

Assessment of the National Action Plan (NAP) on Business and Human Rights of DENMARK



November 2014



INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE



In March 2014, the Danish government launched a National Action Plan (NAP) on business and human rights. In response, the International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ) conducted a structured assessment of the Danish NAP, using the NAPs Checklist developed and published by ICAR and the Danish Institute for Human Rights (DIHR).¹ The NAPs Checklist lays out a set of twenty-five criteria that address both the content of NAPs and the process for developing them.

This assessment is part of a larger effort by ICAR to assess all existing NAPs on business and human rights. In November 2014, ICAR and ECCJ published its first version of a joint report *Assessments of Existing National Action Plans (NAPs) on Business and Human Rights*,² which systematically assessed the published NAPs from the United Kingdom, the Netherlands, Denmark, and Finland. In November 2015, ICAR and ECCJ published an update of this report including the assessments of the Lithuanian and Swedish NAPs. This report was updated a further time in August 2017, in conjunction with both ECCJ and Dejusticia, to include assessments of the Colombian, Norwegian, United States, United Kingdom (second iteration), Italian, and Swiss NAPs.

SUMMARY ASSESSMENT: DANISH NATIONAL ACTION PLAN

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 CSR³ were solicited and included in the NAP. In addition, the Ministry of Business and Growth and the Ministry of Foreign Affairs, which were responsible for the NAP process, consulted with the Ministry of Justice, the Ministry of Employment, the Ministry of Education, the Danish Export Credit Fund, and the Investment Fund for Developing Countries (IFU).

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

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

The NAP also does not detail what follow-up measures will be put in place to ensure that commitments made in the NAP are implemented effectively. Although there is a reference to the fact that Denmark's earlier CSR NAP will be "continually updated,"⁴ it does not specify how or when that will happen, nor does it specify if the same will be done for the NAP on business and human rights.

Content

One positive aspect in terms of the content of the Danish NAP is that it provides a "principle-by-principle" approach in Annexes 1 and 2, laying out which past, current, and, in the case of Pillars I and III, a few future steps that are relevant to the implementation of the UNGP in question. Another positive aspect is that a few of the planned actions are specific, including the planned action to create an inter-ministerial working group to research whether legislation in relevant areas should and could feasibly include extraterritorial obligations. This action includes questions the group will be tasked with addressing and suggests that Denmark is interested in exploring ways to ensure that its businesses respect human rights abroad, as well as within Denmark. The commitment to require labor clauses in all government contracts for

construction projects instead of just for those above DKK 37.5 million is also very specific. Having said that, the remaining planned actions are quite vague, and none of them specify timelines.

One negative aspect of the Danish NAP is that it does not remedy the fact that Denmark's implementation of the UNGPs has so far been focused on guidance and self-regulation under Pillar II and access to non-judicial remedy under Pillar III, failing to provide adequate regulatory measures under Pillars I and concrete measures to provide access to judicial remedy under Pillar III.⁵ 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.

**ASSESSMENT OF THE DANISH
NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS**

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
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. ⁶
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. ⁷
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. ⁸
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	No budget for the NAP process was determined. ⁹

2. STAKEHOLDER Participation	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	No stakeholder mapping was conducted. ¹⁰
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,¹¹ the Mediations and Complaints-Handling Institution for Responsible Business Conduct, and the Danish Institute for Human Rights (DIHR).¹² 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.¹³ Additionally, the process was not clearly and publicly communicated.¹⁴</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.¹⁵</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.¹⁶</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>

2. STAKEHOLDER Participation	COMMENTS
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>No participation by disempowered or at-risk stakeholders was facilitated.¹⁷</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>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>The Danish Council for CSR could be considered a stakeholder steering group/advisory committee.¹⁸ The Council for CSR provided recommendations under each Pillar of the UNGPs. These recommendations were to a large extent included in the BHR NAP.¹⁹</p>

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
<p>The NBA as the Foundation for the NAP</p>	
<p>3.1. Undertake a NBA as the first step in the NAP process.</p>	<p>No NBA was conducted.²⁰ However, there was a high-level “table” that included key observations and recommendations for each GP.²¹</p>
<p>3.2. Allocate the task of developing the NBA to an appropriate body.</p>	<p>Not applicable. However, the “table” mentioned in 3.1. was developed by the Danish Business Authority.²²</p>
<p>3.3. Fully involve stakeholders in the development of the NBA.</p>	<p>Not applicable. However, DIHR was able to provide comments to the “table” referred to in 3.1.²³</p>
<p>3.4. Publish and disseminate the NBA.</p>	<p>Not applicable. The “table” referred to in 3.1. was not published.²⁴</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The 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.²⁵ 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.²⁶ 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.²⁷ Annex 1 also explains which UNGP each planned action is meant to implement.²⁸</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).²⁹ 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> There is no mention of due diligence in the “Planned Actions” section.³⁰</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<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.³¹ Part of the evaluation conducted by the judges includes looking at whether a company reports on human rights impacts.³² However, this is not a government initiative as the trade organization is a private association composed of member firms and individuals.³³</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.³⁴ 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”³⁵ 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> <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,</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>Tax, and Corporate Finance’s award on best non-financial reporting.</p> <p>Although not directly a positive or negative incentive, the Danish government could further support companies and encourage them to conduct due diligence by providing sector specific guidelines.</p> <p><u>(2) Disclosure of Due Diligence Activities</u></p> <p>There is no mention of due diligence disclosure in the “Planned Actions” section.³⁶</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.³⁷ 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.³⁸ However, this requirement does not include reporting on adverse human rights risks and impacts and disclosure of due diligence activities, which is a major weakness of the requirement.</p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There is no mention of due diligence as the basis for compliance with a legal rule in the “Planned Actions” section.³⁹</p> <p>Despite the existing requirement to disclose CSR, human rights, and climate policies, this does not, as described above, create the requirement to actually report on adverse human rights risks and impacts and conduct due diligence as companies can simply</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>report on their general human rights commitments and procedures or report that they don't have a policy to respect human rights in place.⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³</p> <p>As described above, an inter-ministerial working group has been established to assess the “need and feasibility” of including extraterritorial jurisdiction in legislation regulating relevant topics, with a particular focus on access to judicial remedy for victims of serious human rights violations involving Danish multinational enterprises.</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>The introduction of the NAP states that the NAP is “focused on preventing and mitigating adverse impacts on human rights by Danish companies at home and abroad.”⁴⁴</p> <p><u>Past/Current Actions</u></p> <p>The “past and current actions” outlined in the NAP do address the full scope of the State’s jurisdiction. For example, the Mediation and Complaints-Handling Institution (the Danish National Contact Point), which was created in 2012, can hear complaints against Danish private companies, public authorities, and private organizations (e.g., NGOs) for actions that allegedly violate the OECD Guidelines for Multinational Enterprises, both abroad and in Denmark.⁴⁵ 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,</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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.⁴⁶ 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.⁴⁷ 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.⁴⁸ In addition, very few companies report on their due diligence processes. The Danish government should therefore seriously consider strengthening the reporting requirement on CSR for all large Danish companies 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</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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.⁴⁹ 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.⁵⁰</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p><u>Past/Current Actions</u></p> <p>In the sections on past and current actions to implement the UNGPs there are many references to international and regional organizations and standards. For example, under Pillar I, the NAP references Denmark’s participation in the Universal Periodic Review (UPR) process,⁵¹ as well as the fact that Denmark is part of the Group of Friends of Paragraph 47.⁵² 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.⁵³ 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.⁵⁴</p> <p><u>Planned Actions</u></p> <p>Given the very limited number of planned actions, there is only one reference to international or regional organizations and standards and how they relate to future action. Specifically, under Pillar I, the planned actions (section 2.4) reference ILO Convention 94 and its general commitment to ensure that there is more use and enforcement of labor clauses in government contracts.⁵⁵</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>Thematic and sector specific human rights issues are discussed briefly in the Danish NAP.</p> <p><u>Past/Current Actions</u></p> <p>In the sections on past and current actions to implement the UNGPs, there are references to thematic human rights issues. Specifically, under Pillar I, discrimination in the labor market is discussed.⁵⁶ Additionally, the NAP mentions the Partnership for Responsible Garments Production in Bangladesh that the Danish government is a part of.⁵⁷ 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.⁵⁸</p>
<p>Content of NAPs</p>	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The Danish NAP includes multiple statements of commitment to the UNGPs. For example, it says that “the Danish Government is highly committed to the UN Global Compact [sic] and the UN Guiding Principles on Business and Human Rights.”⁵⁹ 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.⁶⁰ The NAP also notes that the Danish government began to implement the UNGPs in 2012 when it published its CSR NAP.⁶¹ 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-</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>2014 on CSR.⁶² 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.⁶³</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>None of the planned actions include a timeline.</p> <p>Furthermore, it is difficult to tell which actions have already been completed, which are underway, and which have not yet been started, as there are inconsistencies in which tense is used in the annex and in the main body of the NAP when discussing certain actions. For example, when referring to workshops conducted by the Trade Council and the Danish Business Authority, the Annex says that “they will include practical guidance on how to demonstrate due diligence,”⁶⁴ while in the main body of the NAP it says “they include practical guidance on how to demonstrate due diligence.”⁶⁵ 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 Danish Financial Statements Act.⁶⁶ 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</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>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.⁶⁷ 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.⁶⁸ Whether or not this happens will be easy to measure/monitor, as either the government will succeed in changing the law or it will not.</p> <p>Other planned actions are not as specific and measurable. For example, the commitment to having municipalities and regions “jointly prepare guidelines for how public authorities can avoid having an adverse impact on international guidelines” is quite vague. Although in the Annex there is a little more information provided (e.g., “the guidelines should be used to manage the challenges public authorities are facing today when acting as a private company”),⁶⁹ 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>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Priorities for NAPs	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>There does not appear to be any prioritization of particular business-related human rights abuses.</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>There is no mention of vulnerable or excluded groups, such as indigenous communities, in the Danish NAP. The Danish NAP does not contain the expression “vulnerable groups,” not even the stand-alone adjectives “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.”⁷⁰</p> <p>The need for particular attention within NAPs to groups such as indigenous peoples has also been highlighted in the report of the UN Working Group on Business and Human Rights to the UN General Assembly.⁷¹</p>
5. TRANSPARENCY	COMMENTS
Full Transparency With All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was conducted or published. No significant analysis was conducted and no submissions were published.⁷²</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The 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.⁷³ 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.⁷⁴ 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.⁷⁵</p> <p>Other commitments are even more vague. For example, there is no indication of who will be in charge of putting together a document of case studies to “demonstrate how companies and municipalities work with social clauses in practice.”⁷⁶</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>There is no framework for monitoring or reporting laid out in the NAP. In Section 5, entitled “Looking Ahead,” the government simply commits to “continuously update Danish priorities with regard to the implementation of the UN Guiding Principles in alignment with the National Action Plan for CSR 2012-15.”⁷⁷ 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.⁷⁸</p>

ENDNOTES

¹ DANISH INSTITUTE FOR HUMAN RIGHTS & INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A TOOLKIT FOR THE DEVELOPMENT, IMPLEMENTATION, AND REVIEW OF STATE COMMITMENTS ON BUSINESS AND HUMAN RIGHTS (2014) [*hereinafter* NAPs TOOLKIT].

² INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE & EUROPEAN COALITION FOR CORPORATE JUSTICE, ASSESSMENTS OF EXISTING NATIONAL ACTION PLANS (NAPs) ON BUSINESS AND HUMAN RIGHTS, NOVEMBER 2015 UPDATE (2015).

³ The CSR Council represents local municipalities, NGOs, business, trade unions, and financial organizations. DANISH NAP, *supra* note 8, at 9.

⁴ *Id.* at 22.

⁵ 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.

⁶ Based on civil society and NHRI research and participation in the NAP development process.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 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.

¹² Based on civil society and NHRI research and participation in the NAP development process.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ DANISH NAP, *supra* note 8.

¹⁶ Based on civil society and NHRI research and participation in the NAP development process.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ 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.

²⁶ *Id.* at 24, 34.

²⁷ *Id.* at 9, 24, 34.

²⁸ *Id.* at 24.

²⁹ Jesnes, *supra* note 23.

³⁰ See DANISH NAP, *supra* note 8, at 16.

³¹ *Id.* at 18.

³² *Id.*

³³ Presentation of FSR – Danish Auditors, <http://www.fsr.dk/Om%20os/English>.

³⁴ See DANISH NAP, *supra* note 8, at 12.

³⁵ Danish Business Partnerships, <http://amg.um.dk/en/technical-guidelines/danida-business-partnerships/>.

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- ³⁶ See DANISH NAP, *supra* note 8, at 16.
- ³⁷ *Id.* at 18.
- ³⁸ Based on civil society and NHRI research and participation in the NAP development process.
- ³⁹ See DANISH NAP, *supra* note 8, at 16.
- ⁴⁰ See *id.* at 18.
- ⁴¹ *Id.* at 12.
- ⁴² *Id.* at 16.
- ⁴³ *Id.*
- ⁴⁴ *Id.* at 9.
- ⁴⁵ *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>.
- ⁴⁶ 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.
- ⁴⁷ DANISH NAP, *supra* note 8, at 18.
- ⁴⁸ 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.
- ⁴⁹ DANISH NAP, *supra* note 8, at 16.
- ⁵⁰ *Id.*
- ⁵¹ *Id.* at 11.
- ⁵² *Id.* at 14.
- ⁵³ *Id.* at 18.
- ⁵⁴ *Id.* at 21.
- ⁵⁵ *Id.* at 16.
- ⁵⁶ *Id.* at 13.
- ⁵⁷ *Id.* at 11.
- ⁵⁸ *Id.* at 16.
- ⁵⁹ *Id.* at 27.
- ⁶⁰ *Id.* at 6.
- ⁶¹ *Id.* at 9.
- ⁶² *Id.*
- ⁶³ *Id.*
- ⁶⁴ *Id.* at 27.
- ⁶⁵ *Id.* at 11.
- ⁶⁶ *Id.* at 18.
- ⁶⁷ *Id.* at 16.
- ⁶⁸ *Id.*
- ⁶⁹ *Id.* at 28.
- ⁷⁰ UNGPs, *supra* note 1.
- ⁷¹ 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).
- ⁷² Based on civil society and NHRI research and participation in the NAP development process.
- ⁷³ DANISH NAP, *supra* note 8, 16.
- ⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 22.

⁷⁸ *Id.* at 22.