



Comparative Analysis of National Action Plans and Other Legal Mechanisms on Business and Human Rights

Human Rights Now

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The information described on this report¹ solely refers to each country's National Action Plan (NAP), and its updated version, if any, or to any other legal mechanism of each country. Therefore, the information may not necessarily reflect ongoing/latest discussions and/or developments, unless specifically mentioned. Additionally, the information on discussions in Japan is current up to March 2019.

¹ Alexi Abel and another fellow led in the creation of this report, with the support of the Nishimura & Asahi law office pro bono practice team. HRN expresses our great appreciation to all that contributed.

1. Executive Summary

1.1 Introduction

In response to the recommendation by the UN Working Group on Business and Human Rights, more than 20 countries have drafted and adopted a National Action Plan (NAP) for Business and Human Rights since 2013. In Japan, the government has launched a formulation process with a baseline study in 2018. The baseline study is comprised of desk research by the government and multi-stakeholder meetings, which were held a total of 10 times in 2018, attended by business associations, trade unions, academia, civil society organisations, international organisations, and government officials.

As result of the meetings, the government, through the Ministry of Foreign Affairs, has set seven prioritised areas to be focused on in the Japanese NAP: 1) Public procurement; 2) Equality under the law (people with a disability, LGBT, and women); 3) Labour (children, foreigners, including technical trainees); 4) Access to remedy; 5) International treaties (e.g. investment agreement); 6) Supply chains; and 7) Small and Medium Enterprises (SMEs). The Ministry is planning to draft a NAP in 2019, based on the above prioritised areas, to finalise and adopt it by the middle of 2020.

Under such circumstances, Human Rights Now has conducted comparative research of the NAP (or relevant documents) of 11 countries, including all G7 countries, with a view to understanding the trend and discussions in other countries' NAP to consider the validity of the seven prioritised areas of the Japanese NAP and the degree of commitment that will be expected for Japan, as one of the world's biggest economies, thus a significant influencer in the area of business and human rights.

1.2 Overall comparison to the proposed focused areas of the Japanese NAP

In this report, we have reviewed the National Action Plans (NAPs) or relevant documents of the following countries: Australia, Canada, Denmark, France, Germany, Italy, Netherlands, South Korea, Sweden, the United Kingdom, and the United States (including California).

As the NAPs are part of a broader effort towards global improvement on Business and Human Rights, this document refers to developments in California, Canada and Australia where these are directly relevant to initiatives in a NAP. However, it must be noted that California, Canada, Australia and South

Korea do not have a NAP on Business and Human Rights, although South Korea does have a chapter on Business and Human Rights in its Human Rights National Action Plan.²

As such, upon the review of the NAP and related documents of the above-mentioned countries, we have established five focused areas to be highlighted in this report: 1) Human Rights Due Diligence/Impact Assessment; 2) Remedy; 3) Trade; 4) Migrant Rights & Migrant Workers; and 5) Development Assistance. As far as we have identified, these are the top five areas most commonly and widely discussed in the NAPs of those countries. Among the five areas, three of them (Remedy, Trade, and Migrant Rights & Migrant Workers) overlap with the prioritised areas by the Japanese NAP, whereas two areas (Human Rights Due Diligence / Impact Assessment and Development Assistance) are currently not prioritised by Japan.

When the UN Working Group on Business and Human Rights recommended nations create NAPs on Business and Human Rights, the intention was that the NAPs be part of each nation's duty to implement and disseminate the United Nations Guiding Principles on Business and Human Rights (UNGPs).³ A key part of the UNGPs is the concept of Human Rights Due Diligence,⁴ and thus Human Rights Due Diligence / Impact Assessment was particularly emphasised in the majority of the NAPs we reviewed for this report. In many countries, legislation has been introduced to create obligations for corporations to create impact assessments in which they report on the human rights impact of actions in their supply chain. Due diligence can also be used to improve human rights in the financial dealings of state agencies and in the case of specific trade issues such as conflict minerals. Therefore, due diligence is a key area where developed countries are using both legislation and policy to meet their human rights obligations.

As for Development Assistance, it was picked up in the NAPs of Sweden and Denmark, and in a majority of the G7 countries, such as, France, Germany, UK, and US. Many of these countries show strategic and coherent approaches that combine promotion of responsible trade and investment and sustainable development of recipient countries. In other words, they see that establishing a level playing field for responsible business would benefit economies of not just recipient countries, but donors and other

² The National Human Rights Commission of Korea also announced "National Human Rights Policy Basic Plan Recommendation of Business and Human Rights" on September 2016

³ United Nations Human Rights Office of the High Commissioner, 'State national action plans on Business and Human Rights', <https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx>.

⁴ John Gerard Ruggie 2011, *United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, guidelines, United Nations Office of the High Commissioner for Human Rights, Geneva at 16 – 24.

international businesses, and therefore, policy and programme of development assistance are to be aligned with such objectives.

In addition to due diligence and development assistance, remedies were also a focus. While approaches to remedies are diverse, most common was use of a National Contact Point (NCP) or a specific office such as an Ombudsman or Commissioner to hear complaints and recommend remedies. Trade was another focus, and commonly there is an impetus to prioritise sustainability and human rights in trade and investment agreements. Finally, another key focus was fair treatment of workers, particularly in terms of how to protect migrant workers' rights.

2. Examples of each country's NAP by issue

2.1 Human Rights Due Diligence / Impact Assessment

2.1.1 Section summary

Due Diligence and the State

Due diligence can overlap with financial dealings of state agencies. For example, in France, public agencies such as the COFACE (the governmental credit insurer agency) and the AFD (the French Development Agency) have due diligence requirements including to monitor their foreign activities' impacts on human rights. In the Netherlands, due diligence or export credit insurance requires companies to sign a declaration that they will seek to abide by the OECD Guidelines. Similarly, the Swedish Exports Credits Guarantee Board (EKN) sets out how environmental and human rights due diligence should be conducted in all business projects applying for export guarantees, in line with OECD recommendations.

Due Diligence and Conflict Minerals

Italy, Germany and Sweden introduced due diligence with respect to minerals from conflict-affected and high-risk areas. In the case of Italy, there are measures so that European Union importers of specified minerals only import from conflict-free, responsible sources. Germany also supports the prevention of use of minerals from conflict-affected and high-risk areas. Sweden, meanwhile, supports the 'OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas'. The United States has due diligence requirements for corporations to limit their use of conflict minerals specifically from the Democratic Republic of the Congo (DRC) or an adjoining country.

Impact Assessment

Due diligence may require legal obligations that corporations must meet. In the United Kingdom, Chapter 4A of the Companies Act was inserted in 2013 so that directors of certain listed companies must consider human rights issues when making annual strategic reports.

Various Western countries have created statutory duties corporations must follow in order to fulfil their human rights obligations. The most significant of these are the national statutes of the United Kingdom, France and Australia. The first statute is France's 2001 Act on New Economic Regulations, also known as the 'NRE Act', which establishes reporting requirements for corporations, specifically social and environmental information 'listed companies' must disclose.

The second statute is the California Transparency in Supply Chains Act of 2010 (CTSCA) which legislates for corporate reporting as part of corporate due diligence. This means that retail sellers and manufacturers doing business in California with an annual global revenue of over \$100 million are required to post on their website how, if at all, they are meeting their obligations to avoid or mitigate human trafficking in their supply chains.⁵ Notably, however, this development is not part of the US NAP.

Reporting requirements similar to those in the CTSCA have been adopted in both the United Kingdom and Australia. In the United Kingdom, the Modern Slavery Act 2015 requires certain commercial organizations (wherever they are incorporated) that carry on a business in the UK to disclose how they implement anti-forced labour measures. In Australia, the Modern Slavery Act 2018 (Cth) similarly sets reporting requirements regarding human rights within corporate supply chains.

2.1.2 Country information

Australia

The *Modern Slavery Act 2018* (Cth) clarifies corporations' reporting requirements about slavery within their supply chains. Section 16 of the Act sets out mandatory criteria that each statement must include. Mandatory criteria include reporting on the structure, operations and supply chains of the business, the risk of modern slavery practices in the operations and supply chains of the business, and how the business conducted its assessment to reduce those risks, including due diligence and remediation processes. Section 16 of the Act also requires the business to explain how effective the risk-reduction is and how the business is coordinating with its subsidiaries. If a corporation does not meet its reporting obligations, Section 16A (1) empowers the minister to request a corporation to do either or both of the following:

- “(a) provide an explanation for the failure to comply within a specified period of 28 days or longer after the request is given;*
- (b) undertake specified remedial action in relation to that requirement in accordance with the request within a specified period of 28 days or longer after the request is given.”*

Section 24 of the Act establishes the relevant minister's obligation to, three years after the Act has commenced, conduct a review on the Act's operation and any potential reforms to the Act. Sections 18

⁵ Karen Stauss (2017) 'Forced Labor in Supply Chains: Addressing Challenges', 65 *United States Attorneys' Bulletin* 169 at 171-172.

and 19 provide for a publicly accessible and free-of-charge online registry (for business statements made under the Act) managed by the Australian government. Sections 9 and 10 establish that the Act has extra-territorial application and therefore will apply throughout the operations of a business's supply chain.

France

The 2001 Act on New Economic Regulations, otherwise known as the NRE Act, requires listed companies to disclose specific social and environmental information in their management report. These requirements were strengthened by the Act of 12 July 2010, also referred to as the Grenelle II Act. Firstly, under Article 224 of this Act, asset management companies' annual reports must explain how their investment policies incorporate environmental, social and governance criteria. Secondly, under Article 225 of this Act and the decree of 24 April 2012, listed companies and non-listed companies with more than 500 employees and over €100 million in net turnover must publish more detailed non-financial information, which is subject to independent third parties' verification. This third party must then prepare a report certifying the quality of the company's reporting and provide a 'reasoned opinion' on the accuracy of information provided, and also on the explanations given by the company for any omitted data.⁶

Moreover, the Act of 27 March 2017 on the corporate duty of vigilance for parent and instructing companies imposes a duty of care on companies employing over 5,000 employees in France, or over 10,000 employees in France and abroad. The duty of care includes effective implementation of a 'vigilance plan'. The vigilance plan must set out 'reasonable vigilance measures to adequately identify risks and prevent serious violations of human rights and fundamental freedoms, risks and serious harms to health and safety and the environment'. The new Act also makes companies potentially liable for failures to comply with their vigilance plan, or inadequacy of their vigilance plan, if such failure to comply with their obligations under the new Act can be linked to harm to an injured party.⁷

The French export credit agency, COFACE, has played a special role as a public institution with regard to human rights due diligence. It systematically applies the Recommendations of the OECD Council on Common Approaches for Officially Supported Credits and Environmental and Social Due Diligence ('the Common Approaches'). The Common Approaches establish strict common standards for OECD

⁶ Office of the Ambassador at large for Corporate Social Responsibility of France (2012) 'The French legislation on extra-financial reporting: built on consensus', at 5 (available at https://www.diplomatie.gouv.fr/IMG/pdf/Mandatory_reporting_built_on_consensus_in_France.pdf).

⁷ Sandra Cossart, Jérôme Chaplier, Tiphaine Beau de Lomenie (2017) 'The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All' Volume 2, Issue 2, *Business and Human Rights Journal* 317, especially at 321.

countries and require due diligence determining project impacts on human rights. Detailed impact assessments must be completed before COFACE awards government guarantees to projects likely to have major impacts on CSR, especially human rights. The inter-ministerial guarantee commission based at the Ministry of the Economy and Finance also examines these requirements. Such impact assessments are published on COFACE's website.

Pursuant to Article 8 of the French Act of 7 July 2014, the AFD's development and international solidarity policy must take into account the public and private actors' social and environmental responsibility. Furthermore, the companies must implement risk management procedures to prevent or mitigate social, health and environmental damage and human rights abuses that may arise as a result of their activities in partner countries. Also, the AFD must incorporate social responsibility into its governance system and operations. Furthermore, the AFD must implement measures to evaluate and control the environmental and social risks of the operations it funds, and to promote the financial transparency of businesses involved in these operations in each of these countries.

Germany

The federal government expects all enterprises to introduce human rights due diligence processes (a human rights policy statement; procedures for the identification of actual or potential adverse impact on human rights; measures to ward off potentially adverse impacts and review of the effectiveness of these measures; reporting; and a grievance mechanism) in a manner commensurate with their size, the sector in which they operate and their position in supply and value chains. Their compliance will be reviewed annually from 2018.

The federal government's aim is that at least 50% of all Germany-based companies with over 500 employees will have incorporated the elements of human rights due diligence into their corporate processes by 2020. If more than 50% of these companies fail to take this voluntary action by 2020, the German government will consider further measures including legislation.⁸ Based on the response from companies, the federal government will also consider how to require such commitment to SMEs.

As for sector-specific promotion of human rights due diligence, the federal government will publish a

⁸ While deadline of the above-mentioned plan was set to be 2020 on the NAP, it is reported, as of February 2019, that the German Federal Ministry for Economic Cooperation and Development has drafted an as of yet unpublished law' on obligations of human rights due diligence for German companies. While there is restriction on business sectors subject to the obligation, the threshold of the number of employees has gone down to 250 (and more than 40 million Euros annual turnover), compared to the above-mentioned original idea on the NAP, showing the government's strong intention to commit the initiative. Details are mentioned on this webpage: <https://www.business-humanrights.org/en/german-development-ministry-drafts-law-on-mandatory-human-rights-due-diligence-for-german-companies>.

study identifying high-risk sectors and regions of particular relevance to the supply and value chains of German business. Based on this study, sector-specific guides to the conduct of human rights due diligence and examples of best practice will be drawn up in cooperation with the relevant business associations and with the aid of dedicated multi-stakeholder forums.

While the federal government supports the prevention of the use of proceeds from certain types of minerals (i.e. tin, tantalum and tungsten, of their respective ores and of gold) to fund armed struggles in conflict zones and other high-risk areas, it is also going to formulate binding due diligence rules, with a view to introducing proportionate measures for SMEs so that their market entry would not be unnecessarily prohibited. As for tourism sector, the ‘Round Table on Human Rights in Tourism’ will receive increased funding from the federal government in support of their effort for developing sector-specific understanding of due diligence with regard to human rights.

The federal government is also considering the introduction of a certification mark into German law. This is aimed at increasing transparency of supply chain management of businesses, especially in the area of human rights, and by doing so, a sense of competition for responsible business conduct is expected in the marketplace.

Italy

The Italian government supports the new EU regulation 2017/821 of the European Parliament and of the Council of 17 May 2017 regarding the due diligence obligations for Union importers of certain minerals (tin, tantalum and tungsten, their ores, and gold) from conflict-affected and high-risk areas. This regulation, which is to be effective on 1 January 2021, will require EU companies to conduct due diligence when they import such minerals and metals so that only responsible and conflict-free sources will be imported.

With regard to the OECD Guidelines for Multinational Enterprises, the government has conducted pilot projects, training and advisory sessions about due diligence for both large companies and SMEs. A toolkit (‘Due Diligence Guidance for SMEs’) was also made to provide practical advice particularly for SMEs.

Italy is also committed to the ‘Action for Fair Production’ initiative, agreed in the meeting of the G7 Employment and Development Ministers in October 2015. In order to promote sustainable global supply chain management, the government is going to conduct a comprehensive review of the existing commercial and civil law to assess and evaluate legislative reform to introduce provisions, such as, duty of care or due diligence for businesses.

Netherlands

The Netherlands' due diligence focus involves providing information and frameworks to promote corporate due diligence obligations. Key areas are:

- International Corporate Social Responsibility (ICSR)
- Export Credit Insurance
- SMEs

It is stated that state-controlled companies should comply with the OECD Guidelines and monitor their CSR policies. Also, risk analysis of government suppliers should indicate respect for human rights in line with the UNGPs.

The government uses International Corporate Social Responsibility (ICSR) as a framework for risk assessment. ICSR is a concept the Dutch government uses to emphasise the importance that Dutch companies maintain human rights standards even when operating abroad. The Dutch government has conceptualised ICSR as responsibility for fair work under acceptable employment conditions, and for satisfactory conditions throughout a corporation's supply chain. The government expects companies to act in accordance with the OECD Guidelines wherever possible. Corporations can enter into voluntary agreements with the government in order to commit to an ICSR framework. The Dutch NAP raises ICSR as involving human rights responsibilities in the context of international documents such as the OECD Guidelines and the UNGPs. The Government has applied ICSR frameworks for risk assessment (due diligence) to all applications for support which is for companies in the form of grants or other types of finance for activities abroad, export credit insurance and trade missions. These frameworks differ, depending on the goals and the nature of the instrument in question. For example, the ICSR framework for trade missions differs from the frameworks for project grants and export credit insurance.

Under the CSR policy on export credit insurance, companies using export credit insurance are required to sign a declaration that they will seek to abide by the OECD Guidelines. Companies must provide information necessary for the export credit agency Atradius DSB to perform a due diligence risk analysis of the applications for insurance. If the companies do not provide the information, they cannot get the insurance. The OECD Export Credit Group, in which all member states with export credit facilities are represented, is working on a strategy for assessing project-related human rights. The Netherlands plays an active part in this group, which is responsible for improving risk assessment.

The Netherlands supports a European Directive regarding disclosure on human rights, environmental matters, social and employee-related matters and corruption. With respect to Myanmar specifically, the

Netherlands will exchange views and experience within the OECD regarding US reporting requirements for investing in Myanmar. The Netherlands is developing criteria for companies and investors in Myanmar.

South Korea

South Korea supports the creation of standards that reinforce the human rights due diligence obligations of corporations. For example, the government has amended the Procurement Business Act so that the Public Procurement Service's administrator may consider social and environmental values, including labour rights and human rights, in order to promote CSR, in the procurement process.⁹ Furthermore, the government has committed to a new sustainable management policy to be released every 5 years. As mentioned above the National Human Rights Commission of Korea released a National Human Rights Policy Basic Plan Recommendation in September 2016.

Sweden

Through the discussion within the EU regarding the draft regulation on responsible trade in minerals from conflict areas, Sweden has proposed sharper formulations that companies have to obtain certification to import minerals from particularly problematic countries. The Swedish government also supports the 'OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas', and awareness-raising activities for businesses will be carried out in promotion of the Guidance.

The Swedish Exports Credits Guarantee Board (EKN) has been also instructed in its appropriation directions to pursue continuous development of its work on human rights, working conditions, the environment, corruption, and internet freedom, based on OECD recommendations in the relevant areas. The EKN sets out requirement to conduct environmental and human rights due diligence in all business projects applying for export guarantees, in line with the recommendations by OECD. For information of businesses, the EKN also publishes country risks analyses for many countries.¹⁰ Upon the conducting of due diligence, further investigation may be carried out depending on the seriousness of the potential risks and size of the business.

⁹ Procurement Business Act, Article 3-2 (Encouraging Social Responsibility).

¹⁰ www.ekn.se.

United Kingdom

Section 172 of the Companies Act 2006 makes it clear that directors must think about matters which might have a bearing on that success, including the interests of the company's employees and the impact on the community of the company's operation. In 2013, Chapter 4A of the Companies Act was inserted so that directors of quoted companies¹¹ must either include social, community and human rights issues in its strategic report or clarify that the report does not include such descriptions.

The Modern Slavery Act 2015 requires a 'commercial organisation' either to outline steps it has taken during the financial year to eliminate slavery and human trafficking in the operations and supply chains of the business, or to release a statement that it has taken no such steps. The 'commercial organisation' includes a body corporate or a partnership wherever incorporated that carries on a business, or part of a business, in the UK.¹² There is a threshold of an annual turnover, currently £36m,¹³ but that is calculated as the turnover of that organisation and the turnover of any of its subsidiary undertakings (including those operating wholly outside the UK).¹⁴ An Independent Anti-Slavery Commissioner appointed by the Secretary of State oversees the effectiveness of the Act, as discussed in the following section.

2.2 Remedy

2.2.1 Section summary

The NAPs address remedies in different ways; however, two approaches are commonly used. One is to create a strong OECD National Contact Point (NCP) in order to support corporate compliance with the OECD Guidelines. The other is to create an oversight role, filled either by an office (for example an ombudsman) or by an institute. This oversight role allows for broader functions such as consultation with key stakeholders.

¹¹ A "quoted company" means a company whose equity share capital:

- (a) has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8); or
- (b) is officially listed in an EEA State; or
- (c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.

¹² 'Transparency in Supply Chains etc. A practical guide' Section 3.1.

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf)

¹³ Ibid.

¹⁴ 'Transparency in Supply Chains etc. A practical guide' Section 3.2.

NCP

The way that NCPs operate differs depending on how the national government empowers them to investigate corporate behaviour. Creating a strong role for a national NCP allows for non-judicial oversight of corporate due diligence. The British and Dutch NCPs have been recognised as good examples of effective NCPs.¹⁵

National Human Rights Institution / Ombudsman

Various countries have created a national human rights institution or position to ensure national human rights protections are safeguarded. For many countries, this is a specific position such as a commissioner or ombudsman. The United Kingdom's Modern Slavery Act 2015 creates the position of an Independent Anti-Slavery Commissioner to oversee the effectiveness of the legal framework against slavery. Australia has considered introducing a position modelled on the United Kingdom's Independent Anti-Slavery Commissioner.¹⁶ France has a 'Defender of Rights', and Canada is in the process of developing a new position, the Ombudsman for Responsible Enterprise.

2.2.2 Country information

a) General

Denmark

With regard to judicial remedy, the provisions laid down in the Danish Administration of Justice Act (Consolidation Act 2012-10-24 No.1008) form a critical part of the framework on access to judicial remedies in relation to human rights violations through business conduct, to ensure international obligations to adhere to the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights (UNGPs). The Danish government keeps these provisions under constant review in order to fulfil international obligations and to ensure that the provisions are adequately applied.

Germany

In order to ensure the access to remedy for those who are affected by human rights violations, including non-German speaking people, the federal government will create a multilingual information brochure on

¹⁵ Law Council of Australia 2017, *Inquiry into establishing a Modern Slavery Act in Australia Submission 60*, inquiry submission, Parliament of the Commonwealth of Australia, Canberra at 34-35.

¹⁶ Joint Standing Committee on Foreign Affairs, Defence and Trade 2017, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*, report, Parliament of the Commonwealth of Australia, Canberra at 73.

judicial remedy. As for non-judicial remedy, the government already recognises some good examples of company or industry-wide grievance mechanisms for human rights violations that are available to their employees and outside stakeholders. Such examples will be shared with other businesses to accelerate the adoption of grievance mechanisms.

Italy

It is planned to maintain an adequate amount of budget for legal aid and to ensure its access to non-national and non-resident claimants, such as migrant workers who are victims of human trafficking by organised crime networks. The Italian government is also planning to establish an independent National Human Rights Institution that includes a specialised section for human rights violations in business activities.

Netherlands

The key areas for remedies dealt with by the Dutch NAP are companies' complaint mechanisms, Dutch legal aid and the NCP. The NCP will be discussed separately in the following section.

Complaint procedures at a company level should be in line with OECD Guidelines. Complaints should still have recourse to other judicial/non-judicial complaint procedures, such as the NCP process or the court system. During the consultations, it was also suggested that more financial support such as a fund should be provided for alleged victims so they can institute proceedings. In the Dutch government's opinion, such a fund is unnecessary because the regular Dutch legal aid scheme provides for support in paying legal costs.

The Dutch government also supports training overseas in Kenya in order to strengthen measures against human rights violations in local companies and in Jakarta where trade union representatives and civil society organisations are trained in the use of non-judicial mechanisms such as the NCP. These trainings are organised through the Centre for Research on Multinational Corporations (SOMO), which the Dutch government provides funding for via its Human Rights Fund.

Sweden

On 20 May 2014, a report¹⁷ was submitted by an inquiry on protection of workers who blow the whistle on various unsatisfactory conditions, irregularities or offences. The inquiry proposes a new labor act strengthening the protection for whistleblowers, and under the act, workers who have suffered reprisals for whistleblowing will be entitled to damages.

¹⁷ Swedish Government Official Reports 2014:31.

b) NCP

Denmark

The Danish government established as its OECD NCP the Mediation and Complaints-Handling Institution for Responsible Business Conduct by Danish law, one of few examples in the world where the NCP was established as a national institution by law. The purpose was to ensure that the non-judicial remedy process has maximum legitimacy and authority in the country. The institution focuses on mediation to solve complaints, both on company level and if that is not possible, assisted by the institution. If mediation is not possible, the institution can initiate an investigation of the matter and make a public statement based on the result. The scope of their investigation is not just limited to activities by Danish companies, but also includes those by public authorities and private organisations (e.g., NGOs). The institution will base its assessment on the OECD Guidelines, which incorporate the UN Guiding Principles.

France

The French NCP is tripartite, involving government, trade union, and business representatives. It revised its internal rules in 2012 and 2014 to improve its efficiency in dealing with requests, e.g., a timeline for dealing with files and options for following up on recommendations. It also made it easier to call on external technical experts at any time.

The transparency of the French NCP's work has been improved. The NCP holds an annual information meeting and an annual consultation meeting with organizations representing civil society. Its website is regularly updated and features links to information about the OECD Guidelines for Multinational Enterprises and Global Forum on Responsible Business Conduct.

Germany

The German NCP is yet to be fully recognised or utilised to fulfil its objectives. In this regard, it is planned to establish a new organisation within the Federal Ministry for Economic Affairs and Energy to raise awareness towards the NCP, for which staff members will also be increased to enhance the initiative.

Netherlands

A stakeholder may make a complaint to the NCP if the stakeholder believes the company is not sufficiently putting the OECD Guidelines into practice. If the complaint is admissible, the NCP may then function as an impartial mediator between the complaining party and the company. The Dutch NCP should be accessible to all stakeholders.

At the end of a procedure, the NCP may issue a final statement describing its process and the relationship between the solution and the OECD Guidelines. Parties may agree the company should offer a remedy such as compensation. However, if the parties cannot reach a solution, the NCP releases a final statement describing the process and also releases recommendations regarding the alleged breach of the OECD Guidelines based on its understanding of the facts. The purpose of these recommendations is to prevent future disputes. The NCP procedure is non-judicial. Its final statement is not an administrative law decision and there is therefore no scope for appeal. Additionally, the Dutch government may ask the NCP to carry out sector-wide investigation of CSR. This process was introduced by amendments to the decree establishing the NCP in 2014.

South Korea

South Korea is strengthening its NCP by amendments to its operational rules¹⁸ and diversification of its members. The NCP operates an Arbitration Committee, which mediate/arbitrate specific complaints against multinational enterprises regarding the implementation of the operational rules. South Korea intends to improve the NCP's operation by learning from advanced NCPs through the OECD peer review process. Specific improvements laid out in Korea's third NAP include diversifying the membership of the NCP so that its personnel are more neutral and professional and strengthening the involvement of NGOs, employer organisations and other stakeholders.

Sweden

Sweden spreads information and knowledge about CSR and the OECD Guidelines for Multinational Enterprises through NCPs, whose main roles include to help resolve problems in individual cases through dialogue and discussion. However, as the OECD Guidelines are voluntary, the NCP has no competence to issue any sanctions. The Swedish Ministry for Foreign Affairs is planning to examine the possibility of strengthening its NCP, and the NCP is also intended to increase contacts and collaboration with NCPs in non-OECD countries.

United Kingdom

The UK National Contact Point (NCP) is staffed by officials from the Department for Business, Innovation and Skills (BIS). The UK NCP can assess whether multinational enterprises meet the due diligence standards of the OECD Guidelines for Multinational Enterprises. The UK NCP will seek to

¹⁸ Operation Rules for National Contact Point (NCP) for Implementing OECD Guidelines for Multinational Enterprises (2001). The South Korean NCP was established within the Ministry of Trade, Industry and Energy. The website of the NCP can be found in the following URL (In both Korean and English): http://www.ncp.or.kr/jsp/kcab_ncp/intro_ncp.jsp.

mediate an agreement between the parties, and, where this is not possible, it will examine the allegations in detail and will make a determination of whether the multinational enterprise has acted inconsistently with the Guidelines. The UK NCP's reports will be considered by UK Export Finance when considering export credit for a company's project.

For example, in a case against Formula One Group, *Americans for Democracy and Human Rights in Bahrain (ADHRB) vs. Formula One Management Limited*, the UK NCP rejected the claim that holding the Formula One Grand Prix in Bahrain increased or was linked to human rights violations in Bahrain. However, the UK NCP found merit in ADHRB's complaint "on issues relating to Formula One World Championship Limited and Formula One Management Ltd.'s management systems, due diligence, human rights policy and communications with stakeholders and business partners." Formula One Group and ADHRB finally reached an agreement released a joint statement in which it committed to human rights due diligence as a formal part of its policy.^{19, 20}

c) National Human Rights Institutions / Ombudsman

Canada

As of 2019, Canada is planning to introduce a Canadian Ombudsperson for Responsible Enterprise. This role will be under the authority of the executive branch of government (specifically, under the authority of the Governor General of Canada). The role of the Ombudsperson is to help resolve conflicts between local communities and Canadian companies which have foreign operations. The Ombudsperson may respond to human rights complaints by making investigations and recommendations. Sectors the Ombudsperson will focus on include mining, oil and gas and the garment sector. The government may withhold finance from companies found to violate human rights.²¹

In addition to collaboratively resolving conflicts or disputes between Canadian corporations and impacted communities, the Ombudsperson will be able to independently investigate, recommend remedies, monitor

¹⁹ John Gerard Ruggie and Tamaryn Nelson (2015) 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementations Challenges', 22 *Brown Journal of World Affairs* 99 at 116-117.

²⁰ ADHRB, "ADHRB, Formula One Reach Agreement on Human Rights Framework for Bahrain", 10 April 2015, <https://www.adhrb.org/2015/04/adhrb-formula-one-reach-agreement-on-human-rights-framework-for-bahrain/>.

²¹ CBC, 'Ottawa to create new ombudsperson to keep tabs on corporate behaviour abroad', 17 January 2018, <https://www.cbc.ca/news/politics/corporate-ombudsman-abroad-1.4491388>.

implementation, and produce reports.²²

France

The 2008 constitutional revision introduced the Defender of Rights, an independent administrative authority, and it was established in 2011. The Defender of Rights has jurisdiction to deal with subjects in four specific areas. Any individual or legal entity can call on it directly and free of charge when they:

1. consider they have been discriminated against;
2. observe public or private representatives of law and order (police officers, customs officers, security guards, etc.) engaging in improper conduct;
3. have difficulties in relation with public services; or
4. consider a child's rights are not respected.²³

Since the Defender of Rights has broad jurisdiction over discrimination-related matters, it is expected to play a key role in dealing with cases concerning CSR.

Sweden

The Office of the Equality Ombudsman, a government agency responsible for monitoring compliance with the Swedish Discrimination Act, has been trying, in the first instance, to induce those to whom the Discrimination Act applies to comply with the Act voluntarily. In addition, the Ombudsman may also bring a court action on behalf of an individual who consents to this, and those who violate the Discrimination Act may be found liable to pay compensation for the discrimination to the person discriminated against.

The Ombudsman for Children in Sweden is a government agency whose main task is to represent the rights and interests of children and young people, based on the UN Convention on the Rights of the Child. The Ombudsman monitors society's compliance with the UN Convention and drives implementation in central and local government agencies.²⁴ It is responsible for drawing attention to deficiencies in the application of the UN Convention and for proposing amendments to laws and ordinances. The Children's Ombudsman submits an annual report to the Swedish Government containing analyses and

²² Government of Canada, 'The Government of Canada brings leadership to responsible business conduct abroad', 17 January 2018, https://www.canada.ca/en/global-affairs/news/2018/01/the_government_ofcanadabringingleadershiptoresponsiblebusinesscond.html.

²³ See the website of le Défenseur des droits <<https://www.defenseurdesdroits.fr/fr/institution/organisation/defenseur>> (in French).

²⁴ However, by law, the Ombudsman is not allowed to intervene in individual cases.

recommendations to improve the situation of children and young people.

United Kingdom

The Secretary of State appoints the Independent Anti-Slavery Commissioner. The Commissioner must develop a strategic plan to establish how he or she will perform his or her role and submit the plan to the Secretary of State for approval. In his first strategic plan, the Commissioner identified coordination between the private sector, civil society and statutory bodies as his priority. The Commissioner must submit to the Secretary of State an annual report on the exercise of the Commissioner's functions during the year. This involved educating corporations of their obligations under the Modern Slavery Act 2015.

To tackle human trafficking, the Commissioner may take various actions including providing information, making recommendations, creating reports, consulting and cooperating with relevant authorities.²⁵ The Commissioner may request a specified public authority to co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner's functions, and the public authority must comply with a request so far as reasonably practicable.

2.3 Trade

2.3.1 Section summary

Given the complexities of international trade and difficulties to take measures suitable to each country- and business sector- specific contexts, some countries have focused on providing additional services for companies and supporting multi-stakeholder initiatives.

For example, Denmark, through its embassies abroad, provides human rights due diligence services for companies seeking to formulate new businesses in developing countries. Also, the Human Rights and Business Country Guide is made available to the public, with a view to providing country-specific information that helps develop sustainable businesses by referring to recommendations and case studies.

Denmark and Germany support the Danish Ethical Trading Initiative (DIEH) and the Partnership for Sustainable Textiles respectively, both of which are multi-stakeholder initiatives aiming at improving human rights considerations in textile businesses. Such initiatives seem to be efficient and effective

²⁵ *Modern Slavery Act 2015* (UK), Part 4.

approaches to maximising collective voices and actions, thorough supplementing functional capacities and accumulating insights across companies from the same business sector and/or various stakeholders.

Meanwhile, countries such as Sweden and the Netherlands focus on rather unified and macro level approaches by trying to ensure inclusion of sustainability-related clauses on trade and investment agreements used by companies from not just their countries, but from other countries within the EU.

2.3.2 Country information

Denmark

The Danish government has provided various supports to private companies for them to ensure responsible business conduct in trading business, especially in developing countries. For example, the Trade Council under the Ministry of Foreign Affairs has chargeable advisory services for companies to help them identify potential risks and opportunities around social responsibility, including human rights due diligence. Such services are also available in developing countries, through Danish embassies in each country. Embassies hold workshops and practical advisory services regarding responsible supply chain management, targeted at companies, including SMEs and their local business partners.

Also, in 2013, the Danish Institute of Human Rights (DIHR), in partnership with SIDA (the Swedish International Development Cooperation Agency), launched a website of Human Rights and Business Country Guide. This is a free website that contains the information of 23 countries related to human rights, including specific recommendations and case studies, to help companies identify, assess and address their human rights impacts through business conduct around the world. The country guide was drafted by the DIHR and their counterpart civil society organisations in each country, to whom the DIHR had also provided technical support to improve their capacities in dealing with human rights issues.

Such sector-driven partnerships are also formed to tackle human rights issues in certain countries. For example, the Danish Ethical Trading Initiative (DIEH) has members from companies, NGOs, business associations, public institutions, and trade unions, who have agreed to take a number of detailed commitments to improve business environment for garment sector in Bangladesh.

Germany

With regard to export credits, investment guarantees and other instruments for the promotion of external trade by German companies, the federal government will ensure that requirements for human rights impact assessment will be further specified and prioritised in the assessment procedures. Furthermore, Germany will advocate and support further development of sustainable supply chain management, and

therefore will enhance cooperation with other countries to reach a common understanding on human rights due diligence at the international level, such as the EU, G7 and G20.

As for sector-specific approaches, the federal government will continue its support for the Partnership for Sustainable Textiles. It is a multi-stakeholder initiative of voluntary and mandatory elements in line with the UN Guiding Principles, and aims to involve 75% of German textile and clothing companies by 2018. In doing so, it is expected to become a leading example to stimulate other industries in their cross-sectorial collective effort towards due diligence requirements.

Netherlands

The Dutch government is committed to trade and investment agreements containing clear provisions on what the relationship between trade, investment and sustainability will be. It is mentioned that civil society should be involved in the creation of these agreements. International Corporate Social Responsibility (ICSR), meanwhile, is a feature of Dutch trading missions and export credit insurance.

Sweden

Sweden has pushed for the inclusion of references to CSR in the EU's bilateral, regional and other types of trade & investment agreements. Also, in support of the 'OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas', Sweden has proposed the EU to adopt stricter regulations against the trade of conflict minerals, emphasising the introduction of certification system for ethically sourced minerals. In the NAP, Sweden also expressed its intention to encourage organizations, such as the UN, the OECD, and the World Bank, to promote corporate respect for human rights within their respective mandates.

Meanwhile, "Business Sweden" (the Swedish Trade & Invest Council) is required to follow (i) the UN Guiding Principles on Business and Human Rights, (ii) the principles of the UN Global Compact, and (iii) the OECD Guidelines for Multinational Enterprises. It is also required to actively inform and encourage companies in their CSR work in accordance with the established global guidelines. It is also instructed to support SMEs in this area.

United Kingdom

The export licencing system grants governments control over the export of "strategic" technology and goods, such as military use or 'dual use' goods, technology, software, documents or diagrams, via an assessment that takes possible human rights impacts into account. Applications are assessed against the Consolidated EU and National Arms Export Licencing Criteria, which includes the respect of human rights and fundamental freedoms in the country of final destination as a criterion. This means a licence

may not be granted on human rights grounds if the goods or technology would be used repressively abroad.

United States

The US government is empowered to conduct investigations and prevention regarding imported goods produced by forced labour. To strengthen this, the government has removed a clause in the Tariff Act of 1930, which imposed quantity-based limits on US investigation and prevention of such goods, by the enactment of the Trade Facilitation and Trade Enforcement Act of 2015.

2.4 Workers' rights & migrant workers

2.4.1 Section summary

In pursuit of promoting fair and ethical work environments, Denmark, France, Sweden and the UK have taken various legislative measures, mainly focusing on rights-based fair treatment of labourers. Meanwhile, Germany has talked about organisational structures for implementation of such objectives and has proposed a joint federal-state working group to fight against human trafficking and exploitative employment.

Italy has taken further steps, compared to those countries, with particular emphasis on restrictions of illicit intermediaries (human resources agents) and human trafficking. Such measures are especially evident in the agricultural sector, for which the government has established a list of companies who adhere to the legal requirements, so that a sort of peer-pressure will be generated to lift up the standard within the sector. Also, Italy has developed training programs for migrant workers, both before and after their arrival to the country, to promote sustainable inclusion of such workers in Italian society.

2.4.2 Country information

Denmark

Danish law strongly prohibits human rights abuses by businesses. For instance, since 1996, the Danish Parliamentary Act has prohibited differential treatment in the labour market, such as, discrimination based on race, gender, skin colour, religion, political opinion, sexual orientation or national, social, and ethnic identities/origins. The Working Environment Act of 2005 and the Act on the Work of Young Persons from 2005 implement the EU Directive 94/33/EC from 1994 on the protection of young workers.

Denmark's Criminal Code protects the right to life and human rights against torture and slavery, for which companies and company representatives can be punished under the Act. Furthermore, the Working Environment Act prohibits adverse impacts on individual's health arising from environmental pollution or dangerous working conditions related to business activities, and it protects the right to highest attainable standard of health through regulating access to health services.

All public sector contracts will be obliged to include labour clause(s) regardless of its value, since the current threshold of DKK 37.5 million for public projects will be abolished. This is based on the idea that all work conducted in Denmark must ensure fair and decent pay and work conditions according to Danish standards, so that underpaid foreign workers would not occur in public projects.

France

The Act on Job Security intended to ensure staff representative bodies have resources they need to defend human rights. It gave employee representatives the right to vote on the administrative boards of large French companies and allowed them to discuss the content of management reports submitted to these boards. It also improved processes for consulting with and providing information to work councils in order to strengthen obligations to keep employees informed. Issues for which work councils must be consulted include a company's strategic goals and the effect of those goals on employment conditions. Up-to-date information on such matters should be available to work councils via a database. Furthermore, work councils are entitled to act as economic whistleblowers under the French Labour Code.

Germany

To supplement the existing structures, the federal government has shifted the focal point to a joint federal-state working group to develop a strategic approach to reinforce prevention, establish advisory structures and improve criminal prosecution and the data situation, in their fight against human trafficking / exploitative employment. The federal government has also agreed on a bill to further regulate the use of temporary agency work and service contracts.

Italy

With a view to countering and preventing human trafficking, the Italian government has adopted the National Action Plan against Trafficking in and Serious Exploitation of Human Beings, in line with the Legislative Decree 24 of 2014 (transposing the EU Directive 2011/36) in February 2016. Under the National Action Plan, it has been planned to 1) strengthen the role of labour inspections, 2) enhance compensation for victims of trafficking, 3) promote and incentivise both Italian and non-Italian companies to establish and follow fair labour recruitment procedures, and 4) improve the regulations on intermediaries and companies who use such intermediaries, among others.

Some of such measures are already undertaken in the agricultural sector. For example, the ‘*Rete del Lavoro Agricolo di Qualità*’, a network of a so-called ‘white list’ companies in the agricultural sector, who are compliant with the legal requirements in labour treatment, social securities and fiscal laws (such as the application of local and national agricultural sector work agreements). The list of companies is referred by government agencies, when making decisions on extending public services to companies, for example. In doing so, the government is trying to incentivise businesses to form and share best practices to generate peer-pressure among them. Also, the Law n. 199 of 29.10.2016 ‘*Disposizioni in materia di contrasto ai fenomeni del lavoro nero, dello sfruttamento del lavoro in agricoltura e di riallineamento retributivo nel settore agricolo*’ (provisions on countering undeclared labour, labour exploitation in agriculture and wages rebalance in agricultural sector), sets measures against capital accumulation of exploiters (i.e. illicit intermediaries).

In addition to the above, the Ministry of Agricultural, Food and Forestry Policies has developed training projects on human rights compliance for migrant workers, both in Italy and in their countries of origin upon departure. This is to ensure fair inclusion of migrant workers into the agricultural sector and life in Italy, through providing training on business skills and ensuring access to social welfare services, etc.

South Korea

South Korea’s third Human Rights NAP deals with the securing of corporate responsibility on human rights. For example, the government of Korea declared its expectations on corporate responsibility on human rights through its official website that corporations within Korean territory or jurisdiction, no matter their location, should implement the corporate human rights responsibilities outlined in the UNGPs. To this effect, the South Korean government has also declared that it intends to provide support to corporations so as to promote these corporate human rights responsibilities. For example, South Korea’s data collection about labour rights abuses helps it brief companies on overseas treatment of workers. South Korea also intends to promote business and human rights through economic organizations including Korea Employers Federation (KEF). South Korea also intends to support private business and public institutions with gender equality management by conducting gender equality education to managerial staff or high-level human resources managers.

Sweden

With a view to improving the protection for workers, amendments to the Swedish Work Environment Act and the Swedish Working Hours Act have been proposed. Under these amendments, financial penalties would largely replace penal sanctions to create a more effective sanctions system.

United Kingdom

The UK has had legal framework including employment regulations that require companies not to discriminate against employees on grounds of sex, race, sexual orientation and religious belief, and environmental regulations, such as the Health and Safety at Work Act 1974. The Data Protection Act 1998 requires companies to respect the privacy of individuals. New legislation, such as the Gangmasters (Licencing) Act 2004, has been introduced to protect workers in agriculture, shellfish-gathering and related processing or packaging work. This is because previously, legislation in this area was insufficient to stop these workers from being exploited.

2.5 Development assistance

2.5.1 Section summary

Countries, such as, Denmark, Germany and Sweden clearly indicate that all institutions involved in a development assistance programme are required to adhere to the UNGPs and other relevant initiatives.

Their policies and programme for development assistance, including those by the UK and US, are coincided with the enhancement of a level playing field, and thus the promotion of international trading and investment. By doing so, businesses of both recipient and donor countries, and of other international corporations, will be promoted in a responsible manner, so that sustainable economic development will be promoted further.

Examples of such approaches include the ‘Program for Responsible Business in Myanmar’ by Denmark, the ‘Social and labour standards in the textile and garment sector in Asia’ project by Germany, a management programme by the Swedish Institute (SI), ‘Nairobi Process: A Pact for Responsible Business’ by the UK, and various initiatives for promotion of responsible land use by the United States.

2.5.2 Country information

Denmark

Under the concept of “The Right to a Better Life”, the development cooperation of Denmark has taken rights-based approaches, aiming to realise human rights as well as poverty eradication. Therefore, Denmark ensures that all companies involved in development cooperation projects adhere to the

framework of ILO conventions, UN Global Compact, the OECD Guidelines for Multinational Enterprises and work towards the implementation of the UNGPs.

The ‘protect, respect and remedy framework’ by the UNGPs has also been reflected in the actual components of development cooperation projects. For example, in Myanmar, the ‘Program for Responsible Business in Myanmar’ was launched in 2013. The program is designed to provide technical assistance not only for establishing a favourable environment for rule of law and foreign direct investment, with a view to enhancing industry development of Myanmar, but also for enhancing private sectors’ capacities to pursue responsible business activities.²⁶

With regard to the latter, Myanmar Centre for Responsible Business (MCRB) was established in 2013 to provide ‘a trusted, impartial forum for dialogue, seminars, and briefings to relevant parties as well as access to international expertise and tools’.²⁷ The centre has been operated in partnership with other bilateral aid agencies of UK, Norway, Switzerland, the Netherlands, and Ireland,²⁸ and conducting human rights impact assessments in the country's major industries, such as, energy, ICT, tourism, and mining²⁹ to provide the information for multilateral businesses from various different countries.

In terms of access to remedy, the Danish government established a Mediation and Complaints-Handling Institution for Responsible Business Conduct by Danish law (see section 2 for details).

France

Under Article 8 of the 2014 Act for France’s Strategy for Development and International Solidarity, the French development assistance policy must consider the social and environmental responsibility of public and private actors. Therefore, companies involved in development assistance projects are to implement risk management procedures to identify, prevent or mitigate social and environmental risks in their operations in developing countries. Also, the AFD must take measures to evaluate and control the risks of the operations it finances, and to promote the financial transparency of businesses involved in these operations.

²⁶ Danish Ministry of Foreign Affairs, ‘Programme for Responsible Business in Myanmar 2013-2016’, 31 May 2013, <http://um.dk/en/~media/UM/English-site/Documents/Danida/About-Danida/Danida%20transparency/Consultations/2013/Del%201%202013/Business%20in%20Myanmar.pdf>.

²⁷ Myanmar Centre for Responsible Business, ‘About the Myanmar Centre for Responsible Business’, <https://www.myanmar-responsiblebusiness.org/about.html>.

²⁸ Ibid.

²⁹ Danish Institute for Human Rights, ‘Myanmar’, <https://www.humanrights.dk/place/myanmar>.

Based on the partnership with the ILO, the AFD promotes decent work initiatives (e.g., creation of decent jobs, skills development, and transition towards sustainable employment). The AFD is also working to address gender inequality in its funded projects. Furthermore, the French Government represented that more resources would be allocated to increase businesses' awareness towards the OECD guidelines in the operation of projects funded by the AFD and COFACE.

Germany

The requirements of human rights due diligence set out in the UNGPs are also applied to the policies and projects of development assistance and thus to the organisations (including financial institutions) in charge. In this regard, the federal government will track the reform processes of international financial institutions so that their operations are also in line with the UNGPs.

The federal government will promote the institutionalisation of responsible business, in line with the UNGPs, in developing countries and newly industrialised countries through its development assistance projects. For example, the 'Social and labour standards in the textile and garment sector in Asia' project, implemented in Bangladesh, Cambodia and Pakistan, is promoting the establishment of sustainability standards in the host countries. Another example is the Aid for Trade initiative, through which Germany is supporting efforts of developing countries in their compliance with international labour, social and environmental standards to enhance an enabling environment for trading business.

Sweden

Activities of the Swedish International Development Cooperation Agency (SIDA), including those done by contracted agencies/companies for international development projects, are to be in line with the UNGPs and other related guidelines, such as, the OECD Guidelines for Multinational Enterprises and the UN Global Compact. SIDA also coordinates the "Swedish Leadership for Sustainable Development" (SLSD), a network that encompasses around twenty large corporations with links to Sweden. SLSD is functioning as a forum for valuable knowledge-exchange and formulating collaborative models and projects that contribute to poverty reduction and sustainable development.

Dissemination of the idea of responsible business is also done through the Swedish Institute (SI), a governmental agency in the field of culture, education, science and business. The SI has a management programme for young leaders from Europe, China and India to nurture future leaders who promote ethical businesses around the world, connecting them to form a network of like-minded business people, with whom Swedish companies could also flourish in business in the future.

United Kingdom

The UK Foreign & Commonwealth Office, through its Human Rights and Democracy Programme (2013/14), has funded the ‘Nairobi Process: A Pact for Responsible Business’, an initiative to enhance an enabling environment for responsible business in the Kenyan extractive sector. Through establishing a licensing system for gas exploration businesses, the initiative will try to mitigate community tensions and security risks arising from irresponsible business conduct, while maximising sustainable economic benefit. The initiative is being developed by the Institute for Human Rights and Business (IHRB) and the Kenya National Commission on Human Rights (KNCHR), with a view to establishing a forum where multiple stakeholders, whether Kenyan or international, get together and engage to collaboratively address key areas of human rights concern. Furthermore, the initiative also encourages peer learning among businesses and capacity development of the Kenyan government in implementing the UNGPs.

In Bangladesh, the UK Department for International Development (DFID) and the British High Commission have been closely working with other donors (e.g., Canada and the Netherlands) and multiple stakeholders to improve working conditions, empower workers and urge buyers to conduct business responsibly in garment, leather and tannery sectors in the country.

United States

US foreign development assistance will consistently align to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) by the FAO (UN Food and Agricultural Organization). The aim is to improve land and resource governance worldwide.

As part of the initiative, USAID will develop and/or update country-specific land governance profiles, which cover information such as land laws, land use patterns and gender concerns. The profiles are expected to help businesses in making land-based investments in those countries. Also, USAID assists the private sector in piloting the Analytical Framework for Land-Based Investments in African Agriculture, an international accepted guidance helping companies mitigate land tenure risks and enhancing inclusivity, responsibility and sustainability of investment. The US is going to promote similar initiatives for food security and nutrition through communication with other G7 countries.

The US is also implementing a capacity development program for civil society organisations in Sierra Leone, Liberia and Guinea, with a view to reducing land conflict through learning about land rights and tenure issues. A Massive Open Online Course (MOOC) on Land Tenure and Property Rights, a university-level 14-week free online tutorial, was also developed in 2015. It has been used by approximately 2,000 participants from more than 60 countries, helping them acquire technical knowledge

to understand and support customary tenure in development planning. All these initiatives are in the support of the UNGPs. Furthermore, another USAID program in the Ivory Coast supports responsible business practices in the process of diamond sourcing and the country's compliance with the Kimberley Process Certification Scheme, in order to promote trading of conflict-free diamonds, while improving community land rights.

2.6 Other issues

2.6.1 Public Procurement

South Korea

South Korea intends to revise related institutions and bylaws with regards to the newly organized clause in the "Government Procurement Act" which promotes social responsibility. The third NAP highly recommends applying the public procurement guidelines which reflect CSR. For example, in the guidelines, suppliers are accredited with additional points when the suppliers are 'female/disabled friendly companies' (for example suppliers utilizing non-discriminatory facilities which meet the relevant standards).

United States

The US has measures to eliminate child labour and trafficking from federal supply chains. One executive order, "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor", prevents federal agencies from procuring goods made by child labour that is indentured or forced. The executive order "Strengthening Protections against Trafficking in Persons in Federal Contracts" is intended to remove trafficking and trafficking-related activities from federal supply chains.

Primary References

Below are the URL of each country's NAP (or relevant documents) and its adoption date:

- Australia - *Modern Slavery Act 2018* (Cth) (assented to in Australia on 10 December 2018, came into force on 1 January 2019)
<https://www.legislation.gov.au/Details/C2018A00153>
- France (adopted on 26 April 2017)
https://www.ohchr.org/Documents/Issues/Business/NationalPlans/NAP_France_EN.pdf
- Denmark (adopted on 31 March 2014)
https://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf
- Germany (adopted on 16 December 2016)
<https://www.auswaertiges-amt.de/blob/610714/fb740510e8c2fa83dc507afad0b2d7ad/nap-wirtschaft-menschenrechte-engl-data.pdf>
- Italy (adopted on 16 December 2016, revised in 2018)
https://cidu.esteri.it/ComitatoDirittiUmani/resource/doc/2018/11/all_2_-_nap_bhr_eng_2018_def_.pdf
- Netherlands (adopted April 2014)
https://www.ohchr.org/Documents/Issues/Business/NationalPlans/Netherlands_NAP.pdf
- South Korea (Unofficial translation only.³⁰ The Third National Action Plan for the Promotion and Protection of Human Rights Republic of Korea, which includes a chapter on Business and Human Rights was adopted on 9 August 2018)
<https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/3rd-hr-nap-of-republic-of-korea-2018-2022-chapter-8-bhr-only-by-khis-2018-11-24.pdf>
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<https://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf>
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³⁰ South Korea does not have a NAP dedicated solely to Business and Human Rights. Rather, it has a Human Rights National Action Plan with a chapter on Business and Human Rights. There is no official English translation of South Korea's NAP. The English version of the Korean NAP is provided by the Korean House for International Solidarity.

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John Gerard Ruggie 2011, *United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, guidelines, United Nations Office of the High Commissioner for Human Rights, Geneva.

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United Nations Human Rights Office of the High Commissioner, 'State national action plans on Business and Human Rights', <https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx>.