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**NATIONAL ACTION PLANS AS POLICY INSTRUMENTS FOR  
PROMOTING HUMAN RIGHTS DUE DILIGENCE: a comparative  
analysis of France, Germany, and The Netherlands**

Dissertation to obtain a Master's  
Degree in Law, in the specialty of  
International and European Law.

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**NATIONAL  
ACTION  
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France,  
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The  
Netherlands**

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*In honor of my mother and father, with all the love that has ever existed.*

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## **Abbreviations**

CNCDH - National Consultative Commission on Human Rights

CSOs - Civil Society Organizations

CSR – Corporate Social Responsibility

ECOSOC - Economic and Social Council

ESG - Environmental, Social, and Governance

EU - European Union

HRDD – Human Rights Due Diligence

ILO - International Labor Organization

NAPs– National Action Plans on Business and Human Rights

NBA - National Baseline Assessment

NCP - National Contact Point

OECD - Organisation for Economic Co-operation and Development

OHCHR - The Office of the High Commissioner for Human Rights

UDHR – Universal Declaration of Human Rights

UN - United Nations

UNHRC – UN Human Rights Council

UNGPs – UN Guiding Principles on Business and Human Rights

## **General Notes**

The body of the dissertation, including spaces and notes, occupies a total of 106.353 characters.

## **Abstract**

This thesis examines the role and significance of National Action Plans (NAPs) in promoting human rights within business activities at international, regional, and national levels. While businesses possess the potential to positively impact society and the environment, there is also a growing concern relating to the risks of adverse human rights consequences that can arise throughout these business operations and their global value chains. Building upon the United Nations Guiding Principles on Business and Human Rights (UNGPs), this study focuses on the specific aspect of how human rights due diligence expectations are embodied in NAPs. By conducting a comparative analysis of selected countries (France, Germany, and The Netherlands), this research aims to identify and analyze best practices for effectively addressing these concerns. This thesis explores the objectives, adoption, and roles of NAPs, both for states and companies, emphasizing the need for robust human rights due diligence processes. By examining state compliance with international standards, this research seeks to provide valuable insights, contributing to the debate on NAPs and human rights norms, with a specific emphasis on the UN Guiding Principles.

## **Resumo**

*Esta tese examina o papel e a importância dos Planos de Acção Nacionais (NAPs) na promoção dos direitos humanos nas actividades empresariais a nível internacional, regional e nacional. Embora as empresas possuam o potencial para impactar positivamente a sociedade e o ambiente, existe também uma preocupação crescente relativamente aos riscos de consequências adversas para os direitos humanos que podem surgir ao longo destas operações comerciais e das suas cadeias de valor globais. Com base nos Princípios Orientadores das Nações Unidas sobre Empresas e Direitos Humanos (UNGPs), este estudo centra-se no aspecto específico de como as expectativas de devida diligência em matéria de direitos humanos são incorporadas nos NAPs. Ao realizar uma análise comparativa de países seleccionados (França, Alemanha e Países Baixos), esta investigação*

*visa identificar e analisar as melhores práticas para abordar eficazmente estas preocupações. Esta tese explora os objetivos, a adoção e as funções dos NAPs, tanto para os Estados como para as empresas, enfatizando a necessidade de processos robustos de devida diligência em matéria de direitos humanos. Ao examinar a conformidade do Estado com as normas internacionais, esta investigação procura fornecer informações valiosas, contribuindo para o debate sobre os NAPs e as normas de direitos humanos, com ênfase específica nos Princípios Orientadores da ONU.*

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## 1. INTRODUCTION

The business and human rights debate has been increasingly attracting significant attention at the international, regional, and national levels, especially considering recent trends and the growth of globalization and international business operations.

According to the Economic and Social Council (ECOSOC) Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, even though globalization has been beneficial in several ways including providing unprecedented living standards in some parts of the developing world, it has at the same time attracted attention to the transnational corporate sector and its impacts.<sup>1</sup>

While businesses hold the potential to positively impact society and the environment, there is also a growing concern relating to the risks of adverse human rights consequences that can arise throughout these business operations and their global value chains.<sup>2</sup>

Moreover, the report assertively states that a social backlash becomes unavoidable when global corporations are widely seen as exploiting their authority, which seemed to be the case in various circumstances around the world, especially considering major players' performance in developing countries.<sup>3</sup>

This debate becomes severally more critical as companies cultivate practices that harm human and labor rights, as well as environmental standards. Following a

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<sup>1</sup> ECOSOC, 'Interim Report of the Special Representative of the Secretary-General on the Issues of Human Rights and Transnational Corporations and Other Business Enterprises' UN Doc., at 5 (2006)  
<<https://digitallibrary.un.org/record/569408>>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

scenario of an uncontrollable global reach and impacting scale, the need for greater corporate responsibility and accountability became even more clear.<sup>4</sup>

With the aim of addressing these concerns, the United Nations Guiding Principles on Business and Human Rights (UNGPs), was adopted in June 2011 by the UN Human Rights Council (UNHRC), which marked a key turning point in the development of norms and standards on the accountability and responsibility of business actors.<sup>5</sup>

The Guiding Principles have provided a framework for promoting responsible business conduct and protecting human rights and soon enough they were acknowledged as the global standard for mitigating the risk of adverse corporate human rights consequences.<sup>6</sup>

Even though these principles have at first a theoretical and conceptualized form, they can come to light and be put into practice through the development and implementation of different instruments, such as the National Action Plans. NAPs serve as key tools for supporting governments in outlining their strategies and integrating human rights considerations into business practices.

The NAPs can perform as a valuable guideline for governments to fulfill their duty to protect human rights and ensure that businesses are held accountable for their actions. Additionally, NAPs can serve as mechanisms for companies, helping on their mission to align operations with international human rights standards, while also implementing effective due diligence processes.

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<sup>4</sup> Ibid.

<sup>5</sup> OHCHR, 'United Nations Guiding Principles on Business and Human Rights' (2011)

<[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)>

<sup>6</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)

<<https://repository.ghumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

Having this landscape in mind, this thesis aims to critically examine the role and significance of NAPs in promoting human rights within the context of multinational enterprises and business activities. It also intends to explore how NAPs embody the expectations of Human Rights Due Diligence (HRDD), as outlined in the UNGPs.

By conducting a comparative analysis of the selected countries—France, Germany, and The Netherlands—this research seeks to identify and analyze best practices for effectively addressing human rights concerns.

The comparative analysis of the existing NAPs focuses on demonstrating possible lessons that could be learned from the previous experiences of NAPs in other countries, by highlighting both successful examples of implementation, as well as points that require further attention. The importance of this analysis relies on the fact that these examples could provide insights into the development of future NAPs and other instruments.

With the objective of emphasizing the importance of the human rights due diligence process, this thesis will delve into the objectives, adoption process, and roles of NAPs, especially considering its embodied human rights due diligence expectations, according to the definition of HRDD as introduced by the UN Special Representative, John Ruggie, through the “Protect, Respect, Remedy” Framework and the UNGPs.<sup>7</sup>

In this sense, the human rights due diligence process should involve identifying, preventing, mitigating, and accounting for adverse human rights impacts that may occur from business activities, as outlined by the Guiding Principles.<sup>8</sup>

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<sup>7</sup> UN Human Rights Council, ‘Protect, Respect and Remedy: A Framework for Business and Human Rights – Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie’ A/HRC/8/5, 7 (2008).

<sup>8</sup> Ibid.

In summary, the extent to which states comply with international standards and the UNGPs in developing and implementing their NAPs will be evaluated. Through the analysis of the strengths and weaknesses of existing NAPs, including the assessment of factors such as stakeholder engagement, monitoring mechanisms, and remedies for human rights violations, the thesis seeks to provide valuable insights into the comprehensive implementation of human rights norms.

The following chapters will explore the frameworks around the theme, and examine not only the UNGPs but also the relevant literature on NAPs and human rights due diligence, as well as a comparative analysis of the selected countries' NAPs.

In conclusion, this thesis seeks to contribute to a deeper understanding of the role of NAPs in promoting responsible business conduct, mitigating human rights risks, and leveraging a more sustainable and global economy with a specific focus on the UN Guiding Principles. While addressing specific research questions, it is possible to highlight the importance of human rights due diligence processes, and most importantly, the potential for NAPs to serve as key instruments in the safeguarding of human rights.

Finally, this debate also contributes to the holistic view of NAPs and their multifaceted roles in fostering human rights protection and to a deeper understanding of their role in promoting responsible business conduct, and mitigating human rights risks, as will be detailed below.

## 2. AN OVERVIEW OF BUSINESS AND HUMAN RIGHTS

### 2.1. International Soft Law Instruments and Standards

There are several established treaties and instruments that address human rights and environmental protection due to international initiatives that have emerged with the intention of connecting businesses with human rights responsibilities. Some of these instruments include the Universal Declaration of Human Rights<sup>9</sup>, the European Convention on Human Rights<sup>10</sup>, and the Convention on the Rights of the Child<sup>11</sup>, among others.

Followed by these acclaimed instruments, several attempts were put in force to address human rights violations incurred from business operations. These initiatives can be divided into two movements, one in favor of the adoption of hard law, and the other one in the benefit of soft law instruments instead.

It is important to note that while there is currently no legally binding international instrument specifically dedicated to Business and Human Rights, several soft law instruments play a crucial role in regulating the theme, such as the UNGPs<sup>12</sup>, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises<sup>13</sup>, and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy<sup>14</sup>.

Hard law typically pertains to legally binding norms, whereas soft law encompasses non-binding, voluntary norms. Soft law can sometimes serve as a

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<sup>9</sup> Available at [https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>10</sup> Available at [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf).

<sup>11</sup> Available in <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf>.

<sup>12</sup> Available at [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>13</sup> Available at <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>14</sup> Available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

preliminary stage for the development of legally binding norms.<sup>15</sup> A good example is the progression from soft law declarations to the eventual establishment of international human rights treaties.<sup>16</sup>

Moreover, soft law norms have the potential to evolve into binding customary international law. This allegation is usually raised when it comes to the Universal Declaration of Human Rights, referring to its shift from soft law into a legally binding legal framework.<sup>17</sup>

Drawing a historical comparison, the clash of interests between developing and developed nations presented considerable hurdles in achieving a consensus on regulations about Business and Human Rights. Developing countries focused on mitigating the negative impacts of multinational corporations, whereas developed nations aimed to protect their own corporate interests.<sup>18</sup>

As a result, several instruments have emerged, attempting to address this particular issue. These efforts continually diverged between the duality of non-binding and binding norms, therefore illustrating the ongoing debate and search for an effective approach.

During the 1970s, the rise in foreign investments and the process of decolonization stimulated the formation of a Code of Conduct to define the rights

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<sup>15</sup> Abbott, Kenneth W., and Duncan Snidal. "Hard and Soft Law in International Governance." *International Organization* 54, no 3 (2000), 421–56 <<https://doi.org/10.1162/002081800551280>>.

<sup>16</sup> Angelika Nußberger, "Hard Law or Soft Law—Does it Matter? Distinction Between Different Sources of International Law in the Jurisprudence of the ECtHR" in Anne van Aaken, and Iulia Motoc (eds), *The European Convention on Human Rights and General International Law* (2018) <<https://doi.org/10.1093/oso/9780198830009.003.0003>>.

<sup>17</sup> Joseph, Sarah and Joanna Kyriakakis. "From Soft Law to Hard Law in Business and Human Rights and the Challenge of Corporate Power." *Leiden Journal of International Law* 36, no 2 (2023), 335–61. <<https://doi.org/10.1017/S0922156522000826>>.

<sup>18</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018) <<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

## II. An Overview of Business and Human Rights

and obligations of multinational companies at the international level.<sup>19</sup> However, these divergent objectives, combined with a growing trend toward regulation resulted in the breakdown of negotiations in the 1990s. Despite the unsuccessful talks, the conversation regarding corporate human rights responsibilities persisted.<sup>20</sup>

In the early 2000s, the former UN Secretary-General introduced the Global Compact<sup>21</sup> as a platform for dialogue and support.<sup>22</sup> The Global Compact focused on ten fundamental principles which included human rights, labor, the environment, and anti-corruption measures that companies could choose to adhere to on a voluntary basis.

While some civil society organizations criticized the voluntary nature of the Global Compact, it is undeniable that it has played a significant role in advancing the business responsibility and accountability discourse.

With the initiative, approximately 12,900 participating companies and organizations were engaged. However, in the meantime, there was still a growing demand for a mandatory framework to serve as a guideline for enterprises.<sup>23</sup>

Later in 2003, the UN Sub-Commission's Draft Norms on Responsibilities of Transnational Corporations and Other Enterprises concerning Human Rights

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<sup>19</sup> Karl P. Sauvant, *The Negotiations of the United Nations Code of Conduct on Transnational Corporations: Experience and Lessons Learned* (2015). *Journal of World Investment and Trade*, vol. 16 (2015), pp. 11-87  
<<https://ssrn.com/abstract=2991265>>

<sup>20</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)  
<<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>21</sup> Available at [www.unglobalcompact.org](http://www.unglobalcompact.org)

<sup>22</sup> United Nations, 'Secretary-General Proposes Global Compact on Human Rights, Labour, Environment, in Address to World Economic Forum in Davos' UN Doc. SG/SM/6881 (February 1999).

<sup>23</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)  
<<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

(Norms) came into light but were not well-received by companies and the business community due to their enforceability, being soon abandoned by the Commission.<sup>24</sup>

Unlike the UN Global Compact or other soft-law mechanisms, the Norms in fact represent a legally binding instrument, therefore, transnational corporations and business enterprises would be subject to UN monitoring and verification procedures aside "other international and national mechanisms already in existence or yet to be created."<sup>25</sup>

Concurrently, renewed calls for a mandatory framework persisted. Yet, after the rejection of the Norms, John Ruggie was appointed as the Special Representative on human rights and businesses to follow with the mission of reshaping the ongoing work into a feasible instrument.<sup>26</sup>

Ruggie vehemently criticized the Norms, considering them a distraction from the primary goal. Instead, he aimed to develop a comprehensive document that would include updates regarding the down points of the previous ones. Through extensive stakeholder engagement, Ruggie and his team formulated the UN Framework known as the Guiding Principles.<sup>27</sup>

The UNGPs are the foremost authoritative global standard in this domain and quickly gained recognition as the "new global standard for business and human rights".<sup>28</sup> These principles were unanimously adopted by the United Nations Human

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<sup>24</sup> UN Commission on Human Rights, 'Responsibilities of transnational corporations and related business enterprises with regard to human rights', Decision 2004/116 (April 2004).

<sup>25</sup> Julie Campagna, 'United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights: The International Community Asserts Binding Law on the Global Rule Makers', 37 J. Marshall L. Rev. 1205 (2004).

<sup>26</sup> Available in

[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf).

<sup>27</sup> Ibid.

<sup>28</sup> Scott Jerbi, 'UN Adopts Guiding Principles on Business and Human Rights - What Comes Next?', Institute for Human Rights and Business (2011)

<[www.ihrb.org/other/commentary-un-guiding-principles-business-human-rights](http://www.ihrb.org/other/commentary-un-guiding-principles-business-human-rights)>

## II. An Overview of Business and Human Rights

Rights Council in 2011, which was a landmark considering the previous unsuccessful attempts to regulate the field.

Serving as the UN's official guidance to states and companies on their human rights-related duties and responsibilities, the UNGPs consist of 31 principles. They implement the UN Protect, Respect, and Remedy Framework on Business and Human Rights and are applicable to all states and business enterprises, regardless of their size, sector, location, ownership, or structure.<sup>29</sup>

In 2011, shortly after the endorsement of the UNGPs, the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises were revised to include recommendations for responsible business conduct and several updates. The OECD Guidelines were initially established in 1976 and represent a significant instrument in the realm of Business and Human Rights. One of the key new features that came with its revision, was a specific chapter on human rights that aligns with the UNGPs, thus actively promoting their implementation.<sup>30</sup>

The Guidelines were envisioned to ensure that multinational corporations would carry out their activities in accordance with government policies. They aim to enhance mutual trust between enterprises and the societies they perform in setting up requirements for responsible commercial enterprise behavior across various regions, including human rights, labor rights, the environment, bribery, and consumer interests.<sup>31</sup>

Another instrument that was recently revised to align with the UNGPs is the International Labor Organization (ILO) Tripartite Declaration of Principles

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<sup>29</sup> Available at [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf), p.

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<sup>30</sup> OECD, 'OECD Guidelines for Multinational Enterprises' (2011) <<https://www.oecd.org/daf/inv/mne/48004323.pdf>>

<sup>31</sup> Ibid.

Concerning Multinational Enterprises and Social Policy<sup>32</sup>, which represents another pivotal instrument.

The Tripartite Declaration can be characterized as a soft-law instrument, providing standards to enterprises regarding social guidelines and encouraging inclusive, accountable, and sustainable place-of-job practices.<sup>33</sup>

The Declaration explicitly acknowledges its soft-law status in its introduction, stating that it serves as guidelines to enhance the favorable social and labor impacts of multinational enterprises' operations and governance, with the aim of achieving decent work for all—a universal objective mentioned within the 2030 Agenda for Sustainable Development.<sup>34</sup>

Ultimately, the issue of multinational corporations evading accountability for human rights violations is not a recent problem, in fact, the topic of business and human rights has been present on the UN agenda for many years. There was an initial attempt in the 1970s that ultimately faded out in the early 1990s, followed by a resurgence of interest in the late 1990s that continues until today.<sup>35</sup>

Over time, strategies to encourage responsible corporate conduct regarding human rights have oscillated between proposals for binding legal instruments and softer approaches in the form of policies and non-binding instruments. The tension between favoring hard or soft law approaches persists today, with the prevailing

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<sup>32</sup> Available in [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

<sup>33</sup> International Labour Organization, "What is the ILO MNE Declaration?" <[https://www.ilo.org/empent/areas/mne-declaration/WCMS\\_570332/lang-en/index.htm](https://www.ilo.org/empent/areas/mne-declaration/WCMS_570332/lang-en/index.htm)>.

<sup>34</sup> International Labour Organization, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, (March 2017). See also Brownlie (1980), pp. 39 and 41.

<sup>35</sup> Joseph, Sarah and Joanna Kyriakakis. "From Soft Law to Hard Law in Business and Human Rights and the Challenge of Corporate Power." *Leiden Journal of International Law* 36, no 2 (2023), 335–61. <<https://doi.org/10.1017/S0922156522000826>>.

international instrument being the openly non-binding UN Guiding Principles on Business and Human Rights.<sup>36</sup>

Further adding to the ongoing debate, an intergovernmental working group at the United Nations is drafting a new legally binding instrument on business and human rights.<sup>37</sup>

## 2.2. The UN Guiding Principles on Business and Human Rights

John Ruggie was commissioned in 2006 by the Human Rights Council, which by the time was recently formed, to conduct a comprehensive investigation into the business and human rights sphere.<sup>38</sup> A few years later, Ruggie's efforts assembled into the United Nations Guiding Principles on Business and Human Rights, and they were ratified in 2011 by the UNHRC, marking a turning point in the development of norms and standards on the accountability and responsibility of business actors.<sup>39</sup>

The guidelines revealed fundamental human rights norms that all States have agreed to be the basis of duties and obligations for preventing and redressing business-related human rights violations. Additionally, they represent decades of struggle by impacted communities, human rights advocates, and civil society organizations to achieve justice, redress, and acknowledgment of the effects companies have on human rights.<sup>40</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> John G Ruggie, 'The Social Construction of the UN Guiding Principles on Business and Human Rights' in Surya Deva and David Birchall (eds.), *Research Handbook on Human Rights and Business* (2020), 71.

<sup>39</sup> OHCHR, 'United Nations Guiding Principles on Business and Human Rights' (2011) <[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)>

<sup>40</sup> The Danish Institute for Human Rights and the International Corporate Accountability Roundtable (June 2014) <[https://media.business-humanrights.org/media/documents/files/documents/DIHR\\_-\\_ICAR\\_National\\_Action\\_Plans\\_NAPs\\_Report.pdf](https://media.business-humanrights.org/media/documents/files/documents/DIHR_-_ICAR_National_Action_Plans_NAPs_Report.pdf)>

While Ruggie's role was well-defined, it is important to note that the UNGPs do not possess the force of law or regulation. Instead, these principles are based on a fundamental set of social norms designed to guide business practices. The UNGPs present a three-part framework, emphasizing that (1) nation-states have a duty to *protect* against human rights abuses by third parties, (2) businesses have the (independent) responsibility to *respect* human rights, and (3) victims need to be able to access *remedy* when human rights abuses have taken place.<sup>41</sup>

The principles established a clear distinction between the state's responsibility to protect, the corporate responsibility to respect, and the accessibility to remedies.

For that reason, the UNGPs underscored the importance of governments implementing policies, legislation, and mechanisms to prevent, investigate, and redress human rights abuses committed by business activities.<sup>42</sup> Simultaneously, corporations were able to be held accountable for due diligence processes implementation with the main goal of preventing negative impacts.<sup>43</sup>

Additionally, they contributed to the expansion of the corporate social responsibility (CSR) infrastructure, while also providing a soft-law solution in a way that encourages businesses to prioritize human rights without alienating the business community or the UN itself.<sup>44</sup> According to Ruggie, the UNGPs draw upon social

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<sup>41</sup> Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (March 2011).

<sup>42</sup> OHCHR, 'United Nations Guiding Principles on Business and Human Rights' (2011), 3  
<[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)>

<sup>43</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)  
<<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>44</sup> Stéphanie Lagoutte, 'The UN Guiding Principles on Business and Human Rights – A Confusing "Smart Mix" of Soft and Hard International Human Rights Law' in Stéphanie Lagoutte, Thomas Gammeltoft-Hansen and John Cerone (eds.), *Tracing the Roles of Soft Law in Human Rights* (2016), 235–253.

norms to shape business conduct and affirm that businesses must adhere to legal requirements.<sup>45</sup>

However, it is important to highlight that the UNGPs go beyond mere legal compliance and further establish that enterprises have an obligation to respect human rights, regardless of the willingness or ability of states to enforce the law.<sup>46</sup>

Ruggie argues that businesses should consider respect for human rights as the fundamental starting point, irrespective of whether it is legally mandated or influenced by societal norms. Therefore, the Guiding Principles present a pragmatic strategy to guarantee the acknowledgment of human rights by incorporating procedures such as evaluating concerns, taking action based on the findings, monitoring responses, and communicating results.<sup>47</sup>

It is further emphasized by the Guiding Principles the importance of transparency and external communication by businesses to address concerns raised by affected stakeholders. The reporting mechanism enables companies to raise awareness and comprehension of the human rights implications of their activities.<sup>48</sup>

On that account, the UNGPs outline as well that the integration of human rights due diligence into business conduct is fundamental and that, in this sense, HRDD should entail identifying, preventing, mitigating, and being accountable for a company's impact on human rights.

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<sup>45</sup> John G Ruggie, 'The Social Construction of the UN Guiding Principles on Business and Human Rights' in Surya Deva and David Birchall (eds.), *Research Handbook on Human Rights and Business* (2020), 71.

<sup>46</sup> *Ibid.*

<sup>47</sup> Rasche, Andreas, and Sandra Waddock., "The UN Guiding Principles on Business and Human Rights: Implications for Corporate Social Responsibility Research." in *Business and Human Rights Journal* 6, no 2 (2021), 227–40 <<https://doi.org/10.1017/bhj.2021.2>>

<sup>48</sup> Global Reporting Initiative 'Strengthening business accountability in the National Action Plans on Business and Human Rights: Policy recommendations on transparency' <<https://www.globalreporting.org/media/lnikk40o/naps-policy.pdf>>

This type of accountability requires the disclosure of non-financial information, which is becoming a legally binding requirement.<sup>49</sup> The guiding principles distinguish between the responsibilities of states and businesses. While states are encouraged to prompt businesses to communicate their human rights efforts, disclosure can be mandated without state intervention.<sup>50</sup>

Undoubtedly, the UNGPs have introduced a new era in the field by combining voluntary and binding measures, and by addressing the state's duty to protect, the corporate responsibility to respect, and the access to remedy.

They represent a notable guideline for states and corporations based on how to make further progress. Still, there is a need to assess how their implementation has been done to evaluate their true potential to contribute to more responsible, transparent, and accountable business activities.<sup>51</sup>

Notably, one of the crucial initiatives towards the efforts to contribute to the ongoing implementation of the UNGPs has been the UNHRC's call on all Member States to create National Action Plans.<sup>52</sup> In this way, governments would be able to support the implementation of the Guiding Principles in each of their unique national settings.

Following related developments at the regional level in Europe, the UNHRC issued this call in 2014 alongside a resolution to establish an intergovernmental

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018) <<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>52</sup> Human Rights Council Res. A/HRC/26/L.1. Rep. of the Human Rights Council, 26th Sess., June 10-27, 2014 (June 2014) <<http://www.norwaygeneva.org/EFTA1/Statements/26th-Session-of-the-Human-Rights-Council/Item-3-Promotion-and-protection-of-human-rights/Business-and-Human-Rights-Resolution-/#.U63LWGSxPgj>>.

framework to work toward the creation of a treaty to address the human rights obligations of transnational business.<sup>53</sup>

In this context, the ongoing discussion regarding the potential value of legally binding norms against soft law instruments emphasizes the significance of developing guidance on NAPs. In the context of this duality, the NAP mechanism proves to be an even more valuable resource, since it is able to promote a significant impact for both movements of the debate.

For the proponents of a treaty, the recommended process of national dialogue, research, and analysis outlined for the NAPs, if implemented, would provide an accurate understanding of current challenges related to human rights impacts caused by businesses. On the other hand, for the defendants of alternative approaches, the NAPs will play a major part in securing the commitment to the UNGPs and stimulating stronger strategies from stakeholders.<sup>54</sup>

It would also identify existing gaps in laws, policies, and institutions that contribute to these impacts and hinder effective prevention and redress. On the other hand, for those favoring alternative approaches, ensuring a sustained commitment to the UNGPs among stakeholders necessitates stronger implementation strategies, with NAPs expected to play a crucial role in supporting these efforts.<sup>55</sup>

Significantly, in response to the calls from the UN, the EU, and the Council of Europe, as well as numerous countries globally have made commitments to

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<sup>53</sup> Danish Institute for Human Rights and International Corporate Accountability Roundtable, 'A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks' (2014)  
<https://media.business-humanrights.org/media/documents/files/documents/DIHR - ICAR National Action Plans NAPs Report.pdf>

<sup>54</sup>Ibid.

<sup>55</sup>Ibid.

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implement the UNGPs at the domestic level by developing National Action Plans on Business and Human Rights.

### **3. NATIONAL ACTION PLANS AS POLICY INSTRUMENTS FOR PROMOTING HUMAN RIGHTS DUE DILIGENCE**

#### **3.1. Definition and Importance of Human Rights Due Diligence**

The idea of corporate Human Rights Due Diligence has its roots in the work of John Ruggie, who served as the UN Special Representative on transnational corporations, business enterprises, and human rights. As highlighted in the preceding section, Ruggie presented the UN Framework to the UNHRC, which aimed to define the responsibilities of both states and corporations concerning business and human rights.<sup>56</sup>

With the ground-breaking decision to adopt the UNGPs, the UN unprecedentedly addressed the responsibility of corporations. In this way, actively putting efforts towards the resolution of the ‘governance gap’ that has been long-standing in the last years regarding human rights protection.<sup>57</sup> The UNGPs introduce a noteworthy element in the discussion on human rights due diligence, which has garnered considerable attention.

Scholars distinguish between two types of due diligence incorporated in the Guiding Principles. Firstly, due diligence refers to a process that enables firms to manage business risks.<sup>58</sup> Secondly, it pertains to a standard of conduct required to fulfill an obligation.<sup>59</sup>

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<sup>56</sup> UN Human Rights Council, ‘Protect, Respect and Remedy: A Framework for Business and Human Rights – Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie’ A/HRC/8/5, 7 (2008).

<sup>57</sup> Lara Sophia Hutt, ‘German Action Plan on Business and Human Rights: a step forward or just business as usual?’ (2018) <<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>58</sup> Rasche, Andreas and Sandra Waddock., “The UN Guiding Principles on Business and Human Rights: Implications for Corporate Social Responsibility Research.” in *Business and Human Rights Journal* 6, no 2 (2021), 227–40. <<https://doi.org/10.1017/bhj.2021.2>>

<sup>59</sup> Jonathan Bonnitca and Robert McCorquodale, ‘The Concept of “Due Diligence” in the UN Guiding Principles on Business and Human Rights’ (2017) <<https://doi.org/10.1093/ejil/chx042>>

The coexistence of these two meanings stems from the UNGPs' utilization of the term 'due diligence' to align with the understanding of businesses, lawyers, and government representatives.<sup>60</sup>

Significantly, the endorsement of due diligence in the UNGPs has had a far-reaching impact, influencing various standards and frameworks. These principles have been integrated into international codes of practice, the policies of the European Union, and the advocacy efforts of civil society organizations (CSOs). Furthermore, large corporations have also integrated the UNGPs into their social responsibility processes.<sup>61</sup>

According to the Guiding Principles, it is the individual responsibility of all business enterprises to uphold human rights. This obligation entails engaging in a comprehensive human rights due diligence process, encompassing the identification, prevention, mitigation, and accountability of their impacts on human rights. By undertaking such due diligence, enterprises can effectively manage potential and existing adverse human rights effects associated with their operations in a proactive manner.<sup>62</sup>

The process consists of four fundamental elements:

- (a) Identification and assessment of actual or potential adverse human rights impacts stemming from the enterprise's activities, including those directly linked to its operations, products, or services through business relationships.*
- (b) Integration of assessment findings into relevant company processes, taking appropriate action based on the level of the enterprise's involvement in the impact.*

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<sup>60</sup> Rasche, Andreas and Sandra Waddock, "The UN Guiding Principles on Business and Human Rights: Implications for Corporate Social Responsibility Research." in *Business and Human Rights Journal* 6, no 2 (2021), 227–40 <<https://doi.org/10.1017/bhj.2021.2>>

<sup>61</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)

<sup>62</sup> OHCHR, 'United Nations Guiding Principles on Business and Human Rights' (2011) <[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)>

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- (c) Monitoring the effectiveness of measures and processes aimed at addressing adverse human rights impacts to ensure their efficacy.*
- (d) Communication about the steps being taken to address impacts, demonstrating to stakeholders, especially affected stakeholders, the existence of adequate policies and processes.<sup>63</sup>*

Enterprises ought to conduct a comprehensive assessment of risks, taking into account factors such as geographical context, sector, and business relationships throughout their operations, which include headquarters, subsidiaries, and the entire value chain.

The primary objective of human rights due diligence is to proactively avoid any detrimental impacts on individuals, with a clear priority placed on their well-being above any business considerations. This process should be continual, acknowledging that risks to human rights can evolve.<sup>64</sup>

Furthermore, engaging meaningfully with various stakeholders is vital, particularly those directly affected by the enterprise's activities, as well as human rights defenders, trade unions, and active organizations. The input and insights of these stakeholders should inform the due diligence process. It is imperative to take into account the risks faced by human rights defenders and other critical voices, recognizing their significance in ensuring comprehensive human rights protection.<sup>65</sup>

However, even though corporate human rights due diligence has emerged as a crucial aspect in both the business and government sectors, the current practices of businesses and governments in relation to human rights due diligence reveal several challenges and gaps. Many companies are falling short of meeting the

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<sup>63</sup>Ibid.

<sup>64</sup>Ibid.

<sup>65</sup>Ibid.

requirements set forth in the Guiding Principles, indicating inadequate management of risks affecting workers and communities.<sup>66</sup>

A lack of awareness and understanding among businesses regarding their responsibility to respect human rights is a significant issue. Similarly, governments face obstacles in fulfilling their duty to protect human rights, including inconsistent enforcement of legislation and a dearth of guidance specifically tailored to local business contexts, including small and medium-sized enterprises.<sup>67</sup>

Addressing these challenges necessitates collaborative efforts from all stakeholders involved. Businesses must take the initiative by commencing human rights due diligence, conducting assessments of potential and actual impacts, and formulating action plans that align with the Guiding Principles. It is crucial for businesses to engage with affected stakeholders, enhance transparency, and consider collective leverage approaches to address systemic human rights issues.<sup>68</sup>

The investment community, recognizing their role and responsibility, should incorporate human rights due diligence into their investment practices and demand effective due diligence from the companies they invest in. Governments, for their part, must utilize their regulatory and policy levers to advance corporate human rights due diligence.<sup>69</sup>

This includes enacting legislation that incentivizes due diligence, integrating human rights considerations into state-owned enterprises, and public procurement,

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<sup>66</sup> UN Working Group on Business and Human Rights, ‘Summary of the Report of the Working Group on Business and Human Rights to the General Assembly - Policy coherence in government action to protect against business-related human rights abuses’ (2019) <[https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ExecutivesummaryWGBHRPolicycoherence2019GA74report\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ExecutivesummaryWGBHRPolicycoherence2019GA74report_EN.pdf)>

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

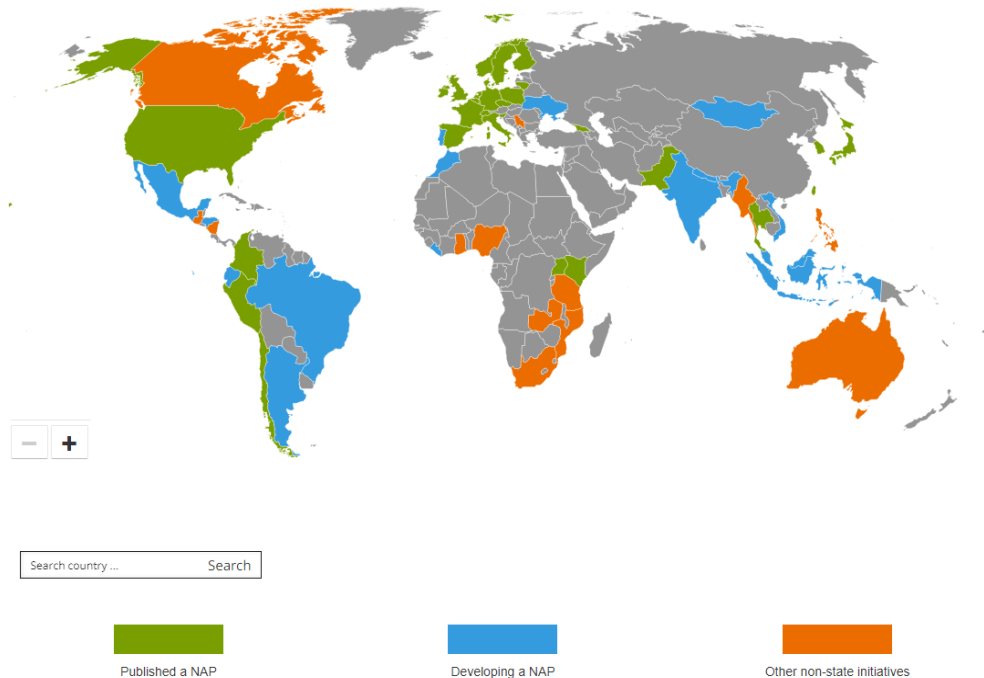
<sup>69</sup> Ibid.

fostering policy coherence, and providing tailored guidance to businesses, including smaller enterprises.<sup>70</sup>

### 3.2. Overview of National Action Plans (NAPs) and their Purpose

National Action Plans outline official policies, national priorities, and activities aimed at implementing the principles laid out in the Guiding Principles on Business and Human Rights. By formulating NAPs, governments evaluate their existing policies and identify challenges related to business and human rights. Subsequently, they devise measures to be adopted by both the State and businesses.

According to the map provided below, it demonstrates that 32 states have already embraced and released their NAPs, while an additional 20 states are presently in the process of creating one. Moreover, 7 countries are actively involved in non-state initiatives related to this matter.



**Figure 1:** An overview of adopted or developing NAPs worldwide, as well as similar non-state initiatives.

Source: Danish Institute for Human Rights <<https://globalnaps.org>>

<sup>70</sup>Ibid.

These measures often include promoting or mandating the disclosure of information regarding how companies address their impacts, in line with Guiding Principle 3(d).<sup>71</sup>

Following the guidance document on NAPs provided by the UN Working Group, governments are encouraged to "clarify their expectations regarding the disclosure of information on human rights due diligence and related impacts."<sup>72</sup> This fosters transparency in addressing business-related human rights issues and ensures that companies are held accountable for their actions and their potential impacts on human rights.<sup>73</sup>

Furthermore, NAPs serve as policy instruments created by States with the objective of protecting against negative human rights impacts arising from corporate activities, in alignment with the UNGPs. The UN Human Rights Council has urged Member States to establish and adopt NAPs, while the UN Working Group on Business and Human Rights has been encouraging all nations to develop and revise such plans since 2011.<sup>74</sup>

NAPs are able to enhance the characteristics of business and human rights requirements (in particular, their precision, as well as their ownership by governments). Furthermore, through NAPs it is possible to incorporate John Ruggie's recommendations and the UNGPs into the reality of challenging issues.

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<sup>71</sup> Global Reporting Initiative 'Strengthening business accountability in the National Action Plans on Business and Human Rights: Policy recommendations on transparency'

<<https://www.globalreporting.org/media/lnikk40o/naps-policy.pdf>>

<sup>72</sup> UN Working Group on Business and Human Rights, 'Summary of the Report of the Working Group on Business and Human Rights to the General Assembly - Policy coherence in government action to protect against business-related human rights abuses' (2019)

<[https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ExecutivesummaryWGBHRPolicycoherence2019GA74report\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ExecutivesummaryWGBHRPolicycoherence2019GA74report_EN.pdf)>

<sup>73</sup> Ibid.

<sup>74</sup> See

<https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights>

Finally, NAPs are essential tools for implementing the Guiding Principles, and are crucial for governments to effectively embody the three pillars of the UNGPs: the state's duty to protect against adverse human rights impacts related to business activities, the corporate responsibility to respect human rights through the implementation of robust due diligence processes, and the necessity for affected individuals and communities to access appropriate remedies.<sup>75</sup>

### **3.3. Role of NAPs in Promoting Responsible Business Conduct and Addressing Adverse Human Rights Impacts**

The growing interconnectedness of corporate processes across national borders poses significant challenges to safeguarding human rights. Countries that host numerous corporations are required to implement appropriate measures to prevent violations within this context. At the same time, corporations must acknowledge their collective responsibility for their operations and demonstrate due diligence in mitigating, preventing, and addressing human rights abuses that may arise from their business activities.<sup>76</sup>

By taking proactive measures, businesses can play a crucial role in ensuring that their operations respect human rights and contribute positively to the communities and environments in which they operate.

When host states are unable or unwilling to ensure adequate human rights protection, other countries bear a distinct responsibility in establishing policies that require corporations to uphold human rights standards. As a result, achieving comprehensive human rights protection in the global economy heavily relies on the legal and political actions of governments within their national contexts.

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<sup>75</sup> OHCHR, 'United Nations Guiding Principles on Business and Human Rights' (2011), 3  
<[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)>

<sup>76</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)  
<<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

Through the implementation of National Action Plans, governments have a valuable opportunity to enforce a minimum standard of corporate due diligence and establish measures to proactively prevent potential violations from occurring in the first place.

NAPs serve as a means for governments to hold corporations accountable for their actions and to create an environment where businesses are compelled to respect human rights in all their operations, regardless of the host state's capacity to enforce such protections. By doing so, governments can contribute significantly to safeguarding human rights in the global economy and promoting responsible business practices on an international scale.<sup>77</sup>

Therefore, National Action Plans serve as a significant mechanism for upholding Human Rights within the framework of business activities and fulfilling international, regional, and national human rights obligations.<sup>78</sup>

There is a growing trend of legislative initiatives at both national and regional levels that demonstrate a rising interest in regulating human rights due diligence.<sup>79</sup> These initiatives introduce obligations related to conducting due diligence and transparency requirements. In practice, both States and businesses are expected to adhere to the principles set forth in the Guiding Principles to fulfill their respective duties and responsibilities.

As a result, National Action Plans on Business and Human Rights have gained significance as a policy tool for States to address and minimize the adverse human rights impacts arising from business activities. These plans serve as essential

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<sup>77</sup> Ibid.

<sup>78</sup> National Liaison Officer Working Party on National Human Rights Action Plans of the EU Fundamental Rights Agency, 'National human rights action plans in the EU' (2019), 12 <[https://fra.europa.eu/sites/default/files/fra\\_uploads/2020\\_outcome-report-wp-national-human-rights-action-plans.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/2020_outcome-report-wp-national-human-rights-action-plans.pdf)>.

<sup>79</sup> Mandatory Due Diligence - Business & Human Rights Resource Centre. Business & Human Rights Resource Centre <<https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/>>

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mechanisms to promote responsible business practices and protect human rights in the context of economic activities.<sup>80</sup>

Several governments are currently involved in the development of legislative frameworks pertaining to corporate HRDD. Achieving comprehensive safeguarding of human rights within the global economy predominantly hinges upon governments' legal and political endeavors within their respective national realms.<sup>81</sup>

Through the implementation of NAPs, governments have the opportunity to establish a fundamental standard for corporate due diligence and adopt proactive measures aimed at preemptively averting potential violations.<sup>82</sup>

Accordingly, numerous bodies, including the Council of Europe Committee of Ministers, have stressed the urgency for States to develop NAPs and effectively implement the United Nations Guiding Principles on Business and Human Rights.<sup>83</sup>

The UNGPs emphasize that companies should implement a human rights due diligence process to fulfill their responsibility to respect human rights. This process involves the identification, prevention, mitigation, and accountability of a company's impact on human rights. However, in practice, the level of compliance by companies with their human rights due diligence obligations has remained limited.<sup>84</sup>

For that reason, the development of National Action Plans dedicated to these matters is undoubtedly a crucial step on the path of ensuring the UNGPs and

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<sup>80</sup>Global Reporting Initiative 'Strengthening business accountability in the National Action Plans on Business and Human Rights: Policy recommendations on transparency'  
<<https://www.globalreporting.org/media/lnikk40o/naps-policy.pdf>>

<sup>81</sup>Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)  
<<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>82</sup>Ibid.

<sup>83</sup>Council of Europe, 'National Action Plans'  
<<https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/national-action-plans>>

<sup>84</sup>Ibid.

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leveling due diligence processes. The overarching aim is to ensure that the concept of human rights due diligence becomes a standard practice across the wider business landscape, transcending the efforts of a select group of corporations.

## **4. COMPARATIVE ANALYSIS OF EXISTING NATIONAL ACTION PLANS**

### **4.1. Analysing Human Rights Due Diligence Expectations on NAPs**

This chapter aims to recognize the widespread adoption of NAPs while assessing three of the current existing NAPs and their implementation of human rights due diligence expectations as per the UNGPs. The goal is to enhance protection for individuals and communities from human rights abuses linked to business activities across global supply chains.

The majority of NAPs are independent action plans structured according to the design of the UNGPs. They cover a diverse range of relevant issues, themes, and sectors. These include Corporate Law and governance, non-financial reporting, public procurement, trade and investment, taxation, rights of vulnerable groups, data protection, and privacy, business operations in conflict-affected areas, and judicial remedies and non-judicial grievance mechanisms, among others.<sup>85</sup>

This study will particularly focus on the chapters and sections related to human rights due diligence in the National Action Plans for France, Germany, and the Netherlands due to their relevant background considering the topic. By analyzing these specific sections, we aim to gain insights into the efforts and effectiveness of these countries in implementing human rights due diligence in their NAPs.

Over the past decade, several European countries have been enacting legislation on mandatory human rights due diligence, aligning with the commitments made in their NAPs. France, Germany, and the Netherlands were chosen for this

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<sup>85</sup> ELSA Portugal Legal Research Group on Business and Human Rights and NOVA Centre on Business, Human Rights and the Environment, Recommendations for the Upcoming Portuguese National Action Plan on Business and Human rights (October 2022).

study due to their significant economic interconnectedness, large export-driven economies, and their ongoing development of human rights due diligence instruments.

These countries' economies play a vital role in generating employment opportunities and raising social and environmental standards. However, the growing complexity of business activities can also lead to adverse effects on people along the supply chain.<sup>86</sup>

On that account, countries like France, Germany, and the Netherlands hold a special responsibility to establish clear expectations and implement policies for corporations, ensuring that they respect, mitigate, and prevent infringements on human rights.

Additionally, the French, German, and Dutch governments have committed to reinforcing their legislation on public policies to adopt new legislative measures supporting mandatory human rights due diligence.<sup>87</sup> By doing so, they can contribute to a more responsible and sustainable business environment while safeguarding human rights throughout the global supply chains.

#### **4.2. France's National Action Plan**

The French NAP, 'Plan National D'action Pour La Mise En Œuvre Des Principes Directeurs Des Nations Unies Relatifs Aux Droits De L'homme Et Aux Entreprises', was adopted on 26th April 2017.<sup>88</sup>

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<sup>86</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018) <<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>87</sup> ELSA Portugal Legal Research Group on Business and Human Rights and NOVA Centre on Business, Human Rights and the Environment, Recommendations for the Upcoming Portuguese National Action Plan on Business and Human rights (October 2022).

<sup>88</sup> 'National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights' (2017) <<https://globalnaps.org/wp-content/uploads/2017/11/france-nap-english.pdf>>

#### IV. Comparative Analysis of Existing National Action Plans

On 21st February 2013, to develop the action plan for implementing the United Nations Guiding Principles, the French government sought the opinion of the National Consultative Commission on Human Rights (CNCDH) and has committed to implementing them through a groundbreaking corporate social responsibility policy.<sup>89</sup>

An inter-ministerial working group, in cooperation with the National CSR Platform, examined the CNCDH's recommendations and formulated appropriate proposals for action. The action plan distinguishes between proposals already being implemented and those for future implementation, ensuring collective commitment from stakeholders.<sup>90</sup>

It addresses both voluntary and binding arrangements, along with judicial and extrajudicial supervisory mechanisms. The CNCDH, as an independent administrative authority, is indicated to monitor and evaluate the actions implemented, providing regular reports in accordance with the United Nations working group's recommendation on business and human rights.<sup>91</sup>

The implementation of the French NAP has been instrumental in prompting France to enact new legislative measures to support mandatory human rights due diligence.<sup>92</sup> A notable example of this is the French Duty of Vigilance Law<sup>93</sup>, which was officially adopted on March 27, 2017.

This law mandates that large French companies must establish, implement, and disclose a vigilance plan. This legislative development marks a historic milestone for France, as it represents the integration of HRDD into the national legal framework.

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<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid., p. 23.

<sup>93</sup> Available, in French, at <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000034290626/>.

The process leading to the enactment of the Duty of Vigilance Law was a four-year journey, characterized by various legislative and political conflicts and discussions involving civil society, trade unions, and Members of Parliament. Ultimately, the National Assembly formally adopted the Duty of Care Law in February 2017, solidifying France's commitment to advancing human rights protection and corporate accountability within its borders.<sup>94</sup>

The French Duty of Vigilance Law is a significant milestone in promoting corporate accountability for human rights and environmental impacts. This legislation imposes a duty of care on companies to exercise vigilance and due diligence in identifying and preventing risks and harms.<sup>95</sup>

Despite having faced opposition from several legislators who lobbied against the law's constitutionality, the Council ruled that the majority of the law's text adhered to constitutional principles.<sup>96</sup>

In this sense, the French Duty of Vigilance Law came into force with the key aim of establishing that corporations headquartered in France with a workforce of at least 5,000 employees, as well as foreign companies with French subsidiaries that collectively employ 10,000 people globally.<sup>97</sup>

Under this law, these corporations are now mandated to develop "plans de vigilance" (vigilance plans) within two consecutive financial years. These plans must incorporate reasonable oversight measures capable of identifying risks and

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<sup>94</sup> Cossart, Sandra, Jérôme Chaplier and Tiphaine Beau De Lomenie, "The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All." in *Business and Human Rights Journal* 2, no 2 (2017), 317–23 <<https://doi.org/doi:10.1017/bhj.2017.14>>

<sup>95</sup> Ibid.

<sup>96</sup> European Coalition for Corporate Justice, 'Last hurdle overcome for landmark legislation: French Corporate duty of vigilance law gates green light from Constitutional Council' (March 2017) <<http://corporatejustice.org/news/435-last-hurdle-overcome-for-landmark-legislation-french-corporate-duty-of-vigilance-law-gets-green-light-from-constitutional-council>>

<sup>97</sup> Décision no. 2017-750 DC du 23 Mars 2017 du Conseil Constitutionnel (2017) <[www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-750-dc/decision-n-2017-750-dc-du-23-mars-2017.148843.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-750-dc/decision-n-2017-750-dc-du-23-mars-2017.148843.html)>.

preventing serious harm to human rights, fundamental freedoms, individuals' health and safety, and the environment. This significant development entails that approximately 150 to 200 corporations are obligated to take concrete actions to mitigate and prevent severe human rights violations, not only within their own operations but also within their business networks, including subsidiaries and suppliers.<sup>98</sup>

Moreover, they must establish monitoring plans to ensure the effective implementation of these measures. The law marks a notable step forward in corporate accountability for human rights impacts and reflects France's commitment to protecting fundamental rights.<sup>99</sup>

Within the broader regulatory landscape, the French Duty of Vigilance Law represents a trend toward embedding corporate respect for human rights into legal requirements. It aligns with the use of due diligence as a regulatory tool to ensure responsible business conduct.<sup>100</sup>

While other approaches exist, such as criminal responsibility for specific offenses and administrative regulations with specific requirements or incentives, French law stands out for its comprehensive scope and extraterritorial reach. It sets a precedent for holding companies accountable through civil liability, promoting a culture of responsible business behavior.<sup>101</sup>

The new French Duty of Care Law is an important step towards greater accountability of corporations' global activities. The more this type of law is

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<sup>98</sup>Décision no. 2017-750 DC du 23 Mars 2017 du Conseil Constitutionnel (2017) <[www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-750-dc/decision-n-2017-750-dc-du-23-mars-2017.148843.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-750-dc/decision-n-2017-750-dc-du-23-mars-2017.148843.html)>

<sup>99</sup>Ibid.

<sup>100</sup> Cossart, Sandra, Jérôme Chaplier and Tiphaine Beau De Lomenie, "The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All." in *Business and Human Rights Journal* 2, no 2 (2017), 317–23 <<https://doi.org/doi:10.1017/bhj.2017.14>>

<sup>101</sup>Ibid.

discussed at regional and national levels the greater the chance for other countries to follow the trend.<sup>102</sup>

Furthermore, the "duty of vigilance" act also applies to the company's subsidiaries, subcontractors, and suppliers, promoting accountability across the entire supply chain.

Moreover, the NAP highlights the fact that France actively supports international frameworks and initiatives. Within the International Framework, France provides financial assistance for implementing the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas<sup>103</sup>. Additionally, France has significantly contributed to the development of the ISO 26000 standard on social responsibility, which emphasizes the concept of due diligence in identifying and mitigating negative impacts.<sup>104</sup>

At the European level, the French NAP confirms France's endorsement of Recommendation CM/Rec(2016)<sup>105</sup> on human rights and business by the Council of Europe, which calls for the application of human rights due diligence by businesses. Furthermore, France supports comprehensive regulation of responsible supply chains for minerals in conflict zones and high-risk areas. It aims to ensure effective due diligence and intends to monitor its implementation closely.<sup>106</sup>

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<sup>102</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018) <<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>103</sup> OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition (2013) <<https://doi.org/10.1787/9789264185050-en>>

<sup>104</sup> 'National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights' (2017) <<https://globalnaps.org/wp-content/uploads/2017/11/france-nap-english.pdf>>

<sup>105</sup> Council of Europe, Human Rights and business – Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States (2016) <<https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>>

<sup>106</sup> Ibid.

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Within the national framework, France has taken legislative measures to strengthen corporate social responsibility. The enactment of a duty of vigilance for parent companies and outsourcing companies requires the development and implementation of due diligence plans. These plans must include measures to identify and prevent human rights abuses, fundamental freedoms violations, and harm to health, safety, and the environment. France is actively working towards the effective implementation of this legislation.<sup>107</sup>

Specific sectors, such as textiles and the extractive industry, have received special attention in France's National Action Plan. France collaborates with the OECD to develop tailored guides that include enhanced due diligence measures for these industries, such as the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector.<sup>108</sup>

This sector-specific approach aims to address unique challenges and risks faced by businesses in these areas, contributing to better human rights protection. In the financial sector, France promotes investment policies that incorporate due diligence and responsible business conduct principles. It recognizes the importance of ensuring that investors comply with due diligence requirements outlined in the OECD Guidelines for Multinational Enterprises, particularly regarding human rights and minority shareholdings.<sup>109</sup>

Finally, the National CSR Platform, a key advocate for responsible business practices, emphasizes the importance of due diligence in improving human rights and environmental risk prevention. It recommends that parent companies and outsourcing firms conduct due diligence on their subsidiaries and subcontractors to ensure compliance with fundamental rights and environmental standards.<sup>110</sup>

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<sup>107</sup> Ibid.

<sup>108</sup> 'National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights' (2017) <<https://globalnaps.org/wp-content/uploads/2017/11/france-nap-english.pdf>>

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

Transparent disclosure of due diligence processes is encouraged, in line with the European directive on non-financial reporting. The plan also addresses the issue of access to remedies for victims of human rights violations. It proposes a legal duty of vigilance on the part of parent companies to prevent abuses through their subsidiaries.<sup>111</sup>

Besides, non-judicial mechanisms, such as the OECD National Contact Point (NCP), play a vital role in promoting responsible business conduct and due diligence. The NCP's involvement in supply chain risks, human rights, and workers' rights is particularly important, as it helps raise awareness and enhance accountability.<sup>112</sup>

Overall, the findings emphasize France's commitment to advancing human rights due diligence across various sectors through its National Action Plan. The country actively participates in international and European frameworks, enacts legislation, and supports sector-specific initiatives. These efforts reflect France's dedication to promoting responsible business practices and protecting human rights.

### **4.3. Germany's National Action Plan**

The German National Action Plan titled "Implementation of the UN Guiding Principles on Business and Human Rights 2016-2020" was officially approved by the Federal Cabinet on December 16th, 2016.<sup>113</sup> In addition, Germany is already under an ongoing process of developing its second NAP, to replace the initial one that expired in 2020. However, this process has suffered significant delay due to the challenges posed by mandatory human rights due diligence requirements.

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> 'National Action Plan 2016-2020' (2016), 4

<<https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>>

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To address these issues, the German Institute for Human Rights conducted a National Baseline Assessment (NBA) specifically for the second German NAP. The findings from this assessment were published in September 2022. The NBA aims to provide a comprehensive evaluation of the current state of human rights implementation in Germany and identify areas that require improvement as the country formulates its new NAP.<sup>114</sup>

The German National Action Plan on Business and Human Rights lays out the Federal Government's expectations for companies regarding human rights due diligence. It emphasizes the need for enterprises, regardless of size and sector, to integrate this process into their operations, especially when operating in countries with weak rules of law.<sup>115</sup>

Germany has made remarkable progress in addressing human rights due diligence expectations within its National Action Plans. It not only outlines explicit requirements for companies to conduct human rights due diligence but also sets an ambitious benchmark.

Even before commencing the development process, Germany announced the publication of an ambitious NAP. What distinguishes the German NAP from others is its unique feature. Unlike any other state, the Federal Government formulates a clear and specific future goal in the NAP.<sup>116</sup> This forward-looking approach sets Germany's NAP apart as an innovative and pioneering framework in the realm of human rights and corporate responsibility, as stated:

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<sup>114</sup>Wüdsch, Melanie and Michael Windfuhr, National Baseline Assessment: Contribution to the update of the National Action Plan on Business and Human Rights (2022)  
<<https://www.ssoar.info/ssoar/handle/document/81703>>

<sup>115</sup>'National Action Plan 2016-2020' (2016), 4  
<<https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>>

<sup>116</sup>Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)  
<<https://repository.ghumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

*The aim is that at least 50% of all enterprises based in Germany with more than 500 employees will have incorporated the elements of human rights due diligence described in [this NAP] into their corporate processes by 2020. Enterprises which have not adopted particular procedures and measures should be able to explain why they have not done so (the comply or explain mechanism). If fewer than 50% of the enterprises defined above have incorporated the elements of human rights due diligence described in chapter III into their corporate processes by 2020 and the target is thus missed, the Federal Government will consider further action, which may culminate in legislative measures.<sup>117</sup>*

The German NAP introduced the responsibility of German companies regarding human rights in their supply and value chains. Last year, in June 2021, Germany enacted the Supply Chain Due Diligence Act, making it mandatory for companies with over 3,000 employees in Germany and over 1,000 employees from 2024, to comply with human rights and environmental due diligence obligations. These obligations extend to their operations, direct suppliers, and to some extent, indirect suppliers.<sup>118</sup>

This legal measure represents a significant advancement in promoting responsible business practices and upholding human rights and environmental standards within German companies.<sup>119</sup>

The origins of the debate on a mandatory human rights due diligence law in Germany can be traced back to the mid-2010s. Inspired by developments in France, civil society and academics started discussing the potential structure of such a law in Germany. The key factor that influenced the process leading to the 2016 National

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<sup>117</sup>'National Action Plan 2016-2020' (2016), 10  
<<https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>>

<sup>118</sup> Available, in German, at <https://www.bundestag.de/dokumente/textarchiv/2021/kw23-de-lieferkettengesetz-845608>.

<sup>119</sup>ELSA Portugal Legal Research Group on Business and Human Rights and NOVA Centre on Business, Human Rights and the Environment, Recommendations for the Upcoming Portuguese National Action Plan on Business and Human rights (October 2022).

#### IV. Comparative Analysis of Existing National Action Plans

Action Plan on Business and Human Rights was the decision on whether to implement voluntary or mandatory measures.<sup>120</sup>

Despite the ultimate preference for a voluntary approach, the German NAP conveys a clear expectation from the government. It highlights that if companies' voluntary compliance proved insufficient, the consideration of mandatory legislation remained on the table as a viable option. This demonstrates the government's readiness to explore more stringent measures if needed to ensure effective human rights due diligence by companies operating in Germany.<sup>121</sup>

The German NAP starts by recognizing the UNGPs as the primary international framework and pledges to implement them. It also acknowledges Germany's economic interconnectedness and emphasizes the responsibility of states to protect human rights.

On top of that, chapter three of the German NAP focuses on the expectations for businesses to integrate Human Rights Due Diligence into their operations. The NAP encourages companies, especially those with international operations, to adopt HRDD measures that are appropriate for their size and industry. Taking into account inputs from various stakeholders during the consultation process, the NAP provides a comprehensive description of HRDD.<sup>122</sup>

Specifically, the NAP highlights the key elements of human rights due diligence that enterprises should adopt. First, companies are expected to publicly state their commitment to respecting human rights through a human rights policy

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<sup>120</sup>'National Action Plan 2016-2020' (2016)

<<https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>>

<sup>121</sup>Krajewski, Markus, Kristel Tonstad and Franziska Wohltmann. "Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?" *Business and Human Rights Journal* 6, no 3 (2021), 550–58 <<https://doi.org/doi:10.1017/bhj.2021.43>>

<sup>122</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)

<<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

statement. This statement should clarify responsibilities within the company and provide necessary staff training to ensure proper implementation.<sup>123</sup>

Moreover, enterprises should establish a systematic procedure to identify potential adverse impacts on human rights resulting from their business activities. This includes examining both direct and indirect impacts, as well as those that the enterprise might contribute to through its business relations. Engagement with relevant stakeholders is essential in this process.<sup>124</sup>

Once the impact analysis is complete, enterprises should implement appropriate measures to prevent or mitigate adverse human rights impacts. Regular effectiveness tracking and engagement with affected stakeholders are vital to ensure continuous improvement and proper redress.<sup>125</sup>

Additionally, enterprises are encouraged to keep and share information regarding their human rights impacts, demonstrating their awareness and actions taken to address them and setting up complaint mechanisms for individuals affected by these impacts. More significant risks may require regular public reporting to enhance transparency.

Furthermore, the NAP emphasizes that the scope and depth of due diligence measures will vary based on an enterprise's size, sector, and operational context. Larger enterprises may collaborate with others within the same industry or association, while small and medium-sized enterprises are encouraged to seek support from government and business associations.<sup>126</sup>

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<sup>123</sup>'National Action Plan 2016-2020' (2016),  
<<https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>>

<sup>124</sup>Ibid.

<sup>125</sup>Ibid.

<sup>126</sup>Ibid.

#### IV. Comparative Analysis of Existing National Action Plans

In terms of progress, the NAP set a target for at least 50% of German-based enterprises with more than 500 employees to incorporate human rights due diligence into their processes by 2020. The government planned to review compliance annually and will consider further action, including legislative measures if the target is not met.<sup>127</sup>

Likewise, the NAP addresses specific areas for action, such as development policy, public procurement, and business activity in conflict zones, where human rights due diligence should be integrated. It also aims to create a global level playing field for responsible supply chains and encourages transparency and communication about corporate impacts on human rights.<sup>128</sup>

In the final two chapters, the German National Action Plan focuses on policy coherence and monitoring mechanisms. The Federal Government pledges to ensure a comprehensive and robust monitoring process to track progress effectively. To achieve this, an inter-ministerial committee, led by the Foreign Ministry, will be established.<sup>129</sup>

This committee will be responsible for conducting an annual survey specifically addressing the implementation status of pillar II of the UNGPs, which emphasizes the state's duty to protect human rights by ensuring that businesses respect human rights in their operations.<sup>130</sup>

The survey conducted by the inter-ministerial committee will evaluate how well enterprises are incorporating human rights due diligence measures outlined in pillar II into their business processes. By conducting regular surveys, the German

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<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018)  
<<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>130</sup> Ibid.

Government aims to monitor the level of compliance and identify any challenges faced by companies in integrating human rights due diligence effectively. The results of these surveys will provide valuable insights into the progress made in implementing the NAP and enable the government to take appropriate actions if needed.<sup>131</sup>

Emphasizing the importance of monitoring and continuous improvement, the NAP seeks to regularly review the progress made and challenges encountered during the implementation of its principles. By conducting these annual surveys, the German Government aims to create a dynamic and cooperative process involving various stakeholders.

This collaborative approach aims to foster a more responsible and sustainable business environment in Germany, ensuring that companies operating within the country actively respect and uphold human rights in their practices.

The German NAP envisions a forward-looking strategy, one that consistently seeks to improve and enhance the protection of human rights in the business sector. By fostering open communication and ongoing assessment, the German Government aims to strengthen the country's commitment to human rights and contribute to a more ethically responsible global business landscape.<sup>132</sup>

Finally, the commitment to a comprehensive monitoring procedure reflects the German Government's dedication to ensuring that businesses operating within its jurisdiction are actively working to respect and protect human rights, in line with the principles of the UN Guiding Principles on Business and Human Rights.<sup>133</sup>

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<sup>131</sup>National Action Plan 2016-2020<sup>9</sup> (2016)

<<https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>>

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

#### 4.4. The Netherlands' National Action Plan

The Netherlands' National Action Plan on Business and Human Rights, "Nationaal Actieplan bedrijfsleven en mensenrechten: Rapport over het Nederlandse beleid rondom de bevordering van eerbiediging van mensenrechten door het bedrijfsleven," was adopted on December 10th, 2013.<sup>134</sup>

In the Autumn of 2020, the Netherlands initiated a process to develop an updated NAP. As part of this process, a national baseline assessment was conducted by Utrecht University and the Netherlands Institute for Human Rights, and the findings were published in August 2020. Subsequently, in November 2022, the second NAP was published.<sup>135</sup>

The Dutch National Action Plan underscores the country's commitment to promoting corporate adherence to human rights principles, with a strong emphasis on preventing human rights violations not only within a company's direct operations but also throughout its production chains. This approach aligns with both the UN Guiding Principles and the OECD guidelines.<sup>136</sup>

The human rights due diligence process entails examining both current and potential impacts of a company's actions on human rights, taking proactive measures, continuously monitoring the outcomes, and maintaining transparency about the entire approach. This obligation extends not only to a company's internal procedures but also to its entire supply chain.

Chapter 3 of the Dutch National Action Plan provides a thorough explanation of the various elements of due diligence. However, it's noteworthy that the subsequent sections of the action plan tend to focus primarily on risk

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<sup>134</sup> 'National Action Plan on Business and Human Rights' (2013)  
<<https://globalnaps.org/wp-content/uploads/2017/10/NAP-Netherlands.pdf>>

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

assessment, with comparatively less attention given to other critical components of due diligence, such as taking action to address issues and monitoring the effectiveness of those actions.<sup>137</sup>

The national action plan also presents an extensive compilation of ongoing initiatives designed to promote human rights within the business context. These initiatives have been partially implemented and indicate the Netherlands' long-standing commitment to addressing this issue.

One notable initiative is the sector risk analysis, which involves a systematic assessment of the risk of human rights violations within different sectors. The subsequent engagement between the government and these identified sectors aims to collaboratively improve the situation.<sup>138</sup> This positive approach highlights the ability to bring structural challenges to light and foster effective solutions.

Additionally, contributing to this approach, the Dutch Parliament adopted in 2017 the Child Labour Due Diligence Law. This new initiative allowed an examination and report to be required from corporations, followed by a plan of action, to obtain an overall assessment of whether child labor occurs along their supply chain and to address this issue accordingly.<sup>139</sup><sup>140</sup>

In this sense, the Dutch National Action Plan on Business and Human Rights further emphasizes the government's active role in promoting Corporate Social Responsibility and human rights due diligence within the business community. The plan encourages companies to take proactive measures to identify and address

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<sup>137</sup>International Corporate Accountability Roundtable and European Coalition for Corporate Justice 'Assessment of the National Action Plan (NAP) on Business and Human Rights of the Netherlands (2014) <<https://globalnaps.org/wp-content/uploads/2017/11/icar-analysis-netherlands.pdf>>

<sup>138</sup>Ibid.

<sup>139</sup>Lara Sophia Hutt, 'German Action Plan on Business and Human Rights: a step forward or just business as usual?' (2018) <<https://repository.gchumanrights.org/server/api/core/bitstreams/84220e2f-6ad7-4651-a119-f25a80f8f6dc/content>>

<sup>140</sup>India Committee of the Netherlands, 'Child Labour Due Diligence Law for companies adopted by Dutch Parliament', (2017) <[www.indianet.nl/170208e.html](http://www.indianet.nl/170208e.html)>

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human rights risks in their operations, particularly within international supply chains.<sup>141</sup>

The government uses the OECD Guidelines as a framework of reference for International Corporate Social Responsibility in its communications with and conditions for the business community. However, companies have requested clearer guidance on what is expected of them in terms of due diligence. To address this, the government is focused on raising companies' awareness of the importance of due diligence. This includes providing practical information and guidance through organizations like CSR Netherlands. Workshops are organized to assist companies in shaping their CSR policies and prioritizing the human rights risks they face.<sup>142</sup>

In addition, the government supports research to explore whether the ISO 31000 risk management standard is suitable for Corporate Social Responsibility due diligence. The plan also involves engaging with specific sectors that present high risks of adverse social impacts. Sector Risk Analysis is introduced to identify these sectors, and the government plans to enter into voluntary CSR agreements with them. These agreements aim to address sector-specific challenges and support companies in scaling up their initiatives to an international level.<sup>143</sup>

Furthermore, the Dutch government applies its proper due diligence frameworks for risk assessment to all applications for support, such as grants or export credit insurance. Companies seeking government support must take responsibility for their activities and comply with the OECD Guidelines.<sup>144</sup>

In summary, the Dutch National Action Plan highlights the government's efforts to encourage companies to apply human rights due diligence and places a

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<sup>141</sup> Ibid.

<sup>142</sup> 'National Action Plan on Business and Human Rights' (2013)  
<<https://globalnaps.org/wp-content/uploads/2017/10/NAP-Netherlands.pdf>>

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

significant emphasis on encouraging businesses to uphold human rights standards, extending this responsibility across their supply chains. It seeks to provide clear guidance and support, raise awareness, and engage with the business community to foster a culture of responsible business conduct that respects human rights both domestically and internationally.

While risk assessment is extensively covered, there is room for enhancing coverage of other crucial aspects of due diligence. The plan showcases a range of ongoing initiatives that reflect the Netherlands' sustained commitment to advancing human rights within the corporate realm. The sector risk analysis stands out as a particularly commendable effort, revealing and addressing systemic issues collaboratively.<sup>145</sup>

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<sup>145</sup>International Corporate Accountability Roundtable and European Coalition for Corporate Justice 'Assessment of the National Action Plan (NAP) on Business and Human Rights of the Netherlands (2014) <<https://globalnaps.org/wp-content/uploads/2017/11/icar-analysis-netherlands.pdf>>

## 5. CONCLUSION

This study critically examined the role and significance of National Action Plans in promoting human rights within the context of business activities at international, regional, and national levels. By focusing on how human rights due diligence expectations are embodied in NAPs and conducting a comparative analysis of three selected countries, namely France, Germany, and the Netherlands, based on their relevance to the topic, this thesis aimed to identify and analyze best practices for effectively addressing adverse human rights consequences.

Through the analysis of NAPs, it became evident that these policy instruments play a crucial role in promoting human rights in business operations and global value chains. NAPs serve as frameworks that outline official policies, expectations, priorities, and activities related to the implementation of the United Nations Guiding Principles on Business and Human Rights.

The findings of this study shed light on the importance of robust human rights due diligence processes. Effective NAPs should integrate human rights due diligence expectations by incorporating four core components: identification and assessment of adverse human rights impacts, integration of findings into company processes, monitoring of the effectiveness of measures, and transparent communication about impact mitigation efforts.

Moreover, the comparative analysis allowed for the identification of best practices that can be adopted to enhance the effectiveness of NAPs. These best practices include clear objectives, comprehensive adoption processes, and well-defined roles for both states and companies.

The assessment of corporate practices has revealed a varying level of commitment to addressing human rights concerns among corporations. While a

growing number of companies acknowledge the importance of human rights, only a small fraction have fully integrated human rights considerations into their core operations and strategies.

Therefore, it is concluded that achieving comprehensive Human Rights Due Diligence within the corporate sector necessitates a more holistic approach. A crucial step in this direction is the establishment of standardized minimum requirements for HRDD. These requirements would ensure a level playing field and bridge the existing gaps in human rights protection.

However, it's important to note that these legal standards should be viewed as a foundational step rather than the ultimate objective. It is essential to recognize that while legal standards provide a baseline, further substantial efforts are required beyond the realm of legislation.

Consequently, the emphasis shifts towards collaborative initiatives and shared responsibility, a concept advocated by the UN Guiding Principles and corroborated by the assessment of National Action Plan implementation and corporate behavior. The accomplishment of meaningful and far-reaching change in enhancing social standards across global supply chains rests on coordinated efforts by diverse stakeholders.

Taking into consideration the principle that National Action Plans should encompass strategies enabling the fulfillment of responsibilities pertaining to responsible business conduct, human rights, and Environmental, Social, and Governance (ESG) obligations as mandated by European legislation, it is contended that robust NAPs should encompass measures that facilitate this readiness. This includes provisions for training, knowledge-sharing initiatives, and the incorporation of prior evaluations during the formulation process.

## V. Conclusion

The application of human rights due diligence must be proportional to the company's size, the severity of potential human rights impacts, and the operational context. It should also be an ongoing endeavor centered on safeguarding both people and the environment, prioritizing these aspects over the company's own risks. This exercise not only helps in managing reputational and legal risks but also enhances engagement with stakeholders, such as consumers and investors. The endorsement of the United Nations Guiding Principles and the resultant formulation of NAPs have spurred developments at both regional and national levels.

Despite this momentum, while some countries have initiated regulatory measures through legislation, others remain cautious about implementing more stringent actions. It is crucial to recognize that it is precisely resolute actions that would vindicate the positions of those countries that have been hesitant to support a legally binding treaty on corporate responsibilities, instead placing high regard on Ruggie's Guiding Principles.

In this context, France, Germany, and The Netherlands' initiatives offer a noteworthy foundation, though they should serve as a stepping stone for further advancements. The overarching aim is to ensure that the concept of human rights due diligence becomes ingrained as a standard practice across the wider business landscape, transcending the efforts of a select group of corporations.

Additionally, the study highlighted the significance of state compliance with international norms and emphasized the need for ongoing stakeholder engagement, particularly with affected stakeholders, human rights defenders, trade unions, and active organizations.

In conclusion, this research contributes to the academic discourse by providing valuable insights into the comprehensive implementation of human rights

norms through NAPs. It underscores the importance of NAPs in addressing adverse human rights consequences in business activities and offers recommendations for policymakers and stakeholders to strengthen the embodiment of human rights due diligence expectations in NAPs.

By fostering effective NAPs and promoting robust human rights due diligence, we can advance the protection and promotion of human rights within the realm of business operations and global value chains.

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