



Strengthening business accountability in the National Action Plans on Business and Human Rights:

Policy recommendations on transparency

Developed by:



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INTRODUCTION

Unanimously endorsed by the UN Human Rights Council in 2011, the Guiding Principles on Business and Human Rights¹ (Guiding Principles) have become the authoritative global reference regarding the responsibilities of business enterprises with respect to human rights.

The expectation of human rights due diligence is essential to business behavior, as set out in the Guiding Principles. The due diligence process consists of the identification, prevention, mitigation and accounting of how companies address their human rights impacts. This responsibility to account for addressing impacts makes the disclosure of non-financial information a critical component of the due diligence process, and is increasingly becoming a legally binding obligation.

The Guiding Principles distinguish between the role of States on the one hand and the role of business

enterprises on the other. According to Guiding Principle 3(d), States should “*encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*” However, a State role is not necessary to make disclosure a requirement for business enterprises. Guiding Principle 21 provides that “*in order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders.*”

Reporting can help companies become aware of and understand the human rights impacts of their decisions and activities. The GRI Sustainability Reporting Standards (GRI Standards)² provide a comprehensive framework that can be used by businesses to report on their human rights impacts and how they manage them, including their due diligence processes (see “Update of human rights-related GRI Standards”).

¹ https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

² <https://www.globalreporting.org/standards/>

CALL-TO-ACTION

At the 2019 edition of its Forum, “Time to act: Governments as catalysts for business respect for human rights,”³ the UN Working Group on Business and Human Rights (UN Working Group) is calling for government action and leadership. GRI also recognizes the fundamental role of policy makers, understood as government officials, members of government agencies and regulators, in facilitating and promoting the corporate responsibility to respect human rights. A number of national and regional legislative initiatives indicate a growing trend towards regulating human rights due diligence,⁴ through obligations to conduct due diligence and/or transparency requirements.

In practice, to fulfil their respective duties and responsibilities, States and businesses have to take action as determined by the Guiding Principles. Subsequently, National Action Plans (NAPs) on Business and Human Rights⁵ have emerged as a key policy instrument for States to protect against the adverse human rights impacts caused by business activities. NAPs set out official policies, national expectations, priorities and activities with respect to the implementation of the Guiding Principles. Through the development of NAPs, governments consider existing policies and challenges related to businesses and human rights and set out measures for both the State and businesses to take. These measures include, among other things, how companies should be encouraged or required to report on how they address their impacts, as called for in Guiding Principle 3(d). For that purpose, the guidance document on NAPs developed by the UN Working Group encourages governments to “*support efforts to have transparency in relation to business and human rights issues by clarifying their expectations regarding the disclosure of information on human rights due diligence and related impacts*”⁶ – and, further, to refer to established reporting standards such as GRI.

In this document, GRI provides additional recommendations on how to strengthen business transparency and reporting requirements in the NAPs. The recommendations are based on an analysis of the 23 NAPs published as of September 2019.⁷ They are aimed primarily at governments drafting or updating their NAPs, but also at stakeholders participating in this process, including businesses, civil society, and research and national human rights institutions. The analysis shows that the disclosure of non-financial information receives uneven treatment in existing NAPs. These recommendations are intended to provide a basis for discussion by the participants in the NAPs process as to how non-financial information can be incorporated into national human rights policy.

Update of human rights-related GRI Standards

GRI is currently working to update the human rights-related GRI Standards⁸ to better align them with key authoritative intergovernmental instruments, such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The review will also take into account the OECD Due Diligence Guidance for Responsible Business Conduct, which is the most authoritative elaboration of human rights due diligence. This project will look at:

- ✦ Including a set of human rights-specific disclosures (e.g., policy commitment) in GRI 102: General Disclosures, for use by all organizations reporting with the GRI Standards;
- ✦ Including reporting requirements on due diligence for all economic, environmental, and social topics an organization reports on;
- ✦ Reviewing and revising the range of human rights-related topics covered in the GRI Standards (e.g., GRI 408: Child Labor, GRI 409: Forced or Compulsory Labor), and the related disclosures, to ensure they reflect best practice.

³ <https://www.ohchr.org/EN/Issues/Business/Forum/Pages/2019ForumBHR.aspx>

⁴ <https://www.business-humanrights.org/en/mandatory-due-diligence>

⁵ <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

⁶ https://www.ohchr.org/Documents/Issues/Business/UNWVG_NAPGuidance.pdf

⁷ <https://globalnaps.org/> and <https://www.business-humanrights.org/en/government-action-platform>

⁸ <https://www.globalreporting.org/standards/work-program-and-standards-review/review-of-human-rights-related-gri-standards/>

CURRENT DEVELOPMENTS

Experience shows that the State duty to protect human rights cannot be fully realized through voluntary guidelines and self-regulation by companies alone. And so, in many countries, reliance on voluntary efforts by companies to account for how they address their impacts has been followed by increasing mandatory disclosure requirements. These regulations tend to focus on general non-financial information and/or specific human rights issues such as modern slavery or child labor.

The exploration and development of legally binding requirements should be a component of NAPs in the context of achieving a “smart mix” of voluntary and binding State measures. Examples of such reforms include mandatory non-financial reporting requirements, such as those provided by the EU Non-Financial Reporting Directive (2014)⁹ or mandatory human rights due diligence regulations.¹⁰ Beyond addressing national or regional legislation, it is notable that many NAPs refer to other instruments or frameworks. These include the Organisation for Economic Co-operation and Development (OECD)¹¹ Guidelines for Multinational Enterprises as well as related guidance such as the OECD Due Diligence Guidance for Responsible Business Conduct. In addition to authoritative governmental frameworks, there are important sector-specific initiatives developed by industry bodies such as the International Council on Mining and Metals and IPIECA for oil and gas.

The “smart mix” of measures – voluntary and mandatory, national and international – can drive further progress towards more and better human rights reporting. Most importantly, it should always consider the globalized nature of today’s economy. NAPs can use non-financial reporting requirements to address the human rights impacts of home-based companies beyond national borders.

Despite these legislative efforts, there is a striking gap in policy commitment, management systems and reporting on results and progress from businesses.¹² A 2018 European study by the Alliance for Corporate Transparency¹³ reveals that while 90% of companies expressed a commitment to respect human rights in their annual reports, only 36% described their human rights due diligence system. Reporting needs to go beyond stating general policies and processes or other generic quantitative metrics. For reporting to be meaningful, businesses need to report on the challenges they face and provide specific examples of how policies and processes are applied in practice. Further, they should take a forward-looking approach and provide clear targets and goals to show how they are intending to address their impacts. The following recommendations look at filling these gaps and ensuring that NAPs address human rights reporting in the most effective manner.

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>

¹⁰ <https://www.business-humanrights.org/en/mandatory-due-diligence>

¹¹ <http://mneguidelines.oecd.org/>

¹² <https://www.globalreporting.org/resourcelibrary/Shining%20a%20Light%20on%20Human%20Rights%202016.pdf>

¹³ <https://www.allianceforcorporatetransparency.org/>

RECOMMENDATIONS FOR POLICY MAKERS

- 1. NAPs should require public reporting on human rights impacts based on internationally recognized standards that are aligned with the Guiding Principles.** To ensure quality and consistency of the information disclosed by companies, the relevant legislation should require companies to report on their human rights due diligence processes across their activities and business relationships. Requiring the use of specific standards, such as the GRI Standards, for human rights reporting will allow the performance of companies that report to be comparable, which may act as an incentive for them to communicate how they manage their impacts and benefit companies that already do so.
- 2. NAPs should consistently clarify that companies need to disclose how they are managing their human rights impacts,** according to the key components of the due diligence process outlined in the Guiding Principles. They should specify that companies are expected to include information on the human rights risks identified, the measures taken to avoid and address them, as well as the effectiveness of those measures. This way, NAPs can serve governments to communicate the benefits and added value of non-financial information as a tool to identify and manage human rights impacts, as well as highlight the advances at the national level.
- 3. NAPs should include concrete targets and timelines regarding human rights reporting.** They should call for specific targets for an increase in the number of businesses that report as well as a clear timeline to monitor the development of the reporting process. The targets should be specific, measurable and realistic in order to be useful in measuring the effectiveness of the policies included in the NAPs.
- 4. NAPs should be informed by sustainability reports as part of an efficient and transparent monitoring process.** These reports should be used as a source of information on responsible business conduct but also to determine the extent to which businesses meet their responsibility to identify and address their human rights impacts. They inform governments on the common themes and human rights impacts related to domestic companies operating in the country or abroad, as well as the challenges faced by foreign or multinational companies operating in their territory. Sustainability reports that rely on the GRI Standards can help governments develop better policies while facilitating the extraction, aggregation and correlation of data.
- 5. NAPs should take into account the reporting responsibilities of all businesses, including small and medium-sized enterprises and state-owned enterprises.** As all organizations can impact human rights, reporting requirements should also target the value chains of businesses, including both domestic and international business operations. For these two categories of reporters, the development of trainings is particularly important.
- 6. NAPs should provide incentives for companies to increase and improve their reporting on human rights impacts.** The objective is to encourage companies to have policies and implement adequate procedures at a global level according to their size and circumstances. By doing so, governments can incentivize sustainable outcomes in the way they design their policies and in recognizing companies' reporting. Concrete examples of incentives include awards, annual events organized for companies to show progress, as well as rankings to stimulate competition and propagate benchmarks.

RECOMMENDATIONS FOR POLICY MAKERS

- 7. NAPs should include support to companies through the promotion of awareness raising and capacity building measures** targeting companies, business associations, and other key stakeholders. These measures can, for example, include coordinating with employers' organizations to support companies and business representative bodies adequately. Other support measures should include the development and production of training materials and the organization of meetings on specific reporting issues. Similar awareness raising and capacity building measures should also be developed for public entities and public administration officials. This will help foster a common understanding and promote dialogue between the public and private sectors.
- 8. NAPs should include the development of guidance documents that further explain and specify the reporting requirements set out.** Such guidance can be in the form of topic-specific documents including good practices and/or addressing concrete human rights risks. In order to evaluate compliance with human rights issues, companies should be directed to guidance covering topics that are already addressed in other legislation. These documents can cover certain sectors, in particular for high risk business activities (e.g., mining, energy, textile) or specific themes (e.g., modern slavery, child labor, conflict-affected areas).
- 9. NAPs should foster collaborations and partnerships between the State, public and private companies, and civil society.** Transparency requirements need not be limited to formal reporting but can include dialogue with workers, communities, consumers, and other stakeholders. NAPs should engage policy makers at the national and international levels, including through public consultations, to understand public opinion on policies and their role. This can be done through support to industry-led initiatives, including on reporting, benchmarking performance and practical sector guidance. Conversely, NAPs should engage businesses at every step of the development and drafting process. Finally, governments should share their experiences on non-financial reporting with other governments to harmonize requirements among jurisdictions.
- 10. NAPs should specify who is responsible for the implementation of specific action points including human rights reporting.** For that purpose, they should clearly identify and publicly communicate leadership roles on the development and drafting process. They can recommend the completion and publication of impact assessments, ensuring that all appropriate stakeholders are included.



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