





Danish National Action Plan

– implementation of the
UN Guiding Principles on
Business and Human Rights

March 2014

The Danish Government

Danish National Action Plan

– implementation of the
UN Guiding Principles on
Business and Human Rights

Contents

Preface	6
1 Introduction	9
2 The state duty to protect human rights	10
2.1 UNGPs on the state duty to protect	10
2.2 Recommendations from the Council for CSR on the state duty to protect	10
2.3 Actions taken	11
2.4 Planned actions	16
3 The corporate responsibility to respect human rights	17
3.1 UNGPs on the corporate responsibility to respect human rights	17
3.2 Recommendations from the Council for CSR on the corporate responsibility to respect	17
3.3 Actions taken	18
4 Access to remedy	19
3.1 UNGPs on access to remedy	19
3.2 Recommendations from the Council for CSR on access to judicial and non-judicial remedy	20
3.3 Actions taken	20
5 UNGPs in Denmark looking ahead	22
Appendix 1: Overview of the implementation of the state duty to protect	24
Appendix 2: Overview of the implementation of the access to remedy	34

Preface

In June 2011, the United Nations Human Rights Council endorsed a set of Guiding Principles for Business and Human Rights. For the first time in history, we have a global standard for preventing and addressing adverse impacts on human rights linked to business activities. The process included comprehensive consultations with a large number of stakeholders including representatives from states, business community and civil society around the world. Denmark supported the work of John Ruggie in developing the UN Guiding Principles on Business and Human Rights and is now supporting the UN Working Group in promoting the implementation of the principles in practice.

The UN Guiding Principles on Business and Human Rights marked a milestone, but it is only the first step. It is not enough to have adopted the principles. The challenge is now to turn principles into practice.

Sustainable development offers opportunities for global growth but opportunity does not come without responsibility. Even though companies are committed to respect human rights, it can sometimes be difficult to know what to do in practice. The aim of the Danish Government is to assist private and public businesses in turning the respect for human rights into reality wher-

ever they operate. The disaster in Bangladesh in April 2013 where a collapse of an eight-story building caused the death of more than 1.100 workers sewing clothes for western manufacturing companies was a dark reminder that huge challenges still remain.

It is the Government's ambition that Denmark should be a global front-runner by ensuring that all players in society demonstrate social responsibility and create value both for their own organisation and the surrounding society by using dialogue to manage social, environmental and ethical challenges in accordance with internationally recognised principles and CSR guidelines.

Companies must integrate social responsibility in their core business. Consumers must assume greater responsibility and be given better opportunities for demonstrating social responsibility through their choice of consumer goods. Investors must use their investments as a driving force for responsible growth. Organisations and NGOs must act as watchdogs of social responsibility while also promoting it through dialogue and partnerships with companies and, finally, the public sector must be a driving force by creating good framework conditions for CSR and thereby promote responsible growth.

The Danish Government is committed to ensuring that growth goes hand in hand with responsible conduct. The UN Guiding Principles' step-by-step approach highlights the importance of continuous improvement of corporate respect for human rights allowing all companies to be on board regardless of their size or geographical location of their operations.



Henrik Sass Larsen
Minister for Business
and Growth



Mogens Jensen
Minister for Trade and
Development Cooperation

1. Introduction

The work of the Danish Government on the implementation of the UN Guiding Principles on Business and Human Rights is to a large extent based on the recommendations from the Danish Council for Corporate Responsibility (The Danish Council for CSR)¹. The Council supports and advises the Danish Government in matters on Danish companies' social responsibility and represents Danish business and financial organisations, NGOs, local municipalities and trade unions. The council has made recommendations on all three pillars of the Protect, Respect and Remedy-framework as to what they believe the Danish Government should do in order to implement the UN Guiding Principles on Business and Human Rights.

Also the European Council² and the European Commission³ have called for member states to develop national action plans for the implementation of the UN Guiding Principles (UNGPs).

In 2012, the Danish Government started to take dedicated measures to implement the UNGPs on each of the pillars in the Protect, Respect and Remedy-framework based on recommendations from the Council for CSR. Some of these initiatives are part of the second National Action Plan for CSR; Responsible Growth 2012–2015, which the Government presented in March 2012. The CSR Action Plan focuses on business and human rights and was inspired by the recent international development in the field of CSR including the revision of the OECD Guidelines for Multinational Enterprises from May 2011, the ratification of the UNGPs in June 2011 and the renewed EU Strategy 2011–14 for Corporate Social Responsibility.

The purpose of this National Action Plan on the implementation of the UN Guiding Principles on Business and Human Rights is to summarise the dedicated initiatives on business and human rights which have been taken by the Danish Government since the UN endorsement of the Guiding Principles on Business and Human Rights. In addition, the Action Plan gives an overview of the status

on all guiding principles. The intention is to give a complete overview on the implementation of UN Guiding Principles on Business and Human Rights in Denmark anno 2014.

The initiatives in the Danish Government's action plan on Business and Human Rights are focused on preventing and mitigating adverse impacts on human rights by Danish companies at home and abroad.

Denmark has a long political tradition of supporting and addressing human rights. Changing governments have concentrated on special focus areas such as freedom of expression; freedom of religion; racism; indigenous peoples; children's rights; the rights of persons with disabilities; human rights defenders; torture, and most recently, corporate social responsibility (CSR).

With Danish companies' increased engagement in new growth markets and the adoption of the UN Guiding Principles, human rights impacts of companies and their business relations operating outside Danish territory has gained increased political attention and become an important focus area of the Danish Government.

Structure of the Action Plan

The action plan is structured around the three pillars of the UNGPs. Each of the three main parts sets out by:

- 1) shortly summarising the principles of UNGPs followed by;
- 2) recommendations from the Danish Council for CSR;
- 3) initiatives which have been implemented by the Danish Government, and
- 4) initiatives which are planned.

The first descriptive part of the National Action Plan on Business and Human Rights highlights some of the initiatives taken to implement the UNGPs. The annex in the end of the publication includes a schematic overview of the Danish implementation of the UNGPs principle by principle.

¹ Source Cf. <http://csrcouncil.dk/>

² Source http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

³ Source <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>

2. The state duty to protect human rights

2.1 UNGPs on the state duty to protect

The UN Guiding Principles on the state duty to protect focus on the preventive measures that states can take to avoid adverse impacts on human rights:

“A. Foundational Principles

1. *States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.*
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”⁴*

The state can protect human rights by (not exhaustive):

- Enforcing laws (including law with extraterritorial implications) that enable rather than constrain businesses to respect human rights.
- Providing guidance and encourage businesses to respect human rights.
- Promoting the respect for human rights through its business relations, in bilateral and multilateral institutions and through development cooperation.

The Government has taken initiatives in all three areas as described in the following.

2.2 Recommendations from the Council for CSR on the state duty to protect:

In November 2011, the Danish Council for CSR started working on recommendations to the Government on how the UNGPs on the state duty to protect could be implemented. The council finished its work in January 2012 where the recommendations were handed over to the Government.

Among other initiatives, the Council for CSR recommended that the Danish Government:

- **Expands** the existing Danish corporate non-financial reporting requirement to include mandatory reporting on human rights;
- **Encourages** responsible public procurement by requiring government contractors to perform due diligence on human rights in relation to the products or services covered by the contract, including regularly supervising the contractual requirements;

⁴ **Source** UN Guiding Principles on Business and Human Rights, p. 3–4.
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

- **Requires** state-owned companies and governments agencies which distribute significant government funds to incorporate due diligence in their business activities;
- **Advocates** joint solutions at international level, e.g. through the UN or the EU, in the areas of human rights, labour rights and the environment, to enable home countries to prosecute companies involved in particularly gross violations outside the home country's borders; and also to
- **Considers** the possibility of relevant national measures that meet the need for prosecuting particularly gross violations.

The recommendations from the Council on how the Danish Government can fulfill the UNGPs on the state duty to protect can be found here: <http://www.raadetforsamfundsansvar.dk/dokumenter/0/16> (in Danish only).

2.3 Actions taken

Ensuring policy coherence across governmental departments and agencies

The Government's CSR efforts are coordinated by an inter-ministerial working group with representatives from departments and agencies who work with CSR and human rights related areas. These include Ministry of Business and Growth, Ministry of Foreign Affairs, Ministry of Employment, Ministry of Environment, Ministry of Finance, Ministry for Food, Agriculture and Fisheries, Ministry for Climate, Energy and Building and the Investment Fund for Developing Countries (IFU) (GP 8).

Danish Government's expectations to companies

In the National Action plan for CSR, the Danish Government sets out clear expectations to Danish companies that they must take responsibility to respect human rights when operating abroad- especially in developing countries where there can be an increased risk of having an adverse impact on human rights (GP 2).

As part of the promotional activities among Danish companies the government has committed to providing courses and guidance on responsible business conduct. The Government has launched an information campaign specifically aimed at companies and NGOs on compliance with the Guiding Principles in connection with the estab-

lishment of the mediation and grievance mechanism (for more information see section 4.3).

The Trade Council under the Ministry of Foreign Affairs advises Danish companies and their local partners on how they should handle their social responsibility in a number of export markets. The advisory services include human rights due diligence. The advisory services are demand-driven and offered to companies on the same terms as the other business services of the Trade Council, i.e. chargeable by the hour in accordance with Danish legislation (UNGPs 3c).

In addition, at Danish embassies in emerging markets, the Trade Council in co-operation with the Danish Business Authority holds workshops in responsible supply chain management, especially focusing on small and medium-sized companies and their local business partners (GP 3c). The courses are held on an annual basis. They include practical guidance on how to demonstrate due diligence in business operations in regard to adverse impacts on human rights. To further assist Danish companies in emerging markets, the embassies are also conducting CSR reviews of local business partners. The reviews include a due diligence component (UNGPs 3c).

The Guiding Principles have proved to be an excellent instrument in rallying stakeholders for joint action. Using the Guiding Principles as the basis for a new Partnership for Responsible Garments Production in Bangladesh, the Danish government, business associations and enterprises have agreed on a number of detailed commitments to improve conditions within their sphere of influence. The partnership, which was agreed within the framework of the Danish Ethical Trading Initiative (DIEH), will be implemented in close co-ordination with international partners as well and stakeholders in Bangladesh.

Protection of human rights through state regulation and policy

In Denmark all new legislation is systematically evaluated in terms of human rights consequences by the Ministry of Justice.

Denmark actively takes part in the Universal Periodic Review process of the United Nations as well as review by the UN Treaty Body Monitoring mechanisms with regard to obligations arising under the United Nations core hu-

man rights conventions, and by relevant ILO and Council of Europe bodies. These processes provide a platform for systematic consideration of the compliance of Danish law, policies and administration with international human rights law. Denmark duly takes account of findings and recommendations issued by such bodies.

Denmark is fully committed to human rights obligations – both nationally and internationally – and has signed and ratified many legal instruments, which belong to various organs, especially the United Nations, the European Union and the Council of Europe.

For a complete list of the International Human Rights Treaties that Denmark has signed and ratified see: <http://www1.umn.edu/humanrts/research/ratification-denmark.html>.

Together with more than 40 countries Denmark adheres to the OECD Declaration on International Investment and Multinational Enterprises. The OECD Guidelines for Multinational Enterprises are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. The Guidelines are supported by a unique implementation mechanism of National Contact Points (NCPs), agencies established by adhering governments to promote and implement the Guidelines. Denmark is one of the only countries in the world which has established the OECD National Contact Point by Danish law. The purpose is to ensure that the Danish NCP has a maximum of legitimacy and authority (for more information see section 4.3).

As stated in the strategy for Danish development cooperation: “The Right to a Better Life”, Denmark applies a rights based approach to development. The human rights based approach entails that the goal of development cooperation should seek to realise human rights as well as poverty alleviation. Furthermore political dialogue with partners and concrete development interventions should be guided by human rights standards and principles, focusing in particular on rights-holders and duty-bearers and their capacities to claim and fulfill obligations related to human rights. The “protect, respect and remedy framework” also provides the basis for Danida’s institutional private sector programmes aimed at enhancing the capacity and institutional environment for private sector development. One prime example of this approach is the new “Program for

Responsible Business in Myanmar”, using both the state duty to protect and the company duty to protect as the key parameters in its programme design.

Denmark works to ensure that companies involved in Danish development cooperation respect human rights and act responsibly within the areas of worker’s rights, human rights, environment and anti-corruption within the framework of ILO conventions, UN Global Compact, the OECD guidelines for multinational enterprises and work towards implementation of the UN Guiding Principles on Business and Human Rights.

Companies involved in Danida Business Partnerships – an instrument that facilitates and provides economic support to develop commercial partnerships between Danish companies and partners from developing countries - are now required to integrate CSR strategically in their business operations and to demonstrate due diligence, including human rights, in order to mitigate adverse impact. The Danida Business Finance instrument engages both local buyers and Danish companies in the promotion of human rights and CSR activities through due diligence analysis and requirements to comply with fundamental principles of ILO when providing interest-free loans to public infrastructure projects in developing countries.

To further support the protection of human rights, the Danish Government has ensured that individuals have access to a non-judicial remediation mechanism in cases where Danish companies have had adverse impact on human rights (GP 27) (See the specific section on the implementation of access to non-judicial remedy, section 4.4).

Protection of human rights in the business sphere in Danish legislation

General Danish law contributes to fulfilling Denmark’s duty under human rights treaties to which it is a party against human rights abuses by private actors, including businesses. For example, the Danish parliamentary act prohibits differential treatment in the labour market from 1996 protecting against discrimination based on race, gender, skin colour, religion, political opinion, sexual orientation or national, social or ethnic origin. It is also an offense to refuse to serve a person on the same terms as others involved in commercial or non-profit company because of his/hers race, colour, national or ethnic origin, religion or sexual orientation. The Working Environment Act of 2005 and the Act on the Work of Young Persons

from 2005 implement the EU Directive 94/33/EC from 1994 on the protection of young workers, and the 1956 Constitutional Act of Denmark covers freedom of association and assembly.

Similarly, the Danish Data Protection Act helps to uphold the right to respect for private life; the Working Environment Act contributes to protecting the right to a safe and healthy working environment, the act protects, among other things, individuals against adverse impacts on health due to environmental pollution from business sources and contributes to protecting the right to the highest attainable standard of health through regulating access to health services. Denmark's Criminal Code protects the right to life and human rights against torture, slavery, while proscribing a range of activities connected with human trafficking, for example. The Criminal Code further provides that companies and company representatives can be punished under the Act while other criminal laws contain provisions in similar terms.

Companies owned or controlled by the state

In 2008 the Danish Government introduced a statutory CSR reporting requirement which obligates all state-owned public limited companies irrespective of their sizes to report on CSR in the management's review in their annual reports (GP 4).

The same year state owned companies were required to join the UN Global Compact principles and the Principles for Responsible Investment (PRI). Businesses must accede to the Global Compact as a group, in which the parent company accedes. The parent company then reports on the group's observance of the principles on behalf of the subsidiaries (GP 4).

The Danish Government believes that public authorities, including companies owned or controlled by the state, should live up to the same requirements that private companies are expected to fulfill. Therefore, the non-judicial remedy mechanism can also examine complaints involving public authorities (GP 4).

Companies that receive substantial support and services from State agencies

The Environmental & Social Due Diligence Policy of the Danish Export Credit Agency (EKF) states that EKF is committed to implementing the UN Guiding Principles on Businesses and Human Rights (GP 4).

Since 2007 Denmark has worked actively in the OECD to ensure that export credit agencies have a common approach for evaluating human and labour rights as well as the protection of the environment (GP 10).

For more initiatives on the Danish Export Credit Agency and the Investment Fund for Developing Countries (IFU) see annex 1 under GP 4 and 7.

When Danida under the Ministry of Foreign Affairs signs contracts with companies, it is a requirement that companies live up to Danida's anti-corruption policy and to the UN Global Compact. A description of the applicant's approach to quality assurance and how it will comply with Danida's anti-corruption code of conduct and the principles of the UN Global Compact during implementation are requested from pre-qualified tenderers and form part of the tender evaluation.

Promotion of human rights in commercial transactions

The Government has committed itself to promoting responsibility in public procurement through several initiatives among other:

- By publishing a set of common guidelines for responsible procurement in the public sector in collaboration with municipalities and other relevant parties. The guidelines will serve as a practical tool to determine when and how the UNGPs can be applied in connection with public procurement (GP 6). The tool is available in Danish: www.csr-indkob.dk.

Providing effective guidance on how to respect human rights

Since 2005, the Danish Government has worked directly with promoting CSR among Danish companies. The efforts have focused on providing companies with tools and guidance to implement CSR policies in a manner which is both strategic and manageable (GP 3c).

Examples of relevant tools include:

- The CSR Compass – which is a free online tool that helps companies implement responsible supply chain management. <http://www.csrcompass.com/>
- The Global Compact Self-Assessment Tool - which helps companies to test their performance on all ten UN Global Compact principles, and how well these issues are managed: <http://www.globalcompact-selfassessment.org/>

The tools have been developed in collaboration with the UN Global Compact and other partners from Danish civil society and industry organisations.

The Danish Government is committed to continuously improving and promoting guidance provided to companies on how to work with CSR in general and human rights in particular. To ensure that companies have the right tools and the necessary guidance to handle the new due diligence requirements, the Government has updated the existing web tool, the CSR Compass and the Global Compact Self-Assessment Tool in accordance with the due diligence requirements of the UNGPs. The revised Compass includes a guide for small and medium-sized companies on how to exercise due diligence (GP 17) and also gives guidance on ways to solve company conflicts by actively engaging in a dialogue with the company's stakeholders (GP 29). The revised Global Compact Self-Assessment Tool works as a self-Assessment guide to a CSR due diligence going through a questionnaire covering aspects of human rights, worker's rights, environment and anti-corruption and including a template for a follow-up action plan.

Reporting requirement on human rights impact

Another priority for the Danish Government has been to strengthen the existing legal reporting requirement for the largest Danish companies and all state-owned companies (GP 3d).

Since 2009, large companies including all state-owned companies and institutional investors in Denmark have been required to report on their work on corporate social responsibility. This means that while Danish businesses are free to choose whether or not they wish to have a CSR policy there is a statutory requirement that they must take a position on CSR in their annual reports.

If the company has a CSR policy, the company must account for this policy in their annual reports, including any CSR standards, guidelines or principles the company employs. Secondly, the company must report how these policies are translated into action, including any systems or procedures used. Thirdly, the company must evaluate what has been achieved through the CSR initiatives during the financial year, and any expectations it has regarding future initiatives. If the company does not have any social responsibility policies, this must be reported.

In June 2012, this reporting requirement was expanded so that the largest Danish companies from 2013 expressly must state in their reports what measures they are taking to respect human rights and to reduce their impact on the climate. This means that if a company has a policy on human rights or climate issues, it must report according to the existing structure; what is the policy, how has the policy been translated into action and what has been achieved through the initiatives. If the company does not have policies for human rights or climate issues, this must also be disclosed. The purpose is to further strengthen Danish companies' activities in relation to human rights and climate change which will be beneficial to society overall, but also to the individual company.

Three years after the reporting requirement was introduced, analyses show that companies generally appear to have been encouraged to report on CSR. In the course of the first three years of the legal requirement's existence, nearly 50% of the companies reported on CSR for the first time. Secondly, there have been significant improvements in reporting practices in a number of areas. There is, nevertheless, still room for improvement as regards reporting consistency and reporting on the results of the CSR work. For information on Danish companies reporting on human rights see section 3.3.

Promoting transparency through the Group of Friends of Paragraph 47

The Group of Friends of Paragraph 47 is a government led initiative formed by the governments of Brazil, Denmark, France and South Africa in June 2012 following the acknowledgement of the importance of corporate sustainability reporting in Paragraph 47 of the outcome document of the 2012 United Nations (UN) Conference on Sustainable Development (Rio +20). Since then several governments have joined the group. The Group issued their Charter on 7 November 2012, declaring their shared belief that corporate transparency and accountability are key elements of a well-functioning market economy, that substantially enhances the private sector's contribution to sustainable development, and that governments have a primary role to play in this agenda. This agenda includes all aspects of CSR, including human rights. The group is supported by the UN Environment Programme (UNEP) and the Global Reporting Initiative (GRI) in a Secretariat capacity⁵.

⁵ **Source** Cf. <http://www.unep.org/resourceefficiency/Business/SustainableandResponsibleBusiness/CorporateSustainabilityReporting/GroupofFriendsofParagraph47/tabid/105011/Default.aspx>

Promoting shared understanding and international cooperation on UNGPs

Denmark participated actively in the 2011 revision of the OECD Guidelines for Multinational Enterprises. A main focus of the Danish efforts was to ensure that the revision of the OECD guidelines was made in accordance with the UNGPs.

The Danish Government is highly committed to the UN Global Compact and works for even closer cooperation between the UN Global Compact and the UN Guiding Principles on Business and Human Rights. Danida has provided financial support to the UN Global Compact for a number of years and has also provided support to John Ruggie's work on developing the UNGPs as well as support to the UN Working Group's work in promoting the implementation of the principles in practice.

Denmark continues to work actively to ensure consistency between the different policies in the OECD including in the area of export credits. Denmark also works to ensure that the future EU policy in the field of CSR and human rights is based on UNGPs.

At EU level, Denmark is an active player in the EU-Commission's high level group on CSR.

At the multilateral level, Denmark actively works to promote and strengthen the implementation of the UN Guiding Principles. In May 2012, as part of the Danish EU Presidency, the Danish Government organised an international conference on the UN Guiding Principles to increase the awareness among both EU member states and companies on the implementation of the UNGPs (GP 10). Moreover, Denmark participates in the annual UN Forum on Business and Human Rights held in Geneva, focusing on trends and challenges in relation to the effective implementation of the UN Guiding Principles.

Extraterritorial legislation

Direct extraterritorial legislation and enforcement includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs⁶. The Danish Government wishes to engage in the discussion on extraterritorial legislation as proclaimed in the UNGPs and as recommended by the Danish Council for CSR. Acknowledging the complexity of the issue, the Government has taken the following initiatives:

- At international level the Danish Government actively promotes the discussion on extraterritorial legislation, in particular the need for joint solutions. The Government has recommended that the Council of Europe should take the lead on the issue of extraterritoriality. The Council of Europe would be an excellent point of departure for this discussion as it covers virtually the entire European continent and focuses on the protection of human rights. Furthermore the Council of Europe is already working on these issues through its Steering Committee for Human Rights.
- The Government has recommended that the second annual UN Forum on Business and Human Rights could focus on the issues of extraterritoriality as this is a challenge for every country to implement.

⁶ **Source** UN Guiding Principles on Business and Humans Rights, p. 4.
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

2.4 Planned actions

Extraterritorial legislation

To further engage in the issue of extraterritorial legislation, the Danish Government has planned the following initiative:

- At national level the Government will put together an inter-ministerial working group which will discuss the need for and feasibility of legislation with extraterritorial effect in areas of particular relevance. The group will look at what other countries have done and are doing in this area with the purpose of learning what works and what does not work. Finally, the group will examine the need for judicial prosecution of severe human rights impacts as recommended by the Danish Council for CSR.

Promoting CSR in the Public Sector

The Government wishes to establish good framework conditions for social responsibility as the public sector's contribution to the promotion of responsible growth.

This is the reason why the new mediation and complaints-handling institution can handle complaints about human rights impacts and other adverse impacts on international guidelines by public authorities, as is the case with private companies (see section 4.3 for more information).

The public authorities should assume social responsibility relating to environmental, social and economic conditions as well as human rights in connection with their activities. To obtain this objective, the Government will invite municipalities and regions to jointly prepare guidelines for how public authorities can avoid having an adverse impact on international guidelines. The guidelines should be used to manage the challenges the public authorities are facing today when acting as a private company.

Increasing the use of labour and social clauses in public contracts

Part of the foundation of the Danish labour market model is that work performed in Denmark must be performed on Danish pay and working conditions. In this, the authorities hold an important role in ensuring that underpaid foreign labour does not occur in public projects. The Government wants to ensure fair and reasonable pay and working conditions in accordance with ILO Convention 94 by increasing the use and better enforcement of labour clauses in public contracts (GP 5).

The following initiatives are planned:

- The current labour clause threshold value of approximately DKK 37.5 million for public construction projects included by the labour clause requirement will be abolished. In the future, governmental contracting authorities (including companies that are fully owned by governmental authorities and not in competition) must use labour clauses in all public tender calls for construction projects.
- Furthermore, it has been agreed that Danish municipalities and regions in the future will use labour clauses to a further extent in the same manner as governmental contractors.
- Finally, more and better information on the use of labour clauses will soon be available in written form and on the internet.

The Government also wants to increase the voluntary use of social clauses in connection with public tenders. Many public authorities already use or are considering using social clauses. To assist with this work, a number of cases will be prepared to demonstrate how companies and municipalities work with social clauses in practice (GP 5).

3.

The corporate responsibility to respect human rights

The UNGPs on *the corporate responsibility to respect* human rights focus on what companies need to do in order to know and show that they respect human rights.

While, the Danish Government has an important role in promoting the UNGPs by clarifying and communicating expectations towards companies, the Government acknowledges that in the short term it can be a significant challenge for companies to implement due diligence in their business operations - especially if the company has a complex supply chain or if the company is an SME. Thus, the Government supports the implementation of the corporate responsibility to respect by carrying out initiatives which are aimed at supporting and assisting companies with this effort. These initiatives are described under section 2: the state duty to protect. In addressing challenges, the Government monitors and evaluates progress in close dialogue with stakeholders, in particular within the Danish Council for CSR.

3.1 UNGPs on the corporate responsibility to respect human rights

In order to respect human rights business enterprises should avoid having an adverse impact on the human rights of others and should address adverse human rights impacts with which they are involved.

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- a) A policy commitment to meet their responsibility to respect human rights;

- b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their adverse impacts on human rights;
- c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute⁷.

3.2 Recommendations from the Council for CSR on the corporate responsibility to respect

Since its creation in 2008, the Danish Council for CSR followed the work of the SRSG John Ruggie closely. In 2009, the Government asked the Council to produce a set of guidelines for responsible supply chain management to help companies meet international social and environmental requirements and expectations in their supply chain.

In June 2010, the Council published a set of guidelines for responsible supply chain management based on the Protect, Respect, Remedy Framework. The Council also made sure that the guidelines were aligned with recognised international principles like the UN Global Compact, ISO 26000 etc. The guidelines were meant as a supplement to the Protect, Respect, Remedy-Framework, intended to provide greater clarity about responsible supply chain management by offering a practical, easy-to-read guide and online tool. The guidelines are supplemented by a checklist of self-help questions intended to help the individual company find the solutions that address their specific challenges. For the guidelines in its entirety, see: www.csrcouncil.dk/guidelines.

⁷ Source UN Guiding Principles on Business and Humans Rights, p. 13–16. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

While the guidelines are focused on assisting companies with the implementation of the UNGPs with regard to supply chain management, implementation of the corporate responsibility to respect continues to be a very important part of the council's agenda.

3.3 Actions taken

Danish Government's support for international guidelines for CSR

In the National Action Plan for CSR (March 2012), the Government encourages Danish companies *to demonstrate responsible business conduct and apply internationally recognised guidelines for corporate responsibility such as the UN Global Compact, the UN guiding principles on business and human rights, the OECD guidelines for multinational enterprises and ISO 26000*⁸.

Expectations to companies and other stakeholders to respect human rights

The National Action Plan for CSR (March 2012) contains a number of expectations, based on UNGPs recommendations, that companies are expected to follow (GP 2). The government has reiterated its expectations in the preface to this National Action Plan on the implementation of the UNGPs.

In order to fulfill their requirements companies need to be able to know and show that they respect human rights. The Government therefore wants to create more transparency about the CSR efforts of both private companies and public authorities. It is only through increased transparency that CSR can become a key parameter for consumer choices. Danish legislation thus requires major Danish companies to report on social responsibility in their annual reports including what specific measures they have taking to respect human rights and reduce their adverse impact on the climate (GP 3d). For more information on the legal reporting requirement on human rights see section 2.3.

The transparency framework for the major private and public companies is supported by the new non-judicial remediation mechanism where cases involving potential adverse impacts by Danish companies on international CSR principles, including adverse impacts on human rights, can be investigated (GP 4 and GP 27). For more information on the implementation of access to remedy see section 4.

In 2013, a number of Danish organisations were granted support to promoting CSR and Fair Trade.

Evaluation of CSR reporting in large and listed Danish companies

In 2008, Danish Government introduced a legal requirement for large companies in the Danish Financial Statements Act (see section 2.3 page 6 for more on the reporting requirement). Since the statutory CSR reporting was introduced a survey on the effects of the legal requirement has been conducted in three consecutive years. The surveys were based on a rolling group of participants, meaning that the same group of companies has been surveyed the previous years. Since the group has been subject to the reporting requirement for three years it includes – in the last survey – very few companies reporting for the first time. As expected, there have also been few changes in the choice of topics and content in the reports.

In the financial year⁹ 2010, a significant increase in the number of companies reporting actions relating to human rights (38% compared to 16% in 2009) and labour rights (35% compared to 16% in 2009) was noted. In the 2011 financial year, these reporting topics were as common as in 2010. Due to recent developments in international CSR principles (in particular the development of the UN Guiding Principles on Business and Human Rights), an increased focus on human rights, in particular, can be expected in the future. Following the latest amendment of Section 99a of the Danish Financial Statements Act, companies thus have to report on the topics of human rights and climate with effect from the 2013 financial year.

Award for best non-financial report

The Danish trade organisation of auditing, accounting, tax and corporate finance, "FSR - Danish Auditors" annually announces the company with the best CSR report both for large companies and SMEs. The reports are judged by a panel of selected representatives from Danish businesses, organisations, financial sector, educational institutions, etc. As part of the evaluation the judges look at whether companies also report on difficult subjects such as adverse human rights impacts.

For more best practice cases on reporting on non-financial issues, see:

http://csrgov.dk/communication_and_reporting.

⁸ **Source** Danish Government Action plan for CSR "Responsible Growth" 2012–2015, p. 6.

⁹ **Source** The reports that companies submit in 2011 cover the financial year 2010.

4.

Access to remedy

4.1 UNGPs on access to remedy

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 (GP 25).

This includes providing effective and appropriate judicial and non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State based and non-State-based, should be:

- a) *Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;*
- b) *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;*

- c) *Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;*
- d) *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;*
- e) *Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;*
- f) *Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;*
- g) *A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;*

The effectiveness criteria in the UNGPs largely coincide with those recommended in the OECD guidelines for the national contact points, which also stress visibility and accountability.¹⁰

¹⁰ **Source** UN Guiding Principles on Business and Humans Rights, p. 33–34.
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

4.2 Recommendations from the Council for CSR on access to judicial and non-judicial remedy

In November 2010, the Council for CSR established a working group who would be able to work intensively on the recommendations for implementing remedy as described in the UN Protect, Respect, and Remedy-framework. The working group was composed by a representative from the Confederation of Danish Industry, the Danish Confederation of Trade Unions, the Danish 92 Group, the Danish Shipowners' Association and the chair of the Council.

The working group followed closely the final work of the SRSG John Ruggie on the development of the Guiding Principles for the implementation of the Protect, Respect and Remedy framework as well as the work of the OECD Investment Committee on the revision of the OECD-guidelines for multinational enterprises.

Recommendations on judicial remedy

The Danish Council for CSR acknowledges that this is an extremely difficult issue that is best handled at an international level. The Council therefore recommended that the Danish Government works to find a solution to gross violations covered by the revised OECD guidelines at an international level (under the EU umbrella), for example via a UN agency.

In terms of legislation with extraterritorial effect, the Council recommended that the Danish government, in addition to the international work, consider introducing relevant national legislation for particularly gross violations. A balance should be established between, on the one hand, the need to prosecute particularly gross violations and maintain an overwhelming sense of justice, and, on the other, the possibilities of examining violations in practice.

In addition to criminal law consequences, the Council recommended that the government consider the possibilities of civil law measures against companies committing gross human rights violations abroad, cf. UNGPs.

Recommendations on non-judicial remedy

The Council recommended that a Danish non-judicial mediation and grievance mechanism for responsible business conduct should be based on the OECD Guidelines on Responsible Business Conduct, which incorporate the

UN's recommendations on business and human rights. The mechanism should also be established in accordance with the UN and OECD criteria for non-judicial mediation and grievance mechanisms, including legitimacy, accessibility, transparency and predictability.

Furthermore, the Council's recommendations included the following unique features:

- The institution should be established by Danish law
- The institution should be able to take up cases on its own initiative
- The institution should be able to handle cases involving not only private companies but also public authorities and private organisation, like NGO's
- The company which is subject to a complaint should be given a period of two months to solve the conflict with the complainant without the involvement of the national institution.

The recommendations on non-judicial remedy from the Council for CSR was for the most part implemented by the Danish Government (see section 4.4).

The recommendations from the council on a Danish mediation and grievance mechanism can be found here: <http://www.csrcouncil.dk/documents>

4.3 Actions taken

Access to judicial remedy

The provisions laid down in the Danish Administration of Justice Act (Consolidation Act 2012-10-24 No. 1008) form an essential and important part of the framework on access to judicial remedies in cases regarding human rights issues in business. Denmark keeps these provisions under constant review in order to fulfill international obligations and to ensure that the provisions are adequately applied.

Access to non-judicial remedy

In the second national action plan for CSR from March 2012, the Danish Government announced the establishment of a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

The institution was established by Danish law, which was passed through parliament and approved on June 12 2012. The Danish Government wanted to ensure that a non-judicial remedy has a maximum of legitimacy and authority.

The purpose of the institution is to investigate cases involving potential adverse impacts by Danish companies on international CSR guidelines as described in the OECD Guidelines for Multinational Enterprises.

The mediation and complaints-handling institution is established in accordance with the international effectiveness criteria for non-judicial mediation and grievance mechanisms as described in the UNGPs and the OECD Guidelines for Multinational Enterprises (GP 31).

The institution will base its assessments on the OECD Guidelines for Multinational Enterprises, which incorporate the UN Guiding Principles on Business and Human Rights, including in particular the due diligence concept as described in the UN Guiding Principles, when looking at a complaint.

The institution focuses on mediation to solve complaints - both on company level and if that is not possible, assisted by the Mediation and Complaints-Handling Institution. If mediation is not possible, the institution can initiate an investigation of the matter and based on the result, make a public statement.

The institution can examine complaints involving not only Danish private companies but also public authorities and private organisation, like NGO's. It can also take up cases on its own initiative, which will allow the institution to be proactive in cases of substantive importance. As a first step in the case handling procedure the institution gives the company two months to solve the conflict with the complainant without the involvement of the institution itself. If the company does not solve the matter on its own, the institution undertakes an initial assessment and based on the result the institution can offer mediation or investigation.

The institution which has existed since November 1st 2012 is composed of five members – one chairman, one expert and three members appointed on the recommendation of the following organisations; Confederations of Danish Industries, the Danish Confederation of Trade Unions and the Danish 92 Group which is an association of 23 different Danish NGO's. For more information on the member of the institution see: www.businessconduct.dk. The institution is also working to promote the respect for

the OECD Guidelines and the knowledge of the institution. So far the promotional activities have included among other:

- Homepage in Danish and English; www.businessconduct.dk;
- Survey among Danish companies on the knowledge of the institution and of the OECD Guidelines in order to be able to measure the progress in the coming years;
- Information leaflet in Danish, English, French and Spanish; the leaflet has been distributed through 112 Danish embassies for audiences abroad;
- Translation of the OECD Guidelines for Multinational Enterprises into Danish;
- Briefings, presentations and dialogue with interest groups, NGOs, etc. in order to raise awareness of the institution and the OECD guidelines for multinational enterprises and the UN Guiding Principles;
- Development of guidance on due diligence in the supply chain and company-based conflict resolution;
- Instruction for Danish Embassies encouraging them to raise awareness about the Danish National contact Point to local stakeholders.

For more information see: <http://www.businessconduct.dk>

Other examples of non-judicial institutions which contribute to remedy for victims of business-related human rights abuses, include Employment Tribunals, national Ombudsman, and Consumer tribunal. Furthermore Denmark has mechanisms for dealing with cases of race, gender, disability, age, religious discrimination in employment or services, etc.

5.

UNGPs in Denmark

looking ahead

While the National Action Plan for CSR 2012–15 already includes initiatives on implementing the UN Guiding Principles, this is the first Danish stand-alone National Action Plan on the implementation of the UN Guiding Principles on Business and Human Rights.

The expectation towards business and stakeholders to respect internationally recognised principles and guidelines has received considerable attention the past few years. The UN Guiding Principles on Businesses and Human Rights form an important part of this agenda.

Implementing the UN Guiding Principles is a global challenge, and a common responsibility. To succeed we need to involve all stakeholders in raising awareness and leveling the playing field. With this action plan, Denmark wants to demonstrate its commitment towards this agenda.

In a European context, this national action plan is also to be seen as a response to the EU Action Plan on Human Rights and Democracy 2012-2014 and the renewed EU strategy for Corporate Social Responsibility 2011-14. In the action plan, the European Council lists the development of national plans on implementation of the UN Guiding Principles as actions for EU Member States. In the strategy, the European Commission invites EU Member States to develop national action plans for the implementation of the UN Guiding Principles. We will continuously update Danish priorities with regard to the implementation of the UN Guiding Principles in alignment with the National Action Plan for CSR 2012–15.

We thank all stakeholders, in particular the Danish Council for CSR, for contributing to this action plan. We look forward to continue working with them, as well as with other governments, businesses and stakeholders in the future.

Appendix 1 Overview of the implementation of the state duty to protect

The following gives a schematic overview of the implementation of the state duty to protect principle by principles.

GP 1

State Duty to Protect

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The National Action Plan for CSR from 2008 is the Government's first official policy for promoting CSR among Danish companies. The national action plan encourages Danish businesses to continue to work actively with social responsibility, thus contributing to, for example, improving conditions in the countries in which they do business in and/or have established themselves in.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- In 2011 the Danish government published its second national action plan for CSR "Responsible Growth" 2012–2015. The national action plan contains several initiatives which translate the UNGPs into practice, among other:
 - A reporting requirement on human rights and climate
 - A non-judicial grievance mechanism

GP 2

State Duty to Protect

States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- In 2004 the Ministry for Business and Growth in collaboration with the Confederation of Danish Industry developed the CSR Compass. The CSR Compass is an online tool which Danish companies can use when requiring customers and suppliers to respect human rights and perform due diligence.
- In 2008 the Danish Government published its first national action plan on CSR which encourages Danish companies and investors with international business activities to follow the UN Global Compact and Principles for Responsible Investment (PRI). Since 2007 the number of Danish companies that have joined the UN Global Compact has risen from 26 to 248.
- In 2010, the Government asked the Council for CSR to develop guidelines for Responsible Supply Chain Management based on the UN Protect, Respect and Remedy framework.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

In the national action plan for CSR the government encourages Danish companies to demonstrate responsible business conduct and apply internationally recognised guidelines for corporate responsibility such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and ISO 26000 (National action plan on CSR page 6).

GP 2 continued

State Duty to Protect

Extraterritorial legislation

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction..... Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- According to the Criminal Code, acts committed outside the Danish territory are subject to Danish criminal jurisdiction in certain specified cases. Criminal liability presupposes that the Danish pe-

nal provision that may be violated also applies to acts committed abroad (extraterritorial applicability). The question of whether a penal provision has extraterritorial applicability is not generally regulated by law. Instead, the question depends on interpretation in each case of the particular penal provision. Generally, the penal provisions in the Criminal Code have extraterritorial applicability. Conversely, other penal provisions generally only apply to acts committed within the Danish territory.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- The Government has recommended to the Council of Europe that Drafting Group on the Human Rights and Business under the Council of Europe should take the lead on the issue of extraterritoriality. The Council of Europe would be an excellent point of departure for this discussion as it covers virtually the entire European continent and focuses on the protection of human rights. Furthermore, the Council of Europe is already working on these issues through its steering committee for human rights.
- The Government has recommended that the second annual forum on Business and Human Rights could focus on the issues of extraterritoriality as this is a challenge for every country to implement individually.
- The Government has put together an interministerial working group which will discuss the need for and feasibility of legislation with extraterritorial effect in areas of particular relevance. The group will look at what other countries have done and are doing in this area with the purpose of learning what works and what does not work. Finally, the group will examine the need for judicial prosecution of severe human rights impacts as recommended by the Danish Council for CSR.

GP 2 continued State Duty to Protect

States have adopted a range of approaches in this regard. Some are domestic measures with extraterritorial implications. Examples include requirements on “parent” companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development; and performance standards required by institutions that support overseas investments.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The Danish Ethical Trading Initiative is an example of a soft law initiative. It is the first Danish multi-stakeholder initiative for Ethical Trading and Responsible Supply Chain Management. The initiative is co-financed by Danida.
- Together with other OECD members, Denmark has worked and will continue to work to ensure that project-related social and human rights impacts are included in the OECD Common Approaches, including that relevant elements from the UNGP and Human Rights become part of the way export credit agencies undertake their due diligence
- Denmark works to ensure that companies involved in Danish development cooperation respect human rights and act responsibly within the areas of workers' rights, human rights, environment and anti-corruption within the framework of ILO conventions, UN Global Compact, the OECD guidelines for multinational enterprises and work towards implementing the UN Guiding Principles on Business and Human Rights.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- Denmark has contributed actively to the discussions in OECD on how to embrace Human Rights in the “Recommendation of the Council on the Common Approaches for Officially supported Export Credits and Environmental and Social Due Diligence (Common Approaches)”. Together with other OECD members, Denmark has worked to ensure that project-related social and human rights impacts are included in the OECD Common Approaches, and also that relevant elements from the UNGPs and Human Rights become part of the way export credit agencies demonstrate due diligence. Furthermore, the revised Common Approaches now ensure policy coherence with the OECD Multinational Guidelines.

GP 3a**State Duty to Protect**

In meeting their duty to protect, States should:

- (a) 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;

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- In Denmark all new legislation is systematically evaluated in terms of human rights consequences by the Ministry of Justice.
- Denmark actively takes part in the Universal Period Review process of the United Nations. Denmark also takes part in the review by the UN Treaty Body Monitoring mechanisms with regard to obligations arising under the United Nations core human rights conventions, and by relevant ILO and Council of Europe bodies. These processes provide a platform for systematic consideration of the compliance of Danish law, policies and administration with international human rights law. Denmark duly takes account of findings and recommendations issued by such bodies.

GP 3b**State Duty to Protect**

- (b) 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 respect for human rights;

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The Government's 2007 Action Plan was prepared by an inter-ministerial working group with representatives from a variety of departments and agencies. The working group still coordinates the Danish government's initiatives in the area of social responsibility.
- As mentioned in GP 3a, all new legislation is evaluated in terms of human rights consequences.
- Large parts of Danish national law support compliance with the UNGPs such as legislation on labour issues, the environment, child labour etc. This type of protective legislative framework of Denmark enables business respect for human rights.

GP 3c**State Duty to Protect**

- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The Danish Government's CSR policy is especially focused on developing knowledge and tools that are directly applicable to businesses. Whenever possible these tools are developed in cooperation with relevant stakeholders. Tools with a direct focus on human rights include the CSR Compass and the Global Compact Self-Assessment tool, developed by the Ministry of Business and Growth, the Confederation of Danish Industry, the Danish Institute of Human Rights and the Danish Investment Fund for Developing Countries.
- Danida has provided financial support to the UN Global Compact for a number of years and also provided support to John Ruggie's work on developing the UNGPs as well as support to the UN Working Group's work in promoting the implementation of the principles in practice.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- To make sure companies have the right tools and the necessary guidance to handle the new reporting requirements, the Government will continue to improve and promote the guidance provided to companies via a revision of an existing web-based tool.
- To promote responsible business conduct among Danish businesses, the government has also committed to providing courses and guidance on responsible business conduct.
- In connection with the establishment of the Mediation and Complaints-Handling Institution for Responsible Business Conduct the Government has therefore launched an information campaign on compliance with the UN Guiding Principles.

- The Danish Government is highly committed to the UN Global Compact and the UN Guiding Principles on Business and Human Rights and works for even closer cooperation between the two sets of principles.
- The Trade Council under the Ministry of Foreign Affairs advises Danish companies and their local partners on how they should handle their social responsibility in a number of export markets. The advisory services include human rights due diligence. The advisory services are demand-driven and offered to companies on the same terms as the other business services of the Trade Council, i.e. chargeable by the hour in accordance with Danish legislation.
- The Trade Council in co-operation with the Danish Business Authority holds workshops in Responsible Supply Chain management, especially focusing on small and medium-sized enterprises and their local business partners (GP 3c). The courses are held on an annual basis. They will include practical guidance on how to demonstrate due diligence in business operations in regard to adverse impacts on human rights. To further assist the Danish companies in emerging markets, the embassies are also conducting free CSR reviews of local business partners. The reviews include a due diligence component.
- Whenever necessary, the government also initiates and drives multi-stakeholder partnerships based on the Guiding Principles. This year the government established the partnership for Responsible Garments Production in Bangladesh, gathering all the major Danish stakeholders within the industry and linking the partnership up with international public and private partners to achieve joint action.
- Companies involved under Danida Business Partnerships are required and guided to undertake a CSR due diligence covering human rights, workers' rights, environment and anti-corruption and to follow-up with an action plan in order to mitigate adverse impacts of business activities on employees and society at large.
- The ministry of Foreign Affairs is also working on competence development courses within UNGPs and CSR for embassy staff, including e-bites, guidance on how to perform CSR due diligence and workshops for Danish companies operating abroad and local companies in new growth markets.
- In 2013, a number of Danish organisations have been granted support by Danida for initiatives focusing on the promotion of ethical trading initiatives and supply chain management, CSR and Fair Trade.

GP 3d
State Duty to Protect

- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- **Mandatory CSR reporting**

As part of the first national action plan for CSR, the Danish Government introduced a reporting requirement to ensure that major businesses, institutional investors and unit trusts report on their CSR work in the management review of the annual reports. The duty to report for major businesses, institutional investors and unit trusts has entailed an obligation to report on their CSR policies and how they implement the policies in practice. Businesses and investors must also report if they have yet to set up policies for the area. This fact must appear from the management review of the businesses' annual reports.

- **Initiatives taken or planned as a dedicated measure to implement the UNGPs**

(after the UN ratification of the Guiding Principles)

- **Reporting on human rights and climate**

From 2013 the 1,100 largest Danish companies and all state-owned limited liability companies must report on CSR in their annual reports. The Government will introduce a bill proposing that the largest Danish companies and state-owned limited liability companies in future must expressly state in their reports what measures they are taking to respect human rights and reduce their impact on the climate.

GP 4**State Duty to Protect**

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.

Status in Denmark*(initiatives implemented before the UN ratification of the Guiding Principles)*

- In 2008 the state financing fund, Vækstfonden, has committed to adhere to the UN Principles for Responsible Investment (PRI). The Export Credit Agency (EKF), the Investment Fund for Developing Countries (IFU) and Investment Fund for Central and Eastern Europe (IØ) has committed to join the UN Global Compact.
- EKF's Environmental & Social Due Diligence Policy states that EKF is committed to implementing the UN Guiding Principles on Businesses and Human Rights. EKF has also committed to the Equator Principles. These are binding international standards and frameworks for project funding. This ensures that private institutions and banks assess the environmental and social responsibility through a common set of guidelines. EKF works to promote the Equator Principles internationally, especially to institutions in the BRIC countries (Brazil, Russia, India and China). EKF uses International Finance Corporations (IFC) Performances Standards when rating a project which EKF participates in. The IFC Performances Standards mainly covers labor rights but human rights are also covered.
- IFU's overall objective is to promote sustainable economic growth, economic development and a more equitable distribution of income by co-financing private sector investment in developing countries. IFU's investments in projects should contribute to job creation, good governance, respect for the environmental, higher social standards and community development. IFU has joined the UN Global Compact and is committed to promoting these principles in its investments. Furthermore, IFU's CSR policy is based on UN, ILO and OECD international conventions and declarations. By promoting these, IFU wishes to contribute to the achievement of the UN 2015 Millennium Development Goals. When conducting due diligence IFU uses the Global Compact Self-Assessment tool, which contains a robust assessment of human rights conditions.
- As part of the approval process, Danida Business Finance analyses potential human rights related risks including local legislation and policies and other CSR issues. Access to finance is based on buyer's and exporter's compliance with ILO principles on human and workers' rights. When Danida signs contracts with companies, it is a requirement that companies live up to Danida's anti-corruption policy and to the UN Global Compact. A description of the applicant's approach to quality assurance and how it will comply with Danida's anti-corruption code of conduct and the principles of the UN Global Compact during implementation are requested from pre-qualified tenderers and form part of the tender evaluation.
- With the 2008 national action plan for CSR a number of state owned companies were committed to join the UN Global Compact, among other DONG Energy, DSB, and Post Denmark. The national action plan also introduced a CSR reporting requirement for all state owned companies (see GP 3d).

Initiatives taken or planned as a dedicated measure to implement the UNGPs*(after the UN ratification of the Guiding Principles)*

- The public authorities should assume corporate social responsibility relating to environmental, social and economic conditions as well as human rights in connection with their activities. To obtain this objective, the Government will invite municipalities and regions to jointly prepare guidelines for how public authorities can avoid breaching international guidelines. The guidelines should be used to manage the challenges the public authorities are facing today when acting as a private company.
- The Danish Export Credit Agency (EKF) has a CSR policy which includes taking into account social, economic and environmental issues.
- Companies involved in Danida Business Partnerships are required to integrate CSR strategically in their business operations and to demonstrate CSR due diligence in order to prevent and mitigate adverse impact of business activities.

GP 5**State Duty to Protect**

States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- The new non-judicial remedy mechanism (see GP 27) can examine complaints involving public authorities. This means that public authorities have the same responsibilities as private companies towards sub-suppliers which they are directly linked to, e.g. by a contract.
- Increasing the use of labour and social clauses causes: Part of the foundation of the Danish labour market model is that work performed in Denmark must be performed on Danish pay and working conditions. In this, the authorities hold an important role in ensuring that underpaid foreign labour does not occur in public projects. The Government wants to ensure fair pay and working conditions according to ILO Convention 94 by increasing the use and better enforcement of labour clauses in public contracts (GP 5). The following initiatives are planned:
 - The current labour clause threshold value of approximately DKK 37.5 million for public construction projects included by the labour clause requirement will be abolished. In the future, governmental contracting authorities (including companies that are fully owned by governmental authorities and not in competition) must use labour clauses in all public tender calls for construction projects.
 - Furthermore, it has been agreed that Danish municipalities and regions in the future will use labour clauses to a further extent in the same manner as governmental contractors.
 - Finally, more and better information on the use of labour clauses will soon be available in written form and on the internet.
- The Government also wants to increase the voluntary use of social clauses in connection with public tenders. Many public authorities already use or are considering using social clauses. To assist this work, a number of cases will be prepared to demonstrate how companies and municipalities work with social clauses in practice.

GP 6**State Duty to Protect**

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

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- As part of the 2008 national action plan, a requirement that all future joint state supply contracts systematically should embed social responsibility as articulated in the conventions that provide the foundation for the UN Global Compact.
- All state procurement officers have access to guidelines for embedding social responsibility.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- To promote responsibility in public procurement, the Government has developed common public sector guidelines for responsible procurement in collaboration with municipalities and other relevant parties. The guidelines are a practical tool to determine when and how Corporate Social Responsibility can be applied in connection with public procurement. The tool is available in Danish: www.csr-indkob.dk.

GP 7**State Duty to Protect**

Supporting business respect for human rights in conflict-affected areas.

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:

- a) 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;
- b) 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;
- c) 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;
- d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The Danish development assistance generally contributes to the promotion of human rights in conflict areas. In conflict areas it is often difficult to work closely with the host country, because local authorities do not always have sufficient capacity to monitor and legislate. The Danish efforts in fragile states include support for building institutional framework.
- When Danida signs contracts with companies, it is a requirement that companies live up to Danida's anti-corruption policy and to the UN Global Compact.
- Danida Business Partnerships provides financial support for the implementation of CSR partnerships and CSR initiatives in a range of Denmark's partner countries. As part of the approval process, Danida Business Finance analyses potential human rights related risks including local legislation and policies and other CSR issues. Access to finance is based on buyer's and exporter's compliance with ILO principles on human and workers' rights.
- Besides following the government regulations with respect to export promotion, trade policy and political imposed trade sanctions and export controls, the EKF has initiated the development of a model that provides an overview of the business risks that could potentially be related to human rights, labour rights, environment and climate in the countries where EKF is investing. EKF is screening the companies involved in the EKF's transactions. There has not been any cases involving human rights issues.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- The Danish Institute of Human Rights will launch a Business Guide to Human Rights in December 2013. The Guide to Human Rights is a free website for companies to identify, assess and address their human rights impacts around the world. It provides country- and sector-specific information about the human rights impacts of businesses, alongside concrete recommendations for preventing and mitigating adverse impacts, as well as maximising positive ones. The Guide to Human Rights emphasises multi-stakeholder engagement and dialogue, and seeks to build the capacity of local Portal partners on human rights and business.
- The Danish Government has provided financial assistance to the OECD Proactive Agenda work which has a specific focus on conflict-affected areas. For more information see <http://mneguidelines.oecd.org/proactiveagenda.htm>.

GP 8**State Duty to Protect****Ensuring policy coherence**

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.

Status in Denmark*(initiatives implemented before the UN ratification of the Guiding Principles)*

- Together with poverty reduction, promoting human rights is at the core of Danish development cooperation. The Danish rights-based approach to development cooperation includes a focus on improving the overall framework conditions for ensuring respect for human rights, capacity building in governmental and legal institutions, research institutions, civil society and business organisations.
- The Government's CSR efforts are coordinated by an inter-ministerial working group with representatives from departments and agencies who work with CSR and human rights related areas.

Initiatives taken or planned as a dedicated measure to implement the UNGPs*(after the UN ratification of the Guiding Principles)*

- The Government has updated the CSR Compass which is an online tool that helps companies exercise due diligence in the supply chain. The guide has been updated in accordance with the UNGPs and the OECD Guidelines for Multinational Enterprises. This online tool will also be promoted to governmental departments, agencies and other State-based institutions.
- Danida/the Ministry of Foreign Affairs is increasingly integrating business and human rights issues in its bilateral development assistance programs, especially within private sector development. The most far-reaching attempt at this so far has been the new program on Responsible Business in Myanmar which is directly based on the Guiding principles.

GP 9**State Duty to Protect**

States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

Status in Denmark*(initiatives implemented before the UN ratification of the Guiding Principles)*

- When Danida signs contracts with companies, it is a requirement that companies live up to Danida's anti-corruption policy and to the UN Global Compact. A description of the applicant's approach to quality assurance and how it will comply with Danida's anti-corruption code of conduct and the principles of the UN Global Compact during implementation are requested from pre-qualified tenderers and form part of the tender evaluation.
- The EU adheres to principles and standards on responsible business conduct such as the OECD Guidelines for Multinational Enterprises, which is also reflected in negotiations for free trade agreements that includes the area of investment. The guidelines are considered the reference document on Corporate Social Responsibility, including human rights, intended to balance the rights and obligations between investors and host states. Furthermore, it is common practice to reference in the mandate the right of the parties to adopt and enforce measures necessary to pursue legitimate public policy objectives such as social, environmental, human rights, security, public health and stability of the financial systems in a non-discriminatory manner

Initiatives taken or planned as a dedicated measure to implement the UNGPs*(after the UN ratification of the Guiding Principles)*

- On responsible Business Program in Myanmar (see GP8).
- The Government actively supports substantial Trade and Development chapters in the EU's bilateral free trade agreements as well as human rights suspension clauses in the same agreements. The new free trade agreement between the EU and Peru/Colombia is an important case in point, being substantially more ambitious in this area than earlier agreements.

GP 10**State Duty to Protect**

States, when acting as members of multilateral institutions that deal with business related issues, 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;

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The government works to promote human rights bilaterally and multilaterally. This work is described in the Danish 2009 human right strategy "International human rights work".
- The government works actively in bilateral and multilateral institutions such as the UN and the EU to strengthen the observance and respect for human rights.
- The government supports that the post-2015 development agenda is firmly anchored in human rights and universally accepted values and principles, including those encapsulated in the Charter, the Universal Declaration of Human Rights and the Millennium Declaration. Further, Denmark has been instrumental in the establishment of the World Bank's Nordic Trust Fund which aims to promote the application of the human rights framework in World Bank policies and operations. Denmark has also been active in promoting that The International Finance Cooperation (IFC) actively supports its clients in addressing human rights risks and impacts. Furthermore, human rights are reflected in trade agreements.

GP 10 continued**State Duty to Protect**

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;

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The government contributes actively to the promotion and dissemination of CSR in the UN and the EU through cooperation with donors. CSR is an important element in the donor Declaration "Bilateral Donors' Statement in Support of Private Sector Partnerships for Development", which was presented by the Danish Prime Minister at the UN Summit in September 2010.
- Denmark's participation in ILO cooperation contributes to the promotion of decent work for all. The focus is on the need to prioritise the relationship between employment, social security, labor standards and social dialogue in the ILO's work, and the promotion of decent work in other international contexts.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- The Government has pro-actively supported the European Commission's proposal for an EU Directive as regards disclosure of non-financial and diversity information. The Danish government finds that the expected European regulation is a timely opportunity for Europe and European companies to further strengthening reporting practices with regard to human rights. In addition it sends an important signal globally that while transparency is important in itself, a leveling playing field is needed.

GP 10 continued State Duty to Protect

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

Initiatives taken or planned as a dedicated measure to implement the UNGPs

(after the UN ratification of the Guiding Principles)

- To raise awareness about the new UN Guiding Principles on Business and Human Rights, both among companies and the general public, the Government has organised an international conference on human rights 7–8 May 2012 in connection with the Danish EU Presidency.
- Denmark participated actively in the 2011 revision of the OECD Guidelines for Multinational Enterprises. A main focus of the Danish efforts was to ensure that the revision of the OECD Guidelines was made in accordance with the UNGPs.
- Denmark continues to work actively to ensure consistency between the different policies in the OECD including in the area of export credits. Denmark also works to ensure that the future EU policy in the field of CSR and human rights is based on UNGPs.

Appendix 2 Overview of the implementation of the access to remedy

The following gives a schematic overview of the implementation of the state duty to protect principle by principles.

GP 25

Access to remedy

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.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The provisions laid down in the Danish Administration of Justice Act (Consolidation Act 2012-10-24 No. 1008) form an essential and important part of the framework on access to judicial remediation in cases regarding human rights issues in business. Denmark keeps these provisions under constant review in order to fulfill international obligations and to ensure that the provisions are adequately applied.

GP 26

Access to remedy

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.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- At international level the Danish Government actively promotes the discussion of legislation with extraterritorial application, in particular the need for joint solutions (see UNGPs 2).
- The provisions laid down in the Danish Administration of Justice Act (Consolidation Act 2012-10-24 No. 1008) form an essential and important part of the framework on access to judicial remedy in cases regarding human rights issues in business. Denmark keeps these provisions under constant review in order to fulfill international obligations and to ensure that the provisions are adequately applied.

GP 27

Access to remedy

State-based non-judicial grievance mechanisms

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.

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- Examples of non-judicial institutions which contribute to remediation for victims of business-related human rights abuses, include Employment Tribunals, national Ombudsman, and Consumer tribunal. Furthermore Denmark has mechanisms for dealing with cases of race, gender, disability, age, religious discrimination in employment or services, etc.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

- Mediation and grievance mechanism for responsible business conduct. In June 2012 the Government approved a bill creating the Mediation and Grievance Mechanism for Responsible Business Conduct. This state-based non-judicial grievance mechanism can deal with cases involving potential adverse impacts by Danish companies on international CSR guidelines, including human rights impacts. The mediation and grievance mechanism comply with the UN Guiding Principles on Business and Human Rights and the OECD's Guidelines on Multinational Enterprises.

GP 28

Access to remedy

Non-State-based grievance mechanisms

States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

- Denmark has a well-functioning system in place for dealing with complaints inside companies, e.g. wrongful dismissal. In this system, employers' organisations representing the management level and trade unions representing the employees find solutions to conflicts by mediation and negotiation. In this way, many problems are solved outside the legal system.

- An initiative dedicated to implementing the UNGPs which has been implemented recently is the development of a guide for small and medium-sized companies on ways to solve company conflicts by actively involving and engaging in a dialogue with the company's stakeholders.

GP 29**Access to remedy**

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.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

- The state-based grievance mechanism includes the operational-level as part of its complaints-handling process. When a complaint is approved for further consideration, the Mediation and Grievance Mechanism for Responsible Business Conduct encourages the parties (petitioner and respondent) to resolve the matter themselves. This serves to create the basis for a dialogue between the parties. If the parties succeed in resolving the matter on their own, the Institution has no further involvement. The parties must simply notify the Mediation and Complaints-Handling Institution for Responsible Business Conduct within three months from submission of the complaint to indicate whether or not they have found a solution. Matters resolved between the parties are not subject to any form of publication by the Institution.
- The two online tools which help companies to integrate due diligence into their own company and into the businesses of their sub-suppliers, the CSR Compass and the UN Global Compact Self-Assessment tool, both include guidance on company level grievance mechanisms.

GP 30**Access to remedy**

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.

Initiatives taken or planned as a dedicated measure to implement the UNGPs

- The guide on company conflicts resolution in the CSR Compass promotes the active involvement and engagement of the company's stakeholders.

GP 31**Access to remedy*****Effectiveness criteria for non-judicial grievance mechanisms***

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State based and non-State-based, should be:

- Legitimate:
- Accessible:
- Predictable:
- Equitable:
- Transparent:
- Rights-compatible:
- A source of continuous learning:

Operational-level mechanisms should also be:

- Based on engagement and dialogue:

Status in Denmark

(initiatives implemented before the UN ratification of the Guiding Principles)

- The Danish Mediation and Complaint Handling Institution has been established in accordance with the international criteria for non-judicial mediation and grievance mechanisms (UNGPs) as well as the criteria for national contact points as stated in the OECD Guidelines for Multinational Enterprises (Visibility, Accessibility, Transparency, Accountability):
 - a) To ensure legitimacy the institution has been established in Danish law
 - b) Anyone can submit a complaint to the Mediation and Complaints-Handling Institution
 - c) A description of the complaint handling procedure has been made public along with an indicative timeframe for each step in the process
 - d) The chairman shall assist the weaker party that may require special support, but also assist companies, for example, so that the chairman can help to conclude a case quickly and in a way that also takes the company's situation into account. The Mediation and Complaints-Handling Institution for Responsible Business Conduct may allocate advisers to one or both parties. The purpose is to ensure that the mediation outcome is in the interests of both parties.
 - e) The institution will inform the public of the cases the institution is handling. For every step in the case handling the institution will make a statement which will be made publicly available on the institution's website. Information from a case is subject to the access to information act once the case has been concluded. Finally, the Institution will prepare an annual report that is published and also discussed with the Council for Corporate Social Responsibility and the OECD's Investment Committee, in order to improve the work of the Institution.
 - f) The purpose of the institution is to help solve conflicts in accordance with the OECD Guidelines for Multinational Enterprises.
 - g) In addition to considering concrete incidences of infringement, the Mediation and Complaints-Handling Institution also has the object of promoting the implementation of the OECD Guidelines for Multinational Enterprises, and compliance by Danish companies, authorities and organisations. The Mediation and Complaints-Handling Institution will also conduct activities that support the CSR efforts of Danish companies, authorities and organisations, for example as guidance in relation to the consideration of concrete cases, or in information and education activities. The institution will also work with other national contact points and the OECD Investment Committee in terms of concrete complaint handling as well as promotional activities.
 - h) Dialogue and mediation play a central role in the complaint handling.

Danish National Action Plan – implementation of the UN Guiding Principles on Business and Human Rights

2013/14:9

**Enquiries regarding the publication
can be addressed to**

Danish Business Authority
Dahlerups Pakhus
Langelinje Allé 17
2100 Copenhagen
Denmark

E-mail: samfundsansvar@erst.dk

ISBN (Printed version)

978-87-92985-81-1

ISBN (Electronic version)

978-87-92985-82-8

Layout

e-Types & e-Types Daily

Web

The publication can be downloaded at
samfundsansvar.dk/csr.gov.dk