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Beyond National Action Plans

Policy Trajectory, Instrument Substitution, and the State Duty to Protect in Business and Human Rights, With Indonesia as a Deviant Case

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Abstract: The operationalization of state obligations in business and human rights does not follow a single uniform pattern. National action plans (NAPs) are widely used to operationalize the state duty to protect under the United Nations Guiding Principles on Business and Human Rights (UNGPs). Formal adoption alone, however, cannot explain changes in national governance when policy instruments are renewed, strengthened, discontinued, or replaced. This study analyzes policy trajectories across seven NAP-adopting jurisdictions—the Netherlands, Colombia, Germany, Chile, Kenya, Thailand, and Japan—treating South Africa as a negative case and Indonesia as a deviant case of instrument substitution. It applies a normative-comparative legal approach, functional equivalence, document-based policy trajectory analysis, and directed content analysis to reconstruct changes in instruments, institutional ownership, monitoring, review, and participation, based on evidence verified through 30 June 2026. The findings indicate non-linear trajectories: iterative institutionalization, regulatory hardening, renewal lapse, incremental formalization, non-NAP pathway, and instrument substitution. From these trajectories, five analytical governance conditions are reconstructed: the primacy of functional substance over documentary status; continuity of institutional ownership; testability through measurable commitments, monitoring, and review; traceable meaningful participation; and a component-sensitive reading of resource constraints. Indonesia suggests that replacing an instrument can strengthen formal authority and governmental coordination while also shifting institutional ownership and participatory continuity. The article positions policy trajectory and instrument substitution as auditable analytical categories, moving the assessment of business and human rights governance beyond the mere existence of a document or the ranking of NAP performance.

Keywords: business and human rights; national action plan; state duty to protect; policy trajectory; instrument substitution.

1. Introduction

The United Nations Guiding Principles on Business and Human Rights (UNGPs) establish the state duty to protect, the corporate responsibility to respect, and access to remedy as three interrelated pillars. Pillar I specifically articulates the state's obligation to prevent, investigate, punish, and redress human rights abuses by third parties through effective policy, legislation, regulation, and adjudication ([Office of the High Commissioner for Human Rights \(OHCHR\), 2011](#)). Within the architecture of the UNGPs, the duty to protect under Pillar I connects to the state's obligation to ensure access to remedy under Pillar III; the two are not properly treated as disconnected domains ([Office of the High Commissioner for Human Rights \(OHCHR\), 2011](#)). General Comment No. 24 of the Committee on Economic, Social and Cultural Rights (CESCR) affirms that the duty to protect requires both effective prevention and victims' access to remedy, including legal frameworks that mandate human rights due diligence in relevant circumstances ([Committee on Economic Social and Cultural Rights, 2017](#)).

National action plans (NAPs) on business and human rights subsequently developed as a policy strategy for translating the UNGPs into national governance. The guidance of the United Nations Working Group defines a NAP as an evolving policy strategy and emphasizes four essential criteria: grounding in the UNGPs, responsiveness to national context, inclusiveness and transparency, and periodic review and updating ([UN Working Group on Business and Human Rights \(UNWG\), 2016](#)). That guidance is important, but the existence of a document cannot be treated as automatic evidence that state obligations have been discharged.

Criticism of NAPs has developed since the first generation. de Felice and Graf show that NAP effectiveness requires gap analysis, whole-of-government engagement, multistakeholder participation, sustained monitoring, clear commitments, deadlines, and capacity building ([de Felice & Graf, 2015](#)). Early practice instead revealed wide scope for improvement ([de Felice & Graf, 2015](#)). Cantú Rivera argues that the NAPs available had produced little in the way of more effective protection, particularly on legislative reform and access to remedy ([Cantú Rivera, 2019](#)). In the European Union, recurring weaknesses include the absence of indicators and benchmarks, inadequate monitoring, and a failure to construct an appropriate mix of voluntary and mandatory instruments ([Augenstein et al., 2018](#)).

More recent literature reinforces these criticisms while also indicating the potential of NAPs as a learning mechanism. An analysis of 25 countries found relatively complex deliberative processes but still recorded weak inclusion of vulnerable groups and few explicit indicators and targets ([O'Brien & Ford, 2019](#)). An evaluation of Poland's NAPs underscores the need for baseline assessment, milestones, performance indicators, and inclusive processes so that progress can be compared over time ([Kilanowski, 2024](#)). Studies of Finland and Spain likewise indicate that human rights indicators can improve NAP effectiveness when they are linked to clear objectives and monitoring processes ([Avellanda San Antonio, 2023](#)). The experience of Peru, by contrast, suggests that multistakeholder dialogue can become a policy strength when the state genuinely provides deliberative space for actors who previously distrusted one another ([Fiestas, 2024](#)).

This body of scholarship reveals three gaps. First, most research still focuses on the quality of a given NAP or on its drafting process rather than on the trajectory of instrument change and the governance conditions that can be reconstructed from comparative patterns across jurisdictions. Second, the institutional, coherence, participation, and remedy dimensions are often analyzed separately, even though the

business and human rights field operates through domestic–transnational networks involving state institutions, corporations, civil society, and hybrid mechanisms (O'Brien & Ford, 2019). Third, the literature has addressed the complementarity of NAPs and binding instruments, and the capacity of NAPs to drive regulatory change (Blackwell & Meulen, 2016; Hampton, 2019). This does not yet sufficiently explain what happens when a state replaces its policy instrument with another that alters institutional ownership, binding force, and the participatory record.

Within its theoretical framework, this article treats state obligations under international human rights law as the primary foundation. The duty to protect is not merely an obligation to issue a document but a standard of state conduct for controlling the risk of abuse by private actors and for providing avenues of remedy (Committee on Economic Social and Cultural Rights, 2017). At the middle-range level, experimentalist governance and multilevel governance explain the need for coordination, learning, measurement, revision, and accountability in governance in which authority is dispersed (O'Brien et al., 2022; O'Brien & Ford, 2019; Ruggie, 2014). At the applied level, the article uses functional equivalence, document-based policy trajectory analysis, directed content analysis, and an audit of meaningful participation to compare institutional functions that carry different names but serve equivalent purposes.

Indonesia offers an important case. In 2017 the Komisi Nasional Hak Asasi Manusia [National Human Rights Commission] (Komnas HAM) adopted a national action plan on business and human rights through Peraturan Komisi Nasional Hak Asasi Manusia Nomor 001 Tahun 2017 tentang Pengesahan Rencana Aksi Nasional Bisnis dan Hak Asasi Manusia [Regulation of the National Human Rights Commission No. 001 of 2017 on the Adoption of the National Action Plan on Business and Human Rights]. Peraturan Presiden Republik Indonesia Nomor 60 Tahun 2023 tentang Strategi Nasional Bisnis dan Hak Asasi Manusia [Presidential Regulation of the Republic of Indonesia No. 60 of 2023 on the National Strategy on Business and Human Rights], by contrast, places the Strategi Nasional Bisnis dan Hak Asasi Manusia [National Strategy on Business and Human Rights] (Stranas BHAM) within an executive instrument governing the obligations of ministries, agencies, and regional governments, the responsibilities of business actors, access to remedy, and the establishment of the Gugus Tugas Nasional [National Task Force] (GTN) and the Gugus Tugas Daerah [Regional Task Force] (GTD). That replacement was not merely a change of title but a change in the policy vehicle and a shift in institutional ownership—from Komnas HAM in 2017 to the Government of the Republic of Indonesia in 2023. This transformation marks the trajectory as one of instrument substitution. This conceptual development aligns with five substantive principles: participation as a manifestation of the modern social contract, policy coherence with the UNGPs, accountability of responsible government officials, victim-rights-based remedy alongside the persistent weakness of the remedy pillar, and ecological and intergenerational justice (Kholis, 2026).

Against these gaps, the study poses three questions. First, how are state obligations operationalized through policy trajectories, instrument change, and institutional continuity? Second, what analytical governance conditions can be reconstructed from trajectory patterns and verifiable participatory records? Third, how does instrument substitution in Indonesia test and enrich that reconstruction? The objectives are to map policy trajectories comparatively, to use four analytical dimensions as a diagnostic lens without ranking, to reconstruct auditable analytical conditions, and to assess the implications for business and human rights policy design in Indonesia.

2. Methods

This is normative legal research with a comparative approach. The comparison applies the rule of functional equivalence: what is compared is not the name of a ministry or agency, or the form of an instrument, but the function performed to resolve equivalent socio-legal problems (Husa, 2015; Samuel, 2014). The analytical logic moves from the normative construction of the UNGPs to practice across jurisdictions and back to a reconstruction of analytical governance conditions tested through the Indonesian case.

The comparative loci were selected purposively using a maximum-variation design. The seven countries with a NAP or comparable instrument are the Netherlands, Colombia, Germany, Chile, Kenya, Thailand, and Japan. South Africa is treated as a negative case because it has no NAP in the register used, while Indonesia is treated as a deviant case because it underwent instrument substitution. The cases span four regions and vary in legal tradition, level of policy development, and significance of the extractive sector. The observation window opens with the adoption of the Netherlands' first NAP on 10 December 2013 and includes the approval of Chile's third NAP on 29 January 2026; evidence of implementation, review, and institutional change was verified through 30 June 2026.

Data requirements cover legal instruments, NAP texts, drafting documents, monitoring reports, institutional information, and evidence of remedy. Official instruments are used to establish formal facts such as dates, mandates, targets, and structures; reports by human rights institutions, civil society organizations, and professional bodies, together with scholarly articles, are used to test implementation. The evidentiary rules produce no score: formal facts must be traceable to primary sources or authoritative registers, while the quality of implementation is triangulated with independent sources where these are available. Where sources conflict, primary sources take priority for formal facts, and differences in the assessment of implementation are reported. The absence of an open record is marked not verified (NV) rather than treated as evidence that an action did not occur.

The four analytical dimensions are not the *four official criteria* of the United Nations Working Group, and they produce no ranking. The constructs used here derive from the UNGPs, the United Nations NAP guidance, CESCR General Comment No. 24, and the NAP evaluation literature. The four essential criteria in the United Nations guidance are grounding in the UNGPs, responsiveness to context, inclusiveness and transparency, and periodic review and updating (UN Working Group on Business and Human Rights (UNWG), 2016). The study translates these, together with other normative sources, into diagnostic questions on stewardship,

Table 1. Diagnostic Analytical Framework of the Four Dimensions

Dimension	Diagnostic Question	Evidence Sought	Verification Rule
Clarity of stewardship	Who holds the mandate, and how is coordination sustained?	Mandate; responsible officer; coordination; reporting and review.	Formal facts from official sources; implementation cross-checked. No scoring.
Policy coherence	Are commitments connected to targets, cross-sectoral action, monitoring, and review?	Targets; deadlines; indicators; integration of programs and regulation; monitoring.	A record is reported where it is documented; absence of evidence is not scored.
Meaningful participation	Is there a record of being heard, being considered, and receiving an explanation?	Consultation; comments on drafts; response matrix; affected groups.	The three records are tested separately and marked not verified where open evidence is insufficient.
Access to remedy	Are mechanisms available, accessible, and followed up?	Judicial and non-judicial mechanisms; barriers; follow-up; reparation.	Formal availability is distinguished from implementation and from outcome.

Source: Authors' construction from the UNGPs, the United Nations NAP guidance, and CESCR General Comment No. 24 (2026).

coherence, participation, and remedy (Committee on Economic Social and Cultural Rights, 2017).

Table 1 produces no score. NV means only that open evidence is not yet sufficient; it does not prove that an event did not occur. Participatory effort is examined through three rights affirmed by the Constitutional Court: the right to be heard, the right to be considered, and the right to receive an explanation. These three rights underpin evidentiary questions rather than operating as a norm binding on other jurisdictions (Putusan Mahkamah Konstitusi Republik Indonesia Nomor 91/PUU-XVIII/2020 [Constitutional Court of the Republic of Indonesia Decision No. 91/PUU-XVIII/2020], p. 393). This functional translation is linked to the requirement of effective and meaningful participation in business and human rights policy (Committee on Economic Social and Cultural Rights, 2017).

The analysis proceeds in two stages. In the first, the policy trajectory is reconstructed from the sequence of instruments, changes in binding force, institutional ownership, monitoring, and review through 30 June 2026. The results are presented in Table 2 as the principal empirical basis. In the second, the four dimensions are read diagnostically. Table 3 audits only the participatory record and does not determine trajectory categories or composite scores. Functional equivalence is used to compare equivalent institutional functions. The use of targets, indicators, monitoring, and review as process records follows the NAP evaluation literature (Augenstein et al., 2018; de Felice & Graf, 2015). The sequence of events is not by itself taken as evidence of a causal relationship.

3. Results and Discussion

3.1. Policy Trajectories and Institutional Continuity

The principal analysis begins with policy trajectory rather than with scoring. The age, generation, legal form, and evaluation mechanism of each instrument differ, so a comparison that freezes a single point in time risks obscuring institutional change. Table 2 reconstructs auditable events through 30 June 2026: when an instrument was created or renewed, who owns it institutionally, how monitoring and review are conducted, and whether binding force changed. The trajectory categories are descriptive and do not constitute a ranking of compliance.

Table 2 indicates that implementation of the UNGPs does not follow a single linear path. The Netherlands, Chile, Thailand, and Japan display renewal within the same instrument family but with differing evaluation patterns. Germany displays regulatory hardening after a voluntary target failed on a measured basis. Colombia shows repeated adoption followed by a renewal lapse. Kenya shows incremental formalization toward an implementation committee. South Africa remains a non-NAP case and, at the international level, has supported the binding-instrument process without being treated as a domestic substitute equivalent to a NAP. Indonesia replaced both the type of instrument and its institutional ownership. In this context, the variety observed reflects differences in trajectory rather than an ordering from better to worse.

These findings shift the center of analysis from whether a state possesses a NAP to how its instruments, authority, and evaluation mechanisms change. Germany shows an auditable relationship among targets, monitoring, verified failure, and regulatory hardening (Federal Foreign Office of Germany, 2020; O'Brien et al., 2022). Indonesia displays a different pattern. Peraturan Presiden Republik Indonesia Nomor 60 Tahun 2023 and Peraturan Menteri Hukum dan Hak Asasi Manusia

Table 2. Policy Trajectories, Instrument Chronology, and Institutional Continuity in Business and Human Rights across Nine Jurisdictions

Jurisdiction	Policy Chronology Through 30 June 2026	Institutional Architecture and Change	Policy Trajectory Character	References
Netherlands	The first national action plan (NAP) was adopted on 10 December 2013. A national baseline assessment was published in 2020 and was followed by a government response. The government decided on a new NAP in July 2022, and the second NAP was published on 8 November 2022 for the period 2022–2026.	NAP revision is coordinated by the Ministry of Foreign Affairs together with an interministerial working group. The second NAP contains 33 action points; progress must be reported annually to parliament and discussed every two years with a focus group of business, civil society, and expert representatives. This indicates the institutionalization of a baseline–revision–monitoring–feedback cycle.	Iterative institutionalization: the instrument is renewed through evaluation and through increasingly structured monitoring and feedback mechanisms, rather than through the mere issuance of a second NAP.	Government of the Netherlands (2022) ; National Action Plans on Business and Human Rights (2024)
Colombia	The first NAP was launched in December 2015 for 2015–2018; the second was published on 10 December 2020 for 2020–2022. In July 2024 the government issued a policy memorandum on business and human rights and continued a national baseline assessment. On the verifiable evidence within the study window, no third NAP has been adopted.	Drafting of the first NAP was led by the Presidential Advisory Office for Human Rights, with an intergovernmental working group and a multistakeholder steering committee. A national coordination body involving more than 90 stakeholders was formed during the second NAP process. Institutional continuity therefore exists, but instrument continuity lapsed after 2022.	Repeated adoption with a renewal lapse: Colombia indicates that issuing a second-generation NAP does not by itself guarantee continuity of the next policy cycle.	National Action Plans on Business and Human Rights (2025b)
Germany	The Federal Cabinet adopted the NAP on 21 December 2016. The government conducted monitoring from 2018 to 2020 on the application of human rights due diligence. In 2020, only around 13–17% of companies were assessed as meeting the requirements, far below the minimum target of 50%. The Bundestag then passed the Supply Chain Due Diligence Act on 11 June 2021, and the law entered into force on 1 January 2023.	Monitoring is overseen by the Interministerial Committee on Business and Human Rights, which involves 10 ministries, and the monitoring process is coordinated through the Federal Foreign Office. What matters analytically is not a German score but the presence of an evidentiary chain: target, measurement, verified failure, and regulatory hardening.	Regulatory hardening: target, measurement, verified failure, and binding regulation. Germany is the clearest case in this set of a shift from policy commitment to legal obligation after a voluntary target failed on a measured basis.	Federal Foreign Office of Germany (2020, 2021) ; O'Brien et al. (2022)
Chile	The first NAP was launched on 21 August 2017. The second was published on 4 March 2022 and ran to 2025. On 29 January 2026 the interministerial committee approved the third NAP for 2026–2029, containing 68 actions. On 23 June 2026 the Diplomatic Academy of Chile held a training session on human rights and business in trade policy, delivered by a representative of the Subsecretaría de Relaciones Económicas Internacionales [Undersecretariat for International Economic Relations] (SUBREI). The Academy described the session as responding to commitments under the national action plan on human rights and business, without identifying the plan generation from which those commitments derive.	The Comité Interministerial para el Plan de Acción Nacional [Interministerial Committee for the National Action Plan] (CIPAN), established through Decreto Supremo No. 169/2017 [Supreme Decree No. 169 of 2017], is responsible for NAP governance, coordinating formulation, implementation, evaluation, and interministerial coherence. The third NAP process in 2025 involved 1,281 participants and generated 2,577 responses. Evidence available through 30 June 2026 documents continuing NAP-linked activity, but does not establish that the third plan has become the operative reference: the published action commitments of SUBREI remain those recorded under the second plan (2022–2025). The formal administrative status of the third plan is in any case distinct from the date of CIPAN approval.	Cross-generational institutionalization: Chile shows continuity from the first through the third NAP, alongside strengthening reporting, participation, and interministerial coordination mechanisms.	Academia Diplomática de Chile Andrés Bello (2026) ; Ministry of Justice and Human Rights of Chile (2026) ; National Action Plans on Business and Human Rights (2025a) ; Subsecretaría de Relaciones Económicas Internacionales (2026)
Kenya	A NAP was published by the Office of the Attorney General on 24 July 2019 and was formally approved by the Cabinet in 2021; sources diverge on the date, with the Kenya National Commission on Human Rights (KNCHR) recording 27 February 2021 and DIHR recording April 2021. The NAP was presented to Parliament in July 2021 as dissemination rather than as formal approval. A multistakeholder implementation committee was inducted in October 2021, and its work plan was approved and validated in April 2022.	Drafting was coordinated by the Office of the Attorney General and Department of Justice together with KNCHR. Following Cabinet approval, a multistakeholder NAP implementation committee was established; the subsequent implementation plan sets out actions, indicators, responsible agencies, partners, timelines, and estimated budgets.	Incremental formalization toward institutionalized implementation: the analytical value of Kenya lies in the movement from a participatory drafting process to a permanent implementing structure, not in a participation score.	Government of Kenya (2019) ; The National Action Plan on Business and Human Rights in Kenya (n.d., 2023) ; National Action Plans on Business and Human Rights (2026b)
Thailand	The Cabinet adopted the first NAP on 29 October 2019 for the period 2019–2022. The second NAP was adopted on 8 September 2023 for the period 2023–2027.	Drafting and implementation of the second NAP are led by the Rights and Liberties Protection Department of the Ministry of Justice, under the supervision of a sub-steering committee. The second NAP systematically lists activities, responsible agencies, implementation periods, and indicators.	Continuous renewal: Thailand moved from the first to the second generation without a lengthy instrument gap and retained an action–responsibility–indicator structure.	National Action Plans on Business and Human Rights (2026c)

Jurisdiction	Policy Chronology Through 30 June 2026	Institutional Architecture and Change	Policy Trajectory Character	References
Japan	The first NAP was launched on 16 October 2020 for the period 2020–2025. Between 2022 and May 2025, the interministerial committee published four annual implementation reviews, covering the first through the fourth year of the plan. Following review and consultation, the government formally revised the NAP on 24 December 2025. Because the first NAP ran on a five-year cycle to the end of 2025, the fifth-year review was absorbed into the revised text rather than issued as a standalone report, so the revised NAP serves as both the culmination of the five-year review and the succeeding policy roadmap.	NAP revision and implementation are managed through an interministerial committee and supported by a roundtable and working group serving as a continuing forum for dialogue among government, experts, and stakeholders. During the revision process, the roundtable and working group discussed the revision framework in November 2024 and the draft revision in July 2025. This was followed by public comments in October 2025 and adoption of the revised NAP on 24 December 2025. The dialogue mechanism continued after the revision, with 11 roundtable and eight working group meetings held through April 2026. There is a traceable institutional record running from implementation to annual review, stakeholder dialogue, and revision.	Review, learning, and revision: Japan displays a policy-learning trajectory that is more informative than a score assigned to the design of the 2020 NAP.	Ministry of Foreign Affairs of Japan (2025, 2026); National Action Plans on Business and Human Rights (2026a)
South Africa	Through 30 June 2026, there is no business and human rights NAP that can be assessed in the register used. South Africa is not, however, a case of no policy: it was among the sponsors of draft resolution A/HRC/26/L.22/Rev.1 in 2014, which produced Resolution 26/9 initiating the process of drafting a binding international instrument.	There is no governmental NAP unit that can be analyzed as a national instrument. South African support for a draft binding international instrument is recorded as an institutional position reflecting a different institutional pathway at the international level, rather than as a domestic substitute equivalent to a NAP.	Alternative instrument pathway and negative case: this case tests the assumption that NAP adoption is the only trajectory for implementing the UNGPs. The absence of a NAP should not be equated with the absence of business and human rights policy.	UN Human Rights Council (2014)
Indonesia	In 2014 Komnas HAM and the Lembaga Studi dan Advokasi Masyarakat [Institute for Policy Research and Advocacy] (ELSAM) began developing a NAP framework; in 2017 Peraturan Komnas HAM Nomor 001 Tahun 2017 was issued. That instrument did not acquire full executive binding force. The government subsequently developed a national strategy through the Ministry of Law and Human Rights; following a consultation process, the President enacted Peraturan Presiden Republik Indonesia Nomor 60 Tahun 2023 on 26 September 2023. In 2024 the working procedures of the GTN and GTD were specified through Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 13 Tahun 2024 tentang Tata Kerja Gugus Tugas Nasional dan Gugus Tugas Daerah Bisnis dan Hak Asasi Manusia [Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 13 of 2024 on the Working Procedures of the National and Regional Task Forces on Business and Human Rights].	A substantive change occurred in institutional ownership, from the national human rights institution together with civil society to the executive branch; there was a simultaneous change in form, binding force, implementing structure, and the range of implementing actors, from the Komnas HAM NAP to Stranas BHAM with the GTN and GTD. The 2017 record is not superseded merely because international registers count 2023 as the official instrument of Indonesia.	Instrument substitution: this is the most distinctive trajectory in the case set, in that replacing the instrument altered the source of authority and the institutional architecture without automatically carrying over the participatory capital of the preceding instrument.	National Action Plans on Business and Human Rights (2026d)

Source: Official instruments and institutional records as cited in each row, data processed by the authors (2026).

Note. The table assigns no performance ranking. The unit of analysis is the policy trajectory, that is, the sequence of instrument change, institutional ownership, monitoring and review mechanisms, and change in binding force. The Danish Institute for Human Rights (DIHR) database is used to triangulate chronology and instrument status. Trajectory character is an analytical category derived from chronological and institutional evidence, not a compliance score. All events are bounded by evidence available through 30 June 2026.

Republik Indonesia Nomor 13 Tahun 2024 strengthened the executive basis and the GTN and GTD structure. Compared with the 2017 process, which is documented through the involvement of Komnas HAM and civil society, the center of authority — the source of an instrument’s legal power, as distinct from its institutional ownership — also changed. Participatory continuity is therefore an aspect that must be verified and maintained rather than assumed to transfer automatically (National Action Plans on Business and Human Rights, 2026d). It is at this point that instrument substitution acquires an auditable chronological and institutional basis.

3.2. Auditing the Record of Meaningful Participation as a Secondary Analysis

Once the policy trajectory has been reconstructed, participation is examined as a secondary analysis: whether there is a public record that stakeholders were heard, that their input was considered, and that the results of that consideration were explained to them. The three elements of the Constitutional Court decision are

Table 3. Audit of the Record of the Three Elements of Meaningful Participation

Jurisdiction	Record of Being Heard	Record of being Considered	Record of Explanation	Audit References
Netherlands	Draft consultations in July 2021 and January 2022; local dialogue through embassies.	Input was collected and processed; the response to the national baseline assessment explains points of agreement and disagreement and how these were integrated.	The response to the national baseline assessment is available; a response matrix covering all consultation input was not found.	National Action Plans on Business and Human Rights (2024)
Colombia	A national forum with more than 100 participants, three regional forums, and online consultation; the national coordination body for the second national action plan (NAP) involved more than 90 actors.	Meetings and workshops examined recommendations; a record of decisions on each recommendation was not found.	Not verified (NV): a response matrix, or reasons for acceptance and rejection, was not found.	National Action Plans on Business and Human Rights (2025b)
Germany	The national baseline assessment used three rounds of consultation; the NAP process included hearings.	Input shaped the issue mapping; the final draft was prepared internally without a planned final comment phase.	NV: a public response matrix on the final draft was not found.	National Action Plans on Business and Human Rights (2024); O'Brien et al. (2022)
Chile	The third NAP process in 2025 involved 1,281 participants and 2,577 responses.	Official sources state that stakeholder contributions were incorporated into the drafting process.	NV: a response matrix for each item of input was not found.	Ministry of Justice and Human Rights of Chile (2026)
Kenya	Nine three-day regional consultations; Indigenous communities were consulted separately.	Results were synthesized into a report and analyzed as the basis for the NAP; thematic groups sharpened the recommendations.	NV: reasoned feedback to participants was not found.	National Action Plans on Business and Human Rights (2026b)
Thailand	Consultation on the second NAP from 2 August to 19 September 2022 through questionnaires, workshops, and interviews.	Feedback was collected; open sources do not indicate which input altered the draft.	NV: a response matrix or reasoned feedback was not found.	National Action Plans on Business and Human Rights (2026c)
Japan	A roundtable and working group, and public comments from 1 to 30 October 2025; 228 submissions containing 514 items of opinion after sorting by substance.	The e-Gov portal states that the draft was amended on the basis of input.	The results of the public comments and the government's reasoning on them were published on 19 December 2025.	E-Gov Public Comments (2025); Ministry of Foreign Affairs of Japan (2025)
Indonesia	The 2017 NAP proceeded through public consultation; for Stranas BHAM, consultation was held on 14 October 2021, with an online input channel and webinars covering 33 provinces.	The draft was open for input; a response matrix linking input to the final text was not found.	NV: an explanation of the acceptance or rejection of input was not found.	National Action Plans on Business and Human Rights (2026d)

Source: Institutional consultation records and audit databases as cited in each row, data processed by the authors (2026).

Note. South Africa is not included because it has no governmental NAP process to serve as the unit of testing, and it continues to function as a negative case in Table 2. Not verified (NV) denotes that public evidence is not yet sufficient; it is not evidence that an event did not occur.

applied through functional translation, as set out in the Methods. Table 3 assigns no rating of full, partial, or weak participation (Putusan Mahkamah Konstitusi Republik Indonesia Nomor 91/PUU-XVIII/2020; Committee on Economic Social and Cultural Rights, 2017).

Table 3 indicates that consultation is easier to trace than consideration and explanation. Japan provides the most complete example in the most recent period: 228 public comments, amendment of the draft on the basis of input, and publication of the results and reasons in December 2025 (E-Gov Public Comments, 2025; Ministry of Foreign Affairs of Japan, 2025). This finding does not alter the trajectory categories in Table 2. It indicates only a participatory quality that needs to be maintained when an instrument is revised or replaced. Participation is therefore read as an auditable governance record rather than as a composite score.

3.3. Reconstructing Five Analytical Governance Conditions

The reconstruction of five analytical governance conditions rests on two tables: [Table 2](#) as the principal evidence of policy trajectory, and [Table 3](#) as a secondary audit of the participatory record. The five conditions formulated here are not conditions for the validity of a norm, rules of positive law across states, or a ranking instrument. The first three conditions are empirical-analytical inferences from the trajectories; the fourth is an operational benchmark reached through functional translation; and the fifth is an interpretive constraint.

The first condition is the primacy of functional substance over documentary status: the existence of a NAP does not automatically demonstrate fulfillment, and its absence is not sufficient to conclude that business and human rights policy is absent. South Africa illustrates a non-NAP pathway, while Germany shows how measurable targets can reveal failure and be followed by regulatory hardening, so that function and policy change matter more than the label of the instrument ([Hampton, 2019](#)). The second condition is continuity of institutional ownership. The renewals in the Netherlands, Chile, Thailand, and Japan largely preserved the coordinating center and the review mechanism, whereas Indonesia shifted the legal form, the center of authority, and the implementing architecture. The literature indicates that business and human rights governance remains anchored in domestic processes even when connected to transnational networks ([O'Brien & Ford, 2019](#)). The third condition is testability through measurable commitments, monitoring, and review. The German case provides the clearest record in this set of a sequence of target-setting, monitoring, verified failure, and policy change, without treating the NAP as the sole cause of binding regulation ([Augenstein et al., 2018](#); [O'Brien et al., 2022](#)).

The fourth condition is traceable meaningful participation. [Table 3](#) examines whether stakeholders were heard, whether their input was considered, and whether the results of that consideration were explained. The Constitutional Court decision is used as an operational benchmark through functional translation (Putusan Mahkamah Konstitusi Republik Indonesia Nomor 91/PUU-XVIII/2020, p. 393; (Committee on Economic Social and Cultural Rights, 2017). The fifth condition is a component-sensitive reading of resource constraints. The article does not use income classification as a proxy for fiscal capacity and draws no causal relationship; resource limitation is relevant only where the burden of a component and its fiscal data can be demonstrated. This approach is consistent with the need for targets, allocation of responsibility, means, participation, and monitoring, and with the findings that fiscal capacity must be measured explicitly and that it does not automatically produce public outcomes without adequate governance ([Committee on Economic Social and Cultural Rights, 2017](#); [Fathurrahman et al., 2026](#); [Rai & Priambodo, 2026](#)). These five conditions help explain the quality and consequences of a policy trajectory. In this sense, the study suggests that policy trajectory and instrument substitution serve as distinguishing categories for reading the governance of business and human rights NAPs.

3.4. Indonesia as a Case of Instrument Substitution

The Indonesian case most clearly tests institutional continuity. The process involving Komnas HAM and ELSAM from 2014 onward culminated in Peraturan Komnas HAM Nomor 001 Tahun 2017 following public consultation. The government subsequently moved the policy center to the executive pathway through Peraturan Presiden Republik Indonesia Nomor 60 Tahun 2023. The working procedures of the GTN and

GTD were then specified through Peraturan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor 13 Tahun 2024. In preparing Stranas BHAM, public consultation was held on 14 October 2021, and an online input channel remained open until 21 October 2021. Webinars were also held involving regional governments from 33 provinces. The audited open sources, however, do not yet show a response matrix for each item of input.

A review of instrument substitution differs from a review of ordinary revision. In the Netherlands, Chile, Thailand, and Japan, instruments were renewed within the NAP family through relatively continuous coordinating mechanisms. Indonesia differs significantly because it replaced the legal form, the center of authority, and the implementing architecture. Strengthening formal binding force does not automatically transfer participatory continuity and institutional knowledge. As noted, this governance is anchored in domestic processes even where it connects to transnational networks, so a change of mandate bears directly on continuity (O'Brien & Ford, 2019). It is here that trajectory change and instrument substitution occur, in a way not captured by a simple sequence from one NAP to the next.

In the Indonesian case, the substantive consequences of the institutional trajectory are most visible in the remedy dimension in the extractive sector. Research on Indonesia and the Association of Southeast Asian Nations indicates that critical mineral development must account for justice, not only for growth and supply (Qurbani et al., 2021). Indonesian mining regulation also continues to face problems with the recognition and protection of Indigenous peoples, including reclamation and post-mining obligations (Jamin et al., 2023). A study of community responses to the nickel industry indicates that local conflict and negotiation are closely connected to the social impacts of mining (Hudayana et al., 2020). Comparatively, sustainability-oriented mineral policy requires indicators, transparency, and long-term processes to build trust (Janikowska & Kulczycka, 2021). This context explains why remedy in business and human rights cannot be confined to individual compensation. A framework linking business, human rights, and the environment encourages the integration of ecological impact with human rights protection, particularly where environmental damage affects health, livelihoods, and future generations (Martin-Ortega et al., 2022). This reinforces the function of substantive context in explaining the consequences of the institutional trajectory in Indonesia.

From the corporate side, human rights due diligence provides a mechanism for identifying, preventing, mitigating, following up on, and communicating human rights impacts (McCorquodale et al., 2017). Corporate commitment may nonetheless remain selective and vague, while the UNGPs continue to place the state as the primary bearer of the legal obligation to protect human rights (Favotto & Kollman, 2022). Peraturan Presiden Republik Indonesia Nomor 60 Tahun 2023 would therefore be stronger if the responsibilities of business actors were connected to measurable indicators, supervisory mechanisms, and remedy pathways that rights holders can use. CESCER emphasizes that judicial and non-judicial mechanisms must be complementary and accessible, and must be capable of producing enforceable reparation (Buhmann, 2023; Committee on Economic Social and Cultural Rights, 2017).

4. Conclusion and Recommendations

The operationalization of state obligations in business and human rights does not follow a single uniform pattern. Comparison across jurisdictions reveals several policy trajectories: iterative institutionalization in the Netherlands, Chile, Thailand,

and Japan; regulatory hardening in Germany; a renewal lapse in Colombia; incremental formalization in Kenya; a non-national action plan (NAP) pathway in South Africa connected to support for the binding-instrument process at the international level; and instrument substitution in Indonesia. The existence of a NAP is not sufficient for assessing the development of state obligations. What becomes decisive is instrument change, institutional continuity, monitoring and review mechanisms, and the relationship between policy and regulatory hardening. Accordingly, the four analytical dimensions and the participation audit are used as diagnostic tools for reading the quality of a trajectory and not as a basis for ranking states.

Five analytical governance conditions are reconstructed: (1) the primacy of functional substance over documentary status; (2) continuity of institutional ownership; (3) policy testability through targets, monitoring, and review; (4) meaningful participation that leaves a record that stakeholders were heard, that their input was considered, and that they received an explanation; and (5) a component-sensitive reading of resource constraints. The first three conditions are empirical-analytical inferences from policy trajectories. The fourth functions as an operational benchmark through functional translation. The fifth is an interpretive constraint, so that resource limitation is not used as a general justification for weak governance.

Indonesia enriches the comparative results through the phenomenon of instrument substitution. The transition from the NAP adopted by the Komisi Nasional Hak Asasi Manusia [National Human Rights Commission] (Komnas HAM) in 2017 to the national strategy under Peraturan Presiden Republik Indonesia Nomor 60 Tahun 2023 [Presidential Regulation of the Republic of Indonesia No. 60 of 2023] strengthened formal authority and governmental coordination structures, while also relocating institutional ownership. That change suggests that strengthening binding force does not by itself guarantee continuity of participation, institutional knowledge, and previously established networks. Policy trajectory and instrument substitution are categories that can be audited through chronology, changes in authority, binding force, institutional architecture, evaluation mechanisms, and the participatory record, rather than through performance scores across states.

For the Government of Indonesia, implementation and policy renewal following Peraturan Presiden Republik Indonesia Nomor 60 Tahun 2023 should preserve at least four auditable records: (1) clarity of institutional ownership and mandate; (2) targets, indicators, monitoring, and review; (3) documentation of the input received, its consideration, and the explanation given to stakeholders; and (4) follow-up on remedy mechanisms. The Gugus Tugas Nasional [National Task Force] (GTN) and Gugus Tugas Daerah [Regional Task Force] (GTD) should develop open feedback mechanisms, including equivalent instruments suited to the characteristics of each region. In the extractive sector, remedy should connect the restoration of victims' rights with ecological restoration and the protection of Indigenous peoples. Measures of success should be directed toward policy change, the effectiveness of follow-up, and verifiable protection outcomes, rather than toward the number of meetings held or documents produced.

This study retains several limitations. The reconstruction of trajectories rests primarily on documents and therefore does not substitute for the direct experience of rights holders; the small-N purposive design limits generalization; the age and level of development of the instruments differ; and the participation audit captures only records available in the open domain, so that a status of not verified cannot be interpreted as absence. The use of three participation elements drawn from an

Indonesian constitutional decision is likewise a functional translation that requires further testing. Subsequent research should expand the number of cases, adopt longitudinal designs, apply independent coding, incorporate relevant fiscal data, and test whether document-based policy trajectories correspond to the experience of rights holders and the remedy they actually receive.

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This article is a development of the first author's dissertation at the Doctoral Program in Law, Faculty of Law, Universitas Indonesia. The first author was previously involved in the business and human rights national action plan process adopted through Peraturan Komnas HAM Nomor 001 Tahun 2017. To manage the risk of partiality, propositions concerning Indonesia are grounded in verifiable legal instruments and public documents, and the limitations associated with positionality are stated openly.

Declaration on the Use of Artificial Intelligence

Generative artificial intelligence tools were used in preparing this manuscript as aids for literature searching, language editing, condensation, and cross-checking of citations. These tools were not treated as authors or as sources of reference. Data selection, coding, argumentation, findings, and conclusions all remain the responsibility of the authors.

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