

Open Consultation on National Action Plans on Business and Human Rights
7th Session of the UN Working Group on Business and Human Rights
20 February 2014
Palais des Nations, Geneva

**Comments from the Working Group on Business and Human Rights of the
International Coordinating Committee of National Institutions for the Promotion and
Protection of Human Rights (ICC)**

DRAFT – CHECK AGAINST DELIVERY

The ICC Working Group on Business and Human Rights is pleased to be able to engage in dialogue with the UN Working Group on Business and Human Rights on this important topic.

NHRIs, business and human rights

National human rights institutions (NHRIs) established in line with the UN General Assembly's 1993 Paris Principles have a broad mandate to protect and promote human rights, including through

- Monitoring and investigating human rights violations and abuses
- Advising governments
- Reporting to regional and international supervisory mechanisms
- Human rights education
- Determining cases.

The Paris Principles mandate includes business and human rights as a core element, as alluded to by the UN Guiding Principles, and as also recognised by the Human Rights Council in Resolution 17/4 endorsing the Guiding Principles, and subsequent resolutions.

The International Coordinating Committee (ICC) is the global association of NHRIs. In 2010, the ICC adopted the Edinburgh Declaration on business and human rights. The Edinburgh Declaration commits NHRIs to taking active steps to promote implementation of the UN Guiding Principles nationally, and at regional and global levels, in coordination with their sister institutions.

Since 2009, the ICC's Working Group on Business and Human Rights has been one major vehicle encouraging and supporting NHRIs to take such action. The Working Group comprises 9 NHRIs drawn from across the ICC's four regional networks - Africa, Asia-Pacific, the Americas and Europe - presently those of Ghana, Malawi, Bolivia, Venezuela, Canada, South Korea, the Philippines, Germany and Denmark.

Over the last four years, following a programme of NHRI capacity development, internal awareness-raising, outreach and advocacy led by the ICC Working Group, as well as by

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NHRI regional networks, NHRI actions in response to business-related human rights abuses worldwide have increased markedly.

A short report prepared last month by the German and Danish NHRIs – and available today at the back of the room - details a selection of such actions, including examples from Sierra Leone, Cameroon, Kenya, Morocco, South African and Zambia, Chile and Mexico, Australia, India, the Philippines, Indonesia, Malaysia, South Korea, Mongolia, France, Germany, Denmark, Scotland, Northern Ireland and the UK.

Such a geographically wide-ranging distribution of NHRI interventions clearly demonstrates the seriousness of business-related human rights issues, and the priority attached to them, by national institutions in the global north and south alike.

National Action Plans on business and human rights – NHRI recommendations

NHRIs have previously advocated the need for and importance of national action plans on business and human rights. The European Network of NHRIs published a set of recommendations for National Action Plans, addressing both their essential content and the type of processes that should be used to develop them, in June 2012.

In addition, NHRIs in France, Finland, the UK, Scotland, the Netherlands and Denmark have already advanced specific recommendations into national processes or dialogues around NAPs in their own countries.

Building on these earlier interventions, the ICC Working Group on Business and Human Rights today would commend to the UN Working Group, governments and other stakeholders, the following five principles regarding NAPs and urge their integration to your own recommendations and work in this area.

1. NAPS as a universal requirement

NAPs should be developed by all states, as a vital tool to promote effective implementation of the UNGPs – and to increase the accountability of governments to rights-holders, both inside and outside their territory, with reference to the human rights standards and requirements to which they have committed, and which the UNGPs recall.

2. Full scope across UNGPs

NAPs should in principle address the full scope of the UN Guiding Principles, across all three pillars. NAPs should furthermore address the application of the Guiding Principles both inside and outside the state's territorial jurisdiction – neglecting neither the impacts of the state and businesses for which it provides the seat outside the territory, nor the impacts of businesses on the human rights of workers, communities and others domestically.

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This is not to advocate a one-size fits all approach, or to say that NAPs should afford equal weight or resources to all issues raised by the UNGPs. On the contrary, NAPs should prioritise for government action those issues which, in the given national context, are the most urgent, in terms of the seriousness and extent of risk to rights-holders that they pose.

3. *Baseline assessment*

Given the wide ranging nature of the UNGPs, the need for NAPs to reflect this, and at the same time, the relative novelty of the UNGPs, as well as historically weak protection for human rights against business-related impacts in many jurisdictions, a robust baseline assessment or gap analysis needs to be undertaken as the first step of any NAP development process. This is essential if the subsequent plan is to have a well-founded and rational basis.

But who should produce such baseline assessments? Governments, being the principal owners of NAPs, and the holder of much of the information needed to assess the state of play in UNGPs implementation, clearly need to be closely involved in producing baseline assessments.

Yet, being also one of their primary targets of NAPs, governments are interested parties. Sometimes, they may also lack the resources or expertise needed to allow a systematic consideration of how the UNGPs cross-refer to national regulations in all substantive policy areas. Accordingly, we recommend that independent entities, such as academic research centres, national human rights institutions, and others, are involved in generating baseline studies or gap analyses. We are pleased to see that in some cases, for example, that of France, steps have been taken in that direction.

4. *Human rights based process*

Yet not only NHRIs, and independent experts need to be involved in developing NAPs. In line with a human rights based approach to development, which many if not most governments have espoused, a NAPs process should be Participatory, Accountable, Non-discriminatory, Empowering and Legal, with reference to rights-holders. Many people who are affected by business-related human rights abuses are from groups at risk of vulnerability and marginalisation within their societies or communities, which may include, depending on context, women, children, indigenous peoples, persons with disabilities, racial, ethnic or religious minorities, migrant workers and the poor.

It is these people, more than anyone else, who need the UNGPs. So it is essential that their voices are heard, and their experiences captured and responded to, in a NAPs process. Appropriate steps must therefore be taken by states to include such rights-

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holders adequately in the national dialogue process for which NAPs provide an opportunity.

5. Monitoring and evaluation

A further element is crucial if NAPs are to serve as a tool for promoting human rights accountability: monitoring and evaluation. As recommended by the European Network of NHRIs' 2012 paper, we therefore propose that NAPs should include achievable and time-bound targets, milestones for delivery, and performance indicators, to permit periodic review on their achievement, inside and outside government, and updating and revision, in line with performance and evolving challenges to human rights and responses.

The approach to reviewing NAPs in a given state will depend on a range of factors: for instance, whether the state in question has a national plan on human rights in general, or a national plan on CSR, with which reporting on the UNGPs NAP might be combined; and also on the role that a national parliament, NHRI, or other independent entities, such as multi-stakeholder bodies, might be given in the process.

While preserving the space for such diversity, however, there is also a role for a process of exchanges of experiences across states regarding NAPs, as well as for oversight of UNGPs implementation, based on NAPs, by regional and/or international supervisory mechanisms. Such processes – both horizontal and vertical – tend to require a standardised basis. We therefore do see a role for a UNGPs assessment template or matrix, at international or regional level, and propose this to the UN Working Group as an area for further investigation.