

## **UN Working Group on Business and Human Rights – Open Consultation on National Action Plans in the implementation of the UN Guiding Principles on Business and Human Rights**

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### **→ Check against delivery**

Dear Chair, Excellencies, Ladies and Gentlemen,

I would like to thank the UN Working Group for the invitation to say a few words about UNGP National Action Plan from the perspective of a private sector company. I understand from the Working Group that they want to have a very open conversation about this topic. I will try to give you my honest personal viewpoint as a representative of Nestlé, the world's leading Nutrition, Health and Wellness Company, as a representative of the Board of the Swiss UN Global Compact Network and as a practitioner having worked in the area of human rights for many years both in the public and private sector.

### **1. What is important to consider in National Action Plans (NAPs)?**

The first and maybe most important elements to consider in the development of an NAP are balance and international alignment. Companies compete in markets, States compete to attract companies and investments. We certainly all agree that this should not take place to the detriment of human rights. At the same time, Governments will want to avoid the creation of major regulatory disadvantages for companies – especially those with international operations – hosted on their territory. Therefore, a certain level of international alignment and coordination among States is critical in the development of their NAPs. Here the UN Working Group should play a leading role to make sure that all NAPs are fully aligned with the UN Framework and Guiding Principles on Business and Human Rights in order to create a consistent level-playing field among Governments in this area.

A second important step in my view is then to have a close look at what is already in place within the existing regulatory and implementation framework on Business and Human Rights within a given State. We are currently participating in a multi-stakeholder process initiated by the Swiss Government in order to develop the Swiss NAP. One of the first conclusions from a private sector perspective is that the current regulatory framework is already very complete with regards to domestic activities of companies hosted in Switzerland. We also believe that this is the case in terms of international activities, but the Swiss NGO community obviously has a different viewpoint on this issue.

This said, regulatory frameworks and implementation and enforcement capacity are eminently local. So are the vast majority of human rights challenges, for that matter. It is therefore critical that in countries of weak governance and high human rights risks the local legislative frameworks, judicial systems, including law enforcement, are strengthened. We should not only look at developing NAPs in Europe and North America, but also have a particular focus on the Global South. Industrialized countries could support the establishment of NAPs in countries of the Global South as part of their development cooperation. The improvement of judicial systems, good governance and enforcement capacity does not seem high on the agenda in international development cooperation currently. I may have missed it, but I don't think I've seen any substantial discussion around this in the debate on the Post-2015 Sustainable Development Goals. So this is my third point. Support for judicial systems and NAPs on the ground. This creates a level playing field for business. A company like Nestlé is heavily decentralized. We have 470 factories, half of them in developing countries. We source locally, process locally and market locally. And we compete with local competitors. We do of course abide by international standards as a company, but if we all, collectively, want to have a genuine impact, we have to lift the bar at the local level for all competitors – big or small - across the world.

## **2. Don't forget Pillar TWO**

There is a temptation to only focus NAPs on pillar 1 – State Duty to Protect and pillar 3 – Remedy of the UNGP. However, States should not forget pillar 2, the Corporate Responsibility to Respect human rights, as this is where the fastest and most real

progress can actually take place. Companies need guidance on how to perform a human rights due diligence. This is not a given. At Nestlé, we have a comprehensive 8 step human rights due diligence programme developed together with the Danish Institute for Human Rights. As the first company, we have just published a White Paper on our first 7 Human Rights Impact Assessments (HRIAs) and the lessons learnt drawn from this experience ([“Talking the Human Rights Walk”](#)). For having led the business and human rights programme in our company for the last 6 years, I can tell you that this is by no means easy or obvious. But it can be done and, based on our experience, create a real value added for companies. This one of the key messages of the HRIA White Paper. It is very important that National Action plans give clear guidance on what the Government expects of companies and how they should conduct their due diligence. This guidance has to be inclusive (from MNEs to SMEs), realistic and feasible. The UK Action Plan is a good example in this respect.

At the same time Governments should clearly express their expectation that companies active on their territory respect human rights. A conversation between a Head of State or Minister and a CEO about human rights and social impacts can work miracles. But is this really what they usually talk about?

States can and should also lead by example in order to put these expectations into practice. Things like a Government Procurement Policy, which includes human rights criteria, or human rights in the investment criteria of a State Pension Fund are two of many possible options. Incentives often work better than punishment, also for companies.

Voluntary initiatives, such as the UN Global Compact, the Voluntary Principles on Security and Human Rights, or the Code of Conduct for Private Military and Security Companies, can be excellent tools for rapid progress. But again, Governments should clearly express their expectation that companies participate in these initiatives. In this regard, NAPs present a real opportunity for Government to clarify, including the possibility to prioritize certain high risk sectors.

Most voluntary initiatives already include transparency and reporting requirements, and obviously reporting is an integral part of a solid human rights due diligence

process. This said, the expectation that companies report on their implementation of pillar 2 needs to be expressed in NAPs. Like for the Human Rights Impact Assessments, it is important to demonstrate to companies of all sizes and sectors that this can be done and give guidance on how to best go about it. In order to avoid a proliferation of new and unaligned reporting standards, I would urge Governments, civil society, academia and companies to focus on the ones, which already exist, such as GRI or the UN Global Compact differentiation framework, and improve them, where necessary. Again, there is a need for capacity building, focus and simplicity. Companies are expected to report on a whole series of non-financial issues, and you don't want to end up with just the massive GRI reports of a few multinationals (the latest draft of our 2013 GRI A+ report I have seen is about 400 pages long...).

### **3. Grievance mechanisms and remedy**

What we have seen when we analyzed the current legislative framework in Switzerland, is that it already contains the necessary provisions for effective judicial grievance and remedy mechanisms to address potential human rights violations occurring within the country's territory. As mentioned above, the judicial remedies for corporate activities overseas have to be developed and implemented directly in the host countries. From what I can tell, both the UK and the recently published Dutch NAPs came to similar conclusions.

What can and should be explored much better though, are non-judicial grievance mechanisms, such as mediation, conflict resolution, arbitration, or the famous National Contact Points (NCPs) under the OECD Guidelines for Multinational Enterprises. These mechanisms are clearly underutilized and if you allow me to come back to the case of Switzerland – this country has huge tradition in conflict resolution and mediation in often extreme situations, so there is a good potential in the area of business and human rights. If conflicts are de-escalated on time, violations can often be avoided.

Eventually, there is a need for guidance on company level grievance mechanisms. This is one step before you may even need a mediation. We have worked on this

within our own company for both employees and external stakeholders, and it is quite a journey.

#### **4. Conclusion**

Let me conclude by saying that any development of a National Action Plan should be based on a multi-stakeholder process. In such a process – and you'll forgive me for stating the obvious – business has to be at the table at all times, both through business associations and individual companies. It is clear that such a multi-stakeholder process can lead to tensions among the participants, and some of those are reflected in the Dutch Action Plan. However, this is also a tremendous opportunity to have a real business and human rights conversation at the national level with all relevant stakeholders, clarify misunderstandings, and manage expectations through a proper dialogue and constructive cooperation.

Another key success factor for an NAP is predictability. Predictability is what has characterized the UN Framework and Guiding Principles process of John Ruggie. All stakeholders saw and knew what was coming, no surprises. This led to the broad consensus, with which the Framework and the Principles were received.

And a final point, although I often get challenged when I say this: let's not complicate things too much. Human rights are not rocket science, but common sense. And the respect for human rights is simply good longterm business practice and a basis for longterm business success. If we manage to convey this as a business and human rights community and through the National Action Plans, we have already made a huge step forward.

Thank you.