

Open Public Consultation
**Substantive Elements to be Included in Guidance on National Action Plans to Implement
the Guiding Principles on Business and Human Rights (NAPs)**

Submission of the European Coalition for Corporate Justice

The European Coalition for Corporate Justice (ECCJ) is the leading European civil society network advocating for legal frameworks to ensure corporations respect human rights in their global operations. ECCJ comprises 21 members active in 15 European countries, whose national platforms bring together over 250 NGOs, trade unions, consumers' organizations and academic institutions. By working together at the European level, the members aim to develop a common vision of corporate justice and build capacity among civil society organisations in order to influence European and national policies towards better regulation for corporate accountability.

ECCJ considers the UNGPs as a key element of the policy debate on business and human rights. ECCJ has called on the European Union to embed these Guiding Principles in the legal and policy reforms which contribute to shaping the transparency and accountability of multinational corporations and the ability of victims to access remedies.

ECCJ supports the submission made jointly by the International Corporate Accountability Roundtable (ICAR) and the Danish Human Rights Institute (DHRI) to this open public consultation. ECCJ also strongly supports the use by governments of the "*NAPs Toolkit*" released by these two organizations following an extensive consultation of experts and practitioners.

ECCJ draws the following lessons from the development of NAPs by EU governments:

- The authorities in charge of developing a NAP should have necessary competencies to ensure engagement of other relevant authorities and implementation of the final NAP.
- The process of NAP development should be endorsed and supported by relevant political institutions at ministerial and parliamentary levels. Fully implementing the UNGPs may require legislative changes (Guiding Principles 1 and 3). This needs to be acknowledged at the beginning of the process and the process needs to be backed by institutions that have authority to instigate such reforms. These relevant institutions and authorities must have assigned or recognized explicitly their responsibility to develop NAPs and to act on its recommendations.
- Policy coherence is essential. Discussions on Corporate Social Responsibility (CSR) and Business & Human Rights tend to be restricted to the margins of state policies and to supportive measures. CSR is typically separated from discussions concerning company, criminal, civil law which fundamentally shapes the environment for business conduct. This issue needs to be addressed all the way from the baseline assessment to the NAP implementation.
- To date none of the existing NAPs have been rooted in a baseline assessment. A structured baseline assessment is a crucial first step in the development of the NAPs. It should adequately inform the content of the NAP as well as measure any future progress. It is therefore highly recommended that the baseline assessment be developed by or in consultation with respected independent experts, rather than by in-house government officials. Stakeholder consultations are an essential part of this process as well.
- With the exception of the UK NAP, none of the NAP's released to date includes a timeframe for revision. There should be a clear indication of the period during which the NAP is applicable and the revision process that is foreseen at the end of that period.

- The NAPs developed so far by European States have ignored two crucial areas, where the existing law permits or encourages behaviours which contradict the UNGPs or prevent victims of human rights abuses from asserting their rights:
 - The European Union, Switzerland and Norway are home to a large number of multinational enterprises that have substantial operations outside of Europe, including in areas associated with high risks of human rights violations. The UNGPs introduced the concept of Human Rights Due Diligence (HRDD) that explains their responsibility in this respect. HRDD surpasses the twin legal principle of separate legal personality and limited liability, which insulates parent companies for any responsibility for acts of other members of the enterprise they control. In this context, the existing rules of company, civil and criminal law should be examined and the baseline assessment studies and NAPs should at least consider if it is necessary to adjust them to avoid this conflict and to support the implementation of the UNGPs. However, all NAPs released to date have remained silent on this issue. As the study conducted by ICAR, ECCJ and the Canadian Network on Corporate Accountability (CNCA) "*Human Rights Due Diligence: The Role of States*" documented, the HRDD concept is indeed a regulatory option for the States and as such it has been used worldwide to address a number of distinct corporate impacts.
 - Likewise, the released NAPs don't adequately address the issue of access to remedy. While all NAPs mention the third pillar of the UNGPs, little or no commitment can be found on how States plan to address it, in particular on access to *judicial* remedies – whether in domestic or extraterritorial context. These NAPs don't even explain why this part of the UNGPs was ignored. Yet, as documented in the ECCJ, CORE and ICAR's "*Third Pillar*" Report and various other studies (e.g. Oxford Pro Bono Publico's submission to Prof. Ruggie), victims often face significant obstacles and access to justice is not available.

ECCJ and its members look forward to continuing to engage with the UN Working Group throughout the course of this important work.

Sincerely,

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Links to ECCJ members' assessments of released NAPs

CORE Coalition (UK) – Good Business? Analysis of the UK Government Action Plan on Business & Human Rights: http://corporate-responsibility.org/wp-content/uploads/2013/12/GoodBusiness_COREcommentonUKNAP_final_Dec2013.pdf

MVO Platform (The Netherlands): Dutch National Action Plan on Business and Human Rights: <http://mvoplatfom.nl/news-en/dutch-national-action-plan-on-business-and-human-rights>