

European Group of National Human Rights Institutions

Implementing the UN Guiding Principles on Business and Human Rights: Discussion paper on national implementation plans for EU Member States

Executive Summary

In the EU Commission Communication on CSR, EU Member States are invited “to develop by the end of 2012 national plans for the implementation of the Guiding Principles.” This paper highlights a set of preliminary recommendations with regard to these plans, developed by the European Group of National Human Rights Institutions (NHRIs).

A. National Implementation Plans – process

In developing their national implementation plans, EU Members States should ensure

- i. *A UNGPs implementation plan that is clearly identifiable separately from the general CSR plans also recommended by the 2011 Communication; alternatively, which comprise a clearly identifiable component of the Member State’s general CSR plan*
- ii. *A national baseline study and gap analysis is performed, with reference to the UNGPs, to provide a credible, transparent basis for national UNGPs implementation plans that set clear and strategic milestones*
- iii. *Clear ownership of UNGPs national implementation plans within a relevant ministry or agency*
- iv. *Periodic monitoring and reporting on progress, according to verifiable criteria.*

In addition, in line with a human rights-based approach, EU member states should develop and give effect to national implementation plans through a process that is:

- v. *Participatory, ensuring inclusion of rights-holders exposed to conditions of vulnerability, both inside and outside the jurisdiction, impacted or potentially impacted by the activities of companies based inside the jurisdiction*
- vi. *Transparent and adequately resourced.*

B. National implementation plans – minimum content

UNGP national implementation plans should at minimum:

- vii. *Address the full scope of UN Guiding Principles, across all three pillars, including a review of measures and detailed recommendations as needed under each of the Guiding Principles*
- viii. *Address interface between the UNGPs national implementation plan with EU regional standards, and EU and international monitoring and reporting processes, with a view to supporting effective state reporting in such fora (e.g. UPR)*
- ix. *Include achievable targets, milestones for delivery, and performance indicators, for state and business actors.*

1. Introduction

The EU Commission's 2011 Communication on CSR¹, invites EU Member States "to develop by the end of 2012 national plans for the implementation of the Guiding Principles."

This paper highlights a set of issues to consider with regard to these plans, developed by the European Group of National Human Rights Institutions. A list of the members of the European Group of NHRIs is included in Annex A. Annex B provides a summary of the mandate and functions of NHRIs, and how these are being applied to the UN Guiding Principles on Business and Human Rights.

Measures to support implementation of the UN Guiding Principles within the EU and wider European Region, including those included in the European Commission's 2011 Communication, will be discussed at the European Regional Group of NHRI's Workshop on Business and Human Rights, Berlin, 5-7 September 2012 (with support from the German Federal Ministry for Development Cooperation).

2. National implementation plans – recommendations

A. National implementation plans – process

In developing their national implementation plans, EU Member States should ensure

- i. *A UNGPs implementation plan that is clearly identifiable separately from the general CSR plan also recommended by the 2011 Communication; alternatively, which comprises a clearly identifiable component of the Member State's general CSR plan*

Alongside the Commission's proposal that Member States develop national implementation plans for the UNGPs, the 2011 Communication invites Member States to "develop or update by mid 2012 their own plans or national lists of priority actions to promote CSR in support of the Europe 2020 Strategy, with reference to internationally recognized CSR principles and guidelines in cooperation with enterprises and other stakeholders...". Some Member States (e.g. Denmark) have already indicated that they regard their general CSR Action Plan as adequate to serve the dual purpose of meeting both of the Commission's recommendations.

However, unless EU Member States analyse and clearly identify gaps in current measures at national level that are relevant to implementation of the UNGPs, and measures that will be taken to close such gaps, they will be unable to report effectively, regionally or internationally on progress made. In addition, without a dedicated, well-publicised process for development of a UNGPs implementation plan, an important opportunity to mobilise support and raise awareness amongst key stakeholders at national level – in government, business and wider society - will be lost.

Accordingly, the European Group of NHRIs urges Member States to develop a separate implementation plan for the Guiding Principles or, at minimum, to include a clearly identifiable section on UNGPs implementation within a general CSR Action Plan. In both cases, the content on UNGPs implementation should meet the specifications outlined below.

¹ European Commission, Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions: A renewed strategy 2011-14 for Corporate Social Responsibility, (Brussels, 25 October 2011) COM(2011) 681final.

- ii. *A national baseline study and gap analysis is performed, with reference to the UNGPs, to provide a credible, transparent basis for a UNGPs national implementation plan that sets clear and strategic milestones*

Before the UN Guiding Principles' adoption by the UN Human Rights Council in July 2011, no explicit universal standards addressing the respective responsibilities of states and corporations with regard to business impacts on human rights existed. Consequently, EU Member States have not previously evaluated whether national arrangements regulating the conduct of business comply with their international human rights obligations in any systematic way.

At the same time, states will increasingly be held to account to the standards contained in the UN Guiding Principles, in the context of international monitoring and reporting processes, such as UPR and those of UN treaty bodies. In line with the general approach adopted in UPR, this will include reporting on progress made across successive UPR cycles.

To facilitate the adoption of a coherent approach to identification, prioritisation and selection of UNGP-implementation measures, as well as subsequent reporting on them at international level, Member States should start the process of UNGPs implementation planning by conducting a *comprehensive baseline assessment* with regard to the extent to which current national arrangements meet the requirements under all three pillars of the UN Framework.² This assessment should clearly identify, for each of the Guiding Principles, national measures that support compliance with its requirements, as well as any gaps where national measures are lacking or inadequate. The baseline study and gap analysis should be published along with the Member State's first UNGPs implementation plan.³

In line with a *human rights-based approach*,⁴ the baseline study should

- Be comprehensive, and consider the full range of rights, economic and social, as well as civil and political, as well as the principles of universality, indivisibility and interdependence of human rights
- Focus on the most vulnerable and excluded groups, including issues of gender and discrimination, and indigenous peoples⁵
- Be informed by recommendations of international human rights bodies (including the ILO as well as UN human rights bodies) and European regional human rights bodies (such as the European Committee of Social Rights)
- Recognise individuals and communities potentially affected by business activities as rights-holders, and target their ability to claim rights

² This is also implied by Guiding Principle 3a. For further explanation of the role of baseline study, and other guidelines on rights-based process, see Handbook on National Human Rights Plans of Action (2002, OHCHR available at <http://www.ohchr.org/Documents/Publications/training10en.pdf>).

³ See

⁴ Stamford Inter-Agency Workshop statement of Common Understanding of a human rights based approach to development cooperation (<http://www.fao.org/righttofood/KC/downloads/vl/en/details/212902.htm>) and DIHR, Applying a Rights-Based Approach (2007) (<http://www.humanrights.dk/files/pdf/Publikationer/applying%20a%20rights%20based%20approach.pdf>).

⁵ See Council Resolution of 30 November 1998 (http://eeas.europa.eu/human_rights/ip/docs/council_resolution1998_en.pdf) and European Consensus on Development 2005 (http://ec.europa.eu/development/icenter/repository/european_consensus_2005_en.pdf).

- Address accountability of duty-bearers, including through legal and administrative procedures
- Result from a process that includes consultation with rights-holders and other stakeholders.

iii. Clear ownership of UNGPs national implementation plans within a relevant ministry or agency

The UN Special Rapporteur highlighted the risk of horizontal and vertical policy incoherence regarding business and human rights at national level.⁶ To avoid this, Member States must ensure clear ownership for UNGPs implementation plans, by a public entity with the organisational capacity and the resources necessary to promote and monitor its implementation effectively, and to communicate with stakeholders inside governments and the wide public sector, as well as externally.

iv. Periodic monitoring and reporting on progress

To ensure accountability, and support effective mainstreaming of the UN Guiding Principles into international monitoring and reporting processes, EU Member States should monitor and report on progress regarding UNGPs implementation plans on a regular basis. Given the UPR's 4-yearly cycle, a 4-yearly cycle could also be considered in this context, with reporting to precede UPR reporting.

v. Participatory, ensuring inclusion of rights-holders exposed to conditions of vulnerability, both inside and outside the jurisdiction, affected or potentially affected by the activities of companies based inside the jurisdiction

The central purpose of the UN Guiding Principles on Business and Human Rights is to address threats to the enjoyment of human rights resulting from rising transnational economic activity, taking place in parallel with liberalization of national and international controls, for example on trade and money flows, and in labour markets. This combination of factors has exposed many millions of people worldwide, though especially in the developing world, to deteriorating working, living and environmental conditions, while delivering increased enjoyment of rights, through employment and greater prosperity, for a minority, concentrated within more industrialised countries.

In line with a rights-based approach, EU Member States must ensure that their processes to develop national UNGPs implementation plans identify and provide for participation by rights-holders, particularly those from vulnerable groups, both within and outside the jurisdiction, who are negatively impacted or potentially negatively impacted by activities of companies based in the Member States, as well as stakeholders who represent such rights-holders.

For example, in developing its baseline study, gap analysis and implementation plan, with regard to access to effective remedy for corporate abuses for human rights under Pillar III of the UN Framework, each Member State should take steps to secure inputs and participation from rights-holders within the national jurisdiction and in host-countries of MNEs based in the Member State, in order to assess the efficacy of existing judicial and non-judicial grievance mechanisms, given the actual context and circumstances experienced by such rights-holders, as well as measures to improve the accessibility and effectiveness of such mechanisms.

⁶ UN Guiding Principles on Business and Human Rights, Guiding Principle 8.

vi. *Transparency and adequate resources*

EU Member State should ensure full transparency regarding the process of development of UNGPs implementation plans, as well as concerning measures putting them into effect and progress reporting.⁷ This should extend, for example, to timely public consultation on process and proposed content of a national baseline study and implementation plan and publication of lists of participants in consultation meetings, submissions from and meetings with industry associations and public affairs professionals as well as other stakeholders. At the same time, governments must ensure that processes to develop national implementation plans (including public consultations) and to deliver on goals they set are supported by adequate organisational and financial resources.

B. National implementation plans – minimum content

UNGP national implementation plans should meet the following criteria:

vii. *Address the full scope of UN Guiding Principles, across all three pillars, including a review of measures and detailed recommendations as needed under each of the Guiding Principles*

It is critical that Member States' implementation plans address the full scope of issues relevant to the UNGPs' effectiveness at national level, under all three pillars of the UN framework. To reach this goal, it will be necessary for Member States to unpack the content of the UNGPs, one by one. To support UNGPs implementation by EU Member States, and promote ease of reporting and monitoring on GPs across the EU, it would therefore be desirable to develop a single template, identifying key issues under each of the Guiding Principles.

vii. *Address interface between the UNGPs National Implementation Plan with EU regional standards, and EU and international monitoring and reporting processes, with a view to supporting effective state reporting in such for a (e.g. UPR)*

The UN Guiding Principles originate in the pre-existing obligations of states under international human rights instruments of the UN system, in particular, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights, and the ILO Declaration on Fundamental Principles and Rights at Work. For EU Member States, these obligations are supplemented by those arising under the European Convention on Human Rights, European Charter of Fundamental Rights, European Social Charter and European Code of Social Security, EU non-discrimination and labour law⁸ and a range of other international human rights instruments to which they are signatories. In undertaking baseline studies, and devising UNGPs implementation plans, EU Member States should ensure full integration of relevant standards and redress mechanisms under these EU regional human rights instruments.

vii. *Include achievable targets, milestones for delivery, and performance indicators, for state and business actors*

EU Member States' implementation plans should include reasonably precise targets and objectives, that are achievable within reasonable time frames, to which easily understandable and verifiable performance indicators are attached, and with phased milestones for delivery, wherever appropriate.

⁷ See e.g. Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998).

⁸ For a summary, see <http://ec.europa.eu/social/main.jsp?catId=157>

Annex I: NHRIs in the European Region

Table 1. NHRIs in the EU

Country	Name of NHRI	ICC Accreditation	OECD Member	UN Global Compact Contact Point
Austria	The Austrian Ombudsman Board	B	Y	z
Belgium	Centre for equal opportunities and opposition to racism	B	Y	z
Bulgaria	Bulgarian Parliamentary Ombudsman			z
Cyprus	National Institute for the Protection of Human Rights			z
Czech Republic	Ombudsman		Y	
Denmark	The Danish Institute for Human Rights	A	Y	z
Finland	Parliamentary Ombudsman of Finland		Y	z
France	National Consultative Commission of Human Rights	A	Y	z
Germany	The German Institute for Human Rights	A	Y	Y
Greece	Greek National Commission for Human Rights	A	Y	Y
Hungary	Parliamentary Commissioner on the Rights of National and Ethnic Minorities		Y	Y
Ireland	Irish Human Rights Commission	A	Y	
Italy	Commissione per i Diritti Umani - Présidence du Conseil des Ministres		Y	Y
Latvia	Latvian National Human Rights Office			Y
Lithuania	The Seimas Ombudsmen			Y
Luxembourg	Consultative Commission of Human Rights	A	Y	
Netherlands	Equal Treatment Commission	B	Y	Y
Northern Ireland, UK	Northern Ireland Human Rights Commission (NIHRC)	A		
Poland	Commissioner for Civil Rights Protection	A	Y	Y
Portugal	Ombudsman Office	A	Y	Y
Romania	Advocate of the People			
Slovakia	Slovak National Centre for Human Rights	B	Y	

Country	Name of NHRI	ICC Accreditation	OECD Member	UN Global Compact Contact Point
Slovenia	Human Rights Ombudsman	B	Y	
Spain	The Office of the Ombudsman	A	Y	Y
Sweden(BO)	Children's Ombudsman	A	Y	Y
Sweden(DO)	The Swedish Ombudsman against Ethnic Discrimination (DO)	A	Y	Y
Sweden(HO)	The Swedish Disability Ombudsman	A	Y	Y
Sweden(JämO)	Ombudsman for Equal Rights	A		
United Kingdom	Equality and Human Rights Commission	A	Y	Y

Table 2. NHRIs in non-EU member states

Country	Name of NHRI	ICC Accreditation	OECD Member	UN Global Compact Contact Point
Albania	The People's Advocate	A		
Armenia	Human Rights Defender of the Republic of Armenia	A		z
Azerbaijan	Human Rights Commission	A		z
Bosnia and Herzegovina	The Human Rights Ombudsman of Bosnia and Herzegovina	A		z
Croatia	Office of the Croatian Ombudsman			z
Georgia	Office of Public Defender of Georgia	A		Y
Kazakhstan	Commissioner for Human Rights (National Ombudsman)			
Kosovo	Ombudsperson Institution in Kosovo			
Kyrgyzstan	Ombudsman of the Kyrgyz Republic			
Macedonia	Human Rights Ombudsman of Macedonia			Y
Moldova	The Centre for Human Rights of Moldova			Y
Norway	Norwegian Centre for Human Rights	A	Y	
Russia	Commissioner on Human Rights in the Russian Federation	B		Y
Serbia and	Office of the Ombudsman of the Republic			Y

Country	Name of NHRI	ICC Accreditation	OECD Member	UN Global Compact Contact Point
Montenegro	of Montenegro			
Switzerland	Federal Commission against Racism (FCR)	B	Y	Y
Ukraine	Ukrainian Parliament Commissioner for Human Rights	A		Y
Uzbekistan	Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for Human Rights			

Annex 2. NHRIs, business and human rights

1. What are National Human Rights Institutions (NHRIs)?

NHRIs are independent, public bodies, established in line with the 1993 UN General Assembly's *Paris Principles*.⁹ Under the Paris Principles, NHRIs must have a broad mandate in national law to promote and protect human rights, including through monitoring and advising governments, investigating human rights abuses, engaging with international human rights bodies (e.g. in the UN and regional organisations, such as the EU), via public and professional education and research.

More than one hundred countries worldwide have established NHRIs.¹⁰ Ten EU Member States have NHRIs accredited to A-status, meaning that they are assessed as meeting the highest standards of independence and impartiality.¹¹ Within the broader European region, forty-four European countries have NHRIs, with twenty-two accredited to A-status (see Annex I). Some NHRIs also serve as national ombudsmen and, within the EU, some NHRIs also function as equal treatment bodies under EU anti-discrimination law.

Founded in 1993, the International Coordinating Committee (ICC) of NHRIs promotes coordination of NHRI activities globally. The ICC Bureau draws its members from the ICC's four Regional Networks (Network of African National Human Rights Institutions, Regional Network of the Americas, Asia-Pacific Forum and European Group of NHRIs).

1.1. NHRI mandate and functions on business and human rights

Under the Paris Principles, NHRIs must have a broad mandate to promote and protect human rights. In Resolution 17/4 of July 2011, endorsing the UN Guiding Principles on Business and Human Rights, the UN Human Rights Council explicitly affirmed the important role of NHRIs on business and human rights.¹² Likewise, the UN Guiding Principles on Business and Human Rights highlight the role and functions of NHRIs under each of pillar of the UN Protect, Respect, Remedy framework.

The range of NHRI functions on business and human rights include the following:

- a. State duty to protect
 - Based on their mandate to monitor governments' fulfilment of human rights commitments under international instruments (including the UN Guiding Principles) NHRIs can monitor national governments' measures to regulate business, to promote access to justice for victims of corporate human rights abuses, and consistency with the Guiding Principles of positions taken by governments across domestic and international arena (e.g. export credit supports, trade negotiations)
 - Advancing proposals for legal reform to promote implementation of the Guiding Principles at national level
 - Supporting government and the public sector more broadly (e.g. state enterprises, local government, and public authorities such as armed forces, health, education and housing sectors) on business and human rights
- b. Corporate responsibility to respect

⁹ <http://www2.ohchr.org/english/law/parisprinciples.htm>.

¹⁰ For Directory of NHRIs, see <http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/default.aspx>.

¹¹ See further, European Union Fundamental Rights Agency, National Human Rights Institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU (2010, Luxembourg: FRA), available at http://fra.europa.eu/fraWebsite/attachments/NHRI_en.pdf.

¹² http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/17/L.17/Rev.1.

- NHRIs have experience of translating human rights principles into language and operational standards that duty-bearers can understand. Accordingly, NHRIs can develop user-friendly guidance for businesses explaining the Guiding Principles and how to integrate respect for human rights into business operations
 - Investigate and report on impacts of businesses operating in or from the jurisdiction on the realization human rights of communities, individuals, human rights defenders and trade unions
 - Convene and facilitate dialogue and collaboration among key stakeholders in business, government and civil society, to promote awareness, understanding and operationalization of the Guiding Principles at national level, as well as trans-nationally on a bilateral and regional basis.
- c. Victims' right to remedy and reparation
- Promoting awareness of avenues for redress, including judicial and non-judicial mechanisms, their own monitoring and receiving complaints of human rights violations by business entities,¹³ and cooperating with the judiciary
 - Handle complaints and grievances relating to corporate human right abuses including, where the NHRI's legal mandate allows, through conciliation, mediation, supporting individual cases and legal assistance
 - Identify obstacles to access to justice for victims of abuses by companies operating in or registered in the national jurisdiction e.g. through public enquiries and research.

1.2. NHRI support for implementation of the UN Guiding Principles

In March 2009, an ICC Working Group on Business and Human Rights was established to support strategic planning and capacity development of NHRIs on business and human rights. Until 2011, the Working Group was chaired by the Danish Institute for Human Rights (DIHR), representing the European Group of NHRIs. During this period, key outputs of the Working Group included:

- Supporting development of the ICC's 2010 [Edinburgh Declaration on Business and Human Rights](#), and follow-up regional workshops for NHRIs on Business and Human Rights, in Africa, Asia-Pacific and the Americas, in 2011
- Promoting awareness of NHRIs' role on business and human rights, with governments, the private sector, trade unions and civil society, including in contexts of
 - o the mandate of the UN Special Representative on Business and Human Rights, through written submissions and public meetings
 - o OECD Guidelines for Multinational Enterprises and Common Approaches on Export Credit Guarantees; leading to conclusion of an *ICC-OECD Memorandum of Understanding* in 2012
 - o UN Global Compact, through joint meetings and information materials promoting collaboration between UNGC Local Networks and NHRIs
- Conducting a baseline survey of NHRIs' needs, priorities and mandate on business and human rights

¹³ See Survey of National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs Worldwide (2009, Geneva: OHCHR), available at <http://nhri.ohchr.org/EN/Documents/Questionnaire%20-%20Complete%20Report%20FINAL-edited.pdf>.

- Establishing a web portal for NHRIs on business and human rights.¹⁴

In 2012, further activities to support capacity development of NHRIs on business and human rights, undertaken by DIHR, in communication with the ICC Working Group, UN Office of the High Commissioner for Human Rights, and UNDP will include:

- Producing manual and training programme for NHRIs on business and human rights
- Developing indicators to support NHRIs and civil society actors in integrating the UN Guiding Principles into monitoring and reporting activities in processes such as UN UPR and human rights treaty reporting.

1.3. European Group of NHRIs: Actions on business and human rights

The European Group of NHRIs was set up in 2003 to coordinate actions across NHRIs from the European region. A Network Secretariat will be established in 2012. On behalf of the Network, the Network Chair (currently the Scottish Human Rights Commission) cooperates with the European Parliament European Commission, Council of Europe, Organisation for Security and Cooperation in Europe (OSCE), Fundamental Rights Agency (FRA), and European office of the UN OHCHR, UNDP, other international and regional agencies, and civil society. Specific actions on business and human rights to date include:

- 2011 [submission on the EU Green Paper 'Towards a more efficient European Procurement Market'](#)
- Engaging with EU member states on negotiating positions taken in the development of the UN Guiding Principles, review of the OECD Guidelines for Multinational Enterprises, and OECD Common Approaches on Export Credit Agencies¹⁵
- As mandated by the ICC's 2010 Edinburgh Declaration, holding a **Regional Workshop, 5-7 September 2012, in Berlin**, to develop a regional Action Plan for NHRIs in Europe on business and human rights.

¹⁴ <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>

¹⁵ Submissions available here:

<http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/International%20Policy%20Development.aspx>