**SECOND ANNUAL UN FORUM ON BUSINESS AND HUMAN RIGHTS**

**National Action Plans for Implementing the Guiding Principles**

A Discussion Paper

Prepared by the Working Group on the issue of human rights and transnational corporations and other business enterprises for the States Pre-Forum Meeting

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**Introduction**

This discussion paper has been prepared by the Working Group to inform discussion during the caucus of representatives of States. This paper contains the Working Group's observations regarding considerations relevant to the development of national action plans for implementation of the Guiding Principles, based on the Guiding Principles themselves and the State practice that has emerged to date.

In its report to the 23rd session of the Human Rights Council, the Working Group identified key trends and challenges as well as priorities in the dissemination and implementation of the Guiding Principles. The Working Group also made various recommendations to stakeholders, including that States should consider the development of national action plans for the development of the Guiding Principles.[[1]](#footnote-1)

A number of States are engaged in the development of national action plans and on 4 September 2013 the United Kingdom launched a national action plan specifically directed to the implementation of the Guiding Principles.[[2]](#footnote-2)

**Strategy Development**

As an initial step, States seeking to implement the Guiding Principles are likely to assess the optimal strategy to ensure a coherent and realistic plan. Many States and regional institutions have rightly drawn links between business and human rights issues as addressed in the Guiding Principles, and the wider CSR agenda.[[3]](#footnote-3) However, a question arises, whether implementation of the Guiding Principles as part of a CSR strategy alone can fully meet the expectations of the Guiding Principles.

The Working Group has previously emphasised the importance of expressly referring to the Guiding Principles in government CSR policies because, among other things, this may help to ensure that government CSR policies "*target the potentially negative impacts of business activities, and thus avoids the reduction of the concept of CSR to only a philanthropic endeavour*".[[4]](#footnote-4)

A possible disadvantage in addressing national implementation of the Guiding Principles as a component of a broader CSR policy is that actions required to ensure implementation of the State's duty to protect and actions required to ensure access to remedy may be overlooked.

A number of States have been developing national plans relating to implementation of the Guiding Principles as part of broader efforts to establish or update national CSR plans. Others are developing stand-alone strategies and plans that relate specifically to the Guiding Principles.

**The Working Group is interested to hear States' views on ways to ensure the development of a clearly identifiable strategy in relation to implementation of the Guiding Principles which meets the expectations of the Guiding Principles while maximising synergies with State policy in other areas, such as CSR. In particular, to what extent do States consider that there are advantages and disadvantages to a separate, identifiable national action plan in relation to the Guiding Principles or a general CSR Plan that includes implementation of the Guiding Principles as a component?**

**Leadership and Focus**

In its report to the 23rd session of the Human Rights Council, the Working Group recommended that States should consider designating responsibility for implementation of the Guiding Principles to a relevant ministry or department and to establish an interdepartmental group (or similar).[[5]](#footnote-5) In this regard, the Working Group recalls its observations regarding the need to ensure policy coherence across different government departments, in particular that: *[[6]](#footnote-6)*

"...*early lessons indicate that a basic step that can help achieve this coherence would be to ensure that the Guiding Principles do not exclusively reside within those State departments and agencies traditionally focused on international human rights standards (e.g. human rights sections of Foreign Affairs ministries or national human rights institutions). Instead, the Guiding Principles are most effective when they are communicated to and integrated into the daily work of those departments and agencies that interact directly with business and with other States on issues such as trade and investment.*"

The Working Group is interested in understanding the recent approaches taken by States to seek to ensure policy coherence in developing national action plans. It may be useful to consider factors leading to the designation of particular ministries or departments to lead implementation efforts, and the extent of and practicalities around interdepartmental consultation and involvement.

Matters for discussion may include the allocation of adequate resources to ministries or departments; the possible need for the lead department or ministry to educate and build capacity in other government departments regarding business and human rights issues as a precursor to interdepartmental discussion regarding national implementation priorities[[7]](#footnote-7); and the extent to which involvement of external experts or consultants may be of assistance.

The Working Group notes that in some States, NHRIs have been given or have assumed a leadership or coordinating role in relation to the development of national action plans and the implementation of the Guiding Principles.

**The Working Group is interested to discuss methods for ensuring the involvement of all relevant government departments in the development of a national action plan and to ensure policy coherence.**

**The Working Group is also interested to discuss the role that NHRIs can play in contributing to the development of a national action plan and to what extent it may be appropriate for States to delegate the task of developing a national action plan to the NHRI.**

**The Working Group is also interested to discuss ways in which States may be assisted in the development of national action plans by cooperation and dissemination of good practice and experience within bilateral, multilateral or regional contexts.**

**Evidence Gathering**

In its report to the 23rd session of the Human Rights Council, the Working Group recommended that States should review existing domestic legal and regulatory frameworks (including to identify gaps in protection and in access to remedy) and to consult with external stakeholders when designing action plans to implement the Guiding Principles.[[8]](#footnote-8)

A baseline assessment of existing policy, law and regulation, against which to analyse alignment with the Guiding Principles, might be regarded as an essential component of State planning in connection with the development of a national action plan. Consistent with the Guiding Principles, any review of the status quo should extend to policy effectiveness and the practicalities of enforcement within legal, regulatory and adjudicative frameworks. However, the achievement of a comprehensive baseline study and gap analysis is likely to pose considerable logistical and practical challenges, and in every case will require careful planning.

It is apparent in a number of States that stakeholder consultation has played a role in identifying national issues and priorities. It may be that States can identify priority actions to be taken without having first undertaken a detailed gap analysis. It may be that a detailed gap analysis or baseline study is not an essential precondition to the adoption of a national action plan. It may be expedient and preferable that a national action plan be prepared ahead of a full evidence-gathering exercise, and, where appropriate, the action plan might envisage such an exercise as a future priority.

**The Working Group is interested to discuss States' experiences in planning and undertaking baseline studies and gap analyses, including methodological approaches and the resources and time required to complete studies effectively.**

**Assuming a national baseline study and gap analysis provides the most credible and transparent basis for development of a national action plan, to what extent are such analyses feasible for States in the short-term and, if not, is it preferable to include plans for such studies as part of the on-going national action plan? What considerations are relevant to the phasing of State evidence gathering and to prioritisation of areas to address?**

**Where States have relied upon stakeholder consultation as a method for identifying priority areas for action, the Working Group is interested to discuss the forms of consultation which States have used and their effectiveness (e.g. surveys, multi-stakeholder roundtables or actor-specific meetings).**

**Review and continuity**

The initial articulation of a national action plan will reflect State practice at a particular point in time but should mark the beginning of a continuous process of implementation. In this regard, it is relevant for States to bear in mind the recommendation in the Guiding Principles that States should consider whether their domestic laws "*provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights*."[[9]](#footnote-9)

A plan should therefore provide clear indications of a timetable for actions identified, for a review of progress and an updating of objectives.

**The Working Group is interested to hear States' views on the appropriate frequency for review of national action plans and updating of objectives.**

**Content**

A national action plan should clearly articulate how the State protects or intends to enhance the protection of human rights against business-related abuse within their territory and/or jurisdiction. The Guiding Principles recognise the State's discretion regarding the appropriate steps to be taken to prevent, investigate, punish and redress private actors’ abuse[[10]](#footnote-10) but recommend that States "*should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication*".

Ideally, a national action plan should outline planned activity in the areas of policy, legislation, regulation and adjudication. The plan should also explain how the State will provide support and guidance to business enterprises in connection with their discharge of the responsibility to respect human rights. Examples of guidance provided by States include the development and publication of toolkits in relation to human rights. States have also taken steps to ensure that internal capacity exists to provide guidance (for example by training civil servants, including overseas diplomats).

The Guiding Principles recommend that States should clearly set out their expectation that business enterprises subject to their jurisdiction respect human rights throughout their operations.[[11]](#footnote-11) A national action plan is one vehicle via which a State can communicate this expectation but it is also important to consider all the ways in which the State interacts with the private sector to ensure that this basic expectation is consistently communicated.

To assist future review, the plan should identify future milestones and objectives. The plan should indicate the means by which objectives will be achieved and provide for periodic review and updating of the strategy within the Plan to reflect developments in the business environment and/or emerging human rights risks.

States should be wary of the risk of focusing on large or multinational enterprises at the expense of addressing the risk of human rights abuses associated with the operations of small and medium sized enterprises. In this regard, States should also bear in mind that small and medium sized enterprises may lack capacity to fully understand and meet their responsibility to respect human rights.

**The Working Group is interested to discuss the experience of States in determining the content of national action plans, in particular as it relates to the identification of priority actions. For example, have States sought to prioritise actions by identifying business sectors which are particularly important within their economy, or sectors in which particularly acute human rights challenges arise?**

**The Guiding Principles encourage States to adopt a 'smart mix of measures' to implement the Guiding Principles;[[12]](#footnote-12) how can States identify the 'smart mix' that is appropriate to them, and how can States most effectively share best practice in this regard?**

**Through their procurement, export credit and investment policies, States can act as multipliers for the implementation of the Guiding Principles. The Working Group will like to hear of States’ experiences concerning this role in their implementation plans.**

1. The Working Group is grateful to Rae Lindsay and Antony Crockett of Clifford Chance LLP for their assistance in the preparation of this paper.

   See A/HRC/23/32, para. 71 (f). [↑](#footnote-ref-1)
2. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf> [↑](#footnote-ref-2)
3. In the European context, the European Commission in its 2011 policy on CSR invited EU member states to develop national CSR action plans by the end of 2012. <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm>. One of the actions included in the EU Strategic Framework and Action Plan on Democracy and Human Rights, adopted by the Council of the EU in June 2012 is for Member States to develop national action plans for the implementation of the Guiding Principles with timing indicated for 2013. www.consilium.europa.eu/uedocs/cms\_data/docs/.../131181.pdf. [↑](#footnote-ref-3)
4. See, A/HRC/23/32/Add.2, para. 16. [↑](#footnote-ref-4)
5. See A/HRC/23/32, para. 71 (a). [↑](#footnote-ref-5)
6. See, A/HRC/23/32/Add.2, para. 25. [↑](#footnote-ref-6)
7. In its report to the 23rd session of the Human Rights Council, the Working Group identified the need to build the capacity of State officials, regulators and National human rights institutions (NHRIs) as a priority. [↑](#footnote-ref-7)
8. See A/HRC/23/32, para. 71. [↑](#footnote-ref-8)
9. See Commentary to Guiding Principle 3. [↑](#footnote-ref-9)
10. See Commentary to Guiding Principle 2. [↑](#footnote-ref-10)
11. See Guiding Principle 2. [↑](#footnote-ref-11)
12. See Commentary to Guiding Principle 3. [↑](#footnote-ref-12)