

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

INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE (ICAR)  
EUROPEAN COALITION FOR CORPORATE JUSTICE (ECCJ)



# Assessments of Existing National Action Plans (NAPs) on Business and Human Rights

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International Corporate Accountability Roundtable (ICAR)  
European Coalition For Corporate Justice (ECCJ)

## PROJECT PARTNERS

The International Corporate Accountability Roundtable (ICAR) is a coalition of human rights, environmental, labor, and development organizations that creates, promotes, and defends legal frameworks to ensure corporations respect human rights in their global operations.

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

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## INTRODUCTION

### I. INTRODUCTION

#### Background

The UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (UNGPs) in June 2011.<sup>1</sup> The Human Rights Council subsequently called on all Member States in June 2014 to develop National Action Plans (NAPs) to further the implementation of the UNGPs within their respective national contexts.<sup>2</sup> This development followed similar requests to Member States made by the European Union in 2011<sup>3</sup> and 2012<sup>4</sup> and by the Council of Europe in 2014.<sup>5</sup>

Since 2011, however, only four States have developed and published NAPs on business and human rights, including the United Kingdom in September 2013,<sup>6</sup> the Netherlands in December 2013,<sup>7</sup> Denmark in March 2014,<sup>8</sup> and Finland in September 2014.<sup>9</sup> At the same time, however, a number of other governments have begun the process of developing NAPs on business and human rights or have publicly announced an intention to do so.<sup>10</sup> As such, it is essential that the four 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.

This report aims to support the development and further review of NAPs on business and human rights by providing structured assessments of the four existing NAPs. The intention of both ICAR and ECCJ is 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*.<sup>11</sup> The NAPs Checklist lays out a set of 25 criteria that address both the content of NAPs and the process for developing them. A completed NAPs Checklist for each of the countries that have thus far released NAPs on business and human rights—namely, the United Kingdom, the Netherlands, Denmark, and Finland—can be found in the Annex to this report. A cross-assessment of all four NAPs is provided in Section II,

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and assessment summaries for each NAP are outlined in Section III. The order in which the assessments are presented reflect the order in which the four NAPs were published.

In analyzing each existing NAP's fulfillment of the criteria outlined in the NAPs Checklist, ICAR and ECCJ conducted extensive desk-based research, as well as direct consultations with ECCJ member organizations involved in the development of the NAPs in the United Kingdom, the Netherlands, Denmark, and Finland. Drawing from existing research and the experiences of these local civil society groups, the ICAR-ECCJ 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.

## II. CROSS-ASSESSMENT OF EXISTING NAPs

### Introduction

The creation of NAPs on business and human rights by the United Kingdom, the Netherlands, Denmark, and, most recently, Finland is a step toward increased accountability for government action in implementing key business and human rights frameworks, including the UNGPs. Moreover, as the NAPs thus far have all come from European countries, the trend of NAPs development across the region lends a unique opportunity for developing national measures in a coordinated and coherent manner, particularly throughout the European Union, where Member States may be encouraged to take on joint actions as a result of NAPs processes.

As a means of consolidating the information and analysis presented throughout this report, this section provides a cross-assessment on general trends across the four 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 in the drafting processes of the NAPs published so far is that all of the drafting processes included various entities within the government in some way, for example, through the creation of inter-ministerial working groups. Moreover, in each case, the government entity responsible for oversight of the drafting process was clearly identified. Another positive trend is that all of the governments that have published a NAP so far conducted some form of consultations with stakeholders. However, some of the consultations appear to have been more comprehensive and inclusive than others. Additionally, as far as ICAR and ECCJ are aware, the governments that have released NAPs so far did not take steps to facilitate participation in these consultations by disempowered or at-risk stakeholders and, with the exception of the Netherlands, did not conduct a stakeholder mapping. Lack of transparency regarding the drafting process was also an issue across all of the NAPs. Specifically, no government published information about the budget that it had set aside for the NAP drafting process, and there was general lack of public information about the terms of reference and timelines for the drafting processes.

Possibly the most significant weakness in the drafting processes of all four existing NAPs was the consistent failure to conduct national baseline assessments (NBAs) to inform the content of the NAPs. Although some countries, such as the Netherlands and Finland, did conduct an "internal

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mapping” and a background memorandum, respectively, on relevant laws and policies, none of these documents rose to the level of a NBA. This is a key failure that should be remedied 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.

Finally, there were mixed results across the assessments regarding the inclusion of a framework for follow-up on the NAPs. The United Kingdom and Finland both included information about how the implementation of the NAP would be monitored, while the Netherlands and Denmark did not explain what type of monitoring mechanism would be in place. Only the Finnish NAP identified which ministry would be responsible for the implementation of all of the future action points. The Dutch, Danish, and U.K. NAPs, on the other hand, only designated the part of the government responsible for implementation for a select number of the listed future action points, but not for all of them.

### Content

Some generally positive trends in the content of the NAPs published so far include that each one 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.

The most significant weaknesses of the NAPs thus far, in terms of content, is that they all do not sufficiently explore regulatory options to ensure adequate human rights protections nor the issue of access to remedy. The action points that are included in the existing 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. Additionally, the NAPs each tend to focus on one or two of the Pillars of the UNGPs, leaving one or more of the Pillars inadequately addressed. Specifically, while Pillar III has been widely recognized as an essential Pillar of the UNGPs,<sup>12</sup> it is either addressed only very briefly or not at all in the existing NAPs. In addition, with the exception of Finland, there is little or no attention given to the circumstances of vulnerable groups, such as children or indigenous communities.

Finally, the broad trend of the NAPs thus far has been to focus primarily on describing past actions the government has taken, instead of focusing on future action points. With the exception of Finland, all of the NAPs have a very limited number of future action points. However, even the future action points that are included across the existing NAPs are, with very few exceptions, overly vague and do not provide information about concrete steps that the



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respective State will take. This makes it extremely difficult for stakeholders, including agents of the respective State itself, to adequately monitor whether the government has implemented the actions it has committed to taking within the NAP.

### III. ASSESSMENT SUMMARIES

The following assessment summaries provide an overview of the key outcomes and observations gathered through the full assessments of the existing NAPs on business and human rights, namely, from the United Kingdom, the Netherlands, Denmark, and Finland. 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 25 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.

#### A. The United Kingdom

##### 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 2011<sup>13</sup> and launched the document in September 2013.<sup>14</sup> 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.<sup>15</sup>

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 the 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 has committed to do by the end of 2015.<sup>16</sup>

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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)<sup>17</sup> 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 selected 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.

## B. 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.<sup>18</sup> 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.<sup>19</sup> 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

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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.<sup>20</sup> 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, however, 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.<sup>21</sup> 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.

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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,”<sup>22</sup> 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,”<sup>23</sup> the government only expresses an expectation towards companies or trade missions and embassies, not a clear path toward doing so.

## C. 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 CSR<sup>24</sup> 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



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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,"<sup>25</sup> 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

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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.<sup>26</sup> 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.

## D. 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.<sup>27</sup> The Finnish government created a working group to draft the NAP, and the NAP was adopted on September 17, 2014.<sup>28</sup> 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."<sup>29</sup> 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-

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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 statement<sup>30</sup> 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

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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.”<sup>31</sup> 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.

## ANNEX: NATIONAL ACTION PLAN (NAP) ASSESSMENTS

The following assessments of the currently existing NAPs on business and human rights, namely, from the United Kingdom, the Netherlands, Denmark, and Finland, 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*.<sup>32</sup>

### A. The United Kingdom

1. GOVERNANCE AND RESOURCES	COMMENTS
<b>Leadership and Ownership of NAP Process</b>	
<p><b>1.1. Commitment to the NAP process.</b></p>	<p>The UK government announced its intention to create a NAP in 2011.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> The Annual Report on Human Rights and Democracy of the Foreign and Commonwealth Office (FCO) will include a report on progress of the NAP.<sup>37</sup> The UK made an express commitment in the NAP to create a new and updated NAP by the end of 2015.<sup>38</sup> These commitments suggest that the UK is serious about continuing to engage with its NAP over the long-term.</p> <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>

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1. GOVERNANCE AND RESOURCES	COMMENTS
<p><b>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</b></p>	<p>The responsibility for the NAP process was placed in the UK Foreign &amp; Commonwealth Office (FCO), specifically, under its Human Rights and Democracy Department.<sup>39</sup> A steering committee composed of different government ministries was created to guide the process.<sup>40</sup></p>
<p><b>1.3. Ensure an inclusive approach across all areas of government.</b></p>	<p>As noted above, a steering committee composed of different government ministries was created to help coordinate the NAP process.<sup>41</sup></p> <p>Additionally, after the initial draft was complete, it was sent to government agencies for consultation.<sup>42</sup> 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.<sup>43</sup></p>
<p><b>1.4. Devise and publish terms of reference and a timeline for the NAP process.</b></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.<sup>44</sup></p> <p>No timeline was published.</p>
<p><b>Adequate Resourcing</b></p>	
<p><b>1.5. Determine an appropriate budget for the NAP process.</b></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>

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2. STAKEHOLDER Participation	COMMENTS
<b>Effective Participation by All Relevant Stakeholders</b>	
2.1. Conduct and publish a stakeholder mapping.	No stakeholder mapping was conducted.
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	<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.<sup>45</sup> A final meeting was then held, with all categories of stakeholders in attendance.<sup>46</sup></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.<sup>47</sup></p> <p>The timeline/plan for stakeholder participation was not published.</p>
2.3. Provide adequate information and capacity-building where needed.	No capacity-building was provided.
2.4. Facilitate participation by disempowered or at-risk stakeholders.	The UK did not facilitate the participation by disempowered or at-risk stakeholders.
2.5. Consider establishing a stakeholder steering group or advisory committee.	The UK did not establish a multi-stakeholder steering group or advisory committee, only a governmental, inter-departmental steering committee.



3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
<b>The NBA as the Foundation for the NAP</b>	
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. <sup>48</sup>
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
<b>Scope of NAPs</b>	
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 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.<sup>49</sup> 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</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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.<sup>50</sup></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.)<sup>51</sup> 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><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</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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 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.</p> <p>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>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<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> The regulatory mix is unsatisfactory because, while the NAP clearly references existing international legal instruments and national legislation protecting human rights, in terms of actual future actions, its main focus is on voluntary corporate self-regulation. The plan does not create new legal obligations for companies.<sup>52</sup></p>
<p><b>4.2. A NAP should address the full scope of the State’s jurisdiction.</b></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.<sup>53</sup> 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.”<sup>54</sup></p>
<p><b>4.3. A NAP should address international and regional organizations and standards.</b></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).”<sup>55</sup> 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</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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, 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.<sup>56</sup></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><b>4.4. A NAP should address thematic and sector-specific human rights issues.</b></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.<sup>57</sup> 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</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	encourage companies in one sector to work together to create guidance on protecting human rights that is relevant to that sector.
<b>Content of NAPs</b>	
<p><b>4.5. The NAP should include a statement of commitment to the UNGPs.</b></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.<sup>58</sup> Section 2(vii) states that the UK will push other States to implement the UNGPs.<sup>59</sup> The NAP also refers to key international treaties and conventions beyond the UNGPs.</p>
<p><b>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</b></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.<sup>60</sup> 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 2(i)</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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 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</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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><b>Priorities for NAPs</b></p>	
<p><b>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</b></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>
<p><b>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</b></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>



5. TRANSPARENCY	COMMENTS
<b>Full Transparency With All Stakeholders</b>	
<p><b>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</b></p>	<p>No NBA was done, so it was not published. Interdepartmental meetings and debates were not transparent, and discussions were not made public.<sup>61</sup> For example, minutes from the meetings between the government and business or civil society were only circulated confidentially.<sup>62</sup> 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.<sup>63</sup></p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
<b>Holding Duty-Bearers Accountable for Implementation</b>	
<p><b>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</b></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 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</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>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.<sup>64</sup></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.<sup>65</sup></p>
<p><b>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</b></p>	<p>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.</p>

## B. The Netherlands

1. GOVERNANCE AND RESOURCES	COMMENTS
<b>Leadership and Ownership of NAP Process</b>	
<b>1.1. Commitment to the NAP process.</b>	<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.<sup>66</sup> 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.<sup>67</sup></p>
<b>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</b>	<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.<sup>68</sup> The MFA also hired a consultant to conduct the stakeholder interviews that took place prior to the drafting of the NAP.</p>
<b>1.3. Ensure an inclusive approach across all areas of government.</b>	<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.<sup>69</sup> It included representatives from the Ministry of Economic Affairs, Ministry of Finance, Ministry of Security &amp; Justice, and the Ministry of Social Affairs &amp; Employment.<sup>70</sup> Departments from the MFA that were involved were the Legal Department, the Department for Sustainable Economic Growth, the Department for Human Rights, and the Department for Internal Market.<sup>71</sup> 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.<sup>72</sup></p>

1. GOVERNANCE AND RESOURCES	COMMENTS
<p><b>1.4. Devise and publish terms of reference and a timeline for the NAP process.</b></p>	<p>An overall timeline and terms of reference for the entire NAP process were never made publicly available.<sup>73</sup></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.<sup>74</sup> The terms of reference indicated that the consultant was hired for a fixed-term assignment.<sup>75</sup></p> <p>The timeline and terms of reference for the remainder of the NAP development process remained unclear throughout the process.<sup>76</sup> If such information was developed, it was never shared publicly or with interview participants.<sup>77</sup></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.<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup></p> <p>During the drafting of the NAP, one consultation was conducted with each stakeholder group (i.e. business, civil society/academia, and “implementing organizations”).<sup>81</sup></p>
<b>Adequate Resourcing</b>	
<p><b>1.5. Determine an appropriate budget for the NAP process.</b></p>	<p>Unknown.</p>

2. STAKEHOLDER Participation	COMMENTS
<b>Effective Participation by All Relevant Stakeholders</b>	
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. <sup>82</sup>
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	<p>See 1.4. above.</p> <p>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 open and honest as possible, an external consultant conducted the interviews.<sup>83</sup> 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.<sup>84</sup></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.<sup>85</sup></p>
2.3. Provide adequate information and capacity-building where needed.	No capacity-building measures were included in the NAP process. <sup>86</sup> Relatively well-informed stakeholders were part of the stakeholder interview process. <sup>87</sup> Although the number of consultation participants was significantly limited, those who did participate were well-equipped to do so. <sup>88</sup>

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2. STAKEHOLDER Participation	COMMENTS
2.4. Facilitate participation by disempowered or at-risk stakeholders.	Participation by disempowered or at-risk stakeholders was not prioritized nor facilitated during the NAP process. <sup>89</sup>
2.5. Consider establishing a stakeholder steering group or advisory committee.	The Netherlands did not establish a multi-stakeholder steering group or advisory committee, only a governmental, inter-ministerial working group. <sup>90</sup>

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. <sup>91</sup>
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. <sup>92</sup>
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable. The “internal mapping” did not involve external stakeholders. <sup>93</sup>
3.4. Publish and disseminate the NBA.	Not applicable. The “internal mapping” was not published. <sup>94</sup>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<b>Scope of NAPs</b>	
<p><b>4.1. A NAP should address the full scope of the UNGPs.</b></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.<sup>95</sup></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 addressed as the actions listed primarily look into non-judicial grievance mechanisms, rather than judicial reforms.<sup>96</sup> 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</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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.)<sup>97</sup> 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, 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.<sup>98</sup> 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.”<sup>99</sup> 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</p>



4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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.<sup>100</sup></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.<sup>101</sup> 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 removing obstacles to due diligence identified by companies.<sup>102</sup></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.<sup>103</sup> 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.<sup>104</sup> The government also stressed that the CSR agreements that it enters into with different sectors will emphasize transparency and stakeholder dialogue.<sup>105</sup></p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<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.<sup>106</sup> This would potentially apply to 600 Dutch companies.<sup>107</sup> 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.<sup>108</sup> 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 transparency initiatives.”<sup>109</sup></p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u>            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).<sup>110</sup> 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>            Although the government commits to analyzing the current regulatory mix in the Netherlands (Clarifying due diligence: bullet point five),<sup>111</sup> 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.<sup>112</sup> The main emphasis of the Dutch NAP is on awareness raising and capacity building, it does not include legislative or</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	enforcement measures. Therefore, the regulatory mix is unsatisfactory.
<p><b>4.2. A NAP should address the full scope of the State’s jurisdiction.</b></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.”<sup>113</sup> 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.”<sup>114</sup> 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.<sup>115</sup></p>
<p><b>4.3. A NAP should address international and regional organizations and standards.</b></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.<sup>116</sup> 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.<sup>117</sup> The NAP mentions that both civil society and the business community brought up that the Dutch should use multilateral forums to push for the implementation of the UNGPs more often.<sup>118</sup></p> <p>There are two action points that refer to international and regional organizations and</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	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. <sup>119</sup>
<p><b>4.4. A NAP should address thematic and sector-specific human rights issues.</b></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.<sup>120</sup> 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.<sup>121</sup></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.<sup>122</sup> 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 the NCP assesses CSR issues for a particular sector.<sup>123</sup></p>
<b>Content of NAPs</b>	
<p><b>4.5. The NAP should include a statement of commitment to the UNGPs.</b></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>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p><b>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</b></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.”<sup>124</sup> In the body of the report, it says this would be for civil servants at the international level as well.<sup>125</sup> 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</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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. 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.<sup>126</sup> However, one of its limitations is that the NCP cannot initiate these investigations on its own but rather must be requested by the Cabinet.<sup>127</sup></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,</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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> <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</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	three, and Transparency and reporting: bullet point one.
<b>Priorities for NAPs</b>	
<p><b>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</b></p>	<p>The NAP does not appear to prioritize any human rights abuses above others.</p>
<p><b>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</b></p>	<p>There is no mention of vulnerable and excluded groups in the Dutch NAP.</p>



5. TRANSPARENCY	COMMENTS
<b>Full Transparency With All Stakeholders</b>	
<p><b>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</b></p>	<p>No NBA was conducted, and the “internal mapping” was not made public. The summaries of consultations were not made publically available.<sup>128</sup></p>
6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
<b>Holding Duty-Bearers Accountable for Implementation</b>	
<p><b>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</b></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 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.<sup>129</sup></p>
<p><b>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</b></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.<sup>130</sup> However, there is no commitment in the NAP itself for updating the document or writing a new NAP in the future.<sup>131</sup></p>

## C. Denmark

1. GOVERNANCE AND RESOURCES	COMMENTS
<b>Leadership and Ownership of NAP Process</b>	
1.1. Commitment to the NAP process.	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.
1.2. Ensure responsibility for the NAP process is clearly established and communicated.	The Ministry for Business and Growth and the Ministry of Foreign Affairs were responsible for the NAP process. <sup>132</sup>
1.3. Ensure an inclusive approach across all areas of government.	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. <sup>133</sup>
1.4. Devise and publish terms of reference and a timeline for the NAP process.	No terms of reference or a timeline for the NAP process were devised or published. <sup>134</sup>
<b>Adequate Resourcing</b>	
1.5. Determine an appropriate budget for the NAP process.	No budget for the NAP process was determined. <sup>135</sup>

2. STAKEHOLDER Participation	COMMENTS
<b>Effective Participation by All Relevant Stakeholders</b>	
2.1. Conduct and publish a stakeholder mapping.	No stakeholder mapping was conducted. <sup>136</sup>
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,<sup>137</sup> the Mediations and Complaints-Handling Institution for Responsible Business Conduct, and the Danish Institute for Human Rights (DIHR).<sup>138</sup> 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.<sup>139</sup> Additionally, the process was not clearly and publicly communicated.<sup>140</sup></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 NAP.<sup>141</sup></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>
2.3. Provide adequate information and capacity-building where needed.	<p>No adequate information and capacity building were provided.<sup>142</sup></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>

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2. STAKEHOLDER Participation	COMMENTS
<p><b>2.4. Facilitate participation by disempowered or at-risk stakeholders.</b></p>	<p>No participation by disempowered or at-risk stakeholders was facilitated.<sup>143</sup></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. Again, for a follow-up action plan, Denmark might consider coordinating such a consultation process with other states such as the Nordic Countries in order to minimize effort.</p>
<p><b>2.5. Consider establishing a stakeholder steering group or advisory committee.</b></p>	<p>The Danish Council for CSR could be considered a stakeholder steering group/advisory committee.<sup>144</sup> The Council for CSR provided recommendations under each Pillar of the UNGPs. These recommendations were to a large extent included in the BHR NAP.<sup>145</sup></p>

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
<p>The NBA as the Foundation for the NAP</p>	
<p><b>3.1. Undertake a NBA as the first step in the NAP process.</b></p>	<p>No NBA was conducted.<sup>146</sup> However, there was a high-level “table” that included key observations and recommendations for each GP.<sup>147</sup></p>
<p><b>3.2. Allocate the task of developing the NBA to an appropriate body.</b></p>	<p>Not applicable. However, the “table” mentioned in 3.1. was developed by the Danish Business Authority.<sup>148</sup></p>
<p><b>3.3. Fully involve stakeholders in the development of the NBA.</b></p>	<p>Not applicable. However, DIHR was able to provide comments to the “table” referred to in 3.1.<sup>149</sup></p>
<p><b>3.4. Publish and disseminate the NBA.</b></p>	<p>Not applicable. The “table” referred to in 3.1. was not published.<sup>150</sup></p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p><b>4.1. A NAP should address the full scope of the UNGPs.</b></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.<sup>151</sup> 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.<sup>152</sup> 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.<sup>153</sup> Annex 1 also explains which UNGP each planned action is meant to implement.<sup>154</sup></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).<sup>155</sup> 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>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p><u>(1) Positive and Negative Incentives for Due Diligence</u>            There is no mention of due diligence in the “Planned Actions” section.<sup>156</sup></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.<sup>157</sup> Part of the evaluation conducted by the judges includes looking at whether a company reports on human rights impacts.<sup>158</sup> However, this is not a government initiative as the trade organization is a private association composed of member firms and individuals.<sup>159</sup></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.<sup>160</sup> 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”<sup>161</sup> 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 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>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<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>            There is no mention of due diligence disclosure in the “Planned Actions” section.<sup>162</sup></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 climate.<sup>163</sup> 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.<sup>164</sup> 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>            There is no mention of due diligence as the basis for compliance with a legal rule in the “Planned Actions” section.<sup>165</sup></p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<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.<sup>166</sup> 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> <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.<sup>167</sup> 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.<sup>168</sup> 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.<sup>169</sup></p>



4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<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 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><b>4.2. A NAP should address the full scope of the State’s jurisdiction.</b></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.”<sup>170</sup></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.,</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>NGOs) for actions that allegedly violate the OECD Guidelines for Multinational Enterprises, both abroad and in Denmark.<sup>171</sup> 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 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.<sup>172</sup> 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.<sup>173</sup> 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.<sup>174</sup> In addition, very few companies report on their due diligence processes. The Danish government should therefore seriously consider strengthening the reporting</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>requirement on CSR for all large Danish companies 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.<sup>175</sup> 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.<sup>176</sup></p>
<p><b>4.3. A NAP should address international and regional organizations and standards.</b></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,<sup>177</sup> as well as the fact that Denmark is part of the Group of Friends of Paragraph 47.<sup>178</sup> 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 Global Compact.<sup>179</sup> 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.<sup>180</sup></p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<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.<sup>181</sup></p>
<p><b>4.4. A NAP should address thematic and sector-specific human rights issues.</b></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.<sup>182</sup> Additionally, the NAP mentions the Partnership for Responsible Garments Production in Bangladesh that the Danish government is a part of.<sup>183</sup> 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.<sup>184</sup></p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<b>Content of NAPs</b>	
<p><b>4.5. The NAP should include a statement of commitment to the UNGPs.</b></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 Global Combat [sic] and the UN Guiding Principles on Business and Human Rights.”<sup>185</sup> 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.<sup>186</sup> The NAP also notes that the Danish government began to implement the UNGPs in 2012 when it published its CSR NAP.<sup>187</sup> 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.<sup>188</sup> 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.<sup>189</sup></p>
<p><b>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</b></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,”<sup>190</sup> while in the main body of the NAP it says “they include practical guidance on how to demonstrate due diligence.”<sup>191</sup> 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 the NAP, it says that this has already been completed through an amendment to Section 99a of the</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Danish Financial Statements Act.<sup>192</sup> 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.<sup>193</sup> 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 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.<sup>194</sup> Whether or not this happens will be easy to measure/monitor, as either the government will succeed in changing the law or it will</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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”),<sup>195</sup> 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><b>Priorities for NAPs</b></p>	
<p><b>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</b></p>	<p>There does not appear to be any prioritization of particular business-related human rights abuses.</p>
<p><b>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</b></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 “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.”<sup>196</sup></p> <p>The need for particular attention within NAPs to groups such as indigenous peoples has</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	also been highlighted in the report of the UN Working Group on Business and Human Rights to the UN General Assembly. <sup>197</sup>

5. TRANSPARENCY	COMMENTS
<b>Full Transparency With All Stakeholders</b>	
<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.<sup>198</sup></p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
<b>Holding Duty-Bearers Accountable for Implementation</b>	
<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.<sup>199</sup> 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.<sup>200</sup> 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.<sup>201</sup></p>



6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<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.”<sup>202</sup></p>
<p><b>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</b></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.”<sup>203</sup> 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 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.<sup>204</sup></p>

## D. Finland

1. GOVERNANCE AND RESOURCES	COMMENTS
<b>Leadership and Ownership of NAP Process</b>	
<b>1.1. Commitment to the NAP process.</b>	<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.<sup>205</sup> On September 17, 2014, the Finnish Government adopted the Working Group's (discussed further in 1.3) proposed plan on implementation of the UNGPs.<sup>206</sup> The fact that Finland has a plan for monitoring implementation of the NAP, with yearly monitoring by the Committee for Corporate Social Responsibility<sup>207</sup> 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."<sup>208</sup> 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>
<b>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</b>	<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>
<b>1.3. Ensure an inclusive approach across all areas of government.</b>	<p>The Ministry of Employment and Economy created an inter-ministerial working group.<sup>209</sup> 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.<sup>210</sup> 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.<sup>211</sup> The other ministries that were part of the working group were:</p>

1. GOVERNANCE AND RESOURCES	COMMENTS
	<ul style="list-style-type: none"> <li>• <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.</li> <li>• <u>The Ministry of Education and Culture</u>: Counsellor for Cultural Affairs Marjo Mäenpää.</li> <li>• <u>The Ministry of Agriculture and Forestry</u>: Government Counsellor Timo Tolvi.</li> <li>• <u>The Ministry of Justice</u>: Ministerial Advisor Kaisa Tiusanen, and from October 31, 2013 Ministerial Advisor Camilla Busck-Nielsen.</li> <li>• <u>The Ministry of Transport and Communication</u>: Government Counsellor Kaiser Leena Välipirtti.</li> <li>• <u>The Ministry of Finance</u>: Ministerial Advisor Taina Eckstein.</li> <li>• <u>The Ministry of Social Affairs and Health</u>: Senior Officer Ismo Suksi and Senior Officer Piia Mattila.</li> <li>• <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.</li> <li>• <u>The Ministry of the Interior</u>: Program Coordinator Krista Nuutinen.<sup>212</sup></li> </ul> <p>The result of the Working Group's activities is Finland's National Action Plan on implementation of the UNGPs.</p>
<p><b>1.4. Devise and publish terms of reference and a timeline for the NAP process.</b></p>	<p>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.<sup>213</sup> 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</p>

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1. GOVERNANCE AND RESOURCES	COMMENTS
	published. <sup>214</sup> The NAP was ultimately approved during an informal meeting of the ministers. <sup>215</sup>
<b>Adequate Resourcing</b>	
1.5. Determine an appropriate budget for the NAP process.	No budget was made public. <sup>216</sup>

2. STAKEHOLDER Participation	COMMENTS
<b>Effective Participation by All Relevant Stakeholders</b>	
2.1. Conduct and publish a stakeholder mapping.	Unknown. <sup>217</sup>
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	The Working Group consulted with stakeholders during two public consultations. <sup>218</sup> Tens of NGOs and companies were invited to these stakeholder hearings. <sup>219</sup> The dates of these consultations were published. <sup>220</sup> The Working Group also accepted comments in writing. <sup>221</sup>
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. <sup>222</sup> 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.

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2. STAKEHOLDER Participation	COMMENTS
<p><b>2.4. Facilitate participation by disempowered or at-risk stakeholders.</b></p>	<p>All organizations, ministries, and companies at the consultations were Finnish.<sup>223</sup> It is unclear whether the government directly heard from disempowered stakeholders such as migrants, indigenous peoples residing in northern Finland, or other minorities.<sup>224</sup> 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 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.<sup>225</sup></p>
<p><b>2.5. Consider establishing a stakeholder steering group or advisory committee.</b></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.<sup>226</sup> This steering group was involved in the NAP drafting process.<sup>227</sup> No new stakeholder steering committee was created.<sup>228</sup></p>
3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
<p>The NBA as the Foundation for the NAP</p>	
<p><b>3.1. Undertake a NBA as the first step in the NAP process.</b></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.<sup>229</sup> 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</p>

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3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>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><b>3.2. Allocate the task of developing the NBA to an appropriate body.</b></p>	<p>Not applicable. However, various ministries were involved in development of the background memorandum.</p>
<p><b>3.3. Fully involve stakeholders in the development of the NBA.</b></p>	<p>Not applicable. No non-governmental stakeholders were involved in the development of the background memorandum.</p>
<p><b>3.4. Publish and disseminate the NBA.</b></p>	<p>The background memorandum was made publically available.</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>Scope of NAPs</p>	
<p><b>4.1. A NAP should address the full scope of the UNGPs.</b></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</p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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).<sup>230</sup> 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 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.<sup>231</sup> 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.”<sup>232</sup></p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>The NAP also commits the State to “actively participate in the discussion of the proposal for a regulation on conflict minerals.”<sup>233</sup> The proposal the NAP is referring to is a proposal by the European Commission to create “a due diligence system for the union.”<sup>234</sup></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 published in the informal meeting of the ministers. It has not been translated in to English.<sup>235</sup></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.<sup>236</sup> These reports must include information on human rights.<sup>237</sup> However, it is unclear from the NAP whether they must report on due diligence activities.<sup>238</sup></p> <p>The NAP discusses the European Commission directive<sup>239</sup> 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.<sup>240</sup> 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.<sup>241</sup> The NAP says that Finland will start to prepare to implement this proposal.<sup>242</sup></p> <p>In terms of new commitments, the NAP commits to making human rights the theme of the annual CSR reporting competition, mentioned earlier.<sup>243</sup> This improvement to the</p>



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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>competition could incentivize disclosure of any due diligence activities that a company already conducts regarding human rights.<sup>244</sup></p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u>            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.”<sup>245</sup> 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.<sup>246</sup></p> <p><u>(4) Regulatory Mix</u>            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.”<sup>247</sup></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.<sup>248</sup> 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 implementation through international organizations.<sup>249</sup> In its separate statement, the government concertized the scope of the legislative survey,</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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.<sup>250</sup> 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.<sup>251</sup> 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.<sup>252</sup> 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.<sup>253</sup> 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.<sup>254</sup> 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 branch of activity and on promoting the dissemination of due diligence best practices.<sup>255</sup></p> <p>Finally, the NAP commits to providing additional training, especially to small and medium enterprises (SMEs), on business and human rights issues.<sup>256</sup></p>

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4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p><b>4.2. A NAP should address the full scope of the State’s jurisdiction.</b></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.<sup>257</sup> 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.”<sup>258</sup> 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.”<sup>259</sup></p>
<p><b>4.3. A NAP should address international and regional organizations and standards.</b></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.<sup>260</sup> For example, Finland commits to “support and participate in the update of the OECD Policy Framework for Investment.”<sup>261</sup> Sub-section 1.3 discusses “activities in the EU,” 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.<sup>262</sup></p>
<p><b>4.4. A NAP should address thematic and sector-specific human rights issues.</b></p>	<p>The NAP does address thematic and sector-specific human rights issues. It touches on children’s rights,<sup>263</sup> the rights of indigenous persons,<sup>264</sup> extractive activities,<sup>265</sup> issues related to trade,<sup>266</sup> labor rights,<sup>267</sup> communication technology,<sup>268</sup> the right to privacy,<sup>269</sup> and government procurement.<sup>270</sup></p> <p>For example, one follow-up action commits Finland to translating the UN Committee</p>

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	<p>on the Rights of the Child General Comment No. 16 into Finnish and Swedish and to distributing it to various entities.<sup>271</sup> Finland also commits to creating a roundtable discussion on the right to privacy, including the State, civil society, and ICT companies.<sup>272</sup></p>
<b>Content of NAPs</b>	
<p><b>4.5. The NAP should include a statement of commitment to the UNGPs.</b></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.”<sup>273</sup></p>
<p><b>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</b></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.<sup>274</sup> This is adequately specific</p>

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	<p>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 measureable 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 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.<sup>275</sup> 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.<sup>276</sup> 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</p>

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	<p>the following:</p> <p>Finland commits to maintaining a “regular dialogue” on the UN principles, the OECD guidelines, and others with public financial institutions.<sup>277</sup> Although this dialogue would be positive, and although the action point identifies the general participants<sup>278</sup> in this dialogue, it could have been more specific. For example, it 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.”<sup>279</sup> 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.”<sup>280</sup> 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</p>

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	<p>the guiding principles may be given to the states examined.” This appears merely to be a statement about what the UN Human Rights 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>
<b>Priorities for NAPs</b>	
<p><b>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</b></p>	<p>The NAP does not appear to prioritize any human rights abuses over others.</p>
<p><b>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</b></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 forward in the World Conference on Indigenous Peoples in autumn 2014.”<sup>281</sup></p> <p>In a separate follow-up action listed on page 15, Finland commits to including</p>

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	<p>information to the UN Committee on the Rights of the Child regarding Finland’s implementation of the Committee’s recommendation about Business.<sup>282</sup> 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.<sup>283</sup></p>

5. TRANSPARENCY	COMMENTS
<b>Full Transparency With All Stakeholders</b>	
<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>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
<b>Holding Duty-Bearers Accountable for Implementation</b>	
<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.”<sup>284</sup> 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</p>



6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>ministry as “continuous.”<sup>285</sup> 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.<sup>286</sup></p>
<p><b>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</b></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.”<sup>287</sup> Each year the NAP’s implementation will be monitored by the Committee for Corporate Social Responsibility.<sup>288</sup> Additionally, the individual ministries will “monitor the progress of proposals in their respective areas of responsibility.”<sup>289</sup> 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>

## ENDNOTES

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- <sup>1</sup> 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].
- <sup>2</sup> 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>.
- <sup>3</sup> 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>.
- <sup>4</sup> European Parliament, Committee on Foreign Affairs, Report on the Review of the EU's Human Rights Strategy, EUR. PARL. DOC. A7-0378/2012 (November 19, 2012), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2012-0378+0+DOC+PDF+V0//EN>.
- <sup>5</sup> 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>.
- <sup>6</sup> 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf) [hereinafter UK NAP].
- <sup>7</sup> 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].
- <sup>8</sup> 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](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf) [hereinafter DANISH NAP].
- <sup>9</sup> 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](http://www.tem.fi/files/41214/TEMjul_46_2014_web_EN_21102014.pdf) [hereinafter FINNISH NAP].
- <sup>10</sup> Such States include, but are not limited to, Belgium, Chile, Colombia, France, Germany, Ghana, Ireland, Italy, Mozambique, Norway, Scotland, Spain, Switzerland, Tanzania, and the United States.
- <sup>11</sup> 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/>.
- <sup>12</sup> For example, the UN Working Group on Business and Human Rights, in its report to the UN General Assembly in 2014, "stresse[d] the need to put particular emphasis on the third pillar of the Guiding Principles in national action plans." Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. A/69/263 (2014), available at <http://business-humanrights.org/sites/default/files/documents/unwg-report-naps-oct-2014.pdf>.
- <sup>13</sup> CORPORATE RESPONSIBILITY COALITION (CORE), GOOD BUSINESS? ANALYSIS OF THE UK GOVERNMENT ACTION PLAN ON BUSINESS & HUMAN RIGHTS 2 (2013), available at

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[http://www.corporatejustice.org/IMG/pdf/goodbusiness\\_corecommentonuknap\\_final\\_dec2013-1.pdf](http://www.corporatejustice.org/IMG/pdf/goodbusiness_corecommentonuknap_final_dec2013-1.pdf) [hereinafter CORE].

<sup>14</sup> UK NAP, *supra* note 6.

<sup>15</sup> 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).

<sup>16</sup> *Id.* at 19.

<sup>17</sup> An NBA is a study conducted at the start of an intervention to analyze current conditions.

<sup>18</sup> DUTCH NAP, *supra* note 7, at 6.

<sup>19</sup> DUTCH NAP, *supra* note 7, at 6; based on the experience of SOMO and the CSR Platform.

<sup>20</sup> *Id.* at 20.

<sup>21</sup> 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).

<sup>22</sup> DUTCH NAP, *supra* note 7, at 10.

<sup>23</sup> *Id.* at 15.

<sup>24</sup> The CSR Council represents local municipalities, NGOs, business, trade unions, and financial organizations. DANISH NAP, *supra* note 8, at 9.

<sup>25</sup> *Id.* at 22.

<sup>26</sup> 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.

<sup>27</sup> FINNISH NAP, *supra* note 9, at 7-8.

<sup>28</sup> *Id.*

<sup>29</sup> FINNISH NAP, *supra* note 9, at 7-8.

<sup>30</sup> 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).

<sup>31</sup> *Id.* at 15.

<sup>32</sup> DANISH INST. FOR HUMAN RIGHTS & INT’L CORPORATE ACCOUNTABILITY ROUNDTABLE, *supra* note 11, at 149-53.

<sup>33</sup> CORE, *supra* note 13, at 2.

<sup>34</sup> UK NAP, *supra* note 6, at 19.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> 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).

<sup>40</sup> *Id.*

<sup>41</sup> 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

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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](http://hrlc.org.au/wp-content/uploads/2014/04/National_Action_Plan_on_Business_and_Human_Rights_backgroundpaper_2014.pdf).

<sup>42</sup> 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](http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_4_2013.pdf).

<sup>43</sup> *Id.*

<sup>44</sup> Damiano De Felice & Andreas Graf, *The Potential of National Action Plans to Implement the United Nations Guiding Principles on Business and Human Rights: An Early Assessment*, *Journal of Human Rights Practice*, Volume 7, Issue 1 (forthcoming).

<sup>45</sup> BORDIGNON, *supra* note 39, at 12.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> CORE, *supra* note 13, at 4.

<sup>51</sup> Jesnes, *supra* note 21.

<sup>52</sup> *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>.

<sup>53</sup> CORE, *supra* note 13, at 9-10.

<sup>54</sup> *Id.* at 9.

<sup>55</sup> UK NAP, *supra* note 6, at 10.

<sup>56</sup> *Id.* at 11-12.

<sup>57</sup> *Id.* at 11.

<sup>58</sup> De Felice & Graf, *supra* note 44.

<sup>59</sup> UK NAP, *supra* note 6, at 12.

<sup>60</sup> CORE, *supra* note 13, at 5.

<sup>61</sup> De Felice & Graf, *supra* note 44.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> CORE, *supra* note 13, at 4.

<sup>65</sup> De Felice & Graf, *supra* note 44.

<sup>66</sup> Janneke Faber, Multilateral Organisations and Human Rights Department, Netherlands, Presentation at the 7<sup>th</sup> 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](http://www.ohchr.org/documents/issues/business/nationalplans/jannekefaber_statement.pdf).

<sup>67</sup> DUTCH NAP, *supra* note 7.

<sup>68</sup> *Id.* at 6.

<sup>69</sup> Faber, *supra* note 66.

<sup>70</sup> DUTCH NAP, *supra* note 7, at 6.

<sup>71</sup> Faber, *supra* note 66.

<sup>72</sup> *Id.*

<sup>73</sup> Based on the experience of SOMO and the CSR Platform.

<sup>74</sup> *Id.*

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> DUTCH NAP, *supra* note 7, at 13.

<sup>84</sup> Faber, *supra* note 66, at 2.

<sup>85</sup> Based on the experience of SOMO and the CSR Platform.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See DUTCH NAP, *supra* note 7, at 6 (inter-ministerial group compared current policy with the UNGPs).

<sup>92</sup> *Id.* at 6.

<sup>93</sup> Based on the experience of SOMO and the CSR Platform.

<sup>94</sup> *Id.*

<sup>95</sup> 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>.

<sup>96</sup> It does commit to holding a conference where the topics of judicial and non-judicial grievance mechanisms will be discussed. DUTCH NAP, *supra* note 7, at 42.

<sup>97</sup> Jesnes, *supra* note 21.

<sup>98</sup> DUTCH NAP, *supra* note 7, at 41.

<sup>99</sup> *Id.* at 41.

<sup>100</sup> *Id.* at 23.

<sup>101</sup> *Id.* at 25.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 42.

<sup>104</sup> *Id.* at 28.

<sup>105</sup> *Id.* at 29.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* (the transparency benchmark would be extended to the 600 largest Dutch companies under the European Commission’s proposal).

<sup>109</sup> MVO Platform, *supra* note 95.

<sup>110</sup> DUTCH NAP, *supra* note 7, at 41.

<sup>111</sup> *Id.* at 41.

<sup>112</sup> See *id.* at 41-42.

<sup>113</sup> *Id.* at 5.

<sup>114</sup> *Id.* at 39.

<sup>115</sup> NETH. INST. FOR HUMAN RIGHTS, *ADVICE: RESPONSE TO THE NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS “KNOWING AND SHOWING”* 6 (2014).

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- <sup>116</sup> DUTCH NAP, *supra* note 7, at 15.
- <sup>117</sup> *Id.* at 19.
- <sup>118</sup> *Id.* at 18.
- <sup>119</sup> *Id.* at 41-42.
- <sup>120</sup> *Id.* at 24.
- <sup>121</sup> Based on the experience of SOMO and the CSR Platform.
- <sup>122</sup> DUTCH NAP, *supra* note 7, at 42, 34-35.
- <sup>123</sup> *Id.* at 42.
- <sup>124</sup> *Id.* at 41.
- <sup>125</sup> *Id.* at 17.
- <sup>126</sup> 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).
- <sup>127</sup> See *id.*
- <sup>128</sup> Based on the experience of SOMO and the CSR Platform.
- <sup>129</sup> See DUTCH NAP, *supra* note 7, at 41-42.
- <sup>130</sup> See, e.g., MVO Platform, *supra* note 95.
- <sup>131</sup> NETH. INST. FOR HUMAN RIGHTS, *supra* note 115, at 13.
- <sup>132</sup> Based on civil society and NHRI research and participation in the NAP development process.
- <sup>133</sup> *Id.*
- <sup>134</sup> *Id.*
- <sup>135</sup> *Id.*
- <sup>136</sup> *Id.*
- <sup>137</sup> 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.
- <sup>138</sup> Based on civil society and NHRI research and participation in the NAP development process.
- <sup>139</sup> *Id.*
- <sup>140</sup> *Id.*
- <sup>141</sup> DANISH NAP, *supra* note 8.
- <sup>142</sup> Based on civil society and NHRI research and participation in the NAP development process.
- <sup>143</sup> *Id.*
- <sup>144</sup> *Id.*
- <sup>145</sup> *Id.*
- <sup>146</sup> *Id.*
- <sup>147</sup> *Id.*
- <sup>148</sup> *Id.*
- <sup>149</sup> *Id.*
- <sup>150</sup> *Id.*
- <sup>151</sup> DANISH NAP, *supra* note 8, 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.
- <sup>152</sup> *Id.* at 24, 34.
- <sup>153</sup> *Id.* at 9, 24, 34.
- <sup>154</sup> *Id.* at 24.

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- <sup>155</sup> Jesnes, *supra* note 21.
- <sup>156</sup> See DANISH NAP, *supra* note 8, at 16.
- <sup>157</sup> *Id.* at 18.
- <sup>158</sup> *Id.*
- <sup>159</sup> Presentation of FSR – Danish Auditors, <http://www.fsr.dk/Om%20os/English>.
- <sup>160</sup> See DANISH NAP, *supra* note 8, at 12.
- <sup>161</sup> Danish Business Partnerships, <http://amg.um.dk/en/technical-guidelines/danida-business-partnerships/>.
- <sup>162</sup> See DANISH NAP, *supra* note 8, at 16.
- <sup>163</sup> *Id.* at 18.
- <sup>164</sup> Based on civil society and NHRI research and participation in the NAP development process.
- <sup>165</sup> See DANISH NAP, *supra* note 8, at 16.
- <sup>166</sup> See *id.* at 18
- <sup>167</sup> *Id.* at 12.
- <sup>168</sup> *Id.* at 16.
- <sup>169</sup> *Id.*
- <sup>170</sup> *Id.* at 9.
- <sup>171</sup> *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>.
- <sup>172</sup> 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](http://businessconduct.dk/file/507301/aug_14_2014_general_statement.pdf).
- <sup>173</sup> DANISH NAP, *supra* note 8, at 18.
- <sup>174</sup> 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](http://samfundsansvar.dk/file/358879/csr_rapport_2013_eng.pdf).
- <sup>175</sup> DANISH NAP, *supra* note 8, at 16.
- <sup>176</sup> *Id.*
- <sup>177</sup> *Id.* at 11.
- <sup>178</sup> *Id.* at 14.
- <sup>179</sup> *Id.* at 18.
- <sup>180</sup> *Id.* at 21.
- <sup>181</sup> *Id.* at 16.
- <sup>182</sup> *Id.* at 13.
- <sup>183</sup> *Id.* at 11.
- <sup>184</sup> *Id.* at 16.
- <sup>185</sup> *Id.* at 27.
- <sup>186</sup> *Id.* at 6.
- <sup>187</sup> *Id.* at 9.
- <sup>188</sup> *Id.*
- <sup>189</sup> *Id.*
- <sup>190</sup> *Id.* at 27.
- <sup>191</sup> *Id.* at 11.
- <sup>192</sup> *Id.* at 18.
- <sup>193</sup> *Id.* at 16.
- <sup>194</sup> *Id.*

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<sup>195</sup> *Id.* at 28.

<sup>196</sup> UNGPs, *supra* note 1.

<sup>197</sup> 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).

<sup>198</sup> Based on civil society and NHRI research and participation in the NAP development process.

<sup>199</sup> DANISH NAP, *supra* note 8, 16.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 22.

<sup>204</sup> *Id.* at 22.

<sup>205</sup> *Id.* at 7-8.

<sup>206</sup> *Id.* at 5.

<sup>207</sup> *Id.* at 32.

<sup>208</sup> *Id.* at 8.

<sup>209</sup> *Id.* at 7-8.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> Based on the experience of Finnwatch.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> FINNISH NAP, *supra* note 9, at 7-8.

<sup>219</sup> Based on the experience of Finnwatch.

<sup>220</sup> *Id.*

<sup>221</sup> FINNISH NAP, *supra* note 9, at 7-8; based on the experience of Finnwatch.

<sup>222</sup> Based on the experience of Finnwatch.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> FINNISH NAP, *supra* note 9, at 7-8.

<sup>230</sup> Jesnes, *supra* note 21.

<sup>231</sup> FINNISH NAP, *supra* note 9, at 26.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 17.

<sup>234</sup> *Id.*

<sup>235</sup> 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).

<sup>236</sup> *Id.*



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<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> 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.

<sup>240</sup> FINNISH NAP, *supra* note 9, at 16.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at 26.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 25.

<sup>246</sup> *Id.* at 25-26.

<sup>247</sup> *Id.* at 9.

<sup>248</sup> *Id.* at 13-14.

<sup>249</sup> *Id.* at 15-16.

<sup>250</sup> *Id.* at 20-21.

<sup>251</sup> *Id.* at 20.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 21.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.* at 25-26.

<sup>256</sup> *Id.* at 27.

<sup>257</sup> Based on the experience of Finnwatch.

<sup>258</sup> FINNISH NAP, *supra* note 9, at 18.

<sup>259</sup> *Id.* at 21.

<sup>260</sup> *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.”

<sup>261</sup> FINNISH NAP, *supra* note 9, at 15.

<sup>262</sup> *Id.* at 22.

<sup>263</sup> *Id.* at 15.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.* at 17.

<sup>266</sup> *Id.* at 17-19.

<sup>267</sup> *Id.* at 19, 18.

<sup>268</sup> *Id.* at 23, 18.

<sup>269</sup> *Id.* at 23.

<sup>270</sup> *Id.* at 20-21.

<sup>271</sup> *Id.* at 15.

<sup>272</sup> *Id.* at 23.

<sup>273</sup> *Id.* at 15.

<sup>274</sup> *Id.* at 19.

<sup>275</sup> *Id.* at 21.

<sup>276</sup> *Id.* at 26.

<sup>277</sup> *Id.* at 22.

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<sup>278</sup> 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.

<sup>279</sup> FINNISH NAP, *supra* note 9, at 15.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *See, e.g.*, FINNISH NAP, *supra* note 9, at 16-17.

<sup>285</sup> *See, e.g., id.* at 12, 16.

<sup>286</sup> *Id.* at 15.

<sup>287</sup> *Id.* at 8.

<sup>288</sup> *Id.* at 32.

<sup>289</sup> *Id.* at 32.