

ROLE OF HUMAN RIGHTS INDICATORS IN NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: COMPARATIVE ANALYSIS OF FINLAND AND SPAIN

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Abstract: This article examines the articulation and role of measurements and indicators in the National Action Plans on Business and Human Rights (NAPs). We first provide a theoretical perspective based on the examination of a wide range of literature. We then analyse how the NAPs have been implemented in practice in Spain and Finland. The results demonstrate an enhancement of the human rights indicators for business and provide insights into how to use indicators for improving the effectiveness of the NAPs.

Keywords: human rights indicators; human rights indicators for business; human rights impact assessment; National Action Plans on Business and Human Rights (NAPs); UN Guiding Principles on Business and Human Rights (UNGPs).

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1. INTRODUCTION

The United Nations (UN) Guiding Principles on Business and Human Rights (UNGPs) constitute the main framework for ensuring that companies respect human rights. To affirm their compliance, the National Action Plans on Business and Human Rights (NAPs)² have been one of the tools, framed in *soft law*, which has been most widely implemented in recent years. The framing of UNGPs has recently completed 10 years, and despite the difficult journey, the discipline of human rights has progressed, although it still has a long way to go. The development in these 10 years indicates a lack of concrete results and specific achievements in terms of human rights. Precise information, such as that embedded in indicators and measurements, is needed.

The potential of the human rights indicators (HRIs) to monitor improvements in human rights and compliance with international standards is well established, at least on

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² These plans will be referred to as NAPs. Later in the article, we will also mention general human rights plans, which we will refer to as National Human Rights Plan of Action, NPAs (or with their specific identification in each country).

paper. Another question is their implementation and practical application. The UN has long established the methodological framework of the HRIs, which can be applied to business activity and corporate social responsibility. Indeed, the development of indicators is one of the most promising developments in the field of business and human rights. Several initiatives of HRIs for business (HRIBs)³ have been undertaken, some of which are discussed later.

In this article, we first (section 3) compile and analyse the main international guidelines, directives, reports, and references on NAPs and HRIs to concretise the role and contributions of HRIBs to the NAPs, both in the process of the plan and in its contents. The HRIBs are fundamental to acquiring the necessary information to design the NAPs, as well as its follow-up and assessment, in terms of not only aims but also real and specific achievements. By contrast, the NAP can be a reference framework for implementing tools to measure the impact of business activity and the level of respect for human rights in businesses, as well as for the protection of states.

This analysis is complemented by a practical overview (section 4), presenting two examples of the articulation of HRIBs in NAPs in two European countries with different traditions, although it is not an exhaustive investigation of the picture in Europe. Finland has a stronger human rights background and was one of the first to adopt NAPs in Europe. Similarly, HRIs have been present in Finland since the first National Human Rights Plan of Action (NPA), and the country has developed initiatives and reports that have implemented the HRIB systems. By contrast, Spain has adopted the NAP more recently and has a lower focus on human rights in its policies. The Spanish NAP has important shortcomings, including a lack of monitoring and fewer indicators, and has not been evaluated or updated. Despite this, Spain has an important precedent in the human rights plan of the Madrid City Council.

We conclude that Europe has important HRIB systems and backgrounds in its NPAs. However, continuing to work on HRIB initiatives is necessary. More importantly, ensuring that the NAPs processes are based on HRIBs, and their contents include HRIB initiatives and systems that encourage and specify the risk assessments of companies and their accountability for the impact of their activities, is critical. Although HRIs are essential in human rights-based plans and policies and Europe has precedents for NPAs that have successfully articulated HRIs, in-depth studies on the potential and practice of using measures, data and, HRIs in NAPs are lacking. This article seeks to fill this gap and provide concrete suggestions on what, how, and where indicators can contribute to the process and contents of NAPs and make a novel contribution to the literature by pioneering the application of HRIs in the theory and practice of NAPs.

³ Note that we will refer to human rights indicators in general as HRIs and to those applied and specific to companies and their activity as HRIBs.

2. CONCEPTS: NAPs AND HRIs

2.1. NAPs

In 2005, UN Secretary-General Kofi Annan appointed Harvard Professor John Ruggie to clarify the roles and responsibilities of states, companies, and other social actors in the business and human rights sphere.⁴ In 2008, the result was the *Ruggie report* (UN Human Rights Council [UNHRC] 2008) that articulated the three pillars of the UNGPs: the state duty to protect, the corporate responsibility to respect, and access to remedies. These principles were endorsed by the UNHRC in June 2011 and the same resolution (UNHRC 2011) established a Working Group on Business and Human Rights (UNWG). The ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ of 2011 (Office of the UN High Commissioner for Human Rights [OHCHR] 2011, p. 1) are grounded in recognition of:

- (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

More than 10 years later, its implementation has progressed, although it still has a long way to go (UNWG 2021). By contrast, the concept of NPAs was developed as part of the World Conference on Human Rights held in Vienna in 1993. Part C, which includes the strengthening and development of human rights, highlights the importance of national tools and recommends that: ‘each State consider developing a national plan of action identifying the measures necessary for that State to improve the promotion and protection of human rights’ (UN General Assembly 1993a, para 71). The Council of Europe and its Commissioner for Human Rights also recommend and encourage the creation of national plans, analyse existing ones, or participate in their creation (Council of Europe 2014).

Specifically, NAPs are one of the fundamental tools for the implementation of UNGPs. The UNWG ‘strongly encourages all states to develop, enact and update periodically a national action plan on business and human rights’⁵ as part of the responsibility of states to implement UNGPs, and in 2016, this Group published ‘The Guidance on National Action Plans on Business and Human Rights’, a world reference for NAPs (UNWG 2016). The NAPs translate the UNGPs into concrete action with local and global implications (UNWG 2014). As De Felice and Graf (2015, p. 64) point out, NAPs allow the adaptation of the UNGPs to specific contexts while maintaining the integrity of

⁴ See the background in UN Human Rights Council document: ‘The UN “Protect, Respect and Remedy” Framework for Business and Human Rights’ (UNHCR 2010).

⁵ National action plans on business and human rights, UNWG [Accessed 13 June 2022].

the three pillars, provide information on potential mismatches between state obligations and state practices, limit the challenges of decentralised government, empower local pro-human rights actors, and ensure that public bodies have adequate knowledge and capacities. However, to be effective, they must meet certain criteria, such as being based on a comprehensive baseline study/gap analysis, involving the stakeholders, and being concrete to the maximum possible extent (De Felice & Graf 2015).

A total of 26 states have produced a NAP, 4 have included a ‘Business and Human Rights’ chapter in their NPAs, and 27 are in the process of developing or have begun developing a NAP.⁶ In Europe, 19 states have a NAP (15 in the European Union [EU]) and 6 are in the process.⁷ In the EU, the ‘Action Plan on Human Rights and Democracy 2020–2012’, is the instrument that brings together the European strategy on human rights; it devotes a section to the business sector and its relationship with human rights, and insists on the need to implement and develop NAPs in member states (EU European Commission 2020, sec. 3.5.a).

Despite progress, the results of the implementation of NAPs in Europe are not convincing. The EU in its report on the implementation of the UNGPs (EU Directorate-General for External Policies Policy Department 2017) points out that the majority of them are general, declaratory, and stock-taking in nature, rather than forward-looking and action-oriented. The major weakness identified in the processes of NAPs is the failure to conduct national baseline assessments (NBA) to inform the plans’ content or not use it to inform the process and its content. Notably, most NAPs in the EU focus on external actions rather than on steps necessary to improve domestic situations and concentrate on describing what has been achieved to date, rather than on setting out action points for the future. Further, they do not provide sufficient options to ensure access to remedial measures (EU Directorate-General for External Policies Policy Department 2017). Similarly, the assessment by The International Corporate Accountability Roundtable (ICAR) also points to the failure to conduct NBAs to inform the content of the NAPs, to sufficiently explore regulatory options to ensure adequate human rights protections, and access to remedy, with the majority of the assessed NAPs only briefly addressing access to remedy (ICAR, ECCJ & DeJusticia⁸ 2017). De Felice and Graf (2015) indicate similar shortcomings: ‘no country has yet conducted an independent and comprehensive analysis of the status quo’ (p. 64); NAPs focus too heavily on preventive measures and are largely silent on how to improve access to remedy and UNGPs ‘are the ceiling, not the floor’ of human rights protection (p. 65).

In short, the effectiveness of the NAPs is related to their capacity to produce results, beyond mere declarations of intent. Moreover, as we illustrate later, NAPs must have diagnostic tools that help companies to comply with their commitments, analyse these

⁶ Source: National action plans on business and human rights, UNWG [Accessed 26 January 2023].

⁷ Calculated from the information from Council of Europe, UNWG, and Globalnaps [Accessed 26 January 2023].

⁸ ICAR: International Corporate Accountability Roundtable; ECCJ: European Coalition For Corporate Justice; DEJUSTICIA: Center For The Study Of Law, Justice And Society.

results, and provide information to improve the NAPs themselves and their measures. However, we need to recognise that the discussion is about public policy and in the context of *soft law*, with all its limitations on justiciability.⁹ Therefore, aiming for legal tools to hold businesses legally accountable for their global human rights impacts is essential.¹⁰

2.2. HRIIs

Green (2001) defined HRI as ‘a piece of information used in measuring the extent to which a legal right is being fulfilled or enjoyed in a given situation’ (p. 1065). Scholars agree¹¹ that HRIIs assess the gap between the legal formulation of rights and their concrete reality and the extent to which the states uphold their human rights commitments; they are a measure that reflects the status of a right and the fulfilment by a state or institution of obligations to respect, protect, and fulfil that right.

The OHCHR is the primary institution involved in the development of HRIIs. Since the 1990s, the OHCHR has launched several initiatives (e.g. working groups, seminars, consultations) and produced guides and documents aimed at defining, designing, clarifying, promoting, and encouraging HRI implementation and use in the tools for monitoring, compliance, and promotion of human rights.¹² The culmination of this process was the publication of the seminal document ‘Human Rights Indicators. A Guide to Measurement and Implementation’ in 2012 (OHCHR 2012a).

This guide is a pioneer in theoretical and methodological development and a reference for the construction and implementation of HRIIs, not only in international monitoring instruments but also in national systems. HRI is defined as: ‘specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights’ (OHCHR 2012a, p. 16).

HRIIs should directly or indirectly report on the state of a right and should be a tool for enforceability. They should not only aim to improve the social situation of citizens (the objective of development indicators, for example) and guide public policies (as is partly the case with socioeconomic indicators) but also become a tool that contributes

⁹ See limitations of NAPs in Márquez Carrasco, C. (2022).

¹⁰ See in this regard conclusions of Augenstein (2022).

¹¹ See approaches such as Chapman (1996), Green (2001), Welling (2008), Landman & Carvalho (2009), or Abramovich & Pautassi (2010).

¹² Central to this process were the reports of Türk (1992), the 1993 Specific Preparatory Seminar for the Vienna Conference (UN General Assembly 1993b), and the OHCHR (2006) and OHCHR (2008) Reports on indicators for monitoring compliance with international human rights instruments. In addition, the work of the committees and treaty bodies, which, through their observations, recommendations, or reporting guidelines have delimited the minimum and measurable contents, variables, and indicators of many rights, as well as the obligation to segment data by possible grounds of discrimination or to reflect progress or setbacks, has also been essential.

to the accountability and demand for human rights. Similar to a few other tools, HRIs reflect, summarise, and translate the degree of compliance and respect for human rights, their principles (non-discrimination, progressiveness, and effectiveness), and minimum contents—both in an international and national context—into concrete magnitudes. However, HRIs must meet several requirements and must be disaggregated, periodic, contextualised, relevant, and comparable. In addition, an internationally accepted framework exists based on the need to measure commitments-efforts-results and on the use of uniform categories of indicator groups for all rights. Thus, indicators should be structural, process, and outcome indicators.¹³

After the publication of the 2012 guide, interest in HRIs seems to have waned. McInerney-Lankford and Sano (2021) found that references to HRIs in human rights journals have declined in recent years. However, the same authors suggest the need to revive their potential, especially in development and other areas such as the private sector and business.

As De Felice (2015, p. 518) punctuates, the traditional method to assess a company's human rights performance is to examine the individual level, through concrete cases of possible human rights violations: 'How is one to know whether abusive behaviour in a specific case is the rule or just an exception? How is one to compare and aggregate information from different projects, factories, countries of operation, and so on? The move from the specific to the general is where business and human rights indicators step in'. The general HRI framework refers to the responsibility, obligations, and commitments of states, and the application of this general framework to business is a major methodological and operational challenge. HRIBs should measure and concretise corporate social responsibility, human rights due diligence, and the UNGPs. However, this adaptation poses multiple challenges, some of which concern the access to and production of data, the adaptation of indicators to local and business contexts, or the need to measure beyond the minimum compliance. Indicators should not limit their focus to those human rights issues that have significant financial consequences for the company or purely philanthropic activities (De Felice, 2015).

As indicated above, HRIs should measure commitments-efforts-results; when applied to the company, it involves measuring policy commitments, due diligence and remediation, and adverse human rights impacts directly or indirectly attributable to the company (as De Felice (2015) rightly points out, this is the most difficult and controversial). In recent years, several institutions have developed tools to measure companies' respect for human rights: management tools, reporting frameworks, sustainability indices and standards, human rights impact assessment tools, and ethical ratings,¹⁴ and most of

¹³ Developed primarily, as highlighted before, in the OHCHR (2012a) Guidance and in the work of the committees and treaty bodies. In this regard, see Avellaneda's work on requirements, potentialities, and utilities: Avellaneda (2019) and Avellaneda (2020).

¹⁴ See this categorisation of tools in De Felice (2015). See also other compilations in DIHR (2020) and O'Brien (2018).

them incorporate and develop HRIBs. For instance, the FTSE4Good¹⁵ and Dow Jones Sustainability Index¹⁶ include human rights criteria in their performance indicators.

HRIB is an essential tool for ‘businesses, national human rights institutions, civil society groups, governments, consumers, and others, to evaluate whether businesses have effective human rights due diligence measures in place across their operations—including human resources, health and safety, product quality and marketing, communities, security, government relations, and supply-chain management’.¹⁷ However, as the Danish Institute for Human Rights (DIHR) notes, the use of HRIBs ‘is still an evolving field’ (DIHR 2020, p. 77) full of barriers and problems in their application, and as De Felice (2015) points out, the question is not whether or not to use HRIBs, but how to use them and produce valid and emancipatory measures of corporate respect for human rights.

We can distinguish two types of indicators or methods of adapting the OHCHR framework of HRIs to NAPS, UNGPs, and corporate accountability. The first one, NAP indicators, refers to the quantification of the objectives and measures proposed in the plan and the level of fulfilment of the NAP itself. NAPs should include specific, measurable, achievable, realistic, and time-bound (SMART) actions (DIHR & ICAR 2014) and indicators to evaluate success and to ensure actions are fully SMART.¹⁸ In this sense, the assessments and the scholarly literature point to the lack of such indicators in the NAPs.¹⁹

Secondly, HRIBs measure compliance with the UNGPs, their pillars and due diligence— either because of the application of a NAP or other tools. A good example of such an indicator is the Corporate Human Rights Benchmark—Core UNGP Indicators (developed by the Corporate Human Rights Benchmark [CHRB]) that comprises approximately 60 indicators across 5 different themes (CHRB 2021). However, in a more general application, HRIBs are concerned with international standards, measure companies' respect for human rights, and focus on their obligation to identify risks and be accountable for the impact and results of their activity. For example, the Business & Human Rights Resource Centre has developed the *Platform for Human Rights Indicators for Business*, which sets out 1,000 indicators that enable companies and other stakeholders to assess corporate policies, procedures, and practices on human rights.²⁰ Both *versions* of the HRIBs are complementary, interdependent, and many of them overlap. Further, as we analyse later in this article, they are a tool for NAPs (as well as for other entities such as national human rights institutions).

¹⁵ Financial Times Stock Exchange, FTSE Russell [Accessed 15 June 2022].

¹⁶ S&P Dow Jones Indices, Dow Jones Sustainability World Index [Accessed 15 June 2022].

¹⁷ Business & Human Rights Resource Centre [Accessed 15 June 2022].

¹⁸ See the application of these types of indicators to the analysis of various NAPs in DIHR (2021).

¹⁹ See, e.g. DIHR (2018) and O'Brien, Ferguson & McVey (2022).

²⁰ Platform for Human Rights Indicators for Business, Business & Human Rights Resource Centre [Accessed 15 June 2022].

3. ROLE OF HRIs IN NAPs

3.1. HRIBs and NAP process

Considering HRIs throughout the process of any human rights-based public policy or national plan of action is essential. Similar to any plan, it needs information for decision-making at all stages, and indicators provide concise and relevant information. If well designed, indicators account for basic principles such as the situation of vulnerable groups (non-discrimination), compliance with minimum standards for all rights (effectiveness), and whether the situation of rights has been improving relative to the capacity of each country (progressivity). Further, by examining the NAP process, we can establish two stages or moments of the plan where HRIBs are essential: in the preliminary diagnosis and the evaluation of the plan; in other words, in the NBA and the assessments, focusing on the impact, outcomes, and achievements of the plan.

An important point in the preparation of any plan, action or policy is the preparation of a prior diagnosis, situation, or needs report. In 2002, the OHCHR, in its handbook on NPAs, already recommended this to examine the legal framework, the institutions for the protection of human rights, and the situation of human rights education and awareness raising; however, it should also focus on the situation of vulnerable groups (OHCHR 2002). Although incorporating indicators in any assessment seems obvious and important, this cannot be overemphasised; the above-mentioned handbook explicitly highlights the role of social indicators²¹ in the baseline study (OHCHR 2002). The UNWG recommends obtaining a sound understanding of adverse business-related human rights impacts and identifying gaps in state and business implementation of the UNGPs (UNWG 2016, no. 2.5 and 2.6). For this purpose, it suggests the use of the NBA developed by the DIHR and ICAR (2017). This NBA focuses on how the requirements of Pillars I, II, and III of the UNGPs are being met by state and business duty-bearers. This methodology is based on quantitative and qualitative information, specifically a template that comprises a set of tables that cover all the UNGPs. This template is in line with the HRIs framework developed by the OHCHR in 2012 (OHCHR 2012a) and these guiding questions seek to ‘assess the steps being taken by states in addressing their obligations—from commitments and acceptance of international human rights standards (structural indicators) to efforts being made to meet the obligations that flow from the standards (process indicators) and on to the results of those efforts (outcome indicators)’ (DIHR & ICAR 2017, p. 26). Although finding this type of data is not easy, ‘NAP processes offer a unique opportunity to engage businesses, industry associations, chief security officers, and impacted individuals and communities in generating relevant data’ (DIHR & ICAR 2017, p. 27). The DIHR has also developed specific guidance (toolkit) on how children's rights can be addressed in NAPs and other similar policies. In this guidance, HRIBs are related to the NBA, for example, the prohibition of child labour, maternity protection, or access to children's services (DIHR, ICAR & UNICEF 2015).

²¹ Note that this Guide predates the 2012 definition of HRI in the OHCHR (2012a) Guidance.

Ultimately, any plan is expected to eventually improve the state of rights, and this is precisely what they measure. Somehow, the improvement in HRIs must be part of the goals of all NPAs. The evaluation of a NAP is not only to assess whether the proposed objectives have been achieved but also to evaluate whether due diligence and UNGPs have progressed. In other words, it should assess not only what has been carried out but also what has been achieved. In 2015, a report of the UNWG highlighted gaps in the measures of the UNGPs: little information on Pillar III, lack of data on many rights, their impact on communities and small businesses, lack of data on actual effects, and overreliance on socioeconomic data. It also pointed to the need for three types of measurements, commitments, processes, and outcomes, and highlights that ‘there needs to be more nuanced methodologies and data gathering to track actual outcomes (...) For example, about an effective company grievance mechanism’ (UNWG 2015, para 63). Likewise, the evaluation of 10 years of UNGPs shows that it needs to develop clearer data to assess the actual state of play of the corporate responsibility to respect human rights in two different directions: data are insufficient to determine the actual adoption of the Principles by companies, and more generally, the performance of companies in the area of human rights (UNWG 2021). The balance is that the ‘companies do not know whether their human rights policies are being implemented optimally and whether they have responded effectively to the identified human rights impacts’ (UNWG 2021, p. 18); ‘Moving from measuring what is done to what is achieved is without a doubt challenging’ (p. 19) and ‘bridging these persistent measurement gaps requires support for innovations for measuring performance’ (pp. 18–19).

3.2. HRIBs and NAP contents

The HRIBs are essential for the contents of the NAPs related to the companies’ diagnoses of possible risks to human rights, the monitoring of their measures, and the evaluation and communication of the results of their measures. In indicator terminology: structural, process, and outcome indicators. The first NAPs did not include baseline assessments or comprehensive sets of benchmarks or indicators, ‘but gradually, several national action plan processes were underway that placed a stronger emphasis on measurement and benchmarking’ (UNGA 2015, para 79).

We can establish at least three main areas of the contents of the NAPs where HRIBs can contribute to their concreteness and effectiveness. First (and related to UNGP 18), NAPs can incorporate frameworks for the implementation of indicators in initial company assessments (human rights impact assessments [HRIAs]), which would contribute significantly to the accuracy of risk assessment of business activity. Second, NAPs can also incentivise and encourage the consolidation of HRIBs in the monitoring of companies’ human rights policies (UNGP 20), the tools to account for their respect for human rights (UNGP 21), and non-financial reporting. Third, the NAPs must establish a system of indicators in their content to evaluate the plan itself, beyond the fulfilment of immediate and operational objectives, in terms of achievements, improvements, and real progress in respecting human rights.

The UNGP 18 states, among other things, that companies should conduct an initial assessment of the potential human rights risks of their activities. The impact assessment of human rights informs the subsequent steps to be adopted in the human rights due diligence process (OHCHR 2011). Several approaches can be used to accomplish this, including HRIA of business projects and activities. The DIHR has developed this methodology and HRIBs are essential; specifically, in the analysis of the country's regional and local human rights context, the level of legal protection and human rights enjoyment, and the history of human rights violations (DIHR 2020). In addition, in this initial assessment, companies should pay particular attention to marginalised or vulnerable groups to ensure that they do not contribute to, or exacerbate, such discrimination,²² and to this end, having segmented HRIBs specific to these groups is essential.

UNGP 20 states that to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should be based on appropriate qualitative and quantitative indicators (OHCHR 2011). No single method exists for such monitoring, which depends on a multitude of issues such as the size of the company, the sector, and the level of risk. In the process of developing a human rights policy, the company, when acting and monitoring the results, must 'identify indicators for measuring human rights performance, developing and implementing systems for acquiring qualitative and quantitative data, drawing on both internal and external feedback, including from affected stakeholders, and reviewing the findings to inform future strategy' (OHCHR 2015, p. 32). The type of indicators to be used also depends on the human rights issue, access to data, or the existence of established indicators (OHCHR 2012b, p. 54).

In any case, as the DIHR (2020) guidance on assessment points out, HRIBs are essential to guide subsequent data collection and baseline development and monitor whether the measures proposed are effective. The advantages of using HRIBs are clear: they provide structured information, reporting on impacts, outcomes, and ongoing monitoring, aligned with the UNGP 20. They allow assessments to be comprehensive and in line with international principles and standards and are an essential tool for assessing corporate policies, procedures, and practices. Moreover, their use can alleviate the shortcomings of HRIAs, emphasising the outcome level and the impact attributed to business activities (Veiberg, Factor & Tedaldi 2019).

The UNWG does not advocate that the exact approach should be adopted in the field of business and human rights or that it should conclude with an identical output as the OHCHR human rights indicator framework; however, it does argue that such work is both vital and achievable (UNWG 2015, para 77). In this regard, the above-mentioned guidance of the DIHR provides an excellent example of applying HRIBs to HRIAs, applying the criteria and types of indicators established by the OHCHR (structural, process, outcome) to specific needs and uses in the business context.²³ Similarly, we find scholarly studies that have adapted the OHCHR framework to the business context (Veiberg, Factor &

²² As pointed out by OHCHR (2012b, pp. 40–41) and O'Brien (2018, p. 88).

²³ See the development of indicators in Table 2.C in DIHR (2020, pp. 79–81) and 'Data Collection and Baseline Development Practitioner Supplement' in DIHR (2020).

Tedaldi 2019): the structural and process indicators provide insights into the management commitments and procedures in the company and outcome indicators measure the extent to which companies' respect for human rights efforts translate into actually addressing adverse impacts identified. While the HRIA entails the development of context-specific indicators, existing human rights indicator resources can be used (DIHR 2020). Combining standardised indicators with case-specific ones is essential.²⁴ Moreover, they should not be the only source, and including other qualitative measurements and analyses is crucial.

According to UNGP 21, companies should explain and communicate the measures they adopt and be transparent and accountable. The commentary on this Principle notes that one of the key reporting tools is non-financial reports that include information on human rights. These reports have evolved, guidelines and frameworks have been developed, and are now being used as a basis for reporting.²⁵

In Europe, the EU Directive 2014/95/EU requires certain large companies to disclose relevant non-financial information to provide investors and other stakeholders with a more complete picture of their development, performance and position, as well as the impact of their activity and specifically states that this non-financial information should contain *key performance indicators* (EU European Parliament of the Council 2014, art. 1 (1) 1.e.). According to the European Commission's Guidance on this Directive, some *key performance indicators* may be useful for multiple companies and business circumstances; others are more related to the issues and circumstances of a particular sector. In any case, companies are encouraged to disseminate indicators, both general and sectoral (EU European Commission 2017). HRIBs tailored to specific circumstances or sectors can be an essential part of these *key performance indicators*. Likewise, the Council of Europe call for member states to mandate business enterprises to be more transparent and regularly provide information about human rights impacts and due diligence efforts (Council of Europe 2016). Some European states have indeed enacted legislation or adopted other measures along these lines, even according to a set of qualitative and quantitative indicators on issues such as employee contracts, working hours, pay, industrial relations, health and safety, and disability policies.²⁶

However, HRIBs also have a major role to play in the development of other UNGPs such as numbers 4²⁷ and 5;²⁸ in both cases, the guidance suggests measures that render support or contracting conditional on due diligence and respect for human rights (UNWG 2016). To this end, determining clear and unambiguous criteria, minimum standards, and the development of a system of indicators to serve as a benchmark, is critical. Further, HRIBs adapted and related to access to an effective remedy (Pillar III) could

²⁴ See examples in Veiberg, Factor & Tedaldi (2019).

²⁵ See *Non-financial reporting* at Globalnaps [Accessed 17 June 2022].

²⁶ See more references in O'Brien (2018, pp. 90–91).

²⁷ Addresses situations in which the state controls or owns business enterprises or where companies receive substantial support from state agencies (OHCHR 2011).

²⁸ Addresses situations in which states privatise the delivery of public services (OHCHR 2011).

help quantify the implementation and effectiveness of these tools, which, as illustrated earlier, form one of the gaps in the current NAPs, especially to support the collection of gender-disaggregated data (UNWG 2016). As De Felice and Graf (2005, p. 62) point out, the NAPs must establish ‘unambiguous commitments, precise indicators, and clear deadlines for future action’. One of the most widely used methodologies for assessing NAPs has been developed by DIHR and ICAR²⁹ and is based on a checklist that lays out a set of 25 criteria that address both the content of NAPs and the process for developing them. Criterion 6.2. states that ‘NAPs should lay out a framework for monitoring of and reporting on implementation’ (DIHR & ICAR 2014, p. 149) and HRIBs, as mentioned earlier, are essential for accountability and follow-up.

Finally, mentioning the role that indicators can play in the internal processes of companies and the evaluation of the integration of a human rights approach is also important. UNGP 16 sets out a company's commitment to meet this responsibility through a statement of policy that is reflected in operational policies and procedures necessary to embed it throughout the business enterprise (OHCHR 2011). To this end, as the OHCHR points out, including indicators related to human rights policies and procedures in the performance assessments of staff at all operational levels is essential (OHCHR 2012b).

3.3. NAPs as a framework for establishing HRIB systems

An NPA can be the political-administrative framework to drive the creation of a unified HRI system. This has been stated by the OHCHR as early as 2002 in its handbook on plans, where it explicitly states that: ‘Where such indicators and information are not available, the national action plan may ultimately include plans to regularly collect the necessary data’ (OHCHR 2002, p. 63). In its 2012 guide on indicators (OHCHR 2012a) and more recently, in its guide on reporting, it states: ‘With respect to statutory mandates, the mandate of a national mechanism may also originate from a national human rights action plan (...) that assigns it the tasks of developing indicators and benchmarks, (...)’ (OHCHR 2016, p. 12).

As mentioned earlier, HRIBs can similarly provide tools for the initial assessment, monitoring, and impact of the NAP, and contribute to the fulfilment of the UNGPs. The NAP itself can be the springboard for launching or expanding initiatives to create national HRIB systems by including some measure or objective that envisages the creation of a tool that collects, analyses, designs, develops, reports on, and promotes specific indicators. These systems would adapt the universal framework of HRIs to the national context and the idiosyncrasies of business and productive activities.

4. COMPARATIVE EXPERIENCES: FINLAND AND SPAIN

As mentioned in the Introduction section, since the establishment of the UNGPs, NAPs have been developed, especially in Europe where many countries have progressively

²⁹ Already mentioned in section 3.1.

elaborated and implemented NAPs. However, this development has occurred at different rates, from the first few NAPs in the United Kingdom (2013), The Netherlands (2013), Denmark (2014), and Finland (2014), to those currently in process, such as in Ukraine and Scotland³⁰. In addition, each European country has its own context and tradition in the development of human rights-based policies and plans.

We selected two European countries that represent two different traditions and that have developed NAPs at different times. Finland is one of the first European countries to develop a NAP and has the strongest track record in the development of human rights plans, policies, and initiatives. Contrarily, Spain falls into the Mediterranean typology of welfare states, which only lately incorporated a human rights approach into its policies, and therefore, has been slower to develop a NAP.

4.1. Finland

Since 1998, Finland has produced reports on human rights,³¹ focusing on the measures and actions taken rather than on quantifiable results, although the importance of a human rights database and indicators is referred to, especially since 2014 (Ministry for Foreign Affairs, Finland 2014). In 2013 a working group was set up at the Human Rights Centre to apply the OHCHR's methodological framework to a national system and the University of Tampere prepared a report for the government in 2016 on the development of HRIs and their use in legislative processes (Rautiainen & Lavapuro 2016). The importance of indicators was already mentioned in the 'First National Action Plan on Fundamental and Human Rights (2012–2013)', although its evaluation also stated that the defined indicators did not allow for an assessment of improvements in the fulfilment of rights (Ministry for Foreign Affairs, Finland 2014). In the second plan (2017–2019), one of its priorities was the development of HRIs that allow international comparisons and are adapted to the Finnish context. This is in the form of designing equality indicators and a barometer of fundamental rights to be implemented by the Ministry of Justice and the Human Rights Centre (Ministry of Justice, Finland 2017). The third National Action Plan (2020–2023) explicitly refers to the shortcomings in the development of HRIs and even to the Parliament's final call for its importance (Ministry of Justice, Finland 2022).³² This plan attaches considerable importance to indicators and explicitly sets out the implementation of the OHCHR's framework for HRIs and translates into a specific project for this purpose,³³ even devoting an appendix on fundamentals and HRIs (Ministry of Justice, Finland 2022).

³⁰ See dates of NAPs in Globalnaps [Accessed 27 July 2022].

³¹ Reports in 1998, 2000, 2004, 2009, 2014, and 2021, available at Human Rights Centre, Finland [Accessed 18 June 2022].

³² *Parliament has stated that quantitative and qualitative fundamental and human rights indicators are required to support systematic monitoring* (Ministry of Justice, Finland 2022, p. 12).

³³ See Ministry of Justice, Finland [Accessed 18 June 2022].

Finland's NAP (Ministry of Employment and the Economy, Finland 2014), was adopted on 17th September 2014.³⁴ In the NAP process, although a background memorandum on relevant laws and policies was formulated, no NBA or diagnostic report that could incorporate HRIBs was carried out.³⁵ To date, no report has been published on the impact and achievements specifically of the NAP.³⁶

However, the Ministry of Economic Affairs and Employment has published several studies on companies' actions related to human rights. One of them is the Status of Human Rights Performance of Finnish Companies project,³⁷ which examines the human rights performance of Finnish companies relative to the expectations set out in the UNGPs. It is based on the methodology developed by the CHRB and the Core UNGP Indicators.³⁸ A total of 78 Finnish companies were included in the sample, 29 of which were assessed using CHRB's sectoral methodology (focused on specific sectors and composed of a larger number of indicators) and 49 with the Core UNGP Indicators (general and on 13 indicators) focused on the companies' human rights policy commitments, the implementation of due diligence and the remedies and grievance mechanisms. This report shows, among other things, that the process to identify, prevent, mitigate, and address the adverse human rights impacts of the activities has not yet begun and is at a very nascent stage for many Finnish companies, which is aligned with companies in other European countries (Ministry of Economic Affairs and Employment, Finland 2021).

Regarding the content, the NAP (Ministry of Employment and the Economy, Finland 2014) recognises the importance of HRIA (sec. 3) and the crucial role of civil society in the assessment of the impact of business activities on human rights (sec. 3.5). It also refers to the non-financial reporting obligation under the EU Directive and its entry into force in Finland (sec. 1.3) and recommends the use of the Global Reporting Initiative (GRI) (sec. 3.2), which covers a wide range of standards of economic, environmental, and social impacts.³⁹

4.2. Spain

Spain approved its first 'Human Rights Plan (2008–2012)' in 2008 (Gobierno de España, Spain 2008) and conducted its evaluation in 2012 (Gobierno de España, Spain 2012). From the perspective of HRIs, we can conclude that this first plan contributed practically nothing; it did not even establish clear indicators for its monitoring, not even in

³⁴ See the process in the NAP itself (Ministry of Employment and the Economy, Finland 2014) or in Globalnaps [Accessed 18 June 2022].

³⁵ Corroborated by the ICAR evaluation report for Finland (ICAR & ECCJ 2014).

³⁶ Ministries have reported on the progress since the NAP was approved (approximately eight times). Information on progress is shared with stakeholders at various events organised by the Government. Social media is also used to keep stakeholders informed. Information at Globalnaps [Accessed 18 June 2022].

³⁷ See Status of Human Rights Performance of Finnish Companies at (SIHTI) project [Accessed 18 June 2022].

³⁸ See section 2.2. of this article and CHRB (2021).

³⁹ See information on this initiative at Globalreporting.org [Accessed 20 June 2022].

the results report.⁴⁰ Although this plan has not been renewed, it is in the process of being approved and is currently in the public consultation phase.⁴¹

However, in Spain, we find a very important precedent in the ‘Strategic Plan for Human Rights of the Madrid City Council’ (Ayuntamiento de Madrid, Spain 2017). This plan was in force from 2015 to 2019 and despite its brevity, it was pioneering in many ways, especially in the use and promotion of HRIs.

The diagnosis before this plan was based on qualitative and participatory methodology (workshops and consultations), but included some social indicators, reflecting issues related to the right to an adequate standard of living or decent housing (Ayuntamiento de Madrid, Spain 2017). The final evaluation of the plan, in addition to the indicators related to the objectives, analyses the outcomes and the impact on human rights in terms of HRIs. It assesses the plan according to data such as the Gini coefficient or the gender inequality index. Specifically, it applies the OHCHR indicator framework (structure, effort, and results) and adds indicators of human rights enjoyment (RED2RED & Ayuntamiento de Madrid, Spain 2019). This plan succeeds in incorporating the HRIs into its contents and explicitly refers to the publication of indicators disaggregated by discrimination, reflecting citizen participation (Ayuntamiento de Madrid, Spain 2017, sec. 1.1.6) and the establishment of a system of HRIs to evaluate the plan (p. 96). Within the framework of the objectives related to the promotion of human rights (Goal 18), a specific objective is the ‘promotion of the identification of human rights indicators, until now non-existent, to ensure their inclusion in all municipal cultural and sports activities’ (goal 18.4.4).

The plan also foresees an annual human rights impact report to accompany the City Council's General Budget, a diagnosis of the fulfilment of economic, social, and cultural rights, and to consider HRIs in the management of municipal services to guarantee equity (goal 21.1.3). All this implies that we can regard this Council Plan as a good example of the use of HRIs as a tool for diagnosis, orientation, evaluation, and accountability.

However, the most important proposal, or at least the one that best reflects this enhancement, is perhaps the development of a municipal system of HRIs. The plan foresees the creation of the Office of Human Rights and Memory, and among its purposes, is the ‘promotion of the implementation of systems for the collection, management, and publication of data on the human rights situation in the city of Madrid, as well as on the degree of compliance with the City Council's obligations in the field of human rights and the area of the SDGs’ (Ayuntamiento de Madrid, Spain 2017, p. 96).

After a long process,⁴² the Spanish NAP was approved in 2017 (Gobierno de España, Spain 2017). This plan has significant shortcomings: it does not incorporate an NBA, has not published a diagnostic report, and does not include content or measures

⁴⁰ Corroborated by the plan monitoring report by Ramiro (2011).

⁴¹ Available at Ministerio de la Presidencia [Accessed 20 June 2022].

⁴² See the process at Globalnaps [Accessed 20 June 2022].

related to Pillar II. Moreover, tools or measures related to managing a plan effectively, such as dates, deadlines, objectives, concrete actions, and indicators (of any type), are absent.⁴³

The plan foresees the creation of a monitoring committee. In addition to an annual evaluation of the plan, the objective of this committee is to conduct an impact assessment of the plan concerning the prevention, mitigation, and remediation of the negative effects of business activity (two years after the approval of the plan) (Gobierno de España, Spain 2017, pp. 22–23). To date, no evaluation or impact assessment report of the NAP has been published.

In Spain, the EU Directive 2014/95 on non-financial information was changed one year later in '*Ley 11/2018 en materia de información no financiera y diversidad*' (non-financial information and diversity law) (Ley 11/2018, de 28 de diciembre). This law establishes that information on the respect of human rights must be included and refers to key indicators and initiatives such as the aforementioned GRI.

Some initiatives and guidelines have been published to complement this NAP on due diligence and reporting,⁴⁴ where the HRI framework and its importance are mentioned, as well as some of the most important international initiatives in the reporting methodology.⁴⁵ However, in general, we find few reports on the human rights impact of companies, where we can observe HRIBs developed in the context of Spanish companies. Only a few reports exist on cases⁴⁶ or complaints filed by non-government organisations.⁴⁷

5. CONCLUSION AND DISCUSSION

Discussing the integration of indicators in the NAPs implies considering how evaluation and accountability tools are incorporated into these plans and the level of concreteness of these tools. In this article, we analysed the potential of the relationship between HRIBs and NAPs from a dual perspective: in terms of process and content. In the NAP process, the HRIBs provide context and clarity to the diagnosis of the human rights situation, the UNGPs, and the objectives that should guide the NAP. In the monitoring and

⁴³ In this respect, see analyses such as José Ángel Moreno Izquierdo (1 October 2018) at Agora [Accessed 20 June 2022].

⁴⁴ For example, The 'Guía de Derechos Humanos Para Empresas. La Aplicación de La Devida Diligencia y El Reporting' of Observatorio de Responsabilidad Social Corporativa, available at Observatorio RSC [Accessed 20 September 2022] and the 'Comunicando El Progreso 2021' of Pacto Mundial. Red Española, available at Pacto Mundial [Accessed 20 September 2022]

⁴⁵ Such as the one developed by DIHR.

⁴⁶ The most relevant report is: Fundación CIDEAL, 'Empresas españolas y derechos humanos. Prácticas de aplicación de la Devida Diligencia', about six Spanish companies' cases in 2019, available at CIDEAL [Accessed 20 September 2022].

⁴⁷ See the work of the NGO Plataforma por empresas responsables [Accessed 20 June 2022].

assessment, HRIBs focus on achievements in terms of human rights and compliance with international standards. The NAPs must at least refer to the use of HRIB methodologies or systems in the evaluations of the plan and its achievements. In this respect, Finland has a longer tradition than Spain of reporting on achievements, although both countries still have a long way to go in incorporating HRIBs into the NAP process.

In the NAP content, HRIBs are an indispensable tool in assessing the impact of business activity and corporate accountability. The more concrete the NAPs are in this respect, the more guarantees they will have. In parallel to the legal development of non-financial reporting, NAPs can be a tool to help companies report and be accountable, and at the very least, should recommend the use of methodologies that incorporate HRIBs, such as the Finnish NAP. In general, HRIBs can and should be present in the design, monitoring, content, and evaluation of NAP measures and tools. In this regard, Finland and Spain have two important precedents in their general human rights plans. In Finland, the Third NPA attaches crucial importance to indicators and explicitly sets out the implementation of the OHCHR's framework for HRIs and translates into a specific project for this purpose. In Spain, in the Strategic Plan for Human Rights of the Madrid City Council, the development of HRIs forms part of several of its measures and one of the objectives of this plan is the development of a municipal system of HRIs. The NAPs themselves can be the platform for the creation and promotion of initiatives and projects for the development of HRIB systems adapted to national contexts and business typologies.

Developing specific HRIBs is not an easy task and possibly, specifying and measuring the obligations of companies is much more complex than that of states. A system of HRIBs is much more than applying the OHCHR framework and further developing methodologies, initiatives, and the practice of using indicators, are needed. However, if we are in the realm of policies, tools that help to assess the eventual results in terms of human rights impacts are the closest we can reach justiciability and accountability.

One of the shortcomings of the NAPs is their capacity to produce and verify results and achievements. This article delivers keys to alleviate this limitation through the articulation and use of the full potential of the HRIs. This work provides a novel contribution to the literature on the subject and a practical approach that can be useful to various stakeholders, including practitioners and public policymakers. However, it also shows that continuing the in-depth analysis of the uses, potentials, and initiatives occurring in Europe along with their results is necessary.

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