

Mexico City, Mexico.  
July 27, 2017.

United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises.

Dear Working Group members,

The Civil Society Focal Group on Business and Human Rights in Mexico hereby expresses its gratitude for the spaces for dialogue provided during the last two years for the development of the National Program on Business and Human Rights (NAP). After a thorough analysis of the process and the content of the last draft of the Plan, and considering the Focal Group has done numerous efforts for the NAP to comply with the needs and commitments of our country, we have decided that it is not possible for us to endorse the proposed instrument.

During this time we have made significant contributions to reach the best results possible. For example, we have mobilized our own monetary resources to develop an independent National Baseline Assessment on the topic, with the support of international allies; we have documented numerous cases to present as an input to strengthen the visit of your Working Group to Mexico last year; we have participated in all the National Working Group meetings, different seminars and regional meetings, providing exhaustive written and oral comments for the improvement both of the text of the NAP and of the process itself.

For the last couple of years we have actively and responsibly provided the Ministry of the Interior (responsible for the development of the Program) with quality information that considers international experiences to effectively implement the three pillars of the United Nations Guiding Principles on Business and Human Rights (UNGPs) through the Mexican NAP. We acknowledge that our work made some improvements to the initial draft shared last March; nevertheless, the last version of the NAP does not comply with the international standards on the topic by not addressing appropriately some key issues mentioned below.

We also acknowledge that the socialization process took into account some of our comments, for example the inclusion of different social actors, the expansion of the deadline to receive comments, as well as the launch of an online process. At the same time, we consider that various aspects pointed out in several occasions were not solved or addressed, for example the request of having a clear roadmap and that the discussions around the content of the NAP were active within the National Working Group to have a transparent multi-actor process.

Regarding the content, since the beginning of the process we defined priorities that haven't been met in the document and are stated below:

- Improvement of access to justice and remediation for the affected communities by business activities. Pilar 3 of the UNGPs clearly establishes as a fundamental element the need to include these mechanisms in any NAP. Specifically on the matter of access to justice, the Mexican NAP does not integrate the recommendation, and conclusion of the Seminar, to implement the reform to the Ley de Amparo of 2013 which states that businesses can be named as responsible authorities when they commit human rights violations.
- Highlight and recognize in the NAP the obligatory for enterprises to conduct human rights due diligence processes in their operations and value chains (including beneficial ownership) to identify, avoid, mitigate and, if required, remediate damage. The current text does not incorporate the obligation to publish social and environmental impact assessments (that are not public by law). There are no actions established to ensure transparency of the private sector, and no explicit statement about the obligation for businesses to respect human rights.

- Inclusion of solid mechanisms for the protection of human rights defenders, journalists and whistleblowers. Companies are not urged to publicly condemn the attacks and intimidation to against these actors, as recommended by your Working Group in the report of the country visit. It is fundamental that the right to security is ensured, particularly in the context of the work of the aforementioned actors and of the human rights crisis in Mexico.
- Acknowledgment of the free, prior and informed consent processes as a right, and the recognition of the results of consultations as binding. The draft text limits its application to indigenous communities, excluding the rural and comparable ones that are facing similar issues. Besides, this right is not linked to the responsibility of human rights due diligence processes by companies, as recommended in the UNGPs.
- Explicit recognition of the responsibility to guarantee human rights by the State when it acts as an economic actor. The draft text does not include strong guidelines for businesses with State participation or under its control, or in the public procurement processes, so as to set the example for the private sector, as stated by the UNGPs.

Due to the above, the Focal Group is abstaining to endorse the Mexican National Program on Business and Human Rights as it has been developed, according to the draft that was shared with us in recent days. Given that the development and publication of the Program will be completed, we will continue with our commitment to monitor the implementation and evaluation of the business and human rights agenda, including the NAP, with the objective of improving public policies on the matter, and business accountability in the country.

Yours truly,

Business and Human Rights Resource Center (BHRRC);  
 Centro Mexicano de Derecho Ambiental (CEMDA);  
 Comité de Defensa Integral de Derechos Humanos Gobixha (Código DH);  
 Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC);  
 Project on Organizing Development, Education, and Research (PODER);  
 Oxfam México;  
 Servicios y Asesoría para la Paz (Serapaz);  
 Accompanied by Preace Brigades International (PBI) and the Asociación Interamericana para Defensa del Ambiente (AIDA)

CC:

Special Rapporteur on the Rights to Safe Drinking Water and Sanitation

Special Rapporteur on the situation of Human Rights Defenders

Special Rapporteur on the Rights of Indigenous Peoples

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

Danish Institute on Human Rights

International Corporate Accountability Roundtable