

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



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In August 2015, the Swedish 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 Swedish 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.

ASSESSMENT SUMMARY: SWEDISH NATIONAL ACTION PLAN

Introduction

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

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

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

Process

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

However, during the consultations, the Swedish government specifically stated that it did not

facilitate participation by disempowered or at-risk stakeholders in the NAP process.³ In fact,

Sweden's indigenous community, the Sami, were not represented at the consultations despite the fact that Sweden's NCP recently had a case related to indigenous peoples' rights and business brought before it. Additionally, according to ECCJ, only a few of the observations made by NGOs were included in the final NAP, and a "majority of problems identified were left unaddressed."⁴ As far as ICAR and ECCJ are aware, no stakeholder mapping was conducted.

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

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

Content

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

The Swedish NAP heavily focuses on Pillar I, but does also address Pillar III. However, one weakness in the Swedish NAP is that some of the measures planned are not clearly relevant to or explicitly tied to business and human rights. For example, there is no explanation in the NAP about how the commitment to have an inquiry into whether or not Sweden should make the UN Convention on the Rights of the Child part of national law will be relevant to business.⁵ Some of the measures planned related to access to remedy are also not explicitly tied in the NAP to

business and human rights but rather are overall reforms to the judicial system. Although these reforms could benefit victims of adverse human rights impacts, the NAP does not clearly make the connection to corporate-related human rights harms.

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

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

**ASSESSMENT OF THE SWEDISH
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.	Sweden has demonstrated its commitment to the NAP process by noting that it “marks the start of Sweden’s effort to implement” the UNGPs. ⁶ In line with this statement, Sweden has committed to following up on the implementation of its NAP in 2017. ⁷ Conducting stakeholder consultations is also a sign of Sweden’s commitment to the NAP process. However, this is undermined by the fact that the government did not try to facilitate participation by disempowered or at-risk stakeholders, as well as the fact that there were key stakeholder groups, such as the Sami indigenous community, missing from the consultations. Although Sweden’s commitment in the NAP to conduct a national baseline assessment (NBA) is seen by CSOs as positive, ⁸ Sweden failed to conduct a NBA prior to creating the NAP. ⁹ This is a sign that Sweden lacked a strong commitment to creating a comprehensive NAP that involves structured evidence gathering to inform the content of the NAP.
1.2. Ensure responsibility for the NAP process is clearly established and communicated.	As the lead ministry for the NAP process, the Ministry of Foreign Affairs was in charge of drafting the NAP. ¹⁰ The responsible department within the Ministry of Foreign Affairs also reports to the Minister of Enterprise and Innovation. ¹¹ The NAP states that it was developed by the “Government Offices,” ¹² which is comprised of the Swedish ministries, missions abroad, the Prime Minister, and the Office for Administrative Affairs. ¹³ The Minister for Enterprise and Innovation, Mikael Damberg, launched the Swedish NAP in August 2015. ¹⁴
1.3. Ensure an inclusive approach across all areas of government.	As noted above, the Ministry of Foreign Affairs was the lead agency on the NAP, but it also reported to the Minister of Enterprise and Innovation. ¹⁵ The Government Offices approved the NAP prior to its publication. ¹⁶ No information about the existence, nor consideration, of an inter-ministerial committee was published. ¹⁷ It should be noted that no representatives from the judiciary, administrative tribunals, or parliament were present at the stakeholder consultations. ¹⁸ It should also be noted that other ministries were involved in NAP process,

1. GOVERNANCE AND RESOURCES	COMMENTS
	however, it is not known which ministries, to what extent they were involved, or whether there was any official committee. ¹⁹
1.4. Devise and publish terms of reference and a timeline for the NAP process.	No terms of reference nor timeline for the NAP process were published. ²⁰ The government held an informal meeting in 2013 for the purpose of discussing the expectations of the NAP and which provisions of the UNGPs civil society organizations felt were essential. ²¹ After this initial meeting, there was no public information on the NAP process until the new government was elected in September 2014. ²² The new government organized the March 2015 stakeholder consultation and disseminated the draft of the NAP prior to the consultation. ²³ From the time of the consultation until the publication of the NAP in August 2015, there was no information made publically available about the NAP process. ²⁴
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	Unknown. No information about the budget was made public. ²⁵

2. STAKEHOLDER Participation	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	No information on any stakeholder mapping was published. ²⁶
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	The Government Offices created a draft of the NAP, which was then made available on their website for public comment. ²⁷ Over 100 NGOs, companies, trade unions, and Government agencies participated in four consultations regarding the first draft of the NAP. ²⁸ All four consultations were held in the Spring of 2015, with two located in Stockholm, one in Gothenburg, and one in Malmö. ²⁹ However, according to the European Coalition for Corporate Justice (ECCJ), only a few of the observations made by NGOs were included in the final NAP and a “majority of problems identified were left unaddressed.” ³⁰
2.3. Provide adequate information and capacity-building where needed.	The government did not provide information and capacity-building where needed. ³¹

2. STAKEHOLDER Participation	COMMENTS
2.4. Facilitate participation by disempowered or at-risk stakeholders.	During the consultations, the Swedish government specifically stated that it did not facilitate participation by disempowered or at-risk stakeholders in the NAP process. ³² Sweden's indigenous community, the Sami, were not represented at the consultations despite the fact that Sweden's NCP recently had a case related to indigenous peoples' rights and business brought before it. Land rights of Sami communities have also been brought before the Swedish courts. ³³
2.5. Consider establishing a stakeholder steering group or advisory committee.	No stakeholder steering group nor advisory committee was created. Whether the Swedish government considered creating such a group is unknown. ³⁴

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
3.1. Undertake a NBA as the first step in the NAP process.	No national baseline assessment was conducted. ³⁵ However, one of Sweden's planned measures outlined in the NAP is to map Swedish legislation, compare it with the UNGPs, and "determine whether there are any immediate or obvious gaps that need to be addressed." ³⁶ Although the commitment to conducting an NBA in the future is considered as "a step in the right direction" by Swedish civil society organizations, conducting the NBA prior to creating the NAP is recommended as the most effective process. ³⁷
3.2. Allocate the task of developing the NBA to an appropriate body.	Not applicable.
3.3. Fully involve stakeholders in the development of the NBA.	Not applicable.
3.4. Publish and disseminate the NBA.	Not applicable.

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The main body of the NAP is organized by the three pillars of the UNGPs. Each section gives a brief explanation of the pillar, with some additional background information relevant to Sweden. Under Pillar I, the NAP lists some existing civil and criminal laws aimed at protecting human rights (e.g., the Discrimination Act 2008:567, Chapter 36 Penal Code³⁸) and briefly discusses adjudication of crimes committed abroad in Swedish courts.³⁹ Under Pillar II, the NAP states that Sweden expects companies to respect human rights, pointing in particular to employees’ labor rights and exploitation of women and children.⁴⁰ The NAP also says that Sweden expects companies to have a human rights policy in place, have a human rights due diligence procedure in place, and be transparent.⁴¹ There is no explanation in this section on how Sweden incentivizes this. Under Pillar III, the NAP discusses the Swedish court system and efforts to improve efficiency, the different ombudsmen in Sweden, and Sweden’s OECD National Contact Point.⁴² It also lists some basic criteria for a company grievance mechanism.⁴³</p> <p>Finally, the NAP lists measures taken and measures planned to implement the UNGPs in two separate annexes.⁴⁴ These measures are not organized by Pillar, nor do they reference which particular UNGPs they are intended to implement. Furthermore, some of the non-regulatory measures have already been completed and therefore should not be listed in the “measures planned” annex without information about how the government intends to follow up on these measures.⁴⁵ For example, the first three “measures planned” in the NAP are three inquiries that addressed different aspects of the judicial and administrative tribunal systems. These provisions in the NAP simply note that the results of those inquiries have been “circulated for comment.”⁴⁶</p> <p>The Swedish NAP heavily focuses on Pillar I, but does also address Pillar III. For example, one planned measure commits that Sweden will consider strengthening its National Contact Point for the OECD Guidelines.⁴⁷ However, other “measures planned” related to access to remedy are not explicitly tied to business and human rights but rather are overall</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>reforms to the judicial system. For example, the NAP states that the report from an inquiry on certain court costs (The Price of Justice) has been circulated for comment.⁴⁸ The NAP does not commit to implementing any changes related to court costs, nor does it tie the overall court cost reforms to access to remedy for victims specifically harmed by business activities.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the Swedish NAP's coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP's fulfillment of each UNGP, which is a task to be completed during the national baseline assessment (NBA) process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) the regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).⁴⁹ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content. The Swedish NAP is unsatisfactory on each of the four sub-criteria.</p> <p><u>(1) Positive and Negative Incentives for Due Diligence</u></p> <p>The NAP states that Sweden will ensure, "where appropriate," that State-owned companies conduct human rights due diligence.⁵⁰ However, there is no statement about how Sweden will ensure that this occurs, i.e. whether it will be legally required or incentivized in some way.</p> <p>The Swedish NAP discusses the recent EU Procurement Directives, which allow contracting authorities to include criteria related to social considerations when awarding contracts.⁵¹ The NAP states that "the recitals of the Directives expressly state that the contracting authorities or entities in their contracts can require suppliers . . . to comply in substance</p>

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	<p>with the provisions of the basic International Labour Organisation (ILO) Conventions.”⁵² Under the Procurement Directives, States may not prohibit contracting authorities from considering social criteria.⁵³ The Directives only require States to allow contracting authorities to do so, but it is up to each State if they wish to mandate that contracting authorities include social criteria.⁵⁴ The NAP simply commits to transposing these Directives into national law by 2016, but does not say whether Sweden will simply permit or mandate Swedish contracting authorities to require suppliers to comply with basic ILO conventions and/or to consider social criteria when awarding contracts. For example, if the NAP stated that Sweden will aim to require contracting authorities to take social criteria into consideration and require contractors to comply with basic ILO conventions, how Sweden will concretely incentivize companies to conduct due diligence would be made clearer within the NAP.</p> <p>The NAP also notes that the new Directives require “that the contracting authorities or entities exclude tenderers who have been found guilty in a definitive judgment of crimes including child labour and other forms of human trafficking in accordance with Directive 2011/36/EU.”⁵⁵ The NAP then notes that Sweden will implement these directives through national law in 2016.⁵⁶ This could be an incentive for companies to conduct due diligence, at least regarding child labour and human trafficking. By conducting due diligence in relation to human trafficking and child labour, companies may be better able to avoid instances of judgments against them, which would terminate their ability to win government contracts.</p> <p><u>(2) Disclosure of Due Diligence Activities</u></p> <p>In addition to failing to state how the government will ensure that companies conduct human rights due diligence, the NAP does not state whether these companies will have to publically disclose what those activities entail or not.⁵⁷</p>

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	<p>The Swedish NAP references the recent EU Directive (Directive 2014/95/EU) amending the Accounting Directive. This Directive requires that certain companies include information about measures taken related to “environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.”⁵⁸ Specifically, they must include: (1) a description of the company’s business model, (2) policies in place related to the above listed topics, including due diligence processes, (3) the outcome of those policies, (4) principal risks related to those topics “linked to the undertaking’s operations” and how those risks are managed, and (5) non-financial key performance indicators. Sweden, and all other EU Member States, must transpose this Directive into domestic law by 2016.⁵⁹ Once Sweden transposes this into national law, it will require disclosure of any human rights due diligence activities conducted by companies covered by this Directive.</p> <p>Sweden’s NAP does not clearly explain that this is something Sweden must do, but instead simply states that “[c]orporate disclosure of sustainability and diversity policy (Ministry Publication Series 2014:45) proposes that certain companies prepare a sustainability report providing information on, for example, respect for human rights and anti-corruption activities.”⁶⁰ In fact, Sweden’s proposed law does go further than the Directive by covering more companies than is required, which is not made clear in the NAP itself either.⁶¹ The NAP could have instead briefly stated what the Directive requires and how the proposal goes beyond what the Directive requires.</p> <p><u>(3) Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u></p> <p>There are no measures planned that would require due diligence as the basis for compliance with a legal rule. As discussed above, the NAP notes that Sweden will ensure that State-owned companies “where appropriate, conduct human rights due diligence in order to assess and address any significant risk to human rights.”⁶² However, there is no mention of exactly what “where appropriate” means, how Sweden will ensure this, or if there are any existing or planned measures that would legally require State-owned</p>

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	<p>enterprises to conduct human rights due diligence.</p> <p><u>(4) Regulatory Mix</u></p> <p>The presence of regulatory mix in the NAP is unsatisfactory. Only two out of the twenty-seven measures planned will directly regulate corporations. These two measures relate to EU Directives. First, the NAP notes that the Swedish interim report on implementing the EU’s new Accounting Directive “proposes enhanced transparency regarding payments made by some companies active in the extractive industry and in the logging of natural forests.”⁶³ Under this provision, companies in these sectors will have to provide reports each year indicating the amount of money paid to governments where they conduct business.⁶⁴ This is required under the EU Accounting Directive (2013/34/EU).⁶⁵ Sweden’s reference to this amendment is unclear about the fact that this is something that must be translated into Swedish law and instead states that Sweden’s interim report on implementation of this amendment proposes this type of disclosure.⁶⁶ Again, it would have been clearer if the NAP stated the amendment’s requirement and then committed to translating it into domestic law by a certain date.</p> <p>Second, the NAP notes that the “Corporate Disclosure of Sustainability and Diversity Policy,” which addresses the amended Accounting Directive on disclosure of non-financial and diversity information discussed above, “proposes that certain companies prepare a sustainability report providing information on, for example, respect for human rights and anti-corruption activities.”⁶⁷ Sweden will ultimately have to translate the requirements of this amendment into national law, which will require certain companies to report information about policies and measures taken with respect to, among others, human rights.⁶⁸</p> <p>Apart from these two regulations requiring corporate transparency on payments and sustainability policies, the NAP only commits to non-regulatory measures such as trainings</p>

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	<p>and promoting the UNGPs. These measures include, for example, an inquiry into whether or not Sweden should make the UN Convention on the Rights of the Child part of national law,⁶⁹ providing trainings for Embassy staff on the UNGPs,⁷⁰ conducting workshops for State-owned companies on the UNGPs,⁷¹ considering strengthening the Swedish National Contact Point,⁷² and considering providing continued support to Shift for the Reporting and Assurance Framework Initiative (RAFI).⁷³ While these commitments are positive, the overwhelming focus on non-regulatory measures is problematic.</p>
<p>4.2. A NAP should address the full scope of the State’s jurisdiction.</p>	<p>There are multiple references in the Swedish NAP to the fact that businesses are expected to respect human rights both domestically and abroad. In the foreword, Mikael Damberg states, “[t]he Government would like to urge and encourage all Swedish companies to use the international guidelines as a basis for their operations and to set a good example both at home and abroad.”⁷⁴ Additionally, the NAP states that “[t]he Government’s clear expectation is that companies operating in Sweden or abroad respect human rights in all their activities.”⁷⁵ The NAP also notes that labor rights and efforts to “identify and prevent anti-union policies or actions” apply both abroad and domestically.⁷⁶ Moreover, in the annex on “planned measures,” the NAP states that “[t]he Government’s clear expectation is that companies operating in Sweden or abroad comply with the UN Guiding Principles for Business and Human Rights and other relevant guidelines in this area, and review their due diligence and redress measures.”⁷⁷</p> <p>Apart from the information provided about access to Swedish courts for harms that occur abroad (discussed in the following paragraph), there is no explicit mention of extraterritorial jurisdiction.</p> <p>The Swedish NAP notes that the jurisdiction of Swedish courts “is extensive, and Swedish courts are therefore often able to adjudicate in cases concerning offences committed abroad.”⁷⁸ It notes further that usually there must be “some ties” to Sweden, and there must be criminal liability for the act in the country in which it occurred before the Swedish courts can hear the case.⁷⁹ However, there is an exception for “the most serious crimes,”</p>

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	<p>which includes crimes listed in the Act on criminal responsibility for genocide, crimes against humanity, and war crimes, as well as crimes with a minimum sentence of four years imprisonment.⁸⁰ Finally, although corporations cannot be convicted of a crime in Sweden, they can face fines “for crimes committed in the exercise of business activities.”⁸¹</p> <p>Because of the potential for Swedish courts to hear cases regarding human rights harms perpetrated by corporations both domestically and abroad, measures involving reform of the judicial system potentially benefit victims of human rights abuses domestically and abroad. There are three “planned measures” that relate to potential judicial and administrative reform. All three involve inquiries that have already been completed, with one focusing on “data on the practical, organizational and economic implications that is needed to form a position on how proposals for major changes in the handling of criminal cases should be implemented.”⁸² Not only is this inquiry already complete, it is also not relevant to business and human rights as companies cannot be held criminally liable in Sweden, and there is nothing in the inquiry that touches on business.⁸³ The second inquiry looked at income ceilings, legal aid fees, and “remuneration for public counsels, injured party counsels and legal aid counsels, along with expenses for evidence, parties, interpreters and guardians ad litem.”⁸⁴ The third inquiry focuses on making the administrative proceedings in Sweden more modern and effective.⁸⁵ However, as mentioned earlier in Section 4.1 above, these three inquiries have already been completed and have been “circulated for comment.”⁸⁶ There is no additional information on what next steps Sweden is committed to taking. Finally, and most importantly, there is no explicit connection made in the NAP between these three reforms and business and human rights. Absent more information about what the inquiries propose, it is difficult to assess the potential impact on business and human rights.</p>
<p>4.3. A NAP should address international and regional organizations and s.</p>	<p>The Swedish NAP addresses international and regional organizations and standards by pointing out how Sweden is already working through these organizations and supporting various standards. For example, the NAP points out that Sweden’s NCP disseminates information about the OECD Guidelines for Multinational Enterprises and that Sweden has</p>

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	<p>pushed to include CSR language in the EU’s investment agreements, trade agreements, and partnership and cooperation agreements.⁸⁷ The NAP also notes that Sweden provides support to the EITI and provides financial support to the UN Global Compact.⁸⁸ Additionally the NAP states that Sweden’s ownership policy requires its majority State-owned companies to report using the Global Reporting Initiative.⁸⁹</p> <p>There are five “planned measures” included in the NAP that explicitly refer to regional or international organizations and/or standards.⁹⁰ In the NAP, the Swedish Government commits to continue pushing the EU to include references to the UNGPs in investment agreements, trade agreements, and partnership and cooperation agreements.⁹¹ It also commits to working with other EU countries on the issue and to encourage them to create NAPs.⁹² Sweden also commits to promoting the OECD Guidelines among non-OECD countries.⁹³ The NAP states that Sweden will encourage the UN, EU, OECD, and the World Bank, among others, to promote business and human rights throughout their work.⁹⁴ Finally, the EU procurement directives, which in part allow contracting authorities to require contractors to comply with the ILO Conventions, will be “transposed” into Swedish law by April 2016.⁹⁵</p>
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p>The Swedish NAP discusses initiatives the Government is already involved in with respect to thematic and sector-specific human rights issues. For example, the government proposed “sharper formulations in the draft regulation on responsible trade in minerals from conflict areas” that the EU is discussing.⁹⁶ Sweden has also taken steps to promote internet freedom and privacy by tabling resolutions on the topic at the UNHRC in 2012 and 2014 and by holding the Stockholm Internet Forum in 2012, 2013, and 2014.⁹⁷</p> <p>Three of the twenty-seven planned measures in the NAP address thematic or sector-specific human rights issues. The NAP notes that the government has already begun to discuss whether the UN Convention on the Rights of the Child should become law in Sweden or not.⁹⁸ It also states that the interim report, Implementation of the EU’s New Accounting Directive, proposes provisions that would require some extractive and logging</p>

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	<p>companies to publish payments made to governments in the countries in which they operate.⁹⁹ This reporting would be required on an annual basis.¹⁰⁰ Finally, in reference to the EU procurement directives (which allow the contracting authorities to require contractors to comply with the ILO Conventions), the NAP states that “[s]uch conditions might also be intended to favour the implementation of measures for the promotion of equality of women and men at work, the increased participation of women in the labour market . . . or the recruitment of more disadvantaged persons than are required under national legislation.”¹⁰¹</p>
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>Sweden’s NAP does include statements indicating a strong commitment to the UNGPs. The NAP notes that “the national action plan aims to translate the UN Guiding Principles into practical action at the national level.”¹⁰² Furthermore, one of the planned actions is that “Sweden will work to improve the implementation of the UN Guiding Principles for Business and Human Rights, for example by urging foreign governments to develop national action plans.”¹⁰³</p>
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>Out of twenty-seven “planned measures” included in the NAP, only one has a specific time table: Sweden has committed to translating the EU procurement directives into national law by April 2016.¹⁰⁴ The remaining twenty-six measures planned have no reference to when the government plans on beginning or completing the commitments.</p> <p>Some of the measures planned are relatively specific and measurable. For example, the NAP commits that the Government will “conduct a baseline study of how Swedish legislation compares with the Guiding Principles to determine whether there are any immediate or obvious gaps that need to be addressed.”¹⁰⁵ Although no timeline is given, this is a measurable action as long as the government also publishes the results of the baseline study. If, on the other hand, the Government merely states that the baseline was completed, this action will not be measurable because civil society will have no proof of its completion, nor will civil society be in a position to evaluate the thoroughness of the baseline. Providing a timeline and committing to publishing the results would have made</p>

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	<p>this planned measure even more specific and measurable. Providing more information on how the baseline will be conducted would also improve this planned measure. For example, it is unclear whether civil society will be invited to participate in the process or provide comments and feedback, and there is no indication as to which agency will be in charge of doing the baseline.</p> <p>The NAP also commits the government to “examin[ing] the possibility of strengthening the Swedish National Contact Point.”¹⁰⁶ This planned measure does state that the Ministry of Foreign Affairs will be in charge of this study and, if results of the study are published, it will be a measurable commitment. As stated above, failure to publish the results of the study will make it difficult for civil society to know if it was actually completed and to evaluate the quality of the study and reasoning behind any decisions to change or not change the NCP. Even this relatively specific and measurable planned measure could be improved by committing the publishing the results, by providing examples of changes to the NCP that the Ministry of Foreign Affairs will consider, and by listing the factors the MFA will take into account when examining each potential change.</p> <p>Another relatively specific planned measure in the NAP states that the Government “is prepared to consider continued support to the Shift Project . . . Reporting and Assurance Frameworks Initiative (RAFI).”¹⁰⁷ This planned measure is specific because it applies to a particular project run by a specific organization. However, this planned measure is weakened by the fact that the government only commits to considering giving support to Shift and does not actually commit the government to such support. It also does not lay out the type of support the Government will consider providing, which could range from financial support to general government approval of RAFI or promoting RAFI to Swedish businesses.¹⁰⁸</p> <p>The Government’s commitment to provide a series of workshops for State-owned enterprises is also specific and potentially measurable. The NAP provides the type of</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>information that will be shared during these workshops (general information about the UNGPs, due diligence, and redress mechanisms), and notes that these workshops will be a time for State-owned enterprises to learn from each other and share “tools and good practices.”¹⁰⁹ However, it could have been improved by specifying when the workshops will occur, which government ministry will be in charge of hosting the workshops, and whether the government will partner with civil society organizations with relevant expertise for these workshops or not. This will be measurable if the government at the very least announces when the workshops are set to occur (even if they are closed to the public).</p> <p>Despite the relatively specific and measurable measures planned listed above, there are many measures planned that are overly vague. For example, the NAP states that the “Government Offices [are] considering conducting special due diligence in sectors facing distinct challenges.”¹¹⁰ This does not specify what the government means by due diligence or what exactly this applies to. Key questions left unanswered by the NAP include: Is this in relation to State-owned enterprises? Or in relation to government procurement? Why are the Government Offices conducting due diligence (as opposed to requiring corporations to conduct human rights due diligence), and what will trigger such due diligence? How will the government determine what constitutes a “distinct challenge”?</p> <p>Another vague planned measure is that, “[i]n the OECD, Sweden will work to strengthen efforts to promote the OECD Guidelines for Multinational Enterprises among non-OECD countries.”¹¹¹ This planned measure does not identify any concrete actions that Sweden will take to promote the OECD Guidelines. Having more concrete actions planned in addition to a general statement of wanting to promote the OECD Guidelines would be preferable. Concrete actions could take the form of identifying specific non-OECD countries Sweden plans to target and conducting an analysis of key barriers in State implementation of the Guidelines.</p> <p>Similarly, the NAP commits the government to “work[ing] to improve the implementation</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>of the UN Guiding Principles for Business and Human Rights, for example by urging foreign governments to develop national action plans.”¹¹² Again, there is not an example of a concrete action Sweden will take to promote implementation of the UNGPs or the development of NAPs specifically. Sweden could have specifically committed to offering support to other governments (in the form of training or sharing experience from Sweden’s own NAP process) to conduct a NAP.</p> <p>The first three measures planned listed in the Annex are also vague. The reports themselves (each containing results of an inquiry into the judicial system, such as legal aid fees) are fairly specific, and the NAP lays out the topic of each report and provides a citation.¹¹³ However, these reports have already been completed, and the only statement suggesting there will be follow-up is that each one “has been circulated for comment.”¹¹⁴ As a result, it is entirely unclear as to what the government is actually committing to doing with these three reports. It does not even provide a timeline for when the period for comments will be complete, who within Government is providing feedback, or whether anything will be done based on the reports and comments.</p>
Priorities for NAPS	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>The NAP does not appear to prioritize any human rights abuses above others.</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The NAP touches on vulnerable and excluded groups, but does not focus on them. For example, it briefly discusses children and women in the context of business and human rights under Pillars II and III.¹¹⁵ In the “planned measures” section, children are addressed in the commitment to consider translating the UN Convention on the Rights of the Child into national law.¹¹⁶ The NAP does not say how this would affect business, however. It also mentions women’s rights when discussing the EU procurement directives.¹¹⁷ However, the NAP fails to discuss other vulnerable and excluded groups, such as indigenous peoples, and specifically the Sami.</p>

5. TRANSPARENCY		COMMENTS
Full Transparency With All Stakeholders		
5.1.	The NBA and any other significant analyses and submissions informing the NAP should be published.	No NBA was conducted. However, a draft of the NAP was made publically available through the Government Office’s website. ¹¹⁸

6. ACCOUNTABILITY AND FOLLOW-UP		COMMENTS
Holding Duty-Bearers Accountable for Implementation		
6.1.	NAPs should identify who is responsible for implementation of individual action points and overall follow-up.	<p>Only four out of the twenty-seven “planned measures” identify the entity within the government responsible for implementation of the planned measure: (1) the Ministry of Foreign Affairs is tasked with considering whether or not to strengthen the NCP;¹¹⁹ (2) the Ministry of Foreign Affairs will enhance its reports on the human rights situation in specific countries to ensure that companies can easily obtain guidance on business and human rights issues that are relevant to each country;¹²⁰ (3) Swedish embassies are specifically tasked with creating a dialogue about business and human rights with their local networks as well as collecting information about “potential problems related to human rights and Swedish companies, especially in conflict-affected countries;”¹²¹ the same planned measure states that there will be a training initiative to enhance knowledge about the UNGPs within Swedish embassies, but does not clearly state whether the embassies or another entity within the Government will be in charge of conducting those trainings;¹²² and (4) the NAP notes that Business Sweden, which is jointly owned by the Government and industry,¹²³ “will be instructed to strengthen its implementation of the UN Guiding Principles on Business and Human Rights.”¹²⁴</p> <p>No specific entity or individual is clearly made responsible for overall follow-up on the implementation of the NAP.</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The NAP says that “[i]mplementation of this action plan, including the proposed measures, should be followed up in 2017.”¹²⁵ However, the NAP does not lay out a framework for monitoring of and reporting on implementation, nor does it say which entity within the government will conduct the follow-up.</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 Based on the experience of Swedwatch.

⁴ ECCJ, *Sweden: More Action Required for Business and Human Rights*, <http://www.corporatejustice.org/Sweden-More-action-required-for-business-and-human-rights.html?lang=en> (last visited Nov. 6, 2015).

⁵ Swedish NAP, *supra* note 11.

⁶ SWEDISH NAP, *supra* note 11, at 19.

⁷ *Id.*

⁸ ECCJ, *supra* note 39.

⁹ SWEDISH NAP, *supra* note 11, at 28.

¹⁰ Based on the experience of Swedwatch.

¹¹ *Id.*

¹² SWEDISH NAP, *supra* note 11, at 6.

¹³ Government Offices of Sweden, *Organization*, <http://www.government.se/the-government-offices/organisation/> (last visited Nov. 6, 2015).

¹⁴ Permanent Mission of Sweden to the United Nations, *Action Plan for Business and Human Rights*, <http://www.swedenabroad.com/en-GB/Embassies/Geneva/Current-affairs/News/Action-plan-for-business-and-human-rights-sys/> (last visited Nov. 6, 2015).

¹⁵ Based on the experience of Swedwatch.

¹⁶ SWEDISH NAP, *supra* note 11, at 6; Based on the experience of Swedwatch.

¹⁷ Based on the experience of Swedwatch.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ SWEDISH NAP, *supra* note 11, at 6.

²⁸ *Id.*

²⁹ *Id.* at fn. 1.

³⁰ ECCJ, *supra* note 39.

³¹ Based on the experience of Swedwatch.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ SWEDISH NAP, *supra* note 11, at 28.

³⁷ ECCJ, *supra* note 39.

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- ³⁸ SWEDISH NAP, *supra* note 11, at 11. Penal code - although companies cannot be convicted of a crime in Sweden, can be fined for crimes committed in the exercise of business.
- ³⁹ SWEDISH NAP, *supra* note 11, at 9-11.
- ⁴⁰ *Id.* at 13.
- ⁴¹ *Id.* at 14.
- ⁴² *Id.* at 15 -17.
- ⁴³ *Id.* at 17.
- ⁴⁴ SWEDISH NAP, *supra* note 11, at 20, 26.
- ⁴⁵ ECCJ, *supra* note 39.
- ⁴⁶ SWEDISH NAP, *supra* note 11, at 27.
- ⁴⁷ *Id.* at 28.
- ⁴⁸ *Id.* at 27.
- ⁴⁹ Jesnes, *supra* note 24.
- ⁵⁰ SWEDISH NAP, *supra* note 11, at 29.
- ⁵¹ SOMO, *Fact Sheet – socially responsible public procurement*, http://somo.nl/publications-en/Publication_4161 (last visited Nov. 6, 2015).
- ⁵² SWEDISH NAP, *supra* note 11, at 27.
- ⁵³ Based on the experience of Swedwatch.
- ⁵⁴ *Id.*
- ⁵⁵ SWEDISH NAP, *supra* note 11, at 27-28.
- ⁵⁶ *Id.* at 28.
- ⁵⁷ *Id.* at 29.
- ⁵⁸ European Union Directive 2014/95/EU, insertion to Article 19a, *available at* http://ec.europa.eu/finance/company-reporting/non-financial_reporting/index_en.htm
- ⁵⁹ *Id.*
- ⁶⁰ SWEDISH NAP, *supra* note 11, at 27.
- ⁶¹ Based on the experience of Swedwatch.
- ⁶² SWEDISH NAP, *supra* note 11, at 29.
- ⁶³ *Id.* at 27.
- ⁶⁴ *Id.* at 27.
- ⁶⁵ European Union Directive 2013/34/EU, *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN>.
- ⁶⁶ SWEDISH NAP, *supra* note 11, at 27.
- ⁶⁷ *Id.* at 27.
- ⁶⁸ European Union Directive 2013/34/EU, *supra* note 436.
- ⁶⁹ SWEDISH NAP, *supra* note 11, at 27.
- ⁷⁰ *Id.* at 28.
- ⁷¹ *Id.* at 29.
- ⁷² *Id.* at 28.
- ⁷³ *Id.* at 28-29.
- ⁷⁴ *Id.* at 3.
- ⁷⁵ *Id.* at 13.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.* at 29.
- ⁷⁸ *Id.* at 1

⁷⁹ *Id.*
⁸⁰ *Id.*
⁸¹ *Id.*
⁸² *Id.* at 27.
⁸³ *Id.*; Based on the experience of Swedwatch.
⁸⁴ *Id.* at 27.
⁸⁵ *Id.*
⁸⁶ *Id.*
⁸⁷ *Id.* at 21.
⁸⁸ *Id.* at 22.
⁸⁹ *Id.* at 23.
⁹⁰ *Id.* at 27-29.
⁹¹ *Id.* at 29.
⁹² *Id.*
⁹³ *Id.*
⁹⁴ *Id.*
⁹⁵ *Id.* at 27-28.
⁹⁶ *Id.* at 22.
⁹⁷ *Id.*
⁹⁸ It is unclear if the commitment is to continue to consider it, or to try and turn it into law. *Id.* at 27.
⁹⁹ *Id.* at 27.
¹⁰⁰ *Id.*
¹⁰¹ *Id.*
¹⁰² *Id.* at 6.
¹⁰³ *Id.* at 28.
¹⁰⁴ *Id.* at 27-28. This timeline is an external timeline imposed by the EU itself.
¹⁰⁵ *Id.* at 28.
¹⁰⁶ *Id.*
¹⁰⁷ *Id.* at 29.
¹⁰⁸ Even if the government has provided a certain type of support in the past, this planned measure does not explicitly state that the government will consider continuing the same support only.
¹⁰⁹ *Id.* at 29.
¹¹⁰ *Id.* at 28.
¹¹¹ *Id.* at 29.
¹¹² *Id.* at 28.
¹¹³ *Id.* at 27.
¹¹⁴ *Id.*
¹¹⁵ *Id.* at 13, 15, 17.
¹¹⁶ *Id.* at 27.
¹¹⁷ *Id.*
¹¹⁸ *Id.* at 6.
¹¹⁹ *Id.* at 28.
¹²⁰ *Id.*
¹²¹ *Id.*
¹²² *Id.*

¹²³ Business Sweden, *About*, <http://www.business-sweden.se/en/about-us/About-Business-Sweden/> (last visited Nov. 6, 2015).

¹²⁴ SWEDISH NAP, *supra* note 11, at 29.

¹²⁵ *Id.* at 19.