



National Action Plans on Business and Human Rights: A Comparative Analysis of Corporate Accountability

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PROLOGUE

It is not common to find practical documents that are so innovative and provide readers with tools for legislative regulation and implementation of public policies related to business and human rights, based on technical knowledge and analysis of concrete experiences. Even more, it is rare to find analyses that incorporate the voices of civil society and those who participated in these processes. Therefore, the document that the reader now holds in their hands is an essential reference for corporate accountability and government obligation to ensure access to justice for serious human rights violations when designing and implementing National Action Plans in this field.

Normative advancements at the regional and international levels in this matter are significant, and among these legal instruments are the National Action Plans on Business and Human Rights. These plans represent a key normative framework for further regulating the actions of businesses and protecting the human dignity of all individuals against systemic abuses of corporate power, especially towards indigenous peoples, human rights defenders, and women, as this research highlights.

In this sense, this report has the value of proposing recommendations that compile the challenges for the development of the Plans through each of the analyzed cases (six countries analyzed), such as the need for practices that allow for monitoring and effective implementation of policies, the determination of measurable scopes and clear goals, disaggregated statistics – specifying groups in vulnerable situations such as indigenous peoples, human rights defenders, or women –, budgetary resources allocation, the imperative need for organizational charts for the distribution of responsibility among each of the actors of each action of the plan, opening spaces for social participation, the urgent need for capacity-building in the field of business and human rights, following legal avenues through extraterritorial obligations and consular assistance, among others.

For many countries, including Mexico, an urgent pending issue is to materialize the plans; that is, effectively achieve capacities within the State to regulate this issue with intelligence and inclusiveness. That's why the relevance of this document, as through the compilation of framework instruments on business and human rights and an important comparative analysis of cases from various Latin American (Peru, Colombia, and Chile) and European (United Kingdom, France, and Germany) experiences, it considers the voices that contributed to each of the Plans in those States, generating a clear guide for the Mexican State and countries in the region to find very important technical recommendations.

The dialogues held in each of the interviews focused on those who experience greater violence due to the lack of corporate regulation and impunity in national and global justice systems, such as women, indigenous peoples, and human rights defenders, allow for the incorporation of valuable perspectives and an updated panorama in the identification of similarities and differences, strengths and weaknesses of each analyzed case.

The document also offers a solid perspective on missteps and some successful decisions generated by each of the six analyzed countries, promoting the possibility of firm progress in their adaptation to the Mexican context in their own national regulation and implementation.

Therefore, I deeply appreciate this research by ProDESC, in collaboration with the Human Rights Clinic of the University of Essex, as it is yet another example of the professionalism, seriousness, and commitment of this Mexican organization, which is an ally for many of us in Europe and other regions of the world. With this report, ProDESC once again takes the lead in strategic and substantive analysis that forms the basis for a defense of human rights with tangible results and allows us to demonstrate (with solid and well-documented arguments) why the demand for corporate accountability is more imperative than ever today.

Dr. Miriam Saage-Maaß
European Center for Constitutional and Human Rights

I. INTRODUCTION & METHODOLOGY

About this report

As of today, June 2022, 30 countries have published at least one National Action Plan (NAP), and 16 are in the process of developing one². Since July of 2021, Mexico belongs in the latter group of countries, despite a previous uncompleted attempt at publishing a NAP from 2015 to 2018.³ The aim of this report is to provide an analysis of the effectiveness of six other countries that have already published one or more NAPs, with a particular focus on three groups of affected people –human rights defenders (HRDs), women, and indigenous groups.⁴

The goal is to provide an insight into the good practices observed in the NAPs' drafting, implementing, and reporting of Chile, Colombia, France, Germany, Peru, and United Kingdom that other countries, and more specifically Mexico, should be taking example of. Additionally, a critical perspective regarding practices that have been proven ineffective and why.⁵

This report is structured to explain not only the information found from the research but provide justification and insight for the decisions taken along the way. The first section is the methodology section which elaborates on the topic of research, desk research methods, and interview process, while also bringing to light issues that the research team faced during this project. It is then followed by the establishment of the section on general framework on business and human rights, which institutes the basis of international and regional human rights treaties, declarations, instruments, documents, and laws that are used to understand, compare, contrast, and identify both violations and appropriate conducts of human rights in business settings at individual, group, and national levels. This section helps incorporate human rights-based approaches to business activities and better addresses the comparison topics of this report. The penultimate section includes the comparative study findings and analysis. Finally, the report concludes with the team's final recommendations.

² Mexico- National Action Plans on Business and Human Rights' (National Action Plans on Business and Human Rights, 2022) <<https://globalnaps.org/country/Mexico/>> accessed 29 October 2021.

³ Secretaría Gobernación, 'Abordar Los Derechos Humanos En Todos Los Espacios Y Entornos: Grupo De Trabajo Sobre Empresas Y #DDHH' (gob.mx, 2022) <<https://www.gob.mx/segob/articulos/abordar-los-derechos-humanos-en-todos-los-espacios-y-entornos-grupo-de-trabajo-sobre-empresas-y-ddhh?idiom=es>> accessed 20 November 2021.

⁴ The term "human rights defenders" will be preferred throughout this report, HRDs from there on, but they are also widely referred to as "human rights activists" and "defenders"

⁵ These will be informed by a human rights policy expert in Mexico, who will help us assess their reasonability and feasibility.

A. Category of the Research & Comparative Choices

The present research embraces a comparative approach because it focuses on the similarities and differences of the NAPs under study. The specific comparative method used in this report is that of few-country comparisons. Following Landman, this type of comparative method is case-oriented as the units of analysis are cases, and attention is paid on similarities and differences among them.⁶ This project makes such comparisons regarding six cases (Chile, Colombia, France, Germany, Peru, and United Kingdom).

This research deploys a qualitative method as it examines the elements that explain the differences and similarities among these public policy instruments, not using quantifiable variables nor statistical methods.

As Landman explains, the comparisons carried out on a small number of countries tend to produce generalizations, based on the use of concepts that are examined in great depth across the cases of study.⁷ The generalizations in this project are the good practices and protection gaps (strengths and weaknesses) found in the NAPs, from which this report will come up with recommendations for the elaboration of the Mexican NAP.

Due to the limitation of team members and what is feasible to produce within the project timeline, this research takes a qualitative approach rather than a quantitative one by limiting the number of NAPs the comparative analysis would be based on. A larger scale analysis would have included more NAPs, however due to time constraints, conducting research on them individually would have been much poorer. The sample chosen in this project aims to represent the diversity present in the realm of action plans around the world. The countries suggested by the project partner reflected that very well, with Peru, Colombia and Chile in Latin America, and the United Kingdom, France, and Germany in the European continent. A more in-depth explanation as to why these countries were chosen is to come in the following paragraphs.

Additionally, this report sets a limit to the number of comparison topics it would focus on. Within International Human Rights Law, and with the nature of the work of the non-governmental organization (NGO) project partner, there were several affected groups to choose from (i.e., migrant workers, persons with disabilities, children, etc.). Keeping the time limitation in mind, as well as the final goal towards Mexico, this study decided to cover three groups: human rights defenders, women, and indigenous peoples. This is because, despite the recent progress with the Escazú Agreement, Mexico's track record of protection of these groups is deeply concerning, with 42 human rights defenders killed in 2021, making Mexico one of the deadliest countries for human rights defenders in the

⁶ Todd Landman, *Studying human rights* (Routledge 2006) 68.

⁷ *Ibid.*

world, second only to Colombia.⁸ The statement of the Working Group on Business and Human Rights after their visit to Mexico highlighted the immense progress needed by the Mexican government to respect, protect and fulfil indigenous communities' rights in cases related to business projects and matters of land.⁹ Finally, the same report mentions critical levels of gender discrimination against women in the employments sector. Therefore, this study expects that by providing an analysis of published NAPs focused on these topics, the type of policies and measures that the upcoming action plan of Mexico needs are put forward.

The chosen countries within this report share many similarities and differences in relation to social culture, economy, and geographical resources. Peru, Colombia, and Chile specifically hold high similarities regarding the Latin American and Spanish-speaking culture due to the close geographical proximity which they have to Mexico, and their common history of colonization.¹⁰ The research team supports that the “Latin American” identity is an important factor for the study's understanding of their public policy adaptation patterns and their levels of success.¹¹ That is, this “common base” holds possibilities that the recommendations suggested throughout the NAPs are, to an extent, constructed to have ideal results when aligned with the nation's social and cultural norms, policy acceptance, and cooperation. Thus, leading to a hypothesised likeliness of success within Mexico.

As for economic and geographical resources and commonalities, according to the Business & Human Rights Resource Centre in their 2021 report titled “Renewable energy (in)justice in Latin America”, there have been hundreds of recorded cases and allegations of human rights abuses within Latin America within the renewable (also referred to as “Green”) energy sector.¹² Internationally, Latin America disproportionately holds 61% of the allegations of abuse within the Business and Human Rights field.¹³ Some of the most significant findings through this report is the strong correlation between the growth of renewable energy and these abuses, and the identification of the most common abuses being those that involve territory rights and attacks against human rights defenders.¹⁴ Proof of this renewable energy injustice is seen within Mexico in the Unión Hidalgo Case¹⁵,

⁸ Raphaël Viana David, ‘Mexico| Genuine commitment urgently needed to protect environmental and human rights defenders’ (2020) ISHR <<https://ishr.ch/latest-updates/mexico-genuine-commitment-urgently-needed-protect-environmental-and-human-rights-defenders/>> accessed 27 March 2022.

⁹ UNWG on Business and Human Rights, ‘Statement at the end of visit to Mexico’ (2016), OHCHR <<https://www.ohchr.org/en/statements/2016/09/statement-end-visit-mexico-united-nations-working-group-business-and-human?LangID=S&NewsID=20466>> accessed 20 March 2022

¹⁰ Jorge Larrain, *Identity and Modernity in Latin America* (Polity Press in association with Blackwell Publishers Ltd 2000).

¹¹ Business & Human Rights Resource Centre, ‘Renewable Energy (In)Justice in Latin America’ (Business & Human Rights Resource Centre 2021) <https://media.business-humanrights.org/media/documents/RE_LATAM_final_English.pdf> accessed 26 October 2021.

¹² *Ibid.*

¹³ *Ibid.*, p.4.

¹⁴ *Ibid.*, p.5.

¹⁵ The aforementioned case has been a cornerstone in the advancement of corporate due diligence and accountability mechanisms. It is also one of the first cases that the French court heard in relation to the Loi de Vigilance. Recently, the Gunna Sicarú windfarm related to the case was suspended following delays in the windfarm contract resulting from the absence of prior community consent and adequate due diligence. More info: <https://prodesc.org.mx/en/union-hidalgo-englis/>

in which a French energy firm, Electricity of France (EDF Group), allegedly disregards the rights of indigenous peoples in the area.¹⁶ Additionally, the natural resources that are found in Latin America have got the attention of the extractive industries who have grown in strength and power within Latin American countries.¹⁷ As pointed out by Martha Ines Romero, this industry escalates many political and social conflicts within these regions, and results in extreme “environmental degradation” that, as mentioned later in the report, impacts indigenous groups disproportionately.¹⁸

France’s NAP was chosen as a comparative variable due to the close association with human rights violations within Mexico, as seen within the aforementioned case, but it is also very prevalent to observe since the French government enactment of the Law on Duty of Care, or the Law on Duty of Vigilance.¹⁹ It was not only a significant accomplishment within the world of corporate accountability, but also a good benchmark for other States to trail.²⁰ Another State to set an example was the United Kingdom, the second European country in this project, as it was the first actor to act on the United Nations Working Group’s recommendations to produce and adopt a NAP and therefore, it is a necessary country to observe.²¹

The United Kingdom also helped other nations in the development areas of their NAPs.²² Finally, the third European nation in this project is Germany, whose inclusion is important as they play an elevated role as importers and foreign investment within corporations at an international level and its 2021 Human Rights Due Diligence Law has been widely discussed

16 Electricity of France is an energy company, majorly (approximately 85%) owned by the French Government. It supplies electricity and gas and generates its energy from nuclear plants and some renewables. For more information on its capital structure see ‘Capital Structure’ (EDF FR, 2022) <<https://www.edf.fr/en/the-edf-group/dedicated-sections/investors-shareholders/the-edf-share/capital-structure>> accessed 6 February 2022.

17 International Monetary Fund, ‘Macroeconomic Policy Frameworks for Resource-Rich Developing Countries-- Background Pa’ (International Monetary Fund 2012) <<https://www.imf.org/external/np/pp/eng/2012/082412a.pdf>> accessed 23 April 2022

18 Martha Ines Romero is Pax Christi International’s Coordinator for Latin America and the Caribbean. On 31 October 2017, at a Pax Christi International and CIDSE organised discussion titled ‘Extractives in Latin America: Grass Roots and International Community Responses’, Romero spoke on the violations and abuses committed to the environment disproportionately impacting the indigenous groups found across the region. To read more of her comments see ‘Extractive Industries and Human Rights in Latin America’ (Cidse.org, 2022)

19 A French Law that compels French companies to “Establish and implement a diligence plan which should state the measures taken to identify and prevent the occurrence of human rights and environmental risks resulting from their activities, the activities of companies they control and the activities of sub-contractors and suppliers on whom they have a significant influence” (final adoption on 21 February 2017)

20 Sandra Cossart, Jerome Chaplier and Tiphaine Beau de Lomenie, ‘The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All’ (2017) 2 Business & Human Rights Journal.

21 On 4 September 2013, the United Kingdom was the first State to adopt a National Action Plan. See ‘United Kingdom | National Action Plans on Business and Human Rights’ (National Action Plans on Business and Human Rights, 2022) <[https://globalnaps.org/country/united-kingdom/#:~:text=\(Updated%20NAP\).-,Process,later%20on%2012%20May%202016](https://globalnaps.org/country/united-kingdom/#:~:text=(Updated%20NAP).-,Process,later%20on%2012%20May%202016)> accessed 17 November 2021.; see also ‘UK First to Launch Action Plan On Business And Human Rights’ (GOV.UK, 2022) <<https://www.gov.uk/government/news/uk-first-to-launch-action-plan-on-business-and-human-rights>> accessed 17 March 2022.

22 Within the Colombian NAP [published 10 December 2020 and developed by the Presidential Advisory Office for Human Rights and International Affairs] the collaboration with the United Kingdom’s government is mentioned as follows: “Regarding the ‘Remediation’ pillar, work has been done from various angles on strengthening access to judicial and non-judicial redress; and today Colombia has a roadmap to implement a comprehensive system of non-judicial reparation prepared by the Regional Centre for Responsible Companies and Entrepreneurship (CREER), with the support of the Presidential Council for Human Rights, Human Rights and International Affairs and sponsored by the Embassy of the United Kingdom.” NAP found here Presidential Advisory for Human Rights and International Affairs Colombia, ‘National Action Plan of Business and Human Rights 2020/ 2022 “Together We Make It Possible Resilience and Solidarity”’ (Presidency of the Republic of Colombia 2020). pp. 45

as a model for other countries.²³ Overall, it is important to recognize that European nations are just a crucial to this comparative analysis as the ones from Latin America, especially since according to the Business & Human Rights Resource Centre’s report, seven out of the thirteen companies in the world with the highest number of human rights abuses are European.²⁴



B. Desk Based Research and Analysis

The desk research is divided into two phases that are literature review and comparison of the NAPs. Firstly, it refers to academic literature with the view to examine methodologies, determine international standards on business and human rights, and identify gaps in implementing each NAPs.

This research paper draws on several comparative studies including that of the Danish Institute for Human Rights, the Scottish Human Rights Commission and that of other academics.²⁵

²³ Germanwatch & Misereor IHR Hilfswerk, ‘Putting Germany to The Test’ (Germanwatch 2014 <<https://germanwatch.org/sites/default/files/publication/8874.pdf>> accessed 9 January 2022. pp. 3; see also, Business & Human Rights Resource Centre, ‘German Parliament Passes Mandatory Human Rights Due Diligence Law’ (2021) <<https://www.business-humanrights.org/en/latest-news/german-due-diligence-law/>> accessed 25 May 2022.

²⁴ Business & Human Rights Resource Centre, ‘Renewable Energy (In)Justice in Latin America’ (Business & Human Rights Resource Centre 2021) <https://media.business-humanrights.org/media/documents/RE_LATAM_final_English.pdf> accessed 26 October 2021. (p. 6)

²⁵ The Danish institute of human rights, ‘National Action Plans on Business & Human Rights an analysis’ [2018]; The Scottish Human Rights Commission, ‘Business and Human Rights National Action Plans: Comparative Review of Global Best Practice’ [2019]; Humberto CANTÚ RIVERA, ‘National Action Plans on Business and Human Rights: Progress or Mirage?’ [2019] 4(2) Business and Human Rights Journal 213.

In examining the implementation status of each NAP, monitoring reports concerning the NAPs as well as other academic literature will be referred to. Following the literature review, a comparative study of the NAPs will be conducted. As mentioned earlier, this research addresses NAPs published by six countries. It is acknowledged that the contents of each NAP vary due to its publishing year (the oldest one being the United Kingdom and the newest being Peru).²⁶

The comparative study examines each action item of the NAPs with a view to identifying differences and commonalities concerning three topics including participation, protection of focused groups, and extraterritoriality in all aspects of the NAP process ranging from the development to the update. In addition, benchmarks developed by academics, civil societies and the United Nations Working Group on Business and Human Rights will be used to assess each NAP.²⁷

Admittedly, as pointed out by academics, there is little empirical analysis on the effectiveness of NAPs to date.²⁸ To explore what is missing in the academic literature and other documents that are not public, this research also conducts interviews with civil society organizations, academics, and public officials involved in the creation of the NAPs.

C. Interviews

To have a more well-rounded understanding, the research team decided that the most effective way to get direct, detailed, and swift responses to questions highlighting the gaps within the NAPs would be via interviews. Due to COVID-19, budgetary, and time restrictions, they were not carried out in person, only via videocall. Interviews are conducted among experts of the subject field, as well as public officials who were engaged in the creation of the NAPs of interest. In coherence with the topics of comparison covered in this project it was important to interview public officials whose work is related to the elaboration, implementation or monitoring of NAPs, and experts or academics that have conducted research on these topics as well.

Some of the interviewees include Peter Frankental from Amnesty International, Daniel Morris from the Danish Institute for Human Rights, Michael Windfuhr from Deutsches Institut für Menschenrechte/German Institute for Human Rights, Marilyn Croser formerly of the Corporate Justice Coalition, and Daniel Blackburn from the International Centre for Trade Union Rights. Academics that also had first-hand experience within the drafting process from their countries include Dante Pesce from the Vincular Centre of the School

²⁶ The Secretary of State for Foreign and Commonwealth Affairs, 'Good Business Implementing the UN Guiding Principles on Business and Human Rights' [2016]; Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (2021) (Peruvian NAPs).

²⁷ Claire Methven O'Brien and others, 'National Action Plans on Business and Human Rights: An Experimentalist Governance Analysis' [2022] Human Rights Review 71; The Danish institute of human rights and the International Corporate Accountability Roundtable (ICAR), 'National Action Plans on business and human rights Toolkit – 2017 edition' [2017]; UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016].

²⁸ Diane Bulan Hampton, 'Modern Slavery in Global Supply Chains: Can National Action Plans on Business and Human Rights Close the Governance Gap?' [2019] 4(2) Business and Human Rights Journal 239.

of Business and Economics of the Pontifical Catholic University of Valparaiso, Judith Schönsteiner from the Law School of the Diego Portales University of Chile, Enrique Fernández Maldonado Mujica from the Centre for Public Policy and Human Rights. Additionally, there were interviews from departments and ministries that had led the NAP drafting processes in their countries such as Colombia’s Presidential Counselor for Human Rights, and Peru’s former General Coordinator of the National Action Plan on Business and Human Rights of Peru, Federico Chunga Fiestas.

The interviews were focused on the elaboration of how the NAPs addressed: (1) the rights of women, indigenous peoples, and human rights defenders, (2) participation of these affected peoples in the drafting, implementing, and monitoring of the public policies introduced within the Plans, and (3) the extent of extraterritorial obligations that home states have to provide judicial and non-judicial remedies to those who have been violated by their country’s companies, and the level of consular assistance resources available to human rights defenders, who face dangerous levels of threat in foreign jurisdictions.²⁹ (See Section VII for findings)

Still, the research team understands the limitations behind the interview process, and how much these restrictions have impacted the scope of the project. For example, one limitation was the inability to interview groups of affected people who were disproportionately affected within the business conducts in the studied countries.³⁰ This exclusion is a significant impediment and a bit oxymoronic, as the team recognizes the importance of participation and communication from victims of violations, and yet their feedback is not included in this report.

After all, much research shows that many of these issues begin due to the lack of representation and decision-making by those who are most negatively impacted.³¹ The research team attempted to hear the opinions of NGOs who work closely with these impacted individuals, but it understands that no NGO can speak for communities themselves.³²

²⁹ Amnesty International UK, ‘How the UK Government Can Defend the Defenders’ (United Kingdom 2021) <<https://www.amnesty.org.uk/onthehumanrightsfrontline>> accessed 17 February 2022.

³⁰ In this report, terms such as “disproportionately affected individuals”, “potentially affected groups”, or “affected peoples” will be also used. The term “vulnerable people(s)” has a damage-leaning connotation as critiqued by Martha Fineman, and for that reason the report will substitute it with the aforementioned terms. See Martha Albertson Fineman, ‘Vulnerability and Social Justice’ [2019] 53 Valparaiso University Law Review.

³¹ For example, as seen in this “Free Prior and Informed Consent: An indigenous peoples’ right and a good practice for local communities” publication by the Food and Agriculture Organization of the United Nations, the issues and harm resulted from the absence of communication and input from the affected groups — in this focus for indigenous peoples—at a local and national level. See more at Food and Agriculture Organization of the United Nations, ‘Free Prior and Informed Consent: An Indigenous Peoples’ Right and A Good Practice for Local Communities’ (Food and Agriculture Organization of the United Nations 2016) <<https://www.fao.org/3/I6190E/i6190e.pdf>> accessed 3 March 2022.

³² As many of the interviewees are experts that have had projects and opportunities to have direct contact with the affected peoples of their countries that the research team did not have the opportunity. One interviewee, for example, is Mr. Dante Pesce who for the last 20+ years has been “working in 14 Latin American countries in outreach, capacity building and advisory services related to sustainability and responsible business practices, including business and human rights, sustainability reporting, corporate sustainability strategy.” See more at ‘Mr. Dante Pesce, Former Member of The Working Group On The Issue Of Human Rights And Transnational Corporations And Other Business Enterprises’ (OHCHR, 2022) <<https://www.ohchr.org/en/business/mr-dante-pesce-former-member-working-group-issue-human-rights-and-transnational-corporations-and>> accessed 17 May 2022.



II. INTERNATIONAL HUMAN RIGHTS LAW FRAMEWORK

Business and Human Rights – International and National Level

Under international human rights treaties, State obligations can be distinguished in three aspects – the duty to respect, protect and fulfil.³³ In the context of business and human rights, the State duty to protect is most relevant as it requires States to prevent third parties from causing harm to individuals.³⁴ To this end, States are required to regulate private actors by introducing and implementing necessary measures to ensure the protection of the rights.³⁵ There is an approach for a State to exercise its regulatory power over a company which is domiciled in the State but also operates outside its territory and infringe the rights of people abroad, which is typically called States’ extra-territorial obligations.³⁶

An argument for State’s extra-territorial obligation is made, especially when host States, within which a company causes adverse impacts on human rights, are unable or unwilling to fulfil the duty to protect individuals against the harms.³⁷ General comment No. 24 of Committee of Economic, Social, and Cultural Rights underlines the States’ extraterritorial obligation to protect human rights in a situation where business activities that the State can “exercise control”³⁸ may cause harm overseas as well as where victims are denied access to the domestic courts in pursuit of the remedy.³⁹ This issue is further addressed in section VI. E.

States’ protection of individuals against third parties exerts a “horizontal effect of human rights”.⁴⁰ States’ liability arises when it fails to prevent third parties from infringing the rights.⁴¹ As opposed to the indirect effect over the private actors, there is no international binding treaty that directly imposes obligations to comply with international human rights

³³ Markus Krajewski, ‘The State Duty to Protect Against Human Rights Violations Through Transnational Business Activities’ [2018] Deakin Law Review 13 18; Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc E/C.12/GC/24 (23 June 2017) 4–8.

³⁴ Ibid, para 14.

³⁵ Ibid; Human Rights Committee (HRC), General Comment No 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) para 7; Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc E/C.12/GC/24 (23 June 2017) para 22.

³⁶ Markus Krajewski, ‘The State Duty to Protect Against Human Rights Violations Through Transnational Business Activities’ [2018] Deakin Law Review 14.

³⁷ Ibid.

³⁸ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc E/C.12/GC/24 (23 June 2017) para 30.

³⁹ Ibid.

⁴⁰ Frédéric Mégret, ‘Nature of Obligations’ in Daniel Moeckli and others (eds), International Human Rights Law (Oxford University Press, 3rd ed, 2017) 97 98.

⁴¹ Ibid.

norms on enterprises.⁴² Though non-binding, the United Nations Guiding Principles on Business and Human Rights (UNGPs) is regarded as the most prominent international standard that codifies a business's responsibility to respect human rights.⁴³ The UNGPs gave influence over other international norms such as the OECD Guidelines for Multinational Enterprises and ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, both of which have adopted the standards of the UNGPs in their provisions.⁴⁴

Drawing on existing international standards and practices concerning business and human rights, the UNGPs provides an integrated guideline on this matter.⁴⁵ While acknowledging that "the States are the primary duty-bearers under international human rights law",⁴⁶ it also sets out the business enterprises' responsibility to respect human rights.⁴⁷ The document is divided into three pillars: I. the State duty to protect human rights; II. The corporate responsibility to respect human rights; III. Access to remedy.⁴⁸ With regard to a concept of extra-territorial obligations of States, the UNGPs has a view that, under international human rights law, States are neither generally obliged to exercise their duties over the behaviors of companies abroad nor generally prohibited from doing so, but, at the same time, it recognizes that some human rights treaty bodies have recommended that

'[...] home States take steps to prevent abuse abroad by business enterprises within their jurisdiction'.⁴⁹

In the same year of the launch of UNGPs, the Human Rights Council established the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (UNWG).⁵⁰ The UNWG encourages the implementation of UNGPs by utilizing a NAP, which is a set of policies that are complied with the UNGPs.⁵¹ Notably, the UNWG published criteria for the NAPs:

to have its foundation on the UNGPs; to address specific issues of a State in concern; its development process needs to be inclusive and transparent; the whole process of NAP

⁴² Markus Krajewski, 'The State Duty to Protect Against Human Rights Violations Through Transnational Business Activities' [2018] Deakin Law Review 17 18.

⁴³ Ibid; John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' [21 March 2011] UN Doc A/HRC/17/31.

⁴⁴ Markus Krajewski, 'The State Duty to Protect Against Human Rights Violations Through Transnational Business Activities' [2018] Deakin Law Review; Surya Deva, 'Treating human rights lightly: a critique of the consensus rhetoric and the language employed by the Guiding Principles' in Surya Deva and David Bilchits (eds) *Human Rights Obligations of Business Beyond the Corporate Responsibility to Respect?* (CUP 2013) 78.

⁴⁵ John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' [21 March 2011] UN Doc A/HRC/17/31.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid. foundational principle 2 and commentary.

⁵⁰ Erika George, *Incorporating Rights: Strategies to Advance Corporate Accountability* (OUP 2021) 91; UN Human Rights Council (HRC), *Human rights and transnational corporations and other business enterprises*, A/HRC/RES/17/4 para. 6 (July 6, 2011).

⁵¹ Ibid; Human Rights Council (HRC), *Human rights and transnational corporations and other business enterprises*, A/HRC/RES/17/4 para. 6 (July 6, 2011).

needs to be reviewed regularly.⁵² The development of NAPs was encouraged by regional institutions as in the case in Europe and Latin America in response to the launch of the UNGPs in 2011.⁵³

The UNGPs asks corporations to conduct human rights due diligence to “identify, prevent, mitigate and account for how they address their adverse human rights impacts” within their business activities.⁵⁴ Among the six countries chosen for this comparative analysis, France, Germany, and the United Kingdom have introduced domestic legislation that requires companies to exercise human rights due diligence.⁵⁵ All three legislations have links to the UNGPs. French and British legislations follow guidelines presented in the UNGPs.⁵⁶ Notably, creation of the German legislation was committed in its NAPs.⁵⁷ French and German legislation impose mandatory obligations on corporations to conduct human rights due diligence which come with penalties if companies continue to be non-compliant with the law.⁵⁸

Meanwhile British law lacks such monitoring or enforcement mechanisms.⁵⁹ It is stated that the law only has limited contribution to human rights due diligence practices because it only requires companies to issue statements as to how they identify or mitigate risks of modern slavery.⁶⁰ With regards to the civil liability, while French legislation provides a ground for legal action when a company fails to undertake its obligations, German and British legislation does not.⁶¹

52 Human Rights Council (HRC), Human rights and transnational corporations and other business enterprises, A/HRC/RES/17/4 para. 6 (July 6, 2011).

53 Humberto CANTÚ RIVERA, ‘National Action Plans on Business and Human Rights: Progress or Mirage?’ [2019] 4(2) Business and Human Rights Journal 213 217, 218.

54 John Ruggie, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ [21 March 2011] UN Doc A/HRC/17/3116.

55 Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre; Modern Slavery Act 2015; Act on Corporate Due Diligence Obligations in Supply Chains 2021.

56 Chiara Macchi and Claire Bright, ‘Hardening Soft Law: The Implementation of Human Rights Due Diligence Requirements in Domestic Legislation’ in Martina Buscemi and others, Legal Sources in Business and Human Rights (Brill 2020) 7 12 13; Shift, ‘Mapping the Provisions of the Modern Slavery Act Against the Expectations of the UN Guiding Principles on Business and Human Rights’ (July 2015) 3-4 < https://shiftproject.org/wp-content/uploads/2015/07/Shift_ModernSlaveryAct_UNGPs_July2015.pdf > accessed 1 June 2022.

57 Chiara Macchi and Claire Bright, ‘Hardening Soft Law: The Implementation of Human Rights Due Diligence Requirements in Domestic Legislation’ in Martina Buscemi and others, Legal Sources in Business and Human Rights (Brill 2020) 17; German Federal Foreign Office, ‘National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights 2016–2020’ (December 2016), 7.

58 Chiara Macchi and Claire Bright, ‘Hardening Soft Law: The Implementation of Human Rights Due Diligence Requirements in Domestic Legislation’ in Martina Buscemi and others, Legal Sources in Business and Human Rights (Brill 2020) 14; Sandra Cossart and others, ‘The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All’ (2017) 2(2) Business and Human Rights Journal 317, 322.

59 Chiara Macchi and Claire Bright, ‘Hardening Soft Law: The Implementation of Human Rights Due Diligence Requirements in Domestic Legislation’ in Martina Buscemi and others, Legal Sources in Business and Human Rights (Brill 2020) 7.

60 Chiara Macchi and Claire Bright, ‘Hardening Soft Law: the Implementation of Human Rights Due Diligence Requirements in Domestic Legislation’ in Martina Buscemi and others, Legal Sources in Business and Human Rights (Brill 2020) 8; Norton Rose Fulbright and BIICL, ‘Making sense of managing human rights issues in supply chains’ (2018) 9 10 <https://www.biicl.org/documents/1939_making_sense_of_managing_human_rights_issues_in_supply_chains__2018_report_and_analysis_-_full_text.pdf> accessed 1 June 2022.

61 Chiara Macchi and Claire Bright, ‘Hardening Soft Law: the Implementation of Human Rights Due Diligence Requirements in Domestic Legislation’ in Martina Buscemi and others, Legal Sources in Business and Human Rights (Brill 2020) 6 14; Genevieve LeBaron and Andreas Rühmkorf, ‘The domestic politics of corporate accountability legislation: struggles over the 2015 UK Modern Slavery Act’ (2019) 17(3) Socio-Economic Review 709 727 728; Markus Krajewski, ‘Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?’ (2021) 6(3) Business and Human Rights Journal 550 558.



A. Indigenous Peoples

The first specially protected group is indigenous peoples. At international human rights systems there are instruments that recognize their collective rights to land; free, prior and informed consent; and culture, which are the focus of this report.

Regarding the right to land, article 14 of the ILO Convention No. 169 and article 26 of the United Nations Declaration on the Rights of Indigenous Peoples, establish that this right involves the recognition of ownership and possession of indigenous peoples over the lands and resources that they have traditionally occupied or used. Such recognition should embrace the collective dimensions of tenure that are present in indigenous communities.⁶² Following the Inter-American Court of Human Rights, traditional occupation of lands by indigenous peoples '(...)' has equivalent effects to those of a State-granted full property title'.⁶³ In order to provide tenure security for indigenous peoples, States have the obligation to demarcate, delimit and title their territories.⁶⁴

⁶² UN Committee on Economic, Social and Cultural Rights, 'General Comment No 26. Draft prepared by the Rapporteurs, Rodrigo Uprimny and Michael Windfuhr' (2021) UN Doc E/C.12/69/R.2, 20.

⁶³ Case of the Sawhoyamaya Indigenous Community v. Paraguay, Judgement, Inter-American Court of Human Rights Series C No 146 (29 March 2006), 128; Case of the Xucuru Indigenous People and its Members v. Brazil, Judgement, Inter-American Court of Human Rights Series C No 346 (5 February 2018), 117.

⁶⁴ Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama, Judgement, Inter-American Court of Human Rights Series C No 284 (14 October 2014), 119. As the Committee of the International Covenant on Economic, Social and Cultural Rights has pointed out in its Draft General Comment N°26, States have an '(...)' obligation to guarantee security of tenure for all legitimate land users, particularly those who depend on collective or communal land use schemes'. UN Committee on Economic, Social and Cultural Rights, 'General Comment No 26. Draft prepared by the Rapporteurs, Rodrigo Uprimny and Michael Windfuhr' (2021) UN Doc E/C.12/69/R.2, 15.

In addition, according to article 15 of the ILO Convention No. 169, the right to land encompasses the participation of indigenous peoples in the benefits of programs aimed at the exploration or exploitation of their natural resources.⁶⁵ Likewise, article 29 of the UN Declaration on the Rights on Indigenous Peoples indicates that this group has '(...) the right to determine and develop priorities and strategies for the development or use of their lands or territories or other resources'.

In relation to the use of natural resources, the Inter-American Court of Human Rights has signaled that the right of members of indigenous peoples to communal property can be restricted by the State (e.g. granting a concession), as long as the limitation is previously envisaged by law, necessary, proportional and with the purpose of attaining a legitimate objective in a democratic society.⁶⁶ Besides, the restriction should consider whether the limitation denies the traditions and customs in a way that imperils the survival of the indigenous community and its members.⁶⁷ There are three additional guarantees to prevent a restriction from being such denial: a) effective participation of the members of the indigenous community, pursuant to their customs and traditions, with regard to any development or investment plan within their territory, b) granting of a reasonable benefit coming from any such plan, c) elaboration of a social and environmental impact assessment by independent and competent entities, under state supervision and prior to the granting of the development or investment plan.⁶⁸

It is to be noted that indigenous peoples maintain a cultural and spiritual relationship with the lands, territories, and other resources that they have traditionally owned, occupied or used, as article 13 of ILO Convention No. 169 and article 25 of the UN Declaration on the Rights on Indigenous Peoples acknowledge. According to the Inter-American Court of Human Rights, this relationship refers to the value of traditional land for indigenous peoples, as it is '(...) not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations'.⁶⁹

As to the right to free, prior, and informed consent, article 19 of the United Nations

⁶⁵ The Inter-American Court of Human Rights has considered that States should reasonably share the benefits of any development project within ancestral lands with the indigenous peoples that occupy such lands. Case of Kaliña and Lokono Peoples v. Suriname, Judgement, Inter-American Court of Human Rights Series C No 309 (25 November 2015), 227.

⁶⁶ Case of Yakye Axa Indigenous Community v. Paraguay, Judgment, Inter-American Court of Human Rights Series C No 125 (17 June 2005), 144-145; Case of the Saramaka People v. Suriname, Judgement, Inter-American Court of Human Rights Series C No 172 (28 November 2007), 127. This case-law has based its reasoning in article 21 of the Inter-American Convention on Human Rights.

⁶⁷ Case of the Saramaka People v. Suriname, Judgement, Inter-American Court of Human Rights Series C No 172 (28 November 2007), 128.

⁶⁸ Ibid, 129. With respect to environmental impact assessments, the Inter-American Court of Human Rights has indicated that they serve to identify the potential adverse impact of a development or investment plan on an indigenous community, and that its formulation should involve their participation. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Judgement, Inter-American Court of Human Rights Series C No 245 (27 June 2012), 204-206.

⁶⁹ Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment, Inter-American Court of Human Rights Series C No 79 (31 August 2001), 149.

Declaration on the Rights of Indigenous Peoples envisages that States shall carry out consultations with indigenous peoples, through their own representative institutions, before the adoption or implementation of legislative or administrative measures that may affect them, to obtain their free, prior and informed consent. In that sense, article 32 of this instrument contemplates that such consultations should be secured before the approval of any project affecting their lands or other resources, and article 15 of the ILO Convention No. 169 points out that consultations with indigenous peoples are needed before States undertake or authorize any program aimed at the exploration or exploitation of resources pertaining to the lands of indigenous peoples.⁷⁰

In analyzing this right, the Inter-American Court of Human Rights has established that its essential elements are ‘(…) a) the prior nature of the consultation; b) good faith and the aim of reaching an agreement; c) appropriate and accessible consultation; d) the environmental impact assessment, and e) informed consultation’.⁷¹

In relation to the right to culture, article 8 of ILO Convention No. 169 asserts that indigenous peoples have the right to maintain their own customs and institutions. Meanwhile, articles 11, 13, 31 and 34 of the Declaration on the Rights of Indigenous Peoples adds that such peoples have the right to practice, develop, control, protect and promote their cultural traditions, customs, expressions, and manifestations. In addition, indigenous peoples have the right to determine their own cultural identity, according to article 33 of the before-mentioned declaration.

B. Human Rights Defenders (HRDs)

The second focus group within this report are human rights defenders. According to a 2017 report by Global Witness, 207 HRDs were murdered—the majority reported in Latin America.⁷² In Mexico, the dangers to HRDs grows parallel to the region’s and to such extremes that in 2012 the Mexican government have developed the Law for the Protection of Human Rights Defenders and Journalists.⁷³ This State-wide measure confirms the need for HRDs as a comparative topic in this research. Additionally, regional, and international human rights instruments support the urgency behind alleviating and resolving the high levels of unjust criminalization, killings, and torture that are faced by them.⁷⁴

⁷⁰ Following article 10 of the UN Declaration on the Rights of Indigenous Peoples, the right to free, prior and informed consent prohibits relocation of indigenous peoples from their lands when they have not provided such consent.

⁷¹ Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Judgement, Inter-American Court of Human Rights Series C No 245 (27 June 2012), 178.

⁷² Frontline Defenders, ‘Annual Report on Human Rights Defenders at Risk In 2017’ (Front Line, the International Foundation for the Protection of Human Rights Defenders 2017) <https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf> accessed 29 April 2022.

⁷³ Law for the Protection of Human Rights Defenders and Journalists 2012.

⁷⁴ Inter-American Commission on Human Rights, ‘Criminalization of The Work of Human Rights Defenders’ (Inter-American Commission on Human Rights 2015) <<http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>> accessed 17 January 2022.; see also, Business & Human Rights Resource Centre, ‘Renewable Energy (In)Justice in Latin America’ (Business & Human Rights Resource Centre 2021) <https://media.business-humanrights.org/media/documents/RE_LATAM_final_English.pdf> accessed 26 October 2021. pp. 8 (number of abuses) & 10 (for abuses by category)

However, Mexico’s law and its mechanism for the protection of HRDs and Journalists has many flaws. According to a report by WOLA in May of 2020, there are still many gaps in the implementation of the mechanism, and the department is severely understaffed and its budget has repeatedly impeded its effectiveness in many instances.⁷⁵ Issues like these contribute to a backlog within the system, and blocks much—if not all—protections that could be useful to HRDs.

The “human rights defenders” group opens the research to a variety of demographics. A human rights defender’s race, gender, ethnic background, race, sexuality, and other characteristics sway the levels of risk that they face. An example of this sway is viewed in the UN Special Procedure Reports documentation on gender-based attacks that have occurred for women HRDs.⁷⁶ But if the woman–HRD were indigenous as well, the level of danger and attacks she faces would increase, since now she will receive attacks directed towards a woman HRD and also those intended to harm an indigenous HRD.⁷⁷ Not only that, but the sector (i.e., hydro, solar, mining, logging, etc.) in which the defenders advocate in also impacts their level of attacks.⁷⁸ The interview with Federico Chunga Fiestas, who was the general coordinator of Peru’s NAP, also confirmed these increased levels of risk with sector affiliation, and that for Peru’s case, he states that indigenous environmental defenders are in the top ranks of those in greater danger.⁷⁹



Due to this critical issue, emphasis on non-discriminatory practices or targeting is necessary to push measures that are more intersectional and emphasize non-discrimination when dealing with how to help such a diverse group of advocates. In addition to this measure, HRDs require effective remedies that will help address and end the issues that they face, but also help to clear a path for their future works and projects.

⁷⁵ WOLA, ‘Mexico Needs Comprehensive Strategies to Combat Violence Against Journalists and Human Rights Defenders’ (2020) <<https://www.wola.org/analysis/journalists-human-rights-defenders-mexico/>> accessed 19 June 2022.

⁷⁶ UN General Assembly. “Situation of human rights defenders” 3 August 2016. A/71/281.

⁷⁷ Ibid.

⁷⁸ Global Witness. ‘At What Cost?’ (Global Witness 2018) <<https://www.globalwitness.org/en/campaigns/environment-activists/at-what-cost/>> accessed 10 January 2022

⁷⁹ Interview with Federico Chunga, former General Coordinator of the Peruvian NAP on 8 April 2022.

Within of the International Covenant on Civil and Political Rights⁸⁰ and the International Covenant on Economic Social and Cultural Rights⁸¹, these two rights are viewed in Article 2 of both documents. Further elaboration on the right to remedy is also seen in the UN Declaration on Human Rights Defenders.

Article 9.1 states that:

“In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.”⁸²

The UN Human Rights Committee General Comment No. 31 states that “in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights.”⁸³ Therefore, adding to the variety in the kind of remedies that should be provided and not limiting them to just monetary compensations. That is, there should be proactive steps in creating legislation, policies, panic buttons, and programs that clear a path for helpful and lasting remedies to HRDs. This is also reflected within the Working Group on Business and Human Rights’ Guidance on National Action Plans.⁸⁴

Regarding France, United Kingdom, and Germany, they are bound to this right as well due to Article 13 of the European Convention on Human Rights titled: “Right to an Effective Remedy.”⁸⁵ The equivalent for Colombia, Chile, and Peru, is found in the American Convention on Human Rights under Article 25, “Right to Judicial Protection.”⁸⁶ The significance behind States emphasizing this right can be very effective in the deterring of companies continuing their violations if they are going to face the subjection of paying reparations of some kind.

Some of the specific risks that HRDs face are death threats, defamation, criminalization, attacks, fearmongering, and/or murder.⁸⁷ In the 2018 UNGA Report of the Special

⁸⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

⁸¹ International Covenant on Economic Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

⁸² UNGA Res 53/144, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” 8 March 1999 (adopted 09 December 1998)

⁸³ UNHCR ‘General Comment no. 31 [80] the Nature of the general legal obligation imposed on States Parties to the Covenant’ (26 May 2004) UN DOC CCPR/C/21/Rev.1/Add.13

⁸⁴ UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’ [2016] (p 31)

⁸⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 13.

⁸⁶ Organization of American States, American Convention on Human Rights, (entered into force 18 July 1978) OAS Treaty Series No. 36 (1969) Art. 25.

⁸⁷ Ben Leather and others, ‘A Thematic Supplement To ‘National Action Plans on Business and Human Rights: A Toolkit For The Development, Implementation, And Review Of State Commitments To Business And Human Rights Frameworks’ (International Service for Human Rights & International Corporate Accountability Roundtable 2016) <https://ishr.ch/sites/default/files/documents/ishr_icar_hrds_in_naps_guidance_eng.pdf> accessed 21 October 2021. Pp. 5 see also, Frontline Defenders, ‘Annual Report on Human Rights Defenders at Risk In 2017’ (Front Line, the International Foundation for the Protection of Human Rights Defenders 2017) <<https://www.>

Rapporteur on the situation of human rights defenders on his mission to Mexico, there were multiple confirmations regarding the torture that HRDs were facing within the nation.⁸⁸

A previous report submitted by the Inter-American Commission on Human Rights also supports this pattern of torture for HRDs in Mexico and provides further details on the occurrences and perpetrators behind the violations.⁸⁹ Additionally, all the studied States within this report have all signed and ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.⁹⁰

Article 2.1 reads “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” and can be used to urge States to look at their NAPs as a tool that emphasizes and develops concrete measures in the overall protection of HRDs and assuring their safety from targeted violence.

Supplementary, within this convention, the responsibility to protect from torture comes not only to the States and their constituents or residents within their jurisdiction, but as mentioned in article 5.1,

“Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

- Ⓐ When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- Ⓑ When the alleged offender is a national of that State;
- Ⓒ When the victim is a national of that State if that State considers it appropriate.”

That is, focusing on this right will not only fall within the topic of HRDs, but it will also overlap slightly with the project’s section on extraterritorial obligations, since the convention pushes States to implement due diligence obligations on their companies and nationals abroad. Further elaboration is to come in the Extraterritorial Obligations Section.

frontlinedefenders.org/sites/default/files/annual_report_digital.pdf> accessed 29 April 2022.

⁸⁸ UNGA, “Report of the special rapporteur on the situation of human rights defenders on his mission to Mexico” 12 February 2018, A/HRC/37/51/Add.2

⁸⁹ Inter-American Commission on Human Rights, ‘The Human Rights Situation in Mexico’ (Inter-American Commission on Human Rights 2015) <<http://www.oas.org/en/iachr/reports/pdfs/mexico2016-en.pdf>> accessed 2 March 2022. (Pgs. 104–105, 157–194)

⁹⁰ ‘UNTC’ (Treaties.un.org, 2022) <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en> accessed 2 February 2022.

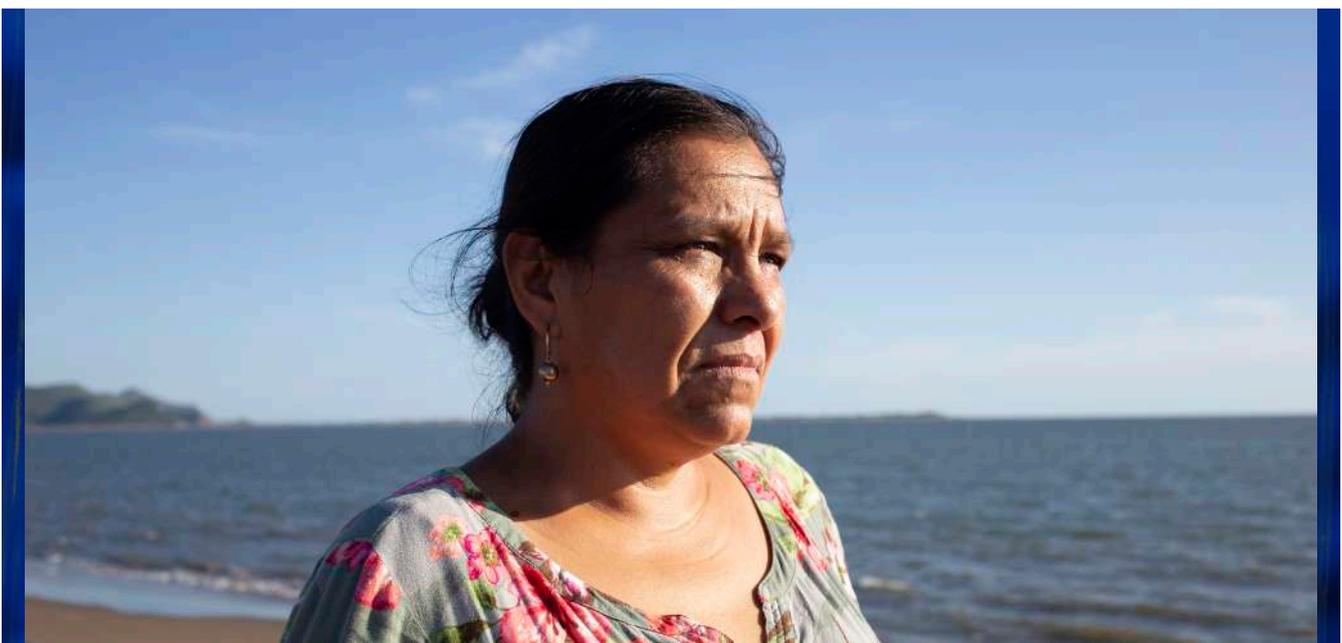
C. Women

The third affected group is women. This study will be referring to three particular rights of women applicable in the business sector. The first one, the right to work, is present in the ICESCR, under article 6.1 “The States Parties to the present Covenant recognize the right to work”, and in the CEDAW, under article 11 (a) “The right to work as an inalienable right of all human beings”. The second one, the right to equal employment opportunities, is also covered by both conventions, in article 7 of the ICESCR “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work”, and article 11 (b) of the CEDAW “The right to the same employment opportunities”.

Finally, the ICESCR lays out the right to just and favorable conditions of work. This instrument states “Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work” in article 7(i).

The contents of legally binding conventions, in this case the ICESCR and the CEDAW, must be enforced and implemented by States that ratified them due to their obligation to respect, protect and fulfil these rights. In the case of this project’s countries of choice, all have ratified both covenants.

The two fundamental ILO Conventions on equal remuneration (C100)⁹¹ and discrimination in employment (C111)⁹² have been ratified and are in force for all six of the countries.



⁹¹ International Labour Organization (ILO), Equal Remuneration Convention, 29 June 1951, C100, available at: <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_84_en.pdf>

⁹² International Labour Organization (ILO), Discrimination (Employment and Occupation) Convention, 25 June 1958, C111, available at: <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/genericdocument/wcms_114189.pdf>

D. Right to Participate

Two other key conventions on the rights internationally afforded to women are Convention N^o156, on workers with family responsibilities, in force only for Chile, France, Peru,⁹³ and Convention N^o183, on maternity protection, in force for Peru and soon to be for Germany.⁹⁴ In them, the rights mentioned above are elaborated on in further detail, binding States to apply the rights to work, to just and fair conditions of work from the ICESCR and CEDAW.

Regarding the presence of a gendered aspect in all NAPs, the UN Working Group's guidance clearly states that they should aim to give "particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men."⁹⁵

This section explains the participation of stakeholders in the process of the NAPs. In article 18(b) of the UNGPs, the term 'stakeholders' is described as meaning "potentially affected groups".⁹⁶

In the case of business and human rights then, affected groups, or affected stakeholders, can be understood to include groups of people whose lives and rights can be affected negatively by certain business practices.⁹⁷ The affected stakeholders can be internal or external.⁹⁸ The former includes employees, managers, board of directors, and the latter, much broader, encompasses supply chain workers, communities and even consumers. Indigenous peoples and women fall directly into these categories, while human rights defenders do so indirectly, by being defenders of stakeholders themselves, and potentially being targeted by enterprises wishing to silence them.

Human rights defenders, indigenous peoples and women then are among the stakeholders affected by the respect or disrespect of the rights meant to be upheld with the help of NAPs. In an effort to assist States in their initiatives to develop a NAP, the UN Working

⁹³ International Labour Organization (ILO), Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981, C156, available at: <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/genericdocument/wcms_114192.pdf>

⁹⁴ Inter-American Commission on Human Rights, 'The Human Rights Situation in Mexico' (Inter-American Commission on Human Rights 2015) <<http://www.oas.org/en/iachr/reports/pdfs/mexico2016-en.pdf>> accessed 2 March 2022. (Pgs. 104–105, 157–194)

⁹⁵ UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights'

⁹⁶ John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', 17th Sess, UN Doc A/HRC/17/31 (2011) Accessed at: <https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf>

⁹⁷ Definition from UNCHR, 'The Corporate Responsibility to Respect Human Rights: An Interpretative Guide' (June 2012) UN Doc HR/PUB/12/02; "An affected stakeholder refers here specifically to an individual whose human rights has been affected by an enterprise's operations, products or services".

⁹⁸ Shift and Mazars LLP, 'C2 – Stakeholder Engagement (UN Guiding Principles Reporting Framework, 2016–2017)' <www.ungpreporting.org/reporting-framework/management-of-salient-human-rights-issues/stakeholder-engagement/> accessed 20 March 2022.'

Group on Business and Human Rights published a guide in 2016,⁹⁹ which has been complemented by the National Action Plans on Business and Human Rights Toolkit by the Danish Institute for Human Rights and the International Corporate Accountability Roundtable.¹⁰⁰ These two sources shed light on the standards expected of states on the participation of non-governmental stakeholders in the development, implementation and update of NAPs, as well as transparency in such processes.

Among the standards set out in these guiding materials, 1) States should publish a work plan for the elaboration of a NAP and disseminate it among non-governmental stakeholders,¹⁰¹ in a timely manner and through adequate media outlets, so that stakeholders can manage their participation in the NAP processes;¹⁰² 2) States should adequately and timely inform non-governmental actors of participation opportunities in the making process of the NAP (workshops, dialogues, consultations events, comment periods, etc.),¹⁰³ including for the drafting of the National Baseline Assessment (NBA);¹⁰⁴ and 3) States should publish, in an accessible and timely way, key documents concerned with the NAP processes, including the NBA, summaries of participation events, contributions from stakeholders, draft NAP and reports of implementation.¹⁰⁵

In addition, 4) States should carry out consultations with non-governmental stakeholders ‘(…) on the priorities and concrete actions to be included in the NAP (…)’ and ask them for feedback on the draft NAP;¹⁰⁶ 5) States should conduct a stakeholder mapping at the beginning of the NAP process, considering representatives of affected groups and human rights defenders;¹⁰⁷ 6) States should set up a multi-stakeholder working group for engagement with representatives of affected groups and other non-governmental actors, to guide the elaboration of the NAP.¹⁰⁸ In addition, States should create a multi-stakeholder group to monitor the implementation of the NAP, which can be built on the platform created for the elaboration process.¹⁰⁹

99 UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’ (November 2016)

100 The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, National Action Plans on business and human rights Toolkit. 2017 Edition (DIHR & ICAR 2017)

101 UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’ [2016] 6.

102 The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, National Action Plans on business and human rights Toolkit. 2017 Edition (DIHR & ICAR 2017), 20.

103 Ibid, 20–21.

104 Ibid, 30; UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’ [2016] 7–8.

105 Ibid, 21, 49.

106 UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’ [2016] 8–9; The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, National Action Plans on business and human rights Toolkit. 2017 Edition (DIHR & ICAR 2017), 21.

107 The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, National Action Plans on business and human rights Toolkit. 2017 Edition (DIHR & ICAR 2017), 22–23.

108 Ibid, 23; UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’ [2016] 6.

109 UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’ [2016] 9–10.

Moreover, 7) States should remove barriers that prevent marginalized or at-risk groups (such as women, indigenous peoples, and human rights defenders) from effectively participating in the NAP processes, which can consist in lack of financial resources or fear of reprisals;¹¹⁰ and 8) States should provide the necessary training to non-governmental stakeholders on business and human rights so that they can participate meaningfully in the building process of the NAP.¹¹¹

With regard to the specific right-holders addressed in this report, States should carry out consultations with indigenous peoples in the elaboration process of NAPs, with respect to legislative, administrative and developmental measures that may affect them, and pursuant to the right of indigenous peoples to free, prior and informed consent.¹¹² This right entails that '(...) the nature and scope of the consultation process should be agreed on with indigenous peoples in advance of consultation procedures taking place.

Consultations should also be initiated prior to any form of government decision-making (...)'.¹¹³ States may consider the creation of a specific consultation track for indigenous communities to follow these procedures.¹¹⁴

In relation to the participation of human rights defenders in the elaboration process of NAPs, States should guarantee the effective protection of these stakeholders throughout all NAPs stages, and provide measures within these public policy instruments to address the persecution and harassment affecting them.¹¹⁵

As regards women, their participation in NAP processes is key to comprehending how widespread discrimination against them is perpetuated by corporate activities in workplaces, and how these activities provoke disproportionate impacts on the working conditions of women. In particular.¹¹⁶

The UN Working Group on Business and Human Rights stresses the importance of seeking stakeholders' input because it allows businesses and Governments to realize the full extent of their impact on the affected groups. Additionally, any new measures to respect, protect or fulfil human rights taken on without the consultation of the individuals or communities affected by these measures has a poorer chance of succeeding than if these measures are rooted in what these people need. This type of information can be provided by national human rights institutions (NHRIs), business representatives, trade unions, civil society organizations, and representatives of the affected groups, who must

¹¹⁰ The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, National Action Plans on business and human rights Toolkit. 2017 Edition (DIHR & ICAR 2017), 24.

¹¹¹ Ibid, 25.

¹¹² Ibid, 51.

¹¹³ Ibid.

¹¹⁴ Ibid, 52.

¹¹⁵ Ibid, 52.

¹¹⁶ Ibid, 54.

all take part in the making of a NAP, the guidance states.¹¹⁷

The UNGPs themselves, the principles that States are expected to uphold, have guidance on the inclusiveness of stakeholders. In Principle 18, it is made very explicit that actively involving and meaningfully communicating with affected groups is a required step in any enterprise's endeavor to reach the goal of betterment in the sector of human rights. Failure to do so would result in a failure to apply due diligence.¹¹⁸ When it comes to monitoring the effect of the measures laid out in the NAPs, the UNGPs also state, in principle 20, that businesses should seek the feedbacks of affected stakeholder.

The participation of stakeholders can only be ensured if they are made aware of the current standpoint, the goal, the efforts made –or not made. Effective communication of businesses is therefore necessary to ensure optimal stakeholder participation. Once again this is highlighted in the UNGPs' 21st principle. Principle 31 contains recommendations regarding non-judicial grievance mechanisms and advises that dialogue with stakeholders is the best way to give them the reparations that they really need.

The International Convention of Civil and Political Rights (ICCPR) also articulates the right of people to be actively involved in the development of policy issues that concern them. In article 25(a), it is provided that all citizens have the right and must be given the opportunity “to take part in the conduct of public affairs directly or through freely chosen representatives”. The UNHRC General Comment 25 further clarifies the extent of the scope of this law, by specifying that ‘public affairs’ include “the formulation and implementation of policy at international, national, regional and local levels”.¹¹⁹ Article 23 (a) of the American Convention on Human Rights (ACHR), that Mexico, Peru, Chile and Colombia have ratified, also ensures this right with precisely the same words as Article 25 of the ICCPR.¹²⁰ Additionally, article 6 of the ILO Indigenous and Tribal People's Convention N^o169 (1989) specifically mentions that States must “consult the peoples concerned [...] whenever consideration is being given to [...] measures which may affect them” and “establish means by which these people can freely participate”.¹²¹

With regard to indigenous peoples particularly, this was further enforced by the Inter-American Court of Human Rights' decision in the case of Kichwa indigenous people

¹¹⁷ UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016] 4.

¹¹⁸ The OHCHR says that the fourth component of human rights due diligence is “(d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.” <<https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices>>

¹¹⁹ UN Human Rights Committee, General Comment No. 25: The Rights to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), Para 5, CCPR/C/21/Rev.1/Add.7, 27 August 1996, available at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.7&Lang=en>

¹²⁰ Organization of American States (OAS), American Convention on Human Rights, “Pact of San Jose”, Costa Rica, 22 November 1969, available at: <<https://www.refworld.org/docid/3ae6b36510.html>> [accessed 21 March 2022]

¹²¹ International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989, available at: <www.refworld.org/docid/3ddb6d514.html> [accessed 21 March 2022]

of *Sarayaku v. Ecuador* (2012).¹²² Several States have even included the concept of participation of stakeholders in their national laws, such as Chile, with its Law 19.253 (2017),¹²³ and the Colombian Constitution of 1991, with article 2 stating that “The essential goals of the State are [...]; to facilitate participation by everyone in the decisions that affect them [...]”.¹²⁴

E. Extraterritorial Obligations (ETOs)

A State’s responsibility must exist outside of its jurisdiction to provide a “safety” mechanism that aims to lower human rights violations, that is, not only from within a nation but from the outside as well. ETOs can be applied to a variety of human rights necessities, such as monitorization, implementation, reparations, and overall accountability.¹²⁵

As a legal basis for the ETOs, the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights provide guidance on which States are assumed their ETOs.¹²⁶

These principles elaborate on a definition, the scope of jurisdiction, and substantive elements of the ETOs.¹²⁷ Specifically, principle 9 stipulates that States have obligations in situations such as when States can “exercise authority or effective control” over the territory and people.¹²⁸ Substantially, the principles express that States are obliged to regulate non-State actors, including “transnational corporations and other business enterprises”, to prevent them from infringing enjoyment of the rights in circumstances such as “where the non-State actor has the nationality of the State concerned” or where the controlling company has a substantial relation to the State concerned.¹²⁹

Additionally, to tackle some of these extraterritorial-related issues, the United Nations Working Group on Business and Human Rights offers guidance for States on the specific adoption of methods within their National Action Plans. The report titled “Guidance on National Action Plans on Business and Human Rights” was published in November 2016 and directly mentions the potential measures and recommended steps that could be taken regarding the Pillars of the United Nations Guiding Principles on Business and Human Rights. The following are certain areas of focus, or standards, that should be mentioned in the NAPs to best cover the gaps in State accountability and monitorization

¹²² Kichwa indigenous people of *Sarayaku v Ecuador* (Merits, Reparations, Costs) IACtHR Series C Nº245 (27 June 2021)

¹²³ Minority Rights Group International, World Directory of Minorities and Indigenous Peoples – Chile: Mapuche, September 2017, available at: <https://www.refworld.org/docid/49749d3e32.html> [accessed 21 March 2022]

¹²⁴ Constitución Política de Colombia [Colombia], 27 October 1991 (rev. 2015), available at: <www.constituteproject.org/constitution/Colombia_2015.pdf?lang=en> [accessed 22 March 2022]

¹²⁵ Daniel Augenstein, ‘Towards A New Legal Consensus on Business and Human Rights: A 10Th Anniversary Essay’ (2022) 40 Netherlands Quarterly of Human Rights.

¹²⁶ Olivier De Schutter and others, ‘Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights’ [2012] 34 1084, 1084.; see also Daniel Augenstein, ‘Towards A New Legal Consensus on Business and Human Rights: A 10Th Anniversary Essay’ (2022) 40 Netherlands Quarterly of Human Rights.

¹²⁷ *Ibid.*, (n 46) 1085, 1102, 1105, 1134, 1138.

¹²⁸ *Ibid.* (n 46) 1105.

¹²⁹ *Ibid.* (n 46) 1134, 1138.

of their companies abroad.

The UNWG's 2016 Guidance report describes their "Assessment and Consultation" in the second phase of their guidance plan.¹³⁰ Here States are recommended to engage with local National Human Rights Institutions, unions, and/or civil society organizations when there are issues and violations occurring extraterritorially. Additionally, States are recommended to have levels of transparency that would aid the community, groups of disproportionately impacted individuals, and other external actors in contributing to the process of providing remedy and alleviation within the situation. In other words, this recommendation by the UNWG would help fill gaps in issues that are not so prevalent or directly visible within the State.

This is one of the mentions and standards that this research will also be looking for within the NAPs. Especially since many of the previously mentioned European countries have many companies abroad that hold their fair share of violations towards individuals and groups in their host country.¹³¹ Therefore, any of their policies and actions that are mentioned within their NAPs could be used to inspire, or be recreated, for the Mexican government to hold accountable and monitor their companies abroad.

The 25th Guiding Principle states:

"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".¹³²

Having systems, policies, or programs in place that offer a remedy strengthens a home States' duty to protect.¹³³ This is an especially important standard to have as what one could hope to be a "back-up" for when the host State fails to act domestically. That is, the individuals who have had their human rights violated have another actor to turn to.

The OHCHR has elaborated a Guidance to enhance corporate accountability and access to judicial remedy for human rights abuse by companies, which provides recommendations to States on how to implement the Access to remedy pillar of the UNGPs.¹³⁴

These recommendations are concerned with the strengthening of private and public law remedial mechanisms.¹³⁵ States can implement such recommendations as part of a

¹³⁰ UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016] (p 7-8)

¹³¹ Business & Human Rights Resource Centre, 'Renewable Energy (In)Justice in Latin America' (Business & Human Rights Resource Centre 2021) <https://media.business-humanrights.org/media/documents/RE_LATAM_final_English.pdf> accessed 26 October 2021. (pp. 6)

¹³² UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016] (p 27)

¹³³ Ibid. (pg. 27)

¹³⁴ UN OCHCR, 'Improving accountability and access to remedy for victims of business-related human rights abuse' (2016) UN Doc A/HRC/32/19, 8, annex.

¹³⁵ Ibid, 17.

NAP.¹³⁶ The guidance has an addendum, which provides an explanation to States on how to apply it.¹³⁷

Among the recommendations of the guidance, States should provide judicial remedies that address business-related human rights abuses, are appropriate to respond to the characteristics of such abuses and give details of the obligations that they impose on enterprises.¹³⁸ Such remedies should be an effective deterrence from adverse human rights impacts carried out by companies.¹³⁹ In addition, the guideline suggests that States review whether their public and private law regimes secure the required coverage and the adequate set of approaches in relation to business-related human rights impacts, in light of the States' international human rights obligations and evolving challenges in the area of business and human rights, and if any shortcoming in the coverage or approach is found, States should adopt the necessary amendments to better respond to such abuses.¹⁴⁰

The OHCHR has also elaborated a guidance to enhance the effectiveness of State-based non-judicial mechanisms relevant to business-related human rights abuses.¹⁴¹ It has an addendum that explains how States can apply the guidance as well.¹⁴² Among the recommendations of this guidance, States should review comprehensively whether such remedies are envisaged to respond to adverse human rights impacts, whether they have an adequate and sufficient degree of independence and functions so as to contribute to the business respect for human rights, and whether they satisfy the needs and sufficiently protect the rights of individuals and communities for whom these remedies are devised.¹⁴³ State should adopt the necessary improvements to correct any shortcoming in the effectiveness of such remedies.¹⁴⁴ In addition, the guidance suggests that States respond to cross-border cases through their non-judicial mechanisms.¹⁴⁵

The second Guiding Principle highlights the extraterritorial obligations that States have when monitoring and limiting their corporations, but also the responsibility to be explicit in the expectations that they have and will continue to hold over the companies. Setting these measures from the beginning are a sure way to maintain business practices to an appropriate standard, even if the corporation's new host State has poor quality of business

¹³⁶ Ibid, 19, 31

¹³⁷ UN OCHCR, 'Improving accountability and access to remedy for victims of business-related human rights abuse: explanatory notes for guidance' (2016) UN Doc A/HRC/32/19/Add.1.

¹³⁸ UN OCHCR, 'Improving accountability and access to remedy for victims of business-related human rights abuse' (2016) UN Doc A/HRC/32/19, annex.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ UN OCHCR, 'Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms' UN Doc A/HRC/38/20.

¹⁴² UN OCHCR, 'Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms: explanatory notes to final report' (2018) UN Doc A/HRC/38/20/Add.1.

¹⁴³ UN OCHCR, 'Recommended action to improve the effectiveness of State-based non-judicial mechanisms relevant to business and human rights' (2018) UN Doc A/HRC/38/20, Annex, policy objective 1.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid, policy objective 13.



and human rights conducts, the companies will still have to follow—or be inclined to follow—their home country’s margins of appropriate standards. Another recommendation and potential measure that falls under this guiding principle is encouraging states to extraterritorial implications saturating the measures at a domestic level, and very direct implementation of “strict extraterritorial legislation and enforcement”.¹⁴⁶

The 26th Guiding Principles is as follows:

“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”.¹⁴⁷

This principle in particular stresses the importance of different avenues that should work in conjunction with one another to alleviate the issues at hand, with different judicial and non-judicial measures, as well. The suggestion from the group and recommended potential measure states that regardless of if the issue is taking place extraterritorially or within the state’s jurisdiction, the mechanisms should both strive to be equally as efficient, and therefore it is crucial that gaps in information, resources, and other necessities are addressed as soon as possible, and the access to remedies are readily available to the victims in need.

¹⁴⁶ UN Working Group on Business and Human Rights, ‘Guidance on National Action Plans on Business and Human Rights’ [2016].

¹⁴⁷ Ibid.



III. COMPARATIVE STUDY

Affected Peoples

1. Indigenous Peoples

As mentioned in section II, international treaties such as the ILO Convention No.169 and the UN Declaration of the Rights of Indigenous Peoples (the UN Declaration) as well as the draft General Comment No.26 of CESCR stipulate that the States are required to recognize the indigenous peoples' collective rights. Also, as a premise, the UN Declaration explicitly shows in concern that there has been "historic injustice" such as "colonization and dispossession of their lands, territories and resources", which prevented them from exercising their collective rights.¹⁴⁸

The UNGP recognizes indigenous peoples as groups that require special protection in the implementation of the UNGP.¹⁴⁹ In practice, States are required to ratify relevant international and regional human rights instruments to protect individuals against harms;¹⁵⁰ ensure the participation of indigenous peoples in all aspects of the NAP;¹⁵¹ advise the businesses on how to consider issues concerning indigenous peoples;¹⁵² and remove legal barriers to gain remedies.¹⁵³ To this end, NAPs should address specific issues faced by indigenous peoples while ensuring their participation in all aspects of NAP processes.¹⁵⁴

Similarities & Differences

Chile, Germany, Peru, and the United Kingdom specifically mentioned indigenous peoples' rights in their actions, whereas Colombia and France only included actions that implicitly impacted indigenous peoples. No States except for Chile and Peru addressed specific human rights issues faced by indigenous peoples (e.g., the right to land) in their actions.¹⁵⁵ Only the three Latin American States promised to implement measurable activities such as training on public officials or businesses or publication of participation guidelines intended for business entities.¹⁵⁶

¹⁴⁸ UNGA, 'United Nations Declaration on the Rights on Indigenous Peoples' [13 September 2007] UN Doc A/61/L.67/Add.1

¹⁴⁹ John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' [21 March 2011] UN Doc A/HRC/17/31 23.

¹⁵⁰ Ibid 6; UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016] 18.

¹⁵¹ Ibid 4 6.

¹⁵² John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' [21 March 2011] UN Doc A/HRC/17/31 8.

¹⁵³ Ibid 23.

¹⁵⁴ The Danish institute of human rights, 'National Action Plans on Business & Human Rights an analysis' [2018]; The Scottish Human Rights Commission, 'Business and Human Rights National Action Plans: Comparative Review of Global Best Practice' [2019] 33 34 51.

¹⁵⁵ Ministry of Foreign Affairs, 'National Action Plan On Business And Human Rights Chile' (Republic of Chile 2017) (Chilean NAPs); Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (2021) (Peruvian NAPs).

¹⁵⁶ Ibid; Presidential Advisory for Human Rights and International Affairs Colombia, 'National Action Plan of Business and Human Rights 2020/ 2022 "Together We Make It Possible Resilience and Solidarity"' (Presidency of the Republic of Colombia 2020) (Colombian NAPs).

Strengths & Weaknesses

Concerning the State duty to protect, France's NAP showed its willingness to ratify core ILO Conventions including the Convention No.169 which stipulated indigenous peoples' rights.¹⁵⁷ However, France has not ratified the Convention at the time of writing of this report.¹⁵⁸ Similarly, though Peru's NAP committed itself to ensure the indigenous peoples' right to land as well as the right to free, prior, and informed consent through adaptation of the Escazú Agreement concerning the protection of environment and human rights, the government has not ratified the agreement yet.¹⁵⁹ It can be said that the implementation on this matter is weak even though States are asked to sign and ratify human rights instruments in the light of principle 1 of the UNGP.¹⁶⁰

Chile and Peru's NAPs stipulated their clear commitments to protect indigenous peoples' collective rights. Some of those actions were time-specific in terms of their implementations.¹⁶¹ For example, an action within the Chilean NAP aimed to hold dialogues between corporations and local communities including indigenous peoples with regards to energy projects has a specific time frame for the implementation.¹⁶²

Though such practices existed before the launch of that NAP, they were included as one of the measures of the action plan.¹⁶³

However, despite the specificity of the actions, not all of them have been implemented. Other measure in the Chile's NAP to provide opportunities for dialogues between enterprises and indigenous peoples as to territorial development plans has not been successfully implemented.¹⁶⁴ Though the government has attempted to establish such dialogues, many of those have not reached fruition; at the same time, there are considerable gaps in the implementation of free, prior, and informed consent.¹⁶⁵ Therefore, the implementation of the measures to protect the territorial rights need to be strengthened. In addition, no States explicitly addressed an aspect of cultural rights,

¹⁵⁷ Ibid 23.

¹⁵⁸ 'Ratifications of C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169)' (International Labour Organisation) < https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314>accessed 26 May 2022.

¹⁵⁹ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

¹⁶⁰ John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' [21 March 2011] UN Doc A/HRC/17/31. 6; UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016] 18.

¹⁶¹ Ministry of Foreign Affairs, 'National Action Plan On Business And Human Rights Chile' (Republic of Chile 2017) (Chilean NAP); Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (2021) (Peruvian NAPs). 34–35; Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (2021) (Peruvian NAPs) 61–65.

¹⁶² Ministry of Foreign Affairs, 'National Action Plan On Business And Human Rights Chile' (Republic of Chile 2017) (Chilean NAP) 34–35.

¹⁶³ Interview with Judith Schönsteiner, Reader, Researcher of the Centre for Human Rights at Diego Portales University (Zoom Interview, 27th Friday 2022).

¹⁶⁴ Ministry of Foreign Affairs, 'National Action Plan on Business And Human Rights Chile' (Republic of Chile 2017) (Chilean NAP) 34.

¹⁶⁵ Interview with Judith Schönsteiner, Reader, Researcher of the Centre for Human Rights at Diego Portales University (Zoom Interview, 27th Friday 2022).

which is essential in protecting indigenous peoples' heritage from development projects or business activities.

In relation to the access to remedy as stipulated in the pillar 3 of the UNGP, only Peru's NAP promised to strengthen the remediation process.¹⁶⁶ The action aimed to secure judicial reparations of victims affected by business activities through training public officials in a justice department.¹⁶⁷ It is crucial because the State's duty to protect individuals against human rights violations requires the provision of effective remedies.¹⁶⁸ Still, the actions in Peru's NAP missed to address lifting legal barriers that indigenous peoples were facing as advised in the guiding principle 26.¹⁶⁹

2. Human Rights Defenders

As previously mentioned, the two standards that this report is analyzing are the (1) right to non-discrimination and the right to an effective remedy, and (2) freedom from torture and inhuman or degrading treatment. These two receive this focus because of the danger that a HRD faces when they are a part of more than one demographic that is targeted (i.e., women, indigenous people, LGBTQIA+), and the second because of the high levels of killings and danger that this group faces.

It is important to note that if the 18th UN Guiding Principle is followed, and States are taking proactive measures to maintain the expertise of relevant affected groups (such as HRDs in this case), then the previously mentioned standards would be highlighted as important and a necessity.¹⁷⁰ From there, it is the State's responsibility to not only recognize these rights, but produce and implement effective policies, legislation, and actions at a national level. In their NAP, is one place of many to start.

Regarding human rights defenders, within these six nations' NAPs there is acknowledgement and mentions of the dangers that this specific group faces within their borders. With this said, every single observed country in this research mentioned HRDs at least once, but how effective and properly implemented their actions were rarely if ever successful. Additionally, the policies' appropriateness can have a better chance if feedback from the impact individuals contribute to these solutions. Yet, through many of the interviews conducted for this project it is observed that many States, such as Colombia or Chile, were able to fulfil the participation process from their affected

¹⁶⁶ Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (2021) (Peruvian NAPs) 125.

¹⁶⁷ Ibid.

¹⁶⁸ John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' [21 March 2011] UN Doc A/HRC/17/31 6.

¹⁶⁹ Ibid 23; UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016] 32.

¹⁷⁰ UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016]

community groups, but it was only acceptable in appearance.¹⁷¹ The incorporation of these groups' feedbacks rarely—or ineffectively—made it to the final stages of the plan.

Similarities & Differences

A dangerous similarity between these NAPs and their approach to the protection and respect of HRDs is the lack of intersectionality. As mentioned in the previous section, the varying demographics that a HRD can belong to can increase the risk that they face.¹⁷² Furthermore, all of these nations are taking a singular and direct approach to protecting—or trying to protect—this group, but they do not appropriately address the correlation between personal demographics and their status as a human rights defender. They all fail to take explicit approaches to join departments or policies to cover a wider range of defenders and whistle-blowers in a more specific, measurable, concrete, and time-specific way. Additionally, the collaboration of NGOs who specialize in the protection of these groups was rarely mentioned. For example, involvement of NGOs with gender-based protection goals, some with HRD focus, and others who focus Indigenous Peoples could collaborate with governments on issues of Indigenous Women HRDs and resources and safety-nets that are necessary for their protection.

Strengths & Weaknesses

One of the biggest weaknesses in these reports was the tangible and effective policies that were introduced surrounding the protection of HRDs, especially when there has been a long history of increasing HRD murders within these countries' jurisdiction. For Example, in 2021 Colombia had 138 reported killings of human rights defenders making up almost 39% of killings worldwide, according to Frontline Defenders' data.¹⁷³ This statistic, however, is not uncommon for this State, as for the last five years Colombia has maintained itself to be the top country in the world in murders of HRDs occurring within its borders.¹⁷⁴ In their National Action Plan, titled “Together We Make It Possible Resilience and Solidarity,” there is only one direct mention of human rights defenders and taking action to protect them:

“Innovative commitments have also been made for new forms of relationship between

¹⁷¹ Interview with Dante Pesce, Executive Director, Vincular Center at Catholic University of Valparaíso–Chile (Zoom Interview, 29th March 2022) and Interview with Colombia staff of the Business & Human Rights Resource Centre (Zoom Interview, 08 April 2022)

¹⁷² This is brought to attention by Spotlight Initiative, in their article Better Protection for women human rights defenders in Latin America, as the issue of women HRDs being targeted at a disproportionate rate than other HRD groups; see more at Spotlight Initiative, ‘Better Protection for Women Human Rights Defenders in Latin America’ (2020) <<https://spotlightinitiative.org/news/better-protection-women-human-rights-defenders-latin-america>> accessed 21 April 2022.

¹⁷³ This matters because there is not a single database of HRDS killings, so Frontline is the only authoritative source that can report on these findings at this time. See more at Frontline Defenders, ‘Front Line Defenders Global Analysis 2021’ (Front Line, the International Foundation for the Protection of Human Rights Defenders 2021) <https://www.frontlinedefenders.org/sites/default/files/2021_global_analysis_-_final.pdf> accessed 29 April 2022.

¹⁷⁴ Ibid.



companies and the territory, such as the Coal and Human Rights Working Group and its commitment to defending the work of social leaders and human rights defenders in the departments of Cesar and La Guajira.”¹⁷⁵

Of course, this is insufficient in being able to make tangible and effective change for a group that is facing a disproportionate level of attacks and danger compared to the rest of the world. More specifically, this mention was in reference to Colombia upkeeping the UNGPs “Respect” Pillar which also highlights the responsibility that falls onto the States for taking action to shield social actors— specifically identifying human rights defenders as those in need of extra support and respect.¹⁷⁶ Colombia takes up this accountability by mentioning these details in its NAP and elaborating on the specific departments that should allocate more resources and time to their protection.

From the interview with the Colombia’s Presidential Advisory Office for Human Rights and International Affairs, it was noted that there were many workshops during the years of the drafting of the NAP which brought in community members, NGOs, and many other civil actors to contribute with their opinions and observations for the focus and content of this plan.¹⁷⁷ Their goal through this interaction was to fulfill the UNGPs respect pillar and get a more accurate understanding of the issues to alleviate and resolve through the usage of the NAP.¹⁷⁸ Yet, with another Colombian interview from an experienced and well-trusted source, the research team was told that there were three incidents that impeded the proper incorporation and participation of NGOs and other non-state actors.¹⁷⁹

These incidents were (1) a lack of call to work on the perspective of business and human rights, (2) critical organizations to the State and human rights activist leaving the process due to disagreements with the President at the time—Juan Manuel Santos—, and (3)

¹⁷⁵ Presidential Advisory for Human Rights and International Affairs Colombia, ‘National Action Plan Of Business And Human Rights 2020/ 2022 ‘Together We Make It Possible Resilience And Solidarity’ (Presidency of the Republic of Colombia 2020) . pp. 44

¹⁷⁶ United Nations. ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” 16 June 2011, (pg. 13, 20)

¹⁷⁷ Interview with Colombia’s Presidential Counselor for Human Rights (Zoom Interview, 05 April 2022)

¹⁷⁸ Ibid.

¹⁷⁹ Interview with Colombia staff of the Business & Human Rights Resource Centre (Zoom Interview, 08 April 2022)

human rights activist and defenders were being killed at high rates.¹⁸⁰ Additionally, according to an interviewee, a Colombian University was asked to conduct a baseline assessment for providing input for the elaboration of the NAP, but it was not considered in the final stages because the NAP was reviewed by business corporations, and not by civil society.¹⁸¹ Thus, these events could potentially explain the lack of mentions and actions within the NAP in benefit to the protection of HRDs. Regarding how this could be reflective in the situation of Mexico, Colombia has been followed in deadly HRD statistics by Mexico and Brazil for some years now.¹⁸² Thus, the lack of attention that is given to such a vulnerable group in the nation should not be repeated in Mexico.

Compared to Colombia, Chile does not have the similar statistics regarding the murders of HRDs, and yet in their NAP they make five in-direct mentions to policies and practices that could help alleviate and elevate these individuals.

Although only two of these mentions are “specific” in the sense that they are assigned to a specific government department and offer concrete actions that can be measured—and thus, monitored. The interview with Mr. Dante Pesce alludes to the reasoning behind these limited mentions because there are already laws in place within Chile that are supported by prosecutor’s fear from public scrutiny in siding with the accused.¹⁸³

Similarly, to Chile, Peru’s numbers do not come close to Colombia’s, but they do have many more direct mentions of HRDs and whistle-blowers in their plan. Yet, more mentions do not necessarily dictate a stronger approach, especially since more than half of these addresses are not tied to any specific governmental body/department and are not time specific.



¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Frontline Defenders, ‘Annual Report on Human Rights Defenders at Risk In 2017’ (Front Line, the International Foundation for the Protection of Human Rights Defenders 2017) <https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf> accessed 29 April 2022.

¹⁸³ Interview with Dante Pesce, Executive Director, Vincular Center at Catholic University of Valparaíso-Chile (Zoom Interview, 29th March 2022)

3. Women

Women's rights in the workplace look quite different in each of the six NAPs. One thing is certain though, despite anti-discriminatory legislations in most countries, none of them can claim that they have overcome the gender equality issue.¹⁸⁴ In a first time, let us have a look at some common patterns within the NAPs, and what constitutes a strength or a weakness in terms of potential success of implementation.

Similarities & Differences

The three European countries' NAPs have the common flaw of proposing only one action aimed specifically towards the better fulfilment of women's rights, or even none. Germany mentions the existence of a pay gap between men and women and the current efforts being made to fight it, it does not include future actions towards this issue.¹⁸⁵ There is an indirect reference to an area where particular attention on women's right is needed, which is the disproportionate rate at which women are affected by the abuses of temporary agency work and abuses of work and services contract. Though it did not highlight its gendered dimension, Germany tackled these human rights violations by committing in one of its measures to pass a bill designed to regulate the power of employers over these vulnerable workers, which it did.¹⁸⁶

The United Kingdom's NAP of 2016 only mentions women once, when it acknowledges their increased likeliness of being a victim of negative impacts of business activity, and it commits to 'raising awareness' in countries where it is the case and assigning to embassies the task of taking on activities to counter it.¹⁸⁷ France's proposed 'underway' actions only include one measure that addresses gender discrimination. The measure in question does not amount to a direct state commitment, because it merely declares that a public financial institution is working on reducing gender inequality in the operations that it funds.¹⁸⁸ There are other measures that technically benefit women, but they are distinctly not meant to be for a one affected group in particular.

Chile, Colombia, and Peru have more measures about women. In the two first, most actions regarding women are in a section on inclusivity and non-discrimination, alongside with other vulnerable groups. All three take a very family-oriented approach to women's rights, emphasizing the importance of keeping a balance between work and family. One

¹⁸⁴ UN Human Rights Council, Report of the Working Group on the issue of Discrimination Against Women in Law and in Practice, A/HRC/26/39, 2014, para. 45: <<https://undocs.org/A/HRC/26/39>>

¹⁸⁵ Government of Germany, Federal Foreign Office, National Action Plan – Implementation of the UN Guiding Principles on Business and Human Rights (2016–2020) p.15–17: <https://globalnaps.org/issue/gender-womens-rights/>

¹⁸⁶ Ibid, p.12.

¹⁸⁷ The United Kingdom Government, Secretary of State for Foreign and Commonwealth Affairs, Good Business: Implementing the UN Guiding Principles on Business and Human Rights (2016) p.11: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf

¹⁸⁸ French Government, Ministry of Foreign Affairs and Development, National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights (2017) p.30.

can only hope that the goal is not to safeguard women's place as primary caregivers of children, but rather a step towards gender equality by providing men and women with the same help and tools to be able to provide for their families in terms of salary and in terms of availability equally. This kind of approach would make them of identical value in the eyes of potential employers who would be less likely to hire men over women.

Strengths & Weaknesses

The fact that the NAPs of France, Germany and the UK do not contain a section dedicated to the people that are most affected by business practices is a flaw and an interviewee, from the National Consultative Commission of Human Rights (CNCDH) of France, admits that it is regrettable that no larger spotlight has been given to women in the NAP. She says that the upcoming report on the French NAP that the CNCDH is in charge of, will contain advice in favor of the inclusion of more specific measures aimed at closing gender-related gaps.¹⁸⁹ The absence of them in the current NAPs of these three countries is most certainly not a result of past legislations having been enough, especially if women's right to favorable conditions of work are evaluated, given the vast issue that violence and sexism in the place of work is in France,¹⁹⁰ Germany,¹⁹¹ and the United Kingdom.¹⁹² Regardless, interviewees have noted that despite gender equality is not given a large platform in the NAPs of these countries, there are still important change happening at all levels, including legal. For example, France has adopted decrees that target gender pay gap by requiring of private businesses that they report their gender equality score yearly, similarly to the Gender Pay Gap Regulations UK and Germany's Gender Transparency Gap Act.¹⁹³

Despite having more gap-specific actions, Chile, Colombia, and Peru too have some broad actions that encompass all affected groups under one commitment. This practice results in actions that do not address any issue in particular, therefore making them not

189 Interview with a staff of CNCDH (Commission Nationale Consultative des Droits de l'Homme, CNCDH) (Zoom Interview, 11th May 2022)

190 Mediapart, "Fight against Sexism and Sexual Violence at Work in France: Action Is Urgent" (Human Rights Watch, March 24, 2022) <available at: <https://www.hrw.org/news/2022/03/07/fight-against-sexism-and-sexual-violence-work-france-action-urgent>>

191 Welle D, "Germany: Sexual Harassment at Work on the Rise, Finds New Study Urging Businesses to Intervene" (Business Human Rights Resource Centre, October 28, 2019) <available at: <https://www.business-humanrights.org/en/latest-news/germany-sexual-harassment-at-work-on-the-rise-finds-new-study-urging-businesses-to-intervene/>>

192 Unison, 'Sexual Harassment Is a Workplace Issue: Guidance and Model Policy' (February 2020) <available at: <https://www.unison.org.uk/content/uploads/2020/02/25965-1.pdf>>

193 I UK, Gender Pay Gap Regulations (2017), <https://www.gov.uk/guidance/the-gender-pay-gap-information-employers-must-report#snapshot-date>
Germany, Gender Transparency Gap Act (2017), <https://www.gesetze-im-internet.de/entgtranspg/EntgTranspG.pdf>
France, Decree No. 2019-15 and Decree No. 2021-265, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043235305>, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037964765/>.

Specific, their progress not Measurable, their Achievability undeterminable, it makes them non-Relevant and generally not Time-specific, unless the NAP itself has a pre-determined duration. Such actions undermine the effectiveness of the NAP to tackle the issues of women and others, and it makes it close to impossible to monitor their implementation or establish causality between them and the changes happening at the human rights level in the countries.¹⁹⁴

Dante Pesce even argues that the most measures in the Chilean NAP have achieved nothing, and that all of the progress that has been made towards the rights of women in the labor market has been achieved by societal means – social movements like feminism, activism, and growing education rates among the Chilean population.¹⁹⁵

He further explained that even specific measures such as action 3.4 and 3.6 in the Chilean NAP where training about female leadership, gender-focus on unions and the balance of work and family life is promised, there is so few political will and budget put into the implementation of the NAP that they either do not happen or are conducted by non-professionals.



¹⁹⁴ Interview with a staff of CNCDH (Commission Nationale Consultative des Droits de l'Homme, CNCDH) (Zoom Interview, 11th May 2022)

¹⁹⁵ Interview with Dante Pesce, Executive Director, Vincular Center at Catholic University of Valparaíso-Chile (Zoom Interview, 29th March 2022)

Participation of Affected Peoples – Building of NAP, Implementation, & Monitoring

1. Building of NAP

According to the international standards on business and human rights identified in the section II, States should secure the participation of stakeholders in the elaboration of the NAPs, including of those groups that may be affected by business activities such as women, indigenous peoples, and human rights defenders. Their active involvement is part of their right to participate in the formulation of policies that concern them. The input provided by such participants is key to identifying and addressing human rights impacts of business activities and to the success of the NAPs.

All countries under study arranged consultations with civil society stakeholders in general during the building process of their NAP. Nevertheless, only Chile and Peru referred expressly in their NAPs that such consultations involved indigenous peoples.¹⁹⁶ None of the NAPs mentioned explicitly that the elaboration process of their NAPs encompassed the participation of women and human rights defenders.

While there was no participation of civil society groups in the identification of priority issues for the German NAP, which relied on experts for that,¹⁹⁷ in Colombia, Chile and Peru there were regional workshops with such groups for the elaboration of their NAPs, with the aim of identifying challenges, shortcomings and opportunities.¹⁹⁸ In particular, the building process of the Peruvian NAP involved a phase related to the elaboration of diagnosis and baseline, in which civil society organizations were allowed to present suggestions and comments.¹⁹⁹

Unlike other NAPs, the Peruvian one indicates that the Ministry of Justice would explain the reasons why a suggestion is included or not.²⁰⁰ The French, Peruvian and Colombian

¹⁹⁶ Ministry of Foreign Affairs, 'National Action Plan on Business and Human Rights Chile' (Republic of Chile 2017), 21–23; Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021), 24–29.

¹⁹⁷ The Federal Foreign Office, 'National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights' (Germany's Federal Foreign Office on behalf of the Interministerial Committee on Business and Human Rights 2016), 5

¹⁹⁸ Presidential Advisory for Human Rights and International Affairs Colombia, 'National Action Plan of Business and Human Rights 2020/ 2022 "Together We Make It Possible Resilience and Solidarity"' (Presidency of the Republic of Colombia 2020), 46–47; Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021), 16; Pontifical Catholic University of Chile, 'Report on the evaluation of the National Action Plan' (Pontifical Catholic University of Chile 2020) <<https://globalnaps.org/wp-content/uploads/2021/03/estudio-de-actualizacion-evaluacion-del-plan-de-accion-nacional-de-derechos-humanos-y-empresas-y-propuesta-para-la-elaboracion-de-su-segunda-version.pdf>> accessed 10 May 2022, 83.

¹⁹⁹ Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021), 20–21, 23–24.

²⁰⁰ Ibid, 20–21, 23–24. The Ministry of Justice made available a form where non-governmental actors could write down their observations. There was a column in that form where the Ministry put its response to the observation (either acceptance or decline). This practice enabled to track how the dialogue took place and generated confidence on stakeholders. Interview with Federico Chunga Fiestas, former General Coordinator of the National Action Plan on Business and Human Rights, Peru's Ministry of Justice and Human Rights (Zoom Interview, 08 April 2022).

NAPs relied on multi-stakeholder roundtables or platforms in the making process of the NAPs, which provided recommendations for such a process.²⁰¹ Only the Peruvian NAP stated expressly that its multi-stakeholder roundtable included representatives of indigenous peoples.²⁰² While the Peruvian, Chilean and Colombian NAP entailed the realization of consultations or workshops in different regions,²⁰³ so that they reached more non-governmental stakeholders, the UK NAP only organized stakeholder engagement events in London.²⁰⁴ With regard to the Chilean NAP, Dante Pesce, former member of the UN Working Group on Business and Human Rights, indicated that, even though workshops involved the participation of indigenous peoples, the consultations were concentrated in Santiago (capital city), and therefore did not focus on the capacity building of such groups.²⁰⁵

In relation to the trust of non-governmental actors towards the building process of a NAP, Federico Chunga, former Coordinator of the Peruvian NAP, asserted that in the Peruvian case, at the beginning of the elaboration process, civil society actors were unwilling to engage because many of them did not believe that it would work well.²⁰⁶ To try to overcome that belief, the Peruvian State arranged individual meetings with each invited organization, and allowed them to engage in a) the formulation of the methodology for the elaboration process of the NAP, b) national baseline assessment, and c) selection of priority issues,²⁰⁷ The final list of priority issues for the elaboration of the Peruvian NAP was a consensus between the State and non-governmental actors.²⁰⁸

Another factor that contributed to the trust building process in the Peruvian case proved to be that the governmental stakeholders had full support from the top officials of their institutions or sectors, enjoyed the ability to take decisions and to make institutional commitments, and had the duty to keep informed the senior level of their institutions on

201 The Danish Institute for Human Rights, 'France' (National Action Plans on Business and Human Rights) <<https://globalnaps.org/country/france/>> accessed 23 May 2022; Presidential Advisory for Human Rights and International Affairs Colombia, 'National Action Plan of Business and Human Rights 2020/ 2022 "Together We Make It Possible Resilience and Solidarity"' (Presidency of the Republic of Colombia 2020), 46; Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021), 24-29.

202 Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021), 16, 18-19.

203 Presidential Advisory for Human Rights and International Affairs Colombia, 'National Action Plan of Business and Human Rights 2020/ 2022 "Together We Make It Possible Resilience and Solidarity"' (Presidency of the Republic of Colombia 2020), 46-48; Ministry of Foreign Affairs, 'National Action Plan on Business and Human Rights Chile' (Republic of Chile 2017), 21-23; Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021), 18.

204 The Danish Institute for Human Rights, 'United Kingdom' (National Action Plans on Business and Human Rights) <<https://globalnaps.org/country/united-kingdom/>> accessed 23 May 2022; Interview with Marilyn Croser, formerly the Corporate Justice Coalition (Zoom Interview, 13 June 2022).

205 Interview with Dante Pesce, Executive Director, Vincular Center at Catholic University of Valparaíso-Chile (Zoom Interview, 29 March 2022).

206 Interview with Federico Chunga Fiestas, former General Coordinator of the National Action Plan on Business and Human Rights, Peru's Ministry of Justice and Human Rights (Zoom Interview, 08 April 2022).

207 Ibid.

208 Ibid. The Peruvian State proposed a list of 18 topics to be addressed in the formulation of the baseline for the NAP, which ended up encompassing 23 topics due to the suggestion of stakeholders. Bruce Barnaby and Claudia Lovón, 'Avances, desafíos y reflexiones del proceso de elaboración del Plan Nacional de Acción sobre Empresas y Derechos Humanos en Perú' in Universidade Federal de Goiás (ed), Planos Nacionais de Ação e Políticas Públicas na América Latina Sobre Direitos Humanos e Empresas (Cegraf UFG 2020).

the agreements and progress in the elaboration process.²⁰⁹

With regard to the inclusion of recommendations submitted by non-governmental actors in the action of NAPs, in the Chilean case, according to an independent study, there is no evidence that the National Baseline Assessment nor the participatory consultations were used for the elaboration of its NAP.²¹⁰ In relation to Colombia, the elaboration process of its NAP lacked an evaluation of the most urgent human rights violations in the country, thereby this NAP did not include serious issues raised by civil society.²¹¹

Neither Colombia, Chile nor Peru conducted consultations with indigenous peoples before the approval of their NAPs, in order to obtain their free, prior and informed consent,²¹² even though these public policy instruments constitute norms affecting such groups, as mentioned in the comparative section on indigenous peoples. The right to free, prior and informed consent requires that such consultations should be arranged before the approval of any legislative and administrative measures that concern them.

Finally, in relation to civil society mapping, only the Peruvian NAP asserts explicitly that as part of the building process there was a stage which consisted in the identification and summoning of stakeholders. Federico Chunga, former Coordinator of the Peruvian NAP, indicated that the criteria of civil society mapping undertaken in the Peruvian NAP consisted in the trajectory of groups or organizations that had worked on business and human rights issues.²¹³

209 Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021), 17.

210 Pontifical Catholic University of Chile, 'Executive Summary. Report on the evaluation and update of the National Action Plan on Business and Human Rights' (Pontifical Catholic University of Chile 2020) <<https://globalnaps.org/wp-content/uploads/2021/03/estudio-de-actualizacion-evaluacion-del-plan-de-accion-nacional-de-derechos-humanos-y-empresas-y-propuesta-para-la-elaboracion-de-su-segunda-version.pdf>> accessed 10 May 2022, 9–10. José Aylwin, Marcel Didier and Felipe Guerra agreed that civil society perspective was not reflected in the Chilean NAP. José Aylwin et al, 'El plan de acción nacional de derechos humanos y empresas en Chile: análisis crítico' in Universidade Federal de Goiás (ed), Planos Nacionais de Ação e Políticas Públicas na América Latina Sobre Direitos Humanos e Empresas (Cegraf UFG 2020), 43. According to Judith Schönsteiner, findings of the NBA and the concerns raised in the participatory dialogues were reflected in a very limited way in the content of the Chilean NAP. Judith Schönsteiner, 'O Plano Nacional de Ação sobre Direitos Humanos e Empresas do Chile: um balanço sobre o seu impacto discursivo e real' (2019) 16(3) Revista de Direito Internacional 94, 98.

211 National Roundtable of NGOs on Business and Human Rights, 'Public statement by environmental, social and human rights non-governmental organizations rejecting the new version of the National Action Plan on Business and Human Rights (Business & Human Rights Resource Centre) <https://media.business-humanrights.org/media/documents/NAP_2020_TR_final.pdf> accessed 16 June 2022.

212 Vice-ministerial Resolution N°001-2019-JUS 2019; José Aylwin et al, 'El plan de acción nacional de derechos humanos y empresas en Chile: análisis crítico' in Universidade Federal de Goiás (ed), Planos Nacionais de Ação e Políticas Públicas na América Latina Sobre Direitos Humanos e Empresas (Cegraf UFG 2020), 61; National Roundtable of NGOs on Business and Human Rights, 'Public statement by environmental, social and human rights non-governmental organizations rejecting the new version of the National Action Plan on Business and Human Rights (Business & Human Rights Resource Centre) <https://media.business-humanrights.org/media/documents/NAP_2020_TR_final.pdf> accessed 16 June 2022. The methodology guiding the elaboration process of the Peruvian NAP indicated that prior consultation process will be conducted in the implementation stage of the NAP. Vice-ministerial Resolution N°001-2019-JUS 2019.

213 Interview with Federico Chunga, former General Coordinator of the Peruvian NAP on 8 April 2022.



2. Implementation

Although the responsibility of implementing the NAPs falls on the States, the UN Working Group adds that stakeholder engagement is a necessary addition to assure this success as well.²¹⁴ To this end, States are advised to remove any barriers impeded to disproportionately impacted individuals; create platforms where impacted communities can exchange opinions to ensure the transparency and inclusivity of conduct capacity building for stakeholders.²¹⁵

On the one hand, the Peru and Colombia's NAPs state implementation stage as stipulated in the ILO Convention No.169 as well as the UNGP.²¹⁶ On the other hand, the European countries did not explicitly address any particular groups' participation in their implementation processes.²¹⁷ The UK's NAP was only focused on their civil societies' engagement in their implementation.²¹⁸

²¹⁴ UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016] 4.

²¹⁵ Ibid, p.12.

²¹⁶ Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021) 42-43, 71-74; Presidential Advisory for Human Rights and International Affairs Colombia, 'National Action Plan of Business and Human Rights 2020/ 2022 "Together We Make It Possible Resilience and Solidarity"' (Presidency of the Republic of Colombia 2020) 61.

²¹⁷ Ministry of Foreign Affairs and International Development, 'National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights' (Republic of France 2017); The Federal Foreign Office, 'National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights' (Germany's Federal Foreign Office on behalf of the Interministerial Committee on Business and Human Rights 2016); The Secretary of State for Foreign and Commonwealth Affairs, 'Good Business Implementing the UN Guiding Principles on Business and Human Rights' (UK Crown 2016).

²¹⁸ The Secretary of State for Foreign and Commonwealth Affairs, 'Good Business Implementing the UN Guiding Principles on Business and Human Rights' (UK Crown 2016) 10 (iv), (v), 16.

Germany's NAP had no relevant clause.²¹⁹ Above all, no States specifically mentioned the participation of other focused groups such as women and human rights defenders.

According to the UNWG's guidelines, a measure that can enhance transparency and inclusiveness of the implementation processes includes platforms for dialogues between business enterprises and impacted groups.²²⁰ Notably, the Chilean government promised to set up a local governance mechanism made by representatives of the community where an energy project is being carried out.²²¹ However, the information as to whether the measure was implemented could not be found.²²² To ensure that the dialogues are effective and meaningful, States are advised to provide capacity-building of stakeholders.²²³ However, the Chilean government has not conducted such capacity-building measures as awareness-raising among indigenous peoples.²²⁴

3. Monitoring

Germany created a steering group that complies with the recommendations of the guidance. It is made up of representatives of businesses, civil society, and trade unions, making it inclusive according to the principles.²²⁵ However, there are no indicators other than the benchmark decided on regarding due diligence. The goal was that a certain number of businesses have implemented due diligence by 2020, and if not, legislation would be passed. None of the other measures from the NAP have indicators. Without the indicators, it is more complicated for stakeholders to monitor the progress of the NAP.

Before the Guidance on the NAPs was published, the Government of the United Kingdom had committed to report yearly on implementation progress. It was already intended to create a steering group with some stakeholders for the process, such as business representatives and civil societies, though not all stakeholders that would ideally be included, such as trade unions representatives, were.

However, in 2017, an effort was made to reach out to stakeholders and gather critiques of the NAP from them.

²¹⁹ The Federal Foreign Office, 'National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights' (Germany's Federal Foreign Office on behalf of the Interministerial Committee on Business and Human Rights 2016).

²²⁰ UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016] 4.

²²¹ Ministry of Foreign Affairs, 'National Action Plan on Business and Human Rights Chile' (Republic of Chile 2017) 35 53.

²²² Interview with Judith Schönsteiner, Reader, Researcher of the Centre for Human Rights at Diego Portales University (Zoom Interview, 27th Friday 2022).

²²³ The Danish Institute of Human Rights, 'National Action Plans on Business & Human Rights an analysis' [2018]; The Scottish Human Rights Commission, 'Business and Human Rights National Action Plans: Comparative Review of Global Best Practice' [2019] 25.

²²⁴ Interview with Dante Pesce, Executive Director, Vincular Center at Catholic University of Valparaíso-Chile (Zoom Interview, 29th March 2022).

²²⁵ See above section D – Participation.

France's monitoring procedure is not mentioned in the NAP. It relies on the volunteering of businesses to provide reports of implementation of CSR and due diligence.²²⁶ It has appointed a national human rights body (CNCDH) in charge of a report which was due almost two years ago. When interviewed, a staff from the CNCDH explained that the process was very lengthy and tedious. Her explanations during the interview brought doubt about exactly how much the affected stakeholder's participation and comments is included in the monitoring process that the report is meant to be. Indeed, while the CNCDH is made up of representatives of trade unions, civil societies, and NGOs, it is also made up of representatives of businesses and ministries. For every recommendation issued, a consensus between all of them must be reached.²²⁷ This means that a lot of the affected stakeholders' comments do not make it to the official monitoring tool that reaches the State.

The Peruvian NAP stipulates that indigenous peoples and civil society organizations have a secured place in the monitoring of the implementation. The Multi-stakeholder Roundtable, made up of 132 non-governmental stakeholders, that was established during the elaboration of the NAP, will have to pick only a few that would represent the interests and voices of all of in the Multi-stakeholder Committee, which was created to conduct a closer monitoring.²²⁸ In May of 2022, extremely recently, the State has approved a guidance that, if applied, would allow the creation of different working groups made up of stakeholders, which would highly increase their participation in the monitoring process.²²⁹

Colombia has an Inter-Institutional Monitoring Commission which gathers stakeholders, indigenous peoples, and NGOs; however, it is not made of any women. The participation of stakeholders cannot be found to be respected if women are not represented and not part of the consulted stakeholders. A staff member from Colombia's Business & Human Rights Resource Centre, interviewed for this project, deplores that the Monitoring Commission is in fact a declarative working group rather than an operative one, as the

group has not met once since the change of government.²³⁰

Therefore, there has been no official report on the progress made in the last two years yet.

²²⁶ French Government, Ministry of Foreign Affairs and Development, National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights (2017) p.23–24.

²²⁷ Interview with a staff of CNCDH (Commission Nationale Consultative des Droits de l'Homme, CNCDH) (Zoom Interview, 11th May 2022)

²²⁸ Director's Resolution N°004–2022–JUS/DGDH; Interview with Enrique Fernández–Maldonado, Center for Public Policy and Human Rights, Peru Equity (Zoom Interview, 7 April 2022)

²²⁹ Director's Resolution N°004–2022–JUS/DGDH

²³⁰ Interview with Colombia staff of the Business & Human Rights Resource Centre (Zoom Interview, 08 April 2022)

Chile has by far the most adequate course of action for monitoring, on paper. An entire chapter of the NAP is dedicated to explaining in detail how the monitoring of implementation and follow up will take place. The process involves stakeholders, as part of a Multi-Actor Committee, a specific procedure by which each ministry reports the implementation of the measures it oversees, to the Inter-Ministerial Working Group. There is a separate document mentioned, in which the indicators are laid out.

However, in an interview with Judith Schönsteiner, from the Human Rights Centre of the University Diego Portales, the research team learned that the Committee has not been working as well as intended: it started with considerable delay, its members –at least those from civil society sector– were chosen by the government without due consideration of the representativity of different (also critical) positions, and there was no representation of social movements either.²³¹ An evaluation of the NAP's implementation was hardly possible as the plan's indicators were defined only as formal tick-box exercises, and therefore, could not be meaningfully evaluated by the Committee.²³² In addition, after August 2021, the Subsecretariat in charge of the plan stopped communicating with the Committee, and it was not consulted regarding the measures of the second Chilean NAP.²³³ Overall, the Committee only met three times since its creation, and not once since August of 2021.²³⁴ The Chilean Civil Society Platform on Business and Human Rights has critically accompanied the process of elaboration of the second Chilean NAP.²³⁵

231 Interview with Judith Schönsteiner, Reader, Researcher of the Centre for Human Rights at Diego Portales University (Zoom Interview, 27th Friday 2022).

232 Ibid.

233 Ibid. The second Chilean NAP was approved by the Inter-Ministerial Committee in March 2022. Ministry of Justice and Human Rights of Chile, 'Segunda versión del Plan Nacional de DD.HH. y empresas es aprobado por Comité Interministerial' (Ministry of Justice and Human Rights, 10 March 2022) <<https://ddhh.minjusticia.gob.cl/segunda-version-del-plan-nacional-de-dd-hh-y-empresas-es-aprobada-por-el-comite-interministerial/>> accessed 1 June 2022.

234 Ibid.

235 Chilean Civil Society Platform on Business and Human Rights, 'Sin participación ciudadana incidente ni consulta indígena, gobierno saliente aprobó segundo plan de acción nacional de derechos humanos y empresas a días del cambio de mando' (Human Rights Centre of the University Diego Portales, 10 March 2022) <<https://derechoshumanos.udp.cl/sin-participacion-ciudadana-incidente-ni-consulta-indigena-gobierno-saliente-aprobo-segundo-plan-de-accion-nacional-de-derechos-humanos-y-empresas-a-dias-del-cambio-de-mando/>> accessed 1 June 2022.

Extraterritorial Obligations

1. Availability of Remedies from Home Countries for Affected Groups in Host Countries

As international standards on business and human rights indicate, extraterritorial obligations are key to preventing human rights abuses by third parties. Such obligations encompass the duty of States to regulate the conduct of businesses operating outside of their territory and that have their nationality or have a substantial relation with them. That duty involves the availability of remedies by States to hold their domiciled companies accountable for violations committed by their subsidiaries in host countries.

Germany and France have measures contained in their NAPs concerning the provision or strengthening of remedies from home countries for affected groups in host countries: Germany committed itself in its NAP to adopting mandatory legislation on corporate due diligence in case less than 50% of large Germany-based enterprises would not have voluntarily incorporated due diligence procedures by 2020.²³⁶ In that year, the government presented the results of a survey conducted to assess whether this target was achieved: only 22% of the companies that had provided a response to the survey could demonstrate that they fulfilled the target.²³⁷ In this way, following its NAP, the German State passed the Act on Corporate Due Diligence Obligations in Supply Chains in 2021, through which large German companies should adopt due diligence mechanisms within their supply chains (including activities abroad).²³⁸ This legislation created an administrative remedy before the Federal Office for Economic Affairs and Export Control for persons in host countries whose human rights are violated or put at risk by a German company's non-fulfilment of its due diligence obligations contained in the Act.²³⁹

The Act also allows potentially affected individuals to authorize NGOs or trade unions to represent them in the processing of existing judicial remedies before German civil courts. However, as a human rights expert from Germany has pointed out, the Act does not create new judicial remedies.²⁴⁰ With regard to this absence in the Act, the Initiative Lieferkettengesetz has asserted that, '(...)' the lack of a new and improved civil liability provision reduces the deterrent and thus preventive effect on companies.²⁴¹

²³⁶ The Federal Foreign Office, 'National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights' (Germany's Federal Foreign Office on behalf of the Interministerial Committee on Business and Human Rights 2016), 10.

²³⁷ Business & Human Rights Resource Centre, 'German parliament passes mandatory human rights due diligence law' (Business & Human Rights Resource Centre, 16 June 2021) <<https://www.business-humanrights.org/en/latest-news/german-due-diligence-law/>>

²³⁸ Act on Corporate Due Diligence Obligations in Supply Chains of July 16, 2021 (GER).

²³⁹ Ibid.

²⁴⁰ Interview with a human rights expert from a German NGO (Zoom Interview, 08 April 2022).

²⁴¹ Initiative Lieferkettengesetz, 'What the new Supply Chain Act delivers – and what it doesn't' (Germanwatch, 11 June 2021) <https://www.germanwatch.org/sites/default/files/Initiative-Lieferkettengesetz_Analysis_What-the-new-supply-chain-act-delivers.pdf> accessed 4 June 2022.

In relation to the existing judicial remedies in Germany, its NAP indicates that it will elaborate a multilingual information brochure on civil remedies available to potentially affected persons by business activities.²⁴² During the implementation stage, Germany produced an information booklet in German and English, named “The responsibility of business enterprises for human rights violations: Access to justice and the courts”, which explained the remedies that are available under the civil procedure law of Germany.²⁴³

This study addressed the opportunities available for foreign national victims of abuse by German companies.²⁴⁴

On its part, France indicated that its Law on Duty of Vigilance is being implemented.²⁴⁵ This law applies to large France-based companies operating abroad and provides ground for criminal liability. In addition, France asserted in its NAP that it will amend article 113-8 of its Criminal Code so that a prosecutor’s decision to close an investigation into a complaint presented by a victim of a crime perpetrated by a French company abroad can be appealed.²⁴⁶ This amendment has not been implemented yet.²⁴⁷

Meanwhile, Peru committed in its NAP to creating an inter-sectorial coordinating space to review the existing judicial remedies within its legal system to make the necessary changes aimed at securing their effectiveness, in light of the OHCHR’s Guidance to improve corporate accountability and access to judicial remedy for business-related human rights abuse.²⁴⁸ As mentioned previously, this guidance and its addendum recommends States to review whether their remedies properly prevent and punish business-related human rights impacts, in light of the States’ international human rights obligations and evolving challenges in the area of business and human rights. Accordingly, by including this action, the Peruvian State will check whether its legal system includes the availability of remedies to hold Peru-domiciled companies for violations committed by its subsidiaries abroad, and if it does not, it will incorporate such remedies.

Peru’s NAP also establishes that the before-mentioned space will include in its respective review the effectiveness of existing non-judicial remedies, for which it will resort to the OHCHR’s guidance to enhance the effectiveness of State-based non-

²⁴² The Federal Foreign Office, ‘National Action Plan Implementation of the UN Guiding Principles on Business And Human Rights’ (Germany’s Federal Foreign Office on behalf of the Interministerial Committee on Business and Human Rights 2016), 25.

²⁴³ Federal Ministry of Labour and Social Affairs, ‘Access to remedy and remediation’ (Corporate Social Responsibility) <<https://www.csr-in-deutschland.de/EN/Business-Human-Rights/NAP/Access-to-remedy-and-remediation/access-to-remedy-and-remediation.html>> accessed 3 June 2022.

²⁴⁴ Interview with Michael Windfuhr, Deputy Director of the German Institute for Human Rights and Expert member of the UN Committee on Economic, Social and Cultural Rights (Zoom Interview, 18 May 2022).

²⁴⁵ Ministry of Foreign Affairs and International Development, ‘National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights’ (Republic of France 2017), 27.

²⁴⁶ *Ibid.*, 53.

²⁴⁷ Légifrance, ‘Penal Code of France. Article 113-8’ (Légifrance) <https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006417194> accessed 4 June 2022.

²⁴⁸ Ministry of Justice and Human Rights, ‘National Action Plan on Business and Human Rights’ (Peru’s Ministry of Justice and Human Rights 2021), 121.

judicial mechanisms relevant to business-related human rights abuses.²⁴⁹ As asserted previously, this guidance and its addendum recommends States to check whether these types of remedies adequately protect communities and individuals from business-related human rights impacts. Therefore, by incorporating this action, the Peruvian State will conduct that review, and if its legal system does not include the availability of non-judicial remedies for extraterritorial abuses by Peru-domiciled companies, it will incorporate such remedies.

Colombia, Chile, and United Kingdom do not have any measures in their NAPs addressing remedies from home countries for affected groups in host countries, in contrast to France, Germany and Peru.

2. Consular Assistance for HRDs

For a group that is under attack at such alarming rates at the international level, having access to remedies and exercising their fundamental freedoms is of utmost importance. Within the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms there are articles that establish the right for HRDs to benefit from an effective remedy and to be protected in the event of the violation of their rights.²⁵⁰ In addition to this, the declaration places responsibility on the states to protect HRDs with strategies and all resources at their disposal.²⁵¹ Following the Remedy Pillar in the UNGPs—especially in reference to the commentary on state-based judicial mechanisms, consulates offer a pathway to those remedies.

Taking these steps are crucial in maintaining or improving the wellbeing and humane state of HRDs—especially in places like Colombia and Mexico where the killings of these individuals are always some of the highest levels in the world.²⁵²

²⁴⁹ Ibid, 121.

²⁵⁰ UNGA Res 53/144, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” 8 March 1999 (adopted 09 December 1998) Art 9.1

²⁵¹ Ibid, Article 12.

²⁵² ‘Extractive Industries and Human Rights in Latin America’ (Cidse.org, 2022) <<https://www.cidse.org/2017/11/13/extractive-industries-and-human-rights-in-latin-america/>> accessed 17 March 2022 see also, Spotlight Initiative, ‘Better Protection for Women Human Rights Defenders in Latin America’ (2020) <<https://spotlightinitiative.org/news/better-protection-women-human-rights-defenders-latin-america>> accessed 21 April 2022.

Similarities & Differences

All these plans had few mentions of consulate assistance being a tool or pathway for aid, especially for HRDs. However, many of the nations' have placed trainings that are offered to their diplomatic staff to be better equipped with ways to help the mentioned individuals. The nations that fall under this are Germany, the UK, France, and Chile. As seen in Germany, the Elisabeth–Selbert–Initiative was launched in 2020 with the goal to better train embassy staff in how they can best assist and aid the HRDs that they may encounter who are at risk.²⁵³ Due to this program, Germany completed what they had promised in their NAP regarding creating a program to HRDs through diplomatic and consular missions about businesses and human rights. Through an interview with the German Institute for Human Rights' Deputy Director, Michael Windfuhr, the research team was informed of a positive example of when this initiative helped the German Embassy in Uzbekistan look into a supply chain when developing their different projects in textile and oil sectors and were able to increase initiatives that focused on HRDs and their protection.²⁵⁴ Other countries, such as Colombia and Peru lacked on the making and implementing of possible consulate assisting programs or trainings for HRDs protection. In fact, Colombia, and Peru both had no mentions of consulate assistance or diplomatic mentions in their plans.

Strengths & Weaknesses

The United Kingdom's plan mentioned that there would be more responsibility placed on their diplomatic missions to support HRDs' work and raise awareness within the local authorities and help with the application of international human rights law, especially if there was some sort of clash between IHRL and local law.²⁵⁵ Simultaneously, the foreign office also provided BHR training to assist in the overall expansion of the goal, but it is not clear to what extent this influences the relations that UK diplomatic missions have with companies and their willingness to raise human rights concerns.

This needs to be monitored and evaluated.²⁵⁶ Additionally, the impact from such training varies depending on the individual, some of whom may be keener than others to pursue human rights issues with their host governments and with British companies.²⁵⁷

In France's NAP, the government promised to “encourage embassies to be vigilant with respect to the human rights” performances, whom they assigned this responsibility to

²⁵³ Elisabeth–Selbert–Initiative. Protect Human Rights Defenders – Ifa' (Ifa.de, 2022)

²⁵⁴ Interview with Michael Windfuhr, Deputy Director of the German Institute for Human Rights and Expert member of the UN Committee on Economic, Social and Cultural Rights (Zoom Interview, 18 May 2022)

²⁵⁵ The Secretary of State for Foreign and Commonwealth Affairs, 'Good Business Implementing the UN Guiding Principles on Business and Human Rights' (UK Crown 2016) (pg. 9,17)

²⁵⁶ Interview with Peter Frankental, Economic Affairs Programme Director, Amnesty International UK (Zoom Interview, 11 April 2022)

²⁵⁷ Ibid.

the French Ministry of Foreign Affairs and International Development.²⁵⁸ Who, as of 2015, sent out a CSR guide to their diplomatic posts and embassies with the necessary information to better prepare their consulates.²⁵⁹ Therefore, in allocating a specific department to fill a gap, France took appropriate steps to better their assistance to HRDs.

Overall, there are significant gaps in extraterritorial obligations within the NAPs and in practice through training and programs. A lack of ETO implementation and awareness can leave gaps in a system that if improved could be a helpful tool for the protection of HRDs. ETOs are meant to provide external support for the victims of abuse from businesses and States that have not taken—or been hindered from taking—the necessary steps to appropriately aid BHR victims.



²⁵⁸ Ministry of Foreign Affairs and International Development, ‘National Action Plan for The Implementation of The United Nations Guiding Principles on Business And Human Rights’ (Republic of France 2017). Pp. 16

²⁵⁹ Ibid.



IV. CONCLUSIONS AND POLICY RECOMMENDATIONS FOR MEXICO

1. Conclusions

A. General

National Action Plans for Business and Human Rights require proactive and effective practices in the monitorization and policy implementation. While most of the NAPs addressed the UNGPs to the best of their ability by allowing for affected individuals to participate and offer solutions to help aid the issues faced in their country by HRDs, women, and indigenous peoples, there were still weak points in many of the policies and plans. For example, European States included no concrete actions to protect indigenous peoples against human rights violations. Additionally, in reflecting the UNGPs' voluntary nature, many measures lacked specific timeframes.

B. Indigenous Peoples

Compared to European peers' broad commitments, the three Latin American States developed actions whose progresses are measurable and time specific. (e.g., training on public officials) However, despite their specificity of the target issues and time frames, their implementations have not come to fruition. For example, though the government of Chile included a measure to hold dialogues between companies and local communities including indigenous peoples in its NAP and attempted to implement it, it has not been successfully implemented. In addition, it has been noted that there are gaps in the implementation of free, prior, and informed consent.

C. Human Rights Defenders

Overall, the criminalization, direct threats, and defamation that human rights defenders face in the business and human rights sector require immediate, direct, and effective solutions from State authorities. Any measures less than productive, detailed, inclusive, and time-specific could result in similar or inadequate outcomes. Even though Germany, the United Kingdom, and France had zero reported killings of HRDs in the last five years, these States still included mentions towards better business and human rights practice towards this group—specifically aiming to implement the UNGP's Respect Pillar into their policies. Colombia, Peru, and Chile on the other hand had killings reported for many years now, and yet their tackling of this issue was very unspecific and fell under no timeframes. All of the studied States, however, offered no intersectional protection for HRDs.

D. Women

France, Germany, and the UK have made the mistake of underplaying the need for women's marginalization from the work scene to be represented in the NAPs, by not reflecting the challenges they face. An important aspect uncovered in this report is the need for an NAP to be an articulator between the population's needs and businesses' actions. Though the States of Chile, Colombia and Peru were able to point at issues regarding women's rights in BHR and spell them out, it is mainly the society that pushes progress ahead in non-legislative ways at initially. The role of the NAP is to support these feminist movements and ensure that businesses have the tools to follow it, and, if it comes to it, legally force businesses to comply by passing laws. Good practices seen amongst the six countries touched upon the balance between family and work life, revision of parental leave laws, adoption of family friendly systems in the workspace. An issue that requires more attention from all countries is the safety of women in the workplace and pay gap, protected by their right to a just and favorable conditions of work, and to equal remuneration.



E. Participation

Business activities can impair the rights of indigenous peoples, human rights defenders and women. According to international human rights standards, these affected groups are entitled to participate in all stages of NAPs. In turn, it means that States should facilitate active participation of such actors, for which transparency is key. With regard to the NAPs under study, Colombia, Chile and Peru provided participation opportunities for non-governmental actors in the identification of priority issues for the formulation of their NAPs. Meanwhile, Germany decided to rely on experts for that task, excluding the engagement of civil society groups. Notably, the Peruvian NAP established that it would explain the reasons whereby an input by non-governmental stakeholders is not included. In addition, while the NAPs of Peru, Chile and Colombia envisaged the organization of consultation events in different regions of their countries, the UK NAP delivered such events in London only. With regard to free, prior and informed consent procedures in the elaboration process of NAPs, the Chilean, Colombian and Peruvian cases lacked such procedures. In relation to the participation of indigenous peoples in the implementation stage of NAPs, the Peruvian and Colombian NAP committed to creating working groups composed of such groups, while the European NAPs did not explicitly include them.

F. Extra-territorial Obligations

Extra-territorial obligation entails the State duty to provide remedies for those who were harmed by business activities. While Germany, France, and Peru included measures to enact a law or amend existing legislation to ensure the access to remedy, Chile, Colombia, and the United Kingdom did not mention this regard. Notably, France implemented the law on the duty of vigilance that provides a ground for civil liability for a company that failed to exercise human rights due diligence.

G. Consular Assistance

Chile, France, Germany, and the UK promised to provide training on public officials to protect individuals including human rights defenders against harm. While such programs have been implemented, their designs are criticized for being broad or heavily dependent on individual ambassadors' willingness to cooperate.



2. Recommendations

A. General

- Ensure that all NAPs action points have measurable targets and benchmarks, as well as a clear timeframe for implementation.
- For each action introduced in the Mexican NAP, there must be specificity behind the department, ministry, working group, or government official that will carry out and oversee these actions.
- An allocation of the necessary resources should be secured by the national government to assure the continuation and success behind the actions and their monitoring groups.
- Provide targets for specific groups, including women, indigenous people and HRDs, based on transparent and disaggregated data.

B. Indigenous Peoples

- Ensure dialogues between companies and local communities, including indigenous peoples, who would be affected by development or business activities while making sure that the dialogues are underpinned by international standards.
- Provide training on public officials to ensure the victims' access to remedy.
- Ensure that the NAP takes into account the historical and structural imbalance of power between indigenous communities and companies as a starting point for the design of public policies to regulate business activities, avoiding perpetuations of such imbalances.

C. Human Rights Defenders

- Creating a working group made up of (1) HRDs of different identity and community groups, (2) NGOs with different demographic focuses, and (3) government departments/ ministries who oversee the development of program designs and legislation proposals aimed at the protection of HRDs.
 - o With the goal of intersectionality, this working group should have a gender quota of at least 50%. Additionally, it should have ethnic and indigenous representatives from each Mexican State.

o The government should provide transportation, with additional security, for these working group representatives to attend their meetings.

– Increase the annual budget for Mexico’s National Mechanism to Protect Human Rights Defenders and Journalists. This budget should not only be allocated towards improving and increasing the resources that the mechanism can use in their protection and prevention work, but additionally it should be increased enough to cover hiring of staffing levels that are appropriate enough in keeping up with the agency’s growing caseloads. Overall, the budget should increase enough to cover as many gaps in the mechanism’s needs as possible.

– Mandate that all 32 Mexican states create, promote, and protect their state-level protection units that serve as points of contact for the federal Protection Mechanism.

– All 33²⁶⁰ state police forces should provide bi-annual reports of their progress with the defense of human rights defenders when they have been called upon by the defenders themselves, or through the Protection Mechanism itself.

– Government Authorities should actively forbid and debar violence, death threats, defamation, criminalization, and murder on HRDs, and warn perpetrators of legal repercussions for this violation.

– In addition to ban on attacks of HRDs, explicit and public recognition by business and government of the vital work they do for democracy must be encouraged—if not mandated—by the government.

– Establish an obligation for effective engagement with defenders when companies create due diligence policies to adequately integrate measures for their protection and perspectives.

D. Women

– Within the first year, request an assessment of women’s security in the workplace from all businesses. If it is not provided within a year of the request, the business shall be fined proportionally to its size. Collaborate with relevant BHR actors (NGOs, trade unions, academics, etc.) to create the standards of the assessment.

²⁶⁰ There are 31 state police forces and 2 for Mexico City

- Within the first year, mandate NGOs, trade unions, businesses and other relevant BHR actors to work together to provide a report on how to best accommodate family life at work in realistic manner. The aim is to come up with recommendations and policies that could be incorporated into businesses over the next three years
- Within the first year, request businesses to provide a yearly disclosure report including a pay gender pay gap score. Collaborate with relevant BHR actors to create indicators. Businesses should aim to keep their score above a threshold and publish an action plan for the upcoming year in case they do not.

E. Participation

- Carry out consultations with indigenous peoples, human rights defenders and women in the building, implementation and monitoring of the NAP. In order to ensure their participation in the monitoring stage, make available in a timely manner reports of implementation to such groups. In the specific case of indigenous peoples, with regard to measures within the NAP that may affect them, conduct such consultations following appropriate procedures, with participation of their own representative institutions, and before the approval of said measures, in accordance with the right of indigenous peoples to free, prior and informed consent.
- In order to facilitate that such groups adequately plan their participation in NAPs processes, States should inform them in a timely manner the participation opportunities (workshops, consultations, etc.) envisaged for all stages of the NAP.
- In the building process of the NAP, allow indigenous peoples, human rights defenders and women to provide their recommendations and inputs in the elaboration of the National Baseline Assessment, which consists in the evaluation of the implementation of the UNGPs and in the identification of the most urgent human rights issues in a given State.
- Create a working group made up of non-governmental stakeholders, including representatives of indigenous peoples, human rights defenders and women, as a permanent platform where these actors can continuously provide recommendations and receive information from the State during the elaboration, implementation and monitoring processes of the NAP.
- Explain why a recommendation submitted by indigenous peoples, human rights defenders and women is not incorporated within the NAP.

- Conduct consultation events in different regions of the country, so that physical barriers to participation for human rights defenders, indigenous peoples and women are lessened.
- Provide the necessary trainings on business and human rights standards (capacity building) to indigenous peoples, human rights defenders, and women, so that they can have a meaningful participation in all the stages of the NAP.
- Carry out civil society mapping at the early stage of the building process of NAP.

F. Extra-territorial Obligations

- Consider enacting a law to strengthen access to justice for victims who bring cases against a State in concern from overseas. The scope of liability includes not only the parent companies but also their subsidiaries or suppliers.
- Review existing legislation and judicial mechanisms to ensure the access to remedy as well as its adequateness.

G. Consular Assistance

- Include measures to train diplomatic missions to ensure the protection of individuals, especially human rights defenders who may be harmed by development or business activities.
- Design training programs in a way that the diplomatic missions undertake without being dependent on each diplomat or ambassador's willingness.



V. BIBLIOGRAPHY

Articles

- Albertson Fineman M, 'Vulnerability and Social Justice' [2019] 53 Valparaiso University Law Review
- Augenstein D, 'Towards A New Legal Consensus on Business and Human Rights: A 10Th Anniversary Essay' (2022) 40 Netherlands Quarterly of Human Rights
- Cantú Rivera H, 'National Action Plans on Business and Human Rights: Progress or Mirage?' [2019] 4(2) Business and Human Rights Journal
- Cossart S, Chaplier J, and Beau de Lomenie T, 'The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All' (2017) 2 Business & Human Rights Journal
- Hampton D, 'Modern Slavery in Global Supply Chains: Can National Action Plans on Business and Human Rights Close the Governance Gap?' [2019] 4(2) Business and Human Rights Journal
- Krajewski M, 'The State Duty to Protect Against Human Rights Violations Through Transnational Business Activities' [2018] Deakin Law Review
- Krajewski M, 'Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?' (2021) 6(3) Business and Human Rights Journal
- LeBaron G and Rühmkorf A, 'The domestic politics of corporate accountability legislation: struggles over the 2015 UK Modern Slavery Act' (2019) 17(3) Socio-Economic Review
- Methven O'Brien C and others, 'National Action Plans on Business and Human Rights: An Experimentalist Governance Analysis' [2022] Human Rights Review
- Schönsteiner J, 'O Plano Nacional de Ação sobre Direitos Humanos e Empresas do Chile: um balanço sobre o seu impacto discursivo e real' (2019) 16(3) Revista de Direito International

Books

- José Aylwin et al, 'El plan de acción nacional de derechos humanos y empresas en Chile: análisis crítico' in Universidade Federal de Goiás (ed), Planos Nacionais de Ação e Políticas Públicas na América Latina Sobre Direitos Humanos e Empresas (Cegraf UFG 2020)
- Barnaby B and Lovón C, 'Avances, desafíos y reflexiones del proceso de elaboración del Plan Nacional de Acción sobre Empresas y Derechos Humanos en Perú' in Universidade Federal de 59
- Goiás (ed), Planos Nacionais de Ação e Políticas Públicas na América Latina Sobre Direitos Humanos e Empresas (Cegraf UFG 2020)
- Buscemi M and others, Legal Sources in Business and Human Rights (Brill 2020)
- Deva S and Bilchits D (eds) Human Rights Obligations of Business Beyond the Corporate Responsibility to Respect? (CUP 2013)
- George E, Incorporating Rights: Strategies to Advance Corporate Accountability (OUP 2021)
- Landman T, Studying human rights (Routledge 2006).
- Larrain J, Identity and Modernity in Latin America (Polity Press in association with Blackwell Publishers Ltd 2000)
- Moeckli D and others (eds), International Human Rights Law (Oxford University Press, 3rd ed, 2017)

Case-law of the Inter-American Court of Human Rights

- Case of the Sawhoyamaya Indigenous Community v. Paraguay, Judgement, Inter-American Court of Human Rights Series C No 146 (29 March 2006).
- Case of the Xucuru Indigenous People and its Members v. Brazil, Judgement, Inter-American Court of Human Rights Series C No 346 (5 February 2018).
- Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama, Judgement, Inter-American Court of Human Rights Series C No 284 (14 October 2014).

Case of Kaliña and Lokono Peoples v. Suriname, Judgement, Inter-American Court of Human Rights Series C No 309 (25 November 2015).

Case of Yakye Axa Indigenous Community v. Paraguay, Judgment, Inter-American Court of Human Rights Series C No 125 (17 June 2005).

Case of the Saramaka People v. Suriname, Judgement, Inter-American Court of Human Rights Series C No 172 (28 November 2007).

Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Judgement, Inter-American Court of Human Rights Series C No 245 (27 June 2012).

Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment, Inter-American Court of Human Rights Series C No 79 (31 August 2001).

Government Publications

Chamber of Deputies of the H. Congress of the Union General Secretary, 'Regulation of the Law for the Protection of Defenders of Human Rights and Journalists' (the Mexican Secretariat for Parliamentary Services 2012)

Foreign & Commonwealth Office, 'UK Support for Human Rights Defenders' (Crown 2019)

Guidance

Business & Human Rights Resource Centre, 'Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders-- Guidance for Companies' [2018]

The Danish Institute of Human Rights, 'National Action Plans on Business & Human Rights an analysis' [2018]

The Scottish Human Rights Commission, 'Business and Human Rights National Action Plans: Comparative Review of Global Best Practice' [2019]

UN Working Group on Business and Human Rights, 'Guidance on National Action Plans on Business and Human Rights' [2016]

International Treaties

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean

169 ILO Convention

Inter-American Convention on Human Rights

Interviews

Interview with Colombia's Presidential Counselor for Human Rights (Zoom Interview, 05 April 2022)

Interview with Colombia staff of the Business & Human Rights Resource Centre (Zoom Interview, 08 April 2022)

Interview with Federico Chunga Fiestas, former General Coordinator of the National Action Plan on Business and Human Rights, Peru's Ministry of Justice and Human Rights (Zoom Interview, 08 April 2022)

Interview with Dante Pesce, Executive Director, Vincular Center at Catholic University of Valparaíso-Chile (Zoom Interview, 29th March 2022)

Interview with Judith Schönsteiner, Reader, Researcher of the Centre for Human Rights at Diego Portales University (Zoom Interview, 27th March 2022)

Interview with Michael Windfuhr, Deputy Director of the German Institute for Human Rights and Expert member of the UN Committee on Economic, Social and Cultural Rights (Zoom Interview, 18 May 2022)

Interview with a staff of CNCDH (Zoom Interview, 11 May 2022)

Interview with Peter Frankental, Economic Affairs Programme Director, Amnesty International UK (Zoom Interview, 11 April 2022)

Interview with a human rights expert from a German NGO (Zoom Interview, 08 April 2022).

Interview with Marilyn Croser, formerly the Corporate Justice Coalition (Zoom Interview, 13 June 2022).

Interview with Enrique Fernández-Maldonado, Center for Public Policy and Human Rights, Peru Equity (Zoom Interview, 7 April 2022)

Legislation

Act on Corporate Due Diligence Obligations in Supply Chains 2021

Law for the Protection of Human Rights Defenders and Journalists 2012

Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre

Modern Slavery Act 2015

Vice-ministerial Resolution N°001-2019-JUS 2019

Manuals

Food and Agriculture Organization of the United Nations, 'Free Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities' (Food and Agriculture Organization of the United Nations 2016) <<https://www.fao.org/3/I6190E/I6190e.pdf>> accessed 3 March 2022

National Action Plans

Ministry of Foreign Affairs, 'National Action Plan on Business and Human Rights Chile' (Republic of Chile 2017)

Ministry of Foreign Affairs and International Development, 'National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights' (Republic of France 2017)

Ministry of Justice and Human Rights, 'National Action Plan on Business and Human Rights' (Peru's Ministry of Justice and Human Rights 2021)

Presidential Advisory for Human Rights and International Affairs Colombia, 'National Action Plan of Business and Human Rights 2020/ 2022 "Together We Make It Possible Resilience and Solidarity"' (Presidency of the Republic of Colombia 2020)

The Federal Foreign Office, 'National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights' (Germany's Federal Foreign Office on behalf of the Interministerial Committee on Business and Human Rights 2016)

The Secretary of State for Foreign and Commonwealth Affairs, 'Good Business Implementing the UN Guiding Principles on Business and Human Rights' (UK Crown 2016)

Press Releases

Chilean Civil Society Platform on Business and Human Rights, 'Sin participación ciudadana incidente ni consulta indígena, gobierno saliente aprobó segundo plan de acción nacional de derechos humanos y empresas a días del cambio de mando' (Human Rights Centre of the University Diego Portales, 10 March 2022) <<https://derechoshumanos.udp.cl/sin-participacion-ciudadana-incidente-ni-consulta-indigena-gobierno-saliente-aprobo-segundo-plan-de-accion-nacional-de-derechos-humanos-y-empresas-a-dias-del-cambio-de-mando/>> accessed 1 June 2022

Business & Human Rights Resource Centre, 'German Parliament Passes Mandatory Human Rights Due Diligence Law' (2021) <<https://www.business-humanrights.org/en/latest-news/german-due-diligence-law/>> accessed 25 May 2022 Ministry of Justice and Human Rights of Chile, 'Segunda versión del Plan Nacional de DD.HH. y empresas es aprobado por Comité Interministerial' (Ministry of Justice and Human Rights, 10 March 2022) <<https://ddhh.minjusticia.gob.cl/segunda-version-del-plan-nacional-de-dd-hh-y-empresas-es-aprobada-por-el-comite-interministerial/>> accessed 1 June 2022

National Roundtable of NGOs on Business and Human Rights, 'Public statement by environmental, social and human rights non-governmental organizations rejecting the new version of the National Action Plan on Business and Human Rights (Business & Human Rights Resource Centre) <https://media.business-humanrights.org/media/documents/NAP_2020_TR_final.pdf> accessed 16 June 2022.

Spotlight Initiative, 'Better Protection for Women Human Rights Defenders in Latin America' (2020) <<https://spotlightinitiative.org/news/better-protection-women-human-rights-defenders-latin-america>> accessed 21 April 2022

WOLA, 'Mexico Needs Comprehensive Strategies to Combat Violence Against Journalists and Human Rights Defenders' (2020) <<https://www.wola.org/analysis/journalists-human-rights-defenders-mexico/>> accessed 19 June 2022

Reports

Amnesty International UK & the Centre for Applied Human Rights, 'On the Human Rights Frontline-- How the UK Government Can Defend the Defenders' (Amnesty International 2021) <https://www.amnesty.org.uk/files/2021-02/On%20the%20Human%20Rights%20Frontline%20-%20Report.pdf?hQ0uL7htqPxuUgm98RjkTQMF99x5qnv_> accessed 22 February 2022

Business & Human Rights Resource Centre, 'Renewable Energy (In)Justice in Latin America' (Business & Human Rights Resource Centre 2021) <https://media.business-humanrights.org/media/documents/RE_LATAM_final_English.pdf> accessed 26 October 2021

Frontline Defenders, 'Annual Report on Human Rights Defenders at Risk In 2017' (Front Line, the International Foundation for the Protection of Human Rights Defenders 2017) <https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf> accessed 29 April 2022

Frontline Defenders, 'Front Line Defenders Global Analysis 2018' (Front Line, the International Foundation for the Protection of Human Rights Defenders 2018) <https://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf> accessed 15 April 2022

Frontline Defenders, 'Front Line Defenders Global Analysis 2019' (Front Line, the International Foundation for the Protection of Human Rights Defenders 2019) <https://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf> accessed 29 April 2022

Frontline Defenders, 'Front Line Defenders Global Analysis 2020' (Front Line, the International Foundation for the Protection of Human Rights Defenders 2020) <https://www.frontlinedefenders.org/sites/default/files/fld_global_analysis_2020.pdf> accessed 29 April 2022

Frontline Defenders, 'Front Line Defenders Global Analysis 2021' (Front Line, the International Foundation for the Protection of Human Rights Defenders 2021) <https://www.frontlinedefenders.org/sites/default/files/2021_global_analysis_-_final.pdf> accessed 29 April 2022

Global Witness, 'At What Cost? Irresponsible Business and the Murder of Land and Environmental Defenders In 2017' (Global Witness 2018) <<https://www.globalwitness.org/en/campaigns/environmental-activists/at-what-cost/>> accessed 12 January 2022

Germanwatch & Misereor IHR Hilfswerk, 'Putting Germany to the Test' (Germanwatch 2014) <<https://germanwatch.org/sites/default/files/publication/8874.pdf>> accessed 9 January 2022

Initiative Lieferkettengesetz, 'What the new Supply Chain Act delivers - and what it doesn't' (Germanwatch, 11 June 2021) <https://www.germanwatch.org/sites/default/files/Initiative-Lieferkettengesetz_Analysis_What-the-new-supply-chain-act-delivers.pdf> accessed 4 June 2022

Inter-American Commission on Human Rights, 'Inter-American Commission on Human Rights, 'Criminalization of the Work of Human Rights Defenders' (Inter-American Commission on Human Rights 2015) <<http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>> accessed 17 January 2022

Inter-American Commission on Human Rights, 'The Human Rights Situation in Mexico' (Inter-American Commission on Human Rights 2015) <<http://www.oas.org/en/iachr/reports/pdfs/mexico2016-en.pdf>> accessed 2 March 2022

International Monetary Fund, 'Macroeconomic Policy Frameworks for Resource-Rich Developing Countries-- Background Pa' (International Monetary Fund 2012) <<https://www.imf.org/external/np/pp/eng/2012/082412a.pdf>> accessed 23 April 2022

Leather B and others, 'A Thematic Supplement To 'National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, And Review of State Commitments to Business and Human Rights Frameworks'' (International Service for Human Rights & International Corporate Accountability Roundtable 2016) <https://ishr.ch/sites/default/files/documents/ishr_icar_hrds_in_naps_guidance_eng.pdf> accessed 21 October 2021

Loyer C and others, 'Human Rights Violations in Mexico: What Are the Responsibilities of EDF And The APE?' (Terre Solidaire, ECCHR, ProDESC 2021) <<https://www.ecchr.eu/en/press-release/edf-mexico-wind-park-decision/>> accessed 12 February 2022

Muers S, 'Culture, Values and Public Policy' (University of Bath- institute for Policy Research 2018) <<https://www.bath.ac.uk/>

publications/culture-values-and-public-policy/attachments/CultureValuesandPublicPolicy.pdf> accessed 17 February 2022

Norton Rose Fulbright and BIICL, 'Making sense of managing human rights issues in supply chains' (2018)910<https://www.biicl.org/documents/1939_making_sense_of_managing_human_rights_issues_in_supply_chains_-_2018_report_and_analysis_-_full_text.pdf> accessed 1 June 2022

Pontifical Catholic University of Chile, 'Report on the evaluation of the National Action Plan' (Pontifical Catholic University of Chile 2020) <<https://globalnaps.org/wp-content/uploads/2021/03/estudio-de-actualizacion-evaluacion-del-plan-de-accion-nacional-de-derechos-humanos-y-empresas-y-propuesta-para-la-elaboracion-de-su-segunda-version.pdf>> accessed 10 May 2022, 83.

Shift, 'Mapping the Provisions of the Modern Slavery Act Against the Expectations of the UN Guiding Principles on Business and Human Rights' (July 2015) 3-4 <https://shiftproject.org/wp-content/uploads/2015/07/Shift_ModernSlaveryAct_UNGPs_July2015.pdf> accessed 1 June 2022

Online Resources

'Capital Structure' (EDF FR, 2022) <<https://www.edf.fr/en/the-edf-group/dedicated-sections/investors-shareholders/the-edf-share/capital-structure>> accessed 10 April 2022

'Ethical Approval Applicant Review Processes | University of Essex' (Essex.ac.uk, 2022) <<https://www.essex.ac.uk/staff/research-governance/ethical-approval-resources-for-applicants#:~:text=The%20Moodle%20course-,Research%20Involving%20Human%20Participants,-provides%20an%20overview>> accessed 17 December 2021

'Extractive Industries and Human Rights in Latin America' (Cidse.org, 2022) <<https://www.cidse.org/2017/11/13/extractive-industries-and-human-rights-in-latin-america/>> accessed 17 March 2022

'France | National Action Plans on Business and Human Rights' (National Action Plans on Business and Human Rights, 2022) <<https://globalnaps.org/country/france/>> accessed 23 May 2022

'Mr. Dante Pesce, Former Member of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (OHCHR, 2022) <<https://www.ohchr.org/en/business/mr-dante-pesce-former-member-working-group-issue-human-rights-and-transnational-corporations-and>> accessed 17 May 2022

'Ratifications of C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169)' (International Labour Organisation)<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314>accessed 26 May 2022

'UK First to Launch Action Plan on Business and Human Rights' (GOV.UK, 2022) <<https://www.gov.uk/government/news/uk-first-to-launch-action-plan-on-business-and-human-rights>> accessed 17 March 2022

'United Kingdom | National Action Plans on Business and Human Rights' (National Action Plans on Business and Human Rights, 2022) <[https://globalnaps.org/country/united-kingdom/#:~:text=\(Updated%20NAP\).-,Process,later%20on%2012%20May%202016](https://globalnaps.org/country/united-kingdom/#:~:text=(Updated%20NAP).-,Process,later%20on%2012%20May%202016)> accessed 17 November 2021

'UNTC' (Treaties.un.org, 2022) <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en> accessed 2 February 2022

Federal Ministry of Labour and Social Affairs, 'Access to remedy and remediation' (Corporate Social Responsibility) <<https://www.csr-in-deutschland.de/EN/Business-Human-Rights/NAP/Access-to-remedy-and-remediation/access-to-remedy-and-remediation.html>> accessed 3 June 2022

Légifrance, 'Penal Code of France. Article 113-8' (Légifrance) <https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006417194> accessed 4 June 2022

United Nations Document

Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc E/C.12/GC/24 (23 June 2017)

Human Rights Committee (HRC), General Comment No 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004)

Ruggie J, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' [21 March 2011] UN Doc A/HRC/17/31

UNGA Res 53/144, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" 8 March 1999 (adopted 09 December 1998)

UNGA, 'United Nations Declaration on the Rights on Indigenous Peoples' [13 September 2007] UN Doc A/61/L.67/Add.1

UNGA, "Report of the special rapporteur on the situation of human rights defenders on his mission to Mexico" 12 February 2018, A/HRC/37/51/Add.2

UNHCR 'General Comment no. 31 [80] the Nature of the general legal obligation imposed on States Parties to the Covenant' (26 May 2004) UN DOC CCPR/C/21/Rev.1/Add.13

General Assembly, "Situation of Human Rights Defenders" 19 July 2021, A/76/143

United Nations. "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" 16 June 2011

UN Human Rights Council (HRC), Human rights and transnational corporations and other business enterprises, A/HRC/RES/17/4 para. 6 (July 6, 2011)

UN Committee on Economic, Social and Cultural Rights, 'General Comment No 26. Draft prepared by the Rapporteurs, Rodrigo Uprimny and Michael Windfuhr' (2021) UN Doc E/C.12/69/R.2.

