicators (see Box 24 on Human rights indicators). Uganda's NAP makes a distinction between outcome and output indicators. A NAP should indicate who is responsible for assessing progress against indicators and targets. Luxembourg refers to this aspect as "verification sources". Peru's NAP lists a responsible ministry for each action and indicator.



Timelines: A NAP should specify a timeframe(s) for the implementation of actions/ outputs. The NAP can also contain an implementation plan with information on the implementation and accountability measures, including reviews (see sections 2.3.7 and 2.3.8). 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.



Resources: A NAP should indicate financial resources in as much detail as possible. Process indicators can be based on budget allocations (see box 24). Uganda's NAP contains a set of budgetary tables in the annex.



Sustainable Development Goals (SDGs): A NAP can link objectives and/or actions to particular SDGs targets and indicators to ensure coherence with the 2030 Agenda. Both Thailand and Pakistan refer to relevant SDGs in their NAP action tables.¹²³



2.3.6 Ensure coherency with other relevant frameworks

For NAPs on business and human rights to be effective in improving business conduct, they should be coherent with other international and regional frameworks and initiatives which articulate business respect for human rights.

BOX 42: RELEVANT INTERNATIONAL FRAMEWORKS AND INITIATIVES TO CONSIDER FOR COHERENCY

- Regional instruments on human rights and responsible business conduct;
- The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct;¹²⁴
- The 2030 Agenda for Sustainable Development;¹²⁵
- The Paris Agreement on Climate Change;¹²⁶
- The ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration);¹²⁷
- Recommendations from UN human rights bodies and special procedures;
- Extractive Industries Transparency Initiative Principles;¹²⁸
- The Kimberley Process;¹²⁹
- The Voluntary Principles on Security and Human Rights;¹³⁰ and
- UN Committee on the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights,¹³¹ and the UN Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations in the context of business activities.¹³²

NAPs should be coherent with other national level legislation, policies, and action plans which articulate business respect for human rights.

BOX 43: RELEVANT POLICY AREAS

The NAP should be coherent with:

- Human rights and environmental due diligence legislation; and
- Other national action plans, for example, on human rights broadly, child labour, human trafficking, sustainable development, women, climate, persons with disabilities.

The NAP should also be coherent with other relevant policy areas, including:

- Fundamental labour rights;
- Equality and antidiscrimination;
- Freedom of information;
- Freedom of association;
- Privacy;
- Whistle-blower protection;
- Immigration;
- Environmental;
- Economic development plans;
- Corporate law;
- Securities;
- Investment;
- Export credit;
- Insurance;
- Trade;
- Contract law;
- Competition law;
- Recognition of arbitration awards; and
- Sector-specific approaches, such as those related to mining, extractives, and energy.

A list of over 40 human rights issues, how they relate to business activities, and how different NAPs address (or don't address) them is available on the [globalnaps website](#).¹³³

2.3.7 Articulate implementation and coordination measures and mechanisms

In addition to ensuring that actions are SMART, a NAP should articulate overarching implementation and coordination mechanisms to ensure consistency and coherence throughout the implementation period between relevant ministries, agencies, and stakeholders. Alternatively, a NAP can contain an action to establish implementation and coordination mechanisms and measures at the first stage of the implementation process.

BOX 44: A COMMITMENT TO ESTABLISH MULTI-STAKEHOLDER IMPLEMENTATION AND COORDINATION MECHANISMS AND MEASURES



Peru's NAP (2021-2025) contains an action to establish a number of multi-stakeholder coordination spaces, including a “coordination forum made up of representatives of state stakeholders, companies, trade unions, indigenous peoples and civil society organizations, as well as international organizations and international cooperation agencies”. See box 55 for information on how this action was implemented.



Ireland's NAP (2017-2020) commits the Government to “establish a ‘Business and Human Rights implementation group’, which will consist of representatives from government, the business community and civil society, and will meet twice a year to review the implementation of the National Plan over the first three years.” The NAP provides that “membership to be announced within three months of publication of the National Plan”.

Consideration should be to how mechanisms guiding the development of a NAP could transition into mechanisms to support NAP implementation and coordination (see section 2.1.2 and 2.4.2).

A NAP can also contain an **implementation plan** providing an overview of actions to be taken and an overarching timeline.

BOX 45: IMPLEMENTATION PLANS IN NAPS



Peru's NAP (2021-2025) contains a table with the strategies, objectives, specific actions, indicators, and timelines. The actors responsible for the implementation of the actions and measuring the indicators are specifically detailed in the table. The annex contains 97 specific actions within 5 strategic axes. The NAP clarifies that the competent authorities for each action will carry them out with their own ordinary budget and by incorporating the actions into each authority's institutional plan.



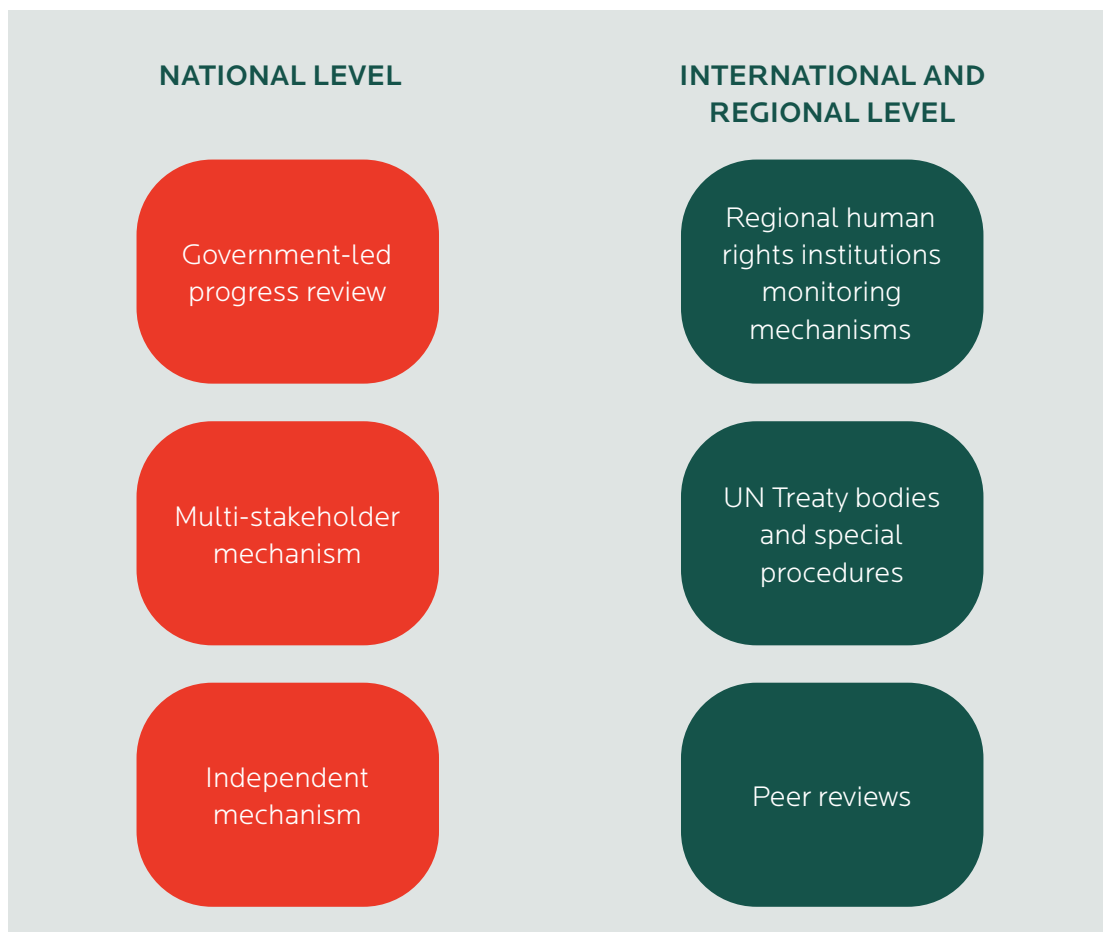
The first Thai NAP (2019-2022) contains tables identifying specific actions to be undertaken by public authorities. The tables are located under each section of the NAP, each table indicating a set of actions to address a particular type of issue (for example, human rights defenders, environment and human rights). The tables specify the particular aspect of each issue, activities, responsible agency, timeframe, indicators and which national strategy or international standard the activity will address.



The second Swiss NAP (2020-2023) addresses 35 implementation measures based on each Principle in UNGPs. Each measure contains a paragraph with a short description and the background for its adoption, followed by a box containing the objective to be achieved, the relevant indicators and the responsible authority.

2.3.8 Articulate accountability mechanisms and measures

Accountability mechanisms and measures can help identify what progress has been made in the implementation of the NAP, identify challenges, make recommendations to improve implementation measures to ensure they are effective in achieving their objectives, and evaluate the effectiveness measures towards the implementation of UNGPs in practice. Accountability mechanisms and measures should be explicitly detailed in the NAP, along with who is responsible and information on when activities will occur.



National level accountability mechanisms and measures

There are range of national level accountability mechanisms. For each of these, consideration should be given on how mechanisms guiding the development of a NAP could transition into accountability mechanisms. The NAP should specify when/ at what stages the reviews will take place.

A NAP can commit to a **government-led periodic progress review**. There are many bodies which can be designated to undertake this function, including the body coordination implementation in conjunction with an inter-governmental working group and/or a multi-stakeholder steering committee.

BOX 46: COMMITTING TO PERIODIC REVIEWS



The Uganda NAP (2021-2026) details that implementation is a shared responsibility of the government, private sector, and other non-State actors. Although the NAP itself does not create or specify a particular stakeholder standing group to review implementation, it encourages the establishment of “periodic reviews in order to track implementation of interventions, results and change outcomes to enhance accountability, effectiveness and success” in coordination with all key stakeholders.



The Kenyan NAP (2020-2025) states that the NAP “will be reviewed periodically under the guidance of the NAP Implementation Committee. This committee will ensure accountability of the various stakeholders charged with implementation. It will also guarantee that the NAP implementation process remains aligned to contemporary practices and developments in the field of business and human rights with due regard the Kenyan context.”

A **mid-term review** can inform a revision/ update of the content of the NAP (see section 2.4.5 for more information).

BOX 47: COMMITTING TO A MID-TERM REVIEW



In Italy, the first NAP (2016-2021) and the second NAP (2021-2026) committed the State to undertake mid-term reviews.



The Pakistan NAP (2021-2026) states that “[t]he NAP Secretariat will conduct a mid-term review through consultations with all relevant stakeholders to gauge progress on the implementation of the NAP and identify any adjustments required.”

A **final evaluation** can analyse the overall effectiveness of a NAP (see section 2.4.5 for more information).

BOX 48: COMMITTING TO A FINAL EVALUATION



The second Swiss NAP (2020-2023) commits the Federal Department of Foreign Affairs (FDFA) and the Federal Department for Economic Affairs, Education and Research (EAER) to evaluate the NAP.

A NAP can provide explicit information on the composition of accountability mechanisms bodies and/or contain an action to define the composition at the outset of the implementation period.

BOX 49: COMPOSITION OF MULTI-STAKEHOLDER MECHANISMS



The second Colombian NAP (2020-2022) includes a framework for evaluation and follow-up. According to this plan, a follow-up commission will convene every 3 months to review the actions. An Interinstitutional Working Group will then gather these discussions and additional material to produce a yearly review, which should be published in the first semester of every year in the Presidential Advisory Office for Human Rights and International Affairs' website. The NAP details that this commission is to be composed of 11 members elected by stakeholder groups (Indigenous Peoples, afrocolombian people, CSOs, trade unions, business associations, academia) and relevant institutions (Colombia's NHRI (Defensoría del Pueblo), international organisations and global business and human rights initiatives).

A NAP can commit to **a multi-stakeholder monitoring and review mechanism or specialised working groups** to undertake monitoring functions, independently or jointly as part of a government-led periodic progress reviews.¹³⁴ This is a means of ensuring stakeholder participation and enhancing accountability with independent voices.

A NAP can also commit to **establishing or mandating an independent national monitoring mechanisms to review the NAP**. Existing bodies with an independent mandate established by law can ensure that the review is considered legitimate by all stakeholders. Further, bodies which can legally request access to information can help ensure a robust review. The UN Convention on the Rights of Persons with Disabilities requires one or more "independent mechanisms" to promote and monitor the Convention's implementation,¹³⁵ which can include an existing body such as an NHRI or another entity set up for this purpose can be allocated this function.¹³⁶ The NAP could articulate that an independent body, such as an NHRI, be given the role of promoting and monitoring implementation of the NAP.

BOX 50: INDEPENDENT NATIONAL MONITORING MECHANISM TO CONDUCT A FINAL REVIEW OF THE NAP



The French NAP (2017-open) provides that follow-up and evaluation of the NAP is to be conducted by the NHRI (Commission Nationale Consultative des Droits de l'Homme) as an independent administrative body. The NAP states that it will evaluate the implementation of the plan periodically, however, precise details are not included in the NAP.

International accountability mechanisms and measures

A commitment or action point should be considered on **reporting on the implementation of the NAP to regional and international and intergovernmental bodies** (see section 2.4.6 for information on the types of bodies and reporting processes). Reporting on successes and failures ensures transparency and accountability, and can help foster an exchange of information and the sharing of best practices within and among States, as well as with wider society.

BOX 51: COMMITTING TO REPORTING TO INTERNATIONAL MECHANISMS



The second Swiss NAP (2020-2023) states that “Business and human rights issues will feature more prominently in Switzerland’s recommendations and regular reports to the UN treaty bodies.” Switzerland included a business and human rights section in its latest Universal Period Review (UPR) report from October 2023. Likewise, business and human rights featured in the Swiss reports to the Committee of the Rights of Child and the Committee on the Elimination of Discrimination against Women, both received in December 2020.¹³⁷



The second Luxembourg NAP (2022-2022) notes that the presentation of reports to the bodies offers an opportunity to ensure policy coherence between the NAP and other sector-specific action plans that Luxembourg is requested to develop.

A commitment to **peer exchanges** on NAPs, in particular at the regional level can help enhance dialogue and learning amongst States that face similar business and human rights realities and challenges (see section 2.4.7).

BOX 52: COMMITTING TO PEER DIALOGUE



The second Italian NAP (2021-2026) states that Italy will “[c]arry out an open and constructive dialogue with States for the exchange of knowledge and good practices regarding voluntary review models of National Action Plans on Business and Human Rights, including through peer review mechanisms.”

2.3.9 Commit to updating the NAP

Incorporating a commitment to update a NAP allows the lessons learnt during creation, implementation, and review to be put into practice and demonstrates a commitment to progressively realise the “protect, respect, remedy” framework of the UNGPs.

BOX 53: COMMITTING TO AN UPDATE



The second Swiss NAP (2020-2023) states that “The measures defined in this National Action Plan should be implemented within four years. The Federal Council will review and update the National Action Plan at the end of the four-year period.”



The first Pakistan NAP (2021-2026) states that “[n]ear the conclusion of the five-year implementation period, the NAP Secretariat, will lead an evaluation to provide recommendations for the development of the subsequent NAP.”

2.4 IMPLEMENTATION AND ACCOUNTABILITY

CHECKLIST:

- Adopt the NAP;
- Establish and constitute implementation and coordination mechanisms;
- Disseminate the NAP;
- Implement the actions;
- Establish and engage with national accountability mechanisms and measures;
- Report to/ engage with international accountability mechanisms and measures;
- Participate in peer exchanges and reviews.

Publishing a NAP is not the end of the process, but rather the beginning of the implementation phase. The most effective way of ensuring successful implementation of a NAP is by undertaking a thorough development process.

Accountability mechanisms and measures detailed within the content of the NAP contribute to accountability. However, ensuring accountability in practice requires a sustained and meaningful commitment from the State, especially when implementation does not progress as originally planned.

2.4.1 Adopt the NAP

There are different ways to adopt the NAP depending on how a State is constituted. A NAP could be adopted through parliamentary legislation, an executive decree, or through a ministerial-level sign-off. The type of normative or legislative act used when adopting the NAP can help ensure its longevity through different governments, as well as bolster dissemination.

BOX 54: ADOPTING NAPS THROUGH NORMATIVE ACTS



The Peruvian NAP (2021-2025) was adopted through a Supreme Executive Decree, the highest executive act in the Peruvian legal system.



The Kenyan NAP (2020-2025) was adopted by the Cabinet of the Republic, ensuring inter-ministerial awareness of the NAP. The Kenyan NAP was also presented to the parliament as a sessional paper for voluntary consideration.

2.4.2 Establish and constitute implementation and coordination measures and mechanisms

The first stage of implementation is to establish and constitute implementation and coordination measures and mechanisms (see section 2.3.7 for more information). Mechanisms and measures to implement and coordinate actions directed towards a specific community or rightsholder group should ensure the participation of these groups.

BOX 55: ESTABLISH MULTI-STAKEHOLDER IMPLEMENTATION MECHANISMS



In Peru in April 2022, an Operational Guide for the Multi-Actor Coordination Spaces for the Implementation, Follow-up, Monitoring, Evaluation, and Update was approved via a Directional Resolution. The Operational Guide realised an action in the NAP committing to establishing coordination spaces. The Operational Guide articulated how the coordinated spaces should be organised, including details on who can participate from specific groups/ sectors, and how these spaces operate, including how decisions are taken and information from meetings is made publicly available. Multi-Actor Coordination Spaces includes:

- The NAP Multi-actor Roundtable;
- The NAP Multi-actor Committee;
- The NAP Executive Working Group;
- The NAP Technical working group of Indigenous Peoples;
- The NAP Technical working group of Labour Affairs; and
- Others as needed/ relevant to implement NAP actions.



In Kenya, the Implementation Committee detailed in the NAP was established in October 2021 after a 4-day induction session and was set to meet on a quarterly basis. The Committee is comprised of 18 actors, including the NHRI (Kenya National Commission on Human Rights), government bodies, CSO, business sector associations, business and human rights initiatives, and trade unions.

See box 8 for examples on multi-stakeholder governance mechanisms guiding NAP development, and Box 44 on NAP commitments to multi-stakeholder implementation mechanisms.

2.4.3 Disseminate the NAP

Dissemination of the NAP sets the scene for implementation of substantive actions. It should have the objective of informing all stakeholder addressed in the NAP of what is expected/ required of them, especially at local levels. Dissemination can be tailored to different stakeholder groups to help them reflect on their role in forthcoming implementation activities.

BOX 56: DISSEMINATION ACTIVITIES



In Kenya, the Kenya National Commission on Human Rights held dissemination workshops in all main regions of the country, training civil society organisations and some businesses on human rights and business and the NAP.

The Kenya National Chamber of Commerce and Industry organised capacity building for small and medium-sized enterprises in different regions of Kenya, which included informing participants about the content of the Kenyan NAP.

2.4.4 Implement the actions

Ideally, a NAP should indicate resources for each action. However, budgets are often set annually and liable to change. Therefore, a key (and ongoing) priority for those involved with implementation is to **ensure sufficient resources are available** over the full implementation period.

The NAP should indicate responsibility for the implementation of actions, which is often a central ministry. However, many actions may require, or be more effectively implemented, by **involving relevant stakeholders, especially at regional and local levels.**

BOX 57: LOCAL AND DECENTRALISED IMPLEMENTATION



In Peru, a decentralised implementation strategy was adopted. From 2022 onwards, the Ministry of Justice organised a range of workshops in Ica, Cusco, Ucayali, Cajamarca and Piura with local government, businesses, Indigenous Peoples, trade unions, and civil society. These workshops often began with capacity building followed by an open dialogue framed around the implementation of actions in the NAP.

There are often changes in personnel in bodies responsible for implementation and in key stakeholder organisations. It is advisable to **plan for periodic capacity development** throughout the NAP implementation phase.

A NAP development and implementation process take time and political changes and changes in personnel often occur. It is therefore important that key stakeholders, including **businesses and CSOs, reiterate their interest in NAP implementation**, to ensure that it survives any political changes.

Where implementation on specific actions is delayed it is important to be transparent to ensure that accountability measures and mechanisms can measure progress, or lack thereof, against indicators. It can be useful to undertake a mid-term review and adjust actions based on progress made and challenges faced (see box 59 for examples). Where implementation is delayed broadly, it may be necessary to extend the lifespan of NAP. An extension should be accompanied with a renewed commitment and clarity on how the delays will be overcome and actions realised within the new time-period (for example, updated SMART actions and indicators).

BOX 58: EXTENDING THE NAP LIFESPAN



In the Netherlands, the implementation of the first NAP was impacted by the Covid-19 pandemic, so the NAP lifespan was extended.

2.4.5 Establish and engage with national accountability mechanisms and measures

National accountability measures and mechanisms should be articulated in the NAP (see section 2.2.8 for examples) and established with clear governance structures, mandates, and financial resources to operate effectively throughout the implementation phase. Information on actions taken should be regularly shared publicly and with these mechanisms to allow for progress to be measured against indicators.

During a review process, the State's performance in meeting indicators established in the NAP should be assessed and reported on, as well as the concrete impacts of measures on/ for stakeholders. The NBA developed to inform the NAP can provide as baseline to monitor and evaluate whether actions in the NAP had the desired effect (see section 2.2).

Mid-term reviews provide an opportunity to update actions and/ or implementation measures contained within the NAP, or supplement actions with additional measures.

BOX 59: UNDERTAKE A MID-TERM REVIEW/ PROGRESS REVIEWS



In Italy, the first NAP (2016-2021) underwent a mid-term review in 2018. The mid-term review was conducted by the Working Group on Business and Human Rights (GLIDU), a monitoring body established in the NAP. The GLIDU assessed results achieved and identified gaps in the actions undertaken. The analysis was carried out with a special focus on the priorities set in the present NAP and with the aim of addressing future challenges. Following the mid-term review, the President of the Inter-ministerial Committee for Human Rights, announced the release of a

revised NAP in November 2018 which included some limited additional language around journalists and human rights defenders. The second Italian NAP (2021-2026) provides for a similar a mid-term review in 2024.



The first German NAP (2016-2020) contained soft human rights due diligence measures, setting a target for half of German businesses to implement core elements of human rights due diligence. By 2020, a survey showed that 83-87% of companies were not complying with the NAP requirements, which contributed towards the development of the German Supply Chain Due Diligence Law. This law came into force on 1 January 2023 and requires companies over a certain size to conduct human rights due diligence.

A final review should occur towards the end of a NAP lifespan to analyse the effectiveness of NAP actions and implementation measures. It can also make recommendations on how to structure a process to develop an updated NAP. Consideration should be given on when to schedule the final review to ensure it can effectively inform the development of an updated NAP.

BOX 60: UNDERTAKE A FINAL REVIEW OF THE NAP



In Chile, the government contracted the Catholic University of Chile to undertake a study to inform the development of a second NAP. Published, in August 2020, the study evaluated the first NAP, evaluated and proposed a new stakeholder participation mechanism for the second NAP, and proposed new themes on business and human rights for the second NAP.



In Ireland, during 2021, the Human Rights Unit of the Department of Foreign Affairs worked closely with the multi-stakeholder Implementation Group for the National Plan on Business and Human Rights in the preparation of a review of implementation of the National Plan. Members participated in a special forum convened on 31 May 2021 to consider the review. The review document was noted by the Government on 3 December 2021.¹³⁸



In 2023, France's NHRI published a report reviewing the implementation of the 2017 French NAP in regard to French national, regional and international action on business and human rights (as provided for in the NAP). The report contains 145 recommendations to the French State to implement business and human rights policies, 20 of which are considered priorities.¹³⁹



In Switzerland, in line with a NAP commitment, the Federal Department of Foreign Affairs (FDFA) and the Federal Department for Economic Affairs, Education and Research (EAER) commissioned an evaluation of the second NAP (2020-2023) and to inform a third NAP.¹⁴⁰ The report, published in November 2023, was conducted by the University of Zurich

and consultancy firms Good Rechtsanwälte and Engageability, examined “the extent to which knowledge of the NAP 2020-2023 is available among the federal agencies involved and how it has been applied or referred to. It also examines whether the federal government’s communication and awareness-raising measures under the NAP 2020-2023 have reached the businesses concerned. The evaluation focuses on a forward-looking consideration with the goal of demonstrating the potential for further development of the NAP in terms of structure (including indicators), processes, and content.

The evaluation identified four priority action areas for the development of a future NAP:

1. Strengthening the coherence of policies and instruments dealing with business and human rights and related issues of responsible business conduct.
2. Considering future fields of action.
3. Strengthening the leverage of the measures of the NAP and the improvement of impact measurement.
4. Continuing and strengthening of support for all stakeholders.”

A parallel report was commissioned on the implementation of legal due diligence instruments for responsible business conduct.

The FDFA and EAER responded to the reports highlighting which recommendations were accepted, partially accepted, or rejected, including a narrative response to each.¹⁴¹

All monitoring and review mechanisms should ensure a **gender and territorial balance**. Multi-stakeholder mechanisms should include representatives from civil society, trade unions, businesses, and the NHRI (where it exists), and aim to ensure a gender balance. The composition should also consider the presence of vulnerable, and marginalised peoples and communities of rightsholders, and Indigenous Peoples, and minority groups (see section 2.1.4 on ensuring stakeholder participation).

Periodic review meetings between stakeholders 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 effect.

The legislative and judicial branches of government can be included in accountability process by reviewing the executive branch’s implementation of the NAP, and/ or results of reviews can be formally presented to them. Information on the implementation of the NAP can also be included in a State’s annual human rights reports.

BOX 61: DETAILING PROGRESS ON IMPLEMENTATION IN ANNUAL HUMAN RIGHTS REPORTS



In 2021, the Colombian government published an annual report on the implementation of the second NAP.¹⁴² Colombia's 2022 annual report on human rights also contains a chapter on business and human rights, detailing actions taken to implement the NAP.¹⁴³

2.4.6 Report to/ engage with international accountability mechanisms and measures

Reporting on NAP efforts to international human rights mechanisms provides governments and local stakeholders with additional avenues for monitoring the State's human rights obligations in relation to business, thus helping to improve implementation of the UNGPs and ensuring accountability for State duty-bearers. Reporting to such mechanisms can also support the identification of gaps and the need for further normative developments at the regional and/or global level, including in relation to the extra-territorial dimension of business and human rights issues.

The Universal Periodic Review (UPR) Process by the UN Human Rights Council

The UPR process is overseen by the UN Human Rights Council and examines the record of each of the UN Member States once every four and a half years. The scope of the review is in line with the human rights guaranteed by the Universal Declaration of Human Rights and set out in the UN Charter, other UN human rights instruments, ratified treaties, voluntary pledges, and applicable international humanitarian law. States should report on business and human rights through the UPR process, including progress towards the implementation of the UNGPs through NAPs.

The State under review may report on NAP progress in its information provided to inform the review. NHRIs, civil society, and others can also submit information on a NAP to the OHCHR which is compiled as a summary of stakeholder information. Other UN organs can provide the OHCHR with information to be included within an OHCHR report informing the review. States can ask questions and make recommendations to the State under review on its NAP development and implementation.

BOX 62: REPORTING THROUGH THE UPR PROCESS

The UPR process has become increasingly more important to review NAP commitments. According to the UPR Info Database, 98 recommendations regarding NAPs were made up to the fourth and current UPR cycle.¹⁴⁴



In 2018, during the third UPR cycle, Colombia made a voluntary pledge to develop an updated NAP, which was published in 2020.¹⁴⁵



The second Swiss NAP (2020-2023) highlights the importance of the UPR process and notes that “business and human rights issues will feature more prominently in Switzerland’s recommendations and regular reports to the UN treaty bodies.” Switzerland reported on its business and human rights activities in October 2022 during the fourth UPR cycle.

UN Human Rights Treaty Monitoring Bodies

The UNGPs address all internationally recognised human rights and, as a result, business and human rights can be raised in discussion in any treaty body monitoring process, special procedures, or other UN accountability mechanisms.

States should report on business and human rights through reports to UN Human Rights Treaty Monitoring Bodies (see box 51 for examples of commitments to do so in NAPs).

BOX 63: HUMAN RIGHTS TREATY BODIES

There are ten human rights treaty bodies (Committees):¹⁴⁶

- UN Human Rights Committee (UNHRC);
- Committee on the Elimination of Discrimination against Women (CEDAW);
- Committee Against Torture (CAT) and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT);
- Committee on the Elimination of Racial Discrimination (CERD);
- Committee on the Rights of Persons with Disabilities (CRPD);
- Committee on Enforced Disappearances (CED);
- Committee on Economic, Social, and Cultural Rights (CESCR);
- Committee on the Rights of the Child (CRC); and
- Committee on Migrant Workers (CMW).

The UN Committees oversee the requirement for States which have acceded to a treaty to undertake a periodic report roughly every four years and based on constructive dialogue, publishes its concerns and recommendations, in the form of concluding observations.

UN Committees provide a list of issues prior to reporting to the State party which should provide the basis for its State party report under the simplified reporting procedure. UN Committees can ask for information on business and human rights, including NAPs, within the list of issues.

BOX 64: LIST OF ISSUES PRIOR TO REPORTING



The list of issues sent to Chile ahead of their CRC report in 2020 requests information on the extent to which the first NAP establishes a regulatory framework for private businesses, in particular companies in the manufacturing and extractive sectors, to address their impact on the environment and children's health and to what extent it provides for redress.¹⁴⁷



The list of issues sent to Italy ahead of their CESCR report in 2020 requests information on the follow-up to the first NAP including results achieved and challenges encountered.¹⁴⁸



The list of issues sent to Brazil ahead of their CESCR report in 2021 requests "an update on the development of a national action plan on business and human rights".¹⁴⁹



The list of issues sent to the Democratic Republic of the Congo ahead of their CESCR report in 2020 asked for information on "whether the State party is planning to develop an action plan on business and human rights, or regulations requiring companies to exercise due diligence in respect of human rights."¹⁵⁰

Whether in response to the list of issues, or in to provide information more broadly on how the State fulfils its human rights obligations in line with the UNGPs, a State can highlight the development and implementation of a NAP to UN Committees.

BOX 65: REPORTING TO UN COMMITTEES



Ireland's periodic report to the CRC in 2022 highlights its NAP and multi-stakeholder monitoring mechanisms.¹⁵¹



Germany's periodic report to the CEDAW in 2021 highlights its NAP in relation to its extraterritorial obligations, stating that the Federal Government "expects the private sector to fulfil its human rights due diligence obligations."¹⁵²



Mongolia's periodic report to the CESCR in 2021 highlighted their commitment and ongoing process to develop a NAP.¹⁵³



Peru's periodic report to the UN Human Rights Council in 2020 highlights progress to develop a NAP.¹⁵⁴



Thailand's periodic report to the CERD in 2019 highlights progress to develop a NAP, noting stakeholder consultation activities and priority areas it will address.¹⁵⁵

UN Committees provide concluding observations and recommendations to States as part of treaty body reporting. The CEDAW, CERD, CESCR, CRC, and UN Human Rights Council have issued concluding observations and recommendations to States noting/welcoming the adoption of NAPs, highlighting concern about gaps, urging States to adopt NAPs, expedite NAP development and implementation processes, strengthen protections in NAPs, and provide information on measures taken.

BOX 66: UN COMMITTEES' CONCLUDING OBSERVATIONS AND RECOMMENDATIONS¹⁵⁶



In 2023, the CESCR recommended that Qatar “[d]evelop and adopt a national action plan, through a consultative and participatory process with stakeholders, in particular groups such as workers and minority-owned business entities, to implement the Guiding Principles on Business and Human Rights”.



In 2023, the CRC recommend that New Zealand “[i]n line with its commitments made during the third cycle of the universal periodic review, develop and implement a national action plan on business and human rights, in addition to the responsible business conduct strategy, through a multisectoral consultation with a focus on children’s rights”.



In 2022, the CERD recommended that Thailand “[s]trengthen the implementation of its national action plan on business and human rights with a view to preventing business entities from engaging in activities that adversely affect the rights of indigenous peoples, among other groups”.

BOX 67: A LEGALLY BINDING INSTRUMENT ON BUSINESS AND HUMAN RIGHTS

In 2014, the UN Human Rights Council decided “to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”¹⁵⁷ While the scope and focus of such an instrument is still being discussed, it has been suggested that a treaty on business and human rights or component of it could focus on NAPs on business and human rights.¹⁵⁸ The July 2023 revised draft of the treaty purports to establish a treaty body with the competence to review periodical State reports regarding its implementation, which should include policy measures to ensure compliance with the protect, respect and remedy framework.¹⁵⁹

UN Special Procedures

The UN Human Rights Council has established “Special Procedures” which are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the UN human rights machinery and covers all human rights: civil, political, economic, social, and cultural. As of June 2024, there are 46 thematic and 14 country mandates. Included as one of the thematic mandates is the UNWG, whose responsibilities include the effective and comprehensive dissemination and implementation of the UNGPs.

BOX 68: THE UNWG REPOSITORY OF NAPs

The UNWG launched a Repository of NAPs in February 2014, which collects all published NAPs in one location. In June 2014, the UN Human Rights Council, in renewing the UNWG’s mandate, gave it the new task of seeking information from States on their NAPs and encouraged States and other stakeholders to provide relevant information to the UNWG. Specifically, the UN Human Rights Council “welcome[d] the efforts of the Working Group to build a database of national action plans” and “encourage[d] States to submit information on their national action plans” by way of annual updates.¹⁶⁰

Special procedures undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to States and others (including rightsholders, businesses, and investors) in which they bring alleged violations or abuses to attention; conduct thematic studies and convene expert consultations; contribute to the development of international human rights standards; engage in advocacy; raise public awareness; and provide advice for technical cooperation. Special procedures report annually to the UN Human Rights Council ; the majority of the mandates also report to the UN General Assembly. All 11 UNWG country visits reports since 2017 have addressed NAPs.

BOX 69: UNWG COUNTRY VISITS REPORTS



Following a country visit to Luxembourg in 2022, the UNWG “commend[ed] the Government for ensuring that the development of the national action plans followed a multi-stakeholder process” and “an excellent mapping and report” which provided a baseline to the second NAP. However, the UNWG notes that they are “concerned that the current national action plan does not sufficiently address pillar III of the Guiding Principles, in particular with regard to access to effective remedies for human rights abuses by businesses domiciled in Luxembourg that occur in countries outside the European Union.” The UNWG noted that Luxembourg should, inter alia, “[p]ay special attention, in the next national action plan, to the financial sector, including investment and pension funds, as well as the climate crisis, with a strong emphasis on corporate accountability”, “[b]etter address pillar III”, and “[i]nclude a provision in the next national action plan to carry out a national risk assessment on business and human rights”.¹⁶¹



Following a country visit to Liberia in 2023, the UNWG recommended that the government “[e]nsure that every step of the process is developed in a transparent manner, including by providing access to information at all stages, and with the equal and meaningful participation of all relevant stakeholders in all counties, with a particular focus on communities in the most marginalized situations outside the capital”, “[s]trengthen the capacity of institutions responsible for implementing consultations with communities, including by providing the funds necessary for relevant public servants to discharge their duties”, “that the national action plan includes indicators that are specific, measurable, achievable and time-bound to assess implementation”, and “[e]stablish effective mechanisms for the meaningful participation of relevant stakeholders, including civil society actors, in monitoring and evaluating the progress made, or the lack thereof, during the implementation of the plan”.¹⁶²



Following a country visit to Argentina in 2023, the UNWG recommended that the State “strengthen the development of the national action plan and enhance the legitimacy of the process by providing strong political support that prioritizes the development and implementation of the plan and renews the trust of stakeholders and renews the trust of stakeholders, including other key ministries.” The UNWG recommended the State “[e]nsure active transparency in the development of the national action plan... and promote broad participatory forums with all relevant stakeholders that are not merely information-sharing exercises and include representatives of Indigenous Peoples and communities, civil society, academia and the private sector.” The UNWG also provided a recommendation to CSOs to “to actively participate in the design of public policies relating to the business and human rights agenda, including the national action plan”.¹⁶³



Following a country visit to Japan in 2023, the UNWG noted a general lack of domestic awareness of the UNGPs and the NAP, and encouraged training and awareness raising. The UNWG noted a lack of sufficient engagement with stakeholders in the development and implementation of the NAP, highlighting that the “national action plan review process thus provides an opportunity for the Government to fully engage with all relevant stakeholders.” The UNWG recommends that when reviewing the NAP, Japan should “[p]ay special attention to business-related human rights abuses experienced by at-risk communities”, “[s]trengthen access to remedy”. “[i]nclude a gap analysis”, “[c]larify the modalities for implementation, including the identification of clear responsibilities, time frames and human rights indicators to monitor and evaluate progress”, and “[d]evelop effective mechanisms to ensure the meaningful participation of relevant stakeholders, including victims and civil society actors, in monitoring and evaluating the progress made during the implementation”.¹⁶⁴

BOX 70: COMMUNICATIONS OF UN SPECIAL PROCEDURES



In May 2024, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, the UNWG, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on trafficking in persons, especially women and children sent a letter to the UK Government regarding allegations of labour exploitation of migrant workers requesting information on “actions taken, or being planned, by your Government to implement the relevant provisions in the 2016 National Action Plan on Business and Human Rights (NAP).”¹⁶⁵



In May 2024, the Working Group on discrimination against women and girls, the UNWG, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right to privacy, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, and the Special Rapporteur on violence against women and girls, its causes and consequences sent a letter to the US Government bringing to their attention that legislation concerning online gender-based discrimination and violence against women and girls if adopted without amendment, may fall short of international human rights norms and standards, due to the lack of preventative measures. They requested information on measures that the US Government “has taken or intends to take to ensure the alignment of the proposed legislation with its commitments under the National Action Plan on Responsible Business Conduct, adopted in 2024”.¹⁶⁶



In December 2023, the UNWG, the Special Rapporteur on the right to development, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and the Special Rapporteur on the rights of Indigenous Peoples sent a letter to the Malaysian Government bringing to their attention information received regarding the signing of a Nature Conservation Agreement (NCA) granting monopoly rights of two million hectares to a private company without respecting Sabah Indigenous Peoples’ rights, including their rights to consultation and free, prior and informed consent (FPIC). They requested “information regarding the progress of the development of a National Action Plan on Business and Human Rights”.¹⁶⁷



In June 2023, the UNWG, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders sent a letter to the Ecuadorian Government bringing to their attention information they had received about death threats and harassment of a human rights defender and his family. They requested information on the status of the development of NAP.¹⁶⁸

The Voluntary National Reviews of the 2030 Agenda and High-level Political Forum

The 2030 Agenda's follow-up and review architecture is comprised of national, regional, and international levels. Nationally, States should conduct regular and inclusive progress reviews that draw on input from stakeholders, and regionally, they should undertake voluntary reviews (VNRs) based on national follow-up and review processes for the purposes of peer learning and sharing of best practices. At the global level, the 2030 Agenda establishes the High-level Political Forum as the hub for review of State efforts to implement the SDGs.

States seeking to implement and voluntarily report on their efforts to implement the SDGs through the High-level Political Forum can also report on measures within their NAP on business and human rights which implement, or support the implementation of, the SDGs. States can also ensure coordination between the SDG follow-up and review mechanism and the mechanisms set up to monitor the implementation of their business and human rights NAP. To further integrate these reporting processes, States could incorporate national level indicators on the business and human rights NAP as part of the national follow-up and review mechanism.¹⁶⁹

BOX 71: REPORTING ON NAP PROGRESS TO THE HIGH-LEVEL POLITICAL FORUM



Japan reported to the High-level Political Forum on the adoption of its first NAP in 2021. The review explicitly linked the Japanese NAP to the SDGs, stating that “the protection and promotion of human rights has been positioned as an important element in achieving the SDGs”¹⁷⁰. Furthermore, it highlighted the role of policy coherence for implementing the NAP.



Poland reported on the adoption of its second NAP (2021-2024) in its 2023 contribution to the High-level Political Forum. The Polish government included the report under the chapter dedicated to the implementation of SDG 16 (peace, justice and strong institutions) as part of its engagement with UN human rights institutions.¹⁷¹

African Commission on Human and Peoples' Rights

The African Commission established a Working Group on Extractive Industries, Environment, and Human Rights violations in 2006. Its mandate includes, inter-alia, to “undertake research on the violations of human and peoples' rights by non-state actors in Africa,” and “formulate recommendations and proposals on appropriate measures and activities for the prevention and reparation of violations of human and peoples' rights by extractive industries in Africa.”¹⁷² In carrying out its mandate, the Working Group has the platform to drive the implementation of the UNGPs in Africa's extractives sector. Additionally, in May 2018 the African Commission on Human and Peoples' Rights published State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment.¹⁷³

Council of Europe

The Council of Europe has set up various mechanisms for the promotion and monitoring of human rights in Member States. The Commissioner for Human Rights is an independent non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the Council of Europe Member States. The Commissioner is mandated to, inter-alia, foster the effective observance of human rights, assist Member States in the implementation of the human rights standards of the Council of Europe, and identify possible shortcomings in law and practice concerning human rights.¹⁷⁴ As a follow-up to the adoption of a Recommendation on business and human rights, the Commissioner has begun integrating business and human rights into the agenda of country visits.¹⁷⁵

Inter-American Commission on Human Rights

The mandate of the Inter-American Commission on Human Rights provides opportunities for reviewing the progress of NAPs of Organization of American States' Member States, including through country visit outcome reports, periodic public hearings where States may be subject to a review on human rights and business, and in situations where States ask for advisory support on their NAP development and implementation process. Such an advisory role is in line with the 2014 and 2016 Organization of American States' Resolutions on business and human rights, which request increased engagement and support by the Inter-American Commission on Human Rights in this area. The Inter-American Commission on Human Rights has noted the adoption and implementation of NAPs in its country reports.¹⁷⁶

In November 2019, the Inter-American Commission on Human Rights' Special Rapporteur for Economic, Social, Cultural and Environmental Rights published a report entitled "Business and Human Rights: Inter-American Standards". The report recommended that the Working Group of the Protocol of San Salvador, which is tasked to monitor progress of economic, social, cultural and environmental rights in American States, consider business and human rights issues in their observations to reports submitted by State parties to the Protocol.¹⁷⁷

2.4.7 Participate in peer exchanges and reviews

Business and human rights can be a relatively new area for policy-makers, and the scope of business and human rights is very broad. Peer exchanges and dialogues can provide a platform to learn from experiences in developing and implementing NAPs and/or other policy measures to implement the UNGPs.¹⁷⁸

Peer reviews can help provide a level of accountability, especially where they incorporate stakeholder engagement. There are a number of examples of peer review processes in other areas which could be further explored in relation to business and human rights, including:

- OECD Investment Policy Reviews¹⁷⁹ and National Contact Points Reviews;¹⁸⁰
- The African Peer Review Mechanism established under the African Union's New Partnership for African Economic Development;¹⁸¹
- Association of Southeast Asian Nations' Intergovernmental Commission on Human Rights regional consultations;¹⁸²

- The EU “Open Method of Coordination”¹⁸³ and specific peer review exercises;¹⁸⁴
- Council of Europe examinations;¹⁸⁵
- Organization of American States regional peer exchange sessions.¹⁸⁶

BOX 72: PEER EXCHANGE



In June 2022, Belgium hosted a peer exchange meeting on policy developments in the business and human rights field with representatives from Belgium, France, the Netherlands, Germany, Kenya, and the EU to discuss recent developments on NAPs and mandatory human rights due diligence.

In Latin America and the Caribbean, an Intergovernmental Community of Practice on Business and Human Rights has been functioning since February 2021. Representatives from 12 governments from the region participate in a monthly peer-learning platform on business and human rights public policies to support the design and implementation of NAPs. The Community of Practices has been supported by the OHCHR, within the RBCLAC Project.

2.5 UPDATING THE NAP

CHECKLIST:

- Plan the update before the end of the current NAP implementation period;
- Repeat the previous steps.

In order to ensure accountability and effectively realise the UNGPs, NAPs should not only be monitored, reviewed, and reported on, but should also be periodically updated.

Once a NAP nears the end of its implementation period, planning should begin to develop a new or updated NAP. The implementation of actions in an updated NAP should dovetail with the finalisation of actions in the previous NAP and prolonged breaks between NAP implementation periods should be avoided.

BOX 73: ENSURING CONSISTENT IMPLEMENTATION



Switzerland adopted its first NAP on 9 December 2016 which ran until the end of 2019. Switzerland adopted its second NAP on 15 January 2020, which ran until the end 2023. Switzerland is expected to publish its third NAP in Q2 2024.



Italy adopted its first NAP on 15 December 2016 which ran until the end of 2021. Italy adopted its second NAP on 1 December 2021, which runs until the end of 2026.

Updated NAPs should build from an evaluation of the extent to which the first NAP's indicators were met through final reviews (see section 2.4.5).

Conditions on the ground are likely to have evolved over the implementation period of the NAP. An updated NBA (see section 2.2.6), and input and recommendations from national, regional, and international monitoring and review mechanisms, as well as on domestic stakeholder feedback, should help inform an updated NAP.

The policy and regulatory environment at the international, and regional and national developments is also likely to have shifted. Since the first generation of NAP were adopted in 2014, there has been a widespread recognition of a right to a healthy environment and major developments related to technology, among many others. At the same time, there has been a hardening of business and human rights standards through the introduction of mandatory human right and environmental due diligence legislation, and a need to consider the role of NAPs in supporting the implementation legislation (see section 4.2). It is therefore necessary for the new NAP process to reflect such change.

BOX 74: SECOND NAPS

As of June 2024, 11 States (Belgium, Chile, Colombia, Italy, Luxembourg, Netherlands, Poland, Switzerland, Thailand, the UK, and the USA) have published second NAPs.



Luxembourg's second NAP (2020-2022), published in January 2020 was developed by the existing Working Group from the first NAP, representing diverse stakeholders. The Working Group assessed the results of the implementation of the first action plan in a report submitted to the Government Council on 18 July 2019 and approved in the session of 26 July 2019. The report has not been made publicly available. The Ministry of Foreign Affairs commissioned a National Baseline Assessment (NBA) to an academic, which was published in October 2019, to evaluate the first NAP and guide the development of a second NAP. The draft of the second National Action Plan was developed between September and December 2019, and coordinated through five meetings of the Working Group.



Colombia's second NAP development process began during the later stage of the implementation of the first NAP (2015-2018). A National Coordination Body (NCB) was established in November 2017, comprised of over 90 stakeholders. In February 2018, the NCB conducted 15 territorial meetings and a multi-stakeholder Technical Roundtable. Subsequent workshops, meetings, and tables, led by the Presidential Advisory Office for Human Rights, reviewed recommendations. Despite Covid-19 disruptions, additional meetings occurred in 2020 and a second NAP was published in December 2020. The Inter-Institutional Working Group which implemented the first NAP were charged to implement the second. No (NBA) was conducted for the first nor second NAP. The second NAP was criticised by trade unions and CSOs for the lack of an NBA and lack of effective public participation and timely, accessible, and complete information.¹⁸⁷



In the Netherlands, two Dutch MPs requested the NAP be updated in July 2019. A process to develop a second NAP began in Autumn 2020. The Dutch Ministry of Foreign Affairs coordinated the update in three phases: 1) preparing and gathering ideas, including an NBA by the Netherlands Institute for Human Rights; 2) elaborating on policy priorities and additional stakeholder consultations; and 3) deciding on and delivering the new NAP. The timeline is available on the Dutch Government's website.

3. A HUMAN RIGHTS-BASED APPROACH TO NAPS

This Toolkit's content and recommended processes are aligned with a human rights-based approach. According to the UN's Statement of Common Understanding on human rights-based approach to Development Cooperation and Programming, it is:¹⁸⁸

- Normatively and operationally based on international human rights standards and principles;
- Applies human rights-based principles in processes – including participation, non-discrimination, empowerment, transparency, and accountability; and
- Emphasises the importance of accountability by recognising entitlements of rightsholders and the obligations of duty bearers.

3.1 EQUALITY AND NON-DISCRIMINATION

All human beings are considered equal and entitled to the same human rights without discrimination on the grounds of race, colour, sex, gender, sexual orientation, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth, or other status.¹⁸⁹

Implications for a NAP on business and human rights in relation to equality and non-discrimination include:

- Ensuring that consultation processes and the content of NAPs are gender sensitive, and that women, men, LGBTI+ people are given equal opportunities to participate in the NAP development and implementation processes;
- Guaranteeing that consultations with Indigenous Peoples are held in good faith and follow the applicable international standards, in particular the requirement of free, prior, and informed consent in all issues concerning Indigenous Peoples, their lands and resources.
- Identifying and recognising affected, vulnerable, and marginalised peoples and communities of rightsholders, as well as those who may be discriminated against in the given context, especially those individuals subject to multiple forms of discrimination; and
- Ensuring that the NAP addresses issues of discrimination against women and other groups in society in the context of business activities.

3.2 PARTICIPATION

Participation enables all stakeholder groups to be involved in each phase of the process, and governments should take special measures to engage affected, vulnerable, and marginalised peoples and communities of rightsholders throughout a NAP process. The goal of participation is to create ownership by right-holders over their development, which in turn requires access to information to ensure effective participation.¹⁹⁰

Implications for a NAP on business and human rights in relation to participation include:

- Enabling stakeholder participation through, for example, the establishment of a permanent multi-stakeholder structure tasked with providing input at all stages of the NAP development process, and in monitoring implementation;
- Facilitating consultation meetings throughout the NAP process from its inception, to the development of an NBA, drafting of the NAP, implementation, and review;
- Ensuring that consultations take place in a manner appropriate to the stakeholder(s) in question, with attention paid to levels of knowledge and expertise in the subject matter and any potential language or social, cultural, financial, or other barriers to participation, which may be heightened for people in vulnerable situations;
- Undertaking capacity-building of stakeholders as necessary to enable meaningful participation for those rightsholders who are affected, vulnerable, and marginalised peoples and communities of rightsholders, and/ or discriminated against; and
- Fostering mechanisms for participation of women and girls, for example by guaranteeing a gender balance in stakeholder meetings, establishing separate mechanisms for exclusive participation of women in the NAP development and convening all-female meetings where necessary.

BOX 75: RIGHTSHOLDER GROUPS WHICH MAY REQUIRE INCREASED FOCUS

Children

According to the Convention on the Rights of the Child, all children capable of forming their own views should be able to freely express themselves and have their views taken into account in line with their age and maturity.¹⁹¹ Additionally, there are a number of children's rights stakeholders within and outside of government that are also able to help express the needs and desires of children. These stakeholders might include children's ombudspersons or individuals within ministries for youth, family, social affairs, health or education. Other children's rights stakeholders include youth organisations, civil society groups, parents and/or caregivers, and community leaders. The DIHR, the International Corporate Accountability Roundtable, and UNICEF published a 2016 report on Children's rights in NAPs.¹⁹²

Indigenous Peoples

ILO Convention No. 169 on the rights of Indigenous Peoples,¹⁹³ the UN Declaration of the Rights of Indigenous Peoples,¹⁹⁴ the OECD Guidelines on Responsible Business Conduct,¹⁹⁵ as well as international and region-specific standards and jurisprudence articulate the rights of Indigenous Peoples to effective participation in the development of policy and regulation which affects them, which includes NAP processes.¹⁹⁶ Consultations should be undertaken with the objective of achieving free, prior, and informed consent. Consultation should also be undertaken in good faith with the representative institutions of Indigenous Peoples, through procedures that are appropriate for them. This means that the nature and scope of the consultation process should be agreed on with Indigenous Peoples in advance of consultation procedures taking place.

Human Rights Defenders

The UN Declaration on Human Rights Defenders recognises the important role that human right defenders play in identifying, preventing, mitigating, and ensuring accountability for corporate human rights abuses.¹⁹⁷ States should consult with

human rights defenders in the process of creating a NAP. A guidance on how human rights defenders should be protected and supported in NAPs was published in June 2016 by the International Service for Human Rights and the International Corporate Accountability Roundtable.¹⁹⁸ In June 2021, a UNWG report on ensuring respect for human rights defenders concluded that States “should enable human rights defenders to play an active role in processes to develop and implement national action on business and human rights, and ensure that such plans address the issues facing defenders.”¹⁹⁹ The report also details what protective measures can be put into place to facilitate their engagement in a NAP development process.

Women

There is extensive evidence of differentiated impacts of business activities on women.²⁰⁰ The Convention on the Elimination of all Forms of Discrimination Against Women, and range of ILO conventions,²⁰¹ recognise rights and protections for women. Article 7 of the Convention on the Elimination of all Forms of Discrimination Against Women recognises the right for women “[t]o participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government”. The UNWG has highlighted that “States should ensure the participation of women and women’s organizations in taking legal and policy measures to implement, including through a national action plan and other such means, the Guiding Principles.”²⁰² A mapping by the DIHR provides an overview of select topics for state attention in strengthening their gender focus in UNGPs implementation processes, including, but not limited to, NAPs.²⁰³ States should consult with women in the process of creating a NAP.

LGBTI+ people

Protection against gender discrimination is guaranteed by the Convention on the Elimination of all Forms of Discrimination Against Women. The rights of LGBTI+ (Lesbian, Gay, Bisexual, Transgender and Intersex) individuals and individuals with non-binary gender identities to non-discrimination have been recognised internationally in several instances.²⁰⁴ The UNGPs call for explicit attention gendered approach to business and human rights issues in Principles 3, 7, 18 and 20.²⁰⁵ The UNWG’s report on applying a gender lens to the UNGPs highlights the need to apply the gender framework (which the report contains) in the development of NAPs.²⁰⁶ A report was published in 2023 by the DIHR analysing how gender was addressed in NAPs from Peru, Thailand and Uganda.²⁰⁷

Migrant Workers

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Migration for Employment Convention recognise rights and protections for migrant workers.²⁰⁸ Article 7 of the ILO Migrant Workers (Supplementary Provisions) Convention states that “representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate ... abuses ..., and the possibility of their taking initiatives for this purpose shall be recognised.”²⁰⁹ States should consult with migrant workers in the process of creating a NAP.

For information on how NAPs address these groups in their content and actions on the [globalnaps website](https://www.globalnaps.org/).

3.3 TRANSPARENCY

Access to information is necessary for ensuring effective stakeholder participation in a NAP development and implementation process. Transparency requires governments to make available all information relevant to its decision-making processes. It is important that people know and understand how major decisions affecting their rights are made and how public institutions that are established for the protection of these rights are managed. However, the mere availability of information is not enough; this information must also be accessible and available in languages and formats that suit the needs and literacy levels of all. In this regard, a particular emphasis should be placed on the forms of accessible communication described in Article 21 (b) of the Convention on the Rights of Persons with Disabilities on access to information, such as “sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions”.

Implications for a NAP on business and human rights in relation to transparency include:

- Publishing the governance framework and methodology to develop the NAP and regularly updating the timeline and stakeholder engagement opportunities for the different phases;
- Publicising key documents relevant to the NAP process, including the NBA, minutes of meetings, contributions from stakeholders, any drafts of the NAP, and reviews of implementation, in an accessible and timely manner;
- Guaranteeing that the information is translated into relevant languages (including indigenous languages), even where those languages are not listed as official, insofar as that information concerns groups of speakers of that language; and
- Ensuring that the information published is adequate and accessible enough to ensure meaningful participation by rightsholders and other stakeholders in the NAP process. That could include, for example, offering sign language translation in relevant meetings, workshops, and presentations, offering Braille versions of key documents such as the draft and final NAPs and NBAs, making text-to-speech assistance available where necessary, offering simple language summaries of key documents, as well as other forms of inclusive communication as relevant.

3.4 ACCOUNTABILITY

Accountability in the human rights based-approach framework entails recognising the entitlements of rightsholders and the obligations of duty-bearers, thereby enabling rightsholders to hold duty-bearers in government and businesses accountable for their actions.²¹⁰

Implications for a NAP on business and human rights in relation to accountability include:

- Clearly defining responsibilities within the government for the development and implementation of the NAP;
- Ensuring that the NAP addresses the most serious impacts of business activities and the access to remedy for rightsholders adversely affected by business;

- Developing SMART (specific, measurable, achievable, realistic and time-bound) actions and indicators.
- Establishing national accountability measures and mechanisms on NAP implementation.
- Committing to reporting and reviews on the implementation of the NAP to national, regional or international human rights mechanisms (for example, the UPR, HLPF, EU Open Method of Coordination and UN treaty bodies); and
- Consider how to embed progress on business and human rights beyond changes of government and administration.

Taken together, the different elements of a human rights based-approach also help governments command the confidence of all stakeholders, which is a prerequisite to the legitimacy and credibility of NAPs on business and human rights.

4. TRENDS AND REFLECTIONS

There is a growing body of information on trends and reflections on NAPs which are explored in this section.

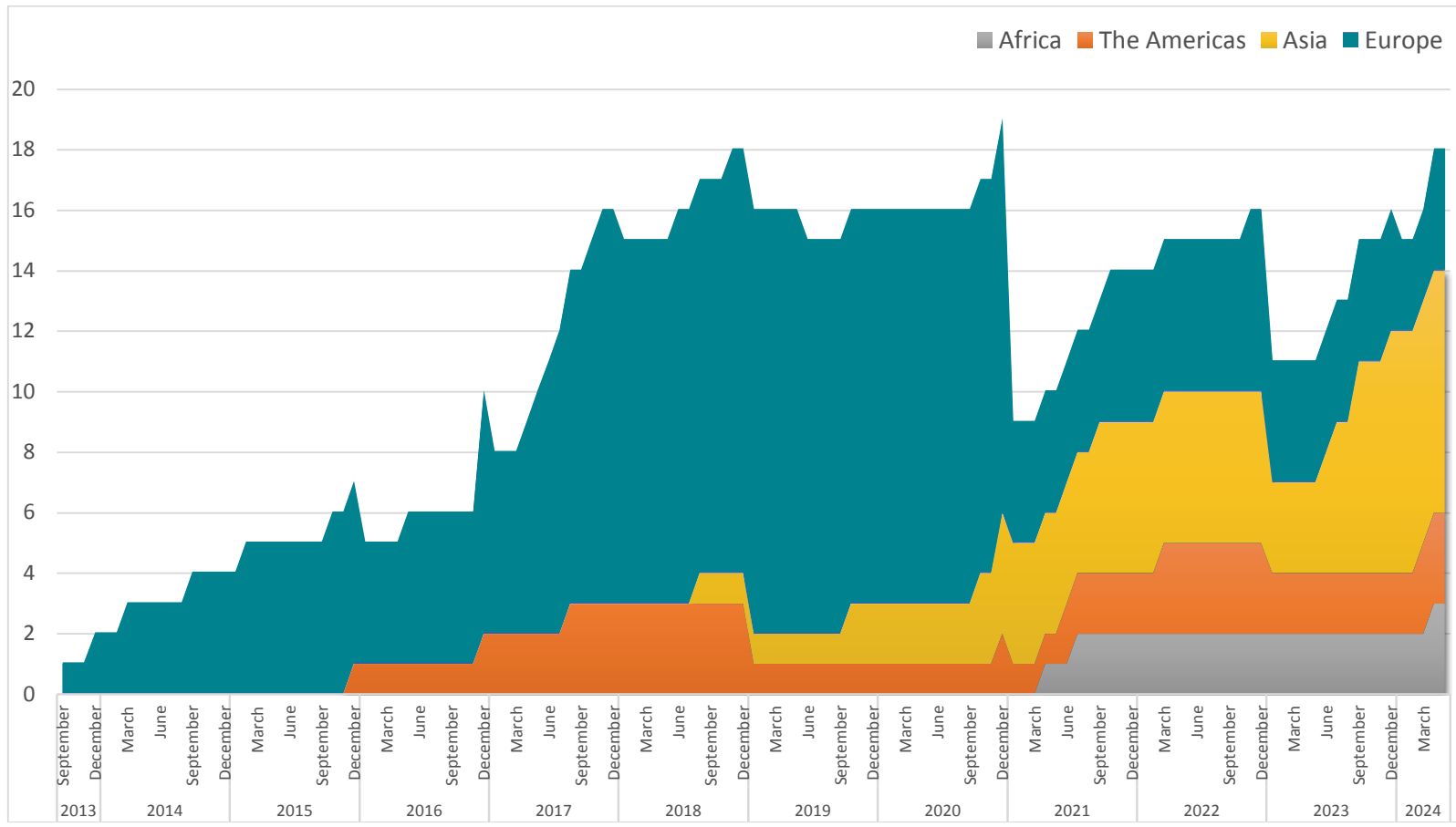
4.1 TRENDS

A DIHR study in 2018 highlighted that only 6 of the first 22 NAPs were informed by an NBA. While the numbers have increased in recent years,²¹¹ a large number of NAPs are still not informed by NBAs, including second NAPs. Furthermore, some NBAs are narrow in their methodology, and in practice are desktop studies conducted by consultants. This means that the full potential of the NBA to galvanise stakeholder engagement is lost. However, there are emerging innovations when it comes to NBAs. The NBA in Belgium incorporated the World Benchmarking Alliance's Corporate Human Rights Benchmark core indicators methodology to generate data on measures taken by businesses to respect human rights. The NBA in Peru was divided into 23 thematic studies to provide a clear framework for State budget allocation and donor-funded support. The NBA in Thailand was composed of 11 thematic assessments and 2 cross-cutting working papers on gender and Indigenous Peoples. The Argentinean NBA included an additional focus on transitional justice. The NBA in the Netherlands contained considered Dutch commitments and activities in foreign policy relating to the UNGPs.

There are clear trends in the regions which have 'active' NAPs over time. While it is difficult to make causal links, it is worth highlighting:

- The EU called on their Member States to adopt NAPs in 2011 and again in 2016. The Council of Europe called on Member States to develop NAPs in 2014 and again in 2016. Such calls have been much less frequent in recent years. Attention in Europe has turned towards mandatory human rights and environmental due diligence legislation (both at the national level, and more recently with the adoption of the EU Corporate Sustainability Due Diligence Directive in July 2024), and
- The UNDP has been supporting States in Asia work on business and human rights and develop NAPs and NBAs since 2016. The OHCHR, through the RBCLAC Project, has supported States in Latin American and the Caribbean work on business and human rights and develop NAPs and NBA since 2019.

The implementation of actions in an updated NAP should dovetail with the finalisation of actions in the previous NAP and prolonged breaks between NAP implementation periods should be avoided. However, in practice, there are a large number of States which have adopted and implemented a first NAP but have made no commitments to develop a subsequent NAPs. Of the 36 States which have adopted NAPs, only 17 have a currently active NAPs. Of the first 6 States which adopted NAPs (UK, Netherlands, Denmark, Finland, Lithuania, and Norway), only 2 updated or adopted a subsequent NAP (UK, Netherlands), and only 1 has a currently active NAP (Netherlands). Furthermore, in the Netherlands, there was nearly 6 years between the last dated action in the first NAP and the adoption of the second NAP.



Active NAPs over time²¹²

4.2 REFLECTIONS

NAPs vis-à-vis mandatory human right and environmental due diligence

An increasing number of States are updating or adopting new NAPs. At the same time, the business and human rights policy and regulatory landscape is evolving rapidly, especially regarding mandatory human rights and environmental due diligence. An academic has identified NAPs as being critical to the development of human rights and environmental due diligence legislation,²¹³ while some NAPs expressly address the need for such legislation and/ or articulate steps towards the development of such legislation.²¹⁴

Mandatory human rights and environmental due diligence legislation implements the UNGPs as hard law obligations and have huge potential to ensure business respect for human rights. As hard law instruments, the obligations they contain are often narrower in their scope than the UNGPs. They may, for example, only apply to businesses over a certain size (i.e. large multi-national enterprises), contain obligations for private businesses (rather than applying to the State when it acts as an economic actor), require businesses to address risks in certain parts of the value chain (for example only upstream supply chain risks, rather than risks which occur in the downstream part of the value chain, i.e. impacts which occur after a product or service leaves a company), or apply only to certain sectors. NAPs can supplement mandatory human rights and environmental due diligence legislation to ensure the implementation of the UNGPs across all business activities outside the direct scope of mandatory human rights and environmental due diligence legislation, including small and medium-sized enterprises.

The UNGPs articulate the need for policy coherence, and a NAP can help situate mandatory human rights and environmental due diligence legislation within a broader business and human rights context.

The UNGPs articulate that a State should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights. Mandatory human rights and environmental due diligence legislation requires a range of ‘accompanying measures’ to ensure that implementation is effective. This could include guidance to business, sector-specific approaches, rightsholder specific approaches, and other non-legislative measures/supporting measures, including external action such as trade or development policy. A NAP can be a vehicle to detail ‘accompanying measures’, to create an enabling environment, both in the home State and abroad, with the objective of reaching the most effective combination to address adverse impact.

Many existing NAPs already have a focus on addressing risks through human rights due diligence in global value chains.²¹⁵ States which are adopting mandatory human rights and environmental due diligence legislation can use NAPs to articulate accompanying measures the State will take to support businesses across global value chains (which may be located abroad) to implement human rights due diligence in order to meet demands from business partners within direct scope of mandatory due diligence laws. States without their own mandatory human rights and environmental due diligence legislation can use NAPs to articulate actions to support their business become more competitive by meeting demands from companies who are subject to mandatory due diligence laws, thereby facilitating market access.

Implementation and accountability gaps and the need for research on effectiveness

NAPs have been criticised for in relation to the lack of implementation and transparency. One of the biggest means of ensuring accountability is to ensure that the actions are SMART and resourced (see box 41). Many earlier NAPs did not have SMART actions, and some progress can be seen in this regard. However, there remains more work to make NAPs more forward looking and implementable.

One challenge is moving from the development stage to the implementation stage. While more NAPs are now including plans for implementation, including bodies charged with implementation and oversight, some States are being criticised for focusing too much on dissemination of the NAP rather than active implementation of the actions contained within the NAP.

While there have been one-off peer exchanges and dialogues, there is a lack of continued focus on sharing good practice and reporting on implementation in an ongoing manner. UN treaty bodies, notably CESCR and CRC, are increasingly engaging with NAP during their State reporting (see section 2.4.6), but greater attention could be placed on this by regional and international organisations and mechanisms.

There are currently no detailed evidence-based studies on the impacts of NAPs on the conduct of business and ultimately for furthering the enjoyment of human rights by rightsholders. While NAPs are still relatively young, it has now been over 10 years since the first NAPs were adopted in 2013, and the field would be enriched by more research on their effectiveness.

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