

SUMMARY OF THE ASIAN CONSULTATION ON NATIONAL ACTION PLANS FOR BUSINESS AND HUMAN RIGHTS – 4 AND 5 FEBRUARY 2015

A. The UN Guiding Principles on Business and Human Rights and National Action Plans

In June 2011, the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (“UNGPs”). The UNGPs have gained widespread support among States, the private sector, and civil society. They have become the main reference point for all stakeholder groups in propelling and streamlining efforts to address adverse corporate-related human rights impacts.

Soon after the Human Rights Council’s endorsement, the UN Working Group on Business and Human Rights (“UNWG”), which is charged with promoting the implementation of the UNGPs, together with other stakeholders, called upon governments to engage in processes to strategically implement the UNGPs through the development of [National Action Plans on Business and Human Rights](#) (“NAPs”). In the past two years, an increasing number of States in all regions have started to engage in NAP processes.

The UNWG regards NAPs, both the processes and the plans themselves, as indispensable instruments for the strategic and coherent implementation of the State duty to Protect, the first of three “pillars” of the UNGPs, along with the Corporate Responsibility to Respect, and Access to Remedy. By identifying and prioritizing concrete policy and regulatory options, through a process that is inclusive of all sectors – state, civil society and business - NAPs can provide the following:

- Greater policy coherence within government on the range of public policy areas that relate to business and human rights;
- Transparency and predictability on the direction of the government’s implementation efforts for all domestic and international stakeholders;
- A platform for ongoing domestic multi-stakeholder dialogue; and
- A flexible, yet common, format that enables international cooperation, coordination, and exchanges of good practices and lessons learned.

B. ASEAN/ASIA CONSULTATION ON NATIONAL ACTION PLANS FOR BUSINESS AND HUMAN RIGHTS (“Bali Workshop”)

In order to gain a better appreciation and understanding of the ASEAN/Asia context related to business and human rights, and to have that perspective inform the development of the international standards on NAPs in alignment with the ASEAN Human Rights Declaration, the ASEAN Community integration blueprint, and other relevant regional instruments, an ASEAN/Asia Consultation (“Bali Workshop”) was conducted.

The Bali Workshop was organized jointly by the ASEAN CSR Network (“ACN”) and the Asian Business and Rule of Law Initiative in the Singapore Management University (“SMU-ABRL”), with support from the Human Rights Resource Centre for ASEAN (“HRRC”). It was held in Bali, Indonesia on 4 and 5 February 2015, in conjunction with ACN’s ASEAN Next Generation CSR Forum, and saw high-level stakeholders from business, government and civil society attend and contribute.

Notably, representatives from the ASEAN Intergovernmental Commission of Human Rights, the United Nations Working Group on Business & Human Rights, national human rights institutions, and relevant government agencies, such as the Myanmar Investment Commission, attended and contributed. Leading businesses and business networks, as well as relevant NGOs and trade unions, likewise participated. With 113 participants and speakers from across ASEAN and internationally, the consultation was truly multi-stakeholder in nature and far exceeded expectations.

The consultation forms part of a project commissioned by the UNWG to help develop implementation guidelines for NAPs that would draw upon the perspectives of those who would be creating and using them. The project was awarded to a Coalition led jointly the Centre for Applied Legal Studies, University of the Witwatersrand (“CALS”) and the Asian Business and Rule of Law Initiative in the Singapore Management University (“SMU-ABRL”), together with the Centre for Human Rights, University of Pretoria (“CHR”), and the ASEAN CSR Network (“ACN”). An Africa Consultation will likewise be held in Pretoria, South Africa on 23 and 24 February 2015.

*This report summarises the key takeaways from the ASEAN/Asia Consultation. For the agenda of the Bali Workshop, please see **Annex 1** attached. A list of the participants for the Bali Workshop is available on request.*

C. Key Takeaways

The Bali Workshop was unprecedented in several respects, and the following points that were raised bear mention:

1. National and regional initiatives regarding CSR and human rights should be aligned. Pursuant to the 2014 Baseline Study that was presented by AICHR, ASEAN-wide guidelines should be designed in line with international standards such as the UNGPs.
2. For there to be an effective NAP, there has to be inter-ministerial cooperation within a country, with a coordinating ministry overseeing the NAP process. On that note, the onus of protecting human rights in the business context should not fall to businesses, but should remain with the government.
3. Existing mechanisms and general national action plans that ASEAN states have committed to could be tapped upon to mutually reinforce the link between CSR and human rights. Further, the national action plans for human rights in Thailand and Philippines too can be a starting point for NAPs in these countries.
4. Businesses should be encouraged to act as ‘champions’ for human rights and CSR. In particular, coalitions such as the ASEAN CSR Network can take the lead in driving this agenda.
5. CSR should not be limited purely to the socio-cultural framework of the ASEAN Community framework. It must also be considered in connection with the ASEAN Economic Community (“AEC”), which will be launched later this year. ASEAN’s economic integration is a key priority for the region, and is closely followed by the international community as a whole.
6. NAPs can also serve as a basis to outline a state’s domestic regulatory space in bilateral investment treaties concerning issues of public interest such as human rights and the environment. This will add a level of certainty that is essential for states and foreign investors alike. These NAPs should also reference related regulations contained within the ASEAN Comprehensive Investment Agreement.

7. Over the years, the definition of “development” as being rooted solely in economic considerations has changed. The right to development is enshrined in article 35 of the ASEAN Human Rights Declaration. As such inclusive, equitable, sustainable, and rights-based development are now critical aspects of development discourse in the region. NAPs should therefore be aligned with national and regional development plans, such as the Bali Concord III Plan of Action (2013 - 2017), and other plans that ASEAN and AICHR may develop in relation to the Post-2015 agenda. Bali Concord III states that “ASEAN member states shall, where appropriate, integrate the programmes and activities of the Plan of Action into their respective national development plans”.
8. It is recommended for there to be a gap analysis between the UNGPs and the state of play of CSR and human rights in member states, before a NAP is devised or implemented.
9. On behalf of Myanmar, Professor Aung Tun Thet, the Economic Adviser to the President, announced Myanmar’s commitment to devising a NAP in the near future. This announcement was welcome news to all stakeholders in attendance, and there was common agreement that a Myanmar NAP could serve as a model for other ASEAN states. Indonesia and Malaysia are considering developing NAPs as well.
10. For a NAP to be effective, there must be a multi-stakeholder monitoring and evaluation process. It should be pursued through constructive engagement with business. Because both business and state stakeholders in some parts of ASEAN are not yet comfortable with human rights language, a NAP on ‘Responsible Business Conduct’, may be preferable to a NAP on ‘Business and Human Rights’, at least in the near term. Past experience with national action plans for human rights have shown that in order for the NAPs to be implementable, there needs to be adequate capacity building and financial support.

D. Going forward

In addition, to enhancing our general understanding of the outlook for NAPs in the region, the project seeks to understand what business and human rights means for developing economies and countries in conflict, and on their gendered implications. This information will contribute to the UNWG’s Guidance on the development and implementation of NAPs.

Going forward, ACN and SMU-ABRL will submit reports to the UNWG and AICHR to contextualise NAPs in the region. In addition, ACN and SMU-ABRL stand ready to support countries who have committed to the development of NAPs in the areas of research, training, and capacity-building, and if deemed necessary, support AICHR in the development of a regional framework or action plan on promoting and implementing the UNGPs.

This preliminary report was prepared jointly by the Asian Business and Rule of Law Initiative (“ABRL”) and the ASEAN CSR Network (“ACN”).

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