



THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

NATIONAL
ACTION PLANS
ON BUSINESS &
HUMAN RIGHTS

AN ANALYSIS

**NATIONAL ACTION PLANS ON BUSINESS & HUMAN RIGHTS:
AN ANALYSIS OF PLANS FROM 2013 - 2018**

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ABBREVIATIONS

NAP	National Action Plan on Business and Human Rights
NBA	National Baseline Assessment
UN	United Nations
UNGPs	UN Guiding Principles on Business and Human Rights
VNR	Voluntary National Review

EXECUTIVE SUMMARY

Since 2011 numerous actors including the UN Human Rights Council, the European Union, the Council of Europe, the Organization of American States, the G7, the G20, national human rights institutions and business associations have encouraged states to develop national action plans on business and human rights (NAPs). NAPs articulate a state's priorities and actions to implement the UN Guiding Principles on Business and Human Rights (UNGPs).¹

Until now, 21 states have developed NAPs while 11 more are in the process of developing NAPs. In addition, non-state initiatives are pushing for a NAP in at least 15 countries. This makes it important to review NAPs and to identify the strengths and weaknesses of current NAPs in implementing the UNGPs and enhancing protections for rights-holders against business-related human rights abuse. This initial analysis of NAPs for the period 2013-2018 identifies the following findings:

- **Stakeholder participation in the development process.** All states held stakeholder and rights-holder events during their NAP development processes and all but one process involved both business and civil society. The extent of stakeholder and rights-holder involvement varied considerably as, for example, 8 states took active measures to involve special interest groups and vulnerable groups (e.g. indigenous peoples, persons with disabilities) and 8 states publicly shared timelines on their NAP development process;
- **National baseline assessments.** 6 NAPs were informed by a national baseline assessment (NBA) designed to identify gaps in protections and inform the prioritisation of actions in the NAP. Of the 4 additional states that committed to producing an NBA in their NAP, none have yet completed them (although some commitments have no deadlines and others are still within their deadlines);
- **NAP content.** The majority of NAPs are structured to follow the three pillars of the UNGPs or the 31 guiding principles. All but 1 NAP explicitly address

business operations domestically, and all but 2 explicitly address business operations abroad. 17 NAPs commit the state to engage with other states to share good practice and/ or help other states develop NAPs. Many NAPs address issues affecting vulnerable groups of rights-holders, but certain groups receive less attention than others, including migrant workers, persons with disabilities, and indigenous peoples. Topics which appear in at least 20 NAPs include:

- Children's rights
 - Conflict-affected areas
 - Corporate law and governance
 - Equality and non-discrimination
 - Guidance to business
 - Human rights due diligence
 - Judicial remedy
 - Non-financial reporting
 - Non-judicial grievance mechanisms
 - OECD National Contact Points
 - Policy coherence
 - Public procurement
 - State-owned enterprises/ public-private partnerships
 - Trade
 - Workers' rights
- **Progress reports.** 15 NAPs commit states to provide follow-up reports on the implementation of NAP commitments. 5 states have published such reports to date.
 - **Accountability.** Effective accountability is enhanced when action points in NAPs are specific, measurable, achievable, relevant, and time-bound (SMART), however the action points in NAPs are often not fully SMART. 9 NAPs assign responsibility for actions to named entities, 6 include dates for some or all actions, 4 NAPs include explicit indicators or dates by which the

actions are to be completed. Zero NAPs contain a budget covering all actions, although 1 NAP refers to providing staff and budget necessary for monitoring.

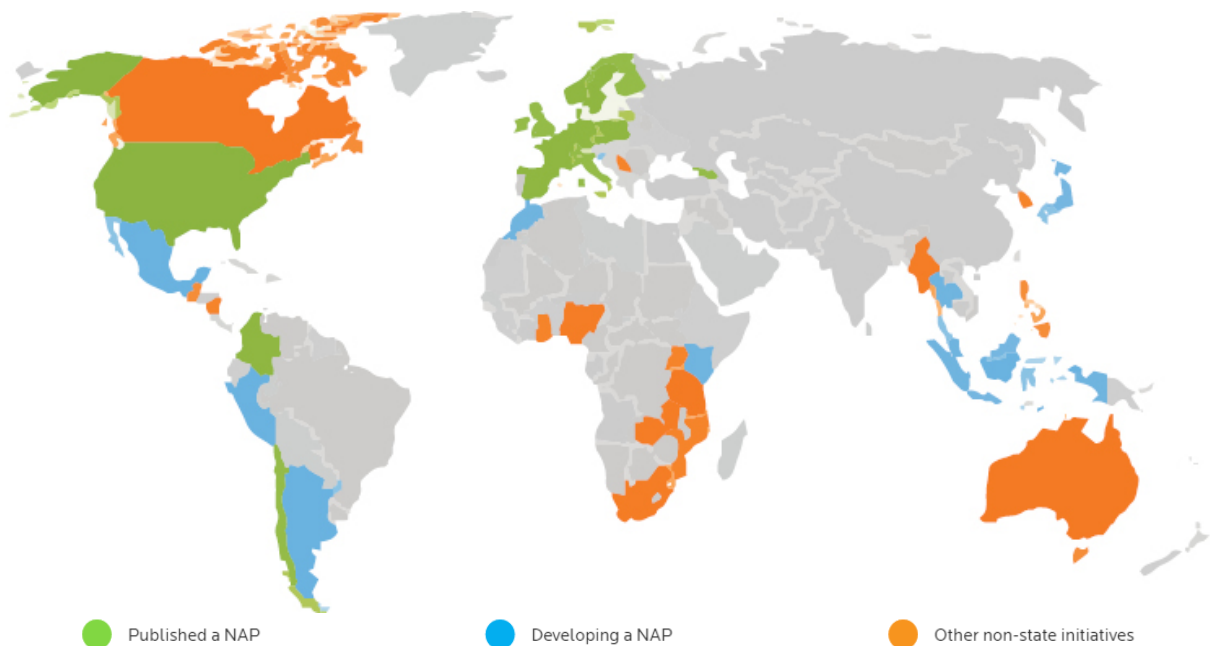
The Danish Institute for Human Rights will continue to develop this analysis on an ongoing basis and welcomes engagement with states, business, and civil society actors to expand and develop the analysis.

CHAPTER 1

INTRODUCTION

Three years after the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs), the UN Human Rights Council called on all Member States to develop National Action Plans to support implementation of the UNGPs.² This call came in the wake of similar developments at the European level.³ The Organization of American States has encouraged its Member States to implement the UNGPs,⁴ while the African Union is currently drafting a policy framework on business and human rights.⁵ The UN Working Group on the issue of human rights and transnational corporations and other business enterprises, established in 2011, strongly encourages all states to develop, enact, and update NAPs on business and human rights.⁶ The G20 leaders have articulated their support for NAPs.⁷ Civil society organisations have also added their support to NAPs.⁸

By 20 November 2018, 21 states had published NAPs.⁹ At least 11 states are developing a NAP and there are 15 countries in which non-state initiatives are working towards a NAP.¹⁰



18 of the 21 states that have published NAPs are members of the Council of Europe. There are 3 NAPs from states in the Americas. 2 African states and 4 Asian states are currently developing NAPs. States with NAPs contribute to 45.6% of global GDP and account for 43.6% of global imports (based on 2017 figures).

This makes it important to review NAPs and to identify the strengths and weaknesses of current NAPs in implementing the UNGPs and enhancing protections for rights-holders against business-related human rights abuse.

The Danish Institute for Human Rights (the Institute) has supported the development of national action plans on business and human rights (NAPs) in a number of states.¹¹ The Institute produced a Toolkit in 2014 to provide guidance on how to develop a NAP and [updated this Toolkit](#) in 2017 to reflect the insight the Institute had gained.¹² The Institute has also produced a [template](#) on how to conduct a national baseline assessment (NBA)¹³ and [guidance](#) on including children's rights in NAPs.¹⁴ The Institute maintains a website (www.globalnaps.org) providing information on NAP development processes and breaking down NAPs to see what they say on particular themes and issues.

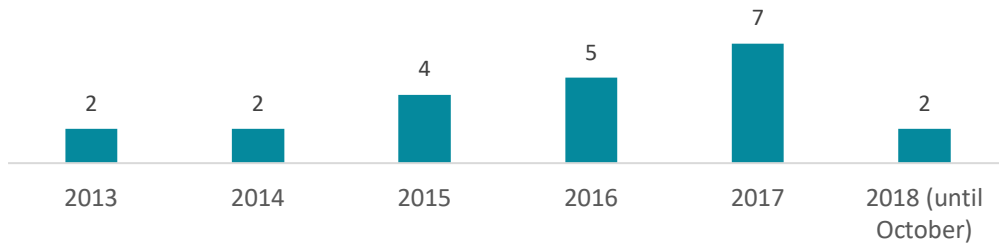
Methodology

The current analysis looks at published NAPs to identify information on both their process and content.¹⁵ The information contained within this analysis was not all available publicly in an accessible manner. It was gathered through desk research and direct correspondence with ministries and civil servants responsible for the NAPs. All the data which informs this analysis is available at <https://globalnaps.org/resources/>. We welcome correction if there are any errors in this data.

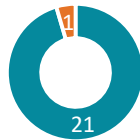
The majority of NAPs are stand-alone action plans and the majority are structured to follow the design of the UNGPs, although there is a wide variety of approaches. Lithuania adopted a letter format; the USA a tabular format; France and Poland elected for longer narrative formats; Denmark adopted a bullet point format; while other countries like Switzerland adopted a format combining text and tables.

The lengths of NAPs vary considerably, however length is not necessarily a measure of action plan content as a number of NAPs provide detailed backgrounds and/or a detailed lists of past actions which can outnumber forward looking action points.

NAPs published by year

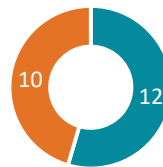


How many are stand-alone or integrated as chapters with broader human rights NAPs



■ Stand-alone ■ Integrated

Is the NAP ongoing or for a specific period of time?

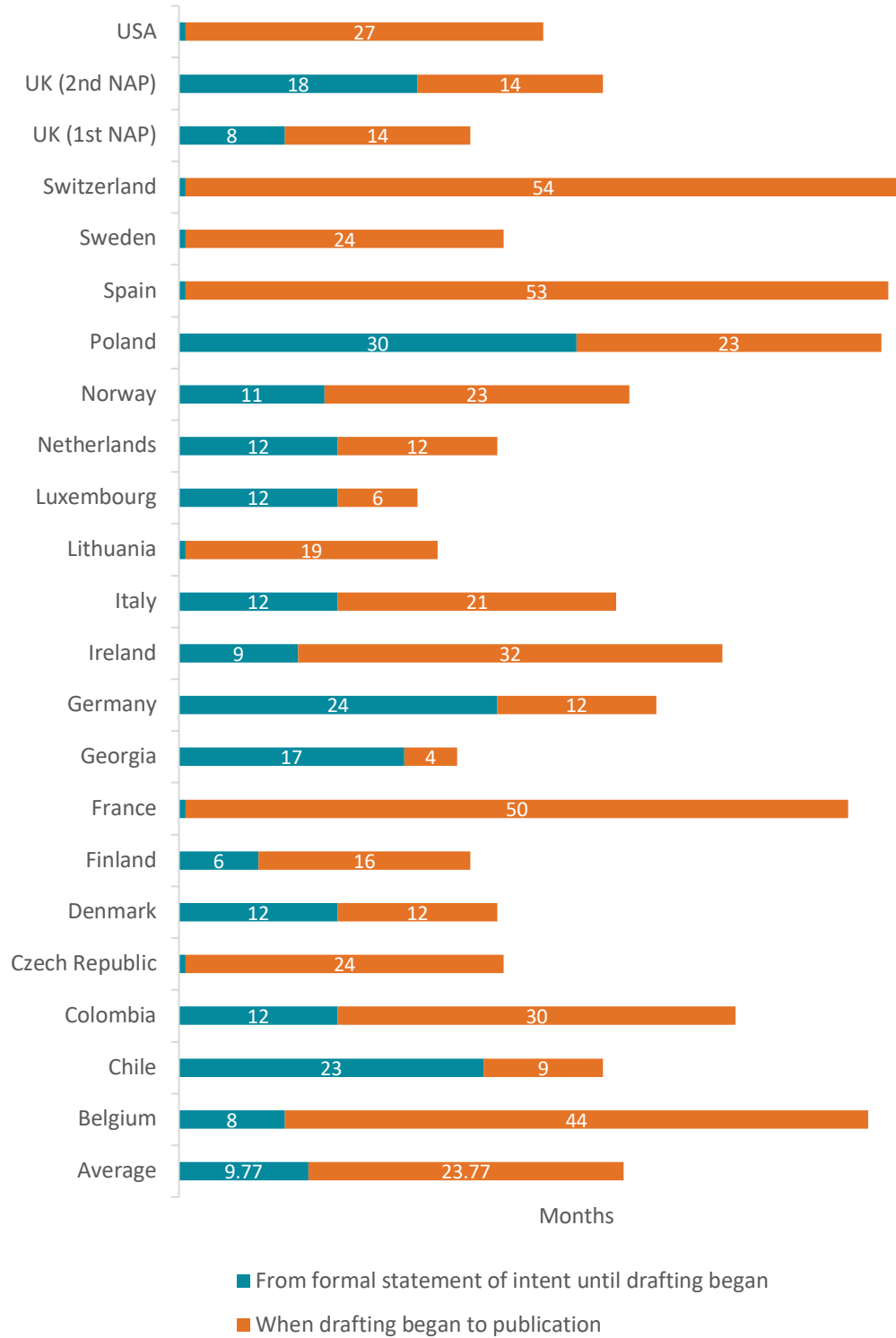


■ Ongoing ■ Fixed

The average duration of a fixed term NAP is 40.8 months

In terms of duration of the NAP-development process, so far it has taken states on average 33.5 months between issuing a first statement of intent to develop a NAP and final publication, and 23.7 months between the date when drafting begins and publication.

How long did it take to develop a NAP?



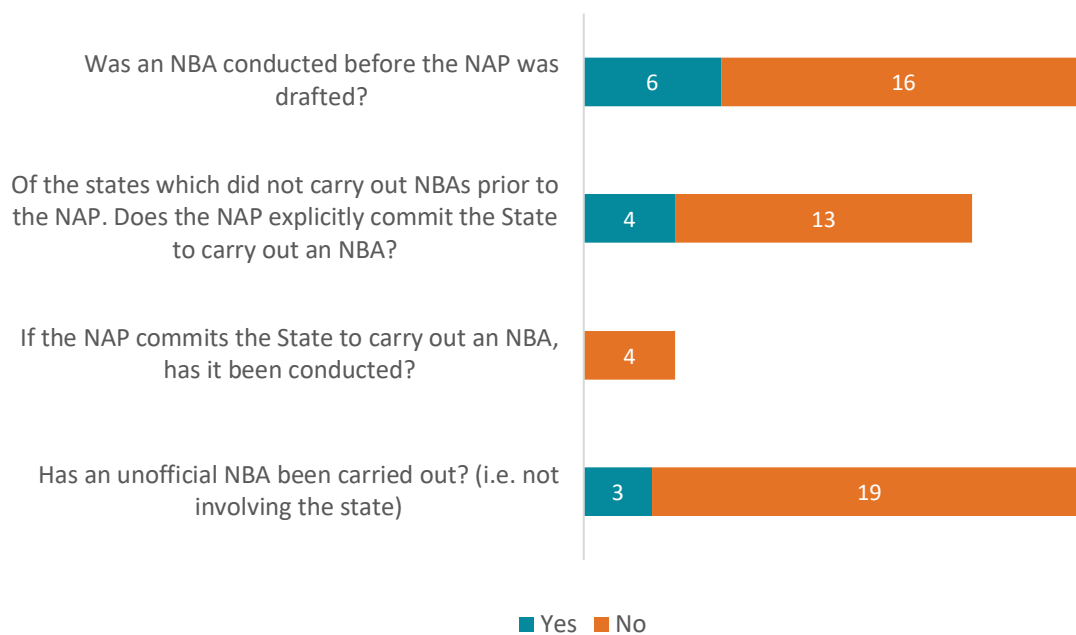
CHAPTER 2

NATIONAL BASELINE ASSESSMENT

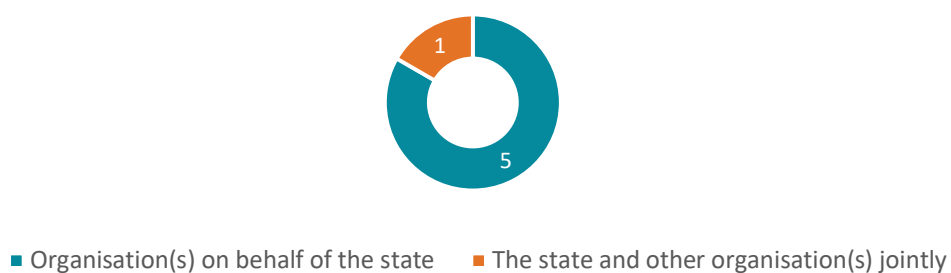
A national baseline assessment (NBA) on business and human rights has the primary objective of assessing the current level of implementation of the UNGPs in a given state. It brings together an analysis of the legal and policy gaps in UNGP implementation with an overview of the adverse human rights impacts of business to identify the most salient human rights issues in a given context. In this way, it serves to inform the formulation and prioritisation of actions in a NAP. Conducting an NBA is also an opportunity to build capacity on business and human rights topics among stakeholders involved in the research process, and to contribute to transparency and accountability in relation to the specific actions adopted in the NAP. The NBA should subsequently be used to monitor and evaluate whether these adopted actions had the desired effect.¹⁶

Of the 21 states with NAPs, 6 conducted an NBA before developing a NAP. 5 of these NBAs were conducted by organisations on behalf of the state, and 1 was conducted by the state and other organisations jointly.

Of the 4 additional states that committed to producing an NBA in their NAP, none have yet completed them (although some commitments have no deadlines and others are still within their deadlines).



If an NBA was undertaken, who did it?



CHAPTER 3

STAKEHOLDER PARTICIPATION DURING DEVELOPMENT

Participation should enable all relevant rights-holder and stakeholder groups to be involved in the NAP development process, and governments should take special measures to engage marginalised rights-holders throughout a NAP process. The goal of participation is to ensure NAPs are relevant in terms of issues affecting right-holders, which in turn requires access to information to ensure their effective participation. Business and human rights NAPS should:

- Enable rights-holder and stakeholder participation through, for example, the establishment of a permanent multi-stakeholder structure tasked with providing input at all stages of the process;
- Facilitate consultation meetings from inception, to the development of an NBA, drafting of the NAP, implementation and review;
- Ensure that consultations take place in a manner appropriate to the rights-holders and stakeholder in question, with attention paid to levels of knowledge and expertise in the subject matter and any potential language or social, cultural, financial, or other barriers to participation;
- Undertake capacity-building of rights-holders and stakeholders as necessary to enable meaningful participation for those who are marginalised or discriminated against.
- Publicise key documents, including the NBA, minutes of meetings, contributions from stakeholders, any drafts of the NAP, and reviews of implementation, in an accessible and timely manner; and
- Ensure that information published is adequate and accessible.¹⁷

All states held stakeholder events during their NAP development processes and all but 1 process involved both business and civil society.

Different states adopted different styles of stakeholder engagement events. This includes national multi-stakeholder seminars on business and human rights; stakeholder dialogues for specific geographic zones; separate workshops with

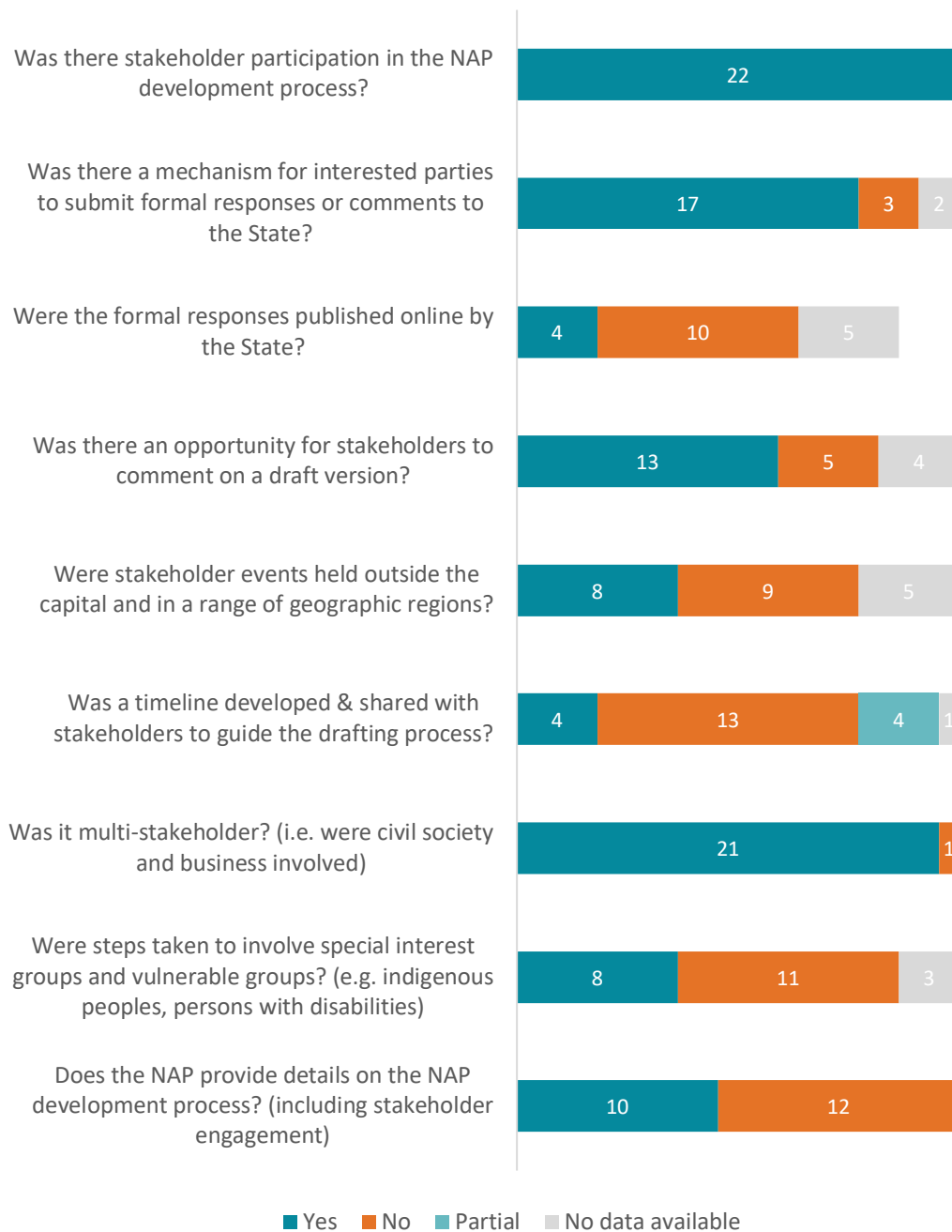
business and civil society; interviews; public consultations; open dialogues; expert consultations; and plenary conferences. Such events have also been held at different points in the NAP development process. Most states held between 1-10 stakeholder engagement events and 8 states held stakeholder events outside of the capital.

Rights-holders from affected groups and communities, especially those from marginalised groups, human rights defenders, journalists, and civil society organisations will often have relevant information and experiences to contribute to a NAP process. Yet these stakeholders may be wary or prevented from participating, for instance, due to lack of resources and capacity, intimidation, fear of reprisals, or social taboos. Given such constraints, measures to facilitate effective communication and participation may include: provision for confidential or anonymous submissions; providing financial support for travel and other consultation attendance costs; interpretation of materials and proceedings into minority languages; protection against negative repercussions for participation; and arrangements for local or stakeholder-specific dialogue events, such as gender-segregated events; and specific outreach to children and other groups.¹⁸

8 states took steps to involve special interest groups and vulnerable groups (e.g. indigenous peoples, persons with disabilities).

17 states established a mechanism for interested parties to submit formal responses or comments to the state and 10 states published such formal responses. 12 states provided an opportunity for stakeholders and rights-holders to comment on a draft version of the NAP.

4 states publicly shared timelines covering the whole NAP development process and another 4 published partial timelines covering specific parts of the development process.¹⁹



CHAPTER 4

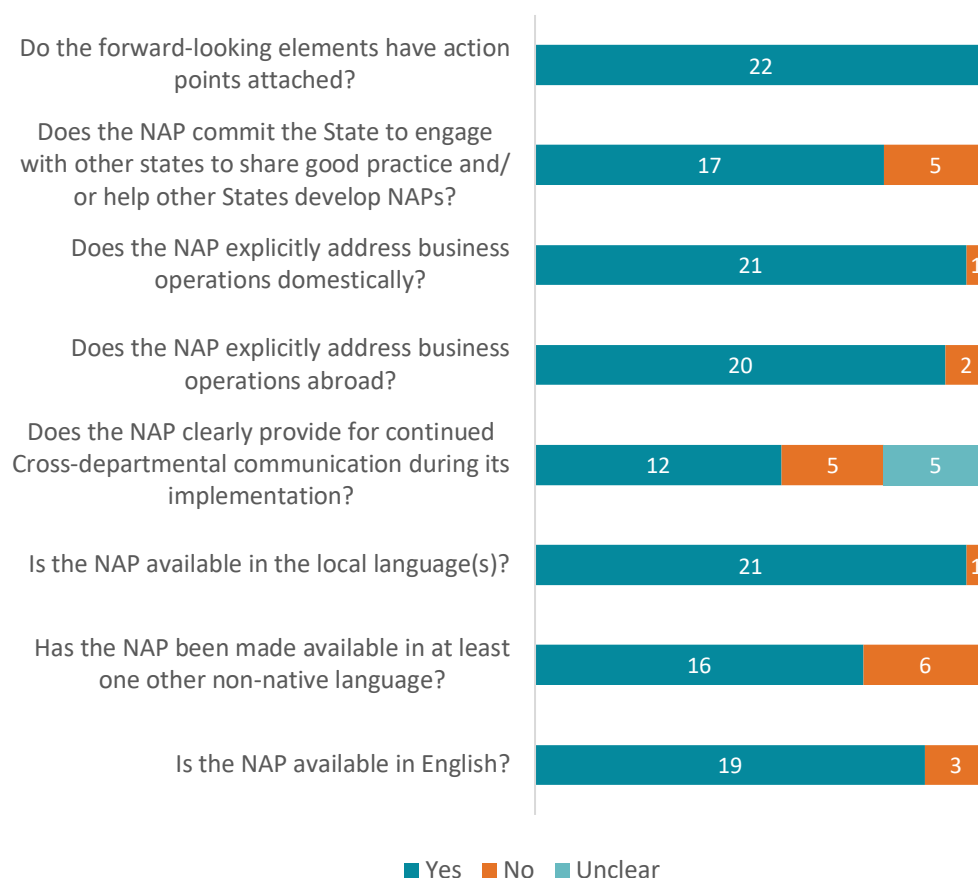
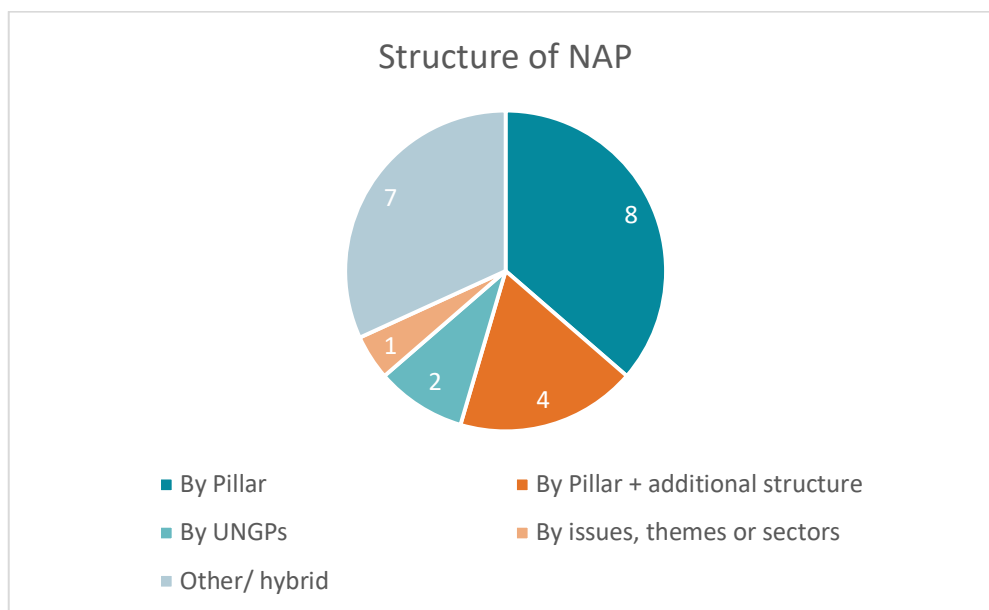
CONTENT

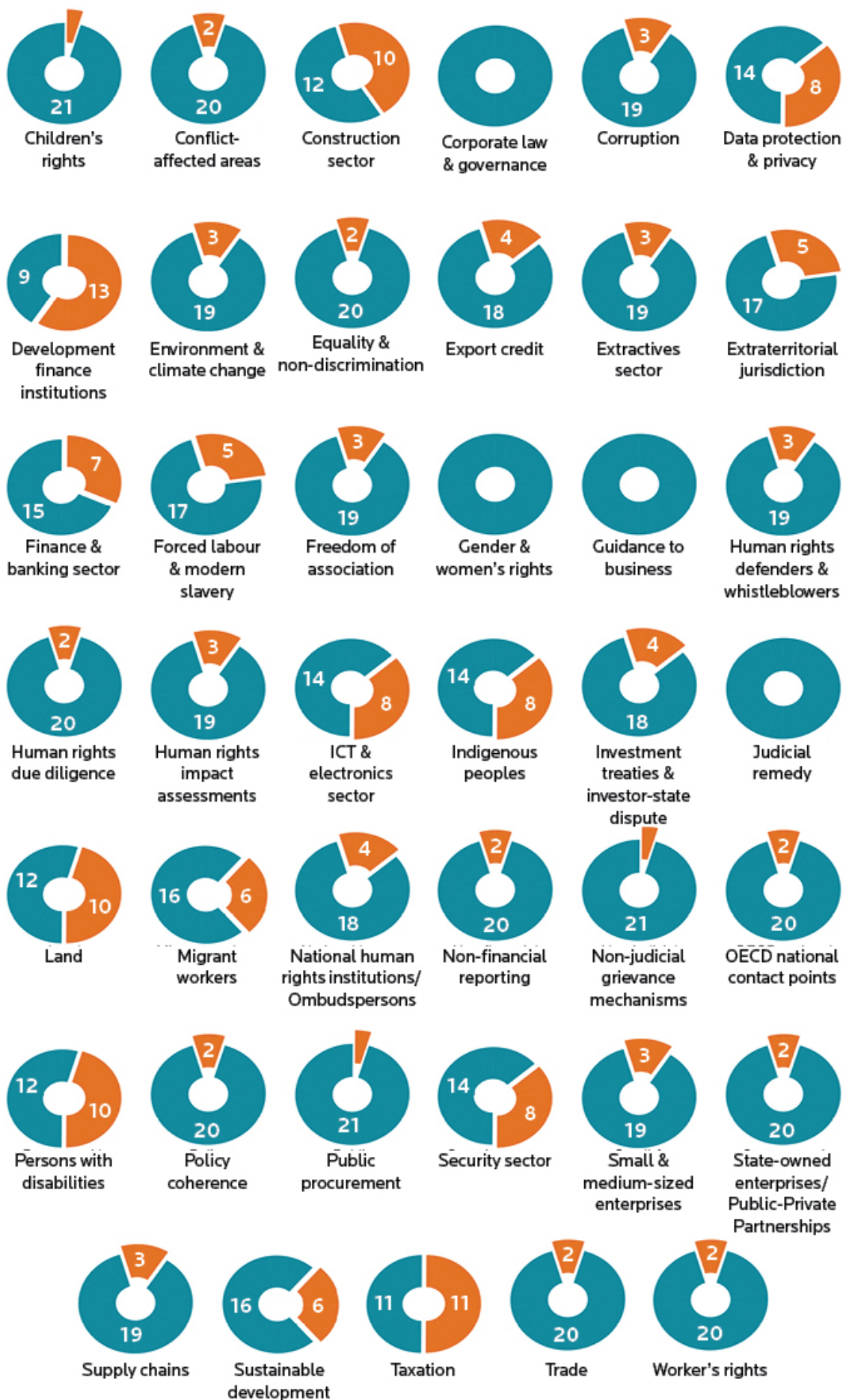
All NAPs contain forward-looking policy commitments and action points.

This initial analysis of NAPs 2013-2018 does not aim to review the quality or relevance of the substantive content of NAPs.²⁰ However, based on data presented via www.globalnaps.org/issues, it can be identified that NAPs address a broad range of relevant issues, themes and sectors, broadly in line with those highlighted by the UNGPs.²¹ Those which appear in at least 20 NAPs include:

- Children's rights
- Conflict-affected areas
- Corporate law and governance
- Equality and non-discrimination
- Guidance to business
- Human rights due diligence
- Judicial remedy
- Non-financial reporting
- Non-judicial grievance mechanisms
- OECD National Contact Points
- Policy coherence
- Public procurement
- State-owned enterprises/ public-private partnerships
- Trade
- Workers' rights

In addition, all but 1 NAP explicitly address business operations domestically, and all but 2 explicitly address business operations abroad. 17 NAPs commit the state to engage with other states to share good practice and/ or help other states develop NAPs.



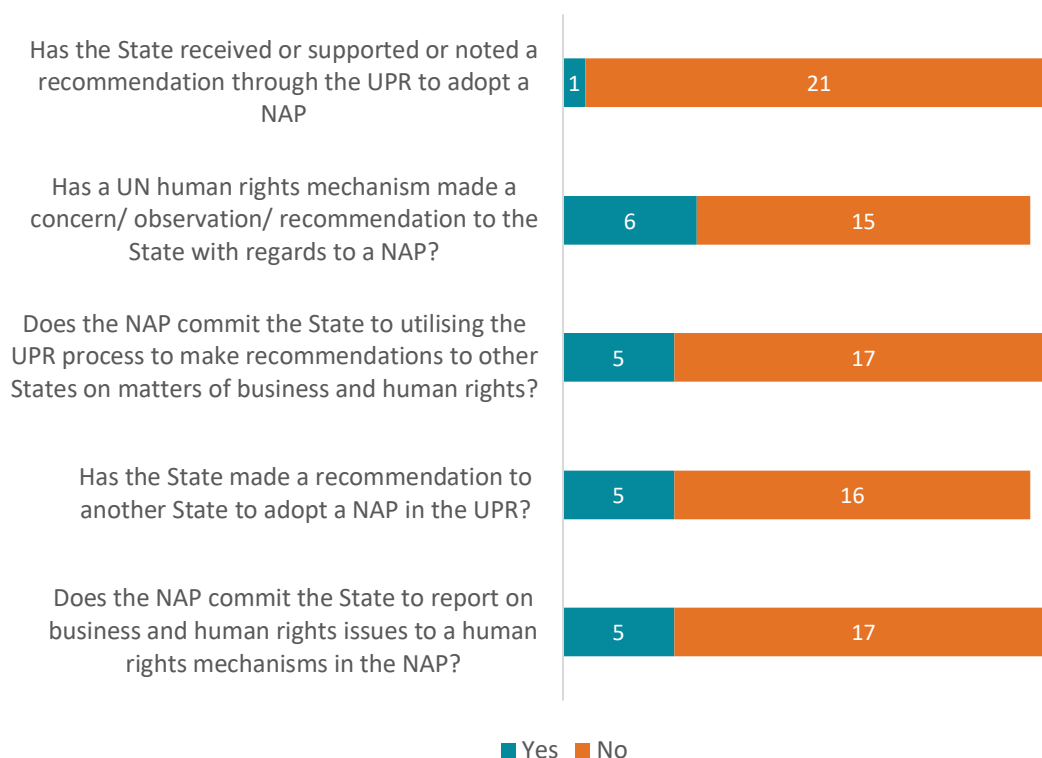


CHAPTER 5

HUMAN RIGHTS MECHANISMS AND THE 2030 AGENDA

5 states commit via NAPs to use the Universal Periodic Review (UPR) process to make recommendations to other states on issues relating to business and human rights. 5 states with NAPs have used the UPR process to recommend other states adopt NAPs (though notably these are different to the states which commit to such actions in their NAPs). Sweden has made 10 such recommendations, and Norway has made 3.

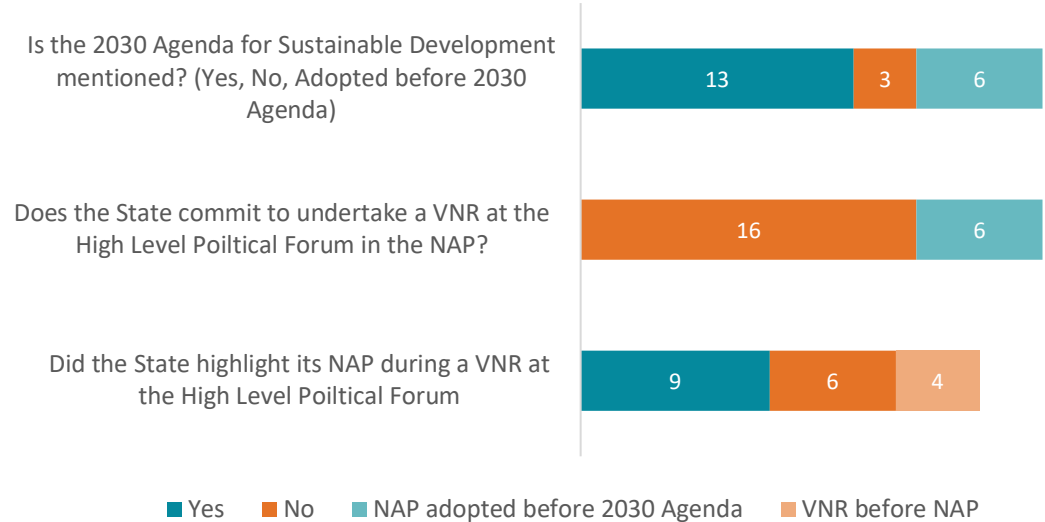
5 NAPs commit the state to report on business and human rights issues to a human rights mechanism.²²



The 2030 Agenda for Sustainable Development (2030 Agenda) and its 17 Sustainable Development Goals were adopted in 2015.²³ Of the 16 NAPs published subsequently, 13 reference the 2030 Agenda.

The 2030 Agenda established the High Level Political Forum which occurs on an annual basis. At the forum states can voluntarily commit to a review “to facilitate the sharing of experiences, including successes, challenges and lessons learned, with a view to accelerating the implementation of the 2030 Agenda. The Voluntary National Reviews (VNR) also seek to strengthen policies and institutions of governments and to mobilize multi-stakeholder support and partnerships for the implementation of the Sustainable Development Goals.”²⁴

Of the 15 states which have undertaken a VNR at the annual High Level Political Forum after publishing their NAP, 9 have highlighted their NAP in their VNR report.



CHAPTER 6

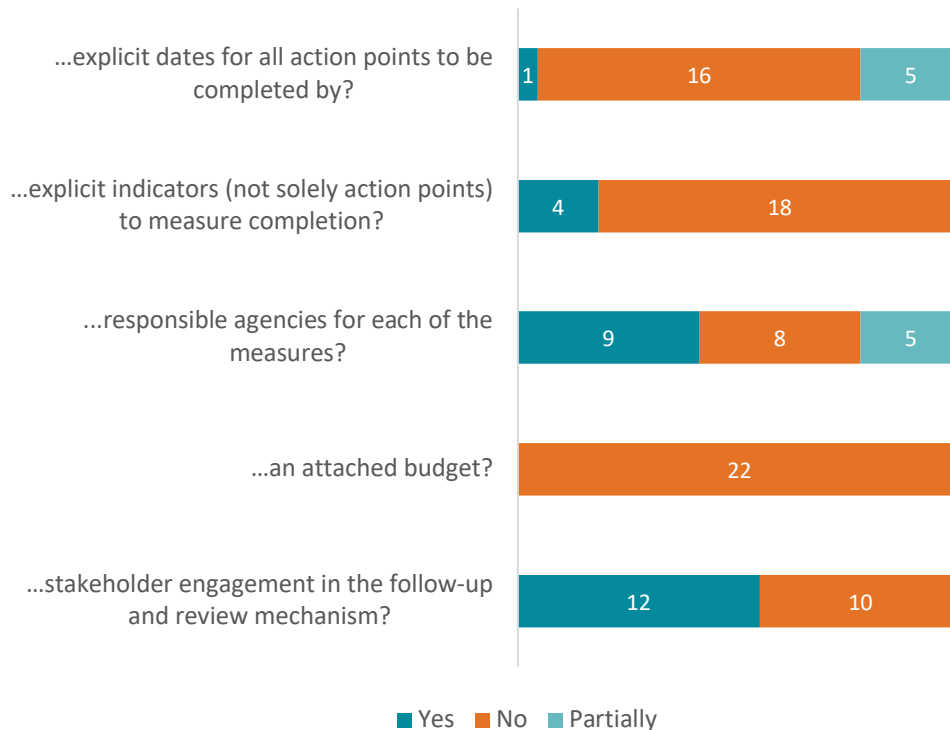
ACCOUNTABILITY

According to a human rights-based approach to development, accountability entails recognising the entitlements of rights-holders and the obligations of duty-bearers, thereby enabling rights-holders to hold duty-bearers in government and businesses accountable for their actions. Implications for a NAP on business and human rights in relation to accountability include:

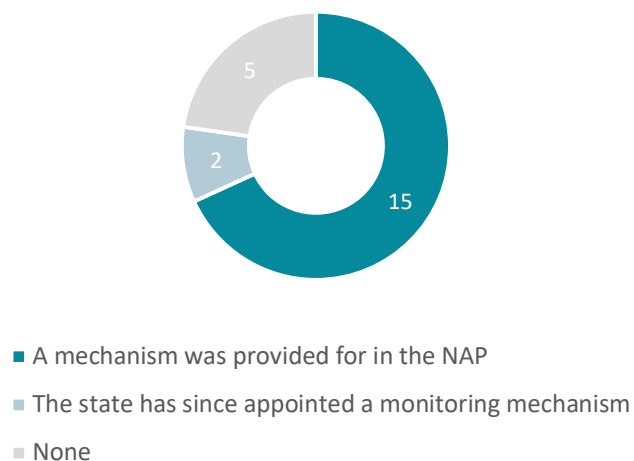
- Clearly defining responsibilities within the government for the development of the NAP;
- Focusing on and identifying responsibilities for the NAP's implementation, follow-up, and review; and
- Ensuring that the NAP addresses the most serious impacts of business activities and the access to remedy for rights-holders adversely affected by business.²⁵

A NAP should ensure that each action item is specific, measurable, achievable, relevant and time-bound (SMART). Effective accountability is enhanced when action points in NAPs are SMART. However, the action points in NAPs are often not fully SMART. 9 NAPs assign responsibility for actions to named entities, 6 include dates for some or all actions, 4 NAPs include explicit indicators or dates by which the actions are to be completed, and zero NAPs contain a budget covering all actions. Although the German NAP refers to providing staff and a budget necessary for monitoring. As discussed above, the majority of NAPs do provide for stakeholder and rights-holder engagement in follow-up and review mechanisms, while 17 NAPs have a monitoring mechanism of some form.

Does the NAP include...



What type of monitoring mechanism is in place overseeing the NAP?



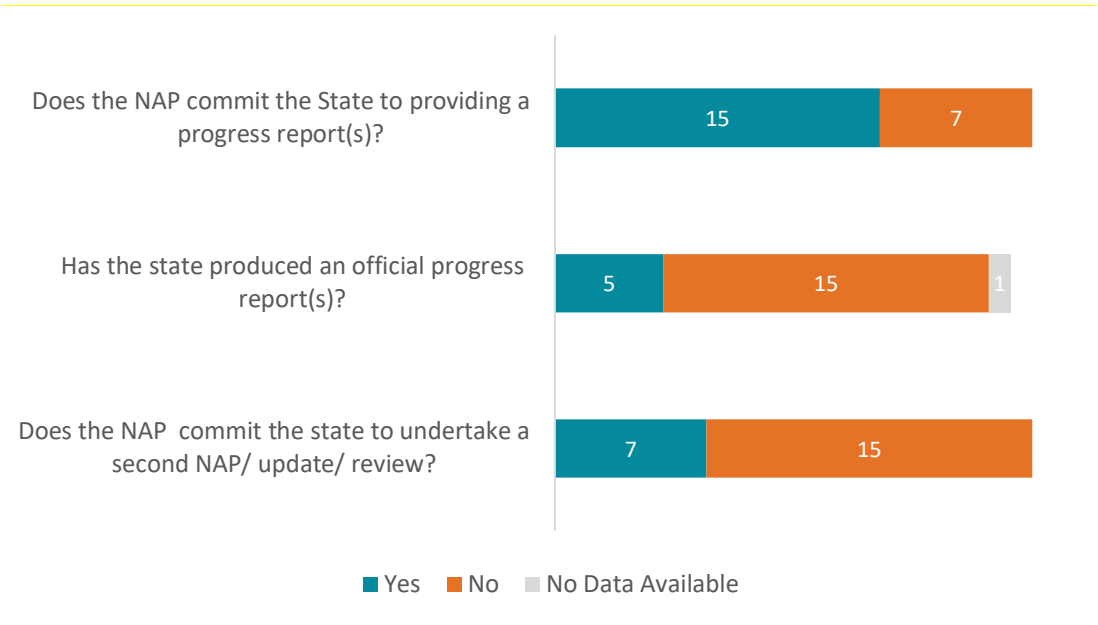
During a NAP lifecycle, it is important to periodically review and address what progress has been made in the implementation of the NAP as identified by stakeholders, including state institutions, businesses, and civil society. Reviews

can help identify challenges and make recommendations to improve implementation measures. Review processes should be explicitly detailed in the NAP, along with who is to undertake reviews and when they will occur. There are a number of forms that reviews can take, including reviews led by the government, multi-stakeholder groups, or independent national monitoring mechanisms.²⁶

15 states committed to produce progress reports in their NAP. To date, only 5 states have produced such progress reports.²⁷

In order to effectively realise the UNGPs, NAPs should not only be monitored, reviewed, and reported on, but should also be periodically updated. Incorporating a commitment to update a NAP allows the lessons learnt during creation, implementation, and review to be put into practice and demonstrates a commitment to progressively realise the “protect, respect, remedy” framework of the UNGPs.²⁸

7 NAPs commit the state to undertake a second NAP, or to provide an update or review the NAP.



END NOTES

¹ The UN Guiding Principles on Business and Human Rights are available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

² Human Rights Council Res. 26/22, U.N. Doc. A/HRC/RES/26/22, at 2 (15 July 2014)

³ See, e.g., A renewed EU strategy 2011–2014 for Corporate Social Responsibility, COM (2011) 681 final (Oct. 25, 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF>; Resolution on the Review of the EU’s Human Rights Strategy, EUR. PARL. DOC. 2062 (INI) (2012),

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0378&language=EN>; Council of Europe, Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights (Apr. 16, 2014), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c6ee3

⁴ Organization of American States, Resolution Promotion and Protection of Human Rights, OAS AG/RES. 2887 (June 14, 2016) (XLVI-O/16)

⁵ See, Validation Workshop of the African Union Policy on Business and Human Rights, African Union (Mar. 21, 2017), <https://au.int/web/en/pressreleases/20170321/validation-workshop-african-union-policy-business-and-human-rights>

⁶ State National Action Plans, UN OHCHR., <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

⁷ G20, Leaders’ Declaration: Shaping an Interconnected World (July 2017) [hereinafter G20 Leaders’ Declaration 2017], <https://www.g20.org/Content/EN/Anlagen/G20/G20-leaders-declaration.pdf;jsessionid=71191DF7C90A31FB537C3D42D3AC249B.s4t1?blob=publicationFile&v=11>

⁸ See National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool Claire Methven O’Brien, Amol Mehra, Sara Blackwell, and Cathrine Bloch Poulsen-Hansen, Business and Human Rights Journal, Volume 1, Issue 1, January 2016 available at https://www.cambridge.org/core/services/aop-cambridge-core/content/view/51687C20A72589C0D9A34B13F1790C15/S2057019815000140a.pdf/national_action_plans_current_status_and_future_prospects_for_a_new_business_and_human_rights_governance_tool.pdf

⁹ The UK has published an updated NAP, so there is a total of 22 NAPs.

¹⁰ See <https://www.globalnaps.org> for more details. This information is correct as of 20 November 2018 based on the information the Danish Institute for Human Rights has found through publicly available sources and through correspondence with state actors, academics, national human rights institutions, and civil society actors, amongst others. The use of countries here is used to cover developments in Scotland in developing a national action plan.

¹¹ For example Chile, Georgia, Kenya, Mexico, and Scotland

¹² 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/>

¹³ <https://globalnaps.org/wp-content/uploads/2018/06/dihr-icar-national-baseline-assessment-template-june-2018-road-testing-version.pdf>

¹⁴ <https://globalnaps.org/wp-content/uploads/2018/01/childrens-rights-in-national-action-plans-naps-on-business-and-human-rights.pdf>

¹⁵ As of 20 November 2018

¹⁶ See the DIHR, ICAR, National Baseline Assessment Template for more information <https://globalnaps.org/wp-content/uploads/2018/06/dihr-icar-national-baseline-assessment-template-june-2018-road-testing-version.pdf>

¹⁷ For more 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/>

¹⁸ For more 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/>

¹⁹ The data here refers to the states where information could be gathered

²⁰ The International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ) conducted assessments of existing NAPs in 2017 which explores their substantive content. See <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/599c543ae9bdf40b5b6f055/1503417406364/NAP+Assessment+Aug+2017+FINAL.pdf>

²¹ This is a binary analysis. One NAP could have a chapter on children's rights and another could just mention the state has ratified the Convention on the rights of the child, and both would be counted as covering children's rights.

²² This includes "different international mechanisms of human rights" (Chile), "the [Danish] Council for Corporate Social Responsibility and the OECD's Investment Committee" (Denmark, although the first of these no longer exists), the UPR process (Spain), and the UN Committee on the Rights of the Child and the UPR process (Finland and Switzerland).

²³ The 2030 Agenda for Sustainable Development is available here <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

²⁴ For more information see <https://sustainabledevelopment.un.org/vnrs/>

²⁵ For more 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/>

²⁶ For more 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/>

²⁷ Note the UK has two NAPs but is counted as one state

²⁸ For more 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/>

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