



INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE



ASSESSMENTS OF EXISTING NATIONAL ACTION PLANS (NAPS) ON BUSINESS AND HUMAN RIGHTS

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PROJECT TEAM



The International Corporate Accountability Roundtable (ICAR) harnesses the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.



The European Coalition for Corporate Justice (ECCJ) promotes corporate accountability by bringing together national platforms of civil society organizations, including NGPs, trade unions, consumer advocacy groups, and academic institutions from all over Europe.



The Center for the Study of Law, Justice, and Society (Dejusticia) is a Colombia-based research and advocacy organization dedicated to the strengthening of the rule of law and the promotion of social justice and human rights in Colombia and the Global South.

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INTRODUCTION

BACKGROUND

The UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (UNGPs) in June 2011.¹ In June 2014, the Human Rights Council subsequently called on all Member States to develop National Action Plans (NAPs) to further the implementation of the UNGPs within their respective national contexts.² This development followed similar requests to Member States made by the European Union in 2011³ and 2012,⁴ and by the Council of Europe in 2014.⁵ Additionally, in 2014, the Organization of American States (OAS) General Assembly endorsed the UNGPs, and requested the Inter-American Commission on Human Rights (IACHR) to “continue supporting States in the promotion and application of State and business commitments in the area of human rights and business.”⁶ Following this initial endorsement, in June 2016, the OAS General Assembly requested the IACHR to collaborate with and support member States in the development of NAPs on business and human rights.⁷

To date, seventeen countries have developed and approved NAPs on business and human rights, including in 2013: the United Kingdom⁸ and the Netherlands;⁹ in 2014: Denmark¹⁰ and Finland;¹¹ in 2015: Lithuania,¹² Sweden,¹³ Norway,¹⁴ and Colombia;¹⁵ in 2016: the United Kingdom’s section iteration¹⁶, Italy,¹⁷ Switzerland,¹⁸ the United States,¹⁹ and Germany,²⁰ and in 2017: France,²¹ Poland,²² Indonesia,²³ Belgium,²⁴ and Spain.²⁵

Additionally, a number of other States are in the process of developing NAPs on business and human rights or have publicly announced an intention to do so—including an increasing number of countries in the Latin American and ASEAN regions.²⁶ As the creation of NAPs on business and human rights continues to proliferate globally, it is essential that existing NAPs be closely analyzed in terms of their content and processes in order to assess best practice and to suggest areas for improvement going forward.

In November 2014, the International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ) published the first *Assessment of Existing National Action Plans (NAPs) on Business and Human Rights*, which includes assessments of the NAPs of the United Kingdom, Netherlands, Denmark, and Finland. In November 2015, an updated assessment report including the assessments of the Lithuanian and Swedish NAPs was published by ICAR and ECCJ.

This third iteration of the NAPs assessment report, co-authored by ICAR, ECCJ, and the Center for the Study of Law, Justice, and Society (Dejusticia), aims to further support the development and review of NAPs on business and human rights by providing an assessment of all existing

NAPs on business and human rights available in English before April 2017, namely those of the United Kingdom (both 2013 and 2016 versions), the Netherlands, Denmark, Finland, Lithuania, Sweden, Norway, Colombia, Italy, Switzerland, and the United States. The report authors aim to conduct assessments of the English translations of all additional existing NAPs when they become available, as well as to assess all future NAPs as they are published.

It is intended that these assessments are used to help provide critical and structured feedback to States who have already developed NAPs and to provide a reference point for States that are on the path to developing NAPs.

METHODOLOGY

The following assessments of existing NAPs on business and human rights were conducted using the NAPs Checklist, developed by ICAR and the Danish Institute for Human Rights (DIHR) and published in Annex 5 of the joint ICAR-DIHR NAPs report, entitled *National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks*.²⁷ The NAPs Checklist lays out a set of twenty-five criteria that address both the content of NAPs and the process for developing them. Completed NAPs Checklist for eleven out of the seventeen countries that have thus far released NAPs on business and human rights can be found in the Annex to this report.

In analyzing each NAP's fulfillment of the criteria outlined in the NAPs Checklist, ICAR, ECCJ, and Dejusticia conducted extensive desk-based research, as well as direct consultations with ECCJ member organizations involved in the development of the NAPs in their specific country contexts, and Colombian civil society with experience in issues of corporate accountability. For Lithuania, only desk-based research was possible because no ECCJ member organization was involved in the NAP process and inquiries with the Lithuanian government yielded no response. Drawing from existing research and the experiences of local civil society groups, these assessments of existing NAPs are intended as living documents, subject to further revision and review as the NAPs processes continue within the countries addressed in this report and as new NAPs on business and human rights are published by additional countries. For example, this report includes an updated assessment of the Colombian NAP, which was originally reviewed by ICAR and Dejusticia in September 2016, and updated in May 2017 following significant changes in the country and the publication of an annual review of implementation of the NAP by the Colombian government.

INTRODUCTION

The creation of NAPs on business and human rights is a step toward increased accountability for State action in implementing key business and human rights frameworks, including the UNGPs. Since the publication of the 2015 Update of the ICAR-ECCJ NAPs Assessment report, the number of non-European countries working on formulating NAPs on business and human rights has increased greatly; and three non-European countries have published NAPs, namely Colombia, the United States, and Indonesia. This cross-assessment of NAPs from varying regions presents a unique opportunity to not only identify best practices across global NAPs processes, but also to evaluate the strength and likely efficacy of the planned measures outlined in these NAPs. The NAPs included in this cross-assessment include those of the United Kingdom (2013, 2016), the Netherlands, Denmark, Finland, Lithuania, Sweden, Norway, Colombia, Italy, Switzerland, and the United States.

As a means of consolidating the information and analysis presented throughout this report, this section provides a cross-assessment on general trends across eleven out of the seventeen existing NAPs in terms of both the process used to draft these NAPs and their actual content. It is hoped that both the positive and the negative trends discussed below can inform the drafting of other States' NAPs.

PROCESS

One positive trend that persists across the assessed NAPs is the inclusion of various government entities during the drafting process.²⁸ All of the assessed NAPs provided for participation across relevant government ministries in some way, for example, through the creation of inter-ministerial working groups. Moreover, in each of these cases, the government entity responsible for oversight of the drafting process was clearly identified.

Another continuing trend across NAPs processes is the inclusion of some form of consultation with stakeholders. While some consultations appear to have been more comprehensive and inclusive than others, stakeholder engagement appears to be increasing overall in the assessed NAPs processes. For example, four of the eleven NAPs processes utilized stakeholder advisory committees or steering groups of one form or another, namely Denmark, Finland, Colombia, and Italy. Additionally, five of the eleven NAPs, those of Finland, Sweden, Colombia, Switzerland, and Italy, provided stakeholders the opportunity to comment on a draft version of the NAP prior to adoption of the final version. However, it does not appear that the assessed NAPs included

processes to facilitate participation in these consultations by disempowered or at-risk stakeholders.

Additionally, more NAPs appear to be including information in relation to follow-up and implementation of the planned future actions included in the NAP. While all of the NAPs assessed, except the United Kingdom's 2016 NAP, identify to some extent which government agency is responsible for implementation of individual action points; the level of specificity varies greatly. Four NAPs, those of Finland, Colombia, the United States, and Switzerland, identify the responsible party for implementation of every individual action point. For example, the United States' NAP designates the "implementing department or agency" in a separate column in the NAP, and the Italian NAP designates the "lead" implementing agency for each policy instrument in an Annex. On the other hand, the NAPs of Sweden, Norway, the Netherlands, and Italy provide this information for less than half of their action points. In addition, six of the assessed NAPs identify clearly who is responsible for overall follow-up of the NAP; while five of the assessed NAPs lay out frameworks for monitoring of and reporting on implementation.

One major weakness across assessed NAPs is a lack of transparency regarding the drafting process. Overall, there was a general failure by States to provide a timeline for their NAP processes or publish terms of reference. While the United States did publish terms of reference and a timeline for public consultation, it did not provide further information about the timeline of the drafting or revision process. Additionally, no State published information about the budget that it had set aside for the NAP drafting process.

Another significant weakness in the drafting process of most assessed NAPs is the failure to conduct national baseline assessments (NBAs) to inform the content of the NAP. Only two of the eleven assessed NAPs, those of Norway and Italy, are based on a comprehensive NBA. While a few other States did conduct preliminary studies on relevant laws and policies, such as an "internal mapping" (the Netherlands), a background memorandum (Finland), or a "stocktaking" (the United States), none of these documents rose to the level of a comprehensive NBA. This is a key failure that should be addressed in future NAPs on business and human rights as NAPs must be evidence-based and tailored to address existing protection gaps in a State's laws, policies, and precedents.

CONTENT

Some generally positive trends in relation to the content of the eleven assessed NAPs are that each NAP explicitly states a commitment to the UNGPs, discusses international and regional organizations and standards, and includes some discussion of thematic and sector-specific human rights issues.

One area of advancement in the newly assessed NAPs is an increase in providing commitments to future action. In 2015, the broad trend of the NAPs thus far evaluated had been to focus primarily on describing past actions the State had taken, instead of focusing on future commitments. While all assessed NAPs continue this trend of expounding upon past actions, some NAPs, particularly those of Italy, Colombia, and Norway, do a good job of laying out commitments to future actions. However, in the majority of cases, the future action points that are included across the assessed NAPs are overly vague and do not provide information about concrete steps that the State will take. This makes it extremely difficult for stakeholders to adequately monitor whether the State has implemented the actions it has committed to taking within the NAP.

Another area of improvement in the assessed NAPs is increased focus on vulnerable or excluded groups. The NAPs of Finland, Italy, and Colombia take into special consideration various vulnerable groups, such as children, women, indigenous peoples, peoples with disabilities, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons. Other NAPs, such as those of the United Kingdom, United States, and Switzerland, also mentioned vulnerable or excluded groups, though to a lesser extent.

A number of significant weaknesses identified in prior iterations of this NAPs assessment report persist. One of the most significant weaknesses of the content of the assessed NAPs thus far is their failure to sufficiently explore regulatory options to ensure adequate human rights protections and access to remedy. The majority of action points included in the assessed NAPs are primarily focused on actions that involve awareness-raising, training, research, and other voluntary measures, with very little focus on supporting the development of regulatory actions. This is problematic as regulatory actions are more likely to effectively and efficiently address existing governance gaps.

Similarly, while there have been improvements in the overall discussion of Pillar III, the majority of assessed NAPs still only briefly address access to remedy. The majority of NAPs that address Pillar III more extensively largely lack specificity in the commitments made by the State to improve access to remedy and fail to seek to address domestic barriers to access judicial remedy for business-related human rights abuses which occur at home or abroad, focusing instead on regional or international initiatives and non-judicial mechanisms. For example, the Norwegian NAP addresses access to remedy solely by committing to participate in international or regional initiatives, while the United Kingdom's NAP commits the State to continue supporting remedy procedures in other countries. Similarly, the NAPs of the United States and Italy focus on non-judicial remedies such as the OECD National Contact Point (NCP) process or grievance mechanisms under the International Code of Conduct for Private Security Service Providers.

Lastly, only four of the eleven assessed NAPs address the full scope of each States' territorial jurisdiction. The majority of the assessed NAPs focus on addressing corporate-related human rights abuses either at home or abroad, with the exception of the Italian, United Kingdom, Swedish, and Danish NAPs. The Colombian NAP focuses only on the actions of Colombian or foreign companies operating within the country; while the United States, Swiss, Norwegian, and Finnish NAPs focus solely on addressing the impacts of their respective country-based corporations abroad.

ASSESSMENT SUMMARIES

The following assessment summaries provide an overview of the key outcomes and observations gathered through the full assessments of eleven assessed NAPs on business and human rights, namely, from the United Kingdom, the Netherlands, Denmark, Finland, Lithuania, Sweden, Norway, Colombia, Italy, Switzerland, and the United States. It is hoped that other States that are considering beginning the process of creating a NAP will use these assessments to inform their own processes.

The full assessments, touching upon all twenty-five criteria outlined in the ICAR-DIHR NAPs Checklist, are provided in the Annex to this report. The following assessment summaries are provided for ease of reference. However, readers are encouraged to cross-reference these summaries with the full assessments, where further detail and analysis are provided.

1. UNITED KINGDOM (2013)

INTRODUCTION

The United Kingdom (U.K.) was the first State to publish a NAP specifically focused on business and human rights and explicitly on implementation of the UNGPs in particular. The United Kingdom made its initial commitment to create a NAP in 2011²⁹ and launched the document in September 2013.³⁰ Other ongoing U.K. government initiatives, while perhaps not explicitly framed in terms of business and human rights, also reflect U.K. government activity in this area.³¹

The U.K. should be commended for showing leadership in embarking on the process of developing a NAP and for being the first state to publish such a plan. However, this willingness to take initiative at a time when other States were reluctant to move forward should not mask some significant oversights in the drafting and consultation process. Nor should it mask the apparent lack of momentum in taking forward some elements of the NAP since its release.

In terms of future actions on the part of the U.K. government, the NAP offers mostly voluntary self-regulation, is somewhat broad, and lacks timelines for implementation. Civil servants have acknowledged that further work is needed to deliver on the commitments made in the plan.

One of the aims of this assessment, laid out in general terms in this document and more fully in the attached checklist, is to provide a constructive contribution to the process of creating a new and updated NAP, which the United Kingdom had committed to do by the end of 2015.³²

This summary provides key trends in terms of process and content, as identified through the assessment of the U.K. NAP.

PROCESS

The positive aspects of the NAP drafting process include the facts that the government entity tasked with overseeing the process was clearly identified and a cross-departmental steering committee was created to ensure that other parts of the government would have a voice in the process. Moreover, there were pre-drafting consultations with a wide range of stakeholder groups and the NAP lays out a framework for follow-up (i.e. through the Annual Report on Human Rights and Democracy) and, as noted above, commits the United Kingdom to updating the NAP by the end of 2015.

The first weakness in the NAP drafting process was that, as far as ICAR and ECCJ are aware, the United Kingdom did not conduct a national baseline assessment (NBA)³³ prior to the drafting of the NAP. This is problematic as a NBA has the potential to provide evidence and data concerning the State's unique context, current progress in implementation, and remaining governance gaps, all of which are essential in informing the NAP and ensuring its efficacy in addressing the most pressing business and human rights concerns within the country.

There were helpful pre-drafting consultation events with stakeholder groups, such as civil society (including trade unions and NGOs) and different types of businesses. However, the consultation process could have been improved to better ensure that the other relevant stakeholders, including impacted communities and rights-holders, were heard. Specifically, the government should have conducted and published a stakeholder mapping to ensure that all stakeholders, even those that are less obvious, were given a chance to voice their opinion. Similarly, the government failed to provide any form of capacity-building in terms of government-wide education on the UNGPs and failed to facilitate participation in the consultation process by disempowered or at-risk stakeholders. This means that some voices that would otherwise have been heard may have been excluded from the dialogue. Moreover, once the pre-drafting consultation was complete, no draft document was published. The government did send a copy of the draft to select stakeholders. However, an additional follow-up consultation with a broad range of external stakeholders on the draft NAP was not conducted. In conjunction with the delays to the process, this meant that there was a lack of transparency around the government's prioritization or de-prioritization of certain issues or concerns following the consultations.

CONTENT

A strength of the content of the U.K. NAP is that it includes references to how the NAP will influence the United Kingdom's interaction with international and regional organizations and standards. The NAP also addresses a few thematic and sector-specific human rights issues, such as commitments in relation to procurement and investment agreements, as well as

instructions to embassies and high commissions to support human rights defenders working on issues related to business and human rights in line with the EU guidelines.

However, the content of the U.K. NAP could be significantly improved. Although the NAP is organized around all three Pillars of the UNGPs, it is heavily focused on Pillar II, with less attention given to Pillar I and with a minimalist approach to Pillar III. The future actions set out in the NAP, which primarily focus on voluntary measures, do little to set out binding measures that broaden and deepen the government's legal duty to protect human rights and guarantee access to judicial remedy for business-related human rights violations. The fact that the commitments made by the U.K. government in the NAP are vague and lack timelines for implementation, and that the NAP rarely identifies what part of the government will be in charge of implementing each planned action, is indicative of a lack of planning and coordination. This also weakens the ability of any party to assess to what extent the United Kingdom has fulfilled the steps it has committed to within the document. Finally, the NAP does not prioritize the most serious business-related human rights abuses. The plan does mention marginalized and at-risk groups, but it lacks an adequate strategy to address these vulnerable populations

2. THE NETHERLANDS

INTRODUCTION

The Netherlands was the second country to publish a NAP on business and human rights. The Dutch House of Representatives requested that this NAP be developed, and the final product was published in December 2013.³⁴ Notably, extensive stakeholder interviews were conducted prior to drafting the Dutch NAP. However, while the content of the NAP responds to concerns raised during the stakeholder interviews, it is primarily a backward-looking document with little attention given to commitments to future action. The few commitments for future action that are included in the NAP could also be improved, as they are mostly vague and mainly focused on awareness raising, funding, risk-assessment, and training instead of regulatory action and concrete measures for improving access to remedy.

This summary provides key trends in terms of process and content, as identified through the attached assessment of the Dutch NAP.

PROCESS

The positive aspects of the NAP drafting process include the facts that the government entity tasked with overseeing the process was clearly identified and various entities of the government were included in the process through an inter-ministerial working group. Moreover, there were extensive pre-drafting interviews with stakeholders (i.e. business, civil society, and “implementing organizations”), as well as one round of single stakeholder consultations during the drafting process.

One weakness of the Dutch NAP drafting process is that no national baseline assessment (NBA) was conducted and/or published. Although there was an “internal mapping” of government policies carried out by the inter-ministerial working group, it did not rise to the level of a NBA and was not made publicly available.³⁵ The interviews appear to have highlighted main issues of concern for the various stakeholders. However, an NBA is required to fully see the State’s unique context, progress in implementation, and governance gaps that could be filled to better protect human rights in relation to business activities.

The stakeholder interviews prior to the NAP drafting process were relatively extensive, involving interviews conducted by an external expert and then follow-up meetings with the three stakeholder groups (i.e. business, civil society, and implementing organizations) separately. However, only a total of 50 external stakeholders were interviewed, no public consultations took place, no capacity-building measures were included in the interview process, and an overall timeline and terms of reference for the entire NAP process were never made

publicly available. In addition, participation by disempowered or at-risk stakeholders was neither prioritized nor facilitated during the NAP process.

Finally, the NAP does not specify any follow-up procedures for implementation of the commitments made within the NAP, and it does not provide any timeline for re-writing or updating the NAP. This is problematic because most of the action points were meant to occur in 2014, so the lack of commitment to revisiting the NAP could mean that nothing occurs after the end of 2014. It also means that it is unclear whether there will be any assessment of how effectively the listed action points have been put in place in the future, if at all.

CONTENT

It is positive that the NAP recognizes that businesses need to respect human rights both abroad and domestically, that it includes an explicit commitment to the UNGPs, and that it integrates a careful review of the CSR activities and intentions of the government. The NAP also discusses several thematic issues and how the Netherlands interacts with international and regional organizations and standards. For instance, it aims to improve policy coherence by integrating human rights and business concerns in trade and investment agreements, including at the EU level.³⁶ Another positive government initiative is the Sector Risk Analysis, which was announced earlier in the Dutch CSR policy letter but referenced in the NAP. The Sector Risk Analysis entails conducting a study to define the sectors that run the greatest risk of human rights abuses. As a follow-up, the government plans to reach agreements to address these risks with business enterprises that operate in these sectors. This approach is both promising and innovative. Its success, however, depends on the quality of the study, the degree to which the agreements are binding, the manner in which they will be monitored, and whether a failure to respect them will entail consequences.

The Dutch NAP's content is mostly focused on current policy measures related to business and human rights, the issues raised during the stakeholder interview process, and the government's response to those issues. The section that is dedicated to forward-looking action points is very short, at only two pages out of the 44-page document. The action points listed are also unsatisfactory as the emphasis is on awareness-raising, training, risk assessment, and funding.

While these initiatives are certainly important, there should be action points that are also more regulatory in nature.³⁷ The Dutch NAP is also focused mostly on Pillar II, with much less attention given to Pillars I and III, which is problematic as the full scope of the UNGPs should be addressed. The NAP also does not prioritize the most serious business-related human rights abuses, and it does not mention marginalized or at-risk groups.

Moreover, many of the action points are overly vague and do not identify a clear timeline for

implementation or a responsible government entity. For example, although the NAP states that “credibility is an important element of the Dutch human rights policy,”³⁸ there is no concrete commitment to change policies or legislation if implementation and enforcement with the government’s human rights policy is not actually achieved. Furthermore, although the NAP states that CSR is an integral part of trade missions and “expects companies represented in trade mission to look into the possible adverse effects of their operations on communities,”³⁹ the government only expresses an expectation towards companies or trade missions and embassies, while not setting a clear path forward toward doing so.

3. DENMARK

INTRODUCTION

Denmark published its NAP on business and human rights in March 2014. The Danish NAP is organized around the three Pillars of the UNGPs. Within each Pillar, there is a general summary of the UNGPs contained in that Pillar, a discussion of the recommendations provided by the Danish Council for CSR, and a description of actions that have already been taken to implement principles under that Pillar. Pillar I also includes a short list of actions that the Danish government commits to take in the future. Additionally, the two annexes go through each UNGP under Pillars I and III and explain which past, current, and (occasionally) future actions have contributed or will contribute to that UNGP's implementation. The Ministry of Business and Growth and the Ministry of Foreign Affairs, which were responsible for the NAP drafting process, conducted consultations. However, the government could have improved the consultation process by including more stakeholders and extending the time allotted for this aspect of the NAP process. Other procedural deficiencies include the failure to conduct a national baseline assessment (NBA) and the lack of terms of reference and a timeline for the overall NAP process.

Denmark has undergone a number of initiatives to promote business respect for human rights. One such initiative has been to extend the CSR reporting requirement for large Danish companies to include policies to respect human rights and policies to reduce negative impacts on the climate. Another initiative has been to establish a Mediation and Complaints-handling Institution for Responsible Business Conduct, which was established by law in 2012. These are positive developments. However, the content of the NAP could still be significantly improved by including more future commitments to build on what has already been done pursuant to Denmark's earlier NAP on corporate social responsibility (CSR). This is especially true in regard to binding measures under Pillars I and III that would more effectively engage the government's legal duty to protect human rights and guarantee access to judicial remedy.

This summary provides key trends in terms of process and content, as identified through the assessment of the Danish NAP.

PROCESS

The positive aspects of the NAP drafting process include the fact that recommendations provided by the Danish Council for CSR⁴⁰ were solicited and included in the NAP. In addition, the Ministry of Business and Growth and the Ministry of Foreign Affairs, which were responsible for the NAP process, consulted with the Ministry of Justice, the Ministry of

Employment, the Ministry of Education, the Danish Export Credit Fund, and the Investment Fund for Developing Countries (IFU).

However, the process for stakeholder consultations was not clearly communicated. Furthermore, only a select group of members of the Danish Council for CSR were consulted about the draft NAP, very limited time was given to provide input to the draft NAP, and other important stakeholders, such as the Danish Consumer Council, were left out of the consultation process entirely. Disempowered or at-risk stakeholders were also not consulted in the process.

Another weakness in the process employed to draft the Danish NAP is that no national baseline assessment (NBA) was conducted and/or published. Although there are descriptions in the NAP on how laws and policies that already exist implement the UNGPs, by failing to conduct an NBA, Denmark missed the opportunity to see the State's unique context and governance gaps that should be addressed in order to increase the protection for human rights. The government also failed to publish terms of reference and a timeline for the overall NAP process.

The NAP also does not detail what follow-up measures will be put in place to ensure that commitments made in the NAP are implemented effectively. Although there is a reference to the fact that Denmark's earlier CSR NAP will be "continually updated,"⁴¹ it does not specify how or when that will happen, nor does it specify if the same will be done for the NAP on business and human rights.

CONTENT

One positive aspect in terms of the content of the Danish NAP is that it provides a "principle-by-principle" approach in Annexes 1 and 2, laying out which past, current, and, in the case of Pillars I and III, a few future steps that are relevant to the implementation of the UNGP in question.

Another positive aspect is that a few of the planned actions are specific, including the planned action to create an inter-ministerial working group to research whether legislation in relevant areas should and could feasibly include extraterritorial obligations. This action includes questions the group will be tasked with addressing and suggests that Denmark is interested in exploring ways to ensure that its businesses respect human rights abroad, as well as within Denmark. The commitment to require labor clauses in all government contracts for construction projects instead of just for those above DKK 37.5 million is also very specific. Having said that, the remaining planned actions are quite vague, and none of them specify timelines.

One negative aspect of the Danish NAP is that it does not remedy the fact that Denmark's implementation of the UNGPs has so far been focused on guidance and self-regulation under Pillar II and access to non-judicial remedy under Pillar III, failing to provide adequate regulatory measures under Pillars I and concrete measures to provide access to judicial remedy under Pillar III.⁴² In this regard, while the inter-ministerial working group on extraterritorial legislation focuses on access to judicial remedy, it is unclear whether this working group will address the issue of mandatory human rights due diligence in areas of particular risk and importance.

Another shortcoming of the Danish NAP is that it only lists a very limited number of future actions. The NAP points to policies put in place in the past or currently being implemented and refers to commitments made under the CSR NAP, instead of developing new commitments specific to business and human rights. As such, the NAP reads more like a backward-looking document than a comprehensive plan for the future. For example, in addition to laying out the courses and guidance on responsible business conduct that the government provides through the Ministry of Finance, the Trade Council, and Danish embassies, it is not clear within the NAP whether there will be additional funding to these programs or if the government will conduct an evaluation of their implementation with a promise to improve them where needed. Another weakness in the content of the NAP is that there is no discussion of how the government will seek to protect vulnerable or excluded groups.

4. FINLAND

INTRODUCTION

Finland announced its decision to create a NAP on business and human rights in its Resolution on Corporate Social Responsibility on November 22, 2012.⁴³ The Finnish government created a working group to draft the NAP, and the NAP was adopted on September 17, 2014.⁴⁴ The NAP drafting process included many different government ministries and included two public consultations with stakeholders, as well as the possibility to comment in writing. However, while the NAP includes a large number of action points and information about steps that Finland is already taking, the action points primarily focus on voluntary measures, dialogue, training, and research, instead of on mandatory measures. Additionally, several of the action points are overly broad and vague.

This summary provides key trends in terms of process and content, as identified through the attached assessment of the Finnish NAP.

PROCESS

Finland's NAP drafting process had several positive aspects, including the facts that the government entity tasked with overseeing the process was clearly identified and representatives from many different government ministries were members of the working group in charge of drafting the NAP. Moreover, there were two public hearings with stakeholders, the working group consulted with stakeholders in writing, and the consultation dates were published. In addition, the process for drafting the NAP was discussed in the Committee for Corporate Social Responsibility (YHVA), which is a multi-stakeholder body acting under the Ministry of Employment and the Economy and gathering business, trade unions, decision-makers, and NGOs. Lastly, the ministries responsible for implementing and following up on each action point are identified, and the responsibility for yearly monitoring of the implementation of the NAP as a whole is placed in the hands of the Committee for Corporate Social Responsibility.

One weakness of the Finland NAP drafting process was that no national baseline assessment (NBA) was conducted and/or published. Instead, a background memorandum was carried out by government ministries and published. This memorandum included information on "Finnish legislation, provisions on fundamental rights and international conventions, and other measures and practices of the authorities in relation to the UN principles."⁴⁵ It was created for use by the working group and was intended to inform its proposals. However, this memorandum did not rise to the level of a NBA because it did not focus on the key questions of

the UNGPs, and non-State stakeholders did not find it very useful and were not involved in its development. This is problematic because a thorough NBA is necessary to ensure that the government identifies the most pressing legislative gaps in the protection of human rights.

Another procedural flaw is that, as far as ICAR and ECCJ are aware, the Finnish government did not take special steps to facilitate the participation of disempowered stakeholders such as migrants, Indigenous peoples in northern Finland, or other minorities. Finally, although the dates of the consultations were published and the NAP process was discussed in the Committee for Corporate Social Responsibility, the overall process was unclear. After the working group in charge of drafting the NAP had published its proposal, the Finnish government did not provide information about the status of the draft nor about the political process through which the NAP would be approved. Therefore, it was unclear which process the second round of consultations was supposed to influence. Publishing or sharing this information would have further increased the transparency of the NAP process and ensured meaningful participation of civil society. In the end, the government approved the NAP based on the working group's proposal and a separate political statement⁴⁶ in an informal meeting of the ministers. In its statement, the government underlined its priorities for the NAP's implementation, concretized some of the commitments, and partly improved the ambition level compared to the working group's original proposal.

CONTENT

The Finnish NAP addresses thematic issues such as children's rights, communication technology, and extractive activities. The NAP also extensively discusses international and regional organizations and standards and how Finland plans to use these to push for the implementation of the UNGPs. The NAP also discusses various vulnerable groups, and there are action points specifically dedicated to them. Another positive aspect of the NAP's content is that each list of action points is assigned to a particular ministry or ministries, and the NAP indicates a year by which the action points should be completed for just over half of the action points. This specificity is positive because it allows stakeholders, including agents of the Finnish government, and civil society to hold a particular ministry accountable if an action point is not completed by the year indicated in the NAP.

In addition to identifying the responsible government entity and a deadline for completion, however, individual future action points in a NAP should also state what the government is going to do in concrete terms, instead of being overly broad or vague. In this respect, the Finnish NAP is somewhat mixed. For example, there is a future action point that commits to adding a field to the public procurement notification service (HILMA) regarding whether social aspects were considered in the procurement decision in order to increase the amount of data available on this matter. Instead of just saying that the government will improve the availability of data,

this future action point shows specifically how the government will do this. Other future action points, however, are overly broad or vague. For example, one of the future action points says that Finland “shall participate in the UN Business and Human Rights Forums and support the work of the working group related to the UN principles.”⁴⁷ This future action point does not clearly lay out information on what type of support (e.g. financial or technical) Finland will provide. Another flaw in the content of the Finnish NAP is that there is very little attention paid to Pillar III, with the focus of the NAP on Pillars I and II. Finally, apart from committing to prepare to implement the European Commission’s directive on non-financial reporting, there is a lack of mandatory or regulatory measures, and the NAP instead focuses on voluntary measures, including dialogue, training, and research.

The Finnish CSOs found it positive that, within the action items outlined in the NAP, the government committed to commissioning a thorough legislative survey focusing on the UNGPs’ three Pillars and current legislative gaps, as the survey aims to provide concrete proposals for the way forward. In addition, the government committed in the NAP to looking into improving social responsibility criteria, in line with the EU Public Procurement Directive, when amending the Public Procurement Act. Moreover, according to the NAP, the majority of State-owned companies will start to assess their human right risks throughout their production chain and report on this. Furthermore, a separate complaint mechanism will be established in order to report alleged human rights violations of State-owned companies.

5. LITHUANIA

INTRODUCTION

Lithuania released its NAP on business and human rights in February 2015. The NAP is organized under the three Pillars of the UNGPs, which the NAP refers to as Objectives 1, 2, and 3. At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.

Overall, the NAP does not clearly articulate which listed actions are past actions, ongoing actions, or future actions. Moreover, in terms of content, the NAP leaves much to be desired. On the positive side, the NAP does touch on international and regional organizations, identifies the government entity responsible for many of the measures foreseen, touches on vulnerable groups, and provides a number of commitments under Pillar III. However, there are some measures foreseen that are either irrelevant or not explicitly tied to business and human rights, all of the measures foreseen are voluntary in nature, the NAP does not explicitly discuss abuses that occur abroad, and many of the measures foreseen are overly vague. It is hoped that other States that are considering beginning the process of creating a NAP will use this assessment to inform their own processes.

This summary provides key trends in terms of process and content, as identified through the attached assessment of the Lithuanian NAP.

PROCESS

At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process, and makes the Lithuanian NAP an outlier among the other published NAPs to date. Furthermore, the NAP does not specify any follow-up procedures for implementation of the commitments made within the NAP, and it does not provide any timeline for rewriting or updating the NAP.

CONTENT

It is positive that the NAP discusses international organizations, specifically the OECD. It is also positive that, for the majority of the measures foreseen, the NAP identifies the ministry within the Lithuanian government responsible for implementation. The NAP also discusses some vulnerable groups, such as women and persons with disabilities, both in the general document

and within the measures foreseen. Finally, Pillar III receives quite a bit of attention in the NAP, with a lot of discussion about reforms to the judicial system.

One weakness of the NAP is that, despite discussing Pillar III, some of the measures planned and related to access to remedy are not explicitly tied in the NAP to business and human rights but rather are overall reforms to the judicial system. Although these reforms could benefit victims of adverse human rights impacts, the NAP does not clearly make the connection to corporate-related human rights harms. This is also true of measures foreseen in other sections of the NAP. For example, the commitment to conduct seminars and informal education about discrimination against persons with disabilities states that these seminars will be for civil servants, trade union leaders, and “other target groups,” but does not explicitly say that business is a target group.⁴⁸ Other measures foreseen are entirely irrelevant as stated. For example, one measure foreseen is the commitment to conduct a “discrimination study.”⁴⁹ The NAP states that the study will look at the reasons for changes in societal attitudes and causes of discrimination,⁵⁰ without articulating any connection to discrimination by business specifically.

Another weakness of the Lithuanian NAP is that none of the measures foreseen involve regulatory actions, but instead are all voluntary in nature and focus on trainings, studies, funding for NGOs, and conferences, among others. There is also no reference to a company’s responsibility for abuses that occur abroad as opposed to within Lithuania. Moreover, many of the action points are overly vague, and, although some of the measures foreseen include a general timeline (usually as part of another action plan that is slotted to last for a range of years), more specific timelines would be more in line with recommended practice.

6. SWEDEN

INTRODUCTION

Sweden published its NAP on business and human rights in August 2015. The Ministry of Foreign Affairs was the lead ministry for the NAP process in Sweden. The Swedish NAP is organized around the three Pillars of the UNGPs. Under each Pillar, there is a brief explanation of the Pillar and additional information specific to Sweden, such as existing laws that relate to Pillars I and II and the Government's expectation of companies under Pillar II. The measures taken and measures planned are listed in separate annexes at the end of the NAP. During the drafting process, Sweden posted the draft of the NAP to its website for public comment and conducted four consultations, all of which were held in the spring of 2015. Over 100 non-governmental organizations (NGOs), trade unions, and government agencies participated in these consultations. However, only a few of the observations made by NGOs were included in the final NAP. Other procedural deficiencies include the failure to conduct a National Baseline Assessment (NBA), the failure of the government to clearly communicate the process for stakeholder participation, and the lack of terms of reference and a timeline for the overall NAP process.

The content of the NAP could have been improved. On the positive side, the NAP does discuss international and regional organizations, thematic issues, and references the expectation that businesses respect human rights both domestically and abroad. However, some of the measures planned are not explicitly tied to the past, many of them are vague, all lack clear timelines and identification of the responsible government entity, and the majority are non-regulatory in nature. It is hoped that other States that are considering beginning the process of creating a NAP will use this assessment to inform their own processes.

This summary provides key trends in terms of process and content, as identified through the attached assessment of the Finnish NAP.

PROCESS

The positive aspects of the NAP drafting process include: (1) the government entity tasked with overseeing the process was clearly identified, (2) various entities within the government were involved in some way, (3) the draft NAP was published for comment, and (4) there were four public consultations with stakeholders.

However, during the consultations, the Swedish government specifically stated that it did not facilitate participation by disempowered or at-risk stakeholders in the NAP process.⁵¹ In fact,

Sweden's indigenous community, the Sami, were not represented at the consultations despite the fact that Sweden's NCP recently had a case related to indigenous peoples' rights and business brought before it. Additionally, according to ECCJ, only a few of the observations made by NGOs were included in the final NAP, and a "majority of problems identified were left unaddressed."⁵² As far as ICAR and ECCJ are aware, no stakeholder mapping was conducted.

Another weakness in the process employed to draft the Swedish NAP is that no National Baseline Assessment (NBA) was conducted and/or published. Although there are descriptions in the NAP on how laws and policies that already exist implement the UNGPs, by failing to conduct a NBA, Sweden missed the opportunity to see the State's unique context and governance gaps that should be addressed in order to increase the protection for human rights. The government also failed to publish terms of reference and a timeline for the overall NAP process.

Although Sweden commits to following up on the NAP in 2017, the NAP does not detail what follow-up measures will be put in place to ensure that commitments made in the NAP are implemented effectively. For the majority of the planned measures, the NAP does not identify which government entity is responsible for implementation, nor does it identify who is responsible for overall follow-up.

CONTENT

One positive aspect of the NAP is Sweden's commitment to consider strengthening its National Contact Point (NCP) for the OECD Guidelines. This commitment is one of the more specific and concrete measures planned. Another positive aspect is that the NAP discusses international and regional organizations and standards fairly extensively, both in the document as a whole and specifically in the planned measures annex. The NAP also discusses several thematic issues, and, although there are not explicit references to extraterritorial jurisdiction, the NAP does include many references to the expectation that businesses should respect human rights both domestically and abroad.

The Swedish NAP heavily focuses on Pillar I, but also addresses Pillar III. However, one weakness in the Swedish NAP is that some of the measures planned are not clearly relevant to or explicitly tied to business and human rights. For example, there is no explanation in the NAP about how the commitment to have an inquiry into whether or not Sweden should make the UN Convention on the Rights of the Child part of national law will be relevant to business.⁵³ Some of the measures planned related to access to remedy are also not explicitly tied in the NAP to business and human rights but rather are overall reforms to the judicial system. Although these reforms could benefit victims of adverse human rights impacts, the NAP does not clearly make the connection to corporate-related human rights harms.

Another weakness in the Swedish NAP is that only two out of the twenty-seven measures planned directly relate to the regulation of corporations. These two measures relate to EU Directives, and Sweden is only actually going beyond what it is required to do by the EU in one of those measures. The rest are non-regulatory measures such as trainings, promoting the UNGPs, and providing support to Shift's Reporting and Assurance Framework Initiative (RAFI).

Some of the actions listed in the measures planned annex were actually completed in the past, with no reference to how the Swedish government intends to follow up on them. Other actions planned that are actually future commitments are overly vague. For example, the NAP states that Sweden will ensure that State-owned companies conduct human rights due diligence, with no further information about how it will ensure that this occurs. Moreover, only one measure planned has a clear timeline for implementation, and the remaining twenty-six measures planned have no reference to when the government plans on beginning or completing the commitments outlined in the NAP.

7. NORWAY

INTRODUCTION

The Norwegian government announced its intention to create a National Action Plan (NAP) on business and human rights at the 2012 UN Forum on Business and Human Rights. The NAP was officially launched by the Minister of Foreign Affairs, Børge Brende, in October 2015.

The Norwegian NAP is based on the government white paper, *Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation*, which commits the government to creating a NAP, and presents twenty-four measures* relating to the State's duties according to the UN Guiding Principles on Business and Human Rights (UNGPs) under Pillar I (State duty to protect) and Pillar III (access to remedy) that the Norwegian government intends to enact. The NAP also highlights five expectations that the Norwegian government has of all companies.

This summary outlines key trends in terms of process and content, as identified through the attached assessment of the Norwegian NAP. It is hoped that other States that are considering, beginning, or are in the process of creating a NAP will use this assessment to inform their own processes.

PROCESS

The steps taken by the Norwegian government during the drafting process demonstrated strong commitment to the NAP. As a first positive step, the government made clear that the Ministry of Foreign Affairs was responsible for the drafting process. Another positive aspect of the NAP process was the creation of a National Baseline Assessment (NBA), an often-overlooked step in NAPs processes, which the Norwegian government contracted with a senior research at the Fafo Research Foundation to conduct. Additionally, the government created an interdepartmental group of ministries for formal and information consultations on the NAP. However, it is unclear which ministries were involved and to what extent.

The Norwegian government also showed its commitment to the NAP process by holding several series of individual- and multi-stakeholder consultations with business, civil society, and indigenous peoples' representatives. The Ministry of Foreign Affairs also sought input from a range of government ministries and institutions.

* The measures in the Norwegian NAP are not numbered; however, for ease of reference, the authors of this assessment have assigned each bullet point within the shaded "measures" boxes of the NAP a number in ascending order from 1-24. The "government expectations" box on p. 30 of the NAP has not been included in this assignation.

One negative aspect of the NAP process was that the Norwegian government did not facilitate direct participation of disempowered or at risk stakeholders, nor was any stakeholder steering group or advisory committee created. The NAP process could also have been improved by increased transparency around the timeline, resources, and drafting process, and by conducting and publishing a stakeholder mapping.

CONTENT

There are a number of positive aspects in relation to the content of the NAP. First, the NAP contains a high-level statement of commitment to the UNGPs, and the majority of the NAP content is organized around the three Pillars of the UNGPs. The NAP also does a good job in recognizing the role of international and regional organizations and standards and encourages both the State and business to use those organizations and standards to push for greater respect for human rights.

Another positive aspect of the NAP is that it addresses thematic and sector-specific human rights issues in its planned future measures. Future commitments are made in a number of areas such as trade, conflict areas, corruption, security concerns, indigenous rights, responsible investment, extractives, and public procurement. Furthermore, while the majority of the NAP content focuses on human rights harms abroad, there are a number of legislative and policy measures that have impacts of domestic concern. Finally, the NAP commits to the creation of an interministerial working group to ensure coordinated implementation of the NAP; however, this commitment could be much stronger with a framework for reporting on implementation of the NAP measures.

One negative aspect of the NAP is that it heavily emphasizes the promotion of corporate social responsibility (CSR), over a stronger focus on ensuring the State upholds its own international duties to protect human rights and provide effective remedy. Furthermore, the NAP mainly focuses on promoting CSR and protecting human rights abroad, thus inadequately addressing the full scope of the State's jurisdiction as it is skewed towards external concerns. The NAP also fails to address issues regarding negative human rights impacts arising within the context of business supply chains.

Another criticism of the NAP is that the majority of the established measures lack specificity, measurable targets, criteria for success, and a fixed timeline. Most of the measures commit the government to vague activities such as "improving," "strengthening," "expecting" or "continuing" certain broad activities. In general, vague monitoring and implementation commitments and lack of reporting requirements are also a major shortcoming of the NAP. Additionally, the majority of the planned measures of the NAP do not identify the government agency responsible for monitoring and enforcement. Ultimately, this limits the effectiveness of

the NAP as it prevents ownership of the measures contained within it and makes it difficult to identify whom to hold to account for failure to implement the plan.

8. COLOMBIA

INTRODUCTION

The Colombian government announced its decision to create a National Action Plan (NAP) on business and human rights in early 2015.⁵⁴ The Presidential Advisory Office for Human Rights led the drafting process, with the accompaniment of the Ministry of the Presidency. A steering committee was created to guide the drafting process, and the first draft of the NAP was published in October 2015. The NAP was officially launched in December 2015.

The Colombian NAP is organized around the three Pillars of the UN Guiding Principles on Business and Human Rights (UNGPs). The substantive content of the NAP is divided into eleven main lines of action, which are organized under the three Pillars, and contain multiple action points. Overarching the specific content, the NAP seeks to prioritize four key sectors: energy, mining, agro-industry, and road infrastructure.

This summary provides key trends in terms of process and content, as identified through the attached assessment of the Colombian NAP. It is hoped that other States that are considering beginning or are in the process of creating a NAP will use this assessment to inform their own processes.

PROCESS

The positive aspects of the NAP drafting process include: (1) the government entity tasked with overseeing the drafting of the NAP was clearly identified; (2) various entities of the government were involved in the process through an inter-governmental working group; (3) various governmental, non-governmental, and international actors were involved in the process through a steering committee; (4) follow up and implementation measures were established; and (5) four public consultations were held with stakeholders on the draft NAP before final publication.

However, the NAP consultation process failed to include in meaningful ways at-risk and disempowered stakeholders, including indigenous communities, Afro-descendent communities, peasants, Colombians living outside of the country as a result of the internal conflict, and other affected communities. Colombian NGOs and civil society organizations, like the authors of this report, have remarked on these failures, and some have heavily and publicly criticized the consultation process.

Additionally, while the NAP establishes a system of evaluation and follow-up, these mechanisms could be improved by explicitly committing the government to drafting a second iteration of the NAP following the completion of the three-year term of the current NAP. The revision process

could also be improved by including affected communities, organizations that defend the rights of these communities, and civil society organizations beyond organizations identified with corporate interests (however legitimate those organizations are) in the process of designing, drafting, and formulating the content of the revised NAP.

Another weakness in the process employed to draft the Colombian NAP was the failure to conduct and publish a national baseline assessment (NBA).⁵⁵ By failing to conduct a NBA, the Colombian government missed the opportunity to map the State's unique context in relation to business and human rights and pinpoint the governance gaps that should be addressed in the content of the NAP in order to increase protection for human rights in the context of corporate activities. Moreover, the lack of a baseline assessment has resulted in complaints that the NAP fails to take into account the realities on the ground of affected communities' access to justice and to other mechanisms of protection or accountability. The UN Working Group on Business and Human Rights has insisted, in its 2014 and 2015 thematic reports, on the importance of NBAs in the elaboration of NAPs as well as in the process of developing appropriate modes of measuring the impacts and implementation of a NAP.⁵⁶

The government also failed to publish terms of reference and a timeline for the overall NAP process.

CONTENT

Overall, the content of the NAP aligned itself with several established good practices in business and human rights, particularly with regard to the provision of information for businesses to understand human rights obligations. It also focused on several, though not all, of the business activities that have the greatest risk of being carried out in a context that could lead to human rights violations.

One positive aspect of the Colombian NAP is that it does a good job of identifying within the content of each action point which State agency, ministry, or office is responsible for the implementation of that commitment. Each point specifically lists which organ will lead or supervise the implementation of the established action items. Similarly, all action points are forward looking. Additionally, the NAP lays out a well-developed framework for evaluation and follow-up. The NAP is seen as a "living plan, in constant revision" and provides for yearly reporting to the Presidential Advisory Office for Human Rights by each government institution tasked with taking specific actions in the NAP.⁵⁷ This information is also to be made public. The NAP establishes bi-annual regional rounds of review to assess the ground implementation of the NAP. Additionally, following the NAP's three-year validity, the final evaluation of the NAP shall be

completed within ten months. These follow-up mechanisms would be strengthened by an explicit commitment from the government to draft a second iteration of the NAP.

One negative aspect of the Colombian NAP is that many of the government action points are overly vague, making it difficult to discern the concrete steps the NAP is committing specific government agencies or ministries to take. This difficulty hampers the ability for stakeholders, including internal government actors, to hold responsible government entities accountable for their commitments. A large percentage of action points are non-regulatory in nature, and appoint different State agencies the tasks of “supporting,” “reinforcing,” “guaranteeing” and “promoting,” various standards or programs. For example, action point 4.9 commits the Ministry of Labor to “reinforce actions aimed at protecting the right to freedom of unionization and collective negotiations.”⁵⁸ Similarly, action point 7.3 commitments the same ministry to “guarantee respect for labor rights.”⁵⁹ This type of broad language makes the exact nature, extent, and process of the government’s commitment unclear. Another weakness of the NAP is that, while it establishes specific timelines for some action points, it does not do so for the majority of action points, making it more difficult to hold government accountable during implementation and evaluation.

Moreover, there is very little detail on the accountability measures that the NAP will support, whether with regard to past human rights violations or with regards to human rights violations that may arise in the future

An important expected change in Colombia’s situation for the duration of the NAP, and throughout the process of its continued revision, is the implementation of the peace accord. Although the peace agreement was initially rejected by voters in a plebiscite in October 2016, a revised peace agreement, addressing the main objections of the campaign against the ratification of the peace accord, was signed on November 24, 2016 and approved by Congress on November 30, 2016.⁶⁰ As of this writing (updated in May 2017), the “Final Agreement for the End of Conflict and the Construction of a Stable and Lasting Peace” (Final Peace Agreement) is in place, and implementation of its terms is under way.⁶¹ It is therefore recommended that the NAP be revised and harmonized more explicitly with the relevant provisions in that agreement, including the terms regarding accountability of third parties in point 5 of the Final Peace Agreement (“agreement on victims of conflict: an integral system for truth, justice, reparation and non-repetition, including the Special Jurisdiction for Peace (JEP) and a Commitment on Human Rights”).⁶²

9. UNITED KINGDOM (2016)

INTRODUCTION

In 2013, the United Kingdom (U.K.) became the first State to develop and publish a National Action Plan (NAP) on business and human rights. It is also the first country to release a second iteration of its NAP—published in May 2016. Drafting of the 2016 NAP was jointly owned by the Foreign and Commonwealth Office (FCO) and Department for Business, Innovation and Skills (BIS).

The 2016 U.K. NAP retains the same structure as the 2013 NAP, and follows the three Pillars of the UN Guiding Principles on Business and Human Rights (UNGPs). The introductory section of the 2016 NAP provides updates to the development of UNGPs implementation since the first iteration of the U.K. NAP was published. The sections on each pillar of the UNGPs clearly delineates between past actions and future government commitments. The NAP also provides case studies in these sections to illustrate some of the United Kingdom's actions in relation to promoting responsible business conduct.

This summary outlines key updates in terms of process and content, as identified through the attached assessment of the 2016 U.K. NAP. It is hoped that other States that are considering beginning or are in the process of updating a NAP will use this assessment to inform their own processes.

PROCESS

The positive aspects of the 2016 NAP drafting process include: (1) the government entities tasked with overseeing the process were clearly identified; (2) advances in the NAP drafting process were publicly communicated to a certain extent; and (3) numerous consultation events were held to increase the involvement of interested stakeholders. Prior to the release of the 2016 NAP, the United Kingdom conducted a total of nine public consultation events that included government departments, civil society groups, businesses, and academics. The government released a summary document of its consultation processes and facilitated the publication of stakeholder submissions. The United Kingdom also continued with some of the positive commitments expressed in the 2013 NAP, such as promoting numerous international and regional organizations to implement the UNGPs, and prioritizing a number of thematic and sector specific human rights issues.

Unfortunately, similar to the 2013 NAP, the U.K. government did not conduct a national baseline assessment (NBA) in the process of updating its NAP. Without undertaking an NBA, it is difficult for the U.K. government to make fully informed updates to its NAP.

The failure of the 2016 NAP to commit to a future iteration is a weakness that may signal a lesser commitment to the NAP process moving forward. Although the 2016 NAP includes a commitment that the FCO will continue to report on the progress of the NAP's implementation in its Annual Report on Human Rights and Democracy, the U.K. government did not commit to a third iteration of the NAP. While the NAP does state that a steering group comprised of civil society and business representatives will meet periodically to monitor implementation of the NAP, it fails to specify who is currently part of the group or how often it will meet.

While the U.K. improved upon the inclusivity of its consultation events prior to drafting the 2016 NAP, it still failed to include impacted communities and disempowered or at-risk stakeholders. Similar to the 2013 NAP process, the government failed to conduct a stakeholder mapping to identify at-risk or disempowered stakeholders, did not publish a clear timeline for stakeholder participation, or provide for capacity building where necessary to facilitate meaningful engagement in the NAP process.

CONTENT

Overall, the 2016 NAP focuses largely on promoting the UNGPs and responsible business conduct, and provides very few commitments in relation to upholding the U.K. government's duty to protect human rights. A strength of the 2016 NAP is that it addresses the full scope of the State's jurisdiction. While the majority of "government commitments" included in the NAP emphasize external human rights concerns, Section 3 (corporate responsibility to respect) and Section 4 (access to remedy) of the NAP also discuss domestic considerations, an improvement from the 2013 NAP. Additionally, the U.K. government strengthened its commitment to working with members of both the International Code of Conduct Association and the Voluntary Principles on Security and Human Rights.

Commitments made in the 2016 NAP vary in specificity and measurability. None of the "government commitments" made in the NAP explicitly specify which government agency or department will be tasked with fulfilling the commitment, or provide a timeline within which they must be carried out. The specificity of expected actions and outcomes varies greatly throughout the NAP. Commitments that are less specific are inherently harder to measure, as there is little guidance on what specific tasks should be carried out, to what extent, and by what time.

Another negative aspect of 2016 NAP is the failure of the government to conduct an in-depth analysis of the types of human rights abuses faced by U.K. citizens or committed by U.K. businesses operating abroad through the creation of a national baseline assessment. The NAP also does not adequately address issues relating to the most vulnerable and excluded groups. The U.K. government's blanket commitment to consider promoting activity to raise awareness and deal with the harmful effects of business on specific vulnerable groups included in both the 2013 and 2016 NAPs does not provide a clear indication of what steps will be or have been taken to improve upon the government's commitment to protecting the rights of these groups.

10. ITALY

INTRODUCTION

The Italian government expressed its intention to draft a National Action Plan (NAP) on business and human rights in 2013. Italy's Inter-ministerial Committee for Human Rights (CIDU) at the Ministry of Foreign Affairs and International Cooperation coordinated the drafting of the NAP. In December 2013, the Italian government released "The Foundations of the Italian Action Plan on the United Nations Guiding Principles on Business and Human Rights," ("Foundations paper") which was based on an analysis of the gaps in domestic implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) and served as an outline for the development of the NAP.

The Italian NAP is organized exclusively around Pillar I, the State duty to protect, and Pillar III, access to remedy of the UNGPs, and goes through their respective UNGPs principle by principle. Rather than addressing Pillar II specifically, the NAP broadly discusses the corporate responsibility to respect under the "Government Expectations Toward Business" section. This is in part because the Italian government views business and human rights and corporate social responsibility as two separate policy areas, and maintains a separate national action plan on corporate social responsibility (CSR).

This summary outlines key trends in terms of process and content, as identified through the attached assessment of the Italian NAP. It is hoped that other States that are considering or are in the process of creating a NAP will use this assessment to inform their own processes.

PROCESS

The positive aspects of the NAP drafting process include: (1) the government entity tasked with overseeing the drafting of the NAP was clearly identified; (2) the government commissioned a gap analysis, or national baseline assessment (NBA), prior to drafting the NAP; (3) an inter-governmental working group was created to inform the NAP drafting; and (4) a draft of the NAP was published and consulted upon before the final version was adopted.

From the beginning of the NAP process, it was clear that CIDU was the lead agency responsible for the coordination of the NAP process. Additionally, prior to the drafting of the NAP, the government commissioned academics from the University of Sant'Anna to conduct a NBA, which examined the "adequacy of the Italian regulatory and institutional frameworks in comparison to the [UNGPs]," identified strengths and weaknesses, and elaborated specific recommendations

on how to ensure stronger conformity with the UNGPs.⁶³ The creation of the NBA and subsequent “Foundations paper” allowed the Italian government to develop a more informed and evidence-based NAP.

Another strong aspect of the NAP process was the establishment and coordination of an ad hoc working group composed of representatives from several ministries and institutions to participate in the NAP process. By helping to facilitate broad governmental engagement, the NAPs process can serve to build government buy-in and increase the likelihood of efficacious implementation. Similarly, the draft NAP was published and open for public comment from July 27 to September 10, 2016.

However, the NAP process could have been improved in a number of ways. First, the entire NAP process could have benefitted from increased transparency; the Italian government did not publish a budget, terms of reference, or timeline for the NAP process. Additionally, while the process included a number of stakeholder consultations, these efforts could have been strengthened through the facilitation and inclusion of disempowered or at-risk stakeholders.

In relation to monitoring and follow-up to the NAP, the government commits to establish an inter-departmental group, known as the Working Group on Business and Human Rights, to work jointly with a consultative body composed of relevant non-governmental stakeholders, such as businesses, trade unions, civil society organizations, human rights defenders, and academics, to monitor the implementation of the NAP. Although the NAP lays out a framework for monitoring and reporting which includes at-risk stakeholders, it does not go as far as to clarify a framework for reporting on implementation or commit to update the NAP in the future.

CONTENT

The content of the NAP focuses on the Italian government’s commitments under Pillars I and III. The NAP only broadly discusses Pillar II, the corporate responsibility to respect, in terms of expectations, rather than action points.

One positive aspect of the Italian NAP is that it addresses the full scope of the State’s jurisdiction by focusing on promoting corporate responsibility and protecting human rights both domestically and abroad. The NAP also does a good job of prioritizing the most serious business-related human rights abuses based on the results of its NBA, including: promoting due diligence, decreasing exploitation of vulnerable groups by businesses, promoting fundamental labor rights, strengthening Italy’s international development cooperation, tackling discrimination and inequality, and promoting environmental protection. The NAP also gives special focus on vulnerable and excluded groups.

One negative aspect of the NAP is that none of the planned measures contained in the NAP have specific timelines for implementation, nor do they specify which government agency or department is tasked with implementing and following-up on future actions. Additionally, as mentioned above, many of the measures included only vague commitments. The lack of specificity and structure of the planned measures will make tracking the NAP's implementation difficult. The planned measures could have been improved through more specificity in the nature of the commitments made and the process by which implementation will be achieved.

11. SWITZERLAND

INTRODUCTION

In 2012, the Swiss National Council adopted postulate 12.3503, “A Ruggie Strategy for Switzerland,” which mandated that Switzerland’s executive branch develop a National Action Plan (NAP) for the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs). Following years of development, in December 2016, the Swiss government published its “Report on the Swiss strategy for the implementation of the UN Guiding Principles on Business and Human Rights” (Swiss NAP).

The Swiss NAP is organized exclusively around the federal government’s obligations under Pillars I and III of the UNGPs, and goes through these respective UNGPs principle by principle. In relation to Pillar II, the NAP discusses the Swiss government’s expectations of business enterprises more broadly under “The position and expectations of the Federal Council” section. Switzerland has a separate policy document in relation to Corporate Social Responsibility (CSR), which addresses a broad spectrum of issues, such as: working conditions, human rights, the environment, and corruption prevention. The NAP highlights that the CSR position paper and the NAP are complementary and of “equal status” for the purposes of fulfilling the mandate of postulate 12.3503.

This summary outlines key trends in terms of process and content, as identified through the attached assessment of the Swiss NAP. It is hoped that other States that are considering, beginning, or are in the process of creating a NAP will use this assessment to inform their own processes.

PROCESS

The positive aspects of the NAP drafting process include: (1) the government entity tasked with drafting the NAP was clearly identified; (2) external stakeholder and government consultations were conducted; and (3) drafts of the Swiss NAP were made available for review and comment before the final version was adopted.

The Federal Council, Switzerland’s executive body, coordinated the drafting of the NAP. Responsibility for the NAP was clearly placed with the Federal Department of Foreign Affairs and the Federal Department of Economic Affairs, Education, and Research. Prior to drafting the NAP, two informational consultations with external stakeholders, such as businesses, civil society, and academia were convened by Swisspeace, a Swiss non-governmental organization. The summary report of these consultations was used as one of the key documents to inform the NAP.

Another positive aspect of the drafting process of the Swiss NAP was that the Federal Council circulated drafts of the NAP to gain feedback from both external stakeholder groups and government offices. External stakeholders had the opportunity to provide feedback on two different drafts on the NAP—though some stakeholders note that there was not sufficient notice given for comment periods, making meaningful contributions to the process challenging. Additionally, drafts of the NAP were circulated to all federal departments for consultation.

However, the NAP process could have been improved in a number of ways; for example, by conducting a National Baselines Assessment (NBA) prior to the drafting of the NAP. Without conducting an analysis of the current status of implementation of the UNGPs, and identifying the gaps in this implementation, it is difficult for a NAP to fully respond to existing gaps in law and policy. Furthermore, the Swiss government did not publish a budget, clear plan, or timeline for the NAP process, nor did it facilitate the engagement of at risk or disempowered stakeholders.

CONTENT

The content of the Swiss NAP primarily focuses on the Swiss government’s current activities and commitments relating to Pillars I and III, with very few commitments to future action. The NAP only broadly discussed Pillar II, the corporate responsibility to respect, in terms of expectations rather than action points.

Of the fifty commitments, or policy instruments, included in the NAP, very few commit to new actions. The overall content of the Swiss NAP essentially provides a summary of ongoing processes and existing support for promoting corporate respect for human rights, framed by often vague future commitments—many of which will be difficult to monitor in the absence of a timeline and clearly allocated responsibilities.

Another negative aspect of the NAP content is its failure to prioritize for action the most serious business-related human rights abuses faced by Swiss citizens or committed by Swiss companies operating abroad. The Swiss NAP also does not adequately address issues related to the most vulnerable and excluded groups, nor does it take into consideration the full scope of its jurisdiction, choosing to focus specifically on the impacts of Swiss business activity abroad.

On a positive note, the NAP does a good job of clearly identifying which government entity is tasked with overseeing the enforcement and implementation of specific policy instruments included in the NAP through the attached Annex. It also extensively discusses international and regional organizations and standards, and touches on thematic and sector-specific human rights issues.

Additionally, the Swiss NAP lays out a relatively strong framework for monitoring, updating, and revising the NAP. The NAP commits to the creation of a multi-stakeholder monitoring group prior to updating the NAP in 2020, to be comprised of representatives from business, civil society, and academia. The group will collaborate on implementation and be invited to comment on NAP status reports published by the Swiss government.

12. UNITED STATES

INTRODUCTION

The United States announced its decision to draft a National Action Plan (NAP) on Responsible Business Conduct in September 2014. The White House National Security Council (NSC) was designated to lead and coordinate the U.S. government's efforts to develop the NAP. In addition, sixteen government agencies were involved in the NAPs process. The NAP was officially launched in December 2016.

The U.S. NAP is organized into five "categories of action," including: (1) leading by example; (2) collaborating with stakeholders; (3) facilitating responsible business conduct by companies; (4) recognizing positive performance; and (5) providing access to remedy. It focuses on a number of issues, including human rights, indigenous rights, labor rights, land tenure, anti-corruption, and transparency.

This summary outlines key trends in terms of process and content, as identified through the attached assessment of the U.S. NAP. It is hoped that other States that are considering, beginning, or are in the process of creating a NAP will use this assessment to inform their own processes.

PROCESS

The positive aspects of the NAP drafting process include: (1) the government entity tasked with overseeing the drafting of the NAP was clearly identified; (2) various entities of the government were involved in the process through inter-governmental working groups; and (3) regional dialogues were held with stakeholders during the NAP drafting process.

As part of the drafting process, the U.S. government created a dedicated email address for written submission where they received stakeholder inputs on a rolling basis for over a year. In addition, U.S. government officials met with a number of stakeholders during four regional dialogues held in New York; Washington, D.C.; Oklahoma; and California. However, the process could have been strengthened through the creation of a multi-stakeholder steering group or advisory committee and the facilitation of participation of disempowered or at risk stakeholders. Additionally, the U.S. government did not release any information or summary documents regarding its deliberation over the content of the NAP, making it difficult to discern the extent to which the government took stakeholder recommendations into consideration.

The NAP process could have been improved with increased transparency around the timeline, resources, and procedure of the drafting stage. While a timeline for initial consultation and terms of reference were provided through the government's online portal early in the drafting process; beyond that, the U.S. government did not publish a timeline in relation to the rest of the NAP process such as the drafting, review, or publication dates.

The drafting process was undermined by the fact that the U.S. government did not conduct a full national baseline assessment (NBA). By failing to conduct a NBA, the U.S. government missed the opportunity to map the State's unique context in relation to business and human rights and pinpoint the governance gaps that should be addressed in the content of the NAP in order to increase protection for human rights in the context of corporate activities. Additionally, vague monitoring and follow-up provisions and a lack of commitment to revise the NAP in the future also demonstrate a lack of commitment to a comprehensive NAP process.

Furthermore, the U.S. government did not consult around or release a draft NAP; missing a key opportunity to gather stakeholder opinions during a critical phase of the drafting process.

CONTENT

Overall, the content of the NAP focuses on a set of key thematic issues, namely, anti-corruption, forced and child labor, human trafficking, transparency, and public procurement. The NAP is largely focused on supporting voluntary measures and dialogue, and providing guidance, outreach, and funding for responsible business conduct initiatives. The scope of the NAP is completely extraterritorial, and the content does not address domestic business-related human rights issues.

One positive aspect of the U.S. NAP is that it clearly identifies which U.S. government department or agency is responsible for implementing each action point. However, these action points could be strengthened with additional information relating to the timeline for implementation and the framework for monitoring and reporting on implementation.

One negative aspect of the U.S. NAP is that many of the government action points are overly vague, making it difficult to discern the concrete steps the NAP is committing specific government agencies or ministries to take. This difficulty hampers the ability for stakeholders, including internal government actors, to hold responsible government entities accountable for their commitments.

Moreover, the NAP is strongly lacking in commitments to new regulatory measures. There are no new action points in the NAP that would require human rights due diligence or the disclosure of human rights due diligence activities. However, the NAP does outline some ongoing commitments and initiatives supported by the U.S. government that may incentivize companies to conduct due diligence and ensure their operations do not negatively impact human rights.

Lastly, there is very little attention paid to Pillar III of the UN Guiding Principles on Business and Human Rights on access to remedy. The NAP is heavily skewed towards promoting the Pillar I State duty to protect and Pillar II corporate responsibility to respect, although it does contain one strong commitment relating to promoting access to remedy, that on improving the performance of the U.S. National Contact Point under the OECD Guidelines

ANNEX: NATIONAL ACTION PLAN (NAP) ASSESSMENTS

The following assessments of the NAPs on business and human rights of eleven States, namely, from the United Kingdom (2013,2016), the Netherlands, Denmark, Finland, Lithuania, Sweden, Norway, Colombia, Italy, Switzerland, and the United States were conducted using the NAPs Checklist, developed by ICAR and the Danish Institute for Human Rights (DIHR) and published in Annex 5 of the joint ICAR-DIHR NAPs report, entitled *National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks*.⁶⁴

1. UNITED KINGDOM (2013)

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>The UK government announced its intention to create a NAP in 2011.⁶⁵ The UK has committed to continuing the development and implementation of its NAP, noting that the NAP released in 2013 is just the first step.⁶⁶ In the NAP, the UK expressly commits to monitoring NAPs created by other countries and to responding to the development of NAP “best practices” in its future policies.⁶⁷ The UK plans to have representatives of civil society, government, and business meet “periodically to monitor implementation” of the UK NAP and to update it.⁶⁸ The Annual Report on Human Rights and Democracy of the Foreign and Commonwealth Office (FCO) will include a report on progress of the NAP.⁶⁹ The UK made an express commitment in the NAP to create a new and updated NAP by the end of 2015.⁷⁰ These commitments suggest that the UK is serious about continuing to engage with its NAP over the long-term.</p>

UNITED KINGDOM (2013)

1. GOVERNANCE AND RESOURCES	COMMENTS
	<p>The fact that the UK NAP was launched by two Secretaries of State – the Secretary of Foreign Affairs and the Secretary of Business, Innovation, and Skills – also sent out a strong signal of the government’s commitment to the NAP process.</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The responsibility for the NAP process was placed in the UK Foreign & Commonwealth Office (FCO), specifically, under its Human Rights and Democracy Department.⁷¹ A steering committee composed of different government ministries was created to guide the process.⁷²</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>As noted above, a steering committee composed of different government ministries was created to help coordinate the NAP process.⁷³</p> <p>Additionally, after the initial draft was complete, it was sent to government agencies for consultation.⁷⁴ In December 2012, a draft was sent to about 40 government agencies, whose comments and feedback were taken into account and incorporated into the finalized NAP.⁷⁵</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>Publication of the NAP was delayed repeatedly, and human rights NGOs say this was done without full communication. As the NAP process continued, it became harder for NGO stakeholders to get information about what was happening.⁷⁶</p> <p>No timeline was published.</p>

UNITED KINGDOM (2013)

1. GOVERNANCE AND RESOURCES	COMMENTS
Adequate Resourcing	
<p>1.5. Determine an appropriate budget for the NAP process.</p>	<p>There is no information publicly available on the level of funding provided for the NAP process.</p> <p>Regarding human capital, the Deputy Head of the Human Rights and Democracy Department of the FCO was in charge of leading the drafting process. Two policy officers assisted the Deputy Head, in addition to inputs and assistance from officials from a number of other departments on an ad hoc basis.</p>

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
<p>2.1. Conduct and publish a stakeholder mapping.</p>	<p>No stakeholder mapping was conducted.</p>
<p>2.2. Develop and publish a clear plan and timeline for stakeholder participation.</p>	<p>Pre-draft consultation with stakeholders had a clear plan. Meetings were set up and run by the FCO, using an external facilitator. The meetings occurred in early 2012, and each category of stakeholders had its own separate meeting.⁷⁷ A final</p>

UNITED KINGDOM (2013)

2. STAKEHOLDER PARTICIPATION	COMMENTS
	<p>meeting was then held, with all categories of stakeholders in attendance.⁷⁸</p> <p>However, there was considerable delay between these meetings and the launch of the plan. Although the government did send a copy of the draft to selected stakeholders, the draft NAP was not publicly circulated before it was finalized and launched, so there was no broad consultation with external stakeholders on the draft document.⁷⁹</p> <p>The timeline/plan for stakeholder participation was not published.</p>
<p>2.3. Provide adequate information and capacity-building where needed.</p>	<p>No capacity-building was provided.</p>
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>The UK did not facilitate the participation by disempowered or at-risk stakeholders.</p>
<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>The UK did not establish a multi-stakeholder steering group or advisory committee, only a governmental, inter-departmental steering committee.</p>

UNITED KINGDOM (2013)

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	The UK did not conduct a NBA. The government has committed to doing a gap analysis sometime in the future. ⁸⁰
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable.
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable.
3.4. Publish and disseminate the NBA.	Not applicable.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	<p>Although the UK NAP addresses all three Pillars of the UNGPs, it does not go through the UNGPs principle by principle, explaining how they have each been implemented and/or will be implemented.</p> <p>As a whole, the NAP focuses largely on the business responsibility to respect</p>

UNITED KINGDOM (2013)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>human rights. In Section 4 (covering Pillar III on access to remedy), there is no discussion of creating judicial remedy, but instead the focus is on company-run grievance mechanisms.⁸¹ Moreover, although the highest number of planned actions are listed under Section 2 (covering Pillar I on the State duty to protect human rights), the majority of these effectively relate to the promotion of Pillar II on the corporate responsibility to respect human rights.</p> <p>There is not much information on what other government departments outside of the FCO will be required to do, such as the Ministry of Justice; the Home Office; the Department for Business, Innovation, and Skills; or the Department for International Development.⁸²</p> <p>While an extensive analysis of the NAP’s fulfillment of each UNGP is a task to be completed during the National Baseline Assessment (NBA) process, there are criteria that can be used to assess the combination of scope and content. The following four sub-criteria are indicative of the UK NAP’s coverage of the full scope of the UNGPs, with particular regard to the central organizing concept of “due diligence.” These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights.)⁸³ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP’s adequacy in terms of substantive content:</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p><u>(1) Positive and Negative Incentives for Due Diligence</u></p> <p>Although human right due diligence, meaning to “identify, prevent, and mitigate human rights risks,” is identified in Section 3 of the UK NAP as something the government expects of business, there are no specific positive or negative incentives newly laid out in the UK NAP’s planned actions to influence corporations to conduct human rights due diligence. The only planned action that explicitly refers to due diligence is in Section 3(ii). This planned action states that the government will “encourage” sector groupings/trade associations to create guidance relevant to human rights in that sector, including on due diligence. This planned action does not, however, specify what concrete measures the government will take to “encourage” the development of guidance in different sectors, let alone what measures it will take to reward the use of due diligence or punish failure to conduct due diligence.</p> <p>The NAP does include information on actions already taken that could constitute incentives to conduct due diligence. Specifically, Section 2(i) notes that, during procurement, public bodies can decide not to consider certain bidders if there is a showing of grave misconduct. The NAP notes that “such misconduct might arise in cases where there are breaches of human rights.” For companies that rely on government contracts, this could serve as a fairly strong incentive to conduct due diligence in an effort to prevent human rights abuses that amount to grave conduct from occurring in the first place. Another potential incentive is listed under Section 3(iii) of the NAP, which states that, pursuant to the OECD 2012 common approaches, UK Export Finance considers National Contact Point statements about a company’s human rights practices</p>

UNITED KINGDOM (2013)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>that are final and negative when deciding if a project may receive an export credit.</p> <p><u>(2) Disclosure of Due Diligence Activities</u></p> <p>In Section 3(ii), the NAP refers to the fact that the UK Companies Act of 2006 requires that company directors include information on human rights in their annual reports. In the planned action sections of the NAP, however, there is no reference to requiring disclosure of due diligence activities.</p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>In the planned action sections of the NAP, there is no reference to a new requirement of due diligence as a component of compliance with a legal rule. However, the Bribery Act is mentioned as an example of an existing UK instrument designed to motivate good corporate behavior and business respect for human rights.</p> <p><u>(4) Regulatory Mix</u></p> <p>The regulatory mix is unsatisfactory because, while the NAP clearly references existing international legal instruments and national legislation protecting human rights, in terms of future actions, its main focus is on voluntary corporate self-regulation. It does not create new legal obligations for companies.⁸⁴</p>

UNITED KINGDOM (2013)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The UK NAP does not adequately address the full scope of the State’s jurisdiction as it is heavily skewed towards external concerns. Human rights abuses perpetrated by business domestically are largely ignored.⁸⁵ For example, although Section 4(iii) states that the UK will encourage companies to implement their domestic grievance mechanisms in their operations overseas, there is no requirement to assess whether or not those domestic grievance mechanisms are “operating in a rights-compatible manner.”⁸⁶</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>There is discussion of international and regional organizations and standards and how the UK has used, will continue to use, or will begin to use those organizations in its quest to implement Pillar I of the UNGPs.</p> <p>Some international organizations and standards are discussed in the “actions taken” sections of the NAP. For example, “actions taken” under Section 2 (duty to protect) states that the UK “played a leading role in developing the International Code of Conduct for Private Security Service Providers (ICoC).”⁸⁷ In this same section, there is also reference to how UK will continue to work on developing and monitoring OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas.</p> <p>International organizations and standards are also discussed in the “actions planned” sub-section under Pillar I. Specifically, the UK plans on encouraging State and private entities to only hire private security contractors that are members of the ICoC and seeking certification, plans on working to strengthen the implementation of the Voluntary Principles on Security and Human Rights,</p>

UNITED KINGDOM (2013)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>plans to lobby foreign States to support the UNGPs and other relevant standards (e.g. ILO Fundamental Principles), and plans to support the UN Working Group on Business and Human Rights.⁸⁸</p> <p>There is no mention of international organizations or standards under Section 3 (duty to respect) or Section 4 (access to remedy) of the NAP.</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>Sector-specific “planned actions” are discussed in the UK NAP. As referred to above, under Section 2 (duty to protect), there are two planned actions in the security and human rights sector. Specifically, the UK government says it will: (1) start to certify land-based private security contractors (PSCs) via the UK Accreditation Service, work to strengthen the ICoC, and encourage State and private actors only to contract with PSCs that are ICoC members and are seeking certification with accredited bodies; and (2) work to strengthen implementation of the Voluntary Principles on Security and Human Rights.⁸⁹ Exports of information and communications technology is also addressed in Section 2(v), where the UK says it will create guidance on the risks that this technology can pose to human rights.</p> <p>The theme of investment agreements is taken up by the NAP as well. In “New Actions Planned” under Section 2(vii), the UK government says it will ensure that international investment agreements entered into do not harm the host country’s ability to protect human rights. Finally, Section 3(ii) states that the UK government will encourage companies in one sector to work together to create guidance on protecting human rights that is relevant to that sector.</p>

UNITED KINGDOM (2013)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The UK’s NAP says that the government “welcomes the creation of the” UNGPs and that the NAP is the UK’s “national implementation plan” for the UNGPs.⁹⁰ Section 2(vii) states that the UK will push other States to implement the UNGPs.⁹¹ The NAP also refers to key international treaties and conventions beyond the UNGPs.</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>There is a timetable for implementation for only one of the planned actions. This action is in Section 2(ii), and it only creates a timeline for one section of the planned action, namely, to agree to a standard for maritime PSCs.</p> <p>Although some of the planned actions go into more detail, the majority of them are not specific, measurable, and time-specific. Overall, criteria for success, measurable targets, and timetables are largely lacking.⁹² This is a major weakness of the NAP as a whole.</p> <p>Section 2 (ii) provides one of the more detailed commitments included in the NAP. It states that the UK is going to start certifying PSCs based on the UK standard for land-based companies. It also states that the UK Accreditation service will be in charge of certification. This planned action also commits the UK to agreeing on a standard for maritime PSCs within the year. This is an example of a concrete action that is measurable and has a time frame.</p> <p>Other planned actions, however, are much less detailed. For example, Section</p>

UNITED KINGDOM (2013)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>2(i) simply commits the UK to “develop partnerships with other countries” to implement the UNGPs. Although it does mention the UK’s current partnership with Colombia, it could have identified other particular countries or discussed steps taken with Colombia that could be replicated in other collaborations. It is helpful that Section 2(xi) explicitly states that UK will instruct its embassies and high commissions “to support human rights defenders” who are working on business and human rights. However, although it does point to the EU Guidelines on human rights defenders, the action plan does not set out concrete measures to ensure that such support occurs, and it does not provide any way for success to be measured. A more detailed planned action could have said that each embassy would be required to set aside a certain amount of its budget and appoint someone to be the key contact person for human rights defenders or to serve as head of implementing the EU Guidelines, and that this would be done by a certain date. Detailing more concrete requirements like these would make the commitment more specific and measurable. Section 2(x) says that the UK will support the UN Working Group, and states how much the UK contributed financially in 2012. Instead of a vague commitment “to support” the Working Group, more concrete actions, such as a commitment to matching or exceeding its 2012 financial contribution, would have improved this planned action.</p> <p>In Section 3(iii), the UK NAP merely says that the UK will “support dialogue between business people, parliamentarians and civil society,” but it does not go into detail about how that will be done. Instead, it could have laid out a number of actions that the UK will take to achieve the overarching goal of dialogue, such</p>

UNITED KINGDOM (2013)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>as setting up recurring meetings between members of these groups and detailing how civil society and business can become participants in those meetings.</p> <p>Section 4(i) states that the UK will “disseminate lessons from the 2012 experience of the London Organising Committee of the Olympic and Paralympic Games” (LOCOG). However, it does not say whether the analysis of the LOCOG process has already been done and merely needs to be given to relevant groups, or whether it still needs to be completed, and if so, who will do it and by what date. Regardless of whether the “lessons learned” have already been compiled, this planned action does not say to whom this will be disseminated, in what form (e.g. as a document or as a training), or how they will be expected to use the information.</p>
<p>Priorities for NAPs</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>Because no NBA took place, any prioritization of human rights abuses was not informed by an NBA. Although there appears to be more focus on a few high-risk sectors, such as private security contracting, overall there is no prioritization of particular human rights issues apparent in the NAP.</p>

UNITED KINGDOM (2013)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The UK NAP does not adequately address issues related to the most vulnerable and excluded groups. There is only one “action to be taken” that discusses vulnerable or excluded groups. Specifically, Section 2(vi) states that the UK will “promote new project activity” to raise awareness and deal with the harmful effects of business, “including on the human rights of groups like indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families, by tasking our diplomatic missions in countries where these are concerns.”</p> <p>The NAP sets out the expectation in Section 3 that the UNGPs should be a guide for UK companies and that one of the key principles is that companies should consult with people who may be affected by a particular project, and that particular attention should be paid to indigenous peoples and other groups. However, the expectations and principles set out in this section are not reflected fully in the actions taken or planned.</p>

UNITED KINGDOM (2013)

5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was done, so it was not published. Interdepartmental meetings and debates were not transparent, and discussions were not made public.⁹³ For example, minutes from the meetings between the government and business or civil society were only circulated confidentially.⁹⁴ Additionally, although draft outlines were sent to a few stakeholders prior to finalization, this was done informally, and for the most part the draft NAP was not made available until it was officially published.⁹⁵</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The NAP does not always clearly say who within the government will be responsible for implementing the various planned actions. In Section 2 (state duty to protect), only three out of the eleven planned actions ((vi) awareness raising, (viii) lobby foreign states, and (xi) support human rights defenders) clearly state what part of government will be responsible and accountable for the planned action. In Section 3 (company responsibility to protect), only out of the four planned actions ((iv) raising issues with local authorities abroad</p>

UNITED KINGDOM (2013)

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>regarding international human rights law) specifically names the government actor tasked with implementation. In Section 4 (access to remedy), only two out of the five planned actions ((ii) UK trade and investment will advise companies on grievance mechanisms, and (iv) support projects through the FCO Human Rights and Democracy Programme Fund) specifically state the part of government that will be in charge.</p> <p>Section 6 (References) does provide a list of “mechanisms for the promotion of good corporate behavior and the Government Departments that lead on them.” However, this is in relation to work that is already being done, not in relation to the planned actions. In fact, there is not much information on what other government departments will be required to do, such as the Ministry of Justice; Home Office; the Department for Business, Innovation and Skills; or the Department for International Development.⁹⁶</p> <p>Overall follow-up for the NAP appears to be in the hands of the FCO, as each year the Annual Report on Human Rights and Democracy (created by the FCO) will include information on the NAP’s progress. Monitoring will also be conducted by representatives of civil society, government, and business who will meet periodically. However, the NAP does not specify who will be part of the group nor how often it will meet. The NAP also does not say whether the inter-agency steering committee will continue in existence and play a role in the implementation of or follow up to the NAP.⁹⁷</p>

UNITED KINGDOM (2013)

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.	There is a framework laid out in section 5 of the NAP. The Annual Report on Human Rights and Democracy will include information on the NAP's progress each year. Representatives of civil society, government, and business will meet periodically to monitor implementation and update it. An updated NAP is promised by the end of 2015. This framework could be improved by elaborating on what "periodically" means (e.g. whether it will be annual, bi-annual, etc.) and what part of government will be responsible for convening the periodic meetings.

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2. THE NETHERLANDS

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>The Dutch parliament and representatives of the Ministry of Foreign Affairs (MFA), which has been tasked with leading the Dutch NAP process, have made clear requests that the UNGPs be implemented nationally.⁹⁸ The interviews with stakeholders conducted throughout the NAP’s development are also a sign of commitment to the process. However, the lack of a national baseline assessment and a plan for oversight and monitoring of implementation of the NAP indicates that the government’s commitment to a comprehensive process, meaning one that involves structured evidence gathering to inform the content of the NAP and follow-up to the NAP, may be significantly limited.⁹⁹</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The Ministry of Foreign Affairs (MFA) was put in charge of coordinating the NAP process and was the chair of the inter-ministerial working group.¹⁰⁰ The MFA also hired a consultant to conduct the stakeholder interviews that took place prior to the drafting of the NAP.</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>An inter-ministerial working group was created in 2012 to coordinate the efforts to develop the NAP. The working group was chaired by the MFA.¹⁰¹ It included representatives from the Ministry of Economic Affairs, Ministry of Finance, Ministry of Security & Justice, and the Ministry of Social Affairs & Employment.¹⁰² Departments from the MFA that were involved were the Legal</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
	<p>Department, the Department for Sustainable Economic Growth, the Department for Human Rights, and the Department for Internal Market.¹⁰³ This group stayed active throughout the NAP's drafting process, responding to 95 questions from the Dutch parliament about the plan prior to the parliamentary debate on the NAP.¹⁰⁴</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>An overall timeline and terms of reference for the entire NAP process were never made publicly available.¹⁰⁵</p> <p>The terms of reference for the consultant hired to conduct the stakeholder interviews that took place prior to the drafting of the NAP were not published, but were shared with the interview participants.¹⁰⁶ The terms of reference indicated that the consultant was hired for a fixed-term assignment.¹⁰⁷</p> <p>The timeline and terms of reference for the remainder of the NAP development process remained unclear throughout the process.¹⁰⁸ If such information was developed, it was never shared publicly or with interview participants.¹⁰⁹</p> <p>After the stakeholder interviews took place, the drafting of the NAP began, yet the timeline for this development process was never made publicly available.¹¹⁰ The only public commitment made in terms of a timeline for the NAP came from the MFA to the Parliament, initially indicating a specific date for the publishing of the NAP.¹¹¹ However, this date was postponed several times throughout the development process, allegedly due to differences in opinion among various ministries concerning the content of the NAP.¹¹²</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
	During the drafting of the NAP, one consultation was conducted with each stakeholder group (i.e. business, civil society/academia, and “implementing organizations”). ¹¹³
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	Unknown.

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	The consultant hired to conduct the stakeholder interviews completed a stakeholder mapping. However, this stakeholder mapping was not published. ¹¹⁴
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	See 1.4. above. A select number of external stakeholders were invited to participate in the interviews, during which a total of 50 representatives of civil society organizations, business, implementing organizations, and experts were asked for inputs. In an attempt to ensure that participants felt that they could be as

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2. STAKEHOLDER PARTICIPATION	COMMENTS
	<p>open and honest as possible, an external consultant conducted the interviews.¹¹⁵ While the NAP was being drafted, three additional interviews were held to further discuss specific issues raised during the initial interviews. Each meeting was made up of only one group of stakeholders (i.e. business, civil society/academia, and implementing organizations). This division of groups was also intended to ensure open and honest dialogue during the stakeholder interviews.¹¹⁶</p> <p>No broad, public consultations took place. As noted above, no clear timeline for the stakeholder consultations was publicly communicated, apart from the fixed timeline of the consultant conducting the interviews, which was only shared with participants, and the publication date of the NAP, which was postponed several times.¹¹⁷</p>
<p>2.3. Provide adequate information and capacity-building where needed.</p>	<p>No capacity-building measures were included in the NAP process.¹¹⁸ Relatively well-informed stakeholders were part of the stakeholder interview process.¹¹⁹ Although the number of consultation participants was significantly limited, those who did participate were well-equipped to do so.¹²⁰</p>
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>Participation by disempowered or at-risk stakeholders was not prioritized nor facilitated during the NAP process.¹²¹</p>
<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>The Netherlands did not establish a multi-stakeholder steering group or advisory committee, only a governmental, inter-ministerial working group.¹²²</p>

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	A full NBA was not conducted by the Dutch government. Although there was an “internal mapping” of government policies, it did not rise to the level of an NBA. ¹²³
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable. However, the “internal mapping” was assigned to the inter-ministerial working group. ¹²⁴
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable. The “internal mapping” did not involve external stakeholders. ¹²⁵
3.4. Publish and disseminate the NBA.	Not applicable. The “internal mapping” was not published. ¹²⁶

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The Dutch NAP does not go through the UNGPs principle-by-principle or even Pillar-by-Pillar. Instead, it is organized around five points that the NAP claims were the main points brought up during the stakeholder interviews: (1) an active role for the government, (2) policy coherence, (3) clarifying due diligence, (4) transparency and reporting, and (5) scope for remedy. The main body of the NAP includes information on past actions, with commitments for future actions interspersed. These action points are then listed in bullet point form and organized by the five topics listed above in section 4 of the NAP on pages 41 and 42.</p> <p>There is no clear indication of how the action points listed will contribute to the realization of a particular UNGP. Unfortunately, the Dutch NAP is mostly a discussion of the status of current policy, the results of the stakeholder discussions, and the government’s response to the various concerns raised during the consultations, rather than an articulation of specific, concrete, and measurable commitments that the government plans to undergo to further implementation of the UNGPs or other business and human rights frameworks.¹²⁷</p> <p>The NAP does not systematically address the State duty to protect human rights under Pillar I and instead focuses mostly on Pillar II. The NAP primarily focuses on voluntary, instead of regulatory, mechanisms for engaging with the State duty to protect human rights. Pillar III on access to remedy is also insufficiently</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>addressed as the actions listed primarily look into non-judicial grievance mechanisms, rather than judicial reforms.¹²⁸ The actions listed also explicitly exclude legislation with an extraterritorial effect. One governance gap that should have been addressed by the NAP is that the government could be much more active in cases of suspected violations of criminal or administrative human rights norms by Dutch companies abroad.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the Dutch NAP’s coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP’s fulfillment of each UNGP, which is a task to be completed during the national baseline assessment (NBA) process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights.)¹²⁹ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP’s adequacy in terms of substantive content. The Dutch NAP is unsatisfactory under each of these sub-criteria:</p> <p><u>(1) Positive and Negative Incentives for Due Diligence</u></p> <p>Although the NAP indicates that the Dutch government is willing to assist companies that choose to conduct due diligence, the action points do not contain any positive or negative incentives for companies to do so. For example,</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>in section 4, where the action points are listed, under Clarifying due diligence: bullet point one, the government commits to talking with relevant schools about incorporating CSR issues into their curriculum.¹³⁰ Bullet point two under this same heading says that the government gives a grant to the SER to “help companies shape the human rights component of their CSR policies.”¹³¹ While both of these are positive developments and may help to encourage due diligence, they do not provide concrete incentives, either positively or negatively, for conducting due diligence.</p> <p>Notably, the main body of the NAP further discusses the ways in which the government is already providing assistance to companies that wish to conduct due diligence. For example, the government provided a grant to CSR Netherlands that developed a CSR Risk Check—an online tool that assists companies in figuring out their possible adverse social impacts based on the sector and country in which they work.¹³²</p> <p>The government also started a “Sector Risk Analysis Project” to identify the sectors most at risk to be associated with negative societal impacts. The government has announced that it will develop a number of CSR agreements with the sectors most at risk, starting with the textile, energy, and financial sectors.¹³³ However, there is no information included in the NAP about the likely content of these agreements. Although it appears that it would be possible for one of the agreements to include due diligence or a mechanism to incentivize due diligence, without more information it cannot be assumed that this is the case. The government has furthermore said that it will assist by</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>removing obstacles to due diligence identified by companies.¹³⁴</p> <p><u>(2) Disclosure of Due Diligence Activities</u></p> <p>Transparency and reporting: bullet point two says that the government thinks that management and supervisory boards “should include more information on their CSR policies” in their reports.¹³⁵ However, in the section on action points there is no mention of any requirements for disclosure of CSR policies in general, or of due diligence activities in particular, and there is no mention of what information these management and supervisory boards should specifically include.</p> <p>In the NAP, the government also gives its support to the idea that companies should communicate the risks it finds through due diligence to stakeholders and investors.¹³⁶ The government also stressed that the CSR agreements that it enters into with different sectors will emphasize transparency and stakeholder dialogue.¹³⁷</p> <p>The government also points out that it supports the European Commission’s proposal that would require large companies to include non-financial reporting on issues such as human rights and environmental impacts.¹³⁸ This would potentially apply to 600 Dutch companies.¹³⁹ Another way that the government says it encourages reporting on social issues is through the transparency benchmark, which rates the largest 500 Dutch companies on transparency.¹⁴⁰ However, as MVO Platform points out with regard to both the Transparency Benchmark and the European Commission’s future non-financial reporting regulation, the “due diligence principle has not yet found its way into these</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>transparency initiatives.”¹⁴¹</p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are no action points that would require due diligence as part of compliance with a legal rule. However, the government does commit to creating an independent committee to assess whether more legal regulation related to Dutch companies’ CSR is necessary in one of the action points (Clarifying due diligence: bullet point five).¹⁴² This future action point does not state that the government will consider legal regulation related specifically to human rights due diligence, but this could be inferred based on the fact that it is included under the clarifying due diligence section.</p> <p><u>(4) Regulatory Mix</u></p> <p>Although the government commits to analyzing the current regulatory mix in the Netherlands (Clarifying due diligence: bullet point five),¹⁴³ the action points do not contain any mandatory measures to ensure that businesses respect human rights. Instead, the action points are comprised of commitments to provide training, funding, and assessments and to enter into CSR agreements.¹⁴⁴ The main emphasis of the Dutch NAP is on awareness raising and capacity building, it does not include legislative or enforcement measures. Therefore, the regulatory mix is unsatisfactory.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The Dutch NAP states that “the guiding principle is that businesses have a social responsibility to apply the same human rights norms both in the Netherlands and elsewhere.”¹⁴⁵ Despite this statement, however, the NAP explicitly rejects legislation with extraterritorial application, stating that “[t]he government would point out that extraterritorial application alone is not enough. A court judgment must also be enforceable, and it is not up to the Netherlands to decide for other countries whether this is possible. The government is therefore not convinced that legislation with extraterritorial impacts will contribute to preventing human rights abuses by foreign companies in the countries in which they are active. There is also too little international support for an international, legally-binding instrument.”¹⁴⁶ On the other hand, the Netherland Institute for Human Rights believes that the NAP does not give enough attention to human rights abuses committed domestically.¹⁴⁷</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The Dutch NAP addresses international and regional organizations and standards by pointing out how the Netherlands currently works through those organizations and standards. Specifically, the NAP points out that the Netherlands pushes for the implementation of the UNGPs in multilateral organizations and also pushes for “universal ratification” of the core ILO standards in order to ensure a “level playing field” for business.¹⁴⁸ The NAP also points out that the Dutch government works through various multilateral institutions, such as the ILO’s Better Work Programme, to encourage the protection of human rights.¹⁴⁹ The NAP mentions that both civil society and the business community brought up that the Dutch should use multilateral forums</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>to push for the implementation of the UNGPs more often.¹⁵⁰</p> <p>There are two action points that refer to international and regional organizations and standards. The government commits to consulting with like-minded member states at the EU-level before 2016, when the Dutch will be in the EU presidency, and to conducting an evaluation of whether the sustainable procurement policy complies with the OECD Guidelines.¹⁵¹</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP notes that the importance of thematic and sector-specific human rights issues were brought up during the stakeholder interviews, particularly with reference to sector risk analysis. It also mentions that the Dutch government introduced “Sector Risk Analysis” in its CSR policy letter, which the government said it would report progress on in early 2014.¹⁵² This project is an attempt to identify the five sectors that have the highest number of CSR risks, including insight into those risks. At the time of this assessment, the Sector Risk Analysis has been performed by KPMG, and the results are expected soon. However, some CSR platform members have been cautious about the process employed by KPMG and are not optimistic about the quality of the forthcoming report.¹⁵³</p> <p>Two of the fourteen action points in the NAP address thematic or sector-specific human rights issues. Transparency and reporting: bullet point one says that CSR agreements will be made with certain sectors based on the results of the Sector Risk Analysis project.¹⁵⁴ Scope for remedy: bullet point two addresses an amendment (which has since been passed) to the National Contact Point (NCP) decree which would allow the government, in serious situations, to request that</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	the NCP assesses CSR issues for a particular sector. ¹⁵⁵
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The Dutch NAP does include a statement of commitment to the UNGPs. Specifically, it says that “[p]utting the UN Guiding Principles into practice is an important priority for the Netherlands.”</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Out of fourteen action points included in the NAP, only five have specific timetables. These can be found under Policy coherence: bullet points one and three, Clarifying due diligence: bullet point five, and Scope for remedy: bullet points two and three. For example, the government commits to organizing a conference on access to remedy in 2014 and to have an independent committee assess whether Dutch law is in line with the UNGPs during that same year. The remaining action points are much more open-ended. For example, Clarifying due diligence: bullet point one, commits the government to “enter into dialogue with educational institutions . . . on including business ethics and/or CSR in their curriculums,” yet there is no timeline provided for this initiative or articulation of how exactly such dialogue will be achieved or carried out.</p> <p>There are some action points that are relatively specific and measurable. For example, under Policy coherence: bullet point two is moderately specific in that it commits to the creation of an e-learning course for “ministries and implementing organisations.”¹⁵⁶ In the body of the report, it says this would be</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>for civil servants at the international level as well.¹⁵⁷ However, this action point could be made even more specific by laying out the type of information to be included in the e-learning course, whether it would be mandatory for relevant ministries and civil servants to complete the course, whether there will be any follow-up after the e-course, when it will be completed, and what institution would be in charge of creating the course.</p> <p>Policy coherence: bullet point three, which commits to evaluating whether procurement policy is consistent with the UNGPs and OECD Guidelines, is specific relative to the other bullet points because it provides a general timeline and names the ministry in charge of implementation (the Ministry of the Interior and Kingdom Relations). However, it is unclear how measurable this action point is, as it may depend on whether the Ministry of the Interior and Kingdom Relations publishes its findings in a report or merely says that this analysis was completed. This action point could have been further improved by committing to the release of such a report so that civil society and other stakeholders could access it and determine whether the action was completed. This action point also should have explained how this analysis would be used, meaning whether the results would lead to the consideration of procurement policy reform and when/how that consideration would take place (e.g. whether the results will be presented to a particular relevant government body).</p> <p>The most specific and measurable action point is under Scope for remedy: bullet point three, which relates to the Dutch National Contact Point (NCP). This bullet point says that the government will “acquire scope to ask the NCP to carry out a sector-wide investigation into CSR issues” in very serious situations.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>The action point also explains how this power will be acquired and when (namely, through amendments to the NCP decree in the summer of 2014). Although it does not explain what criteria will be used to determine “very serious situations,” this action point is arguably the most concrete, specific, and measurable commitment in the Dutch NAP. This action point was indeed achieved during summer 2014.¹⁵⁸ However, one of its limitations is that the NCP cannot initiate these investigations on its own but rather must be requested by the Cabinet.¹⁵⁹</p> <p>One of the action points, Scope for remedy: bullet point one, would be a reasonably specific and measurable action point if it were outlined differently. At this time, it does not include any future commitment. It merely states that the government has already given start-up funding to ACCESS Facility, with no commitment for future funding or support.</p> <p>There are many action points that are overly vague, however. For example, Transparency and reporting: bullet point two commits to “call companies’ attention” to the importance of including information about CSR policies in their reports and complying with the Corporate Governance Code. Apart from the fact that this action point will likely not achieve much change, it does not specify what steps the government will take to do this. Instead, it could have detailed that the government would create a guidance document or report that would then be disseminated to companies or that the government would hold conferences or do presentations for companies on the benefits of including CSR policy information in their reports, amongst other possibilities.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Another vague action point is Scope for remedy: bullet point two. This action point says that the Dutch government “will organize a conference on judicial and non-judicial grievance mechanisms” with ACCESS Facility in 2014. Although it does identify a partner organization and gives a timeframe, the NAP should have specified who else would be invited to this conference (e.g., is it for government, civil society, and/or business?), what the desired outcomes would be, how the government will prepare for the conference (will there be an assessment of existing judicial and non-judicial grievance mechanisms?), and what entity within the government will be in charge of the conference.</p> <p>Policy coherence: bullet point one simply commits to “consult” with other EU Member States prior to the 2016 Dutch EU Presidency. This is very open-ended and could have been improved by identifying key issues related to business and human rights that the government will consult on and how those consultations will inform the 2016 Dutch EU Presidency.</p> <p>Other overly vague action points include Clarifying due diligence: bullet points one and three, and Transparency and reporting: bullet point one.</p>
<p>Priorities for NAPs</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The NAP does not appear to prioritize any human rights abuses above others.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>There is no mention of vulnerable and excluded groups in the Dutch NAP.</p>

5. TRANSPARENCY	COMMENTS
<p>Full Transparency with All Stakeholders</p>	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was conducted, and the “internal mapping” was not made public. The summaries of consultations were not made publically available.¹⁶⁰</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
<p>Holding Duty-Bearers Accountable for Implementation</p>	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>Three of the fourteen action points identify the specific entity responsible for implementation of and follow-up to the action point. These action points can be found under Policy coherence: bullet point three, Clarifying due diligence: bullet point four (although bullet point five says an “independent committee” will be</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>developed, it does not say who will be part of that committee), and Scope for remedy: bullet point four. The other action points are more vague and instead either say that “the government” will complete the task or leave out assignment of responsibility entirely. For example, Policy Coherence: bullet point two says that “an e-learning course will be developed” without mentioning who it will be developed by. Even the action points that are clearly assigned to a particular entity within the government do not specify who will be in charge of follow-up or how such follow-up will be conducted.¹⁶¹</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>There is no framework laid out in the NAP itself regarding monitoring and reporting on implementation of the commitments made therein. The fact that many of the action points were set to occur in 2014 has led some stakeholders to question whether a new NAP will be written in 2015 or later.¹⁶² However, there is no commitment in the NAP itself for updating the document or writing a new NAP in the future.¹⁶³</p>

DENMARK

3. DENMARK

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>The Danish government’s initiative to create a standalone NAP on business and human rights in addition to its NAP on CSR is a positive development. However, the BHR NAP’s frequent reference to the steps taken pursuant to the CSR NAP rather than outlining further steps specific to BHR undermines the appearance of Denmark’s commitment to a separate and comprehensive BHR NAP. The lack of any monitoring or follow-up procedure to the BHR NAP also demonstrates a lack of commitment to the NAP process.</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The Ministry for Business and Growth and the Ministry of Foreign Affairs were responsible for the NAP process.¹⁶⁴</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>The Ministry of Justice, the Ministry of Employment, the Ministry of Education, the Danish Export Credit Fund, and the Investment Fund for Developing Countries (IFU) all provided input to the NAP.¹⁶⁵</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>No terms of reference or a timeline for the NAP process were devised or published.¹⁶⁶</p>

DENMARK

1. GOVERNANCE AND RESOURCES	COMMENTS
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	No budget for the NAP process was determined. ¹⁶⁷

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	No stakeholder mapping was conducted. ¹⁶⁸
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	<p>The Danish government consulted with the Working Group on Remedy under the Council for CSR,¹⁶⁹ the Mediations and Complaints-Handling Institution for Responsible Business Conduct, and the Danish Institute for Human Rights (DIHR).¹⁷⁰ However, very limited time was given for providing input, and important stakeholders, such as the Danish Consumer Council, other members of the Danish Council for CSR, and disempowered or at-risk stakeholders, were not consulted.¹⁷¹ Additionally, the process was not clearly and publicly communicated.¹⁷²</p> <p>The Danish Council for CSR provided recommendations under each Pillar of the UNGPs. These recommendations were to a large extent included in the BHR</p>

DENMARK

2. STAKEHOLDER PARTICIPATION	COMMENTS
	<p>NAP.¹⁷³</p> <p>For future processes, when developing a timeline vulnerable groups, including indigenous peoples, should be given sufficient time and occasion to submit input into the process, taking into account their particular difficulties in doing so. For example, it might be feasible to organise a joint consultation process with indigenous peoples for a group of closely associated states such as the Nordic Countries.</p>
<p>2.3. Provide adequate information and capacity-building where needed.</p>	<p>No adequate information and capacity building were provided.¹⁷⁴</p> <p>Indigenous peoples are among the groups clearly requiring additional capacity-building in order to meaningfully participate in any stakeholder consultation process. Denmark should therefore consider supporting capacity building for indigenous peoples aspiring to apply the UNGP in the defense of their rights.</p>
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>No participation by disempowered or at-risk stakeholders was facilitated.¹⁷⁵</p> <p>Indigenous communities are one example of disempowered or at-risk stakeholders. Ensuring meaningful consultation with potentially or actually business-affected indigenous communities is the key precondition for properly identifying and mitigating human rights risks affecting them. As a follow-up action plan, Denmark might consider coordinating such a consultation process</p>

DENMARK

2. STAKEHOLDER PARTICIPATION	COMMENTS
	with other States such as the Nordic Countries in order to minimize effort.
2.5. Consider establishing a stakeholder steering group or advisory committee.	The Danish Council for CSR could be considered a stakeholder steering group/advisory committee. ¹⁷⁶ The Council for CSR provided recommendations under each Pillar of the UNGPs. These recommendations were to a large extent included in the BHR NAP. ¹⁷⁷

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	No NBA was conducted. ¹⁷⁸ However, there was a high-level “table” that included key observations and recommendations for each GP. ¹⁷⁹
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable. However, the “table” mentioned in 3.1. was developed by the Danish Business Authority. ¹⁸⁰
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable. However, DIHR was able to provide comments to the “table” referred to in 3.1. ¹⁸¹
3.4. Publish and disseminate the NBA.	Not applicable. The “table” referred to in 3.1. was not published. ¹⁸²

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The main body of the Danish NAP goes through each Pillar of the UNGPs and summarizes the respective GPs, details the recommendations provided by the Danish CSR Council, describes actions that have already been taken, and, in the case of Pillar I and III, commits to a few future planned actions relevant to those Pillars.¹⁸³ In the main body of the NAP, there are occasional references to past actions or planned actions relating to a particular UNGP (e.g., page 16 references GP 5 in parenthesis after a planned action). However, the annexes explain which actions are designed to implement a particular UNGP in much more detail.¹⁸⁴ Specifically, in Annexes 1 and 2 of the NAP, there is a “schematic overview” of Danish implementation that goes through individual principles under Pillars I and III.¹⁸⁵ Annex 1 also explains which UNGP each planned action is meant to implement.¹⁸⁶</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the Danish NAP’s coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP’s fulfillment of each UNGP, which is a task to be completed during the National Baseline Assessment (NBA) process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).¹⁸⁷ These sub-criteria are not an exhaustive list, but have been supported by other</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>researchers and advocacy groups as indicative of a NAP’s adequacy in terms of substantive content:</p> <p><u>(1) Positive and Negative Incentives for Due Diligence</u></p> <p>There is no mention of due diligence in the “Planned Actions” section.¹⁸⁸</p> <p>The NAP does include information on actions already taken or in progress that constitute incentives to conduct due diligence. Specifically, there is an award given out each year for the best non-financial report by the Danish Trade Organization of Auditing, Accounting, Tax, and Corporate Finance.¹⁸⁹ Part of the evaluation conducted by the judges includes looking at whether a company reports on human rights impacts.¹⁹⁰ However, this is not a government initiative as the trade organization is a private association composed of member firms and individuals.¹⁹¹</p> <p>The Danida Business Partnership, a partnership between Danish companies and companies in developing countries, is also mentioned in the NAP. In order to participate in this partnership, a company has to demonstrate due diligence, including human rights due diligence, though the details of this requirement are not outlined in the NAP.¹⁹² The due diligence check required by the Danida Business Partnership must be in accordance with the UNGPs. Although this is a positive step, this process could be improved as the current self-assessment guidelines included in the “Guidelines and Conditions for Support”¹⁹³ are based on the UN Global Compact. Moreover, Annex 1 (“CSR approach of Danida Business Partnerships”) only refers to the first two pillars, and it is not very</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>practically oriented. It would be helpful if step-by-step guidelines on the process were provided to guide applicants on how to live up to this requirement. Furthermore, the establishment of a contact point in a relevant ministry may be considered, so companies and other partners can get advice on how to deal with this process. This contact point could also serve as a place where expertise could be gathered from across Danish government ministries, and Denmark’s experience could be compared to the experiences of other countries.</p> <p>There is no explanation of if or how the government is currently a part of either the Danida Business Partnership or the Danish Trade Organization of Auditing, Accounting, Tax, and Corporate Finance’s award on best non-financial reporting.</p> <p>Although not directly a positive or negative incentive, the Danish government could further support companies and encourage them to conduct due diligence by providing sector specific guidelines.</p> <p><u>(2) Disclosure of Due Diligence Activities</u></p> <p>There is no mention of due diligence disclosure in the “Planned Actions” section.¹⁹⁴</p> <p>There is currently a requirement for disclosure of company policies on human rights. The NAP points out that, pursuant to an amendment to section 99(a) of the Danish Financial Statements Act, from fiscal year 2013 onwards the CSR policy disclosure requirement that applies to all large companies (including State-owned enterprises) and financial institutions has been expanded to include policies to respect human rights and reduce negative impacts on the</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>climate.¹⁹⁵ The requirements entail that companies must either disclose their policies to respect human rights and reduce negative impacts on the climate, how they implement these policies, and what they have achieved, or state that they do not have one or both of these policies.¹⁹⁶ However, this requirement does not include reporting on adverse human rights risks and impacts and disclosure of due diligence activities, which is a major weakness of the requirement.</p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There is no mention of due diligence as the basis for compliance with a legal rule in the “Planned Actions” section.¹⁹⁷</p> <p>Despite the existing requirement to disclose CSR, human rights, and climate policies, this does not, as described above, create the requirement to actually report on adverse human rights risks and impacts and conduct due diligence as companies can simply report on their general human rights commitments and procedures or report that they don’t have a policy to respect human rights in place.¹⁹⁸ Going forward, the Danish government should consider making reporting on adverse human rights risks and impacts and disclosure of due diligence activities mandatory for all large companies as part of the CSR policy disclosure requirement. Such a requirement should also include reporting on adverse human rights impacts and due diligence procedures in regard to supply chains and other business relationships.</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>The NAP does point out that, in order to participate in the Danida Business Partnership (as described above), a company must show that it engages in due diligence, which must include human rights due diligence.¹⁹⁹ However, there is no explanation of if or how the government is a part of this initiative.</p> <p><u>(4) Regulatory Mix</u></p> <p>Given the very small number of future action points listed in the Danish NAP, it is difficult to assess the adequacy of the regulatory mix. There is one regulatory measure, which will abolish the DKK 37.5 million trigger for labor clauses to be included in public tender calls regarding construction and instead require such clauses in all construction public tenders.²⁰⁰ The other commitments are not regulatory in nature, but rather include the creation of an inter-ministerial working group to study the prospects of extraterritoriality, recommendations for public authorities on how not to harm international guidelines, and case studies on how social clauses in government contracts work in practice.²⁰¹</p> <p>As described above, an inter-ministerial working group has been established to assess the “need and feasibility” of including extraterritorial jurisdiction in legislation regulating relevant topics, with a particular focus on access to judicial remedy for victims of serious human rights violations involving Danish multinational enterprises. This is a positive step, but the inter-ministerial working group should also address the need and feasibility of including mandatory due diligence in particular areas of risk and importance in order to establish an adequate regulatory mix with regard to the implementation of the UNGPs. For instance, the Danish Council for CSR has recommended that the</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>Danish government should require state-owned companies and government agencies to incorporate due diligence in their business activities. The Danish government should follow up on this recommendation. However, this should not be the only initiative taken by the Danish government.</p> <p>Overall, the focus in the NAP is on guidance and self-regulatory measures and the establishment of the non-judicial Mediation and Complaints-Handling Institution for Responsible Business Conduct. Moving forward, Denmark should focus on binding measures under Pillars I and III of the UNGPs.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The introduction of the NAP states that the NAP is “focused on preventing and mitigating adverse impacts on human rights by Danish companies at home and abroad.”²⁰²</p> <p><u>Past/Current Actions</u></p> <p>The “past and current actions” outlined in the NAP do address the full scope of the State’s jurisdiction. For example, the Mediation and Complaints-Handling Institution (the Danish National Contact Point), which was created in 2012, can hear complaints against Danish private companies, public authorities, and private organizations (e.g., NGOs) for actions that allegedly violate the OECD Guidelines for Multinational Enterprises, both abroad and in Denmark.²⁰³ The Mediation and Complaints-Handling Institution is still a relatively new institution and an important part of the work so far has been to disseminate information about the existence of the institution, both at the national and international level. This work is currently underway. In terms of handling complaints, it is a</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>positive step that the institution, in one of the first cases handled, decided to make a general statement about retention of employees' identification papers, even though it found that it had not been substantially documented whether the employer had in fact retained employees' passports.²⁰⁴ Danish civil society organizations are increasingly aware of the potential of the Mediation and Complaints-Handling Institution as an avenue for promoting corporate accountability and expect more specific instances (cases) to be raised in the years to come.</p> <p>Additionally, from fiscal year 2013 onwards, large Danish companies are required to include information about what measures they are taking to respect human rights and reduce adverse impacts on the climate in their annual reports, pursuant to amendment 99(a) of the Danish Financial Statements Act.²⁰⁵ This arguably covers all of the State's jurisdiction as reporting on policies to respect human rights and reduce adverse impacts on the climate should include operations abroad as well as in Denmark. The amendment 99(a) of the Danish Financial Statements Act has had the positive effect that most of the large Danish companies covered by the Act now have CSR policies in place and include it in their annual report. Many companies are also beginning to address the issue of human rights. However, after three years subject to the legal requirement for reporting on CSR, only about a quarter of the large Danish companies that report on CSR report on their risks, dilemmas, and adverse impacts/negative events.²⁰⁶ In addition, very few companies report on their due diligence processes. The Danish government should therefore seriously consider strengthening the reporting requirement on CSR for all large Danish companies</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>to include reporting on risks, adverse human rights impacts, and due diligence to help ensure that companies respect human rights and report on their efforts to do so. Supply chains and other business partnerships should also be part of such a legal requirement.</p> <p><u>Planned Actions</u></p> <p>One of the “planned actions” relates to extraterritoriality. Specifically, Denmark commits to creating an inter-ministerial working group that will assess the “need and feasibility” of including extraterritorial jurisdiction in legislation regulating relevant topics. This assessment will include a study of the practices of other States and the potential for judicial prosecution.²⁰⁷ Other planned actions relate to human rights issues domestically. For example, in government contracts for construction purposes, labor clauses will have to be included in all public tender calls, instead of only for construction projects that will cost over DKK 37.5 million.²⁰⁸</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p><u>Past/Current Actions</u></p> <p>In the sections on past and current actions to implement the UNGPs there are many references to international and regional organizations and standards. For example, under Pillar I, the NAP references Denmark’s participation in the Universal Periodic Review (UPR) process,²⁰⁹ as well as the fact that Denmark is part of the Group of Friends of Paragraph 47.²¹⁰ Under Pillar II, the NAP references the Danish CSR NAP and how it is meant to encourage companies to apply international guidelines like the OECD guidelines, ISO 26000, and the UN</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>Global Compact.²¹¹ Under Pillar III, the NAP states that the Mediation and Complaints-Handling Institution for Responsible Business Conduct, created in 2012, was “established in accordance with the international effectiveness criteria for non-judicial mediation and grievance mechanisms” laid out in the OECD Guidelines for Multinational Enterprises and the UNGPs.²¹²</p> <p><u>Planned Actions</u></p> <p>Given the very limited number of planned actions, there is only one reference to international or regional organizations and standards and how they relate to future action. Specifically, under Pillar I, the planned actions (section 2.4) reference ILO Convention 94 and its general commitment to ensure that there is more use and enforcement of labor clauses in government contracts.²¹³</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>Thematic and sector specific human rights issues are discussed briefly in the Danish NAP.</p> <p><u>Past/Current Actions</u></p> <p>In the sections on past and current actions to implement the UNGPs, there are references to thematic human rights issues. Specifically, under Pillar I, discrimination in the labor market is discussed.²¹⁴ Additionally, the NAP mentions the Partnership for Responsible Garments Production in Bangladesh that the Danish government is a part of.²¹⁵ This initiative is a positive step but has not produced the expected results regarding supply chain transparency of Danish companies. To some extent it contributed to the achievements of the Accord on Fire and Building Safety and a social dialogue project of the Ethical Trading Initiatives. However, regarding Danish companies, little transparency has been achieved regarding their specific initiatives and results.</p> <p><u>Planned Actions</u></p> <p>In the planned actions under Pillar I (section 2.4), the NAP includes planned actions that focus on labor conditions and public contracting.²¹⁶</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The Danish NAP includes multiple statements of commitment to the UNGPs. For example, it says that “the Danish Government is highly committed to the UN</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>Global Combat [sic] and the UN Guiding Principles on Business and Human Rights.”²¹⁷ The NAP points out that the Danish government supported John Ruggie’s work while he was developing the UNGPs and continues to support the UN Working Group.²¹⁸ The NAP also notes that the Danish government began to implement the UNGPs in 2012 when it published its CSR NAP.²¹⁹ The NAP says that the CSR NAP was inspired by the revision of the OECD Guidelines, the ratification of the UNGPs, and the renewed EU Strategy 2011-2014 on CSR.²²⁰ Finally, the NAP notes that the European Council and European Commission called on States to create NAPs on BHR, but does not give that as the reason for the Danish decision to write this NAP.²²¹</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>None of the planned actions include a timeline.</p> <p>Furthermore, it is difficult to tell which actions have already been completed, which are underway, and which have not yet been started, as there are inconsistencies in which tense is used in the annex and in the main body of the NAP when discussing certain actions. For example, when referring to workshops conducted by the Trade Council and the Danish Business Authority, the Annex says that “they will include practical guidance on how to demonstrate due diligence,”²²² while in the main body of the NAP it says “they include practical guidance on how to demonstrate due diligence.”²²³ Additionally, the Annex states that the “Government will introduce a bill proposing that the largest Danish companies and state-owned limited liability companies in future must expressly state in their reports what measures they are taking to respect human rights and reduce their impact on the climate.” Conversely, in the main body of</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>the NAP, it says that this has already been completed through an amendment to Section 99a of the Danish Financial Statements Act.²²⁴ Clarity about what has been completed and what still needs to be completed is important and will help enable more effective monitoring of the commitments outlined in the NAP.</p> <p>The planned actions listed under Pillar I (the only Pillar that has future planned actions listed) are all relevant to implementation of the UNGPs. They are also relatively specific. For example, one of the planned actions involves creating an inter-ministerial working group with the purpose of assessing the need and feasibility of enacting relevant legislation with extraterritorial application. This planned action lays out the questions this group will be tasked with answering, namely, (1) the practices and experiences of other countries in this area, (2) based on that, what has worked and what has not worked, and (3) whether judicial prosecutions (as recommended by the Danish Council for CSR) for “severe human rights impacts” should be conducted.²²⁵ Although it is still a relatively specific planned action, this planned action could have been made even more specific by explaining whether the inter-ministerial group would publish a report, if their conclusions would be available to the public in some form, and what follow-up measures would be taken based on their recommendations/conclusions. Including more specific details such as these would make it easier to monitor and determine whether the action plan was actually implemented (e.g., if no findings are published in any form, it will be hard for civil society to determine if and how adequately the inter-ministerial working group actually studied the questions listed above).</p> <p>Similarly, the planned action regarding labor clauses in government</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>construction project contracts is quite specific. It lays out a particular monetary threshold in Danish law that will be abolished, with the effect of requiring labor clauses in all such contracts instead of those above DKK 37.5 million.²²⁶ Whether or not this happens will be easy to measure/monitor, as either the government will succeed in changing the law or it will not.</p> <p>Other planned actions are not as specific and measurable. For example, the commitment to having municipalities and regions “jointly prepare guidelines for how public authorities can avoid having an adverse impact on international guidelines” is quite vague. Although in the Annex there is a little more information provided (e.g., “the guidelines should be used to manage the challenges public authorities are facing today when acting as a private company”),²²⁷ the NAP could have laid out a timeline for meetings between various municipalities and regions, what government department or official would be in charge of leading the process, and what types of questions these guidelines should attempt to answer.</p>
<p>Priorities for NAPs</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>There does not appear to be any prioritization of particular business-related human rights abuses.</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>There is no mention of vulnerable or excluded groups, such as indigenous communities, in the Danish NAP. The Danish NAP does not contain the expression “vulnerable groups,” not even the stand-alone adjectives</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>“vulnerable” and “marginalized.” There is no mention of the word “group,” referring to a group exposed to specific human rights risks. This appears as a key deviation from the UNGP’s “General principles,” which stipulate that “[t]hese Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.”²²⁸</p> <p>The need for particular attention within NAPs to groups such as indigenous peoples has also been highlighted in the report of the UN Working Group on Business and Human Rights to the UN General Assembly.²²⁹</p>

5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was conducted or published. No significant analysis was conducted and no submissions were published.²³⁰</p>

DENMARK

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The planned actions lay out who will be generally responsible for implementing the action, but they are not specific enough. First, the study of the feasibility of extraterritorial legislation will be assigned to an inter-ministerial working group.²³¹ However, which ministries will be involved in that working group is not explained. Second, the guidelines for public authorities on how to avoid having “an adverse impact on international guidelines” will be created by municipalities and regions jointly.²³² This, again, is rather vague as it does not say what part of municipal governments will be involved. Third, after the threshold value of DKK 37.5 million is removed, all government entities that contract for construction projects must include a labor clause in those contracts.²³³</p> <p>Other commitments are even more vague. For example, there is no indication of who will be in charge of putting together a document of case studies to “demonstrate how companies and municipalities work with social clauses in practice.”²³⁴</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>There is no framework for monitoring or reporting laid out in the NAP. In Section 5, entitled “Looking Ahead,” the government simply commits to “continuously update Danish priorities with regard to the implementation of the UN Guiding Principles in alignment with the National Action Plan for CSR 2012-15.”²³⁵ There is no explanation of what this continuous update will entail, what part of the government will be in charge, or when it will take place. It also only</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	refers to the NAP for CSR, and does not say how the small number of planned actions laid out in the NAP on BHR will be monitored or if the BHR NAP will be updated in the future. ²³⁶

FINLAND

4. FINLAND

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>Finland announced its decision to draft a NAP on business and human rights in its Resolution on Corporate Social Responsibility on November 22, 2012.²³⁷ On September 17, 2014, the Finnish Government adopted the Working Group’s (discussed further in 1.3) proposed plan on implementation of the UNGPs.²³⁸ The fact that Finland has a plan for monitoring implementation of the NAP, with yearly monitoring by the Committee for Corporate Social Responsibility²³⁹ and additional monitoring of planned actions by specific ministries, is a positive indication of the government’s commitment to the NAP process. The creation of the inter-ministerial working group is another positive indication of this commitment, as is the fact that the Finnish NAP expressly says that it is designed “in a manner that allows potential new measures to be defined.”²⁴⁰ This means that Finland recognizes that this NAP is just a starting point and that there may be actions that should be added on in the future.</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The Ministry of Employment and Economy was tasked with overseeing the NAP drafting process. Specifically, it created an inter-ministerial working group (discussed further in 1.3), which then submitted to the Ministry of Employment and Economy a proposal for implementing the UNGPs in Finland.</p>

FINLAND

1. GOVERNANCE AND RESOURCES	COMMENTS
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>The Ministry of Employment and Economy created an inter-ministerial working group.²⁴¹ The Working Group was tasked with creating a proposal for a national plan to implement the UNGPs. The Working Group met between May 28, 2013 and March 31, 2014.²⁴² The Working Group was chaired by Government Counsellor Antti Riivari and its secretary was Senior Specialist Linda Piirto, both of whom work in the Ministry of Employment and Economy.²⁴³ The other ministries that were part of the working group were:</p> <ul style="list-style-type: none"> • <u>The Ministry of Foreign Affairs</u>: Advisor Merja Lahtinen, Counsellor for Foreign Affairs Rauno Merisaari, Commercial Counsellor Kent Wilska, and from January 1, 2014 Advisor Linda Ekholm. • <u>The Ministry of Education and Culture</u>: Counsellor for Cultural Affairs Marjo Mäenpää. • <u>The Ministry of Agriculture and Forestry</u>: Government Counsellor Timo Tolvi. • <u>The Ministry of Justice</u>: Ministerial Advisor Kaisa Tiusanen, and from October 31, 2013 Ministerial Advisor Camilla Busck-Nielsen. • <u>The Ministry of Transport and Communication</u>: Government Counsellor Kaiser Leena Välipirtti. • <u>The Ministry of Finance</u>: Ministerial Advisor Taina Eckstein. • <u>The Ministry of Social Affairs and Health</u>: Senior Officer Ismo Suksi and Senior Officer Piia Mattila. • <u>The Prime Minister's Office</u>: Government Counsellor Ilpo Nuutinen, and from November 1, 2013 Chief Senior Specialist Sinikka Mustakari and Financial Counsellor Petri Vihervouri.

FINLAND

1. GOVERNANCE AND RESOURCES	COMMENTS
	<ul style="list-style-type: none"> <li data-bbox="976 297 1906 329">• <u>The Ministry of the Interior</u>: Program Coordinator Krista Nuutinen.²⁴⁴ <p data-bbox="877 370 1892 443">The result of the Working Group’s activities is Finland’s National Action Plan on implementation of the UNGPs.</p>
<p data-bbox="191 735 842 813">1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p data-bbox="877 626 1906 922">The process for drafting the NAP was discussed by the Committee for Corporate Social Responsibility, and information about the dates that stakeholder hearings would be conducted was published.²⁴⁵ However, the overall process was unclear. After the Working Group published its proposal, neither information about the status of the draft nor about the political process through which the NAP was approved were published.²⁴⁶ The NAP was ultimately approved during an informal meeting of the ministers.²⁴⁷</p>
<p data-bbox="191 992 457 1024">Adequate Resourcing</p>	
<p data-bbox="191 1081 804 1154">1.5. Determine an appropriate budget for the NAP process.</p>	<p data-bbox="877 1097 1276 1130">No budget was made public.²⁴⁸</p>

FINLAND

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	Unknown. ²⁴⁹
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	The Working Group consulted with stakeholders during two public consultations. ²⁵⁰ Tens of NGOs and companies were invited to these stakeholder hearings. ²⁵¹ The dates of these consultations were published. ²⁵² The Working Group also accepted comments in writing. ²⁵³
2.3. Provide adequate information and capacity-building where needed.	The UNGPs were translated into Finnish. The Committee for Corporate Social Responsibility was provided with information about previously published BHR NAPs in other countries. ²⁵⁴ However, clarity of the process would have improved meaningful participation of the civil society organizations (CSOs). The Ministry of Employment and Economy insisted on at first hearing different stakeholder groups (CSOs and business) separately and declined holding a common hearing for all interest groups. However, all the stakeholders were invited to the second hearing after the Working Group had published its draft.
2.4. Facilitate participation by disempowered or at-risk stakeholders.	All organizations, ministries, and companies at the consultations were Finnish. ²⁵⁵ It is unclear whether the government directly heard from disempowered stakeholders such as migrants, indigenous peoples residing in northern Finland, or other minorities. ²⁵⁶ One NGO present at the consultations worked on issues facing people with physical disabilities. Other NGOs present at the hearing work on issues related to disempowered or at-risk stakeholders. For

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2. STAKEHOLDER PARTICIPATION	COMMENTS
	<p>example, Finnwatch works with migrants and Amnesty International works with transgender peoples and indigenous peoples. However, the NGO for people with physical disabilities was the only one in which at-risk groups were able to represent themselves.²⁵⁷</p>
<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>In Finland, there is a permanent Committee for Corporate Social Responsibility (YHVA) that is composed of individuals from government ministries, NGOs, trade unions, and the church.²⁵⁸ This steering group was involved in the NAP drafting process.²⁵⁹ No new stakeholder steering committee was created.²⁶⁰</p>

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
<p>The NBA as the Foundation for the NAP</p>	
<p>3.1. Undertake a NBA as the first step in the NAP process.</p>	<p>No national baseline assessment (NBA) was conducted and/or published. Although a background memorandum was carried out by government ministries and published, it did not rise to the level of a NBA. The background memorandum included information on “Finnish legislation, provisions on fundamental rights and international conventions, and other measures and practices of the authorities in relation to the UN principles.” It was created for use by the Working Group and was intended to inform its proposals.²⁶¹ However, this memorandum did not rise to the level of a NBA because it did not</p>

FINLAND

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>focus on the key questions of the UNGPs, and non-State stakeholders did not find it very useful and were not involved in its development. This is problematic because a thorough NBA is necessary to ensure that the government identifies the most pressing legislative gaps in the protection of human rights.</p> <p>However, within the action items outlined in the NAP, the government committed to commissioning a thorough legislative survey focusing on the UNGPs' three Pillars and current legislative gaps.</p>
<p>3.2. Allocate the task of developing the NBA to an appropriate body.</p>	<p>Not applicable. However, various ministries were involved in development of the background memorandum.</p>
<p>3.3. Fully involve stakeholders in the development of the NBA.</p>	<p>Not applicable. No non-governmental stakeholders were involved in the development of the background memorandum.</p>
<p>3.4. Publish and disseminate the NBA.</p>	<p>The background memorandum was made publically available.</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>Most of the content of the Finnish NAP focuses on voluntary measures, research, and guidance to companies. As such, the NAP is severely lacking in regulatory measures. Most of the attention is on Pillars I and II, with very little attention to Pillar III.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the Finnish NAP's coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP's fulfillment of each UNGP, which is a task to be completed during the national baseline assessment (NBA) process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).²⁶² These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content. The Finnish NAP is unsatisfactory under each of these sub-criteria:</p> <p><u>(1) Positive and Negative Incentives for Due Diligence</u></p> <p>One potential positive incentive to conduct due diligence is the annual CSR reporting competition put on by the Ministry of Employment and the Economy</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>and the Ministry of the Environment. One of the future action points contained in the NAP says that Finland will make human rights the theme of this competition.²⁶³ However, whether this would in any way incentivize due diligence depends on information not provided in the NAP. For example, currently the judges in this competition just evaluate how well the companies report on their policies, not the quality of the actual policies companies have in place. This competition would be more likely to incentivize due diligence if the companies that are more likely to win are those that conduct effective due diligence and that can identify and mitigate their human rights risks.</p> <p>There do not appear to be any other positive or negative incentives for conducting due diligence contained in the NAP. However, the State does commit to providing support to companies that wish to conduct due diligence, for example, by holding roundtable dialogues by branch of activity with the goal of pinpointing the highest risks for each branch and by promoting the “sharing of due diligence best practices.”²⁶⁴</p> <p>The NAP also commits the State to “actively participate in the discussion of the proposal for a regulation on conflict minerals.”²⁶⁵ The proposal the NAP is referring to is a proposal by the European Commission to create “a due diligence system for the union.”²⁶⁶</p> <p>The government decided during the political process that the majority of State-owned companies will start to assess their human right risks throughout their production chain and report on this. This was not included in the original draft of the NAP draft and is only mentioned in the separate statement that was</p>

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	<p>published in the informal meeting of the ministers. It has not been translated in to English.²⁶⁷</p> <p><u>(2) Disclosure of Due Diligence Activities</u></p> <p>The NAP points out that unlisted companies that are entirely owned by the State or that are majority State-owned have a CSR reporting requirement.²⁶⁸ These reports must include information on human rights.²⁶⁹ However, it is unclear from the NAP whether they must report on due diligence activities.²⁷⁰</p> <p>The NAP discusses the European Commission directive²⁷¹ on non-financial reporting, which requires “companies of significant public interest with more than 500 employees on average on the account closing date” to report “material data” on human rights, the environment, social affairs, employees, and preventing bribery and corruption.²⁷² The report would have to include, among other information, the policies the company has in place, “including due diligence related to them,” and their effectiveness.²⁷³ The NAP says that Finland will start to prepare to implement this proposal.²⁷⁴</p> <p>In terms of new commitments, the NAP commits to making human rights the theme of the annual CSR reporting competition, mentioned earlier.²⁷⁵ This improvement to the competition could incentivize disclosure of any due diligence activities that a company already conducts regarding human rights.²⁷⁶</p>

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	<p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are no measures mentioned in the NAP that require due diligence as the basis for compliance with a legal rule. The NAP acknowledges that, during consultations, it was suggested that Finland enact a statutory obligation for companies to conduct due diligence. The State rejected this, stating that “[t]ransforming the due diligence described above into a legally binding obligation is difficult to envisage.”²⁷⁷ The State goes on to say that defining the obligations would be difficult and that instead there should be increased discussion about risks specific to particular branches of activity and types of risk management that could be useful.²⁷⁸</p> <p><u>(4) Regulatory Mix</u></p> <p>The NAP is heavily skewed to voluntary measures and providing support and training. In fact, the NAP states that “[t]he objective of this proposal is to initiate measures that bring more attention to the link between business activities and human rights in order to help companies be more aware of the impacts their activities have on human rights.”²⁷⁹</p> <p>For example, instead of committing to any legislation to regulate international business activities, Finland commits to creating a report on existing Finnish legislation that relates to such activities.²⁸⁰ However, this is a positive step in that it would retroactively fulfill the expectation that each State conduct a national baseline assessment (NBA) on current UNGPs implementation. The NAP also includes many commitments to promote the UNGPs and their</p>

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	<p>implementation through international organizations.²⁸¹ In its separate statement, the government concertized the scope of the legislative survey, emphasizing that it should focus on the UNGPs' Pillars and current legislative gaps, including presenting concrete proposals for the way forward.</p> <p>In the NAP's section on procurement, the past/current actions are entirely voluntary or guidance-based. Specifically, the NAP states that Finland is amending the Act on Public Contracts to make consideration of social issues in public procurement easier.²⁸² The NAP also points to the existence of a website (CSRKompassi.fi) that gives information to government bodies wishing to include social issues in their procurement.²⁸³ The future commitments are also entirely voluntary or guidance-based. In fact, the NAP points out that, during consultations, it was suggested that a statutory obligation be created to require consideration of social issues during public procurement decisions.²⁸⁴ The NAP rejects this idea and instead commits to non-legislative measures, such as adding to the procurement guidelines a reference to section 49 of the Act on Public Contracts and the Guide to socially responsible procurement.²⁸⁵ The NAP also commits to producing a report on the product groups for which there is a high risk of human rights violations in the supply chain.²⁸⁶ However, the government underlined in its own decision, to look into improving social responsibility criteria, in line with the EU Public Procurement Directive, when amending the Public Procurement Act.</p> <p>This holds true for the section on due diligence as well, which rejects the creation of a statutory obligation for companies to conduct due diligence and instead focuses on roundtable discussions to assess the areas of risk for each</p>

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	<p>branch of activity and on promoting the dissemination of due diligence best practices.²⁸⁷</p> <p>Finally, the NAP commits to providing additional training, especially to small and medium enterprises (SMEs), on business and human rights issues.²⁸⁸</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The Finnish NAP is focused on protecting human rights abroad and does not discuss national legislation that regulates business within Finland’s borders.²⁸⁹ There is no discussion in the Finnish NAP on extraterritoriality. However, there are other action points that would apply abroad. For example, the NAP commits the State to “support the strengthening of human rights assessments in third countries during EU trade or investment agreement negotiations and when monitoring their implementation.”²⁹⁰ It also commits Finland to creating a report on product groups that are high risk for human rights violations with the goal to “increase the awareness related to responsible procurement and help target the consideration of the social aspect for the product groups that pose the highest risk.”²⁹¹</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The Finnish NAP extensively discusses international and regional organizations and standards and how the State will use those organizations and standards to push for further implementation of the UNGPs. Specifically, there is a sub-section (section 1.2) dedicated to “activities in international organizations,” under which there are 11 follow-up measures listed.²⁹² For example, Finland commits to “support and participate in the update of the OECD Policy Framework for Investment.”²⁹³ Sub-section 1.3 discusses “activities in the EU,”</p>

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	<p>under which there are additional follow-up measures listed. The NAP’s discussion of these standards and organization continues throughout the NAP and is not limited to sub-sections 1.2 and 1.3. For example, a follow-up action listed on page 22 says that there will be dialogue about the UNGPs and OECD guidelines with public financial institutions.²⁹⁴</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP does address thematic and sector-specific human rights issues. It touches on children’s rights,²⁹⁵ the rights of indigenous persons,²⁹⁶ extractive activities,²⁹⁷ issues related to trade,²⁹⁸ labor rights,²⁹⁹ communication technology,³⁰⁰ the right to privacy,³⁰¹ and government procurement.³⁰²</p> <p>For example, one follow-up action commits Finland to translating the UN Committee on the Rights of the Child General Comment No. 16 into Finnish and Swedish and to distributing it to various entities.³⁰³ Finland also commits to creating a roundtable discussion on the right to privacy, including the State, civil society, and ICT companies.³⁰⁴</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The NAP does include a statement of commitment to the UNGPs. Specifically, one of the follow-up actions says “Finland supports the observance and implementation of the Guiding Principles on Business and Human Rights approved by the Human Rights Council.”³⁰⁵</p>

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<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Many of the follow-up actions listed in the Finnish NAP are time-specific. At the end of each list of proposed follow-up measures, there is a section in bold that states the part of government that is the “principal responsible party” and either states that these are meant to be “continuous activities” or provides a year that the follow-up actions should be completed by. Out of the listed action points, just over half are listed as “continuous activities” (meaning they are not time-specific) while just under half include a date or date range for completion.</p> <p>The number of action points in the Finnish NAP is certainly sufficient. However, the quality of the action points must also be assessed. Overall, the action points are inconsistent when it comes to being specific and measurable.</p> <p>Examples of adequately specific action points include the following:</p> <p>Finland commits to having the Ministry of Foreign Affairs create a report on how free trade agreements made by the EU, the US, and other countries take into account trade and human rights (particularly labor rights) by mid-2015.³⁰⁶ This is adequately specific as it names what ministry will be in charge, when it will be completed, and what the specific topic of the report will include. This level of specificity makes it measurable as well because stakeholders, including the State itself, will be able to tell whether this report has been completed by the date set out. However, this could have been made even more specific by explaining how this report will be used by Finland and whether it will be published.</p> <p>Finland also commits to making sure that statistics on the consideration of</p>

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	<p>social aspects in government procurement decisions are improved. Specifically, by adding a field about whether social aspects were considered in the procurement decision to HILMA, the public procurement notification service. This task is assigned to the Ministries of Finance and of Employment and the Economy, and is to be completed by the end of 2015.³⁰⁷ The goal of this action is to encourage consideration of these issues in procurement. It is adequately specific because instead of just saying that the government will improve information about the prevalence of government consideration of social issues, it points to a particular change that will be made. Once again, whether this change has been made or not is easily measurable.</p> <p>Moreover, Finland commits to having human rights be the annual theme of the CSR reporting competition by the end of 2015, which is put on by the Ministry of Employment and the Economy and the Ministry of the Environment.³⁰⁸ The intent of the competition is to encourage companies to report on CSR issues, and by having the theme be human rights it would further encourage reporting on that particular issue within CSR. Whether or not the government completes this action point will be clearly measurable.</p> <p>Other action points are not adequately specific. Examples of these action points include the following:</p> <p>Finland commits to maintaining a “regular dialogue” on the UN principles, the OECD guidelines, and others with public financial institutions.³⁰⁹ Although this dialogue would be positive, and although the action point identifies the general participants³¹⁰ in this dialogue, it could have been more specific. For example, it</p>

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	<p>could have explained whether a roundtable would be set up, how often these groups would meet to discuss these principles, and whether there would be any tangible outcome (e.g. a report, proposals for reform of public financial institutions) from this ongoing dialogue.</p> <p>Another of the action points says that Finland “shall participate in the UN Business and Human Rights Forums and support the work of the working group related to the UN principles.”³¹¹ It is unclear what type of support Finland will provide. This is not a very specific or measurable action point. It could have been improved by committing to providing funding or technical assistance to the UN Working Group.</p> <p>Other action points are simply statements of support instead of statements of how Finland will act. For example, one action point states that “Finland supports the cooperation and discussion with the WTO and other international organisations such as ILO or WIPO (World Intellectual Property Organisation) carried out within the framework of the WTO Coherence Mandate.”³¹² This action point (and others) does not say in what concrete ways Finland “supports” this initiative (e.g., Is this just a statement that Finland thinks it is a good initiative? Or has Finland provided concrete support in the form of funding or services?), and it does not commit to any future action.</p> <p>Additionally, one of the action points regarding the Universal Periodic Review merely states that “questions may be asked and recommendations on the implementation of the guiding principles may be given to the states examined.” This appears merely to be a statement about what the UN Human Rights</p>

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	<p>Council can do to further the UNGPs implementation rather than a commitment on Finland’s part to act in some way, for example, by offering information regarding Finland’s implementation of the UNGPs in Finland’s next State report to the UN Human Rights Council.</p> <p>On the positive note, however, the government approved the NAP based on the Working Group's proposal and a separate political statement in an informal meeting of the ministers. In its statement, the government underlined its priorities for the implementation, concertized some of the commitments, and partly improved the ambition level compared to the Working Group's original proposal.</p>
<p>Priorities for NAPs</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The NAP does not appear to prioritize any human rights abuses over others.</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The NAP is not focused on the most vulnerable and excluded groups. However, it does discuss and include follow-up actions that specifically relate to vulnerable and excluded groups, namely Indigenous persons and children. Specifically, a follow-up action listed on page 15 says that Finland “will continue the dialogue related to the human rights impacts of business activities with the UN Bodies for indigenous peoples and ensure that the effects of business activities on the realization of the rights of indigenous peoples will be brought</p>

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	<p>forward in the World Conference on Indigenous Peoples in autumn 2014.”³¹³</p> <p>In a separate follow-up action listed on page 15, Finland commits to including information to the UN Committee on the Rights of the Child regarding Finland’s implementation of the Committee’s recommendation about Business.³¹⁴</p> <p>Additionally, Finland commits to translating the Committee’s General Recommendation No. 16, which discusses business activities and children’s rights, into Finnish and Swedish, as well as distributing a summary of the General Recommendation’s content.³¹⁵</p>

5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>The background memorandum is publically available.</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The NAP does identify which ministry or ministries are responsible for the individual action points. Specifically, at the end of each list of proposed follow-up measures, there is a section in bold that states the part of government that is the “principal responsible party.”³¹⁶ It is assumed that the ministry indicated at the bottom of each list of proposed follow-up actions is in charge of all of the actions in that list unless otherwise specified.</p> <p>These sections also indicate either a timeline or designate the activities assigned to the ministry as “continuous.”³¹⁷ The NAP also indicates that the ministry or ministries assigned to the particular action points are responsible for monitoring the progress in implementation of those actions.³¹⁸</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The NAP states that it contains actions that are meant to be achieved in the next few years (specifically, 2014-2016), but that it also “provides a foundation to which new actions may be added.”³¹⁹ Each year the NAP’s implementation will be monitored by the Committee for Corporate Social Responsibility.³²⁰ Additionally, the individual ministries will “monitor the progress of proposals in their respective areas of responsibility.”³²¹ There is no discussion of whether the Ministries or the Committee for Corporate Social Responsibility will have to report to anyone on the implementation of the NAP based on their monitoring activities.</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
1.1. Commitment to the NAP process.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process and undermines Lithuania’s commitment to the NAP process.
1.2. Ensure responsibility for the NAP process is clearly established and communicated.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.
1.3. Ensure an inclusive approach across all areas of government.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.
1.4. Devise and publish terms of reference and a timeline for the NAP process.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.

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1. GOVERNANCE AND RESOURCES	COMMENTS
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.
2.3. Provide adequate information and capacity-building where needed.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an

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2. STAKEHOLDER PARTICIPATION	COMMENTS
	indication of an inadequate process.
2.4. Facilitate participation by disempowered or at-risk stakeholders.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.
2.5. Consider establishing a stakeholder steering group or advisory committee.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.
3.2. Allocate the task of developing the NBA to an appropriate body.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	indication of an inadequate process.
3.3. Fully involve stakeholders in the development of the NBA.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.
3.4. Publish and disseminate the NBA.	At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	It should be noted that, although the NAP refers to Corporate Social Responsibility (CSR) frequently, the NAP defines the “CSR category” as companies that go beyond what they are required to do by law to address social and environmental issues in their operations. ³²² The NAP explicitly states that “[r]espect for human rights in business is one of the CSR areas.” ³²³ The fact that Lithuania includes respect for human rights as part of its definition of CSR is

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	<p>positive. However, the Lithuanian definition of CSR as voluntary is outdated, as the EU definition of CSR no longer sees CSR as a voluntary approach.³²⁴ In general, the NAP focuses on already existing CSR actions and does not reflect the shift created by the 2011-2014 EU strategy on CSR which modified the definition of CSR and highlighted the need for a “smart mix” of measures (described below).³²⁵ Furthermore, there is no discussion in the NAP of the recent relevant EU Directives on public procurement or non-financial reporting.³²⁶</p> <p>Lithuania’s NAP is organized by the three Pillars of the UNGPs, which the NAP refers to as Objectives 1, 2, and 3. However, the NAP does not go through the UNGPs principle-by-principle. Instead, each objective is broken down further into topics, such as “legislative measures,” “anticorruption measures,” and “measures related to international organizations,” to name a few.³²⁷</p> <p>Overall, the NAP does not differentiate between which actions are past actions, ongoing actions, or future actions that the NAP commits to undertaking. For example, under Objective 1, A. Legislative measures, the sentence starts with the present tense: “the aim is to review legal acts regulating law-making,” but then goes on to describe a past action.³²⁸ Specifically, the Law on Legislative Framework, which increase the transparency of lawmaking in Lithuania and allows for civil society and other stakeholders to submit proposals for legal regulation “at all the stages of law-making,” which was passed in 2012, came into force in 2014.³²⁹ This same issue occurs in multiple places in the NAP.³³⁰</p> <p>The second issue that causes a lack of clarity around whether an action is</p>

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	<p>ongoing or a future commitment involves citations that link an action to a previous government programme or action plan that has already terminated. In a section labeled “measures foreseen” under Objective 1C, the NAP lists the following two actions: (1) a study “into the reasons for changes in societal attitudes and causes of discrimination,” and (2) organizing seminars and informal education about discrimination for civil servants, trade union representatives, and “other target groups.”³³¹ However, the citation for each of these actions shows that they are measures 2.2 and 4 of the Inter-institutional Action Plan for the Promotion of Non-discrimination for 2012-2014.³³² Because this Action Plan on non-discrimination was meant to terminate in 2014, it is unclear whether these two actions listed as “measures foreseen” are on-going (not new commitments) or if the government was unable to accomplish them before 2014 and is thus re-committing to taking these actions.</p> <p>The same issue arises in relation to a number of actions listed under Objective 1D, which are under the heading “ongoing measures.”³³³ These actions all relate to non-discrimination based on sex and include, inter alia, “organizing seminars to encourage employers to systematically promote equal treatment of women and men in the workplace” and organizing a competition among employers around equal treatment of men and women.³³⁴ However, the citation for each of these actions shows that they were already included as specific measures in the past Action Plan of the National Programme on Equal Opportunities for Women and Men, which lasted from 2010 to 2014.³³⁵ Once again, because these actions were part of a previous government Programme that has since terminated, with no indication that it has been or will be renewed, it is unclear if</p>

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	<p>these are measures that were not fully completed during the time period of the Programme on Equal Opportunities for Women and Men, and thus the NAP is committing to continuing to work on them or if they are actually completed measures.</p> <p>Despite this confusion, in order to facilitate this assessment, this assessment will assume that the “ongoing measures” under Objective 1D are indeed ongoing measures and not new commitments and will assume the “measures foreseen” under Objective 1C are new commitments to complete previous commitments that were not acted upon. Given these assumptions, the total number of new commitments in the Lithuanian NAP is about 16. It should be noted that the lack of clarity described above may make it more difficult for civil society to hold the government accountable for the commitments outlined in the NAP.</p> <p>Although the NAP does address all three Pillars, there are weaknesses in the commitments under each Pillar. Under Pillar I, there are 7 measures foreseen listed. The NAP includes a section on Pillar II, and lists 5 measures foreseen. Each of these could also be included under Pillar I as they involve encouraging business to respect human rights, as NAPs are not directed specifically to business action but are meant to focus on government initiatives.</p> <p>Under Pillar III, the NAP lists 5 measures that have already been implemented and 5 planned measures.³³⁶ One of these planned measures is to create class action proceedings in Lithuanian administrative procedure.³³⁷ This measure states that a draft amendment to the Republic of Lithuania Law on</p>

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	<p>Administrative Proceedings to accomplish this goal is being prepared. However, it goes on to say that the draft amendment will be submitted in the fourth quarter of 2014.³³⁸ This is problematic because Lithuania’s NAP was released in 2015, thus a commitment to submit the draft in 2014 without stating any follow-up measures the government is prepared to take is not actually a planned measure but rather an implemented one.³³⁹</p> <p>Additionally, the link between some of the planned measures and business and human rights is not made explicit in the NAP.³⁴⁰ For example, under Pillar III, the NAP commits to evaluating “the legal regulation of the institute of pre-trial administrative dispute resolution.”³⁴¹ Additionally, the NAP commits to developing “the concept” of including juries in the Lithuanian court system.³⁴² The NAP notes that in 2012 the government “in principle” agreed to create “on the constitutional level,” a jury system.³⁴³ The concept that the NAP commits to creating would include basic principles of jury members’ legal status, jury guarantees, responsibilities, procedural rights, and duties.³⁴⁴ The concept would then be presented for public assessment.³⁴⁵ While both of these commitments could lead to positive changes in Lithuania, they relate to the judicial system in general without explaining how the commitments could lead to an increase in access to remedy for victims of human rights abuses. This is also true of some of the listed past actions, such as the Law on State Guaranteed Legal Aid, which came into force in 2014 and “[g]rants broader possibilities to choose a lawyer to provide” representation in court.³⁴⁶</p> <p>This is also true for Pillar I, where some of measures foreseen are only loosely related to business and human rights, and the NAP does not explicitly explain</p>

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	<p>the connection. For example, one of the measures foreseen is to do a study on the causes of discrimination and reasons for changes in societal attitudes.³⁴⁷ There is also a commitment to move forward on the new Inter-Institutional Action Plan for the Promotion of Non-discrimination for 2015-2017. However, there is no commitment to include anything related to business in that plan. There is no mention of how business would be involved in either of these commitments, or how they will achieve the goals of Pillar I.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the Lithuanian NAP's coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAPs fulfillment of each UNGP, which is a task to be completed during the national baseline assessment (NBA). These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence; (2) disclosure of due diligence activities; (3) measures which require due diligence as the basis for compliance with a legal rule; (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).³⁴⁸ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content. The Lithuanian NAP is unsatisfactory on each of the four sub-criteria.</p> <p><u>(1) Positive and Negative Incentives for Due Diligence</u></p> <p>One commitment in the NAP could create an incentive to conduct due diligence. This commitment is to revive the National Responsible Business</p>

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	<p>Award Ceremony, which took place annually from 2007 until 2012.³⁴⁹ The NAP commits to reviving the National Responsible Business Award for 2015-2017.³⁵⁰ This ceremony provides recognition to businesses that have gone the extra mile in implementing corporate social responsibility, and could thus act as an (albeit weak) incentive to conduct due diligence in an attempt to gain the reputational benefit of receiving such an award.</p> <p><u>2) Disclosure of Due Diligence Activities</u></p> <p>None of the future actions discuss disclosure of due diligence activities, nor do any of the ongoing or implemented actions.</p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There is no reference to a new or existing requirement of human rights due diligence as a component of compliance with a legal rule.</p> <p><u>(4) Regulatory Mix</u></p> <p>The regulatory mix is unsatisfactory as none of the foreseen measures explicitly commit to regulation of companies, but instead involve measures such as holding conferences, trainings, and funding NGOs.³⁵¹ For example, Lithuania commits to conducting trainings of employers on employment of persons with disabilities,³⁵² to hold an international conference to disseminate CSR experience,³⁵³ and to seek public feedback on the possibility of adding a jury system to the court system.³⁵⁴</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Only one planned action discusses a potential regulation of business by criminalizing bribery. The NAP does not explicitly commit to doing this, but commits to “create conditions for the ratification of” the OECD Convention on combating bribery of foreign public officials in international business transactions.³⁵⁵The NAP then notes that one condition to accede to the Convention is criminal liability within the State’s laws for bribery of foreign officials for both natural and legal persons.³⁵⁶ The fact that this is a condition of ratification, and that Lithuania commits to “create conditions” for ratification vaguely suggests that Lithuania is committing to create such a law. It would have been a much stronger commitment if Lithuania simply committed to enacting a law creating such criminal liability for companies.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>Lithuania’s NAP does not adequately address the full scope of the State’s jurisdiction. Lithuania’s NAP provides no discussion on human rights abuses perpetrated by business internationally.</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>Lithuania’s NAP does not extensively discuss international and regional organizations and standards. Only two measures foreseen out of sixteen discuss international conventions/organizations. First, Lithuania commits to “intensify and expand” Lithuania’s activities with the OECD and to seek membership with the OECD by actively lobbying the organization for membership.³⁵⁷ Second, Lithuania commits to acceding to the OECD Convention on Combating bribery of foreign public officials in international business transactions, if and when it gains membership with the OECD.³⁵⁸ Other than these two, no other measures foreseen reference international or regional organizations or standards. There</p>

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	<p>is, however, mention of the ILO in one of the past actions.³⁵⁹ Specifically, the NAP notes that Lithuania amended its Labor Code in 2014 pursuant to recommendations provided by the ILO’s Committee on Freedom of Association.³⁶⁰ However, the NAP does not discuss what changes the amendments made to the Code.³⁶¹</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP does not clearly address sector-specific human rights issues. It does, however, address the right to non-discrimination fairly extensively in the NAP, with four of the sixteen measures planned specifically addressing different forms of discrimination. First, Lithuania commits to providing training to employers about employing persons with disabilities and encouraging employers to hire persons with disabilities.³⁶² Second, the NAP commits to creating a new Inter-institutional Action Plan for the Promotion of Non-discrimination for 2015-2017, and points out that a working group has already been created to draft the Action Plan.³⁶³ Third, the NAP commits to conducting seminars and informal education for civil servants, trade union representatives, and “other target groups.”³⁶⁴ Finally, the NAP commits to conducting a study on the causes of discrimination and how to change societal attitudes.³⁶⁵ However, as discussed in more detail below, these last two are not explicitly linked to business. For the seminar/training commitment, the NAP does not say whether business is part of the other target groups category, and the NAP does not explain how the study into general societal discrimination will be made relevant to business.</p> <p>The NAP points out that State owned enterprises “operating under the</p>

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	<p>principles of good governance may act as examples of socially responsible business.”³⁶⁶ The NAP also notes past and ongoing actions related to State owned enterprises (e.g. creation of a model CSR application plan in 2012 coupled with implementing guidelines).³⁶⁷ However, no new measures foreseen address the topic or explain how the past or continuing actions will be built upon.</p>
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>Lithuania’s NAP states that it “specifies actions, planned or implemented measures and legislative provisions intended to consolidate Lithuania’s duty to protect, defend and respect human rights and encourage businesses to ensure respect and responsibility in the field of human rights, as well as to ensure effective remedies.”³⁶⁸</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Eleven of the sixteen clear measures foreseen do contain a general timeline. However, this is usually because the measures foreseen are included in an existing government document/action plan that contains a range of years within which it will occur. For example, the commitment to develop an extrajudicial consumer dispute system is part of “Priority Measures for the Implementation of the Programme of the Government of Lithuania for 2012-2016.”³⁶⁹ There is no measure foreseen that contains a more specific timeline for implementation than a general range of years. One action that is listed under “planned actions” does contain a more specific timeline, however, the date of the proposed action</p>

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	<p>occurred prior to the launch of the NAP, and is therefore not truly a “measure foreseen.”³⁷⁰ Specifically, the NAP states that integrating class actions into administrative procedures is ongoing and that a draft amendment will be given to the government in the fourth quarter of 2014.³⁷¹ Lithuania’s NAP was issued in 2015, after the 4th quarter of 2014.³⁷²</p> <p>Some of the measures planned are more specific, relative to the rest of the measures planned. For example, the NAP commits to organizing seminars and informal education on discrimination for civil servants, trade union representatives, and “other target groups.”³⁷³ However, this measure foreseen could have been improved by describing the content of these trainings and seminars, what incentives would be provided to ensure participation in these seminars, and information about how many seminars would be taking place and when. Another example of a relatively specific measure foreseen is trainings of employers about issues related to persons with disabilities.³⁷⁴ The goal of these trainings is to encourage businesses to employ persons with disabilities.³⁷⁵ This measure foreseen does have a general timeline, as it is part of the National Programme on Social Integration of Persons with disabilities for 2013-2019.³⁷⁶ Once again, this could have been made even more specific by providing a more concrete timeline, explaining the content of the trainings, and explaining how the government would get businesses to participate. A third example is the commitment to re-launch the National Responsible Business Award from 2015 to 2017.³⁷⁷ This award is meant to honor companies that are leading the way and taking steps to include CSR in their operations.³⁷⁸ Although it includes a timeline and the very general goal of the award, it could have been made better</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>by providing information about the past Responsible Business Award, criteria used to evaluate companies, and a more detailed timeline for the process.</p> <p>Most of the measures planned are overly vague, making it difficult for civil society to hold the government accountable for its commitments. For example, one of the commitments is to promote business self-regulation.³⁷⁹ The commitment goes on to say that it will include encouraging the creation of codes of conduct, and will include cooperation with those in charge of existing codes of conduct.³⁸⁰ These statements are very vague and it is unclear what the NAP commits to cooperating on specifically, and what types of codes of conduct the government will encourage or how it will encourage their creation.³⁸¹</p> <p>Another example is the commitment to develop an extrajudicial consumer dispute resolution system.³⁸² The commitment goes on to say that it will establish more effective procedures for extrajudicial resolution of disputes, but does not explain how that will be accomplished or even propose alternate options for such a system that will be considered.³⁸³ The commitment also states that it will increase participation of social partners in the system of ADR, and will encourage self-regulation institutions to become members of the consumer protection system.³⁸⁴ The NAP does not state how it will increase “social partners,” who those social partners are, or what exactly is meant by the consumer protection system.</p> <p>Finally, the NAP states that an annual international conference for the dissemination of CSR experiences will be planned for 2015-2017.³⁸⁵ There is no additional information provided, and this measure foreseen could be improved by including a general timeline, who will be invited to the conferences (e.g. just</p>

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	<p>business, or business and other stakeholders), and how business and human rights issues will be addressed within the broader CSR category. A final example is the measure foreseen related to NGO funding.³⁸⁶ This measure simply states that “[n]on-governmental human rights organizations are annually invited to participate in a competition for partial funding of their activities.”³⁸⁷ The NAP does not state when they are invited to try to compete for funding, how much funding is made available, how many NGOs will be chosen for funding, or what criteria the government does and will continue to use in selecting NGOs.</p> <p>As noted above, in addition to being overly vague, some of the measures foreseen are entirely irrelevant to business and human rights, or are not explicitly tied to business and human rights in the NAP. One irrelevant measure foreseen is the commitment to conduct a “discrimination study.”³⁸⁸ The NAP states that the study will look at the reasons for changes in societal attitudes causes of discrimination.³⁸⁹ This type of study does not relate to business and human rights because it is just broadly looking at societal attitudes and not at discrimination by business specifically.</p> <p>Others may be relevant to business and human rights, but the link is not made explicit in the NAP. For example, the commitment to conduct seminars and informal education about discrimination against persons with disabilities described above states that these seminars will be for civil servants, trade union leaders, and “other target groups,” but does not explicitly say business is a target group.³⁹⁰ Another measure foreseen that does not explicitly relate to business and human rights is the commitment to create a new Inter-Institutional Action Plan for the Promotion of Non-discrimination for 2015-</p>

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	<p>2017.³⁹¹ Although it does state that a working group has already been set up to create this Action Plan, it does not explain whether any actions included in the plan will relate to non-discrimination in business operations.³⁹² The measure foreseen that commits to prepare and present the idea of instituting the jury system in courts to the public is not explicitly linked to business and human rights in the NAP.³⁹³ Although instituting a jury system in the courts is likely positive, there is no explanation of how this will increase access to remedy for victims of adverse human rights impacts caused by business.</p>
<p>Priorities for NAPS</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The NAP does not appear to expressly prioritize any human rights abuses above others. However, it could be argued that the NAP prioritizes non-discrimination because one quarter of the measures foreseen (and quite a few of the ongoing actions) relate to non-discrimination.³⁹⁴</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>Four of the sixteen measures foreseen deal with vulnerable groups. One is to provide trainings of employers on non-discrimination in relation to persons with disabilities, with the overall aim of encouraging employment of persons with disabilities.³⁹⁵ The second is to create a new Inter-institutional Action Plan for the Promotion of non-discrimination.³⁹⁶ The third is to provide seminars and</p>

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	<p>informal education on discrimination, and the fourth is to conduct a study on discrimination in society.³⁹⁷</p> <p>Additionally, the NAP discusses ongoing and past actions that focus on discrimination based on sex and discrimination against persons with disabilities.³⁹⁸</p>

5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>At this time, there is no publicly available information (in English) about the process used to create the NAP in Lithuania. This lack in transparency is itself an indication of an inadequate process.</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>For many of the planned actions the NAP does identify the responsible governmental agency in footnotes. Overall, 9 out of the 16 measures foreseen identify the responsible body within the government. There is also reference to responsible government bodies in footnotes associated with many of the ongoing measures.</p> <p>While many of the planned actions identify the responsible office, it is not consistent throughout, and some do not state who within government is responsible. For example, it is not clear which government body will be in charge of organizing the National Responsible Business Award ceremony from 2015 to 2017.³⁹⁹</p> <p>There is no assignment of responsibility for overall follow-up on the NAP commitments.</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The NAP does not lay out any framework for monitoring of and reporting on implementation of any measures.</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
1.1. Commitment to the NAP process.	<p>Sweden has demonstrated its commitment to the NAP process by noting that it “marks the start of Sweden’s effort to implement” the UNGPs.⁴⁰⁰ In line with this statement, Sweden has committed to following up on the implementation of its NAP in 2017.⁴⁰¹ Conducting stakeholder consultations is also a sign of Sweden’s commitment to the NAP process. However, this is undermined by the fact that the government did not try to facilitate participation by disempowered or at-risk stakeholders, as well as the fact that there were key stakeholder groups, such as the Sami indigenous community, missing from the consultations. Although Sweden’s commitment in the NAP to conduct a national baseline assessment (NBA) is seen by CSOs as positive,⁴⁰² Sweden failed to conduct a NBA prior to creating the NAP.⁴⁰³ This is a sign that Sweden lacked a strong commitment to creating a comprehensive NAP that involves structured evidence gathering to inform the content of the NAP.</p>
1.2. Ensure responsibility for the NAP process is clearly established and communicated.	<p>As the lead ministry for the NAP process, the Ministry of Foreign Affairs was in charge of drafting the NAP.⁴⁰⁴ The responsible department within the Ministry of Foreign Affairs also reports to the Minister of Enterprise and Innovation.⁴⁰⁵ The NAP states that it was developed by the “Government Offices,”⁴⁰⁶ which is comprised of the Swedish ministries, missions abroad, the Prime Minister, and the Office for Administrative Affairs.⁴⁰⁷ The Minister for Enterprise and</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
	<p>Innovation, Mikael Damberg, launched the Swedish NAP in August 2015.⁴⁰⁸</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>As noted above, the Ministry of Foreign Affairs was the lead agency on the NAP, but it also reported to the Minister of Enterprise and Innovation.⁴⁰⁹ The Government Offices approved the NAP prior to its publication.⁴¹⁰ No information about the existence, nor consideration, of an inter-ministerial committee was published.⁴¹¹ It should be noted that no representatives from the judiciary, administrative tribunals, or parliament were present at the stakeholder consultations.⁴¹² It should also be noted that other ministries were involved in NAP process, however, it is not known which ministries, to what extent they were involved, or whether there was any official committee.⁴¹³</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>No terms of reference nor timeline for the NAP process were published.⁴¹⁴ The government held an informal meeting in 2013 for the purpose of discussing the expectations of the NAP and which provisions of the UNGPs civil society organizations felt were essential.⁴¹⁵ After this initial meeting, there was no public information on the NAP process until the new government was elected in September 2014.⁴¹⁶ The new government organized the March 2015 stakeholder consultation and disseminated the draft of the NAP prior to the consultation.⁴¹⁷ From the time of the consultation until the publication of the NAP in August 2015, there was no information made publically available about the NAP process.⁴¹⁸</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	Unknown. No information about the budget was made public. ⁴¹⁹
2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	No information on any stakeholder mapping was published. ⁴²⁰
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	The Government Offices created a draft of the NAP, which was then made available on their website for public comment. ⁴²¹ Over 100 NGOs, companies, trade unions, and Government agencies participated in four consultations regarding the first draft of the NAP. ⁴²² All four consultations were held in the Spring of 2015, with two located in Stockholm, one in Gothenburg, and one in Malmö. ⁴²³ However, according to the European Coalition for Corporate Justice (ECCJ), only a few of the observations made by NGOs were included in the final NAP and a “majority of problems identified were left unaddressed.” ⁴²⁴
2.3. Provide adequate information and capacity-building where needed.	The government did not provide information and capacity-building where

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2. STAKEHOLDER PARTICIPATION	COMMENTS
	needed. ⁴²⁵
2.4. Facilitate participation by disempowered or at-risk stakeholders.	During the consultations, the Swedish government specifically stated that it did not facilitate participation by disempowered or at-risk stakeholders in the NAP process. ⁴²⁶ Sweden’s indigenous community, the Sami, were not represented at the consultations despite the fact that Sweden’s NCP recently had a case related to indigenous peoples’ rights and business brought before it. Land rights of Sami communities have also been brought before the Swedish courts. ⁴²⁷
2.5. Consider establishing a stakeholder steering group or advisory committee.	No stakeholder steering group nor advisory committee was created. Whether the Swedish government considered creating such a group is unknown. ⁴²⁸

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	No national baseline assessment was conducted. ⁴²⁹ However, one of Sweden’s planned measures outlined in the NAP is to map Swedish legislation, compare it with the UNGPs, and “determine whether there are any immediate or obvious gaps that need to be addressed.” ⁴³⁰ Although the commitment to conducting an NBA in the future is considered as “a step in the right direction” by Swedish civil

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	society organizations, conducting the NBA prior to creating the NAP is recommended as the most effective process. ⁴³¹
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable.
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable.
3.4. Publish and disseminate the NBA.	Not applicable.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	The main body of the NAP is organized by the three pillars of the UNGPs. Each section gives a brief explanation of the pillar, with some additional background information relevant to Sweden. Under Pillar I, the NAP lists some existing civil and criminal laws aimed at protecting human rights (e.g., the Discrimination Act 2008:567, Chapter 36 Penal Code ⁴³²) and briefly discusses adjudication of crimes committed abroad in Swedish courts. ⁴³³ Under Pillar II, the NAP states that Sweden expects companies to respect human rights, pointing in particular to employees' labor rights and exploitation of women and children. ⁴³⁴ The NAP

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>also says that Sweden expects companies to have a human rights policy in place, have a human rights due diligence procedure in place, and be transparent.⁴³⁵ There is no explanation in this section on how Sweden incentivizes this. Under Pillar III, the NAP discusses the Swedish court system and efforts to improve efficiency, the different ombudsmen in Sweden, and Sweden’s OECD National Contact Point.⁴³⁶ It also lists some basic criteria for a company grievance mechanism.⁴³⁷</p> <p>Finally, the NAP lists measures taken and measures planned to implement the UNGPs in two separate annexes.⁴³⁸ These measures are not organized by Pillar, nor do they reference which particular UNGPs they are intended to implement. Furthermore, some of the non-regulatory measures have already been completed and therefore should not be listed in the “measures planned” annex without information about how the government intends to follow up on these measures.⁴³⁹ For example, the first three “measures planned” in the NAP are three inquiries that addressed different aspects of the judicial and administrative tribunal systems. These provisions in the NAP simply note that the results of those inquiries have been “circulated for comment.”⁴⁴⁰</p> <p>The Swedish NAP heavily focuses on Pillar I, but does also address Pillar III. For example, one planned measure commits that Sweden will consider strengthening its National Contact Point for the OECD Guidelines.⁴⁴¹ However, other “measures planned” related to access to remedy are not explicitly tied to business and human rights but rather are overall reforms to the judicial system. For example, the NAP states that the report from an inquiry on certain court costs (The Price of Justice) has been circulated for comment.⁴⁴² The NAP does</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>not commit to implementing any changes related to court costs, nor does it tie the overall court cost reforms to access to remedy for victims specifically harmed by business activities.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the Swedish NAP's coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP's fulfillment of each UNGP, which is a task to be completed during the national baseline assessment (NBA) process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).⁴⁴³ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content. The Swedish NAP is unsatisfactory on each of the four sub-criteria.</p> <p><u>(1) Positive and Negative Incentives for Due Diligence</u></p> <p>The NAP states that Sweden will ensure, "where appropriate," that State-owned companies conduct human rights due diligence.⁴⁴⁴ However, there is no statement about how Sweden will ensure that this occurs, i.e. whether it will be legally required or incentivized in some way.</p> <p>The Swedish NAP discusses the recent EU Procurement Directives, which allow contracting authorities to include criteria related to social considerations when</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>awarding contracts.⁴⁴⁵ The NAP states that “the recitals of the Directives expressly state that the contracting authorities or entities in their contracts can require suppliers . . . to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions.”⁴⁴⁶ Under the Procurement Directives, States may not prohibit contracting authorities from considering social criteria.⁴⁴⁷ The Directives only require States to allow contracting authorities to do so, but it is up to each State if they wish to mandate that contracting authorities include social criteria.⁴⁴⁸ The NAP simply commits to transposing these Directives into national law by 2016, but does not say whether Sweden will simply permit or mandate Swedish contracting authorities to require suppliers to comply with basic ILO conventions and/or to consider social criteria when awarding contracts. For example, if the NAP stated that Sweden will aim to require contracting authorities to take social criteria into consideration and require contractors to comply with basic ILO conventions, how Sweden will concretely incentivize companies to conduct due diligence would be made clearer within the NAP.</p> <p>The NAP also notes that the new Directives require “that the contracting authorities or entities exclude tenderers who have been found guilty in a definitive judgment of crimes including child labour and other forms of human trafficking in accordance with Directive 2011/36/EU.”⁴⁴⁹ The NAP then notes that Sweden will implement these directives through national law in 2016.⁴⁵⁰ This could be an incentive for companies to conduct due diligence, at least regarding child labour and human trafficking. By conducting due diligence in relation to human trafficking and child labour, companies may be better able to</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>avoid instances of judgments against them, which would terminate their ability to win government contracts.</p> <p><u>(2) Disclosure of Due Diligence Activities</u></p> <p>In addition to failing to state how the government will ensure that companies conduct human rights due diligence, the NAP does not state whether these companies will have to publically disclose what those activities entail or not.⁴⁵¹</p> <p>The Swedish NAP references the recent EU Directive (Directive 2014/95/EU) amending the Accounting Directive. This Directive requires that certain companies include information about measures taken related to “environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.”⁴⁵² Specifically, they must include: (1) a description of the company’s business model, (2) policies in place related to the above listed topics, including due diligence processes, (3) the outcome of those policies, (4) principal risks related to those topics “linked to the undertaking’s operations” and how those risks are managed, and (5) non-financial key performance indicators. Sweden, and all other EU Member States, must transpose this Directive into domestic law by 2016.⁴⁵³ Once Sweden transposes this into national law, it will require disclosure of any human rights due diligence activities conducted by companies covered by this Directive.</p> <p>Sweden’s NAP does not clearly explain that this is something Sweden must do, but instead simply states that “[c]orporate disclosure of sustainability and diversity policy (Ministry Publication Series 2014:45) proposes that certain companies prepare a sustainability report providing information on, for</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>example, respect for human rights and anti-corruption activities.”⁴⁵⁴ In fact, Sweden’s proposed law does go further than the Directive by covering more companies than is required, which is not made clear in the NAP itself either.⁴⁵⁵ The NAP could have instead briefly stated what the Directive requires and how the proposal goes beyond what the Directive requires.</p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are no measures planned that would require due diligence as the basis for compliance with a legal rule. As discussed above, the NAP notes that Sweden will ensure that State-owned companies “where appropriate, conduct human rights due diligence in order to assess and address any significant risk to human rights.”⁴⁵⁶ However, there is no mention of exactly what “where appropriate” means, how Sweden will ensure this, or if there are any existing or planned measures that would legally require State-owned enterprises to conduct human rights due diligence.</p> <p><u>(4) Regulatory Mix</u></p> <p>The presence of regulatory mix in the NAP is unsatisfactory. Only two out of the twenty-seven measures planned will directly regulate corporations. These two measures relate to EU Directives. First, the NAP notes that the Swedish interim report on implementing the EU’s new Accounting Directive “proposes enhanced transparency regarding payments made by some companies active in the extractive industry and in the logging of natural forests.”⁴⁵⁷ Under this provision, companies in these sectors will have to provide reports each year indicating the</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>amount of money paid to governments where they conduct business.⁴⁵⁸ This is required under the EU Accounting Directive (2013/34/EU).⁴⁵⁹ Sweden’s reference to this amendment is unclear about the fact that this is something that must be translated into Swedish law and instead states that Sweden’s interim report on implementation of this amendment proposes this type of disclosure.⁴⁶⁰ Again, it would have been clearer if the NAP stated the amendment’s requirement and then committed to translating it into domestic law by a certain date.</p> <p>Second, the NAP notes that the “Corporate Disclosure of Sustainability and Diversity Policy,” which addresses the amended Accounting Directive on disclosure of non-financial and diversity information discussed above, “proposes that certain companies prepare a sustainability report providing information on, for example, respect for human rights and anti-corruption activities.”⁴⁶¹ Sweden will ultimately have to translate the requirements of this amendment into national law, which will require certain companies to report information about policies and measures taken with respect to, among others, human rights.⁴⁶²</p> <p>Apart from these two regulations requiring corporate transparency on payments and sustainability policies, the NAP only commits to non-regulatory measures such as trainings and promoting the UNGPs. These measures include, for example, an inquiry into whether or not Sweden should make the UN Convention on the Rights of the Child part of national law,⁴⁶³ providing trainings for Embassy staff on the UNGPs,⁴⁶⁴ conducting workshops for State-owned companies on the UNGPs,⁴⁶⁵ considering strengthening the Swedish National Contact Point,⁴⁶⁶ and considering providing continued support to Shift for the</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Reporting and Assurance Framework Initiative (RAFI).⁴⁶⁷ While these commitments are positive, the overwhelming focus on non-regulatory measures is problematic.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>There are multiple references in the Swedish NAP to the fact that businesses are expected to respect human rights both domestically and abroad. In the foreword, Mikael Damberg states, “[t]he Government would like to urge and encourage all Swedish companies to use the international guidelines as a basis for their operations and to set a good example both at home and abroad.”⁴⁶⁸ Additionally, the NAP states that “[t]he Government’s clear expectation is that companies operating in Sweden or abroad respect human rights in all their activities.”⁴⁶⁹ The NAP also notes that labor rights and efforts to “identify and prevent anti-union policies or actions” apply both abroad and domestically.⁴⁷⁰ Moreover, in the annex on “planned measures,” the NAP states that “[t]he Government’s clear expectation is that companies operating in Sweden or abroad comply with the UN Guiding Principles for Business and Human Rights and other relevant guidelines in this area, and review their due diligence and redress measures.”⁴⁷¹</p> <p>Apart from the information provided about access to Swedish courts for harms that occur abroad (discussed in the following paragraph), there is no explicit mention of extraterritorial jurisdiction.</p> <p>The Swedish NAP notes that the jurisdiction of Swedish courts “is extensive, and Swedish courts are therefore often able to adjudicate in cases concerning offences committed abroad.”⁴⁷² It notes further that usually there must be</p>

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	<p>“some ties” to Sweden, and there must be criminal liability for the act in the country in which it occurred before the Swedish courts can hear the case.⁴⁷³ However, there is an exception for “the most serious crimes,” which includes crimes listed in the Act on criminal responsibility for genocide, crimes against humanity, and war crimes, as well as crimes with a minimum sentence of four years imprisonment.⁴⁷⁴ Finally, although corporations cannot be convicted of a crime in Sweden, they can face fines “for crimes committed in the exercise of business activities.”⁴⁷⁵</p> <p>Because of the potential for Swedish courts to hear cases regarding human rights harms perpetrated by corporations both domestically and abroad, measures involving reform of the judicial system potentially benefit victims of human rights abuses domestically and abroad. There are three “planned measures” that relate to potential judicial and administrative reform. All three involve inquiries that have already been completed, with one focusing on “data on the practical, organizational and economic implications that is needed to form a position on how proposals for major changes in the handling of criminal cases should be implemented.”⁴⁷⁶ Not only is this inquiry already complete, it is also not relevant to business and human rights as companies cannot be held criminally liable in Sweden, and there is nothing in the inquiry that touches on business.⁴⁷⁷ The second inquiry looked at income ceilings, legal aid fees, and “remuneration for public counsels, injured party counsels and legal aid counsels, along with expenses for evidence, parties, interpreters and guardians ad litem.”⁴⁷⁸ The third inquiry focuses on making the administrative proceedings in Sweden more modern and effective.⁴⁷⁹ However, as mentioned earlier in</p>

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	<p>Section 4.1 above, these three inquiries have already been completed and have been “circulated for comment.”⁴⁸⁰ There is no additional information on what next steps Sweden is committed to taking. Finally, and most importantly, there is no explicit connection made in the NAP between these three reforms and business and human rights. Absent more information about what the inquiries propose, it is difficult to assess the potential impact on business and human rights.</p>
<p>4.3. A NAP should address international and regional organizations and s.</p>	<p>The Swedish NAP addresses international and regional organizations and standards by pointing out how Sweden is already working through these organizations and supporting various standards. For example, the NAP points out that Sweden’s NCP disseminates information about the OECD Guidelines for Multinational Enterprises and that Sweden has pushed to include CSR language in the EU’s investment agreements, trade agreements, and partnership and cooperation agreements.⁴⁸¹ The NAP also notes that Sweden provides support to the EITI and provides financial support to the UN Global Compact.⁴⁸² Additionally the NAP states that Sweden’s ownership policy requires its majority State-owned companies to report using the Global Reporting Initiative.⁴⁸³</p> <p>There are five “planned measures” included in the NAP that explicitly refer to regional or international organizations and/or standards.⁴⁸⁴ In the NAP, the Swedish Government commits to continue pushing the EU to include references to the UNGPs in investment agreements, trade agreements, and partnership and cooperation agreements.⁴⁸⁵ It also commits to working with other EU countries on the issue and to encourage them to create NAPs.⁴⁸⁶ Sweden also</p>

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	<p>commits to promoting the OECD Guidelines among non-OECD countries.⁴⁸⁷ The NAP states that Sweden will encourage the UN, EU, OECD, and the World Bank, among others, to promote business and human rights throughout their work.⁴⁸⁸ Finally, the EU procurement directives, which in part allow contracting authorities to require contractors to comply with the ILO Conventions, will be “transposed” into Swedish law by April 2016.⁴⁸⁹</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The Swedish NAP discusses initiatives the Government is already involved in with respect to thematic and sector-specific human rights issues. For example, the government proposed “sharper formulations in the draft regulation on responsible trade in minerals from conflict areas” that the EU is discussing.⁴⁹⁰ Sweden has also taken steps to promote internet freedom and privacy by tabling resolutions on the topic at the UNHRC in 2012 and 2014 and by holding the Stockholm Internet Forum in 2012, 2013, and 2014.⁴⁹¹</p> <p>Three of the twenty-seven planned measures in the NAP address thematic or sector-specific human rights issues. The NAP notes that the government has already begun to discuss whether the UN Convention on the Rights of the Child should become law in Sweden or not.⁴⁹² It also states that the interim report, Implementation of the EU’s New Accounting Directive, proposes provisions that would require some extractive and logging companies to publish payments made to governments in the countries in which they operate.⁴⁹³ This reporting would be required on an annual basis.⁴⁹⁴ Finally, in reference to the EU procurement directives (which allow the contracting authorities to require contractors to comply with the ILO Conventions), the NAP states that “[s]uch</p>

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	<p>conditions might also be intended to favour the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in the labour market . . . or the recruitment of more disadvantaged persons than are required under national legislation.”⁴⁹⁵</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>Sweden’s NAP does include statements indicating a strong commitment to the UNGPs. The NAP notes that “the national action plan aims to translate the UN Guiding Principles into practical action at the national level.”⁴⁹⁶ Furthermore, one of the planned actions is that “Sweden will work to improve the implementation of the UN Guiding Principles for Business and Human Rights, for example by urging foreign governments to develop national action plans.”⁴⁹⁷</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Out of twenty-seven “planned measures” included in the NAP, only one has a specific time table: Sweden has committed to translating the EU procurement directives into national law by April 2016.⁴⁹⁸ The remaining twenty-six measures planned have no reference to when the government plans on beginning or completing the commitments.</p> <p>Some of the measures planned are relatively specific and measureable. For example, the NAP commits that the Government will “conduct a baseline study</p>

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	<p>of how Swedish legislation compares with the Guiding Principles to determine whether there are any immediate or obvious gaps that need to be addressed.”⁴⁹⁹ Although no timeline is given, this is a measurable action as long as the government also publishes the results of the baseline study. If, on the other hand, the Government merely states that the baseline was completed, this action will not be measurable because civil society will have no proof of its completion, nor will civil society be in a position to evaluate the thoroughness of the baseline. Providing a timeline and committing to publishing the results would have made this planned measure even more specific and measurable. Providing more information on how the baseline will be conducted would also improve this planned measure. For example, it is unclear whether civil society will be invited to participate in the process or provide comments and feedback, and there is no indication as to which agency will be in charge of doing the baseline.</p> <p>The NAP also commits the government to “examin[ing] the possibility of strengthening the Swedish National Contact Point.”⁵⁰⁰ This planned measure does state that the Ministry of Foreign Affairs will be in charge of this study and, if results of the study are published, it will be a measureable commitment. As stated above, failure to publish the results of the study will make it difficult for civil society to know if it was actually completed and to evaluate the quality of the study and reasoning behind any decisions to change or not change the NCP. Even this relatively specific and measurable planned measure could be improved by committing the publishing the results, by providing examples of changes to the NCP that the Ministry of Foreign Affairs will consider, and by</p>

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	<p>listing the factors the MFA will take into account when examining each potential change.</p> <p>Another relatively specific planned measure in the NAP states that the Government “is prepared to consider continued support to the Shift Project . . . Reporting and Assurance Frameworks Initiative (RAFI).”⁵⁰¹ This planned measure is specific because it applies to a particular project run by a specific organization. However, this planned measure is weakened by the fact that the government only commits to considering giving support to Shift and does not actually commit the government to such support. It also does not lay out the type of support the Government will consider providing, which could range from financial support to general government approval of RAFI or promoting RAFI to Swedish businesses.⁵⁰²</p> <p>The Government’s commitment to provide a series of workshops for State-owned enterprises is also specific and potentially measurable. The NAP provides the type of information that will be shared during these workshops (general information about the UNGPs, due diligence, and redress mechanisms), and notes that these workshops will be a time for State-owned enterprises to learn from each other and share “tools and good practices.”⁵⁰³ However, it could have been improved by specifying when the workshops will occur, which government ministry will be in charge of hosting the workshops, and whether the government will partner with civil society organizations with relevant expertise for these workshops or not. This will be measurable if the government at the very least announces when the workshops are set to occur (even if they are</p>

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	<p>closed to the public).</p> <p>Despite the relatively specific and measurable measures planned listed above, there are many measures planned that are overly vague. For example, the NAP states that the “Government Offices [are] considering conducting special due diligence in sectors facing distinct challenges.”⁵⁰⁴ This does not specify what the government means by due diligence or what exactly this applies to. Key questions left unanswered by the NAP include: Is this in relation to State-owned enterprises? Or in relation to government procurement? Why are the Government Offices conducting due diligence (as opposed to requiring corporations to conduct human rights due diligence), and what will trigger such due diligence? How will the government determine what constitutes a “distinct challenge”?</p> <p>Another vague planned measure is that, “[i]n the OECD, Sweden will work to strengthen efforts to promote the OECD Guidelines for Multinational Enterprises among non-OECD countries.”⁵⁰⁵ This planned measure does not identify any concrete actions that Sweden will take to promote the OECD Guidelines. Having more concrete actions planned in addition to a general statement of wanting to promote the OECD Guidelines would be preferable. Concrete actions could take the form of identifying specific non-OECD countries Sweden plans to target and conducting an analysis of key barriers in State implementation of the Guidelines.</p> <p>Similarly, the NAP commits the government to “work[ing] to improve the implementation of the UN Guiding Principles for Business and Human Rights, for</p>

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	<p>example by urging foreign governments to develop national action plans.”⁵⁰⁶ Again, there is not an example of a concrete action Sweden will take to promote implementation of the UNGPs or the development of NAPs specifically. Sweden could have specifically committed to offering support to other governments (in the form of training or sharing experience from Sweden’s own NAP process) to conduct a NAP.</p> <p>The first three measures planned listed in the Annex are also vague. The reports themselves (each containing results of an inquiry into the judicial system, such as legal aid fees) are fairly specific, and the NAP lays out the topic of each report and provides a citation.⁵⁰⁷ However, these reports have already been completed, and the only statement suggesting there will be follow-up is that each one “has been circulated for comment.”⁵⁰⁸ As a result, it is entirely unclear as to what the government is actually committing to doing with these three reports. It does not even provide a timeline for when the period for comments will be complete, who within Government is providing feedback, or whether anything will be done based on the reports and comments.</p>
<p>Priorities for NAPS</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The NAP does not appear to prioritize any human rights abuses above others.</p>

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<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The NAP touches on vulnerable and excluded groups, but does not focus on them. For example, it briefly discusses children and women in the context of business and human rights under Pillars II and III.⁵⁰⁹ In the “planned measures” section, children are addressed in the commitment to consider translating the UN Convention on the Rights of the Child into national law.⁵¹⁰ The NAP does not say how this would affect business, however. It also mentions women’s rights when discussing the EU procurement directives.⁵¹¹</p> <p>However, the NAP fails to discuss other vulnerable and excluded groups, such as indigenous peoples, and specifically the Sami.</p>

5. TRANSPARENCY	COMMENTS
<p>Full Transparency with All Stakeholders</p>	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was conducted. However, a draft of the NAP was made publically available through the Government Office’s website.⁵¹²</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>Only four out of the twenty-seven “planned measures” identify the entity within the government responsible for implementation of the planned measure: (1) the Ministry of Foreign Affairs is tasked with considering whether or not to strengthen the NCP;⁵¹³ (2) the Ministry of Foreign Affairs will enhance its reports on the human rights situation in specific countries to ensure that companies can easily obtain guidance on business and human rights issues that are relevant to each country;⁵¹⁴ (3) Swedish embassies are specifically tasked with creating a dialogue about business and human rights with their local networks as well as collecting information about “potential problems related to human rights and Swedish companies, especially in conflict-affected countries;”⁵¹⁵ the same planned measure states that there will be a training initiative to enhance knowledge about the UNGPs within Swedish embassies, but does not clearly state whether the embassies or another entity within the Government will be in charge of conducting those trainings;⁵¹⁶ and (4) the NAP notes that Business Sweden, which is jointly owned by the Government and industry,⁵¹⁷ “will be instructed to strengthen its implementation of the UN Guiding Principles on Business and Human Rights.”⁵¹⁸</p> <p>No specific entity or individual is clearly made responsible for overall follow-up on the implementation of the NAP.</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.	The NAP says that “[i]mplementation of this action plan, including the proposed measures, should be followed up in 2017.” ⁵¹⁹ However, the NAP does not lay out a framework for monitoring of and reporting on implementation, nor does it say which entity within the government will conduct the follow-up.

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1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
1.1 Commitment to the NAP process.	<p>The Norwegian government was an early champion for the implementation of the UNGPs. In 2012, at the UN Forum on Business and Human Rights, the Secretary General of the Norwegian Ministry of Foreign Affairs stressed, “all parts of government have a duty to implement the Guiding Principles.”⁵²⁰ At this time, the government also announced its creation of an interdepartmental group to promote the implementation of the UNGPs in Norway.⁵²¹</p> <p>The Norwegian government committed to drafting a NAP as early as 2013 and the plan was officially launched by the Minister of Foreign Affairs, Børge Brende in October 2015.⁵²²</p> <p>The commissioning of a national baseline assessment (NBA) on the State duty to protect human rights as a basis for the Norwegian NAP is a positive indication of the government’s commitment to a comprehensive NAP process that involves structured evidence gathering to inform the content of the NAP.⁵²³</p> <p>The creation of an interdepartmental group to guide the NAP process is another positive indication of this commitment.⁵²⁴ That being said, vague monitoring and implementation commitments (to be discussed in section six of this assessment) and lack of reporting requirements demonstrates a weakness in the overall commitment to the NAP process, as failure to require reporting and</p>

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	<p>revision of the plan will necessarily impact its effectiveness.</p> <p>Additionally, the Norwegian NAP's emphasis and focus on the language and practice of CSR, which undermines the appearance of Norway's commitment to a comprehensive NAP on business and human rights that takes into account the State's own obligations to protect against corporate human rights abuse and provide remedy for such abuses when they occur.</p>
<p>1.2 Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The Ministry of Foreign Affairs was responsible for the NAP process.⁵²⁵ The Norwegian government also contracted an independent researcher to conduct a mapping and gap analysis of the State duty to protect.⁵²⁶</p>
<p>1.3 Ensure an inclusive approach across all areas of government.</p>	<p>In recognition that "human rights and business are to a certain extent relevant for virtually all Ministries," the Norwegian government established an interdepartmental group for "formal and informal consultations on the NAP."⁵²⁷</p> <p>While the Norwegian government maintains that all "relevant" ministries were involved to "varying degrees" in the NAP process, other than the Ministry of Trade, Industry, and Fishery and the Ministry of Finance, it is unclear which ministries were involved.⁵²⁸ The NAP states that the measures developed in the plan were "developed through broad-based cross-sectoral cooperation in the public administration."⁵²⁹ However, the extent of this cooperation remains unknown.</p>

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1.4 Devise and publish terms of reference and a timeline for the NAP process.	Neither terms of reference nor a timeline for the NAP process was published.
Adequate Resourcing	
1.5 Determine an appropriate budget for the NAP process.	There is no information publicly available on the level of funding provided for the NAP process.

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	No information on any stakeholder mapping was published.
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	No plan or timeline for stakeholder participation is publicly available. However, the Norwegian government held “several series of consultations, both multi-stakeholder and separate meetings with business, civil society and indigenous peoples’ representatives.” ⁵³⁰ The government has also stated it will continue to engage with “all key stakeholders” on the implementation of the NAP. ⁵³¹
2.3. Provide adequate information and capacity-building where needed.	It does not appear that the government provided information and engaged in

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	capacity-building during the NAP process.
2.4. Facilitate participation by disempowered or at-risk stakeholders.	The Norwegian government held “several series of consultations,” both multistakeholder and individual with multiple interested parties, including indigenous peoples’ representatives. ⁵³² However, it is unclear if the government facilitated the participation of other disempowered or at-risk stakeholders.
2.5. Consider establishing a stakeholder steering group or advisory committee.	No stakeholder steering group or advisory committee was created, only a governmental, interdepartmental steering committee. Whether the government considered creating such a group is unknown.

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	<p>The Norwegian government commissioned Mark Taylor, Senior Researcher at the Fafo Research Foundation to conduct an NBA. The final product, a mapping and gap analysis on the State’s duty to protect maps the principal relationships between state agencies and business (e.g. regulation, investment, procurement, policy guidance) in Norway that govern aspects of human rights and business and analyzes the difference (the “gaps”) between State practice and the UNGPs relevant to State action (GPs 1-10; 25-28).⁵³³</p> <p>The analysis was conducted as a preliminary step in the creation of the NAP;</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>“the purpose of the study is to create a basis for further work in the formulation of a national action plan.”⁵³⁴</p>
<p>3.2. Allocate the task of developing the NBA to an appropriate body.</p>	<p>The mapping and gap analysis was developed by Mark Taylor in his professional capacity. He is a senior researcher at the Fafo Research Foundation.</p>
<p>3.3. Fully involve stakeholders in the development of the NBA.</p>	<p>In early 2013, a NAP was requested by a working group of Kompakt, the Norwegian multi-stakeholder advisory body concerning CSR issues. The government commissioned a mapping and gap analysis later that year. The mapping and gap analysis was based in part on interviews and email correspondence with various ministries, government institutions, and non-governmental organizations (NGOs). Government actors consulted include “the Ministry of Labour, the Ministry of Children, Equality and Social Inclusion, the Ministry of Government Administration, Reform and Church Affairs, the Ministry of Industry and Trade, and the Ministry of Foreign Affairs.”⁵³⁵ NGOs consulted include “Amnesty International Norway, Fellesforbundet (a trade union), Forum for Environment and Development, the Norwegian Peace Association, LO (the principle trade union federation) and NHO (the principle association of employers).”⁵³⁶</p>
<p>3.4. Publish and disseminate the NBA.</p>	<p>The mapping and gap analysis was made publicly available.</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The NAP is organized into four chapters: a preliminary chapter on global developments and CSR followed by three chapters, dedicated to a Pillar of the UNGPs. Each respective “pillar chapter” provides the text to all relevant Guiding Principles within that Pillar. For example, the chapter on the State duty to protect provides the text of the first ten Guiding Principles, and so on.</p> <p>The chapter on Pillar I contains the majority of planned measures (twenty-one out of twenty-four measures).⁵³⁷ A little more than half off these planned State actions relate either to promoting CSR or advocating for the implementation of the UNGPs and other business and human rights frameworks abroad. The remaining planned measures relate to State commitments to maintain or improve regulations or policies that work towards the State duty to protect human rights.</p> <p>In the chapter relating to Pillar II, the NAP establishes the Norwegian governments expectations for companies in relation to human rights, including an expectation that companies will “follow the rules and regulations of the country where the company operates,” and “exercise due diligence and assess the risks of human rights abuses in their areas of operation.”⁵³⁸</p> <p>Under Pillar III, the NAP broadly addresses judicial remedies and non-judicial remedies. In relation to judicial remedies, the NAP states that Norway has “an effective judicial system,” but provides no evidence to support that or</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>articulates efforts to strengthen the system.⁵³⁹ It also commits to cooperate internationally to ensure victims of corporate-related human rights abuse have access to effective remedy and support work at both the UN and EU level to strengthen national level judicial remedies.⁵⁴⁰ In discussing non-judicial grievance mechanisms, the NAP simply restates the expectations established in the UNGPs.⁵⁴¹</p> <p>As a whole, the NAP focuses largely on the business responsibility to respect human rights, specifically on voluntary measures, guidance, and support to companies. As such, the NAP is largely lacking in regulatory measures and initiatives.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the Norwegian NAP’s coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP’s fulfillment of each UNGP. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights.)⁵⁴² These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP’s adequacy in terms of substantive content:</p> <p>(1) <u>Positive and Negative Incentives for Due Diligence</u></p> <p>Although the NAP establishes that the Norwegian government expects all</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>companies to “exercise due diligence and assess the risk of human rights abuses in their area of operation,” there are no new specific positive or negative incentives laid out in the NAP’s planned measures to influence corporations to conduct human rights due diligence.</p> <p>The only planned measure that could be seen as relating to due diligence is the eleventh measure, which commits the government to “expect companies that are to receive financial support or services to respect human rights.”⁵⁴³ This measure appears to relate to the Norwegian government’s recognition that “the [S]tate is responsible for exercising due diligence when it provides significant economic support or other types of benefits to the business sector.”⁵⁴⁴ This refers to the State’s obligation to exercise due diligence when funding projects. Read together with the case study box on “Due Diligence by GIEK, Export Credit Norway, and Innovation Norway,”⁵⁴⁵ it could be inferred that failure for a company to respect human rights (which can be related to a lack of due diligence controls) will result in difficulty obtaining in obtaining finances or disqualification from State-run financing bodies.</p> <p>(2) <u>Disclosure of Due Diligence Activities</u></p> <p>There is no reference to requiring specific disclosure of due diligence activities within any of the planned measures.</p> <p>In its discussion of existing relevant legislation, the NAP references the Norwegian Accounting Act, which has, since 2013, required “large enterprises...to submit reports on CSR.”⁵⁴⁶ According to the NAP, the provision within the Act that stipulates “that enterprises must take account of human</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>rights is considered to be in line with the Guiding Principles concerning the independent responsibility of enterprises to ensure that they respect human rights.”⁵⁴⁷ This reporting could therefore include disclosure of due diligence activities.</p> <p>In discussing Pillar II, and specifically Guiding Principle 21 on human rights reporting, the NAP supports reporting in a qualified manner, stating “it is the company itself that decides how to communicate and report on [the human rights impacts of their operations] in the light of its situation and target groups.”⁵⁴⁸ The NAP does go on to support the use of international reporting frameworks and independent auditing.⁵⁴⁹ In doing so, it highlights three leading international reporting standards—the UNGPs Reporting Framework, the UN Global Compact, and the Global Reporting Initiative (GRI)—and offers Norwegian authorities as sources of advice on the most appropriate reporting framework.⁵⁵⁰ The NAP also recognizes the importance of publishing reports in an accessible language for the individuals in countries where the company operates.⁵⁵¹</p> <p>Additionally, the NAP states that the Norwegian government expects companies to apply both the “comply or explain” and materiality principles in relation to disclosure.⁵⁵² The “comply or explain” principle in the NAP holds that all companies should “familiarize themselves with the Guiding Principles and assess the extent to which they are applicable.”⁵⁵³ In cases where the principles are found not to apply, the company should publish a report stating why the UNGPs are not relevant to its activities.⁵⁵⁴ The materiality principle “concerns the fact that companies both address and report on matters that are key to that</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>business’s impacts on people, society, climate and environment.”⁵⁵⁵ However, these expectations are not translated into requirements.</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are no planned measures within the NAP that would require due diligence as part of compliance with a legal rule. However, the Accounting Act is mentioned as an example of an existing Norwegian law designed to motivate good corporate behavior and business respect for human rights.</p> <p>(4) <u>Regulatory Mix</u></p> <p>The first page of the NAP states “Norway already has sound legislation for safeguarding human rights.”⁵⁵⁶ While it goes on to say that “Norway already has in place sound legislation that applies to business,” it recognizes that “it may be necessary to consider amending certain acts in the light of the Guiding Principles and other international developments.”⁵⁵⁷ In response to this, the first measure of future action commits the government to appoint an interministerial working group where “each relevant ministry will continue to be responsible for assessing the need for legislative amendments and other measures in its area of expertise” in relation to “international decisions affecting human rights and CSR.”⁵⁵⁸</p> <p>That being said, the regulatory mix is unsatisfactory because, while the NAP clearly references existing national legislation protecting human rights, in terms of planned future measures, its main focus is on promoting CSR activities and</p>

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	<p>knowledge and greater implementation of business and human rights frameworks domestically and internationally. It effectively postpones the possibility of the creation or amendment of legislation and/or regulations to a later date as ministries from the to-be-created interministerial working group see fit.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The Norwegian NAP is heavily focused on promoting CSR and protecting human rights abroad. It specifically states under section 1.4 ‘Purpose of the action plan’ that the “Government wishes to provide strong support based on Norwegian values, to Norwegian companies abroad...”⁵⁵⁹ As such, the NAP does not adequately address the full scope of the State’s jurisdiction as it is heavily skewed towards external concerns.</p> <p>Despite this focus on the impact of Norwegian companies abroad, the NAP does commit to a number of legislative and policy measures that address domestic impacts and would apply to domestic companies. For example, the third measure commits the government to evaluate amendments to the Norwegian Minerals Act.⁵⁶⁰ Similarly, the ninth measure relates to the management of the Norwegian Government Pension Fund, and commits the Ministry of Finance to following-up on the extent to which portfolio managers can consider human rights issues and impacts in their decision-making.⁵⁶¹</p> <p>Apart from the information provided about access to Norwegian courts for harms that occurred abroad (discussed in the following paragraph), there is no explicit mention of extraterritorial jurisdiction. The NAP notes that if a legal case against a Norwegian company dealing with human rights abuses that occurred</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>in a host country is brought before a Norwegian court, it must “satisfy the requirement in the Dispute Act that the facts of the case ‘have a sufficiently strong connection to Norway.’”⁵⁶² The NAP then provides a vague explanation of the components of this determination and other conditions that must be met in these circumstances.⁵⁶³</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The Norwegian NAP discusses international and regional organizations and standards and how both the Norwegian government and business should use those organizations and standards to push for greater respect for human rights in general, and for further implementation of the UNGPs.</p> <p>The NAP explicitly mentions international organizations and standards in five measures. For example, measure six commits the government to improve the competence of public bodies that offer CSR guidance on the OECD Guidelines; measure eighteen calls on the government to work for the global implementation of these Guidelines; and measure twenty-one commits the government to “seek to ensure that the reporting frameworks set out in the [UNGPs] are incorporated into the United Nations Global Compact and the Global Reporting Initiative.”⁵⁶⁴ Moreover, in relation to access to remedy, measure twenty-three commits the Norwegian government to supporting the work of the Office of the High Commission for Human Rights in strengthening national judicial systems, and measure twenty-four commits the government to participating in the Council of Europe process to implement Pillar III at national level.⁵⁶⁵</p> <p>Outside of the specific measures of the NAP, in relation to the State duty to</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>protect, the NAP discusses the government’s obligations under the EU directive on non-financial reporting and international obligations relating to indigenous peoples, including ILO Convention 169.⁵⁶⁶ It also discusses the OECD National Contact Point (NCP) process and activities in Norway.⁵⁶⁷</p> <p>Additionally, in relation to global developments and CSR, the NAP mentions that the UNGPs are being incorporated into the OECD Guidelines for Multinational Enterprises, the UN Global Compact, ISO 26000, the Equator Principles, and the International Finance Corporation Performance Standards.⁵⁶⁸ The NAP also highlights the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Providers as “useful guidelines for private business enterprises.”⁵⁶⁹ In relation to Chapter 3 on the corporate responsibility to respect human rights, the NAP details a number of international reporting standards, including the UN Guiding Principles (UNGPs) Reporting Framework, the UN Global Compact, and the Global Reporting Initiative.⁵⁷⁰</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP does address thematic and sector-specific human rights issues in its planned future measures. It touches on issues relating to trade,⁵⁷¹ conflict areas,⁵⁷² corruption,⁵⁷³ security concerns,⁵⁷⁴ indigenous rights,⁵⁷⁵ responsible investment,⁵⁷⁶ extractives,⁵⁷⁷ and public procurement.⁵⁷⁸</p> <p>For example, two planned measures specifically address the extractives sector: the second measure commits the government to “reviewed the country-by-country reporting regulations for the extractive industry” and the third measure commits the Ministry of Trade, Industry, and Fisheries to “evaluate the</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>amendments to the Minerals Act proposed by the Sami Rights Commission.”⁵⁷⁹ The third measure also touches on indigenous rights issues.⁵⁸⁰</p> <p>Similarly, in relation to security and corruption, the seventh measure commits Innovation Norway and Norway’s consular missions to “strengthen guidance and dialogue with companies on . . . security and corruption;” while the fourteenth measure commits the Ministry of Foreign Affairs to “strengthen dialogue with the business sector through the missions abroad on the risks associated with human rights violations, security concerns and corruption in conflict areas.”⁵⁸¹</p>
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The Norwegian NAP includes multiple statements indicating a strong commitment to the UNGPs. A large portion of the introductory paragraphs, including the section on “Global developments and CSR” discusses the importance and eminence of the UNGPs.⁵⁸² The NAP states that it is “intended to enable the business sector to follow the UN Guiding Principles, and [as such] the plan outlines specific measures to achieve this aim.”⁵⁸³</p> <p>Furthermore, a number of the planned actions in the NAP make specific mention of the UNGPs. For example, the NAP includes specific measures to “improve the level of competence on the UN Guiding Principles...among the public bodies that offer guidance on CSR”; “work for the global implementation of the UN Guiding Principles...”; and “seek to ensure that the reporting</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>framework set out in the UN Guiding Principles is incorporated into the United Nations Global Compact and the Global Reporting Initiative.”⁵⁸⁴</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Out of the twenty-four measures included in the NAP, only two have a specific timeline. The second measure states that the government will “review the country-by-country reporting regulations for the extractive industry and forestry in 2016-2017.”⁵⁸⁵ However, this timeline is already established in existing legislation; the reporting regulations, which entered into force in 2014 and mandates that they are to be reviewed after three years.⁵⁸⁶ The ninth measure states that the Ministry of Finance will report “in its spring white paper” on Norges Bank’s response to whether “it can draw up an expectations document on human rights, and which areas of human rights it would consider including.”⁵⁸⁷ The remaining twenty-two measures planned contain no reference to when the government plans on beginning or completing the commitments.</p> <p>The majority of measures lack specificity, measurable targets, and criteria for success. Out of the twenty-four measures, only four relate specifically to discreet actions: Measure one commits the government to “appoint an interministerial working group”; measures two and three commit the government to review or evaluate discreet pieces of legislation; and measure nine commits the Ministry of Foreign Affairs to report on Norges Bank’s ability to draw up a human rights expectations document.⁵⁸⁸</p> <p>The remaining twenty measures are overly broad or vague, revealing a major</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>weakness of the NAP as a whole. A majority of the measures commit the government to vague activities, such as “improving,” “strengthening,” “expecting” or “continuing” certain broad activities. For example, measure seven commits the government to “strengthening guidance and dialogue with companies on human rights, business ethics, security and corruption in especially demanding markets;” measure thirteen commits the government to “continue the efforts to develop measure to promote respect for international human rights in public contracts;” and measure six commits the government to “improving the level of competence on the UN Guiding Principles and the OECD Guidelines among the public bodies that offer guidance on CSR.”⁵⁸⁹ This type of broad language makes the exact extent, nature, and progress of the government’s commitment unclear. Measures such as these could be strengthened by specifying what type of steps or discreet actions the government will take to achieve these commitments. For example, in relation to improving the level of competence of public bodies offering guidance on the UNGPs, the measures would be strengthened by including what steps government will take to increase this competence, such as trainings, collaboration with CSOs or other governments, or the creation of educational materials.</p>
<p>Priorities for NAPS</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The NAP does not appear to expressly prioritize any human rights abuses above others. While human rights abuses linked to security and corruption in conflict areas was the most mentioned issue throughout the proposed measures</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	(discussed in three of the twenty-four measures), this does not necessarily show its prioritization ⁵⁹⁰
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The NAP does not appear to focus on the most vulnerable and excluded groups. It does, however, mention the prevalence of conflict between “commercial activity and indigenous peoples’ rights.”⁵⁹¹ The NAP also mentions the special role of the State in protecting against human rights abuses in conflict areas; however, this discussion flows from the NAPs discussion of Guiding Principle 7 as part of its discussion of all UNGPs and not from a special focus on the needs of the particularly vulnerable.⁵⁹²</p>

5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>The mapping and gap analysis was made publicly available. No summaries of the consultations conducted by the Norwegian government were made public.</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The majority of the planned measures of the NAP do not identify the responsible government agency involved. Only one of these seven measures specifically states the responsible party within the text of the measure itself; measure nine specifically states that the Ministry of Finance will report on human rights expectations of Norges Bank.⁵⁹³ Following an analysis of the NAP content, the responsible party for implementation can be assumed in an additional six measures, however, no attempt to provide clarity was made. The content of the text of the NAP help the reader deduce the responsible government entity for implementation of six additional measures.⁵⁹⁴</p> <p>The provision on follow-up to the NAP, to be discussed in detail in section 6.2, is assigned to the members of the to-be-created interministerial working group.⁵⁹⁵ It is unclear from the provisions of the NAP which ministries will be included in this working group and which specific components of the NAP they will cover.</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The NAP commits to the creation of an interministerial working group to, among other things, “ensure coordinated implementation” of the NAP.⁵⁹⁶ According to this measure “each relevant ministry will continue to be responsible for assessing the need for legislative amendments and other measures in its area of expertise.”⁵⁹⁷ However, the NAP does not lay out a framework for reporting on implementation of measures or contain a commitment to update the document or draft a revised NAP in the future.</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
1.1. Commitment to the NAP process.	<p>The Colombian government announced its intention to draft a NAP on business and human rights in early 2015.⁵⁹⁸</p> <p>In its public statements and, in particular, during interventions in international fora on Business and Human Rights, the Colombian government has expressed a strong commitment to continuing the development and implementation of its NAP. Highlighting the symbolic weight accorded to the NAP, the Colombian government chose to publish the NAP on International Human Rights Day, at the same time it launched its 2015 Report on Human Rights (Informe de Derechos Humanos 2015).⁵⁹⁹</p> <p>In the NAP, the government acknowledges that the NAP is a “living plan, in constant revision” and that modifications can and should be made throughout the three-year term of the current NAP to maintain the “spirit with which it was constructed.”⁶⁰⁰ As such, the Colombian Working Group on Business and Human Rights⁶⁰¹, with the advice of a Commission of Experts that the NAP mandates be created, is charged with assessing the implementation of the NAP through the mechanisms established in the NAP’s “Evaluation and Follow-Up” section.⁶⁰² These follow-up measures include: (1) before the first of March each year, every institution mentioned in the NAP must report to the Presidential Advisory Office of Human Rights and publish the actions taken during the past year in implementing its obligations under the NAP; (2) the Presidential Advisory</p>

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Office of Human Rights can convene stakeholders when it deems necessary to seek advice and opinions regarding the implementation of the NAP; (3) each year, “two rounds of regional review” will be undertaken to assess on-the-ground implementation of the NAP; (4) after the three year validity of the NAP has ended, a final evaluation of the plan will be made within ten months; and (5) the results of annual follow-up will be published on the Presidential Advisory Office of Human Rights’ micro-site, and the results of the final evaluation of the NAP will be presented for public opinion.⁶⁰³

The creation of the Commission of Experts, composed of elected representatives from a range of stakeholder groups,⁶⁰⁴ can be a positive indication of the government’s commitment to continuing the development and implementation of its NAP. On the other hand, changes to the existing NAP are to be carried out only by the Colombian Working Group as it may “consider pertinent.”⁶⁰⁵ The degree to which the Commission of Experts is capable of providing meaningful inputs that consider all stakeholders and is able to influence the Colombian Work Group remains unclear.

The mandated composition of the Commission of Experts, which includes three representatives, elected by national indigenous organizations, national Afro-descendent organizations, and the National Confederation of NGOs,⁶⁰⁶ one elected by each group respectively, along with business representatives, labor union representatives and other stakeholders,⁶⁰⁷ offers some positive signs of the government’s willingness to receive input from a range of stakeholders. As stated above, the degree to which the Working Group will give meaningful consideration to the input of the Commission of Experts remains unclear.

Additionally, the lack of a national baseline assessment specifically related to

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	<p>business and human rights and the failure to broadly and meaningfully consult with affected communities indicate that the government’s commitment to a comprehensive process, meaning one that involves structured evidence gathering and consultation to inform the content of the NAP, may be limited.⁶⁰⁸ This is evidenced as well by the removal of a provision from the draft NAP which called for the development of a diagnostic review to identify gaps in policy and other regulations related to human rights and business—a national baseline type assessment.⁶⁰⁹</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The Presidential Advisory Office for Human Rights,⁶¹⁰ with the accompaniment of the then-Minister of the Presidency, María Lorena Gutiérrez, was responsible for the NAP process.⁶¹¹ A steering committee was created to guide the process of drafting the NAP, and consisted of the Office of the Ombudsman, the “Ideas for Peace” Foundation (FIP), the technical secretary of the Mining and Energy Committee (CME), the Spanish Agency for International Development Cooperation (AECID), the United Nations Development Program (UNDP), and the Office of the United Nations High Commissioner for Human Rights (OHCHR).⁶¹²</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>As noted above, the Presidential Advisory Office for Human Rights was the lead agency on the creation of the NAP, and the process of drafting the NAP was guided by a broad ranging steering committee, including certain agencies of the Colombian government.⁶¹³ In addition, the Colombian government created an inter-governmental Working Group on Business and Human Rights, not to be confused with the multi-stakeholder steering committee, charged with establishing which government entities are responsible for certain requirements</p>

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	<p>established in the NAP.⁶¹⁴</p> <p>The Colombian Working Group consisted of the Department of Social Prosperity; Department of National Planning; Ministry of the Interior; Ministry of Education; Ministry of Culture; Ministry of Labor; Ministry of the Environment; Ministry of Agriculture; Ministry of Commerce; Ministry of Mines; Ministry of the Treasury; Ministry of Foreign Affairs; Ministry of Health; Ministry of Transportation; Ministry of Housing; National Service of Learning; Colombian Sports Institute; Administrative Department of Science, Technology, and Innovation; Ombudsman Office*; Comptroller General of the Republic*; Attorney General of the Nation*; and the Presidential Advisory Office for Human Rights*.⁶¹⁵</p> <p>* These government offices have stayed on as permanent members of the Colombian Working Group, post-publication of the NAP.</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>No terms of reference or a timeline for the NAP process were published. The government organized an October 2015 international stakeholder consultation and disseminated the draft of the NAP prior to the consultation.⁶¹⁶ In addition, the government held three regional workshops on the draft NAP during October and November in Cartagena, Apartadó, and Villavicencio.⁶¹⁷</p>
<p>Adequate Resourcing</p>	
<p>1.5. Determine an appropriate budget for the NAP process.</p>	<p>There is no information publicly available on the level of funding provided for the NAP process.</p>

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2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
<p>2.1. Conduct and publish a stakeholder mapping.</p>	<p>No information on any stakeholder mapping specifically related to the NAP could be located. Related to the lack of stakeholder mapping information is a significant problem of trust on behalf of CSOs. It is particularly important to note that the only CSO organization that has been given a space for meaningful participation in the NAP process was the Fundación Ideas para la Paz (FIP). This organization has played a very important role in mobilizing corporate actors in the peace process and in framing the respect for human rights as an essential part of building a lasting peace. It has also played a key role in getting buy-in from the business community around issues of peace building and human rights. However, the scope and focus of its mission, while valuable, provides only one perspective from civil society, focused on providing tools and information for corporations relating to best practices.⁶¹⁸ This focus, which can have a valuable role in facilitating corporate buy-in, leaves aside issues such as accountability, redress, and mechanisms that guarantee non-repetition. In order for NGOs to serve the purpose of representing the perspectives and interests of civil society more broadly, the Colombian government should have also included NGOs that work specifically with and on behalf of affected communities at all stages of the NAP process.</p>
<p>2.2. Develop and publish a clear plan and timeline for stakeholder participation.</p>	<p>During the first half of 2015, the government began working with “key actors” in order to inform the draft NAP.⁶¹⁹ This was a “participative process of consultations with business, civil society, and government entities, along with</p>

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	<p>other governments and international bodies.”⁶²⁰</p> <p>The government then created a draft of the NAP, which was circulated prior to the consultations that took place in October and November 2015. In total, the government conducted four consultations on the draft NAP. An international stakeholder consultation was held in Cartagena, and three regional workshops were held in Cartagena, Apartadó, and Villavicencio.⁶²¹ In addition, the draft NAP was posted on the Presidential Advisory Office for Human Rights website, in Spanish and English, with an e-mail address provided to which comments could be submitted.⁶²²</p> <p>The timeline and plan for stakeholder participation was not published.</p>
<p>2.3. Provide adequate information and capacity-building where needed.</p>	<p>The government provided information regarding international business and human rights frameworks at the three regional workshops. However, the adequacy of this information in terms of building the capacity of stakeholders to engage in informed and meaningful consultation is unknown.⁶²³</p>
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>Multiple civil society organizations have spoken out against the lack of facilitation by the government to ensure participation of disempowered or at-risk stakeholders in the NAP consultations. For example, Tierra Digna has openly criticized the Colombian government for not consulting with communities affected by corporate human rights abuse during the NAP consultations.⁶²⁴ Asociación Ambiente y Sociedad echoed this critique in communication with the authors. The International Network of Human Rights (RIDH) has also spoken out against the NAP process for not facilitating the participation of Colombians who live outside of the country, some of whom have been forced to migrate due to threats resulting from their work opposing corporate human rights abuses.⁶²⁵ Similarly, the Colectivo de Abogados José Alvear Restrepo (CAJAR) highlighted the potential of the NAP process to end impunity and prevent repetition of</p>

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	<p>human rights violations by corporate actors, but only if peasant, indigenous, Afro-descendant communities, and other affected communities are involved in the process of “constructing public policies to overcome the profound asymmetries that exist between victims and economic corporate powers that are interested in their territories.”⁶²⁶</p> <p>No evidence of the participation of vulnerable communities in the drafting of the NAP is available. Moreover, the lack of a baseline assessment specifically focused on human rights and business (rather than on the development of broad-based human rights policies) has resulted in the absence of affected vulnerable communities’ perspectives in the process of framing the business and human rights situation in Colombia for the development of the NAP.</p>
<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>The steering committee established by the Colombian government to guide the NAP drafting process was composed of the Office of the Ombudsman, the “Ideas for Peace” Foundation (FIP), the technical secretary of the Mining and Energy Committee (CME), the Spanish Agency for International Development Cooperation (AECID), the United Nations Development Program (UNDP), and the Office of the United Nations High Commissioner for Human Rights (OHCHR).⁶²⁷ Whether the Colombian government considered including other actors, such as affected communities or business, is unknown. It is important to note that in its presentation of FIP, the government characterizes it as the “representative of civil society.”⁶²⁸ As noted in section 2.1 of this assessment, FIP plays the important role of increasing business participation in peace building and, in the case of business and human rights, in encouraging business to adopt rights-respecting practices. However, it represents only one perspective within civil society. No civil society organization with a mission to protect the human rights of affected communities was involved in this committee.</p> <p>The NAP mandates the creation of a Commission of Experts, which consists of a broad ranging group of civil society and affected community stakeholders, to</p>

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advise the Colombian Working Group, and aid in the implementation of the NAP.⁶²⁹ The Commission of Experts is composed of one representative elected by each of the following stakeholder groups: (1) national indigenous organizations; (2) national organizations of black communities; (3) the National Confederation of NGOs; (4) labor union confederations; (5) the Association of Colombian Universities; (6) the Ombudsman Office; (7) business and human rights multistakeholder initiatives; (8) multilateral organs which develop business and human rights activities; (9) the International Community; and (10) two representatives elected by the National Trade Union (one as delegate for business, and another as delegate for the trade union).⁶³⁰ However, the NAP does not specify which government office or entity is charged with creating or managing the Commission of Experts, nor does it establish a timeline for the creation of the Commission of Experts. This situation, in turn, affects the effective implementation and monitoring of the NAP, and can have a negative impact on the ability of the Government to deliver on its promise that the NAP is a “living document.”

In its first progress report on the implementation of the NAP, the Colombian Government clarified that the Presidential Advisory for Human Rights has taken the lead in pushing forward the nomination of representatives and in developing internal rules for the operation of this Commission of Experts.⁶³¹ In addition to reporting specific progress in the formation of the Commission and the formulation of internal rules, the Presidential Advisory Office for Human Rights has acknowledged two challenges to the Commission of Experts, as a result of consultations and dialogue with communities: First, there is a need to incorporate into the Commission a representative from peasant (*campesino*) communities. Second, there must be specific measures and approaches adopted in order to encourage the active participation of communities and civil society.⁶³²

While it is encouraging that there are active consultations and a recognition that more needs to be done to include the voices of affected communities in

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	<p>the design and implementation of the NAP, the Progress Report does not, as yet, identify how it will address the challenges it identified.</p> <p>The Experts Commission, also referred to as the “Advisory Commission,” was officially established on March 29, 2017.⁶³³</p>
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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
<p>3.1. Undertake a NBA as the first step in the NAP process.</p>	<p>The Colombian government did not conduct a national baseline assessment. The NAP commits the Colombian Working Group to create a baseline assessment of all judicial and non-judicial remedial mechanisms available in the country relating to business and human rights within one year of the launch of the NAP.⁶³⁴ This mapping and gap analysis will “identify which mechanism responds to each type of conflict,” though it is unclear what this analysis specifically entails.⁶³⁵ It will also include a diagnostic review of the efficiency and efficacy of each mechanism, in accordance with the UNGPs.⁶³⁶</p> <p>Although the commitment to conduct a remedy-specific baseline assessment is a step in the right direction, the Colombian government has backtracked on a stronger commitment to draft a full baseline assessment. As discussed in section 1.1 of this assessment, the government removed a provision from the draft NAP that called for the development of a full baseline following the publication of the NAP.⁶³⁷ Conducting a full NBA prior to creating the NAP is recommended as the most effective process.⁶³⁸ It is also strongly recommended</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>by the Working Group on Business and Human Rights, most emphatically in its July 2015 report.⁶³⁹</p> <p>Despite the lack of a full baseline assessment, the Presidential Advisory Office on Human Rights has stated that the NAP was drafted against the backdrop of two documents: <i>Proposals for Human Rights Policy in Colombia (2014 – 2034)</i> and the <i>Guidelines for a Public Policy on Human Rights and Business</i>.⁶⁴⁰ These documents do report some challenges in the protection of human rights in the context of business activities and collect inputs from communities. However, as stated above, important elements of an NBA for a Business and Human Rights NAP are not examined or developed, such as a thorough analysis of judicial and non-judicial mechanisms.</p> <p>While a full baseline assessment would be more effective, a baseline assessment of the existing mechanisms to obtain redress and remedies conducted during the first year after the launch of the NAP will give the Colombian government the opportunity to incorporate into its assessment the mechanisms for accountability that have been outlined in Point 5 of the peace accord. Point 5 refers to the rights of victims and includes a requirement that there be mechanisms for accountability of civilian parties (“terceros civiles”), including corporations, in the conflict. At the same time, the Office of the Prosecutor has been investigating thousands of alleged civilian actors, many of them corporations, relating to unlawful paramilitary activities during the armed conflict. Harmonizing the various regimes of accountability and making these regimes an explicit part of the NAP could be a positive outcome of the belated baseline assessment. In its 2017 Progress Report on the implementation of the</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	NAP, the Government of Colombia maintains its commitment and details its plans to carry out this baseline assessment. ⁶⁴¹
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable. However, such a body should be identified with regard to the committed-to baseline assessment of accountability mechanisms, and the established timeline for this assessment (see point 3.1).
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable. However, the principle of fully involving all stakeholders applies equally to the more limited baseline assessment of accountability mechanisms discussed in section 3.1 of this assessment. It will be particularly important that the participation of all stakeholders in the development of an NBA in the future be meaningful, and include the inputs of victims, affected communities, and organizations that advocate for the rights of these groups.
3.4. Publish and disseminate the NBA.	Not applicable. However, the more limited baseline assessment of mechanisms of redress recommended in section 3.1 of this assessment should be published and disseminated to the same degree as would a full NBA.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The NAP is organized around the three Pillars of the UNGPs; however, it does not go through the UNGPs principle by principle. The NAP begins with an introduction of the UNGPs and a brief description of the three Pillars. The substantive content of the NAP is divided into eleven lines of action, which are organized under the three Pillars as follows:</p> <ul style="list-style-type: none"> • <u>State Duty to Protect</u> <ol style="list-style-type: none"> 1. Inter-institutional Coordination 2. The State as economic actor 3. Effective civil society participation 4. State guidance for human rights respect in business activities 5. Human rights due diligence • <u>Corporate Responsibility to Respect</u> <ol style="list-style-type: none"> 6. Culture of human rights and building peace in the business sector 7. Human rights due diligence for business entities 8. Human rights respect as a competitive advantage 9. Corporate social responsibility and human rights respect • <u>Access to Remedial Mechanisms</u> <ol style="list-style-type: none"> 10. Judicial and administrative mechanisms 11. Non-judicial mechanisms <p>A group of NGOs with experience in business and human rights in Colombia</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>expressed deep concern over the NAP’s treatment of remedial mechanisms, and its focus on alternative conflict resolution mechanisms and multi-stakeholder initiatives without acknowledging power imbalances between corporate and community actors. They also noted the NAP’s failure to refer to past violations committed by corporations.⁶⁴² Thus, in the view of these NGOs, the NAP mentions, but does not address the Third Pillar of the UNGPs.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the NAP’s coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP’s fulfillment of each UNGP, which is a task to be completed during the NBA process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) a regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).⁶⁴³ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP’s adequacy in terms of substantive content.</p> <p>The Colombian NAP is largely unsatisfactory in meeting these four sub-criteria. While the NAP provides an early commitment to creating incentives for due diligence and takes some steps in requiring due diligence as a basis for compliance with a legal rule, these commitments are nascent and piecemeal. Not only could the NAP do more in regards to these two sub-criteria, it also does not require due diligence disclosure and has an inadequate regulatory mix, as none of the action points directly regulate business activities.</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>(1) <u>Positive and Negative Incentives for Due Diligence</u></p> <p>While the NAP does not specifically establish incentives to promote due diligence, it does commit the government to doing so in the future. In action point 8.1, the NAP commits the Ministry of Commerce, Industry, and Tourism to designing a strategy of incentives for large, medium, and small companies to, <i>inter alia</i>, implement due diligence procedures.⁶⁴⁴ While the NAP would ideally provide more discreet and specific ways in which positive and negative incentives for due diligence will be provided for, action point 8.1 is a step in the right direction.</p> <p>(2) <u>Disclosure of Due Diligence Activities</u></p> <p>The NAP does not explicitly require disclosure of due diligence activities. Action point 5.7 commits the Colombian Working Group to evaluate and analyze different ways in which companies can include human rights due diligence reporting in their Sustainability Reports or other means of accountability.⁶⁴⁵ This evaluation must be completed within a year of the launch of the NAP, and should be done in conjunction with “different actors.”⁶⁴⁶ While the Colombian NAP does take the first step of analyzing different options for due diligence disclosure, it does not go as far as to express government commitment to mandate such disclosure or other future requirements of this sort, nor does the NAP directly refer to any existing regulatory regimes that may mandate such disclosures.</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>The NAP does create a few circumstances where due diligence appears to be a requirement for compliance with a legal rule. Action point 5.2 commits the State entities with the largest volume of public contracts to establish and implement human rights due diligence mechanisms in their contracting processes.⁶⁴⁷ However, as discussed in section 4.2 of this assessment, it is unclear which or how many State entities will qualify as those with the “largest volume” of public contracting under this commitment, so the scope of the action item remains unclear. The timing of these actions is also unclear.</p> <p>Additionally, action point 2.2 commits the State agency, Colombia Buys Efficiently, to adapt its existing public procurement system to “incorporate measures to ensure that suppliers comply with due diligence in human rights.”⁶⁴⁸ While no timeline or further guidelines are provided in this regard, action point 2.2 signals that the Colombian government plans to amend its public procurement system to require providers of public goods to comply with human rights due diligence requirements. While both of these action points require (or will require in the future) due diligence as a basis for compliance with a legal rule, the Colombian NAP could go much further in requiring human rights due diligence for a broader array of business entities.</p> <p>(4) <u>Regulatory Mix</u></p> <p>The regulatory mix of the commitments outlined in the NAP is unsatisfactory as none of the action points explicitly commits to regulation of companies or calls for any mandatory measures to ensure that businesses respect human rights. Instead, the action points are comprised of commitments to provide training,</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>develop guidance, design strategies, and facilitate dialogue around increasing business respect for human rights. Direct reference to existing or emerging regulatory and accountability measures and regimes would be particularly useful to understand the level of coherence between them.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The NAP does not adequately address the full scope of the State’s jurisdiction, as it does not discuss human rights abuses perpetrated by business abroad. The NAP is focused only on the actions of Colombian or foreign enterprises operating within the country.</p> <p>Additionally, the NAP does not mention the Integral System of Truth, Justice, Reparation and Non Recurrence, an accountability regime that has emerged out of the peace accord, and which existed as part of the peace process during the drafting of the NAP. A direct reference to the terms of the peace agreement would have been inappropriate, as it had not been finalized at the time of the publication of the NAP, and the peace process operated under the strict principle that none of its terms are final until all the negotiation points have been agreed upon. However, the NAP commits to coordinating with the Framework of Corporations and Peace, which is being designed by the Direction on Post-Conflict, along with the Office of the High Commissioner for Peace.⁶⁴⁹ In noting this effort at inter-institutional coordination, the NAP highlights forward-looking strategies to promote reconciliation. The NAP is not clear about whether this coordination effort will also emphasize accountability mechanisms. It does not make any explicit reference for its future harmonization with post-conflict accountability regimes that are outside the jurisdiction of regular courts.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>At the time of the update of this NAP assessment (May 2017), several Constitutional reforms to establish the main principles and procedures of the transitional justice system set forth in the Final Peace Agreement have been put in place⁶⁵⁰ and the transitional justice system seems to be moving toward implementation. Under the terms of the Final Peace Agreement, the proper implementation of the transitional justice system will necessitate corporate accountability mechanisms to be part of this transitional justice system.⁶⁵¹</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The NAP extensively discusses international and regional organizations and standards.</p> <p>The NAP claims to align not only with international human rights standards, as established by the International Bill of Human Rights and International Humanitarian Law, but also with regional human rights standards, including those espoused in the Inter-American Human Rights System, and standards recognized in the ILO Declaration on Fundamental Principles and Rights at Work.⁶⁵² Colombia, like several other Latin American nations, incorporates international human rights treaties into its constitution, under a “block of constitutionality” doctrine.⁶⁵³ The NAP thus contains a commitment to upholding existing established human rights standards as they flow from these instruments.</p> <p>In the context of the Final Peace Agreement and its implementation, the implementation of the NAP (and future iterations of it) must articulate a clear commitment to holding corporate actors accountable for their role in gross human rights violations (e.g. war crimes and dispossession) during the conflict,</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>in line with the duty of the State to investigate, prosecute, and punish those crimes.</p> <p>Despite its direct reference to international human rights standards, the text of the NAP is not explicit about how the government will incorporate or disseminate information about these standards, even as it emphasizes the importance of generating “information” and “capacity-building” of State actors and corporations to respect rights.⁶⁵⁴</p> <p>In addition to being structured around the three Pillars of the UNGPs, the Colombian NAP explicitly commits itself to maintaining coherence with other international standards and norms relating to business and human rights, including the UN Principles on Responsible Contracting, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the Voluntary Principles on Security and Human Rights, the UN Global Compact, ISO Standard 26000, and the Sustainable Development Goals.⁶⁵⁵</p> <p>The NAP also mentions additional international standards, including international standards on the rights of women and the Extractive Industries Transparency Initiative (EITI).⁶⁵⁶ However, it does not mention Principle 10 of the Rio Declaration of 1992⁶⁵⁷, which calls for participation, access to information, and access to justice, despite the fact that the Rio Declaration is incorporated into Law 99/93 for Environmental Issues.⁶⁵⁸</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p><u>Sector-specific human rights issues:</u> The NAP prioritizes energy, mining, agro-industry, and road infrastructure.⁶⁵⁹ The NAP highlights these sectors as priority areas using information gathered during a round of regional and territorial workshops in realization of the 2014 Guidelines for Public Policy on Business and Human Rights, held in Casanare, Huila, Norte de Santander, Bolívar, Antioquia, and Valle del Cauca, as well as follow-up studies by the Ministry of the Interior.⁶⁶⁰ It is unclear why the NAP does not also prioritize cattle ranching, which has generally been identified alongside extractive industries and agro-industry as an industry tied to human rights violations.⁶⁶¹</p> <p>The prioritization of these sectors can be seen throughout the NAP in terms of specific references to these sectors or references to processes that often accompany projects in these sectors. For example, action point 4.12 tasks the Ministry of Energy and Mines with designing a strategy for advancing respect for human rights in the energy and mining sector within a year of the NAP launch.⁶⁶² In its Progress Report on the NAP (2017), the Presidential Advisory Office highlights that the Ministry of Energy and Mines has advanced in developing guidelines relevant to the NAP, incorporating “lessons learned with businesses” in these sectors.⁶⁶³ This language suggests that the development of Business and Human Rights policies regarding the sectors relevant to Mining and Energy are developed with inputs from corporate actors and relevant State agencies, but not with inputs from communities affected by corporate activity in these sectors or CSOs who defend the rights of these communities. On the other hand, some pilot projects suggest an openness to the participation of communities and CSOs, though it remains unclear whether this participation will</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>be meaningful; for example, the Working Group on Carbon and Human Rights is composed only of State agencies and corporate entities. However, it claims to seek inputs from all “actors who coexist in this region” in its development of a pilot project for the implementation of the NAP.⁶⁶⁴ Importantly, this pilot project emphatically focuses on non-judicial remedies, rather than seeking a mix of measures to strengthen judicial and non-judicial remedies.</p> <p><u>Thematic human rights issues:</u> Less specifically, multiple action points in the NAP reference steps to be taken to mitigate human rights violations which often accompany projects within these specific sectors, such as environmental degradation or the use of private security forces. For example, action point 5.4 commits the Presidential Advisory Office for Human Rights and the Ministry of National Defense to promote the implementation of the Voluntary Principles on Security and Human Rights.⁶⁶⁵ Additionally, action points 7.7 and 7.8 discuss ways in which the Colombian Working Group on Business and Human Rights and the Commission of Experts can help businesses create and follow through with strategies to properly evaluate personal and environmental risks and impacts caused by projects and to mitigate these negative impacts.⁶⁶⁶</p> <p>A recurrent thematic concern by organizations that represent affected communities is the lack of access to justice, and the power imbalance between victims and corporate powers. The Colectivo de Abogados José Alvear Restrepo (CAJAR), for example, in its public statement regarding the draft NAP summarized the significant obstacles to access to justice and to mechanisms of prevention of human rights violations and underscored that the NAP should contribute to strengthen judicial and other regulatory mechanisms and to</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>devise public policies that address these obstacles.⁶⁶⁷ This thematic concern is not present in the NAP as it stands now. However, the NAP’s commitment to a baseline assessment of existing mechanisms of accountability and redress (see section 3.1 of this assessment) can be an opportunity to focus on this thematic issue.</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The NAP includes a statement of commitment to the UNGPs and states that the process of drafting the NAP was undertaken with “the object of strengthening the commitments and the implementation of the UN Guiding Principles.”⁶⁶⁸ In addition, the NAP is designed around the three pillars of the UNGPs and mentions the UNGPs specifically throughout the NAP.⁶⁶⁹ For example, under action point 3.1, within a year of the launch of the NAP, the Colombian Working Group on Business and Human Rights must look for partners in capacitating civil society, small business, and other groups regarding the UNGPs.⁶⁷⁰</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>All eighty of the specific action points developed in the NAP appear to be relevant to the goal of promoting business respect for human rights and protecting against and remedying business-related human rights abuse.</p> <p>Out of the eighty action points that comprise the NAP, only sixteen have specific timelines for implementation.⁶⁷¹ The remaining sixty-four action points contain no reference to when the government plans should begin or complete the</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>commitments.</p> <p>Within the NAP, there is a broad range of specificity and measurability represented in the eighty action points. While the NAP does assign specifically each action point to a relevant office or offices of the government (for more information, see section 6.1 of this assessment), a large percentage of the action points are overly vague, making it difficult for stakeholders, including internal government actors, to hold the responsible government entity accountable for its commitments. For example, action point 4.7 commits the Ministry of Labor and the Colombian Institute for Family Wellbeing to “strengthen efforts to provide advice, training and support” to companies for the protection of children.⁶⁷² Similarly, action point 7.3 commitments the Ministry of Labor to “guarantee respect for labor rights.”⁶⁷³ There are many other action points similar to these that appoint different State agencies the task of “supporting”, “reinforcing”, “promoting”, and “helping” various standards or programs. This type of broad language makes the exact nature, extent, and process of the government’s commitment unclear. Moreover, it emphasizes the government’s role as provider of information and a resource for capacity-building while leaving the specifics of implementation to either corporations or unspecified actors.</p> <p>While there are a number of action points that are more specific, these more explicit action points still vary broadly in the amount of specificity, and therefore, measurability, they provide. For example, there are many action points, which, while being more specific in relation to what actions are required by government actors, are still too vague to fully interpret government</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>commitment and expectations. For instance, action point 3.2 commits the Post-Conflict Director and the Office of the High Commissioner for Peace to design a protocol for dialogue between communities, businesses, and public entities that will “facilitate the participation of social organizations in accordance with international standards on business and human rights.”⁶⁷⁴ While this commitment goes a step further than merely committing the government to promote or support human rights considerations in relation to the peace process, the requirements that accompany this government commitment remain vague. It is unclear what a “protocol for dialogue” entails, what it requires of the government, and what shape and form it is to take. As such, it will be difficult to measure the government’s compliance with and fulfillment of this commitment.</p> <p>Moreover, action points 1.3 and 5.2 are both good examples of more specific government commitments, but which are still lacking key information to elucidate the full extent of the government commitment. For example, action point 1.3 commits the government to creating a Commission of Experts to help advise the Colombian Working Group on Business and Human Rights.⁶⁷⁵ The Commission is to be composed of elected representatives from a number of stakeholder groups, including national indigenous organizations and national Afro-Colombian organizations.⁶⁷⁶ However, it is unclear from this commitment how the election process is to occur. Additionally, there is no information regarding the format of the Commission’s inputs, or whether its findings will be public. Procedural clarity of this kind would increase opportunities for civil society to monitor and evaluate the NAP process as it evolves.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Similarly, and as highlighted above, action point 5.2 commits the entities of the State with the “largest volume” of public contracting to establish and implement due diligence mechanisms in their hiring processes.⁶⁷⁷ However, without more information, it is unclear how many State entities will qualify as those with the “largest volume” of public contracts. It is also unclear how soon these mechanisms will be established and implemented, and how easily accessible they will be. Both action points 1.3 and 5.2, while committing the government more specifically to complete certain actions, are still too vague to establish clear expectations.</p> <p>Finally, there are a few action points that identify very specifically the government’s commitment to future action and how this future action will take shape. As an example, action point 10.2 provides a detailed description of the mapping and gap analysis the Colombian Working Group on Business and Human Rights is committed to realizing within a year of the launch of the NAP.⁶⁷⁸ This commitment requires the Colombian Working Group to identify all existing judicial and non-judicial remedy mechanisms relating to business and human rights in Colombia.⁶⁷⁹ In addition, this mapping must identify which mechanism “responds to each type of conflict”, and include a diagnostic regarding the efficacy and efficiency of each mechanism.⁶⁸⁰ In preparing this diagnostic, the UNGPs’ presentation of legal and practical barriers to accessing remedy must be referenced.⁶⁸¹ Action point 10.2 establishes a clear and specific government commitment, and provides ample detail to enable the monitoring and measuring of future implementation.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Priorities for NAPS	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>As discussed in section 4.4 of this assessment, the NAP prioritizes the energy, mining, agro-industry, and road infrastructure sectors. These sectors were prioritized because they “generate the most social conflict in the country due to their impacts on human rights and the environment.”⁶⁸² The NAP refers to “social conflict” but does not include any reference or sources related to the direct participation of companies in the violation of human rights.</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The NAP discusses and includes follow-up actions that specifically relate to vulnerable and excluded groups. The introductory section of the NAP discusses the different frameworks and approaches that played an integral role in the creation and content of the NAP. Many of these approaches focus on or involve vulnerable and excluded groups. The NAP states that the content and action points of the NAP have been developed keeping in mind a human rights-based approach.⁶⁸³ According to the NAP, the participation of different actors has been decisive in collecting their visions, interests, and concerns and in discerning how to include these perspectives into concrete action items, thus contributing to stakeholder empowerment.⁶⁸⁴ The NAP states that it took a “differential focus” aimed at empowering groups who have been previously prejudiced, discriminated against or stigmatized, including ethnic groups, women, children, LGBTI persons, persons with disabilities, union movements, and other minority groups.⁶⁸⁵ The NAP also states that it has a “territorial emphasis” aimed at keeping in mind the socio-historic, cultural, and</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>environmental characteristics of the territories and inhabitants where the NAP is to be implemented.⁶⁸⁶</p> <p>While the NAP explicitly references these groups, the lack of consultation with these groups in the drafting process, as well as the absence of a NBA that could have given the opportunity for these groups to influence the content of the NAP, raise doubts about the full commitment to a genuine focus on the most vulnerable groups.</p> <p>The NAP discusses and addresses vulnerable and excluded groups within certain action points. For example, action point 1.3 ensures the inclusion of representatives from a number of vulnerable and excluded groups, including indigenous peoples and Afro-descendant communities, as members of the Commission of Experts.⁶⁸⁷ Notably, no women’s groups or advocacy organizations focused on women are mandated to be included in the Commission of Experts.</p> <p>In action point 3.1, the NAP establishes that, within one year of the launch of the NAP, the Colombian Working Group on Business and Human Rights must find “allies” to help in building up the capacity of “groups of special protection” on the UNGPs, other international business and human rights standards, and the contents of the NAP, though it is unclear what types of actors the NAP is referencing in relation to “allies.”⁶⁸⁸ Additionally, multiple action points within section 4 of the NAP discuss key steps to be taken by specific government offices regarding vulnerable and excluded groups.⁶⁸⁹ For instance, in action point 4.5, the Ministry of Labor is tasked with providing guidance to employers</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>on the inclusion of people with disabilities.⁶⁹⁰ Moreover, in action point 4.11, the Ministry of the Interior is charged with improving practices to ensure participation of affected populations in future prior consultation processes, as well as increasing respect for the rights of indigenous communities, afro-descendants, and ethnic minorities.⁶⁹¹</p>

5. TRANSPARENCY	COMMENTS
<p>Full Transparency with All Stakeholders</p>	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was conducted or published. However, a draft of the NAP, in both Spanish and English, was made publicly available in October 2015 on the government’s website.⁶⁹² No information is available regarding how many comments were submitted or the content of such comments.</p> <p>In addition to failing to conduct an NBA, the Colombian NAP process does not reveal how or whether it has taken into consideration the numerous reports that have been published by domestic and foreign NGOs, as well as media reports, regarding corporations’ role in human rights violations in Colombia.⁶⁹³</p> <p>On the other hand, the Presidential Advisory on Human Rights maintains on its website the studies, public policy guidelines, and other documents that it claims the NAP is informed by. These include <i>Proposals for Human Rights Policy in</i></p>

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5. TRANSPARENCY	COMMENTS
	<p><i>Colombia (2014 – 2034)</i> and the <i>Guidelines for a Public Policy on Human Rights and Business</i>.⁶⁹⁴ The accessibility of the website of the Presidential Advisory on Human Rights bodes well for the capacity and willingness of the State to publish a full NBA or other more limited baseline assessments that may be developed in the future.</p> <p>In addition to previously-existing documented human rights violations by corporations, there is emerging information from the office of the prosecutor, which has created a special task force to investigate thousands of cases of civilian participation in human rights violations in the context of the armed conflict.⁶⁹⁵ A future version of the NBA should include lessons learned from this process by the Office of the Prosecutor, as well as from existing documentation of human rights violations in which corporations participated, and from the accountability and non-repetition mechanisms emerging from the peace process.</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The NAP does a good job of identifying which State agency, ministry, or office is responsible for the implementation of individual actions points outlined in the NAP. Each point specifically lists which organ will lead or supervise the implementation of the established action item(s).⁶⁹⁶ However, there are a few action points that are too vague to clearly establish who will be responsible for their implementation. For example, there are three action points that place the impetus of implementation broadly on the national government.⁶⁹⁷ Similarly, action point 5.2 places the obligation of establishing and implementing due diligence mechanisms within hiring practices on “State entities with the largest volume of public contracts.”⁶⁹⁸ It is unclear from this definition how many and which State entities will meet this definition.</p> <p>The NAP establishes a specific timeline for implementation for only sixteen out of eighty action points.⁶⁹⁹ The Colombian Working Group on Business and Human Rights, with the help of the Commission of Experts, and the Presidential Advisory Office for Human Rights are specifically tasked with assessing the implementation of the NAP.⁷⁰⁰ The Colombian Working Group is also empowered with the ability to make modifications to the NAP, while the Presidential Advisory Office is in charge of compiling and publishing information regarding annual and final review of the NAP.⁷⁰¹</p> <p>In April 2016, the former director of the Unit of Victims, Paula Gaviria Betancur was named as the new Advisor to the Presidency on Human Rights.⁷⁰² Ms.</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>Gaviria Betancur is well respected throughout civil society for her defense of human rights and work on behalf of victims; her appointment could have a positive impact on the public’s perception of the Government’s commitment to the implementation of the NAP. It could also contribute to the harmonization of the NAP with other relevant regimes of accountability and redress.</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The NAP lays out a framework for evaluation and follow-up. The NAP is seen as a “living plan, in constant revision.” As such, it can be modified and adjusted in order to “always maintain the spirit” of the NAP as it was drafted.⁷⁰³ The Colombian Working Group, with the help of the Commission of Experts, is charged with verifying the implementation of the NAP and amending the NAP as it sees fit.⁷⁰⁴</p> <p>According to the evaluation and follow-up plan, before March 1st of each year, each institution mentioned in the NAP should report to the Presidential Advisory Office for Human Rights steps taken in relation to the fulfillment of their obligations under the NAP.⁷⁰⁵ This information will be consolidated and published by the Presidential Advisory Office.⁷⁰⁶</p> <p>Each year, the Presidential Advisory Office for Human Rights and the Colombian Working Group will convene two regional rounds of review to assess on-the-ground implementation of the NAP.⁷⁰⁷ Additionally, the Presidential Advisory Office is empowered to consult stakeholders regarding NAP implementation.⁷⁰⁸</p> <p>The NAP is valid for three years.⁷⁰⁹ The final evaluation of the NAP shall be completed within ten months after the completion of the three-year period.⁷¹⁰</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>The results of annual follow-up mechanisms will be published on the Presidential Advisory Office’s NAP micro-site.⁷¹¹ At the time of the update of this NAP evaluation, the Presidential Advisory Office maintains a NAP sub-page on its website.⁷¹² According to the NAP, the results of its final evaluation will be widely disseminated to the public.⁷¹³</p> <p>The evaluation and follow-up plans of the NAP could be improved by explicitly committing the government to drafting a second iteration of the NAP following the completion of the three-year term of the current NAP. Moreover, this revision process could be strengthened by committing to including affected communities and/or organizations that defend the rights of these communities in the process of designing, drafting, and formulating the content of the revised NAP. Additionally, including civil society organizations in the drafting process, aside from organizations identified with corporations (however legitimate these organizations are), would improve the NAP process going forward.</p> <p>Finally, given that the NAP was published while the peace negotiations were still in progress, it is imperative that the NAP be revised now that the peace agreement is in place in order to harmonize the NAP more explicitly with the relevant provisions in that agreement, including the relevant terms of point 5 of the Final Peace Agreement.⁷¹⁴</p>

9. UNITED KINGDOM (2016)

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>The U.K. government has shown early and sustained commitment to the NAP process. The United Kingdom was the first country to publish a NAP on business and human rights. It announced its intention to do so in 2011, and released its first iteration in 2013 (“2013 NAP”).⁷¹⁵ The 2013 NAP was seen as a “first step” in a longer NAP process, with the content of that NAP committing to continue its development and implementation through, in part, an updated version to be published in 2015.⁷¹⁶</p> <p>However, the official launch event for the beginning of the update process did not occur until March 2015, and the updated NAP was not published until May 2016 (“2016 NAP”).⁷¹⁷</p> <p>The process by which the U.K. government conducted its review and assessment of the 2013 NAP and gathered new inputs also signals the government’s commitment to the NAP process. A review process was launched in March 2015 and included consultation with a broad range of stakeholders from business and civil society.⁷¹⁸ More in relation to the facilitation of stakeholder engagement will be discussed in Section 2 of this assessment. Whilst jointly owned by the Foreign and Commonwealth Office (FCO) and Department for Business, Innovation and Skills (BIS), several government departments also contributed inputs.⁷¹⁹</p>

UNITED KINGDOM (2016)

	<p>While the 2016 NAP commits the U.K. government to continue to work with stakeholders on effective implementation of the plan and report on the progress of implementing the NAP in the Annual Report on Human Rights and Democracy of the FCO, it does not go as far as to recommit the government to creating a third iteration of the NAP in the future; highlighting a lesser commitment to continuing the NAP process than the U.K. government has had in the past.</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The responsibility for the 2016 NAP process was clearly placed with the FCO and BIS.⁷²⁰</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>According to the FCO, several government departments were involved in the development of the updated NAP, though it is unclear which departments collaborated in the process.⁷²¹</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>In the 2013 NAP, the UK government committed to publishing an updated version of the plan “by end 2015.”⁷²² No additional information was published in relation to terms of reference or a more detailed timeline for the development of the 2016 NAP.</p> <p>In the 2013 NAP, the UK government committed to publishing an updated version of the plan “by end 2015.”⁷²³ No additional information was published in relation to terms of reference or a more detailed timeline for the development of the 2016 NAP.</p>

UNITED KINGDOM (2016)

Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	There is no information publicly available on the level of funding or human capital provided for the 2016 NAP process.

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	The U.K. government did not conduct a stakeholder mapping for the 2016 NAP process. It similarly did not do so during the initial process of developing the 2013 NAP.
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	<p>The U.K. government did not publish a clear plan or timeline for stakeholder participation in either the 2013 or 2016 NAP development processes.</p> <p>Stakeholder participation was facilitated to an extent in the 2016 NAP process. The update process was launched by a large consultation event, attended by eighty individuals from across civil society, business, and academia.⁷²⁴ The U.K. government held an additional eight public consultation events with various stakeholder groups based on key topics identified during the update process.⁷²⁵ Workshop participants were also invited to submit written contributions to the NAP process.⁷²⁶</p>

UNITED KINGDOM (2016)

2.3. Provide adequate information and capacity-building where needed.	Similar to the 2013 NAP process, the U.K. government did not provide for capacity building in the 2016 NAP process.
2.4. Facilitate participation by disempowered or at-risk stakeholders.	Similar to the 2013 NAP process, the U.K. government did not facilitate participation by disempowered or at-risk stakeholders in the 2016 NAP process. ⁷²⁷ According to the list of organizations represented at the NAP update workshops, the majority of participants were large civil society organizations, law firms, and business representatives. ⁷²⁸
2.5. Consider establishing a stakeholder steering group or advisory committee.	Similar to the 2013 NAP process, the U.K. government did not establish a stakeholder steering group or advisory committee in the 2016 NAP process.

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	Similar to the 2013 NAP process, the U.K. government did not conduct an NBA.
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable.
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable.

UNITED KINGDOM (2016)

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
3.4. Publish and disseminate the NBA.	Not applicable.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	<p>The 2016 NAP addresses all three Pillars of the UNGPs but fails to deal with the UNGPs step by step, explaining how each principle has been implemented and/or will be implemented.</p> <p>As a whole, the 2016 NAP focuses largely on promoting the UNGPs and responsible business conduct and provides very few commitments in relation to upholding the U.K. government’s duty to protect human rights. While the highest number of planned actions is listed under Section 2 (State duty to protect), the majority of these actions are aimed at promoting the corporate responsibility to respect.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the NAP’s coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP’s fulfillment of each UNGP. These sub-criteria are: (1) positive or negative incentives for business to conduct due diligence; (2) disclosure of due diligence activities; (3) measures which require due diligence</p>

UNITED KINGDOM (2016)

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>as the basis for compliance with a legal rule; and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).⁷²⁹ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content:</p> <p>(1) <u>Positive and Negative Incentives for Due Diligence</u></p> <p>While the NAP recognizes that due diligence can help a corporation uphold its responsibility to respect human rights, it does not layout any new positive or negative incentives for conducting due diligence.⁷³⁰</p> <p>The 2016 NAP does build off earlier commitments to promote due diligence, however, it does not establish new government commitments. In the 2013 NAP, the government committed to “encourage” sector groupings/trade associations to create guidance relevant to human rights in that sector, including on due diligence.⁷³¹ In the “actions taken” of Section 2 (State duty to protect), the government states it will “continue to promote the implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas.”⁷³² Similarly, in the case study, <i>Support for Land Tenure and other Property Rights</i>, the government describes how it has jointly developed a “land investment due diligence framework...to guide private sector investments under the New Alliance for Food Security and Nutrition.”⁷³³</p> <p>(2) <u>Disclosure of Due Diligence Activities</u></p> <p>The 2016 NAP recognizes that there is “increasing demand for greater formal</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>reporting by companies on their human rights performance, including from regulations such as the EU non-financial reporting directive and the U.K.'s Companies Act and Modern Slavery Act reporting requirements.”⁷³⁴ In relation to new “government commitments” in the NAP, the U.K. government commits to “ensure the provisions of the EU Directive on non-financial disclosure are transposed in the U.K. to ensure greater consistency and comparability of public information on the human rights policies and performance of listed companies in Europe.”⁷³⁵</p> <p>One of the most promising actions taken by the U.K. government between its two NAP iterations is the introduction of the Modern Slavery Act, which “consolidates and simplifies existing legislation, toughened penalties and safeguards for victims” of human trafficking and slavery.⁷³⁶ Companies covered by the Act are required to produce a “slavery and human trafficking” statement for each financial year setting out what steps they have taken to ensure that slavery and human trafficking is not taking place in its business and supply chains.”⁷³⁷</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>In the “government commitments” sections of the 2016 NAP there are no references to a new requirement of due diligence as a component of compliance with a legal rule. While the government has set up (Modern Slavery Act) and plans to create (transposition of EU directive on non-financial reporting) legal rules which will require the disclosure of information, including</p>

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	<p>in relation to human rights due diligence, these do not necessarily mandate the conducting of due diligence for compliance with these rules.</p> <p>(4) <u>Regulatory Mix</u></p> <p>The regulatory mix in the updated NAP is unsatisfactory. While the NAP recognizes the positive implications of due diligence on a company’s human rights performance, beyond requiring greater human rights reporting, the NAP does not create incentives or penalties for failing to carry out due diligence. The plan does not create new legal obligations for companies to conduct mandatory due diligence; thus, presenting an unequal regulatory mix.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The 2016 NAP clearly explains the U.K. government’s position in relation to regulating the extraterritorial activities of business enterprises domiciled in its jurisdiction. Other than a few “limited exceptions,” such as under treaty regimes, the government states that there “is no general requirement for States to regulate the extraterritorial activity” of its businesses abroad.⁷³⁸ However, the “U.K. may also choose as a matter of policy in certain circumstances to regulate the overseas conduct of British businesses.”⁷³⁹</p> <p>While the majority of “government commitments” in the 2016 NAP emphasize external human rights concerns, especially in Section 2 (State duty to protect), the 2016 NAP does address issues of domestic concern as well. An improvement from the 2013 U.K. NAP, where the contents were “heavily skewed towards external concerns.”⁷⁴⁰</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>In the 2016 NAP, all but one of the “government commitments” in Section 2 (State duty to protect) are externally or internationally focused. However, the “government commitments” in Sections 3 (corporate responsibility to respect) and 4 (access to remedy), discuss domestic and external considerations equally.⁷⁴¹</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The 2016 NAP discusses how the U.K. has used, will continue to use, or will begin to use international and regional organizations and standards to implement Pillars I and II of the UNGPs.⁷⁴² This trend is a continuation from the 2013 NAP, where these organizations and norms were also discussed—though to varying extents.</p> <p>The majority of references to international organizations and standards are made in Section 2 (State duty to protect). The U.K. has endorsed a number of international instruments to “motivate different aspects of corporate behavior,” including the eight core ILO conventions and the OECD Guidelines for Multinational Enterprises.⁷⁴³ Additionally, the NAP lists a number of “actions taken” by the U.K. government in relation to promoting or implementing international standards, including, in relation to the OECD 2012 Common Approaches, OECD Risk Awareness Tool for Multinational Enterprises, the Voluntary Principles Initiative (VPIs), and ISO28007.⁷⁴⁴</p> <p>In relation to future commitments towards implementing the State duty to protect, the NAP commits the U.K. government to working with “government, industry and civil society members of the International Code of Conduct Association to establish an international mechanism to monitor compliance with</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>the code.”⁷⁴⁵ Similarly, another commitment in that section states that the government will continue to work with governments, extractive companies, and civil society to “strengthen the implementation, effectiveness, and membership” of the Voluntary Principles on Security and Human Rights.⁷⁴⁶</p> <p>To a lesser extent, the NAP also discussing international organizations and standards in Section 3 (corporate responsibility to respect), specifically in relation to “actions taken” when discussing support for the UNGPs Reporting Framework and the UN Global Compact.⁷⁴⁷</p> <p>There is no mention of international organizations or standards in Section 3 (access to remedy).</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The 2016 NAP discusses a number of thematic and sector-specific “planned actions.” Under Sector 2 (duty to protect), the 2016 NAP continues the U.K.’s focus on the security and human rights industry from the 2013 NAP.⁷⁴⁸ It commits the government to establish an international mechanism to monitor compliance of the International Code of Conduct for Private Security Service Providers (ICoC) and to work closely with the multi-stakeholder members of the Voluntary Principles on Security and Human Rights Initiative (VPIs) to “promote greater understanding of the Voluntary Principles and strengthen their implementation, effectiveness, and membership.”⁷⁴⁹</p> <p>The theme of investment agreements is also carried over into the 2016 NAP, where it commits the government to “support the EU commitment to consider the possible human rights impacts of free trade agreements” and take</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>appropriate steps where appropriate to avoid or remedy these impacts.⁷⁵⁰</p> <p>Additionally, the issue of risks faced by human rights defenders working on issues related to business and human rights is also addressed in both Section 2 (duty to protect) and Section 4 (access to remedy).⁷⁵¹ Additional thematic and sector specific issues, such as slavery and human trafficking and cyber security, are also discussed in the “actions taken” sections of the NAP.</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The 2016 NAP reaffirms the U.K. government’s commitment to the UNGPs. The introductory section of the NAP provides updates to the development of UNGP implementation since the first iteration of the U.K. NAP was published.⁷⁵² The 2016 NAP retained the same structure as the 2013 NAP in being built around the three Pillars of the UNGPs.⁷⁵³ Additionally, the U.K. government has “developed partnerships with other countries seeking to implement the UNGPs,” including Colombia, Malaysia, South Korea, and a number of EU countries.⁷⁵⁴ The government also pledges to continue to “work with EU partners to implement the UNGPs across member states and internationally.”⁷⁵⁵</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Overall, the 2016 NAP fails to provide action points that are specific, measurable, and time-specific. None of the “government commitments” provided for in the NAP explicitly specify which government agency or department will be tasked with fulfilling the commitment. Similarly, none of the commitments provide a timeframe within which they must be carried out. More</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>positively, none of the “government commitments” appear to be irrelevant to the issue of promoting and implementing the UNGPs.</p> <p>The NAP commitments vary in relation to specificity and measurability. For example, some new commitments are relatively clear in establishing specific actions to be undertaken and their objectives. For example, under Section 2 (State duty to protect), the government commits to work with the “International Code of Conduct Association to establish an international mechanism to monitor compliance with the Code.”⁷⁵⁶ Similarly, under Section 3 (Corporate responsibility to respect), the government commits to ensuring that the EU Directive on non-financial reporting is transposed in the UK.”⁷⁵⁷ In both of these instances, it is clear what the government is committing to do and the overall objective of the commitment--making compliance with the commitment easily measurable.</p> <p>However, other planned actions are much less detailed, making measurability more difficult. For example, under Section 3 (corporate responsibility to respect), the government commits to “facilitating dialogue between business people, parliamentarians and civil society on the implementation of the business and human rights agenda.” This section also commits the government to “continue to work through our embassies and high commissions to support human rights defenders.” Both of these points are difficult to measure given the ambiguity of what successful “facilitation” or “support” means in practice.</p> <p>A more detailed planned action for the “facilitation of dialogue” could have laid out a number of actions that the government will take to achieve the</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>overarching goal of dialogue, such as setting up recurring meetings or a permanent multi-stakeholder group and detailing how civil society and business can participate. Similarly, the NAP could have outlined the steps it will take to supporting human rights defenders, such as, for example, providing dedicating funding or establishing contact points within embassies for dealing with issues faced by human rights defenders. Without establishing a clear expectation of what these actions will look like in practice, it is difficult to track implementation and progress.</p> <p>Other future commitments suffer from a different type of lack of specificity— ambiguity relating to what successful implementation looks like. For example, in Section 2 (State duty to protect), the government states it will “consider new project activity on raising awareness and tackling negative impacts of business activity...by tasking our diplomatic missions in countries where these are concerns.”⁷⁵⁸ Similarly, in Section 3 (corporate responsibility to respect), the government commits to “instruct our diplomatic missions to work with host governments [etc.]...so we can help inform companies of the human rights risk they face.” While compliance is easily measured by whether or not the government instructed embassies to do these things, whether or not the intended outcome is achieved is much more difficult to assess without giving more context to the purpose and intent of these commitments.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Priorities for NAPS	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>As a result of the failure to conduct an NBA, any prioritization of human rights abuses was not informed by a in depth analysis of the types of human rights abuses faced by U.K. citizens or committed by U.K. businesses operating abroad.</p> <p>Although the 2016 NAP appears to maintain the 2013 NAP’s focus on a few high-risk sectors, such as private security contracting; this focus does not necessarily reflect an in-depth analysis of U.K. business’ greatest human rights impacts in the U.K. or abroad.⁷⁵⁹</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The U.K. NAP does not adequately address issues related to the most vulnerable and excluded groups. There are only three “government commitments” that discuss vulnerable or excluded groups.</p> <p>For example, Section 2, paragraph 18 (viii) and subpoint iii of Section 4 under “government commitments” both commit the U.K. government to supporting and promoting the work of human rights defenders working on issues related to business and human rights.⁷⁶⁰</p> <p>The 2016 NAP also reiterates a prior commitment in the 2013 NAP in relation to vulnerable and excluded groups.⁷⁶¹ Section 2, paragraph 18 (vi) states that the U.K. will consider promoting “new project activity” to raise awareness and deal with the harmful effects of business, “including on the human rights of groups like indigenous peoples, women, national or ethnic minorities, religious and</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>linguistic minorities, children, persons with disabilities, and migrant workers and their families, by tasking our diplomatic missions in countries where these are concerns.”⁷⁶² While the government is recommitting itself in this regard, it is unclear from the content of the 2016 NAP, what steps, if any, were taken in the interim in relation to this commitment.</p>

5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was conducted or published. The U.K. government did release a summary of the NAP update process, including “headline messages” received from its consultation workshops.⁷⁶³ The government also invited stakeholders who wished to make their submissions public to submit them to the Business and Human Rights Resource Center, which maintained a dedicated webpage to host these submissions.⁷⁶⁴</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The 2016 NAP does not clearly identify which government agency or department will be responsible for implementing the various government commitments. None of the new commitments specify which sections of government will be in charge of implementation. Certain government actions are identified in the “actions taken” sections as having been the lead agency in implementation of past NAP commitments.</p> <p>Overall follow-up and monitoring for the NAP appears to be in the hands of the FCO, as each year the Annual Report on Human Rights and Democracy (created by the FCO) will include information on the NAP’s progress.⁷⁶⁵ Monitoring will also be conducted by the cross-Whitehall Steering Group—representatives of civil society, government, and business—who will meet periodically.⁷⁶⁶ However, the NAP does not specify who is currently part of the group or more specifically how often it will meet.</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The 2016 NAP lays out a framework for implementation and further development.⁷⁶⁷ According to the NAP, the U.K. government will “continue to monitor” NAP creation and implementation globally and the development of best practice, and use this information to “inform future policy developments.”⁷⁶⁸</p> <p>The 2016 NAP commits the “cross-Whitehall Steering Group,” comprised of business and civil society representatives, to “meet[] periodically” to monitor</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>implementation of the NAP and the government to continue its yearly reporting on the progress of the NAP in the Annual Report on Human Rights and Democracy of the Foreign and Commonwealth Office.⁷⁶⁹</p> <p>However, the 2016 NAP does not make an explicit commitment to a future iteration, which could be a sign of weakening dedication to the NAP process.</p>

10. ITALY

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>The Italian government expressed its intention to draft a NAP on business and human rights in 2013.⁷⁷⁰ In December 2013, the Italian government released “The Foundations of the Italian Action Plan on the United National Guiding Principles on Business and Human Rights,” which laid the groundwork for the adoption of the Italian NAP.⁷⁷¹ This document was based on a gap analysis commissioned by the OECD National Contact Point (established within the Italian Ministry of Economic Development) and conducted by University of Sant’Anna in 2013.⁷⁷² The creation of both of these documents is a positive indication of the government’s commitment to a comprehensive NAP process.</p> <p>In the NAP, the government acknowledges that the NAP is an instrument to “move towards the new needs of interaction between human rights and the economic dimension” in line with the UN Guiding Principles on Business and Human Rights (UNGPs).⁷⁷³ It affirms Italy’s “promotion and respect for human rights - with particular consideration to the most vulnerable groups” as “primary vehicles to rebalance the distortions and inefficiencies produced within the economic and productive contexts that have proved not to be efficient in this regard.”⁷⁷⁴</p> <p>In its statement of commitment, the NAP notes that Italy is “committed to promote and carry out key-actions to provide that, within the domestic legislative, institutional and operational framework regulating economic</p>

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	<p>activities, human rights are conceived as a priority so that the eventual adverse impact of business on these rights is properly addressed.”⁷⁷⁵ It further states that this commitment “will reflect also in Italy’s external action, by encouraging and favoring the adoption of adequate measures to foster respect of human rights in business activities at regional and international level.”⁷⁷⁶</p> <p>While the creation of an inter-departmental group to guide the NAP process (to be discussed in section 1.2 of this assessment) is another positive indication of the government’s commitment to the NAP process, the vague monitoring and implementation commitments and lack of reporting requirements demonstrate a weakness in the overall commitment to the NAP process. Failure to implement more specific action points with timelines and reporting requirements will necessarily impact the plan’s effectiveness.</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>Italy’s Inter-ministerial Committee for Human Rights (known by Italian acronym, CIDU) at the Ministry of Foreign Affairs and International Cooperation coordinated the drafting of the NAP.⁷⁷⁷</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>As noted above, the Ministry of Foreign Affairs and International Cooperation was the lead agency on the creation of the NAP. An ad hoc working group composed of representatives of several ministries and institutions, including the Ministry of Economic Development, Ministry of the Infrastructures and Transports; Ministry of Justice; Interior Ministry; Ministry of Labour and Social Policies, Ministry for the Environment, Land and Sea, National Institute of Statistics, was also established and coordinated by CIDU.⁷⁷⁸</p> <p>In addition, an inter-departmental group, known as the Working Group on Business and Human Rights (in Italian: GLIDU), is charged with ensuring</p>

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	implementation of the NAP, working jointly with a consultative body composed of all relevant non-institutional stakeholders (business community, trade unions, NGOs, civil society organizations, human rights defenders, individual experts and representatives from academia). ⁷⁷⁹
1.4. Devise and publish terms of reference and a timeline for the NAP process.	Neither terms of reference nor a timeline for the NAP process was published. The government published the “Foundations of the Italian Action Plan on UN Guiding Principles on Business and Human Rights (UNGPs)” as a foundational document on which it based the NAP; however, this document did not contain a clear timeline for the process. ⁷⁸⁰
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	There is no information publicly available on the level of funding provided for the NAP process.

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	No information on any stakeholder mapping was published.

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<p>2.2. Develop and publish a clear plan and timeline for stakeholder participation.</p>	<p>The Italian government did not provide a clear plan or timeline for stakeholder participation in the NAP process. Pre-draft consultations were limited in the development of the NAP.⁷⁸¹ The Italian inter-departmental working group invited only the UN Global Compact Network to participate in a few of its meetings.⁷⁸² Italy circulated the first full draft NAP to a select list of stakeholders: ActionAid, Amnesty International Italy, Mani Tese, Re:Common and a few other civil society organizations.⁷⁸³ The government then released an updated draft NAP online for public consultation from July 27 to September 10, 2016.⁷⁸⁴</p>
<p>2.3. Provide adequate information and capacity-building where needed.</p>	<p>The Italian government did not provide capacity-building measures in its engagement with stakeholders.</p>
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>The Italian government did not thoroughly facilitate participation by disempowered or at-risk stakeholders. While it did publish a draft of the NAP online for public consultation,⁷⁸⁵ it is unclear if this reached disempowered/at-risk stakeholders. There is no evidence to suggest that specific efforts were made to seek testimony from rights holders or facilitate opportunities for affected individuals to participate in consultations.</p>
<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>According to the Italian government, during the NAP drafting process, “ad hoc working groups [were] created to involve in this exercise also non-institutional actors and the business world working in Italy and abroad promoting the full awareness and implementation of the UNGPs.”⁷⁸⁶</p> <p>In addition, the NAP announces the creation of the Working Group on Business</p>

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	<p>and Human Rights (GLIDU, in Italian), an inter-departmental steering committee coordinated by CIDU. The GLIDU will “work jointly with a consultative body composed of all relevant non-institutional stakeholders (business community, trade unions, NGOs, civil society organizations, human rights defenders, individual experts and representatives from academia)” in supervising the implementation of the NAP.⁷⁸⁷ The GLIDU was supposed to be established in March 2017; however, no public information about this occurrence has been released⁷⁸⁸.</p>
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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
<p>The NBA as the Foundation for the NAP</p>	
<p>3.1. Undertake a NBA as the first step in the NAP process.</p>	<p>In early 2013, the OECD National Contact Point at the Italian Ministry of Economic Development commissioned academics from the University of Sant’Anna to conduct an NBA.⁷⁸⁹ They launched the report “Business and Human Rights: The Italian case” (in Italian only) in November 2013.⁷⁹⁰ The report examined the “adequacy of the Italian regulatory and institutional framework in comparison to the Guiding Principles,” identified strengths and weaknesses, and elaborated specific recommendations on how to ensure stronger conformity with the UNGPs.⁷⁹¹ It also sought to provide “clear guidance to those companies willing to meet the new international standards within the existing normative framework.”⁷⁹² The analysis is based mainly on “desk-based research and a limited number of interviews, mainly with State</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>administration and national civil society, without any systematic outreach to potential victims.”⁷⁹³</p> <p>In addition, in December 2013, the Italian government released “The Foundations of the Italian Action Plan on the United National Guiding Principles on Business and Human Rights” (The Foundations paper) based primarily on the gap analysis.⁷⁹⁴ The Foundations paper focuses exclusively on the first and third Pillars of the UNGPs, i.e., the state’s duty to protect and access to remedy issues.⁷⁹⁵</p>
<p>3.2. Allocate the task of developing the NBA to an appropriate body.</p>	<p>The gap analysis was carried out under the supervision of Professor Andrea de Guttry, by a group of researchers at the University of Sant’Anna, comprising Claudia Cinelli, Damiano de Felice, and Chiara Macchi.⁷⁹⁶</p>
<p>3.3. Fully involve stakeholders in the development of the NBA.</p>	<p>The gap analysis was based in part on “direct examination of policies and legal instruments, analysis of specific government grants, the study of comments and annotations in specialist publications and conducting interviews with experts in the various disciplines addressed [translated from original Italian].”⁷⁹⁷ The extent to which stakeholders were involved in the analysis is unknown; according to some “consultations were limited to a few domestic stakeholders.”⁷⁹⁸</p>
<p>3.4. Publish and disseminate the NBA.</p>	<p>The gap analysis was published online on November 4, 2013, in Italian only.⁷⁹⁹</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The Italian NAP is organized almost exclusively around Pillars I and III of the UNGPs, and goes through their respective UNGPs principle by principle. The NAP begins with an introduction of the UNGPs and a brief description of the three Pillars. The substantive content of the NAP is divided into narrative lists of government commitments under UNGPs 1-2 and 28-31, and into 59 more specific “Planned Measures,” which are organized under UNGPs 3-10 and 25-27.</p> <p>Despite the less comprehensive focus on Pillar II, the NAP does state with regard to the “Responsibility to Respect,” that “enterprises have to conduct processes aimed at preventing the risk of causing (or contributing to) adverse human rights impact and at adopting specific measures able to mitigate eventual harmful consequences.”⁸⁰⁰ The NAP then elaborates on specific expectations for companies such as creating and implementing due diligence processes and providing grievance mechanisms for victims of abuse.⁸⁰¹</p> <p>In general, the Italian NAP is a summary of ongoing processes and existing objectives, framed by often vague commitments – many of which will be difficult to monitor in the absence of a timeline and clearly allocated responsibilities.</p> <p>In terms of substantive content, the following four sub-criteria provide insight</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>into the NAP's coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP's fulfillment of each UNGP. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) a regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).⁸⁰² These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content.</p> <p>(1) <u>Positive and Negative Incentives for Due Diligence</u></p> <p>One of the Italian government's six priorities for the NAP is "promoting human rights due diligence processes, aimed at identify [sic], prevent and mitigate the potential risks with particular focus on SMEs."⁸⁰³ In consideration of this focus, the NAP establishes a number of commitments to promote due diligence, both generally and at the company level.</p> <p>Generally, the NAP commits the government to promoting the concept of due diligence and its general development as an international standard. For example, under UNGP 3(c, d) the government commits to "participate to [sic] initiatives in the context of the OECD, EU and other international <i>fora</i> on sustainable supply chains, human rights and due diligence."⁸⁰⁴ Similarly, under UNGPs 9-10, the government will "promote further and wider recourse to due diligence processes and foster exchanges of experiences with partner countries at EU and global level, and with international organizations such as the OECD,</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>ILO, IOM, and UNICEF.”⁸⁰⁵</p> <p>Other planned measures aim to promote the use of due diligence at the company level. For example, under UNGP 3(c, d), one planned measure is to “promote [a] common understanding of due diligence among companies and strongly encourage companies to engage in human rights policy and due diligence processes involving the entire supply chain.”⁸⁰⁶ Similarly, under UNGP 7, the NAP commits the government to “further promote the knowledge of the OECD due diligence guidance” and to encourage and support SMEs in following this guidance.⁸⁰⁷ However, it is unclear how the government will promote due diligence, and in what ways, if any, it will seek to provide positive or negative incentives.</p> <p>Another future commitment that could be seen to incentivize the use of due diligence is a planned measure under UNGPs 9 & 10, which states that the government will “advocate for a system of ‘human rights credits’ in international trade through the proposal of introduction of a ‘special duty’ for goods imported from countries and/or produced by enterprises not complying with human rights fundamental standards.”⁸⁰⁸ By imposing a special duty on enterprises not complying with fundamental human rights, businesses will be incentivized to ensure compliance with human rights standards through conducting due diligence in order to avoid this monetary penalty.</p> <p>The NAP also lists current government policies that could establish certain incentives for due diligence processes. For example, Italy’s ‘legality rating’</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>provides legally compliant companies with good governance initiatives a certification of compliance, which entitles them to access public funding and easier bank credit access.⁸⁰⁹ As another example, under the Italian government’s recent initiatives to comply with UNGP 3(a), the NAP lists a 2014 Decree that established “Rete del Lavoro Agricolo di Qualità,” a network aimed at countering irregular work in agriculture.⁸¹⁰ Under this decree, companies compliant with specific requirements under labor, social security, and fiscal law may apply to join the network, and this is rewarded with special incentives (such as being included in a ‘white list’ which lets government enforcement agencies prioritize their controls over companies who are not on the list).⁸¹¹</p> <p>Ideally, however, the NAP missed an opportunity to establish more specific ways in which positive and negative incentives for due diligence can be provided for.</p> <p>(2) <u>Disclosure of Due Diligence Activities</u></p> <p>The NAP does not explicitly require or mandate disclosure of due diligence activities, but does commit to broadly promoting disclosure and reporting mechanisms. For example, under UNGP 3(a), the government commits to “promote effective implementation of EU Directive 2014/95 on disclosure of non-financial and diversity information by large enterprises and groups.”⁸¹² Similarly, under UNGP 3(c, d), the government commits to promoting “environmental accounting in sustainability reporting and encouraging the adoption of disclosure processes for the assessment and communication of the environmental and carbon footprint of business.”⁸¹³</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>The NAP also does not refer to any existing regulatory regimes that may mandate such disclosures, but refers to the need for them. For example, under the government’s expectations for business, the NAP states that “it is important to add the need of disclosure of non-financial information...and the existence of remarkable standards such as the UNGP Reporting Framework.”⁸¹⁴</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are few planned measures within the NAP that could require due diligence as part of compliance with a legal rule. Under UNGP 3(b), the government commits to “conduct a comprehensive review of the existing commercial and civil law to assess and evaluate legislative reform introducing provisions such as the ‘duty of care’ or due diligence for companies.”⁸¹⁵ Depending on the outcome of this review, the Italian government might decide it necessary to require mandatory due diligence. Additionally, under UNGPs 4-6, the Italian government commits to elaborating “within the CIDU the concept of a ‘human rights clause’ to be included <i>as a requirement</i> for competing enterprises in all public model tenders and agreements with business enterprises for the purchase of goods and provision of services.”⁸¹⁶ However, the planned measure does not detail what the human rights clause would specify and if it would require due diligence.</p> <p>The NAP does mention existing legal rules and policies that would likely require due diligence. For example, Legislative Decree No. 231 of 2001 provides a form of liability (administrative in nature, but ascertained by a penal judge/according</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>to criminal law procedures) for entities committing specific offences (ranging from financial crimes like corruption and fraud to trafficking and to even serious environmental crimes).⁸¹⁷ To avoid liability, entities must adopt sound models and a mechanism for monitoring/supervising compliance with that model, making the law both preventive and punitive.⁸¹⁸</p> <p>(4) <u>Regulatory Mix</u></p> <p>The regulatory mix of the commitments outlined in the NAP includes many positive planned measures which either promote due diligence and disclosure of due diligence, or could require due diligence as part of compliance with a legal rule. However, the regulatory mix is not fully satisfactory, because it neither describes how the government will provide incentives for due diligence, nor does it go as far to commit to requiring mandatory due diligence—although it does lay the groundwork for possibly doing so in the future.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The Italian NAP is focused on promoting corporate responsibility and protecting human rights both domestically and abroad. Therefore, the NAP generally addresses the full scope of the State’s jurisdiction, keeping a broad focus on both companies (Italian or foreign) acting within the country, and Italian companies acting in other jurisdictions.</p> <p>The NAP has a number of domestically-focused planned measures, specifically in relation to three of its six key priorities: tackling <i>caporalato</i> (illegal hiring); tackling discrimination and inequality and promoting equal opportunities; and promoting environmental protection and sustainability.⁸¹⁹</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>The NAP also includes several internationally-focused planned measures such as elaborating “within the CIDU the concept of a ‘human rights clause’ to be included as a requirement for competing enterprises...with particular focus on i) enterprises operating abroad; ii) enterprises availing themselves of foreign suppliers; [and] iii) foreign enterprises.”⁸²⁰ Other proposed measures include “providing guidance to Italian enterprises abroad through the diplomatic and consular network for the dissemination of UNGPs and the SDGs” and “disseminating respect of the UNGPs to enterprises investing abroad through an information toolkit for the diplomatic and consular network”.⁸²¹</p> <p>Furthermore, judicial reform/remedy priorities also focus on both domestic and international corporate actors. For example, the NAP proposes that Italian legislators focus on “measures to strengthen special courts for enterprises by extending their competence to consumer protection-related claims, misleading advertising and unfair competition” and the “introduction of criminal provisions against economic crimes, also committed abroad.”⁸²² The NAP also focuses on analyzing and removing barriers to accessing remedy for victims of human rights abuses “especially with regard to extraterritorial violations.”⁸²³</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The Italian NAP extensively discusses international and regional organizations and standards and how the State and businesses should use those organizations and standards to push for greater respect for human rights in general, and further implementation of the UNGPs.</p> <p>The NAP explicitly mentions international organizations and standards in several measures. For example, in relation to Guiding Principles 3(c, d), the NAP</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>provides eight planned measures specifically in relation to the OECD Guidelines for Multinational Enterprises.⁸²⁴ It also discusses the OECD National Contact Point system.⁸²⁵</p> <p>Multiple other planned measures discuss promoting activities of the United Nations Global Compact,⁸²⁶ ratifying/integrating ILO norms and protocols,⁸²⁷ disseminating/promoting the Sustainable Development Goals,⁸²⁸ and promoting awareness of the UNICEF ‘Business Lab’ initiative,⁸²⁹ among other references to international organizations and standards.</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP does address thematic and sector-specific human rights issues in its planned future measures. It touches on issues such as trade, conflict areas, corruption, security concerns, responsible investment, and public procurement. It specifically prioritizes tackling illegal forms of labor and labor exploitation in the agricultural, construction, manufacturing, and services sectors.⁸³⁰ There is also a heavy focus on the environment and measures that promote sustainability, specifically Agenda 2030 and the Sustainable Development Goals.⁸³¹</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The NAP states that Italy has “undertaken the drafting of a National Action Plan on business and human rights to ensure the integration and implementation of the UNGPs within national policy and strategy.”⁸³² It also includes as the first section, a “statement of commitment,” where it outlines the Italian</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>governments commitments in relation to ensuring the “respect of human rights within economic activities.”⁸³³</p> <p>In addition, the NAP is designed around the three pillars of the UNGPs and mentions the UNGPs specifically throughout the NAP. It lists its current activities and future commitments under the framework of each guiding principle under Pillars I and III.⁸³⁴ However, as discussed in section 4.1, rather than addressing specific planned measures under Pillar II, the NAP only discusses Pillar II more broadly in terms of expectations, rather than action points.⁸³⁵</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>All of the specific planned measures developed in the NAP appear to be relevant to the goal of promoting business respect for human rights and protecting against and remedying business-related human rights abuse.</p> <p>None of the planned measures contained in the NAP have specific timelines for implementation. The only mention of a timeline in the entire NAP is in the mid-term review to be conducted by GLIDU in 2018, during which time the group will assess the results achieved and identify the gaps in the actions undertaken to ensure the effective protection and advancement of human rights with regard to economic activities.⁸³⁶</p> <p>The majority of the planned measures in the NAP also do not specify which government agency or department is tasked with implementing and following-up on future actions (for more information, see section 6.1 of this assessment).</p> <p>While the majority of planned actions falls short in setting timelines or</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>specifying implementing agencies, some planned actions are relatively strong in relation to outlining the actions the government is committing to undertaken and how these actions will be fulfilled or can be achieved. For example, under the planned measures for UNGP 3(a), the NAP commits the government not just to “promote the realization of interventions on immigrants’ rights protect,” it specifies it will do so in line with an already existing project which has already shown positive results.⁸³⁷ Similarly, under UNGP 3(c, d), the NAP does not only commit the government to provide “guidance to Italian enterprises abroad through the diplomatic and consular network for the dissemination of the UNGPs and the SDGs,” but it states that this will be carried out by the Ministry of Foreign Affairs and International Cooperation through the development of a strategy which will include actions such as “advocacy, watchdog activities and match making among enterprises.”⁸³⁸ Additionally, under UNGPs 4-6, the government pledges to “[s]trengthen the implementation of socially responsible public procurement rules by adopting a comprehensive framework of reference for bidders” to be coordinated by the Italian Anti-Corruption Authority (A.N.AC).⁸³⁹ It then goes on to clarify that this “comprehensive framework for reference” will cover topics such as “anticorruption, non-financial disclosure, supply chain, environment, labour, equal opportunities and non-discrimination.”⁸⁴⁰</p> <p>There are, however, a number of planned measures that could benefit from more specificity. Some action points, similar to the ones discussed above, which commit the government to “strengthening”, “reinforcing”, “supporting”, and “promoting” various standards or programs, are still too broad for the exact</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>nature, extent, and process of the government’s commitment to be clear. For example, under UNGP 3(c, d), the government commits to “promote [a] common understanding of due diligence among companies...;” “promote the international framework agreements developed by the International Trade Unions;” and “promote and encourage leading multi-stakeholder initiatives involving both big companies and SMEs for exchange and common action on BHR,” however, it is very vague as to how it will go about doing any of these commitments. Another example of this problem is in relation to the planned measures of UNGPs 9-10, which commit the government to “support initiatives in all relevant <i>fora</i> aiming at developing instruments to enhance fair competition for the safeguard and promotion of human rights.”⁸⁴¹ Here, it is unclear what will qualify a forum as “relevant” and how the government will go about “supporting” these initiatives.</p> <p>The NAP avoids introducing new legislation, only leaving the door open for further consideration, and it is framed by vague commitments - which will be difficult to monitor in the absence of a timeline and clearly allocated responsibilities. However, these commitments do include some positive elements. For example, under UNGPs 1 and 3(b), the government promises to look into enhancing enforcement of laws requiring corporate respect of human rights, and to conduct a review of the current domestic legal framework.⁸⁴² The review will assess if legislative reforms could introduce provisions on duty of care or due diligence for companies.⁸⁴³ Similarly, in relation to UNGP 25-26, the NAP commits the government to “evaluate the introduction of relevant additional legislative measures to strengthen access to effective remedy both in</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	civil, criminal, and administrative law” following the review of legal mechanisms and gaps in access to remedy. ⁸⁴⁴
Priorities for NAPS	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The NAP focuses on six priorities based on the gaps identified in the NBA.⁸⁴⁵ These priorities are:</p> <ol style="list-style-type: none"> 1. “Promoting human rights due diligence processes, aimed at identifying, preventing and mitigating the potential risks, with particular focus on SMEs; 2. Tackling <i>caporalato</i> (illegal hiring) (especially in the agricultural/construction sector) and other forms of exploitation, forced labor, child labor, slavery and irregular work, with particular focus on migrants and victims of trafficking; 3. Promoting fundamental labor rights in the internationalization process of enterprises with particular regard to the global productive processes; 4. Strengthening the role of Italy in a human rights-based international development cooperation [sic]; 5. Tackling discrimination and inequality and promoting equal opportunities; 6. Promoting environmental protection and sustainability.”⁸⁴⁶

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The NAP discusses and includes follow-up actions that specifically relate to vulnerable and excluded groups. In its Statement of Commitment, the Italian government pledges to “[c]ontinue to protect, promote universal respect for, and observance of, all human rights, fundamental freedoms and non-discrimination principles, with special attention to the rights of most vulnerable groups, such as women, children, disabled, LGBTI people, migrants and asylum seekers, and persons belonging to ethnic and religious minorities.”⁸⁴⁷</p> <p>The NAP discusses and addresses vulnerable and excluded groups within multiple action points. For example, under UNGP 3(a), the Italian government commits to strengthening “respect of fundamental rights of people with disabilities with regard to access to medical treatment and their quality...”⁸⁴⁸</p> <p>Under UNGP 3(c, d), Italy commits to “[e]ncourage companies in the dissemination of anti-discrimination culture” through several measures including “promoting bodies...that will have the aim of promoting the inclusion of workers with disabilities within the workplace;” “increasing the awareness within the workplace on the serious issue of sexual abuse and domestic violence;” and “providing incentives for corporate training on inclusion, diversity management, gender balance and gender mainstreaming with specific focus on women empowerment and LGBTI rights.”⁸⁴⁹</p> <p>In addition, under UNGP 7, one of Italy’s planned measures is to “[r]einforce the action of the Italian Development Cooperation towards gender equality also by supporting women economic empowerment in post conflict countries...”⁸⁵⁰</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	While the NAP explicitly references these groups, it is unclear whether they participated in consultations in the drafting process.

5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.	Numerous documents that fed into or explained the NAP process were made publicly available. The NBA was published online in Italian, and the Foundations paper in English. ⁸⁵¹ The draft NAP was published in July 2016, and public comment was accepted until September 10, 2016. ⁸⁵² In addition, other documents were made available to explain the NAP process, including the Fact Sheet which accompanied the launch of the NBA, and the Italian government’s response to the UN Working Group on Business and Human Rights “surveys on implementation of the Guiding Principles.” ⁸⁵³

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The majority of the planned measures of the NAP do not explicitly identify the responsible government agency involved. There are a few planned measures, specifically in relation to the Guiding Principles 4-6 and 7, which do specify that the CIDU will jointly help to develop and implement these commitments.⁸⁵⁴</p> <p>The provision on follow-up to the NAP, to be discussed in detail in section 6.2, is assigned to the members of the GLIDU, which will be composed of all the administrations represented within the CIDU. The GLIDU will also “work closely with a consultative body composed of all relevant non-institutional stakeholders.”⁸⁵⁵</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The NAP lays out a framework for monitoring and reporting in Section V “Monitoring, Update and Dissemination of the Plan.”⁸⁵⁶</p> <p>To ensure the implementation of the NAP, the NAP establishes the GLIDU, which will “have the task of supervising the progressive implementation of the NAP, coordinating the monitoring activities and proposing modifications and/or revisions of the measures foreseen in the Plan on the base of either the necessity to fine tuning with future governmental policies or with new necessities and thematic priorities that will emerge in the meetings and multi-stakeholder initiatives related to the implementation of the Plan itself.”⁸⁵⁷</p> <p>The NAP also commits the GLIDU to conduct a mid-term review in 2018 “to</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>assess the results achieved and identify the gaps in the actions undertaken to ensure the effective protection and advancement of human rights with regard to economic activities.”⁸⁵⁸ The NAP gives further context to the 2018 review by stating that it will be “carried out with special focus on the priorities set in the present Plan with the aim of addressing future challenges.”⁸⁵⁹</p> <p>However, the NAP does not lay any framework for reporting on implementation of any measures, or contain a commitment to update the document or draft a revised NAP on business and human rights in the future. The NAP simply states that a mid-term review will be conducted in 2018 and that the NAP is valid through 2021.</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>In 2012, Switzerland’s parliamentary body, the National Council, adopted postulate 12.3503, “A Ruggie Strategy for Switzerland,” which mandated that the Federal Council develop a National Action Plan (NAP) for the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs).⁸⁶⁰ Following years of development, in December 2016, the Swiss government published its “Report on the Swiss strategy for the implementation of the UN Guiding Principles on Business and Human Rights” (Swiss NAP).</p> <p>In the NAP, the Swiss government highlights its commitment to protecting human rights and implementing the UNGPs.⁸⁶¹ The government acknowledges that the implementation of the UNGPs in general, and “its State duties to protect and provide access to remedy” in particular, are an ongoing process that must remain adaptable to new challenges.⁸⁶²</p> <p>The government’s efforts to consult with external stakeholders in business, civil society, and academia also show commitment to the NAP process. The Swiss government partnered with Swisspeace, a Swiss non-governmental organization, to conduct stakeholder consultations. Participating stakeholders had the opportunity to give feedback on two drafts of the NAP, and to attend informational meetings on the NAP’s development.</p>

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	<p>Similarly, the Swiss government’s plan to monitor and implement the NAP is further evidence of its commitment to the NAP process. The NAP outlines the government’s plan to review and update the NAP once every legislative period.⁸⁶³ The implementation of the first Swiss NAP is to be completed by 2020. The next NAP review will take place in 2019.⁸⁶⁴</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The Federal Council coordinated the creation of the NAP by the Federal Department of Foreign Affairs and the Federal Department of Economic Affairs, Education and Research.⁸⁶⁵ The Federal Council is a seven-member executive council, which serves as the collective executive head of government and State of Switzerland.</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>The government did not create an inter-ministerial working group to ensure an inclusive approach across all areas of government. However, drafts of the NAP were circulated within all federal departments for consultation. Additionally, the final draft of the NAP was coordinated and approved by the Federal Council, the highest level of government.</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>Neither terms of reference nor a detailed timeline for the NAP process was published. Postulate 12.3503 specified a two-year timeline for the development of the Swiss NAP; however, this timeline was not met due to a lack of human resources in the State Secretariat of Economic Affairs.⁸⁶⁶</p>

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Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	There is no information publicly available on the level of funding provided for the NAP process.

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	<p>There is no information publicly available as to whether the Swiss government conducted a stakeholder mapping.</p> <p>Prior to drafting the NAP content, in 2014, the government commissioned Swisspeace, a Swiss non-governmental organization, to conduct a stakeholder consultation. The summary report of this consultation period was made publicly available and used as one of the basis documents for drafting the NAP.⁸⁶⁷</p> <p>In addition, throughout the NAP process, external stakeholder groups “had the opportunity to provide feedback on two drafts” of the NAP and to participate in multi-party dialogues.⁸⁶⁸ According to some stakeholders that participated in the process, they were not given sufficient notice of upcoming consultation periods, nor were these periods sufficient in length to allow for meaningful contributions.⁸⁶⁹ Some stakeholders also noted that they were not notified as to how their input would be used, nor were they given any feedback following</p>

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	<p>their initial round of comments.⁸⁷⁰</p> <p>In 2015, another informational meeting was held to update consulted stakeholders on the progress of the NAP; however, following this meeting, external stakeholders were not invited to participate further in the NAP process and were no longer given periodic updates.⁸⁷¹</p>
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	It does not appear that the Swiss government developed or published a clear plan and timeline for stakeholder participation.
2.3. Provide adequate information and capacity-building where needed.	It is unclear what, if any, information or capacity building was provided to consulted stakeholders.
2.4. Facilitate participation by disempowered or at-risk stakeholders.	It is unclear what groups were involved in stakeholder consultations; though there is no indication that participation by disempowered or at-risk stakeholders was facilitated. The NAP merely notes that “[s]takeholder groups outside the government were consulted on multiple occasions.” ⁸⁷²
2.5. Consider establishing a stakeholder steering group or advisory committee.	The Swiss government did not establish a stakeholder steering group or advisory committee for the development of the NAP. However, the NAP commits to the creation of, a multi-stakeholder Monitoring Group prior to the first update of Switzerland’s NAP in 2020. ⁸⁷³ This group will be comprised of representatives of the Federal Administration, business, civil society, and academia. ⁸⁷⁴ The Monitoring Group will periodically discuss the implementation of the NAP with the Federal Administration and will be invited to comment on NAP status reports published by the Swiss government. ⁸⁷⁵

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
<p>3.1. Undertake a NBA as the first step in the NAP process.</p>	<p>The Swiss government did not conduct a national baseline assessment (NBA), a full analysis of the gaps in existing laws and policies in the State which seek to implement the UNGPs. The Federal Council chose to review existing government measures and instruments instead of seeking to identify the gaps in these measures against the full scope of the UNGPs.⁸⁷⁶ The Council made this decision without informing stakeholders who were involved in pre-drafting consultations.⁸⁷⁷ The Federal Council has previously stated that it intended “to carry out an analysis of potential gaps and necessary measures, but it did not state the results of its consultations, “nor did it carry out an analysis of the required measures.”⁸⁷⁸</p> <p>The NAP states that it “will be updated and revised once per four-year legislative period, based on an external analysis of the Swiss context for business and human rights, and any gaps identified in Switzerland’s implementation of the UNGPs.”⁸⁷⁹ While unclear, this statement could represent the Swiss government’s commitment to conduct an NBA in the future.</p>
<p>3.2. Allocate the task of developing the NBA to an appropriate body.</p>	<p>Not applicable.</p>
<p>3.3. Fully involve stakeholders in the development of the NBA.</p>	<p>Not applicable.</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
3.4. Publish and disseminate the NBA.	Not applicable.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	<p>The Swiss NAP is organized exclusively around the federal government’s obligations under Pillars I and III of the UNGPs, and goes through these respective UNGPs principle by principle. The NAP begins with an introduction of the UNGPs and a brief description of the three Pillars. More specific government commitments are organized into 50 “policy instruments (PI).”</p> <p>In relation to Pillar II, the NAP discusses the Swiss government’s expectations of business enterprises more broadly under “The position and expectations of the Federal Council” section.⁸⁸⁰ This may be in part because Switzerland has a separate commitment to Corporate Social Responsibility (CSR), which addresses a broad spectrum of issues, such as: working conditions, human rights, the environment, and corruption prevention; though this document does not include an impact study of current CSR measures of Swiss corporations. The NAP highlights that the CSR position paper and the NAP are complementary and of “equal status” for the purposes of fulfilling the mandate of postulate</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>12.3503.</p> <p>The overall content of the Swiss NAP essentially provides a summary of ongoing processes and existing support for promoting corporate respect for human rights, framed by often vague future commitments—many of which will be difficult to monitor in the absence of a timeline and clearly allocated responsibilities.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the NAP’s coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP’s fulfillment of each UNGP. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) a regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).⁸⁸¹ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP’s adequacy in terms of substantive content.</p> <p>(1) <u>Positive and Negative Incentives for Due Diligence</u></p> <p>Generally, the NAP commits the government to continuing to promote the concept of due diligence and its development as an international standard for increasing transparency in business practices. For example, the NAP highlights Switzerland’s support of human rights guidelines that include human rights due diligence guidance for sectors such as, commodities trading, finance, and food and agriculture.⁸⁸² The Swiss government has been, and continues to be, active</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>in the development of many of these guidelines.</p> <p>The NAP provides numerous examples where the Swiss government can be seen to incentivize businesses to conduct due diligence. For example, the government incentivizes due diligence by providing financial support for the implementation of the OECD Due Diligence Guidance for responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas.⁸⁸³ The Swiss government also incentivizes companies to undertake due diligence by requiring that private security providers hired by the government to work in complex environments be members of the International Code of Conduct for Private Security Providers Association (ICoCA).⁸⁸⁴ Because the ICoCA requires that its members conduct human rights due diligence; businesses who desire government contracts will comply with these provisions. Similarly, in order for a company operating in elevated risk to receive Swiss Export Risk Insurance (SERV), the government requires that applicants conduct human rights due diligence. Again, companies that desire this government coverage will be incentivized to conduct due diligence.⁸⁸⁵</p> <p>The NAP also commits the Swiss government to establishing an award for the “Swiss Business and Human Rights Champion of the Year.” The Federal Department of Foreign Affairs and the Federal Department of Economic Affairs, Education and Research will work with civil society stakeholders and academics to award this honor on business enterprises that “make and outstanding contribution to the field of business and human rights.”⁸⁸⁶ This award may be seen to incentivize businesses to undertake company actions that fulfill their responsibility to respect human rights where their work may impact human</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>rights.</p> <p>(2) <u>Disclosure of Due Diligence Activities</u></p> <p>The NAP explicitly states that the Swiss government supports due diligence on a voluntary basis.⁸⁸⁷ Although the Swiss government supports and is monitoring a number of reporting guidelines and requirements from international organizations and multi-stakeholder initiatives, it does not require disclosure of due diligence activities by private, State-owned, or State-associated businesses.⁸⁸⁸</p> <p>In 2013, the Swiss government passed the Federal Act on Private Security Services provided Abroad.⁸⁸⁹ This Act requires that Swiss security providers be members of the ICoCA. The ICoCA requires that its members conduct due diligence and signatory companies are expected to establish appropriate auditing and monitoring of their compliance, including through reporting.⁸⁹⁰</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>The Swiss government currently does not require Swiss businesses to conduct due diligence. The NAP highlights the tumultuous debate for mandatory due diligence disclosures in Switzerland. In March 2015, the National Council accepted in a first vote, then rejected in a second vote a motion from a parliamentary commission “to introduce a binding obligation for business enterprises to conduct human rights due diligence.”⁸⁹¹ However, the Swiss government does not favor mandatory due diligence until there is greater</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>international support for this regulation, as it fears that such regulation would disadvantage Switzerland as a business location.⁸⁹²</p> <p>Yet, in April 2015, an alliance of over sixty civil society organizations launched the Responsible Business Initiative, which submitted a constitutional text to the government to codify a general human rights due diligence obligation. The popular initiative will be submitted to a vote of all Swiss citizens in the near future.</p> <p>As discussed in section 4(2), the Swiss government indirectly requires due diligence in relation to private security providers through the Federal Act on Private Security Services.⁸⁹³</p> <p>(4) <u>Regulatory Mix</u></p> <p>The regulatory mix of the Swiss NAP is not satisfactory because the government does not require due diligence as the basis for compliance with a legal rule. The substance of the NAP is largely focused on incentivizing voluntary due diligence, and slightly less on increasing transparency of due diligence activities. The Swiss government does not currently support the idea of legally binding human rights due diligence.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The Swiss NAP does not adequately address the full scope of the State’s jurisdiction. Most of the measures discussed in the Swiss NAP focus specifically on business activity abroad, and do not reference domestic corporate activity.⁸⁹⁴ The government decided that the NAP would focus primarily on</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>business activities abroad after consultation with external stakeholders revealed that their greatest challenges lie in their operations abroad.⁸⁹⁵</p> <p>In the section on government expectations, the NAP does mention that “business enterprises based and/or operating in Switzerland should abide by international standards such as the UNGPs, the OECD Guidelines for Multinational Enterprises, and the relevant sector and issue-specific guidelines.”⁸⁹⁶ However, the jurisdictional scope of the NAP falls short because it does not address human rights impacts caused by business in Switzerland, it only focuses on the impacts of Swiss companies abroad.</p> <p>In relation to access to remedy, the Swiss NAP notes that “the political, legal, and practical obstacles to the extraterritorial pursuit of policy and application and enforcement of law” have led the government to focus on domestic legal and policy measures, “the reach of which extends to partner States and the activities of business enterprises abroad.”⁸⁹⁷ The NAP refers to the Council of States Foreign Policy Committee’s postulate 14.3663 on “Access to Remedy” (August 2014) which demanded a report analyzing judicial and non-judicial measures on access to remedies in different countries “to permit persons whose human rights have been violated by a company in a host state to seek remediation in that company’s home State.”⁸⁹⁸ This study, which has not been published, was to be completed “by the end of 2016.”⁸⁹⁹ Once available, the NAP commits the Federal Council to “examine the implementation of possible measures in the Swiss context, with a view to the revision of the National Action Plan.”⁹⁰⁰</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The Swiss NAP extensively discusses international and regional organizations and standards and how the State and businesses should use those organizations and standards to push for greater respect for human rights in general, and further implementation of the UNGPs in specific. For example, in relation to Guiding Principle 3(c, d), the NAP provides a number of policy instruments that relate to multi-stakeholder initiatives and international organizations, such as the International Code of Code of Conduct for Private Security Providers Association (ICoCA) and the OECD.</p> <p>Multiple other policy instruments discuss promoting activities of the UN Working Group on Business and Human Rights, such as incorporating business and human rights issues into Switzerland’s UN Human Rights Council Universal Periodic Review report, and supporting and engaging further with the International Labor Organization (ILO).</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The NAP addresses thematic and sector-specific human rights issues in its policy instruments.⁹⁰¹ It touches on issues such as conflict areas and security concerns, responsible investment, sustainability, and children’s rights.⁹⁰²</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The Swiss NAP clearly demonstrates the Swiss government’s commitment to the UNGPs. The NAP begins by explaining that the UNGPs reflect a “paradigm shift by clarifying the complementary roles of States and business enterprises with</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>respect to the protection of and respect for human rights in the context of business activities.”⁹⁰³ Additionally, the NAP highlights Switzerland’s involvement in and funding of the drafting of the UNGPs.⁹⁰⁴</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>The Swiss NAP defines a total of fifty policy instruments (PI) to be implemented and explicitly notes which federal agencies are responsible for implementing each instrument in an appendix to the NAP.</p> <p>All of the specific policy instruments developed in the NAP appear to be relevant to the goal of promoting business respect for human rights and protecting against and remedying business-related human rights abuse. However, none of the policy instruments contained in the NAP have specific timelines for implementation, nor do they have any precise indicators to evaluate progress in implementation and follow-up.</p> <p>On the whole, the NAP fails to outline new commitments that the Swiss government is taking on as a result of the NAP process; this is to say that the NAP does not include any commitments that arise solely from the NAP drafting process. New commitments made in the NAP relate to existing CSR initiatives or stem from postulates already passed by the National Council.</p> <p>Several of the policy instruments included in the NAP are merely statements of support for human rights bodies the Swiss government already collaborates with or supports. For example, PI 11 reaffirms the Swiss government’s commitments to support the ICoCA, the Voluntary Principles on Security and Human Rights (VPs), and the United Nations Special Rapporteur on Trafficking in</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Persons.⁹⁰⁵ These statements are not measurable or time specific, and do not include new affirmative commitments for the Swiss government to act.</p> <p>Additionally, many of the NAP’s policy instruments are vague and difficult to measure. For example, the NAP notes the Swiss government’s commitment to carrying out awareness-raising programs geared toward raising businesses’ consciousness of the issue of business and human rights.⁹⁰⁶ However, the NAP provides no specific initiatives that the government hopes to carry out, nor in what timeframe it hopes to conduct such programs.</p> <p>Other policy instruments contain no commitments at all. For example, PI41 merely discusses the work and grievance mechanisms of the International Labor Organization (ILO) and does not commit to any actions on the part of the Swiss government.</p>
Priorities for NAPS	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The Swiss NAP speaks broadly of specific business-related human rights abuses, but does not prioritize any issue above others mentioned.</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The Swiss NAP discusses to a certain extent vulnerable or excluded groups. For example, under policy instrument 39, the NAP states that “Switzerland will include business and human rights appropriately in its periodic reports on the implementation of international conventions, such as the Convention on the Rights of the Child, and the Convention on the Elimination of all Forms of Discrimination Against Women.”⁹⁰⁷ The NAP does not address how those conventions will be implemented in relation to Swiss business conduct, nor if any regulatory measures will be take into consideration in this regard, but it does note that Switzerland will report on their implementation.</p> <p>The specific rights of children are also addressed, more specifically under policy instrument 14. The NAP describes a campaign “to combat the sexual exploitation of children in connection with tourism” that Switzerland launched five years ago in 2012 with Austria and Germany.⁹⁰⁸ This campaign provides a website through which individuals can report suspicious activities to the Federal Office of Police.⁹⁰⁹ Additionally, the NAP states that the federal government supports projects to protect children that “are focused on compliance with fundamental labour standards, including measures to combat child and forced labour.”⁹¹⁰</p> <p>The NAP also briefly touches on gender inequality under policy instrument 21, mentioning that under the Federal Act on Public Procurement, “the federal government awards contracts for goods and services in Switzerland” based on conditions such as whether a business “ensures that men and women receive equal pay for equal work.”⁹¹¹</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Additionally, the NAP describes planned measures related to sporting events that address vulnerable groups. Under policy instrument 8, the NAP states that the federal government “will work with the international sporting associations which are based in Switzerland...with sponsors, NGOs, international organisations, other governments and the Institute for Human Rights and Business to implement the UNGP.”⁹¹² To this end, a “multi-party steering committee is conducting a series of pilot projects on issues such as...the establishment of grievance mechanisms and the involvement of particularly vulnerable groups.”⁹¹³</p>

5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>Overall, transparency during the Swiss NAP process was lacking. Postulate 12.3503, the parliamentary directive for the creation of the NAP, was adopted in 2012. The postulate requested that its mandate to create a NAP be fulfilled within two years, by 2014. The NAP was not published until December of 2016, nearly two additional years beyond the postulate’s requested deadline. During this initial two-year period, no terms of reference or strategy was published.</p> <p>No NBA was conducted or published as part of the drafting process. While</p>

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5. TRANSPARENCY	COMMENTS
	<p>stakeholder groups “had the opportunity to provide written feedback on two drafts of the Action Plan,” neither the drafts nor the stakeholder responses to them were made publicly available.⁹¹⁴ The only stakeholder report published was that developed by Swiss civil society organization, Swisspeace, following its consultation with external stakeholders. The NAP states, however, that “the progress of work was discussed several times in the form of multi-party dialogues.”⁹¹⁵ While the NAP mentions stakeholders’ concerns throughout the NAP, the full extent to which the Swiss government took stakeholder recommendations into consideration during the drafting process and incorporated them into the final NAP is unclear.</p> <p>The NAP was published in French and German on December 9, 2016, and an English version was published online on April 18, 2016.</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The Federal Department of Foreign Affairs (FDFA) and the Federal Department of Economic Affairs, Education and Research (EAER) are responsible for the overall implementation and monitoring of the Swiss NAP; while specific policy instruments will be implemented by the lead federal agency identified in Appendix I of the NAP.⁹¹⁶ The FDFA and EAER are also tasked with monitoring</p>

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6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>NAP implementation.⁹¹⁷ While the NAP also commits the government to updating and revising the NAP once per legislative period, it does not go as far as to state explicitly which government agencies will be in charge of future iterations of the NAP.⁹¹⁸</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>Section 6 of the Swiss NAP lays out a framework for monitoring, updating, and revising the NAP.⁹¹⁹ To ensure effective implementation of the NAP, the FDFA and EAER will join with representatives from business, civil society, and academia to create a Monitoring Group. The exact role and functions of the Monitoring Group are to be defined by the group after its creation; though the NAP does clarify that the Monitoring Group will “regularly discuss progress” of the NAPs implementation with the FDFA and EAER.⁹²⁰</p> <p>Additionally, the FDFA and EAER will publish a “short joint report on the status” of the NAP’s implementation at the end of each legislative period.⁹²¹ The Monitoring Group will have the opportunity to comment on these reports.</p> <p>The NAP will also be updated and revised once per legislative period. The update of the NAP will be based upon, “an external analysis of the Swiss context for business and human rights, and any gaps identified in Switzerland's implementation of the UNGP[s].”⁹²² Though this process is positive, it does not reach the level of an NBA because the government will only be reviewing what is in the NAP, not conducting a broader gap assessment. The NAP gives further context to the revision process by noting that the update will “examine the possible integration of environmental aspects associated with human rights.”⁹²³</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
1.1. Commitment to the NAP process.	<p>The United States announced its decision to draft a NAP on responsible business conduct in a fact sheet on the U.S. Global Anticorruption Agenda on September 24, 2014.⁹²⁴ The inclusion of multiple government agencies, creation of interagency working groups, and organization of four regional stakeholder consultations are all positive signs of the United States’ commitment to the NAP process.</p> <p>However, this is undermined by the fact that the U.S. government did not conduct a full national baseline assessment. Additionally, vague monitoring and follow-up provisions and a lack of commitment to revise the NAP in the future also demonstrates a lack of willingness to commitment to a comprehensive NAP process.</p>
1.2. Ensure responsibility for the NAP process is clearly established and communicated.	The White House National Security Council (NSC) was “designated to lead and coordinate the U.S. government’s efforts to develop the NAP.” ⁹²⁵
1.3. Ensure an inclusive approach across all areas of government.	Sixteen government agencies were involved in the NAP process, including the Departments of Commerce, Homeland Security, Defense, Justice, Labor, State, Treasury, Agriculture, Export-Import Bank of the United States, General Services Administration, Office of Management and Budget, Overseas Private Investment Corporation, U.S. Agency for International Development, U.S. Trade

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	<p>Representative, Small Business Administration, and the Environmental Protection Agency.⁹²⁶</p> <p>The U.S. government also established a number of interagency working groups on the “reinforcing issue areas” of transparency and anti-corruption; investment and trade; labor rights; procurement; human rights; land tenure and agricultural investment.⁹²⁷</p>
<p>1.4. Devise and publish terms of reference and a timeline for the NAP process.</p>	<p>The U.S. government published terms of reference and a partial timeline for the NAP process. The terms of reference for the NAP process were laid out in a “Frequently Asked Questions” document published in February 2015.⁹²⁸ In addition, the U.S. government provided a timeline for public consultations/open dialogues in both the FAQ and an announcement of opportunity to provide input into the NAP process.⁹²⁹</p> <p>However, beyond a timeline for initial consultation, the U.S. government did not publish a timeline in relation to the rest of the NAP process, such as the drafting, review, or publication dates.</p>
<p>Adequate Resourcing</p>	
<p>1.5. Determine an appropriate budget for the NAP process.</p>	<p>There is no information publicly available on the level of funding provided for the NAP process.</p>

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2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	No information on any stakeholder mapping was published.
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	<p>In November 2014, the U.S. government released an “Announcement of Opportunity to Provide Input into the U.S. National Action Plan on Responsible Business Conduct.”⁹³⁰ This publication outlined the U.S. government’s plan and timeline for consulting with stakeholders.</p> <p>The U.S. government sought to establish a series of open dialogues with multiple stakeholders, including business associations, individual companies, labor unions, civil society, academics, international organizations, and affected communities.⁹³¹ However, the extent of participation of these different stakeholder groups is unknown. These dialogues were hosted by different stakeholders and held throughout the United States:</p> <ul style="list-style-type: none"> • New York City: hosted by New York University Stern School of Business’ Center for Business and Human Rights and U.S. Council for International Business; • Berkeley, California: hosted by University of California Haas School of Business’ Center for Responsible Business and the U.S. Network of the UN Global Compact; • Norman, Oklahoma: hosted by the University of Oklahoma College of Law; and • Washington, D.C.: hosted by the International Corporate Accountability

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	<p>Roundtable and the Global Business Initiative for Human Rights.⁹³²</p> <p>The U.S. government created a dedicated email address for written submission, and received submissions on a rolling basis for over a year.⁹³³ In addition, U.S. government officials “met with NGOs, academic institutions, foreign government officials, labor unions, businesses, indigenous peoples, and industry associations to solicit input for the NAP.”⁹³⁴</p>
<p>2.3. Provide adequate information and capacity-building where needed.</p>	<p>It does not appear that capacity-building measures were included in the NAP process.</p>
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>The U.S. government did not thoroughly facilitate participation by disempowered or at-risk stakeholders. The U.S. government did state that it would “look to set up webinars, as well as consider video conferences through certain embassies or consulates” in order to reach the “most vulnerable individuals and communities who may be impacted by the conduct of U.S. companies abroad;”⁹³⁵ however, it is unclear which, if any, of these steps the government undertook.</p> <p>There is no evidence to suggest that specific efforts were made to seek testimony from rights holders or facilitate opportunities for affected individuals to participate in consultations. It is also unclear whether the U.S. government requested evidence of the impacts of U.S. companies domestically or abroad from impact assessments (either company or community-based). Such evidence would have provided insight into the priorities and concerns of affected communities related to company human rights impacts.</p>
<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>No stakeholder steering group or advisory committee was created. Whether the U.S. government considered creating such a group is unknown.</p>

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
<p>3.1. Undertake a NBA as the first step in the NAP process.</p>	<p>According to the NAP, the U.S. government conducted a “stocktaking of laws and policies implemented to date that support [responsible business conduct].”⁹³⁶ However, the extent of this stocktaking is unknown.</p> <p>The U.S. government did not conduct a full national baseline assessment (NBA).</p> <p>The U.S. government did “welcome work by others in this area,” including by reflecting on the “shadow” U.S. NBA conducted by the International Corporate Accountability Roundtable, but did not conduct a full NBA due to a number of issues—including the “significant amount of time that would be required to conduct a comprehensive NBA” that covers the large amount of issues discussed in the NAP.⁹³⁷</p> <p>The U.S. government also relied on existing relevant assessments of current U.S. policies and practices, including the 2013 U.S. government Approach to Business and Human Rights document and the 2013 U.S. Open Government Partnership National Action Plan.⁹³⁸</p>
<p>3.2. Allocate the task of developing the NBA to an appropriate body.</p>	<p>Not applicable.</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable.
3.4. Publish and disseminate the NBA.	Not applicable.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	<p>The NAP is heavily skewed towards voluntary measures, guidance, trainings, outreach, funding, and dialogue, and is severely lacking in commitments to new regulatory measures. Additionally, most of the attention is on Pillars I and II; Pillar III is scarcely addressed.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the U.S. NAP’s coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP’s fulfillment of each UNGP, which is a task to be completed during the national baseline assessment (NBA) process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>the State uses to encourage business to respect human rights).⁹³⁹ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP’s adequacy in terms of substantive content. The U.S NAP is unsatisfactory under each of these sub-criteria:</p> <p>(1) <u>Positive and Negative Incentives for Due Diligence</u></p> <p>Generally, the new actions in the NAP do not provide positive or negative incentives for due diligence. One new action that could incentivize human rights due diligence is the commitment on responsible land-based investment. This commitment states that USAID will help the private sector pilot the Analytical Framework for Land-Based Investments in African Agriculture through limited financial assistance and technical assistance.⁹⁴⁰ The Analytical Framework provides guidance to companies on human rights due diligence and risk management for land-based investments in agriculture.⁹⁴¹ Arguably, providing funding and technical assistance may incentivize companies investing in land for agriculture to work with USAID to implement the guidance and conduct human rights due diligence.</p> <p>Another “new” action that could incentivize due diligence is the closing of the consumptive demand loophole. Section 307 of the Tariff Act of 1930 has banned the importation of goods produced with forced labor since it was enacted, however, the “consumptive demand loophole” made an exception to this ban, allowing goods produced with forced labor to be imported when domestic production of a good was insufficient to meet domestic demand for</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>that good.⁹⁴² In 2015, the Trade Facilitation and Trade Enforcement Act eliminated this exception.⁹⁴³ This ban could incentivize companies to conduct forced labor due diligence in order to decrease the likelihood that the goods they are exporting to the U.S. are not denied entry. Although this action is listed in the NAP as “new,” it was enacted in February 2016, and therefore is arguably not a new action.⁹⁴⁴</p> <p>Similarly, outcome 1.4 of the NAP states, “USAID will develop a social safeguards screening questionnaire that Missions may use as an assessment tool when designing new projects (including public-private partnerships) to ensure due diligence on social and human rights issues.”⁹⁴⁵ Though this commitment focuses more on USAID actions, arguably the social safeguards screening tool will act as an incentive for private sector actors engaging in USAID public-private partnerships to conduct human rights due diligence.</p> <p>Some “ongoing commitments and initiatives” outlined in the NAP could potentially incentivize certain companies to conduct due diligence. For example, the NAP mentions Executive Order (EO) 13627 “Strengthening Protections against Trafficking in Persons in Federal Contracts,” which was issued in September 2012.⁹⁴⁶ This EO (and implementing regulation) prohibits <i>all</i> federal contractors, their subcontractors, and employees from engaging in certain human trafficking related practices.⁹⁴⁷ Additionally, for a sub-set of contractors/subcontractors (those with contracts or subcontracts performed abroad worth over \$500,000), this EO requires implementation of compliance plans and certification that after conducting due diligence no evidence of trafficking related activities has been found, or, if it has, that remedial steps</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>have been taken.⁹⁴⁸ This certification must be provided prior to the award of the contract and must be submitted annually during the contract period.⁹⁴⁹ Thus, this EO incentivizes due diligence related to human trafficking for some companies because, depending on the size of the contract/subcontract and where it is performed, a company may lose out on obtaining a federal contract if they do not conduct due diligence.</p> <p>Two other examples outlined in the NAP are the Department of Defense and Department of State requirements for their private security contractors (PSCs). Specifically, the Department of Defense requires the PSCs with which it contracts to “demonstrate conformance with standards consistent with the International Code of Conduct for Private Security Providers” (ICoC), and the Department of State requires PSCs to “confirm their conformance” with the ICoC standard and to also have membership in good standing in the ICoC Association as requirements to bid in relation to the Department of State’s Worldwide Protective Services II contract.⁹⁵⁰ As the ICoC standard does require due diligence, this may incentivize PSCs to conduct due diligence so that they can meet the Department of Defense and Department of State’s requirements in order to obtain contracts with the agencies.⁹⁵¹</p> <p>(2) <u>Disclosure of Due Diligence Activities</u></p> <p>There are no new action points that would require disclosure of human rights due diligence activities. In fact, the NAP explicitly mentions that the Reporting Requirements for Responsible Investment in Burma, which were once mandatory, are now voluntary due to the lifting of sanctions through Executive</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Order 13742 issued by President Obama in October 2016.⁹⁵²</p> <p>One ongoing commitment that requires disclosure of due diligence activities from some companies that is mentioned in the NAP is Dodd Frank Section 1502. The only new commitment in relation to Section 1502 is to provide guidance and assistance to companies for this reporting.⁹⁵³</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are no new action points that would require human rights due diligence as the basis for compliance with a legal rule. Some of the existing regulatory efforts listed in Annex II do require due diligence, but none of them require human rights due diligence. For example, Annex II lists the Bank Secrecy Act, which requires financial institutions to maintain effective anti-money laundering compliance programs, which include conducting due diligence when dealing with senior foreign political figures.⁹⁵⁴ Additionally, Annex II lists the final Customer Due Diligence Rule that was announced by treasury, which requires financial institutions to “collect and verify the personal information of the real people (also known as beneficial owners) who own, control, and profit from companies when those companies open accounts.”⁹⁵⁵ While information on beneficial ownership is important, collection of this information does not constitute human rights due diligence. Furthermore, the information collected will not be made publicly available. Additionally, according to the rule, financial institutions may rely on the beneficial ownership information supplied by the customer, provided it has no knowledge of facts that would reasonably call into</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>question the reliability of the information.”⁹⁵⁶ This requirement is met by the completion of a Certification Form which declares that the information is true “to the best of [the customer’s] knowledge.”⁹⁵⁷ This flexibility undermines the strength of the rule, which states that financial institutions must “verify” the identity of beneficial owners.</p> <p>(4) <u>Regulatory Mix</u></p> <p>The regulatory mix of the U.S. NAP is unsatisfactory. Some of the “ongoing commitments and initiatives” outlined in the NAP involve regulation of companies, for example, Dodd Frank 1502 is mentioned in the NAP, and Annex II lists regulations such as the Foreign Corrupt Practices Act, the Bank Secrecy Act, and Executive Order 13627 (which prohibits human trafficking in federal supply chains and creates certain requirements for a sub-set of federal contractors), that the United States says it will continue to enforce.⁹⁵⁸ Additionally, Annex II states that the Treasury Department has submitted draft legislation that, if passed by U.S. Congress, would require “companies formed in the U.S. to file adequate, accurate, and current information on its beneficial owners with Treasury,”⁹⁵⁹ but no new commitments on this are included in the body of the NAP itself.</p> <p>The new action points in the NAP are almost entirely voluntary. Of the new actions only one clearly involves regulation, and it is arguably not a commitment to new action. This action is the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, which removed the consumptive demand loophole from the ban on the importation of goods produced with forced labor.⁹⁶⁰ The</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>consumptive demand loophole created an exception to the ban, meaning goods produced with forced labor could be imported into the United States if domestic production of the good was insufficient to meet domestic demand.⁹⁶¹ While the removal of this loophole is a very positive development, this was enacted in February 2016, and is arguably not a new action.</p> <p>Apart from this one action, the new commitments in the NAP are heavily focused on providing guidance, tools, trainings, and funding; convening and entering into dialogue with other stakeholders; and continuing to implement existing laws and policies. For example, the NAP states that funding may be provided for the development of sector-specific tools to help companies and federal contractors address human trafficking risks in their supply chains; that the Office of Intergovernmental Affairs will facilitate dialogue among state and local government officials and the federal government on promoting human rights through public procurement; and will provide training on responsible business conduct for U.S. embassies.⁹⁶²</p> <p>While these new commitments are welcome, without pairing these efforts with legal demands and mandatory measures on companies, they are insufficient to drive real change.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The U.S. NAP does not adequately address the full scope of the State’s jurisdiction as it is heavily skewed towards addressing issues of corporate-related human rights abuses abroad. According to the NAP, the plan is developed to “promote responsible business conduct (RBC) by U.S. companies</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	operating abroad.” ⁹⁶³
4.3. A NAP should address international and regional organizations and standards.	The U.S. NAP refers to international and regional organizations and standards extensively. In its new commitments the U.S. commits to developing an outreach plan “to continue its efforts to broaden understanding and implementation of the OECD Guidelines among business,” ⁹⁶⁴ and to undergo a peer review for the US National Contact Point. ⁹⁶⁵ The NAP also references the Department of Labor’s funding of an ILO-led Global Business Network on Forced Labor ⁹⁶⁶ and funding of the ILO’s Better Work program in several countries, ⁹⁶⁷ and the Department of State’s activities to disseminate and promote the UN Guiding Principles. ⁹⁶⁸ Other international and regional organizations and standards touched on in the NAP include the 2030 Agenda for the Sustainable Development and its 17 Sustainable Development Goals, ⁹⁶⁹ the G-7, ⁹⁷⁰ the Inter-American Convention Against Corruption, ⁹⁷¹ the OECD Working Group on Bribery in International Business Transactions, ⁹⁷² and the International Code of Conduct for Private Security Service Providers. ⁹⁷³
4.4. A NAP should address thematic and sector-specific human rights issues.	According to the U.S. government, the NAP focuses on a broad range of issues, including “human rights, the rights of indigenous peoples, labor rights, land tenure and property rights, anti-corruption, and transparency.” ⁹⁷⁴ The U.S. government also focused the scope of stakeholder consultations based on the “issues of particular relevance to stakeholders in that location,” including the financial and technology sectors, extractive industries, the impact of business

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>on indigenous groups, transparency and reporting, and government purchasing power.⁹⁷⁵</p> <p>The content of the NAP focuses heavily on a set of key thematic issues; namely, anti-corruption,⁹⁷⁶ forced and child labor,⁹⁷⁷ human trafficking,⁹⁷⁸ transparency,⁹⁷⁹ and public procurement.⁹⁸⁰</p> <p>The NAP process was launched under the auspices of the U.S. Global Anticorruption Agenda, and the introduction of the NAP by Secretary of State John Kerry focuses heavily on combating corruption.⁹⁸¹ The NAP focuses on anti-corruption efforts in multiple new actions and ongoing commitments. For example, under Outcome 1.1, the NAP states that the U.S. Agency for International Development “will launch the Global Anti-Corruption Consortium (GACC), a new initiative to support international efforts to expose corruption, raise public awareness, and facilitate action by government, law enforcement, and multilateral organizations.”⁹⁸² In Outcome 3.1 under ongoing commitments, the NAP states that the U.S. government will continue to publish information “designed to assist firms in complying with anti-corruption laws.”⁹⁸³ Furthermore, Outcome 3.3 outlines the U.S. government’s commitment to continuing engagement with companies on anti-corruption issues.⁹⁸⁴</p> <p>Similarly, the NAP focuses on public procurement through a designation outcome section, Outcome 1.3 “Leverage U.S. Government Purchasing Power to Promote High Standards.”⁹⁸⁵</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The U.S. NAP contains statements that indicate a strong commitment to the UNGPs. The NAP highlights the UNGPs as an international framework that encompasses the principles of responsible business conduct, and makes clear that the UNGPs “apply to all States and business enterprises.”⁹⁸⁶ Additionally, the NAP commits the U.S. government to continue promoting and implementing the UNGPs. The second new action under Outcome 1.1 states “the U.S. government, through [the Department of] State, will continue to disseminate the UN Guiding Principles through our bilateral, multilateral, and public diplomacy efforts. State will continue to participate in and host discussions with companies, civil society groups, and other on these Guiding Principles, including through its on-going UN Guiding Principles Workshop Series.”⁹⁸⁷</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>The vast majority of action points in the NAP, both new and ongoing, have no future timeline associated with them. Only one point in the ongoing commitments, and three in the new actions specify a timetable of any kind; though these timelines also lack specificity, only committing the action to be completed at some point in 2017. For example, the first new action in Outcome 1.1 commits the State Department to develop an outreach plan “in 2017”; similarly, the new action in Outcome 3.2 also commits the State Department to “establish a plan in 2017.”⁹⁸⁸ The first new action under Outcome 5.1 provides the most specificity, committing the U.S. National Contact Point to “publish a</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>2017 outreach plan by early 2017” and to “undergo a peer review in the fall of 2017.”⁹⁸⁹</p> <p>In addition, it is sometimes difficult to classify the new actions as specific and measurable commitments as some of these points describe actions that have already been completed. A number of new actions describe completed actions. For example, the new action under Outcome 1.2 is not a commitment to perform a new action, but a summary of an action that has already been taken, as is the second new action under Outcome 1.3.⁹⁹⁰ Similarly, the last new action under Outcome 2.1 does not commit the U.S. government to any new actions, and instead describes a recent awards ceremony.⁹⁹¹ Clarity about what actions have already been committed and what actions the U.S. government is committing to complete is important and will help enable more effective monitoring of the commitments outlined in the NAP.</p> <p>A number of new actions described in the NAP lack measurability, because they do not lay out discreet actions, instead committing the U.S. government to vaguely promote or continue supporting business respect for human rights or formulate outreach/action plans whose scope is unknown. For example, the third new action under Outcome 3.1 commits the U.S. government to “welcome and recognize new methods of reporting in support of RBC and create an online resource to that end.”⁹⁹² This action point could be improved by specifying what criteria exist in relation to recognizing good versus bad reporting methods, and what type of “online resource” will be created. Similarly, in the first new action under Outcome 4.1, the State Department commits to “foster continued engagement among relevant stakeholders to support ongoing dialogue and</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>collaboration on respecting human rights within the ICT sector.”⁹⁹³ This action point is vague because it is unclear what steps will constitute “fostering dialogue,” and therefore difficult to measure compliance. Similarly, the first new action under Outcome 1.1 commits the State Department to “develop an outreach plan to continue its efforts to broaden understanding and implementation of the OECD Guidelines among business.”⁹⁹⁴ However, this commitment is too vague to allow for effective monitoring of compliance as the scope, depth, and expectations for this outreach plan are unclear.</p> <p>On the other hand, there are number of the new actions described in the NAP are relatively specific, because they commit the U.S. government to continue with actions that are already well-developed/defined. For example, the first new action under Outcome 3.3 commits USAID to “support responsible land-based investments by helping the private sector pilot the Analytical Framework for Land-Based Investments in African Agriculture.”⁹⁹⁵ Due to the fact that this project is already developed, the scope of the U.S. government’s support for it is quite well defined.</p> <p>One example of a more specific and measurable new action is the first new action under Outcome 3.1 which commits USAID to “develop and/or update 15 public country-level land governance profiles, which explain the land laws, land use patterns, gender concerns, land administration, and land markets within a given country.” This commitment is measurable because it outlines exactly the quantity and contents of the reports that USAID is expected to produce. However, this action point could be enhanced if it contained a timeline for</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>completion.</p> <p>None of the new actions or ongoing commitments and initiatives made in the NAP appear to be irrelevant to the subject of increasing business respect for human rights or overly ambitious to the point they are not achievable. However, there are a few new actions or ongoing commitments related to the protection of wildlife against illegal hunting or trafficking that appear to be less related to the subject of business respect for human rights.⁹⁹⁶</p>
<p>Priorities for NAPS</p>	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>Although the NAP does not explicitly prioritize child labor, human trafficking, or forced labor, at least four of the twenty-eight new commitments in the NAP and at least thirteen of the forty-three ongoing commitments and initiatives address these abuses.⁹⁹⁷</p> <p>Beyond human trafficking, forced labor, and child labor, the NAP does not appear to prioritize any human rights abuses over others.</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>Although the NAP does address children’s rights extensively in relation to existing U.S. government initiatives, the NAP does not give adequate attention to other vulnerable and excluded groups such as indigenous peoples, women, people with disabilities, and human rights defenders.</p> <p>Under ongoing commitments and initiatives the NAP discusses the Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, which</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>applies the procurement of goods by U.S. federal agencies⁹⁹⁸; the Department of Labor’s leadership role on the Child Labor Cocoa Coordinating Group⁹⁹⁹; the Department of Labor’s engagement with the ILO-led Alliance 8.7, which is focused on eliminating the worst forms of child labor, forced labor, and human trafficking¹⁰⁰⁰; and the Department of Labor’s Child Labor and Forced Labor Reports¹⁰⁰¹; among other existing initiatives. However, no new commitments discuss child labor.</p> <p>Furthermore, despite stating that “[t]he NAP focuses on a broad range of issues including but not limited to...the rights of indigenous peoples,”¹⁰⁰² only one new action mentions indigenous peoples. This commitment states that USAID will assist, through technical and limited financial assistance, the private sector to pilot the Analytical Framework for Land-Based Investments in African Agriculture, which the NAP states will “make their investments more responsible and inclusive of local communities, including indigenous peoples.”¹⁰⁰³ Furthermore, women are only explicitly mentioned once in the NAP, people with disabilities are not mentioned at all.¹⁰⁰⁴</p>

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5. TRANSPARENCY	COMMENTS
Full Transparency with All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was conducted, and the “stocktaking of laws and policies” was not made public. The summary of only one of the four regional dialogues was made public; however, it was not published by the U.S. government, but the civil society convener of the dialogue.¹⁰⁰⁵</p> <p>Similarly, the written submissions received through the NAP process’ dedicated email address were not published. Civil society groups, such as the International Corporate Accountability Roundtable (ICAR) and the Business and Human Rights Resource Center compiled and published the written submissions that stakeholders provided to these organizations.¹⁰⁰⁶ However, the full number and content of the written submissions received by the government is unclear.</p> <p>Additionally, the government did not release any information or summary documents regarding its deliberation over the content of the NAP. Thus, it is not clear the extent to which the U.S. government took stakeholder recommendations into consideration during the drafting process, or its reasons for not addressing these recommendations in the NAP’s content. For example, of the 220 specific recommendations made to the U.S. government by ICAR only fifteen are touched upon by either the ongoing commitments or new actions in the NAP.¹⁰⁰⁷ However, it is unclear whether these were included in direct response to ICAR’s recommendations, and whether the government considered the additional recommendations during the drafting process.</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The NAP clearly identifies which U.S. government office is responsible for implementing each action point through a dedicate column entitled “Implementing Department or Agency.”¹⁰⁰⁸ As discussed in the next section, no detail is provided on follow-up, monitoring, or evaluation.</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>There is no framework for monitoring or reporting laid out in the NAP. In the Introduction, the U.S. government states that the NAP is an “example of an open dialogue through which the U.S. government will continue to communicate, coordinate, and assess its actions.”¹⁰⁰⁹ The NAP also states that the U.S. government will continue to accept written “feedback and suggestions” at the dedicated NAP email address.¹⁰¹⁰ However, the NAP does not present any structured framework, methodology, or timeline for following up with the commitments made in the NAP or monitoring implementation of the NAP.</p>

ENDNOTES

- ¹ John Ruggie, Special Representative of the Sec'y-Gen. on the Issue of Human Rights & Transnational Corps. & Other Bus. Enters., Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, U.N. Doc. A/HRC/17/31 (2011), *available at* <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> [hereinafter UNGPs].
- ² Human Rights Council Res. A/HRC/26/L.1. Rep. of the Human Rights Council, 26th Sess., June 10-27, 2014 (June 27, 2014), *available at* <http://www.norway-geneva.org/EFTA1/Statements/26th-Session-of-the-Human-Rights-Council/Item-3-Promotion-and-protection-of-human-rights/Business-and-Human-Rights-Resolution-/#.U63LWGSxPgJ>.
- ³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility, COM (2011) 681 final (October 25, 2011), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.
- ⁴ European Parliament, Committee on Foreign Affairs, Report on the Review of the EU’s Human Rights Strategy, EUR. PARL. DOC. A7-0378/2012 (Nov. 19, 2012), *available at* <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2012-0378+0+DOC+PDF+V0//EN>.
- ⁵ Eur. Consult. Ass., Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights (Apr. 16, 2014), *available at* <https://wcd.coe.int/ViewDoc.jsp?id=2185745&Site=CM>.
- ⁶ Organization of American States, Resolution Promotion and Protection of Human Rights in Business, OAS AG/RES. 2840 ¶ 4 (XLIV-O/14) (June 4, 2014).
- ⁷ Organization of American States, Resolution Promotion and Protection of Human Rights, OAS AG/RES. 2887 (XLVI-O/16).
- ⁸ FOREIGN & COMMONWEALTH OFFICE, GOOD BUSINESS: IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2013), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [hereinafter UK NAP 2013].
- ⁹ DUTCH MINISTRY OF FOREIGN AFFAIRS, NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS (Apr. 2014), *available at* <http://www.corporatejustice.org/Dutch-National-Action-Plan-on.html> [hereinafter DUTCH NAP].
- ¹⁰ GOVERNMENT OF DENMARK, DANISH NATIONAL ACTION PLAN—IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2014), *available at* http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf [hereinafter DANISH NAP].
- ¹¹ MINISTRY OF EMPLOYMENT AND THE ECONOMY, NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2014), *available at* http://www.tem.fi/files/41214/TEMjul_46_2014_web_EN_21102014.pdf [hereinafter FINNISH NAP].
- ¹² PERMANENT MISSION OF THE REPUBLIC OF LITHUANIA TO THE UNITED NATIONS OFFICE AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA, REGARDING THE IMPLEMENTATION OF THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS BY HRC RESOLUTION 17/14 (2015), *available at* http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania_NationalPlanBHR.pdf [hereinafter LITHUANIAN NAP].
- ¹³ GOVERNMENT OFFICES OF SWEDEN, ACTION PLAN FOR BUSINESS AND HUMAN RIGHTS (2015), *available at* <http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and->

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- human-rights.pdf [hereinafter SWEDISH NAP].
- ¹⁴ NORWEGIAN MINISTRY OF FOREIGN AFFAIRS, BUSINESS AND HUMAN RIGHTS: NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES 5 (2015)(English Version)[hereinafter NORWEGIAN NAP].
- ¹⁵ CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, PLAN NACIONAL DE ACCIÓN DE DERECHOS HUMANOS Y EMPRESAS 3 (2015), <http://www.derechoshumanos.gov.co/Prensa/2015/Documents/Plan%20Nacional%20de%20Accion%20DDHH%20Empresa.pdf> [hereinafter COLOMBIAN NAP].
- ¹⁶ FOREIGN & COMMONWEALTH OFFICE, GOOD BUSINESS: IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2016), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf [hereinafter UK NAP 2016].
- ¹⁷ ITALIAN MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION, ITALIAN NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS: 2016-2021 (English Version) 8 (2016), <http://www.cidu.esteri.it/NR/rdonlyres/82FBBD9B-EBA5-4056-A45C-281F0D2C9398/49117/NAPBHRENGFINALEDEC152017.pdf> [hereinafter ITALIAN NAP].
- ¹⁸ REPORT ON THE SWISS STRATEGY FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS at 4 (Dec. 9, 2016) [hereinafter SWISS NAP].
- ¹⁹ U.S. DEPARTMENT OF STATE, RESPONSIBLE BUSINESS CONDUCT: FIRST NATIONAL ACTION PLAN FOR THE UNITED STATES OF AMERICA 24 (2016), *available at* <https://www.state.gov/documents/organization/265918.pdf> [hereinafter U.S. NAP].
- ²⁰ AUSWÄRTIGE AMT, NATIONALER AKTIONSPLAN, UMSETZUNG DER VN-LIETPRINZIPIEN FÜR WIRTSCHAFT UND MENSCHENRECHTE, 2016-2020 (2016), *available at* <http://www.auswaertiges-amt.de/cae/servlet/contentblob/754690/publicationFile/222786/161221-NAP-DL.pdf> [hereinafter GERMAN NAP].
- ²¹ MINISTÈRE DES AFFAIRES ÉTRANGÈRES ET DU DÉVELOPPEMENT INTERNATIONAL, PLAN NATIONAL D'ACTION POUR LA MISE EN ŒUVRE DES PRINCIPES DIRECTEURS DES NATIONS UNIES RELATIFS AUX DROITS DE L'HOMME ET AUX ENTREPRISES (2016), *available at* <http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/droits-de-l-homme/entreprises-et-droits-de-l-homme/article/adoption-du-plan-national-d-action-pour-la-mise-en-oeuvre-des-principes> [hereinafter FRENCH NAP].
- ²² MINISTERSTWO SPRAW ZAGRANICZNYCH, KRAJOWY PLAN DZIAŁANIA NA RZECZ WDRAŻANIA WYTYCZNYCH ONZ DOTYCZĄCYCH BIZNESU I PRAW CZŁOWIEKA NA LATA 2017-2020 (2016), *available at* <http://www.ms.gov.pl/resource/ae6c821f-94d5-4338-88ce-8c8498c7f37e:JCR> [hereinafter POLISH NAP].
- ²³ KOMNAS HAM & LEMBAGA STUDI & ADVOKASI MASYARAKAT (ELSAM), NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS 2017.
- ²⁴ See, Sarah Delafortrie & Christophe Springael, *Plan d'action national Entreprises et Droits de l'homme*, CONSEIL DES MINISTRES, (July 20, 2017), *available at* <http://www.presscenter.org/fr/pressrelease/20170720/plan-daction-national-entreprises-et-droits-de-lhomme>.
- ²⁵ The Spanish Council of Ministers approved the Spanish NAP on Business and Human Rights on July 28, 2017. At the time of publication, the final version of the Spanish NAP had not been published. Official Statement 180, *Approval of National Action Plan on Business and Human Rights*, GOBIERNO DE ESPAÑA, MINISTERIO DE ASUNTOS EXTERIORES Y DE COOPERACIÓN (July 28, 2017).
- ²⁶ Such States include, but are not limited to, Belgium, Chile, Mexico, Guatemala, Ghana, Mozambique, Tanzania, Thailand, and South Korea.
- ²⁷ DANISH INST. FOR HUMAN RIGHTS & INT'L CORPORATE ACCOUNTABILITY ROUNDTABLE, NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A TOOLKIT FOR THE DEVELOPMENT, IMPLEMENTATION, AND REVIEW OF STATE COMMITMENTS TO BUSINESS AND HUMAN RIGHTS FRAMEWORKS 149-53 (2014), *available at* <http://accountabilityroundtable.org/analysis/napsreport/> [hereinafter DIHR-ICAR NAPs Toolkit] [hereinafter NAPs TOOLKIT].
- ²⁸ Apart from assessment of follow-up measures, Lithuania could not be included in the assessment of trends in the NAP drafting processes below due to this lack of information.
- ²⁹ CORPORATE RESPONSIBILITY COALITION (CORE), GOOD BUSINESS? ANALYSIS OF THE UK GOVERNMENT ACTION PLAN ON BUSINESS & HUMAN RIGHTS 2 (2013), *available at* http://www.corporatejustice.org/IMG/pdf/goodbusiness_corecommentonuknap_final_dec2013-1.pdf [hereinafter CORE].

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- ³⁰ UK NAP 2013, *supra* note 8.
- ³¹ For example, the Modern Slavery Bill currently under discussion in the United Kingdom includes a measure to require reporting by listed and non-listed companies on actions to identify and address slavery and forced labor in their supply chains. See Joint Select Committee: Draft Modern Slavery Bill, <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/> (last visited Nov. 28, 2014).
- ³² *Id.* at 19.
- ³³ An NBA is a study conducted at the start of an intervention to analyze current conditions.
- ³⁴ DUTCH NAP, *supra* note 9, at 6.
- ³⁵ *Id.*; based on the experience of SOMO and the CSR Platform.
- ³⁶ DUTCH NAP, *supra* note 9, at 20.
- ³⁷ These sub-criteria are laid out in Kristin Jesnes, Statens plikt til å beskytte menneskerettighetene: En analyse av nasjonale handlingsplaner for oppfølging av FNs veiledende prinsipper for menneskerettigheter og næringsliv. (The State Duty to Protect: An Analysis of National Action Plans on Business and Human Rights). Fafo-notat 2014:15 (2014), available at <http://www.fafo.no/pub/rapp/10199/index.html> (currently only available in Norwegian)[hereinafter JESNES “State Duty to Protect”].
- ³⁸ DUTCH NAP, *supra* note 9, at 10.
- ³⁹ *Id.* at 15.
- ⁴⁰ The CSR Council represents local municipalities, NGOs, business, trade unions, and financial organizations. DANISH NAP, *supra* note 9, at 9.
- ⁴¹ *Id.* at 22.
- ⁴² Although the NAP points to the expanded reporting requirement and the National Contact Point that is established by law, these do not constitute new commitments.
- ⁴³ FINNISH NAP, *supra* note 11, at 7-8.
- ⁴⁴ *Id.*
- ⁴⁵ *Id.*, at 7-8.
- ⁴⁶ Valtioneuvoston saate YK:n yrityksiä ja ihmisoikeuksia koskevien ohjaavien periaatteiden kansallisesta toimeenpanosta (Sept. 9, 2014), available at <http://valtioneuvosto.fi/tiedostot/julkinen/pdf/2014/TEM-saate-iltakoulu-170914.pdf> (currently only available in Finnish).
- ⁴⁷ *Id.* at 15.
- ⁴⁸ LITHUANIAN NAP, *supra* note 12, at 3.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ Based on the experience of Swedwatch.
- ⁵² ECCJ, *Sweden: More Action Required for Business and Human Rights*, <http://www.corporatejustice.org/Sweden-More-action-required-for-business-and-human-rights.html?lang=en> (last visited Nov. 6, 2015).
- ⁵³ SWEDISH NAP, *supra* note 13.
- ⁵⁴ *Colombia Avanza: Hacia la Construcción de un Plan Nacional de Acción sobre Empresas y Derechos Humanos*, CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA (Oct. 20, 2015), <http://www.derechoshumanos.gov.co/Prensa/2015/Paginas/Colombia-Avanza-Plan-Nacional-Accion.aspx>.
- ⁵⁵ See NAPs TOOLKIT, *supra* note 27 (noting that an NBA is a tool for evaluating a State’s implementation of the UN Guiding Principles and other business and human rights frameworks.).
- ⁵⁶ *Rep. of The Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, GAOR, ¶¶ 71-72, U.N. Doc. A/70/216 (July 30, 2015); *Rep. of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, GAOR, ¶¶ 20-24, U.N. Doc. A/69/263 (Aug. 5, 2014). See generally, NAPs TOOLKIT, *supra* note 27.
- ⁵⁷ COLOMBIAN NAP, *supra* note 15.
- ⁵⁸ *Id.* at 15, pt. 4.9.
- ⁵⁹ *Id.* at 19, pt. 7.3.
- ⁶⁰ Javier Lafuente, *El Congreso de Colombia Refrenda el Acuerdo de Paz con las FARC*, EL PAÍS (Dec. 1, 2016),

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- http://internacional.elpais.com/internacional/2016/12/01/colombia/1480559982_804071.html.
- ⁶¹ Mesa de Conversaciones, *Acuerdo Final Para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, OFICINA DEL ALTO COMISIONADO PARA LA PAZ ((Nov. 24, 2016), <http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/Acuerdo-Final-AF-web.pdf>; *Así Marcha El Acuerdo De Paz*, OFICINA DEL ALTO COMISIONADO PARA LA PAZ (2017), <http://www.altocomisionadoparalapaz.gov.co/Documents/informes-especiales/asi-marcha-acuerdo-paz/index.html> (offering a timeline of the accord’s implementation).
- ⁶² *Id.* at 124; *see also* Camilo Sánchez & Daniel Marín, *Responsabilidad Corporativa en la Justicia Transicional en Colombia*, in LA PAZ, *RESPONSABILIDAD DE TODOS: LA RESPONSABILIDAD CORPORATIVA EN LA JUSTICIA TRANSICIONAL: LECCIONES PARA COLOMBIA* (2017), 132 – 154, <https://www.dejusticia.org/wp-content/uploads/2017/04/Paz-la-responsabilidad-de-todos-final.pdf> (explaining of the Special Jurisdiction for Peace with regard to private actors).
- ⁶³ ITALIAN NAP, *supra* note 17.
- ⁶⁴ NAPs TOOLKIT, *supra* note 27, at 149-53.
- ⁶⁵ CORE, *supra* note 29, at 2.
- ⁶⁶ UK NAP 2013, *supra* note 8, at 19.
- ⁶⁷ *Id.*
- ⁶⁸ *Id.*
- ⁶⁹ *Id.*
- ⁷⁰ *Id.*
- ⁷¹ MARTA BORDIGNON, THE CHALLENGE OF IMPLEMENTING THE UN ‘PROTECT, RESPECT AND REMEDY’ FRAMEWORK BY STATES AND THE EUROPEAN UNION THROUGH THE UN GUIDING PRINCIPLES: THE BRITISH, ITALIAN AND SPANISH CASES 12 (2013).
- ⁷² *Id.*
- ⁷³ Foreign Affairs Committee, Written Evidence from Amnesty International, para. 54, *available at* <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaaff/116/116we02.htm>; *see also* RACHEL BALL, HUMAN RIGHTS LAW CTR., AN AUSTRALIAN NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: BACKGROUND PAPER 12 (2014), *available at* http://hrlc.org.au/wp-content/uploads/2014/04/National_Action_Plan_on_Business_and_Human_Rights_backgroundpaper_2014.pdf.
- ⁷⁴ RACHEL CHAMBERS, EMBODIMENT OF OUR NATIONAL COMMITMENT TO PROTECT HUMAN RIGHTS OR DAMP SQUIB? AN ASSESSMENT OF CORPORATE ACCOUNTABILITY UNDER THE UK GOVERNMENT’S NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS 5-6 (2014) (on file with authors, expected submission to the International Journal of Human Rights in January 2015); ANDREAS GRAF, SWISSPEACE, DEVELOPING NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS (2013), *available at* http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_4_2013.pdf.
- ⁷⁵ *Id.*
- ⁷⁶ Damiano de Felice & Andreas Graf, *The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights*, 7 J. OF HUM. RTS. 40 (2015).
- ⁷⁷ BORDIGNON, *supra* note 71, at 12.
- ⁷⁸ *Id.*
- ⁷⁹ *Id.*
- ⁸⁰ *Id.*
- ⁸¹ *Id.*
- ⁸² CORE, *supra* note 29, at 4.
- ⁸³ JESNES “State Duty to Protect,” *supra* note 37.
- ⁸⁴ *E.g.*, Gerry Boyle, *UK Guidance for Business on Human Rights Needs Some Legal Teeth*, GUARDIAN (Sept. 4, 2013), *available at* <http://www.theguardian.com/sustainable-business/blog/uk-guidance-business-human-rights-legal>.
- ⁸⁵ CORE, *supra* note 29, at 9-10.
- ⁸⁶ *Id.* at 9.
- ⁸⁷ UK NAP 2013, *supra* note 8, at 10.
- ⁸⁸ *Id.* at 11-12.
- ⁸⁹ *Id.* at 11.

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- ⁹⁰ De Felice & Graf, *supra* note 76.
- ⁹¹ UK NAP 2013, *supra* note 8, at 12.
- ⁹² CORE, *supra* note 29, at 5.
- ⁹³ De Felice & Graf, *supra* note 76.
- ⁹⁴ *Id.*
- ⁹⁵ *Id.*
- ⁹⁶ CORE, *supra* note 29, at 4.
- ⁹⁷ De Felice & Graf, *supra* note 76.
- ⁹⁸ Janneke Faber, Multilateral Organisations and Human Rights Department, Netherlands, Presentation at the 7th Session of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (Feb. 17-21, 2014), transcript *available at* http://www.ohchr.org/documents/issues/business/nationalplans/jannekefaber_statement.pdf.
- ⁹⁹ DUTCH NAP, *supra* note 9.
- ¹⁰⁰ *Id.* at 6.
- ¹⁰¹ Faber, *supra* note 98.
- ¹⁰² DUTCH NAP, *supra* note 9, at 6.
- ¹⁰³ Faber, *supra* note 98.
- ¹⁰⁴ *Id.*
- ¹⁰⁵ Based on the experience of SOMO and the CSR Platform.
- ¹⁰⁶ *Id.*
- ¹⁰⁷ *Id.*
- ¹⁰⁸ *Id.*
- ¹⁰⁹ *Id.*
- ¹¹⁰ *Id.*
- ¹¹¹ *Id.*
- ¹¹² *Id.*
- ¹¹³ *Id.*
- ¹¹⁴ *Id.*
- ¹¹⁵ DUTCH NAP, *supra* note 9, at 13.
- ¹¹⁶ Faber, *supra* note 98, at 2.
- ¹¹⁷ Based on the experience of SOMO and the CSR Platform.
- ¹¹⁸ *Id.*
- ¹¹⁹ *Id.*
- ¹²⁰ *Id.*
- ¹²¹ *Id.*
- ¹²² *Id.*
- ¹²³ *See* DUTCH NAP, *supra* note 9, at 6 (inter-ministerial group compared current policy with the UNGPs).
- ¹²⁴ *Id.* at 6.
- ¹²⁵ Based on the experience of SOMO and the CSR Platform.
- ¹²⁶ *Id.*
- ¹²⁷ MVO Platform, *Dutch National Action Plan on Business and Human Rights* (Feb. 17, 2014), <http://mvoplatfom.nl/news-en/dutch-national-action-plan-on-business-and-human-rights>.
- ¹²⁸ It does commit to holding a conference where the topics of judicial and non-judicial grievance mechanisms will be discussed. DUTCH NAP, *supra* note 9, at 42.
- ¹²⁹ JESNES “State Duty to Protect,” *supra* note 37.
- ¹³⁰ DUTCH NAP, *supra* note 9, at 41.
- ¹³¹ *Id.* at 41.
- ¹³² *Id.* at 23.
- ¹³³ *Id.* at 25.
- ¹³⁴ *Id.*
- ¹³⁵ *Id.* at 42.
- ¹³⁶ *Id.* at 28.

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- ¹³⁷ *Id.* at 29.
- ¹³⁸ *Id.*
- ¹³⁹ *Id.*
- ¹⁴⁰ *Id.* (the transparency benchmark would be extended to the 600 largest Dutch companies under the European Commission’s proposal).
- ¹⁴¹ MVO Platform, *supra* note 127.
- ¹⁴² DUTCH NAP, *supra* note 9, at 41.
- ¹⁴³ *Id.* at 41.
- ¹⁴⁴ *See id.* at 41-42.
- ¹⁴⁵ *Id.* at 5.
- ¹⁴⁶ *Id.* at 39.
- ¹⁴⁷ NETH. INST. FOR HUMAN RIGHTS, ADVICE: RESPONSE TO THE NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS “KNOWING AND SHOWING” 6 (2014).
- ¹⁴⁸ DUTCH NAP, *supra* note 9, at 15.
- ¹⁴⁹ *Id.* at 19.
- ¹⁵⁰ *Id.* at 18.
- ¹⁵¹ *Id.* at 41-42.
- ¹⁵² *Id.* at 24.
- ¹⁵³ Based on the experience of SOMO and the CSR Platform.
- ¹⁵⁴ DUTCH NAP, *supra* note 9, at 42, 34-35.
- ¹⁵⁵ *Id.* at 42.
- ¹⁵⁶ *Id.* at 41.
- ¹⁵⁷ *Id.* at 17.
- ¹⁵⁸ *See* Ministry of Foreign Affairs, *Netherlands NCP Strengthened with Revised Government Decree*, <http://www.oesorichtlijnen.nl/en/news/netherlands-ncp-strengthened-revised-government-decree> (last visited Nov. 17, 2014).
- ¹⁵⁹ *See id.*
- ¹⁶⁰ Based on the experience of SOMO and the CSR Platform.
- ¹⁶¹ *See* DUTCH NAP, *supra* note 9, at 41-42.
- ¹⁶² *See, e.g.*, MVO Platform, *supra* note 127.
- ¹⁶³ NETH. INST. FOR HUMAN RIGHTS, *supra* note 147, at 13.
- ¹⁶⁴ Based on civil society and NHRI research and participation in the NAP development process.
- ¹⁶⁵ *Id.*
- ¹⁶⁶ *Id.*
- ¹⁶⁷ *Id.*
- ¹⁶⁸ *Id.*
- ¹⁶⁹ The Working Group was composed of a representative from the Confederation of Danish Industry, the Danish Confederation of Trade Unions, the Danish 92 Group, the Danish Ship-owners Association, and the chair of the CSR Council.
- ¹⁷⁰ Based on civil society and NHRI research and participation in the NAP development process.
- ¹⁷¹ *Id.*
- ¹⁷² *Id.*
- ¹⁷³ DANISH NAP, *supra* note 10.
- ¹⁷⁴ Based on civil society and NHRI research and participation in the NAP development process.
- ¹⁷⁵ *Id.*
- ¹⁷⁶ *Id.*
- ¹⁷⁷ *Id.*
- ¹⁷⁸ *Id.*
- ¹⁷⁹ *Id.*
- ¹⁸⁰ *Id.*
- ¹⁸¹ *Id.*

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- ¹⁸² *Id.*
- ¹⁸³ DANISH NAP, *supra* note 10, at 9. Although the planned actions are listed under the section discussing Pillar I, the inter-ministerial working group that is tasked with looking at legislation with extraterritorial effect focuses on access to judicial remedy (Pillar III) for victims of serious human rights violations involving Danish MNEs.
- ¹⁸⁴ *Id.* at 24, 34.
- ¹⁸⁵ *Id.* at 9, 24, 34.
- ¹⁸⁶ *Id.* at 24.
- ¹⁸⁷ JESNES “State Duty to Protect,” *supra* note 37.
- ¹⁸⁸ *See* DANISH NAP, *supra* note 10, at 16.
- ¹⁸⁹ *Id.* at 18.
- ¹⁹⁰ *Id.*
- ¹⁹¹ Presentation of FSR – Danish Auditors, <http://www.fsr.dk/Om%20os/English>.
- ¹⁹² *See* DANISH NAP, *supra* note 10, at 12.
- ¹⁹³ Danish Business Partnerships, <http://amg.um.dk/en/technical-guidelines/danida-business-partnerships/>.
- ¹⁹⁴ *See* DANISH NAP, *supra* note 10, at 16.
- ¹⁹⁵ *Id.* at 18.
- ¹⁹⁶ Based on civil society and NHRI research and participation in the NAP development process.
- ¹⁹⁷ *See* DANISH NAP, *supra* note 10, at 16.
- ¹⁹⁸ *See id.* at 18
- ¹⁹⁹ *Id.* at 12.
- ²⁰⁰ *Id.* at 16.
- ²⁰¹ *Id.*
- ²⁰² *Id.* at 9.
- ²⁰³ *Id.* at 20-21; *see also* Executive Order on a Mediation and Complaints-Handling Institution for Responsible Business Conduct, *available at* <http://businessconduct.dk/file/298160/executive-order-on-mediation.pdf>.
- ²⁰⁴ Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct, Statement on Retention of Employees’ Identification Papers (2014), *available at* http://businessconduct.dk/file/507301/aug_14_2014_general_statement.pdf.
- ²⁰⁵ DANISH NAP, *supra* note 10, at 18.
- ²⁰⁶ THE DANISH BUSINESS AUTHORITY, CORPORATE SOCIAL RESPONSIBILITY AND REPORTING IN DENMARK—IMPACT OF THE THIRD YEAR SUBJECT TO THE LEGAL REQUIREMENTS FOR REPORTING ON CSR IN THE DANISH FINANCIAL STATEMENTS ACT 21 (2013), *available at* http://samfundsansvar.dk/file/358879/csr_rapport_2013_eng.pdf.
- ²⁰⁷ DANISH NAP, *supra* note 10, at 16.
- ²⁰⁸ *Id.*
- ²⁰⁹ *Id.* at 11.
- ²¹⁰ *Id.* at 14.
- ²¹¹ *Id.* at 18.
- ²¹² *Id.* at 21.
- ²¹³ *Id.* at 16.
- ²¹⁴ *Id.* at 13.
- ²¹⁵ *Id.* at 11.
- ²¹⁶ *Id.* at 16.
- ²¹⁷ *Id.* at 27.
- ²¹⁸ *Id.* at 6.
- ²¹⁹ *Id.* at 9.
- ²²⁰ *Id.*
- ²²¹ *Id.*
- ²²² *Id.* at 27.
- ²²³ *Id.* at 11.
- ²²⁴ *Id.* at 18.
- ²²⁵ *Id.* at 16.
- ²²⁶ *Id.*

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- ²²⁷ *Id.* at 28.
- ²²⁸ UNGPs, *supra* note 1.
- ²²⁹ See Rep. of the U.N. Working Group on the Issue of Human Rights and Transnational Corps. and Other Bus. Enters., ¶¶ 41, 92(d), UN Doc A/69/263 (Aug. 5, 2014).
- ²³⁰ Based on civil society and NHRI research and participation in the NAP development process.
- ²³¹ DANISH NAP, *supra* note 10, 16.
- ²³² *Id.*
- ²³³ *Id.*
- ²³⁴ *Id.*
- ²³⁵ *Id.* at 22.
- ²³⁶ *Id.* at 22.
- ²³⁷ *Id.* at 7-8.
- ²³⁸ *Id.* at 5.
- ²³⁹ *Id.* at 32.
- ²⁴⁰ *Id.* at 8.
- ²⁴¹ *Id.* at 7-8.
- ²⁴² *Id.*
- ²⁴³ *Id.*
- ²⁴⁴ *Id.*
- ²⁴⁵ Based on the experience of Finnwatch.
- ²⁴⁶ *Id.*
- ²⁴⁷ *Id.*
- ²⁴⁸ *Id.*
- ²⁴⁹ *Id.*
- ²⁵⁰ FINNISH NAP, *supra* note 11, at 7-8.
- ²⁵¹ Based on the experience of Finnwatch.
- ²⁵² *Id.*
- ²⁵³ FINNISH NAP, *supra* note 11, at 7-8; based on the experience of Finnwatch.
- ²⁵⁴ Based on the experience of Finnwatch.
- ²⁵⁵ *Id.*
- ²⁵⁶ *Id.*
- ²⁵⁷ *Id.*
- ²⁵⁸ *Id.*
- ²⁵⁹ *Id.*
- ²⁶⁰ *Id.*
- ²⁶¹ FINNISH NAP, *supra* note 11, at 7-8.
- ²⁶² JESNES “State Duty to Protect,” *supra* note 37.
- ²⁶³ FINNISH NAP, *supra* note 11, at 26.
- ²⁶⁴ *Id.*
- ²⁶⁵ *Id.* at 17.
- ²⁶⁶ *Id.*
- ²⁶⁷ Valtioneuvoston saate YK:n yrityksiä ja ihmisoikeuksia koskevien ohjaavien periaatteiden kansallisesta toimeenpanosta (Sept. 9, 2014), *available at* <http://valtioneuvosto.fi/tiedostot/julkinen/pdf/2014/TEM-saate-iltakoulu-170914.pdf> (currently only available in Finnish).
- ²⁶⁸ *Id.*
- ²⁶⁹ *Id.*
- ²⁷⁰ *Id.*
- ²⁷¹ Although the language used in the NAP calls this a proposal, it was passed before this NAP was published and the language in the NAP was not updated.
- ²⁷² FINNISH NAP, *supra* note 11, at 16.
- ²⁷³ *Id.*

²⁷⁴ *Id.*
²⁷⁵ *Id.* at 26.
²⁷⁶ *Id.*
²⁷⁷ *Id.* at 25.
²⁷⁸ *Id.* at 25-26.
²⁷⁹ *Id.* at 9.
²⁸⁰ *Id.* at 13-14.
²⁸¹ *Id.* at 15-16.
²⁸² *Id.* at 20-21.
²⁸³ *Id.* at 20.
²⁸⁴ *Id.*
²⁸⁵ *Id.* at 21.
²⁸⁶ *Id.*
²⁸⁷ *Id.* at 25-26.
²⁸⁸ *Id.* at 27.
²⁸⁹ Based on the experience of Finnwatch.
²⁹⁰ FINNISH NAP, *supra* note 11, at 18.
²⁹¹ *Id.* at 21.
²⁹² *Id.* at 15-16. However, a couple of these “follow up measures” appear to be statements of current actions Finland is involved in without a clear statement that Finland will continue to do this. *E.g.*, “Finland participates in the development of UN’s cooperation with business and supports features such as the Global Compact CSR initiative.”
²⁹³ FINNISH NAP, *supra* note 11, at 15.
²⁹⁴ *Id.* at 22.
²⁹⁵ *Id.* at 15.
²⁹⁶ *Id.*
²⁹⁷ *Id.* at 17.
²⁹⁸ *Id.* at 17-19.
²⁹⁹ *Id.* at 19, 18.
³⁰⁰ *Id.* at 23, 18.
³⁰¹ *Id.* at 23.
³⁰² *Id.* at 20-21.
³⁰³ *Id.* at 15.
³⁰⁴ *Id.* at 23.
³⁰⁵ *Id.* at 15.
³⁰⁶ *Id.* at 19.
³⁰⁷ *Id.* at 21.
³⁰⁸ *Id.* at 26.
³⁰⁹ *Id.* at 22.
³¹⁰ It is assumed that on the government side of the dialogue the Ministry of Foreign Affairs and the Ministry of Employment and Economy would participate in this dialogue as they are listed as the principal responsible parties.
³¹¹ FINNISH NAP, *supra* note 11, at 15.
³¹² *Id.*
³¹³ *Id.*
³¹⁴ *Id.*
³¹⁵ *Id.*
³¹⁶ *See, e.g.*, FINNISH NAP, *supra* note 11, at 16-17.
³¹⁷ *See, e.g., id.* at 12, 16.
³¹⁸ *Id.* at 15.
³¹⁹ *Id.* at 8.
³²⁰ *Id.* at 32.
³²¹ *Id.* at 32.
³²² LITHUANIAN NAP, *supra* note 12, at 5.

³²³ *Id.*

³²⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility, COM (2011) 681 final (Oct. 25, 2011), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>.

³²⁵ *Id.*

³²⁶ *See, e.g.*, European Union Directive 2013/34/EU, *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>

³²⁷ LITHUANIAN NAP, *supra* note 12, at 1, 2, and 4.

³²⁸ *Id.* at 1-2.

³²⁹ *Id.* at 2.

³³⁰ For example, LITHUANIAN NAP, *supra* note 12, at 2, Objective 1A(2), Objective 1B(1).

³³¹ *Id.* 10, at 3.

³³² *Id.* at 3, FN 4, 5, and 6.

³³³ *Id.* at 3-4.

³³⁴ *Id.*

³³⁵ *Id.* at 4 FN 9 through 14.

³³⁶ *Id.* 8-11.

³³⁷ *Id.* at 10.

³³⁸ *Id.*

³³⁹ United Nations Office of the High Commissioner for Human Rights, *State National Action Plans*, <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> (last visited Nov. 6, 2015).

³⁴⁰ *See, e.g.*, LITHUANIAN NAP, *supra* note 12, at 10-11.

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.* at 9.

³⁴⁷ *Id.* at 4.

³⁴⁸ JESNES “State Duty to Protect,” *supra* note 37.

³⁴⁹ *See, e.g.*, LITHUANIAN NAP, *supra* note 12, at 7.

³⁵⁰ *Id.*

³⁵¹ *Id.* at 4-5, 3, 7.

³⁵² *Id.* at 3.

³⁵³ *Id.* at 7.

³⁵⁴ *Id.* at 11.

³⁵⁵ *Id.* at 4.

³⁵⁶ *Id.*

³⁵⁷ *Id.* at 4, paragraphs 2-3, part E. Measures related to international obligations.

³⁵⁸ *Id.* at 4.

³⁵⁹ *Id.* at 10.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.* at 3.

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.* at 6-7.

³⁶⁷ *Id.*

³⁶⁸ *Id.* at 1.

³⁶⁹ *Id.* at 10.

³⁷⁰ United Nations Office of the High Commissioner for Human Rights, *supra* note 339.

³⁷¹ *See, e.g.*, LITHUANIAN NAP, *supra* note 12, at 10.

³⁷² United Nations Office of the High Commissioner for Human Rights, *supra* note 339.

³⁷³ LITHUANIAN NAP, *supra* note 12, at 3.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.* at 7.

³⁷⁸ *Id.*

³⁷⁹ *Id.* at 10.

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.* at 7.

³⁸⁶ *Id.* at 4-5.

³⁸⁷ *Id.* at 4.

³⁸⁸ *Id.* at 3.

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.* at 11.

³⁹⁴ *Id.* at 3-4.

³⁹⁵ *Id.* at 3.

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *See e.g., id.* at 3-4.

³⁹⁹ *Id.* at 7.

⁴⁰⁰ SWEDISH NAP, *supra* note 13, at 19.

⁴⁰¹ *Id.*

⁴⁰² ECCJ, *Sweden*, *supra* note 52.

⁴⁰³ SWEDISH NAP, *supra* note 13, at 28.

⁴⁰⁴ Based on the experience of Swedwatch.

⁴⁰⁵ *Id.*

⁴⁰⁶ SWEDISH NAP, *supra* note 13, at 6.

⁴⁰⁷ Government Offices of Sweden, *Organization*, <http://www.government.se/the-government-offices/organisation/> (last visited Nov. 6, 2015).

⁴⁰⁸ Permanent Mission of Sweden to the United Nations, *Action Plan for Business and Human Rights*, <http://www.swedenabroad.com/en-GB/Embassies/Geneva/Current-affairs/News/Action-plan-for-business-and-human-rights-sys/> (last visited Nov. 6, 2015).

⁴⁰⁹ Based on the experience of Swedwatch.

⁴¹⁰ SWEDISH NAP, *supra* note 13, at 6; Based on the experience of Swedwatch.

⁴¹¹ Based on the experience of Swedwatch.

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ SWEDISH NAP, *supra* note 13, at 6.

⁴²² *Id.*

⁴²³ *Id.* at fn. 1.

⁴²⁴ ECCJ, *Sweden, supra* note 52.

⁴²⁵ Based on the experience of Swedwatch.

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ SWEDISH NAP, *supra* note 13, at 28.

⁴³¹ ECCJ, *Sweden, supra* note 52.

⁴³² SWEDISH NAP, *supra* note 13, at 11. Penal code - although companies cannot be convicted of a crime in Sweden, can be fined for crimes committed in the exercise of business.

⁴³³ *Id.* at 9-11.

⁴³⁴ *Id.* at 13.

⁴³⁵ *Id.* at 14.

⁴³⁶ *Id.* at 15 -17.

⁴³⁷ *Id.* at 17.

⁴³⁸ SWEDISH NAP, *supra* note 13, at 20, 26.

⁴³⁹ ECCJ, *Sweden, supra* note 52.

⁴⁴⁰ SWEDISH NAP, *supra* note 13, at 27.

⁴⁴¹ *Id.* at 28.

⁴⁴² *Id.* at 27.

⁴⁴³ JESNES “State Duty to Protect,” *supra* note 37.

⁴⁴⁴ SWEDISH NAP, *supra* note 13, at 29.

⁴⁴⁵ SOMO, *Fact Sheet – socially responsible public procurement*, http://somo.nl/publications-en/Publication_4161 (last visited Nov. 6, 2015).

⁴⁴⁶ SWEDISH NAP, *supra* note 13, at 27.

⁴⁴⁷ Based on the experience of Swedwatch.

⁴⁴⁸ *Id.*

⁴⁴⁹ SWEDISH NAP, *supra* note 13, at 27-28.

⁴⁵⁰ *Id.* at 28.

⁴⁵¹ *Id.* at 29.

⁴⁵² European Union Directive 2014/95/EU, insertion to Article 19a, *available at* http://ec.europa.eu/finance/company-reporting/non-financial_reporting/index_en.htm

⁴⁵³ *Id.*

⁴⁵⁴ SWEDISH NAP, *supra* note 13, at 27.

⁴⁵⁵ Based on the experience of Swedwatch.

⁴⁵⁶ SWEDISH NAP, *supra* note 13, at 29.

⁴⁵⁷ *Id.* at 27.

⁴⁵⁸ *Id.*

⁴⁵⁹ European Union Directive 2013/34/EU, *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>.

⁴⁶⁰ SWEDISH NAP, *supra* note 13, at 27.

⁴⁶¹ *Id.* at 27.

⁴⁶² European Union Directive 2013/34/EU, *supra* note 452.

⁴⁶³ SWEDISH NAP, *supra* note 13, at 27.

⁴⁶⁴ *Id.* at 28.

⁴⁶⁵ *Id.* at 29.

⁴⁶⁶ *Id.* at 28.

⁴⁶⁷ *Id.* at 28-29.
⁴⁶⁸ *Id.* at 3.
⁴⁶⁹ *Id.* at 13.
⁴⁷⁰ *Id.*
⁴⁷¹ *Id.* at 29.
⁴⁷² *Id.* at 1
⁴⁷³ *Id.*
⁴⁷⁴ *Id.*
⁴⁷⁵ *Id.*
⁴⁷⁶ *Id.* at 27.
⁴⁷⁷ *Id.*; based on the experience of Swedwatch.
⁴⁷⁸ SWEDISH NAP, *supra* note 13, at 27.
⁴⁷⁹ *Id.*
⁴⁸⁰ *Id.*
⁴⁸¹ *Id.* at 21.
⁴⁸² *Id.* at 22.
⁴⁸³ *Id.* at 23.
⁴⁸⁴ *Id.* at 27-29.
⁴⁸⁵ *Id.* at 29.
⁴⁸⁶ *Id.*
⁴⁸⁷ *Id.*
⁴⁸⁸ *Id.*
⁴⁸⁹ *Id.* at 27-28.
⁴⁹⁰ *Id.* at 22.
⁴⁹¹ *Id.*
⁴⁹² It is unclear if the commitment is to continue to consider it, or to try and turn it into law. *Id.* at 27.
⁴⁹³ *Id.*
⁴⁹⁴ *Id.*
⁴⁹⁵ *Id.*
⁴⁹⁶ *Id.* at 6.
⁴⁹⁷ *Id.* at 28.
⁴⁹⁸ *Id.* at 27-28. This timeline is an external timeline imposed by the EU itself.
⁴⁹⁹ *Id.* at 28.
⁵⁰⁰ *Id.*
⁵⁰¹ *Id.* at 29.
⁵⁰² Even if the government has provided a certain type of support in the past, this planned measure does not explicitly state that the government will consider continuing the same support only.
⁵⁰³ *Id.* at 29.
⁵⁰⁴ *Id.* at 28.
⁵⁰⁵ *Id.* at 29.
⁵⁰⁶ *Id.* at 28.
⁵⁰⁷ *Id.* at 27.
⁵⁰⁸ *Id.*
⁵⁰⁹ *Id.* at 13, 15, 17.
⁵¹⁰ *Id.* at 27.
⁵¹¹ *Id.*
⁵¹² *Id.* at 6.
⁵¹³ *Id.* at 28.
⁵¹⁴ *Id.*
⁵¹⁵ *Id.*
⁵¹⁶ *Id.*
⁵¹⁷ Business Sweden, *About*, <http://www.business-sweden.se/en/about-us/About-Business-Sweden/> (last visited

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- Nov. 6, 2015).
- ⁵¹⁸ SWEDISH NAP, *supra* note 13, at 29.
- ⁵¹⁹ *Id.* at 19.
- ⁵²⁰ Remarks by Mrs. Bente Angell-Hansen, Secretary General of the Norwegian Ministry of Foreign Affairs, Forum on Business and Human Rights (Geneva, Apr. 12, 2012), *available at* <https://business-humanrights.org/en/doc-forum-on-business-and-human-rights-introductory-remarks-by-mrs-bente-angell-hansen-secretary-general-of-the-norwegian-ministry-of-foreign-affairs-geneva-41212>.
- ⁵²¹ *Id.*
- ⁵²² *National Action Plan on Business and Human Rights*, GOVERNMENT OF NORWAY (Oct. 12, 2015), https://www.regjeringen.no/en/aktuelt/business_hr/id2457726/.
- ⁵²³ *See*, Mark B. Taylor, *A Mapping and Gap Analysis: The State's Duty to Protect*, FAFO AIS (2013) [hereinafter *Mapping and Gap Analysis*].
- ⁵²⁴ *Norway*, Business and Human Rights Resource Centre: Action Platforms (last visited Dec. 2, 2016), <https://business-humanrights.org/en/norway> [hereinafter *BHRRC Norway*].
- ⁵²⁵ Norwegian NAP, *supra* note 14.
- ⁵²⁶ *See* *Mapping and Gap Analysis*, *supra* note 523.
- ⁵²⁷ *BHRRC Norway*, *supra* note 524.
- ⁵²⁸ *Id.*
- ⁵²⁹ NORWEGIAN NAP, *supra* note 14 at 5.
- ⁵³⁰ *BHRRC Norway*, *supra* note 524.
- ⁵³¹ *Id.*
- ⁵³² *Id.*
- ⁵³³ *See*, *Mapping and Gap Analysis*, *supra* note 523.
- ⁵³⁴ *Id.* at 4.
- ⁵³⁵ *Id.*
- ⁵³⁶ *Id.*
- ⁵³⁷ Measures are numbered in consecutive order. Only action points which appear in shaded boxes entitled “Measures” are included; this means that the government expectations of corporations on page 30 of the NAP is not included.
- ⁵³⁸ NORWEGIAN NAP, *supra* note 14 at 30.
- ⁵³⁹ *Id.* at 40.
- ⁵⁴⁰ *Id.*
- ⁵⁴¹ *Id.* at 41-2.
- ⁵⁴² JESNES “State Duty to Protect,” *supra* note 37.
- ⁵⁴³ Norwegian NAP, *supra* note 14 at 24.
- ⁵⁴⁴ *Id.* at 23.
- ⁵⁴⁵ *Id.* at 24.
- ⁵⁴⁶ *Id.* at 19.
- ⁵⁴⁷ *Id.*
- ⁵⁴⁸ *Id.* at 35.
- ⁵⁴⁹ *Id.*
- ⁵⁵⁰ *Id.*
- ⁵⁵¹ *Id.*
- ⁵⁵² *Id.* at 30.
- ⁵⁵³ *Id.*
- ⁵⁵⁴ *Id.*
- ⁵⁵⁵ NORWEGIAN MINISTRY OF TRADE, INDUSTRY AND FISHERIES, DIVERSE AND VALUE-CREATING OWNERSHIP (2013-2014) Meld. St. 27, *available at* <https://www.regjeringen.no/contentassets/899ac257df2648d788942b78c6d59787/en-gb/pdfs/stm201320140027000engpdfs.pdf>.
- ⁵⁵⁶ Norwegian NAP, *supra* note 14 at 8.
- ⁵⁵⁷ *Id.* at 18.
- ⁵⁵⁸ *Id.* at 18, 20.

⁵⁵⁹ *Id.* at 14.
⁵⁶⁰ *Id.* at 20.
⁵⁶¹ *Id.* at 23.
⁵⁶² *Id.* at 40.
⁵⁶³ *Id.*
⁵⁶⁴ *Id.* at 21, 27.
⁵⁶⁵ *Id.* at 40.
⁵⁶⁶ *Id.* at 19.
⁵⁶⁷ *Id.* at 20.
⁵⁶⁸ *Id.* at 12.
⁵⁶⁹ *Id.* at 26.
⁵⁷⁰ *Id.* at 35.
⁵⁷¹ *Id.* at 27, 24.
⁵⁷² *Id.* at 26.
⁵⁷³ *Id.* at 26, 21.
⁵⁷⁴ *Id.*
⁵⁷⁵ *Id.* at 20.
⁵⁷⁶ *Id.* at 23.
⁵⁷⁷ *Id.* at 20.
⁵⁷⁸ *Id.* at 25.
⁵⁷⁹ *Id.* at 20.
⁵⁸⁰ *Id.*
⁵⁸¹ *Id.* at 26, 21.
⁵⁸² *See, e.g. id.* at 12-4.
⁵⁸³ *Id.* at 5.
⁵⁸⁴ *Id.* at 21-7.
⁵⁸⁵ *Id.* at 20.
⁵⁸⁶ *Id.*
⁵⁸⁷ *Id.* at 23.
⁵⁸⁸ *Id.* at 20, 23.
⁵⁸⁹ *Id.* at 21, 25.
⁵⁹⁰ The seventh, fourteenth, and fifteenth measures discuss security and corruption in conflict areas. *Id.* at 21, 28.
⁵⁹¹ *Id.* at 19.
⁵⁹² *Id.* at 25.
⁵⁹³ *Id.* at 23.
⁵⁹⁴ These measures are measure three, seven, thirteen, fourteen, fifteen, and sixteen. *Id.* at 20-1, 25-7.
⁵⁹⁵ *Id.* at 18.
⁵⁹⁶ *Id.* at 20.
⁵⁹⁷ *Id.*
⁵⁹⁸ ‘Colombia Avanza’: *Hacia la Construcción de un Plan Nacional de Acción sobre Empresas y Derechos Humanos*, CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA (oct. 20, 2015), <http://www.derechoshumanos.gov.co/Prensa/2015/Paginas/Colombia-Avanza-Plan-Nacional-Accion.aspx> [hereinafter *Colombia Avanza*].
⁵⁹⁹ Presidencia de la República, *Lanzamiento Plan Nacional de Acción en Derechos Humanos y Empresas*, STORY, www.storify.com/ConsejeriaDDHH/lanzamiento-plan-nacional-de-accion#1 (Dec. 9, 2015) (noting that the Presidential Advisory Office on Human Rights (Consejería Presidencial para los Derechos Humanos) captured the social media dissemination of these events).
⁶⁰⁰ COLOMBIAN NAP, *supra* note 15, at 25.
⁶⁰¹ This working group is composed of: the Department for Social Welfare, the National Department for Planning, the Ministry of the Interior, the Ministry of Education, the Ministry of Culture, the Ministry of Labor, the Ministry of the Environment, the Ministry of Agriculture, the Ministry of Commerce, the Ministry of Mines, the Ministry of Finances, the Ministry of Foreign Affairs, the Ministry of Health, the Ministry of Transportation, the Ministry of

Housing, SENA, Coldeportes, and Colciencias. They work with the Ombudsman's Office, the Treasury Inspector's Office of the Republic, and the Attorney General's Office of the Country, as permanent guest members, and with the Office of the Technical Secretary of the Council to the President for Human Rights. See COLOMBIAN NAP, *supra* note 7, at 10, fn. 2. Please note that the English version of the Colombian NAP refers to the Colombian Working Group as the "Task Force," however, because the Spanish version of the NAP was used to inform this assessment, we retain the term "Working Group."

⁶⁰² COLOMBIAN NAP, *supra* note 15, at 25.

⁶⁰³ *Id.*

⁶⁰⁴ *Id.* at 10, pt. 1.3.

⁶⁰⁵ *Id.* at 25.

⁶⁰⁶ This Confederation includes about 850 non-governmental organizations (NGOs) from across Colombia. It includes corporate foundations, religious organizations, and public interest organizations writ large. *Quiénes Somos*, CONFEDERACIÓN COLOMBIANA DE ONG, http://ccong.org.co/ccong/quienes-somos/quienes-somos_22 (last visited Aug. 30, 2016). On July 25, 2016, a group of NGOs working on business and human rights submitted an official request of information to the Presidential Advisory Office of Human Rights, asking whether the government had researched the membership of this Confederation or had a mapping of all the NGOs in Colombia that work on issues related to business and human rights. The organizations also sought to find out the criteria for selection for the members of the Commission of Experts. These questions were presented in an official request for information, filed in August 2016, under Colombian law (on file with authors). As of this writing, no response had been provided.

⁶⁰⁷ COLOMBIAN NAP, *supra* note 15, at 10-11, pt. 1.3.

⁶⁰⁸ The government cites a number of consultations as having informed the content of the NAP, including the participative processes that it held around the formulation of the Integral Public Policy of Human Rights and the Guidelines for Public Policy in Business and Human Rights; however, it did not hold consultations specifically in relation to the content of the NAP before releasing the draft NAP in October 2015. The government conducted four consultations on the draft NAP during October and November 2015: an international workshop was held in Cartagena, and three regional workshops were held in Cartagena, Apartadó, and Villavicencio.

⁶⁰⁹ CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, BORRADOR DEL PLAN NACIONAL DE ACCIÓN SOBRE DE DERECHOS HUMANOS Y EMPRESAS pt. 1.2 (2015), http://www.derechoshumanos.gov.co/Prensa/2015/Documents/151027-PNA_borrador-ESP.pdf [hereinafter COLOMBIAN DRAFT NAP].

⁶¹⁰ This office reports to the Office of the President, as its name suggests.

⁶¹¹ *Colombia Avanza*, *supra* note 598.

⁶¹² COLOMBIAN NAP, *supra* note 15, at 5.

⁶¹³ *Id.*

⁶¹⁴ *Colombia Avanza*, *supra* note 598.

⁶¹⁵ COLOMBIAN NAP, *supra* note 15, at 10, fn. 2.

⁶¹⁶ *Id.* at 5.

⁶¹⁷ *Id.*

⁶¹⁸ *Sector empresarial y construcción de paz*, FUNDACIÓN IDEAS PARA LA PAZ, <http://www.ideaspaz.org/foundation/work-areas/5> (last visited May 16, 2015) [author translation] (The Fundación Ideas para la Paz's business and human rights (BHR) work falls under the umbrella of its "Corporate Sector and Peace Building" Program Area, where BHR is one of two strategic lines of work. The mission of this Program Area is "to promote, orient, facilitate and cement the participation of the corporate sector in overcoming conflict and in building a sustainable peace, by strengthening capacities and generating knowledge, inputs, and tools for the development of public policies and the adoption of private practices.").

⁶¹⁹ COLOMBIAN NAP, *supra* note 15, at 5.

⁶²⁰ *Id.*

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ *Las 7 Perlas del Plan Nacional de Acción de Empresas y Derechos Humanos*, TIERRA DIGNA (Mar. 9, 2016), [http://tierradigna.org/pdfs/Las 7 perlas del PNA.pdf](http://tierradigna.org/pdfs/Las%207%20perlas%20del%20PNA.pdf).

⁶²⁴ *Id.*

⁶²⁵ *Apuntes sobre el Plan nacional de empresas y derechos humanos de Colombia*, INTERNATIONAL NETWORK OF HUMAN

RIGHTS (Nov. 27, 2016, 4:11 PM), <http://ridh.org/news-and-events/news-articles/apuntes-sobre-el-plan-nacional-de-empresas-y-derechos-humanos-de-colombia/>.

⁶²⁶ *El Cajar se pronuncia sobre el plan “Colombia Avanza,”* COLECTIVO DE ABOGADOS JOSÉ ALVEAR RESTREPO (Oct. 27, 2015), <http://www.colectivodeabogados.org/?El-Cajar-se-pronuncia-sobre-el-plan-Colombia-Avanza>.

⁶²⁷ COLOMBIAN NAP, *supra* note 15 at 5.

⁶²⁸ *Id.*

⁶²⁹ *Id.* at 10-11, pt. 1.3.

⁶³⁰ *Id.*

⁶³¹ CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, PLAN NACIONAL DE ACCIÓN DE DERECHOS HUMANOS Y EMPRESA: INFORME DE AVANCES EN LA IMPLEMENTACIÓN 20 (2017), at 20, <http://www.derechoshumanos.gov.co/lineasestrategicas/empresa/Documents/170331-informe%20ddhh-empresas.pdf> (hereinafter “NAP PROGRESS REPORT 2017”).

⁶³² *Id.*

⁶³³ *Id.*

⁶³⁴ COLOMBIAN NAP, *supra* note 15, at 23, pt. 10.2.

⁶³⁵ *Id.*

⁶³⁶ *Id.*

⁶³⁷ COLOMBIAN DRAFT NAP, *supra* note 609, at pt. 1.2.

⁶³⁸ *See, e.g.,* NAPs TOOLKIT, *supra* note 27; Sara Blackwell, Presentation at the Open Consultation on National Action Plans, 7th Session of the UN Working Group on Business and Human Rights (Feb. 20, 2014), http://www.ohchr.org/Documents/Issues/Business/NationalPlans/SaraBlackwell_statement.pdf; Sara Blackwell, *Time for a NAP: Five Recommendations for the U.S. National Action Plan on Responsible Business Conduct*, INSTITUTE FOR HUMAN RIGHTS AND BUSINESS (Dec. 12, 2014), <http://www.ihrb.org/commentary/five-recommendations-for-us-nap-on-responsible-business-conduct.html>.

⁶³⁹ *Report of The Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, GAOR, ¶¶ 71-72, U.N. Doc. A/70/216 (July 30, 2015). The Working Group explicitly endorsed the use of national baseline assessments (NBA) in the design of NAPs, as it allows States to assess their “current level of implementation of the Guiding Principles,” and is a key tool “for tracking performance over time.” It strongly commended States, such as Chile and South Africa, that have explicitly embraced the development of a NBA as part of the NAP development, and stated that it intends to revisit its guidance on NAPs in order to address the issue of measurement. The capacity to measure effective implementation is affected significantly by the absence of NBAs. *See also Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, GAOR, ¶¶ 20-24, U.N.Doc. A/69/263 (Aug. 5, 2014).

⁶⁴⁰ COLOMBIAN NAP, *supra* note 15, at 7. *See also*, CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, “DE LA VIOLENCIA A LA SOCIEDAD DE LOS DERECHOS” PROPUESTAS PARA LA POLÍTICA DE DERECHOS HUMANOS EN COLOMBIA (2014 – 2034), <http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2014/140801web-Libro-1-propuesta-politica-publica.pdf>; CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, LINEAMIENTOS PARA UNA POLÍTICA PÚBLICA DE DERECHOS HUMANOS Y EMPRESAS (July 2014), http://www.derechoshumanos.gov.co/Observatorio/Publicaciones/Documents/2014/140724-lineamientos-politica_web.pdf

⁶⁴¹ NAP Progress Report 2017, *supra* note 631, at 41-42.

⁶⁴² *Comunicado de la sociedad civil colombiana frente a la política pública sobre derechos humanos y empresas de gobierno de Colombia*, TIERRA DIGNA (July 12, 2016), <http://tierradigna.org/empresas-y-derechos-humanos/2016/07/12/comunicado-de-la-sociedad-civil-colombiana-frente-a-la-politica-publica-sobre-derechos-humanos-y-empresa-del-gobierno-de-colombia/>.

⁶⁴³ JESNES “State Duty to Protect,” *supra* note 37.

⁶⁴⁴ COLOMBIAN NAP, *supra* note 15, at 20, pt. 8.1.

⁶⁴⁵ *Id.* at 17, pt. 5.7.

⁶⁴⁶ *Id.*

⁶⁴⁷ *Id.* at 16, pt. 5.2.

⁶⁴⁸ *Id.* at 12, pt. 2.2.

⁶⁴⁹ *Id.* at 7.

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- ⁶⁵⁰ *Los primeros efectos de la justicia especial para la paz*, EL TIEMPO (Mar. 29, 2017) <http://www.eltiempo.com/politica/proceso-de-paz/efectos-de-la-aprobacion-de-la-justicia-especial-para-la-paz-72572>.
- ⁶⁵¹ See Camilo Sánchez & Daniel Marín, *Responsabilidad Corporativa en la Justicia Transicional en Colombia*, in LA PAZ, RESPONSABILIDAD DE TODOS: LA RESPONSABILIDAD CORPORATIVA EN LA JUSTICIA TRANSICIONAL: LECCIONES PARA COLOMBIA (2017) 132–154, <https://www.dejusticia.org/wp-content/uploads/2017/04/Paz-la-responsabilidad-de-todos-final.pdf> (available in English at <https://www.dejusticia.org/en/publication/peace-everyones-business-corporate-accountability-in-transitional-justice-lessons-for-colombia/>).
- ⁶⁵² COLOMBIAN NAP, *supra* note 15, at 6.
- ⁶⁵³ For a definition and discussion of the Block of Constitutionality doctrine in Colombia, see MANUEL EDUARDO GÓNGORA MERA, INTER-AMERICAN JUDICIAL CONSTITUTIONALISM. SAN JOSÉ, COSTA RICA: INTER-AM. INSTITUTE OF HUMAN RIGHTS, 175 (2011).
- ⁶⁵⁴ See, e.g., COLOMBIAN NAP, *supra* note 15, at 11, at pts. 1.4, 1.5, 1.7, 1.8.
- ⁶⁵⁵ *Id.* at 6.
- ⁶⁵⁶ *Id.* at 15, pt. 4.12.
- ⁶⁵⁷ UN Commission on Human Rights, *Human rights and the environment*, U.N. Doc. E/CN.4/RES/1995/14 (Feb. 24, 1995).
- ⁶⁵⁸ L. 99, diciembre 22, 1993, DIARIO OFICIAL [D.O.] No. 41146, <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297>.
- ⁶⁵⁹ COLOMBIAN NAP, *supra* note 15, at 7.
- ⁶⁶⁰ *Id.* at 5, 7.
- ⁶⁶¹ See, e.g., Camila Osorio, *Can Colombia's Displaced Go Home Again?* THE NEW REPUBLIC (May 16, 2016), <https://newrepublic.com/article/133562/can-colombias-displaced-go-home-again>; AMNESTY INTERNATIONAL, COLOMBIA: A LAND TITLE IS NOT ENOUGH: ENSURING SUSTAINABLE LAND RESTITUTION IN COLOMBIA, 75 (2014).
- ⁶⁶² COLOMBIAN NAP, *supra* note 15, at 15, pt. 4.12.
- ⁶⁶³ NAP Progress Report 2017, *supra* note 631, at 13.
- ⁶⁶⁴ *Id.* at 16.
- ⁶⁶⁵ COLOMBIAN NAP, *supra* note 15, at 16, pt. 5.4.
- ⁶⁶⁶ *Id.* at 20, pts. 7.7-7.8.
- ⁶⁶⁷ See Colectivo de Abogados José Alvear Restrepo, *supra* note 626.
- ⁶⁶⁸ COLOMBIAN NAP, *supra* note 15, at 4.
- ⁶⁶⁹ See *id.* at 9, pt. 3.1.
- ⁶⁷⁰ *Id.* at 13. For more references to the UNGPs, see pts. 5.3, 9.5, and 10.2.
- ⁶⁷¹ *Id.* at pts. 2.1, 3.1, 4.12, 5.3, 5.5, 5.6, 5.7, 6.1, 7.5, 8.3, 8.5, 10.2, 10.3, 10.5, 11.1, and 11.3.
- ⁶⁷² *Id.* at 15, pt. 4.7.
- ⁶⁷³ *Id.* at 19, pt. 7.3.
- ⁶⁷⁴ *Id.* at 14, pt. 3.2.
- ⁶⁷⁵ *Id.* at 10-11, pt. 1.3.
- ⁶⁷⁶ *Id.*
- ⁶⁷⁷ *Id.* at 16, pt. 5.2.
- ⁶⁷⁸ *Id.* at 23, pt. 10.2.
- ⁶⁷⁹ *Id.*
- ⁶⁸⁰ *Id.*
- ⁶⁸¹ *Id.*
- ⁶⁸² *Id.* at 7.
- ⁶⁸³ *Id.* at 6.
- ⁶⁸⁴ *Id.*
- ⁶⁸⁵ *Id.*
- ⁶⁸⁶ *Id.* at 7.
- ⁶⁸⁷ *Id.* at 10, pt. 1.3.
- ⁶⁸⁸ *Id.* at 13, pt. 3.1.
- ⁶⁸⁹ See *id.* at 14-15.

⁶⁹⁰ *Id.* at 15, pt. 4.5.

⁶⁹¹ *Id.* pt. 4.11.

⁶⁹² *Id.* at 5.

⁶⁹³ See, e.g., FOREST PEOPLES PROGRAMME, DEFORESTACIÓN, POLÍTICAS NACIONALES Y DERECHOS DE LOS PUEBLOS INDÍGENAS EN LA AMAZONÍA COLOMBIANA (2016); INTERCHURCH JUSTICE AND PEACE COMMISSION, COLOMBIA: BANACOL, A COMPANY IMPLICATED IN PARAMILITARISM, AND LAND GRABBING IN CURVARADÓ AND JIGUAMIANDÓ (2012); PAX, THE DARK SIDE OF COAL: PARAMILITARY VIOLENCE IN THE MINING REGION OF CESAR, COLOMBIA (2014) (Also note Drummond’s response to PAX report in Annex A, threatening to use “any and all legal action available to it” for publishing or distributing this report); RESGUARDO DE CAÑAMOMO Y LOMAPRIETA, FOREST PEOPLES PROGRAMME, & PROCESO DE COMUNIDADES NEGRAS, DIÁLOGOS INTERCULTURALES SOBRE MINERÍA EN COLOMBIA PROPUESTAS DESDE EL RESGUARDO INDÍGENA CAÑAMOMO LOMAPRIETA Y EL PALENQUE ALTO CAUCA (2015). See also, e.g., Emma Rosser, *Drummond Executive Arrested Over Paramilitary Charges*, COLOMBIA REPORTS (May 26, 2015), <http://colombiareports.com/drummond-executive-arrested-over-paramilitary-murder-charges/>; Verdad Abierta, *Lupa a la multinacional Poligrow que opera en Mapiripán, Meta*, VERDAD ABIERTA (Nov. 4, 2015), <http://www.verdadabierta.com/lucha-por-la-tierra/6054-lupa-a-la-multinacional-poligrow-que-opera-en-mapiripan-meta> (highlighting studies on Poligrow, a palm oil producer, and its response); *Poligrow le responde a VerdadAbierta.com*, VERDAD ABIERTA (Nov. 13, 2015), <http://www.verdadabierta.com/desde-regiones/6071-poligrow-le-responde-a-verdadabierta-com>. This includes only some reports and news articles as a sampling of the wide array of available publications. It does not, however, seek to suggest that these are the specific documents that should have been used.

⁶⁹⁴ COLOMBIAN NAP, *supra* note 15, at 7. See also CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, “DE LA VIOLENCIA A LA SOCIEDAD DE LOS DERECHOS” PROPUESTAS PARA LA POLÍTICA DE DERECHOS HUMANOS EN COLOMBIA (2014 – 2034), <http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2014/140801web-Libro-1-propuesta-politica-publica.pdf>; CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, LINEAMIENTOS PARA UNA POLÍTICA PÚBLICA DE DERECHOS HUMANOS Y EMPRESAS (July, 2014), http://www.derechoshumanos.gov.co/Observatorio/Publicaciones/Documents/2014/140724-lineamientos-politica_web.pdf.

⁶⁹⁵ *Así investigan a financiadores del paramilitarismo*, VERDAD ABIERTA (May 7, 2016), <http://www.verdadabierta.com/otros-negocios-criminales/6265-asi-investigacion-a-financiadores-del-paramilitarismo>.

⁶⁹⁶ See generally, COLOMBIAN NAP, *supra* note 15.

⁶⁹⁷ *Id.* at pts. 3.4, 4.1, 4.3.

⁶⁹⁸ *Id.* at 16, pt. 5.2.

⁶⁹⁹ *Id.* at pts. 2.1, 3.1, 4.12, 5.3, 5.5, 5.6, 5.7, 6.1, 7.5, 8.3, 8.5, 10.2, 10.3, 10.5, 11.1, 11.3.

⁷⁰⁰ *Id.* at 25.

⁷⁰¹ *Id.*

⁷⁰² Press Release, Unidad para las Víctimas, Paula Gaviria Betancur, actual director de la Unidad para las Víctimas, será la nueva Alta Consejera de Derechos Humanos de la Presidencia (Apr. 19, 2016), <http://www.unidadvictimas.gov.co/es/paula-gaviria-betancur-actual-directora-de-la-unidad-para-las-victimas-sera-la-nueva-alta-consejera>.

⁷⁰³ COLOMBIAN NAP, *supra* note 15, at 25.

⁷⁰⁴ *Id.*

⁷⁰⁵ *Id.*

⁷⁰⁶ *Id.*

⁷⁰⁷ *Id.*

⁷⁰⁸ *Id.*

⁷⁰⁹ *Id.*

⁷¹⁰ *Id.*

⁷¹¹ *Id.*

⁷¹² CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, <http://www.derechoshumanos.gov.co/lineasestrategicas/empresa/Paginas/default.aspx> (last visited May 16, 2017).

⁷¹³ COLOMBIAN NAP, *supra* note 15, at 25.

⁷¹⁴ *Acuerdo Final Para La Terminación Del Conflicto Y La Construcción De Una Paz Estable Y Duradera* (Apr. 2017), <http://www.altocomisionadopalapaz.gov.co/herramientas/Documents/Acuerdo-Final-AF-web.pdf>, 124. For a

detailed explanation of the Special Jurisdiction for Peace with regard to private actors, see Camilo Sánchez & Daniel Marín, *supra* note 651, at 132 – 154.

⁷¹⁵ UK NAP 2013, *supra* note 8.

⁷¹⁶ *Id.* at section 5.

⁷¹⁷ UK NAP 2016, *supra* note 16.

⁷¹⁸ UK Department for Business, Innovation and Skills & UK Foreign and Commonwealth Office, “Updating the UK National Action Plan on Business and Human Rights: Headline Messages from Workshops Held in w/c 29 June,” BUSINESS AND HUMAN RIGHTS RESOURCE CENTER (2015) *available at* <https://business-humanrights.org/sites/default/files/documents/UK%20National%20Action%20Plan%20-%20feedback%20from%20action%20plan%20update%20workshops%20June-July%202015.pdf> [hereinafter NAP Update Headline Messages].

⁷¹⁹ Baroness Anelay of St. Johns, *UK National Action Plan on Business and Human Rights: May 2016 Update* (May 12, 2016), <https://www.theyworkforyou.com/wms/?id=2016-05-12.HLWS700.h>.

⁷²⁰ *Id.*

⁷²¹ *Id.*

⁷²² UK NAP 2013, *supra* note 8, at section 5.

⁷²³ *Id.*

⁷²⁴ NAP Update Headline Messages, *supra* note 718.

⁷²⁵ *Id.*

⁷²⁶ *Id.*

⁷²⁷ INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE & EUROPEAN COALITION FOR CORPORATE JUSTICE, ASSESSMENTS OF EXISTING NATIONAL ACTION PLANS (NAPs) ON BUSINESS AND HUMAN RIGHTS, NOVEMBER 2015 UPDATE 27 (2015) [hereinafter ICAR-ECCJ 2015 Assessments]; NAP Update Headline Messages, *supra* note 718.

⁷²⁸ *Id.*

⁷²⁹ JESNES “State Duty to Protect,” *supra* note 37.

⁷³⁰ UK NAP 2016, *supra* note 16, at 3.

⁷³¹ UK NAP 2013, *supra* note 8, at section 3.

⁷³² UK NAP 2016, *supra* note 16, at 8.

⁷³³ *Id.* at 13.

⁷³⁴ *Id.* at 17.

⁷³⁵ *Id.* at 16.

⁷³⁶ *Id.* at 8.

⁷³⁷ *Id.*

⁷³⁸ *Id.* at 6.

⁷³⁹ *Id.*

⁷⁴⁰ ICAR-ECCJ 2015 Assessments, *supra* note 727, at 31.

⁷⁴¹ UK NAP 2016, *supra* note 16, at 16-17; 22.

⁷⁴² *Id.* at 7-11.

⁷⁴³ *Id.* at 7.

⁷⁴⁴ *Id.* at 8-9.

⁷⁴⁵ *Id.* at 10.

⁷⁴⁶ *Id.*

⁷⁴⁷ *Id.* at 16.

⁷⁴⁸ ICAR-ECCJ 2015 Assessments, *supra* note 727, at 32.

⁷⁴⁹ UK NAP 2016, *supra* note 16, at 10.

⁷⁵⁰ *Id.* at 11.

⁷⁵¹ *Id.* at 11, 22.

⁷⁵² *Id.* at 2-4.

⁷⁵³ *Id.* at 4.

⁷⁵⁴ *Id.* at 9.

⁷⁵⁵ *Id.* at 10.

⁷⁵⁶ *Id.*

⁷⁵⁷ *Id.* at 16.

⁷⁵⁸ *Id.* at 11.

⁷⁵⁹ *Id.* at 10.

⁷⁶⁰ *Id.* at 11, 22.

⁷⁶¹ UK NAP 2013, *supra* note 8, at section 2.

⁷⁶² UK NAP 2016, *supra* note 16, at 11.

⁷⁶³ NAP Update Headline Messages, *supra* note 718.

⁷⁶⁴ *Submissions: UK Nat'l Action Plan review process (2015)*, BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, <https://business-humanrights.org/en/submissions-uk-natl-action-plan-review-process-2015> (last visited May 11, 2017).

⁷⁶⁵ UK NAP 2016, *supra* note 16, at 24.

⁷⁶⁶ *Id.*

⁷⁶⁷ *Id.*

⁷⁶⁸ *Id.*

⁷⁶⁹ *Id.*

⁷⁷⁰ *Fact sheet: Business and Human Rights: The Italian Case, Analysis of the Normative and Institutional Framework*, PUNTO DI CONTATTO NAZIONALE (Nov. 13, 2013), available for download at <http://pcnitalia.sviluppoeconomico.gov.it/en/news/item/271-business-and-human-rights-the-italian-case> [hereinafter Event Fact Sheet].

⁷⁷¹ ITALIAN MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION, THE FOUNDATIONS OF THE ITALIAN ACTION PLAN ON THE UNITED NATIONAL 'GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS,' (2014), <https://business-humanrights.org/sites/default/files/media/documents/foundations-ungps-nap-italy.pdf> [hereinafter The Foundations].

⁷⁷² Event Fact Sheet, *supra* note 770, at 2; De Felice & Graf, *supra* note 76 at 49.

⁷⁷³ ITALIAN NAP, *supra* note 17, at 2.

⁷⁷⁴ *Id.*

⁷⁷⁵ *Id.* at 5.

⁷⁷⁶ *Id.*

⁷⁷⁷ OPEN CONSULTATION, ITALIAN NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS, CIDU 4 (Jul. 2016), <http://unipd-centrodirittiumani.it/en/news/Italy-online-public-consultation-on-the-National-Action-Plan-on-Business-and-Human-Rights-2016-2021-open-until-10-September/4149> [hereinafter OPEN CONSULTATION].

⁷⁷⁸ *Italy Survey 2015 Forum Response to UN Working Group surveys on implementation of the Guiding Principles*, MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION, INTER-MINISTERIAL COMMITTEE FOR HUMAN RIGHTS (2015), <http://www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx> [hereinafter Italy OHCHR Survey Response].

⁷⁷⁹ ITALIAN NAP, *supra* note 17, at 30.

⁷⁸⁰ The Foundations, *supra*, note 771.

⁷⁸¹ De Felice & Graf, *supra* note 76, at 56.

⁷⁸² *Id.*

⁷⁸³ *Id.*

⁷⁸⁴ ITALIAN NAP, *supra* note 17, at 2.

⁷⁸⁵ OPEN CONSULTATION, *supra* note 777, at 4.

⁷⁸⁶ Italy OHCHR Survey Response, *supra* note 778, at 1.

⁷⁸⁷ ITALIAN NAP, *supra* note 17, at 30.

⁷⁸⁸ Based on the experience of members of the Human Rights International Corner. *Human Rights International Corner*, <http://www.humanrightsic.com/> (last visited June 6, 2017).

⁷⁸⁹ Event Fact Sheet, *supra* note 770, at 2.

⁷⁹⁰ Damiano de Felice, et al., *Imprese e Diritti Umani: Il Caso Italia, Analisi del Quadro Normativo e Delle Politiche di Salvaguardia*, SCUOLA SUPERIORE SANT'ANNA (2013),

www.sviluppoeconomico.gov.it/images/stories/documenti/Imprese_e_diritti_umani_Il%20caso_Italia_FINALE_NOV_2013.pdf [hereinafter BHR: The Italian Case].

⁷⁹¹Event Fact Sheet, *supra* note 770, at 2.

⁷⁹²*Id.*

⁷⁹³De Felice & Graf, *supra* note 772, at 54.

⁷⁹⁴*Id.* at 49.

⁷⁹⁵The Foundations, *supra* note 771.

⁷⁹⁶BHR: The Italian Case, *supra* note 790, at 2.

⁷⁹⁷*Id.* at 6-7.

⁷⁹⁸De Felice & Graf, *supra* note 76, at 49.

⁷⁹⁹Event Fact Sheet, *supra* note 770, at 2.

⁸⁰⁰*Id.* at 9.

⁸⁰¹*Id.*

⁸⁰²JESNES “State Duty to Protect,” *supra* note 37.

⁸⁰³ITALIAN NAP, *supra* note 17, at 7.

⁸⁰⁴*Id.* at 20

⁸⁰⁵*Id.* at 25.

⁸⁰⁶*Id.* at 20.

⁸⁰⁷*Id.* at 23.

⁸⁰⁸*Id.* at 25.

⁸⁰⁹*Id.* at 13.

⁸¹⁰*Id.* at 14.

⁸¹¹*Id.*

⁸¹²*Id.* at 16. The directive was implemented by the Italian government in January 2017.

⁸¹³*Id.* at 19.

⁸¹⁴*Id.* at 9.

⁸¹⁵*Id.* at 17.

⁸¹⁶*Id.* at 22 (emphasis added).

⁸¹⁷*Id.* at 14.

⁸¹⁸*Id.*

⁸¹⁹*See generally, id.* at 15-6, 19-20.

⁸²⁰*Id.* at 22.

⁸²¹*Id.* at 19.

⁸²²*Id.* at 26-27.

⁸²³*Id.* at 26.

⁸²⁴*Id.* at 20.

⁸²⁵*Id.* at 28

⁸²⁶*Id.* at 25.

⁸²⁷*Id.* at 16, 20, 25.

⁸²⁸*Id.* at 16,19

⁸²⁹*Id.* at 20.

⁸³⁰*Id.* at 7, 16.

⁸³¹*Id.* at 16, 19.

⁸³²*Id.* at 6.

⁸³³*Id.* at 5.

⁸³⁴*Id.* at 10-29.

⁸³⁵*Id.* at 9. The NAP also highlights other leading international reporting standards such as the UN Global Compact and the Global Reporting Initiative.

⁸³⁶*Id.* at 30.

⁸³⁷*Id.* at 16.

⁸³⁸*Id.* at 19.

⁸³⁹*Id.* at 22.

⁸⁴⁰*Id.*
⁸⁴¹*Id.* at 25.
⁸⁴²*Id.* at 10, 17.
⁸⁴³*Id.* at 17.
⁸⁴⁴*Id.* at 26.
⁸⁴⁵*Id.* at 7.
⁸⁴⁶*Id.*
⁸⁴⁷*Id.* at 5.
⁸⁴⁸*Id.* at 16.
⁸⁴⁹*Id.* at 20.
⁸⁵⁰*Id.* at 23.
⁸⁵¹BHR: The Italian Case, *supra* note 790; The Foundations, *supra* note 771.
⁸⁵²OPEN CONSULTATION, *supra* note 777.
⁸⁵³ Event Fact Sheet, *supra* note 770; Italy OHCHR Survey Response, *supra* note 778.
⁸⁵⁴ ITALIAN NAP, *supra* note 17, at 22, 24.
⁸⁵⁵*Id.* at 30.
⁸⁵⁶*Id.*
⁸⁵⁷*Id.*
⁸⁵⁸*Id.*
⁸⁵⁹*Id.*
⁸⁶⁰ EINE RUGGIE-STRATEGIE FÜR DIE SCHWEIZ [A Ruggie Strategy for Switzerland], Dec. 13, 2012, Postulate 12.3503 (Switz.).
⁸⁶¹ SWISS NAP, *supra* note 18 at 4.
⁸⁶² *Id.* at 9.
⁸⁶³ *Id.* at 41.
⁸⁶⁴ *Id.*
⁸⁶⁵ *Id.* at 9.
⁸⁶⁶ STRATEGIE RUGGIE. LE PROCESSUS BLOQUE PAR LE SECO [Ruggie Strategy. The Process Blocked by SECO], Dec. 2, 2014, Question 14.5649 (Switz.).
⁸⁶⁷ Graf et al. (2014) *Zusammenfassender Bericht: Stakeholderkonsultationen zum Nationalen Aktionsplan Wirtschaft und Menschenrechte* [“Summary report: stakeholder consultations on the National Action Plan on Business and Human Rights”], SWISSPEACE (2014), http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Newsletter/2014/NL_125_DE.pdf.
⁸⁶⁸ SWISS NAP, *supra* note 18, at 10.
⁸⁶⁹ Based on ECCJ stakeholder interviews.
⁸⁷⁰ *Id.*
⁸⁷¹ *Id.*
⁸⁷² SWISS NAP, *supra* note 18, at 10.
⁸⁷³ *Id.* at 41.
⁸⁷⁴ *Id.*
⁸⁷⁵ *Id.*
⁸⁷⁶ REPORT DATED 9. DECEMBER 2016 ON SWITZERLAND’S STRATEGY FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS IN RESPONSE TO THE PARLIAMENTARY POSTULATE 12.3503, ALEC VON GRAFFENRIED, 14. DECEMBER 2012, THE SWISS COALITION FOR CORPORATE JUSTICE 9-10 (2016) [hereinafter SWISS COALITION REPORT].
⁸⁷⁷ *Id.* at 10.
⁸⁷⁸ *Id.*
⁸⁷⁹ SWISS NAP, *supra* note 18, at 42.
⁸⁸⁰ *Id.* at 7.
⁸⁸¹ JESNES “State Duty to Protect,” *supra* note 37.
⁸⁸² SWISS NAP, *supra* note 18, at 18, 21.
⁸⁸³ *Id.* at 26.
⁸⁸⁴ *Id.* at 24.

⁸⁸⁵ *Id.* at 23.
⁸⁸⁶ *Id.* at 18.
⁸⁸⁷ *Id.* at 14.
⁸⁸⁸ *Id.* at 22.
⁸⁸⁹ *Id.* at 15.
⁸⁹⁰ INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY SERVICE PROVIDERS at 4 (Nov. 9, 2010).
⁸⁹¹ SWISS NAP, *supra* note 18, at 14.
⁸⁹² *Id.*
⁸⁹³ *Id.* at 15.
⁸⁹⁴ *See id.* at 11.
⁸⁹⁵ *Id.*
⁸⁹⁶ *Id.* at 7-9.
⁸⁹⁷ *Id.* at 13.
⁸⁹⁸ *Id.* at 37.
⁸⁹⁹ *Id.* at 38.
⁹⁰⁰ *Id.*
⁹⁰¹ *See, e.g., id.* at 18-20.
⁹⁰² *See, e.g., id.* (highlighting conflict areas in PI 3, 22-23, 25-26; responsible investment in PI 18; and children’s rights in PI 10 and 14).
⁹⁰³ *Id.* at 4.
⁹⁰⁴ *Id.* at 5.
⁹⁰⁵ *Id.* at 19.
⁹⁰⁶ *Id.* at 30.
⁹⁰⁷ *Id.* at 34.
⁹⁰⁸ *Id.* at 20.
⁹⁰⁹ *Id.* at 21.
⁹¹⁰ *Id.* at 18.
⁹¹¹ *Id.* at 25.
⁹¹² *Id.* at 18.
⁹¹³ *Id.*
⁹¹⁴ *Id.*
⁹¹⁵ *Id.*
⁹¹⁶ *Id.* at 41.
⁹¹⁷ *Id.*
⁹¹⁸ *Id.*
⁹¹⁹ *Id.*
⁹²⁰ *Id.*
⁹²¹ *Id.*
⁹²² *Id.* at 42.
⁹²³ *Id.*
⁹²⁴ The White House, Office of the Press Secretary, *Fact Sheet: The U.S. Global Anticorruption Agenda* (Sept. 24, 2014), <https://www.whitehouse.gov/the-press-office/2014/09/24/fact-sheet-us-global-anticorruption-agenda> [hereinafter US NAP Fact Sheet].
⁹²⁵ U.S. NAP, *supra* note 19, at 24.
⁹²⁶ *Id.*
⁹²⁷ *USG National Action Plan on Responsible Business Conduct: Frequently Asked Questions*, HUMANRIGHTS.GOV, <https://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/> (last viewed Dec. 24, 2016) [hereinafter US NAP FAQ].
⁹²⁸ *Id.*
⁹²⁹ *Id.*, Christopher Smart, *Announcement of Opportunity to Provide Input into the U.S. National Action Plan on Responsible Business Conduct*, WHITE HOUSE (Nov. 20, 2014), <https://www.whitehouse.gov/blog/2014/11/20/announcement-opportunity-provide-input-us-national-action-plan->

responsible-business-.

⁹³⁰ *Id.*

⁹³¹ US NAP FAQ, *supra* note 927.

⁹³² *Id.*

⁹³³ U.S. NAP, *supra* note 19 at 24.

⁹³⁴ *Id.*

⁹³⁵ *Id.*

⁹³⁶ *Id.* at 25.

⁹³⁷ US NAP FAQ, *supra* note 927; INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, "SHADOW NATIONAL BASELINE ASSESSMENT (NBA) OF CURRENT IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS FRAMEWORKS, THE UNITED STATES, PILLAR I (2015), <http://icar.ngo/wp-content/uploads/2015/03/ICAR-Shadow-U.S.-NBA-Pillar-I.pdf> [hereinafter US Shadow NBA Pillar I]; INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, "SHADOW NATIONAL BASELINE ASSESSMENT (NBA) OF CURRENT IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS FRAMEWORKS, THE UNITED STATES, PILLAR III (2015), <http://icar.ngo/wp-content/uploads/2015/06/US-NBA-Pillar-3-FINAL.pdf> [hereinafter US Shadow NBA Pillar III].

⁹³⁸ US NAP FAQ, *supra* note 927.

⁹³⁹ JESNES "State Duty to Protect," *supra* note 37.

⁹⁴⁰ U.S. NAP, *supra* note 19 at 19.

⁹⁴¹ *Analytical Framework for Responsible Land-Based Agricultural Investments*, NEW ALLIANCE FOR FOOD SECURITY AND NUTRITION, <https://new-alliance.org/resource/analytical-framework-responsible-land-based-agricultural-investments> (last visited Dec. 24, 2016).

⁹⁴² Sarah A. Altschuller, *U.S. Congress Finally Eliminates the Consumptive Demand Exception*, CORPORATE SOCIAL RESPONSIBILITY AND THE LAW, Feb. 16, 2016, <http://www.csrandthelaw.com/2016/02/16/u-s-congress-finally-eliminates-the-consumptive-demand-exception/>.

⁹⁴³ *Id.*

⁹⁴⁴ U.S. NAP, *supra* note 19 at 9.

⁹⁴⁵ *Id.* at 12.

⁹⁴⁶ *Id.* at 11.

⁹⁴⁷ Hartmann Young & T. Markus Funk, *Significant Questions Remain Regarding Application of Human Trafficking Rules for Federal Contractors*, BLOOMBERG BNA WHITE COLLAR CRIME REPORT (2015), http://www.americanbar.org/content/dam/aba/events/criminal_justice/2015/2015shanghai_HartmannFunkFinal.athcheckdam.pdf.

⁹⁴⁸ *Id.*

⁹⁴⁹ *Id.*

⁹⁵⁰ U.S. NAP, *supra* note 19 at 11.

⁹⁵¹ INTERNATIONAL CODE OF CONDUCT ASSOCIATION, INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY SERVICE PROVIDERS (2010), http://www.icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf.

⁹⁵² U.S. NAP, *supra* note 19 at 18.

⁹⁵³ *Id.* at 20.

⁹⁵⁴ *Id.* at 27.

⁹⁵⁵ *Id.* at 28.

⁹⁵⁶ 31 C.F.R. Parts 1010, 1020, 1023-24, 1026 (2016).

⁹⁵⁷ *Id.* at 1010.230(b)(1).

⁹⁵⁸ U.S. NAP, *supra* note 19 at 9-10, 26-29.

⁹⁵⁹ *Id.* at 28.

⁹⁶⁰ *Id.* at 9.

⁹⁶¹ *Id.*

⁹⁶² *Id.* at 10-11, 19.

⁹⁶³ *Id.* at 4.

⁹⁶⁴ *Id.* at 8.

⁹⁶⁵ *Id.* at 23.

⁹⁶⁶ *Id.* at 10.

⁹⁶⁷ *Id.* at 15.

⁹⁶⁸ *Id.* at 8.
⁹⁶⁹ *Id.* at 16.
⁹⁷⁰ *Id.* at 8.
⁹⁷¹ *Id.*
⁹⁷² *Id.* at 8-10.
⁹⁷³ *Id.* at 11.
⁹⁷⁴ *Id.* at 5.
⁹⁷⁵ *Id.* at 24.
⁹⁷⁶ *Id.* at 8-10, 14, 18-20.
⁹⁷⁷ *Id.* at 9, 11, 15-16, 18-19.
⁹⁷⁸ *Id.* at 10-12, 18-20.
⁹⁷⁹ *Id.* at 9-10, 14, 20.
⁹⁸⁰ *Id.* at 10-11.
⁹⁸¹ US NAP Fact Sheet, *supra* note 924; U.S. NAP, *supra* note 19.
⁹⁸² *Id.* at 8.
⁹⁸³ *Id.* at 18.
⁹⁸⁴ *Id.* at 20.
⁹⁸⁵ *Id.* at 10.
⁹⁸⁶ *Id.* at 5, fn 1.
⁹⁸⁷ *Id.* at 8.
⁹⁸⁸ *Id.* at 8, 19.
⁹⁸⁹ *Id.* at 23.
⁹⁹⁰ *Id.* at 9-10.
⁹⁹¹ *Id.* at 14.
⁹⁹² *Id.* at 18.
⁹⁹³ *Id.* at 22.
⁹⁹⁴ *Id.* at 8.
⁹⁹⁵ *Id.* at 19.
⁹⁹⁶ *Id.* at 14, 21.
⁹⁹⁷ For new commitments, see *id.* at 9-11, 14; for old commitments, see, e.g. *id.* at 11, 15-16, 18, 29-22.
⁹⁹⁸ *Id.* at 11.
⁹⁹⁹ *Id.* at 15.
¹⁰⁰⁰ *Id.* at 16.
¹⁰⁰¹ *Id.* at 18.
¹⁰⁰² *Id.* at 5.
¹⁰⁰³ *Id.* at 19.
¹⁰⁰⁴ *Id.* at 9.
¹⁰⁰⁵ See, INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, GLOBAL BUSINESS INITIATIVE ON HUMAN RIGHTS, HARRISON INSTITUTE FOR PUBLIC LAW AT GEORGETOWN UNIVERSITY LAW CENTER, *Consultation on the U.S. National Action Plan on Responsible Business Conduct* (2015), <http://icar.ngo/wp-content/uploads/2015/07/US-NAP-Consultation-Report-GBI-ICAR-GL-2015.pdf>.
¹⁰⁰⁶ See, International Corporate Accountability Roundtable, *Stakeholder Recommendations*, available at <http://nationalactionplan.us/other-recommendations/>; Business and Human Rights Resource Center, *USA: First Submissions to National Action Plan Consultation*, available at <https://business-humanrights.org/en/usa-first-submissions-to-national-action-plan-consultation>.
¹⁰⁰⁷ US Shadow NBA Pillar I, *supra* note 937; US Shadow NBA Pillar III, *supra* note 937.
¹⁰⁰⁸ See generally, U.S. NAP, *supra* note 19.
¹⁰⁰⁹ *Id.* at 6.
¹⁰¹⁰ *Id.*