

National Roundtable of Civil Society Organizations on Business and Human Rights
PUBLIC STATEMENT BY ENVIRONMENTAL, SOCIAL AND HUMAN RIGHTS NON-GOVERNMENTAL ORGANISATIONS REJECTING THE NEW VERSION OF THE NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

On the occasion of the Government's launch of the National Action Plan on Business and Human Rights (NAP), for which the Presidential Council for Human Rights and International Affairs is responsible, the undersigned organizations reject process and the resulting document of the updated 2020 - 2022 NAP. The new Plan contains exactly the same gaps that have been evident to civil society for more than four years, and seeks to show the current pandemic as the central problem regarding the violation of human rights by companies in our country, which undervalues, ignores, and denies the serious background of violations related to business operations.

Some of the main gaps identified are: I) The process and the document lack a diagnosis in accordance with the problems that the Plan should respond to as a public policy, that is, the violation of human rights by companies; II) Once again, its formulation suffers from a lack of real and effective participation by civil society and communities that are victims of business activities, in addition to the lack of consultation processes and free, prior and informed consent with ethnic peoples; III) Its language and formulation do not respond to the State's obligation to protect human rights, but rather seek to generate the ideal space to guarantee investment, with a focus on recovery from the pandemic; IV) The content does not constitute a State policy, nor does it propose ideal tools for an integral reparation of human rights violations, nor does it contemplate a preventive approach to them.

Neither diagnosis nor context

From the very objective given for updating of the NAP, it is clear that there is a lack of understanding of the facts that constitute a systematic violation of human rights by national and transnational companies in our country, since it warns that the guarantee of protection of human rights will be given in the face of the situation caused by the COVID-19. In this regard, it is important to mention that the current pandemic is indeed a source of deepening human rights violations in the territories, especially because it made more evident the inequalities caused by violations of economic, social, cultural and environmental rights, and above all labour rights, as well as rights to health and social security.

The diagnosis established in the NAP document omits realities related to systematic human rights violations by companies, denounced by civil society, as well as, among other aspects, their direct and indirect link to the armed conflict. It makes no specific mention of the points in the Peace Agreement, mainly ignoring what is established in Point 5 regarding victims and the contribution that economic actors could and should make to the System of Truth, Justice, Reparation and Non-Repetition. Likewise, as we had denounced four years earlier, the new NAP does not address the problems of territorial order (dispossession, abandonment, forced displacement, socio-environmental damage, among others), nor does it address the companies' lack of recognition of the rights of peasant, indigenous and Afro-descendant communities, nor the rights of nature, territory and the communities that inhabit it.

Despite the fact that the NAP mentions an international normative framework on human rights, at the time of its development and conceptualization, it moves away from this normative framework and from a human rights approach, warning that its guarantee is understood as a business competitive advantage and not as an obligation and responsibility of States and companies with respect to the protection, guarantee of rights, and reparation of damages caused by the private sector with its activities. Likewise, throughout the document there is an emphasis on the promotion and encouragement of respect for human rights by companies, and not their **obligatory nature**; which, finally, opens the door to the ineffectiveness of this Plan to guarantee internationally recognized human rights.

Lack of effective public participation and timely, accessible and comprehensive information

The right to effective public participation and access to information (complete, timely and truthful) is fundamental to guarantee the respect of human rights in the context of business activity. However, as the Inter-American Commission on Human Rights (IACHR) has warned, these are two of the rights that are most violated in this business context. This situation is being reproduced in Colombia again with the formulation and construction of the NAP that is being launched today. In this regard, both the IACHR's Rapporteurship on Economic, Social, Cultural and Environmental Rights and the UN Working Group on Business and Human Rights have warned of

the importance of ensuring transparency, participation and inclusion of the various stakeholders in the development of the NAP, from its initial stages or when it is being updated¹.

Although the Plan notes that it was built with the participation of companies, communities and civil society, as well as through a process of consultation between August 2019 and August 2020, the document does not give an account of the mechanisms and methodologies used for this participatory process, nor of the agreements reached with different civil society actors and, in particular, with those affected by corporate behaviour. Nor is there any information on the times, places, people and organizations that attended the mentioned spaces. There were no processes of free, informed and prior consultation with ethnic peoples. In addition, there was a lack of socialization and publication of the project, since the draft was not available for consultation and comment in any official government source that is freely accessible to the public. This is in contradiction with international standards of timely, accessible and complete information.

Neither is there any mention of the participation of victims of human rights violations in the framework of corporate operations and/or the development of mega-projects, which is extremely worrying, because it means that, once again, a NAP was built without the voice of the communities affected by human rights violations by companies, who are treated as mere recipients of a public policy that lacks effective methodologies for participation, monitoring, checks and balances, and evaluation.

Comprehensive reparation tools and scenarios are still owed

The update of the NAP 2020 - 2022, like its previous version, does not contain effective mechanisms either for the prevention or for the comprehensive reparation of human rights violations by companies. It is absurd that five years after the creation of the first Plan, the identification of judicial mechanisms for the reparation of victims is considered as an action by the Ministry of Justice. Neither does it make sense that voluntary action, multi-stakeholder dialogues and extra-judicial mechanisms should continue to be considered as suitable forms of protection. This ignores the obvious imbalance in power relations between affected communities and companies. In this regard, we reiterate that there are no real guarantees, nor is there any willingness on the part of the State to fulfil its duty to guarantee and protect human rights against corporate abuses. We insist that this situation ignores the systematic context of human rights violations by companies, in many cases in collusion with the State and/or, in the case of the armed conflict, with paramilitary groups.

In conclusion, it is once again evident that the United Nations' Guiding Principles are insufficient to address the problems of human rights violations faced by individuals and communities in Colombia, and to that extent we advocate the urgent adoption of an international convention or treaty in this area that would impose binding obligations.

For all the above reasons, we reject the updated document of the NAP 2020-2022 launched today, December 10, 2020, by the Presidential Advisory Office for Human Rights and International Affairs, as it lacked sufficient community participation and consultation with affected communities, lacking a human rights approach, differential approaches, and for its ignorance regarding the reality of the country.

We urge international bodies not to recognize this instrument as an appropriate mechanism for the protection of human rights, nor as progress on the part of Colombia in fulfilling its international obligations in this area. We also urge the national government to reconsider its negligent position on the matter and to adopt the necessary corrections to bring a Plan into line with international standards.

10th December 2020

¹ Paragraphs 48 and 108 of the IACHR's Special Rapporteurship on Economic, Social, Cultural and Environmental Rights report on Business and Human rights



National Roundtable of Civil Society Organizations on Business and Human Rights

The National NGO Roundtable on Business and Human Rights is a space of confluence of platforms and diverse environmental, social and human rights NGOs in Colombia, for dialogue, dissertation, mutual learning and the search for common purposes, around the business conduct in the country.

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| Asociación Interamericana para la Defensa del Ambiente | Fuerza Mujeres Wayuu |
| Asociación MINGA | Fundación Estrella Orográfica del Macizo Colombiano - FUNDECIMA |
| Centro de Información sobre Empresas y Derechos Humanos – Programa Colombia | Fundación Gaia Amazonas |
| Centro de Investigación y Educación Popular/Programa por la Paz | Instituto de Estudios para el Desarrollo y la Paz |
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| Comisión Colombiana de Juristas | Mesa ambiental de Jericó |
| Comisión Intereclesial de Justicia y Paz | Mesa Social Minero Energética y Ambiental por la Paz |
| Comité ambiental en defensa de la vida del Tolima | Mesa Social y Ambiental del Carmen de Atrato |
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| Comité por la defensa del agua, la vida y el territorio del Cauca | Oxfam Colombia |
| Consejo Regional Indígena del Cauca | Pensamiento y Acción Social - PAS |
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