

EXECUTIVE SUMMARY

NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

Lessons from State Best Practices in Protecting Citizens from the Impact of Businesses

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Part I
Introduction

After the United Nations Human Rights Council ratified the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) in June 2011,[1] a number of countries began formulating National Action Plans (NAPs) on Business and Human Rights. The development of NAPs is an expression of a country's political commitment to create momentum towards realizing a transformative vision to provide a corridor for corporations to respect human rights.

To date, there are 23 (twenty three) countries that have developed and approved NAPs on Business and Human Rights to implement the UN Guiding Principles.[2] One of the main functions of the NAP is to provide strong coordination and coherence within the government on the spectrum of policies related to business and human rights. Policy coherence is essential to ensure effective design and implementation of policies to promote responsible business behavior, including corporate respect for human rights.[3]

Unfortunately, most of the countries that have formulated their NAPs are restricted to member states of the European Union. This has prompted various countries in other regions, including ASEAN countries, to attempt to catch up by holding various activities to promote the UN Guiding Principles at the ASEAN level. Several countries in ASEAN, such as Indonesia, Malaysia and Myanmar, are starting to show their commitment to create a more responsible business climate with respect to the human rights aspect by developing NAP or declaring their commitment to develop such a document.[4] In fact, in October 2019 Thailand enacted its NAP on Business and Human Rights,listing itself as the only country in ASEAN that has a NAP on Business and Human Rights.

When compared to other countries in ASEAN, Indonesia cannot be said to be "backwards" in terms of promoting business and human rights issues. This is because there have been many initiatives or concrete steps that have been taken by the government, corporations and civil society organizations in Indonesia in demonstrating a shared commitment to advance business and human rights. Even so, to date, a coherent policy has not been developed, because the issue of business and human rights remains the discussion of a limited number of ministries/institutions.

Problem Formulation

Based on this rationalization, this study attempts to explore best practices in various countries that already possess a NAP on Business and Human Rights. In addition, not

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1 U.N. Doc. A/HRC/17/31 (2011).

2 Countries that already have a NAP on Business and Human Rights are as follows: (1) United Kingdom (September 2013); (2) Netherlands (December 2013); (3) Denmark (April 2014); (4) Finland (October 2014); (5) Lithuania (February 2015); (6) Sweden (August 2015); (7) Norway (October 2015); (8) Colombia (December 2015); (9) Switzerland (December 2016); (10) Italy (December 2016); (11) United States (December 2016); (12) Germany (December 2016); (13) France (April 2017); (14) Poland (May 2017); (15) Spain (Italy 2017); (16) Belgium (July 2017); (17) Chile (July 2017); (18) Czech Republic (October 2017); (19) Ireland (November 2017); (20) Luxembourg; (21) Republic of Slovenia (November 2018); and Kenya (June 2019). See, https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx, accessed on 25 September 2019, 10.57 WIB.

3 Secretary-General of the OECD, *National action plans on business and human rights to enable policy coherence for responsible business conduct,* (OECD, 2017), pp. 1-2.

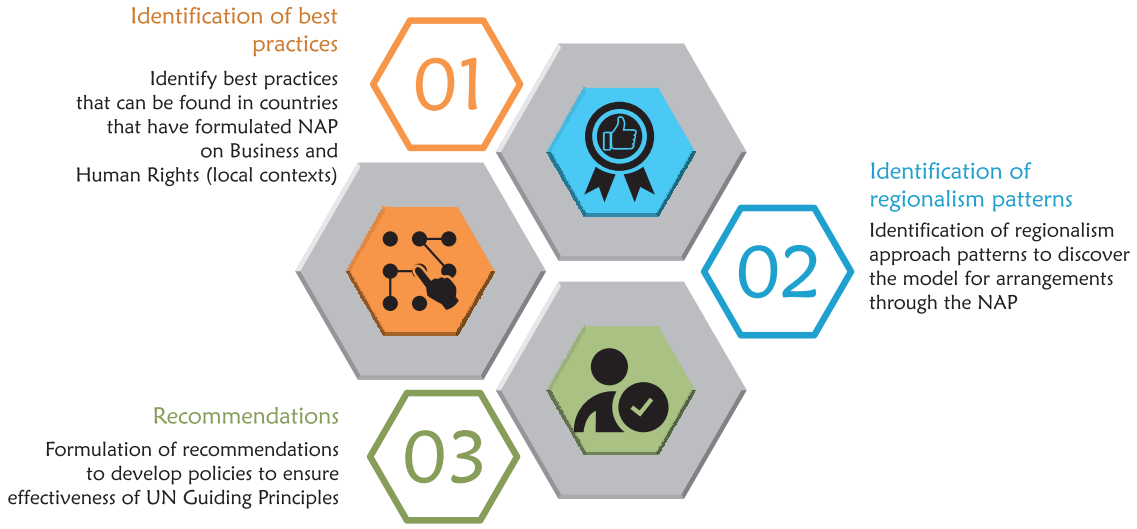
4 https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx, 26 September 2019, 23.59 WIB.

only conducting comparison, this study also seeks to find contexts and regulatory patterns based on regional characteristics regarding the actions needed to make the UN Guiding Principles effective in the national contexts of each country.

Research Objectives

The best practices identified in the NAP, which have been formulated by many countries to find contexts and regulatory patterns based on regional characteristics, can be used as learning materials for the three actors: government, corporations, and civil society, in interpreting the UN Guiding Principles according to their respective responsibilities.

Further, this study is expected to formulate recommendations for the model for arrangements (policies) that are effective in implementing the UN Guiding Principles.



Research methods

In order to identify best practices and patterns (models) of NAP settings found in various countries, this study will use the comparative law method. The focus of comparative law is to present an analysis of the internal dynamics and principles of existing law in the countries studied to construct an answer to the normative question about what law should be.[5]

In this context, comparison becomes a key method for building information on human rights trends within a country, or variations between countries, and helps identify factors and conditions that can explain patterns of human rights arrangements within a country.[6]

We are aware of the existence of several comparative studies of the NAP on Business and Human Rights of various countries. Some of these studies include, *National Action*

[5] John Bell, *Legal Research and the Distinctiveness of Comparative Law, in* Mark Van Hoecke (ed.), *Methodologies of Legal Research,* (Oxford: Hart Publishing, 2011), pp. 157-158.

[6] Bård A. Andreassen,*Comparative analyses of human rights performance,* inBård A. Andreassen, Hans-Otto Sano Siobhán McInerney-Lankford (eds.), *Research Methods In Human Rights: A Handbook*, (Cheltenham: Edward Elgar Publishing Limited, 2017), p. 222.

Plans on Business & Human Rights: An Analysis of Plans From 2013-2018,[7] *Comparative Analysis of National Action Plans and Other Legal Mechanisms on Business and Human Rights*,[8] as well as *globalnaps.org*,[9] which reviews in more detail the NAPs on Business and Human Rights in different countries.

In contrast to studies mentioned above, although this study uses the comparative analysis method, the study attempts not just to compare, but also will further observe the rationalization of the respective countries in making the NAP as a strategy of norming the UN Guiding Principles as *soft law*. This will be analyzed in the context of shifting global governance in the advancement of human rights or the dynamics of norming international law.

[7] Daniel Morris et al., *National Action Plans on Business & Human Rights: An Analysis of Plans From 2013 - 2018,* The Danish Institute For Human Rights, 2018.

[8] Human Rights Now, "Comparative Analysis of National Action Plans and Other Legal Mechanisms on Business and Human Rights", http://hrn.or.jp/eng/wp-content/uploads/2019/07/HRN_Comparative_Analysis_of_NAPs_2019.pdf

[9] The Danish Institute for Human Rights, https://globalnaps.org/, *Op cit*

Part II
Multi-Party Governance in the Promotion of Human Rights

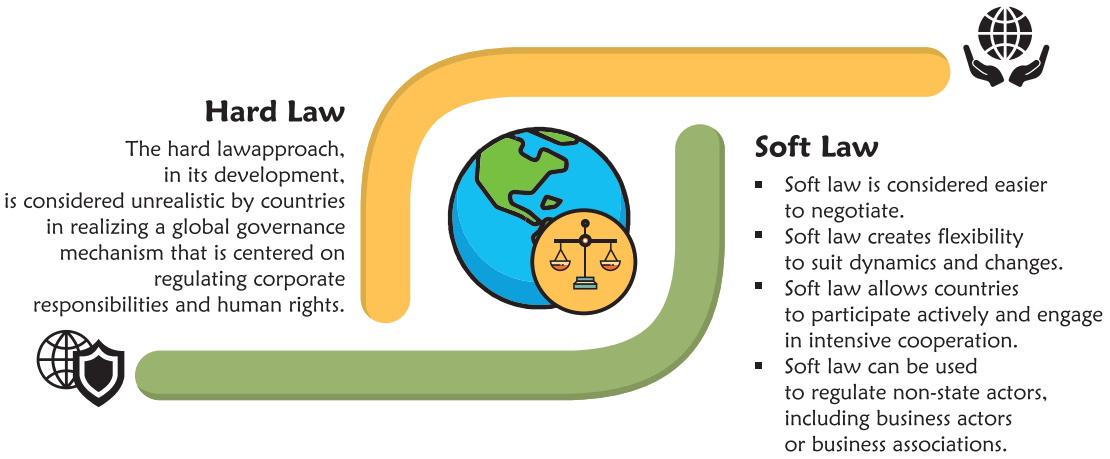
A. Placing Corporations in the Global Governance Configuration: The Transfiguration of Corporate Norming from Hard Law to Soft Law

The discourse on the ideal approach to regulate business responsibility for human rights often places the state in a dilemma between the choice of hard law or soft law approaches. In general, according to Choudhury Barnali, hard lawis a binding rule that generates a set of rights and obligations that can be enforced (*enforceable*). Meanwhile, soft law *is* defined as principles, norms, standards and a set of institutions that do not result in binding rights and obligations. Its soft nature is represented by the non-normative content and voluntary compliance.

The existence of a contestation between the two options is inseparable from the debate regarding the corporate responsibility of human rights based on conventional international human rights law, which views the state as the main subject responsible for respecting, protecting and fulfilling human rights. This paradigm creates a challenge to answer the extent to which corporations must comply with international law and human rights obligations.

The hard law approach, in its development, is considered unrealistic by countries in realizing aglobal governance mechanism that is centered on regulating corporate responsibilities and human rights. Hard lawcreates formal commitments that limit state behavior and sovereignty. Regarding sensitive issues, the state is often reluctant to be bound by rules that can rigidly restrict it. What's more, hard laws arealso considered relatively difficult to change even though factual conditions are highly likely to change over time. The reluctance to choose hard law is reflected in the failure of the United Nations to adopt a legally binding instrument for business entities in 2003, which led countries to switch to a more realistic approach, namely by adopting the relatively soft UN Guiding Principles in 2011.

According to Schaffer and Pollack, the choice of a soft law approach is generally motivated by several reasons. First, soft law is considered easier to negotiate. Second, the “sovereignty costs” in certain areas that are considered politically sensitive are lower. Third, the choice creates flexibility to suit dynamics and changes. Fourth, this approach allows countries to participate actively and engage in more intensive cooperation than when they have to worry about enforcement issues. Fifth, soft law can be more effective in accommodating and mediating all differences. Sixth, soft law can be used to regulate non-state actors, including business actors or business associations.



When contextualized with the issue of business and human rights, the soft law approach tends to be preferred for the same reasons. The economic and development interests behind business activities make them a vital and political issue, so it is only natural that many countries are reluctant to commit to hard laws in regulating business and human rights. The difficulty of compromising the interests of each country makes the formation of hard laws more difficult to reach consensus than soft laws. In addition, soft laws will be easier for corporations to accept as non-state actors, especially in the midst of the unfinished discourse regarding the expansion of human rights responsibilities from the state to corporations.

Apart from the various advantages, it should be acknowledged that soft lawshave various fundamental short comings, namely non-compliance of the subject being regulated in the absence of a compelling instrument. Meanwhile, the compliance aspect is essential in regulating business and human rights, because without it, corporate activities can continue to violate human rights with impunity and violations by corporations cannot be held accountable.

However, increasing the effectiveness of soft laws is not impossible. Soft laws will be more compelling if they are intensively used as a precursor of hard laws,or to complement hard lawsthemselves. Barnali Choudhury explained that the effectiveness of soft law is greatly influenced by its enforcement. The method to optimize enforcement of soft law is to specify the commitment of the rulings. He further explained the importance of detailing the standards that need to be applied in the soft law, which contains process arrangements. In addition, a supervisory system to be carried out by entities outside the corporation will slowly build compliance from the corporation towards human rights principles.

The regulation of the NAP on Business and Human Rights as an implementing instrument of the UN Guiding Principles should be a tool to make the implementation of the UN Guiding Principles more effective, because the NAP is formed under binding national laws and can regulate in detail concrete steps to implement the principles under the UN Guiding Principles. Although the UN Guiding Principles are not binding, from a socio-legal perspective, the soft law approach emphasizes the effectiveness of the law in practice (law in action). The effectiveness is measured by whether a rule, regardless of its soft or hard nature, is able to produce behavior changes or certain positive impacts

that are desired. Through such a construction of thought, the UN Guiding Principles as a participatory and easily accepted soft lawcan actually be more effective than a hard law,when properly implemented.

B. United Nations Guiding Principles on Business and Human Rights as A Manifestation of Multi-Stakeholder Governance

As a leading global governance of business and human rights, the UN Guiding Principles adhere to three main principles, namely i) the obligation of states to protect human rights; ii) corporate responsibility to respect human rights; and iii) access to remedy for victims of human rights violations resulting from business activities. In order to realize these principles, an awareness of the importance of a multi-stakeholder approach is needed. In the context of business and human rights, multi-stakeholder initiatives refer to processes that involve various actors including government, business entities and civil society to realize socially and environmentally sustainable business.

John Ruggie introduced the concept of polycentric governance as an approach that divides the roles of stakeholders differently, but with complementary responsibilities, including the following: i) The state has an obligation under international human rights law to protect individual human rights from threats from third parties, including businesses. At the same time, states are also required to develop cross-governmental policies to realize these legal obligations; ii) Corporations are required to obey the law and manage the risk of their involvement in human rights violations, in addition, corporations also have an obligation to address human rights losses caused by their business activities; iii) Individuals and communities need to be given further empowerment in order to realize the right to recovery.

Polycentric governance seeks to answer the complexities of business and human rights issues, especially in the midst of governance gaps caused by globalization. This phenomenon has created an imbalance between the impact of economic activities and the capacity of the people suffering from the negative impacts of these activities. The gap is due to the absence of regulations that impose sanctions or demand reparations from companies. Through polycentric governance, each actor is encouraged to work together and contribute in overcoming business and human rights problems in accordance with their functions and capacities at their level.

C. The State and the National Action Plan on Business and Human Rights: A National Legal Approach in Responding to International Human Rights Issues

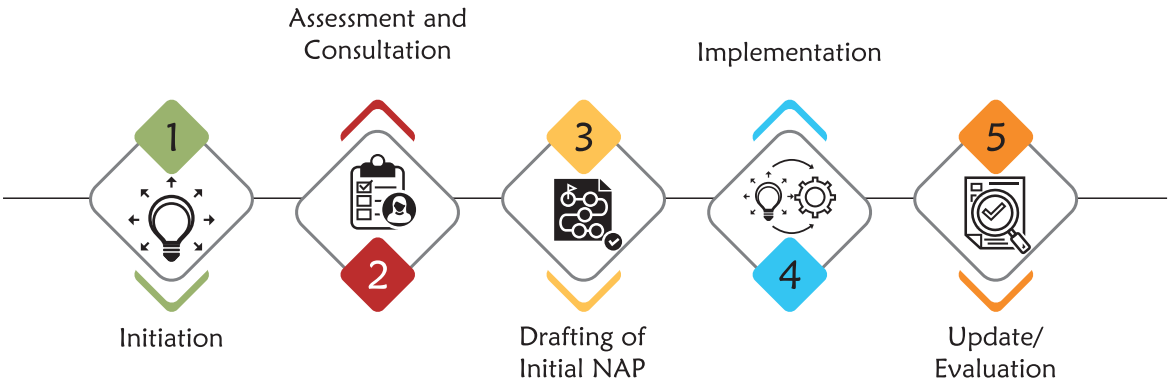
The adoption of the UN Guiding Principles by the UN Human Rights Council creates a mandate for the UN Working Group to promote the effective and comprehensive application of the UN Guiding Principles. Therefore, the UN Working Group sees the importance of states having NAPs on Business and Human Rights. This has also prompted the UN Working Group to issue the Guidance on NAPs on Business and Human Rights which details the guidelines for the formation process to the substance that can be adopted and used as the basis for each country in preparing the NAP on Business and Human Rights at the national level.

The UN Working Group defines the NAP on Business and Human Rights as "an evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights." The UN Working Group outlines six values of the NAP on Business and Human Rights for the state, namely:

1. Greater coordination and coherence within government on the range of public policy areas that relate to business and human rights;
2. An inclusive process to identify national priorities and concrete policy measures and action;
3. Transparency and predictability for interested domestic and international stakeholders;
4. A process of continuous monitoring and evaluation of implementation;
5. A platform for ongoing multi-stakeholder dialogue; and
6. A flexible yet common format that facilitates international cooperation, coordination, and exchanges of good practices and lessons learned.



An ideal NAP on Business and Human Rights must be made in line with a human rights-based approach, namely inclusive, transparent, participatory and accountable. In the process of establishing the NAP on Business and Human Rights, National Baseline Assessments (NBA) should be made by institutions that are considered credible such as the National Human Rights Institution (NHRI) or universities. This process emphasizes the analysis of the relevance of the substance of the NAP on Business and Human Rights to the UN Guiding Principles and serves to see the extent to which NAP content is able to answer needs in practice. Multi-stakeholder consultation is also crucial in the process of establishing the NAP on Business and Human Rights. Apart from representing participation, these consultations will enrich the state's perspective on matters that need to be regulated by the NAP.



In general, the UN Working Group recommends the process of establishing the NAP on Business and Human Rights according to the following guidelines:

Phase	Actions taken
Phase 1: Initiation	1. Establish a formal government commitment to be involved in the NAP process. 2. Establish a cross-institutional collaboration framework and leadership structure. 3. Create a non-government stakeholder engagement scheme. 4. Develop and publish a work plan and allocate adequate resources
Phase 2: Assessment and Consultation	1. Increase understanding of adverse impacts of business on human rights. 2. Identifygaps in state and business implementation of the UN Guiding Principles. 3. Conduct consultations with stakeholders regarding efforts to address gaps and identify priority issues.
Phase 3: Drafting of Initial NAP	1. Prepare an initial draft. 2. Consult on the draft with relevant stakeholders. 3. Finalize and launch the NAP on Business and Human Rights
Phase 4: Implementation	1. Implement actions and continue cross-departmental collaboration 2. Ensure multi-stakeholder monitoring.
Phase 5: Update/Evaluation	1. Evaluate the impact of the adoption of the initial NAP and identify gaps. 2. Consult with stakeholders and identify priority issues. 3. Prepare an updated draft NAP, conduct consultations, finalize and launch it.

Part III
Learning from and Examining the Best Practices of NAPson Business and Human Rights

A. NAP on Business and Human Rights: Localization of Business and Human Rights Issues in the National Context

By the ninth year since the UN Guiding Principles were approved by the UN Human Rights Council in 2011, it has been recorded that 23 countries had issued NAPs on Business and Human Rights. This number is based on data compiled by the Office of the High Commissioner for Human Rights (OHCHR),[10] which slightly differs from the data from The Danish Institute for Human Rights (DIHR) in globalnap.org, where the total number of countries recorded to have published NAPs on Business and Human Rights is 24 countries.[11]

To see how the expression of the political commitment of countries in order to create momentum towards a transformative vision that provides a corridor for corporations to respect human rights through the implementation of the UN Guiding Principles, OHCHR has divided the initiatives to implement the UN Guiding Principles by states through NAPs into several groups:[12]

1. States that have created their national plans of action;[13]
2. States that have included business and human rights chapters in their national human rights action plans;[14]
3. States that are in the process of developing national plans of action or have committed to developing them;[15]
4. States where the NHRI or civil society have initiated steps in the development of a national plan of action.[16]

Meanwhile, DIHR divides states' initiatives in implementing the UN Guiding Principles through NAP into three simpler groups, namely states that have published NAPs, states that are developing NAPs, and other non-state initiatives.[17]

So far there have been two international guidelines that have played an important role in assisting countries in the development, implementation and review of the NAP, namely the Guidance on NAPs on Business and Human Rights developed by the UN Working

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[10] Office the High Commissioner for Human Rights, https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx, accessed on 6 April 2020

[11] According to DIHR, South Korea is included in the category of countries that have published the NAP on Business and Human Rights, while based on the OHCHR version, South Korea is still included as a country with a chapter on business and human rights integrated in the National Action Plan for Human Rights. The Danish Institute for Human Rights, https://globalnaps.org/country/, accessed 6 April 2020.

[12] https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx. *Op cit*.

[13] Some of the countries included in this group include the UK, the Netherlands, Denmark, Finland, Lithuania, Sweden, Norway, Colombia, Switzerland, Italy, the United States, Germany, France, Poland, Spain, Belgium, Chile, the Czech Republic, Ireland, Luxemburg, Republic of Slovenia, Kenya, Thailand.

[14] Countries included in this group are Georgia and South Korea.

[15] Some of the countries included in this group include Argentina, Australia, Azerbaijan, Guatemala, Greece, India, Indonesia, Japan, Jordan, Latvia, Malaysia, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Nicaragua, Pakistan, Peru, Portugal, Uganda, Ukraine and Zambia.

[16] Some of the countries included in this group include, Ghana, Kazakhstan, Nigeria, South Africa, Tanzania and the Philippines.

[17] For details on the countries that fall into this category, see The Danish Institute for Human Rights, https://globalnaps.org/country/*Op. cit.*

Group[18] and the Toolkit on NAPs on Business and Human Rights published by DIHR in collaboration with the International Corporate Accountability Roundtable (ICAR).[19]

1. The European Union and its Member States

As a form of its commitment to promoting aspects of human rights protection, especially in the business sector, the European Union has played a proactive role in the development and implementation of the UN Guiding Principles.[20] In 2011, the European Commission has adopted a new strategy for CSR in line with the Second Pillar of the UN Guiding Principles. This strategy is pursued on a "voluntary" approach to CSR by emphasizing corporate responsibility for its impact on society and expressing the hope that all European companies fulfill their corporate responsibility to respect human rights. To fulfill their obligation to "protect" under the First Pillar of the UN Guiding Principles, EU member states must develop the NAP on Business and Human Rights by the end of 2012 as a strategy to implement the UN Guiding Principles. This has been affirmed in the 2012 EU Council and 2015 National Action Plan for Human Rights and Democracy, with the deadline for member states' NAPs being extended to 2017.[21]

This urge has led EU member states to take an international lead in developing and adopting NAPs for the implementation of the UN Guiding Principles or integrating them into CSR. In fact, a number of member countries have developed the NAP on Business and Human Rights before the UN Working Group published the Guidance on NAPs, including the United Kingdom, the Netherlands, Denmark, Finland, Lithuania, Sweden, Italy, Germany, France, the Czech Republic, France, Ireland, Spain and Slovenia. Meanwhile, several other countries, such as Greece, Latvia and Portugal, have started the process of developing NAPs.[22]

Echoing the European Union's support for the UN Guiding Principles, the conclusion of the European Union Council on Business and Human Rights held in June 2016 welcomed the European Commission's intention to develop the EU NAP for Responsible Business Conduct which should outline an overall European policy framework to improve implementation beyond what is outlined in the UN Guiding Principles.[23]

To see the rationalization of each European Union member state in using the NAP as a strategy for norming the UN Guiding Principles, the following section will describe several examples of EU member states that have developed NAPs on Business and Human Rights.

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[18] UN Working Group on Business and Human Rights (UNWG), '*Guidance on National Action Plans on Business and Human Rights*' (December 2014).

[19] Danish Institute for Human Rights (DIHR) and International Corporate Accountability Roundtable (ICAR), '*National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks*' (June 2014), https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5865d59fe6f2e17f4f0cb629/1483068841826/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf.

[20] Foreword of Antonio Tajani, Vice President of the European Commission in D. Augenstein et al., *'Study of the Legal Framework on Human Rights and the EnvironmentApplicable to European Enterprises Operating outside the European Union'* (European Commission: 2010).

[21] Council of the EU, *'EU Strategic Framework and Action Plan on Human Rights and Democracy'*, 11855/12 (25 June 2012); Council of the EU, '*Council Conclusions on the Action Plan on Human Rights and Democracy 2015–2019*', 10897/15 (20 July 2015). See alsoEU Action Plan on Human Rights & Democracy 2015-2019, http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf.

[22] See Office the High Commissioner for Human Rights, https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx, *op. cit*. and The Danish Institute for Human Rights, https://globalnaps.org/country/, *op. cit*.

[23] Council of the European Union, '*Council Conclusions on Business and Human Rights*', 3477th meeting of the Foreign Affairs Council, 10254/16 (20 June 2016).

United Kingdom[24]

The UK has shown important leadership when it became the first state to produce a NAP on Business and Human Rights. The NAP is the UK's national implementation plan for the UN Guiding Principles. This contributes to the UK's commitment to protecting human rights by helping UK companies understand and manage human rights. In doing so, this NAP sends a clear message of government expectations regarding business behavior, both in the UK and abroad.

In addition, the NAP was prepared as a response by the UK Government to the corporate need for clear and consistent government policy coherence and policies. Corporations need to be certain about the Government's expectations of human rights and expect support in fulfilling their expectations. The UK NAP on Business and Human Rights sets out how the government will respond to the UN Guiding Principles and the government's plan to:[25]

- Carry out the obligations of the UK Government to protect human rights in UK jurisdictions in which corporations are involved;
- Provide support, motivation and incentives for UK corporationsto fulfill their responsibility to respect human rights throughout their operations in the UK and abroad;
- Provide support for effective remedial access to victims of human rights violations involving corporationswithin the UK jurisdiction;
- Promote international compliance with the UN Guiding Principles, including for States to fully assume their duty to protect human rights and ensure remedy in their territories;
- Ensure the consistency of UK Government policies towards the UN Guiding Principles;

As concrete steps in following up on the action plan, the UK Government is developing responsible investment guidelines for investing in Burma, urging all private security services to comply with human rights and ensuring that new bilateral investment agreements include corporate responsibility to respect human rights.[26]

The only hint given in this regard is the commitment to ensure that in UK government procurement policies human rights matters are "properly reflected" and "can" exclude corporations that have violated human rights.[27]This is reflected in the UK Modern Slavery Act (MSA) of 2015. This law requires certain corporations to produce annual statements on issues of slavery and trafficking in persons, which may occur in their business activities. MSA requires companies to "ensure" that slavery and human trafficking are not present in the supply chain network, but this does not mean that companies have to "guarantee" that the entire company supply chain network is free from slavery.[28]

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[24] Good Business: Implementing the UN Guiding Principles on Business and Human Rights, September 2013 (UK Business and Human Rights NAP I), accessible at, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf,updated in May 2016 (UK Business and Human Rights NAP II), accessible via https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf

[25] *Ibid*.

[26] Robert McCorquodale,*"Expecting business to respect human rights without incentives or Sanctions",* British Institute of International and Comparative Law, 4 September 2013, accessible via https://ukhumanrightsblog.com/2013/09/04/expecting-business-to-respect-human-rights-without-incentives-or-sanctions-robert-mccorquodale/,accessed on12 March 2020.

[27] *Ibid*.

[28] Business & Human Rights Resource Centre, *Modern Slavery in Company Operation and Supply Chains: Mandatory transparency, mandatoryduediligenceandpublicprocurementduediligence*,September2017.AccessibleviahttpS://www.business-humanrights.org/sites/default/files/documents/Modern%2520slavery%2520in%2520company%2520operation%2520and%2520supply%2520chain_FINAL.pdf, accessed on 12 March 2020.

France[29]

France has played an important role in ensuring that these issues are prioritizedin the European agenda, particularly in light of the adoption of European Union Directives on Non-Financial and Diversity Reporting, which France actively endorsed during negotiations.[30]

Following proposals for a European regulation on traceability of minerals from conflict zones,[31]France supported the draft of an ambitious regulation on responsible mineral supply chains in conflict zones and high-risk areas. Due diligence regulations for conflict minerals were approved at the European Parliament plenary session in March 2017.[32]

One of the key roles that France has played in the adoption of a common European framework on due diligence is by issuing the French Law on the Corporate Duty of Vigilance. As an initiative on mandatory human rights due diligence across Europe, the Law on the Corporate Duty of Vigilance appears to be a milestone. This law answers questions that have been raised regarding what should be the legal obligations for businesses to ensure respect for human rights in all business and human rights activities and relations.[33]

The French law establishes legally binding obligations for parent corporations to identify and prevent impacts on human rights and the environment resulting from their own activities, from the activities of the companies they control and from the activities of their sub-contractors and suppliers, with whom they have well-established commercial relationship.[34]This makes it easier for victims to argue that the corporation can influence the creation of adverse impacts, and that the corporation must take appropriate action to prevent these. The law mandates corporations to undertake Human Rights Due Diligence, which the UN Guiding Principles see as a key operating principle for putting the corporation's responsibility to respect human rights in practice.

Switzerland[35]

Unlike the UK and France, which show respect for human rights and the environment in business activities through binding legal frameworks by compiling the *UK Modern Slavery Act* (UK) and *French Law on the Corporate Duty of Vigilance* (France), Switzerland also has its own experiences. Basically, economic freedom and contract freedom as guaranteed in the Swiss Federal Constitution are key elements of the Swiss economic order.[36]

Because of the economic freedom guaranteed in the Swiss Federal Constitution, the federal government fulfills its duty to protect a smart mix of additional non-legally binding

[29] National Action Plan for The Implementation of The United Nations Guiding Principles on Business and Human Rights (French NAP on Business and Human Rights), https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/france-nap-english.pdf.

[30] See Directive 2014/95 / EU of the European Parliament and and Council, 22 October 2014 amending Directive 2013/34/EU on the disclosure of non-financial information and diversity by certain companies and large groups, OJ L 330 of 15 November 2014, in NAP Business and Human Rights France, *Ibid*

[31] European Parliament, Les minéraux de conflits. La proposition de règlement européen (Conflict minerals, proposal for a European regulation), briefing, February 2015. In *Ibid*.

[32] *Ibid*

[33] European Coalition for Corporate Justice (ECCJ), French Corporate Duty of Vigilance Law: Frequently Asked Questions, http://www.respect.international/wp-content/uploads/2017/10/french-corporate-duty-of-vigilance-law-faq.pdf, accessed on 15 March 2020.

[34] *Ibid,*

[35] Report on the Swiss Strategy for the Implementation of the UN Guiding Principles on Business and Human Rights (Swiss NAP on Business and Human Rights), 9 December 2016, https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/switzerland.pdf, accessed on 15 March 2020.

[36] Article 27 of the Federal Constitution

legal requirements and, if necessary, additional national and international measures. All these take into account the principle of proportionality.[37]The approach is based on an internationally recognized understanding of the smart mix measures.[38]In other words, the smart mix approach means that the State considers mutually supporting sets of binding and non-binding actions that affect the human rights consequences of economic activities.

If we look closely, the strategy chosen by Switzerland, which emphasizes the "smart mix" in an effort to promote corporate respect for human rights, is also motivated by the position of Swiss companies that are seen around the world as pioneers in developing global markets and creating jobs and prosperity. Many of them have the belief that respect for human rights is strategic and important to their operations (in terms of, for example, competitive advantage, market position, greater productivity and avoidance of reputation risk). Until now, more and more companies are fulfilling their human rights responsibilities consciously, including business associations that actively track human rights issues by committing to the UN Guiding Principles. In doing so, they make a major contribution to the implementation of the UN Guiding Principles.[39]

Thus, on the whole it can be concluded that the measures instituted by the federal government should essentially ensure effective protection against human rights violations by companies based and / or operating in Switzerland, but on the other hand keep the burden on those companies as light as possible. Swiss companies were initially under no obligation to report on sustainability. However, in line with the 2030 Agenda and the Sustainable Development Goals (SDGs), adopted by all UN member states, companies are encouraged to introduce sustainable practices and include sustainability information in their reports.[40]

In general, if one observes the trends of the NAPs on Business and Human Rights of European countries, such as the UK, France, Switzerland, and others in the European Union member states, one can find that these states have a coherent strategy and approach in combining responsible and sustainable trade and investment promotion. In other words, they see that building a balanced playing field in the form of responsible business will benefit the economies of not only recipient countries, but investors and other international businesses and therefore development aid policies and programs must be aligned with such objectives.

2. Latin American Countries

Latin American and Caribbean countries implement an agreement on people's right to environmental access, which marks a step to guarantee democracy in the environmental sector through a regional agreement signed in Escazu, Costa Rica, namely the Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean.[41]This agreement refers to Principle 10 of the 1992 Rio Declaration. This principle regulates citizen participation, whereby individuals have

[37] Article 5 paragraph 2 of the Federal Constitution

[38] UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights, December 2014, p. 14.

[39] *Ibid*

[40] SDG 12.6: Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle.

[41] Carole Excell, “The Escazu Convention on Access to Information, Participation and Access to Justice”, 8 March 2018.

the right of access to environmental information held by public authorities and the opportunity to participate in the decision-making process.[42]

Among Latin American countries, only two countries are known to have formulated NAPs on Business and Human Rights, namely Colombia and Chile, while others such as Argentina, Guatemala, Nicaragua, Mexico and Peru are still developing NAPs on Business and Human Rights.

Chile

Chile has experienced sustainable economic and social development over the past few years thanks to its consistent macroeconomic policies, open trade and a favorable climate for business enterprises. This development is reflected in the improvements in the relative and absolute poverty indices. The government has made progress towards an increasingly modern and competitive economy, although there are still challenges ahead that need to be faced if it is to become a more democratic and cohesive society.[43]To help ensure responsible business conduct, Chile is committed to developing a NAP on Business and Human Rights and spearheading efforts in the Inter-American context to promote national implementation of the United Nations Guiding Principles.

Regarding the situation in Chile, there are national, international and global mechanisms that implement, monitor and evaluate the country's compliance with human rights. Some of these documents provide recommendations on human rights and business at the local level. However, Chile's NAP on Business and Human Rights does not issue a binding commitment to enforce due diligence or human rights reporting. Much of the substance of the Chilean NAP focuses on what ministries will do to socialize the NAP through various engagement tools. It promotes human rights due diligence in business operations and supply chains and references industry guides to be developed by the Ministry of Economy, Development and Tourism to assist companies with this, and other guidelines for public companies to help them report human rights and issues of corporate responsibility.

Colombia

Apart from Chile, another Latin American country that has published a NAP on Business and Human Rights is Colombia. The NAP on Business and Human Rights of Colombia is a public policy instrument formulated to ensure respect for human rights in business activities. This is in line with the 2014-2034 National Human Rights Strategy with the Guidelines for Public Policy on Companies and Human Rights published in 2014. In addition, the NAP arises from the need to align human rights protection with the development of economic activities promoted by the State. It is thus important to have public policies that align these two goals through specific actions, which all stakeholders can follow.[44]

In the Columbian NAP on Business and Human Rights document, it is found that one of the reasons Colombia developed the NAP on Business and Human Rights was that it

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42 Center for International Environmental Law, "*CIEL Statement on the Adoption of a Binding Regional Agreement on Environmental Access Rights",*accessed on 25 September 2019

43 National Action Plan on Business and Human Rights of Chile, https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/national-action-plan-on-business-and-human-rights_.pdf, accessed on 11 April 2020.

44 NAP on Business and Human Rights of Colombia. https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/04/pna-colombia-english.pdf , accessed on 7 April 2020.

wanted to contribute to the implementation of due diligence as a management process and a foundation for responsible investment in Colombia.

The Colombian government realizes that their NAP on Business and Human Rights is far from being "perfect"; as a room for improvement, the NAP establishes a system of evaluation and follow-up. This mechanism could be improved by making a government commitment to develop a second NAP after completing a term of three years. The revision process could also be enhanced by including affected communities, organizations that defend the rights of these communities, and civil society organizations outside the organizations identified with the company's interests in designing, compiling and formulating the content of the revised NAP.

Therefore, Colombia has renewed its commitment, and urges that public and private companies, national or foreigners domiciled in the country, regardless of size, sector, activity, context or operational structure, to go beyond compliance with the Constitution and the Law, and in that regard, respect human rights in accordance with existing international standards. In addition, the State reaffirms its willingness to apply business and human rights standards in areas where significant progress is not yet available.[45]

3. United States of America[46]

In the US NAP on Business and Human Rights, it is stated that the objective of the NAP is to strengthen the role of the US government in advancing responsible business conduct(RBC) through intra-governmental coordination and effective policy making, promoting high standards globally, facilitating RBC today and in the future through enhanced collaboration, and highlighting and supporting US industry leadership.[47]

RBC is a broad concept based on the idea that businesses can perform well while doing good and that governments must establish and facilitate the conditions for the occurrence of RBC. This concept places special importance on two aspects of business-society relations: (1) emphasizing and emphasizing the positive contribution that business can make to economic, environmental and social progress; and (2) recognizing and avoiding the possible adverse effects of business conduct, and addressing them when they occur.[48]

The RBC principles are covered in the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles. As set out in these two international frameworks, the primary role of government is to provide guidance and encouragement to the private sector through a combination of laws, regulations, policies, programs and initiatives to promote corporate respect for human rights and labor rights and to operate responsibly.

The OECD Due Diligence Guidelines for responsible mineral supply chains from conflict-affected and high-risk areas (OECD Due Diligence Guidelines) is a voluntary framework that establishes a five-step process to help companies respect human rights and avoid contributing to conflict through their mineral resource practices. The US Securities and

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[45] Globalnaps.org, *Colombia,* globalnaps.org/country/colombia

[46] Responsible Business Conduct: First National Action Plan For The United States of America, 16 December 2016 (US NAP on Business and Human Rights) https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/10/NAP-USA.pdf, accessed on 20 March 2020.

[47] *Ibid*.

[48] *Ibid*.

Exchange Commission relies on the OECD Due Diligence Guidelines as the only currently internationally accepted due diligence framework for mineral sourcing and chain-of-custody when implementing Dodd-Frank conflict minerals regulations.[49]

Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act supports the efforts at the regional and international levels to break the link between conflict and natural resources and prevent armed groups in countries in Africa's Great Lakes region from benefiting from the sale of certain natural resources sourced from the Democratic Republic of Congo (DRC) or adjoining countries. Section 1502 of the Dodd-Frank Act requires certain companies to submit a description of steps being taken to undertake annual due diligence of the source and chain of custody of four "conflictminerals".[50]

ASEAN countries

The ASEAN Member States are collectively experiencing rapid economic development. As ASEAN continues to increase its competitive power in the business arena and integrates itself into the global economy, there is a need to ensure that standards in corporate governance and accountability, transparency and legitimacy are observed and maintained. Businesses based and / or operating in the ASEAN region are increasingly facing the expectation of demonstrating that they are operating responsibly.[51]

Governments in the region are starting to provide guidance to companies, including through agencies, such as national stock exchanges and corporate regulators, official investment insurance or guarantee agencies, and the National Human Rights Institutions (NHRI). In addition, at the regional level, many other initiatives have been made. Since 2015, UNDP has worked closely with AICHR on business and human rights, including developing and implementing training and joint learning events for AICHR representatives and other stakeholders from the region.

Countries in the ASEAN Region in the ASEAN Region such as Indonesia, Malaysia and Myanmar have begun to show their commitment to creating a more responsible business climate by respecting human rights aspects when listed as countries that are in the process of developing a NAP or have committed to developing it.[52] In fact, in October 2019 Thailand issued its NAP on Business and Human Rights,making it the only ASEAN Member State with a NAP on Business and Human Rights.

Thailand

The drafting of the NAP on Business and Human Rights in Thailand was initiated by *the* Royal Thai Government, which recognizes the importance of responding to human rights violations from business operations. This is the result of a policy recommendation submitted to the Cabinet by the National Human Rights Commission of Thailand to develop a monitoring mechanism for Thai investment abroad. The recommendations also include an emphasis on respect for the fundamentals of human rights within the

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[49] *Ibid*.

[50] *Ibid.,* p. 20.

[51] Report prepared by Thomas Thomas (Leader) and Alexander Chandra (Member) ASEAN Intergovernmental Commission on Human Rights (AICHR) Business and Human Rights Studies Team, https://www.business-humanrights.org/sites/default/files/ documents / AICHRs_Thematic_Study_on_CSR_and_Human_Rights_in_ASEAN.pdf , accessed on 20 March 2020, p. 2.

[52] https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx, 26 September 2019, 23.59 WIB.

framework of the UN Guiding Principles. The Royal Thai Government's commitment to resolving human rights abuses from business operations is reflected in the Voluntary Pledge during the 2nd Cycle of Thailand's Universal Period Review (UPR), 25th Session of the UPR, on 11 May 2016. The Royal Government is committed to promoting the United Nations Guiding Principles and accepted the recommendations made by the Swedish Government, for Thailand, to develop, adopt and implement a NAP in line with the UN Guiding Principles.[53]

The presence of the NAP on Business and Human Rights of Thailand further confirms the commitment of the Royal Thai Government in creating a sustainable business climate by respecting human rights and providing protection for the rights of communities affected by corporate business activities. Through the NAP document, the Government states that if the NAP is well developed and implemented, it is hoped that the NAP on Business and Human Rights can serve as a starting point and driving force for handling corporate accountability, ensuring responsible business behavior and promoting a sustainable Thai economy and respecting human rights. In addition, the NAP on Business and Human Rights is expected to be able to mitigate the risks and impacts of human rights from their activities, and to ensure that Thai companies do not commit or become involved in human rights violations wherever they operate, in the country and abroad.

The NAP on Business and Human Rights in Thailand is closely related to other plans and policies at the national level, including the SDGs and the 20 (twenty) year National Strategy. The NAP of Business and Human Rights is consistent with the 20-year National Strategy in many dimensions, such as:[54]

(1) Creating opportunities for social equality with the aim of resolving the issue of discrimination against workers' rights and employment based on gender, physical disability, status or otherwise. reasons to create equality for people to access job opportunities;
(2) Environmentally friendly green growth emphasizes the importance of sustainable development and not harming the environment, where every potentially harmful project must go through an environmental impact assessment with a focus on the duties and responsibilities of the business sector, both internal and external investment. People affected by the project should be given the opportunity to access the above information in a participatory way. In the event of damage, fair remedy must be provided without delay;
(3) Balancing the development of the public sector by setting the goal of becoming "People's public sector for the people". The action plan will emphasize improving grievance procedures and remedial mechanisms to make them effective. This will include mechanisms for tracking and reporting the results to complainants via communication channels in various forms, including the use of technology to communicate quickly and conveniently.

[53] 1st National Action Plan on Business and Human Rights (2019-2022), Rights and Liberties Protection Department, Ministry of Justice, Thailand (NAP on Business and Human Rights of Thailand). https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/nap-thailand-en.pdf, accessed on 25 March 2020.
[54] *Ibid*. p. 23.

B. Comparison of the NAP on Business and Human Rights: The Narrative of Business and Human Rights Issues in the Perspective of National Interests

In general, there are many good practices that can be found in the NAPs on Business and Human Rights of 23 countries, including but not limited to the preparation process, the topics discussed, the systematics and the framework of the NAP. For this reason, this section will conduct a more in-depth comparative study of the 23 existing NAPs on Business and Human Rights, at least so that it can be a lesson, both practically and academically, especially for those who are conducting studies on NAPs on Business and Human Rights or are initiating the preparation of a NAP on Business and Human Rights.

1. The Process of Developing a NAP on Business and Human Rights

As has been described in the previous section, the UN Working Group has produced a guidance about the development of the NAP. The UN Working Group has released the final version of the Guidance on NAPs on Business and Human Rights at its fifth annual forum, which was held from 14-16 November 16 2016. The guidelines are based on previous iterations of guidelines issued during the annual forums held in 2014 and 2015.[55]

The presence of the NAP Development Guide that has been published by the UN Working Group is indeed of further assistance for countries in developing NAPs. However, a number of EU Member States, such as the United Kingdom, the Netherlands, Denmark, Finland, Lithuania, Sweden, Italy, Germany, the Czech Republic, France, Ireland, Spain and Slovenia have developed the NAP on Business and Human Rights before the UN Working Group published the Guidelines. Meanwhile, several other European Union countries, such as Greece, Latvia and Portugal, are still listed as countries that are developing NAP or committed to developing it (*states that are in the process of developing a national action plan or have committed to developing one*).

This section tries to identify the process of developing the NAP on Business and Human Rights of the 23 countries by placing the NAP Development Guidelines that have been published by the UN Working Group as the analysis tool. The items analyzed are several important aspects, such as participation or involvement of various stakeholders and the use of National Baseline Assessment(NBA) as a scientific analysis which provides context regarding the condition of promotion of human rights, covering implementation, gaps and all aspects relating to the issue of human rights related to the business sector before developing the NAP.

Participation and Engagement

Conceptually, participation should basically be in line with a rights-based approach, and thus implementation should enable all right-holders and relevant stakeholder groups to be involved in the NAP development process, and the government must take special measures to involve marginalized right-holders during the NAP process. Real and effective participation must also be facilitated through capacity building and providing all stakeholders with adequate and timely information.

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[55] This manual was produced following a year-long, open, global, consultation process involving the state, companies, civil society, NHRIs and academia. As part of the UNWG roadmap to producing guidance, the 2014 report was announced to the 69th session of the UN General Assembly on the NAP. https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx , accessed on 29 March 2020.

When observing the patterns of involvement of stakeholders and rights holders in the preparation of the NAP in various countries, in all phases: Phase 1: Initiation, Phase 2: Assessment and Consultation, Phase 3: Drafting of initial NAP, Phase 4: Implementation and Phase 5: Update/Evaluation, there is diversity. The patterns of involvement are realized by organizing national multi-stakeholderseminars on business and human rights, multi-stakeholderdialogue in several areas (not only in the capital city), workshops either concurrently with all stakeholders or separately (companies and civil society respectively), interviews, public consultations, open dialogues/seminars, expert consultations and providing written input via the official websiteor email specifically to the draft NAP Business and Human Rights that has been published through the website or circulating the draft NAP to several influential stakeholders. These activities have been held at various points in the NAP preparation process.

Regarding the participation and involvement of stakeholders in the initiation phase, for example, in this phase, all countries have created formats for cooperation between ministries and other government agencies such as the NHRI, Ombudsman etc., and even in some of them, such as in Denmark, Spain, Finland, Italy, Kenya, Ireland, Belgium, Luxembourg, the Czech Republic and Norway, they have also worked closely with multiple stakeholder groups.

Further, regarding the participation and involvement of stakeholders in the assessment and consultation phase, in this phase, in general all countries that have prepared NAPs on Business and Human Rights have made significant efforts in conducting consultations with stakeholders. In addition, the participation and involvement of stakeholders in this second phase can also be seen in the NBA drafting process (described in the next section) which involved external experts to conduct interviews with stakeholders regarding their expectations and priorities for NAP as practiced by the 8 (eight) countries that produced NBAs.

In the third phase, namely the preparation of the initial NAP. Several countries that have developed NAPs such as Colombia, Kenya, Luxembourg etc. have opened spaces for participation by holding public consultations with stakeholders in this phase, and to expand and ensure that all stakeholders can contribute to this process, several countries such as Finland, Poland, Spain, Sweden, Italy and Switzerland have even invited written feedback through a dedicated website or email. In addition, participation is also carried out in the following phases, namely phase 4: implementation and phase 5: update.

In terms of the number of times and places where these activities were held, most countries held between 1 and 10 times (on average) stakeholder engagement in the preparation of the NAP,[56]even consultations in the process of drafting the NAP on Business and Human Rights in France were held 12 (twelve) times between November 2015 and June 2016. The involvement and consultation with these stakeholders was not only carried out in the capital city, in fact around 8 (eight) states conducted such activities outside the capital city, including vulnerable areas, to reach right-holders from affected groups and communities, especially those from marginalized groups, indigenous peoples, human rights defenders,

[56] Some of them, such as Finland conducted 2 (two) consultations, while Sweden, the United States and Colombia 4 (four) times consultations, England (at the time of revising the NAP on Business and Human Rights) conducted 5 (five) joint workshops with stakeholders in London and 2 other workshops conducted in vulnerable or negatively affected areas, Kenya 9 (nine) times, France 12 (twelve) times between November 2015 and June 2016 etc.

journalists and civil society organizations, because they have information and experience to contribute to and enrich the NAP preparation process.[57]If observedmore closely, most of the consultations in most countries only involved certain actors apart from government and business, namely trade unions, NGOs, research institutions and academia. Even in the preparation of the NAP on Business and Human Rights in Sweden, the government explicitly stated that it did not facilitate high risk stakeholders.

The involvement of high risk stakeholders is very important, but due to not being allowed to participate, or due to lack of resources and capacity, it means that their involvement is very low or even non-existent. Given such constraints, measures to facilitate effective communication and participation can be taken by means of provisions for confidential or anonymous submissions, providing financial support for travel and other consultation attendance costs, interpretation of materials and processes into minority languages (local languages), protection against negative impacts caused by participation, and arrangements for specific local or stakeholder dialogue events, such as gender-disaggregated events and special outreach for children and other groups.[58]

However, apart from these notes, in general there are some good practices that can be learned in relation to the patterns of stakeholder involvement in several countries in the preparation of the NAP on Business and Human Rights. More comprehensively, in its research, DIHR has identified several good practices, including:[59]

1. The State takes steps to involve special interest groups and vulnerable groups (e.g. indigenous peoples and persons with disabilities);
2. The State establishes a mechanism for interested parties to send official comments or responses to the State;
3. The State publishes a formal response to these comments;
4. The State provides an opportunity for stakeholders and right-holders to comment on the draft NAP;
5. The State shares their time to cover the entire NAP development process and;
6. Announces a partial timeline that includes a specific part of the development process.

Based on the data presented by the DIHR, there are countries that already have NAPs on Business and Human Rights in place, but only publishing them in 2019, so that they are not coveredin the analysis, including Thailand and Kenya. Also, there are countries that have updated their respective NAPs in 2020, including Switzerland and Luxembourg.

In the Thai NAP on Business and Human Rights, the Government of Thailand also opens space for stakeholder involvement in the process of drafting the NAP, including holding open dialogues involving various stakeholders, including the government, civil society organizations and corporations. In addition, the Government of Thailand is committed to create a NAP drafting process that is as inclusive as possible, for example by providing

[57] Daniel Morris et al., *National Action Plans on Business & Human Rights: An Analysis of Plans From 2013 - 2018,* The Danish Institute For Human Rights, 2018. p. 17. Some of these countries, such as England, Ireland (not only in Dublin) and Italy, held consultations not only in Milan, but in Naples and Venetia, then the United States (US) which held in states such as New York, California, Oklahoma and the District of Columbia.

[58] For further information, see *the Danish Institute for Human Rights* (DIHR) and *the International Corporate Accountability Roundtable* (ICAR) National Action Plans on Business and Human Rights Toolkit, 2017 Edition, available at https://globalnaps.org/resources/

[59] Morris et al., *op. cit*.

information on the NAP process available on the ministry's website, opening calls for input and comments and engagement with wider civil society and business actors.[60]The Thai BHR Network held 6 (six) consultations with the government between 2017 and March 2018, so that local communities could provide input on the NAP. However, even so, several CSOs claimed through a press conference held by the ManushyaFundation in Bangkok on 23 August 2018 that they were not involved in the process of drafting the NAP.[61]

While at the drafting of the NAP on Business and Human Rights in Kenya, 9 (nine) consultations were held at the end of September 2017. To ensure fair coverage and broad participation, a regional approach was adopted, with eight hearings held across the country. Consultations were conducted with government, business and communities, together with civil society. This was preceded by a mapping exercise with each of the three stakeholder groups to identify participants at the regional level. Subsequently, indigenous peoples were consulted separately. In addition, targeted consultations were planned with business leaders in late 2017.[62]Examining the structure of each consultation, it is found to include awareness-raising sessions that introduce the UN Guiding Principles framework and other Human Rights Frameworks (national, regional and international). Using a participatory methodology, participants identify problems of concern, possible solutions, and responsible actors. The information gathered regarding the causes of the consultation is then synthesized into a report which would be analyzed collectively and provided a basis for formulating the NAP.[63]

National Baseline Assessment (NBA)

Apart from the involvement of stakeholders, another important thing that needs to be considered in the preparation of the NAP on Business and Human Rights is the preparation of the National Basic Assessment of Business and Human Rights, which has the main objective of assessing the level of implementation of the UN Guiding Principles in certain countries. This study is also intended to unify an analysis of legal and policy gaps in the implementation of the UN Guiding Principles. In its implementation, the preparation of the NBA must be carried out by an independent body such as an external research institute, NHRI, etc. Unfortunately, out of 23 countries that already have a NAP on Business and Human Rights, only 8 (eight) countries were identified to have drafted NBAs before developing the NAPs on Business and Human Rights, including Norway, Italy, Germany, the Czech Republic, Ireland, Chile, Kenya and Thailand.

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60 1st National Action Plan on Business and Human Rights (2019-2022), Rights and Liberties Protection Department, Ministry of Justice, Thailand. https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/nap-thailand-en.pdf (Thai NAP on Business and Human Rights)

61 Some analysis of NAPs include Manushya Foundation, Timeline of Events in the Thai BHR NAP Process, August 2018, https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/08/timeline-of-events-in-the-thai-bhr-nap-process.pdf, The Nation, Activists ignored in the drafting of rights plan, August 24, 2018 , http://www.nationmultimedia.com/detail/national/30352833, The Nation, Thai businesses abroad need better control, 4 December2018, http://www.nationmultimedia.com/detail/national/30359788 - .XAX2GLV2ysc.twitter.

62 Globalnaps.org, *Kenya, op. cit*.

63 *Ibid*

Countries Using the NBA as Basis for Preparation of the NAP on Business and Human Rights

No.	Country	Compiler
1.	Norway	The Norwegian government appointed Mark Taylor from the FAFO Foundation
2.	Germany (NBA is in German language)	The German Human Rights Commission
3.	Czech Republic	Center for Human Rights and Democracy, an independent academic institution, under the supervision of Hubert Smekal, Associate Professor at Masaryk University in Brno.
4.	Kenya	Conducted jointly by the Ministry of Justice, the National Commission on Human Rights of Kenya and the Commission on Human Rights of Kenya
5.	Italy	Academics from the University of Sant'Anna
6.	Ireland	Irish Government Appointed Regan Stein and Leading Edge Group
7.	Chile	The Ministry of Foreign Affairs signed an MoU with DIHR (Danish Institute on Human Rights). Under the MoU, DIHR commissioned the Center for Human Rights Studies at the University of Diego Portales, an independent external expert institute.
8.	Thailand	Experts from the Thai BHR Network under the Supervision of the Manushya Fundation

Regarding the standard approach to developing the NBA, the NBA template contains the suggested methodology for evaluating the current level of implementation of the UN Guiding Principles and other relevant business and human rights frameworks by countries and businesses. Originally developed by DIHR and ICAR in 2014, the NBA Template has been used in a variety of national contexts (e.g. Chile, Denmark, Mexico, Germany, Kenya, Serbia, and Zambia). The NBA template has been revised,[65]which combines user feedbackand discusses the three pillars of the UN Guiding Principles. This differs from the original template published in the 2014 version of the Toolkit, which only discussed the UN Guiding Principles under Pillars I and III that relate specifically to state action.

Although only 8 (eight) countries have been identified as using the NBA in the preparation of the NAP on Business and Human Rights, there are several other countries, such as Finland, Sweden, Switzerland, France, Poland, Luxembourg and Belgium that have not carried out the NBA drafting process, but have taken initiatives in preparing an overview of how best to integrate the UN Guiding Principles. In the example of Poland, the

[64] https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/08/germany-nba.pdf

[65] Accessible through https://www.humanrights.dk/sites/humanrights.dk/files/pictures/dihr-icar-national-baseline-assessment-template-june-2018-road-testing-version1.pdf

Polish government conducted a review of the UN Guiding Principles, which had been integrated into the Polish Constitution, by identifying gaps and changes to the Polish legal system.[66]This was also practiced by Sweden, and even the introductory description of the Swedish National Action Plan on Business and Human Rights explains how the country's laws and policies apply the UN Guiding Principles.

Not unlike Poland and Sweden, Finland implemented and published a background memorandum covering information on Finnish laws, international conventions and other standards relevant to human rights, as well as the actions and practices of other authorities in relation to the UN Guiding Principles. This Memorandum is prepared for use by the working group and made available to the public. However, the memorandum was considered by stakeholders to not provide much added value to the NAP development process.[67]

2. The Issues of Priority, Systematics and Framework of NAP

The UN Working Group, through its published NAP Development Guide, sets out the steps for how States should ensure a focus on the national context.[68] ***First,*** Identification and mapping of the adverse impacts on human rights that occur in the territory of the country and abroad by companies domiciled in the country. ***Second***, conducting and updating assessments of State and business implementation of the UN Guiding Principles including the implementation of applicable laws, regulations and voluntary initiatives. To summarize, in general, there are several topics of priority issues or issues that have surfaced in the NAPs on Business and Human Rights in 23 countries, either as a result of NBA consultations and studies or other initiatives in mapping the negative impact of company activities on human rights, including:[69]

1. Children's Rights
2. Conflict-affected areas
3. Corporate Law and Governance
4. Equality and Anti-Discrimination
5. Guidance for Companies
6. Human Rights Due Diligence
7. Restoration/remedy through the court system
8. Non-financial reporting
9. Non-judicial Grievance Mechanism
10. OECD National Contact Point
11. Policy Coherence

- Procurement of Public Goods and Services
- State-Owned Enterprises and Public-Private Partnerships
- Trade
- Workers' Rights
- Land, environment and natural resources
- Human rights defenders, and
- Cross-border investments and multinational corporations.

[66] The Minister for Foreign Affairs commissioned an analysis of how best to integrate non-governmental organizations into the NAP development process by 2015. Analyzes conducted by civil society, such as *the Polish Institute for Human Rights and Business* (PIHRB) have carried out the analysis with a focus on the Third Pillar, access to recovery in relation to business behavior entitled *"Basic Analysis of the Current Situation in Poland Regarding Access to Remedy in cases of Business Abuse"*. Accessible at http://pihrb.org/wp-content/uploads/2017/07/RAPORT_1_2017_ENG_FINAL-2new.pdf . This analysis is part of a project coordinated by *the Center for Research on Multinational Corporations* (SOMO) and funded by the Dutch Ministry of Foreign Affairs. The aim of this analysis is to identify barriers to effective remedy (Pillar III) of the gross business-related human rights violations in Poland and to propose recommendations aimed at resolving identified legal issues.

[67] *Ibid*. See also National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights, Publication of the Ministry of Employment and the Economy, 2014. (NAP on Business and Human Rights Finland), https:// mk0globalnapshvllfq4.kinstacdn.com/wp -content / uploads / 2017/10 / nap-finland.pdf , accessed on 5 April 2020.

[68] https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf, *Op cit*.

[69] Compiled from Globalnaps.org.

The focus or attention of a country in the NAP document on certain issues has a very important position, considering that it determines the stakeholders who will be involved in the drafting process, either in their capacity as a working group, steering committee or involved in the consultation process. In addition, priority issues in the NAP document also affect the planned actions.

Systematics and Frameworks

In general, the systematics, framework and format of the NAPs on Business and Human Rights in several countries such as the United Kingdom, Sweden, Denmark, Germany etc.[70]outlines the three pillars in the UN Guiding Principles, including the First Pillar which regulates the actions to be taken by the government and planned actions. The second pillar discusses the government's expectations of the business sector, and what actions can be taken and planned. Then the third pillar also has the same format. However, what is discussed in each pillar, including planned actions, is highly dependent on the results of any NBA consultations and studies that arise.

One example of the format and framework of the NAP can be seen in the **German NAP on Business and Human Rights**.There are several topics that become the subject of the German NAP on Business and Human Rights, for example in the first part of their NAP document, Germany outlines the First Pillar of the United Nations Guiding Principles related to German economic and public procurement policies that respect human rights. Matters related to economic policy, for example Germany's efforts to combat human trafficking/forced labor, a bill to combat abuses of employment contracts and services, protection of whistleblowers, gender equality in executive positions, further development of human rights impact assessments in investment agreements, supporting compliance with labor, social and environmental standards in foreign partnerships, protection of human rights defenders, and monitoring the reform process in international financial institutions. Meanwhile, the First Pillar relating to the aspect of public procurement in Germany include binding minimum requirements for CSR enshrined in the Procurement Law, state support, ensuring consistency of business action with international obligations, establishing robust assessment procedures and improving National Contact Points(NCP) as the chief complaint mechanism.

In the next section, the NAP on Business and Human Rights of Germany also outlines the Second Pillar of the UN Guiding Principles, relating to supply chains and value chains, for example outlining the chapter on sustainability in free trade agreements, guidance on due diligence for companies operating in high-risk sectors, possibility of German certification marking to certify in accordance with Human Rights Law and prevent the proceeds from resources funding armed struggle. Furthermore, in the Third Pillar of the UN Guiding Principles, the NAP on Business and Human Rights of Germany outlines several things, including increasing access by making multilingual brochures regarding remedy, compensation for living dependents, expanding sanctions against companies for violating criminal laws, promoting internal reporting mechanisms, National Contact Points (NCPs) raising awareness of the OECD's guidelines and role as an extra-judicial remedy mechanism.

[70] For more details, see the table of contents of the NAP on Business and Human Rights of each country in the next section.

It can be seen that some of the topics discussed in the NAP on Business and Human Rights of Germany in outlining the three pillars of the UN Guiding Principles are topics that have emerged as a result of the NBA consultation and study process conducted by Germany's NHRI.

Apart from Germany, another example that can be seen regarding the systematics and substantial framework of the NAP document is the **NAP on Business and Human Rights of Switzerland**, which explains the scope of the discussion, including:

1. Describing the UN Guiding Principles;
2. The position of the Federal Council and its expectations of the UN Guiding Principles;
3. Describing the NAP including the objectives, structure, government regulations and the business sector;
4. Describing the Smart Mix Approach as the foundation, corporate responsibility and the relationship between the NAP on Business and Human Rights with the Federal Council's policy paper on CSR.

After describing the four sections, it further elaborates on each of the UN Guidance Pillars (*Protect, Respect, Remedy*) and reviews the implementation, monitoring and changes or revisions to the NAP. In general, the NAP on Business and Human Rights sets out the position and expectations of the Federal Council with specific regard to business enterprises, and strengthens the consistency of federal government actions to protect and promote human rights in the context of business activities. However, the difference with the NAP on Business and Human Rights in other countries is that with respect to the three pillars contained in the UN Guiding Principles, the Swiss Government only focuses on the First Pillar "State Obligation to Protect" and the Third Pillar "Access to Effective Recovery". These two pillars were selected because they contain basic principles, which set out the framework for state tasks, and practical guidelines for the implementation of the state's tasks in the form of operational principles. Furthermore, in the NAP on Business and Human Rights in Switzerland it is explained that the Guiding Principles of the United Nations do not assign a new task to the state, but only provide more specific details on how the existing task is to protect human rights from the business sector. The NAP also emphasizes that the most important for the UN Guiding Principles are the United Nations International Convention on Human Rights, the ILO Basic Conventions, and the relevant provisions of the European Convention on Human Rights.

Meanwhile, related to corporate responsibility, the NAP on Business and Human Rights of Switzerland is more directed towards business activities abroad. This is based on several consultations that have been carried out by both business groups, civil society and academics that the biggest challenge faced by companies based and/or operating in Switzerland is related to the operations of these companies located abroad.

In contrast to the general format and framework of the NAP in several countries, the **NAP on Business and Human Rights of the Netherlands** is more focused in presenting the 5 (five) most significant results of consultation including:

1. An active role for the government (leveling the playing field, human rights and trade missions);

2. Policy coherence (sustainable procurement policies, international forums and trade and investment agreements);
3. Clarified due diligence (raising corporate awareness, raising awareness through embassies, sector risk analysis, government due diligence and legally binding actions);
4. Transparency and reporting (transparency and stakeholder dialogue, reporting);
5. Scope for remedy (judicial mechanisms, non-judicial mechanisms, corporate complaint mechanisms, legal aid funds, legislation with extraterritorial applications);

C. The Indonesian Government's Policy Response: Reflection and Action

As one of the member countries of the UN Human Rights Council that pushed for the adoption of a resolution regarding the UN Guiding Principles, Indonesia certainly has stronger moral obligation to implement these principles. Thus, Indonesia is obliged to establish appropriate steps to prevent, investigate, punish and remedy various human rights violations committed by the private sector through a variety of policies, legislation, regulations and an effective judicial system.[71]

A 2019 study by the Institute for Policy Research and Advocacy (ELSAM)[72] managed to identify a number of policies issued by the government, particularly by ministries and agencies as an effort to implement the UN Guiding Principles in a national context. Some of these regulations or policies include:

1. Minister of Marine Affairs and Fisheries Regulation No. 35 of 2015 concerning Human Rights System and Certification in the Fisheries Business;
2. Presidential Regulation No. 33 of 2018 concerning Amendments to Presidential Regulation No. 75 of 2015 concerning the 2015-2019 National Action Plan for Human Rights;
3. National Human Rights Commission Regulation No. 001 of 2017 concerning Ratification of the National Action Plan for Business and Human Rights;

Apart from these policies, the government is also preparing a Road Map or National Strategy for Business and Human Rights.

Observing the positive policies that have been or will be issued to respond to business and human rights issues, it can be said that Indonesia is committed to implementing the UN Guiding Principles through various policies, including through the NAP.

However, even though Indonesia has the National Human Rights Commission Regulation No. 001 of 2017 concerning NAP on Business and Human Rights as well as various other initiatives to translate the UN Guiding Principles into the context of national policies, Indonesia's status in the OHCHR category is still included as “states that are in the process of developing a national action plan or have committed to developing one,”together with 15 (fifteen) other countries, namely Argentina, Honduras, India, Japan, Kenya, Liberia, Malaysia, Mexico, Mongolia, Morocco, Pakistan, Peru, Scotland, Uganda and Ukraine.

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[71] In other words, the state duty to protect does not just require more regulation per se but rather focuses on having in place the right kind of regulation that is adequate and effective in requiring companies to respect human rights.OHCHR, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights* (New York and Geneva: OHCHR, 2014). p. 21.

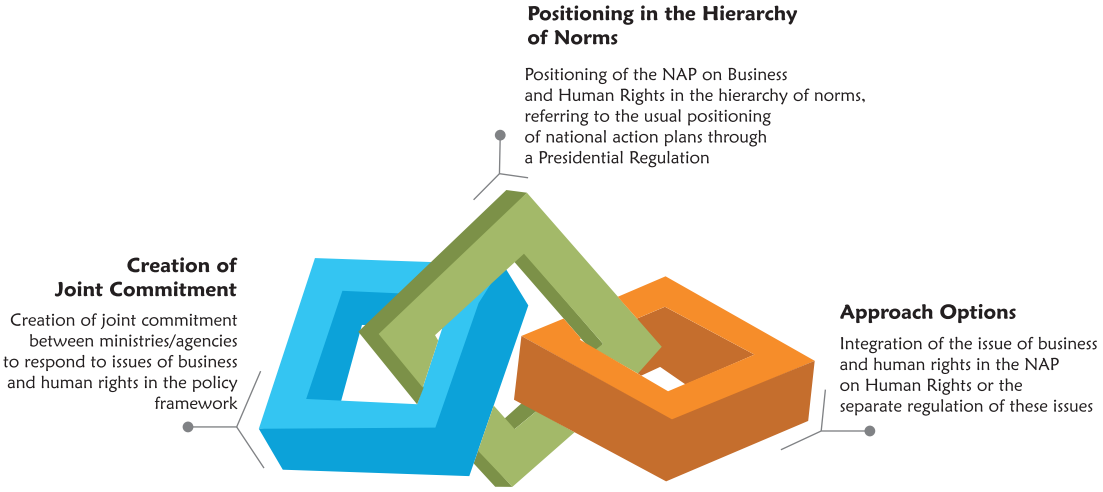
[72] Adzkar Ahsinin et al, *"Development of Business and Human Rights in Indonesia: Perceptions of the State, Civil Society and Corporations,"* Institute for Community Studies and Advocacy (ELSAM), 2019.

1. National Human Rights Commission Regulation (Perkom) No. 001 of 2017 concerning Ratification of the NAP on Business and Human Rights[73]

In an effort to accelerate the implementation of the UN Guiding Principles in Indonesia, Komnas HAM together with ELSAM[74] have carried out various activities aimed at drafting and formulating the NAP on Business and Human Rights, which began in September 2014.

The drafting of the NAP on Business and Human Rights is based on a policy paper that was jointly compiled by Komnas HAM and ELSAM.[75] This text has passed through a process of public consultation of stakeholders, from civil society organizations, the business sector, and government agencies that have authority on issues related to business and human rights.

After the policy paper and the Draft of National Action Plan on Business and Human Rights are declared complete, the first step was to endorse these two documents through the Komnas HAM Plenary Session.[76] The next step, after receiving the endorsement through the plenary session, the document was consulted with ministries and agencies. The objectives of the consultation can be seen in the diagram below.



However, in subsequent developments, efforts to regulate the NAP on Business and Human Rights as a separate document and regulated by a Presidential Regulation could not be realized. According to the Ministry of Foreign Affairs, the Presidential Staff Office, as well as the Ministry of Law and Human Rights, President Joko Widodo wants regulatory simplification to encourage business investment. Based on these policies, it is recommended to integrate business and human rights into one regulation, namely the National Action Plan for Human Rights (RANHAM).

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73 The promulgation of this Commission Regulation has been recorded in State Gazette No. 856, 2017.

74 The working paper drafting team and the draft NAP on Business and Human Rights consisted of several members from ELSAM and Komnas HAM. This team was chaired by Nurkholis, the then Chairman of Komnas HAM and also the Special Rapporteur for Business and Human Rights. Special Rapporteur is one of the mechanisms established by Komnas HAM to oversee human rights issues which are considered important to get the attention of Komnas HAM.

75 ELSAM &Komnas HAM Policy Paper, Urgency for the Preparation and Development of a National Action Plan for Business and Human Rights in Indonesia, 2017. See also Annex to Perkom No. 001 Tahun 2017, http://ditjenpp.kemenkumham.go.id/arsip/bn/2017/bn856-2017.pdf, p. 21.

76 Ratification through the plenary session of Komnas HAM is a strategic step so that the policy working paper and draft of the NAP on Business and Human Rights produced by the Team receive legal status. The Plenary Session is the highest authority in Komnas HAM, which consists of all Komnas HAM members. The Plenary Session determines the Rules, Work Programs and Work Mechanisms of Komnas HAM.

At another point, apart from the fact that the issue of business and human rights was at that time not yet considered to be of strategic importance by ministries/agencies, the Guiding Principles of the UN that leads into the norm of business and human rights are not binding and do not create new legal obligations for the State, so that the government did not yet feel the need to respond through a special policy. Based on this situation, Komnas HAM in accordance with the mandate of Law No. 39 of 1999 on Human Rights decided and stipulated to ratify the Draft of NAP on Business and Human Rights through aKomnas HAM Regulation. Finally, in April, the Draft of NAP on Business and Human Rights was enacted through National Human Rights Commission Regulation (*Perkom*) No. 001 of 2017.

There were several rationalizations underlying the NAP on Business and Human Rights being enacted through a *Perkom* at that time. ***First***, Indonesia was one of the countries that participated in signing the UN Guiding Principles so that a *moral obligation* arose that Indonesia had to implement it on a national scale. ***Second***, until the enactment of Perkom No. 1/2017, there was no single regulation that integrated rulings about corporations with the obligation to respect human rights. ***Third***, data on complaints received by the Commission showed that corporations were the second most complained about institution, although the issues do differ between the years: land disputes, environmental impact of a company's operations, labor or employment, etc.[77]

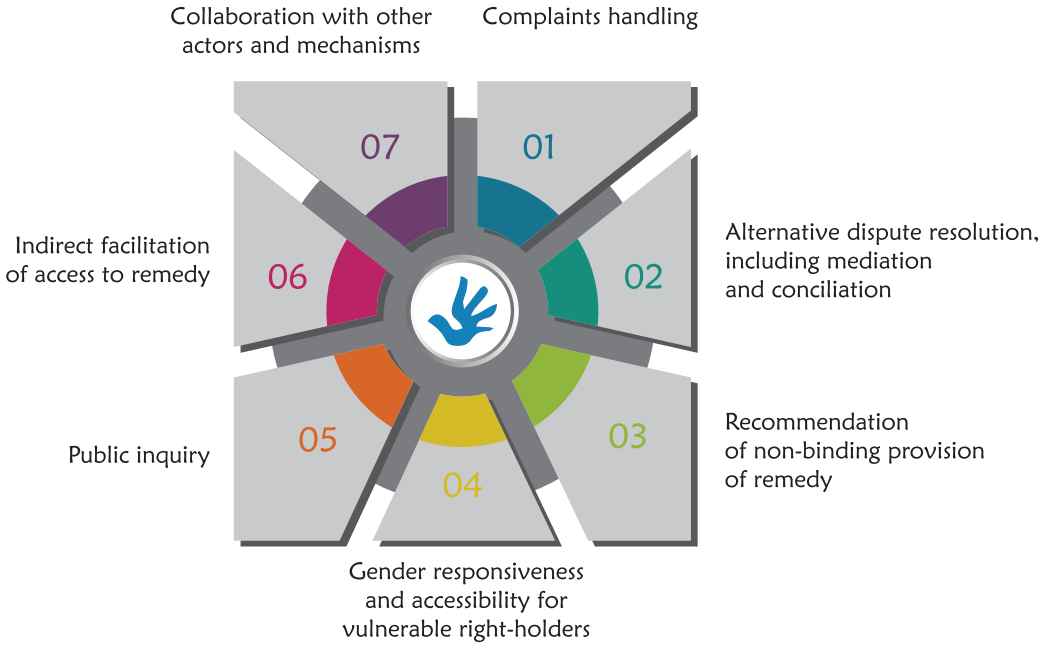
Apart from these three rationalizations, in the context of business and human rights, Komnas HAM as the National Human Rights Institution according to Meg Brodie is a unique actor. As an independent institution established under law, National Human Rights Institutions have traditionally focused on state abuses, but more recently, and increasingly, a number of these state-based bodies are mobilizing their human rights expertise and mandate to address human rights violations involving the private sector (business entities).[78] Meanwhile, Nora Götzmannand Sébastien Lorion identify the roles that can be attached to National Human Rights Institutions related to the issue of human rights in the context of business and human rights:[79]

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77 Written interview with the Chairman of the Indonesian National Commission on Human Rights, AchmadTaufanDamanik, on 29 April 2020.

78 Meg Brodie,*Pushing the Boundaries: The Role of National Human Rights Institutions in Operationalising the 'Protect, Respect and Remedy'* Framework, in Radu Mares, (ed.), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation,* (Leiden:Koninklijke Brill NV, 2012), p. 245

79 Nora Götzmann and Sébastien Lorion, *National Human Rights Institutions and Access to Remedy in Business and Human Rights: Executive Summary and Policy Recommendations*, (Copenhagen: Danish Institute for Human Rights, 2020), pp. 4-5



However, the implementation of the mandate, capacity and resources to address the diversity of human rights issues in the context of business and human rights requires the ability of the National Human Rights Institution to work on access to remedy facilitated through a broad mandate , official inclusion in the mandate, and assigning appropriate resources. including sufficient financial and staff capacity.[80]

In the Indonesian context, the provisions specified in Article 76 and Article 89 of Law no. 39 of 1999 on Human Rights contains the duties and functions of the National Commission on Human Rights, including carrying out the functions of study, research, counseling, monitoring and mediation on human rights. In carrying out these duties and functions, Komnas HAM requires a mechanism for handling cases of human rights violations involving business entities. On this basis, Komnas HAM needs to stipulate a Komnas HAM Regulation on Ratification of the NAP on Business and Human Rights. The appendix describes in detail the three pillars of the UN Guiding Principles in the Indonesian context, in particular providing illustrations of 2 (two) aspects. *First,* instruments to implement the UN Guiding Principles for Business and Human Rights and reflecting the state's duty under International Human Rights Law to protect citizens from the adverse human rights impacts related to corporate business. In addition, striving for the availability of effective access to recovery. *Second,* as an instrument to promote respect for human rights through a due diligence process.

2. Integration of Business and Human Rights in 2020-2024 RANHAM

Apart from these problems, Indonesia continues to maximize various ongoing efforts, especially in creating a business climate that accommodates human rights aspects, one of which is by integrating the UN Guiding Principles into the 2020-2024 RANHAM (NAP on Human Rights). There are several rationalizations why this strategy was chosen rather than compiling the NAP on Business and Human Rights separately from the RANHAM

[80] *Ibid*

document. According to Sofia Alatas, Head of Sub-Directorate of Domestic Cooperation and RANHAM Region II of the Directorate General of Human Rights, Ministry of Law and Human Rights, the RANHAM has been widely recognized by people, both from Ministries/Institutions and the local communities.[81]

Efforts to integrate the UN Guiding Principles through RANHAM are not new. If observed closely, the fourth wave of the RANHAM amendment through Presidential Decree No. 33 of 2018, has included the UN Guiding Principles. Attachment 2 of the Presidential Decree states that there is a need to increase stakeholder understanding regarding business and human rights issues. Unfortunately, the regulation of business and human rights issues within the framework of the RANHAM policy is simplistic in nature, which only emphasizes the aspect of understanding, while human rights violations that result from the adverse impact of corporate business operations have claimed many victims.

For this reason, follow-up steps are needed to further reinforce the Government's commitment to create a sustainable business climate based on the human rights aspect and protect the rights of communities affected by corporate business activities. The government is currently drafting a Presidential Decree on the fifth generation RANHAM. The fifth generation RANHAM will take effect from 2020 to 2024. One of the new things that will be regulated through the fifth generation RANHAM Presidential Regulation is the contribution of the business sector or corporations in carrying out basic obligations towards human rights. This is not only important for its implementation in the country, but also because of global issues that encourage companies to be involved in the implementation of human rights.

Apart from the choice of legal aspect in implementing the UN Guiding Principles as previously explained, the steps chosen were considered strategic considering that the inclusion of the business and human rights framework into the RANHAM policy was able to build policy coherence. This is because, so far, the initiatives that have been made in promoting the issue of business and human rights in Indonesia still remain in different frequency ranges. The coherence of policies that will be made is very important in ensuring policy design and implementing policies to effectively promote responsible business behavior, including corporate respect for human rights.

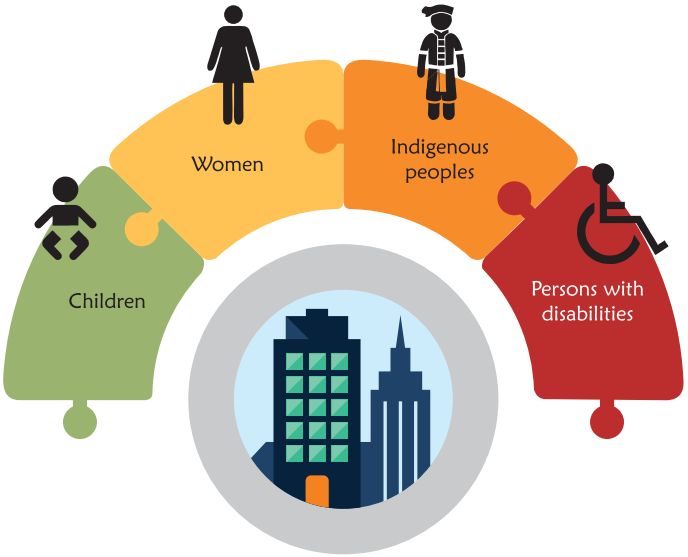
If we look at the on going process, even if the NAP on Business and Human Rights is not developed separately, the integration process carried out will still follow as practiced by other countries, such as being based on a baseline studyand opening up spaces for stakeholder participation through the consultation process. There are two products published as an effort to identify adverse impacts of corporations, namely baseline studiesin 5 (five) provinces and a business and human rights in the oil palm sectorpolicy paper.

The baseline study and policy paper were compiled as a basis for mapping the unique context related to business and human rights by pointing out governance gaps that must be addressed in the substance of the NAP in order to improve human rights protection in the context of company business activities, particularly in the palm oil sector. The results of the baseline study become the basis for the integration efforts of the UN Guiding Principles into RANHAM, particularly focusing on issues relating to the business and

[81] Interview with Sofia Alatas - Head of Sub Directorate of Domestic Cooperation and RANHAM Region II of the Directorate General of Human Rights, Ministry of Law and Human Rights, on 19 February 2020.

human rights that arise with a focus on four (4) target groups, namely Women, Children, Indigenous Peoples and Persons with Disabilities.

This is inseparable from the approach used in the preparation of the fifth generation RANHAM which remains focused on 4 (four) target groups, including women, children, indigenous peoples and persons with disabilities as the main beneficiaries.



The Issue of Human Rights in the Context of Business and Human Rights

Apart from various agendas related to the preparation of the baseline study and policy papers, various meetings and activities related to the process of integrating the UN Guiding Principles into RANHAM have also been held.

3. Roadmap or National Strategy for Business and Human Rights

In addition to the integration process of the UN Guiding Principles in the 2020-2024 RANHAM which is currently underway at the Directorate General of Human Rights, Ministry of Law and Human Rights (which is also collaborating with ELSAM), there are other ongoing initiatives, namely the preparation of a business and human rights roadmap. The initiation of the Business and Human Rights National Roadmap or Strategy was motivated by the argument that the RANHAM was a policy produced in a Presidential Regulation and was cross-sectoral in nature, so that the mandate of its execution was effectively only with government ministries and institutions, while on the other hand business and human rights advocacy are not only in the realm of bureaucracy but also in the realm of society and business. On this basis, an idea emerged that business and human rights issues that are under the government's authority can be included in the 2020-2024 RANHAM, which is implemented through cross-ministerial government agencies, regional governments and so on. In the meantime, related to issues covering the responsibility of the business sector and the community, a document is needed to serve as a guide or reference, i.e. the BHR roadmap document.[82] Thus, in the future the roadmap document is expected not

[82] Interview with Siprianus Bate Soro, Head of Democratic Governance and Poverty Reduction Unit , UNDP Indonesia. 5 May 2020 via Zoom Meeting.

only to serve as a national strategy for the implementation of business and human rights but to become a general guide on a national scale.

The development of the BHR roadmap preparation to date has reached the seventh draft. Regarding the draft, the Expert Team is finalizing it so that it is ready to be presented at a public consultation activity that will be held in the future. In the process of drafting, a lot of consultation process has been conducted, involving Ministries/Institutions, Business Associations, UN Agencies, Corporations and the Embassy of Switzerland.

Observing the composition of the participants of the consultations carried out in the process of preparing the BHR roadmapor national strategy, only elements of government, business, UN Agencies and one embassy were involved. Whereas, if based on the criteria and standards stated in the NAP on Business and Human Rights Development Guidelines published by the UN Working Group and the NAP on Business and Human Rights Toolkit published by the DIHR, the involvement of various parties, especially civil society, is very important even since the initiation phase.

Furthermore, besides emphasizing the importance of the participation of various parties in the drafting process, the guidelines for developing the NAP on Business and Human Rights prepared by the Working Group also emphasize the existence of a transparent and systematic process in the preparation of the NAP. This also seems less evident in the on going process of preparing the BHR roadmap or national strategy, even until the seventh draft.

Part IV
Conclusions and Recommendations

1. Conclusion

The existence of two international guidelines, namely the NAP on Business and Human Rights Development Guidelines published by the United Nations Working Group and the NAP on Business and Human Rights Toolkit published by DIHR in collaboration with ICAR, plays an important role in assisting countries in developing, implementing and reviewing the NAP. However, there are a number of EU countries that developed NAPs even before the UN Working Group published the NAP on Business and Human RightsGuidelines. This further proves the leadership of the European Union in the promotion and protection of human rights, particularly against human rights violations related to the business sector. Moreover, from the 23 countries that already have NAPs on Business and Human Rights, most of these countries are European Union member states, other than a several Latin American countries (Chile and Colombia) and one ASEAN country (Thailand).

There are many good practices found in the NAPs on Business and Human Rights of the 23 countries, including but not limited to the drafting process (aspects of participation and drafting of the NBA), priority issues and the format or substance framework covered in the NAP. Furthermore, not only a comparison, the rationalization of each of these countries in creating the NAP as a strategy for norming the UN Guiding Principles, which has the nature of soft law, can be seen.

2. Recommendations

Based on these conclusions, this study provides several practical recommendations, especially for parties carrying out initiatives such as developing a NAP on Business and Human Rights, integrating the UN Guiding Principles into the RANHAM or also to those currently developing a National Business and Human Rights Strategy, to:

1. Develop the initiative by referring to the stages of the NAP Development Guidelines that have been prepared by the UN Working Group;
2. Adopt good practices in the preparation of the NAPs on Business and Human Rights of 23 countries as role modelsin the efforts to develop the National Strategy for Business and Human Rights or other forms of policy that have relevance to business and human rights issues;
3. Use a gender perspective and an intersectional approach to develop policies that are relevant to business and human rights issues. This is stated in Presidential Instruction No. 9/2000 on Gender Mainstreaming, which aims to reduce the gap between Indonesian women and men in accessing and obtaining development benefits, as well as increasing participation in and mastery of the development process.
4. Involve vulnerable groups, including but not limited to women, children, indigenous peoples and persons with disabilities or who are most at risk of being

violated due to corporate business activities such as Human Rights Defenders, into every stage of the drafting of the NAP on Business and Human Rights;

5. Establish a working group and task force to oversee the development process and create a timelinefor the preparation time;
6. Hold consultations not only in the capital city, but in areas prone to human rights violations due to corporate business activities.





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