

## **Utilizing National Action Plans to Promote Human Rights Due Diligence in Development Finance and Public Financial Institutions**

*updated March, 2017*

### **I. Summary**

Development banks and other public financial institutions such as export credit agencies play a determinative role in driving corporate investment and setting the terms of that investment and its corresponding impacts on human rights. For this reason, how governments regulate these financial flows is a critical issue for the Business and Human Rights agenda. This discussion memo provides preliminary guidance on how to use National Action Plans (NAPs) around Business and Human Rights to promote human rights due diligence in the context of development banks and other public financial institutions. It describes the connection between the UN Guiding Principles (UNGPs) and public finance and identifies potential policy recommendations. We welcome your reactions and inputs to expand and refine the policy recommendations and examples herein.

### **II. Background on UNGPs, NAPs, development banks and public financial institutions**

The UN Human Rights Council (UNHRC) unanimously endorsed the UNGPs in 2011 as an international standard to prevent and address adverse human rights impacts associated with business activity. Correspondingly, the UN Working Group on Business and Human Rights (UNWG) was set up to promote and support implementation of the UNGPs. In 2014, the UNHRC issued a call to all Member States to develop NAPs for the implementation of the UNGPs. Since then, a small number of States have established NAPs and, accordingly, have instituted processes for implementation of commitments made within those NAPs. Many other States are still in the process of NAP elaboration.

In addition to focusing on direct domestic regulation of business activities, NAPs may also be used to tackle issues related to the significant amount of business activities financed and authorized through development banks and other public financial institutions. NAPs may address the policies and activities of national development banks, export credit agencies, and/or national development agencies, as well as the positions that countries take as shareholders of institutions such as the World Bank or regional banks.

### III. What the UNGPs Say about Public Financial Institutions

The UNGPs apply to both the supply and demand side of development finance and public financial institutions in a variety of ways. States' duties to respect and protect human rights, for example, apply to States' actions as recipients of public finance, as financiers, and as decision-makers within multilateral and domestic financial institutions.

- **As recipients:** When a State receives a loan or grant from a development bank or public financial institution, it must implement the project in a manner consistent with its human rights obligations. If that loan or grant is provided to a private company, the State where the company will operate must ensure that local communities are protected from any human rights abuses which may be committed by the company.
- **As donors:** States' human rights obligations do not stop at their borders. States providing finance have obligations to refrain from financing the violation of human rights in other countries or obstructing other countries' abilities to meet their human rights obligations.
- **As decision-makers:** Because domestic and multilateral public financial institutions are comprised of and governed by states, these shareholders are responsible for approving the projects that are financed by the institution and the policies that govern its operations. States acting through financial institutions must ensure they do not violate the rights of those outside their own territories when making decisions about operational policies or activities.

The State obligation to provide redress for human rights violations also applies in each of these situations. Additionally, international financial institutions like multilateral development banks are intergovernmental organizations. This means they are subjects of international law and therefore must comply with human rights obligations. The UNGPs highlight the obligations of public finance institutions more explicitly in the following principles:

Principle 4:

*States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.*

Principle 8:

*States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.*

## Principle 10:

*States, when acting as members of multilateral institutions that deal with business-related issues, should:*

*(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;*

*(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;*

*(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.*

## **IV. Illustrative language for addressing public financial institutions in NAPs**

Within [X country's] national development bank, export credit agency, or bilateral development undertakings, especially those involving business activity, [X country] will promote development that respects human rights.

Within [X country's] national development bank, export credit agency, or bilateral development undertakings, especially those involving business activity, [X country] will establish the following measures and mechanisms. Within multilateral international financial institutions (IFIs) where [X country] is a shareholder, [X country] will promote the following policies, measures, and mechanisms:

- Full and meaningful **transparency and participation** for civil society and potentially affected communities, including requirements for:
  - Disclosure and consultation regarding [X country's] positions on development decisions and policy matters;
  - Consultation and disclosure of project documents in local languages, including clear communication of the extent and role of the public and private entities involved in the activity, including any financing entities;
  - Disclosure of all information on appraisal, mitigation and benefit-sharing for any high/substantial risk activity prior to project approval and made available in a form and language accessible to potentially affected communities;
  - Disclosure by [X Country] of all projects financed by any financial institution in which [X country] is a shareholder;
  - Disclosure by [X Country] of the amounts of development loans and other resources received from financial institutions and other financing entities, and the use of said resources.
  - Participatory monitoring by affected-communities, as well as monitoring by third-parties for high and substantial risk projects.
- Binding policies and safeguards that establish a minimum protection floor and are consistent with and reference international human rights norms, including:

- **Human rights requirement.** Require respect for human rights within bank-financed activities and that the financing entity and client take all measures necessary to ensure that development activities do not cause, contribute to, or exacerbate human rights violations.
- **Human rights due diligence.** Require the financing entity and client to undertake human rights due diligence. Together with project affected people, (1) identifying environmental and human rights risks, (2) assessing actual or potential impacts, including differentiated impacts, (3) acting to prevent human rights violations and avoid, minimize and remediate adverse impacts, including through the appropriate exercise of leverage, (4) accounting for how those impacts are addressed through monitoring and supervision, and (5) communicating with and disclosure to project affected people and relevant stakeholders on the management of impacts.
- **Non-discrimination.** Commit to non-discrimination and to advancing substantive equality within development activities, including all forms of discrimination identified in international law. Ensure that all marginalized or discriminated against groups are guaranteed opportunities to participate in project design, implementation and monitoring, and that development impacts on different groups are analyzed and measured in a disaggregated manner.
- **Participation and human rights defenders.** Systematically analyze the enabling environment for public participation in development processes. Adopt a zero tolerance approach regarding any intimidation, reprisals or attacks against those expressing concerns or opposition to the development project.
- **Indigenous peoples.** Ensure protection of indigenous peoples' collective land and resource rights and management systems, and require respect for self-determination and Free, Prior, and Informed Consent (FPIC) throughout all project stages, in line with the UN Declaration on the Rights of Indigenous Peoples.
- **Labor.** Ensure compliance with the four core labor standards as defined by the ILO, for all workers.
- **Gender.** Require respect for the rights of women and girls, outline mandatory measures to ensure the participation of and assessment of impacts on women and girls, and ensure that development initiatives advance women and girls' human rights, consistent with the UN Convention on the Elimination of All Forms of Discrimination Against Women.
- **Sexual orientation, gender identity/expression, and bodily diversity.** Include explicit requirements to ensure that development meets the needs of and respects the rights of persons with a non-conforming sexual orientation or gender identity/expression, or who are bodily diverse, and that such persons are able to fully benefit from development efforts.
- **Persons with disabilities.** Ensure non-discrimination for persons with disabilities and ensure that persons with disabilities are able to fully access development benefits and that development advances the rights of persons with disabilities, consistent with the UN Convention on the Rights of Persons with Disabilities.

- **Land, land rights, and security of tenure.** Incorporate robust standards on land rights, land access, and security of tenure.
- **Evictions and resettlement.** Prohibit activities that contribute directly or indirectly to forced evictions. Displacement should be used only as a last resort, and only where it has met a “general welfare” threshold. Resettlement activities should follow international law and relevant standards, including the UN Guidelines on Development-based Evictions and Displacement and the UN Guiding Principles on Security of Tenure.
- Independent mechanisms to ensure **accountability and access to effective and adequate remedy** for affected communities:
  - Establishment of accountability mechanisms that are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue, in compliance with UN Guiding Principle #31, *Effectiveness Criteria for Non-Judicial Grievance Mechanisms*.
  - Establishment of financial or other instruments, such as a fund, bond, or insurance, to ensure that remedy can be delivered where human rights abuses occur.

## V. Language regarding public financial institutions in existing NAPs

In your advocacy it may be helpful to point to provisions that other countries have included in their NAPs. Of the thirteen completed NAPs, here are some examples of provisions addressing development finance or public financial institutions:

[Dutch NAP](#): "As a shareholder in the international financial institutions, the Netherlands calls for more systematic attention for human rights and effective internal monitoring mechanisms to safeguard observance of human rights in projects. It is, for example, urging more systematic attention for human rights in the review and update of the World Bank safeguard policies." (p. 19)

[Danish NAP](#): "Denmark has been instrumental in the establishment of the World Bank's Nordic Trust Fund which aims to promote the application of the human rights framework in World Bank policies and operations. Denmark has also been active in promoting that The International Finance Cooperation (IFC) actively supports its clients in addressing human rights risks and impacts." (p. 32)

[Finnish NAP](#): "Finland promotes the realisation of human rights and greater awareness of human rights as part of business activities by influencing the operations of the international organisations of which Finland is member or those activities Finland otherwise supports or funds." (p. 14)

Finland shall bring forward questions related to human rights in international trade and development organisations and direct its support to programs related to business and human rights as part of Finland's support to international trade and development organizations. (p. 15)

[Italian NAP](#): “International Development Cooperation represents for Italy an instrument for creating stable relationships between countries and also a means of human rights and solidarity promotion...” (p. 15)

The Italian Government will “Fully implement the provisions of the new Law on Italian Development Cooperation with particular focus on the relationship between the profit and no profit actors and the definition of specific binding guidelines clarifying the role of business and private sector within development cooperation activities and their compliance with human rights”. (p. 16)

[Norwegian NAP](#): “Implementation of the UN Guiding Principles will help to ensure a more level playing field and greater transparency and predictability for enterprises with international investments. States should harmonise their expectations in international forums that support, enter into partnerships with and provide guidance to enterprises. Norway is therefore working for the integration of the OECD Guidelines for Multinational Enterprises into the OECD framework for export financing. We also play an active role in the UN, the OECD, the multilateral financial institutions and the regional development banks.” (p. 27)

[Spanish NAP](#) (\*translation by author): A Plan of Action specific to the Government of Spain will be developed to guarantee the coherence of policies regarding support for business promotion and alignment with the Guiding Principles, and will be implemented consistent with the recommendations of the OECD. The Government will study how development cooperation, credit agencies, export credit agencies and investment guarantee instruments may condition, or orient or revise their investment support based on full respect for human rights on the part of beneficiary companies, including use of human rights impact assessment. (p. 17)

The Government will promote within multilateral financial institutions, the implementation of the Guiding Principles, moreover assuring that these institutions do not limit the capacity of member States to meet their obligations of human rights protection, nor put restrictions on corporate human rights observance. (p. 21)

The Government will put in practice coordination efforts with International Finance Organizations with respect to existing non-judicial reparations mechanisms or the necessity for their definition and implementation. The Government will establish criteria for transparency and access to information pre- and post- resolution of cases and will establish a program of monitoring and compliance of dispute resolution agreements. (p. 26)

[Swedish NAP](#): The Government will integrate sustainability issues into trade policy and export promotion and in the context of the relaunch of the Policy for Global Development and its efforts to contribute to the new global sustainable development goals (SDGs)...Sweden will encourage organisations such as the UN, the EU, the OECD and the World Bank to promote corporate respect for human rights within their respective mandates.” (p. 29)

[UK NAP](#): “UK Export Finance will consider any negative final [National Contact Point] statements a company has received in respect of its human rights record when considering a project for export credit.” (p. 10)

“The Government will... [e]nsure that agreements facilitating investment overseas by UK or EU companies incorporate the business responsibility to respect human rights, and do not undermine the host country’s ability to either meet its international human rights obligations or to impose the same environmental and social regulation on foreign investors as it does on domestic firms.” (p.12)

[United States NAP](#): “[The Overseas Private Investment Corporation] and [the Export-Import Bank of the United States] will enhance existing procedures and standards that require companies receiving their support to implement [Responsible Business Conduct] principles.” (p. 12)

“USAID will develop a social safeguards screening questionnaire that Missions may use as an assessment tool when designing new projects (including public-private partnerships) to ensure due diligence on social and human rights issues. USAID will also establish a resource library of tools and human resources that can be deployed for various social analyses; conduct a gap analysis to identify topics not addressed by current guidance; convene stakeholder consultations regarding recommendations for future guidance or policies; and pilot the social safeguards assessment tool with interested USAID missions.” (p. 12)

## **VI. Policy language regarding public finance and human rights**

In addition to citing other countries’ NAPs, you may also wish to point to legislation or policies that other countries or intergovernmental bodies have already put in place to regulate development finance and public financial institutions with regard to human rights and due diligence. Below we have compiled some examples.

[German policy on Human Rights and Development](#): "German development policy will work within the relevant bodies for substantially improved human rights policy coherence in relation to all measures that have impacts on developing countries. ...During the preparation of all bilateral development programmes, especially those relating to infrastructure measures, an assessment of human rights risks and impacts must be carried out, focusing for examples on any resettlements or expropriations that may be deemed necessary, local community involvement, or accessibility for people with disabilities . . . The human rights impacts must be monitored and reported by the relevant executing agencies during implementation. During decision-making on major development programmes, stakeholder communities will be actively involved in the assessment in parallel to the dialogue with the partner, and the outcomes will be shared with these communities. Relevant guidelines will be drawn up or amended. ...German development policy will ensure that bilateral development programmes and projects are compatible with human rights standards and will further develop the requisite instruments, such as appropriate procedures for a human rights risk assessment."

[U.S. financial appropriations legislation \(Fiscal Year 2016\)](#): The Secretary of the Treasury shall instruct the U.S. executive director of each IFI to seek to require that such institution conducts rigorous human rights due diligence and risk management, as appropriate, in connection with any loan, grant, policy, or strategy of such institution.

[U.S. Assessment of environmental impact of proposed multilateral development bank actions \(The Pelosi Amendment\)](#): “The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank not to vote in favor of any proposal (including but not limited to any loan, credit, grant, guarantee) which would result or be likely to result in significant impact on the environment, unless the Secretary, after consultation with the Secretary of State and the Administrators of the United States Agency for International Development and the Environmental Protection Agency, determines that for at least 120 days before the date of the vote-

(1) an assessment analyzing the environmental impacts of the proposed action, including associated and cumulative impacts, and of alternatives to the proposed action, has been completed by the borrower or the bank and has been made available to the board of directors of the bank; and

(2) such assessment or a comprehensive summary the assessment (with proprietary information redacted) has been made available to affected groups, and local nongovernmental organizations and notice of its availability in the country of and at the bank has been posted on the bank's website.”

[The U.S. Overseas Private Investment Corporation – Environmental and Social Policy Statement](#). OPIC will ensure that projects receiving OPIC support “Avoid prejudice and discrimination and respect Human Rights...” “An acceptable framework for an ESMS is one that provides for the effective management of the environmental and social risks and impacts associated with a project, including risks related to Labor Rights and Human Rights” In addition to the due diligence referenced in Paragraph 3.4, OPIC confirms with the U.S. Department of State that a project may receive OPIC support based on a consultative Human Rights review.”

[The United Kingdom \(DFID\) Guidance Note, “The Partnership Principles” March 2014](#): One of the UK’s four Partnership Principles is “[a] commitment to respecting human rights and other international obligations. The commitment of the partner government to respecting human rights, and in particular the economic, social and cultural rights as well as civil and political rights of poor people.

[The United Kingdom Department for International Development \(DFID\) Policy Paper, “Partnerships for Poverty Reduction: Rethinking Conditionality,” March 2005](#): “The UK Government believes that the realisation of all human rights underpins sustainable development. States have a shared responsibility to ensure that human rights are upheld, that violations do not take place, and that governments respect their international obligations. Donors have a particular responsibility, as part of their accountability to parliament and the public, to ensure that their development assistance is not used in ways that abuse human rights. The human rights situation

should be assessed on the basis of the partner country's own international human rights obligations. We will explore ways of working with partner governments and civil society to incorporate human rights-based benchmarks into poverty reduction plans and into frameworks for determining progress on poverty reduction. We will also work to ensure that our own policies, alongside those of other donors, do not impede the ability of recipient governments to fulfill their human rights obligations."

[The UK Development Finance Institution \(CDC\) Code of Responsible Investing](#): "CDC believes it should invest in a responsible fashion, considering environmental, social and governance (ESG) and business integrity matters. Effective management of these matters not only reduces the possibility of stakeholders being adversely affected by business activities, but also provides them with access to remedy." See ESG Toolkit for Fund Managers – [Briefing Note on Human Rights](#).

[Chinese Ministries of Commerce and Environmental Protection Guidelines on Environmental Protection in Foreign Investment and Cooperation](#): These guidelines urge enterprises to "respect the religious belief, cultural traditions and national customs of community residents of the host country, safeguard legitimate rights and interests of laborers, offer training, employment and re-employment opportunities to residents in the surrounding areas, promote harmonious development of local economy, environment and community, and carry out cooperation on the basis of mutual benefits."

[Chinese State Council, Nine Principles for Encouraging and Standardizing Outward Investment, 2006](#): Principle 5 commits China to "[c]omplying with local laws and regulations, and adhering to fair, transparent public works project contracts, making a commitment to and fulfilling the necessary social responsibility to protect the legitimate rights and interests of local employees, paying attention to environmental resource protection, caring for and supporting local community and people's livelihoods."

[China Banking Regulatory Commission, Green Credit Guidelines focusing on the financial sector, 2012](#): According to these Guidelines, banks supporting overseas investments should strengthen environmental and social risk management, and make sure project sponsors observe host country laws on environmental protection, land, health, safety, etc. The Guidelines state that banks shall publicly promise that "appropriate international practices or international norms will be followed as far as such overseas projects are concerned, so as to ensure alignment with good international practices." (Article 21).

[China Export and Import Bank's Guidelines for Environmental and Social Impact Assessment of the China Export Import Bank's Loan Projects](#): "When China EXIM Bank reviews its loan projects, not only economic benefits, but also social benefits and environmental demands are considered." (Article 4).

"Social impact refers to the systematic analysis and assessment of the impact on socioeconomic[s], natural resources and social environment caused by project implementation, and proposes policies and measures to reduce that impact. The scope

of evaluation includes labour and terms of employment, social security and health, land acquisition and migrants' protection, etc." (Article 6).

[EU Strategic Framework and Action Plan on Human Rights and Democracy, 2012:](#) "The EU will promote human rights in all areas of its external action without exception. In particular, it will integrate the promotion of human rights into trade, investment, technology and telecommunications, Internet, energy, environmental, corporate social responsibility and development policy...In the area of development cooperation, a human rights based approach will be used to ensure that the EU strengthens its efforts to assist partner countries in implementing their international human rights obligations."

[Japan International Cooperation Agency, Guidelines for Environmental and Social Considerations:](#) "JICA respects the principles of internationally established human rights standards such as the International Convention on Human Rights (sic), and gives special attention to the human rights of vulnerable social groups including women, indigenous peoples, persons with disabilities, and minorities when implementing cooperation projects. JICA obtains country reports and information widely about human rights that are issued by related institutions, and seeks to understand local human rights situations by disclosing information about cooperation projects. Thus, JICA integrates local human rights situations into decision-making processes that relate to environmental and social considerations."

[Japan Bank for International Cooperation, Guidelines for Confirmation of Environmental and Social Considerations:](#) JBIC is to "confirm that project proponents are undertaking appropriate environmental and social considerations, through various measures, so as to prevent or minimize the impact on the environment and local communities which may be caused by the projects for which JBIC provides funding, and not to bring about unacceptable effects."

[Sweden's Policy for Global Development, 2003:](#) This policy mandates a rights-based perspective based on international human rights conventions and a development perspective that "comprises democracy and respect for human rights... to permeate all policy" in that "human rights must form a basis for the measures taken to promote fair and sustainable development."

[Swedish Development Corporation "Change for Freedom: Policy for Democratic Development and Human Rights in Swedish Development Cooperation, 2010-2014:](#) "The rights perspective in development cooperation. People's enjoyment of their human rights is both a foreign policy goal and a means of achieving development and a sustainable peace. Sweden's basic position is that all development cooperation must be human rights-based, i.e. that a rights perspective must be applied in all areas. This approach empowers the individual by strengthening his/her right to control his/her development and situation in life. In practice, it is a matter both of persuading the state to guarantee the rights of the individual and of heightening people's awareness

of these rights and improving their chances of claiming them themselves. Gender equality and women's rights, and also children's rights, are a key part of the rights perspective. Women and men must have equal rights, but it is their differing circumstances, interests, capabilities and opportunities that are to provide the basis for a rights analysis and for decisions on what action to take to ensure that both sexes are able to enjoy their rights.”

[Swedish Export Credit Corporation Policy for corporate responsibility in the guarantee business, 2014](#): “EKN shall assess the risk of, and the opportunities to prevent, any adverse impact on the environment, human rights and working conditions in individual projects, in buyer companies and in their surroundings. For transactions with a high potential risk of adverse impact EKN will perform a deeper assessment and, as required, follow up during the lifetime of the transaction, according to specific guidelines...”

“EKN shall take all human rights into consideration. There is special emphasis on the rights that are linked to business impacts. This concerns, for example, business impact on health and safety in the surroundings, as well as on involuntary displacement, indigenous people, cultural heritage areas and freedom on the Internet. EKN pays special attention to transactions in conflict areas and in countries and sectors with a high risk of human rights violations.”

[South Africa's Pension Funds Act, 1956: Amendment of Regulation 28, 2011](#): “A fund and its board must at all times apply the following principles: . . . before making an investment in and while invested in an asset consider any factor which may materially affect the sustainable long term performance of the asset including, but not limited to, those of an environmental, social and governance character.”

[South Africa's Mineral and Petroleum Resources Development Act, 2002](#): One objective of the Act is to “ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.” The Act requires companies that are interested in mining and production rights to develop and implement a Social and Labour Plan identifying local human resource and economic development programmes aimed at minimizing the impact of resource depletion on individuals, regions and local economies.

[South Africa's 1998 National Environmental Management Act](#): “Negative impacts on the environment and on people's environmental rights should be anticipated and prevented or minimised and remedied” ...[and] “environmental justice should be pursued so that adverse environmental effects are not distributed in such a way as to discriminate unfairly against any person, particularly the most vulnerable.” (2(4)(a)(viii) and (4)(c)).

[Canada's Official Development Assistance Accountability Act, 2008](#): “The purpose of this Act is to ensure that all Canadian official development assistance abroad is provided with a central focus on poverty reduction and in a manner that is consistent

with . . . sustainable development and democracy promotion and that promotes international human rights standards.” Section 2(1)

"Official development assistance may be provided only if the competent minister is of the opinion that it (a) contributes to poverty reduction; (b) takes into account the perspectives of the poor; and (c) is consistent with international human rights standards." Section 4(1)

[Canada’s Official Development Assistance Accountability Act - Consistency with International Human Rights Standards, Feb 2014](#): "For its programming to be consistent with international human rights standards, the applicant should be able to demonstrate, at a minimum, that it can reasonably expect to ‘do no harm’, meaning that due diligence is exercised to avoid undermining human rights in the country or community."

*“Demonstrating that Condition of Section 4.1(c) is Met.* The initiative documentation (application form, proposal or bid) should contain the following: An outline of key human rights issues, including human rights concerns, relevant to the initiative; and Proposed mitigation measures to address any human rights concerns identified.”

*"Mitigation Measures.* When human rights issues are identified ... it is important to propose appropriate and sufficient measures to address the potential human rights concerns ... Appropriate means that the measures are tailored to the identified human rights issue. Sufficient means that the measures are proportionate to the likelihood and magnitude of impact of a possible human rights violation."

[Norwegian NORAD Invests in the future: NORAD’s strategy’s for 2000–2005](#): “It is increasingly acknowledged that human rights are not exclusively an internal matter, but that the international community also has a responsibility for ensuring that these rights are protected throughout the world. On this basis the conventions form a common platform for dialogue between Norway and our partner countries. The goal is to improve the ability of our partner countries to fulfill their own obligations. In addition to the fact that an increasing number of projects are devoted to promoting human rights, the rights dimension implies that focus is being placed on promoting a human rights culture in the partner countries.”

[Norway’s Export Credit Guarantee Agency \(“GIEK”\) Environmental and Human Rights Policy](#), 2013: “There is a minimum requirement that the projects GIEK is to support have appropriate and robust management systems to identify, prevent, mitigate and account for potential negative environmental and human rights impacts, and to remediate them where appropriate.” GIEK’s due diligence process is based on the requirements of the OECD Common Approaches on Environmental and Social Due Diligence (2012), and the UN Guiding Principles on Business and Human Rights, and includes the following elements; 1) Identifying actual or potential environmental and human rights impacts. 2) Assessing actual or potential negative impacts. 3) Acting to seek to prevent, mitigate and remediate those impacts through the appropriate exercise of leverage. 4) Accounting for how those impacts are addressed through follow-up and monitoring. 5) Communication with and disclosure to relevant stakeholders on the management of impacts. GIEK's Environmental and Human Rights Due Diligence Procedure is available [here](#).

[Dutch Development Finance Company \(FMO\) Sustainability Policy, 2017](#): "In line with the United Nations Guiding Principles on Business and Human Rights, FMO recognizes the responsibility of businesses to respect human rights, wherever they operate. FMO respects internationally recognized human rights standards and takes measures to avoid supporting activities that may cause or contribute to human rights violations and acknowledges the responsibility of its clients to do the same. This means to avoid infringing the human rights of others and to address adverse impact these businesses may cause or contribute to. FMO values freedom of expression, the added value of civil society, and recognizes the need to protect dissenting voices. FMO does not condone violations of human rights by its clients, including oppression of, or violence towards, those who voice their dissenting opinion in relation to FMO activities and the activities of FMO's clients...FMO requires clients to assess the likelihood and severity of impact on human rights as part of their assessment of social and environmental impact, and to implement mitigation measures in line with the IFC Performance Standards."

[Swiss Agency for Development and Cooperation \(SDC\)'s Guidance Document Human Rights Policy: Towards a Life in Dignity, 2006](#), "Together with its governmental and non-governmental partners, SDC will integrate human rights principles into the design, implementation and monitoring of development policies, programmes and projects at the multilateral and bilateral level...Human rights issues and problems will be explicitly addressed in the analysis of the context and impact of SDC's activities. Analysis from human rights monitoring bodies will be systematically taken into account."

This policy reaffirms SDC's original commitment in 1997 "towards integrating human rights in development cooperation. SDC will:

- Integrate human rights in its multidimensional conception of poverty elimination . . .
- Further human dignity of poor and marginalised groups. Combating economic, social and political exclusion of marginalised groups will draw on the human rights standards and principles set out in the international human rights framework.
- Promote empowerment of the powerless and their active participation in the development process. Beneficiaries act as active citizens and responsible rightsholders, realising their rights without discrimination . . .
- Strengthen accountability and capacity of state actors at all levels to respect, protect and fulfill the rights of individuals and groups set out in the human rights framework . . .
- Use binding human rights treaties and mechanisms voluntarily agreed upon by most donor and partner countries as a legitimate common basis for action-oriented partnership and political dialogue at the bilateral and multilateral level."

**India's Ministry of the Environment and Forests (MoEF)'s Notification on Environmental Impact Assessment (1994)** makes environmental impact assessment mandatory for 30 different categories of development projects.

**India's MoEF's Manual on Environmental Impact Assessment** (2001) states that socio-economic issues to be assessed during scoping include ... "quantity and nature of employment; any potential for increased stress on utilities and services; potential benefits and detriments to the local habitants as a result of project activities; impacts on health due to migrant labour; the impact on the education of both males and females; community health impacts; potential impacts on existing occupations and economic activities; potential losses of livelihood for local and vulnerable sections of the population; stress on medicinal plants; and potential impacts to archaeological monuments and sites of cultural or religious importance."

[India - The Provisions of the Panchayats \(Extension to the Scheduled Areas\) Act of 1996](#): endows the Panchayats to the Scheduled areas with the rights to: consultation prior to the acquisition of land for development projects and prior to any re-settling or rehabilitating persons affected by such projects; ownership of minor forest produce; prevent alienation of land, exercise control over institutions and functionaries in the social sector; and control local plans and resources for such plans.

## **VII. Examples of civil society NAP proposals relating to public financial institutions**

Civil society groups in different countries have put forward a variety of recommendations for how their respective NAPs can address development finance and public financial institutions. Below are some examples.

### **German NAP recommendations**

[Position Paper on Business and Human Rights- Expectations of a German Action Plan, CorA Network for Corporate Accountability and the German Human Rights Forum](#)

- "...we expect the Federal Republic of Germany to . . . [t]ie all State foreign trade promotion in the form of export credit guarantees, investment guarantees or untied loan guarantees to obligations of maximum human rights due diligence and transparency. All projects must be reviewed for possible risks to human rights in relation to the international human rights agreements. Where risks to human rights are found to exist, independent ex ante and ex post human rights impact assessments must be carried out. An independent mechanism must be set up to receive and examine complaints by possible stakeholders affected by such projects and non-governmental organisations, and where appropriate to propose measures. Enterprises that breach their obligations of human rights due diligence must be excluded from all forms of foreign business support. To provide parliament with greater control over these important issues, regulations should be introduced not in the form of guidelines but in the form of a law." (p. 9)
- "...we expect the Federal Republic of Germany to . . . [w]ork within State or State-controlled financial institutions such as the World Bank, the International Monetary Fund (IMF), regional (development) banks and the

KfW Group for the mainstreaming of human rights in the guidelines and operations of these institutions, in accordance with the BMZ strategy paper on human rights. In decisions made by the boards of directors of the World Bank and regional (development) banks, the German Government should tie its approval of projects to comprehensive human rights due diligence." (p. 13)

- "Work within the continuous revision of the World Bank's environmental and social safeguards for a comprehensive mainstreaming of human and labour rights, including the right to free, prior and informed consent (FPIC). In the future, the revised safeguards must be applied not only to investment projects but also to development policy lending for policy reforms, to sector programmes, the Program for Results (P4R) and other World Bank activities. To ensure that the safeguards are actually implemented in the future the German Government should work toward improving the World Bank's monitoring, complaints and accountability mechanisms." (p. 13)
- "Specifically, the German Government and German Bundestag should... Work to bring about a comprehensive mainstreaming of human rights in the guidelines and operations of the World Bank, IMF and other international institutions." (p. 3)

### **Irish NAP recommendations**

#### [Trocaire for Irish NAP:](#)

- "Ireland should work to bring about a comprehensive mainstreaming of human rights in the guidelines and operations of the World Bank, IMF and other international institutions. Concerns have been raised by civil society organisations with regard to the failure to adequately assess or mitigate human rights impact by the International Finance Corporation and the World Bank itself. Ireland should include progress on integrating human rights concerns in its annual report on participation in the World Bank and the IMF." (p. 6)
- "While Ireland reports each year on its participation at the World Bank and the IMF, it does not provide detail on how it addresses rights-related issues within these institutions. A key concern for Trócaire is the lack of attention to rights paid by the International Finance Corporation, the private sector investment arm of the World Bank." (p. 25)

### **UK NAP recommendations**

#### [Amnesty International for UK NAP:](#)

- "Require DFID's private sector partners to commit to undertake human rights due diligence, in keeping with the UNGPs, so that these companies do not have adverse impacts on the rights of people in developing countries whose lives they seek to improve." (p. 2)
- "Introduce sanctions for companies found to be in breach of the OECD Guidelines for Multinational Enterprises, including denial of access to

Government contracts, export credits, and other forms of Government support for their activities.” (p. 4)

[Institute for Human Rights and Business for UK NAP:](#)

- “The UK Government should maintain capacity-building and awareness with UK [Dept. of] Trade and Industry as to the value and methodology of human rights due diligence, prevention, mitigation, disclosure and remedy and particular priority should be placed on ensuring such expertise exists within British Embassies in high-risk locations with significant amounts of UK investment..” (p. 4 & 5)
- “The UK Export Credit Agency should maintain its work with other OECD-based ECAs in relation to firmly integrating human rights into the “OECD Common Approaches”. Where such guidance does not exist, such as in relation to the ICT sector, the UK ECA should make direct use of human rights guidance produced for the sector... (p. 5)

**U.S. NAP recommendations**

[International Corporate Accountability Roundtable, proposal for U.S. NAP:](#)

- “Support financial or other instruments, such as an international fund, bond, or insurance, to ensure that remedy can be delivered where human rights abuses occur. For instance, OPIC [Overseas Private Investment Corporation] and the international financial institutions (IFIs) do not yet require clients to have insurance or contribute to a fund in case harm occurs.”
- “Ensure that international financial institutions (IFIs) have proper procedures and tools in place to ensure access to effective remedy to communities when abuses occur.”

[EarthRights, proposal for U.S. NAP:](#)

“...the U.S. should commit to independently assessing land rights and resettlement for projects that are large enough to require a Board vote, and to disapprove projects that:

- a) will require large-scale displacement and where insufficient consideration has been given to alternatives that would not require such displacement;
- b) do not include adequately protective resettlement plans;
- c) have not properly consulted with affected communities and obtained their free prior and informed consent and/or
- d) would have other avoidable adverse impacts on land rights.”

[Amnesty International, proposal for U.S. NAP:](#)

- “Any existing or new multilateral or bilateral trade and investment agreements should be reviewed and, if needed, amended, to ensure they do not impair the ability of either the U.S. or other states to implement their international human rights obligations and are consistent with international business and human rights frameworks.”
- “The US NAP should clearly articulate the U.S. government’s commitment to

not support or condone human rights abuses caused or contributed to by businesses. This is particularly relevant with regard to State-owned enterprises and in the case of companies that receive substantial financial and other support from U.S. government agencies or through International Financial Institutions (IFIs) of which the U.S. is a member.”

- “The baseline assessment referred to above should also include an examination of the extent to which the U.S. meets its international human rights obligations when acting multilaterally through IFIs.”
- “To adequately implement principle 10 of the UNGPs, the U.S. government should commit to doing everything in its power to ensure IFIs of which the U.S. is a member respect human rights in their lending and other activities. The U.S. government should strive to ensure IFIs’ policies are in line with and explicitly refer to international human rights law and standards, that they publicly commit to respecting human rights in all their activities and adopt robust human rights due diligence policies and procedures.”

[Accountability Counsel, proposal for U.S. NAP:](#)

- “...assemble a consistent, structured U.S. agenda on IFIs that continues to promote and protect environmental and human rights and ensures that communities have adequate access to remedy for harm resulting from IFI-supported projects. In addition, in developing the NAP, the U.S. government should direct its IFI representatives to urge those institutions to take necessary remedial action in cases in which IFI projects fail to comply with social and environmental safeguards, withhold approval of inadequate remedial action plans that fail to address instances of noncompliance, and stop disbursements or other support for projects or borrowers that are failing to take needed remedial action.”
- “...include the adoption of a policy and development of a plan to coordinate with other IFI member States. This is necessary in order to ensure that IFIs themselves and/or parties seeking IFI support are willing and able to respond to the findings of IFI accountability mechanisms by providing compensation or similar forms of redress to those who suffer human rights violations resulting from IFI projects.”

[Righting Finance, Friends of the Earth and Global Witness, proposal for U.S. NAP:](#)

- “The Administration should expand corporate disclosure requirements for listed and non-listed companies on human rights, environmental and social issues, including, for instance, due diligence measures companies have in place to prevent such risks. This is particularly so in “high risk” investments, such as infrastructure and farmland. Decisions in the Group of 20, multilateral development banks and other forums that promote infrastructure as an asset class are likely to lead to growth in infrastructure investments by institutional investors. These projects are particularly prone to affecting human rights...”

Nomogaia, proposal for U.S. NAP:

“Development banks that provide credit or insurance to corporations should themselves follow the UNGPs and require that their client corporations do so as well.

- “[Overseas Private Investment Corporation] OPIC’s human rights due diligence should be made publicly available (except when publication of human rights due diligence could harm rights-holders, in which case they can be written with some anonymity to protect those threatened).”
- “OPIC’s corporate clients should be required to make public their own due diligence related to projects funded or insured by OPIC.”
- “US contributions to [development finance] institutions can be tied to human rights assessment disclosure, as has been done in the case of World Bank data transparency in past appropriations bills.”

Center for International Environmental Law, Accountability Counsel, and International Corporate Accountability Roundtable, proposal for U.S. NAP:

- The U.S. Agency for International Development (USAID) should “[explicitly commit] to a human rights-based approach to development, designed to implement successful development and to assist partner countries in implementing their international human rights obligations.”
- “The mitigation hierarchy employed in USAID activities should support the commitment to respect human rights and acknowledge that some impacts are unacceptable and must be prevented, rather than merely mitigated.”
- “USAID must have robust due diligence requirements to identify and address human rights risks and impacts and to prevent human rights violations. This includes a process for assessing the country context and enabling an environment for rights-respecting development activities, including an analysis of the legal and regulatory environment for rights enjoyment and any constraints that this environment presents for public participation in development processes, including advocacy and criticism of governments or specific projects supported by USAID. It should also include vetting partners based on prior involvement in human rights abuses and an assessment of the partner’s capacity and will to implement the project in a rights-respecting manner.”
- “USAID must ensure that meaningful consultations with affected communities and other key stakeholders are held at the very beginning and then throughout the lifespan of a project, with sufficient information being provided in an accessible form and for a reasonable time in advance of in-person consultations.”
- “USAID policy should require comprehensive social impact assessments (SIAs)... Social impacts should be defined to include *inter alia*... impacts on the realization or enjoyment of human rights...”
- “...projects should be required to obtain the free, prior, and informed consent of indigenous peoples or the broad community support of other affected communities, as required by international human rights standards.”

- “USAID should establish grievance mechanisms to correspond with USAID field mission activities at a national or regional level and create a mechanism at headquarters to address complaints associated with programs and projects implemented from Washington, DC... At a minimum, these grievance mechanisms should be built on the “effectiveness criteria” set forth in the Guiding Principles.”

## **VIII. Conclusion**

As demonstrated by the wide range of policies sampled here, there is broad acceptance of the importance of human rights within development processes and of the need for human rights due diligence to ensure that public financial institutions are transparent, accountable and rights-respecting. National Action Plans can provide a useful platform and process to deepen these policy commitments and to promote effective implementation. We hope that this brief has provided some helpful ideas, and encourage you to share with us other examples we may have missed. In this way, civil society groups around the world can benefit from each other’s unique experiences, challenges and victories in advocating at the national level for development processes and public financial institutions that respect, protect, and fulfill human rights.

*The Coalition for Human Rights in Development is a global coalition of social movements, civil society organizations and community groups working to ensure that development finance institutions respect, protect, and fulfill human rights.*

[www.rightsindevelopment.org](http://www.rightsindevelopment.org)