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National Action Plans on business and human rights: How to ensure ambition and coherence?

Keynote remarks by

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It is an honour to deliver keynote remarks to this virtual workshop on business and human rights national action plans and how to how to ensure more ambition and coherence in this area.

First, I would like to thank Germany's Federal Ministry for Labour and Social Affairs and the German Institute for Human Rights for the invitation. I am sorry that the time difference did not allow me to participate live, but I am pleased to have the opportunity to share my reflections via video.

I address you in my capacity as Chairperson of the [UN Working Group on Business and Human Rights](#), a group of five independent experts appointed by the UN Human Rights Council. We have a mandate to promote global dissemination and implementation of the [UN Guiding Principles on Business and Human Rights](#), the authoritative international framework for the respective duties and responsibilities of States and businesses to prevent and address business-related human rights abuse.

We have actively [promoted national action plans, or NAPs](#), on business and human rights as key policy tools for advancing implementation of the UN Guiding Principles. Why? We believe NAPs have great potential for driving progress at the national level in all States. More specifically:

- If developed through truly inclusive processes, and where the government and business actors recognize the challenges, NAPs can provide meaningful and much-needed platforms for multi-stakeholder dialogues to build shared understanding and trust.
- If supported by robust baseline assessments of gaps and challenges, NAPs can provide informed roadmaps for addressing them.

- If development and follow-up involve active participation by the full range of relevant government departments, and there is an adequate mandate to the ministry in charge, NAPs can promote greater [policy coherence](#).
- And, if accompanied by clear targets and mechanisms for monitoring progress, NAPs can serve as useful tools for assessing how governments and businesses are implementing their respective duties and responsibilities under the Guiding Principles, and consequently drive implementation and accountability.

In July this year, the UN Human Rights Council recognized the importance of NAPs and encouraged “all States to enhance efforts to implement the Guiding Principles on Business and Human Rights, including through appropriate policy frameworks, regulations and the development of [NAPs] on business and human rights.”

Yet, as we reach the tenth anniversary of the endorsement of the Guiding Principles by the Human Rights Council in June next year, the reality of NAPs – both in terms of their numbers and quality – is not very encouraging.

Beyond Europe, and despite efforts to the contrary, very few countries have actually issued NAPs. Not only have too few countries developed NAPs, but also where such plans exist, the overall picture is one of shortcomings, in terms of both process and content.

Assessments by civil society organizations and the Danish Institute for Human Rights have previously highlighted that with respect to process:

- Too few NAPs are based on robust evidence gathered via national baseline assessments. While what we understand by a *robust* baseline assessment may need to be adapted to local capacity and resources, they should involve multi-stakeholder consultation, consultations in different regions, and a human rights based approach to consultation allowing for the voice of those most at risk being heard, such as indigenous peoples, racial minorities and migrants.
- This is also connected to one of the key challenges for ensuring meaningful participation, as many NAP processes are not accounting for existing power imbalances and mistrust.
- Another criticism highlights that drafting processes have lacked transparency and clear timelines for publication, and once in place, there is weak governance of NAPs, including lack of adequate frameworks for progressing and monitoring implementation. Few business and human rights NAPs have developed KPIs for implementation across government agencies, contrary to what is observed for other policy priorities, such as gender equality and the SDGs.
- Yet another criticism is that – with a few exceptions – NAPs are generally weak in terms of actionable steps that the State should take.
- Inside government, one challenge relates to the observation that ministries in charge do not have sufficient political power to convene key ministries and lack a strong mandate from the highest political level to implement NAP actions internally. For example, foreign ministries that often lead on the NAP are typically among the more powerful ministries, but often less so in a domestic context. And if ministries such as economy, finance, interior or mining, for example, are missing from the table, others can only go so far.
- Resources and capacity present challenges too. Notably, key government agencies that prior to the NAP process were unfamiliar with human rights frameworks and much less about how that relates to business, lack capacity. There are also insufficient financial resources allocated to NAPs. This is especially true in the case of low- or middle-income countries that fall outside the scope of Global North ODA.
- And there is lack of continuity when governments transition.

With respect to content:

- Again with a few notable exceptions, NAPs lack provisions for legal developments and mandatory options to close protection gaps.
- Instead – and while they are important – there is an overemphasis on voluntary measures such as awareness-raising, training, research, and promotion of good practice.
- There is insufficient attention to the State as an economic actor, missing the duty and opportunity to embed the Guiding Principles in SOEs, public procurement and export credit, among others.
- Critically, the third pillar of the Guiding Principles – access to remedy – has been neglected. While NAPs should be a tool for strengthening access to both judicial and non-judicial grievance mechanisms, this is hardly done in any existing plans.

And if one looks behind these gaps, deeper issues are at play. One of the main reasons for the weakness of NAPs in many countries is corruption and corporate capture. If the NAP process and content do not address this challenge and is underpinned by effective political will for change, it is hard to see how NAPs can make a difference in many contexts.

During the 2019 UN Annual Forum, the Working Group stressed that it was time for Governments more actively to catalyse business respect for human rights. We noted that Government action was overdue and urgent to adequately address the challenges of today and prevent those of tomorrow.

This urgency has become even more acute in the current global crisis. States must act to protect workers and communities that are negatively affected by business decisions and activities. While the world is battling with the economic shocks from the pandemic, we need to start planning for a new and better normal, where protection of and respect for human rights must be a key ingredient of a sustainable and just economy.

Now is actually a timely moment to reinvigorate the call for NAPs on business and human rights – but only if we learn from and address the challenges and shortcomings of early efforts.

We recognize that local realities and contexts, including capacity and resources of government entities and other stakeholders, mean that different countries are at different starting points and that journeys will look different. Yet, in all contexts there is potential for progress when learning from the experiences of others and striving toward continuous improvement.

In the European context, the EU has a key role to play in this regard. EU-level expectations clearly played a positive role behind the first wave of NAPs, but much more is needed. While an EU-level action plan on business and human rights is overdue, the EU should also help drive more effective action plans at the national level.

Just as Europe is now showing leadership in establishing mandatory human rights due diligence legislation, it can provide a benchmark for the rest of the world on what is needed to craft a new generation of effective NAPs on business and human rights.

Clear guidance at the EU level can help EU member States in their efforts to improve both the process and content of their respective NAPs – whether we are talking about States that are developing their first NAP or those that are reviewing and updating existing ones. Such guidance can also provide greater coherence across governments and become a useful reference for other regions, where efforts to develop NAPs on business and human rights are less advanced.

Resources to draw on already exist. The Working Group has previously developed guidance for NAP processes, and the International Corporate Accountability Roundtable and the Danish Institute for Human Rights have developed a useful and comprehensive toolkit.

On the process side, all guidance, lessons, and assessments to date clearly suggest that quality criteria for the process of *developing and implementing* the NAP should include:

- Coordination within the government.
- Multi-stakeholder participation that includes both business associations and civil society organizations and, importantly, affected stakeholder voices, including unions, human rights defenders and those most at risk.
- A robust, comprehensive national baseline assessment.
- Transparent processes.
- Clear goals and targets that are specific, measurable, achievable, and time-specific.
- Adequate mandate for the ministry in charge as well as funding, resources, and capacity to raise awareness and follow up on the plan.
- Mechanisms for reporting and monitoring, for example through multi-stakeholder roundtables, a mandate for the national human rights institution, and integration of the NAP into other monitoring and review processes, such as annual "state of the unions" or SDGs reports.

In terms of content, the Guiding Principles already provide key elements for what NAPs need to capture. NAPs should:

- Address challenges both at home and across global value chains, including challenges linked to investments involving financial institutions and investors.
- Reflect a true "smart mix" approach that adequately covers all the four "smart mix" dimensions, namely national and international as well as mandatory and voluntary.
- Spell out concrete legal and regulatory options to respond legal and regulatory gaps found by national baseline assessments, and connect with developments toward mandatory human rights due diligence and greater corporate transparency.
- Set out concrete goals and targets for the State to lead by example in its role as economic actor, including actionable measures and accountability for State-owned enterprises, export credit agencies, State-led pension funds, development finance agencies, and public procurement. In this context, I would like to flag that the Working Group has developed guidance for applying the Guiding Principles to State-owned enterprises and export credit agencies, for example.
- No longer ignore the access to remedy pillar but include clear plans for addressing barriers faced by rights-holders and improving access to both judicial and non-judicial grievance mechanisms. In this context, the Accountability and Remedy Project of the Office of the UN High Commissioner for Human Rights provides comprehensive policy recommendations that should serve as reference for pillar 3 quality criteria.
- Emphasise action that strengthens protection of individuals and groups that are particularly vulnerable to discrimination and business-related human rights abuse.
- Assess the connection to conflict-affected areas, as the risk of business involvement in gross human rights abuse is highest in these contexts. Current policies, regulations, and enforcement measures do not sufficiently address this risk, as found by the Working Group in our report I will present to the UN General Assembly later this month.

- Include measures to support, consult with, and address harassment of human rights defenders who speak up against business impacts both at home and abroad, in view of the alarming situation of human rights defenders worldwide. The International Service for Human Rights and the International Corporate Accountability Roundtable has developed guidance specifically on this issue for NAPs.

Moreover, to become effective, NAP processes need to take into account underlying issues around corruption and corporate capture. They also need to take into account how financial markets function.

In addition, NAPs need to consider key current and emerging challenges such as the need for a just transition to a green economy and other mega-trend challenges posed by rapid technological change and migration patterns. In terms of coherence with other policy action and priorities, NAPs should connect with other relevant action plans. For example, it would be useful to connect with:

- efforts to implement the Sustainable Development Goals, as respect for human rights must be a cornerstone when envisioning the role that business will play in the pursuit of the SDGs;
- and other initiatives such as addressing climate change, the Open Government Partnership and development around AI action plans.

Finally, another element to consider in the context of Europe, as well as for donor States in other parts of the world, is how to address the massive need for capacity building globally. In 2011, Professor John Ruggie recommended the establishment of a capacity building fund to support governments, national human rights institutions, business, and civil society in efforts to effectively embed the Guiding Principles throughout their respective policies, processes, and practices.

This is a proposal the Working Group would like to dust off for the next decade, and concrete support for capacity building globally could indeed be a way for a government to demonstrate that it is putting its money where its mouth is. In this context, there could be lessons from financing efforts to address climate change, for example.

These are key issues for the Working Group's ongoing "[UNGPs 10+ / Next Decade BHR](#)" project, which is assessing the first ten years of implementation of the Guiding Principles and developing a roadmap for further implementation in the next decade.

As the Working Group is looking to engage all stakeholders in making the next ten years a decade of meaningful action and measurable progress, we call on the EU and European States to play a leadership role in making NAPs the effective policy tool they can be. Let me end by saying that in this regard, EU-level development of quality criteria would be a useful contribution to support national efforts and toward coherence and continuous improvement.

I wish you a productive workshop and look forward to learning about the outcomes.