



**NATIONAL ACTION PLANS
ON BUSINESS AND
HUMAN RIGHTS:
a guidance for the mid-term review**



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Authors:

Giada Lepore, Beatrice Pesce
With the contribution of Marta Bordignon

Graphics and layout:
Ilaria Argenziano

HRIC Human Rights International Corner

Corso Vercelli, 57
20144 Milan, Italy

www.humanrightsic.com
segretaria@humanrightsic.com



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FOREWORD

There is, now already, strong evidence to confirm the value of NAPs to the effective implementation of the UNGPs. It is also true that there are still many more lessons to be learned about how best to manipulate the NAP process in order to deliver the best results to those at risk of or affected by adverse impacts of the activities of enterprises. In the circumstances, any form of Guidance from independent actors can be useful. The UN Working Group Guidance on NAPs (2016) and related Guidance such as those developed by the consortium of the International Corporate Accountability Roundtable (ICAR) and the Danish Institute of Human Rights (2014) or the associated versions proposed by the OECD among many others have proved useful.

The importance of the character of NAPs as a continuous learning process is captured by the invitation to States by the UNWG to consider appropriate points in the lives of their NAPs to step back and review progress. There may, however, be more than one reason why a State may be slow in initiating a midterm review of its NAP including not envisaging one at the time of the initial design; uncertainty about how to go about the process and confusion as to its value or more so the absence of resources. For those States that undertake or intend to undertake a midterm review of their NAP as well as for those, who for any of the many reasons are unable to undertake one, a set of general guidance that help to iron out potential challenges or details that are unclear in the larger UNWG Guidance will be useful.

It is for this reason that the present Guidance aimed at supporting the midterm review of NAPs is so welcome. This guidance provides the essential continuity between different iterations of NAPs by building upon the lessons from the practice that has emerged, so far, within States. It is also important to know that the present Midterm Guidance is inspired by the same principles that inform the UNWG Guidance for NAP, including continuous monitoring, tracking and learning, inclusiveness and dialogue that take account of critical voices

For those who may be concerned that another guidance may impose additional burdens, nothing could be further from the truth. In fact, by helping to clarify the nuanced requirements for an effective midterm review, it can be said to lighten the load of effective delivery of the NAP by streamlining the steps and expectations of good practice for States to draw upon.

Professor Michael K. Addo

University of Notre Dame Law School

Former Member of the United Nations Working Group on Business and Human Rights

FOREWORD

Almost ten years after the adoption of the UNGPs, state practice provides relevant evidence of how the development of National Action Plans on Business and Human Rights has contributed to the prevention and protection against human rights abuses by business enterprises. Since the UN Working Group on Business and Human Rights and the European Commission advocated the implementation of the UNGPs by encouraging states to draft National Action Plans, important guidance on their process of elaboration, structure, content, monitoring and update have been issued by the UNWG, civil society organisations and national human rights institutions. These guides, toolkits and recommendations represent a great contribution to harmonise the NAPs processes, including the modalities of monitoring and update. In all of them the periodic review of National Action Plans is underlined as one of their strategic elements.

The review of the Italian NAP conducted in 2018 lies at the origin of the present Guide. The renown experts of the HRIC designed the methodology and participated in the mid-term review of the Plan advising the Italian Inter-ministerial Committee on Human Rights.

On the basis of the Guidance released by the UN Working Group in 2016, the authors of this Guide have looked into the review processes conducted so far and have taken the lessons learnt to identify best practices and evaluate implementation gaps. As a result, this Guide on Mid Term Review of NAPs seeks to provide, through six detailed phases and clear requirements that states should follow in conjunction with civil society and other relevant actors, a methodology for effectively review National Action Plans on business and human rights.

The Mid Term Review of National Action Plans on Business and Human Rights is thus a strategic tool and valuable addition to the existing guidelines which assures the NAPs adequacy to objective criteria and evolving context.

Prof. Dr. Carmen Márquez Carrasco
Department of Public International Law and International Relations
Faculty of Law, University of Seville

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INTRODUCTION

National Action Plans (hereinafter NAPs) are States policy documents enunciating actions, priorities and strategies that will be adopted to support the implementation of obligations or commitments with regard to a specific issue.

NAPs on Business and Human Rights are following a global trend led by States in releasing action plans to intervene in important policy areas, such as climate change, health literacy, or human trafficking. More in particular, in its 2011 Communication the European Commission invited the EU Member States to develop national action plans for the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs), as part of the European Strategy for corporate social responsibility 2011-2014 (CSR). At the time of the issuing of this Guidance (June 2020), twenty-four States in the world had published a NAP on this topic and fourteen are in the process of developing one¹.

As a consequence of the global development of NAPs, the UN Working Group on Business and Human Rights (hereinafter UNWG) issued a Guidance on NAPs to provide, to all the stakeholders involved in the process of drafting a new NAP, recommendations and indications on its development, implementation and update. In this respect, one of the four essential criteria of the UNWG Guidance for an effective NAP is the need to regularly review and update the document.

This need responds indeed to the eventual mutating and evolving political, social and cultural contexts and to the cumulative progress pursued for its implementation. Despite these recommendations there are various NAPs not foreseeing any review-process. Yet, some of the NAPs that provide for review planning and measures updating are adopting different modalities and time schedules to fulfil the review process, so by leading to different outcomes. There are States such as Italy, Sweden, Poland, and Luxembourg that foresee in their NAPs a precise year for a mid-term review in order to assess the results achieved, identify the gaps, and ensure the effectiveness of the NAP. Sweden has not done the review scheduled for 2017, while in Italy the midterm review has been in November 2018. Other NAPs foresee a periodical examination and, if necessary, a consequent update of the action plan (i.e. every two years in Switzerland; every three years in Spain). On another side, the approach of some States is to realize an annual report on the implementation of the NAP (Chile), eventually followed by a review (Colombia, Germany).

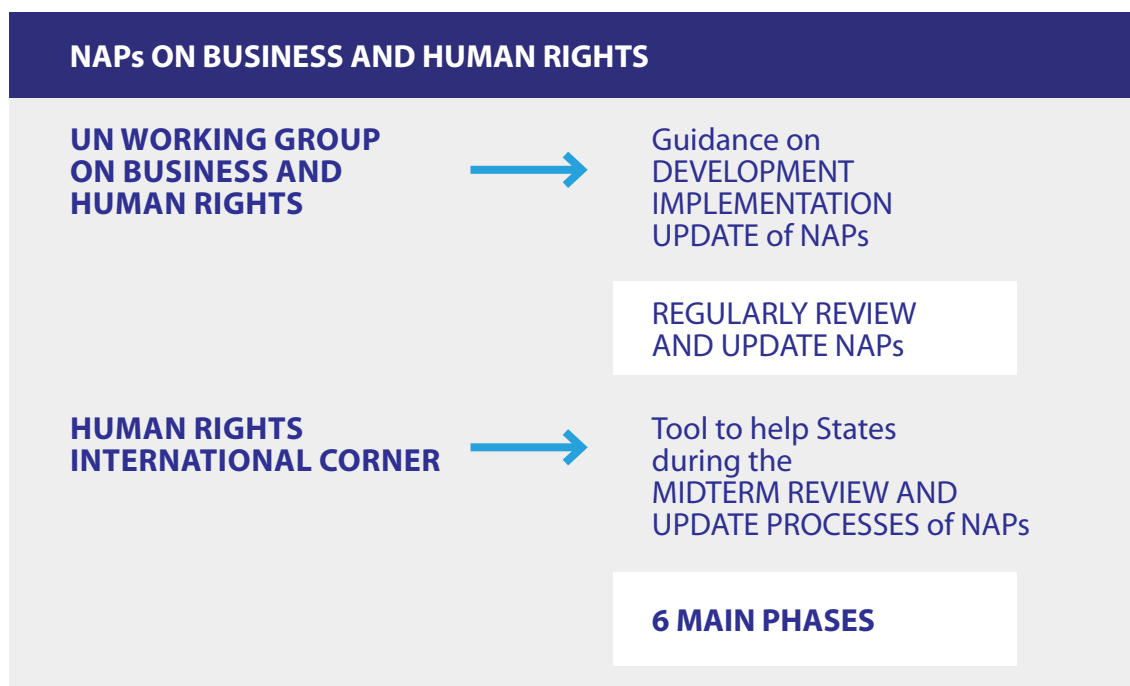
NAPs on Business and Human Rights are mostly very recent policy instruments, and there are only few States that have already reviewed and/or updated their action plans. At the time of the publication of this Guidance only UK, Italy and Switzerland

[1] Source: <https://globalnaps.org/>

have reviewed their NAPs: UK, by publishing an updated version in May 2016 after a consultation process that involved 55 governmental and non-governmental organizations; Italy, after a multi-stakeholder dialogue and a series of activities conducted by the Steering Committee (GLIDU) - such the revision/adjustment of some measures, the introduction of new ones and the indication of competent authority for each measure of the NAP – has released a revised version of the NAP on November 2018 and it is presumably approaching to a new version (being the present NAP 2016-2021); Switzerland, according to its NAP, has to proceed to a so-called “gap analysis” every two years and to this purpose a management consultant was appointed by the Swiss government². The study, published in July 2018, concluded that although the Swiss NAP is in coherence with the State’s international obligations, there were some unsatisfactory and challenging aspects on implementation and update. For this reason, the government came to the conclusion that a revision was necessary. After a multi stakeholder roundtable consultation and several written consultations, the final revised version was adopted by the government in January 2020.

Looking at these three review processes, in particular the Italian one, has allowed to identify best practices, evaluate implementation gaps and learn from experiences, with the aim of proposing some suggestions.

The main objective of this Guidance is to offer a useful tool to help States in approaching the midterm review and update processes of the NAP. The Guidance describes six main phases of the process highlighting the challenges that States and stakeholders are facing during the drawing up of the new NAP’s version. Since the majority of the States will have to review the NAPs within the next few years, the issue is particularly relevant and the Guidance may be a useful toolkit to guide and support also the other stakeholders involved in the process.



[2] <https://www.news.admin.ch/newsd/message/attachments/55268.pdf>

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METHODOLOGY

This Guidance relies on the document titled “Guidance on National Action Plans on Business and Human Rights” released by the UN Working Group in its most updated version in November 2016, and it is intended to be a reliable tool for all the stakeholders involved in NAPs’ consultation and drafting process. In line with the UNWG Guidance, this document too applies the no “one-size-fits-all” approach and it is based on the fourth criterion considered as indispensable by the UNWG, namely “the need to regularly review and update a NAP”, in order to better fine-tune it to new contexts and developments within NAP’s processes.

In particular, HRIC recommends that States follow the below six phases:

- 1. NAP’s Evaluation;**
- 2. Multi-stakeholder Consultation;**
- 3. Drafting of the new NAP or the revised version;**
- 4. Consultation on the draft version with the interested stakeholders;**
- 5. Release of the final version, launch and dissemination;**
- 6. Implementation.**

Among the provisions pointed out by the UNWG as the most valuable ones in the NAP process, we would refer to: (i) an inclusive process to identify national priorities and concrete policy measures and action; (ii) a process of continuous monitoring, measuring and evaluation of implementation; (iii) a platform for ongoing multi-stakeholder dialogue³. Furthermore, HRIC follows up to the priority set out by the UNWG Guidance of a “continuous process of regular review and update”⁴ by providing an effective toolkit for ensuring the State’s commitment and a continuity in the implementing and monitoring phases, although a timeframe and a Government leading authority have not been clearly identified in the original NAP.

[3] UNWG Guidance on NAPs on BHR, November 2016, p.1.

[4] UNWG Guidance on NAPs on BHR, November 2016, p.5.

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GUIDANCE ON NAP MID-TERM REVIEW PROCESS

PHASE 1: EVALUATION

Once the NAP is finalized and launched, it needs to be effective. The implementation is indeed the most crucial phase and involves several aspects of the NAP process of elaboration. To this end, in its Guidance the UNWG suggests specific activities which may be considered in orienting the implementation process of each measure: competence, budget, monitoring group.

At the end of the implementation phase (usually NAPs have a specific duration timeline), Governments may consider whether: i) engage in the process of drafting a new NAP (i.e. United Kingdom); or ii) proceed with conducting a review (or update) of the current NAP (i.e. Italy). In both situations, the starting point is the evaluation. As the realization of specific measures/activities within the implementation phase is subordinated to resource allocation, also the review process should be provided with adequate funding to be effective.

The evaluation analysis allows to verify, measure and assess the results and outcomes achieved during the implementation phase; this exercise is aimed at identifying what has been done so far and what is in progress, but also what is still needed (and what is not), in terms of future policies and measures. Being the evaluation a logic process of assessment and appraisal, HRIC thinks that this tool may be useful in guiding both the cases (new NAP or an updated one).

NAP evaluation should be characterized by an inclusive methodology: this means that the analysis should be conducted in two parallel directions, both internally (by the governmental body/s or committee/s which have carried out the drafting process of the NAP) and externally (by main and relevant stakeholders). In the first one, whether the governmental entity/body that has conducted the drafting process is a single department/office (such as the Ministry of Foreign Affairs or the Ministry of Economy), it is suggested to ensure a cross-department leadership (in example within the form of committees) or participation (through representatives of the other Ministers and/or Governmental bodies/agencies) to guarantee cross-cutting analysis and broader coverage. In addition, the Governmental body may consider to include in this phase the participation of a selected focus group of experts, who may assist in the process with their specific expertise and knowledge about the developments at regional and global level.

As for the external review, this process is aimed at identifying, measure and assess

implementation gaps and results achieved and at drawing a comparative reference for the outcomes of the internal evaluation. Furthermore, the external evaluation is particularly important to assess and evaluate also procedural aspects related to the NAP: in this regard, there may be useful take into consideration also other aspects, such as resources allocation and budget planning for NAP implementation (and review), transparency of the process, competence allocations for measures implementation, quality of monitoring activities. In line with the scope of this phase, the evaluation should be attributed to an independent entity with specific experience and qualification on the business and human rights topic, such as university, research centers or a recognized think-tank. Such evaluation may lead to highlight issues that the internal evaluation have failed to address or that have not been adequately considered.

While the internal evaluation guarantees a deeper and consistent knowledge of the NAP context and background, the NAP policy coherence and (institutional/political) feasibility, the external one yet better ensures the need for implementation, monitoring and accountability.

An inclusive evaluation may therefore include the following step:

a) the “**INTERNAL EVALUATION/PHASE**” which is intended to provide an overall evaluation of the status of implementation of the NAP, with reference to both the measures implemented and the indirect effects of the policies, with the aim of providing information on all the eventual/possible mid-term outcomes, effects and impacts produced and on the long-term changes of the policies.

This analysis should be carried out on three grounds:

1. “**Text investigation**”: assessing the current status and context on each measures/ activities foreseen in the NAP (i.e. establish if the measure is completed/ not completed/partially completed/ongoing; establish if - in line with current circumstances - the measure is still needed or should be revised, updated or deleted).
2. “**Context investigation**”: assessing the implementation of the NAP on the overall business and human rights context (i.e. provide an analysis of any possible impact of the NAP, assess if and to what extent the general context - national policy and regulation, business practice, public awareness, education, social campaign, etc. - improved since the adoption of the NAP). This analysis may be conducted using different sources, such as NGOs reports, institutional documents, other materials. Within the process of assessing the context, such may also wish to take account of new actors and developments at regional and global environments.
3. “**Process investigation**”: assessing the effectiveness of the monitoring mechanism/ process/body put in place to control and oversee the implementation process.

At the end of this investigation process, the Government may want to elaborate an inception report that will be shared with all the stakeholders.

Along with the inception report it is important to set a focused methodology to clarify

the modalities and contents of the stakeholder participation to the process of evaluation. To this purpose it may be useful to elaborate a format for inputs that will also facilitate the collection and analysis of the contributions received from the interested stakeholders.

b) The “**EXTERNAL EVALUATION/PHASE**” which is intended to provide an external and independent appraisal of the NAP implementation. The external assessment may be structured in line with the internal one, and therefore consider the same steps of analysis (text, context and process).

To this purpose this analysis may also provide for comments and observations on the inception report, so to have “external parallel/shadow reports”.

PHASE 2:

MULTI-STAKEHOLDER CONSULTATION

Once the evaluation phase is concluded, the outcomes should be discussed. The organization/setting of multi-stakeholder consultations ensure the transparency of the process, promotes the dialogue on the different perspectives and needs in the field of business and human rights, enrich the final outcome and guarantees legitimacy and effectiveness of the NAP.

Who to involve in consultation? It is suggested - at minimum - the involvement of key stakeholders, such as national human rights commissions, regional institutions (EU), global institutions (UN Working Group on Business and Human Rights, International Labour Organization).

The body/committee in charge of drafting the NAP would certainly involve enterprises, business organizations, NGOs and other subjects (academics, experts and others) that have participated in the process (if present) of consultation for the drafting of the NAP and eventual subsequent phases (such as update or implementation or monitoring meetings, etc.). The body/committee should guarantee as much transparency and openness as possible, therefore it is suggested that the process is made public to allow any organization, professional experts and other subjects with an interest to participate. The consultation process should be organized in a way to guarantee not mere stakeholders’ participation in the process, but their active involvement: in other words, their views and comments should be properly considered.

Outcomes and lessons from this phase may be preliminary shared with peers at relevant international occasions such as the UN Annual Forum on Business and Human rights, with the aim of receiving feedback and observations from other countries, identifying areas of further improvements and strengthening inter-state cooperation and partnership in the field of business and human rights.

PHASE 3:

DRAFTING OF THE NEW/UPDATED VERSION OF THE NAP

Following the consultation phase, the body/committee in charge of drafting the NAP will elaborate the first draft on the basis of the results of the evaluation reports and of the multi-stakeholder consultations.

In drafting the new/updated version, it should be taken into account:

- the eventual establishment of new priorities and measures following mutations at political, social and economic level;
- the lessons learned from the previous NAP, by adding or updating the so-called ‘entry-points’, namely measures/provisions on which the Government has decided to focus the majority of its implementation efforts;
- other countries’ experience on NAP to share and absorb examples of success and best practices.

PHASE 4:

CONSULTATION ON THE DRAFT NEW/UPDATED NAP WITH INTERESTED STAKEHOLDERS

Once the draft text has been elaborated, the Government may consider a final consultation with the relevant stakeholders. The involvement of relevant stakeholders (such as NGOs, business associations representatives, trade unions, etc.) is of utmost importance to guarantee the effectiveness and legitimacy of the NAP, which may receive more support if extensively shared, endorsed and disseminated.

The consultation may be carried out informally: (i) through ad hoc organized meetings with the different stakeholders; (ii) by launching the text online asking for contributions; or (iii) by formally requesting a contribution.

In all cases, inclusiveness and transparency need to be ensured.

PHASE 5:

FINAL TEXT - LAUNCH & DISSEMINATION

Once the consultation is concluded, the final text should be launched and disseminated. More than a result, NAP is a process that needs participation and adhesion to be effective and fruitful. In line with this, developing a ‘communication plan’ targeted on the different stakeholders may be functional for a deep rooting and understanding of the NAP.

PHASE 6: IMPLEMENTATION

As for the implementation phase, it is of utmost importance to define (or update) outcome indicators and a clear allocation of competencies across all the relevant/interested governmental departments. In order to ensure the 'policy coherence', the attribution of competencies should be done in line with the establishment (or the renewal) of a coordinating and monitoring body/mechanism that can oversee the overall implementation of the NAP. Even in this phase it may be useful to consider filling the gaps in monitoring progress of previous NAP, and to establish a clear methodology to follow the process and ensure transparency.

SUMMARY

GUIDANCE ON NAP

MID-TERM REVIEW PROCESS:

Phases



AUTHORS

Giada Lepore is a business and human rights expert. She has a legal background, with an LL.M. in International Law and Intercultural Human Rights at St. Thomas University School of Law of Miami. She has worked both as a human rights researcher within academic projects and as a legal consultant in advising international companies on the implementation of the UN Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights. She has also served as an external expert at the Italian Interministerial Committee for Human Rights working on the elaboration of the National Action Plan on Business and Human Rights 2016-2021 and on the mid-term review carried out in 2018. In October 2019 she joined Eni SpA - Responsible and Sustainable Enterprise department - working on human rights, transparency and sustainability issues. Giada has been Core Member of HRIC until September 2019.

Beatrice Pesce is a business and human rights expert. She joined HRIC since its foundation in 2018 as Core Member, where she focuses on the topic of access to justice and strategic litigation. She has been appointed as Executive Board Member in June 2020. She is a PhD candidate at the University of Innsbruck focusing on the field of Business & Human Rights. As a part of her PhD research, she served as a Research Fellow at the University of Tucumán, Argentina where she worked in the context of the Inter-American Human Rights system. After graduating in law both in German and Italian at the University of Innsbruck, she was a legal fellow at the European Center for Constitutional and Human Rights (ECCHR) in Berlin, where she practiced strategic litigation in cases related to the violations of human rights by big corporations. She worked for two years in a law firm in Milan dealing with corporate social responsibility, anti-discrimination law, and immigration law. She has been selected to work at UNDOC where she will collaborate on a project focusing on anticorruption and human rights.

Marta Bordignon, Ph.D. in International Law at University of Rome “Tor Vergata” (Italy), with a thesis on the implementation of the UN Guiding Principles on Business and Human Rights through National Action Plans in Italy, Spain and the UK. In 2015, she co-founded the association Human Rights International Corner (HRIC) of which she has been appointed as President in May 2018. Since 2018, she is co-director of the “Business and Human Rights” Summer School, together with the University of Milan (Department of Public Italian and Transnational Law), the Wageningen University and Research (The Netherlands) and the National Research Council (IRISS-CNR, Italy). Currently, Marta is Adjunct Professor of Contemporary Politics of Europe and Politics of the Global Economy at Temple University, Rome Campus.



Human Rights International Corner (HRIC) has been founded out of the idea of a group of professionals, researchers and experts in Human Rights, engaged in supporting and promoting the respect of fundamental rights and principles, not only by States but also by the private sector. Since the beginning, HRIC has been devoted to raising the awareness of public and private entities and civil society regarding the UN Guiding Principles on Business and Human Rights, even by the means of publishing reports, organizing workshops and conferences, as well as by lobbying activities. Given the proactive dialogue established with the Italian governmental institutions - and specifically with the Inter-ministerial Committee for Human Rights (in Italian CIDU) - HRIC has taken part to the consultation process that led to the drafting of the Italian “National Action Plan on Business and Human Rights 2016-2021”, as well as to the mid-term review process. Finally - with the aim to improving its interaction and dialogue with the involved stakeholders - in May 2018 HRIC has become an Association under Italian law.

