

NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

A Toolkit for the Development, Implementation, and Review of
State Commitments to Business and Human Rights Frameworks



TOOLKIT COMPONENT 2: THE NATIONAL ACTION PLAN (NAP) GUIDE

The Danish Institute for Human Rights (DIHR) is Denmark’s national human rights institution. Its mandate is to promote and protect human rights and equal treatment in Denmark and abroad. The Human Rights and Business Department is a specialized unit within DIHR focusing on the role of the private sector in respecting human rights.

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

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CHAPTER 6: THE NATIONAL ACTION PLAN (NAP) GUIDE

This Chapter presents guidance, first, on how to develop a NAP and, second, as to the scope, content, and priorities to be addressed by NAPs.

The aim of the NAP Guide is to promote NAPs processes that lead to coherent, robust NAPs that are meaningful in advancing respect for human rights in the business sector, that are viable and valuable governance tools, and which contribute to progressive and durable changes at the national level and beyond. At the same time, the Guide is intended to promote NAPs processes that are inclusive, transparent, and empowering for rights-holders.

The Guide identifies a set of criteria for NAPs in six areas:

- 1. Governance and resources;**
- 2. Stakeholder participation;**
- 3. National Baseline Assessment (NBA);**
- 4. Scope, content, and priorities;**
- 5. Transparency; and**
- 6. Accountability and follow-up.**

The Guide is informed by a desk-based review of published NAPs and related materials, including stakeholder commentaries on these, as well as this Project's global program of consultation with stakeholders, as summarized in Chapter 3 and in Annex 3. A figure summarizing the main elements of the NAP Guide can be found at the end of this Chapter.

An easy-to-use NAP Checklist, based on this Guide, is found in Annex 5 to this report. The Checklist should be used in conjunction with this Guide and the rest of the NAPs Toolkit.

- Where a NAP has not yet been developed, the NAP Checklist should be used in conjunction with the NBA Template;
- For countries that have already developed a NAP, the NAP Checklist should be used to evaluate the NAP and to support development of new versions or revisions to the NAP in the future;
- For those countries that have already developed a NAP without first completing a NBA, or which have developed a NAP based on a NBA that substantially diverges from the NBA Template, the NAP Checklist should be used to evaluate the existing NAP, while a full NBA should be undertaken, referencing the NBA Template, before a new NAP is developed or revisions undertaken.

The NAP Checklist is also directly linked to the Monitoring and Review of NAPs component of the NAPs Toolkit, found in Chapter 7 of this report, in that it explicitly calls for a follow-up process to be identified within the NAP itself in order to ensure that there is continuous and periodic review of the NAP and that there is accountability for the commitments made therein.

6.1. GOVERNANCE AND RESOURCES

Leadership and Ownership of NAP Process

6.1.1. COMMITMENT TO THE NAP PROCESS.

A first, and central, step is for the government to set a firm and long-term commitment to the development and implementation of a NAP. This commitment will ensure that the NAP process is adequately resourced and prioritized within the government. Furthermore, the commitment should be developed jointly with other societal actors, including experts such as NHRIs and academia, ensuring their support throughout the process.

6.1.2. ENSURE RESPONSIBILITY FOR THE NAP PROCESS IS CLEARLY ESTABLISHED AND COMMUNICATED.

As for any policy-making process, efficiency and accountability demand that there is clear leadership within the government for the development of a NAP. Responsibility for the NAP should be unambiguously allocated to an entity or entities within the government (for example, to a specific government ministry, office, or agency), and this allocation of responsibility should be publicly communicated through an official announcement or published decision. The responsible entity should have the organizational capacity, political authority, and resources necessary to develop the NAP, as well as to promote and subsequently monitor its implementation effectively.

6.1.3. ENSURE AN INCLUSIVE APPROACH ACROSS ALL AREAS OF GOVERNMENT.

Almost all government departments, offices, and agencies have responsibilities that are relevant to the implementation of the UNGPs. In order to be material and complete, and for the sake of its long-run success, a NAP should reflect input from and enjoy the full support of departments and others across government, as well as from external stakeholders. Accordingly, a coordinating mechanism such as a cross-departmental advisory group or steering committee should be set up to meet periodically throughout a NAP process.

6.1.4. DEVISE AND PUBLISH TERMS OF REFERENCE AND A TIMELINE FOR THE NAP PROCESS.

Clear terms of reference, objectives, and at least a provisional timeline are essential to enable all stakeholders, internal and external, to plan and manage their participation in a NAP process. Accordingly, these should be published in a draft form for consultation prior to the development of the NAP itself and, once finalized, disseminated through appropriate media sources in a timely fashion in order to ensure adequate notice for all parties.

Adequate Resourcing

6.1.5. DETERMINE AN APPROPRIATE BUDGET FOR THE NAP PROCESS.

Adequate human and financial resources to complete the entire NAP process, including the development and completion of a NBA and monitoring and review of the NAP's implementation once complete, should be allocated to those responsible for the NAPs development process.

6.2. STAKEHOLDER PARTICIPATION

Effective Participation by All Relevant Stakeholders

1.2.1. CONDUCT AND PUBLISH A STAKEHOLDER MAPPING.

Many of the relevant national stakeholders may be obvious and well-known to relevant government departments, such as business associations, trade unions, or individual companies that have a significant footprint on the national economy, workforce, or environment. Others, however, may not be. This is more likely to be the case, for instance, with regard to marginalized or at-risk groups, such as indigenous peoples, representatives of affected communities, or migrant workers' associations. A prerequisite of respecting the right to participation is ensuring that all rights-holders and other stakeholders are identified from the start so that their input can later be sought. The following categories should be considered in the stakeholder mapping exercise:

- Executive government, including all relevant government departments, agencies, offices, and State-owned enterprises, as well as police and other law enforcement agencies;
- Judiciary and administrative tribunals, alternative dispute resolution mechanisms, and informal justice actors;
- Parliament, including relevant committees;
- Businesses, including significant industry sectors, business associations, SMEs, the self-employed, sole traders, cooperatives, non-profits, and informal sector actors;

- Labor unions and other workers' representative associations;
- Representatives of affected groups or communities of rights-holders and human rights defenders, inside and outside the State's territorial jurisdiction who may potentially be affected by the conduct of companies based in or controlled from the State;
- NHRIs, ombudsman institutions, and statutory equality bodies;
- Civil society organizations with mandates addressing relevant issues;
- Media, including general news and specialist sources;
- Academia, including research institutes, individual experts, and relevant educational institutions, such as business schools;
- International and regional actors, for example, relevant UN agencies and country teams, the World Bank, regional development banks, and the OECD.

A draft stakeholder mapping should be made public and disseminated for comment and validation.

1.2.2. DEVELOP AND PUBLISH A CLEAR PLAN AND TIMELINE FOR STAKEHOLDER PARTICIPATION.

In order to be able to take part effectively in a NAP process, stakeholders must be adequately informed, with due notice, of key milestones in the NAP process and of all consultation events and periods. A consultation plan and timeline should be produced, regularly updated throughout the process, and disseminated via appropriate channels. It is also important that timelines for submissions and feedback should be realistic given the time, resources, and capacities of all stakeholders.

1.2.3. PROVIDE ADEQUATE INFORMATION AND CAPACITY-BUILDING WHERE NEEDED.

In many country contexts, the UNGPs, and business and human rights issues more widely, will be new to many stakeholders, both inside and outside of the government. Where this is the case, stakeholders may require information or capacity-building, for example, in the form of introductory training, if they are to participate effectively in dialogue and contribute meaningfully to the formulation of the NAP.

1.2.4. FACILITATE PARTICIPATION BY DISEMPOWERED OR AT-RISK STAKEHOLDERS.

Rights-holders from affected groups and communities, especially those from vulnerable or marginalized groups, human rights defenders, journalists, and CSO personnel will often have relevant information and experiences to contribute to a NAP process. Yet, these stakeholders may be prevented from participating due to factors such as lack of resources, intimidation, fear of

reprisals, social hierarchies, stigma, or taboos that prevent equal access to the public sphere and effective voicing of opinions in public dialogue.

In line with the State duty to protect under Pillar I of the UNGPs and the HRBA, it is incumbent on the government to ensure that at-risk stakeholders can participate effectively. All appropriate measures should therefore be in place to facilitate this. Required steps may include: provision for confidential or anonymous submissions; providing financial support for travel and other consultation attendance costs; interpretation of materials and proceedings into minority languages; police or other protection; and arrangements for local or stakeholder-specific dialogue events, such as separate events for children or gender-segregated events.

1.2.5. CONSIDER ESTABLISHING A STAKEHOLDER STEERING GROUP OR ADVISORY COMMITTEE.

In any country, the relevant stakeholders for a NAP process will be numerous. While all stakeholders should have the opportunity to participate on an equal basis during the process, in some circumstances more effective representation of stakeholder views may result from the establishment of a stakeholder steering group or advisory committee, composed of members drawn from across stakeholder categories on a representative basis.

6.3. NATIONAL BASELINE ASSESSMENT (NBA)

The NBA as the Foundation for the NAP

6.3.1. UNDERTAKE A NBA AS THE FIRST STEP IN THE NAP PROCESS.

To facilitate a coherent approach to identification, prioritization, and selection of UNGP implementation measures to be included in a NAP, the process of its development should start with the completion of a comprehensive National Baseline Assessment (NBA) (see Chapter 5 and Annex 4). Ideally, the NBA should be completed, or at least its preliminary results made available, before any decision-making concerning the scope, content, and priorities of the NAP begins.

6.3.2. ALLOCATE THE TASK OF DEVELOPING THE NBA TO AN APPROPRIATE BODY.

As with any policy-making process, there will be competing views among stakeholders on what issues should be prioritized for action in the NAP and what measures are most appropriate to addressing its objectives. It is therefore crucial that stakeholders see the NAP as an accurate and impartial assessment of the status quo. To achieve this, the task of developing a NBA should be allocated to a body with relevant expertise and competence and which is also viewed as independent from political affiliation or special interests. Relevant expertise in this context must include, at a

minimum, knowledge and experience of national, regional, and international standards and issues in the areas of human rights, business and human rights, and/or CSR.

6.3.3. FULLY INVOLVE STAKEHOLDERS IN THE DEVELOPMENT OF THE NBA.

As further elaborated in Chapter 5, government stakeholders, rights-holders, and other external stakeholders should be solicited for input to the development of the NBA. Their views should also be sought on a draft version of the NBA prior to its finalization to validate provisional findings.

6.3.4. PUBLISH AND DISSEMINATE THE NBA.

In line with the principle of transparency, the NBA should be published and made accessible to all stakeholders once finalized, using forms of communication appropriate to relevant stakeholder categories, such as translation of full or summary findings into relevant languages and posting on government websites.

6.4. SCOPE, CONTENT, AND PRIORITIES

Scope of NAPs

6.4.1. A NAP SHOULD ADDRESS THE FULL SCOPE OF THE UNGPs.

In line with the NBA, the measures contained in the NAP should, in principle, address all of the UNGPs. The NAP should also give a clear indication of how the actions identified contribute to the realization of each UNGP in question.

6.4.2. A NAP SHOULD ADDRESS THE FULL SCOPE OF THE STATE'S JURISDICTION.

Also in line with the scope of the NBA, the NAP should extend to all matters in the State's jurisdiction, including matters outside the State's territorial jurisdiction.

6.4.3. A NAP SHOULD ADDRESS INTERNATIONAL AND REGIONAL ORGANIZATIONS AND STANDARDS.

While the primary focus of the NAP should be legislation, policy, public programs, and institutions within the State in question, the NAP should likewise extend in scope to the State's interactions with relevant regional and international organizations, such as international financial institutions (IFIs), trade bodies, and regional organizations.

6.4.4. A NAP SHOULD ADDRESS THEMATIC AND SECTOR-SPECIFIC HUMAN RIGHTS ISSUES.

Even while taking a principle-by-principle approach, NAPs must not neglect relevant thematic or sector-specific human rights issues. Such issues might include, for instance, women's rights, children's rights, indigenous and minorities' rights, labor rights, anti-trafficking and anti-slavery, security and conflict, revenue transparency and management, and information and communication technologies (ICT).

Content of NAPs

6.4.5. THE NAP SHOULD INCLUDE A STATEMENT OF COMMITMENT TO THE UNGPs.

A NAP should clearly state the government's commitment to the UNGPs, following from its commitments under the UDHR and other international and regional human rights instruments, and to taking necessary steps toward their full implementation.

6.4.6. A NAP SHOULD COMPRISE ACTION POINTS THAT ARE SPECIFIC, MEASURABLE, ACHIEVABLE, RELEVANT, AND TIME-SPECIFIC.

The NAP should identify a set of concrete actions to be taken by the government. The measures to be taken should be explicitly linked to the results of the NBA. In particular, the NAP should respond to identified gaps in implementation and aim to address these directly or, at a minimum, to contribute significantly to resolving them within a reasonable time period. Further, it should be ensured that each item is:

- **SPECIFIC:** The action item should address a specific gap or issue;
- **MEASURABLE:** The action item should be concrete enough to ensure that progress on the item can be measured and assessed;
- **ACHIEVABLE:** The action item should be realistic in terms of time and resources;
- **RELEVANT:** The action item should be linked to the UNGPs or other business and human rights frameworks, and to the realization of specific rights;
- **TIME-SPECIFIC:** The action item should have an indication of the timeline for realization.

Priorities for NAPS

6.4.7. A NAP SHOULD PRIORITIZE FOR ACTION THE MOST SERIOUS BUSINESS-RELATED HUMAN RIGHTS ABUSES.

Informed by the results of the NBA, the NAP should prioritize for action those issues or situations where business-related human rights abuses are current or imminent, as well as situations where abuses have already occurred but have not yet been remediated. States should moreover prioritize and commit to take immediate action in response to actual or threatened human rights abuses of a serious nature, such as where there are threats to life, liberty, and security of person, inhumane or degrading treatment, where there are violations of core labor rights or the rights of vulnerable groups.

6.4.8. IN LINE WITH THE HRBA, THE NAP SHOULD INCLUDE A PARTICULAR FOCUS ON THE MOST VULNERABLE AND EXCLUDED GROUPS.

A NAP should include a particular focus on the most vulnerable and excluded groups. This includes children and, depending on the context, women; racial, ethnic, religious, or other minorities; LGBTs; persons with disabilities; indigenous peoples; the elderly; migrant workers and their families; persons affected by poverty; homeless persons; rural or geographically isolated communities; and persons employed in the informal economy. The NAP should clearly identify such individuals and communities as rights-holders, and should explicitly lay out measures to be taken by the State to enable these individuals and communities to claim and enjoy their human rights.

6.5. TRANSPARENCY

Full Transparency With All Stakeholders

6.5.1. THE NBA AND ANY OTHER SIGNIFICANT ANALYSES AND SUBMISSIONS INFORMING THE NAP SHOULD BE PUBLISHED.

All information produced and contributing to the development of the NAP should be published and accessible to all interested parties, both domestically and abroad, subject to any need to withhold material from publication to safeguard human rights defenders or others at risk from unlawful harassment, intimidation, or reprisals.

6.6. ACCOUNTABILITY AND FOLLOW-UP

Holding Duty-Bearers Accountable for Implementation

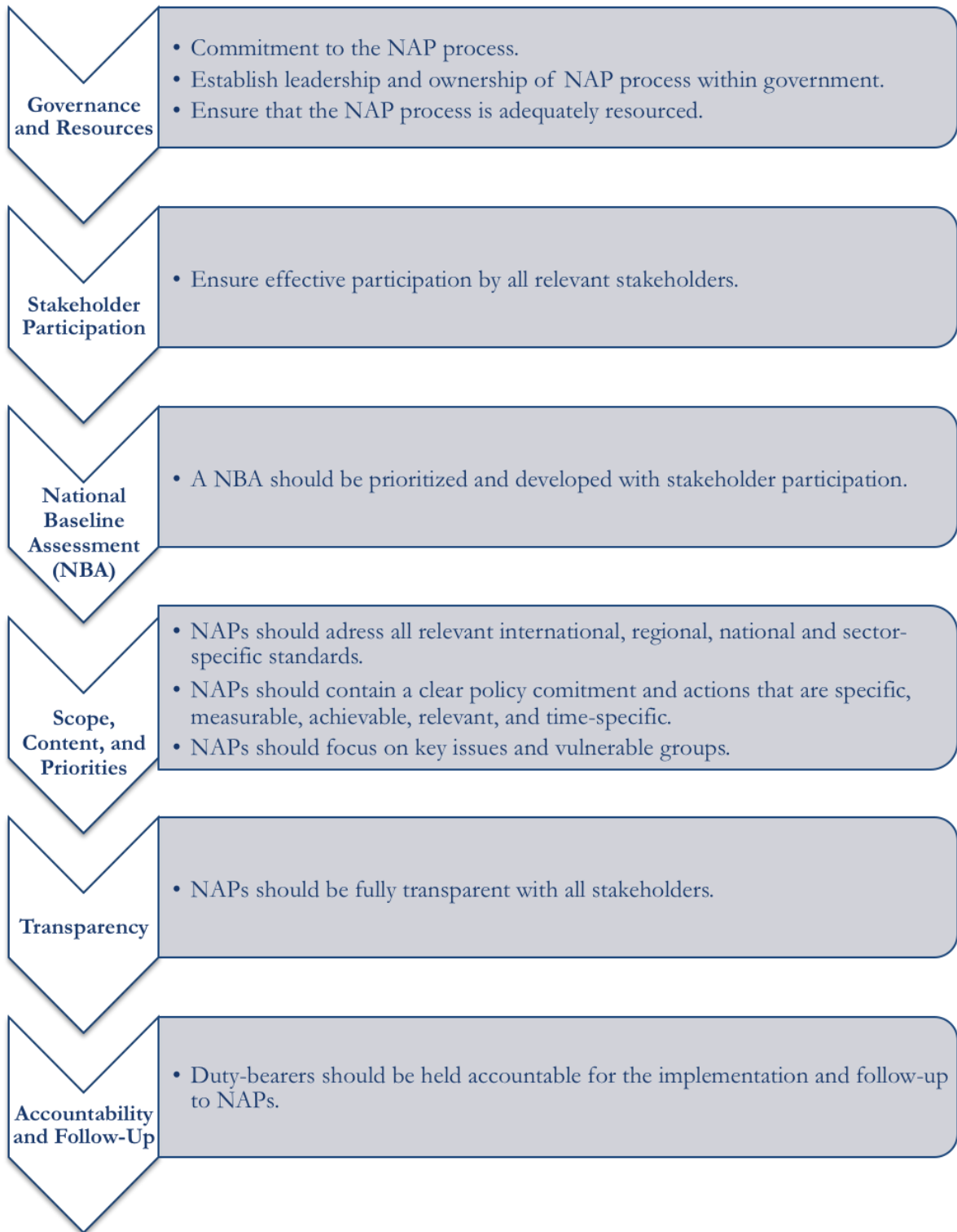
6.6.1. NAPs SHOULD IDENTIFY WHO IS RESPONSIBLE FOR IMPLEMENTATION OF INDIVIDUAL ACTION POINTS AND OVERALL FOLLOW-UP.

Every action point included in the NAP should have its ownership within government clearly identified. Overall responsibility for coordinating implementation of the NAP, reporting, and other follow-up measures should also be clearly allocated.

6.6.2. NAPs SHOULD LAY OUT A FRAMEWORK FOR MONITORING AND REPORTING OF IMPLEMENTATION.

Monitoring and reporting on progress in giving effect to commitments made in their NAPs should be undertaken on a periodic basis. A mapping of follow-up options and short- and long-term goals for follow-up on the NAP is provided in Chapter 7 of this report. Regardless of the follow-up mechanisms to be utilized by the State in reporting on its NAP, the NAP itself should clearly identify which mechanisms are to be used to indicate the State's clear plan going forward.

FIGURE 10: STAGES OF NAPs DEVELOPMENT, IMPLEMENTATION, AND REVIEW



ANNEX 5: THE NATIONAL ACTION PLAN (NAP) CHECKLIST

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
1.1. Commitment to the NAP process.	
1.2. Ensure responsibility for the NAP process is clearly established and communicated.	
1.3. Ensure an inclusive approach across all areas of government.	
1.4. Devise and publish terms of reference and a timeline for the NAP process.	
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	

2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	
2.2. Develop and publish a clear plan and timeline for stakeholder participation.	
2.3. Provide adequate information and capacity-building where needed.	
2.4. Facilitate participation by disempowered or at-risk stakeholders.	
2.5. Consider establishing a stakeholder steering group or advisory committee.	

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.	

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
3.2. Allocate the task of developing the NBA to an appropriate body.	
3.3. Fully involve stakeholders in the development of the NBA.	
3.4. Publish and disseminate the NBA.	

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
4.1. A NAP should address the full scope of the UNGPs.	
4.2. A NAP should address the full scope of the State's jurisdiction.	
4.3. A NAP should address international and regional organizations and standards.	

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
4.4. A NAP should address thematic and sector-specific human rights issues.	
Content of NAPs	
4.5. The NAP should include a statement of commitment to the UNGPs.	
4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.	
Priorities for NAPS	
4.7. A NAP should prioritize for action the most serious business-related human rights abuses.	
4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.	

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.	

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.	
6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.	

