



Latin America Dialogue on National Implementation of Business and Human Rights Frameworks

17-18 March 2014

Bogotá, Colombia

From August 2013 to April 2014, the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR) convened a series of 6 dialogues with over 240 experts and practitioners across stakeholder groups and world regions to gather inputs and recommendations in relation to the ICAR - DIHR National Action Plans (NAPs) Project.

The NAPs Project is aimed at developing a Toolkit to support national implementation of the UN Guiding Principles on Business and Human Rights (UNGPs), including through the development of national baseline studies, NAPs, and follow-up mechanisms that aim to give practical effect to the UNGPs.

On 17-18 March 2014, the NAPs Project held its *Latin America Dialogue on National Implementation of Business and Human Rights Frameworks* in Bogotá, Colombia. This multi-stakeholder event brought together approximately 64 participants from inside and outside the Latin America region, including representatives from governments, civil society, indigenous organizations, academia, the business and investor communities, National Human Rights Institutions, and international organizations. The objective of the event was to share experiences and progress to date on States' implementation of the UNGPs since their adoption in 2011, including through the development of NAPs on business and human rights.

The NAPs Project Team extends its thanks to all participants for their time and for sharing their insights and experiences, as well as special thanks to the following co-organizers for their excellent support and collaboration in this endeavor: Dejusticia, the Presidential Program for Human Rights and International Humanitarian Rights of the Government of Colombia, Sustentia Innovación Social, the Spanish Agency for International Development Cooperation (AECID) of the Government of Spain, CIDSE, the German Institute for Human Rights, the International Work Group for Indigenous Affairs (IWGIA), the Geneva Centre for the Democratic Control of Armed Forces (DCAF), and the Institute for International Education (IIE). The event was held under the Chatham House Rule. A short summary of the Dialogue follows.

Summary of Participants' Observations

Governments are engaging with the business and human rights agenda, but more awareness-raising and capacity-building are needed

Participants agreed that the majority of States within the Latin America region are, to some extent, engaging with business and human rights issues at the national, regional, and international levels. However, there remain significant gaps in governments' awareness of, understanding of, and engagement with existing business and human rights frameworks, such as the UNGPs. Participants highlighted NAPs as a promising means for closing these gaps as NAPs processes could provide a platform to discuss how governments should give effect to their commitments on the ground, including through national laws, regulations, policies, and programs.

Multi-stakeholder consultation is a necessity

Across stakeholder groups, participants felt that inclusive and transparent consultation processes must be an integral part of NAPs development and implementation. At the same time, it was noted that achieving multi-stakeholder dialogue that is constructive, rather than confrontational, can be a challenge in the region given historical conflicts and persisting tensions between governments, businesses, civil society actors, and communities. In this context, NAPs were seen as offering a promising avenue for renewed and positive engagement, on the condition that a diverse array of stakeholders is brought to the table and then consistently included throughout the development, implementation, and review of NAPs.

NAPs processes should clarify the relationship between business and human rights and CSR, including the concept of human rights due diligence

Many participants expressed frustration with inconsistencies in the way that governments and other stakeholder groups in the region communicate about the distinct yet interrelated concepts of business and human rights and corporate social responsibility (CSR). Participants also highlighted the need for clarification of the concept of human rights due diligence and government expectations of business in this regard. NAPs were observed as affording an opportunity to provide such clarification in a systematic, horizontally coherent way as NAPs processes could help to generate a common language and mutual understanding around business and human rights that can be drawn on more widely, including in future initiatives to address corporate impacts on individuals and communities.

Indigenous populations are uniquely vulnerable to business-related harms

The importance of including indigenous peoples and their representatives in the process of developing and implementing NAPs in the region was underlined. NAPs could support stronger awareness and better utilization of existing international and regional standards that support indigenous rights, such as the Declaration on the Rights of Indigenous Peoples (DRIP) and ILO

Convention 169. Such frameworks give concrete content to NAPs, for example with regard to the standard of free, prior, and informed consent and effective access to justice for indigenous peoples in relation to harms that have already occurred. The importance of empowering vulnerable populations through the NAPs process was also highlighted, with participants pointing in this regard to the need for appropriate communication methods, including translation into local and indigenous languages, in NAPs-related consultations.

The State-business nexus is a priority in Latin America

It was observed that, in many Latin American countries, there is a high level of State involvement in investment and development projects. Commonly, there is also confusion about where government action ends and business activity begins, and there is a correlated risk that government entities may negatively impact human rights as a result of commercial activities. In particular, this was felt to be the case in the extractive sector, with regard to States' involvement in development banks and other financial institutions, and in the negotiation of trade agreements. Some participants felt that State involvement in these areas undermined political will to develop robust laws and policies regulating business activities. Accordingly, participants stressed that NAPs in the region should not only address private sector policies and practices, but should also commit the public sector to fully integrating human rights considerations into all facets of its business operations and relationships.

Targeted guidance on UNGPs implementation in relation to specific human rights, rights-holders, and sectors would be highly valuable

Several participants expressed the need for more specific guidance on how the UNGPs address specific human rights, rights-holders, and sectors that are of primary concern in the region. Such guidance would help to assess domestic implementation of business and human rights frameworks. Further to this, strong interest was expressed in the development of NAPs-related tools or guidelines that break down the UNGPs in terms of specific themes. Such tools could be utilized inside and outside the government to evaluate and monitor government performance in priority areas with reference to existing legal and policy frameworks.

NAPs would increase policy coherence inside and between governments

There was frustration amongst participants at a perceived lack of coordination and communication across government ministries, departments, and/or agencies, as well as amongst governments and intergovernmental bodies in the region. This lack of coordination and communication was seen as obstructing the development and implementation of coherent policies relating to business and human rights. NAPs, it was urged, should facilitate government-wide and cross-departmental efforts on business and human rights frameworks by identifying and assigning specific tasks to all government bodies whose work touches upon business and human rights-related issues. Participants further recommended that increased efforts were needed at the regional level to coordinate and communicate best practices and lessons learned in developing and implementing NAPs.

NAPs can be integrated into existing human rights processes

Some governments in the Latin American region have already developed or are in the process of developing NAPs on human rights or national development plans. Given this, concerns were raised by some participants that the development of distinct NAPs on business and human rights might duplicate existing processes, create potential redundancies, or result in inefficient uses of resources. It was therefore suggested that, according to local context, consideration should be given to integrating business and human rights NAPs processes into relevant State initiatives, where they exist, or at least to referencing and aligning with these initiatives during the development of specific business and human rights NAPs, rather than running two or more parallel processes.

The role of governments outside the region

Given the progress made by governments in Europe towards the development of NAPs on business and human rights, several participants highlighted the potential for partnering or cross-learning between States in order to maximize capacity and resource-efficiency in developing, implementing, and periodically reviewing NAPs. The need for coordinated efforts and information-sharing was stressed as particularly important given the cross-border nature of business and human rights issues and the significant impacts of policies and practices of governments outside Latin America (for example, China and Canada) that must be addressed within the NAPs of governments in the region.

NAPs as a means, not an end, in fulfilling the State duty to protect human rights

Most participants agreed that NAPs are an important tool for Latin American governments in engaging with their duty to protect human rights from business-related harms. NAPs were also seen as a valuable mechanism for all stakeholder groups in holding States accountable for making progress towards fulfillment of this duty. However, several participants came with the caveat that NAPs should not be viewed as an end in themselves since much work will remain to be done even after a State has completed the development of its first NAP. Participants therefore agreed that NAPs processes must be ongoing and include monitoring and reporting mechanisms to ensure that national implementation is progressive, transparent, and responsive to feedback and changing circumstances.

Next steps

Participants' responses will be reflected in the development of the NAPs Project Toolkit and Final Report, scheduled for release in June 2014.

Participants are encouraged to continue sharing knowledge, information, and recommendations on NAPs development and implementation through the NAPs Project's *E-Consultation Questionnaire*. The e-consultation will run until 16 May 2014, and the questionnaire link is available under the "E-consultations" section of the NAP's Project

webpage, hosted by the Business & Human Rights Resource Centre: <http://www.business-humanrights.org/Documents/icar-dihhr-naps-project>.

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