



SESSION NOTE

National Action Plans to Enable RBC Policy Coherence

Thursday 21 June 2018 - 9:30-11:00
Room CC12 - OECD Conference Centre

Policy coherence – also known as the systematic promotion of mutually reinforcing policy actions across government departments and agencies creating synergies towards achieving the agreed objectives¹ – is key to ensuring effective design and implementation of policies and regulations to promote responsible business conduct (RBC). Policy coherence, however, is often challenged by limited collaboration between relevant State departments, agencies and other State-based institutions and inconsistencies in the legal and policy frameworks. The importance of policy coherence and alignment of policies in the area of business and human rights is underlined in the UN Guiding Principles on Business and Human Rights (UNGPs).² Policy coherence for RBC is also a key objective in the OECD Policy Framework for Investment 2015, which calls upon Governments to foster coherence among domestic government agencies and bodies to ensure alignment of policies relevant to RBC.³

The 2017 Roundtable for Policy Makers highlighted the potential of National Action Plans on Business and Human Rights (NAPs) to ensure coordination within Government on the spectrum of laws, policies and practices that are relevant to RBC. NAPs can also serve as powerful forward-looking instruments that can inspire new regulations and policies.

The processes to develop a NAP has unfolded in all regions of the world and in countries of all economic levels.⁴ As of May 2018, 21 countries have adopted NAPs – 20 of which are Adherents to the OECD Guidelines for Multinational Enterprises.⁵ An additional 14 Adherents are in the process of developing their action plans (see table below). In 2017 alone, 8 new NAPs were launched. A growing number of NAPs rely on the OECD Guidelines as a core framework, and reference the National Contact Point (NCP) as a key mechanism to promoting access to remedy. Recent OECD Investment Policy Reviews are also increasingly recommending to Governments under review to adopt NAPs.⁶

The framework of the OECD Guidelines and RBC can present an important value added. Beyond labour and human rights, the OECD Guidelines promote RBC across the entire spectrum of issues where business operations intersect with society, including corruption, environment, consumer protection and taxation. NAPs can provide an important overarching policy framework for RBC and strengthen coordination and coherence within the government among all relevant policies relating to RBC (including investment, procurement, export credits, among others). The scope of NAPs varies from country to country. Some go beyond the theme of business and human rights by encompassing the environment (for example France and Italy) and RBC more generally, such as the United States and Switzerland which developed a NAP on Business and Human Rights and on RBC.

While there is no “one-size-fits-all” approach to developing NAPs, the success of NAPs hinges on accurately identifying and rectifying gaps in the existing regulatory framework and gaps in Government and corporate responses to RBC challenges, and to develop concrete commitments and actions to address adverse corporate-related impacts.

The importance of baseline assessments

Given the broad scope of RBC policies, a baseline assessment can be used to develop an evidence based NAP that responds to key challenges, rather than to perceived challenges. Comprehensive baseline assessments ensure that the NAP addresses existing needs regarding RBC, as well as overlaps and outdated policies, thereby ensuring its relevance and credibility. As such, baseline assessments represent a reference point against which to develop targeted commitments with concrete steps to be taken, by whom and when.

In November 2016, the UN Working Group on Business and Human Rights issued a reference guide for all stakeholders, including Governments, involved in the process of developing NAPs.⁷ As a key phase of the NAP process, the Working Group recommended mapping the main adverse business-related impacts occurring on the State's territory as well as abroad with the involvement companies domiciled in the country, and identifying the gaps in Government and corporate responses to these impacts. The latter includes assessing whether existing national laws, regulations and policies can ensure full protection against corporate misconduct, and to what extent business enterprises carry out human rights due diligence and can provide effective remedy through grievance mechanisms.⁸

Guidance on national baseline assessments has also been developed by the Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable (ICAR). This guidance – first released in 2014 and updated in 2017 – provides a methodology to evaluate the current level of implementation of the UN Guiding Principles on Business and Human Rights and other relevant RBC frameworks by Governments and business enterprises.⁹ This template has been used by several Governments, National Human Rights Institutions, Universities and civil society organisations in the design of and participation in NAP processes.¹⁰

Examples of baseline assessment methodologies

Governments have chosen different ways to identify their existing baseline positions and identifying gaps with regards to international RBC standards. A number of Governments or other actors officially associated with the NAP process use the template developed by the DIHR and ICAR as a basis, including in Germany, Thailand and Japan. As has been noted by the UN Working Group, some Governments have also opted for deferring more detailed assessments until after their NAPs have been launched.¹¹ This includes the Netherlands, UK and Switzerland. In Colombia, the NAP commits the Inter-governmental Working Group on Business and Human Rights to conduct a baseline assessment of all judicial and non-judicial remedial mechanisms available in the country relating to business and human rights.¹²

Some Governments have conducted internal mapping exercises. Ireland, through its NAP adopted in November 2017, has committed its Department of Foreign Affairs and Trade to commission a comprehensive baseline assessment of the legislative and regulatory framework pertaining to business and human rights as it applies in Ireland.¹³ According to the NAP, this assessment is expected to be completed by mid-2018.

Other Governments have commissioned external experts, such as national human rights institutions (NHRIs), to conduct independent assessments to inform the development of their NAPs. For example, In Germany, a national baseline assessment was developed by the German Institute for Human Rights and made public in 2015.¹⁴ Following extensive consultation with stakeholder groups, the Governmental steering committee adopted the assessment as a basis for the process to develop the NAP. Independent academic institutions have also played a key role in developing national baseline assessments. The Italian NAP, for example, was informed by a national baseline assessment carried out by the University Scuola Superiore Sant'Anna.¹⁵ In Chile, within the framework of cooperation between the Danish Institute of Human Rights and the Ministry of Foreign Affairs for the development of the NAP, the Institute made available a methodology and funds to develop a baseline study on the situation of Human rights and business in Chile, which was prepared by the Human Rights Centre of the Diego Portales University.¹⁶ In Belgium, the internal mapping was peer-reviewed by a group of leading academics, thereby ensuring both relevance and compliance with international standards.¹⁷

Ensuring action-oriented NAPs

When informed by comprehensive baseline assessments, NAPs can accurately identify relevant and concrete policy measures and actions that are needed to ensure better State and corporate alignment with the UNGPs and the OECD Guidelines. The primary purpose of NAPs is to articulate concrete commitments by the Government to address adverse corporate-related impacts.¹⁸ In doing so, the UN Working Group has encouraged Governments to adopt specific and achievable measures to be taken, and, for every planned measure, clarify i) the specific goal, ii) actions to be taken, iii) an attribution of clear responsibilities to relevant entities, iv) a timeframe for the implementation of the actions, and v) indicators to evaluate the implementation and impact of the activity.¹⁹ Including clear commitments for actions to be taken, by whom and when, enhances the transparency of the NAP and the accountability of the government. Adopting action-oriented NAPs builds confidence and trust among stakeholders that the NAP is more than grandstanding, and is also of key importance for monitoring the implementation of the NAP and measuring its impact.

To support the implementation of the measures that have been identified as necessary to address RBC gaps, identifying lead and support agencies has proven particularly important. The NAP of Chile, for example, allocates responsibility for each identified action of the NAP to lead agencies, and, in a separate document, refers to timelines and indicators to monitor progress.²⁰ Proposed activities to undertake and their matching implementing departments or agencies are also at the centre of the NAP of Switzerland, which identifies which government entity is tasked with overseeing the enforcement and implementation of specific policy instruments included in the NAP.

A number of national action plan processes have also placed a stronger emphasis on measurement of progress,²¹ including Germany whose NAP establishes a permanent inter-ministerial committee that will review the implementation of the measures specified in the NAP, and is equipped with the necessary staff and budget to fulfil this task.

Questions for discussion

Based on the experiences of Italy, Colombia, Thailand, Japan and Argentina, this session will highlight the role of national baseline assessments to accurately identify gaps in regulatory frameworks of Government and corporate practice, and how to best develop and implement targeted actions to address protection gaps in NAPs. For this purpose, the session will address the following questions: the role of national baseline assessments to inform NAPs and methodologies used; key issues to consider when planning for a national baseline assessment; the role of non-state actors in mapping exercises; the added value of baseline assessments in the review of NAPs and how to ensure targeted NAPs through concrete commitments, actions, implementing agencies and follow-up.

NOTES

¹ OECD, 2001. Poverty Reduction, The DAC Guidelines, DAC, OECD, Paris

² See Principles 8-10.

³ OECD Policy Framework for Investment, 2015. Chapter 7. Policies for enabling responsible business conduct.

⁴ Report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, 2015. UN Doc A/70/216, paragraph 22.

⁵ See: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>, <https://globalnaps.org/country/georgia/>

⁶ See, for example, the Policy Investment Reviews of Kazakhstan (2017), Ukraine (2016) and the Philippines (2016).

⁷ UN Working Group on Business and Human Rights, 2016. Guidance on National Action Plans on Business and Human Rights.

⁸ Ibid. pgs. 7-8.

⁹ Danish Institute for Human Rights and the International Corporate Accountability Roundtable, 2017. National Action Plans on Business and Human Rights Toolkit.

¹⁰ See European Parliament Directorate-General for External Policies, 2017. Implementation of the UN Guiding Principles on Business and Human Rights, pgs 33-34.

¹¹ Report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, 2014. UN Doc A/69/263, paragraph 24.

¹² Colombia, 2015, www.ohchr.org/Documents/Issues/Business/NationalPlans/PNA_Colombia_9dic.pdf

¹³ Government of Ireland, 2017. National Action Plan on Business and Human Rights, 2017-2020.

¹⁴ Deutsche Institut für Menschenrechte, 2015. National Baseline Assessment: Implementation of the UN Guiding Principles on Business and Human Rights.

¹⁵ Scuola Superiore Sant'Anna, 2013. Imprese e Diritti Umani: Il caso Italia. Analisi del quadro normativo e delle politiche di salvaguardia.

¹⁶ Centro de derechos humanos UDP, 2016. Estudio de línea base sobre empresas y derechos humanos.

¹⁷ Government Belge, 2017. Plan d'Action National Entreprises et Droits de l'Homme.

¹⁸ UN Working Group on Business and Human Rights, 2016. Guidance on National Action Plans on Business and Human Rights, pg. 11.

¹⁹ Ibid.

²⁰ Government of Chile, 2017. Plan de Acción Nacional de Derechos Humanos y Empresas.

²¹ <https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/> as referenced in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 2015. UN Doc. A/70/216, paragraph 72.