

# Recommendations for National Action Plans on Business and Human Rights

2016. 7

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## I . Overview

### 1. The Significance of National Action Plans on Business and Human Rights

- A. National Action Plans on Business and Human Rights (hereafter referred to as “NAPs”) mean comprehensive and systematic action plans at the state level devised to contribute to human rights progress in society through human rights friendly business activities and prevention of human rights abuses by businesses enterprises.
- B. The government has the obligation to preclude businesses from infringing on others' human rights—its duty to protect human rights—and NAPs are measures to carry out such obligations.
- C. The government is obliged to recognize the necessity of business activities for national development, while facing up to the reality of direct and indirect human rights abuses in the process of business activities. Thus, it needs to help business enterprises realize their responsibilities to respect human rights. Business enterprises, regardless of their sizes or regions of their operation, should not directly violate others' human rights during business activities, nor should be involved with human rights abuses throughout the supply chains in and out of Korea.
- D. NAPs were developed in order to join the efforts made by the international community to fend off human rights infringement by business enterprises. In particular, NAPs are to express the Republic of Korea’s support and commitment to the United Nations Guiding Principles (hereafter referred to as "UNGPs") endorsed by the UN Human Rights Council in 2011.
- E. Government ministries needs to understand and faithfully carry out NAPs as they include policy tasks meant to be implemented by them.

## 2. Background and Need for Recommendations for NAPs

- A. With the growing social influence of business enterprises and the public interest in human rights management issues, there is an increasing demand for protection of and respect for human rights by business enterprises across the globe. In addition, countries are institutionalizing human rights based business management to improve their national image and business competitiveness, based on the need for human rights risk management and the consensus on universal value such as protection of and respect for human rights. There is also an ongoing trend showing that major businesses commit themselves to business management based on human rights, establish and implement their own plans.
- B. In particular, the UN Guiding Principles, since their adoption in 2011, have been widely accepted by UN member states, business enterprises, civil societies and international organizations as a global norm on business and human rights. Accordingly, the international community and human rights respecting countries are focusing their interests on how they can implement the UNGPs.
- C. The best way to implement and publicize the UNGPs is considered to be the development and implementation of NAPs on business and human rights. In 2013, the EU recommended its member States to establish their own NAPs, and in 2014, the UN developed and published the Guidance on National Action Plans on Business and Human Rights. Subsequently, ten countries have already adopted NAPs and 19 countries are in the process of developing them. As such, Korea also needs to formulate and implement NAPs in line with the international trend.
- D. The 2015 G7 Summit (7-8 June 2015, Germany) welcomed the efforts to develop NAPs and declared its support for business and human rights.

E. Although the Korean government has adopted various policies on business and human rights through relevant laws, including the Commercial Code, the Labor Standard Act, the Trade Union and Labor Relations Adjustment Act and the Framework Act on Consumers, there was no coherence. NAPs are meant to enhance coherence and effectiveness of national policies on business and human rights, which would support business enterprises' sustainable development and their global competitiveness through human rights friendly activities.

### 3. Objectives and Major Tasks of NAPs

#### A. Objectives

- 1) The ultimate goal of NAPs is to prevent possible human rights abuses by business enterprises and to promote human rights through human rights friendly business activities.
- 2) NAPs pursue human rights management conducted by business enterprises. According to the UNGPs, human rights management refers to businesses declaring their human rights policies, implementing due diligence and providing remedies to affected individuals.

First, business enterprises should make a declaration of human rights policies. In other words, businesses themselves have to make a public promise to adopt human rights management.

Second, business enterprises should implement due diligence. Due diligence means to identify existent or potential factors for human rights abuse within business activities, and take not only preventative measures but also address those factors, as well as communicate the process with diverse stakeholders.

Third, businesses should provide remedy to victims of human rights abuse.

- 3) Ultimately, NAPs seek to encourage business enterprises to establish their own human rights management system.

## **B. Major Tasks**

In order to build a proper human rights management system which would work in reality, strategic approaches are required, taking account of the different business sizes and types.

### **1) Institutionalization of human rights management by public institutions**

- i . Government ministries directly call on the heads of public institutions under their control to implement human rights management and make their performances public.
- ii. Each ministry induces and encourages heads of affiliated public institutions to exercise their influence on business enterprises through credit, investment and loans so that the business enterprises would carry out corporate responsibility to respect human rights.

### **2) Recommendation to large corporations for human rights management**

- i . Respect for human rights is not legally prescribed as an obligation of corporations, and hence it is not possible to directly require private companies to conduct human rights management..
- ii. Various policy measures can be taken to encourage private companies. Some examples are: to provide information and guidelines on human rights management; to create favorable public opinions on companies with human rights management through training of and publicity for companies and consumer organizations; to identify best practices of human rights management and to provide policy support; to introduce a mandatory system for disclosure



of non-financial information; and to consider human rights-related factors in the public procurement process.

- iii. Whether such an indirect approach to encourage human rights management brings a change in the business practices of large corporations would be monitored through promotion of NAPs. Based on the results, improvement in policies shall be pursued.

### **3) Establishment of legal compliance at SMEs**

- i. Small and medium-sized enterprises often fail to comply with legal requirements, including payment of minimum wage, prohibition of discrimination at the workplace, labor rights protection and observance of occupational safety standards.
- ii. Given the limited human and financial resources of small and medium-sized enterprises, to establish the human rights management system within a short period of time is not feasible. However, all business enterprises are required to comply with the current laws, with due diligence not to undermine consumers' lives, health and safety. Hence, policies focusing on legal compliance are necessary.

### **4) Effective remedies for victims of human rights violations**

- i. In case of human rights abuses by business enterprises, judicial remedies through lawsuits as well as non-judicial remedies should be provided.
- ii. The non-judicial remedial process is based on business enterprises' public commitment to human rights management and establishment of the internal process to address human rights abuses.
- iii. Diverse stakeholders should be able to participate in the development and operation of the non-judicial process.

## **4. Expected outcomes of NAPs**

### **A. Enhanced coherence of government policies on business and human rights**

Policy coherence for human rights friendly management of business enterprises would be maintained, while concrete government policies on business and human rights would establish and expand culture of human rights management.

### **B. Expectation on Korea's leading role in the international community through the establishment of NAPs**

By establishing NAPs in full accordance of the 2014 UN Guidance on NAPs, it is expected that Korea can be considered as one of the leading and exemplary cases of establishing good NAPs on business and human rights in the international community.

### **C. Contribution to sustainable development of businesses**

NAPs would enable business enterprises to proactively respond to the EU's policy on mandatory disclosure of non-financial information of businesses, which will contribute to heighten the business enterprises' status and competitiveness in the international community and their sustainable development.

## II . Recommendations for NAPs

### 1. Expression of government expectation for business enterprises

#### A. Background for recommendation

- 1) It is important that the government clearly expresses its expectation for business enterprises in order to secure businesses' commitment to human rights responsibility and for government policy coherence.
- 2) The government needs to clearly set out its expectation for all business enterprises to respect human rights regardless of regions, sizes and types of the business activities.

#### B. Domestic / overseas standards and cases

- 1) UNGPs

<ol style="list-style-type: none"><li>2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.</li></ol>
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- 2) Establishment of NAPs is the most effective measure to express governments' expectation and policy commitment for the corporate responsibility to respect human rights. Therefore, States that have developed NAPs are taking advantage of the plans to express governments' expectation on the corporate responsibility to respect human rights.

- 3) In case of the United Kingdom, the government has expressed its will to carry out its duty to protect human rights through NAPs regarding business enterprises domiciled in its jurisdiction. In addition, the UK government has declared its willingness to provide support and incentives to all UK enterprises—whether they operate in the U.K. or abroad—to respect human rights.
  
- 4) In case of the Netherlands, the government has already been implementing active policies to require business enterprises respect human rights and has even declared that it is pursuing policies to prevent not only direct human rights abuses by business enterprises but also indirect human rights violations committed in the supply chain. The Dutch government sets out clearly its expectation on business enterprises operating abroad (enterprises that made inroads into countries lacking legislation or enforcement) to uphold the same standard of the corporate social responsibility as required in the Netherlands.

## C. Recommended content for NAPs

### 1) Goal

To clearly express the government's expectations on the corporate responsibility to respect human rights

### 2) Direction of national policy

The government effectively communicates to business enterprises its commitment regarding business and human rights by clearly expressing its expectations on the corporate responsibility to respect human rights.

### 3) Core tasks for implementation

- i. The government expresses (announces) the following expectations on the corporate responsibility to respect human rights through various media such as newspapers, internet and brochures.
  - ① All business enterprises within the territory or under the jurisdiction of Korea, regardless of their sizes or regions, are expected to carry out the corporate responsibility to respect human rights as defined in UNGPs.
  - ② Business enterprises should exercise due diligence, to the highest extent possible, on the potential human rights abuses within the supply chains including contractors and suppliers.
  - ③ The government provides the necessary support, legislative, policy measures or otherwise, to business enterprises for their faithful implementation of the corporate responsibility to respect human rights.
- ii. The government provides training and publicity to business enterprises on the government's expectations regarding business and human rights.

## 2. General policies on business and human rights

### A. Background for recommendation

- 1) In order to fully implement the State's due diligence obligation to protect human rights, the government needs to improve shortcomings by reviewing and analyzing the effectiveness of the enforcement of the current laws which are directly and indirectly related to the corporate responsibility to respect human rights.
- 2) In order to help business enterprises to effectively carry out their responsibility to respect human rights, it is necessary to support them in their establishment

of the human rights management system, in particular by providing standard and exemplary guidelines on contents and methods of human rights management.

- 3) It is necessary to disclose the implementation status of human rights management of business enterprises, since it will help them to figure out the types of human rights abuses they are prone to commit, depending on the characteristics and areas of businesses, and to come up with measures to prevent those human rights abuses.
- 4) Regarding the dissemination of materials on business and human rights, the National Human Rights Commission of Korea published and distributed the translated version of the UNGPs and the UN Guidance on NAPs, as well as developed the Guidelines for Human Rights Management and Checklist. However, education and publicity at the government level have been insufficient.

## B. Domestic / overseas standards and cases

### 1) UNGPs

3. In meeting their duty to protect, States should:
  - ① Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
  - ② Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business to respect for human rights;
  - ③ Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
  - ④ Encourage, and if necessary, require, business enterprises to communicate how they address their human rights impacts.

- 2) UNGPs require the government to effectively enforce laws on business enterprises' human rights protection, identify and narrow the gap between reality and the system and ensure that enactment of new laws or revision of existing laws would not encroach upon human rights. They also require the government to provide guidelines on corporate responsibility to respect human rights and business enterprises to properly communicate on human rights matters externally.
  
- 3) The international community has been institutionalizing the corporate responsibility to respect human rights by revising relevant laws. Since 2009, Denmark, China and South Africa have been requiring business enterprises to disclose non-financial information such as environmental and social factors, and France has also adopted the same requirement in 2011. In particular, the European Union passed legislation in 2014, targeting business enterprises with more than 500 employees, requiring them mandatory disclosure of non-financial information such as human rights.
  
- 4) Although various laws in Korea, such as the Labor Standard Act, the Minimum Wages Act, the Act on the Equal Employment for Both Sexes, the Employment Agency Worker Protection Act, the Act on the Employment of Foreign Workers, the Trade Union and Labor Relations Adjustment Act and the Industrial Accident Compensation Insurance Act, stipulate prevention of human rights abuses by business enterprises, they do not provide sufficient legal framework for implementation of the corporate responsibility to respect human rights.

## C. Recommended content for NAPs

### 1) Goals

- i. To assess the adequacy of, and change if necessary, laws and policies affecting directly or indirectly the corporate responsibility to respect human rights
- ii. To provide effective guidance to business enterprises on their implementation of human rights management
- iii. To develop measures for business enterprises to disclose non-financial corporate information related to human rights

### 2) Direction of national policy

- i. It is necessary to analyze and improve relevant laws and policies from the human rights friendly perspective to fend off any negative impact of business activities on human rights.
- ii. It is necessary to publish and disseminate guidelines on human rights management and provide education for entrepreneurs in a readily approachable and understandable manner.
- iii. A public disclosure system of human rights-related information needs to be introduced, targeting business enterprises larger than a certain size, to enable stakeholders check the implementation status of the business enterprises in their interest regarding corporate responsibility to respect human rights.

### 3) Core tasks

- i. The government considers human rights-related aspects when enacting and revising laws relevant to business activities.



- ii. The government takes measures to strengthen monitoring of SMEs on their possible violation of the Labor Standard Act and to reinforce management and monitoring of their production and distribution of products that might threaten consumers' lives, health and safety.
- iii. Based on the UNGPs, as well as the Guidelines for Human Rights Management and Checklist developed by the National Human Rights Commission of Korea, the government develops educational materials, publicize them and conducts trainings for executives and employees of business enterprises.
- iv. The government adopts a public disclosure system of human rights-related information targeting business enterprises larger than a certain size.
- v. The government identifies and publicizes the exemplary cases of human rights management.

### **3. Institutionalization of human rights management at public institutions**

#### **A. Background for recommendation**

- 1) The government has the greatest means to make public institutions, including State-owned and State-controlled public corporations, establish and implement human rights management. Additionally, by taking advantage of the public institutions' supply chains, it is possible to expand the responsibility to respect human rights to private companies.
- 2) Public institutions, unlike private companies, provide public services. Hence, they need to pay more attention to the responsibility to respect human rights.

## B. Domestic / overseas standards and cases

### 1) UNGPs

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.

- 2) The UN Guiding Principles above indicate that the government is the primary duty-bearer to protect human rights. Therefore, the government is obliged to prevent human rights abuses by State-owned or State-controlled enterprises, or to mitigate the negative impact on human rights by business enterprises that receive substantial support from State agencies.
- 3) European countries have already recognized the corporate social responsibility including human rights, introduced and implemented policies on public corporations and institutions to internalize their responsibility. In addition, these countries have taken social factors including human rights into account when supporting business enterprises through public financial organizations such as export credit agencies, and required business enterprises taking part in development aid projects to pay attention to human rights. For example, California Public Employees' Retirement System, the Public Pension of the Netherlands and the Norwegian Pension Fund reflected social factors including human rights in investment decisions, thereby directly and indirectly requiring business enterprises to consider human rights.

- 4) With this trend, the National Human Rights Commission of Korea has recommended to the public institutions, such as public corporations, to conduct self-evaluation based on the Commission's Guidelines on Human Rights Management and Checklist (2014) and to the Minister of Strategy and Finance, to improve the evaluation system for performance management of public institutions (2016). At the same time, measures are necessary to institutionalize considerations of the corporate responsibility to respect human rights in financial and credit support for business enterprises and their participation in development aid projects.

## **C. Recommended content for NAPs**

### **1) Goal**

Regarding the business enterprises which the government owns or controls or has a substantial influence through investment and credit provision, to develop a system that the concerned business enterprises fulfil their responsibility to respect human rights.

### **2) Direction of national policy**

Public institutions are connected to business enterprises through their supply chains and could exert direct or indirect influence on the corporate management through credit provision for export, ODA, loans or investment. The government needs to tap into such influence of public institutions, taking incentive measures to guide and encourage business enterprises to voluntarily carry out their responsibility to respect human rights.

### **3) Core tasks**

- i. The government institutionalizes human rights management by the public institutions, and let the public institutions declare their human rights management policy, implement it with due diligence and make the results public.
- ii. When public insitutions provide credit and policy financing for export to business enterprises or invest in them with above a certain amount, the government encourages them to consider human rights aspects of the business enterprises and guide them to respect human rights.
- iii. The government recommends public institutions to regularly conduct self-evaluation based on the Guidelines on Human Rights Management and Checklist distributed by the National Human Rights Commission of Korea.

## **4. Public procurement based on human rights**

### **A. Background for recommendation**

- 1) The government conducts diverse commercial transactions with business enterprises through procurement and could exert influence on them with its immense purchasing power.
- 2) In fact, the government has utilized the procurement market where it could exert its purchasing power to implement government policies and support social goals such as fostering of SMEs and environment-friendly companies. Therefore, the government could lay a foundation for public procurement policies for business enterprises to recognize their responsibility to respect human rights.

## B. Domestic / overseas standards and cases

### 1) UNGPs

6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

- 2) The UN Guiding Principle above emphasizes that public procurement is a major means for the government to conduct commercial transactions with enterprises and that human rights consideration is required in procurement. Specifically, it means that the government explains the negative impact of procured materials on human rights to bidders, gives guidelines on the government expectation regarding due diligence and where appropriate, requires the implementation of due diligence.
- 3) Since 1970s, as a measure against apartheid in South Africa, the United States had excluded business enterprises operating in South Africa from the US procurement market and is currently applying its criteria to prohibit business enterprises involved with child labor, forced labor and human trafficking from participating in the government procurement. The European Union introduced the concept of social procurement in the 2000s, and the various social factors including human rights have been used as a criteria to select business enterprises participating in the procurement market.
- 4) In case of Korea, some local governments have developed and are using corporate social responsibility as selection criteria for public procurement. However, there is no such attempt at the central government level, nor a policy foundation to consider human rights in procurement.

## **C. Recommended content for NAPs**

### **1) Goal**

To provide guidance to business enterprises on the corporate responsibility to respect human rights by applying human rights-related standards when the government conducts transactions with the business enterprises.

### **2) Direction of national policy**

The government reinforces the business enterprises' commitment to their responsibility to respect human rights by reflecting standards containing social considerations including human rights in relevant laws such as the Government Procurement Act as a qualification to participate in public procurement.

### **3) Core task**

The government develops a system and procedures to include human rights consideration in the Act on Contracts to Which the State is a Party.

## **5. Supporting businesses to respect human rights in conflict-affected areas**

### **A. Background for recommendation**

- 1) In conflict-affected areas, the possibility of human rights abuses by business enterprises is higher, since the human rights protection system of the State is not functioning properly. In such areas, therefore, business activity itself can raise the probability of business enterprises becoming involved with gross human rights violations.

※ Democratic Republic of the Congo has been in conflicts over mineral resources, during which the armed forces have been committing murders and rapes to gain control of mines. In July 2010, the US government enacted the Dodd Frank Wall Street Reform and Consumer Protection Act, which contained Sec. 1502 prescribing the regulation on minerals originating in conflict-affected areas. The U.S. Securities and Exchange Commission (SEC) publicly announced the enforcement ordinance in August 2012, making all listed US firms to obligatorily report whether they use minerals from conflict-affected areas to the SEC and disclose relevant information.

- 2) It is important that the government closely check the situation on the ground in conflict-affected areas in order to prevent any negative impact on or violations of human rights by business enterprises. As it is likely for the government of the country with conflict areas to have lost effective control, the Korean government needs to support business enterprises by providing them swift and accurate information so that they would not be involved with human rights abuses.

## B. Domestic / overseas standards and cases

### 1) UNGPs

7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- ① Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- ② Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- ③ Denying access to public support and services for a business enterprise that is

involved with gross human rights abuses and refuses to cooperate in addressing the situation;

- ④ Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

- 2) The UN Guiding Principle above states that the support from States is needed to prevent business activities in conflict-affected areas from becoming involved with human rights abuses. Thus, it requires States to recognize difficulties carrying out the corporate responsibility to respect human rights in conflict-affected areas and to pay a closer attention and take special steps at the national level to support business enterprises in implementing their responsibility to respect human rights.
- 3) Published in 2012, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas presents concrete measures to help business enterprises respecting human rights select suppliers when purchasing materials such as mineral resources and avoid involvement in conflicts.
- 4) In Korea, the Ministry of Trade, Industry and Energy set up a task force in 2012 to respond to the US regulation on mineral resources from conflict-affected areas. Since then, the Ministry hosted a meeting in order to find out the industry's responses and difficulties facing them, and through seminars and open forums, continues its efforts to raise awareness of minerals originating in conflict-affected areas. The Korea Mineral Resources Corporation identifies and introduces alternative import channels to minerals subject to the regulation, and KOTRA monitors the responses from major countries through its overseas offices.



## C. Recommended content for NAPs

### 1) Goal

To prevent Korean business enterprises from involving with human rights abuses in conflict-affected areas

### 2) Direction of National Policy

The government pays a close attention so that the Korean enterprises would not be involved in gross human rights abuses in conflict-affected areas and takes preventive and remedial measures.

### 3) Core tasks

- i. The government develops and distributes guidance on activities for business enterprises operating in conflict-affected or high-risk areas.
- ii. The government strengthens its provision of information and education on international standards related to conflict-affected areas, including the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.
- iii. The government develops counseling and support programs to prevent the Korean enterprises operating or hoping to operate in conflict-affected areas from becoming involved with human rights abuses.

## 6. Ensuring government policy coherence

### A. Background for recommendation

- 1) A consistent approach on business and human rights is required for effective policies on business and human rights. Since the government is the principal actor who gives directions and leads other actors regarding human rights matters, coherence of government policies is the prerequisite for public trust and support.
  
- 2) Government activities on business and human rights require mutual understanding of the government expectation on corporate activities. Based on this mutual understanding, the government needs to ensure coherence in policies on business and human rights and to conduct training on business and human rights for relevant public servants.

### B. Domestic / overseas standards and cases

- 1) UNGPs

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.

- 2) The UN Guiding Principle above emphasizes the need for reinforcement of capacity building and training on business and human rights as a measure to ensure policy coherence. Specifically, measures such as development of training materials for relevant officials of the government and public institutions and operation of and support for training programs.

- 3) In other countries, various government ministries sought shared understanding and recognition of business and human rights during the process of developing NAPs, which enabled policy coherence, and developed and distributed diverse training materials and programs on business and human rights .
- 4) Since 2007, the National Human Rights Commission of Korea, recognizing the importance of business and human rights issues, has been making efforts to translate and distribute documents published by the international community and conduct research on related issues.

## **C. Recommended content for NAPs**

### **1) Goal**

To ensure policy coherence on business and human rights

### **2) Direction of national policy**

To ensure policy coherence, the government makes efforts to expand the participation of various stakeholders in the process of formulation and implementation of policies on business and human rights, and develop and expand common understanding.

### **3) Core tasks**

- i . In the process of development and implementation of policies on business and human rights, the government devises a procedure for participation of diverse stakeholders, including relevant officials and companies subject to the policies.

- ii. The government develops training materials and provides training programs including online education for public servants and employees of public institutions related to business and human rights policies.
- iii. The government regularly evaluates the implementation process of NAPs.

## **7. Human rights protection activities at multilateral international organization**

### **A. Background for recommendation**

States, when acting as members of multilateral institutions, should 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. Multilateral institutions need to help States meet their duty to protect and promote business respect for human rights through technical assistance and capacity building.

### **B. Domestic / overseas standards and cases**

#### 1) UNGPs

10. States, when acting as members of multilateral institutions that deal with business-related issues, should:
- ① 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;
  - ② 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;

- ③ Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges

- 2) The UN Guiding Principle above outlines measures for the government to ensure policy coherence on the corporate responsibility to respect human rights and the State duty to protect human rights regarding matters of business and human rights. Multilateral institutions could promote the implementation of UNGPs by enabling information sharing on business and human rights for the government implementation of the State duty to protect human rights and helping all States to meet their duty to protect regarding business and human rights.
- 3) International organizations such as the UN, OECD and ILO have already paid keen attention to business and human rights, each presenting its own concrete and diverse guidelines to member States.

## C. Recommended content for NAPs

### 1) Goal

To provide support for the State duty to protect human rights and the corporate responsibility to respect human rights at multilateral institutions

### 2) Direction of national policy

When participating in multilateral institutions and their activities, the government needs to make active efforts to promote the corporate responsibility to respect human rights and raise awareness of human rights management. .

### **3) Core tasks**

- i. When participating in business-related multilateral institutions and their activities, the government considers human rights aspects.
- ii. The government actively takes part in international efforts to implement and promote the UNGPs.

## **8. Enhancement of the effectiveness of state-based remedy**

### **A. Background for recommendation**

- 1) The government needs to take proper steps to guarantee victims an access to effective remedy in case of human rights abuses by business enterprises in order to carry out its duty to protect human rights.
- 2) Mechanisms for judicial and non-judicial remedy need to contain measures to remove legal as well as practical barriers for affected individuals to have an easy access.

### **B. Domestic / overseas standards and cases**

#### 1) UNGPs

<p>25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.</p>
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26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.
27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

- 2) The UN Guiding Principle above describes not only the importance of judicial remedy addressing human rights abuses by business enterprises but also the duty of the State to support and provide non-judicial remedy for victims.
- 3) The most representative example of non-judicial grievance mechanism is the National Contact Point (hereafter referred to as “NCP”) based on the OECD Guideline on Multinational Enterprises. The NCP investigates corporate activities that violated the OECD Guideline, collects public opinions on the issue with victims participating in the process and provides a forum for discussions to find solutions.
- 4) Korea has set up the NCP in 2001, which has been in operation since. In 2011, the National Human Rights Commission of Korea recommended that the NCP should invite the stakeholders to participate and cooperate, improve access to its website and revise its rules of procedure to guarantee transparency and responsibility in its work.

## **C. Recommended content for NAPs**

### **1) Goal**

To develop effective remedy mechanisms for victims of human rights abuses by business enterprises

### **2) Direction of national policy**

- i. The government improves the effectiveness of judicial and non-judicial remedy mechanisms which could address human rights abuses by business enterprises.
- ii. The government diversifies and facilitates non-judicial remedy mechanisms.

### **3) Core tasks**

- i. The government develops an effective remedy mechanism such as a class action system when the case involves multiple victims of human rights abuses by corporate activities.
- ii. In line with OECD Guidelines, the government changes the membership composition of NCP and its rules of procedure and strengthen publicity on NCP functions.

## **9. Support for non-state-based grievance mechanisms and enhancement of their effectiveness**

### **A. Background for recommendation**

- 1) States need to recognize the necessity and importance of establishing grievance



mechanisms at each business enterprise and, by facilitating their effective operation, create an enabling environment for remedy of human rights abuses.

- 2) When business enterprises establish grievance mechanisms to relieve victims of human rights abuses caused by corporate activities, the purpose of such mechanisms would be met only when the victims and stakeholders trust the mechanisms and are able to use them.
- 3) In this regard, for the practical effectiveness of any grievance mechanism, establishing the standards in its design, improvement and evaluation is needed.

## B. Domestic / overseas standards and cases

### 1) UNGPs

28. States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.
29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.
30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.
31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:
  - ① Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
  - ② Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

- ③ Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- ④ Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- ⑤ Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build on confidence in its effectiveness and meet any public interest at stake;
- ⑥ Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- ⑦ A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;  
Operational-level mechanisms should also be:
- ⑧ Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

- 2) The UN Guiding Principle above indicates that the government needs to raise awareness of and improve access to non-State grievance mechanisms which are not operated by the government.
  
- 3) Non-state-based non-judicial grievance mechanisms are operated at different levels: Global mechanism (for example, ILO Grievance Procedure), regional mechanism (for example, ADB Accountability Mechanism), local mechanism (for example, Regional Commission for Labor Dispute Resolution in Italy), industrial or multilateral mechanism (for example, Extractive Industries Transparency Initiative) and mechanism by enterprise or project.

- 4) A Korean example of non-State-based grievance mechanism is a grievance system based on the Act on the Promotion of Worker Participation and Cooperation. In order for such a system to be effectively operated as remedy for human rights abuses by business enterprises, support from the government is needed to provide human rights victims with easy access to remedy.

## **C. Recommended content for NAPs**

### **1) Goal**

To provide support for better access to non-state-based grievance mechanisms

### **2) Direction of national policy**

- i . The government recognizes the need for non-state-based grievance mechanisms and plays a role as a facilitator for those mechanisms to be effectively operated.
- ii . The government takes measures that the non-state-based grievance mechanisms would meet the characteristics of non-judicial grievance mechanisms as suggested by the UNGPs.

### **3) Core tasks**

- i . The government provides support for individual enterprise to faithfully operate its grievance mechanism for human rights victims.
- ii . The government provides institutional supports for the establishment of various types of grievance mechanisms.
- iii . The government widely publicizes international grievance mechanisms such as the ILO procedure.