



Human Rights Defenders in National Action Plans (NAPs) on Business and Human Rights

A Thematic Supplement to 'National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks'

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International Service for Human Rights (ISHR)
International Corporate Accountability Roundtable (ICAR)



The International Service for Human Rights (ISHR) is an independent, non-governmental organisation dedicated to promoting and protecting human rights by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.



The International Corporate Accountability Roundtable (ICAR) is a coalition of human rights, environmental, labour, and development organisations that creates, promotes, and defends legal frameworks to ensure corporations respect human rights in their global operations.

Report Authors

Ben Leather, Michael Ineichen, and Tania Morris Diaz
International Service for Human Rights (ISHR)
b.leather@ishr.ch, m.ineichen@ishr.ch

Cindy Woods
International Corporate Accountability Roundtable (ICAR)
cindy@icar.ngo

Report Contributors

Sara Blackwell, International Corporate Accountability Roundtable (ICAR)
Phil Lynch, International Service for Human Rights (ISHR)
Sarah Brooks, International Service for Human Rights (ISHR)
Clement Voulé, African Commission for Human and Peoples' Rights Working Group on Extractive Industries, Environment and Human Rights Violations
Association of Women's Rights in Development (AWID)
DefendDefenders, East and Horn of Africa Human Rights Defenders Project (EHAHRDP)
Sejin Kim, Asian Forum for Rights and Development (FORUM-ASIA)
Peace Brigades International
Josua Loots, Centre for Human Rights, Faculty of Law, University of Pretoria
Mike Posner, NYU Stern Center for Business and Human Rights (report commentator)

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INTRODUCTION

Human rights defenders (defenders) play a critical role in promoting corporate respect for human rights. Through their work, defenders help to identify, prevent, mitigate, and ensure accountability for corporate human rights abuses. Whether coming from, living in, representing, or supporting affected communities, defenders are both directly affected by, and key stakeholders regarding, the human rights impacts of business.

Despite this, the incidence of attacks, threats, and harassment against defenders working on business and human rights issues is on the rise. Defenders around the world face significant risks to their lives and livelihoods on a daily basis, as they work under the threat of extrajudicial killings, abductions, surveillance, criminalisation, and intimidation as a result of their efforts to defend human rights in the face of business interests.¹ These risks have been recognised by various United Nations (UN) and regional human rights bodies.²

Meanwhile, a range of UN experts, civil society organisations, and business representatives have repeatedly made the legal, moral, and business case for ensuring that defenders working on business and human rights are protected and consulted.³

In this context, it is crucial that States provide for the protection of human rights defenders by ensuring that the content of their National Action Plans (NAPs) on business and human rights include measures to prevent attacks against defenders and to ensure that defenders are supported, consulted, and free from aggressions, harassment, restriction, interference, and barriers to justice.⁴

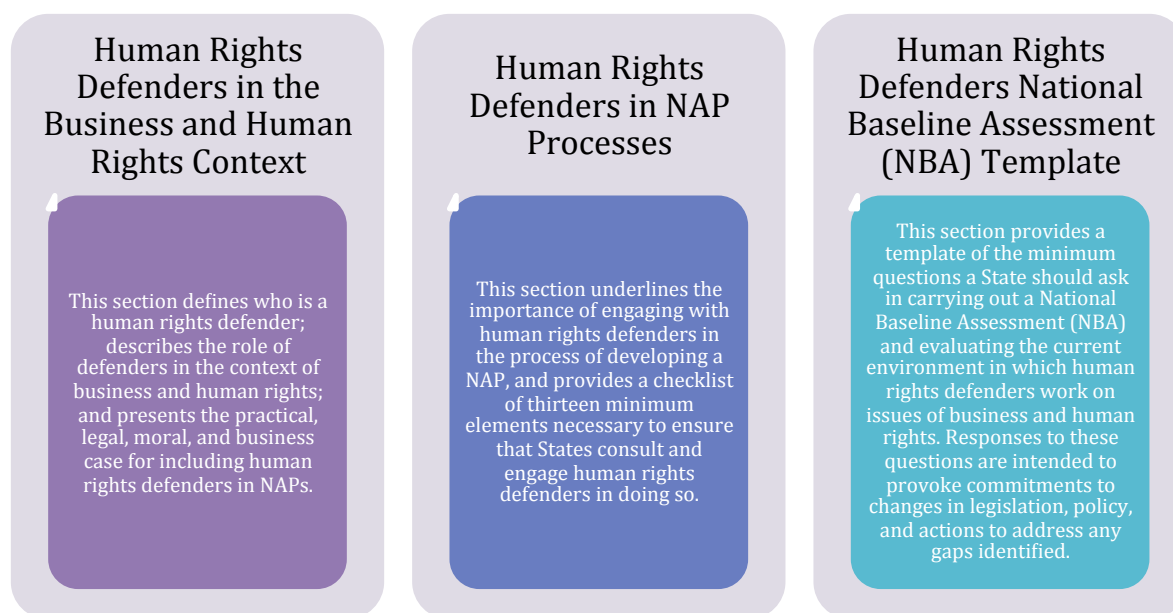
Ensuring the effective protection of defenders through NAPs also requires that defenders are substantially engaged and consulted in the process of a NAP's development. The UN Guiding Principles on Business and Human Rights (Guiding Principles) establish that States should engage in meaningful consultations with "potentially affected groups and other relevant stakeholders" to identify the human rights impacts of their work.⁵ As such, the State is obliged to consult defenders during the NAP process.

In incorporating defender input into both the substance and process of a NAP, States should strive to apply the highest standards of international law and be guided not only by the Guiding Principles, but also by the UN Declaration on the Rights and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) and conventions related to free, prior, and informed consent.⁶ A range of reports by UN and regional human rights experts regarding the consultation and protection of defenders working on business and human rights,⁷ as well as those of non-governmental organisations, should also assist States in this endeavour.⁸

ABOUT THIS GUIDANCE

This publication is intended to orient States to the need and benefits of engaging human rights defenders in the process of developing a NAP on business and human rights. It also aims to provide guidance to ensure that the content of a NAP effectively contributes to a safe and enabling environment for human rights defenders.

This document consists of three main sections:



This guidance does not seek to present an in-depth analysis of the problems facing defenders working on business human rights; ample evidence of this can be found in existing UN and NGO literature. Rather, the guidance seeks to provide, through the NAP checklist and the NBA template, a set of practical tools through which States, in conjunction with civil society and other relevant actors, can explore specific challenges in relation to defender protection and support. Thus, States can analyse existing policy responses and propose new laws, policies, and practices that respond to these problems effectively.

None of the NAPs developed to date have proposed significant changes in law or policy, tending instead to simply summarise existing practice. In working closely with human rights defenders, States can be innovative and show real leadership on this issue.

There is also a good business case for including defenders in NAPs. Many features of a safe and enabling environment for human rights defenders are strongly associated with an enabling operating environment for business, with businesses and defenders alike thriving in contexts characterised by transparency, respect for the rule of law, freedom of expression and association, and non-discrimination.⁹

While States bear the primary obligation for the promotion and protection of human rights and the protection of human rights defenders, NAPs should also sensitise businesses to their responsibilities and include concrete measures and a spectrum of actions to ensure that businesses consult defenders and contribute to a safe and enabling environment for defenders' work.

ISHR and ICAR consider that the State obligation to protect against the abuse of human rights by business actors extends both to the actions of companies domiciled in the State and to their operations and subsidiaries abroad, whether wholly or partially owned or controlled. In this respect, any reference to 'business,' 'business enterprise,' 'corporation,' or 'company' in this guidance should be understood to include both parent companies and subsidiary entities, as well as investors and contractors.

It is also important to see NAPs in the broader context of the UN Human Rights Council's parallel, complementary, and on-going Intergovernmental Working Group (IGWG) towards a binding treaty on business and human rights. NAPs offer all States an opportunity to demonstrate how businesses can and should be regulated in regards to human rights defenders and to underline the importance of consulting and protecting defenders at all levels of this debate, including through the IGWG and any treaty it ultimately produces.

The practical tools included in this guidance are to be used in conjunction with the ICAR-Danish Institute for Human Rights (DIHR) NAPs Toolkit to develop, evaluate, and revise NAPs.¹⁰ This guidance is the second of a series of thematic templates focusing on particular groups of rights holders or subject areas particularly salient to the issue of business and human rights. As such, it draws on the first guidance in the series, the 'Children's Rights in National Action Plans (NAPs) on Business and Human Rights' thematic supplement, published by ICAR, DIHR, and UNICEF in 2015.¹¹

This guidance also draws on ISHR's extensive global experience of consulting, supporting, and advocating with human rights defenders working on business and human rights, as well as ICAR's expertise in all phases of NAPs development. Its content was revised on the basis of consultations with human rights defenders, NGOs, and networks working on the issue of business and human rights in Asia, Latin America, Africa, and Europe.

Finally, this Guidance should be taken as a set of minimum elements for States to consider when developing a NAP. States should always consult local defenders before defining the development process to ensure that the NAP will be as effective as possible.

I. HUMAN RIGHTS DEFENDERS IN THE BUSINESS AND HUMAN RIGHTS CONTEXT

1. *What is a human rights defender?*

The UN Declaration on Human Rights Defenders defines a human rights defender as any person or group of persons who works to promote and protect human rights in a peaceful way.¹² This broad functional definition encompasses professional as well as non-professional human rights workers, volunteers, social movements, journalists, lawyers, and any other individual carrying out, even on an occasional basis, a human rights activity. Essentially, “those who promote and defend human rights are *ipso facto* defenders, even if they are not members of an organisation.”¹³ Therefore, any individual or collective promoting or protecting any human right is a human rights defender.¹⁴

In the context of business and human rights, human rights defenders are often, but not always, members of communities who fear their rights are or might be abused in connection with a business project. Relatedly, throughout this guidance, reference is made to ‘potentially affected communities,’ in recognition that it is often the communities affected by business projects that identify and speak out against potential human rights risks and impacts; in doing so, these communities act as human rights defenders. Consulting and protecting the safe participation of potentially affected communities in business and human rights debates and decisions at the outset could tackle the root causes of human rights violations, including violations against defenders, and prevent them from occurring.

2. *Risks faced by defenders working on issues of business and human rights*

The work of defenders in the field of business and human rights often involves speaking out against and challenging the perceived interests of those who hold great economic and political power. As a result, many human rights defenders face significant risks to their lives and livelihoods on a daily basis. They work under threats of abductions, surveillance, intimidation, stigmatisation, destruction of sources of livelihood, violence, enforced disappearance, and death as a result of their efforts to defend human rights in the face of harmful business activities.¹⁵ They are particularly vulnerable to criminalisation, with the legal system frequently being abused and manipulated to undermine the work of defenders questioning economic interests. Such misuse of the legal system includes use of pre-trial detention, fraudulent or trumped up charges, the arbitrary application of vague laws, denial of due process, and excessively long probation periods.¹⁶

The following examples help to elucidate some of the grave risks defenders working on business and human rights face:

- **Threats:** Máxima Acuña de Chaupe, leader of a social movement opposed to a mining project in Peru, allegedly received death threats from an employee of the mining company, Yanacocha, and was intimidated by approximately thirty members of the police at her home.¹⁷
- **Criminalisation:** Human rights defender Andy Hall was allegedly indicted on false accusations of criminal defamation lodged by the Thai pineapple processing company, Natural Fruit Company, following his contribution to a report concerning labour rights violations.¹⁸
- **Attacks:** In Thailand, several defenders of land rights and rights related to the environment and business were allegedly threatened, including Suwit Jeh-Soh, a community activist who was attacked by unknown armed individuals with multiple rounds of gunfire.¹⁹
- **Murders:** Indra Pelani, a defender who advocates for the rights of tenant farmers against the corporate takeover of their lands, was allegedly beaten, abducted, and murdered by private security guards hired by a subsidiary pulpwood supplier of Asia Pulp and Paper at a security checkpoint in Indonesia.²⁰

This trend of attacks and acts of intimidation is increasing.²¹ Defenders working on business and human rights face accentuated risks, in part because of the broad range of actors who might benefit from critics being silenced. These actors include State authorities and security forces, corporate bodies and business officials, private security firms, hired assassins, organised criminal groups, paramilitaries, and even members of defenders' own communities. Therefore, the laws, policies, and actions articulated through a NAP should consider all relevant actors, whilst preventing and ensuring accountability for abuses against defenders.²²

Women human rights defenders, indigenous activists, defenders living in conflict zones, and defenders of land rights and rights related to the environment are particularly vulnerable to gender and identity-specific forms of persecution and violence, rooted in existing discrimination. Many of these defenders are organised in communities or grassroots movements and thus require collective protection measures. NAPs should take into account the specific protection needs of these and other marginalised groups and acknowledge the complexities of the threats facing defenders, ensuring protection at the community and the family level. They should also emphasise measures to guarantee the consultation of these groups who have traditionally been excluded from decision-making processes that affect their lives and livelihoods.

3. Protecting and respecting human rights defenders, at home and abroad

For human rights defenders to be able to safely work on business and human rights issues, both States and businesses must contribute to a safe and enabling environment for such work, whilst desisting from and sanctioning any actions that might restrict or threaten that environment. NAPs provide an important vehicle for the articulation and coordination of the law, policies, and actions required to foster and protect such an environment. Knowledge of

the obligations and responsibilities of State and business actors in relation to human rights defenders can facilitate a more robust and protective NAP.

3.1. The State obligation to protect human rights defenders

Under international law, the State is the main duty bearer in regards to the protection of human rights. As such, the State is obliged to support, engage, and protect human rights defenders. This obligation is elucidated in both the Guiding Principles and the UN Declaration on Human Rights Defenders.

The Guiding Principles reinforce the State duty to protect by articulating how existing international law should be applied in the realm of business and human rights. According to Principle 1, “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.”²³ Given the increasing prevalence of private corporations involved in violations against human rights defenders, it is thus crucial that States use NAPs to adopt laws and policies that enforce their specific obligations to protect the rights of defenders.²⁴

In addressing these abuses, States should also be guided by the UN Declaration on Human Rights Defenders, which articulates how existing human rights law should be applied to protect the role of human rights defenders, and State duties in this respect.²⁵ The Declaration does not establish special rights for defenders but rather acknowledges that the role defenders play, and the risks they face, require specific legislative and policy responses by States to ensure that they can work in an environment where their rights are protected.²⁶ These rights include:

- The right to be protected (including the right to life);
- The right to freedom of assembly;
- The right to freedom of association;
- The right to access and communicate with international bodies;
- The right to freedom of opinion and expression;
- The right to protest;
- The right to develop and discuss new human rights ideas;
- The right to an effective remedy;
- The right to access funding.

In addition, according to the UN Special Rapporteur on Human Rights Defenders, there are nine main elements that States must provide for defenders to operate in a safe and enabling environment:²⁷

- Conducive legal, institutional, and administrative framework;
- Fight against impunity and for access to justice for violations against defenders;
- Strong, independent, and effective national human rights institutions;
- Effective protection policies and mechanisms, including public support for the work of defenders;
- Special attention for risks and challenges faced by women defenders and those working on women's rights and gender issues;
- Non-State actors' respect for and support of the work of defenders;
- Safe and open access to the UN and international human rights bodies;
- Strong, dynamic, and diverse communities of human rights defenders.

In line with Article 25 of the International Covenant on Civil and Political Rights, as well as other international guidance such as the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention 169 on Indigenous and Tribal Peoples, NAPs should guarantee the free, prior, and informed consent for business operations from affected communities, with human rights defenders having a crucial direct and intermediary role in this regard.

In addition to ensuring that businesses respect and enable the work of human rights defenders, it is also important that NAPs address the abuse of authority through which public officials often restrict the work of human rights defenders working on these issues.²⁸

NAPs represent an opportunity for States to outline how they will safeguard these elements and guarantee a safe and enabling environment for defenders working on business and human rights. Given both the role of defenders in promoting business respect for human rights and the violations of their rights they face in doing so, NAPs ought to outline how the State will guarantee the application of the Guiding Principles and the Declaration to defenders working on business and human rights.

3.2. The business responsibility, and the business case, to respect human rights defenders

Businesses must respect the rights of human rights defenders and other civil society actors to express their views on and to dissent, protest, and organise against, business activities.²⁹ The business responsibility to respect extends to refraining from harming human rights defenders, restricting their rights, or interfering with their legitimate activities, and consulting and engaging with defenders to identify, mitigate, and remedy the adverse human rights impacts of business operations.³⁰ It also includes ensuring that private security firms or contractors acting for or on behalf of business are not involved in threats or attacks against human rights defenders.

NAPs should elucidate how the State will sanction companies that actively undermine the work of human rights defenders.

Examples of business actively undermining the work of human rights defenders include:

- In January 2016, human rights defender Nasako Besingi was convicted on charges of conducting unlawful assemblies and inciting protests in Cameroon, based on allegations made against him by the U.S. agribusiness company Herakles Farms following a demonstration he organised against the company's work in protected territories.³¹ Besingi had previously been convicted on defamation charges also based on allegations by Herakles Farms that an article published by the defender, which alleged he was victim to a violent attack by Herakles employees, caused injury to the company.³²
- In the 1990's, mining company Freeport-McMoRan pushed the United States Agency for International Development to cut funding to WALHI, an Indonesian environmental group that had previously criticised the negative social and environmental impact of the company's projects.³³

In addition to the responsibility to respect human rights and human rights defenders, corporations should also be incentivised to uphold these responsibilities as a matter of good business practice for a number of reasons. For example, human rights defenders can assist companies in navigating human rights laws and establishing risk management procedures, setting the foundation for an operation's long-term security and effectiveness. Engaging with defenders helps businesses prevent and mitigate negative human rights impacts, build relationships with local stakeholders, and design effective grievance mechanisms, proactive mitigation strategies, and remediation processes.

This approach can also reduce costs and operational obstacles by minimising the risk of community conflict, which often results in interrupted production, security costs, human resources lost to crisis management, and litigation. Financial markets and consumers tend to reward businesses and brands that proactively and effectively manage social, environmental, and governance risks.

Examples of business supporting the work of human rights defenders include:

- In 2014, senior executives of six global clothing brands published a joint letter to the Cambodian government expressing concern over the killing and wounding of striking garment workers and bystanders by security forces. The letter called for the Government to launch a thorough investigation, sanction those officials found to have used disproportionate and excessive force, and to take measures to prevent the repetition of such acts.³⁴
- In 2015, Leber Jeweler, Inc. and Tiffany & Co. released statements calling on the Angolan government to drop charges against Rafael Marques, a journalist on trial for defamation after he exposed abuses in the diamond industry.³⁵

Constructive business engagement with human rights defenders should be encouraged by the NAP at all stages of business operations, across all jurisdictions, and in all aspects of implementation of the Guiding Principles.

3.3. Extraterritorial obligations

In addition to policies regarding business and human rights defenders nationally, States should use NAPs to outline how their laws, policies, and actions will regulate and incentivise the actions of the State's businesses abroad in relation to human rights defenders.

The Declaration on Human Rights Defenders affirms that “no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedom.”³⁶ The Declaration elucidates how existing binding international human rights law applies to human rights defenders, and discusses the duties of ‘organs of society,’ which includes business. As such, companies may have a duty to act in circumstances where the conduct of a third party (for example, the State in which it operates) relates to its business and where a failure to act would lead to avoidable harm. Deference to local laws of the host State is not sufficient reason for businesses working abroad to undermine the rights of human rights defenders or fail to speak out against attacks and restrictions to defenders’ work.³⁷

NAPs should enshrine an expectation that companies also address the underlying situation leading to such ‘conflicting requirements.’ Concretely, this means business should speak out proactively against local laws and policies that restrict the work of human rights defenders or perpetuate a climate of attacks and impunity. This is particularly the case where there are allegations or proof, such as by international human rights mechanisms, that local laws or policies are incompatible with the host States’ obligations under international law.³⁸

States should articulate through their NAPs how they will encourage and incentivise businesses abroad to freeze, withdraw, or restrict their investments and projects when human rights defenders are threatened, attacked, or restricted by laws or criminalisation.

As an example, in March 2016, in response to the murder of Berta Cáceres, an indigenous human rights defender who identified human rights concerns around a hydroelectric project in Honduras, the Dutch development bank FMO and the Finnish Fund for Industrial Cooperation (Finnfund) froze their funding of the project, condemned the murder, and made a public call for a thorough investigation.³⁹ Subsequently, the UN High Commissioner for Human Rights defined the response as “surely among the minimum required for a financier in a situation like this,” calling upon all organisations financing projects to show they take human rights risks seriously.⁴⁰

A NAP that is serious about protecting human rights must tackle the risks facing all those who defend these rights, not just those domiciled within the State. It must contain concrete policies and actions designed to recognise and protect human rights defenders both within the State in question, but also abroad in countries where business enterprises and investors domiciled in the State in question, including wholly or partially owned subsidiaries, operate.

II. HUMAN RIGHTS DEFENDERS IN NAP PROCESSES

1. Engaging with human rights defenders

States should engage with human rights defenders in the development of a NAP to ensure that efforts toward implementation of its business and human rights duties adequately incorporate defenders' invaluable perspectives.

Consulting human rights defenders enables States to:

- Learn from and incorporate human rights defenders' opinions, views, and experiences in the NAP process;
- Understand the link between human rights defenders' rights and the wider business and human rights context;
- Gain insight on how existing policies affect human rights defenders and how to better address concerns related to human rights defenders and business in the NAP content;
- Build and strengthen relationships to facilitate future consultations, feedback, and buy-in during NAP implementation, evaluation, and revision;
- Demonstrate State respect for human rights defenders as key stakeholders and show commitment to prioritising human rights defenders in the NAP.

It is vital that a diverse range of defenders and potentially affected communities are fully consulted and able to participate in all stages of the development, monitoring, evaluation, and updating of NAPs. It is especially important that States engage effectively with disempowered, isolated, or at-risk human rights defenders who may find it more difficult to participate. Given their historical exclusion from such processes, additional efforts should be made to engage women human rights defenders and female community leaders, and other minority groups.

Where these consultations identify current gaps in human rights protection, States should be bold in proposing new laws, policies, and actions, and the repeal or amendment of others where necessary, through the NAP. The results of human rights defender participation and consultation should be periodically published in accessible, user-friendly ways and elucidate how the input of human rights defenders was considered.

Engagement with human rights defenders should not only take place within the State developing a NAP, but also by their embassies in countries where their corporations operate. The State also has an obligation to protect defenders participating in the NAP process from any reprisals they might suffer for this involvement.

Given that defenders working on business and human rights face high levels of stigmatisation and criminalisation, the act of engaging them in the development of a NAP can strengthen their legitimacy and contribute to their protection. It may also open doors for future consultation around specific business and/or human rights policies and projects.

At the time of the publication of this guidance, eight States have produced NAPs, of which only four make direct mention of human rights defenders.⁴¹ However, only the United Kingdom has made explicit commitments to support human rights defenders through its embassies abroad.⁴² The UK NAP is also the only NAP to refer to defender protection, in the context of funding local civil society organisations.⁴³ Other NAPs merely reference the importance of consulting with human rights defenders and other stakeholders in general.⁴⁴

A NAP developed with defender input and which contains commitments that prioritise protection of defenders will help safeguard the ability of these vital stakeholders to contribute to and critique State and corporate actions, thus enhancing the overall impact of the policies and actions included in the NAP.

2. Checklist for involving human rights defenders in NAPs

The following checklist contains the minimum elements needed for States to ensure adequate human rights defender participation in NAP processes. It is designed for use in concert with the NAP Checklist found in Annex 5 of the ICAR-DIHR NAPs Toolkit. However, States should consult local defenders at the outset of the NAP development process to adapt and enhance the checklist according to their specific context.

In a joint report, 'Assessments of Existing National Action Plans (NAPs) on Business and Human Rights,' ICAR and the European Coalition for Corporate Justice (ECCJ) identified as a positive trend that all the governments who have thus far published NAPs have conducted some form of consultation with stakeholders in their development.⁴⁵ The ICAR-ECCJ assessments also point out, however, that none of these governments took steps to facilitate the participation of disempowered or at-risk stakeholders.⁴⁶ By using the checklist below, States can work toward filling this gap by setting positive precedents and creating good practise in terms of human rights defenders' involvement in NAPs.

TABLE 1: THE HUMAN RIGHTS DEFENDERS IN NAP PROCESSES CHECKLIST

- 1. Recognition
 - Take every opportunity, publically and unequivocally, to highlight the important and legitimate role of human rights defenders and the indispensable nature of their input in ensuring a practical and effective NAP.
- 2. Protection
 - At the outset of the NAP development process, make commitments and create specific mechanisms to prevent reprisals and guarantee protection for defenders who contribute to the process.
- 3. Resources
 - Allocate adequate resources to enable the consultation of a broad range of human rights defenders both at home and abroad, and across diverse geographic areas.
- 4. Stakeholder Mapping
 - Seek out human rights defenders and affected communities to participate in the development of the NAP, in both the home and host States, as part of a wider stakeholder mapping.
- 5. Governance
 - Ensure that government bodies with a specific remit regarding human rights defenders protection or civil society space are actively involved in the NAP process.
- 6. Participation
 - Facilitate the broad and sustained participation of human rights defenders, including isolated or particularly at-risk defenders, in the NAP consultation, design, implementation, evaluation, and updating processes. Consultations should take place across the country and abroad, where State-based businesses and investments operate.
- 7. National Baseline Assessment (NBA)
 - Incorporate and address human rights defenders' rights and security in the NBA by fully involving defenders in its development and completion, and integrate the results of the Human Rights Defenders' Rights NBA Template into the overall NBA process.
- 8. Scope
 - Base NAP development on the UN Guiding Principles and in line with the UN Declaration on Human Rights Defenders. The protection of the rights of human rights defenders should reflect freedoms guaranteed under international law, supplemented by domestic law where it is deemed to surpass international standards.
- 9. Content
 - Include concrete policies and measures to recognise, protect, and support human rights defenders and ensure that the State and business contribute to a safe and enabling environment for their work, both at home and abroad. Acknowledge the risks defenders face as a result of their work, paying particular attention to the specific protection needs of certain groups of defenders, and include preventative measures which tackle the root causes of risk and address the issue of impunity and accountability.
- 10. Priorities
 - Consider and utilise input by human rights defenders to identify areas for prioritisation both in the NAP itself and in its implementation.
- 11. Transparency
 - Ensure that all human rights defenders consulted understand how their input was taken into account by periodically publishing drafts of the NAP, summary reports on its implementation, and information regarding the NBA, the NAP, and any relevant consultations in an accessible, easy-to-understand format.
- 12. Balance
 - Articulate a clear expectation of how business can meet its duties to respect, consult and support human rights defenders and their work, complementing the primary responsibility of the State in that regard. The NAP should foresee appropriate monitoring mechanisms and sanctions to enforce this duty.
- 13. Follow-up
 - Fully consult human rights defenders and affected communities both at home and abroad in the implementation, review and further refinement of the NAP. Incorporate these specific follow-up mechanisms into the NAP.

III. PROTECTING AND SUPPORTING HUMAN RIGHTS DEFENDERS IN NAP CONTENT

In undertaking an NBA⁴⁷ and utilising it as a tool to create a NAP, the State should analyse and evaluate specific measures to guarantee both State protection and business respect for the rights of defenders working on business and human rights, as well as access to effective remedy when these rights have been violated.

In this context, State commitments to human rights defenders must be holistic and universal, looking at the full range of ways in which defenders at home and abroad are affected by business activities and operations. In this respect, the Guiding Principles, the UN Declaration on Human Rights Defenders, and other relevant international standards and initiatives should guide States. Similarly, a gender perspective should always be included within State commitments to human rights defenders.

The ‘Human Rights Defenders National Baseline Assessment (NBA) Template’ highlights key areas of concern regarding defenders working on business and human rights, drawing out issues likely to be of particular salience. It can be used to determine how human rights defenders and their protection needs are considered as part of a State’s legal and policy framework on business and human rights and within the wider national, regional, and international contexts. It is designed for use together with the full NBA Template found in Annex 4 of the ICAR-DIHR NAPs Toolkit.

The following template contains the minimum scoping questions in relation to the protection and support of human rights defenders that States should consider in creating a NBA. However, States should consult local defenders at the outset of the NBA, as well as throughout its drafting process, as outlined in Section II, in order to adapt and enhance the template according to specific national contexts.

Overview of the Human Rights Defenders NBA Template



TABLE 2: THE HUMAN RIGHTS DEFENDERS NATIONAL BASELINE ASSESSMENT (NBA) TEMPLATE

1. LEGAL AND POLICY FRAMEWORK	
States should assess the legal and policy protections provided to human rights defenders, and the degree to which this general landscape contributes to a safe and enabling environment for their work.	
<i>1.1 International standards and cooperation</i>	
RATIFICATION AND NATIONAL LEVEL ENDORSEMENT	<ul style="list-style-type: none"> • Has the State endorsed or ratified, and implemented (through national legislation where appropriate), relevant international instruments related to human rights defence or the right to defend human rights in the context of business, such as: <ul style="list-style-type: none"> ○ The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; ○ The nine core international human rights instruments and their optional protocols, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; ○ The UN Declaration on the Rights of Indigenous Peoples; ○ International Labour Organization (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, in particular its provisions on prior consultation; ○ ILO Declaration on Fundamental Principles and Rights at Work, in particular those provisions relating to freedom of association and the right to collective bargaining; ○ The UN Global Compact, in particular its provisions on freedom of association and the right to collective bargaining; ○ The Extractive Industries Transparency Initiative and its Civil Society Protocol; ○ The International Code of Conduct for Private Security Forces; ○ The International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability. • Does the constitution recognise the supremacy of international human rights conventions?
<i>Most relevant to Sections 1.1, 1.2 and 1.4 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
UN SPECIAL PROCEDURES	<ul style="list-style-type: none"> • Is there a standing invitation to thematic UN Special Procedures, including the Special Rapporteur on human rights defenders and the Working Group on business and human rights? • Has the State generally responded to communications from the UN Special Procedures in a timely and substantive fashion?
<i>Most relevant to Sections 1.3 and 2.2 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

REGIONAL HUMAN RIGHTS MECHANISMS	<ul style="list-style-type: none"> • Has the State demonstrated a good record of cooperation with relevant regional mechanisms such as the Inter-American Human Rights System, the European Court of Human Rights, the African Commission on Human and Peoples’ Rights, and the ASEAN Intergovernmental Commission on Human Rights, particularly in relation to human rights defenders and business and human rights?
<i>Most relevant to Section 2.2 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
STRENGTHENING THE INTERNATIONAL FRAMEWORK	<ul style="list-style-type: none"> • Does the State participate in the UN Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights? If so, does it use this space to advance the recognition, consultation, and protection of human rights defenders?
<i>Most relevant to Section 1.4 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

<i>1.2 Specific laws for the recognition and protection of human rights defenders</i>	
SPECIFIC LEGISLATIVE FRAMEWORK	<ul style="list-style-type: none"> • Does the State have a specific law for the recognition and protection of human rights defenders, or is any proposed legislation under consideration? • Does the law establish or mandate a mechanism for the protection of human rights defenders? • Does the law provide for policies and measures to prevent threats and attacks against defenders, and to investigate and ensure accountability and remedy where they occur?
<i>Most relevant to Sections 1.5, 3.1, 25.1 and 26.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
DEFENDER INPUT AND OVERSIGHT	<ul style="list-style-type: none"> • Is existing or proposed legislation on the recognition and protection of defenders subject to regular and broad review and consultation with human rights defenders? • Does existing or proposed legislation on the recognition and protection of defenders guarantee human rights defender participation in, and oversight of, implementation?
<i>Most relevant to Sections 1.5 and 3.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
MARGINALISED GROUPS	<ul style="list-style-type: none"> • Do existing or proposed laws for the recognition and protection of human rights defenders contain specific provisions to enhance protection for groups of human rights defenders at particular risk, such as, but not limited to, women and indigenous defenders, collectives, and communities?
<i>Most relevant to Sections 1.5 and 3.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

STRENGTHENING IMPLEMENTATION	<ul style="list-style-type: none"> • Has the State taken measures to implement and strengthen laws, mechanisms, or programs for the recognition and protection of human rights defenders, specifically ensuring that relevant actors and institutions have adequate capacity, expertise, and resources to do so?
<i>Most relevant to Section 1.4 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

<i>1.3 Specific policies and initiatives for the recognition and protection of human rights defenders</i>	
PUBLIC RECOGNITION	<ul style="list-style-type: none"> • Is the important and legitimate role of human rights defenders and the nature of the risks they face publically recognised? • What additional steps are being taken to reiterate the legitimacy of those defenders facing specific and additional stigmatisation for their work on business and human rights, such as women human rights defenders? • Are threats and attacks against human rights defenders working on business and human rights publically and clearly condemned?
<i>Most relevant to Section 3.2 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
PROTECTION AND PREVENTION OF AGGRESSIONS	<ul style="list-style-type: none"> • Are there measures in place for the protection of human rights defenders and the prevention of aggressions against them, their communities, and their families? If so, do they include a focus on the specific vulnerabilities of defenders working on business and human rights? • Do such measures also act upon those non-State actors associated with the risks facing the defender (e.g., the creation of spaces for dialogue between the company, State, and affected community, or the cancellation of a project if violence and threats against defenders continue)? • Do defenders identified, or self-identified, as being under threat have their risk evaluated according to a clear and transparent methodology that takes into account the human rights defender’s identity and the context of their work? Is the participation of the at-risk defender in this analysis guaranteed? • How does the State identify the specific risks faced by particularly marginalised groups of human rights defenders, such as women, minorities, rural communities, and indigenous peoples?
<i>Most relevant to Sections 3.2, 7.3 and 7.4 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
TRAINING AND EDUCATION	<ul style="list-style-type: none"> • Are public officials, including those with responsibilities for promoting and regulating business, trained in understanding the role of human rights defenders, their rights and their protection? • Are there educational campaigns to raise awareness in communities about human rights and the legitimacy of those who defend them, including in the context of business?
<i>Most relevant to Sections 3.2 and 8.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

DIALOGUE	<ul style="list-style-type: none"> Does the State create inclusive space for dialogue between representatives of the State, companies, and human rights defenders, including those in isolated or marginalised communities or groups, and those opposed to business projects?
<i>Most relevant to Section 3.2 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
HUMAN RIGHTS IMPACT ASSESSMENTS	<ul style="list-style-type: none"> In order for licenses to be granted, are human rights impact assessments required to include meaningful participation of the communities affected, including human rights defenders? Do licensing requirements guarantee the inclusion of safeguard mechanisms that address, mitigate, and effectively remedy the negative impact of a project on human rights defenders?
<i>Most relevant to Sections 3.2 and 7.4 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

1.4 General laws and policies which support or enable the work of human rights defenders	
THE RIGHT TO PEACEFUL ASSEMBLY	<ul style="list-style-type: none"> Is the right to freedom of assembly, in line with international human rights law, guaranteed? If not, what efforts are being made to amend legislation or policies that restrict the ability of human rights defenders to assemble freely and without hindrance?
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
FREEDOM OF ASSOCIATION	<ul style="list-style-type: none"> Is the right to freedom of association, in line with international human rights law, guaranteed? If not, are efforts being made to amend laws or policies that restrict the ability of defenders to associate freely?
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
NGO AND TRADE UNION REGISTRATION	<ul style="list-style-type: none"> Are there laws or initiatives designed to facilitate stronger and more diverse NGO and trade union sectors (e.g., by establishing expeditious registration processes and conferring tax benefits on certain NGOs and associations)?
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
NGO FUNDING	<ul style="list-style-type: none"> Is the right to solicit, receive, and utilise funds, including foreign funds, for the purpose of promoting and protecting human rights protected on at least an equal footing to cognate rights of private companies? Are there laws or provisions that criminalise or otherwise limit the activities of NGOs receiving foreign funding (e.g., through requirements that they register as ‘foreign agents’)? If so, what steps is the State taking to repeal these laws?
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

LAWFUL ACTIVITIES, NON LEGAL ENTITIES	<ul style="list-style-type: none"> • Are there impediments to the ability of individuals to join together to engage in activities to promote and protect human rights without the requirement to register as legal entities (e.g., criminal sanctions)? If so, what steps is the State taking to remove these impediments?
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
FREEDOM OF EXPRESSION	<ul style="list-style-type: none"> • Is the right to freedom of expression, in line with international human rights law, guaranteed? If not, what efforts are being made to amend legislation or policies that restrict human rights defenders in the full exercise of their right to freedom of expression, specifically in relation to expression pertaining to the human rights impacts and violations of corporations?
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
WHISTLEBLOWERS	<ul style="list-style-type: none"> • Are there laws to protect human rights related disclosures in relation to both State and non-State actors, and the individuals making such disclosures?
<i>Most relevant to Sections 3.1 and 26.2 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
ACCESS TO OR DISCLOSURE OF INFORMATION	<ul style="list-style-type: none"> • Are there transparent and clear laws and policies that ensure information held by public authorities regarding business-related human rights violations is proactively disclosed? Is the right to request and receive such information provided for by law? Are exceptions to this right narrow and clearly defined? • Are there meaningful penalties for non-disclosure under transparency and reporting regimes? • Do freedom of information laws contain a presumption in favour of access to human rights related information held by both public and private bodies, and guarantee the timely provision of such information? Are any exemptions or exceptions narrow and clearly defined?
<i>Most relevant to Sections 3.1, 3.2, 26.2 and 27.3 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
CONSULTATION AND CONSENT	<ul style="list-style-type: none"> • Are there laws and policies that guarantee the meaningful consultation of potentially affected communities, and encourage the consultation of defenders prior to the granting of licenses for business projects? • Are there laws that guarantee the free, prior, and informed consent of potentially affected communities, particularly indigenous and tribal peoples? • Are there laws to guarantee clear and transparent processes to establish land titles, and do they foresee the proper consultation of local communities and human rights defenders? • Is the implementation of business projects stopped when there are doubts regarding the guarantee of communities' rights to free, prior, and informed consent? If not, what is the response of the State in such instances?
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

PROTECTION AGAINST INTIMIDATION AND REPRISALS IN RELATION TO HUMAN RIGHTS MECHANISMS	<ul style="list-style-type: none"> • Are there laws or policies to protect against, prohibit, and ensure accountability for reprisals against a person or group in association with their engagement with international, regional, or national human rights mechanisms? •
<i>Most relevant to Sections 1.6, 3.1, 3.2, 27.3 and 28.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

<i>1.5 Extraterritorial responsibilities of the State in regards to the recognition and protection of human rights defenders</i>	
FOREIGN POLICY AND GUIDELINES ON HUMAN RIGHTS DEFENDERS	<ul style="list-style-type: none"> • Do guidelines for the recognition, support, and protection of human rights defenders exist as part of the State’s foreign policy?⁴⁸ If so, are they implemented through diplomatic missions? • Are there policies and guidelines in place to encourage and support the consolidation of a safe and enabling legal environment for promoting and protecting human rights in host States, including through specific protection laws and the repeal of laws restricting the work of human rights defenders? • Are defenders involved in defining and reviewing foreign affairs policies, guidelines, funding, and other actions regarding host State legislation?
<i>Most relevant to Sections 1.5, 7.1 and 8.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
DIPLOMATIC ACTIONS AND ADVOCACY	<ul style="list-style-type: none"> • Do diplomatic missions abroad implement specific measures to support human rights defenders working on issues related to their business operations? These measures could include: public statements of recognition; quiet diplomacy on behalf of the defenders concerned; speaking out against attacks on defenders; visiting defenders in their seat or receiving them in the Embassy; observing trials against human rights defenders; providing on-going or emergency funds to defenders and his/her organisation; facilitating dialogue between human rights defenders, business, and/or the host State. • Do ministerial staff and diplomatic missions abroad advocate for laws and policies protecting defenders and guaranteeing communities free, prior, and informed consent in host States in which its businesses are operating? • Are embassy personnel trained and instructed in proactively soliciting and receiving reports from human rights defenders about human rights violations related to the activities of businesses, and in supporting defenders?
<i>Most relevant to Sections 1.5, 7.1 and 8.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
POLICY COHERENCE	<ul style="list-style-type: none"> • Does the State engage with the host State to ensure that businesses are respecting the rights of human rights defenders? • Does the State ensure that divisions between its economic and political sectors do not limit the effective response of ministries and embassies in protecting civic space and human rights defenders?
<i>Most relevant to Sections 1.5, 7.1 and 8.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	

OUTWARD INVESTMENT INSTITUTIONS	<ul style="list-style-type: none"> Do State institutions that support overseas investment have and enforce policies and performance standards in line with, at minimum, the IFC Performance Standards on Environmental and Social Sustainability? If so, are there specific and/or additional safeguards pertaining to the recognition and protection of human rights defenders?
<p><i>Most relevant to Sections 1.4, 1.5, 3.4 and 4.2 of the full NBA Template.</i></p>	
<p><u>Status/Gaps:</u></p>	
PROACTIVE ENGAGEMENT	<ul style="list-style-type: none"> Does the State proactively seek to ensure that it is informed of the role of its businesses abroad in regards to the security of affected communities and human rights defenders?
<p><i>Most relevant to Sections 1.5 and 3.3 of the full NBA Template.</i></p>	
<p><u>Status/Gaps:</u></p>	
DUTY OF CARE	<ul style="list-style-type: none"> Is there a legally enforceable ‘duty of care’ for parent companies in terms of the human rights impacts of their operations and the operations of their subsidiaries, regardless of where the subsidiaries operate, including mandatory due diligence and provisions on human rights defenders and the environment in which they work?
<p><i>Most relevant to Sections 1.5, 3.1 and 3.2 of the full NBA Template.</i></p>	
<p><u>Status/Gaps:</u></p>	

2. EXPECTATIONS, INCENTIVES, AND SANCTIONS ON BUSINESS

States should assess what laws, policies, and mechanisms exist to educate and incentivise business to fulfil its duty to contribute to a safe and enabling environment for human rights defenders, both at home and abroad, and to sanction actions by business that threaten this environment.

ARTICULATION OF THE BUSINESS RESPONSIBILITY	<ul style="list-style-type: none"> • Is the responsibility of business to respect and support human rights defenders and contribute to a safe and enabling environment for their work clearly established in law and policy? If so, are there appropriate monitoring mechanisms and sanctions to enforce this duty? • Is the responsibility of business to consult and engage with human rights defenders in the identification, mitigation, and remediation of adverse human rights impacts of their operations, (e.g. through due diligence policies and impact assessments) clearly established in law and policy?
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Most relevant to Sections 2.1, 3.1 and 3.2 of the full NBA Template.

Status/Gaps:

AWARENESS RAISING	<ul style="list-style-type: none"> • Are there laws and policies in place that raise business awareness of, and encourage proactive engagement in, the role and protection needs of human rights defenders, both on a systemic level and in relation to individual cases of threats, attacks, or restrictions?
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Most relevant to Sections 3.2 and 3.4 of the full NBA Template.

Status/Gaps:

ENGAGEMENT	<ul style="list-style-type: none"> • Does the State facilitate constructive dialogue between State and company representatives, human rights defenders, and affected communities regarding allegations of human rights violations in host countries as a result of business activities? • Are businesses encouraged to proactively protect defenders against abuse where the actor involved in the alleged or potential abuse is related to the businesses' conduct and neglecting to do so would result in damage that could otherwise be avoided?
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Most relevant to Sections 3.2 and 3.4 of the full NBA Template.

Status/Gaps:

RECOGNITION	<ul style="list-style-type: none"> • Are there joint initiatives with business officials to make public declarations recognising the important and legitimate role of human rights defenders in mitigating the negative human rights effects of economic projects, and to condemn threats and violence against human rights defenders?
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Most relevant to Section 3.2 of the full NBA Template.

Status/Gaps:

SANCTIONS	<ul style="list-style-type: none"> • Are sanctions and/or measures against agencies, contractors, majority state-owned enterprises, or commercial partners for interfering with the safe and enabling environment for defenders clearly defined in law and policy?
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Most relevant to Section 3.1, 4.1, 4.2, 5.1, 6.1 and 6.2 of the full NBA Template.

Status/Gaps:

LEGAL ENVIRONMENT	<ul style="list-style-type: none"> • Are there policies that establish a clear expectation that businesses speak out publicly against laws and policies in host States that restrict the work of human rights defenders or contribute to a climate of impunity for attacks against them?
<i>Most relevant to Sections 2.1 and 3.2 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
PRIVATE SECURITY FIRMS	<ul style="list-style-type: none"> • Are there laws and policies that articulate a clear message to business regarding the responsibility of private security to respect the rights of human rights defenders? • Are private security companies regulated in order to ensure that their actions meet international standards, especially that they respect the right to peaceful demonstration?
<i>Most relevant to Sections 1.4, 3.1, 3.2, 6.1 and 7.2 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
PUBLIC PROCUREMENT	<ul style="list-style-type: none"> • Are public procurement contracts required to guarantee human rights due diligence, transparency, independent monitoring, and indicators linked to the protection of fundamental freedoms, especially the freedom of association and expression? • Do procurement regulations require security contractors to be members of the International Code of Conduct for Private Security Service Providers?
<i>Most relevant to Section 6.1 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
INVESTORS	<ul style="list-style-type: none"> • Are private investors incentivised to consult with human rights defenders to ensure that they do not invest in projects that could result in human rights violations or undermine the rights of defenders and affected communities?
<i>Most relevant to Section 3.2 of the full NBA Template.</i>	
<u>Status/Gaps:</u>	
FREE, PRIOR, AND INFORMED CONSENT	<ul style="list-style-type: none"> • Are there laws and policies that incentivise a culture of consultation and consent around the proposal, development, and implementation of business projects? • Are there regulations to monitor the level of commitment of businesses and investors to guarantee broad, adequate, and informed consultation and seek community consent?
<i>Most relevant to Sections 3.1, 3.2 and 7.4 of the full NBA Template</i>	
<u>Status/Gaps:</u>	

3. REDRESS AND REMEDY

States should assess what judicial and non-judicial remedies are available to human rights defenders and their effectiveness, specifically in relation to ensuring access to remedy and guaranteeing non-repetition in cases of abuses against human rights defenders.

3.1 Accessing remedy

JUDICIAL REMEDY	<ul style="list-style-type: none"> • Are there affordable, prompt, and effective judicial remedies for violations, threats, and attacks against human rights defenders? • Does the State guarantee non-recurrence in cases of abuse against human rights defenders?
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Most relevant to Sections 1.6 and all sections under Guiding Principles 25 and 26 of the full NBA Template.

Status/Gaps:

ACCESSIBILITY	<ul style="list-style-type: none"> • Are instruments for access to justice for human rights defenders and affected communities accessible, taking into account geographical, linguistic, and cultural barriers?
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Most relevant to all sections under Pillar III of the full NBA Template.

Status/Gaps:

LEGAL AID	<ul style="list-style-type: none"> • Is there a dedicated legal aid fund for human rights defenders involved in legal proceedings, either in seeking legal remedy for business related human rights violations or in defending themselves against 'judicial harassment'? If so, who may obtain support from this fund?
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Most relevant to Sections 1.6 and 26.2 of the full NBA Template.

Status/Gaps:

EXTRATERRITORIAL JURISDICTION	<ul style="list-style-type: none"> • Is there extraterritorial jurisdiction over the actions of businesses from the State, their subsidiaries, and supply chains for actions committed abroad, particularly in relation to human rights defenders?
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Most relevant to Sections 25.1, 26.2, and 26.3 of the full NBA Template.

Status/Gaps:

INDEPENDENT COMPLAINT MECHANISMS	<ul style="list-style-type: none"> • Are there policies in place to encourage and support the establishment of independent complaint mechanisms for alleged violations related to the operations of its businesses abroad? Do such mechanisms respect the rules of confidentiality and incorporate early warning systems regarding threats or other abuses against those who have submitted or who are considering submitting a complaint?
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Most relevant to Sections 25.1, 27.1, 27.2 and 28.1 of the full NBA Template.

Status/Gaps:

CRIMINALISING ATTACKS ON HUMAN RIGHTS DEFENDERS	<ul style="list-style-type: none"> • Does the criminal code specifically criminalise attacks against human rights defenders?
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Most relevant to Sections 1.5 and 25.1 of the full NBA Template.

Status/Gaps:

ENDING IMPUNITY	<ul style="list-style-type: none"> • Are there laws or policies in place to guarantee impartial and effective investigations into allegations of violations against human rights defenders, ensure the punishment of those who are responsible, and provide adequate reparation to the victims?
<i>Most relevant to all sections under Pillar III of the full NBA Template.</i>	
Status/Gaps:	

<i>3.2 Ending the criminalisation of human rights defenders</i>	
AVOIDING THE ABUSE OF THE JUSTICE SYSTEM	<ul style="list-style-type: none"> • Are there laws and policies in place to prevent the use of the judicial system by public servants and third parties to harass human rights defenders?
<i>Most relevant to Sections 1.5 and 1.6 of the full NBA Template.</i>	
Status/Gaps:	
SANCTIONING STIGMATISATION	<ul style="list-style-type: none"> • Are public officials and private entities sanctioned for stigmatising or defaming human rights defenders in statements or otherwise?
<i>Most relevant to Sections 1.5, 3.2 and 25.1 of the full NBA Template</i>	
Status/Gaps:	
LEGAL COUNSEL AND SUPPORT	<ul style="list-style-type: none"> • Do defenders who are accused of a crime have access to independent legal counsel, the support of human rights organisations, and observation by the international community?
<i>Most relevant to Sections 1.6, 25.1 and 26.2 of the full NBA Template.</i>	
Status/Gaps:	

4. CONTEXT

In order to ensure that the laws, policies, and actions articulated through a NAP are as comprehensive as possible, States should consult existing guidance on their current policy framework in the completion of a NBA.

For this this section, it is recommended that the researcher use:

- UN Universal Periodic Review recommendations;
- UN Human Rights Council resolutions;
- Concluding Observations, General Comments, and case jurisprudence of the UN Treaty Bodies;
- UN and/or regional Special Procedures recommendations;
- Country-specific sources;
- International, regional, national and local international civil society reports and recommendations;
- Media reports.

INTERNATIONAL MONITORING

- What recommendations on human right defenders, business and human rights, civil society space, the right to land, labour rights, and other related issues have been issued to the State through the Universal Periodic Review?
- What calls have been made to the State through UN Human Rights Council resolutions on human rights defenders and business and human rights?
- What Concluding Observations, General Comments, and case jurisprudence of the UN Treaty Bodies relating to human rights defenders and business and human rights exist?
- What UN and/or regional Special Procedures recommendations pertaining to human rights defenders and business and human rights exist?

Most relevant to Sections 1.1, 1.2 and 2.2 of the full NBA Template.

Status/Gaps:

CIVIL SOCIETY

- What civil society campaigns related to human rights defenders and business and human rights exist in the national context and what are their key messages?
- What relevant information has been published by local, national, regional, and international civil society organisations?

Most relevant to Section 1.4 of the full NBA Template.

Status/Gaps:

MEDIA

- What coverage have issues relevant to human rights defenders working on business and human rights received in the local, national, and international media?

Most relevant to Section 1.3 of the full NBA Template.

Status/Gaps:

ENDNOTES

- ¹ See, e.g., Michel Forst, *Supporting and protecting defenders who work on business and human rights*, INT'L SERVICE FOR HUM. RTS., (Nov. 16, 2014), <http://www.ishr.ch/news/supporting-and-protecting-defenders-who-work-business-and-human-rights> [hereinafter Forst article]; INTERNATIONAL SERVICE FOR HUMAN RIGHTS, *THE ROLE OF BUSINESS AND STATES IN VIOLATIONS AGAINST HUMAN RIGHTS DEFENDERS OF LAND RIGHTS, THE RIGHT TO TERRITORY AND RIGHTS RELATED TO THE ENVIRONMENT* (2015) [hereinafter ISHR Role of Business and States]; HUMAN RIGHTS WATCH, *AT YOUR OWN RISK: REPRISALS AGAINST CRITICS OF WORLD BANK GROUP PROJECTS* (2015) [hereinafter At Your Own Risk]; GLOBAL WITNESS, *HOW MANY MORE? 2014'S DEADLY ENVIRONMENT: THE KILLING AND INTIMIDATION OF ENVIRONMENTAL AND LAW ACTIVISTS, WITH A SPOTLIGHT ON HONDURAS* (2015) [hereinafter How Many More?]; FIDH, "WE ARE NOT AFRAID" LAND RIGHTS DEFENDERS: ATTACKED FOR CONFRONTING UNBRIDLED DEVELOPMENT (2014) [hereinafter We Are Not Afraid].
- ² U.N. Secretary-General, *Situation of Human Rights Defenders*, U.N. Doc. A/68/262 (Aug. 5, 2013) [hereinafter Situation of HRDs Aug. 2013]; Secretariat for the Human Rights Council (HRC), *Special Rapporteur on the situation of human rights defenders*, U.N. Doc. A/HRC/31/55 (Feb. 1, 2016) [hereinafter Special Rapporteur HRD Feb. 2016]; HRC, *Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights*, U.N. Doc. A/HRC/31/L.28 (Mar. 21, 2016) [hereinafter HRDs ESC Rights]; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *SECOND REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS*, OEA/Ser.L/V/II. (2011).
- ³ See, e.g., INTERNATIONAL SERVICE FOR HUMAN RIGHTS, *HUMAN RIGHTS MONITOR—NOVEMBER 2015* (2015); INTERNATIONAL SERVICE FOR HUMAN RIGHTS, *HUMAN RIGHTS MONITOR—DECEMBER 2014* (2014).
- ⁴ See Micheal Ineichen, *Human rights defenders must be at core of developing the business and human rights agendas*, INT'L SERVICE FOR HUM. RTS., (Nov. 25, 2014), <http://www.ishr.ch/news/human-rights-defenders-must-be-core-developing-business-and-human-rights-agendas>; Sara Blackwell, *Incorporating human rights defenders into the global trend of National Action Plans on Business and Human Rights*, INT'L SERVICE FOR HUM. RTS., (Oct. 21, 2015), <http://www.ishr.ch/news/incorporating-human-rights-defenders-global-trend-national-action-plans-business-and-human>; Sara Blackwell & Katie Shay, *The role of National Action Plans on Business and Human Rights in protecting human rights defenders*, INT'L SERVICE FOR HUM. RTS., (Nov. 15, 2014), <http://www.ishr.ch/news/role-national-action-plans-business-and-human-rights-protecting-human-rights-defenders>.
- ⁵ *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (2011) [hereinafter UNGPs].
- ⁶ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, G.A. Res. 53/144 (Dec. 9, 1998) [hereinafter UN Declaration on Human Rights Defenders].
- ⁷ See, e.g., HRDs ESC Rights, *supra* note 2; *Report of the Special Rapporteur on the situation of human rights defenders*, U.N. Doc. A/HRC/25/55 (Margaret Sekaggya, Dec. 23, 2013) [hereinafter Special Rapporteur HRD Dec. 2013]; Special Rapporteur HRD Feb. 2016, *supra* note 2; *Report of the Special Rapporteur on the situation of human rights defenders*, U.N. Doc. A/HRC/16/44 (Margaret Sekaggya, Dec. 20, 2010); *Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association*, U.N. Doc. A/HRC/29/25 (Maina Kiai, Apr. 28, 2015); *CRIMINALIZATION OF THE WORK OF HUMAN RIGHTS DEFENDERS*, OEA/Ser.L/V/II.Doc.49/15 (2015); *INDIGENOUS PEOPLES, AFRO-DESCENDENT COMMUNITIES, AND NATURAL RESOURCES: HUMAN RIGHTS PROTECTION IN THE CONTEXT OF EXTRACTION, EXPLOITATION, AND DEVELOPMENT ACTIVITIES*, OEA/Ser.L/V/II.Doc.47/15 (2015).
- ⁸ ISHR Role of Business and States, *supra* note 1; INTERNATIONAL SERVICE FOR HUMAN RIGHTS, *A HUMAN RIGHTS DEFENDER TOOLKIT FOR PROMOTING BUSINESS RESPECT FOR HUMAN RIGHTS* (2015); *HOW MANY MORE?*, *supra* note 1; *WE ARE NOT AFRAID*, *supra* note 1.
- ⁹ See, e.g., Owen Larter, *Microsoft & DLA Piper—Why human rights and human rights defenders are right for our business*, INT'L SERVICE FOR HUM. RTS. (Nov. 16, 2014), <http://www.ishr.ch/news/microsoft-dla-piper-why-human-rights-and-human-rights-defenders-are-right-our-business>.
- ¹⁰ DANISH INSTITUTE FOR HUMAN RIGHTS & INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, *NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A TOOLKIT FOR THE DEVELOPMENT, IMPLEMENTATION AND REVIEW OF STATE COMMITMENTS TO BUSINESS AND HUMAN RIGHTS FRAMEWORKS* (2014).
- ¹¹ DANISH INSTITUTE FOR HUMAN RIGHTS, INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, & UNICEF, *CHILDREN'S RIGHTS IN NATIONAL ACTION PLANS (NAPs) ON BUSINESS AND HUMAN RIGHTS* (2015).
- ¹² UN Declaration on Human Rights Defenders, *supra* note 6.

¹³ *Report of the Special Rapporteur on the situation of human rights defenders*, U.N. Doc. A/HRC/28/63 (Michel Forst, Dec. 29, 2014).

¹⁴ See, e.g., UNITED NATIONS, HUMAN RIGHTS DEFENDERS: PROTECTING THE RIGHT TO DEFEND HUMAN RIGHTS, FACT SHEET NO. 29, <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>.

¹⁵ See, e.g., Forst article, *supra* note 1; ISHR Role of Business and States, *supra* note 1; AT YOUR OWN RISK, *supra* note 1; HOW MANY MORE?, *supra* note 1; International Service for Human Rights, 'Troublemakers' and 'foreign agents': *The situation of corporate human rights defenders in Central Africa* (July 2015), http://www.ishr.ch/sites/default/files/article/files/submission_to_the_african_commission_v2.pdf; WE ARE NOT AFRAID, *supra* note 1.

¹⁶ ISHR Role of Business and States, *supra* note 1.

¹⁷ *Communications report of Special Procedures*, U.N. Doc. A/HRC/31/79 (Feb. 19, 2016)[hereinafter *Communications Report 2016*], Case PER 3/2015.

¹⁸ *Id.*, at Case THA 8/2015.

¹⁹ *Communications Report of Special Procedures*, U.N. Doc. A/HRC/30/27 (Sept. 4, 2015), Case THA 2/2015.

²⁰ *Communications Report 2016*, *supra* note 17 at Case IDN 3/2015.

²¹ U.N. Secretary-General, *Situation of Human Rights Defenders*, U.N. Doc. A/70/217 (Jul. 30, 2015).

²² For a good summary of positive and negative actions by business for human rights and human rights defenders, see Mauricio Lazala & Joe Bardwell, "What human rights?" *Why some companies speak out while other don't*, OPEN DEMOCRACY (Jun. 17, 2015), <https://www.opendemocracy.net/openglobalrights/mauricio-lazala-joe-bardwell/%E2%80%9Cwhat-human-rights%E2%80%9D-why-some-companies-speak-out-while>.

²³ UNGPs, *supra* note 5.

²⁴ Special Rapporteur HRD Dec. 2013, *supra* note 7, at ¶ 103.

²⁵ U.N. Declaration on Human Rights Defenders, *supra* note 6, footnote 1.

²⁶ U.N. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, COMMENTARY TO THE DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

²⁷ Special Rapporteur HRD Dec. 2013, *supra* note 7.

²⁸ Examples include: the alleged fining under Russia's 'foreign agents' law of ecological rights group *Planet of Hopes*, after the organisation carried out human rights activities and exercised freedom of expression, including in relation to business projects, in Russia; the alleged arbitrary arrest of three environmental rights defenders from Cambodian NGO, *Mother Nature*, who protested against alleged illegal sand dredging activities; and the sentencing of Angolan journalist Rafael Marques de Morais in relation to his book on blood diamonds and torture in Angola. *Communications Report 2016*, *supra* note 17, at Case RUS 4/2015, Case KHM 5/2015, and Case AGO 1/2015.

²⁹ UNGPs, *supra* note 5, at Pillar II.

³⁰ *Id.*

³¹ FRONT LINE DEFENDERS, CASE HISTORY: NASAKO BESINGI, <https://www.frontlinedefenders.org/en/case/case-history-nasako-besingi> (last visited May 12, 2016).

³² *Id.*

³³ Tim Weiner, *Unrest in Indonesia: The Opposition; U.S. Has Spent \$26 million since '95 on Suharto Opponents*, N.Y. TIMES (May 20, 1998), <http://www.nytimes.com/1998/05/20/world/unrest-indonesia-opposition-us-has-spent-26-million-since-95-suharto-opponents.html>.

³⁴ Umberto Bacchi, *H&M, Gap, Adidas and Puma Condemn Cambodian Police Killing of Striking Garment Workers*, INTERNATIONAL BUSINESS TIMES (Jan. 7, 2014), <http://www.ibtimes.co.uk/hm-gap-adidas-puma-condemn-cambodian-police-killing-striking-garment-workers-1431402>.

³⁵ *Open statement calling for charges to be dropped against journalist Rafael Marques de Morais in Angola*, INT'L SERVICE FOR HUM. RTS.(22 April 2015), http://www.ishr.ch/sites/default/files/article/files/open_statement_by_jewellers_re_rafael_marques_-_22_apr_2015.pdf (last visited May 5, 2016).

³⁶ UN Declaration on Human Rights Defenders, *supra* note 6 at art. 10.

³⁷ The ‘host State’ is the State in which foreign companies are operating, whereas the ‘home State’ is the State where these companies are incorporated or headquartered.

³⁸ See, e.g., INTERNATIONAL SERVICE FOR HUMAN RIGHTS, FROM RESTRICTION TO PROTECTION: RESEARCH REPORT ON THE LEGAL ENVIRONMENT FOR HUMAN RIGHTS DEFENDERS AND THE NEED FOR NATIONAL LAWS TO PROTECT AND PROMOTE THEIR WORK (NOV. 2014); The International Center for Not-for-Profit Law, NGO LAW MONITOR, <http://www.icnl.org/research/monitor/index.html> (last visited May 9, 2016).

³⁹ Peter Bosshard, *European Funders Suspend Support for Agua Zarca Dam*, HUFFINGTON POST (Mar. 16, 2016), http://www.huffingtonpost.com/peter-bosshard/european-funder-suspend-s_b_9479642.html.

⁴⁰ Zeid Ra’ad Al Hussein, *Development banks need to wake up to the human rights crisis in Honduras*, THE GUARDIAN (Mar. 20, 2016), <http://www.theguardian.com/commentisfree/2016/mar/20/development-banks-human-rights-crisis-honduras-agua-zarca>.

⁴¹ See, BUSINESS AND HUMAN RIGHTS RESOURCE CENTER, NATIONAL ACTION PLANS, <http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans> (last visited May 11, 2016). The four existing NAPs that directly mention human rights defenders are the NAPs of the United Kingdom, Finland, Denmark, and Colombia.

⁴² FOREIGN & COMMONWEALTH OFFICE, GOOD BUSINESS: IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (2013).

⁴³ *Id.*

⁴⁴ See, e.g., DUTCH MINISTRY OF FOREIGN AFFAIRS, NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS (2014); CONSEJERÍA PRESIDENCIAL PARA LOS DERECHOS HUMANOS, COLOMBIA AVANZA DERECHOS HUMANOS Y EMPRESA: PLAN DE ACCIÓN DE DERECHOS HUMANOS Y EMPRESAS (2015).

⁴⁵ INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE & THE EUROPEAN COALITION FOR CORPORATE JUSTICE, ASSESSMENT OF EXISTING NATIONAL ACTION PLANS (NAPs) ON BUSINESS AND HUMAN RIGHTS (2015), p. 3.

⁴⁶ *Id.*

⁴⁷ A National Baseline Assessment (NBA) is a tool for evaluating a State’s current implementation of the UN Guiding Principles on Business and Human Rights and other relevant business and human rights frameworks. An NBA should be conducted at the start of the NAP process to analyze current conditions and facilitate assessing future impact.

⁴⁸ See, e.g., EUROPEAN UNION, ENSURING PROTECTION: EUROPEAN UNION GUIDELINES ON HUMAN RIGHTS DEFENDERS (2010); NORWEGIAN MINISTRY OF FOREIGN AFFAIRS, NORWAY’S EFFORTS TO SUPPORT HUMAN RIGHTS DEFENDERS: GUIDE FOR THE FOREIGN SERVICE (2010); ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (2011), CONFÉDÉRATION SUISSE, FEDERAL DEPARTMENT OF FOREIGN AFFAIRS (2013); UNITED STATES DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, GUIDING PRINCIPLES ON CIVIL SOCIETY ORGANIZATIONS (CSOs) (2006), <http://www.state.gov/j/drl/rls/shrd/2006/82643.htm>.

