



ColombiaAvanza
DERECHOS HUMANOS Y EMPRESA
Plan de Acción de Derechos Humanos y Empresas

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National Action Plan on Human Rights and Business

Introduction

In 2011 the United Nations Human Rights Council unanimously endorsed in its Resolution 17/4 the Guiding Principles on Business and Human Rights: implementing the United Nations “protect, respect and remedy” framework. These principles are currently a world reference to all actors (mainly states, business and civil society), who have, either directly or indirectly, obligations, responsibilities and/or lawful interests regarding the enterprise and business activity.

This document gathers 31 principles in 3 mainstays as follows:

- The States' obligation to protect human rights against eventual third party impacts, including business enterprises.
- The companies' responsibility for respecting human rights as a “world conduct standard” applicable to and enforceable against all companies.
- The need to proactively act in respect of risks and impacts suffered by people due to business activities, and to provide access to remedies.

Colombia is strongly committed to protecting and respecting human rights. For over ten years a large number of initiatives have been developed in the country by the State and by the enterprises, which shows that human rights are a key element in business.

Within the National Human Rights System, an entity for the coordination and organization of entities to guarantee the rights of all peoples, created upon Decree 4100 of 2011, significant public policy initiatives have been developed. This year, Colombia has subscribed to the Declaration on International Investment and Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD), which contains the Guidelines for Multinational Enterprises. Also, the National Point of Contact as an agency for its implementation, part of the Ministry of Commerce, Industry and Tourism, upon Decree 1400 of 2012, has been established.

The foregoing is added Directive 001 of 2014 issued by the Attorney General's Office, which encourages the adoption of the Guiding Principles and their protection by the officials of the Public Prosecutor's Office. All such initiatives are aligned with the effective possession of rights of the National Development Plan 2014-2016 "Everybody for a New a Country", which objective is "to build a peaceful, equitable and educated Colombia in harmony with the purposes of the Colombian Government, with the best international practices and standards, and with a view to long-term planning provided for in the sustainable development goals".

The role of enterprises in this field is essential; they are thus part of initiatives such as: the Mining-Energy Committee for the extraction sector (2003), the Local Network for Global Compact (2004), Guías Colombia for other sectors (2006), the Swiss Ethical Commitment (2011), and the multi-actor process of Training for Dialogue financed by the Spanish Agency for International Development Cooperation (AECID).

With the purpose of strengthening the acquired commitments and the implementation of the United Nations Guiding Principles, other than taking advantage of the opportunity provided by the results from these and other initiatives, in 2015 the Colombian Government began building the National Action Plan on Human Rights and Business, with the Council to the President for the Human Rights as the organizing entity.

This Plan is a public policy instrument built in a participatory manner with business enterprises, organs of civil society and supported by the International Community, to ensure respect for human rights in business activities.

May this be the time to thank all of the social organizations, business enterprises, state entities, embassies and international entities, which, for several years, have supported and accompanied the Government of Colombia in its efforts to progress in the protection of and respect for human rights in the business activities.

The preparation process of the National Action Plan

This plan results from the work the Colombian Government has been developing through the Council to the President for Human Rights, former Presidential Program for Human Rights and the International Humanitarian Law (IHL), framed under the National Human Rights System, which has developed, at the national level, the international standards on the enterprises' respect for human rights.

Upon a participation process carried out between 2012 and 2013, the proposal of the Comprehensive Public Policy for Human Rights was stated. In this process, 32 department fora were conducted and one forum was held in Bogotá, which had over 19,000 social leaders and 9,000 organizations participating, as well as representatives of the entities of the national and territorial government, with the purposes of identifying the human rights issues and designing actions allowing for their full approach. Afterwards, in 2014, the Council to the President for Human Rights published the National Human Rights Strategy 2014-2034, aiming at providing the state entities with useful and specific tools for easy adoption of the Rights Based Approach within actions developed by the National System.

In 2014, the Government of Colombia released the Guidelines for a Public Policy on Human Rights and Enterprises, the first specific document on this matter in Colombia, which was prepared in a national and territorial participative process, in agreement with the National Human Rights Strategy. Territorial workshops were conducted in Casanare, Huila, Norte de Santander, Bolívar, Antioquia and Valle del Cauca, intended to make the representatives of civil society, local governments and companies of the region aware of this problem. Another component for the Guidelines was the Conclusions and Talk Proposals documents regarding the application of the United Nations Guiding Principles, developed by the multi-actor task forces of the Training for Dialogue on Business and Human Rights project.

In the context of these internal processes, Colombia was the venue to international experience exchanging activities related to the implementation of the standards on business and human rights, such as the First Regional Forum of Latin America and the Caribbean on Business and Human Rights held in 2013; and the Latin-American Talk on the National Implementation of Business and Human Rights Frameworks, in 2014.

In order to draw up the Plan, in the first semester of 2015, a work process was initiated with key entities for the development and subsequent implementation of the actions the Plan should contain. This was a participatory consultation process with business enterprises, organs of society, and national government entities, as well as other international governments and entities, to collect the views, interests and concerns of all of such actors.

For the guidance of the Plan drawing up and the draft preparation, a Technical Committee was created by the Council to the President for Human Rights, formed by the Ombudsman's Office, the Ideas for Peace Foundation (a representative of civil society and technical secretary of Guías Colombia and the Swiss Ethical Commitment), the technical secretary of the Mining-Energy Committee, AECID, the United Nations Development Programme (UNDP), and the Office of the United Nations High Commissioner for Human Rights.

The draft was consulted upon a National Workshop provided in Cartagena, territorial workshops (the Caribbean zone in Cartagena, the southwest zone of Apartado, the central zone of Villavicencio); it was also presented in the IV United Nations Forum on Business and Human Rights held in Geneva (Switzerland). Likewise, it has been directly consulted with institutional, business and civil society actors; it has also been posted in its Spanish and English versions on the website of the Council to the President for Human Rights, which has provided an email address for comments from any individual or entity who may be interested in providing their contribution.

The Colombian National Action Plan on Human Rights and Business

The National Action Plan on Human Rights and Business in Colombia is a 3 year public policy instrument, drawn up to ensure respect for human rights in business activities, aligned with the National Human Rights Strategy 2014-2034 with the Guidelines for a Public Policy on Business and Human Rights, released in 2014.

This Plan results from the need to match the protection of human rights and the economic development of State promoted activities. Therefore, it is indispensable to have a public policy to match these two objectives through specific actions, which can be followed up to by all the stakeholders.

The Colombian State thus renews its commitment and encourages public and private enterprises, national and international Colombia-based enterprises, regardless of their size, sector, activity, operation context or structure, to go above and beyond compliance with the Constitution and the Laws and, in this regard, respect human rights following the current international standards. In addition, the State reiterates its intention to implement the standards on business and human rights in such regions where there has been no significant related progress.

As suggested by the United Nations Task Force on Business and Human Rights, a National Action Plan must be adjusted to the context of each country. Therefore, the document, lines and actions contained in the Plan have been developed considering the following:

Human Rights Based Approach. The human rights concept is defined in the International Bill of Human Rights and in the International Humanitarian Law. The Bill consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and its two Optional Protocols. The Plan is aligned with both the international and regional standards covered by the Inter-American Human Rights System, including the American Convention on Human Rights. It is consistent with and contains the Fundamental Principles and Rights of the International Labor Organization (ILO), and applies the rights protecting its covenants.

Throughout the process, the participation of the several actors has been decisive to collect their views, interests, concerns and how to include concrete actions, thus contributing to the empowerment and appropriation thereof.

Consistency with other international rules and standards. Apart from the Guiding Principles inspiring its development, this Plan takes into account the major relevant related standards, such as the United Nations Principles for Responsible Contracts, the Guidelines of the OECD for Multinational Enterprises, the OECD Due Diligence Guidelines for Responsible Mineral Supply Chains in the Areas of Conflict or High Risk; the Voluntary Principles on Security and Human Rights (VP), the Principles of Global Compact and the ISO 26000 Standard. Also, the recommendations of the OECD Task Forces have been observed. Their application is consistent with and strengthens the provisions of the Sustainable Development Goals (SDG), adopted by the International Community in 2015.

Differential Approach. Consists of the implementation of affirmative actions based on respect for identities as a step to overcome prejudice, discrimination and stigma practices restricting the exercise of rights. This Plan is intended to help overcome weaknesses from the past and build stronger trust among society, business enterprises and the State. Thus, businessmen and social and union organizations are required to be willing to respect the rights of ethnic groups, women, children, adolescents, LGBTI, people with disabilities, union movements and other minorities.

Territorial emphasis. The major challenges regarding human rights in the business world are found in the territories. For the implementation of this Plan, actions including sociohistorical, cultural, environmental and production characteristics of territories and their people are taken into consideration

It is also particularly interesting for the Government of Colombia that business enterprises operating in zones historically affected by the armed conflict, are particularly careful in managing risks and eventual effects on human rights.

Sector priority. According to the diagnostic approach found in the guidelines, and the follow-up by the Ministry of the Interior to disorderly conducts, the mining-energy sector, the agroindustry and road infrastructure sectors, are to be addressed as a priority because they generate more social conflict given their effects on human rights and the environment.

Thus, emphasis will be placed on the strategy design for the enterprises part of such sectors to improve their management in the territories where they operate.

Component for post-conflict and peacebuilding. The post-conflict scene may entail an increase in social conflicts related to business activities. A joint effort by the State, business, unions, civil society organizations and the International Community is required to improve the human rights management in business enterprises, and to seek remedies should there be any violations thereof.

However, actions stipulated herein will not depend upon the entering into one or more peace agreement, since the protection and guarantee of human rights must take place at all times, everywhere.

Cooperation and coordination. The Plan is organized under the Business and Peace Framework, which is being designed by the Direction of Post-conflict jointly with the Office of the High Commissioner for Peace. The Framework stipulates, without limitation, a more active role by enterprises within the positive transformations required by the country, going for due diligence and with an approach to keeping the “Action without Damage”¹ Plan. This approach applies ethical criteria and human coexistence values in plural and multi-cultural conditions, based on the dignity, autonomy and freedom concepts.

In this sense, the current strategies and plans encouraging reconciliation in Colombia, which require wholehearted support in the exercises of historical memory, as well as larger participation of enterprises in the job placement of the victims of the conflict and individuals in insertion processes.

The Plan means a cooperation effort among entities; the matching of public policies on business and human rights and social responsibility; as well as the business competition and the involvement of civil society. Likewise, the Colombian Government will support the dissemination and exchange of experiences through its embassies and diplomatic missions abroad, for better implementation of the Plan.

Shared implementation leadership. It is represented by both national and territorial entities, having the highest commitment of all government servants and the Colombian diplomatic representations in foreign countries.

Therefore, the National Government undertakes to strengthen the capacities of the local entities for the application of this Plan and the international standards, as well as to encourage the national institutions to go to the territories for joint adoption.

1. See Vela Mantilla, Margarita María; Rodríguez Fernández, Julia Esmeralda; Rodríguez Puentes, Ana Luz y García Muñoz, Lina María, Action without Damage as a contribution to PeaceBuilding: A Proposal for Practices, National University of Colombia. Synergia Foundation, Armonía Impresores, Bogotá D.C., 2011.

Likewise, strategic alliances will be established with the chambers of commerce, trades, social and union organizations and other relevant actors for the execution of this Plan and its adjustment to the territorial context, jointly with the enterprise and peace process locally, considering the current progress towards the termination of the armed conflict.

Gradual and progressive implementation. This Plan is understood as a live document, which contents and actions will be subject to ongoing reviews and assessments. According to the scope of the issues to be addressed, the need to determine subjects, sectors and priority regions liable to modification as per the development of the implementation of the proposed actions, is contemplated.

Objective

Main objective

Guarantee that the Colombian State properly protects human rights, and that business activities in Colombia respect human rights and contribute to the country's sustainable development.

Specific Objectives

1. Guarantee consistency between the Government policies and the international standards on business and human rights.
2. Guarantee respect for human rights in both public and private business activity.
3. Boost access to effective remedies when human rights are violated in the business activities.
4. Support and encourage a peaceful solution to conflicts generated in the context of business activities.
5. Contribute to the achievement of lasting peace in Colombia and to the implementation of public policies aiming at guaranteeing peace both in the urban and in the territorial areas.
6. Strengthen and develop skills for the effective participation of civil society as regards business activities.
7. Consolidate and promote progress within culture of respect and promotion of human rights in the business field.
8. Contribute to the execution of due diligence as the enterprises' management process and base for responsible investment in Colombia.
9. Contribute to the achievement of the Sustainable Development Goals.
10. Strengthen sustainability and human rights as business competitive advantages.

Lines of action

This Plan, drawn up according to the 3 fold structure of the United Nations Guiding Principles, sets out actions in harmony with the stated strategies in the Guidelines for a Public Policy on Human Rights and Business; and addresses the management of the State, enterprises and the involvement with civil society to protect, respect and, in turn, remedy the violation of rights in the business area. As a public policy the commitments of the Colombian State are developed as follows:

- I. Inter-institution coordination;
- II. The State as an economic actor;
- III. Effective participation of civil society;
- IV. The State's guidance towards respect for human rights in the business activity;
- V. Human rights due diligence;
- VI. Culture of human rights and peacebuilding in the business sector;
- VII. Due diligence in the business sector;
- VIII. Respect for human rights as a competitive advantage;
- IX. Corporate social responsibility and respect for human rights;
- X. Strengthen the judicial and administrative remedy mechanisms;
- XI. Strengthen the non-judicial remedy mechanisms.

The State duty to protect Human Rights

The Colombian State, addressing its obligation to respect, protect and realize the human rights of individuals within its territory, has adopted a series of actions aiming at:

- Improving the consistency and efficacy of its institutional policies.
- Ensuring that the State performance as an economic actor respects human rights.
- Encouraging the effective participation of civil society in the defense and promotion of human rights within the business activities.
- Contributing clear references to enterprises on how they are expected to act in respect of human rights.
- Supporting the implementation of due diligence processes in the business activity.

I. Inter-institutional coordination:

A more consistent and coordinated response to human rights challenges in the business arena.

The State has multiple public policies affecting business activities from various fields (regulation, monitoring, penalty, support, etc.). Consistency is required between such activities and the inclusion of a common human rights protection and respect based approach. Such inter-institutional coordination will aim at defining shared objectives for all related competent entities harmonically, having coordination mechanisms, courses of action, room for discussion, training resources, among others. To such end, the Task Force on Business and Human Rights must become the entity to guide and coordinate the action of the State.

This inter-institutional coordination must not only address the consistency of national policies (horizontal), but also their implementation in the territories (vertical) in particular. It is necessary to grant a relevant role upon local governments in this Plan, strengthening them so they can thus embrace a new human rights agenda. The implementation of this Plan requires an effort for the training of government servants in the national and territorial entities, addressing their specific characteristics to improve the learning management and ensure the continuation of this approach into the future.

For such purpose, upon the Plan launching:

1.1 The Task Force on Business and Human Rights² will be responsible for monitoring advance and progress of the Plan implementation. For such purpose, its regulation will be issued, the frequency of its meetings will be defined, and an operational plan will be implemented, which will determine its activities annually defining the subject approach and the regulation compliance within the priority areas for this plan. This group will include the Direction of Post-conflict.

1.2 The entities of the National Government part of the Task Force will have at least one government servant to be charged with the verification and management of the Plan implementation.

1.3 Upon the Plan being launched, the Expert Committee will be created, which will be formed as follows:

- One representative elected by the national native organizations.
- One representative elected by the national afro-descendent organizations.
- One representative elected by the National Confederation of NGOs.
- One representative elected by the confederations of workers' unions.

2. The Task Force on Business and Human Rights has been created –in the Context of the Subsystem for Economic, Social, Cultural and Environmental Rights (DESCA) of the National Human Rights and International Humanitarian Law System– as an inter-institutional entity charged with the coordination of entities to work on this matter. This Task Force is formed by: the Department for Social Welfare; the National Department for Planning; the Ministry of the Interior; the Ministry of Education; the Ministry of Culture; the Ministry of Labor; the Ministry of the Environment; the Ministry of Agriculture; the Ministry of Commerce; the Ministry of Mines; the Ministry of Finances; the Ministry of Foreign Affairs; the Ministry of Health; the Ministry of Transportation; the Ministry of Housing; SENA; Coldeportes; Colciencias. And, the Ombudsman's Office; the Treasury Inspector's Office of the Republic; and the Attorney General's Office of the Country, as permanent guest members. With the Office of the Technical Secretary of the Council to the President for Human Rights.

- One representative elected by the Colombian Association of Universities.
- Two representatives elected by the National Trade Council, one of whom must be a delegate of the enterprises and the other one a delegate of the trades.
- One representative elected by the Ombudsman's Office.
- One representative of the current multi-actor initiatives on the business and human rights in the country.
- One representative of the multi-lateral entities developing business and human rights related activities.
- One representative appointed by the International Community.

This Expert Committee will operate as an advisory entity for the Task Force and will guide the actions on the implementation of this Plan.

1.4 The Task Force, in alliance with the Administrative Department of the Public Function, and/or universities or study centers, will develop a training module about the international standards on business and human rights and the actions contained in this Plan, which will be addressed to government servants in the national and territory entities.

1.5 Each entity part of the Task Force, according to their operational plan, will define their training plan on this matter and will encourage the learning management in order to guarantee the continuation of the execution of the actions of this Plan. The inter-institutional training processes will be promoted for a better understanding of this matter in its various aspects; thus, the national entities will manage, together with their peers in other countries with the Colombia based embassies, the relevant tools as may be required.

This action will begin upon the formalization of the Task Force and during the implementation of this Plan, responding to gradual and progress principles.

1.6 The Ministry of Foreign Affairs will disseminate and promote this plan internationally through its Diplomatic Missions, Permanent Representation Offices and Consular Sections.

1.7 The Ministry of Commerce, Industry and Tourism, through its offices and agencies charged with business internationalization, will promote respect for human rights in the business activities, providing support regarding the contents of this Plan.

1.8 The national entities part of the Subsystem for Economic, Social, Cultural and Environment Rights (DESCA), and the competent territorial entities will provide the necessary information to the Observatory of the Council to the President for Human Rights, for the consolidation of socio-political documents, as useful for public and private enterprises to identify human rights risks in the operations zones, and manage actions for prevention and mitigation.

The Observatory will provide such information, once compiled, to entities encouraging foreign investments in the country, as well as other institutions to which such information may be useful.

- 1.9 The Direction of Post-conflict, jointly with the Council to the President for Human Rights, will promote the agenda on human rights and peacebuilding in the business sector, in alliance with the Chamber of Commerce of Colombia; thus, a training and knowledge transfer process by the Government, as well as cooperation with enterprises and the enterprises' employees will be created.
- 1.10 The Task Force will engage in a multi-actor talk to address the investment-human rights relation to guide the generation of a strategy for investment attraction, at the national and sector and regional levels.
- 1.11 The Ministry of Commerce, Industry and Tourism and the Ministry of Foreign Affairs will join forces to provide the enterprises and Embassies in Colombia with better knowledge of the stipulations of this Plan.

II. The State as an economic actor

Including human rights in the State's business activities.

The State is one of the most important economic actors in any country; from its position, it must guarantee the protection of and respect for human rights in the business world.

This section focuses on the inclusion human rights aspects in the activities of the most active state entities in the business world, both nationally and internationally, through the relationship with the State suppliers, public procurement or large contracts and biddings.

Colombia has recently reiterated its commitment to the Sustainable Development Goals; it is thus a priority for the government to move on for the announcement and implementation of socially responsible investment contributing to the regional development; minimizing the adverse environmental and community effects, under the efficacy and transparency principles.

To such end:

- 2.1 Within the following year of the Plan being launched, the Task Force will list the basic criteria applicable to decision making in the selection and awarding public procurement processes. They will then assess and analyze, jointly with such State entities with the highest procurement weight, the inclusion of such criteria in their awarding processes.
- 2.2 The Colombia Compra Eficiente agency will adjust the current public procurement system to comply with such criteria as for respect for human rights, by including them in their objectives and including measures to make sure that suppliers execute the human rights due diligence.

- 2.3 The Ministry of Commerce, Industry and Tourism emphasizes the inclusion, in the business negotiations with other States, of clauses or criteria on human rights; this will be considered in the negotiation of future agreements, review of current agreements, and/or unilateral or joint statements with the business partners.
- 2.4 The Ministry of Commerce, Industry and Tourism and its entities will determine the requirements regarding sustainability and respect for human rights as the criteria to select the enterprises to participate in their business activity encouragement programs, including the SME and micro SME³.
- 2.5 The Ministry of Commerce, Industry and Tourism and its entities (PROCOLOMBIA) will work to make the Colombian enterprises observe the human rights standards and will strive for incentives in the international market.
- 2.6 The Ministry of Environment, jointly with the National Authority for Environmental Permits, will strengthen the existence of respect for human rights requirements regarding the Environmental Impact Assessment of companies, and the Business Social Risk Management and Human Rights Plans.
- 2.7 The Ministry of Agriculture and Rural Development will include the human rights criteria and the DESCA in its business activity related programs.

III. Effective participation of civil society

Guaranteeing the defense and promotion of human rights in business activities.

The State must guarantee that citizen and civil society organizations might demand the exercise of their human rights. Thus, this Plan is intended to include civil society in the multi-actor talk areas, which might help prevent or mitigate adverse effects by the business activity.

This direction is consistent with this Plan's peace approach, including the creation of useful meeting initiatives between the civil society actors and the State institutions and the enterprises. To such end, the State must guarantee the necessary conditions for the civil society to carry out its activities in safety conditions.

- 3.1 Within the following year of the Plan being launched, the Task Force on Business and Human Rights will find allies for the training of civil society, special protection groups and small enterprises, regarding the United Nations Guiding Principles and the international standards on human rights and business, and this Plan.

3. Thus they will take the OECD Recommendations for export loan entities as reference <http://www.oecd.org/tad/xcred/oecd-recommendations.htm>

- 3.2 The Direction of Post-conflict and the Office of the High Commissioner for Peace will design a protocol for dialogue among the communities, enterprises and state entities, allowing for the participation of social organization, according to the international standards on business and human rights.
- 3.3 The Minister of the Interior will propose the inclusion of the business and human rights issue on the agenda of the National Committee for Human Rights Defenders, Social and Community Leaders, as well as the Regional Committees for Guarantees, with the purpose of using them as meeting spaces to settle conflicts with impacts on human rights caused by the business activity.
- 3.4 Through the Comprehensive Conflict Prevention and Management System, the National Government will create agreement and social talk mechanisms between the Government and its several levels, the communities and the enterprises. The foregoing to create formal dialogue areas for actors with various interests; all of that as the way to contribute to peacebuilding and respect for human rights in the territories. This action will begin its execution once the system is implemented.
- 3.5 The Ministry of the Interior will organize actions intended to guarantee the necessary safety conditions so the leaders working on business and human rights matters might carry out their activities in proper conditions, according to the current guarantee policy for the defense of human rights.

IV. The State's guidance towards respect for Human Rights in the business activities

Tools for the business world

Guaranteeing that business enterprises respect human rights is not a matter of law and supervision only. For such purpose, the State must play a strong guiding role towards respect for human rights in the business world.

There are multiple spaces, mechanisms and instances where enterprises engage with the State: the State supervises, the States promotes investments, the States regulates the business practices, etc.

It is highly important that all of the contact points between the State and the enterprises encourage the human rights agenda, responding, in turn, to the most appropriate form. Thus, this section is intended to direct the State action including, but not limited to, regulation matters, conditional business promotion or, sometimes, as information for those who are willing to conduct business in the country⁴. In every implemented measure, the State must promote the appropriation and leadership of respect for human rights by the related enterprises.

4. See Carneiro M, Cordero J, Cordero C, Martín V. Handbook-Guide of the UN Guiding Principles on Business and Human Rights: Gateway, Social Innovation, AECID, Madrid, 2013.

- 4.1 The Government will strengthen the subscribing to these multi-actor initiatives: Guías Colombia, Swiss Ethical Committee and the Mining-Energy Committee, as well as the implementation of guides or the provided recommendations by such initiatives.
- 4.2 The Council to the President for Human Rights will have a microsite on its website for the business and human rights issue, where the information on the implementation of this plan will be available.
- 4.3 With the purpose of preventing enterprises from engaging in actions involving any kind of discrimination, the National Government will boost the knowledge transfer and the transfer of the developed tools in the context of the National Human Rights Strategy in respect of rights to equality and non-discrimination.
- 4.4 Within the State Policy for the LGBTI population, which the National Government is preparing, business practices respecting, recognizing and appreciating this population's diversity will be supported.
- 4.5 The Ministry of Labor will advise the businessmen on the labor inclusion of people with disabilities and employment mediation services, in agreement with the National Public Policy on Disability and Social Inclusion.
- 4.6 The Council to the President for Women Equality will strengthen the coordination for the application of the international standards on women's rights, intended to guarantee such rights in the business world.
- 4.7 The Ministry of Labor and the Colombian Institution for Family Welfare will strengthen actions intended to provide advice, training and monitoring to enterprises in respect of the integral protection of the children's rights, as well as the implementation of the children's rights and business principles in the priority sectors.
- 4.8 The Ministry of Labor will strengthen actions to prevent the commercial sexual exploitation of children and adolescents, and will create strategies engaging the private sector in the actions to prevent the violation of the children's and adolescents' rights.
- 4.9 The Ministry of Labor will strengthen actions aiming at protecting the rights to union freedom and collective negotiations.
- 4.10 The Ministry of Labor will propose the inclusion of the business and human rights matter in the National Agreement Commission and in the Social Talk Plans of the Department Agreement Subcommittees.
- 4.11 The Ministry of the Interior will implement actions at the institutional level to identify the real issues in the prior-consultation process and its effect on human rights. It will also improve such practices allowing for the involvement of the affected population, protecting and respecting the rights of the native, afro-descendant and ethnic minority communities, according to the OIL agreements and the standards of the Inter-American Human Rights System.
- 4.12 In the year following the Plan launching, the Ministry of Mines and Energy will design a strategy to step forward as for the respect for human rights in the mining-energy sector, which will adjust the Principles and Criteria of the Extractive Industries Transparency Initiative (EITI) to the national needs.

V. Human Rights Due Diligence

Defining the concept and guiding through effective implementation mechanisms.

Due diligence is understood as the set of measures systematically implemented by an enterprise acting cautiously, to fulfill its respect for human rights duty, considering the specific circumstances according to the activity, operation context, scope and similar factors.

Since this is a concept to be interpreted in each case as an appropriate response to the risks of impacts on human rights by the business activities, the State must determine how companies are expected to act so they can execute human rights due diligence.

Thus, it will encourage the development of mechanisms and tools allowing for the practical implementation by business and public entities of the human rights due diligence.

The entities must act as follows:

5.1 The Task Force will coordinate the preparation of a guide intended to define what executing due diligence means; what the practice is, particularly applied to the high risk business activity sectors.

5.2 The State entities with the highest procurement volume will determine and implement due diligence mechanisms in their own procurement processes.

5.3 Promote the implementation of the United Nations Guiding Principles and other international standards on business and human rights by the trades and the enterprises part thereof, so they may adopt human rights policies.

Thus, during the first year of the execution of this Plan, the Council to the President for Human Rights will convene high level meetings with the trades to determine the inclusion goals in the multi-actor initiatives and human rights performance follow-up mechanisms.

These actions must be coordinated with the entities of the Task Force, especially with the Ministry of Commerce, Industry and Tourism and in cooperation with the Direction of Post-conflict.

5.4 The Council to the President for Human Rights and the Ministry of National Defense will encourage the implementation of the Voluntary Principles on Security and Human Rights. To that end, they will alternately engage in the areas where such issue is treated.

5.5 Develop a guide on the increasing human rights risks of the business activities in zones historically affected by the armed conflict. Thus, the Council to the President for Human Rights and the Direction of Post-conflict will coordinate with the Comprehensive Conflict Prevention and Management System the development of such guide, which must be worked upon in a participatory manner with the enterprises and the civil society.

According to the provided period to create the Comprehensive Conflict Prevention and Management System, this action must be carried out within the year following the coming into operation of such system.

- 5.6 The Ministry of Commerce, Industry and Tourism will promote the business efforts to adjust their policies to the OECD Guidelines for Multinational Enterprises, for which purposes it will assess, within six months from the execution of this Plan, its strategy to disseminate the Guidelines so as to make them widely known.
- 5.7 The Task Force will assess and analyze the formulae for enterprises to include the reporting of the human rights due diligence in their Sustainability Reports or rendering of accounts. Such assessment will be carried out within the year following the launching of this Plan and accompanied by the several sectors.

The enterprises' duty to respect Human Rights

The responsibility to respect human rights is a “global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate”⁵.

Upon this Plan, the National Government will focus its efforts on consolidating the progress of the business commitment to the respect for human rights in the following lines:

- Generate a culture of human rights and peacebuilding in the business sector.
- Foster and guide the implementation of due diligence mechanisms.
- Generate incentives for large, medium, small and micro enterprises, for human rights to become a competitive advantage.
- Coordinate the Corporate Social Responsibility (CSR) actions for major impact when proposing an agenda where human rights are the common concept framework for the alliance between the State and the private sector.

5. United Nations High Commissioner for Human Rights, Guiding Principles on Business and Human Rights. Implementation of the United Nations framework to “protect, respect and remedy”, 2011, p. 16.

VI. Culture of Human Rights and peacebuilding in the business sector

Two political agendas walking together.

The Colombian State is committed to fostering the culture of human rights, understood as that defended by professor Longo: “Speaking of culture of human rights means referring to such cultural operation upon which rights translate into values, rules, attitudes, guidance that inspire the conducts of people as considered singularly or collectively; in short, a complex reference culture system”⁶.

Colombia faces the significant challenges of developing its culture of peace within a peacebuilding context. Therefore, all social actors are essential for the performance of the positive transformations Colombia requires.

6.1 The Council to the President for Human Rights, within the following year of this Plan being launched, will encourage business to define and publicly disclose their political commitment to respect human rights.

6.2 The Administrative Department for Social Welfare will strengthen the alliances between the private sector and the Administrative Social Inclusion and Reconciliation sector with a view to eradicate extreme poverty and overcome vulnerability conditions.

6.3 The Unit for Care and Integral Repair for Victims, as the coordinator of the National Care and Integral Repair for Victims (SNARIV), jointly with the Direction of Post-conflict, will develop strategies aiming at getting companies to contribute to the recovery of historical memory for peacebuilding, reconciliation and promotion of human rights and the reconstruction of the fabric of society, wherefore memory and peacebuilding culture initiatives might be created.

6.4 The Council to the President for Human Rights, the Colombian Agency for Reintegration and the Direction of post-conflict will prepare a joint strategy for companies to actively promote major participation of people in the reintegration process into the business field, in the production field, and in the peacebuilding processes.

6.5 The Task Force will encourage enterprises to exchange their experiences in order to better understand the human rights and peacebuilding management.

6.6 The Direction of Post-conflict will hold a public debate on the role and power of business enterprises in peacebuilding.

6. Di Cristofaro, G., I diritti umani. Dalla dichiarazione ai processi di inculturazione dei diritti umani. In: Per una cultura dei Diritti Umani, 2002. Milan, Italia Pp 46 5.

VII. Corporate Human Rights due diligence

The State's promotion and support for implementation in business enterprises.

According to the Guiding Principles and international standards such as the OECD Guidelines for multinational enterprises, due diligence allows for better management of risks and impacts on human rights as may be caused by the business activity.

In this regard, the implementation of human rights due diligence constitutes an indispensable process for enterprises to fulfill their duty to respect human rights in their operations and contribute to the sustainable development of the country. The State must support its business sector in the implementation of due diligence processes, which are ultimately to the benefit of society, prevent adverse effects on people's rights and strengthen the management and sustainability of the enterprises themselves in the medium and long term.

- 7.1 The Task Force, advised by the Expert Committee, will encourage talk fora to determine the best formulae for enterprises to establish easy-to-access, transparent and effective complaint and claims offices or mechanisms for prevention and mitigation and remedy of adverse human rights effects as may be caused by their activities.
- 7.2 The Ministry of Commerce, Industry and Tourism will encourage large enterprises to foster and boost their human rights support and guidance efforts for such SME they have business⁷ relationships with⁸.
- 7.3 The Ministry of Labor will guarantee respect for the labor rights.
- 7.4 The Ministry of Commerce, Industry and Tourism will encourage business enterprises to foster talks with consumers.
- 7.5 The Office of the Transparency Secretary of the Presidency of Republic will support the adoption of transparency covenants by enterprises so as to contribute to the corruption struggles in corporate governments, for which purposes a year will be given upon the Plan launching.
- 7.6 The Task Force will tend towards enterprises, through their complaint offices, receiving and diligently managing the citizen and community claims, as considered to be affected by the adverse effects caused by their operations.

7. In this regard, it is important to keep in mind the commentary of the United Nations to guiding principle No. 13 which provides as follows: "Enterprises may be involved with negative human rights impacts either through their activities or as a result of their business relationships with other parties..."

For the purpose of these Guiding Principles a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

8. It is relevant insofar as the first measures prevail over the second measures which are their suppliers. Thus the adoption of proper Human Rights management mechanisms is encouraged within lower capital business enterprises.

- 7.7 The Task Force, advised by the Expert Commission, will encourage companies to have follow-up Strategies in place to know about the progress and follow-up to the mitigation of adverse impacts caused by the development of business activities.
- 7.8 The Task Force, advised by the Expert Commission, will encourage business enterprises to assess their risks and impacts on people and the environment as a result of their operation.

VIII. Respect for Human Rights as a competitive advantage

The State's incentives for diligent business enterprises.

The State understands the business enterprise as an ally to contribute to the performance of its protection and respect duties through an active commitment to human rights, from both individuals and communities; other than reaching economic benefits and development in the country. Thus, the business enterprise's operations must respond to the basic principles of the Human Rights Based Approach: equality and non-discrimination; participation and empowerment; transparency and accountability.

Therefore, it is the interest of the State to provide incentives for companies so as to implement the international standards on human rights into their operations and, thus, support and strengthen the national and territorial entities within their purposes. The institutional strengthening by companies is an alliance between the public and the private sectors, which is also to the benefit of the national peacebuilding agenda.

This section aims at structuring the assistance provided by the State to the business enterprises to such end, through the proposal of specific incentives providing the business enterprises with more facility to operate.

- 8.1 The Ministry of Commerce, Industry and Tourism will design a differentiated incentive strategy for large, medium and small enterprises with the purpose of having them to implement human rights policies involving:

- Public commitment
- Due diligence procedure
- Result verification mechanism

- 8.2 The Ministry of Commerce, Industry and Tourism, supported by the Council to the President for Human Rights, the Direction of Post-conflict and the National Authority for Environmental Permits, will incentivize the establishment of public-private alliances for the creation of social and environmental quality enterprises, particularly in the unfocused rural field.
- 8.3 The Ministry of Commerce, Industry and Tourism, jointly with the Council to the President for Human Rights will create a Human Rights business incentive to be provided every year and to value the advances the business enterprises might have in adopting the international standards

on business and human rights in their operations. This incentive regulation will be developed by the Task Force within the year following this Plan launching.

- 8.4 The Council to the President for Human Rights will publicly disclose on its website the advances and good practices implemented by the enterprises in respect of the human rights implementation in the business field.
- 8.5 The Council to the President for Human Rights will coordinate an annual international event with the international community, where business enterprises with the largest progress might show and share their challenges and issues.
- 8.6 The Council to the President for Human Rights, jointly with the Ministry of Foreign Affairs and the Ministry of Commerce, Industry and Tourism, will facilitate international exchange among business enterprises for better practices in the implementation of human rights in the business activity.
- 8.7 The Direction of Post-conflict, in cooperation with the Council to the President for Human Rights will identify and recognize the joint work opportunities between the business and the public sectors for development and peacebuilding.
- 8.8 The Council to the President for Human Rights will generate cooperation strategies between the State and the enterprises for the implementation of affirmative actions.
- 8.9 SENA will boost and disseminate the business enterprises' support to the processes developed by the State for the workers' training.

IX. Corporate Social Responsibility and Respect for Human Rights

Coordination framework between the State and the business sector.

Within the framework of their Corporate Social Responsibility programs, enterprises carry out actions that could multiply their impact if jointly performed with the State and aiming at the community needs.

9. Cárdenas, C., Hernández, A., Public policies on the promotion of social responsibility in the context of sustainable development. International Benchmark Presentation. VINCULAR Center for Social Responsibility and Sustainable Development. Pontifical Catholic University of Valparaiso-Chile. Bogota, August 2015.

Therefore, this section of the Plan aims at lines intended to the effort coordination and the relationships with groups of interest from a Rights Approach contributing to the effective enjoyment of rights to change the conditions experienced by territories where the enterprise is established, progressing towards sustainability and anticipating financial, legal and reputational risks.

- 9.1 The Ministry of Commerce, Industry and Tourism, jointly with the Council to the President for Human Rights will support the coordination of corporate human rights policies with the Corporate Social Responsibility institutional programs.
- 9.2 The Corporate Social Responsibility programs are to foster productivity in the areas of influence of their projects to generate the development and economic empowerment of communities under the due diligence and respect for human rights principle.
- 9.3 Increase the recognition of Corporate Social Responsibility and dissemination of good practices by establishing sector platforms for the enterprises and stakeholders to make commitments and jointly supervise progress. The Ministry of Commerce, Industry and Tourism will supervise this process.
- 9.4 With the purposes of improving trust levels within enterprises, and follow up to such levels, the Ministry of Commerce, Industry and Tourism will lead and organize the performance of surveys on public trust in business. Such surveys will include questions to find out about the people's perception of how business enterprises respect human rights and of the remediation mechanisms provided by them.
- 9.5 The Council to the President for Human Rights will assist the Ministry of National Education to lead the integration of the Guiding Principles on Business and Human Rights and Corporate Social Responsibility into education, training and research. A plan will be thus created, which will be supported by Task Force.

Access to remedy

Where the human rights risk prevention has failed and an adverse effect has been caused, the State is obliged to provide remediation, being understood as the implementation of adequate measures to guarantee access to effective remediation.

This Plan aims at a consistent judicial and non-judicial mechanism system providing satisfactory solutions to both parties. This requires a proper structure clearing the ways by which citizens might access to effective remedy.

Such solutions might be provided through various entities or by strengthening social talks and the civil society empowerment for participation in such mechanisms in equal conditions with the business actors.

X. Judicial and administrative mechanisms

The State's judicial mechanisms to guarantee effective remedy.

It is necessary to identify the improvement spaces within both training of officials and strengthening of the judicial system regarding the business and human rights matters, and access to justice for such individuals who may deem their rights have been infringed.

- 10.1 The Council to the President for Human Rights will encourage the Ombudsman's Office to lead the implementation of the access to remedy policies covered by this Action Plan, and to develop a specific training effort for its officers at the territorial and local levels.
- 10.2 The Task Force on Business and Human Rights, within the year of the Plan being launched, will draw a map of the current judicial and non-judicial remediation mechanisms on business and human rights in the country. Such map will identify which mechanism responds to each type of conflict, and will include a diagnostic of the efficacy and efficiency of the access to judicial and non-judicial remedy mechanisms, according to the United Nations Guiding Principles, identifying the obstacles to access to justice by the affected populations, both legally and practically.
- 10.3 Upon the Plan launching, the entities part of the Task Force, supported by the Ombudsman's Office will provide advice on access to the current judicial and non-judicial remediation mechanisms in the country, through its communication channels with citizens. Once completed the mechanism map, the collected information therein is to guide the assistance provided to citizens.
- 10.4 The Ministry of Justice will prepare a gradual adjustment plan to mitigate the primary obstacles to access to effective judicial remedy as identified in the aforementioned mechanism map.
- 10.5 The Ministry of Justice, together with the Council to the President for Human Rights will design strategies to train judicial operators in the international standards on Business and Human Rights within the year of the Plan launching.

XI. Non-judicial mechanisms

The access to non-judicial remedy mechanisms of the State and other key actors.

A judicial process will not always guarantee the termination of the conflict, because the awarded compensations in the ruling might leave an unsatisfied claimant or enterprise according to the remedial measures or guarantees of non-repetition, among other aspects.

On the other hand, non-judicial mechanisms involve talks and agreement between the parties in equal conditions and might thus generate participatory remedial measures and more efficient, effective and easy results. For the strengthening and provision of consistency within the non-judicial mechanisms, the Government-Ombudsman's Office alliance is essential.

In view of the foregoing, this section aims at strengthening the talk mechanisms as a way to conflict resolution and access to remedy, in line with the efficacy criteria noted in the Guiding Principles and other international standards.

- 11.1 As regards the non-judicial remedy, the mechanism mapping referred to in 10.2 above will define the ways to access to each mechanism; the encountered obstacles; the relation between mechanisms; the affected institutions, individuals and communities; as well as the current research, mediation, facilitation, negotiation and arbitration options.
- 11.2 The Task Force will develop strategies to disseminate the most relevant and appropriate business and human rights extrajudicial mechanisms.
- 11.3 The Ministry of Commerce, Industry and Tourism, within the six months of the Plan launching, will submit to the Consultation Committee of the National Point of Contact, an analysis of its dissemination strategy regarding the National Point of Contact and will establish the improvement it may deem fit to guarantee access to such point as for conflicts over which it may have jurisdiction.
- 11.4 The Ministry of Labor and the Public Employment Services will continue to support the talks among workers, unions, enterprises and government for negotiation, as well as the employment mediation and agreement through the mechanisms defined for such purpose¹⁰.
- 11.5 The Task Force and the Council to the President for Human Rights, supported by the Ombudsman's Office, will encourage and provide access to mediators and facilitators for the resolution of conflicts as may arise between communities and enterprises, notwithstanding that there may be other pending administrative or judicial processes.

10. Such as CETCOIT – Special Committee for Conflict Resolution - ILO

Assessment and follow-up

Upon completing the preparation of the National Action Plan on Business and Human Rights, Colombia is provided with an instrument meaning the beginning of a new gradual and progressive action and action implementation phase.

The Plan seeks to achieve positive changes in the initial situation and the context upon which it is built, with results oriented to better enjoyment of rights, welfare, development, peace and equality in the country. To strengthen this spirit and the provided commitments, the Plan is provided with a followed-up and assessment mechanism guided by the improvement, participation and transparency oriented principles, so its contents and measures are at all times relevant and effective as for the intended objectives.

It is a live plan, being continuously reviewed; modifications and adjustments may be thus made as the Task Force may deem convenient, always keeping its initial spirit.

- a. The Task Force, supported by the Expert Commission, will be responsible for verifying the implementation of this plan's actions through a detailed assessment and follow-up mechanism to be created by the Task Force based on the level of performance of the objectives and indicators associated with each action in this Plan.
- b. Before March 1 of each year, each entity referred to in this Plan must report to the Council to the President for Human Rights their progress related to the implementation of the actions included in this Plan, so the Council might consolidate and release a follow-up report.
- c. Likewise, the Council to the President for Human Rights might call different actors (trades, schools, civic society, among others) as it may deem necessary to know their opinion on the implementation of this Plan.
- d. Regional rounds will be held every year –one during the first half and the other during the second half– to verify the implementation of this Plan in the territory. Such rounds will be convened by the Council to the President for Human Rights, supported by the Task Force.
- e. This Action Plan will be valid through three (3) years. Upon its termination, the final assessment of the Plan will be performed, which will take no more than 10 months.
- f. The annual follow-up results posted on the microsite of the website the Council to the President for Human Rights will provide as for the National Action Plan, as well as the final assessment results will be also disclosed to the public in other mass media.



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