

Open Consultation on National Action Plans
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Good afternoon, and many thanks to the UN Working Group on Business and Human Rights for the opportunity to speak today as part of this important and timely Open Consultation on National Action Plans.

My name is Sara Blackwell, and I am the Legal and Policy Associate at ICAR – the International Corporate Accountability Roundtable.

ICAR is a coalition of human rights, environmental, labor, and development organizations that works to create, promote, and defend legal and policy frameworks at both the international and domestic levels to ensure that businesses respect human rights in their global operations.

Under our initiative on implementation of the UN Guiding Principles on Business and Human Rights, ICAR is currently engaging in an ongoing project that is specifically focused on the development of National Action Plans – or NAPs – on business and human rights. I am delighted to be participating in this panel today alongside our partner on the NAPs Project, Dr. Claire O'Brien of the Danish Institute for Human Rights.

Since the adoption of the UN Guiding Principles by the UN Human Rights Council in 2011, much attention has focused on the corporate responsibility to respect human rights under Pillar 2 of the UNGPs. So far, however, much less attention has been devoted to understanding and unpacking the State duty to protect human rights under Pillars 1 and 3. Strongly reflecting this gap, we have seen an increasingly resounding call from civil society for evidence that the State duty to protect is being implemented by governments and effectuated on the ground.

Against this background, ICAR and the Danish Institute launched the NAPs Project in August of 2013 with the goal of producing a robust NAPs Toolkit in order to support the development and evaluation of NAPs in answering this call and holding governments to account for progress in fulfilling the State duty to protect.

Recognizing the many phases that must be undertaken for a holistic plan, the NAPs Toolkit is comprised of three key components:

- (1) A model National Baseline Assessment;
- (2) A model National Action Plan; and
- (3) Proposals for follow-up monitoring and reporting modalities for assessing State progress in carrying out their respective NAPs.

First, the model National Baseline Assessment – or NBA. In order for NAPs to accurately and strategically address the business and human rights realities within individual countries, and to have a baseline for future measurement of State progress, governments must first conduct thorough analyses of existing measures and gaps in engaging with the duty to protect. The content of the model NBA is comprised of key issues for consideration, targeted implementation questions, and measurable indicators to support assessment of existing State efforts to implement the UNGPs under Pillars 1 and 3, which most directly require State action. For example, questions that a government may ask as part of its NBA may be, “What type of formal public reporting by business enterprises of non-financial information is required by law?” or “Do public procurement contracts include provisions that clarify the State’s expectation that the enterprises delivering goods or services respect human rights?”

Second, the model National Action Plan component of the NAPs Toolkit focuses on the minimum content of NAPs and a human rights-based consultation process for developing them. States function in various roles: they are policy-makers, legislators, adjudicators, contractors, investigators, monitors, incentivizers, facilitators of dialogue, standard-setters, sanctioners, and so on. The model NAP comprehensively addresses this by recommending minimum actions that States must take in fulfilling each of these roles in a way that is consistent with and gives effect to the UNGPs.

Third, the follow-up modalities component of the NAPs Toolkit examines mechanisms at sub-regional, regional, and global levels for assessing State progress in carrying out actions outlined in NAPs on a periodic basis. Such mechanisms could include Universal Periodic Review, peer review, expert review, and treaty body reporting mechanisms.

In developing each of these three components of the NAPs Toolkit, ICAR and the Danish Institute are convening a series of dialogues across world regions.

With civil society, we consulted 13 civil society leaders from 10 different countries in the European region in October 2013, and we then consulted 21 civil society leaders from 13 different countries in the African region in November 2013.

With National Human Rights Institutions, we consulted over 50 members of the Network of African National Human Rights Institutions – or NANHRI – in November 2013.

With business, we are consulting with over 40 business representatives – including members of the Global Business Initiative and representatives from major industry initiatives working on human rights – next month in London.

In the new year, we are also leading two multi-stakeholder dialogues for the Latin America and Asia-Pacific regions in March and April, respectively. Each of these multi-stakeholder dialogues will include 60 participants from government, civil society, academia, business, and National Human Rights Institutions.

These dialogues are significant components of the NAPs Project, and participants' inputs are feeding into the Project's final report and NAPs Toolkit, which are scheduled for release in June 2014.

With that introduction to the NAPs Project, I would like to take the opportunity to step into the civil society perspective and share with you 5 key recommendations that the NAPs Project has heard directly from civil society leaders during its regional NAPs dialogues.

Briefly, these 5 recommendations are: (1) NAPs can and must be done, (2) engagement must be the hallmark of NAPs developments, (3) NAPs must be action-oriented, (4) NAPs must ensure policy coherence, and (5) NAPs processes must be ongoing and periodic to ensure progress towards implementation.

First – NAPs can and must be developed. It is clear that governments are diverse in their economic, geographic, cultural, and practical contexts. However, the NAPs process can and must be done by each government. We have seen initiatives in this regard from countries like Spain who have tight resource constraints, yet are engaging through an external consultancy to develop a NAP. At the same time, healthy economies like the UK and the Netherlands have developed NAPs through internal capacity. Moreover, countries in the global South – such as Mozambique and Chile – have communicated intentions to initiate National Baseline Assessments. It is important to note that there are ways to ease the process of developing NAPs when resources prove a challenge. Such methods include “cross-learning” or “twinning,” whereby NAPs and the process used to develop them can be shared between countries, between National Human Rights Institutions, with regional organizations, or with civil society partners in strategic ways to help provide capacity and technical support to NAPs processes.

Second – engagement and consultation with all relevant stakeholder groups – including civil society organizations and rights-holders – is imperative. NAPs can provide a constructive opportunity for robust collaboration, consultation, engagement, and trust-building amongst stakeholders. Moreover, governments must conduct NAPs consultations in a transparent manner, providing publicly available summaries of consultations so that stakeholders may later assess governments' incorporation of their inputs into periodic or final drafts of NAPs.

Third – the content of NAPs must include clear steps in terms of policy reform. As centralized or “one-stop shop” national policy documents, NAPs are a tool for governments to clearly and uniformly articulate their policies on business and human rights and communicate them to stakeholders. However, NAPs must be action-oriented and include key steps that the government will take to implement their commitments under the UNGPs. These could include elaboration of commitments to require mandatory non-financial reporting, reforms to public procurement with respect to human rights, human rights due diligence obligations, and reforms to legal systems to create better conditions for accessing remedies, to name a few.

Fourth – the scope of NAPs must be government-wide and ensure policy coherence. NAPs must help coordinate cross-departmental efforts to implement the UNGPs by outlining and assigning

tasks to the diverse array of government bodies addressing business and human rights-related issues. This includes ministries of business, trade, or justice – which should be involved at an early stage and throughout the NAPs process. This cross-cutting, government-wide approach properly recognizes the various ways that government interacts with business enterprises, from such wide-ranging forms as trade and investment support to more regulatory efforts, including those linked to environmental protection and financial regulation.

And fifth – the NAPs process must be ongoing and capture progress in achieving goals. The content of NAPs should include concrete targets and timelines to ensure government accountability for UNGPs implementation and to ensure that governments and other stakeholders have a clear understanding of specific State actions to be undertaken. Then, follow-up modalities, such as through the Universal Periodic Review process or others, should be engaged in to capture State progress, especially where National Baseline Assessments have been conducted and where unambiguous targets and timelines are outlined in the content of NAPs.

So, to summarize: (1) NAPs can and must be done, (2) engagement must be the hallmark of NAPs developments, (3) NAPs must be action-oriented, (4) NAPs must ensure policy coherence, and (5) NAPs processes must be ongoing and periodic to ensure progress towards implementation.

To close, I'd like to take this opportunity to announce a collaboration between the NAPs Project Team and the Business and Human Rights Resource Centre to launch the official NAPs Project Webpage, which is being hosted on the BHRRC's website. I encourage you to visit the webpage, found under the Guiding Principles portal of the BHRRC website at www.business-humanrights.org, for more on the NAPs Project and to keep up-to-date on its developments and deliverables.

Again, many thanks to the UN Working Group for the opportunity to share this submission today and for providing a forum for informed discussion and inspired collaboration on NAPs. We at ICAR look forward to continued progress in the development of NAPs across regions and contexts and to continuing to engage in these types of robust dialogues regarding such progress.

Please visit our website or contact us for more information about our project.