



# **Guidance on National Action Plans on Business and Human Rights**

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# Executive Summary

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This guidance of the UN Working Group on Business and Human Rights (UNWG) provides recommendations on the development, implementation and update of National Action Plans (NAPs) on Business and Human Rights.

The document is designed to serve as a reference guide for all stakeholders involved in NAP processes. It is based on the recognition that there is no 'one-size-fits-all' approach to NAPs.

## Definition and essential criteria

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).” The UNWG considers four essential criteria to be indispensable for effective NAPs.

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. 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. Relevant 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.

## Guidance on NAP process

The UNWG recommends governments consider following a five-phase process which is composed of 15 steps. Phases 1 to 3 describe the development of an initial NAP. Phases 4 and 5 include the continuous cycle of implementation, monitoring and update of successive versions of the NAP.

### Phase 1: Initiation

1. Seek and publish a formal Government commitment
2. Create a format for cross-departmental collaboration and designate leadership
3. Create a format for engagement with non-governmental stakeholders
4. Develop and publish a work plan and allocate adequate resources

### Phase 2: Assessment and consultation

5. Get an understanding of adverse business-related human rights impacts
6. Identify gaps in State and business implementation of the UNGPs
7. Consult stakeholders and identify priority areas

### Phase 3: Drafting of initial NAP

8. Draft the initial NAP
9. Consult on the draft with interested stakeholders
10. Finalize and launch the initial NAP

### Phase 4: Implementation

11. Implement actions and continue cross-departmental collaboration
12. Ensure multi-stakeholder monitoring

### Phase 5: Update

13. Evaluate impacts of the previous NAP and identify gaps
14. Consult stakeholders and identify priority areas
15. Draft updated NAP, consult on, finalize, and launch it

## **Guidance on NAP substance**

### **Overall structure and content**

The UNWG recommends that Governments consider structuring their NAPs along the following four sections.

In an introductory section, the Government should commit to protect against adverse business-related human rights impacts. It should also state its expectation that business enterprises respect human rights in line with the UNGPs, including by implementing human rights due diligence, and ensuring access to remedy where adverse impacts occur. Governments should thereby indicate the significance of the policies and activities outlined in the NAP for the implementation by business enterprises of the corporate responsibility to respect human rights.

A second section should provide some context. Governments may include a short introduction into the UNGPs, clarify the relation of the NAP to other related government policy strategies, such as on human rights, development, CSR or labour-related standards, and outline the key national business and human rights challenges.

In a third section, Governments should highlight their priorities in addressing adverse business-related human rights impacts and discuss current and planned activities on each of the Guiding Principles directed at States (Guiding Principles 1-10, 25-28, 30, and 31). For every planned activity, Governments should clarify the modalities of implementation including clear responsibilities of relevant entities, a timeframe, and indicators to evaluate success (see Annex II).

In a fourth section, Governments should specify the modalities of monitoring and update. This might include the creation of a multi-stakeholder monitoring group which receives, and comments on, regular Government reports. Moreover, Governments should define a date for the next NAP update and identify mechanisms for measuring progress (see Annex I).

### **Underlying principles of the government response**

The third section of the proposed NAP structure which outlines the Government response to adverse business-related human rights impacts is the central part of a NAP. The UNWG recom-

mends that Governments follow four underlying principles when identifying their commitments.

First, all commitments in the NAP as well as the overall plan need to be directed towards preventing, mitigating and remedying current and potential adverse impacts. If Governments need to prioritize, they should focus on actions to prevent and redress violations which are most severe in terms of their scale, scope, and irremediable character as well as those where they have most leverage to change the situations on the ground.

Second, the UNGPs should be used to identify *how* to address adverse impacts. Governments should draw on the Guiding Principles directed at States in pillars I and III when defining their strategy and concrete measures to address adverse business-related human rights impacts. When detailing their measures, Governments should also refer to the Guiding Principles addressing the corporate responsibility to respect under pillars II and III. In particular, they should promote the concept of human rights due diligence as the thread ensuring coherence in Government activities. Annex III of this guidance provides a non-exhaustive list of issues to be considered in relation to each of the relevant Guiding Principles.

Third, Governments should identify a 'smart mix' of mandatory and voluntary, international and national measures. Identifying a 'smart mix' implies that Governments respect their legal obligations and take into account all possible measures to address adverse human rights impacts of businesses. Governments should thereby identify the mix of commitments which is most effective in improving the protection of individuals and communities and in providing remedy for those adversely impacted.

Fourth, Governments should take into account differential impacts on women or men, and girls or boys, and make sure the measures defined in their NAP allow for the effective prevention, mitigation and remediation of such impacts.

The UNWG encourages Government representatives to consider following the recommendations of this guidance when engaging in NAP processes. Non-Governmental stakeholders should call upon their Governments to develop NAPs in line with this guidance and hold them accountable for unjustified deviations from the recommendations outlined in this document.

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# 1. Introduction

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The UN Working Group on human rights and transnational corporations and other business enterprises (UN Working Group on Business and Human Rights/UNWG) is mandated by the Human Rights Council to promote the effective and comprehensive implementation of the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>1</sup> The UNWG considers that National Action Plans on business and human rights (NAPs) can be an important means to promote the implementation of the UNGPs.

This document is the guidance of the UNWG on NAPs.<sup>2</sup> It provides recommendations to all interested stakeholders on procedural and content aspects of NAPs.

## Background

In June 2011, the United Nations Human Rights Council endorsed by consensus the UNGPs. States thereby made a powerful joint commitment to address adverse human rights impacts of business enterprises. The UNGPs are the result of a six-year consultative process among States, business enterprises, and civil society led by the then Special Representative to the UN Secretary General, John Ruggie.

The authoritative framework provided by the UNGPs clarifies and details duties and responsibilities of both States and business enterprises in addressing adverse business-related human rights impacts. The UNGPs are based on three pillars:

- Pillar I clarifies the legal duty of States to protect individuals from adverse corporate related human rights impacts and outlines a set of operational principles with which States should implement this duty;
- Pillar II identifies the responsibility of business enterprises to respect human rights and delineates a due diligence process with which companies should give effect to this responsibility; and
- Pillar III stresses and specifies the need to ensure better access to remedy for victims as

a joint responsibility of States and business enterprises.

The UNGPs have gained wide support from States, the private sector, and civil society. They have become a central reference point for efforts to prevent, mitigate and remedy adverse human rights impacts of business activities. Soon after the UNGPs were endorsed by States in the Human Rights Council, the UNWG along with other stakeholders started to call upon Governments to engage in processes to develop NAPs as a means to implement the UNGPs.<sup>3</sup> An increasing number of States from various continents have started to engage in such processes whilst others have indicated their intentions to do so. The first group of States published their initial NAPs in 2013 and 2014.<sup>4</sup>

## The value of National Action Plans on Business and Human Rights

The UNWG considers that NAPs, and the process to develop them, can provide for:

- Greater coordination and coherence within government on the range of public policy areas that relate to business and human rights;
- An inclusive process to identify national priorities and concrete policy measures and action;
- Transparency and predictability for interested domestic and international stakeholders;
- A process of continuous monitoring, measuring and evaluation of implementation;
- A platform for ongoing multi-stakeholder dialogue; and
- A flexible yet common format that facilitates international cooperation, coordination, and exchanges of good practices and lessons learned.

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<sup>1</sup> A/HRC/17/31

<sup>2</sup> This is version 2.0 of the UNWG's NAP Guidance. It is a slightly updated version of the 1.0 edition released in December 2014. After a further round of consultations, the final document will be published in November 2016.

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<sup>3</sup> The UNWG in its report to the twenty-third session of the Human Rights Council called upon States to "consider elaborating a national plan of action" (A/HRC/23/32, p. 21). Furthermore, at its seventh session in February 2014, the UNWG outlined a road map on its activities to promote national action plans (A/HRC/WG.12/7/1).

<sup>4</sup> See the UNWG's repository of NAPs at: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

## Purpose of this guidance

This document clarifies the UNWG's view on how States should organize the development, content, and implementation of successive versions of their NAP. Its overall objectives are to:

- 1) Promote NAP processes that are effective in preventing, mitigating and remedying adverse business-related human rights impacts and in improving access to remedies; and
- 2) Encourage more States, civil society actors and business enterprises to develop and support such NAP processes.

This guidance is based on the recognition that there is no "one-size-fits-all" approach to developing NAPs. It does not prescribe a specific way of developing NAPs, or the content that should be included in a NAP. Instead, it provides recommendations on procedural and content aspects to be considered in the light of the national context in which NAPs are developed.

The guidance is a practical instrument which is meant to be used by all stakeholders involved in NAP processes. It seeks to guide and assist Government institutions leading the development of a NAP process and the formulation of a NAP, and serve as a standard of practice against which other stakeholders can measure Government action.

It is important to note that the duties and responsibilities of States and business enterprises under

the UNGPs exist independently of NAPs. Nothing in this guidance and in NAPs should be read to undermine the terms of the UNGPs or to delay UNGP implementation by States or business enterprises.

The guidance consolidates the lessons learned by the UNWG in carrying out its mandate, including following the development of NAPs in different countries. It is enriched by consultations convened by the UNWG with multiple stakeholders from different world regions.<sup>5</sup> This guidance is a 'living document' that will be updated by the UNWG on a regular basis.

## Structure of this Guidance

This Guidance is structured as follows. Section 2 sets out the definition of a NAP and the four criteria that the UNWG considers to be essential for effective NAP processes. Section 3 provides guidance on the process of developing a NAP. The NAP process is separated into five phases and, for each of the phases, the guidance outlines a set of recommended practical steps. Section 4 provides general recommendations in relation to the items that should be included in a NAP. Annex I includes an annotated model table of contents for NAPs. Annex II suggests structure for the compilation of action points and their modalities of implementation. Annex III provides a non-exhaustive list of measures to be considered when formulating a NAP.

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<sup>5</sup> These consultations include 1) an open consultation and expert workshop held in Geneva in February and May 2014, 2) an online consultation on the substantive elements to be included in a national action plan, 3) a questionnaire sent to States, 4) secondary research and interviews conducted in collaboration with the Centre for Applied Legal Studies at the Witwatersrand School of Law (CALS) and the Singapore Management University School of Law (SMU), together with other academic or independent institutions, and 5) two consultations on the version 1.0 of the guidance document with government, civil society and business representatives in Indonesia and South Africa in February 2015. Furthermore, the UNWG has drawn lessons from the participation in consultations organized by the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR) as part of their NAPs project and from consultations organized by the OECD in June 2015 and the EU in September 2015.

## 2. Definition and essential criteria of NAPs

National Action Plans are State policy strategies outlining the strategic orientation and concrete activities to address a specific policy issue. In the field of business and human rights, the UNWG understands a NAP 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.***

Normally, the UNWG recommends developing stand-alone NAPs on business and human rights. However, it recognizes that it might be meaningful in particular national contexts to initiate and situate the NAP within the context of other Government strategies such as those focusing on development, human rights, labour rights, or corporate social responsibility. In any case, governments should ensure the conformity of NAPs with the essential criteria set out in this Guidance, and their legal obligations at national and international levels.

### **Relation of NAPs to other government strategies**

- NAPs may, in full or in part, be integrated in related government strategies which have a *broader scope* than business and human rights. Such strategies may include development plans, national action plans on human rights, labour rights, or CSR strategies.
- Furthermore, NAPs should themselves refer to related government strategies which address specific elements of business and human rights. Such strategies may include action plans related to ILO Conventions (such as on the elimination of child labour, forced labour, on disability, freedom of association or on occupational safety and health), action plans on human trafficking, action plans regarding multi-stakeholder initiatives such as the Voluntary Principles on Security and Human Rights, or strategies on the protection of human rights defenders.

The UNWG considers four criteria to be indispensable for an effective NAP. It must 1) be founded upon the UNGPs, 2) respond to specific challenges of the national context, 3) be developed

and implemented through an inclusive and transparent process, and 4) be regularly reviewed and updated.

### **The UNGPs as the foundation for NAPs**

A NAP is an instrument to implement the UNGPs. In line with the UNGPs, NAPs must be based on international human rights standards and reflect the complementarity and interrelatedness of State obligations and business responsibilities in preventing, mitigating and remedying adverse business-related human rights impacts.

NAPs as public policy strategies should, in the first instance, provide answers as to how States plan to implement their human rights obligations. When implementing their duty to protect under the UNGPs, States will also need to clarify the ways in which they expect business enterprises to discharge their responsibilities under the second and third pillars, and identify activities through which Governments support, incentivize and require business enterprises to respect human rights. The UNGPs can help ensure that businesses are held to the same standards both internally by various government policy and regulatory instruments, and internationally across countries.

Consistent with the UNGPs, NAPs must be underpinned by the core human rights principles of non-discrimination and equality. This means that particular attention should be given to identifying and addressing the challenges faced by individuals and groups that may be at heightened risk of becoming vulnerable or marginalized, including by taking into account differential impacts based on gender.

### **How should States use the UNGPs as a foundational reference?**

- Conduct capacity building on the UNGPs within government (see section 3, step 1).
- Identify gaps in State and business performances based on the UNGPs (see section 3, steps 6 and 13).
- Take the UNGPs as the guiding instrument, along with the underlying international normative instruments, when identifying and deciding upon adequate measures to address protection gaps (see section 4.2 and Annex III).



## Responding to specific challenges faced in the national context

While all NAPs will share common ground in their alignment with the UNGPs and with international human rights instruments, one size will not fit all. Each NAP needs to reflect material priorities of the relevant country context. For example, countries that host many multinational business enterprises will be expected to focus on a different set of questions and measures than countries that are home to those business enterprises. Similarly, if specific sectors are of particular importance to the economy of a country, this may lead to additional emphasis on those sectors.

NAPs and the processes through which they are developed and updated must also adjust to each State's capacity and cultural and historic contexts, and set out focused and realistic actions that deliver the most impact possible on prevention and remedy of adverse corporate-related human rights impacts.

### How should States identify priority action points according to the national context?

- Identify and map adverse human rights impacts occurring in the country's territory as well as abroad by companies domiciled in the country (see section 3, steps 5 and 13).
- Conduct and update an assessment of State and business implementation of the UNGPs (see section 3, steps 6 and 13).

## Inclusiveness and transparency

NAP processes, including NAP development, monitoring and update must be both inclusive and transparent and take the views and needs of individuals or groups who may be impacted and other relevant stakeholders into account. This is central to a rights-compatible approach and the degree to which relevant stakeholders participate in the NAP process will determine, amongst other things, the legitimacy and effectiveness of a NAP.

Relevant stakeholders can bring in extensive knowledge of the challenges and potentially effective solutions in the field of business and human rights, and they are central to ensure effective implementation of commitments made in NAPs. Through the inclusion of both governmental and non-governmental stakeholders, NAP processes can serve as a key platform for multi-stakeholder exchange and coordination related to the State duty to protect and UNGP implementation more generally.

Stakeholders invited to participate in NAP processes should include national human rights institutions (NHRIs), business representatives, trade unions, civil society organizations, as well as representatives of population groups that may be particularly vulnerable to business-related human rights abuse, such as children, women, indigenous peoples, ethnic minorities and persons with disabilities. Wherever possible, persons impacted by business-related human rights harm, or actors legitimately representing their views, should be able to participate in the process.

### How should States ensure inclusiveness and transparency?

- Involve as many relevant Government entities as possible and create a format for exchange (see section 3, steps 1 and 4), notably by building on relevant existing national platforms.
- Consult and take into account the views and needs of non-governmental stakeholders throughout the process of NAP development, monitoring and update (see section 3, steps 3, 4, 5, 6, 7, 9, 12, 13, 14, and 15).
- Outline and update a clear time plan on the NAP process (see section 3, step 4).
- Share information and results of assessments and consultations with all relevant stakeholders on a regular basis (see section 3, steps 4, 5, 6 and 13).

## A continuous process of regular review and update

NAP processes need to be continuous efforts rather than one-off events. In developing an initial NAP, States may need to prioritize certain areas over others. It is therefore unlikely that an initial NAP will effectively address all of the issues relating to business and human rights in a State. Governments need to strive for cumulative effects and progress by regularly reviewing, measuring the effectiveness of, and updating their NAP. NAP updates should take into account changing actual and potential adverse human rights impacts by business, as well as developments in political priorities and in the international regulatory environment.

### How should States ensure continuity?

- Commit to an open-ended process in the early stages (see section 3, step 1).
- Clarify in the NAP when an existing NAP will be updated (see section 4.1 and annex I).
- Provide clear timelines for the implementation of actions defined in NAPs and measure progress (see section 4.1 and annex II).

### 3. Guidance on NAP process

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The UNWG considers the process through which a NAP is developed, implemented and updated to be as important as its content. This chapter provides guidance on the organization of NAP processes. It identifies five phases: 1) initiation, 2) assessment and consultation, 3) drafting of an initial NAP, 4) implementation, and 5) update. While the first three phases describe the development of an initial NAP, phases 4 and 5 provide guidance on the continuous process of implementing and updating successive versions of the NAP.

For each of the phases, a number of recommended steps and selected examples of practice by Governments are outlined. The steps are meant as recommendations and good practice. In their totality, the 15 steps provide a model process which the UNWG recommends States to follow. It is up to the stakeholders to agree on potential deviations from the recommended process based on the specificities of the national context.

#### Phase 1: Initiation

The first phase includes the initial steps of getting the NAP process started. In many countries, civil society organizations, NHRIs, or individual government entities provide the impetus for NAP development. It is then usual for a small number of governmental and/or non-governmental entities to take the lead in rallying initial support for the development of a NAP.

At the end of this first phase, the basic modalities on the development of the initial NAP should be clarified and publicised. Buy-in from relevant Government entities should be as broad-based as possible and there should be a common understanding of the task ahead. The relevant non-governmental stakeholders should know what the Government expects from them and what they can expect from the Government.

#### **Recommended steps:**

##### **1) Seek a formal commitment of the Government to engage in a NAP process**

As the first step in a NAP process, a formal commitment from the Government to engage in an open-ended NAP process should be sought. In order to do so, representatives of governmental or non-governmental stakeholders interested in initiating a NAP process in their country should identify the relevant Government departments and entities to be included in the process. Relevant entities might include those involved in human rights, labour, corporate social responsibility, trade and industry, development, or social affairs.

Once identified, the awareness of and knowledge about business and human rights issues should be strengthened among representatives of relevant government departments and agencies. This might include efforts by civil society organizations or a NHRI to educate stakeholders on human rights and related business responsibilities; and identify and publicise evidence on business and human rights challenges and gaps in State implementation of its duties under international human rights law. On the side of Government entities interested in initiating a NAP process, activities to consider might include carrying out Government internal discussions or workshops, supporting relevant research, or organizing public conferences on business and human rights issues, including on NAP development.

The UNWG would appreciate being informed about the decision to launch a NAP process.<sup>6</sup>

##### **2) Create a format for cross-departmental collaboration and designate leadership**

Once the Government (or a specific ministry, as the case may be) has formally committed to engage in a NAP process, it should set up a format for coordination and regular communication between relevant Government entities. One option

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<sup>6</sup> Information can be sent by email to [wg-business@ohchr.org](mailto:wg-business@ohchr.org). In its resolution 26/22, the UN Human Rights Council encourages States to submit information on their national action plans with reports on the implementation of such commitments, and invites all relevant stakeholders to submit relevant information to the Working Group.

is to create a formal cross-ministerial or cross-departmental working group within which the work on NAP development takes place.

One or several dedicated Government entities should be designated to lead the process. The mandate of the leading entity should include, amongst other things, coordinating collaboration within government and with non-governmental stakeholders, as well as leading the drafting process.

### 3) Create a format for engagement with non-governmental stakeholders

Engagement with relevant non-governmental stakeholders throughout the process is essential for the effectiveness and legitimacy of a NAP. Governments should therefore create a format for engagement with non-governmental stakeholders which may become the central platform for exchange about the national implementation of the UNGPs. It may be most effective to build on existing dialogue platforms and invite broader stakeholder participation.

Governments should invite all interested stakeholders to take part in the process. In addition, they might consider proactively identifying relevant stakeholders. These may include civil society organizations, national human rights institutions (NHRIs), trade unions, business enterprises and associations, as well as representatives of population groups that may be particularly vulnerable to business-related human rights abuse, such as children, women, indigenous peoples, ethnic minorities and persons with disabilities. Wherever possible, persons impacted by business-related human rights harm, or actors legitimately representing their views, should be able to participate in the process.

### 4) Develop and publish a work plan and allocate adequate resources

As a final step of the first phase, Government entities should proceed to develop a work plan. In doing so, they should take into consideration the steps outlined in phases 2 and 3 of this section. The work plan should also include a clarification on the relation of the NAP to related government strategies, such as those on human rights, labour rights, CSR or development. Once agreed by all relevant governmental stakeholders, the plan should be published and disseminated among relevant non-governmental stakeholders. The plan should be updated regularly as the process

unfolds and stakeholders should be informed about changes to the plan.

Moreover, Governments should make sure that adequate resources are available for the NAP development process. The amount and kind of resources required will depend on the national context and the way in which the process is planned.

#### Selected examples of practice phase 1:

In many countries, including in the **Philippines, Ghana, Korea, Malaysia** and **Morocco**, NHRIs have engaged in conducting research, organizing multi-stakeholder dialogues and other awareness raising and capacity building efforts to help initiate NAP processes.

In **Slovenia, Germany** and the **Czech Republic**, Government entities in favour of initiating NAP processes organized conferences on business and human rights.

In **Switzerland** and the **Netherlands** the Parliament called upon the Government to develop a NAP.

In **Tanzania**, the NAPs process was initiated by government and supported by civil society and is facilitated by means of a partnership between government and civil society.

In **all the countries** where NAP development is in advanced stages, a format for cross-departmental cooperation was created.

The governments of **Denmark, Finland** and **Norway** are closely collaborating with standing multi-stakeholder reference groups.

The **Spanish** Ministry of Foreign Affairs has early in the process published a work plan for the development of its NAP and updated it regularly.

## Phase 2: Assessment and consultation

During phase 2, the actors driving the NAP process should identify the priorities associated with the implementation of the UNGPs in the national context. This should include the participation of interested Governmental and non-Governmental stakeholders and might require support from independent experts.

The objective is that after phase 2, the main adverse business-related human rights impacts and the gaps in Government and corporate responses will have been identified. Non-Governmental stakeholders should have been able to provide inputs on what the NAP should include. Also, all Governmental actors involved in the process

should have a clear and common understanding of the State's priorities in strengthening the implementation of the UNGPs.

### **Recommended steps:**

#### **5) Get a sound understanding of adverse business-related human rights impacts**

The first step for an evidence-based prioritization is the identification of adverse corporate-related human rights impacts. This includes impacts occurring on the State's territory as well as abroad with the involvement of a company domiciled in the country. Moreover, it comprises impacts occurring at the time of assessment as well as potential future impacts.

Such a mapping exercise could be developed, for example, through a multi-stakeholder workshop or could be the result of an assessment by the NHRI or other external experts. In any case, relevant stakeholders should be invited to participate and provide input. For impacts occurring extraterritorially, this might mean engaging with local NHRIs, civil society organizations or national and international trade unions. The Government should make the results of the assessment publicly available.

#### **6) Identify gaps in State and business implementation of the UNGPs**

Having in mind the actual business and human rights challenges, gaps in UNGP implementation by the State, as well as by business enterprises, should be identified. In the process of doing so, the Government should outline the various laws, regulations and policies it has in place in relation to each of the Guiding Principles addressing States in pillars I and III (Guiding Principles 1-10, 25-28, 30 and 31) and identify respective protection gaps.

The same should be done with regard to business enterprises active or based in the country's territory and their performance in regard to pillars II and III (Guiding Principles 11-24 and 28-31). This includes assessing to what extent business enterprises carry out human rights due diligence and provide effective remedy through operational-level grievance mechanisms.

As part of this assessment, relevant stakeholders should be invited to participate and provide input. In order for the assessment to generate the most credible information as a basis for further NAP development, the UNWG encourages Governments to consider collaborating with their NHRI or

other independent external experts. The Government should make the results of the assessment publicly available.

#### **Baseline Assessment Template of ICAR and DIHR**

The International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR), as part of their NAPs toolkit, have jointly developed a detailed template for national baseline assessments of a State's implementation of the UNGP. The UNWG recommends that stakeholders involved in NAP processes consider using this helpful guidance when identifying gaps in the Government's implementation of the UNGPs. The toolkit also includes a supplement on child rights and NAPs developed by UNICEF. It can be found at:

<http://accountabilityroundtable.org/analysis/napsreport/>.

#### **7) Consult relevant stakeholders on actions to address gaps and identify priority areas**

The UNWG recommends that, after having identified key adverse impacts and gaps in protection, relevant stakeholders should be consulted on the priorities and concrete actions to be included in the NAP. Such a consultation process should be open and accessible to all relevant non-governmental stakeholders and might, for instance, take the form of workshops, online consultation, public hearings, targeted interviews, or written submissions.

Based on the results of these consultations, the Governmental actors involved in the NAP process should jointly identify priority areas to be addressed in the initial NAP. The UNWG recommends selecting the priority areas based on two criteria: First is the severity of adverse human rights impacts judged by their scale, scope, and irremediable character.<sup>7</sup> The second criterion to consider is the leverage of the Government in bringing about actual change on the ground.

#### **Selected examples of practice phase 2:**

The Government of **Malaysia** has engaged in policy oriented research as the basis for the definition of a NAP.

In **Mozambique**, the government has developed a baseline study on UNGP implementation with multi-

<sup>7</sup> See commentary to Guiding Principle 14 of the UNGPs. For further elaboration on the concept of severity in the UNGPs see: The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, UN Office of the High Commissioner for Human Rights, 2011, p.8.

stakeholder involvement.

The **French, Italian and Norwegian** Governments have mandated external experts, NHRI or independent research institutions to identify gaps in UNGP implementation by the State.

The chapter on business and human rights in the **Colombian** national action plan on human rights is based on broad-based participation by stakeholders in a series of dialogue workshops across the country.

In **all the countries** where NAP development is in advanced stages, significant efforts were made to consult non-governmental stakeholders.

The governments of the **Netherlands** and **Switzerland** mandated external experts to conduct interviews with relevant stakeholders on their expectations and priorities for the NAP.

### Phase 3: Drafting of initial NAP

Phase 3 consists of the drafting of the initial NAP. A draft version should be consulted on, and revised, before it is published. Activities in this phase should build upon the results of the assessments and consultations of phase 2.

After phase 3, the initial NAP will be published. The document should address the previously identified governance gaps in tackling adverse human rights impacts and put special emphasis on the priority areas selected in phase two. It should also contain the concrete measures the government envisions to take. These should mirror the recommendations on NAP substance outlined in chapter four of this guidance and might be informed by the non-exhaustive list of potential measures highlighted in Annex III.

#### **Recommended steps:**

##### **8) Draft the initial NAP**

After assessing the context and identifying priorities, a draft version of the initial NAP should be prepared. Active participation of the Government entities that are supposed to implement the respective measures will enhance the effectiveness of the NAP. The role of the leading Government entity is crucial in this regard. It should strive to ensure active participation of all relevant entities, mediate between different interests, and strive for coherence throughout government policies and regulations.

Governments should consider following the overall structure and content outlined in section 4.1 of this guidance. This comprises a statement of

commitment, information on background and context, the description of the current and planned State response, as well as an outline of the modalities of monitoring, measuring progress and update.

In the section on the Government's response to business and human rights challenges, a NAP should outline focused and achievable activities which will allow for the most effective protection from adverse corporate related human rights impacts possible. To this end, Governments might consider it useful to take into account the recommendations regarding the underlying principles of NAP substance described in section 4.2 and seek inspiration from the non-exhaustive list of measures to consider on each of the Guiding Principles addressing States in Annex III.

##### **9) Consult on the draft with relevant stakeholders**

Once a draft of the initial NAP has been prepared, it should be consulted on with relevant stakeholders. An efficient way to do this might be to ask for written comments on the draft document. Besides reflecting good practice in the field of human rights, consulting on the draft NAP with non-governmental stakeholders will also enhance the legitimacy and effectiveness of a NAP as it will strengthen support from non-governmental stakeholders for the subsequent implementation phase.

##### **10) Finalize and launch the initial NAP**

After reviewing the draft NAP in the light of stakeholder comments, the NAP should be finalized. Governments should consider using the launch of the NAP as a moment for raising awareness of business and human rights issues in the country, including in relation to the Government's expectations in regard to the implementation of pillar II and III by business enterprises.

#### **Selected examples of practice phase 3:**

The governments of **Finland** and **Spain** have consulted on draft versions of their NAP.

The **Italian** government released a document outlining the foundations of its NAP and invited stakeholders to comment.

The initial NAP of the United Kingdom was launched jointly by two members of government, demonstrating cross-ministerial and high-level support for the business and human rights agenda.

## Phase 4: Implementation

Phase 4 outlines the UNWG's recommendations on the process and institutional set-up of NAP implementation and monitoring. The modalities of this process should be made transparent in the NAP.

The aim is that after phase 4, the measures defined for the time-span of the respective NAP will be implemented. Non-Governmental stakeholders should have been able to monitor this process and their comments and recommendations should have been taken into account on a regular basis.

### **Recommended steps:**

#### **11) Implement the actions defined in the NAP and continue cross-departmental collaboration**

NAPs are only as effective as the implementation of the commitments made by the Government. The implementation of the NAP will be facilitated if, for each action outlined in the NAP, clear objectives, responsibilities, and timelines have been defined (see Annex II) and if the necessary financial resources are made available.

Collaboration among different Government branches led by a dedicated lead entity is crucial for the coherent implementation of specific actions and the NAP as a whole. Government actors should ensure continued cross-departmental collaboration and might consider reviewing and, where necessary, improving the format for cross-departmental collaboration set up under step 2.

#### **12) Set up a multi-stakeholder monitoring group and define modalities of monitoring**

In order to ensure continued multi-stakeholder involvement in, and oversight of, NAP implementation, Governments should consider setting up an independent multi-stakeholder monitoring group. Such a group should be composed of legitimate representatives from all relevant stakeholder groups, and might build upon the group created in step 3.

Effective monitoring requires transparency in relation to Government activities. The Government should therefore consider reporting on progress relating to NAP implementation to the multi-stakeholder monitoring group on a regular basis and take its recommendations into account. Also, a Government focal point should be designated to respond to requests and concerns regarding

NAP implementation of non-governmental stakeholders.

### **Selected examples of practice phase 4:**

The government of the **United Kingdom** has committed in its NAP to regularly report on progress in NAP implementation.

The **Finnish** NAP proposes that the implementation of the measures outlined is monitored on a yearly basis by the Committee on Corporate Social Responsibility.

The draft of the **Spanish** NAP foresees a process of regular multi-stakeholder consultation and yearly reporting to a parliamentary committee during the implementation phase.

## Phase 5: Update

Phase 5 describes the recurring process of evaluating and updating a NAP. The recommendations reflect the guidance provided for phases 1 to 3 of the initial NAP development. The date for the next evaluation and update of a NAP should be included in the NAP.

After phase 5, an updated version of the NAP should have been developed. This new version should tackle the most relevant remaining governance gaps and take into account progress made during the previous NAP implementation period, as well as the changing national and international context.

### **Recommended steps:**

#### **13) Evaluate the impact of the previous NAP and identify governance gaps**

Any NAP update should be based on a thorough evaluation of the effectiveness of the previous NAP in regard to its actual impact in relation to preventing, mitigating, and remedying adverse business-related human rights impacts.<sup>8</sup> When measuring progress, evaluators should refer to the performance indicators defined by the Government in the NAP as one of the benchmarks for the evaluation (see annex II). This evaluation should be conducted by an independent entity such as the NHRI, or other experts, and should include consultations with relevant stakeholders.

The evaluation should be complemented by an update of the assessments conducted in steps 5

<sup>8</sup> The UNWG has dedicated its 2015 report to the General Assembly to the issue of measuring progress on business and human rights in which it identifies existing measuring initiatives. NAP processes are seen as an important avenue to track State progress. See A/70/216.

and 6. This includes a re-assessment of the most relevant business and human rights challenges and the performance of governments and businesses in implementing the UNGPs to address them. Relevant non-governmental stakeholders should be invited to participate and provide input. The credibility of the assessment will be heightened if Governments collaborate with their NHRI or other external experts.

The Government should make the results of the evaluation, as well as the assessment, publicly available.

#### **14) Consult interested stakeholders on actions to address gaps and identify priority areas**

Interested stakeholders should be informed about the results of the evaluation and the re-assessment of the remaining governance gaps. They should be invited to provide their views and priorities on effective and adequate actions to address the identified gaps. Taking into account the views of non-governmental stakeholders, Governmental entities involved in the NAP pro-

cess should then identify the priority areas to be focused on in the updated NAP.

#### **15) Draft updated NAP, consult, finalize, and launch it**

Based on the assessments and consultations, Government entities should proceed to draft an updated version of the NAP. The draft should be consulted on with the non-Governmental stakeholders previously identified; and then finalized and launched as an updated version of the NAP. For this part of the update process, the recommendations of the UNWG do not differ from the development of the initial NAP provided in steps 8, 9, and 10.

##### **Selected examples of practice phase 5:**

The Government of the **United Kingdom** has initiated a process to review and update its NAP.

The **Danish** NAP includes a commitment by the Government to regularly update its priorities with regard to UNGP implementation in alignment with the country's action plan on corporate social responsibility.

## 4. Guidance on substance of NAPs

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While the previous section introduced recommendations relating to the NAP process, this section provides general guidance on the substance of NAPs. The first part focuses on the overall structure and the different elements Governments should consider including in NAPs. The second part introduces four underlying principles which a Government should follow when identifying its response to adverse business-related human rights impacts. This section should be seen as complementary to Annex III which outlines a non-exhaustive list of measures Governments should consider taking on each of the relevant Guiding Principles.

### 4.1 Overall structure and content

NAPs should provide the overall strategy and a set of concrete commitments by the Government for addressing adverse corporate-related human rights impacts in line with the UNGPs. The UNWG recommends that Governments consider including the following four sections in their NAP (see also Annex I):

#### I. Statement of commitment to implementing UNGPs

Governments should, in an introductory section of their NAP, commit to protect against adverse business-related human rights impacts and to provide effective remedy to victims. Thereby, the Government should refer to the UNGPs as the authoritative document on which its activities on business and human rights are based. This also includes the clarification of its expectations that companies respect human rights and implement human rights due diligence under pillars II and III of the UNGPs. This introductory section should be signed off by the head of State and/or relevant members of Government.

#### II. Background and context

A second section should provide the background and context to the NAP. This might include a short introduction to the UNGPs and some clarification as to how the NAP relates to other existing government policy strategies such as national development plans, CSR strategies, NAPs on human rights more broadly, or strategies on more narrow issues such as on specific labour issues

related to ILO Conventions. Moreover, governments should consider presenting the key findings of the mapping of business and human rights challenges which it conducted in steps 4 or 13.

#### III. Government expectation

In the third section of NAPs, governments should specify their expectation towards companies. This includes the expectation that companies in line with pillar II of the UNGPs respect human rights throughout their operations, wherever they operate. Governments should thereby refer to the principles addressing companies (11-24 and 28-31), the 2011 interpretive guide on the corporate responsibility to respect human rights developed by the UN Office of the High Commissioner for Human Rights,<sup>9</sup> as well as to complementary guidance documents for specific sectors, issues or elements of the due diligence process.<sup>10</sup> Moreover, governments should consider referring to the OECD Guidelines for Multinational enterprises and the ILO Tripartite Declaration of Principles concerning Multinational enterprises and Social Policy that includes the ILO Fundamental Principles and Rights at Work.

#### IV. Government response

Section four should clarify how the government currently addresses adverse business-related human rights impacts and outline commitments for further activities. In this regard, Governments should first highlight the priority areas identified in steps 7 or 14 and outline the strategic orientation of its approach to business and human rights.

They should then discuss the current and planned activities on each of the Guiding Principles directed at States (Guiding Principles 1-10, 25-28, 30 and 31). The parts on the current activities summarize parts of the results of the assessments conducted during the steps 6 or 13. The planned activities are the result of the government's deliberations on how it plans to address protection gaps identified in steps 6 or 13.

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<sup>9</sup> See: [http://www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](http://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf).

<sup>10</sup> A comprehensive list of guidance documents can be found on the website of the Business and Human Rights Resource Centre at [www.business-humanrights.org](http://www.business-humanrights.org).



Governments should make sure that the measures are specific, measurable and achievable. For every planned activity outlined in the NAP, the government should clarify 1) the specific goal, 2) actions to be taken, 3) an attribution of clear responsibilities to relevant entities, 4) a timeframe for the implementation of the actions, and 5) indicators to evaluate the implementation and impact of the activity (see Annex II).

## **V. Monitoring and update**

Finally, the government should specify the mechanisms and processes through which NAP implementation will be monitored and define a date for the next NAP update. With regard to monitoring, the UNWG recommends that the Government puts in place a standing multi-stakeholder monitoring group to which it reports on a regular basis (see also step 12).

## **4.2 Underlying principles of the government response**

The central element of NAPs is the definition of the government response to adverse corporate-related human rights impacts (see section III of the proposed overall structure). The UNWG recommends that Governments take into account four underlying principles when developing and drafting this section.

### **1) Focus on addressing concrete impacts**

NAPs need to be oriented towards addressing actual and potential business and human rights challenges. While the Governments' legal duty is generally restricted to adverse impacts in the country's territory and/or jurisdiction, States should also take into account extraterritorial implications of business enterprises domiciled in their territory in accordance with the UNGPs.

The selection of the impacts to be addressed with priority should follow two key criteria: 1) the severity of adverse human rights impacts and 2) the leverage of the Government in bringing about change on the ground (see also step 7).

### **2) Use UNGPs to identify how to address adverse impacts**

Governments must rely on the UNGPs to identify specific and achievable measures on how to prevent, mitigate and redress adverse human rights impacts by business enterprises.

The UNGPs outline a set of widely accepted principles which clarify the legal duty of States to protect against adverse business-related human

rights impacts and provide operational guidance on how to do so (Guiding Principles 1-10, 25-28, 30 and 31). These principles specify, for instance, how Governments should support, incentivize, or require private business enterprises to respect human rights and remedy adverse impacts. They also clarify that business enterprises which are owned or controlled by the State must respect human rights, and that States, in their relations with other States, should ensure an environment which is conducive to business respect for human rights. Annex III of this guidance provides a non-exhaustive list of concrete measures for Governments to be taken into consideration on each of these Guiding Principles.

At the same time, Governments should refer to the Guiding Principles addressing businesses in pillars II and III (Guiding Principles 10-24 and 28-31) when designing their measures. In particular, the concept of human rights due diligence should be promoted as the thread ensuring coherence in the Government's activities outlined in NAPs. For instance, Governments should clarify their expectation towards companies to implement human rights due diligence. They should also promote, and elaborate on, the concept of human rights due diligence in their measures to support, incentivize and require business enterprises to respect human rights.

### **3) Identify a 'smart mix' of mandatory and voluntary, international and national measures**

The UNWG recommends that a NAP should, in line with the UNGPs, represent a 'smart mix' of mandatory and voluntary, as well as international and national measures. The term 'smart mix' means that all possible measures to influence corporate impacts on human rights should be taken into consideration and that the combination of the identified measures should be 'smart' in the sense that it is most effective in addressing the adverse impacts.

### **4) Ensure effective protection from gender-specific impacts**

Governments should take into account differential impacts on women or men, and girls or boys. This includes integrating a gender analysis to identify such impacts, including by collecting gender disaggregated data, and committing to measures which prevent, mitigate and allow for the remediation of gender-based impacts.

## 5. Conclusion

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This guidance of the UN Working Group on business and human rights (UNWG) puts forward a common understanding of what National Action Plans (NAPs) are, and provides recommendations about NAP process and substance. This document is intended to strengthen effective NAPs and help efforts to convince additional Governments to engage in NAP processes.

The essential components of this guidance are:

- a definition of NAPs including four essential criteria for effective NAP processes (section 2);
- a 15-step model for a process of NAP development, implementation and regular update (section 3);
- the definition of five general sections characterizing the overall structure and content of a NAP as well as four underlying principles for the definition of the government response to adverse business-related human rights impacts (section 4);
- an annotated model NAP table of contents (Annex I);
- a suggestion on how to summarize the vari-

ous activities and the modalities of implementation (Annex II); and

- an indicative list of measures to consider on each of the relevant Guiding Principles (Annex III).

In all those elements, this guidance gives due regard to the specificities of national contexts. The guidance is based on the fundamental understanding that both, processes and substance of NAPs need to respond to national contexts and be negotiated among multiple stakeholders. At the same time, the UNWG is convinced that NAPs can be more effective if the recommendations outlined in this guidance are followed.

The UNWG encourages all stakeholders to follow this guidance when engaging in NAP processes. Government representatives should consider following the recommendations when designing the process and drafting the NAP. Non-Governmental stakeholders should call upon their Governments to develop NAPs along this guidance and hold them accountable for unjustified deviations from the UNWG recommendations outlined in this document.

# Annex I:

## Model table of contents for NAPs

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This annex outlines the UNWG's recommendations on how to structure NAPs and highlights the key elements to be raised under each section and sub-section.

### I. Statement of commitment

Explicit commitment by Government to protect against and remedy adverse business-related human rights impacts, with particular attention to impacts on groups at heightened risk of becoming vulnerable or marginalized; clarification of expectation that companies respect human rights; reference to UNGPs as the authoritative document on which the NAP should be based; signed off by head of State and/or relevant members of Governments

### II. Background and context

Short introduction to the UNGPs; clarification on how the NAP relates to other existing policy strategies such as national development plans, CSR strategies, national plans implementing ILO Conventions and Recommendations, or NAPs on human rights more broadly, summary of key business and human rights challenges identified in steps 5 or 13.

### III. Government expectation

Clarification of the government's expectation towards companies, based on the Guiding Principles directed at companies (11-24, 28-31) and complementary guidance documents.

### IV. Government response

Clarification of how Government addresses/plans to address adverse impacts

#### A. Priority areas and strategic orientation

Definition of priority areas and grand strategic lines; summary of results from steps 7 or 14

### B. Current and planned activities

Discussion of current and planned activities taken by the Government on each of the Guiding Principles directed at States (principles 1-10, 25-28, 30 and 31)

**Guiding Principle 1** Clarification of existing and future Government commitments on each of the relevant Guiding Principles

#### i. Text of the Guiding Principle

State the text of the respective principle in the relevant language(s)

#### ii. Current activities

Outline of current activities in relation to the Guiding Principle; summary of assessment from steps 6 or 13

#### iii. Planned activities

Outline of planned activities in relation to the Guiding Principle

*(Same structure for all of the Guiding Principles directed at States (Guiding Principles 1-10, 25-28, 30 and 31, see also Annex III))*

### C. Compilation of action points and modalities of implementation

Compilation of all planned action points identified; clarification of: 1) the specific objective, 2) activities to be taken, 3) an attribution of clear responsibilities to relevant entities, 4) a timeframe for the implementation of actions, 5) performance indicators to evaluate the implementation and impact of the action (see Annex II).

### V. Monitoring and update

Specification of monitoring and update mechanisms; clarification of: 1) date of next NAP update, 2) modalities for monitoring (see step 12), 3) Government focal point

**Annex II:  
Model structure of NAP  
section IV.C (Compilation of  
action points and modalities of  
implementation)**

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This Annex outlines a suggested structure for the compilation of action points and their modalities of implementation in section IV.C of the model table of contents for NAPs (see Annex I). It reflects best practice on NAP development on other

issues and is widely in line the respective suggestion of the Handbook on National Human Rights Plans of Action developed by the Office of the United Nations High Commissioner for Human Rights (p.75).

<b>Guiding Principle 1</b>				
<b>Objective</b>	<b>Activities</b>	<b>Relevant Government entity</b>	<b>Completion target date</b>	<b>Performance indicators</b>
<b>Guiding Principle 2</b>				
<b>Objective</b>	<b>Activities</b>	<b>Relevant Government entity</b>	<b>Completion target date</b>	<b>Performance indicators</b>

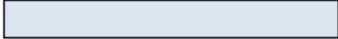
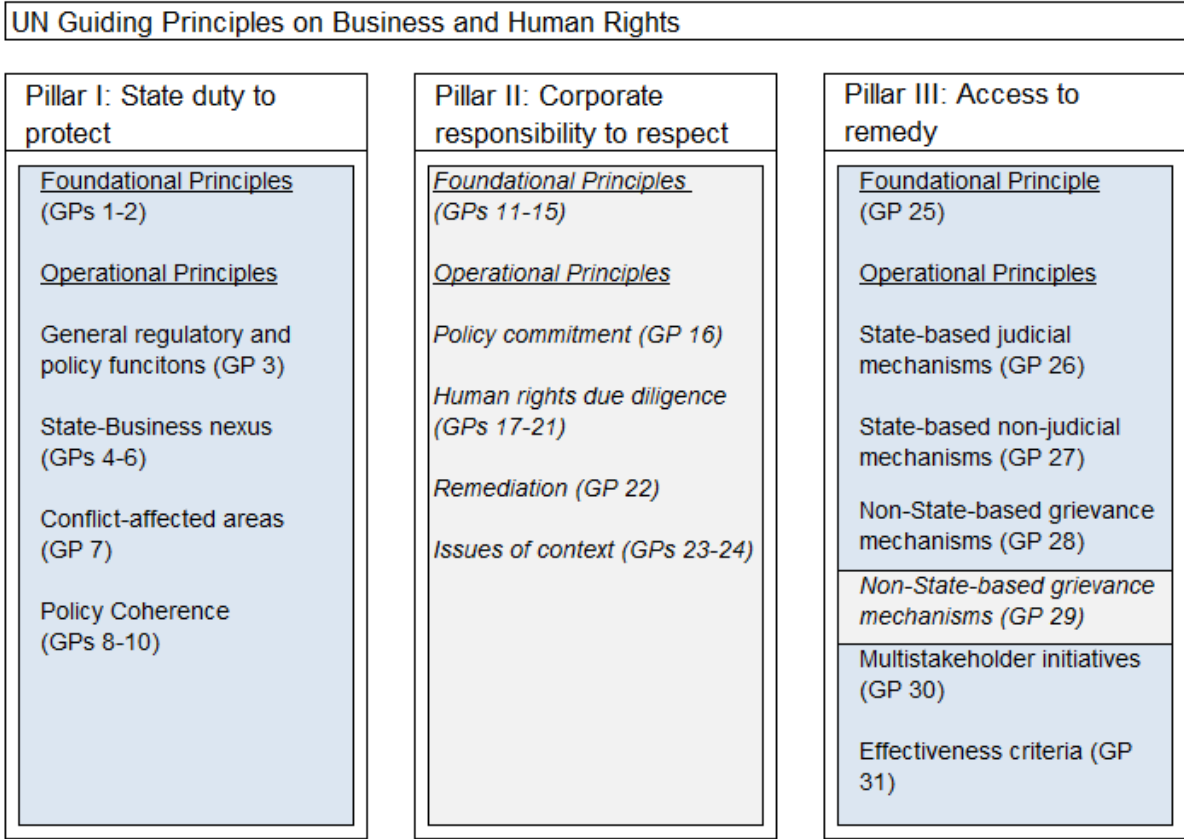
(The same structure should be followed for all of the Guiding Principles directed at States (Guiding Principles 1-10, 25-28, 30 and 31.)

# Annex III: Non-exhaustive list of issues to consider including in NAPs

This annex sets out a non-exhaustive list of measures which Governments should consider in their response to each of the Guiding Principles

addressing States. The list is structured in the same way as the UNGPs (see Figure 1).

Figure 1: Overview on the challenges UNGPs and the Guiding Principles addressing States and business



Principles directed at States\*



Principles directed at business enterprises

\* Principles 30 and 31 are directed at both States and business enterprises

In the following, on each of the Guiding Principles directed at States, the text of the UNGPs is recalled together with a set of measures governments should consider taking.

## **Pillar I**

### **A. Foundational principles**

#### **Guiding Principle 1:**

*States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.*

Guiding Principle 1 is the key foundational principle of the State duty to protect. It re-affirms the legal obligation of States to protect against human rights abuse by business enterprises within their territory and/or jurisdiction. Guiding Principle 1 therefore provides the basis for the rest of the principles directed at States which specify ways through which this legal duty should be implemented. The measures to consider in direct relation to Guiding Principle 1 are linked to the States' commitment to international and regional human rights instruments.

#### Potential measures:

#### **Signing and ratifying international and regional legal human rights instruments**

The State's duty to protect refers to the obligations defined by the treaties it has ratified. In this regard, Governments should consider:

- Signing and ratifying, where they have not done so, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights and the corresponding protocols.
- Signing and ratifying other legal human rights instruments such as the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

(ICMW), the International Convention for the Protection of all Persons from Enforced Disappearance (CPED), the Convention on the Rights of Persons with Disabilities (CPRD).

- Ratifying the relevant ILO conventions, in particular the eight core Conventions and the protocol on forced labour and report on progress in implementing the provisions of the conventions.
- Signing and ratifying the relevant regional human rights instruments such as the African Charter on Human and Peoples' Rights, the African Youth Charter, the African Charter on the Rights and Welfare of the Child, the American Convention on Human Rights, or the European Convention for the Protection of Human Rights and Fundamental Freedoms, and any corresponding protocols.

#### **Adhering to or promoting soft law instruments**

Legally binding international and regional human rights instruments are complemented by soft law instruments. In this regard, Governments should consider:

- Expressing commitment to the promotion of the ILO Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.
- Adopting and adhering to relevant regional soft law instruments such as the American Declaration of the Rights and Duties of Man, the Bali Concord III Plan of Action, the ASEAN Human Rights Declaration, and the principles of the ASEAN Community set out in the Bali Concord II.
- Adhering to the OECD Guidelines for Multinational Enterprises (also non-OECD member States).
- Adhering to the Vienna Declaration and Programme for Action.

#### **Ensuring equal and non-discriminate protection of all individuals**

Effective implementation of the UNGPs requires equality and non-discrimination regardless of gender, age, ethnicity, sexual orientation, economic situation, or social status. In this regard, Governments should consider:

- Signing and ratifying all relevant international and regional human rights instruments geared towards the protection of vulnerable and/or

marginalized groups, including relevant international labour conventions.

- Taking additional and tailored measures to ensure the protection of particularly vulnerable groups (see detailed measures under the respective Guiding Principles).
- Reporting to the various committees of the UN and regional organizations on the measures taken to ensure equality and non-discrimination.

### Guiding Principle 2:

*States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.*

Guiding Principle 2 addresses the issue of extraterritoriality and emphasizes the importance of clearly setting out the expectation States have of corporations. The commentary to Guiding Principle 2 clarifies that, while some treaty bodies have introduced extraterritorial obligations in relation to business and human rights, States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis.

Potential measures:

#### Implementing measures with extraterritorial implications

One way in which home governments can address extraterritorial impacts of corporations are domestic measures with extraterritorial implications, or direct extraterritorial legislation and enforcement. In this regard, Governments should consider:

- Ensuring that measures outlined in the NAP take full advantage of the leverage home states have in order to effectively prevent, address, and redress extraterritorial impacts of corporations domiciled in their territory and/or jurisdiction (specific measures can be found under each of the Guiding Principles discussed in this Annex).

## B. Operational Principles

### General State regulatory and policy functions

#### Guiding Principle 3:

*In meeting their duty to protect, States should:*

- Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;*
- Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;*
- Provide effective guidance to business enterprises on how to respect human rights throughout their operations;*
- Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*

Guiding Principle 3 outlines a broad range of complementary instruments through which States should meet their duty to protect as part of their general regulatory and policy functions. This includes measures based on legal requirements as well as providing support and guidance for companies.

Potential measures Guiding Principle 3a/3b:

#### Identifying protection gaps

Effective implementation of the UNGPs requires governments to be aware of existing protection gaps. In this regard, Governments should consider:

- Conducting, where this has not yet been done in the development of the first version of the NAP, an in-depth examination of existing business and human rights policies and legislation with regards to their effectiveness in meeting business and human rights challenges.
- Refreshing the gap analysis as part of the NAP update process.

#### Improving enforcement of existing laws

In many contexts, the State's failure to effectively address adverse human rights impacts is due to insufficient enforcement of existing laws. In this regard, Governments should consider:

- Allocating adequate resources to, and building capacity of, administrative branches in charge of enforcing relevant legal frameworks.
- Taking measures to combat corruption linked to Government entities in charge of ensuring the implementation of relevant laws.
- Ensuring the effectiveness of labour administration and labour inspection mechanisms to assist with the implementation of labour laws by all companies operating within the national territory, including in export processing zones.
- Supporting other governments in the enforcement of existing laws through development cooperation.
- Improving access to judicial remedy (see Guiding Principles 25-26).
- Ensuring that multilateral or bilateral investment treaties do not limit the capacity of governments to fulfil their human rights obligations (see Guiding Principle 9).
- Introducing a mechanism that periodically assesses gaps in law enforcement.

### **Addressing gaps in the legal framework**

Business and human rights issues are linked to a wide array of laws which enable and where necessary require businesses to respect human rights. In this regard, Governments should consider:

- Enacting labour laws and regulations to protect worker's rights and ensure social protection after tripartite consultation and in line with ILO Conventions and the case law of the ILO supervisory bodies.
- Ensuring that workers' rights to health are fully protected in national legislations including by taking into account differential impacts on men and women issues such as sexual and reproductive health, family planning, gender-based violence.
- Including business and human rights issues into legislation relating to the incorporation of new companies. This could include a requirement to declare a corporate commitment to respect human rights in the articles of incorporation.
- Introducing human rights considerations into a company director's legal duty of care in corporate law.
- Introducing listing requirements for companies to commit to their responsibility to respect human rights and/or to act with a 'lawful purpose' or 'respect for the public order'.
- Enacting effective anti-bribery and anti-corruption legislation.

- Introducing legal requirements regarding effective community engagement, including reference to the principle of Free Prior and Informed Consent (FPIC).
- Introducing legislation preventing and addressing adverse environmental impacts, such as those which render air, soil, or water poisonous, noxious or debilitating.
- Recognizing customary land rights in property and land management laws.
- Introducing human rights due diligence requirements to procurement law (see Guiding Principle 6).
- Introducing human rights requirements to legal provisions regulating and controlling the export of high risk goods such as munitions and surveillance technology.
- Ensuring that the national legal framework requires business enterprises to respect children's rights such as outlined in General Comment No.16 of the Committee on the Rights of the Child.<sup>11</sup>
- Ensuring that parent companies are legally responsible for acts conducted by other members of the enterprise they control.
- Ensuring that all laws in relation to business and human rights and the legal system as a whole require or encourage respect for equality and non-discrimination.
- Ensuring that efforts to address development issues are rights-based.

### **Ensuring new laws do not constrain business respect for human rights**

The provision of a legal framework which enables and fosters business respect for human rights is a continuous effort. In this regard, Governments should consider:

- Tasking an independent institution, such as the NHRI, to assess new laws for their effect on business and human rights issues and define formal processes through which such concerns can be raised.

### Potential measures Guiding Principle 3c:

#### **Making business enterprises aware of State's expectations**

Business enterprises need to know what the Government's expectations of them are. In this regard, Governments should consider:

- Communicating the State's expectations regarding business respect for human rights in

<sup>11</sup> See: CRC/C/GC/16



- exchanges with businesses in a clear and consistent manner.
- Developing awareness raising and capacity building campaigns on the UNGPs, the NAP and the State's expectations in relation to business and human rights. These campaigns could be organized with employer associations, sector-specific business associations, or the UN Global Compact networks.
  - Engaging directly with business leaders to convey the government's expectations.
  - Using the launch of the NAP as an opportunity to build capacities in the business community to promote corporate respect for human rights and publicise the government's expectations.

### **Developing guidance material and tools on the implementation of pillar II**

Guidance material and tools can help corporations understand the State's expectations in relation to specific contexts and/or issues and serve as practical tools to implement the corporate responsibility to respect. In this regard, Governments should consider:

- Developing practical sector-specific guidance documents where a need is identified (e.g. on financial institutions or resource extraction and trade).
- Developing practical issue-specific guidance documents where a need is identified (e.g. on resettlement, community engagement and consent, working in conflict-affected areas, supply chains, or the corporate role in respecting the right to health.).
- Developing practical guidance on specific steps of human rights due diligence processes (e.g. on human rights impact assessments (HRIA), the definition and implementation of mitigation measures, or reporting).
- Developing practical guidance on the protection of population groups that may be particularly vulnerable to business-related human rights abuse, such as children<sup>12</sup>, women, indigenous peoples<sup>13</sup>, ethnic minorities and persons with disabilities.
- Developing practical guidance which responds to the needs and requirements of small and medium-sized enterprises (SMEs).
- Developing online-tools on implementing human rights due diligence.

<sup>12</sup> See: General Comment No. 16 (2013) of the Committee on the Rights of the Child

<sup>13</sup> See: UNWG Report to the UN General Assembly of 2013 on the rights of indigenous peoples, A/68/279

- Translating existing instruments into languages relevant to the national context.
- Collaborating with other governments on the development of new or use of existing guidance materials and tools.

### **Providing information and support services to companies**

In order to become relevant, guidance material and tools need to be implemented by companies in their operational contexts. In this regard, Governments should consider:

- Developing trainings on human rights due diligence for corporations in collaboration with established business fora such as employer associations, sector-specific business associations, or the UN Global Compact networks.
- Providing targeted training to small and medium sized enterprises.
- Sensitizing and supporting enterprises in the informal sector, including by helping them to formalize.
- Providing resources to NHRIs to enable them to advise and train companies on human rights issues.
- Training and tasking embassy staff to advise corporations on business and human rights questions in the host State (see also Guiding Principle 7).
- Ensuring that advice on human rights issues is included in all export promotion activities including on trade missions.
- Creating a focal point which can provide information and advice on business and human rights issues.
- Supporting standards and initiatives that promote the corporate responsibility to respect human rights with regards to groups at risk of becoming vulnerable or marginalized, such as the Children's Rights and Business Principles.
- Encouraging education on business and human rights issues amongst current and future business community members through undergraduate, postgraduate, and executive education courses.

### **Fostering exchange and lessons sharing among and within stakeholder groups**

Learning from peers within the same stakeholder group, as well as from actors of other stakeholder groups, can be crucial for the dissemination of responsible business and human rights practices. In this regard, Governments should consider:

- Supporting and potentially leading multi-stakeholder platforms for exchange on busi-

ness and human rights, for instance on particular sectors or issues of high risks.

- Strengthening social dialogue among employers and trade unions.
- Providing support to civil society organizations networks to pool their expertise and leverage.
- Providing support to business-led platforms such as the UN Global Compact Networks and the Global Compact-ILO Child Labour Platform to foster exchange and capacity building among companies.

### **Supporting multi-stakeholder initiatives**

Multi-stakeholder initiatives are additional instruments to effectively guide corporate action in relation to human rights issues. In this regard, Governments should consider:

- Ensuring that multi-stakeholder initiatives refer to the UNGPs and require corporations to carry out human rights due diligence processes along the lines of pillar II.
- Developing effective multi-stakeholder initiatives on problematic sectors or issues where no such initiative exists.
- Ensuring that multi-stakeholder initiatives provide for effective and independent verification of company compliance with relevant standards.
- Supporting the development of grievance mechanisms in multi-stakeholder initiatives (see Guiding Principle 30)

### Potential measures Guiding Principle 3d:

#### **Encouraging corporations to report on human rights due diligence**

Governments can support efforts to have transparency in relation to business and human rights issues by clarifying their expectations regarding the disclosure of information on human rights due diligence and related impacts. In this regard, Governments should consider:

- Clarifying their expectations regarding reporting on human rights as part of the definition of general expectations of companies (see Guiding Principle 2).
- Specifying that companies are expected to include information on the human rights im-

pacts identified, the measures taken to address them, as well as the effectiveness of those measures.

- Referring to established reporting standards such as the Global Reporting Initiative.

#### **Introducing legally binding reporting requirements on non-financial issues**

Legal reporting requirements on non-financial issues can provide a common standard for transparency and strengthen incentives for companies to engage in human rights due diligence processes. In this regard, Governments should consider:

- Establishing non-financial reporting requirements on human rights due diligence processes and the results thereof for companies working in or having substantial presence in the country's territory and/or jurisdiction.
- Introducing transparency requirements in host State legislation and contracts with multinational enterprises.
- Including reporting requirements on human rights issues in stock exchange listing requirements.
- Ensuring the verification of information by arranging an independent audit of the reports, and issuing sanctions where inaccurate and/or incomplete information is provided.

#### **Ensuring transparency of payments to and from governments**

Transparency over payments of business enterprises to governments and vice versa can contribute to enhanced accountability of both corporations and governments. In this regard, Governments should consider:

- Disclosing the amounts paid to and received from, companies on the level of projects.
- Requiring corporations to disclose the amounts paid to, and received from, companies on the level of projects.
- Joining and/or supporting the Extractive Industry Transparency Initiative (EITI).
- Ensuring the verification of information by arranging an independent audit of the reports, and issuing sanctions where inaccurate and/or incomplete information is provided.

## The State-business nexus

### Guiding Principle 4:

*States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.*

Guiding Principle 4 addresses situations in which the State controls or owns business enterprises or where companies receive substantial support from State agencies. In these situations, governments have direct influence on corporate behaviour.

#### Potential measures:

#### **Ensuring implementation of UNGPs by State-owned or controlled companies**

State-owned or controlled companies are also subject to the corporate responsibility to respect under pillar II. Moreover, where a business enterprise is controlled by the State or where its acts can be attributed to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligation. In this regard, Governments should consider:

- Clarifying the commitment that business enterprises owned or controlled by the State live up to the same requirements that private companies are expected to fulfil (see Guiding Principle 2).
- Ensuring that effective human rights due diligence is implemented by State-owned or controlled companies.
- Fostering the participation of state-owned companies in relevant multi-stakeholder and multilateral initiatives such as the UN Global Compact or the Principles for Responsible Investment.
- Introducing effective reporting and oversight procedures to ensure respect for human rights by State-owned and controlled companies.
- Allocating adequate resources to, and building capacity of, administrative branches in charge of scrutinizing state-owned or controlled enterprises.

### **Introducing human rights conditionality to the work of export credit agencies**

Export credit agencies are important tools through which home States can promote respect for human rights by business enterprises. In this regard, Governments should consider:

- Developing a policy with a clear commitment to human rights and actions detailing how the export credit agency implements the UNGPs throughout its processes.
- Requiring human rights due diligence on projects as part of the application process where a heightened risk of adverse human rights impacts is identified.
- Providing clear guidance regarding the expectations on human rights due diligence for business enterprises applying for export credits.
- Conditioning export credits for projects with risks of adversely impacting human rights on the implementation of specific mitigation measures.
- Refraining from supporting projects with high risks of adversely impacting on human rights.
- Allocating adequate resources for the monitoring of human rights impacts of supported companies or projects.
- Supporting and/or adopting the recommendations of the OECD Council on common approaches for officially supported export credits and environmental and social due diligence.

### **Introducing human rights conditionality in other public finance instruments**

Besides export credit agencies, governments provide financial support to business enterprises through various other instruments such as through pension funds, public banks, agencies providing investment insurance, or through development finance institutions. In this regard, Governments should consider:

- Including human rights conditionality in the investment strategies of all public finance institutions (national and multilateral) including by adhering to the UN Principles for Responsible Investment and by referring to the IFC Performance Standards on Environmental and Social Sustainability and the Equator Principles.
- Requiring human rights due diligence on projects as part of the application process where a heightened risk of adverse human rights impacts is identified.

- Allocating adequate resources for the monitoring of human rights impacts of State-supported companies or projects.
- Supporting the inclusion of human rights considerations in international and regional development finance institutions (see also Guiding Principle 10).

### **Introducing human rights conditionality in non-financial support instruments**

Governments support corporations in various non-financial ways. In this regard, Governments should consider:

- Making the delivery of export promotion support measures by embassies or specialized export promotion agencies (see also Guiding Principle 3c) conditional on the parallel engagement of the company in an effective human rights due diligence process.
- Making public private partnerships in development assistance conditional on a company's human rights record and ensuring adequate human rights due diligence review of such partnerships.
- Refraining from providing support to, and partnering with, business enterprises which adversely impact on human rights and refuse to cooperate in addressing the situation

### **Guiding Principle 5:**

*States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.*

Guiding Principle 5 addresses situations in which States privatize the delivery of public services. Areas where services are privatized include health, education, the penal and asylum system. The failure of States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations might entail legal consequences for the State itself.

#### Potential measures:

### **Introducing human rights requirements when contracting with, or legislating for, business enterprises on the delivery of public services**

Governments have various means to ensure that corporations delivering public services respect human rights. In this regard, Governments should consider:

- Conducting a human rights impact assessment prior to any privatization, or private sector delivery of, public services, and taking action on the basis of those findings.
- Introducing human rights provisions into all contracts with organizations that provide public services, especially where a risk of adverse human rights impacts is identified.
- Adopting legal provisions which require all corporations that provide services on behalf of the State to respect human rights and implement human rights due diligence processes.
- Including a company's ability to demonstrate its respect for human rights as a key issue in the selection process.
- Providing training and capacity building to all business enterprises that deliver public services.
- Ensuring adequate oversight and monitoring of the human rights impacts of corporations that deliver public services.

### **Ensuring respect for human rights when contracting with private security providers**

One of the areas with the highest risk of adverse human rights implications related to business enterprises that deliver public services is the

provision of private security. In this regard, Governments should consider:

- Requiring private security providers to respect human rights throughout their operations and implement adequate human rights due diligence processes including through the introduction of language in contractual agreements.
- Becoming party of the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies During Armed Conflict.
- Becoming party of the International Code of Conduct for Private Security Providers (ICoC) including its Association (ICoCA).
- Enacting legislation excluding contracting with PSMCs which are not party to the ICoC and/or ICoCA.

## Guiding Principle 6:

*States should promote respect for human rights by business enterprises with which they conduct commercial transactions.*

Guiding Principle 6 asks States to individually and collectively make use of opportunities to promote respect for human rights by the business enterprises with which they conduct commercial transactions.

### Potential measures:

#### **Introducing human rights conditionality in public procurement**

The primary means through which a government conducts commercial transactions with businesses is by public procurement. In this regard, Governments should consider:

- Requiring human rights due diligence from bidders in cases where risks of adverse human rights impacts, including in the supply chain of a given product, are identified.
- Providing clear guidance to bidders on what is expected from them in terms of human rights due diligence.
- Taking human rights considerations into account when selecting successful contractors and excluding bids with high risks of adverse impacts on human rights.
- Including human rights requirements and due diligence measures into all contracts.
- Ensuring adequate monitoring of human rights impacts by all contractors and, if possible, by directly impacted stakeholders

#### **Fostering the introduction of human rights conditionality in public procurement agencies at sub-state levels**

Authorities at provincial and municipal levels are often responsible for a large share of overall public procurement. In this regard, Governments should consider:

- Requiring, where possible, procurement agencies at sub-state levels to implement the same human rights standards as are implemented at the national level.
- Pooling procurements with high human rights risks at the national level.
- Conducting capacity building on the integration of human rights into public procurement with relevant agencies at sub-state levels.

## Supporting business respect for human rights in conflict-affected areas

### Guiding Principle 7:

*Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:*

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;*
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;*
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;*
- (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.*

Guiding Principle 7 recognizes the particularly important challenges to respect for human rights by businesses in conflict-affected areas. It asks States to take enhanced and context-specific measures to address the heightened risks of adverse human rights impacts. The implementation of the State duty to protect in relation to conflict affected areas is also subject to a separate report of 2011 by the then Special Representative to the Secretary General, John Ruggie.<sup>14</sup>

### Potential measures:

#### **Providing conflict-specific guidance and advice to companies**

Business enterprises seek increasing guidance and advice from States about how to ensure respect for human rights in conflict affected areas. In this regard, Governments should consider:

- Providing guidance and advice, for instance through embassies and/or NHRIs, on conducting effective human rights due diligence

<sup>14</sup> See:

<http://www.ohchr.org/Documents/Issues/TransCorporations/A.HRC.17.32.pdf>

processes in conflict-affected areas (see also Guiding Principle 3c).

- Developing early warning programs in collaboration with relevant stakeholders including business enterprises, present in each conflict area.
- Supporting, and where necessary requiring, companies to conduct conflict sensitivity assessments as part of their human rights due diligence.
- Developing guidance on how to deal with the risk of sexual and gender-based violence and advising business enterprises about this.
- Promoting the implementation of the OECD Due Diligence Guidance for Responsible Supply Chains in Conflict-Affected and High-Risk Areas.

### **Supporting multi-stakeholder initiatives dealing with issues related to conflict-affected areas**

Various multi-stakeholder initiatives have been developed to address human rights challenges specific to or particularly relevant in conflict affected areas. In this regard, Governments should consider:

- Adhering to and implementing the requirements of the Voluntary Principles on Security and Human Rights and the International Code of Conduct on Private Security providers.
- Supporting private-sector led initiatives such as the Conflict-Free Gold Initiative, the Conflict-Free Smelter Program, or activities of the International Council on Mining and Metals.
- Engaging in the creation and support of certification schemes on the responsible sourcing and trading of goods from conflict-affected areas.

### **Enacting legislation specific to conflict-affected areas**

The heightened risks of corporate involvement in gross human rights violations in conflict affected areas should lead governments to take into consideration the implementation of specific legislations. In this regard, Governments should consider:

- Assessing the legal framework with regard to the extent to which it addresses heightened risks of adverse human rights impacts in conflict affected areas, and identifying, and acting to deal with any protection gaps.
- Introducing reporting requirements on commodities from conflict affected areas.

- Introducing an obligation to notify or report on activities in specific high-risk countries.
- Developing mechanisms for civil or criminal liability for companies domiciled or operating in their territory and/or jurisdiction and involved in gross human rights abuses.
- Signing and ratifying the Rome Statute and accepting the jurisdiction of the International Criminal Court.
- Engaging in multilateral efforts to improve prevention, mitigation and remediation of business involvement in gross human rights violations.

## **Ensuring policy coherence**

### **Guiding Principle 8:**

*States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.*

Guiding Principle 8 asks States to ensure a coherent approach to business and human rights. This includes vertical policy coherence which means States need to have the necessary policies, laws and processes to implement their international human rights law obligations. It also means horizontal policy coherence across all departments and agencies at national and sub-national levels with a mandate that touches on any human right. This may also include departments less traditionally associated with business such as those related to health, education, women or youth. NAPs are key instruments to improve coherence in both dimensions.

#### Potential measures:

### **Conducting internal training and capacity building on the UNGPs and the NAP**

Conducting training and capacity building in relation to the UNGPs and the NAP is vital for horizontal policy coherence across all government entities. In this regard, Governments should consider:

- Developing guidance and training material on the UNGPs and the NAP for all government staff.
- Conducting obligatory training sessions with relevant staff in the capital as well as overseas.

- Allocating the necessary resources to the NHRI or other independent experts to carry out these training sessions and capacity building efforts.

### **Ensuring coherence of policy documents**

Policy documents which relate to responsible business conduct such as national development plans, CSR-strategies, overall human rights national action plans need to form a coherent whole. In this regard, Governments should consider:

- Providing explicit clarification in each of the documents on how the various strategies relate to each other and cross-referencing the different strategies.
- Ensuring that national development plans, CSR strategies or overall human rights national action plans include chapters on business and human rights which either include the NAP in its entirety, or refer to the stand-alone NAP.
- Developing policies on addressing human rights issues in specific high risk industries while ensuring full coherence with other policy documents.

### **Ensuring coherence of government measures**

In order to have a coherent approach to business and human rights, all government activities need to relate to a common understanding of what is expected from companies. In this regard, Governments should consider:

- Making sure the corporate responsibility to respect and in particular the concept of human rights due diligence is used as the common denominator for all government activity in relation to business and human rights.
- Clarifying what the government expects companies to do (see Guiding Principle 2) and use this understanding as the basis of all measures.

### **Guiding Principle 9:**

*States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.*

Guiding Principle 9 addresses economic agreements concluded by States, either with other States or with business enterprises. States

should ensure that they retain the ability, through policy and regulation, to protect human rights under the terms of such agreements, while providing the necessary investor protection.

### Potential measures:

#### **Ensuring that bilateral and multilateral investment agreements do not impede respect for human rights**

International investment agreements may impede host States from fully implementing their human rights obligations. In this regard, Governments should consider:

- Conducting human rights impact assessments prior to concluding bilateral or multilateral investment agreements.
- Introducing specific human rights provisions in bilateral or multilateral investment agreements.
- Ensuring that stabilization clauses in bilateral or multilateral investment agreements do not constrain a government's freedom to implement legislation to improve corporate respect for human rights. Supporting efforts to strengthen transparency of investor-State dispute settlement mechanisms.
- Monitoring decisions reached pursuant to the investor-state dispute settlement mechanisms that concern human rights.
- Ensuring that human rights obligations imposed on foreign investors are equally imposed on domestic investors.

#### **Fostering business respect for human rights through bilateral and multilateral trade agreements**

Trade agreements can be important instruments to anchor human rights issues in the economic relations between two States. In this regard, Governments should consider:

- Conducting human rights impact assessments prior to concluding trade agreements.
- Introducing provisions on human rights in trade agreements, including stipulating that trading partners ratify international human rights instruments and fundamental ILO conventions.
- Including in trade agreements an exemption from agreed provisions in cases where the other contracting party violates human rights.
- Monitoring the human rights impacts of ongoing trade agreements and address adverse impacts where identified.

## Ensuring that contracts for investment projects between host state and multinational enterprises foster business respect for human rights

Investment contracts can be key instruments for host countries to ensure corporate respect for human rights by ensuring clarity in human rights standards for States and companies alike. Governments should consider:

- Conducting human rights impact assessments prior to concluding investment contracts.
- Including clauses into State-company investment contracts that require companies to respect human rights, and implement human rights due diligence processes.
- Identifying ways to ensure that companies domiciled on their territory do not sign investment agreements which limit the space of host States to implement their human rights duties.
- Increasing awareness of and implementing the recommendations of the UN principles for responsible contracts developed in 2011 by the then SRSG John Ruggie.<sup>15</sup>

### Guiding Principle 10:

*States, when acting as members of multilateral institutions that deal with business-related issues, should:*

- Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;*
- Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;*
- Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.*

Guiding Principle 10 stresses the need to strengthen policy coherence at the international level. It asks States to foster a coherent understanding and policy responses in their capacity as members of multilateral institutions.

## Potential measures

### Advancing the business and human rights agenda in multilateral institutions

The implementation of the UNGPs is amongst other things dependent on their uptake by multilateral institutions. In this regard, Governments should consider:

- Promoting the effective implementation of the UNGPs through the mandate and activities of the UN Human Rights Council.
- Supporting the processes within the UN bodies on strengthening the protection of population groups that may be particularly vulnerable to business-related human rights abuse, such as children, women, indigenous peoples, ethnic minorities and persons with disabilities.
- Building synergies between the implementation of the UNGPs and States' commitments and international obligations under International Labour Standards.
- Supporting the ILO supervisory mechanism on the application of international labour standards in law and practice.
- Supporting the OECD Guidelines on Multinational Enterprises as well as related guidelines, templates and recommendations and work towards wider adherence by non-OECD member States.
- Supporting the inclusion of human rights criteria in international financial institutions such as the IFC and regional development banks.
- Supporting the cooperation on business and human rights issues between the World Trade Organization (WTO) and other international organizations (such as ILO and the World Intellectual Property Organization (WIPO)) within the framework of the WTO Coherence Mandate.
- Promoting business and human rights issues in global policy processes on the Sustainable Development Goals (SDGs) and the post-2015 development agenda as a whole.
- Supporting the inclusion of human rights issues in international finance institutions (IFIs) and ensure effective remedy for individuals or communities adversely affected projects supported by IFIs, including by introducing non-judicial grievance mechanisms in IFIs (see also Guiding Principles 4, 26 and 27).
- Promoting the inclusion of business and human rights concerns through UN platforms re-

<sup>15</sup> A/HRC/17/31/Add.3, 2011



lated to communication technologies such as the World Summit on the Information Society (WSIS) process or other relevant international bodies such as the Internet Governance Forum (IGF).

- Using the platforms of multilateral institutions to develop and strengthen level playing fields in relation to the legislation regarding business and human rights of home and host States.
- Engaging in peer-review processes on NAP development and implementation.

### **Advancing the business and human rights agenda in regional organizations**

Regional organizations have been proven to be effective catalysts in promoting State implementation of the UNGPs. In this regard, Governments should consider:

- Calling for and supporting the development of regional strategies on the implementation of the UNGPs in the African Union, the Association of Southeast Asian Nations, the European Union, the Council of Europe, and the Organization of American States.
- Using regional organizations as a platform to promote the development of NAPs by member States.

### **Including business and human rights issues in the universal periodic review (UPR) and in reports to UN human rights treaty monitoring bodies**

The universal periodic review mechanism of the UN Human Rights Council is a key accountability mechanism for State compliance with human rights obligations. In this regard, Governments should consider:

- Reporting to UN human rights treaty monitoring bodies and the UPR on its activities and the challenges it faces in the field of business and human rights.
- Including business and human rights issues in reports on other States.
- Promoting exchange and dialogue with civil society organizations, trade unions and employers' organizations in host and home States on business and human rights issues to be included in the recommendations to other States.
- Ensuring effective follow-up to any recommendations from UN human rights treaty monitoring bodies, special procedure mandate holders, or the UPR process.

## **Pillar III**

### **A. Foundational principle**

#### **Guiding Principle 25:**

*As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*

Guiding Principle 25 re-iterates the legal duty of States to ensure access to effective remedy as part of their duty to protect. Such remediation measures may take a variety of forms such as apologies, restitution, rehabilitation, financial and non-financial compensation and punitive sanctions, as well as the prevention of harm through, for example injunctions or guarantees of non-repetition.

#### Potential measures

#### **Ensuring that the combination of various instruments to access remedy is effective**

Access to remedy can be provided by state-based and non-state-based, as well as judicial and non-judicial mechanisms (see Guiding Principles 26-31). States should ensure that the combination of the measures available allow for effective remedy. In this regard, Governments should consider:

- Assessing (in case this has not yet been done) to what extent victims of domestic and extraterritorial adverse business-related human rights impacts have access to remediation mechanisms and address the identified gaps.

#### **Promoting accessibility of national and international remediation mechanisms**

Ensuring access to remedy requires that States facilitate public awareness and understanding of these mechanisms. In this regard, Governments should consider:

- Reducing procedural and practical barriers to accessing remedies including by ensuring that affected parties of population groups that may be particularly vulnerable to business-related human rights abuse, such as children, women, indigenous peoples, ethnic minorities and persons with disabilities, as well as their representatives, have equitable access to reme-

diation mechanisms (see Guiding Principles 26, 27, 28, and 30).

- Ensuring that judicial and non-judicial grievance mechanisms respond to the specific needs of victims of sexual abuse and harassment, including by making sure that processes are handled by professional staff and by ensuring anonymity of victims.
- Improving access to transnational remedy through both judicial and non-judicial mechanisms (see Guiding Principles 26 and 27).
- Collaborating with civil society organizations and/or NHRIs to strengthen awareness of remediation mechanisms accessible to victims of adverse business-related human rights impacts.

### **Promoting the generation and dissemination of knowledge on adverse business-related human rights impacts**

States can help facilitate access to remediation by ensuring that victims' voices are heard and by enhancing knowledge about adverse business-related human rights impacts. In this regard, Governments should consider:

- Providing NHRIs and/or civil society organizations with adequate resources to identify and publicise adverse human rights impacts by corporations.
- Supporting the collection of gender-disaggregated data in order to identify ways in which a business enterprise may have differential, disproportionate, or unforeseen gender-related impacts.

### **Protecting human rights defenders**

Access to remedy may be severely hindered by threats against, and repression of, those defending rights holders. In this regard, Governments should consider:

- Committing to, and implementing the responsibilities under, the UN Declaration on human rights defenders<sup>16</sup> and supporting the work of the UN special rapporteur on human rights defenders.
- Enacting legislation ensuring the protection of human rights defenders who address corporate-related human rights harm in the country's territory and/or jurisdiction.
- Collaborating with NHRIs, civil society organizations and trade unions in identifying human

rights defenders in need of protection, both domestically and extraterritorially.

- Engaging directly with human rights defenders through embassies including by formally inviting them to events, visiting contested project sites, and upholding regular and public contact.
- Showing support for human rights defenders in political and diplomatic exchanges.
- Collaborating with business enterprises to ensure that they help providing for the protection of human rights defenders and refrain from taking action which might put them at risk.
- Enacting anti-SLAPP legislation to ensure that human rights defenders are not subjected to civil liability for their activities.
- Offering, where necessary, political asylum to threatened individuals.

## **B. Operational principles**

### **State-based judicial mechanisms**

#### **Guiding Principle 26:**

*States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.*

Guiding Principle 26 stresses that impartial and integral judicial measures based on due process are key to ensuring access to remedy. States should ensure that they do not erect barriers to prevent legitimate cases from being brought before courts in host and/or home states. States are also asked to reduce legal as well as practical and procedural barriers to accessing judicial remedy.

#### Potential measures:

### **Strengthening independent judicial systems**

The independence of judicial systems is central for effective access to remedy. In this regard, Governments should consider:

- Enshrining the independence of the judicial system in the country's constitution and/or law.
- Ensuring that the judiciary has the ability to decide without any restrictions, improper influences or pressures, whether an issue sub-

<sup>16</sup> See: <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>

mitted to it for decision is within its competence as defined by law.

- Introducing due process to the selection of senior judicial officers in order to limit political interference.
- Providing the judiciary with adequate resources to enable it to perform its functions independently.
- Supporting other countries in their efforts to strengthen the independence of their judicial systems.
- Taking measures to deter and eradicate corruption in the judicial system.
- Strengthening labour inspectorates to detect violations of and informing workers of their rights.

### Reducing legal barriers

Equitable access to domestic judicial mechanisms is essential. In this regard, Governments should consider:

- Ensuring that the criminal legal regime allows for the prosecution based on the nationality of the perpetrator and/or the domicile of the business enterprise (if prosecution of a moral person is possible) in the home State, regardless of where the offence occurs (see also Guiding Principles 2 and 3a/b).
- Ensuring that the civil liability regime allows for tort suits based on the domicile and/or listing of the business enterprise in the home State (see also Guiding Principles 2 and 3 a/b).
- Ensuring that host State courts have the competency to adjudicate cases related to business and human rights.
- Ensuring access to home State courts where claimants of legitimate cases face a denial of justice in a host State.
- Providing national labour tribunals with the competency to adjudicate business and human rights impacts.
- Ensuring effective access to remedy for individuals and communities adversely affected by projects supported by national or multilateral investment finance instruments (see also Guiding Principle 4 and 10).
- Ensuring that victims are granted access to compensation when businesses or their officers are found guilty of involvement in human rights abuses.
- Ensuring that there is no limitation period for claims alleging genocide, war crimes, and crimes against humanity.
- Ensuring that parent companies and/or their directors can be held legally accountable for

adverse human rights impacts by other members of the enterprise under their control.

- Making sure that the same level of legal protection and access to justice is guaranteed to all groups of people including to representatives of population groups that may be particularly vulnerable to business-related human rights abuse, such as children, women, indigenous peoples, ethnic minorities and persons with disabilities.<sup>17</sup>

### Reducing practical and procedural barriers to legal remedy

Besides legal barriers, access to judicial remedy can also be hindered by practical and procedural barriers. In this regard, Governments should consider:

- Ensuring that prosecutors have the mandate and resources to thoroughly investigate and prosecute legitimate allegations of domestic or extraterritorial corporate involvement in adverse human rights impacts.
- Training prosecutors and judges to effectively perform their tasks in relation to domestic and/or extraterritorial business-related human rights abuses.
- Ensuring that victims have an adequate remedy available before a court can dismiss a case under a doctrine of *forum non conveniens*,
- Providing financial support to claimants for expenses related to filing legal cases. This includes allowing for the recoupment of lawyers' fees and ensuring that victims with legitimate claims can seek a 'no cost ruling' where the system requires the loser of a case to cover costs related to the court case.
- Ensuring, by law and policy action, that claimants are not subject to any form of retaliatory actions linked to the court case.
- Introducing or strengthening options for aggregating claims and representative proceedings such as class actions, multi-party litigation or other collective action procedures.
- Providing tailored assistance to children in order to ensure that they have appropriate and accessible means to enforce their rights.
- Training legal assistance providers to effectively represent groups at risk of becoming vulnerable or marginalized.

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<sup>17</sup> For an instructive framework on access to justice for Children see: Council of Europe Guidelines on Child-Friendly Justice (<https://wcd.coe.int/ViewDoc.jsp?id=1705197>)

## State-based non-judicial grievance mechanisms

### Guiding Principle 27:

*States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.*

Principle 27 addresses state-based administrative, legislative and other non-judicial mechanisms designed to complement and supplement judicial mechanisms. States are asked to consider expanding the mandates of existing non-judicial mechanisms and/or adding new mechanisms in order to address gaps in the access to a remedy for business-related human rights abuses.

#### Potential measures

#### **Strengthening the effectiveness of existing non-judicial state-based grievance mechanisms**

Many countries already have non-judicial grievance mechanisms which operate with varying degrees of effectiveness. In this regard, Governments should consider:

- Making sure that NHRIs and/or ombudsperson offices have the appropriate mandates and resources available to receive complaints from victims of alleged corporate-related human rights abuses.
- Ensuring the effectiveness of OECD National Contact Points (NCP) by improving knowledge about their existence and, where appropriate, expanding their mandate and financial resources.
- Anchoring non-judicial grievance mechanisms such as the ones provided by NHRIs, ombudspersons, or the OECD NCPs in national law.
- Establishing non-judicial grievance mechanisms tailored to the specific rights and needs of groups at risk of becoming vulnerable or marginalized, such as for instance ombudspersons for children.
- Ensuring that business enterprises which, in the course of non-judicial grievance mechanisms have been found to have abused hu-

man rights, implement remedial action and face adequate consequences, including through administrative penalties such as fines or the limitation of access to State services (see also Guiding Principles 4 and 5).

- Improving home and/or host State oversight mechanisms where non-judicial grievance mechanisms have found States to inadequately meet their role.
- Ensuring that the mechanisms meet the criteria identified in Guiding Principle 31 (see below).
- Introducing adequate independent oversight mechanisms with the mandate to regularly test non-judicial grievance mechanisms against the effectiveness criteria of Guiding Principle 31.

#### **Creating new non-judicial state-based grievance mechanisms**

The creation of new non-judicial state-based grievance mechanisms may help address gaps in access to remedy for business-related human rights abuses. In this regard, Governments should consider:

- Providing NHRIs and/or ombudsperson offices with a mandate to receive complaints from victims of alleged corporate-related human rights abuses.
- Adhering to the OECD Guidelines on Multinational Enterprises and setting up an effectively mandated and resourced National Contact Point.
- Creating alternative entities with a mandate to receive complaints from victims of alleged corporate-related human rights abuses.
- Creating a separate accountability mechanism which can receive complaints on alleged involvement in adverse human rights impacts by state-owned or controlled business enterprises.
- Creating remedy mechanisms for complaints related to projects supported by international finance institutions and consider referring to the mechanism of the International Finance Corporation's Compliance Advisor Ombudsman (CAO).
- Facilitate mediation on an ad-hoc basis between business enterprises and affected individuals or their representatives.

## Non-State-based grievance mechanisms

### Guiding Principle 28:

*States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.*

Guiding Principle 28 gives the State a role in fostering effective non-State-based grievance mechanisms. These include those mechanisms administered by a business enterprise alone or with stakeholders, an industry association or a multi-stakeholder group and those mechanisms administered by regional and international human rights bodies.

#### Potential measures:

#### **Supporting the development of business-based grievance mechanisms**

States can help to improve access to remedy for business-related human rights abuses by supporting business enterprises in fulfilling their responsibility to provide for, or cooperate in, the remediation of adverse impacts that they have caused or contributed to (see Guiding Principle 22). In this regard, Governments should consider:

- Developing best practice and guidance on the establishment of effective business-based grievance mechanisms which respond to the criteria identified in Guiding Principle 31 (see below).
- Providing an enabling environment for labour relation systems, including through the support of labour tribunals and industrial relations systems.
- Encouraging and supporting business associations to develop grievance mechanisms.
- Supporting the inclusion of civil society organizations and trade unions in business-based grievance mechanisms and act as, among other things, representatives or mediators in disputes between aggrieved parties.

#### **Supporting access to regional and international human rights bodies**

Besides business-based grievance mechanisms,

States can also improve access to remedy for business-related human rights abuses by supporting relevant regional and international human rights bodies. In this regard, Governments should consider:

- Strengthening the awareness of regional and international human rights bodies and the ways in which they can be accessed by victims.
- Addressing procedural or practical barriers for rights holders, for instance by helping to establish connection with the regional or international body, or by supporting the provision of legal aid.
- Working towards more opportunities for rights holders to access regional and international human rights bodies.

### Guiding Principle 30

*Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.*

Guiding Principle 30 addresses the role of States as participants in multi-stakeholder initiatives. States should strengthen the availability of effective mechanisms through which affected parties, or their legitimate representatives, can raise concerns when they believe the commitments in question have not been met.

#### Potential measures:

#### **Supporting the development of grievance mechanisms by multi-stakeholder initiatives**

Multi-stakeholder initiatives can be effective tools to improve access to non-judicial remedy. In this regard, Governments should consider:

- Supporting the development of effective grievance mechanisms in multi-stakeholder initiatives and ensure that they reflect the criteria identified in Guiding Principle 31 (see below).
- Enforcing adequate consequences for business enterprises which have been found to have breached commitments, such as fines or by limiting access to State services.

## Effectiveness criteria for non-judicial grievance mechanisms

### Guiding Principle 31

*Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.*

*In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:*

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;*
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;*
- (c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;*
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;*
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;*

*(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;*

*(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;*

*Operational-level mechanisms should also be:*

*(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances*

Guiding Principle 31 outlines a set of key criteria for the effectiveness of non-judicial grievance mechanisms. The people it is intended to serve need to know about it, trust it and be able to use it.

#### Potential measures:

#### **Ensuring that all non-judicial grievance measures live up to the effectiveness criteria**

States can improve the effectiveness of non-judicial grievance mechanisms by ensuring that non-judicial grievance mechanisms reflect the criteria outlined in Guiding Principle 31. In this regard, Governments should consider:

- Making sure that all the non-judicial grievance mechanisms it runs, is part of or, it supports (see Guiding Principles 27, 28, and 30) are developed and operated in accordance with the criteria set out in Guiding Principle 31.
- Ensuring that the non-judicial grievance mechanisms are adequately mandated and resourced so that they are effective.



