

## **Submission to the review of the UK National Action Plan on implementing the UN Guiding Principles on Business and Human Rights**

July 2015

### **Introduction**

The Institute for Human Rights and Business (IHRB) welcomes this opportunity to provide input for the first review of the UK's National Action Plan on Business and Human Rights (NAP). IHRB played a proactive role in facilitating stakeholder consultations undertaken as part of the process to develop the first version of the UK NAP in 2012/13. Since then, IHRB has contributed to a range of other NAPs across a number of countries.

This submission includes proposals that in our view would make the UK NAP more effective. It is based, in part, on a review of relevant policies and approaches by over 70 States worldwide: most without NAPs, but nonetheless implementing particular practices of relevance to the business and human rights agenda.<sup>1</sup> NAPs have become an important tool to strengthen policy coherence for the still small but growing number of states that have developed such plans. The review of the UK NAP is an important marker of on-going commitment to implementation and evaluation both within the UK and globally. NAPs implementation should be an iterative process – and countries that have developed similar plans should learn from each other. At a minimum, NAPs ensure that business and human rights issues remain an on-going priority for governments. If developed effectively, NAPs can help enhance policy coherence across government departments and contribute to more effective interventions to help protect and respect human rights.

At a time of significant challenges to human rights at home and internationally, including decreasing space for civil society and increasing risks for human rights defenders in many parts of the world, NAPs are a crucial part of overall state strategies to implement their international obligations. The UK NAP can be of tremendous value to business by offering greater consistency and clarity concerning UK Government expectations of corporate practices and by helping to create a more level playing field for business operations internationally. There is much the UK Government can do to help businesses understand, prevent and mitigate their potential negative human rights impacts through effective human rights due diligence and ensure access to effective remedies for victims consistent with the United Nations Guiding Principles on Business and Human Rights (UNGPs).

This submission is organized around five main areas in which the state relates to business (as an economic actor, as a regulator and enforcer of law, as the creator of accountable marketplaces, as a partner in development, and as an enabler of trade and investment). Specific recommendations are made as well relating to “Mega-Sporting Events”, which in many ways constitute a microcosm for business and human rights themes addressed in the UK NAP.

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<sup>1</sup> See IHRB, “State of Play: Human Rights in the Political Economies of States – Avenues for Application” (2014): [http://www.ihrb.org/pdf/2014-03-18\\_State-of-Play\\_HR-Political-Economy-States.pdf](http://www.ihrb.org/pdf/2014-03-18_State-of-Play_HR-Political-Economy-States.pdf)

## 1. The State as an Economic Actor

The 2013 UK National Action Plan<sup>2</sup> (NAP) affirmed the UK Government's commitment to ensuring that human rights concerns are appropriately reflected in government purchasing, including the ability to exclude companies from tender processes which have been involved in grave professional misconduct, including cases of human rights breaches. The NAP also commits to reviewing the degree to which state contracting and purchasing agreements are executed with due respect for human rights considerations, including recommendations to ensure compliance with the UNGPs.

The 2014 European Union (EU) Procurement Directives<sup>3</sup> have squarely invited more explicit and meaningful use of social and human rights related measures within the tendering process at all phases. EU Member States transposing the Directives now have ample opportunity before the April 2016 deadline to reflect within their own relevant processes, expectations for any company delivering goods, works or services to their governments, including implementing their responsibilities under the UNGPs.

Recent G7 commitments<sup>4</sup> concerning responsible global supply chains are also of relevance in this regard. UK public procurement involves a long and large supply chain, and for G7 commitments to be meaningfully implemented in practice it is crucial that the revised UK NAP more clearly explains the measures the UK Government will take to ensure its own purchasing practices are consistent with the UNGPs. Explicit consideration of human rights within the earliest phases of the tender process is a key way in which UK Government authorities can express to the widest number of businesses the importance of human rights due diligence processes and thereby to ensure that negative impacts linked to business practices are prevented. The UK Government should take additional steps to express a clear market preference for businesses demonstrating a commitment to respecting human rights through robust risk management systems – something many leading CEOs called for in a recent survey by the Economist Intelligence Unit.<sup>5</sup>

The UK Public Contracts Regulations 2015<sup>6</sup> were recently introduced to implement the 2014 EU Directives. While the new UK Regulations explicitly allow the consideration of social conditions within the technical specification, award criteria or contract performance conditions, they do not provide a clear indication that human rights related measures should be a priority within the tendering and contract management process. Such provisions are entirely discretionary for contracting authorities and fall below the sentiments of the 2013 UK NAP in seeking to procure in compliance with the UNGPs, which requires proactive and continuous risk management to prevent negative impacts from occurring. The Regulations do not spell out the UK Government's expectations with respect to the need for procurers to assess the human rights risks posed by products and sectors. Nor do the Regulations clarify how contractors should be informed of these risks to ensure adequate prevention, mitigation and remediation measures as part of specification, exclusion, selection and award decisions, including through appropriate contractual requirements and monitoring activities covering performance of the contract.

Additional measures the UK Government could consider as part of the UK NAP revision include:

- Supporting the European Commission to revise its "Buying Social" guidance<sup>7</sup> to implement socially responsible public procurement by Member State authorities under the 2014 EU Directives. The EU's

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<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf)

<sup>3</sup> [http://ec.europa.eu/growth/single-market/public-procurement/modernising-rules/reform-proposals/index\\_en.htm](http://ec.europa.eu/growth/single-market/public-procurement/modernising-rules/reform-proposals/index_en.htm)

<sup>4</sup> <https://www.whitehouse.gov/the-press-office/2015/06/08/g-7-leaders-declaration>

<sup>5</sup> <http://www.economistinsights.com/business-strategy/analysis/road-principles-practice>

<sup>6</sup> <http://www.legislation.gov.uk/ukxi/2015/102/contents/made>

<sup>7</sup> <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=978>

“Buying Social” guidance was issued in 2010 and on the whole discouraged incorporating human rights related considerations within the tendering process. The current guidance does not reflect the much more welcoming stance the 2014 EU Directives take on human rights. Revisions to the guidance are needed for procurement practitioners to become more engaged, empowered and educated in making rights-respecting purchasing decisions.

- Adopting UK-specific human rights and social procurement guidance to ensure UK contracting authorities understand EU requirements and related UK implementing measures.
- Developing more robust human rights related labels and certifications to ensure compliance with human rights requirements in the technical specification, award criteria or contract performance conditions. Such efforts are currently limited in both quantity and quality compared to environmental related labels and are currently the only means under the UK Procurement Regulations by which those submitting tenders are required to demonstrate compliance with human rights relevant issues.

## **2. The State as a Regulator and Enforcer of Law**

The Protocol to the ILO Forced Labour Convention was agreed in June 2014 and is now open for ratifications. The Protocol specifically states the importance of ensuring ethical recruitment as a critical part of preventing forced labour and human trafficking and it recommends that both governments and business undertake relevant due diligence in their operations and supply chains. The revised UK NAP should affirm the importance of this issue, which should inform all government efforts in both prevention and supply chain transparency, for instance in the guidance for the UK Modern Slavery Act 2015. If crafted effectively, the due diligence guidance relating to the supply chain sections of the Modern Day Slavery Act could become a standard for other states as they ratify the ILO Protocol.

Disclosure and reporting remain key concerns also in relation to the EU Non-Financial Reporting Directive that will apply to many large companies in the UK. The UK’s own reporting guidance (such as that currently being developed by the UK Equality and Human Rights Commission) should be aligned with guidance produced by the EU Commission and close attention should be paid as well to similar initiatives being developed by the Danish Government, as a precursor to what the European Commission itself will produce.

At the international level, IHRB encourages the UK Government to strengthen its participation in the activities of the UN expert group on business and human rights and the annual UN forum on this subject as well as discussions concerning a potential new legal instrument on business and human rights. We also recommend that the UK Government continues to engage effectively with special procedures mechanisms of the UN Human Rights Council including the new mandate of Special Rapporteur on the Right to Privacy.

## **3. Creating an Accountable Marketplace**

In his speech of 27 May 2014, the Governor of the Bank of England, Mark Carney, defined “Inclusive capitalism” as being:

*“...fundamentally about delivering a basic social contract comprised of relative equality of outcomes; equality of opportunity; and fairness across generations. Different societies will place different weights on these elements but few would omit any of them.”<sup>8</sup>*

In his Mansion House speech of 10 June 2015, he went further in describing the social license of “real markets” in contrast to the “ethical drift” of recent years:

*“Unethical behaviour went unchecked, proliferated and eventually became the norm. Too many participants neither felt responsible for the system nor recognized the full impact of their actions.*

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<sup>8</sup> <http://www.bankofengland.co.uk/publications/Pages/speeches/2015/821.aspx>

*For too many, the City stopped at its gates, though its influence extended far beyond.”<sup>9</sup>*

It is undoubtedly the case that the financial crisis has caused significant negative human rights impacts both within the UK and around the world. Given the dominance of the financial sector, the UK’s NAP should fully align itself with the current efforts of the Bank of England and FICC Markets Standards Board.

Incentives can be developed to encourage competition between companies on objectively set human rights benchmarks, which then enable both the commitments and performance of companies to be ranked. IHRB would like to recognize the support of the UK Government in the initiation of the Corporate Human Rights Benchmark<sup>10</sup> initiative in which we are proud to be a founding member.

The UK is also home to a broad range of small and medium-sized companies, sometimes publicly listed sometimes not, whose operations have global impacts. The UK Tech sector (see Item 7 below) is one example of this, but also the dozens of oil, gas and mining exploration companies that operate across Asia and Africa in particular. Very few of these companies are aware of the UNGPs or their responsibilities which flow from them. IHRB encourage the UK Government to use its convening power to raise human rights awareness among such companies and develop further industry specific human rights guidance, for example, aimed at exploration companies in the extractive sector.

#### **4. Business as a Partner in Development**

In the coming months, world leaders will adopt new UN Sustainable Development Goals, which will call for an expanded role for the private sector. Despite greater emphasis on transparency and accountability in the new Goals, and to some extent human rights, the UNGPs, the OECD Guidelines on Multinational Enterprises and other relevant standards concerning corporate responsibility have remained at the margins of these discussions. We encourage the UK Government to play a leading role in aligning the business and human rights agenda with the implementation of the SDGs as well as the new international climate change framework to be approved in Paris in December and to reflect these commitments in the update UK NAP.

Also of relevance in this context, the rights of women are not adequately expressed in the current UK NAP. The Government should make clear its expectations for business with regard to ensuring effective due diligence and the protection of women’s rights as a key driver of economic activity and sustainable development. The UK Government should also consider how its international leadership on the issue of Sexual Violence in Conflict could be expanded to other contexts in which sexual violence is prevalent, such as in mining or agricultural supply chains.

Fundamentally, the UNGPs and the broader business and human rights agenda will only be effective development tools if pre-competitive aspects are understood and respected. We hope the UK Government will deepen its relationships with other Governments (including beyond EU and OECD member states) including through multi-stakeholder approaches to complex human rights issues in specific geographical locations. We hope ongoing work in Myanmar, for example, which increasingly also involves Asian governments and investors alongside those from the UK and elsewhere, might act as a model for similar approaches elsewhere.

#### **5. The State as an Enabler for Trade and Investment**

States are powerful incentivisers of trade and investment, through interventions such as: advice services, trade missions and export credit services, as well as the mediation and determinations by OECD National Contact Points. The UK Government should maintain capacity-building and awareness with UK Trade and Industry as to the value and methodology of human rights due diligence, prevention, mitigation, disclosure

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<sup>9</sup> <http://www.bankofengland.co.uk/publications/Pages/speeches/2015/821.aspx>

<sup>10</sup> <http://business-humanrights.org/en/corporate-human-rights-benchmark>

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. The Myanmar Centre for Responsible Business is one model where the UK can pool resources with other like-minded governments for the benefit of all businesses. Seconding expert staff to specific embassies might be another.

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 (such as that published by the European Commission in 2012, or that which IHRB developed with Tech UK and the Foreign Office).

## 6. Mega-Sporting Events

The 2013 UK NAP section on promoting “access to remedy” included a commitment to disseminate lessons from the London Organising Committee of the 2012 Olympic and Paralympic Games (LOCOG). The NAP stressed that; *“LOCOG developed a process informed by the UNGPs to deal with complaints and grievances related to the application of its Sustainable Sourcing Code by commercial partners, particularly in relation to labour conditions at factories supplying sponsors, licensees and suppliers.”*

In August 2012 the UK Foreign and Commonwealth Office instigated a joint-communiqué on “Human Rights and Olympic and Paralympic Games” endorsed by the Governments of the UK, The Russian Federation, The Federative Government of Brazil and The Republic of Korea in which among other items these recent and prospective Olympic hosts affirmed that: “London 2012, Sochi 2014, Rio 2016 and Pyeongchang 2018 offer a valuable opportunity to systematically promote awareness of the Universal Declaration of Human Rights to a worldwide audience of billions, and demonstrate how the principles of the Olympic Charter relate to the Declaration and can translate into all aspects of society.”

In light of these commitments, IHRB recommends that the UK Government:

- Reviews the extent to which it has disseminated human rights-related lessons associated with the London 2012 Olympic and Paralympics Games as outlined in the 2013 UK NAP with forthcoming Mega- Sporting-Event (MSE) host nations, including Brazil, Russia, South Korea, Japan, and Qatar, and the extent to which it has explicitly promoted the LOCOG’s access to remedy formula. No MSE host since London 2012 has yet replicated this model.
- Re-commits to disseminating human rights-related lessons arising from the London 2012 Olympics, and pledge to share lessons from the Glasgow 2014 Commonwealth Games and England Rugby World Cup (2015) to future MSE hosts. This should include not only good practice associated with the access to remedy pillar as spelled out in the UK NAP, but also wider human rights related initiatives.<sup>11</sup> For example:
  - The commitment of the Olympic Delivery Authority (ODA) through its Procurement Policy and venue construction processes to promote strong industry standards for health and safety, greater workplace diversity and inclusion, and increased employability among young people.
  - LOCOG and the ODA’s high benchmark in establishing an independent body to monitor the sustainability impacts of the Olympics, and their conclusion of co-operation agreements with the worker representative body, the Trade Union Congress.
  - LOCOG’s promotion of responsible recruitment practices for temporary and migrant workers by urging its partners to ensure contract workers were recruited via regulated agencies or licensed by relevant public authorities.

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<sup>11</sup> <http://www.megasportingevents.org/host.html#country>

- Glasgow 2014 benchmark for MSE organising committees in publishing a Human Rights statement<sup>12</sup> that referenced the UNGPs, and its publication for a post-event human rights report.<sup>13</sup>
- Revisits the 2012 “Human Rights and Olympic and Paralympic Games” communiqué and explore ways in which this has been, or could continue to be, implemented by each of the co-supporting nations of Brazil, Russia and South Korea, and how these nations might work together to promote the UNGPs in the context of their forthcoming MSEs. It should additionally engage with the governments of Japan (due to host Tokyo 2020) and the soon to be announced Winter Olympics host for 2022 (China or Kazakhstan) to urge their support for the tenets included within the 2012 Human Rights Olympic Communiqué.
- Considers how it can support UK companies that are actively involved in the staging or delivery of MSEs in the UK or internationally (whether in their capacity as sponsors, licensees, broadcasters or commercial partners) to respect human rights and to encourage wider implementation of the UNGPs and the underlying human rights due diligence approach.

## 7. Specific recommendation in relation to the UK Cyber Exports Strategy

The UK has a large cyber security industry that the government is keen to grow. There has also been more attention on this part of the industry in recent years from human rights groups, due to questions over intrusive surveillance technology being sold to regimes with poor human rights records, and concerns that this technology may be used to target vulnerable groups such as human rights defenders, dissidents, journalists and lawyers. The 2013 NAP commits the government to: *“...develop guidance to address the risks posed by exports of information and communications technology that are not subject to export control but which might have impacts on human rights including freedom of expression on line.”*

The result of this planned action in the NAP was the publication of the guidance, *Assessing Cyber security Export Risks* in November 2014. IHRB was contracted by the UK industry association Tech UK to facilitate consultation with industry and help draft the guidance.<sup>14</sup>

As attention on the cyber security industry continues, particularly with the recent disclosures about Hacking Team's sales and clients, IHRB recommends the revised action plan include plans to develop human rights due diligence beyond identifying and assessing impacts and focus on integrating and acting, tracking performance, and access to remedy. Human rights due diligence is about knowing and showing a company respects human rights. This guidance placed focus on the "knowing", it is now time to concentrate on the "showing".

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<sup>12</sup> <http://www.glasgow2014.com/sites/default/files/documents/Glasgow%202014%20-%20Approach%20to%20human%20rights%20-%20December%202013.pdf>

<sup>13</sup> *Ibid.*

<sup>14</sup> [https://www.techuk.org/images/CGP\\_Docs/Assessing\\_Cyber\\_Security\\_Export\\_Risks\\_website\\_FINAL\\_3.pdf](https://www.techuk.org/images/CGP_Docs/Assessing_Cyber_Security_Export_Risks_website_FINAL_3.pdf)

## **About The Institute for Human Rights and Business (IHRB)**

IHRB is a global centre of excellence and expertise – a think and do tank – on the relationship between business and internationally proclaimed human rights standards. IHRB has a proven track record of working directly with business leaders, government officials, civil society, and trade unions to provide guidance on implementing the UN Guiding Principles on Business and Human Rights (the UNGPs), and to evaluate the effectiveness of current policies, operational practices, and multi-stakeholder initiatives relevant to human rights (see <http://www.ihrb.org/about/mission.html> for more details). IHRB is committed to maintaining its independence and impartiality through diverse partnerships, and transparent funding arrangements. We strive to earn the trust of all stakeholders.

IHRB has a presence in Geneva, Brussels, London and Washington, D.C. in addition to three centres for responsible business in Colombia, Kenya, and Myanmar, and is part of a consortium that works on business and human rights in China. Over 20 staff members carry out IHRB's regional and thematic work around the world. Professor John Ruggie chairs IHRB's International Advisory Board, under the patronage of Mary Robinson.

Since its inception in 2009, IHRB has given particular focus to providing sectoral and thematic guidance on how to operationalise the UNGPs. We believe sector-wide and thematic work can create the catalytic impact needed to transform corporate policies and practices, far exceeding impacts that can be expected by working with one company at a time.

Much of IHRB's sectoral and thematic focus is based on key "global flows" critical to sustainable social and economic development – these are: flows of labour, flows of information, flows of money and flows of commodities.

These in turn drive IHRB programs on:

- **Migrant Workers:** in certain high-risk countries and sectors (e.g., construction sector in Qatar);
- **Information and Communication Technologies (ICT):** (e.g., various aspects of online threats to respect for human rights, including mass surveillance and network shutdown practices utilized by some states)
- **Financial Sector:** (e.g., a new [Corporate Human Rights Benchmark](#) project to provide a credible, publicly accessible human rights ranking of major global companies' human rights approach and performance. We are also collaborating with the [United Nations Environmental Programme](#) (UNEP FI) Inquiry on the human rights dimensions of designing a sustainable financial system (which will include an inquiry into the role of derivatives and human rights)); and
- **Commodities:** (oil, gas, mining, and agriculture), which cross cuts and shapes the current activities of our three responsible business centres mentioned above. IHRB has also recently won a tender to lead and multi-stakeholder process and to develop guidance for the commodity sector funded by the Swiss Government.

## **Sample of IHRB research and guidance**

### **Workers:**

- [Dhaka Principles on Migration with Dignity](#)
- [Fees & IDs: Tackling Recruitment Fees and Confiscation of Workers' Passports](#)
- [European Commission Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles](#)
- [The Glasgow Commonwealth Games: Upholding Human Rights, Preventing Forced Labour and Trafficking – Meeting Report](#)
- [Migrant Workers: Responsible Recruitment and Fair Hiring Practices – Meeting Report](#)
- [Bangladeshi Migrant Workers: Responsible Recruitment and Return](#)
- [Striving for Excellence – Mega-Sporting Events and Human Rights](#)

### **Finance:**

- [Investing the Rights Way: A Guide for Investors on Business and Human Rights](#)
- [ICT and Human Rights Guidance to Export Credit Agencies \(\*forthcoming\*\)](#)
- [Guidance on a sustainable financial system \(\*forthcoming\*\) – UNEP](#)
- [The OECD NCP system and the Finance Sector, with a focus on financing in the Extractive Sector](#)
- [The Human Rights Dimensions of a Sustainable Financial System – Meeting Report](#)
- [Colloquium on Policy, Law, Contracts, and Sustainable Investments – Meeting Report](#)
- [The Corporate Human Rights Benchmark \(\*forthcoming\*\)](#)

### **ICT:**

- [Assessing Cyber Security Risks – TechUK](#)
- [Human Rights Challenges for Telecoms Vendors – Case Study: Ericsson](#)
- [European Commission ICT Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)
- [Tackling Dilemmas and Dangers in the Digital Realm - Wilton Park Conference Report](#)
- [Analysing network disconnection in Pakistan \(\*forthcoming\*\)](#)
- [Corporate Responses to Hate Speech in the 2013 Kenyan Presidential Elections: Case Study: Safaricom](#)

### **Commodities:**

- [Promoting Human Rights, Ensuring Social Inclusion & Avoiding Conflict in Extractives – UNDP](#)
- [European Commission Oil & Gas Sector Guide on Implementing the UN Guiding Principles on Business & Human Rights](#)
- [More than a Resource: Water, Business and Human Rights](#)
- [From Red Flags to Green Flags: The Corporate Responsibility to Respect in High-Risk Countries](#)
- [Security & Human Rights in Kenya's Extractives Sector](#)
- [OECD National Contact Points and the Extractive Sector – Meeting Report](#)
- [State of Play: Human Rights and Business Relationships](#)