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**Human rights questions, including alternative approaches for  
improving the effective enjoyment of human rights and  
fundamental freedoms**

## **Working Group on the issue of human rights and transnational corporations and other business enterprises**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, submitted pursuant to Human Rights Council resolutions 17/4 and [35/7](#).

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\* [A/74/150](#).



## **Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises**

### *Summary*

In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises examines what policy coherence on business and human rights means in practice under the Guiding Principles on Business and Human Rights. It proposes practical ways to enhance government's capacity, ability and action to achieve this goal, based on lessons learned from the development and implementation of national action plans on business and human rights and other relevant policy frameworks. It highlights opportunities to align implementation efforts and to encourage policy coherence when the commitments of the Sustainable Development Goals intersect with the business and human rights agenda.

## I. Introduction

### A. Background, aims and objectives of the report

1. States have a duty to protect individuals and communities from business-related human rights abuses. The scope of this duty is considerable, as business enterprises can have a significant impact on virtually the entire spectrum of internationally recognized human rights. It applies to potential and actual impacts in all sectors, and requires both preventive measures and redress. To achieve effective change, coherent policy and action across all government ministries is needed. This fact is recognized by the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31, annex), which notes that achieving policy coherence requires the operationalization of the State’s international human rights obligations across the range of State departments and agencies that shape business practice or interface with business, as well as entities owned or controlled by the State.

2. While a growing number of States recognize the need for greater policy coherence on business and human rights and practical steps are being taken by some governments, including through the development of national action plans, much work remains to fulfil the potential of the Guiding Principles. In practice, the lack of national policy coherence and leadership in the area of business and human rights is deeply concerning and remains widespread across all regions.

3. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises examines what policy coherence on the part of government with regard to business and human rights means in practice, and ways in which it can be improved. The Working Group elaborates and provides guidance on States’ obligations under Guiding Principle 8, which establishes that: “States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.”

4. In addition, the Guiding Principles indicate the need for States to maintain adequate policy space to meet human rights obligations when pursuing other policy objectives, such as when attracting foreign investment (Guiding Principle 9); align the practice of multilateral institutions that deal with business-related issues (e.g., finance, investment and trade) with the Guiding Principles (Guiding Principle 10); and operationalize their State duty to protect across the various roles they play as economic actors (Guiding Principles 4 to 6). The present report does not address these other principles because the Working Group has already addressed related specific policy coherence issues in previous reports.

5. The Working Group also identifies practical ways to enhance policy coherence at the State level to strengthen government’s capacity, ability and action to protect against business-related human rights abuses.

6. Experience suggests that tensions can exist among different ministries/departments that have sometimes conflicting mandates and agendas. This is often manifested in a lack of “horizontal policy coherence”, where departments and agencies – at both the national and subnational levels – that shape business practices, including those responsible for corporate law, investment, export credit and insurance, trade and labour, as well as those in charge of areas such as natural resources and land management, are not sufficiently aware of or equipped to act in

conformity with the State's international human rights obligations.<sup>1</sup> Ensuring policy coherence in federal States and across the subnational levels presents further challenges.

7. For the purpose of the present report, "horizontal policy coherence" refers to the consistency of policies and practices across functional areas of national and subnational government with the State's human rights obligations.<sup>2</sup> The Working Group does not address "vertical policy coherence", which refers to consistency in translating international human rights obligations into domestic regulatory frameworks.

8. The Working Group provides an overview of critical areas where improving policy coherence would have a positive impact on the State's ability to discharge its duty to protect. It considers current challenges and positive practices resulting from the development and implementation of national action plans and other relevant business and human rights policy frameworks. It also suggests that government initiatives to deliver on the 2030 Agenda for Sustainable Development offer opportunities to align implementation efforts and to encourage policy coherence whenever the commitments of the Sustainable Development Goals intersect with the business and human rights agenda.

9. The Working Group reiterates its calls on governments to move from policy to practice in the field of business and human rights and to "walk the talk" in preventing and addressing business-related human rights impacts through appropriate actions to foster responsible business conduct. Achieving greater policy coherence is a crucial measure to strengthen the prevention of business-related human rights abuses. States should lead by example in their role as buyer, owner, investor and trade promoter, and help enable respect for human rights by the business sector, which will help improve competitiveness and sustainability overall. The Working Group urges governments to prevent national action plans from becoming a "tick-box exercise" and fully enforce government policy, including by State-owned enterprises (see [A/HRC/32/45](#)).

## **B. Methodology**

10. In addition to relevant primary and secondary sources, the Working Group benefited from written submissions by States and other stakeholders in response to a call for inputs.<sup>3</sup> When preparing the report, the Working Group drew on interviews with numerous experts and the outcomes of consultations conducted with States, business associations and organizations, civil society organizations and other stakeholders in Geneva during the twenty-third session of the Working Group. The Working Group builds on its previous thematic reports and its engagement with States and other stakeholders in relation to promoting implementation of the Guiding Principles. The Working Group has also incorporated information from the findings and experiences of rights holders and duty bearers gathered during country visits.<sup>4</sup>

11. States can address the issue of policy coherence through various government-led policy strategies. However, the Working Group has highlighted that national action plans provide a "useful policy tool to promote greater coordination and coherence within Government on the range of public policy areas that relate to

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<sup>1</sup> See [www.ohchr.org/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf).

<sup>2</sup> See commentary to Guiding Principle 8 ([A/HRC/17/31](#), annex).

<sup>3</sup> The written submissions are available at [www.ohchr.org/EN/Issues/Business/Pages/2019Survey.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/2019Survey.aspx).

<sup>4</sup> See [www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#hrc](http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#hrc).

business and human rights”.<sup>5</sup> As the number of countries developing national action plans grows, and positive practices emerge, this provides an opportunity to consider how governments are dealing with policy coherence challenges in practice.

## II. Development of government policy on business and human rights

12. Policy coherence, leading to clear and established policy and operational practice, serves to strengthen knowledge and accountability across government actors that shape business practice or interact with business, and significantly enhances both prevention and access to remedy for victims of human rights abuses. The call for policy coherence has been made by numerous actors and is increasingly recognized by governments. Many business enterprises, as well as business associations and organizations, also recognize that the private sector benefits from and expects policy clarity, consistency and predictability in places where it conducts business, as well as an overall enabling environment for economic activity.

13. National action plans provide a strong foundation on which governments can achieve policy coherence in the area of business and human rights. At the international level, in its resolution 26/22 the Human Rights Council noted “the important role that national action plans and other such frameworks on business and human rights can play as a tool for promoting the comprehensive and effective implementation of the Guiding Principles”. At the time of writing, 21 States had developed a national action plan, 2 had chapters on business and human rights within their wider human rights national action plans<sup>6</sup> and 14 were in the process of developing a national action plan or had committed to doing so.<sup>7</sup> Non-State initiatives were pushing for a plan in at least 15 countries.<sup>8</sup> Notably, 18 of the 21 States that have published national action plans are members of the Council of Europe. There are three plans from States in the Americas, and three African States and at least five Asian States are currently developing plans.<sup>9</sup>

14. At the regional level, the European Union Action Plan on Human Rights and Democracy for the period 2015–2019 called on member States of the European Union to advance on business and human rights, including through the development and implementation of national action plans and sharing experiences and best practices in this field.<sup>10</sup> In 2016, the Council of Europe recommended that member States “should develop and adopt plans on the national implementation of the [United Nations] Guiding Principles on Business and Human Rights”.<sup>11</sup> The same year, the Organization of American States encouraged its member States to implement the

<sup>5</sup> Working Group on business and human rights, “Guidance on national action plans on business and human rights” (Geneva, November 2016). Available at [www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

<sup>6</sup> See <https://globalnaps.org/country/>.

<sup>7</sup> See [www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx).

<sup>8</sup> Daniel Morris and others, “National action plans on business & human rights: an analysis of plans from 2013–2018” (Copenhagen, Danish Institute for Human Rights, 2018), p. 5. Available at [www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrb\\_2018/nap-analysis\\_2018.pdf](http://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrb_2018/nap-analysis_2018.pdf).

<sup>9</sup> See <https://globalnaps.org>.

<sup>10</sup> See objective 18, p. 29, in Council of the European Union, *EU Action Plan on Human Rights and Democracy* (Luxembourg, Publications Office of the European Union, 2015). Available at [https://eeas.europa.eu/sites/eeas/files/eu\\_action\\_plan\\_on\\_human\\_rights\\_and\\_democracy\\_en\\_2.pdf](https://eeas.europa.eu/sites/eeas/files/eu_action_plan_on_human_rights_and_democracy_en_2.pdf).

<sup>11</sup> Council of Europe, “Human rights and business (Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States adopted on 2 March 2016)”, appendix, para. 10. Available at <https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>.

Guiding Principles and requested the General Secretariat, the Inter-American Commission on Human Rights and the Executive Secretariat for Integral Development “to continue supporting member states...in the area of human rights and business, including...in developing national action plans on human rights and business as one way of applying the Guiding Principles”.<sup>12</sup> The African Union is also in the process of drafting a regional policy framework on business and human rights.<sup>13</sup>

15. The European Union and its members, and other European governments, are supporting peer learning initiatives and regional programmes (including in other regions) to promote implementation of the Guiding Principles, including in the context of the adoption of national action plans.<sup>14</sup> Civil society groups and international and regional organizations have intensified their efforts to analyse and provide recommendations to strengthen both the process and content requirements of national action plans. In 2013, civil society organizations launched a project to develop guidance and criteria to ensure that national action plan processes and outcomes align with human rights standards.<sup>15</sup>

16. Despite this positive trend towards the development and adoption of national action plans, a sober analysis underlines the need for further, significant policy progress in all regions. While national action plans provide an ideal foundation for policy coherence, the human rights obligations of all States, including those without a plan or other formal policy process in the area of business and human rights, require that they should nevertheless endeavour to implement a “smart mix” of actions to protect persons and communities from the adverse impact of business-related activities. Indeed, efforts in this respect may usefully trigger an inclusive process to establish a national action plan.

17. Developing and adopting a national action plan is an important step in the right direction for governments; however, a plan should constitute a point of departure and the beginning of a process of national action involving all relevant stakeholders, with the objective of transforming policy into practice. It can serve as a powerful forward-looking instrument that can inspire new regulations and policies. Recognizing national action plans as a useful policy tool to promote “greater coordination and coherence within Government on the range of public policy areas that relate to business and human rights”, the Working Group issued guidance with recommendations to all stakeholders on both the procedural and content aspects of national action plans.<sup>16</sup>

18. In an ideal scenario, a national project to ensure policy coherence requires that all relevant government bodies are fully aware of and equipped to meet the State’s human rights obligations when fulfilling their respective mandates, in a coordinated and consistent manner, within and across government bodies. Mechanisms are established and maintained to provide information, training and support, with the

<sup>12</sup> Organization of American States, AG/RES. 2887 (XLVI-O/16). Available at [www.oas.org/en/sla/dil/docs/ag-res\\_2887\\_xlvi-o-16.pdf](http://www.oas.org/en/sla/dil/docs/ag-res_2887_xlvi-o-16.pdf).

<sup>13</sup> See [www.africa-eu-partnership.org/sites/default/files/documents/joint\\_au-eu\\_press\\_release\\_on\\_stakeholders\\_validation\\_workshop\\_au-hrb\\_mar.pdf](http://www.africa-eu-partnership.org/sites/default/files/documents/joint_au-eu_press_release_on_stakeholders_validation_workshop_au-hrb_mar.pdf).

<sup>14</sup> See, for example, the project funded by the European Union entitled “Responsible business conduct in Latin America and the Caribbean”, jointly implemented by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Labour Organization and the Organization for Economic Cooperation and Development (OECD).

<sup>15</sup> The Danish Institute for Human Rights and the International Corporate Accountability Roundtable. See [www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans/icar-dihr-national-action-plans-project](http://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans/icar-dihr-national-action-plans-project).

<sup>16</sup> Working Group on business and human rights, “Guidance on national action plans on business and human rights”.

objective of institutionalizing knowledge at all levels, building operational capacity and ensuring effective implementation in respect of all business-related activities. Clear guidelines and methodologies are established and utilized and business enterprises, including State-owned enterprises, are aware of their obligation to comply with policy guidelines and required practices. Civil society, trade unions and the general public are provided with clear and consistent information relating to business and human rights, including the extraterritorial nature of those activities, and their access to remedy in cases of business-related abuses.

### **III. Situating challenges to policy coherence in selected areas**

19. The weak implementation of the Guiding Principles as a result of incoherent and inconsistent implementation of the relevant legal and policy frameworks, and the consequent adverse impact on the victims of human rights abuses, has been a common finding of country visits conducted by the Working Group.<sup>17</sup> Moreover, in its previous thematic reports, the Working Group stressed the need to strengthen efforts to ensure convergence and consistency with States' human rights obligations, including under the Guiding Principles, in selected areas.

20. Numerous challenges exist with regard to achieving policy coherence in implementing the Guiding Principles. These challenges include: government ministries, departments and agencies working independently in "silos" with poor communication and a lack of common policy understanding or objectives; a lack of coordination and collaboration between and across government bodies; poor information and knowledge management and exchange on business and human rights policy and its relevance to different government bodies; insufficient training, guidance and support on policy implementation; failure to include all relevant actors and areas of State responsibility in the policy development, roll-out and implementation processes; and insufficient political and operational leadership and authority to ensure policy implementation and accountability.

21. One prominent cause of incoherent government action is that ministries, departments and agencies which directly shape business practices typically work in isolation. Different ministries have different mandates and their own distinct department objectives, budgets and responsibilities. With the exception of ministries or departments that have explicit human rights mandates, government officials often focus on delivering results only in terms of their own areas of expertise, with little or no knowledge or integration of human rights considerations. This may result in different parts of government working independently, and not sharing relevant information, tools, priorities and processes, including those related to human rights considerations, when fulfilling their respective mandates. The lack of a coordinated and coherent approach across relevant ministries is a major obstacle to ensuring that all parts of a government act in a manner compatible with the State's human rights obligations under the Guiding Principles.

22. The following paragraphs provide a non-exhaustive overview of selected key areas where policy coherence on business and human rights is critical and can be improved through addressing challenges in those areas.

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<sup>17</sup> All reports available at [www.ohchr.org/EN/Issues/Business/Pages/WGCountryVisits.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/WGCountryVisits.aspx).

## A. Public procurement

23. Public procurement is a policy area of significant magnitude and great potential as a driver for scaling up more responsible business practices. Worldwide, government purchasing accounts for 1 trillion euros per year<sup>18</sup> and, in countries that are members of the Organization for Economic Cooperation and Development (OECD), 12 percent of gross domestic product is spent on public procurement.<sup>19</sup> The policy coherence challenges in this area include ensuring that all public officials involved in procurement activities are aware of human rights issues policies and understand their role in implementing the Guiding Principles.

24. The Guiding Principles clarify that the State's duty to protect human rights extends to public procurement, and States do not relinquish their human rights law obligations when they privatize the delivery of services that may have an impact on the enjoyment of human rights.<sup>20</sup> However, incoherent procurement policy and laws are often compounded by a lack of practical guidance on how the State's duty to protect human rights is to be operationalized by public authorities in the course of their procurement activities.

25. Notably, applicable laws often require buyers to select the cheapest bid, while no legal requirements exist to link the awarding of public contracts to the efforts of bidding companies to implement human rights due diligence and establish operational-level grievance mechanisms to redress adverse impacts. Similarly, even in situations where public buyers benefit from a permissive legal and policy environment that allows them to reward corporate efforts, for example with regard to supply chain transparency or non-financial reporting, "the vast majority appear to lack the awareness, tools and resources needed to effectively exploit this".<sup>21</sup>

## B. State-owned enterprises

26. Where the State is an economic actor and does business with business, it has the greatest opportunities and leverage to ensure that relevant policies, legislation and regulations concerning respect for human rights are implemented effectively. The expectation is that States should not ask less of companies that are closely associated with it than it asks of private businesses. In turn, businesses are much more likely to accept directives from the State if they consider that the State is leading by example and ensuring that the entities closest to it, if not directly associated with it, respect human rights (see [A/HRC/32/45](#)).

27. However, largely because of a lack of policy coherence, State-owned enterprises are generally lagging behind in adopting and implementing human rights due diligence approaches (see [A/73/163](#)). With the exception of some pioneer State-owned enterprises that have made commitments in this respect, allegations of human rights abuses by such enterprises in their home countries and in their operations abroad have frequently occurred. These include labour-related abuses, discrimination,

<sup>18</sup> Claire O'Brien and Olga Martin-Ortega, "The SDGs, human rights and procurement: an urgent need for policy coherence", in *High Impact Procurement: Supporting Sustainable Development* (United Nations Office for Project Services, 2017). Available at [www.researchgate.net/profile/Claire\\_Obrien12/publication/324829379\\_The\\_SDGs\\_human\\_rights\\_and\\_procurement\\_An\\_urgent\\_need\\_for\\_policy\\_coherence/links/5ae5990faca272ba50809af3/The-SDGs-human-rights-and-procurement-An-urgent-need-for-policy-coherence.pdf?origin=publication\\_detail](http://www.researchgate.net/profile/Claire_Obrien12/publication/324829379_The_SDGs_human_rights_and_procurement_An_urgent_need_for_policy_coherence/links/5ae5990faca272ba50809af3/The-SDGs-human-rights-and-procurement-An-urgent-need-for-policy-coherence.pdf?origin=publication_detail).

<sup>19</sup> See [www.oecd.org/gov/public-procurement/](http://www.oecd.org/gov/public-procurement/).

<sup>20</sup> See Guiding Principle 6 and commentary to Guiding Principle 5.

<sup>21</sup> Claire O'Brien and Olga Martin-Ortega, "The SDGs, human rights and procurement: an urgent need for policy coherence".



environmental damage, forced evictions and land rights violations, and the intimidation and defamation of human rights defenders.

28. Failures to address these gaps often stem from a lack of awareness on the part of many State-owned enterprises of their responsibility to respect human rights, but also from a failure to integrate human rights variables into key performance indicators in order to assess the effective implementation of the Guiding Principles and hold such enterprises to account. This calls for more coordinated and coherent approaches towards ensuring clear and established human rights policies and operational practices throughout their governance structures and operations. Although the activities of State-owned enterprises have traditionally been focused domestically for the provision of public services, they have rapidly internationalized over the past decade. Asian State-owned enterprises, for example, are playing an increasingly large cross-border role, in terms of both exports and financing for development activities.<sup>22</sup>

### C. Economic and trade diplomacy tools of States

29. Export and trade promotion and investments can be a powerful tool to promote corporate respect for human rights.<sup>23</sup> However, the Working Group has highlighted the need for more systematic and generalized policy coherence in States' practice when they provide support for trade and investment promotion, and it has noted the weak integration of human rights due diligence into States' "economic and trade diplomacy tools", such as export credit, investment guarantees, export promotion, trade advocacy and participation in trade missions (see [A/HRC/38/48](#)). The protection of labour rights provides one example: even in countries where labour standards are generally respected domestically, States may engage in trade and diplomacy initiatives with third States that have lower standards of labour rights protection.

30. Demonstrated commitment to and respect for the Guiding Principles is rarely a prerequisite for receiving State support and benefits related to trade and export promotion, including participation in trade missions. Export and trade promotion entities that support businesses abroad do not systematically develop and disseminate effective guidance on how business should respect human rights in cross-border trade. For example, trade missions could make businesses receiving economic diplomacy support from a government aware of the persecution of human rights defenders and the consequent risks to businesses.

31. Similarly, States should keep in mind their international human rights obligations when negotiating bilateral or regional trade and investment agreements (Guiding Principle 9).<sup>24</sup> It is critical that the dispute settlement process under these agreements be compatible with international human rights law, rather than widening the asymmetry of power in favour of investors.<sup>25</sup>

### D. Special economic zones

32. The establishment of special economic zones provides another example of the need to address human rights risks and impacts through coherent and coordinated policy measures, and an opportunity to align policies and practice with the Guiding Principles. Special economic zones often seek to attract foreign investment through

<sup>22</sup> See <https://globalnaps.org/issue/state-owned-enterprises-public-private-partnerships/>.

<sup>23</sup> See, for example, "Commission lifts 'yellow card' from Thailand for its actions against illegal fishing". Available at [http://europa.eu/rapid/press-release\\_IP-19-61\\_en.htm](http://europa.eu/rapid/press-release_IP-19-61_en.htm).

<sup>24</sup> See also [www.ohchr.org/EN/Issues/Business/Pages/IAs.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/IAs.aspx).

<sup>25</sup> See [www.ohchr.org/Documents/Issues/Development/IEDebt/OL\\_ARM\\_07.03.19\\_1.2019.pdf](http://www.ohchr.org/Documents/Issues/Development/IEDebt/OL_ARM_07.03.19_1.2019.pdf).

tax and non-tax incentives in a number of labour-intensive industries. Governments must recognize and take action to ensure that such economic zones, and all business actors and activities associated with them, fall within the scope of national policy and conform fully to human rights standards.

33. A recurrent policy coherence concern arises from the process through which special economic zones are established, especially with regard to land acquisition and decisions about their location. Individuals and communities living in areas designated for these zones are often not consulted or fairly compensated, in contravention to the requirements of the basic principles and guidelines on development-based evictions and displacement. The vulnerability of affected communities is increased when communities that have been living, and depend for their livelihoods, on land that would be used for special economic zones do not hold title deeds.<sup>26</sup>

## **E. Protection of individuals and groups at heightened risk of abuse**

34. One of the starkest examples of situations in which gaps in policy coherence result in business-related human rights abuse is when governments, including those that have committed to protecting human rights, do not prevent, or even facilitate, the harassment of human rights defenders who speak up about adverse business impacts on human rights. In 2018, 321 human rights defenders in 27 countries were targeted and killed for their work. Of the total number of activists killed, 77 per cent were defending land, environmental or indigenous peoples' rights, often in the context of extractive industries and State-aligned mega-projects.<sup>27</sup> Establishing policy coherence in the area of business and human rights can result in protection mechanisms and processes that ultimately save the lives of human rights defenders.

35. The Special Rapporteur on the situation of human rights defenders noted that corporate human rights due diligence requirements will not achieve their purpose as long as other laws and policies can be used to obstruct the legitimate work of human defenders and civil society organizations and silence those who raise legitimate concerns related to the adverse human rights impacts of business operations (see [A/72/170](#)).<sup>28</sup>

36. Some national laws allow or facilitate the malicious prosecution of human rights defenders (including trade unions), provide undue restrictions on public assembly or criminalize peaceful protests. This is also an issue for "home" States that have committed to supporting defenders in third countries while at the same time facilitating private or State-owned enterprise trade and investment in contexts where attacks on human rights defenders occur.

37. Other business-related areas in which many governments need to strengthen policy coherence include developing holistic policies on environmental impact assessments, large-scale development projects, land management and forest conservation and the need to meet the requirement for free, prior and informed consent when the lives, livelihoods and cultures of indigenous peoples are at stake. Similarly, the absence of a comprehensive normative and policy framework on eviction, resettlement and compensation calculations in the context of economic development projects has triggered repeated human rights conflicts. These gaps are

<sup>26</sup> See, for example, [A/HRC/41/43/Add.1](#) (country mission to Thailand).

<sup>27</sup> Front Line Defenders, "Global analysis 2018" (Dublin, 2019). Available at [www.frontlinedefenders.org/sites/default/files/global\\_analysis\\_2018.pdf](http://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf).

<sup>28</sup> See also International Service for Human Rights, "Human rights defenders in national action plans (NAPs) on business and human rights" (June 2016).

exacerbated when governments and/or businesses do not respect the right of affected communities and individuals to participate in decisions that affect them.

## **F. Gender dimensions of business and human rights**

38. The Working Group has systematically highlighted how women and girls experience the adverse impacts of business activities differently and disproportionately when compared with men and boys, and face additional barriers in seeking effective remedies.<sup>29</sup> They continue to experience multiple forms of discrimination, exclusion and violence in all spheres of life. They are not only underrepresented in decision-making positions, but are also likely to be affected more adversely by the “fourth industrial revolution” if, for example, the impact of automation on tasks currently performed predominantly by women is not managed in a gender-responsive manner.

39. In its recent report to the Human Rights Council on gender dimensions of the Guiding Principles (A/HRC/41/43), the Working Group developed a gender framework for the Guiding Principles and provided concrete practical recommendations to both States and businesses with regard to integrating a gender perspective when implementing the Guiding Principles to achieve substantive gender equality.

40. States have not done enough to ensure that gender equality considerations relating to business and human rights are integrated systematically and in a coordinated manner into all policies, strategies, programmes and actions of all governmental ministries and departments. Issues of gender equality often fall within the exclusive domain of one ministry (e.g., a ministry of women’s affairs or a ministry of equality), while other parts of the government responsible for business regulation, trade or investment promotion do not adequately integrate gender equality considerations into their mandates. Similarly, State-owned enterprises are not leading by example in terms of achieving substantive gender equality, and when State agencies conduct a variety of commercial transactions, including procurement activities, they rarely use their leverage to achieve substantive gender equality.

## **G. Ensuring access to effective remedy**

41. The Guiding Principles call for the different administrative branches of government to be equipped to provide or facilitate adequate access to judicial and non-judicial remedies for victims of business-related human rights abuses. However, those individuals or communities seeking to obtain remedy continue to face significant challenges stemming from multiple and concurrent factors, including fragmented, poorly designed or incomplete policy and legal regimes on accountability for business-related human rights abuses, a lack of awareness of the scope and operation of accountability regimes and a lack of enforcement (A/HRC/32/19, para. 4).

42. Both judicial and non-judicial institutions should possess the necessary powers, expertise and resources to be able to provide a “bouquet of remedies” (see A/72/162) (preventive, redressive and deterrent) to victims of business-related human rights abuses. Non-judicial mechanisms, such as national human rights institutions and the national contact points in States that adhere to the OECD Guidelines for Multinational Enterprises, have an important role in providing access to remedy in business and human rights cases. However, their potential is often undermined in many countries

<sup>29</sup> See, for example, A/72/162, A/HRC/41/43/Add.1 and A/HRC/38/48/Add.1.

because of challenges such as inadequate policy coherence, insufficient funding, a lack of independence and inadequate personnel training. In recognition of the limitations faced by national contact points, in June 2019 the labour and employment ministers of the Group of Seven committed to stepping up efforts to strengthen mechanisms providing access to remedies.<sup>30</sup>

43. Barriers to seeking effective remedy are further exacerbated in cross-border cases, given that relevant State authorities often operate within the scope of domestic legal and policy regimes that generally regulate business activities and impacts within their respective territories (A/HRC/32/19, para. 5). Weak rule of law and governance gaps pose additional challenges in terms of access to remedy, as these settings may, for example, allow companies to exercise influence over the judicial process.

## **IV. From policy to practice – positive practices, innovations and lessons learned**

44. The following sections provide a brief and non-exhaustive overview of some elements that the Working Group considers indispensable to achieving policy coherence and ensuring that the development of a national action plan does not become a pretext for inaction, but rather a catalyst for change.

### **A. Political and operational leadership**

45. Governmental high-level political commitment and leadership is instrumental to ensuring that all branches of government are aware of their obligations, to fostering coordination on policy design and to creating political momentum for implementation. In some States this role is even situated under the office of the president, which gives high status to the business and human rights agenda. This commitment should be matched by demonstrated leadership at the ministerial and operational level, and those ministries should exercise oversight and be accountable for ensuring that the national action plan is followed up in practice. Political capital and high-level direction in all relevant ministries is critical to raising awareness and fostering ownership and accountability across government.

46. Currently almost all national action plans assign the leading or coordination role to a ministry or an interministerial body.<sup>31</sup> In some cases the Ministry of Foreign Affairs is assigned the lead, while ministries or State agencies that are oriented towards the business sector as part of their core mandates (e.g., those responsible for business regulation, trade or investment promotion) may have little or no leading/coordination role, which may create challenges related to policy “ownership”. Whichever ministry or body is assigned the lead role, it must be empowered to lead and drive the agenda forward. National political forces, including political parties, need to be aligned and consistent in their messages and commitments across all levels of government.

### **B. Importance of coordination and inclusion**

47. For national action plans to fulfil their potential, the process of developing a plan or other business and human rights policy framework should include the participation of all relevant government bodies, ministries, departments and agencies from the earliest stages of the process. They not only need to be aware of the process,

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<sup>30</sup> See [https://travail-emploi.gouv.fr/IMG/pdf/g7\\_social\\_communique\\_and\\_outcomes\\_final.pdf](https://travail-emploi.gouv.fr/IMG/pdf/g7_social_communique_and_outcomes_final.pdf).

<sup>31</sup> For example, Italy and Luxembourg.

but should understand why they are involved, what their responsibilities are and how those responsibilities may evolve as the process develops. A successful implementation of policy commitments is dependent on how the participation of the implementing government entities unfolds during the policy development process.

48. Early involvement across government bodies is crucial to foster cross-governmental communication, broad “buy-in” and a common understanding of the tasks ahead from all relevant government entities. This, in turn, contributes to building awareness and a sense of policy ownership across State entities, and nurtures comprehensive and coordinated approaches across the various departments that shape business practice or interact with business enterprises. The engagement of stakeholders is crucial: such engagement should not be seen as a bureaucratic exercise but as a process necessary to generate a shared understanding across all branches of the government.

49. For the purpose of strengthening collaboration across government bodies, conducting a national baseline assessment to identify gaps in the implementation of the Guiding Principles by the State and businesses provides a good opportunity to engage different branches of the government at an early stage. A national baseline assessment can be a useful tool to ensure that all ministries are aware of and understand the extent to which business-related human rights impacts are relevant to their respective mandates. Such assessments provide both a valuable evidential benchmark and an important political justification for wide-ranging policy measures in the field of business and human rights.

50. Policy “ownership” and the engagement of relevant government ministries, agencies and other bodies should be nurtured and preserved as the development and implementation measures of a national action plan go forward. Particularly in federal States, the development of the national action plan should involve all layers of government. In Belgium, for example, the drafting of the national action plan comprised the participation of representatives from federal administrations and regional entities, and different State-based advisory bodies at both the federal and regional levels were asked to submit their views on the preliminary draft of the plan.

51. A study by non-governmental organizations of the content and processes of 11 national action plans found that all involved the participation of various government entities during the drafting process – for example, through the creation of interministerial working groups.<sup>32</sup> In each of the cases analysed, the government entity responsible for oversight of the drafting process was clearly identified. Among States that are currently developing a national action plan, the draft plan of India stated that its preparation would require dialogue and engagement with all ministries and departments of its Government. A working group/committee was created to set clear objectives and prepare time-bound policy actions to achieve them, and articulate clear responsibilities for relevant ministries and departments.<sup>33</sup>

52. The practice of creating interministerial and cross-governmental coordination in the development phase of national action plans is a logical approach for others to follow, and is a positive practice. Equally important is the participation of the judiciary and other State bodies that have mandates related to accountability, including relevant non-judicial mechanisms and independent State institutions, such

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<sup>32</sup> See International Corporate Accountability Roundtable, European Coalition for Corporate Justice and Center for the Study of Law, Justice, and Society (Dejusticia), “Assessments of existing national action plans (NAPS) on business and human rights” (August 2017 update), p. 3.

<sup>33</sup> India, Ministry of Corporate Affairs, “National action plan on business and human rights, zero draft”, p. 22. Available at <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2019/02/draft-nap-india-2019.pdf>.

as national human rights institutions and ombudspersons. Their participation is important to ensure progress in strengthening victims' access to an effective remedy.

53. A number of studies have discussed the importance of having a detailed implementation strategy in place for the respective national action plan commitments to ensure that action occurs and to facilitate effective monitoring, reporting and review through effective coordination structures. To facilitate implementation, actions identified in the national action plan should be specific, measurable, achievable, relevant and time-bound. At a minimum, the implementation plan should specify who within the government is responsible for undertaking each of the commitments/actions and the time frame for its implementation.

54. However, a recent analysis of 22 national action plans (this figure includes Georgia)<sup>34</sup> showed that only 9 of the adopted plans identify which State agency, ministry or office is responsible for implementation of individual activities, 6 include dates for some or all actions and only 4 include explicit indicators or dates by which the actions are to be completed. None of the national action plans contain a budget that covers all actions. A positive development is the creation of instruments and mechanisms designed to ensure coordination among the functional areas of government. In fact, the majority of national action plans that exist or are in development include provisions for such mechanisms (e.g., interministerial committees on business and human rights<sup>35</sup> or interministerial working groups<sup>36</sup>). However, the creation of such mechanisms does not necessarily translate into effective and coordinated implementation of the commitments.

55. Federal States face the reality of decision-making differences at subnational levels, where their implementing structures may not necessarily be well suited to ensure the necessary horizontal policy coherence. Fragmentation and distribution of powers, competences and jurisdictions, combined with different political and economic priorities, represent a particular challenge. In Germany, institutional arrangements have been adopted to scale up coordination efforts between the federal Government and local governments.<sup>37</sup>

### C. Adequate funding, resources and regular meetings

56. One key challenge faced by coordination mechanisms is the lack of adequate funding, resources and capacity to ensure the effective implementation, enforcement and monitoring of national action plans and coordinate on new initiatives. As the business and human rights agenda is gaining momentum, and States are increasingly expected to strengthen efforts to deliver on their obligations, adequate resources are necessary to shape and respond to policy developments and work with stakeholders to properly address their respective duties and responsibilities, among other things.

57. A case in point is environmental protection. Effective environmental regulations require companies to conduct robust environmental impact assessments on their activities to ensure they will not cause adverse impacts on local populations, including with regard to their rights to health and safe and clean water. However, the

<sup>34</sup> The analysis covered Belgium, Chile, Colombia, Czechia, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland, the first and second national action plans of the United Kingdom of Great Britain and Northern Ireland and the United States of America. An Excel file with a detailed breakdown and figures is available at <https://globalnaps.org/resources>.

<sup>35</sup> For example, Chile and Italy.

<sup>36</sup> For example, Finland, the Netherlands, Norway and Slovenia.

<sup>37</sup> Humberto Cantú Rivera, "National action plans on business and human rights: progress or mirage?", *Business and Human Rights Journal* (2019), p. 2.

enforcement of such regulations is undermined by the lack of funds required to purchase the equipment necessary to verify contamination levels in the field, or to employ sufficient numbers of staff to undertake such verification. The same applies in the area of enforcing regulation on occupational health and safety, where a lack of adequate resources may prevent labour inspection offices from carrying out their mandates effectively.

58. Coordination mechanisms need to be proactive in their role as a convening force. To drive action and policy coherence, the mechanism responsible for coordination should meet regularly. Setting up space for regular and effective discussions contributes to the establishment of a framework for effective communication across all layers of government and strengthens ownership, leadership and the accountability of actions at the country level. It also fosters a common understanding of the various roles and responsibilities.

#### **D. Training and awareness-raising across State actors**

59. Knowledge of business and human rights standards by government officials in charge of policy implementation is essential in order to embed protection and respect for human rights across all government functions. Any attempts to drive coherence across government agencies, including through the development and roll-out of a national action plan, is necessarily associated with building and mobilizing expertise, knowledge and capacity on business and human rights among governmental officials. Ultimately, all ministries have to speak the same (human rights) language and fully understand their human rights commitments. This is even more important (and challenging) in federal States or coalition governments where competing economic and political visions may coexist.

60. A common observation from Working Group country visits is that, with the exception of a small set of government officials working specifically on responsible business conduct, there is generally a low level of awareness and understanding among government officials and State-owned enterprises of the State's duties under the Guiding Principles and their legal and policy implications. This recurring issue goes hand in hand with challenges related to ensuring effective coordination across the different departments of government. Addressing this problem requires concerted efforts to ensure that any public body dealing with the business sector is aware and capable of fulfilling the human rights obligations relevant to its activities or functions.

61. Some national action plans propose information and training services for government officials in the form of e-learning opportunities, seminars and other learning platforms. Examples include Colombia, France, Italy and the Netherlands. Recommendation CM/Rec(2016)3 of the Council of Europe suggests that member States should offer training on business and human rights to government officials whose tasks are relevant to the issue of corporate responsibility, for example diplomatic staff assigned to third countries with a sensitive human rights situation.<sup>38</sup> Some countries have developed guidance materials such as sectoral codes of conduct that focus on the specific application of the Guiding Principles. For example, in June 2019, Canada launched *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders*,<sup>39</sup> which offers practical advice for Canadian diplomats working around the world.

<sup>38</sup> Council of Europe, "Human rights and business (Recommendation CM/Rec(2016)3)", appendix, para. 29.

<sup>39</sup> Available at [http://www.international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders\\_guide\\_defenseurs\\_droits.aspx?lang=eng](http://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng).

62. However, a human rights “knowledge divide” often exists between ministries with mandates related to economics and ministries in charge of human rights. Historically, exposure to and knowledge of human rights standards and issues (or responsible business conduct generally) has often been limited to certain parts of government. Consequently, States should consider adopting more effective measures to ensure that knowledge and understanding of the Guiding Principles is built, embedded in and maintained across all branches of government. These may include regular and compulsory business and human rights training for government officials. States may consider establishing business and human rights focal points, units or other similar expertise in all relevant government bodies to institutionalize knowledge on business and human rights.

63. Equally important is ensuring that government departments/agencies that have mandates more explicitly related to human rights are included in the policy development and policy execution matters of those that have business-related mandates, including those responsible for trade and investment promotion, in order to seek greater alignment of their activities. The adoption of national action plans offers a tool to link capacity-building initiatives on business and human rights for government officials with their ability to comply with State’s human rights obligations, so they can be more proactive in preventing the negative impacts of national companies or investors operating within and beyond national borders. Expertise and experience needs to be maintained over time. This is particularly important when new opportunities for policy alignment emerge and other government agencies may arrive later to the process.

## **E. Information and knowledge management for business and human rights policy**

64. The dissemination of knowledge regarding the State’s international obligations and national policy among different governmental levels, departments, agencies and ministries is essential, and government officials must receive adequate guidance on how to discharge their duties. For example, human rights should be fully integrated into general guidance materials on public procurement and into the criteria for awarding contracts. Guidance should include steps required to conduct risk assessments and adopt appropriate measures at each stage of the procurement process. For example, in Belgium, the Flemish authorities intend to support purchasers with “an automatic reference/practical instrument” on ways to integrate human rights concerns, including factors such as diversity, accessibility and the inclusion of people from at-risk groups, for each part of a public procurement contract.<sup>40</sup> The Government of Denmark, in collaboration with business and civil society organizations, created the “CSR Compass”, a free online tool to support companies in complying with international guidelines for responsible business conduct in the supply chain.<sup>41</sup>

65. Coherence is critical with regard to how the government communicates externally on national business and human rights policies. It requires a clear and unambiguous assertion of what the government expects of businesses across their operations within and across borders, providing predictability and coherence among all parts of the government. Lack of coherence in what different parts of government signal to business actors will quickly undermine the effectiveness of a stated expectation that business enterprises should respect human rights.

66. Government policy must also be reinforced by government practices or, again, it will be quickly undermined. It is the role and responsibility of the government to

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<sup>40</sup> Inputs from Belgium.

<sup>41</sup> See [www.csrcompass.com](http://www.csrcompass.com).



provide support and assist companies, including through advice, guidance, resources and other forms of support at home and through overseas missions. To achieve this, government agencies need to have a common understanding of the concept of human rights due diligence and of the processes for carrying it out in practice. This, in turn, reinforces the steps companies themselves are asked to take to demonstrate their respect for rights.<sup>42</sup> For example, the national action plan of Germany highlights the core elements of human rights due diligence (e.g., the procedures in place to identify human rights risks, assessment and review of measures taken). It clarifies what the Government expects from companies and what ministries should ask for in their respective assigned areas of responsibility. However, the way in which ministries ask companies to do so speaks to the challenge of ensuring that all government entities “speak the same language” when they interact with businesses/the private sector.

67. Providing relevant information to companies, State-owned enterprises and public procurement agencies on the human rights situation in a given country also contributes to the promotion of due diligence, as companies seek to assess risks in their supply chains. For example, the national action plan of Sweden ensures that the reports of the Ministry of Foreign Affairs on human rights situations in different locations are made available to companies and that those reports are complemented with guidance on the human rights issues and risks in the various countries in which Swedish business may operate. The Dutch “CSR Risk Check” website (and its German version)<sup>43</sup> is a tool also used by other States that is designed to help companies assess the risks they are likely to encounter in their business activities, such as during procurement, in production abroad or when exporting products.

68. Most awareness-raising efforts by governments focus on the largest companies, with little attention paid to their subsidiaries or investments abroad, and small and medium-sized enterprises are often left out of policy-setting discussions and implementation initiatives. Several national action plans recognize the need to assist small and medium-sized enterprises in their efforts, including the undertaking of human rights due diligence in a manner proportionate to their size and capacity. Some national contact points are providing training sessions for these companies on human rights due diligence. However, more efforts are needed to help small and medium-sized enterprises become aware of and translate existing policy guidance into operational procedures that fit their contexts. Governments have multiple levers to do so, including by embedding the Guiding Principles as a central policy objective of their programmes relating to small and medium-sized enterprises, boosting the training and capacity-building activities offered by government departments and making the commitment and ability to respect human rights a requirement to receive government subsidies and grants (A/HRC/35/32, para 42).

## **F. Monitoring and evaluation as a means to strengthen policy coherence**

69. Monitoring and reporting by governments on the implementation of national action plans and their impacts is a critical aspect of ensuring accountability, while the overall national action plan process and content should be periodically assessed and reviewed. These measures are instrumental to ensuring that the government learns about business and human rights challenges and takes coordinated action and

<sup>42</sup> A/HRC/8/5, para. 29; OECD, “National action plans on business and human rights to enable policy coherence for responsible business conduct” (June 2017), available at <https://mneguidelines.oecd.org/NAP-to-enable-policy-coherence-for-RBC.pdf>.

<sup>43</sup> See [www.mvorisicochecker.nl/en/about-us](http://www.mvorisicochecker.nl/en/about-us).

measures to address them. However, in most instances of national action plan implementation, monitoring and evaluation elements remain patchy at best.

70. Approaches to monitoring and reviewing the implementation of national action plans include government-led progress reviews, multi-stakeholder mechanisms and independent mechanisms. A study analysing 22 national action plans reported that 15 committed to issuing progress reports, 17 had monitoring mechanisms, 9 assigned responsibilities to named bodies, 6 included set dates/timelines for completion of activities and 4 contained indicators to assess whether actions were completed. Of the national action plans that include a commitment to formalize a monitoring body or procedure, government-led monitoring is the most common approach.

71. Regrettably, the majority of national action plans do not include progress reporting requirements. This should be addressed, as reporting serves the purpose of monitoring progress in fulfilling the commitments of the plan. Reporting also helps to facilitate a process of learning and improvement, serves as an opportunity for the various branches of government to familiarize themselves with the national action plan and why it matters and helps to strengthen collaboration across the government and take stock of past initiatives, track those that are ongoing and initiate new actions, if necessary. Given the significance and potential of monitoring and evaluation processes, the lack of clear forms of evaluation is a major gap. The lack of adequate measurement of the implementation of policies makes it difficult to ascertain whether effective changes are taking place.

72. Inclusive engagement with other stakeholders is crucial to holding a government to account and improving the efficiency and ultimately the legitimacy of a government's policies and actions,<sup>44</sup> and contributes to keeping a government diligent. The Government of Switzerland has for the first time included civil society in monitoring, evaluation and implementation processes. Similarly, in Chile, a multi-actor committee includes representatives from civil society, unions, the business community, indigenous peoples, academia and the national human rights institute to evaluate progress and provide feedback and recommendations.<sup>45</sup> In Czechia, evaluation of the action plan will draw on independent research that assesses business and human rights practice.<sup>46</sup> Institutionalized engagement with other stakeholders serves as a platform for the exchange of critical information about national implementation of the Guiding Principles. It is an opportunity for continuous learning, based on stakeholder's inputs and experiences. Governments should invite all relevant stakeholders to participate in the process, including representatives of groups particularly exposed to business-related human rights abuses, such as children, women, indigenous peoples, ethnic minorities and persons with disabilities.

73. Monitoring initiatives that are inclusive of national human rights institutions can help strengthen the capacity of the State to better discharge its duties under the third pillar of the United Nations "Protect, Respect and Remedy" Framework. In some States, national human rights institutions and/or a relevant ombudsman have been given an official monitoring role alongside or as part of the multi-stakeholder group, as recommended by the Office of the United Nations High Commissioner for Human

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<sup>44</sup> Guidance from the Working Group advises the adoption of an independent multi-stakeholder monitoring group, with defined modalities for monitoring (see Working Group on business and human rights, "Guidance on national action plans on business and human rights", p. 12).

<sup>45</sup> Chile, Ministry of Foreign Affairs, "National action plan on business and human rights, Chile", p. 68. Available at [https://mk0globalnaphsvllfq4.kinstacdn.com/wp-content/uploads/2017/11/national-action-plan-on-business-and-human-rights\\_.pdf](https://mk0globalnaphsvllfq4.kinstacdn.com/wp-content/uploads/2017/11/national-action-plan-on-business-and-human-rights_.pdf).

<sup>46</sup> Czechia, Minister for Human Rights, Equal Opportunities and Legislation, "National action plan for business and human rights, 2017–2022", p. 54. Available at [www.business-humanrights.org/en/czech-republic-adopts-national-action-plan-on-business-human-rights](http://www.business-humanrights.org/en/czech-republic-adopts-national-action-plan-on-business-human-rights).

Rights and the Working Group.<sup>47</sup> France has entrusted its national human rights institution with a clear mandate to monitor and review its business and human rights national action plan. In Chile and Spain, the national human rights institution and relevant ombudsman, respectively, form part of the multi-stakeholder monitoring group, providing expert opinions on government progress in national action plan implementation. National human rights institutions are increasingly involved in emerging national action plan processes in countries such as Malaysia, the Republic of Korea and Kenya (in undertaking the national baseline assessment), and the Working Group hopes that this trend continues.

74. Parliamentary oversight of national action plan monitoring reports provides another level of democratic accountability, which can act as an incentive to deliver and improve on policy commitments and coherence. It creates opportunities for discussion and raising awareness of business and human rights policy issues involving politicians, lawmakers and the wider public – part of efforts to create a national culture of business and human rights. An example of dialogue between the legislative and the executive powers on how to improve the implementation of a government’s commitments is provided in the report on business and human rights by the Joint Committee on Human Rights of the Parliament of the United Kingdom of Great Britain and Northern Ireland, in which the Committee points to a number of critical protection and implementation gaps in the national action plan.<sup>48</sup> Mandatory reporting to parliament on progress made can be found among the most recently developed national action plans, including those of Spain, Belgium and Georgia.<sup>49</sup>

75. Review of national progress should benefit from existing monitoring and reporting human rights mechanisms at the regional and international level, such as the International Labour Organization, the universal periodic review, the special procedures of the Human Rights Council and treaty bodies, and build on relevant recommendations to advance national implementation of the Guiding Principles. For example, States from all regions have increasingly used the universal periodic review to formulate and/or support recommendations addressing both the process and content of national action plans. Accepted recommendations range from the development of a national action plan<sup>50</sup> to strengthening its content on specific issues (e.g., to address black market labour exploitation in the construction sector),<sup>51</sup> and from including provisions to extend the application of standards set out in the Guiding Principles to companies operating abroad<sup>52</sup> to ensuring responsible business contacts in situations of armed conflict.<sup>53</sup> Review of implementation progress should draw from the relevant reports, information and experience stemming from States’ practice in the development and adoption of national action plans. Relevant recommendations from national human rights institutions on business and human rights issues should also be considered.

<sup>47</sup> OHCHR, “Handbook on national human rights plans of action”, Professional Training Series No. 10 (29 August 2002), p. 94, available at [www.ohchr.org/Documents/Issues/Education/Training/HandbookNationalHR.pdf](http://www.ohchr.org/Documents/Issues/Education/Training/HandbookNationalHR.pdf); Working Group on business and human rights, “Guidance on national action plans on business and human rights”, p. 10.

<sup>48</sup> See <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>. The Government’s response was published on 12 January 2018 and is available at <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/686/686.pdf>.

<sup>49</sup> See [https://globalnaps.org/wp-content/uploads/2019/05/shrc\\_bhr\\_nap\\_report.pdf](https://globalnaps.org/wp-content/uploads/2019/05/shrc_bhr_nap_report.pdf), p. 23.

<sup>50</sup> See, among others, recommendations to Malta, Nigeria, Japan, Canada and Brazil. Available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

<sup>51</sup> Recommendation to Germany, see [A/HRC/39/9](https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx).

<sup>52</sup> Recommendation to China, see [A/HRC/40/6](https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx).

<sup>53</sup> Recommendation to Luxembourg, see [A/HRC/38/11](https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx).

## G. Connecting business and human rights policy with the Sustainable Development Goals and other national policy frameworks

76. The Working Group has stressed that a precondition to achieving the Sustainable Development Goals is to address adverse impacts on people resulting from business activities in all sectors.<sup>54</sup> It emphasized the need for national frameworks to implement the Goals in alignment with national action plans and government policies on business and human rights, and vice versa.<sup>55</sup> Owing to the complexity and vast set of human rights-related policy areas that both the Guiding Principles and the 2030 Agenda for Sustainable Development aim to address, an integrated approach towards implementation efforts is required to ensure that the links between the different action plans are made explicit. Systematic collaboration and cooperation between various government actors as well as other stakeholders is necessary.<sup>56</sup> This is especially relevant in the context of the voluntary national reviews<sup>57</sup> that seek to strengthen the policies and institutions of governments and mobilize multi-stakeholder support and partnerships for the implementation of the Goals.<sup>58</sup>

77. The Guiding Principles set out a number of considerations for States to act on to ensure policy coherence across business-oriented policy areas that relate to sustainable development, both at home and in multilateral settings. For example, a review of progress on Sustainable Development Goal 12 on responsible consumption and production can take into account existing efforts to prevent and address business-related human rights impacts, including through the enforcement of human rights due diligence regulatory framework. Target 12.7, which aims to “promote public procurement practices that are sustainable, in accordance with national policies and priorities”, connects directly with the Guiding Principles’ requirement that governments integrate human rights into public procurement.

78. Sustainable Development Goal 17, to “strengthen the means of implementation and revitalize the global partnership for sustainable development”, includes “institutional and policy coherence” as an integral part of the means of implementation.<sup>59</sup> It also includes a cross-cutting target to “enhance policy coherence for sustainable development” which apply to the entire framework of the Goals. In achieving this target, governments will have to ensure that their policies in all public domains are consistent with, and do not undermine the achievement of, the Sustainable Development Goals.<sup>60</sup>

79. Some States have already taken steps towards an integrated approach to State reporting efforts, using the follow-up and review framework of the 2030 Agenda to strengthen protection in the area of business and human rights. As of June 2019, of the 17 business and human rights policy frameworks<sup>61</sup> published after the adoption of

<sup>54</sup> See “10 key recommendations to Governments and businesses from the UN Working Group on Business and Human Rights”. Available at [www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR\\_SDGRecommendations.pdf](http://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf).

<sup>55</sup> Ibid.

<sup>56</sup> Daniel Morris and others, “National action plans on business & human rights”.

<sup>57</sup> See [https://sustainabledevelopment.un.org/content/documents/17346Updated\\_Voluntary\\_Guidelines.pdf](https://sustainabledevelopment.un.org/content/documents/17346Updated_Voluntary_Guidelines.pdf).

<sup>58</sup> See, for example, OECD, “National action plans on business and human rights to enable policy coherence for responsible business conduct”.

<sup>59</sup> Technical Support Team for the Open Working Group on Sustainable Development Goals, “TST issues brief: means of implementation; global partnership for achieving sustainable development”. Available at [https://sustainabledevelopment.un.org/content/documents/2079Issues%20Brief%20Means%20of%20Implementation%20Final\\_TST\\_141013.pdf](https://sustainabledevelopment.un.org/content/documents/2079Issues%20Brief%20Means%20of%20Implementation%20Final_TST_141013.pdf).

<sup>60</sup> See [www.oecd.org/gov/pcsd/toolkit%20framework%20for%20pcsd.pdf](http://www.oecd.org/gov/pcsd/toolkit%20framework%20for%20pcsd.pdf).

<sup>61</sup> This includes national action plans as well as chapters on business and human rights in national human rights plans of action.

the 2030 Agenda in 2015, 13 refer to the Agenda. Of the 15 States that have presented a voluntary national review during the annual high-level political forum on sustainable development after publishing a national action plan, 9 highlighted the plan in their review.<sup>62</sup> In its statement of human rights commitments, Japan explicitly pledged that formulating a national action plan on business and human rights was “one of the main measures” for achieving the Goals.<sup>63</sup> Progress achieved in the implementation of the national action plan is meant to be incorporated in reports about the 2030 Agenda in Chile.<sup>64</sup>

80. National reviews offer an opportunity for multi-stakeholder dialogue on business and human rights under a broad range of Sustainable Development Goals, which in turn contribute to raising awareness on business and human rights. In practice, however, those in charge of business and human rights issues are often not the same as those tasked with implementing the 2030 Agenda. To address coordination challenges, some countries have entrusted the body responsible for coordinating the implementation of the national action plan with the task of coordinating policies related to sustainable development. In Belgium, for example, each of the actions (except one) of the national action plan is linked to one or more concrete Goals. This indicates an attempt to embed the implementation of the Guiding Principles in the larger strategy to realize the Goals.<sup>65</sup>

81. The Working Group recognizes that States are pursuing other policies in which the roles of government and business intersect, including in the context of emerging global issues such as climate change, the “gig economy” and the “future of work”, transitioning to a green economy, developing sustainable infrastructure and reducing conflict and building peace, as well as issues such as the rights of migrants and the empowerment of women and gender equality. The Guiding Principles apply to and should be integrated into such policy areas, and implementation of these policies should align with efforts to implement the Guiding Principles. This requires the creation of adequate institutional arrangements and information-sharing mechanisms, investment in building the capacities of all stakeholders and the development of strong coordination mechanisms for alignment that are fit for purpose and flexible in order to respond to emerging challenges and opportunities. Policy planning and implementation strategies across various policy areas should ensure strong connections between relevant governmental departments and other stakeholders, including grass-roots organizations, trade unions and business associations, and build on both institutional and bottom-up initiatives.

## V. Conclusions and recommendations

### A. Conclusions

**82. Since their endorsement in 2011, the Guiding Principles on Business and Human Rights have provided an authoritative reference that promotes greater policy coordination and coherence in State action to prevent and address business-related human rights impacts. However, much remains to be done to translate policy commitments, including in the context of national action plans, into better protection of human rights on the ground. Examples of the harm caused by gaps and inconsistencies in the implementation of relevant policy and regulatory frameworks are countless, and progress in this respect must be given**

<sup>62</sup> Daniel Morris and others, “National action plans on business & human rights”.

<sup>63</sup> Japan, “Japan’s human rights commitments and pledges” (January 2019). Available at <https://www.mofa.go.jp/files/000175306.pdf>.

<sup>64</sup> Chile, Ministry of Foreign Affairs, “National action plan on business and human rights, Chile”, p. 68.

<sup>65</sup> Inputs from Belgium.

the highest priority by all States as part of their human rights and good governance obligations.

83. Improvements in policy coherence can help address the challenges faced by individuals and groups who are at heightened risk of business-related human rights abuses, including human rights defenders, women and girls, indigenous peoples, workers in low-wage sectors and migrant workers. They are often the victims of inconsistent design or application of policies and regulations that results in inadequate action by businesses to identify, prevent, mitigate and account for the negative human rights impacts they may cause. Their vulnerability is compounded by policies and regulations that put them at risk of abuse and pose multiple barriers to access to an effective remedy.

84. The Guiding Principles remind States that ensuring policy coherence is relevant across the three pillars of the United Nations “Protect, Respect and Remedy” Framework. States need to scale up efforts to establish and maintain mechanisms to institutionalize knowledge and common understanding of their responsibilities. In fulfilling their duty to protect, they must build operational capacity and ensure accountability across all relevant government entities, including at the local and subnational level. However, there is scant evidence of consistent, clear guidelines and established methodologies that are rigorously used, enforced and monitored in practice.

85. The international community has recognized the need to translate policy commitments into reality on the ground. The development of a national action plan can be an essential first step towards a coherent policy approach to preventing and addressing business-related human rights abuses. Initiatives to address policy coherence gaps exist and the momentum gained by national action plan development and implementation practice are positive steps in the right direction. However, those initiatives are still too few and have not reached a scale commensurate with the challenges at hand.

## **B. Recommendations**

86. The Working Group recommends that States should:

(a) Commit to developing a national action plan with the engagement of all government entities and the meaningful participation of key stakeholders, as an opportunity to foster cross-governmental communication, broad buy-in and a common understanding of the challenges and tasks ahead;

(b) Demonstrate political support, leadership and commitment at the highest level to promote the effective implementation of the Guiding Principles on Business and Human Rights. Ministries should exercise leadership and oversight and be accountable for ensuring the implementation of the Guiding Principles/national action plan in practice;

(c) Establish clear policy directives matched by adequate State funding and support for the actions of relevant ministries/agencies. States should build the necessary political capital and support across political parties with regard to the business and human rights agenda;

(d) Adopt effective measures to ensure that knowledge and understanding of the Guiding Principles is disseminated, embedded and maintained across all branches of government;

- (e) Provide regular and compulsory training sessions, e-learning opportunities, seminars and other learning platforms on business and human rights norms and standards, including the Guiding Principles;
- (f) Require different ministries to update their policies to fully integrate human rights considerations, including explicit reference to the Guiding Principles, into their policy documents, as appropriate. Such policies should integrate due consideration for risks faced by people at risk, including human rights defenders, in relation to business-related activities;
- (g) Treat gender equality as a cross-cutting issue to be integrated into all strategies, policies, documents, programmes and actions of all ministries, departments, agencies and institutions that shape business practices;
- (h) Encourage different ministries to develop guidance materials in partnership with business and civil society, for example, sectoral codes of conduct that focus on the specific application of the Guiding Principles;
- (i) Ensure that key ministries that interact with the business community through trade, export promotion and small business advising, among other things, are equipped to help businesses understand how to engage in responsible business practices. This may include guidance materials on ways to conduct human rights due diligence and ensure respect for the rights of communities and individuals;
- (j) Require businesses to demonstrate a commitment to the Guiding Principles as a prerequisite for receiving State support and benefits related to trade and export promotion, including participation in trade missions and eligibility for trade advocacy. Export and trade promotion entities should work in partnership with businesses and other stakeholders to develop and disseminate effective guidance on respect for human rights in cross-border trade;
- (k) Ensure that human rights are fully integrated into general guidance materials on public procurement and criteria for awarding contracts. Guidance should include the steps required to conduct risk assessments and adopt appropriate measures at each stage of the procurement process;
- (l) Enable embassies or trade officers to provide guidance to companies on human rights issues in different markets as part of their larger advisory services;
- (m) Consider the creation of a focal point or units in each ministry or other government department that is tasked with raising awareness and assisting in institutionalizing knowledge on business and human rights;
- (n) Offer specific training on business and human rights to diplomatic/consular staff assigned to third countries that have a sensitive human rights situation, including on the responsibility to conduct enhanced due diligence in conflict and post-conflict situations;
- (o) Ensure that government officials in charge of departments/agencies that have explicit human rights mandates are included in the policy development and policy execution matters of those in charge of economic/trade mandates;
- (p) Require that State-owned enterprises fully integrate human rights considerations throughout their operations and governance structures, and deliver on human rights commitments as role models;
- (q) Detail an implementation strategy to ensure that action takes place and to facilitate effective monitoring, reporting and review through effective

coordination structures. To facilitate implementation, actions identified in the national action plan should be SMART (specific, measurable, achievable, relevant and time-bound). The implementation plan should specify responsibility for undertaking each of the commitments/actions and the time frame for its implementation, and allocate adequate resources;

(r) Establish coordination structures such as intergovernmental/interministerial bodies to oversee the implementation of the national action plan, enable input from all relevant parts of government and other stakeholders and provide a forum where governments can be held to account. This body should meet regularly and be provided with adequate resources;

(s) Recognize that the national action plan is a living document that should be reviewed and assessed regularly, including through interim reports, and be updated as needed;

(t) Consider forms of institutionalized dialogue with independent multi-stakeholder-led monitoring and evaluation initiatives to ensure inclusive evaluation and strengthen legitimacy and accountability;

(u) Include mandatory periodic reporting to parliament on the status of implementation of the national action plan, and include such information in their reports to regional and international human rights monitoring bodies and mechanisms;

(v) Comprehensively and proactively monitor whether and to what extent they are meeting their international human rights obligations in their role as economic actors, including through investments and business activities of the enterprises that they own or control, at home and abroad. States should clearly set the expectation that State-owned enterprises respect human rights throughout their operations, adopt human rights commitments and be role models in this regard;

(w) Set out clearly in their national action plans the specific steps to ensure that all State agencies contribute to the realization of effective remedies. Education and awareness-raising among government officials (relating to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) are required, as is systematic engagement with rights-holders. States are encouraged to draw upon the guidance and recommended actions produced by the Accountability and Remedy Project of the Office of the United Nations High Commissioner for Human Rights;<sup>66</sup>

(x) Break institutional silos to allow for the coordination and complementarity of efforts and align the implementation of national action plans with the Sustainable Development Goals, building on dialogues and partnerships. In their implementation plans, States should make explicit the links between the different agendas;

(y) Consider peer learning, cooperation and the exchange of good practices among States, including through technical cooperation and assistance to third States with whom they engage in trade and investment or provide development assistance, and contribute to the creation of more robust respect for human rights throughout global supply chains. States are encouraged to create partnerships within and across regions as part of a larger business and human rights strategy.

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<sup>66</sup> See [A/HRC/32/19](#), [A/HRC/32/19/Corr.1](#) and [A/HRC/32/19/Add.1](#) (on judicial mechanisms) and [A/HRC/38/20](#) and [A/HRC/38/20/Add.1](#) (on State-based non-judicial mechanisms).