



## ► Briefing note

June 2021

# ► The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

### Background

- This briefing note aims to explain the interconnectivity between international labour standards, the UN Guiding Principles for Business and Human Rights, and National Action Plans on Business and Human Rights (NAPs). It is addressed to governments, employers' and workers' organizations, who all have a critical role to play in the development, adoption and implementation of such NAPs. It assists these ILO constituents in identifying synergies and opportunities for promoting Government protection of and business respect for labour rights.
- The briefing note is based on the Guidance on National Action Plans on Business and Human Rights issued by the Working Group on Business and Human Rights, and ILO's experience to date with NAP processes in various member States.
- This brief is a first version issued jointly by the ILO and the UN Working Group on Business and Human Rights. It may be updated on a regular basis as more NAPs – as time-bound action plans – are adopted, implemented and evaluated, to capture the latest developments and trends in regards to how international labour standards are incorporated. Concrete examples from current NAPs have been added; these examples are by no means exhaustive but help to illustrate the policy coherence and common formulations of ILO standards, instruments, services and projects in current NAPs.

As an expression of their commitment to the United Nations Guiding Principles on Business and Human Rights (UNGPs), States are encouraged to adopt National Action Plans (NAPs) on Business and Human Rights.<sup>1</sup> An increasing number of countries develop and adopt such NAPs<sup>2</sup> with the purpose of strengthening coordination and coherence within government on the range of public policy areas that relate to business and human rights, and of which the protection of labour rights are an integral part.

The engagement of ministries of labour as well as employers' and workers' organizations in this process is crucial to reinforce the labour dimension of the business and human

rights agenda, identify priorities at the national level and concrete policy measures and actions to protect and respect labour rights in business operations, and ensure effective access to remedy to victims of corporate-related human rights abuses.

Ultimately, a stronger connection in practice could make a significant contribution to addressing major current challenges, by putting respect for workers and their rights at the centre of a responsible and resilient recovery from the COVID-19 crisis and in efforts toward a just transition to a green economy and a human-centred future of work.

1 Guidance on National Action Plans on Business and Human Rights. Working Group on Business and Human Rights (UNWG). 2016.

2 See the Working Group's NAPs repository: <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>. See also <https://globalnaps.org> managed by the Danish Institute for Human Rights (DIHR).

## ► Briefing note

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

# 1. What are the UN Guiding Principles on Business and Human Rights (UNGPs)?

The UNGPs<sup>3</sup> provide the authoritative global framework to address business impact on all human rights, applicable to both States and businesses, clarifying their respective duties and responsibilities to prevent and address human rights risks related to business activities.

The UNGPs consist of three pillars first presented in the United Nations “Protect, Respect and Remedy” Framework (2008) and further operationalized by the UNGPs:

1. The State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication
2. The corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of

## UN Guiding Principles on Business and Human Rights at 10: the next decade

June 2021 marks the tenth anniversary of the unanimous endorsement by the Human Rights Council of the UNGPs. As part of its mandate to promote the UNGPs, the [UN Working Group on Business and Human Rights](#) is using this milestone to undertake a project (“UNGPs 10+”) to evaluate the first ten years of implementation and chart a course for a decade of action on business and human rights. This effort, informed by wide-ranging stakeholder consultations, takes stock of achievements to date, assess existing gaps and challenges with a view to develop a roadmap for implementing the UNGPs more widely and more broadly between now and 2030.

The two main outputs of the project include (i) a report to the Human Rights Council in June 2021 to assess progress to date, highlight existing challenges as well as opportunities and consider how to leverage more robust policy action for transformational change towards 2030 and beyond; and (ii) a Roadmap for the Next Decade, informed by multi-stakeholder inputs,<sup>4</sup> setting out an implementation strategy with goals and targets for States, business enterprises and associations, international organizations and other actors.

NAPs on Business and Human Rights are among the aspects of UNGPs uptake addressed by UNGPs 10+. Several assessments by civil society organizations and the Working Group on the existing NAPs have highlighted a number of common shortcomings, including: too few NAPs are based on robust evidence gathered via national baseline assessments; lack of meaningful participation, as many NAP processes are not accounting for existing power imbalances; lack of transparency and clear timelines for publication, and once adopted, weak governance, particularly in terms of follow through and monitoring; and with few exceptions, NAPs are generally weak in terms of actionable steps that the State should take.

These assessments have underlined the need for quality criteria for NAP development and implementation that should include: an adequate mandate for the ministry in charge as well as funding and resources; coordination within the government; a transparent process; multi-stakeholder participation that includes both employers’ and workers’ organizations among other stakeholders and affected groups; a robust, comprehensive national baseline assessment; clear goals and targets that are specific, measurable, achievable, and time-specific; and mechanisms for reporting and monitoring, for example through multi-stakeholder roundtables.<sup>5</sup>

These assessments are also considered in the context of the UNGPs 10+ stocktaking and the roadmap for further implementation if the UNGPs in the next decade.

For more information see: [www.ohchr.org/UNGPsBizHRsnext10](http://www.ohchr.org/UNGPsBizHRsnext10).

<sup>3</sup> Full text available at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>4</sup> Written inputs to UNGPs 10+ are available at: <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10-inputs.aspx>. It includes: [Joint submission by: Building and Wood Workers’ International \(BWI\), International Trade Union Confederation \(ITUC\), International Transport Workers’ Federation \(ITF\), Trade Union Advisory Committee to the OECD \(TUAC\), UNI Global Union](#); and [International Organisation of Employers \(IOE\) report ‘Achievements, challenges, and the way forward in the uptake and implementation of the UN Guiding Principles on Business and Human Rights’](#).

<sup>5</sup> See Working Group statements, e.g. [https://www.ohchr.org/Documents/Issues/Business/AR\\_keynote\\_remarks\\_NAP\\_workshop.pdf](https://www.ohchr.org/Documents/Issues/Business/AR_keynote_remarks_NAP_workshop.pdf) and <https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/DantePESCE-C20.pdf>.

## ► Briefing note

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

others and to address adverse impacts with which they are involved

### 3. The need for greater access by victims to effective remedy, both judicial and non-judicial

The United Nations Human Rights Council unanimously endorsed the UNGPs in June 2011.<sup>6</sup> The UNGPs apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership or structure.

## 2. What is a National Action Plan on Business and Human Rights (NAP)?

In the field of business and human rights, a NAP is defined 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).”<sup>7</sup>

In 2014, the United Nations Human Rights Council called on all member States to develop a NAP to support implementation of the UNGPs.<sup>8</sup> This was followed by further calls at the international and regional level, including by the European Union,<sup>9</sup> African Union,<sup>10</sup> G20 leaders,<sup>11</sup> and by the Organization of American States.<sup>12</sup>

The UN Working Group on Business and Human Rights (see question 7), strongly encourages all States to develop, enact and update a NAP on business and human rights as part of the State duty to protect human rights in business operations. To help States in this process, the UN Working Group issued the final version of its Guidance on National Action Plans<sup>13</sup> at the fifth annual UN Forum on Business and Human Rights (2016) following a consultative process involving States, business, civil society, National Human Rights Institutions, academia as well as international organisations. The ILO provided inputs on this guidance document to encourage international and national policy coherence on labour rights in the broader business and human rights agenda and highlighting the importance of

the engagement of employers’ and workers’ organizations in this process.

In practical terms, a NAP on Business and Human Rights is a public policy instrument to support State implementation of the UNGPs. As the UN Working Group on Business and Human Rights explains, NAPs must adhere to four essential criteria:

► **First, NAPs need to be founded on the UNGPs. As an instrument to implement the UNGPs, NAPs need to adequately reflect a State’s duties under international human rights law to protect against adverse business-related human rights impacts and provide effective access to remedy. A NAP further needs to promote business respect for human rights including through due diligence processes and corporate measures to allow for access to remedy. Moreover, NAPs must be underpinned by the core human rights principles of non-discrimination and equality.**

**Second, NAPs need to be context-specific and address the country’s actual and potential business-related human rights abuse. These include adverse impacts occurring within the country’s territory and/or jurisdiction as well as the adverse impacts of companies’ activities outside of the State’s jurisdiction. Governments should define focused and realistic measures which deliver the most impact possible on preventing and remedying these human rights harms.**

**Third, NAPs need to be developed in inclusive and transparent processes. Interested stakeholders need to be allowed to participate in the development, and update, of the NAP and their views need to be taken into account. Information needs to be shared transparently at all stages of the process.**

**Fourth, NAP processes need to regularly be reviewed and updated. They must respond to changing contexts and strive for cumulative progress.<sup>14</sup>**

6 The UNGPs were proposed to the UN Human Rights Council as part of the 2011 report to the Council by then-UN Special Representative on business & human rights John Ruggie (A/HRC/17/31), and unanimously endorsed by the Human Rights Council (A/HRC/RES/17/4) on July, 6th, 2011.

7 Guidance on National Action Plans on Business and Human Rights, UN Working Group, 2016, p. ii. See also the NAPs Toolkit developed by The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, available at: <https://globalnaps.org/resources/>.

8 A/HRC/RES/26/22

9 See “A renewed EU strategy 2011-14 for Corporate Social Responsibility”. COM(2011) 681 final.

10 See “Joint Press Release: Validation Workshop of the African Union Policy on Business and Human Rights”. African Union, European Union. 21 March 2017, Addis Ababa, Ethiopia.

11 See “G20 Leaders’ Declaration: Shaping an interconnected world”. Statement, 8 July 2017, Hamburg.

12 See “Promotion and Protection of Human Rights”. AG/RES. 2887 (XLVI-O/16).

13 Guidance on National Action Plans on Business and Human Rights. Working Group on Business and Human Rights (UNWG). 2016.

14 Guidance on National Action Plans on Business and Human Rights, UN Working Group, 2016, p. i.

## ► Briefing note

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

The Working Group documents States that have adopted, are in the process of adopting, or have committed to developing a NAP based on information received from States.<sup>15</sup>

### 3. Which ILO instruments are referenced in the UN “Protect, Respect and Remedy” Framework and Guiding Principles on Business and Human Rights?

First, the 2008 UN “Protect, Respect and Remedy” Framework cites the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration) as a prominent example of a unique instrument enshrining the corporate responsibility to respect human rights. The ILO MNE Declaration provides guidance to both governments and enterprises on labour-related human rights and some aspects of inclusive economic growth and development. The ILO MNE Declaration was adopted in 1977 and amended several times, most recently in 2017 to take into account different developments within and outside the ILO, including the UNGPs.<sup>16</sup>

Second, the 2011 Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, respect and Remedy” Framework refer to “*internationally recognized human rights – understood, at a minimum as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.*”<sup>17</sup>

The ILO Declaration on Fundamental Principles and Rights at Work (1998) states that: “[A]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.”<sup>18</sup>

### 4. What are the linkages between international labour standards and NAPs?

Many of the human rights enshrined in the International Bill of Human Rights are further elaborated in one or more international labour standards, which are the most detailed authoritative international normative instruments concerning the human rights of workers.

International labour standards are formulated and adopted by the ILO, as the standard setting UN specialized agency for the world of work. They are developed through tripartite dialogue and negotiation involving representatives of government and of employers and workers of each of the 187 ILO member States. These international labour standards can take the form of conventions and protocols, which governments can ratify; and recommendations, which provide guidance but are not open to ratification. When a government ratifies a convention or protocol, it accepts it as a legally binding instrument that needs to be applied in law and practice and submits itself to the ILO supervisory system,<sup>19</sup> that regularly examines the application of international labour standards in member States and points out shortcomings.

Ratification of international labour standards and their effective application in law and practice is key to ensuring business respect for human rights. The NAP should affirm the government’s commitment to uphold its existing obligations concerning ratified ILO conventions<sup>20</sup>, and address any challenges and recommendations on how to strengthen their implementation, as highlighted by the ILO supervisory bodies. This can also include the strengthening of labour administration and public labour inspection.<sup>21</sup> In addition to upholding existing international commitments, NAPs can also include the start of a ratification process of an ILO Convention, if the need thereto has been identified as a means to strengthen the protection of human rights in business operations.

<sup>15</sup> See the Working Group’s NAPs repository: <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>. See also <https://globalnaps.org> managed by the Danish Institute for Human Rights (DIHR).

<sup>16</sup> See, ILO MNE Declaration, para. 10.

<sup>17</sup> Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), Principle 12 and its commentary pg.13 and 14.

<sup>18</sup> ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998, para. 2.

<sup>19</sup> See <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang-en/index.h>

<sup>20</sup> See, ILO MNE Declaration, para 8

<sup>21</sup> See, ILO MNE Declaration, para 3

## ► Briefing note

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

► The Government will implement its labour policy in order to respect, promote and realise the fundamental principles and rights at work as envisaged in the ILO 1998 Declaration [ILO Declaration on Fundamental Principles and Rights at Work], and will make continuous efforts to achieving decent work including work-life balance that contributes to the promotion of women's participation and advancement. [...] The Government will make continued and sustained effort towards the ratification of the fundamental ILO Conventions and other ILO Conventions which it considers appropriate to ratify.

► National Action Plan on Business and Human Rights (2020-2025). Japan, 2020.

Many of the existing NAPs identify the ratification and effective application of international labour standards in national law, as well as access to judicial remedy, as a key means of ensuring that the national legal framework provides sufficient protections for labour rights, as part of the State's duty to protect against human rights abuses in business.

► Germany has ratified major strategic international instruments codifying the protection of human rights, including labour rights, thereby incorporating them into national law. The same applies to the particularly important ILO instruments known as the Core Labour Standards. ... The Federal Government is currently preparing for the incorporation of numerous international legal instruments into German law. These include the Protocol to the ILO Forced Labour Convention (No 29). The Federal Ministry of Labour and Social Affairs is planning the examination prior to ratification of the ILO Minimum Wage Fixing Convention (No 131) and Indigenous and Tribal Peoples Convention (No 169) as well as of the Optional Protocol of 2008 to the International Covenant on Economic, Social and Cultural Rights and the revised Social Charter.

► National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights 2016–2020. Germany, 2016.

Some NAPs also highlight how labour provisions in trade agreements are anchored in the 1998 Declaration on Fundamental Principles and Rights at Work or international labour standards more generally.<sup>22</sup>

► Common trade policy falls within the exclusive competence of the European Union, a member of which is also Slovenia, and this is why Slovenia does not conclude preferential trade agreements with other countries. The latest trade agreements contain sustainable development provisions, which require that the signatories respect workers' rights by acceding to particular ILO conventions, to protect the environment and to observe the provisions contained in the OECD Guidelines for multinational enterprises.

► National Action Plan of the Republic of Slovenia on Business and Human Rights. Slovenia, 2018.

NAPs also provide guidance to businesses on what it means to respect labour-related human rights in the particular national context.

► What does the Government expect from business enterprises?

- That they comply with and respect the existing legislation.
- That they know and get acquainted with the international instruments on social responsibility, such as the UN Guiding Principles on Business and Human Rights, OECD MNE Guidelines, and ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.
- That they apply due diligence in the field of human rights with the purpose of identifying the potential risks of impacts on human rights by their operations.
- That they create operational mechanisms for remedy allowing them to identify potential impacts and establish remedial actions in case this happens.

► National Action Plans on Business and Human Rights. Chile, 2017.

Several NAPs also state their commitments in terms of the government, as an economic actor, ensuring respect for labour rights, both as an employer and through sustainable procurement.

<sup>22</sup> See [https://ec.europa.eu/trade/policy/policy-making/sustainable-development/#\\_trade-agreements](https://ec.europa.eu/trade/policy/policy-making/sustainable-development/#_trade-agreements).

## ► Briefing note

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

► The Government will analyse the best way to verify and monitor compliance with the criteria defined in the purchase of products and services in a number of sensitive sectors, including when part of the production takes place in so-called "at risk" countries to ensure that the requirements for respect of the human rights mentioned in the specifications are actually respected. The existing good practices in European countries will be a source of inspiration. For this purpose, the Sustainable Public Procurement Working Group analysed various case studies relating to monitoring compliance with ILO clauses and human rights in supply chains to test, through pilot projects, whether such an initiative is feasible in Belgium.

► National Action Plan on Business and Human Rights, Belgium, 2017.

In some cases, compliance with national law and respect for the fundamental principles and rights at work is a criterion for business' eligibility to gain access to government-backed financing, compete for a public tender or attain other state-sponsored benefits.

► Denmark works to ensure that companies involved in Danish development cooperation respect human rights and act responsibly within the areas of worker's rights, human rights, environment and anti-corruption within the framework of ILO Conventions. (...) Companies involved in Danida Business Partnerships – an instrument that facilitates and provides economic support to develop commercial partnerships between Danish companies and partners from developing countries - are now required to integrate CSR strategically in their business operations and to demonstrate due diligence, including human rights, in order to mitigate adverse impact. The Danida Business Finance instrument engages both local buyers and Danish companies in the promotion of human rights and CSR activities through due diligence analysis and requirements to comply with fundamental principles of ILO when providing interest-free loans to public infrastructure projects in developing countries.

► Danish National Action Plan. Implementation of the UN Guiding Principles on Business and Human Rights. Denmark, 2014.

These and other examples, demonstrate that international labour standards offer concrete guidance for implementation across the "Protect, Respect and Remedy" pillars in practice and can help build consensus between governments and stakeholders participating in the NAP development process on that guidance and the most appropriate mechanisms to promote the UNGPs.

The connection between international labour standards and business and human rights in the context of the future of work is set out in the report of the Global Commission on the Future of Work - established as part of the ILO's Future of Work Centenary Initiative – which called for "a human-centred agenda for the future of work that strengthens the social contract by placing people and the work they do at the centre of economic and social policy and business practice" and noted that "the UN Guiding Principles on Business and Human Rights, adopted in June 2011, provide a widely supported global framework for preventing and addressing adverse human rights impacts linked to business activity. This framework can be harnessed to the broader promotion of business's positive contribution to the processes and objectives we have set out."<sup>23</sup>

► In 2019, Switzerland declared that it was in favour of adopting the 'ILO Centenary Declaration for the Future of Work' which puts workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies. The federal government also promotes the recommendations of the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. These activities are part of efforts to promote the NAP and provide business enterprises with guidance on compliance with labour standards.

► UN Guiding Principles on Business and Human Rights. Swiss National Action Plan, 2020-2023.

## 5. What other ILO instruments and initiatives might be useful to guide governments and businesses in achieving the objectives of NAPs?

A number of NAPs specifically highlight the role of the ILO MNE Declaration in guiding the achievement of its objectives. The ILO MNE Declaration provides guidance to enterprises (multinational and national), governments, and

<sup>23</sup> See [https://www.ilo.org/global/topics/future-of-work/WCMS\\_569528/lang-en/index.htm](https://www.ilo.org/global/topics/future-of-work/WCMS_569528/lang-en/index.htm)

## ► Briefing note

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

employers' and workers' organizations on social policy; and is the only international tripartite instrument of this nature. Its principles are based on provisions contained in international labour standards, and the Declaration cites specific conventions that governments should ratify and implement effectively.

The ILO updated the MNE Declaration in 2017 to take into account different developments within and outside the ILO, including the UNGPs and the 2030 Agenda for Sustainable Development. The text references the UNGPs and recognizes the similar approach in both instruments in acknowledging the different yet complementary roles that different actors (governments, business and social partners) have to play in the promotion of business respect for human rights. The ILO MNE Declaration's guidance concerning due diligence is aligned with the UNGP provisions while further highlighting the central role of freedom of association and collective bargaining as well as social dialogue and industrial relations as part of the ongoing due diligence process.<sup>24</sup>

### ► Companies are thus expected to:

- i) establish a human rights policy;
- ii) set up and implement due diligence processes to identify, assess and prevent any potential human rights risks which could be incurred in across their operations and activities (or business partners or suppliers);
- iii) provide mechanisms of grievance allowing reparation to victims of abuses they may have caused or contributed to, or with which they are directly linked to.

In conducting this activity, which allows to foresee and avoid potential negative human right impact on individuals and communities, companies should refer at a minimum to internationally recognized human rights, as expressed in the International Bill of Human Rights and those set out in the International Labour Organization's Declaration on Fundamental Principles and Right at Work and the ILO Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy." Italian National Action Plan on Business and Human Rights (2016-2021). Italy, 2016.

- Italian National Action Plan on Business and Human Rights (2016-2021). Italy, 2016.

Several NAPs also promote the ILO Helpdesk for Business,<sup>25</sup> which provides guidance to company managers and workers on how to better align business operations with international labour standards and build good industrial relations, as a useful tool to guide efforts to implement respect for human rights in business operations.

► **As the third-largest contributor to the International Labour Organization, the Federal Government is a major sponsor of the support services offered by the ILO. The ILO Helpdesk for Business on International Labour Standards assists enterprises in applying international labour and social standards correctly. Besides an informative website, the Helpdesk also provides prompt replies to individual queries on a confidential basis as well as training courses.**

- National Action Plan. Implementation of the UN Guiding Principles on Business and Human Rights, 2016-2020. Germany, 2016.

Establishing linkages between ILO-supported frameworks, projects and initiatives, such as Decent Work Country Programmes and national strategies for the effective implementation of the Fundamental Principles and Rights at Work,<sup>26</sup> and the NAPs is critical to strengthen national policy coherence and implementation. This, in turn, can facilitate the involvement of ILO constituents in the NAP process.<sup>27</sup>

► **France is one of ILO's more active members and has a permanent seat on the organization's Governing Body. It adheres to and promotes the Decent Work Agenda, and fully supports the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the MNE Declaration). The country has signed a four-year partnership agreement with the International Labour Office, which involves implementing CSR initiatives and contributing to the Better Work Programme.**

- National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights. France, 2017.

<sup>24</sup> See, ILO MNE Declaration, paragraph 10. For more information on how the ILO MNE Declaration, UNGP and OECD Guidelines for Multinational Enterprises are aligned and complement each other, see: Responsible Business: [Key Messages from International Instruments](#).

<sup>25</sup> [www.ilo.org/business](http://www.ilo.org/business).

<sup>26</sup> For guidance on how to develop National Action Plans on Forced Labour and those adopted to date, see: [https://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_716879/lang-en/index.htm](https://www.ilo.org/global/topics/forced-labour/publications/WCMS_716879/lang-en/index.htm).

<sup>27</sup> A list of projects on the fundamental principles and rights at work can be found here : [www.ilo.org/fundamentals](http://www.ilo.org/fundamentals)

## ► Briefing note

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

## 6. How can ILO constituents be involved in the process of developing and implementing a NAP?

The UN Working Group has highlighted that an essential criterion for the development and successful implementation of a NAP is an inclusive and transparent process, which takes into account the views of relevant stakeholders in all stages: drafting, adoption, implementation and update. An inclusive process builds consensus on national priorities and concrete policy measures and action to be taken.

In order for the NAP to achieve its objectives, interested stakeholders, such as employers' and workers' organizations, need to effectively participate in its development, implementation, evaluation and update. Government needs to share information in a transparent and timely manner with all involved stakeholders at all stages of the process. In countries where there is no process underway to develop a NAP, employers' and workers' organizations could call upon the Government to start such a process and/or support similar initiatives.

A critical issue both in the development and effective implementation of the NAP, to ensure meaningful dialogue and protection of those most at risk, concerns protection of human rights defenders, including trade union representatives. The Working Group's NAP Guidance notes that governments should engage "with NHRIs (National Human Rights Institutions), civil society organizations and trade unions in identifying human rights defenders in need of protection, both domestically and extraterritorially."

The effective participation and respect of indigenous peoples and their specific rights is also critical for the development and implementation of the NAP. ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169) thus provides another essential ILO instrument for NAPs to contribute to strengthening the protection of and respect for indigenous peoples' rights in a business context. It moreover highlights consultation processes with indigenous peoples and their representatives as an important way to ensure their rights are respected. Reference to this ILO Convention was included in the 2017 version of the ILO MNE Declaration.

ILO supports the involvement of Ministries of Labour, and of national employers' and workers' organizations in the NAP process by providing capacity building and technical assistance, and making available relevant ILO expertise, products and services during the development, implementation and review stages of the NAP. This has been the case in Chile, Colombia and Japan among other countries.

While one of the primary purposes of a NAP is to specify objectives and actions to be carried out at the national level, many also highlight the importance of creating a level global playing field and participating in activities at the international level, such as multilateral forums that contribute to the advancement of global policies and discussions on business and human rights. The ILO provides a platform for global policy formulation and dialogues on labour issues related to business and human rights through its tripartite International Labour Conference, Regional Meetings,<sup>28</sup> Governing Body sessions and various technical meetings; as well as many events open to the broader public such as conferences and symposia.

### ► Level Playing Field:

**Promoting a level playing field is one of the government's main tasks in relation to ICSR (International Corporate Social Responsibility), and the Netherlands works through the multilateral institutions to achieve this aim. In multilateral forums such as the EU, OECD, ILO and UN, the Netherlands consistently calls for attention to the UN Guiding Principles, and urges member states to adopt them as the guiding principles of their policy. The Netherlands is also committed to universal ratification of the ILO's fundamental labour standards: the ban on child labour and forced labour, equality of opportunity and treatment, and freedom of association. The ILO's eight fundamental and four priority conventions support the system of universal labour standards and are crucial for a level playing field.**

► Netherlands. National Action Plan on Business and Human Rights. 2013

## 7. What is the Working Group on Business and Human Rights?

In its resolution endorsing the UNGPs, the UN Human Rights Council established a Working Group on the issue of human rights and transnational corporations and other business enterprises (referred to as the UN Working Group on Business and Human Rights)<sup>29</sup> with a mandate to promote the effective and comprehensive dissemination and implementation of the UNGPs through various means.

<sup>28</sup> As part of its operational tools, the ILO MNE Declaration has a regional follow-up mechanism. This comprises a regional report on the promotion and application of the MNE Declaration in the ILO member States in the region. The regional reports are based primarily on inputs received from governments, employers' and workers' organizations in these member States. A special session during ILO Regional Meetings provides a tripartite dialogue platform to discuss challenges and opportunities in relation to the operations of multinational enterprises in the region where the Regional Meeting is taking place and further promotional activities at the regional level.

<sup>29</sup> See: <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>.



## ► Briefing note

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

The Working Group consists of five independent experts, of balanced geographical representation, for a period of three years, appointed by the UN Human Rights Council. The Working Group's mandate was extended in 2014<sup>30</sup>, 2017<sup>31</sup> and 2020.<sup>32</sup> The Working Group reports annually to both the UN Human Rights Council and the UN General Assembly.

The UN Human Rights Council also established an annual Forum on Business and Human Rights under the guidance of the Working Group to discuss trends and challenges in the implementation of the UNGPs, and promote dialogue and cooperation on issues linked to business and human rights, as well as identifying good practices. The Forum has taken place annually since 2012.<sup>33</sup> The sharing of experiences with NAPs development and implementation is a regular feature of the annual UN Forum on Business and Human Rights and of regional forums on Business and Human Rights.

## 8. What is the relationship between the ILO and the Working Group on Business and Human Rights?

The ILO has been actively engaging with the Office of the High Commissioner for Human Rights (OHCHR) in the area of business and human rights and even more so since the Human Rights Council endorsed the UN "Protect, Respect and Remedy" Framework on Business and Human Rights and the UNGPs and subsequently also with the Working Group on Business and Human Rights.<sup>34</sup> This collaboration was made more explicit when the Working Group updated its methods of work during its 10th session in 2015<sup>35</sup>:

► In light of the close links with the mandate of the ILO, the Working Group and the ILO have decided on a working arrangement to formalize cooperation. In carrying out its functions in accordance with its mandate as an independent expert body, the Working Group will, where appropriate: (a) consult with the ILO on matters relating to the Guiding Principles that involve fundamental principles and rights at work and other issues within the competence of ILO; (b) take into account ILO comments and material relating to such issues in its reports and other activities; and (c) coordinate with

the ILO, as relevant, on follow-up action on Working Group outputs.

In April 2017, the Working Group welcomed the adoption of the revised ILO MNE Declaration as another step toward greater convergence on business and human rights. It stated that:

► The MNE Declaration adopted by the ILO Governing Body in March 2017 provides a key international reference for collective efforts to ensure that labour rights are protected and respected in the operations of transnational business. The revision represents a significant contribution toward greater normative coherence in this area by integrating the UN Guiding Principles on Business and Human Rights and taking account of the 2030 Agenda for Sustainable Development.<sup>36</sup>

The Working Group also welcomed the various operational tools such as tripartite national focal points provided for in the ILO MNE Declaration to promote its implementation.<sup>37</sup>

At an operational level, the ILO and the Working Group collaborate in various ways. An ILO-Working Group coordination meeting is organized each time the Working Group is in session (three times per year), where the ILO updates the UN Working Group on its work to promote the effective implementation of the fundamental principles and rights at work and the ILO MNE Declaration and on new international labour standards and relevant ILO policy discussions.

The ILO also contributes to the preparation of the country visits of the Working Group (on average two per year) by providing information on the ratification status of ILO Conventions and pending comments and cases before ILO's supervisory bodies, and facilitating contacts with ILO constituents. The Working Group invites the ILO to contribute to their thematic reports and the annual UN Forum on Business and Human Rights, and to participate and co-organize Regional Forums and consultations on Business and Human Rights it organizes. This is specifically the case in Latin America, South Asia and Asia and the Pacific.

30 A/HRC/RES/26/22.

31 A/HRC/RES/35/7.

32 A/HRC/RES/44/15.

33 <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>.

34 ILO is mentioned by name in UN Human Rights Council Resolution A/HRC/RES/17/4, para 6(h).

35 A/HRC/WG.12/10/1.

36 [Information Note. UN expert group welcomes revised ILO declaration on multi-national enterprises – another step toward greater convergence on business and human rights.](#)

37 See: Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (fifth edition, 2017), Annex II, Operational Tools.

**► Briefing note**

The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights

The ILO is implementing jointly with the OHCHR and the OECD the *Responsible Business Conduct in Latin America (CERALC)* project, which is carried out in close collaboration with the Working Group.<sup>38</sup> The project (2019-2022), funded by the European Union, aims to promote smart, sustainable and inclusive growth in the EU, Latin America and the Caribbean by supporting responsible business conduct

practices in line with the UNGPs, the ILO MNE Declaration and the OECD Guidelines for Multinational Enterprises. A component of the project is supporting governments of its nine target countries to develop and/or implement a NAP in consultation and collaboration with national employers' and workers' organizations.

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<sup>38</sup> For more information about the CERALC project, see: [www.ilo.org/ceralc](http://www.ilo.org/ceralc).

**► Further information**

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