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Implementing the UN-Framework II: the national level

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Overview

- National implementation within the EU: the renewed EU strategy on CSR
- National implementation based on the UN Guiding Principles
 - The Working Group's roadmap
 - Substantive elements to be included in a national action plan



National action plans: Renewed EU strategy on CSR

- “A renewed EU strategy 2011-14 for Corporate Social Responsibility (CSR)”, COM (2011)681
- New definition of CSR as “the responsibility of enterprises for their impacts on **society**”
- The Commission also [...] invites EU Member States to develop by the end of 2012 national plans for the implementation of the UN Guiding Principles



National action plans: The UN Working Group

- Report to the UN GA in 2012 (A/67/285): States should consider adopting a national action plan to implement the Guiding Principles
- February 2014: Strategic focus on NAPs (A/HRC/WG.12/7/1) and open consultation
- Current state of affairs:
 - As of May 2014, four states have produced a NAP: UK, Netherlands, Italy and Denmark
 - A number of states are working on NAPs, e.g. Switzerland, Finland, Spain



The Working Group's roadmap to develop guidance on State national action plans

- May - June 2014: Working Group to draft its report to the UN General Assembly (GA) on NAPs;
- June - November 2014: Further Working Group research, consultation and drafting of guidance on NAPs;
- October 2014: Working Group to present its report on NAPs to GA: conceptual basis for guidance on the development, implementation and follow up
- December 2014: Working Group to launch draft (pilot) guidance
- 2015: Review of the guidance;
- December 2016: Working Group to release its final guidance



Substantive elements to be included in a national action plan

- State approach (Guiding Principle 1)
- Extraterritoriality (GP 2)
- State regulatory and policy functions (GP 3)
- State-Business nexus (GP 4)
- Privatisation and public procurement (GPs 5 & 6)
- Conflict-affected areas (GP 7)
- Policy coherence (GPs 8-10)
- Access to remedy (GPs 25-28)



Guiding Principle 1: State duty to protect

➤ Inside Government

- Identify the relevant State ministries and agencies whose work touches on business and human rights issues
- Gauge and increase the level of awareness on business and human rights issues in relevant State ministries and agencies
- Consult on, identify and communicate the most pressing business and human rights issues that the State should act upon

➤ Root and branch look at the State's existing measures under pillar 1 of the Guiding Principles (duty to protect)

- Establish if the State has already taken domestic measures (policies, legislation or other regulation) to protect individuals against human rights abuse by business enterprises



Guiding Principle 2: Extraterritoriality

➤ Home State measures to ensure that business enterprises respect human rights in their operations abroad

- Outline the domestic measures that clearly set out the expectation that business enterprises respect human rights abroad
- Identify if the State adopts and enforces any extraterritorial legislation

➤ Implementation of recommendations from UN Treaty Bodies or the Human Rights Council

- Check if the State has received recommendations from UN Treaty Bodies or the HR Council's UPR process on steps to prevent abuse abroad by business enterprises within its jurisdiction
- Check if the State has received communications from UN Special Mandate holders on the issue of extraterritoriality



Guiding Principle 3: Scrutinising State policies and regulations

- Legislation that directly or indirectly regulates business activities that may impact on human rights
- Laws that govern the creation and on-going operation of business enterprises
- Policies that seek to foster business respect for human rights and State guidance to business enterprises
- Human rights due diligence, reporting and communication by business enterprises
- The role of national human rights institutions



Guiding Principle 4: State-Business nexus

- State owned or controlled business enterprises
 - Ensure that State agency management reports include human rights impact assessments of State owned or controlled business enterprises.
 - Ensure that relevant government departments can scrutinize and have oversight over the human rights impacts of State owned or controlled business enterprises.
- Agencies linked to the State
 - Examples include: export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions



Guiding Principles 5 & 6: Privatisation and Public Procurement

- Assess whether the State performs a human rights impact assessment of the potential consequences of a planned privatisation of provision of goods or services.
- Make clear that public procurement contracts or legislation clarify the State's expectations that the enterprises delivering services and goods respect human rights, e.g.
 - Availability, accessibility, quality, non-discrimination, etc.
 - Assess whether public procurement contracts comply with human rights standards
 - Make clear that the terms of contracts with these enterprises should provide for due regard to States' relevant obligations under national and international law



Guiding Principle 7: Conflict-affected areas

- Help business enterprises to identify, prevent, mitigate and account for how they address their human rights impacts
- Provide assistance to business enterprises to help them assess and address the heightened risks of causing, contributing or having their activities linked to adverse human rights impacts in conflict-affected areas
- Suggest measures that States could consider taking if companies are unwilling to meet the standards set in conflict-affected situations
- Ensure that current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses



Guiding Principles 8-10: Policy coherence

- Capacity building of State institutions
- Facilitate multi-stakeholder initiatives and cooperation with civil society and business enterprises
- Economic agreements concluded by States
 - Concerns international investment agreements, bilateral investment treaties and free-trade agreements
 - Make sure that the negotiation process between the host State and the business investor is designed to identify, avoid and mitigate human rights risks
 - The host State should retain adequate policy and regulatory ability to protect human rights under the terms of the agreements that it has signed.
- States as members of multilateral institutions



Guiding Principles 25-28: Access to remedy

- State-based judicial mechanisms
 - Ensure that no legal barriers prevent legitimate cases from being brought before the courts
 - Ensure that no practical or procedural barriers prevent legitimate cases from being brought before the courts
 - Imbalances between parties
- State-based non-judicial grievance mechanisms
 - Identify the different types of administrative, legislative and other non-judicial mechanisms that exist to address business-related human rights abuses



Guiding Principles 25-28: Access to remedy (cont'd)

- Non-State-based grievance mechanisms
 - The State should raise awareness of non-State-based grievance mechanisms
 - The State should ensure access to non-State-based grievance mechanisms
- Effectiveness criteria for non-judicial grievance mechanisms
 - Do the grievance mechanisms promote trust in the stakeholder groups they are intended for?
 - How does the State ensure that the different parties to a grievance process cannot interfere with its fair conduct?
 - Has the State built awareness of the grievance mechanisms, taking into account accessibility elements?