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National Action Plans on
Business and Human Rights
in Latin America:

Analysis of Colombia,
Mexico and Chile



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NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS IN LATIN AMERICA: ANALYSIS OF COLOMBIA, MEXICO AND CHILE¹

1. INTRODUCTION TO THE RESEARCH

The research in question is a continuation of a critical research process initiated by Homa in 2015 on the development of National Action Plans on Business and Human Rights.

These instruments for the implementation of the Guiding Principles on Business and Human Rights have been drafted since the end of 2012 and the first States published theirs in 2013, in accordance with the recommendations of the Resolution 21/5² of the Human Rights Council of September 2012.

However, the movement to implement the National Action Plans agenda in Latin America only comes to fruition in the second half of 2016 and early 2017, with the support of the European Union, as opposed to the leadership of Ecuador in the Intergovernmental Working Group on Transnational Enterprises and Other Business Regarding Human Rights, which aims at the elaboration of an International Treaty on the subject.

Given this scenario, Homa - Center for Human Rights and Business launched in January 2016 the first document containing critical analyzes of the 7 (seven) National Action Plans prepared in Europe up to September 2015 (research start date).

The research called "National Action Plans on Business and Human Rights: Contributions to Brazilian Reality" was called in its first part: "General Perspectives on National Action Plans on Business and Human Rights."³ The work presents critical analyzes of the National Plans drawn up in the United Kingdom, the Netherlands, Italy,

¹ A special thanks to the collaborators Gabriel Coutinho Galil, who contributed to the elaboration of the model of questionnaire that was applied and of the questions for the interviews, Lívia Fazolatto Ferreira and Laura Monteiro Senra, for contributions in recordings and analyzes of documents.

² Available at: <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/176/27/PDF/G1217627.pdf?OpenElement>>. Access on June 23, 2018.

³ Available at: <<http://homacdh.com/wp-content/uploads/2016/01/Perspectivas-Gerais-sobre-os-Planos-Nacionais-de-Ac%C3%A7%C3%A3o-sobre-Empresas-e-Direitos-Humanos.pdf>>. Access on June, 23 2018.

Denmark, Spain, Lithuania and Sweden, already pointing out some serious flaws regarding the participation and transparency in the elaboration process, the absence of real mechanisms of corporate accountability for Human Rights violations in a national level, mechanisms to control the implementation of the measures, vague concepts and proposed measures.

This second part of the research intends to identify the existing flaws in the Latin American National Plans in relation to the organic insertion of international Human Rights norms, to the proposals of mechanisms for national and extraterritorial accountability of companies for violations of rights and to the inclusion of instances of monitoring and inspection of the proposed measures, highlighting the peculiarities that arise in Latin America and observing whether there has been effective participation of civil society and of those affected by the companies' violating activities, or whether the neoliberal framework of the architecture of impunity⁴ has captured participatory processes.

In light of this, it was decided to analyze the National Action Plans of the three countries in the most advanced phase in the region: Colombia and Chile - which already have published Plans - and Mexico, which has already finalized its text, but has not yet formally launched it. In addition, it is proposed to build a narrative of the mobilizations of Brazilian civil society around the agenda in question - through the constitution of the "WG Corporations" - and the relations created between the ongoing process in Brazil for the elaboration of a National Action Plan and the proposal for a National Policy on Human Rights and Business led by civil society.

Thus, the importance of such study is due to the need to verify if the plans that have been elaborated have, in fact, potential to promote advancements in the national norms and public policies for protection of Human Rights against violations committed by companies or if they do not break with the framework of the architecture of impunity that perpetuates in the Latin American context.

⁴ ZUBIZARRETA, Juan Hernández; RAMIRO, Pedro. Against the 'Lex Mercatoria': proposals and alternatives for controlling transnational corporations. Madrid: OMAL, 2016.

2. THEORETICAL CONSIDERATIONS

Before considering theoretical considerations about the international framework for the implementation of voluntary Human Rights norms which the National Action Plans take up and their potential in the production of democratic participation for the elaboration of public policies of Human Rights protection, it is fundamental to locate this work, emphasizing its purpose in providing critical contributions to civil society and to academia in the field of dispute between normative projects on Business and Human Rights.

The premise of theoretical neutrality is rejected because it is believed that all "theory is always for someone and with a specific purpose"⁵, and an analysis that proposes to produce knowledge aiming to transform reality is sought to be developed, which is seen as something profoundly contradictory, as a social process that tends to reproduce the structure, but which contains within itself its possibility of transformation and rupture.

For the desired analysis of the process of elaborating the National Action Plans on Business and Human Rights from the perspective of civil society participation in Latin America, the studies of Evelina Dagnino⁶ will be used, as well as the author's researches in partnership with Alberto J. Olvera and Aldo Panfichi^{7,8}. These references work with concepts related to democracy, civil society, citizenship and participation in Brazil and Latin America.

In a complementary way, to present the political-normative dynamics at the United Nations that led to the implementation of the Guiding Principles elaborated by John Ruggie from National Action Plans since 2012, reference will be sought in the

⁵ COX, Robert W. Social Forces, States and World Orders: Beyond International Relations Theory. KEOHANE, Robert O. (ed.). *Neorealism and its critics*. New York: Columbia University Press, 1986, p. 206.

⁶ DAGNINO, Evelina. Construção democrática, neoliberalismo e participação: os dilemas da confluência perversa. *Revista Política e Sociedade*. N. 03, Vol. 05, October 2004.

⁷ DAGNINO, Evelina; OLVERA, Alberto J. & PANFICHI, Aldo. Para uma outra leitura da disputa pela construção democrática na América Latina. In: DAGNINO, Evelina; OLVERA, Alberto J. & PANFICHI, Aldo (orgs.). *A disputa pela construção democrática na América Latina*. São Paulo: Paz e Terra; Campinas: Editora da Unicamp, 2006.

⁸ DAGNINO, Evelina; OLVERA, Alberto J. & PANFICHI, Aldo. Innovación Democrática en América Latina: una Primera Mirada al Proyecto Democrático-Participativo. In: *Innovación Democrática en el Sur: Participación y Representation en Asia, África y América Latina*. Buenos Aires: CLACSO, 2008, p.31 - 58.

works of Daniel Maurício Cavalcanti de Aragão⁹, Manoela Carneiro Roland and Luiz Carlos Silva Faria Junior¹⁰.

The National Action Plans on Business and Human Rights come out in 2012 and are presented as the main form of incorporating the guidelines developed by John Ruggie as Special Representative of the Secretary General for Human Rights, Transnational Corporations and Other Businesses.

Politically, the UN Human Rights scenario was increasingly linked to transnational capital through the disarticulation of the process of drafting the “Norms” in 2003¹¹ and the strengthening of Corporate Social Responsibility with the Global Compact¹².

Since the beginning of Ruggie's mandate as Special Representative in 2005, the intentions and demands made were already clear. Resolution 2005/69¹³ of the Commission on Human Rights, which requested from the UN Secretary General the nomination of a specialist on the subject of Human Rights and Business, only called for clarifications, elaborations, development of materials and methodologies for monitoring and conducting research on “good practices”. These goals do not include the development of a regulatory framework for corporate activities in relation to Human Rights¹⁴.

With the publication of the Guiding Principles in 2012, there is evidence of alignment with the interests of transnational capital, of absence of a binding

⁹ ARAGÃO, Daniel Maurício Cavalcanti de. *Responsabilidade como Legitimação: Capital Transnacional e Governança Global na Organização das Nações Unidas*. Theses (PhD) – Catholic University of Rio de Janeiro, Institute of International Relations, 2010.

¹⁰ FARIA JR., Luiz Carlos Silva. *A Batalha de Davi Contra Golias: Uma Análise Neogramsciana da Agenda das Nações Unidas em Direitos Humanos e Empresas*. Dissertation (Masters) - Federal University of Juiz de Fora, Graduate Program in Law and Innovation, 2015.

¹¹ *Normas sobre Responsabilidades das Corporações Transnacionais e Outros Empreendimentos Privados com Relação aos Direitos Humanos - U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2*. Working Group on Work Methods and Activities of Transnational Corporations. Available at: <<http://www1.umn.edu/humanrts/links/norms-Aug2003.html#approval>>. Access on June 2, 2018.

¹² Daniel Maurício Cavalcanti de Aragão, Op. Cit.

¹³ Resolution 2005/69: Human Rights and Transnational Corporations and Other Business Enterprises. *Comissão de Direitos Humanos*. Disponível at: <<http://www.un.org/en/terrorism/pdfs/2/G0514744.pdf>>. Access on March 14, 2018.

¹⁴ Luiz Carlos Silva Faria Junior, Op. Cit.

regulatory framework, being sufficient general guidelines for companies and lack of effective monitoring mechanisms.

This alignment with corporate interests was presented by Ruggie in the theoretical format of "principle pragmatism", which assumes the existence of a commitment to the promotion and protection of Human Rights by all actors, although recognizing that there may be limits for this commitment, being necessary, then, to prioritize those actions and norms that have a greater chance of producing good practical results, even if they are not representative from a symbolic point of view or do not fully protect Human Rights¹⁵ ¹⁶. Surya Deva and David Bilchitz refer to Ruggie's mandate as a period in which "companies were in the driver's seat."¹⁷

It is in this context that the National Action Plans on Business and Human Rights appear in the UN, aiming to implement the voluntary guidelines of the Guiding Principles and to consolidate the logic of the principle pragmatism in the elaboration of public policies in the States.

On the logic of public policy-making and civil society participation, Evelina Dagnino¹⁸ points out that currently in Latin America there is a dispute between two political projects for the construction of democracy. These are the Democratic-Participative Project and the Neoliberal Project.

This dispute, which is seen as a tension in the elaboration of National Action Plans in Latin America, characterizes what the author calls a perverse confluence, since such projects, despite pointing to different and often antagonistic directions, require

¹⁵ Id.

¹⁶ Pragmatism is not something new in the field of Human Rights. The progressive fulfillment of social, economic, and cultural rights established in the 1966 Pact indicates that immediate compliance would require a quantity of resources that would not be available to the States immediately, and the rights should be established gradually in a planned manner in order to rationalize resources. Therefore, compliance should take place in whatever way possible and acceptable. However, pragmatism hitherto had been limited to the sphere of execution or realization of rights. With Principle Pragmatism, Ruggie inserts the pragmatic perspective on the applicability of Human Rights norms to companies, and not only in their sphere of concretization and materialization.

This methodological line could be read in a different way, establishing strong and rigid Human Rights norms for the corporate sector, but allowing their deferred compliance according to a general plan outlined in the very body of the Principles (DEVA; BILCHITZ, 2013, p.12).

¹⁷ DEVA, Surya; BILCHITZ, David (Eds.). *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* Cambridge: Cambridge University Press, p.8, 2013.

¹⁸ Evelina Dagnino, Op. Cit.

a participatory civil society as well as work their speeches in seemingly very similar ways.

This identity of purposes, as far as the participation of civil society is concerned, is evidently apparent. But this appearance is solidly and carefully constructed through the use of common references, which make its deciphering a difficult task, especially for the involved civil society actors, whose participation is appealed so vehemently and in such familiar and seductive terms. The political contest between distinct projects then takes on the stance of a dispute of meanings for seemingly common references: participation, civil society, citizenship and democracy.¹⁹

Dagnino, Olvera and Panfichi²⁰ discuss the characteristics of each of these projects in dispute. According to the authors, the Democratic-Participatory Project is associated with the radicalization and deepening of democracy, not only being satisfied with the existence of an electoral democracy, but also seeking to go beyond and to allow real participation of civil society in the emergence of new themes, subjects and discussions, allowing them to act in the construction of rights. This project disputes the formal limits of liberal democracy, which would have an exclusive and elitist character.

Thus, in this project the participation of society plays a central role in decision making, which is not concentrated in the hands of the State. Society has the power to contribute to the formulation of public policies. According to the authors:

Participation is then conceived fundamentally as the sharing of the decision-making power of the State in relation to issues of public interest, thus distinguishing itself from a conception of participation that is limited to consultation with the population²¹.

In the same way, there is also participation regarding social control over the State, through following and monitoring mechanisms of its performance by society.

Furthermore, in this project, civil society is seen in its heterogeneity, in a broad and inclusive way. It is in civil society that one has a fertile ground for debates between

¹⁹ Evelina Dagnino, Op. Cit., p.97.

²⁰ Dagnino, Olvera e Panfichi, Op. Cit., 2008.

²¹ Dagnino, Olvera e Panfichi, Op. Cit., 2006, p. 48-49.

divergent interests and the construction of provisional consensuses about what the public interest is. There is also the need to build public spaces, with or without state participation, in which conflicts, discussions and deliberations can be publicized with the inclusion of different sections of civil society.

This project also has as an element the construction of greater equality and of a citizenship associated with the so-called "right to have rights"²². That is, the citizen has the right to fight and to participate in the creation of the rights that they wish to see recognized. It is a strategy that is not linked to the ruling classes, but rather gives voice to the excluded.

Thus, in this project, there is an emergence of new lands, subjects, themes and processes, a new way of doing politics arises, with the performance of new subjects, such as social movements.

On the other hand, the Neoliberal Project has its focus on adjusting the State and its relationship with society to what it believes to be the demands of a globalized capitalist economy. Unlike the Democratic-Participatory Project, the central issue is not the democratic construction, but the need to organize the economy, so that it can be competitive at the international level.

The authors emphasize that, despite the Neoliberal Project, this is a global formulation, it has specific characteristics in Latin America, since the interaction with different national contexts ends up affecting some features, even though the main guidelines are maintained.

In the Neoliberal Project one has a vision of the public administration as an extension of the private administration, it transfers the market logic to the governmental scope.

In this context, participation is seen as a tool to obtain qualified information about social demands and uses civil society entities, so that they assume the execution of public policies in an efficient way. "Civil society is thus conceived in a selective and exclusive manner, since those sectors capable of performing functions are recognized"²³.

Thus, there is an exclusion of various sectors of civil society, such as social movements, and these are practically reduced to NGOs or to a third sector idea.

²² Evelina Dagnino, Op. Cit., p. 104.

²³ Dagnino, Olvera e Panfichi, Op. Cit., 2006, p. 55.

Governments seek reliable partners who ratify their ideas, excluding the ideological plurality, conflict and debate that should characterize civil society and its arenas. Participation is now taken as mere management and implementation of public policies, and there is no decision-making power. An idea of social solidarity is then defended, based on the social responsibility of individuals, and the struggle against ailments is reduced to the notion of charity.

The concept of citizenship is also altered, being seen as market integration, philanthropy and solidarity with the poor:

The conceptions of citizenship, civil society and participation formulated by the Neoliberal Project express the same depoliticizing intention and are therefore bearers of what could be called a minimalist view of politics. This vision, which reacts against the expansion of the politics undertaken by the democratizing efforts of the Participative-Democratic Project, translates into its inverse: the reduction of land, subjects, themes and processes considered as constituting politics²⁴.

Based on such references, the aim is to identify whether the participation that has taken place in the processes of elaboration of the National Action Plans on Business and Human Rights in Latin American countries, especially in Colombia, Chile and Mexico, has been an inclusive participation, marked by publicity, diversity of ideologies of civil society and real decision-making power of the Democratic-Participatory Project, or whether it has been a restricted participation to selected sectors of civil society, with an individualistic and exclusive character, little publicity of conflicts and discussions, and without real power of decision, distinctly neoliberal.

In addition, it is proposed to analyze the content of the Plans already elaborated in these countries, seeking to understand if there is organic insertion of the Human Rights lexicon, with the insertion of basic principles and international mechanisms already available, as well as provision for accountability, monitoring and inspection mechanisms, and whether there are measures with transforming potential on the national regulatory and institutional frameworks.

²⁴ Dagnino, Olvera e Panfichi, *Op. Cit.*, 2006, p. 58.

3. METHODOLOGICAL CONSIDERATIONS

In order to be able to access various levels of information on the processes of elaboration of the National Action Plans and on their content, the use of a combination of methods was chosen.

Initially, in order to "map the field" of the progress in the elaboration processes of the National Action Plans in Latin America and the Caribbean, so that it would be able to choose the countries to be investigated, a questionnaire was developed that was widely sent to Networks of Social Movements and NGOs in the region to verify the existence of knowledge about consultation processes on National Plans.

In a complementary manner, a workshop on the theme was held during the IV International Seminar on Human Rights and Business, on August 26, 2017, with civil society participants from Uruguay, Brazil, Costa Rica and El Salvador to present the initial goals of the research and to receive contributions regarding the adequacy of the proposed critical approach.

Based on the diagnostics produced in the analysis of the answers to the questionnaires and the contributions of the Workshop, it was chosen to investigate the elaboration processes of National Action Plans on Business and Human Rights in Mexico, Colombia and Chile, three States with published Plans or in advanced state of elaboration.

After mapping the field of investigation, the documentation analysis of the 3 countries' Plans was carried out and the structure of the interviews that were to be carried out were prepared with Gloria Holgín (Colombia) and Maria Fernanda Hopenhaym (Mexico), members of civil society who participated in the elaboration processes of the Plans in the States where they worked.

The interviews were held on November 9, 2017, in person, in the city of Vitória - Espírito Santo. Regarding the representatives of Chilean civil society, it was not possible to obtain interviews, and we had to apply an adapted version of the questionnaire to Verônica Zubia, an advisor to the Directorate of Human Rights at the Ministry of Foreign Affairs of Chile.

In addition, a questionnaire was also applied to Elisabet Pèriz Fernández, from the Centro de Estudios para La Justicia Social - Tierra Digna, Colombia.

The content analysis of the National Action Plans of the selected States was guided by three axes: [i] the presence of national and international language, norms

and jurisprudence on Human Rights; [ii] the main measures proposed and the main themes addressed; [iii] the existence of mechanisms to monitor proposals, legislative changes and means of national and extraterritorial accountability of companies.

Finally, it is important to emphasize that the content analysis of the Plans does not aim to address all the proposed measures in each of the documents, but to carry out a general evaluation of the organization and actions contained, highlighting only the most important points for the chosen analysis axes.

4. NOTES ABOUT THE NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS IN LATIN AMERICA

4.1. COLOMBIA²⁵

4.1.1. THE ELABORATION PROCESS OF THE NATIONAL ACTION PLAN AND THE PARTICIPATION OF CIVIL SOCIETY

Colombia was the first country in Latin America to have a National Action Plan on Business and Human Rights, which was launched on December 9, 2015, and is in the implementation phase. In 2017 the report on the first year of the plan was released.

Through an interview and questionnaire application to members of Colombian civil society, specifically the Centro de Estudios para La Justicia Social - Tierra Digna²⁶, to Elisabet Pèriz Fernàndez, and FIAN Colombia²⁷, to Gloria Holguín, Homa aims to understand how the process of elaboration of the document and the dimension of democratic participation happened, in order to evaluate the factual possibilities of

²⁵ Colombia's National Action Plan is available at: <https://www.ohchr.org/Documents/Issues/Business/NationalPlans/PNA_Colombia_9dic.pdf>. Access on July 1, 2018.

²⁶ Tierra Digna is an organization dedicated to the defense of territory, life and culture of communities affected by the implementation of natural resource extraction projects, driven mainly by the government and by private companies. The Organization is dedicated to the integral follow-up of affected communities, mostly rural communities, through legal, investigative and knowledge-exchanging work aimed at protecting and fully realizing their rights. For further information: <<http://tierradigna.org>>.

²⁷ FIAN Colombia is an extension of FIAN International, Human Rights organization, which works with nourishment and nutrition. For further information: <<http://www.fiancolombia.org>>.

obtaining positive results in order to fill legal gaps and implement mechanisms to hold companies accountable for Human Rights violations.

Colombia's National Action Plan on Business and Human Rights is a document that has absorbed many other moments and circumstances that have occurred in the country, even before the beginning of its elaboration. One of the most important of them is the so-called "Comprehensive Public Policy on Human Rights", formulated between 2012 and 2013²⁸. After this process, in 2014 the "Consejería Presidencial para los Derechos Humanos"²⁹ published the National Human Rights Strategy 2014-2034, a document with the guidelines for 20 years of public policies in Human Rights, aiming to bring a focus on rights for all the actions developed by the federal government.

It is also in 2014 that the Colombian government publishes its first document dealing specifically with human rights and companies, the "Lineamientos para una Política Pública de Derechos Humanos y Empresas." These guidelines, following what is established by the National Human Rights Strategy 2014-2034³⁰, were elaborated with the promotion of workshops to disseminate the theme. These workshops took place in six Colombian territories: Casanare, Huila, Norte de Santander, Bolívar, Antioquia and Valle del Cauca.

Colombia's National Action Plan is officially launched in the first half of 2015, under the leadership of the "Consejería Presidencial para los Derechos Humanos" (formerly called the Presidential Program for Human Rights and International Humanitarian Law - DIH), based on previous processes and the UN guiding principles.

The process of drawing up the Plan took place through the creation of a Technical Committee to guide the plan and formulate a draft of the document that was led by the "Consejería" itself with the participation of other bodies and organizations³¹

²⁸ According to the Colombian government, The Comprehensive Public Policy on Human Rights was based on a survey held in 32 departmental forms (one of them in Bogota) and counted with the participations of more than 19,000 social leaders, 9,000 organizations, besides representatives from government entities, according to official information.

²⁹ Body directly linked to the executive power, responsible for the elaboration and coordination of public policies on Human Rights and International Humanitarian Rights. Available at: <<http://www.derechoshumanos.gov.co/consejeria/paginas/QuienesSomos.aspx>>. Access on June 23, 2018.

³⁰ Document available at: <http://historico.derechoshumanos.gov.co/Observatorio/Publicaciones/Documents/140815-estrategia_web.pdf>. Access on June 5, 2018.

³¹ Defensoría del Pueblo, Fundación Ideas para la Paz (civil society representatives) and technical secretariat of Guías Colombia y Compromiso Ético Suizo, technical secretariat of Comité Minero

and met several times in Bogota with consultations with companies, national government entities, international governments and civil society organizations, with subsequent regional consultations to present the draft document.

The document was also presented in two languages through the official website of the Colombian government and its presentation at the "IV United Nations International Forum on Business and Human Rights" in Geneva, 2015.

Despite the occurrence of regional consultations and meetings of the Technical Committee, both interviewees considered that the level of participation of organized civil society was low and selective. According to Elisabet Pèriz Fernández and Gloria Holguín, most of the organizations that worked in the elaboration process of such a plan have a link with the business sector and act in an perspective linked to voluntarism and corporate social responsibility, while the communities affected by the business activity were excluded from the process. This is the case of "Fundación Ideas para la Paz", which was part of the Technical Committee for drafting the Plan and the "Centro Regional de Empresas y Emprendimientos Responsables" (CREER).

We are not aware of how many organizations participated in the regional forums convened by the Ministry. We do know, however, through some spaces of socialization after the launch of the NPA, that there are civil society organizations closely associated with this process, such as the Ideas for Peace Foundation (part of the Technical Round Table for the elaboration of the NPA) and the Regional Business and Responsible Enterprise (CREER); both organizations in a very pro-voluntary logic, due to their links with the business sector. (Elisabet Pèriz Fernández)

Both the representative of FIAN and the representative of Tierra Digna stated that their organizations were not informed about the process of drafting the Colombian National Plan, nor were they invited to participate in such a process.

Confirming what was stated in the official document of the National Action Plan, Gloria Holguín stated that there was a formal process of consultation with some regional workshops and face-to-face meetings in Bogota, however, the civil society organizations present had no decision-making power beyond recommendations to the

Energético, AECID, Programa de las Naciones Unidas para el Desarrollo (PNUD) and Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos.

government. And, during the process, some organizations stopped attending such meetings when realizing that the recommendations given were not being followed.

The diagnosis made was that the meetings organized by the government had the purpose of formally legitimizing the Plan, rather than actually listening to civil society. This strategy is made clear by mentions on the participatory nature of the preparation of the Plan in the introduction to the document, as well as in the one-year report.

Con el objetivo de la formulación del Plan, en la primera mitad de 2015, se inició un proceso de trabajo con entidades claves para el desarrollo y posterior implementación de las acciones que debería contener. Este fue un proceso participativo de consultas con empresas, organizaciones de la sociedad civil y entidades del gobierno nacional, así como con otros gobiernos y organismos internacionales, con el fin de recoger las visiones, intereses y preocupaciones de todos los actores³².

Para el Gobierno colombiano, la participación es un principio fundamental de la política de Derechos Humanos y, en particular, de la política de Empresa y Derechos Humanos³³.

According to the representative of FIAN Colombia, although the government seeks to highlight the large participation in the process, in practice, few civil society organizations participated because they feel that the space was captured by companies.

[...] And no doubt some organizations attended the first meetings and then did not return because, in a sense, the recommendations they were making were not taking place. I believe that it served only for government and business to justify civil society participation. The National Action Plan in its introduction, which is quite extensive, talks a lot about participation and in the follow-up report it mentions again, saying that they have done many forums, many workshops and had participants from many regions, but it is actually a scenario where business and government convened, and civil society entities that went were few. (Gloria Holgín)

³² Colombian National Action Plan on Business and Human Rights. Op. Cit. p.5

³³ Report on the Implementation Progress of the Colombian National Action Plan. Op. Cit. p.4.

According to the Plan itself, workshops were held in four regional areas: the Caribbean area in Cartagena, south-west zone in Apartadó, central zone in Villavicencio and a national workshop in the city of Cartagena (municipality where two consultation workshops are held) with the purpose of informing civil society, local governments and companies in the regions of the content of the document.

Elisabet Pèriz Fernàndez pointed out that these localities are not areas of high conflict between companies and affected communities, unlike del Cesar, Magdalena and La Guajira (areas in the north of the country affected by more than 30 years of coal mining) or in Tolima (where it is planned to be installed a large gold mining project in the open air and where there was great social mobilization), or in Meta y Caqueta (with many oil fields in operation, with strong labor unions and major controversies with companies).

The civil society representatives consulted stressed that they did not have exact knowledge of the methodology used by the government to allow civil society participation in the process, knowing only the official information on the implementation of the above four workshops. Some organizations that participated in workshops informed them that these were mere spaces of socialization of the Guiding Principles.

According to the FIAN Colombia representative, after the regional workshops, some meetings took place in Bogota, in which civil society organizations made criticisms and suggestions regarding the process, but these opinions did not generate any impact in the final document of the plan. Participation does not seem to have taken place effectively, since civil society did not feel that it was actually being heard.

It is worth noting that the civil society's displeasure with the process of elaborating the National Action Plan on Business and Human Rights is public and notorious, and was expressed in a document entitled: "Statement of Colombian Civil Society in regard to Public Policy on Human Rights and Business of the Colombian Government", published on July 12, 2016, and signed by 16 organizations³⁴.

³⁴ The document was signed by the following Civil Society organizations: Asociación AMBIENTE Y SOCIEDAD, Asociación MINGA, Centro de Estudios para la justicia Social TIERRA DIGNA, Colombia PUNTO MEDIO, Comisión intereclesial de JUSTICIA Y PAZ, Comitè ambiental en defensa de la vida, Equipo Jurídico PUEBLOS, Foro Interétnico Solidaridad Chocó (FISCH), Fundación Comité de Solidaridad con los presos políticos, Greenpeace Colombia, Grupo de Investigación geo-ambiental TERRAE, Instituto de Estudios para el Desarrollo y la paz (INDEPAZ), Instituto

In this document, the organizations registered their concern with the construction of government public policy and its main instrument: the National Action Plan. They point to a series of structural defects as well as the concern that such policies do not have as main focus the offering of effective solutions communities affected by industrial activities.

Regarding financial support to the Plan's elaboration process, the Spanish Cooperation Agency (AECID) and the Colombian Network of the Global Compact contributed. A training course on "Empresa, Derechos Humanos y Paz en el marco de la Nueva Agenda de Desarrollo - ODS" was organized in 2017 to deepen discussions on the National Action Plan, the Guiding Principles and the Sustainable Development Goals, with the support of these agencies³⁵.

4.1.2. CRITICAL ANALYSIS TO THE CONTENT OF THE NATIONAL ACTION PLAN

As was pointed out previously, Colombia's National Action Plan on Business and Human Rights is the result of a process of construction of Human Rights rhetoric by Juan Manuel Santos government, which, from his relationship with the United States, has become an important spokesperson for the speech on corporate social responsibility and the narrative of the Guiding Principles.

In this perspective, two events that the country has hosted are highlighted: the First Latin American and Caribbean Regional Forum on Business and Human Rights in 2013 and the Latin American Dialogue on the National Implementation of Business and Human Rights Frameworks, in 2014.

i. The Presence of Human Rights Lexicon

This axis of analysis aims to understand if the Plan seeks its inspiration in the conceptual framework of Human Rights, that is, if it has language, normative references and national and international jurisprudence on Human Rights; or if it seeks

Latinoamericano para una sociedad y un derecho alternativos (ILSA), Observatório de Expansión Minero - Energética y Re- Existencias, Pensamiento y Acción Social (PAS), SOS Ambiental. Document available at: <<http://tierradigna.org/empresas-y-derechos-humanos/2016/07/12/comunicado-de-la-sociedad-civil-colombiana-frente-a-la-politica-publica-sobre-derechos-humanos-y-empresa-del-gobierno-de-colombia/>>. Access on June 5, 2018.

³⁵ To access the program of the course in question, access: <http://www.aecidcf.org.co/TdR_convocatoriaDiplomado.pdf>. Access on June 19, 2018.

references in corporate social responsibility, in economic calculations and market demands.

In this regard, the Plan describes that Colombia has developed Human Rights policies in general since 2011, with Decree 4100, which established the National Human Rights System, converging to the business theme for the great importance it has for the government. It was also in 2011 that Colombia adhered to the “Declaración de Inversión Extranjera y Empresas Multinacionales”, from the Organization for Economic Co-operation and Development (OECD), which sets out guidelines that should be taken towards multinational companies.

The following documents are included as core texts for the National Action Plan: United Nations Principles of Responsible Contracting, OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guide for Supply Chains Responsible for Minerals in Conflict or High Risk Areas, Voluntary Principles of Security and Human Rights (VP), Global Compact Principles and the ISO 26000 standard, as well as the Sustainable Development Goals (SDG).

The lack of implementation of the main international Human Rights treaties is evident, although the document mentions its alignment with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and Protocols, the Pact of San José de Costa Rica and Fundamental Principles and Rights of the ILO.

The Plan is said to be associated with the “Business and Peace” framework³⁶, which contemplates a more active role of companies in the positive transformations, including the production of peaceful and conflict-free environments, betting on due diligence as a way to respect Human Rights, ignoring how companies are agents of conflict in the territories.

The Plan valued normative instruments of a voluntary nature and elaborated from the theoretical perspective of Corporate Social Responsibility, such as the Global Compact, the OECD Guidelines for Multinational Companies and ISO 26000, making

³⁶ The Ideas for Peace Foundation, which acted as a representative of civil society in the elaboration of the Colombian National Action Plan, has a specific program on the theme articulating actions with the Colombian government. More information is available at <<http://www.ideaspaz.org/foundation/work-areas/5>>. Access on June 19, 2018.

clear this valuation by the constitution of sustainability and Human Rights as competitive advantage in the specific goals of the Plan³⁷.

There is great concern that the National Action Plan adopts this approach that links the protection of Human Rights to the production of a competitive business advantage, thus demonstrating that the focus given in the document is aimed at attracting business flows to the country through a legal-political framework based on international standards of corporate responsibility and not an intent to effectively protect affected communities and hold corporations accountable for Human Rights violations.

ii. Critical Observations on Proposed Measures and Actions

This axis of analysis seeks to present in a general way the lines of action proposed by the National Action Plan, problematizing its scope, depth and capacity of effective impact in the national reality in the matter of protection of Human Rights.

The Colombian document is presented as a set of measures to be implemented "in a gradual and progressive manner" within a period of three years, in order to "harmonize" economic development and the protection of Human Rights.

There are ten approaches observed during the preparation of the document, which indicate in general the path that the Plan will follow. The nine lines of action under which the document is articulated fit into the Three Pillars established by the Guiding Principles: [i] Obligation of States to Protect Human Rights; [ii] Corporate Responsibility to Respect Human Rights; [iii] Access to Repair; demonstrating that the Principles are the theoretical and structural basis for the envisaged actions.

The Plan states that it prioritizes sectors that generate greater social conflict and greater impacts in terms of Human Rights and the environment, such as: mining-energy sector, agribusiness and road infrastructure; however, there are no concrete measures directed at these sectors specifically regarding the establishment of sectoral regulations.

The grammar used by the government in the Plan favors the use of verbs with broad meaning and avoids taking specific and determined commitments, preferring to use "boost, foster, strengthen" rather than "implement, effect, apply." In addition, the

³⁷ Specific Goal N. 10. Potenciar la sostenibilidad y los derechos humanos como ventajas competitivas empresariales.

document avoids using the word "violation" of Human Rights, deliberately preferring to use "impact", which may be negative or positive. This points to the imprecision of the document in determining the anticipated actions and in implementing the mentioned directives and reinforces the constant line of thought in the Guiding Principles that distances companies from the role of violators of Human Rights and qualifies them as agents of development.

The document mentions values such as dignity, autonomy and freedom and the establishment of "effective participation of civil society" (Line of Action III), but these values are depleted in the set of measures, since there is no proposal that brings autonomy for traditional peoples and communities, or that allocates power in the hands of those who have their rights violated.

Concerning "effective participation of civil society", the document seems to attach great importance to civil society organizations, but does not clearly define what it considers to be civil society, and when proposals on this topic are investigated in depth, there are only references to the training of civil society and the construction of a "dialogue protocol between communities, companies and public entities" within the Comprehensive System for Conflict Prevention and Management, but there are no indications as to how this protocol would be developed and what would be the role of affected communities in determining the criteria for dialogue.

In view of the various proposals contained in the document, some stand out, such as those in Line of Action II "State as an economic actor", which proposes the inclusion of criteria related to Human Rights and Business for public purchases, bidding and large contracts, as well as Human Rights clauses in agreements with the government. The strengthening of requirements of respect for Human Rights in Environmental Impact Studies is also proposed.

It is understood that it is important to establish strict Human Rights criteria for companies to contract with the State, but the Plan does not indicate from which regulatory framework these criteria and requirements will develop, generating uncertainty regarding the effectiveness of the measure.

Another point that stands out is the excessive commitment to due diligence mechanisms in Human Rights as a way for the prevention and protection of Human Rights. The government proposes the elaboration of a guide on due diligence to advise companies in the production of evaluations, however, if these guidelines follow the

international advices produced by business consultancies³⁸ and are not elaborated from the local experience and the narrative of the communities affected by the business activity, it will perpetuate the logic of self-regulation that allows the legitimation of Human Rights violating practices by the pure and simple elaboration of reports that do not necessarily tell the truth³⁹.

Finally, emulating the criticisms produced by the Colombian civil society organizations consulted in this paper, the Colombian National Action Plan was prepared without the prior existence of mappings and diagnoses regarding the impacts and violations of Human Rights by the development of business activities in the territories, in relation to the flaws in the existing legislation on Human Rights and Business as well as on the effective mechanisms of prevention and remediation. It is understood that such studies should have been carried out before the elaboration of the National Action Plan to subsidize the actions and proposals.

iii. Mechanisms for National and Extraterritorial Monitoring and Accountability of Companies

This axis intends to analyze the existence of monitoring mechanisms and participation of civil society in the evaluation of compliance with the proposed actions, as well as the presence of mechanisms of accountability of companies at national, international and extraterritorial levels.

In this regard, the National Action Plan points to a lack of information on judicial mechanisms for reparation and remediation of Human Rights violations, proposing to map and diagnose in order to plan future actions.

There is no mention of proposals for legislative change or the government's commitment to push for any legislative initiative in parliament. It also ignores the need for extraterritorial mechanisms to hold companies accountable while focusing on mediation as an extrajudicial alternative to conflict resolution, ignoring the structural

³⁸ Like Shift, Mazzars or the NGO ICAR. The following is an example of a due diligence reporting guide: <<https://www.shiftproject.org/resources/publications/human-rights-due-diligence-high-risk-circumstances/>>. Access on June 26, 2018.

³⁹ See Vale's Unsustainability Reports, elaborated by the International Articulation of Affected and by Vale in 2015. Available at: <https://atingidospelavale.files.wordpress.com/2015/04/relatirio_pdf.pdf>. Access on June 26, 2018.

imbalance between companies and affected communities, between Human Rights violators and violated.

There is in the Plan the provision to create some multi-stakeholder bodies to follow up on the implementation of the actions, such as a Committee of Experts⁴⁰ to work jointly with the Working Group created for the process of elaborating the National Action Plan, to verify the progress of the activities and actions proposed. In addition, there is a provision of annual reports on the execution of actions for all the bodies mentioned in the document.

Six-monthly regional visits are also planned in order to verify the implementation of the planned measures and to hold an annual event for the business sector so that companies can share risks and difficulties and exchange good practices' experiences.

Thus, after this analysis, it becomes clear that the State leaves to the companies themselves the responsibility to deal with complaints about Human Rights violations as well as assessments of the negative impacts of their own activity. It is demonstrated the government's position in which, despite providing mechanisms to monitor actions, it does not grant non-governmental organizations and communities affected by business activity any power of inspection and denunciation, and there is not even an institutional mechanism for receiving complaints or proposals to guarantee access to justice.

4.1.3. ANALYSIS OF THE IMPLEMENTATION OF THE NATIONAL ACTION PLAN AND RESULTS: THE 1-YEAR PUBLICATION PROGRESS REPORT

This topic aims to analyze the progress of the implementation of the measures proposed in the Colombian Plan from the official information provided by the Progress

⁴⁰ This commission will be composed of: one representative elected by the national indigenous organizations, one representative for the national black community organizations, one representative elected by the National Confederation of NGOs, one representative elected by the confederations of workers' unions, one elected by the Colombian Association of Universities, two representatives elected by the National Board of Guilds (one of the companies and another of the guilds), one representative of the Public Defender's Office, one representative of the multi-actor initiatives on Business and Human Rights in the country, one representative of multilateral organizations that carry out activities related to Business and Human Rights, a representative appointed by the international community.

Report on the Implementation of the Colombian National Action Plan⁴¹, last updated in May 2017. It is understood that there is a tendency towards creating fables regarding the dimensions and effectiveness of the implemented measures, in the preparation of reports of this nature, but due to the impossibility of insertion of the research team in the territory, it was chosen to use the document to access the official narrative of the government regarding the first year of development of the actions.

The document in question was elaborated in a confusing and disorderly way, without the standardization of a methodology for analyzing indicators of progress and implementation of actions, but the document is structured along the lines of the Guiding Principles in three pillars.

With the publication of the National Action Plan, an Interinstitutional Working Group on Human Rights and Business (IWG) was created, with the responsibility of monitoring progress in implementing the Plan, being one of the envisaged mechanisms of governance, along with the Advisory Committee (AC), and responsible for 25% of the implementation of the actions established in the document.

It is noticed that the two bodies mentioned above have the responsibility to monitor compliance by the other bodies and to prepare reports, resulting in the progress report that was analyzed, but there is no other relevant action taken by these bodies in the period besides activities of training and meetings.

This shows that the bodies with more attributions determined by the Plan had a low representativeness regarding the degree of implementation of the proposed actions.

There is in the Plan the provision for the development of multi-actor initiatives among the State, civil society and companies, and in this regard it was possible to find the workings of the Working Group on Human Rights and Coal, in which there was agreement for the implementation of a "Pilot on good Human Rights practices with coal producing companies located in Cesar and Guajira", with the aim of promoting an exchange of experiences and producing studies on the impacts and risks to Human Rights in the large-scale mining and coal sector in the cities where the study was focused.

41

Available

at:

<<http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2017/170523-Informe-empresas-ac2.pdf>>. Access on June 30, 2018.

It was also possible to find the initiative "Arauca: right to the future": a local partnership initiative between the State, the productive sector and the Araucanian society to reflect on the future of Arauca and jointly define the path for the progressive implementation of the National Action Plan.

In both initiatives, which were considered the most relevant, there is no description of taken actions, implemented changes or transformation in company practices, only the production of studies, and meetings.

The government has developed in this evaluated year 7 "Colombia Guides"⁴², regulations for the management of its employees in the territory with respect to the subject, providing guidance and standardization for the State agents' action in relation to affected communities.

In the same sense, a relationship program was developed and created in 2016 in the territory of the National Mining Agency with the goal of achieving a relationship between strategic actors present in the territories and related to mining projects, with a view to implementing the State obligation of generate consensus and consult communities about the granting of new mining deeds, but there is no description or mention of the methodology, composition and implementation cases to verify that there is agreement with the international regulations on prior, free and informed consultation.

Regarding the development of regulations for companies, the "General Code of Corporate Governance" was drafted for state companies, which included commitments to transparency and governance and the "Equipares" stamps of the Presidential Council for Women's Equality were issued to support companies that promote the entry of women into the labor market on an equal footing with men, "Friendly Biz", which certifies companies as LGBTQ + friendly business.

In addition, the progress report mentions the declaration of members of the British business community in support of peace and Human Rights in Colombia, made in 2016 by a group of British companies operating in Colombia, which does not represent advances in the fulfillment of Human Rights defining norms, but indicates

⁴² It was developed: Guía de seguridad, lineamientos de quejas y reclamos; Guía de trabajo decente; Guía de buenas prácticas en trabajo decente; Guía para la compra y la adquisición de derechos sobre la Tierra y derecho de uso; and currently it is under development the Guías de fortalecimiento institucional y debida diligencia en cadenas de suministro, which were published in 2017.

the continuity of the relationship between the Colombian government and European countries in promoting the political agenda of Corporate Social Responsibility.

The State of Colombia recognizes the importance of different national and international voluntary guides and guidelines on Business and Human Rights by quoting them, but does not address the degree of incorporation into national legislation and the level of application to corporate CSR activities and policies.

As the Plan proposed a mapping of the judicial and non-judicial mechanisms for remediation and reparation existing in the country, there is a plan of its implementation in the next years, from with the preparation, along with the Ministry of Justice, of a line which will provide information on judicial and extrajudicial mechanisms in the national territory, through a survey of the formal and informal justice operators and the leaders of the territory of 34 key municipalities.

In addition, a Working Group on Business and Human Rights was created within the "Defensoría del Pueblo" to conduct training and studies on the subject within the judiciary.

And the Presidential Council for Human Rights and the Regional Center for Responsible Business and Enterprises (CREER), with the support of the United Kingdom Embassy, have developed the "Elements of a non-judicial remedy access system for Business and Human Rights" project to address of mechanisms internal to the companies for complaint, investigation and repair of produced impacts.

Thus, it is clear the absence of the implementation of actions representative to the normative and institutional framework related to Business and Human Rights in Colombia, with the development of timid policies, mostly focused on training and production of studies and diagnoses. The Progress Report only makes evident the absence of potential effect that the Plan has, not being able to implement any relevant public policy and only indicating the intention to elaborate the National Baseline to establish the priorities for a possible second version of the National Action Plan.

4.2. MEXICO⁴³

4.2.1. THE ELABORATION PROCESS OF THE NATIONAL ACTION PLAN AND THE PARTICIPATION OF CIVIL SOCIETY

The process of drafting the Mexican National Plan on Business and Human Rights began in 2015 under the leadership of the Government Secretariat, composed of a number of sub-secretariats, among them the Sub-secretariat for Human Rights.

In order to understand the process of preparing the Mexican National Action Plan from a different source, Fernanda Hopenhaym, Executive Director of the organization "Proyecto sobre Organización, Desarrollo, Educación e Investigación" (PODER)⁴⁴ was interviewed. She worked directly with the civil society group involved in the elaboration process, called the Focus Group⁴⁵, and which was already in operation before the beginning of the Plan process.

Inspired by the format of the Guiding Principles developed by Ruggie, the Mexican National Action Plan incorporates demands already planned in strategy 4.4 of Mexico's National Human Rights Program (PNDH) 2014-2018, when it establishes the obligation to "Promote the approach of Human Rights and gender in the private sector, as well as in business policies and activities", as well as five other goals that start from

⁴³ It was possible to obtain access only to the "final draft" of the Mexican National Action Plan of October 2017, since it has not yet been officially published by the government, despite the formal elaboration process already completed, according to Maria Fernanda Hopenhaym, interviewed for this work. It is available version of the document previous to the one used for this research and that was publicized for the virtual consultation of the document. <https://www.gob.mx/cms/uploads/attachment/file/225507/3.Borrador_PNEDH.pdf>. Access on July 1, 2018.

⁴⁴ Organization that operates in the subject of Human Rights Business and composed the Focus Group on Business and Human Rights of Mexican Civil Society. For more information: <<http://www.projectpoder.org/en/>>.

⁴⁵ The following organizations make up the Mexican civil society focus group: Centro de Información sobre Empresas y Derechos Humanos (CIEDH); Centro Mexicano de Derecho Ambiental (CEMDA); Comité de Defensa Integral de Derechos Humanos Gobixha (Código DH); Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC); Proyecto sobre Organización, Desarrollo, Educación e Investigación (PODER); Oxfam México; Servicios y Asesoría para la Paz (Serapaz); The focus group is accompanied by: Brigadas de Paz Internacional (PBI) and Asociación Interamericana para Defensa del Ambiente (AIDA). For access to the Group's conceptual note, visit: <<https://www.business-humanrights.org/sites/default/files/Presentación%20Grupo%20Focal%20-%20Nota%20conceptual%202016.pdf>>. Access on June 30, 2018.

a perspective in which the state assumes the reins of disseminating information on the subject⁴⁶.

In September 2015, the National Working Group on Business and Human Rights was officially created, consisting of judicial bodies and representatives of legislative bodies, civil society organizations, the business sector - including state enterprises - federal public administration bodies, academic researchers, international organizations (UNICEF, UNESCO and UN High Commissioner for Human Rights), trade unions, the Human Rights Commission of the Chamber of Deputies and representative of the Supreme Court of Justice. The civil society Focus Group on Business and Human Rights was also invited to form the National Working Group.

The presence of the US and Japanese Chamber of Commerce in the meetings of the National Group is important because they are great international investors in the country, being authorized to act with active voice in the process of elaboration of Human Rights public policies. State or local executive authorities were not invited to participate in the process.

The composition of the National Working Group already points to a clear predominance of the corporate and business sector, with international trade agencies, national industrial chambers and state enterprises, while civil society organizations were understood as a single entity (Focus Group).

In the process, there was also the presence of the Danish Institute of Human Rights - Danish Institute⁴⁷, which advised the Government for one year, as well as the European Union, the Switzerland and the Spanish Cooperation financial cooperation⁴⁸.

This advisory led to the "Country Guide", a Baseline produced in partnership among Mexico, the Swiss government and the Danish Institute of Human Rights, containing information on current and possible impacts on Human Rights produced by

⁴⁶ Goal 1: To strengthen the mechanisms designed to ensure that the State respects Human Rights in companies and in the private sector. Goal 2: To encourage companies to disseminate Human Rights and include them in their declarations of principles, codes and policies. Goal 3: To drive the Human Rights approach to corporate social responsibility. Goal 4: To promote that the law that regulates companies guarantees respect for Human Rights. Goal 5: To help companies to understand their Human Rights obligations in relation to their workers and users.

⁴⁷ The Danish Institute for Human Rights. Information available at: <<https://www.humanrights.dk/>>. Access on June 23, 2018.

⁴⁸ Information on financial cooperation between the European Union and Spain for the preparation of the Mexican National Plan was obtained through an interview with Maria Fernanda Hopenhaym, however it was not possible to find documents to account for the entry and use of these resources.

companies in Mexico and the diagnosis of the situation in Mexico of children and adolescents in the area of Business and Human Rights, with the support of UNICEF.

The National Working Group held a total of nine meetings, six of which were ordinary and three were extraordinary. At these meetings, three basic documents were discussed⁴⁹, addressing public policies, the concrete configuration of the issue in the country and the main Human Rights challenges in Mexico. The Focus Group provided the government with lists of associations working with Human Rights, Environment and some local communities affected to participate in the National Group and convened for meetings.

However, the meetings of the Group took place in the capital, and the government claimed lack of resources to attend civil society meetings and forums, refusing to pay the transportation of representatives of organizations, movements and communities from other regions of Mexico . According to Maria Fernanda Hopenhaym, the participation of civil society existed but was not very wide.

However, the meetings of the Group took place in the capital, and the government claimed lack of resources to fund the presence of civil society at the meetings and forums, refusing to pay the transportation of representatives of organizations, movements and communities from other regions of Mexico . According to Maria Fernanda Hopenhaym, the participation of civil society existed but was not very wide.

⁴⁹ The first base document worked on was a draft of the National Action Plan prepared by the Focus Group for the National Group and was presented on July 21, 2015 for further internal discussion. The second base document worked on by the National Working Group was the "Country Guide", the result of a "trilateral cooperation project " among Mexico, the Swiss government and the Danish Institute of Human Rights. The request to an external agency for a document that reports on the situation of the country in the area of Human Rights and business is something recurrent, also verified in the process of elaboration of the Chilean Plan. Available at:

<https://www.gob.mx/cms/uploads/attachment/file/200977/7._Gui_a_de_Derechos_Humanos_y_Empresas_en_Me_xico.pdf> The last base document worked on was the "Basic diagnosis of the situation in Mexico of girls, boys and adolescents in Business and Human Rights", prepared by the Office of the United Nations Children's Fund (UNICEF). Available at: <<https://www.projectpoder.org/wp-content/uploads/2017/02/Libro-DiagnosticoLineaBase-WEB.pdf>>

Participation existed but was not very broad. Because there were no resources at all. So they invited, but they had no money to bring them to the capital. We argued much with the government to decentralize the process. They held events outside of Mexico City, held an event three hours away, another in the North and another in Chiapas, one of the states with the most indigenous population in the country, and there were a few more locals there. (Maria Fernanda Hopenhaym)

Because of these difficulties, the Focus Group began to urge the Government to decentralize the consultation process. Thus, 3 events were held outside of Mexico City to disseminate the Guiding Principles, discuss the topic, and formally consult on the Draft National Plan. For the open consultation events, registration was opened and organizations and individuals were able to offer contributions.

The first draft of the Plan was placed in virtual consultation, but participation was very small, of about 20 people, according to the representative of the POWER. After the contributions, a new draft of the instrument was sent to the National Working Group.

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The presentation of the draft Plan after the regional consultation plan was an important milestone in understanding the level of participation in the process. According to Maria Fernanda Hopenhaym, the document did not incorporate the contributions and criticisms made by civil society, thus being questionable.

According to her, elements related to access to justice and reparation, protection of Human Rights defenders in the context of business activity, imprecision on the subject of informal prior consultation, etc. were lacking. There was also no concern on the theme of the State as an economic actor, with the specific requirements for companies that have business with the State or even State-owned enterprises, the later, especially in the oil and electricity sector, are among the major violators of Human Rights in the country.

The presentation of this second document caused the formal and public withdrawal of the Focus Group from the process of elaborating the Plan through a communication to the government and a press conference, as they noticed that the

various contributions made to the first draft had been practically ignored, that is, that the consultation had no impact on the writing of the Plan⁵⁰.

4.2.2. CRITICAL ANALYSIS TO THE CONTENT OF THE NATIONAL ACTION PLAN

The history of Mexico in relation to the protection and defense of Human Rights does not stand out positively in the region, having an intimate political relation with the United States' position on the subject, which is recognized by the non-signature of several international Human Rights treaties. Taking advantage of the insertion of the Business and Human Rights agenda in the USA, the Mexican State began its own process of elaborating its National Action Plan.

It is noteworthy that Mexico, through its diplomatic representation at the Human Rights Council in Geneva, has acted as a proxy of the USA and a strong ally of the European Union in creating political obstacles to the negotiation of the International Treaty on Business and Human Rights in the Intergovernmental Working Group established by Resolution 26/9⁵¹.

Thus, the publication of a National Action Plan, which has not yet officially occurred - the analysis were carried out from the draft written in October 2017 - will reflect the State's political position in the international sphere, which is to support voluntary regulatory mechanisms of business activity, with little representation in the promotion of effective protection of Human Rights and accountability of companies for violations.

⁵⁰ Note on the withdrawal of the Focus Group of the process of preparation of the Mexican National Action Plan available at: <<https://www.business-humanrights.org/sites/default/files/documents/ComunicadoGF-17jul2017.pdf>>. Access on June 30, 2018.

⁵¹ Resolution available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement>>. Access on June 29, 2018.

i. The Presence of Human Rights Lexicon

This part of the analysis seeks to identify and understand whether the Plan is driven by a conceptual framework permeated by the logic of Human Rights or if it is based on an understanding linked to corporate social responsibility and *lex mercatoria*.

There are several international frameworks which appear as a minimum for business to create a "commitment to respect human rights", without addressing any specific aspect or concrete application of the themes in the Plan, namely: The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the ILO Declaration, the American Convention on Human Rights, the Protocol of San Salvador, the International Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

In the Plan, extra-judicial and voluntary domestic frameworks are mentioned, such as NMX-R-025-SCFI-2015, which provides for mechanisms to promote gender equality at work in the country and to combat violence and discrimination at labor environments. That norm is placed as a basis for encouraging actions for the promotion and protection of women's rights without, however, using another normative framework that could bring robustness to proposals and actions, such as the Convention on the Elimination of All Forms of Discrimination Against Women, cited in the document, but not actually used in its content.

That example represents the way in which international human rights regulations are incorporated in the document, only formally, without real use of the normative and conceptual matrix that they emulate.

There is also a strong presence of measures and instruments of corporate self-regulation and voluntary compliance, such as the Global Compact, Corporate Human Rights Benchmark and some standards of the International Organization for Standardization (ISO's).

In contrast to international law, there is a deepening and integration of the relationship between the NAP and the Sustainable Development Goals, with measures based on those Goals and the national mechanism for their implementation.

Repeating the pattern observed in other countries, Mexico adopts a logic that relates the protection of Human Rights as an important point for business competition, using international standards in an instrumental way in order to demonstrate a competitive advantage for business performance. The aforementioned human rights treaties and conventions are only mentioned in a general manner, without raising objective questions and essential terms of these documents. Such perspectives are disturbing since they are guided by a reason based on corporate social responsibility, in which all activism and regulation is carried out by the companies themselves, to the detriment of an effective protection to those affected by the violations produced by business activities.

ii. Critical Observations on Proposed Measures and Actions

The Plan is concerned with building a structure similar to the Guiding Principles of the Ruggie framework, organized into five general goals that are divided into strategies, and then subdivided into lines of action which guide the implementation of the actions by the bodies involved.⁵²

⁵² The NAP mentions bodies, councils and secretariats of executive power as instances of its implementation, in addition to sections of the judiciary and some state companies. Among the bodies of the executive branch are Consejo Nacional para Prevenir la Discriminación (CONAPRED), Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI), Secretaría de Gobernación (SEGOB), Secretaría de Relaciones Exteriores (SRE), Comisión Ejecutiva de Atención a Víctimas (CEAV), Secretaría del Trabajo y Previsión Social (STPS), Comisión para el Diálogo con los Pueblos Indígenas de México (CDPIM), Secretaría de la Función Pública (SFP), Secretaría de Desarrollo Agrario, Territorial y Urbano (SEDATU), Comisión Nacional del Agua (Conagua), Secretaría de Economía (SE), Secretaría de Gobernación (SEGOB), Secretaría de Relaciones Exteriores (SER), Secretaría del medio ambiente y Recursos Naturales (SEMARNAT), Secretaría de Energía (Sener), Dirección General de Política Pública de Derechos Humanos (DGPPDH), Comisión Nacional de Seguridad (CNS), Sistema Nacional de Protección Integral de Niñas, Niños y Adolescentes (SIPINNA), Secretaría del Trabajo y Previsión Social de México (STPS), Secretaría de la Función Pública (SFP), Secretaría de Desarrollo Social (SEDESOL), Secretaría del Trabajo y Previsión Social (STPS), Instituto Nacional de las Mujeres (INMUJERES), Comisión Nacional para Prevenir y Erradicar la Violencia Contra las Mujeres (Conavim), Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros (CONSUDEF), Comisión Federal de Electricidad (CFE), Agencia de Seguridad, Energía y Ambiente (ASEA), Secretaría de Comunicaciones y Transportes (SCT), Secretaría de Hacienda y Crédito Público (SHCP). From the Judiciary, the Procuraduría General de la República (PGR), Procuraduría Federal de la Defensa del Trabajo (PROFEDET) and the Procuraduría Federal del Consumidor (PROFECO) are mentioned. There are also five state-owned and parastatal companies: Petróleos Mexicanos (PEMEX), LICONSA S.A, Servicio Postal Mexicano (SEPOMEX), and ProMéxico. Finally, the Comisión Nacional de los Derechos Humanos (CNDH), Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales (INAI), Consejería Jurídica del Ejecutivo Federal (CJEF), Suprema Corte de Justicia de la Nación (SCJN), Comisión Nacional de Tribunales Superiores de Justicia (CONATRIJ), Consejo Nacional de la Agenda 2030 para el Desarrollo Sostenible, UNICEF, and the Federal Legislative Branch are mentioned as collaboration bodies.

Regarding the construction of the goals, a high degree of generality is perceived, dominated by a language of suggestions for the various assigned organizations. Whereas several important components and themes are mentioned (such as gender and traditional communities), the possibility of success of the elaborated propositions is seriously compromised by the level of vagueness of the strategies, especially of the lines of action per se.

As previously pointed out by the civil society organizations which composed the focus group⁵³, the issues are treated as abstract matters, rather than having a solid legal orientation, implying the centrality of business towards those affected as a backbone.

Other inconsistencies mentioned by civil society are confirmed in the Plan, and there are no effective notes on mechanisms that create, by legal means, actions that improve access to justice for communities affected by business activities. On the contrary, a discourse towards a further shielding of corporations is revealed, placing them in a position of partnership and as way of reaching development⁵⁴.

When dealing with corporate transparency mechanisms, the document assumes a role of not establishing measures to enforce corporate transparency in the private sector. There is an association with the Sustainable Development Goals (SDGs) as a basis for the transparency principles to be sought by state bodies.

The Mexican framework of non-recognition of the obligation to publish and publicize environmental / social impact assessments in new ventures remains in the document.

Even though the Plan contains a strategy dedicated to the protection of Human Rights advocates and journalists working on the subject, there is no inclusion of any legal mechanism that can guarantee security in their activities. There is also the possibility of establishing a legal mechanism that allows companies a certain degree of prominence, along with the State, in the recognition of these agents, which increases the risk for these agents, since much of the violence against human rights activists is perpetrated under request of the companies themselves (or individuals in their productive chain) in articulation with local state authorities. In addition, the proposals

⁵³ Op. cit. 45.

⁵⁴ The PODER Organization, a member of the Focus Group, has released footage criticizing the Plan in relation to access to justice. Available at: <<https://youtu.be/95JU-cEMQRY>>. Access on June 30, 2018.

made by the Focus Group for protecting whistle-blowers⁵⁵ were not taken into consideration.

The recognition of prior consultation with communities potentially affected by business activities is not considered as a right, nor is it established as an instance of control with deliberative and binding power in its results. There is also an exclusion of peasants and other likely affected people who do not fit the category of indigenous peoples in impacted areas⁵⁶.

Whereas the approach given to state-owned companies regarding the recognition of human rights in the development of their activities is worth mentioning, its downside is that there is no explicit orientation for this centrality of human rights to be actually fulfilled.

In all of the goals, there is a concern about the pursuit for training of government agency employees on Human Rights and Business issues, while maintaining the repeated pattern of not specifying how these training actions would be done, nor of the possibility of joint articulation between areas where input from civil society organizations would be essential.

iii. Mechanisms for National and Extraterritorial Monitoring and Accountability of Companies

This matter is almost completely disregarded on Mexico's National Action Plan, which only addresses such questions very briefly, with possible mechanisms to be created from existing laws (for example, the Electric Industry Act, Hydrocarbons Act and General Act of Rights of children and adolescents).

There is little information on any specific remedy or redress mechanism to be applied in cases of human rights violations, and the Plan often resorts to a language that considers companies not as responsible for violations, but only for impacts on Human Rights.

⁵⁵ The DH Code Organization, a member of the Focus Group, has released footage criticizing the Plan in relation to the issue of human rights advocates. Available at: <https://youtu.be/t4_D2UMDq4U>. Access on June 30, 2018.

⁵⁶ The AIDA Organization, a member of the Focus Group, has released footage criticizing the Plan in relation to the issue of Prior Informed Consultation. Available at: <https://youtu.be/_bwmn-4Nb80>. Access on June 30, 2018.

The body elected for settlement of disputes is the OECD National Contact Point, and the plan also proposes the implementation of national and international certification mechanisms to award companies with quality seals for the respect of Human Rights.

The judiciary is mentioned only as a collaborating player in the diffusion of the Guiding Principles and receives the orientation to carry out research towards identifying good business practices.

The proposals for legislative changes in the Mexican legal system contained in the document are not accompanied by a commitment from the State to push these proposals in the parliament, and there is no detailed information on what points should be revised, modified or strengthened. Nevertheless, the development of a protocol with administrative procedures for immediate attention to communities affected by environmental emergencies arising from business operations; the revision of environmental regulations to include the precautionary principle; the rights of indigenous communities and communities directly and potentially affected; and the strengthening of the legal frameworks for high-risk sectors to prevent impacts on HR and the environment are mentioned.

An important point in the National Action Plan, generally lacking effective measures to transform the current scenario of serious violations of human rights by companies, is the incorporation of safeguards on respect for Human Rights as requirements for companies and their value chains for participation in public bidding, permits/licenses, and public concessions and contracts. However, the State's commitment to enforce the measure, not only encouraging its implementation is missing.

In addition, there is a line of action that provides for the inclusion of the responsibility of companies to respect human rights and to avoid negative impacts when providing their services in the Law on Acquisitions, Leases and Services of the Public Sector. Regardless, neither the possibility of justified unilateral termination of the contract nor the imposition of strict liability principles on the violating company are provided for.

The subject of extraterritoriality is not mentioned at all. It is expected from the companies themselves to remedy the impacts caused by them according to international voluntary guidelines. The plan also fails to provide practical measures or monitoring groups to oversee the implementation of the proposals in its text .

After analyzing the Mexican framework, the high degree of prominence given to business in the document becomes evident, while respect for human rights is more firmly based on a criterion of voluntary compliance and as an advantage on corporate competitiveness. Neither a normative instrument with the purpose of guaranteeing mechanisms for monitoring corporations in relation to the international frameworks they are supposed to comply with, nor any specific space where those affected can make denunciations to the State are created.

4.3. CHILE⁵⁷

4.3.1. THE ELABORATION PROCESS OF THE NATIONAL ACTION PLAN AND THE PARTICIPATION OF CIVIL SOCIETY

The formal process of developing the National Action Plan in Chile began on April 24, 2015, at a national seminar under the coordination of the Human Rights Directorate of the Ministry of Foreign Affairs⁵⁸ with authorities and stakeholders summoned by the government. From this seminar an Interministerial Working Group was organized for periodic meetings, formed by eleven ministries, with the support of the "Agencia Española de Cooperación Internacional para el Desarrollo" (AECID). In the same year a guide for the dissemination of information about the National Plans initiative was created along with a web page on the subject.

For the purpose of the present research direct contact with members of the Chilean civil society involved with the process was tried, but it was not possible to get in touch with them neither through a questionnaire, nor a personal interview. Seeking to fill in this methodological gap, a questionnaire was applied to the lawyer Verónica

⁵⁷ Chile's National Action Plan is available at: <https://minrel.gob.cl/minrel/site/artic/20171109/asocfile/20171109170236/plan_de_accion_nacional_de_ddhh_y_empresas.pdf>. Access on July 1, 2018.

⁵⁸ The order for the elaboration of a National Action Plan on Business and Human Rights for Chile was agreed by the Social Responsibility Council for Sustainable Development, which delegated the coordination of the subject to the Ministry of Foreign Affairs. The Ministry, in its turn, created a "specialized unit" assigned to the Human Rights Department to proceed with the matter through the "Orden de Servicio Subsecretaría de Relaciones Exteriores N° 40 del 26 de enero de 2015".

Zúbia, an advisor to the Directorate of Human Rights of the Ministry of Foreign Affairs of Chile.

In order to provide a basis for building up the Plan, a commissioned study was prepared by an independent expert, aiming to assess the Human Rights and business situation in the country. This expert study⁵⁹ has been prepared by the "Centro de Derechos Humanos de la Universidad Diego Portales"⁶⁰ and the study, carried out from the perspective of analysis of the Guiding Principles, was presented at the second National Seminar held in May 2016.

In order to gather data to prepare the Plan, workshops were held in the regions of Antofagasta, San Pedro de Atacama, Santiago and Temuco in July 2016, with business, unions, civil society and indigenous peoples. Those workshops were conducted by specialized international consultants⁶¹ with the participation of 420 people, according to the government. However, the document points out that those actions were not carried out as a public consultation, but rather only as a means to gather information with key groups.

According to Verônica Zúbia the calls for participation in the regional events were wide open, in order to reach the largest number of organizations.

For her, there was a lot of participation of civil society in the process of elaborating the Chilean National Action Plan. According to official government figures, 360 people from different regions participated in the national seminars and regional dialogues and 60 people in the presentation of the final result.

Between December 2016 and March 2017, the group met to prepare the draft of the Plan, which was submitted to electronic public consultation in March and received 19 written comments.

In April 2017 a workshop was held to discuss the draft produced with the participation of 61 people so that, on 21 August of the same year, approval of the document with an expected duration of three years (2017-2019) was attained.

⁵⁹ Available at: <www.derechoshumanos.udp.cl/derechoshumanos/index.php/quienes-somos?layout=edit&id=157>. Access on June 23, 2018.

⁶⁰ Centro de Derechos Humanos de la Universidad Diego Portales. More information at: <www.derechoshumanos.udp.cl/>. Access on June 23, 2018.

⁶¹ Dialogues with business, unions and civil society were facilitated by Carlos Cordero Sanz from the Sustentia consultancy, and dialogues with indigenous peoples were facilitated by Birgitte Feiring and Paloma Muñoz Quick from the Danish Institute. For more information on the Sustentia consultancy, please check: <www.sustentia.com/>. Access on June 28, 2018.

Although requested, Verônica Zúbia did not inform which groups were involved in the events and workshops, which makes it impossible to infer the actual representativeness of civil society beyond the formal dimensions of the presented data. However, the interviewee's omission to inform the names of the groups suggests a low degree of transparency of the process⁶².

Although it was not possible to find information about the workshop participants, the government published a report presenting the methodology and general results of the dialogues, which can be considered an improvement over the approach of other countries investigated in this work⁶³.

4.3.2. CRITICAL ANALYSIS TO THE CONTENT OF THE NATIONAL ACTION PLAN

The Chilean government has presented itself through its official documents as an actor committed to the Business and Human Rights agenda through the implementation of the Guiding Principles.

In this process of political positioning of the country as a regional leader, in direct dispute with Ecuador, which heads up the Intergovernmental Working Group to elaborate an International Treaty on the subject at the UN, Chile proposed resolutions at the General Assembly of the Organization of American States (OAS) in 2014⁶⁴ and 2016⁶⁵, urging States to implement the Guiding Principles.

In 2015, there was a special meeting of the Permanent Council of the OAS on the subject⁶⁶ and a thematic hearing at the Inter-American Commission on Human

⁶² Although the Plan informed union participation in the process of drafting the Chilean National Action Plan, informal talks with Barbara Figueroa, president of the trade union center (CUT - Chile), the most representative trade union organization in the country, revealed that there was no summoning from the government to participate in the process.

⁶³ The report is available at: <https://www.business-humanrights.org/sites/default/files/documents/informe_final_conjunto_de_talleres_dialogo_chile_julio_2016_1.pdf>. Access on Jun 28, 2018.

⁶⁴ The resolution proposed in 2014, AG / RES. 2840 (XLIV-O / 14), provides for "Promotion and Protection of Human Rights in Business" and is available at: <https://www.oas.org/en/sla/ddi/docs/AG-RES_2840_XLIV-O-14.pdf>. Access on June 28, 2018.

⁶⁵ The resolution proposed in 2016, AG / RES. 2887 (XLVI-O / 16), provides for "Promotion and Protection of Human Rights" and is available at <http://www.oas.org/en/sla/ddi/docs/ag-res_2887_xlvi-16.pdf>. Access on June 28, 2018.

⁶⁶ For access to the information on the Session, visit: <<http://www.oas.org/consejo/sp/cajp/ddhh.asp>>. Access on June 28, 2018.

Rights (IACHR) about Business and Human Rights that was held in Chile⁶⁷. Currently, a thematic report on the subject under the responsibility of the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights is underway, led by Soledad García Muñoz⁶⁸, as a result of the inclusion of the theme as a priority in the IACHR's Strategic Plan 2017-2021⁶⁹ following up the approval of the 2016 Resolution.

Although presenting itself regionally as a State concerned with the defense of Human Rights in relation to business activities, Chile has been harshly criticized internationally by civil society organizations for its leading role in concluding negotiations and signing the Trans-Pacific Agreement on Economic Cooperation, renamed Integral and Progressive Treaty of Transpacific Association - TPP11, which was signed in March 2018 by 11 countries.

For various civil society organizations and even for traditional players in the international press⁷⁰, "la prioridad [en el TPP] es la protección de los intereses corporativos, y no el promover el libre comercio, la competencia, o lo que beneficia a los consumidores"⁷¹.

In this way, the process of Elaboration of the Plans is inserted in the controversial dynamics of the Chilean government's position regarding the subject.

i. The Presence of Human Rights Lexicon

The Chilean National Action Plan for Business and Human Rights is structured on the basis of the Guiding Principles, also using them as a mediation in relation to respect for international human rights standards.

⁶⁷ A Report on the Thematic Session is available at: <<http://www.oas.org/en/cidh/prensa/docs/Report-158.pdf>>. Access on June 28, 2018.

⁶⁸ The plan of action and development of the Thematic Report on Business and Human Rights was presented by Rapporteur Soledad García Muñoz in February 2018 to the Permanent Committee on Juridical and Political Affairs of the OAS and is available at: <http://scm.oas.org/pdfs/2018/CP38733T.pdf>>. Access on Jun 28, 2018.

⁶⁹ Strategic Plan available at: <<http://www.oas.org/es/cidh/mandato/Estrategicplan2017/docs/Estrategicplan2017-2021.pdf>>. Access on June 28, 2018.

⁷⁰ The New York Times published news in 2015 criticizing the Treaty. Available At: <https://www.nytimes.com/2015/03/26/business/trans-pacific-partnership-seen-as-door-for-foreign-suits-against-us.html?_r=0>. Access on June 28, 2018.

⁷¹ Critical analyzes of TPP11 are available at: <<https://ciperchile.cl/2018/03/09/el-tpp-11-el-gobierno-saliente-y-la-utopia-invertida/>>. Access on June 28, 2018.

The document also contains an extensive list of international human rights treaties and documents of various organizations⁷², but does not include its provisions as a structural basis for the development of actions.

A fundamental problem that can be found in the Plan is the use of the general guideline: "Human Rights and Business as a means for sustainable development", which associates the need for protection and respect of Human Rights to the notion of sustainable development.

This association allows the flexibilization of Human Rights with regard to its application, since there is an appropriation of the concept by the notion of Corporate Social Responsibility, which allows the negotiation of Human Rights in business practice. In this wake, there is a great presence of the Sustainable Development Goals (SDGs) and the UN Agenda 2030, indicating the points of contact with the Guiding Principles and with actions proposed in the document.

This perception of human rights also involves the qualification of business as fundamental actors of development, and collaborators for the full realization of Human Rights, instead of potential violators of Human Rights, the most appropriate epithet given the serious context of violations committed by companies in Latin America.

ii. Critical Observations on Proposed Measures and Actions

The National Action Plan is placed as a document supporting Chilean public policies on Human Rights and Business issues, presenting a continuity bias towards what has already been accomplished, such as the implementation of SDGs, including a specific goal directly related to them and Agenda 2030.

The proposed actions are structured along the three pillars of Ruggie's Framework, maintaining the State as the main responsible for the protection of Human Rights.

A favorable point of the Chilean Plan is the attribution of actions directly to ministries or specific bodies of the federal government organizational structure. Nevertheless, its grammar in general lacks density and real commitment to the actions and proposals.

⁷² National Action Plan on Business and Human Rights of Chile. Op. Cit. P. 94.

There is a strong presence of training, capacity building and preparation of studies on the subject, both for public officials, for companies and for the population in general. Whereas these actions comprise a large portion of the actions envisaged, giving the impression of a large number of proposals, they do not produce structural changes in the protection of Human Rights and effective accountability of companies.

Despite the publication of the Baseline Plan, it is considered that there is a lack of information on the national regulatory framework related to Business and Human Rights and on the effectiveness of public policies already existing in the country regarding this matter, since there is an indication of previous mapping activities to collect such information, which should be available before the document is prepared.

While providing, based on alleged demands from civil society, for the establishment of multiple spaces of multi-actor dialogue in various instances, the plan does not assign deliberative competence to any of the proposed spaces. The Social Responsibility Council for Sustainable Development was created as a permanent forum for dialogue on the subject, devoid of any competence to receive claims or to liaise with the State's investigation bodies.

Regarding transparency, there is only the commitment to create a virtual platform for transparency on energy projects undergoing licensing, implementation and operation procedures, for monitoring by the population.

At the local level, the document commits to the development of a Territorial Development Plan to guide the dialogue in the territories, in addition to the establishment of "local governance mechanisms" for places where power generation projects are installed. However, there is no clear definition of its meaning and functioning. Although the Plan provides for fostering the inclusion of representatives of civil society in the negotiation of trade agreements, there are doubts about what would these support actions be and how effective such incentive is to have in this process.

The proposal regarding human rights criteria for companies in public purchasing, bidding and contracting processes is weak and imprecise, determining only the insertion of Human Rights criteria through an "Integrity Pact" to which the company will be bound. Regardless, non-compliance to this Pact does not justify for unilateral contract termination or deems companies ineligible to public contracting, revealing a lackluster responsibility dimension.

In relation to state-owned companies, there are only commitments to a due diligence procedure by the National Copper Company (CODELCO), even though there are no regulations and procedures defined for its development; and to the elaboration of a Baseline for the National Oil Company (ENAP) so that it is possible to identify impacts likely to be produced.

As far as legislative proposals are concerned, these do not exist with the potential for major changes. The only mentions on this matter are a legal framework for regulation and encouragement of social enterprises and a support regulation for the Law on Labor Inclusion.

The proposal of having a legal survey prepared by the Supreme Court on Human Rights and Business in order to analyze jurisprudential trends on this matter was interesting, and may generate important reference material about the judicialization of demands from affected communities, legal advisors and popular lawyers.

Recognition of the responsibility of business to respect human rights materializes in an extremely timid manner, boiling down to the awareness about national and international human rights norms in order to avoid potential "negative impacts" on rights; to the implementation of due diligence procedures, without proposing criteria for its application or for the future development of national regulations to guide such implementation; to the production of periodic reports of activities and respect for Human Rights; and to the development of internal mechanisms for companies to receive claims and complaints about violations of rights.

iii. Mechanisms for National and Extraterritorial Monitoring and Accountability of Companies

Chile's National Action Plan on Business and Human Rights does not establish any type of action to improve, approve, strengthen or institute jurisdictional mechanisms for corporate accountability and redress. In the axis that addresses judicial state mechanisms, only a proposal of capacity building of environmental courts on the subject and the previously mentioned jurisprudential survey to be elaborated by the Supreme Court appear.

In contrast, extrajudicial mechanisms are greatly appreciated, especially the OECD National Contact Point and administrative oversight procedures, either by the Ministry of Labor or the Superintendency of Environment.

The plan also presents operational mechanisms of complaint as an alternative made available by the companies themselves, which could quickly respond to the communities and directly repair the damages caused. In addition, criteria for the evaluation of extrajudicial complaint mechanisms are presented: Legitimacy; Accessibility; Predictability; Equity; Transparency; Compatibility with Rights; Continuous Learning Source; Basis on Participation and Dialogue.

Concerning the accountability of companies for human rights violations, it is possible to conclude that the proposals are vague or simply do not exist, as in the case of extraterritorial responsibility.

In respect to the establishment of evaluation and monitoring mechanisms, whereas the existence and functioning of the Interministerial Working Group created in 2015 for the elaboration of the Plan, which will be supported by a Multi-Actor Advisory Group for the publication of action monitoring reports, was ensured; there are no signs of formalization of effective mechanisms for the civil society to oversee the Plan's implementation and to evaluate reports produced by agencies and ministries.

Finally, the National Action Plan establishes matters that should be addressed in the next Plan, after the three-year deadline for implementing the current one. The problem with these proposals is that many of them should have already been included in the current document, since they do not depend on a period of improvement of procedures or mechanisms, such as: involving the Judiciary and the Legislative Branch; involving all state-owned enterprises; incorporating aspects related to foreign investment; incorporating materials relating to the inclusion of LGBTQ+ people.

Thus, in addition to the structural failures that the Plan has as a result of its normative inspiration and its ideological alignment with Corporate Social Responsibility and sustainable development, the document also seems incomplete and a with a premature publication, just to stand out in the regional political scenario of Guiding Principles implementation.

5. COMMENTS REGARDING THE PROCESS OF THE ELABORATION OF A NATIONAL ACTION PLAN IN BRAZIL

In this topic, we seek to construct a narrative that addresses the movements of Brazilian civil society around the development of a National Policy on Human Rights and Business, and that this work agenda is older and more comprehensive than the political process of elaboration of a National Action Plan, which is attached to the theoretical-practical matrix of the Guiding Principles and incapable of filling the legal gaps of business accountability for human rights violations.

In order to approach the process of insertion of the Human Rights and Business agenda in Brazil from a civil society perspective, it is fundamental to make a brief historical incursion in 2012, during the Peoples' Summit, a parallel event to the Rio+20 International Conference in Rio de Janeiro, when the Global Campaign to Dismantle Corporate Power and Stop Impunity⁷³ was officially launched as a joint effort of more than 200 civil society organizations from all over the world, bringing together a series of Brazilian organizations - in Brazil - around the issue of human rights violations committed by companies and their blatant impunity.

Based on this articulation, a number of civil society organizations reinforced their participation and following-up actions towards the ongoing UN dynamics in Geneva, both in relation to the activities of the UN Working Group on Human Rights and Transnational Corporations and other Business enterprises⁷⁴, set up to foster the implementation of the Guiding Principles developed by John Ruggie and adopted in 2011; as well as the historic demands for a binding international instrument to regulate business activity against human rights violations which have been taken over by Ecuador and South Africa upon the adoption of Resolution 26/9 in June 2014, which kick-started the process of drafting an International Treaty on Business and Human Rights.

⁷³ Global Campaign to Dismantle Corporate Power and Stop Impunity Campaign website available at: <<https://www.stopcorporateimpunity.org/list-of-signatories/>>. Access on July 1, 2018.

⁷⁴ For information on the Work Group information, please check: <<https://www.ohchr.org/en/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>>. Access on July 1, 2018.

In the historic voting session of Resolution 26/9 in the Human Rights Council⁷⁵, Brazil abstained under the justification of not having a definite position on the issue.

Based on this position of the Brazilian State about such an important resolution, a group of civil society organizations in Brazil began to liaison in order to conduct training, disseminate the theme and the international state of affairs among society, aiming at shaping the government's position in the sessions of the Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with regard to Human Rights, which would begin in 2015.

This articulation, later named "GT Corporações"⁷⁶, began with the "1st Workshop Concentration and Transnationalization of Capitalism: Impacts in Brazil", which took place on August 24, 2014, in São Paulo, with support and leadership of the Friedrich Ebert Foundation.

The space of that workshop was repeated periodically with the availability of the organizations and the international agenda of advocacy at the sessions of the Intergovernmental Working Group.

During the 2nd Workshop, which took place on November 24, 2014 in São Paulo, the need for advocacy actions with the government seeking to understand its position on the implementation of the Guiding Principles and on the negotiation of the Treaty, scheduled to begin the following year, was signaled.

As indicated at the November 2014 meeting, a series of meetings took place on 16 March 2015 with representatives of the Human Rights Secretariat - SDH - (Rodrigo de Oliveira Morais), the Foreign Affairs Ministry - MRE - (Pedro Saldanha) and the

⁷⁵ Resolution 26/9 was adopted with the votes of the following countries: Algeria, Benin, Burkina Faso, China, Congo, Côte d'Ivoire, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kenya, Morocco, Namibia, Pakistan, Philippines, Russia, South Africa, Venezuela and Vietnam; Against: Austria, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Montenegro, South Korea, Romania, Macedonia, United Kingdom and United States; Abstentions: Argentina, Botswana, Brazil, Chile, Costa Rica, Gabon, Kuwait, Maldives, Mexico, Peru, Saudi Arabia, Sierra Leone and United Arab Emirates.

⁷⁶ Currently "GT Corporations" is composed of 23 organizations: Amigos da Terra Brasil; Associação Brasileira Interdisciplinar de Aids - ABIA; Conectas Direitos Humanos; Confederação de Trabalhadores da Agricultura Familiar - Contraf; Fórum da Amazônia Oriental – FAOR; FASE; HOMA - Centro de Direitos Humanos e Empresas da UFJF; IBASE; INESC; International Accountability Project -IAP; Instituto Equit; Instituto Observatório Social - IOS; Instituto Políticas Alternativas para o Cone Sul - PACs; Internacional de Serviços Públicos - ISP Brasil; Justiça Global; Movimento de Atingidos por Barragens - MAB; Movimento pela Soberania Popular na Mineração - MAM; Movimento Interestadual das Quebradeiras de Coco Babaçu – MIQCB; Serviço Interfranciscano de Justiça Paz e Ecologia – SINFRAJUPE; Rede Brasileira pela Integração dos Povos - REBRIP; Repórter Brasil; Terra de Direitos e Vigência; in addition to several other organizations which support and follow its activities.

Ministry of Finance (Luís Balduino) and it was possible to establish a channel of communication with the State agencies related to the subject, to obtain information about a partnership to be celebrated between SDH and FGV-SP for the elaboration of a study on the National Plans, and to the proposal for the creation of an Interministerial Working Group to discuss the issue.

Based on the information obtained at the March meetings, the 3rd Workshop was held on May 20 and 21, 2015 in Brasília, and was attended by representatives of SDH (Cláudia Arai), MRE (Pedro Saldanha) and of the OECD National Contact Point, located at the Ministry of Finance (Arlete da Silva). During this meeting, the Brazilian agenda in relation to the topic of Business and Human Rights and its position at the First Session of the Intergovernmental Working Group on Enterprises Transnational and Other Business related to Human Rights that occurred between July 6 and 10 of that year was set.

During the First Session in Geneva, the group of Brazilian civil society organizations was invited to a meeting with the Brazilian diplomatic representative, Regina Dunlop, who stated the lack of information from the MRE in Brazil to take a position on the subject.

In September 2015, on 15 and 16, the European Union - Brazil Dialogue took place in Brasília, and several members of the established "GT Corporações" were invited and attended to the meeting. In this event, the European agenda for the implementation of the Guiding Principles and the promotion of the National Action Plans was promoted, and the politically manufactured opposition between the international projects regulating business with respect to Human Rights became clearer.

After the events that took place and in the face of the greatest environmental crime in Brazilian history - the collapse of the Fundão Dam in Mariana on November 5, 2015 -, the 4th Workshop was held on November 11 and 12, 2015 in São Paulo, and a new dialogue was held with SDH and Prof. Flávia Scabin from FGV-SP on the elaboration of a National Action Plan on Business and Human Rights in Brazil, its limitations and shortcomings.

Also in November, from 16 to 18, the 4th Edition of the UN Forum on Business and Human Rights took place and was attended by several Brazilian civil society organizations which guided the process of drafting the treaty. During the event, the implementation process of the Guiding Principles was also discussed, pointing towards

the possibility of reconciling both. On that occasion there was another meeting with the Brazilian mission in Geneva and with its representative Regina Dunlop, and a letter from the "GT Corporações" was sent to Pavel Sulyandziga, member of the UN Working Group on Human Rights and Transnational Corporations and Other Business enterprises, who would visit Brazil between December 7 and 16.

"GT Corporações" guided the visit of the representative of the UN Working Group in several localities, being present in its visit to Mariana, after the dam failure, to Belo Monte and to Brasília, São Paulo and Rio de Janeiro.

The year 2016 presented itself as a period of political tensions and difficulties established by the democratic rupture produced by the coup suffered by President Dilma Roussef, which weakened the relations between "GT Corporações" and the Brazilian government.

In April 2016, the meeting of the Alliance for the Treaty - a network of more than 600 organizations around the world for the approval of an International Treaty on Business and Human Rights - was held along with the Third International Seminar on Human and Business Rights organized by Homa - Center for Human Rights and Business, in Rio de Janeiro.

International academics, such as Profs. Surya Deva and Bonita Meyersfeld, international civil society organizations, Ecuadorian Ambassador Maria Fernanda Espinosa Garcés, then President of the Intergovernmental Working Group on Transnational Corporations and Other Business enterprises with regard to Human Rights, MRE representative Pedro Saldanha and Federal Prosecutor Marlon Weichert participated in the event⁷⁷.

Under a scenario of democratic rupture and the advance of dangerous retrogressive agendas in the National Congress, Homa prepared, based on a collective demand from the Working Group, the piece of research entitled "Human Rights and Business: The State of Art of Brazilian Law" which sought to raise the legal and institutional framework in Brazil in several areas related to business and human rights violations with the goal of subsidizing the work of the WG in its demand for a National Policy on Human Rights and Business. This research was presented during the 5th Workshop of "GT Corporações", which took place on August 4, 2016 in Brasília.

⁷⁷ Information about the III Seminar available at: <<http://homacde.com/iii-seminar/en/>>. Access on July 1, 2018.

The process of preparing this book was wide open to the perceptions of civil society regarding the challenges and urgencies faced in the implementation of a national human rights and business policy. Based on consultations with civil society organizations and social movements, the following subjects that would be of fundamental importance for the development of a policy with potential for effectiveness emerged: obstacles to access to justice; civil and criminal liability of legal entities; extraterritorial liability mechanisms; slavery; traditional peoples and communities; human right to adequate nutrition and food; right to a healthy and ecologically balanced environment; right to housing, ownership and property; protection of human rights advocates and the responsibility of funding bodies.

On August 3, a meeting was held between civil society organizations and the Federal Public Prosecutor's Office (PFDC) for the presentation of the new chief prosecutor, Débora Duprat, and for the construction of a dialogue channel with the Working Group on Business and Human Rights of PFDC, coordinated by Prosecutor Marlon Weichert, who became an important partner of the "GT Corporações" within the post-coup institutional scenario.

In October 2016, during the 2nd Session of the Intergovernmental Working Group for the preparation of the International Treaty on Business and Human Rights, the first breakdown of the relationship between Brazilian civil society and the country's diplomatic mission happened, after several denunciations about the coup and ongoing institutional regression.

In January 2017, from 17 to 19, the Second Regional Consultation for Latin America and the Caribbean on the Implementation of the Guiding Principles on Business and Human Rights was held in Santiago, Chile, within the framework of the Agenda 2030 for Sustainable Development, where members of "GT Corporações," Federal Prosecutor Marlon Weichert, representing the PFDC Working Group on Business and Human Rights, and the Secretary of Human Rights at the time, Flavia Piovesan, currently a member of the Inter-American Commission on Human Rights participated.

At that time, PFDC's work with "GT Corporações" was strengthened around the need to take effective and forceful measures to hold corporations accountable for human rights violations and around the fragility of the framework for the elaboration of National Action Plans in Latin America Latin America, unable to combat the status of corporate impunity in the region.

On March 30, 2017, the 6th Workshop of the "GT Corporações" in São Paulo took place with the release of the piece of research developed by Homa "Human Rights and Business: The State of the Art of Brazilian Law" in book format at the University of São Paulo (USP) Law School, with the attendance of Prof. Dr. Paulo Borba Casella, Prof. Dr. André de Carvalho Ramos, Prof. Dr. Maria Luiza Alencar Mayer Feitosa, Federal Prosecutor Marlon Weichert and Gonzalo Berrón, GT representative.

This event strengthened the relations of the "GT Corporações" with the USP Law School and resulted in the IV International Seminar on Human Rights and Business⁷⁸, organized by Homa and held from 23 to 25 August in the university's premises. This Seminar's edition was attended by several national and international experts in Public and Private International Law and the Ambassador of Ecuador and President of the Intergovernmental Working Group for the elaboration of the International Treaty on Business and Human Rights at the time, Guillaume Long.

During the same period of the IV Seminar, the 1st Regional Meeting for Latin America and the Caribbean of the Campaign to Dismantle Corporate Power and Stop Impunity was held in São Paulo, where the political scenario surrounding the negotiation of the treaty at the UN and a systemic picture of human rights violations in the region were discussed.

In October 2017, during the 3rd Session of the Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with regard to Human Rights, it was possible to notice an attempt from the Brazilian diplomatic mission in Geneva of approaching the civil society organizations that were present under the government's alleged intention to engage in conversations supporting the continuation of treaty negotiations, which was at risk because of political maneuvers from the European Union and the bloc of allied countries such as Mexico.

The Brazilian approach was viewed in a suspicious way due to its closeness to the European bloc, which has reproduced the narrative that there is an incompatibility between the processes of implementation of the Guiding Principles and the elaboration of National Action Plans; and the negotiation of an International Treaty on Business and Human Rights.

⁷⁸ For information on the IV Seminar, please check: <<http://homacdhe.com/iv-seminar/en/>>. Access on July 1, 2018.

This narrative is artificial and manufactured and has been fiercely opposed by the Ecuadorian government and international civil society, who understand that the Guiding Principles were only a step towards the protection of Human Rights, which requires binding norms to fill in legal gaps and to the effective accountability of transnational corporations for rights violations.

An Indicative of the falsehood that this narrative represents in Brazilian civil society is the holding of the 1st Public Hearing on Business and Human Rights in November 2017, in Vitória, Espírito Santo, organized by PFDC in partnership with "GT Corporações"⁷⁹.

Although Civil society organizations, social movements, communities affected by business activity, government agencies, unions and companies were all invited to the hearing; there was no company attendance, in spite of the large presence of civil society organizations, affected communities, social movements, Public Attorneys, Public Prosecutors from several states, business consultancies in sustainability and academic organizations.

The main goal of this public hearing was to carry out an initial dialogue and consultation session to collect data, information and experiences to support the State's actions while conducting the process of elaborating a National Human Rights and Business Policy.

At the end of 2017, in December, the Third Regional Consultation for Latin America and the Caribbean on the Implementation of the Guiding Principles on Business and Human Rights within the framework of the Agenda 2030 for Sustainable Development was held again in Santiago, Chile. During the Consultation, Brazil presented the report "Implementing the Guiding Principles on Business and Human Rights of the UN: The State's Duty to Protect and the Obligation of Corporations to Respect Human Rights"⁸⁰, which was developed by FGV-SP under the coordination of Prof. Dr. Flavia Scabin.

In the presentation, on this occasion conducted by the Danish Institute, the processes of preparation of National Action Plans in progress in Latin America were pointed out. Brazil had work in progress, which indicated that there is a movement

⁷⁹ An Analysis of the Public Hearing produced by Homa is available at: <<http://homacdhe.com/wp-content/uploads/2018/04/Breve-analysis-on-audit-public.pdf>>. Access on July 1, 2018.

⁸⁰ Work available at: <<http://www.mdh.gov.br/sdh/noticias/2017/novembro/cartilha-empresas-e-direitos-humanos-1/@@download/file/Empresas%20e%20Direitos%20Humanos.PDF>>. Access on July 1, 2018.

towards elaborating a National Action Plan within the government and without the insertion or consultation of civil society. Moreover, there were consultations with jurists and specialists in Brazil in 2018 on the elaboration of a first draft of the Plan, without the participation of civil society organizations.

This narrative built from the perspective of civil society / "GT Corporações" was necessary to the process of dialogue on the elaboration of a Brazilian National Action Plan, so that there is a memory, even if incomplete, of the various opportunities for dialogue produced by society in order to voice their demands in a clear way.

This long process of coordination and advocacy on the part of the "GT" organizations, both nationally and internationally, shows that there has always been openness from the civil society for the construction of a National Human Rights and Business Policy with the government, in a democratic and inclusive fashion, based on the normative framework of Human Rights, along with the Guiding Principles and in complementarity with the negotiation of an international treaty on the subject, which would strengthen the national framework and provide international support for the implementation of rights and effective accountability of business.

However, this opening is done in a manner that is committed to the construction of effective mechanisms for the protection of Human Rights, demanding a theoretical and political effort that goes beyond the Guiding Principles and Corporate Social Responsibility, which are not able to fill legal gaps regarding business accountability and redress. Companies need to be pointed out for what they are, from the recognition that they are violating human rights in Brazil in the most diverse forms. In addition, it is fundamental to recognize that Brazilian legislation requires norms to stop corporate impunity, with legal elaborations that make extraterritorial responsibility possible, and that public policy needs to be developed and strengthened to safeguard the rights provided in the Federal Constitution, such as housing and access to justice.

6. CRITICAL CONCLUSIONS ON THE PROCESS FOR THE ELABORATION OF NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS IN LATIN AMERICA

This research is part of the set of articles produced by Homa within its role as an academic center committed to the protection and defense of Human Rights. Since 2015, the center has produced critical analyses on the logic of implementing the Guiding Principles through National Action Plans on Business and Human Rights. The investigation of the insertion of this agenda in Latin America is paramount for understanding the regional and international political scenario in the United Nations.

Using the conceptual matrix created by Dagnino⁸¹, which identifies two participation projects, it is possible to understand that so far, the process of elaboration of National Action Plans in Latin America is close to the neoliberal project, serving as an instrument to legitimize transnational companies in the region, instead of implementing accountability, control and monitoring mechanisms of companies' activities.

Next, we will draw conclusions which this work allows to affirm in some fundamental axes of analysis, avoiding the repetition of questions broadly analyzed previously.

Level of Popular Participation in the Drafting of Plans

From the analyses carried out in this work on the processes of elaboration of the National Action Plans of Chile, Colombia and Mexico and the content of those, we notice that in all the countries there a certain model of participation and consultation with civil society has been prioritized.

This model operates from a central body composed largely by federal and national government bodies and the business sector, including some civil society organizations, but without concern for parity of votes or with the status of companies as agents that violate Human rights and not as agents of development. The dialectic of "multistakeholdism" is applied by stripping real power away from civil society while maintaining the formal appearance of participation.

⁸¹ Evelina Dagnino. Op. Cit.

This central body can receive various names: "Technical Board", as in Colombia; "National Working Group", as in Mexico; or "Interministerial Group", as in Chile. Nevertheless, their function remains the same: coordinating the process, with periodic meetings and workshops-seminars.

While both in Colombia and Mexico, civil society organizations participated in the composition of the central body, in Chile it was not possible to identify the permanent participation of civil society in the "Interministerial Group".

Another key point to highlight here is the profile of civil society organizations involved in drafting the National Plans. As in Chile there was no insertion of civil society in the central group, it comes down to evaluating the organizations in the Colombian and Mexican cases.

In Colombia, the main organization of the civil society involved was the "Ideas for Peace Foundation", which has outstanding work in the field of corporate social responsibility, together with "CREER - Centro Regional de Empresas y Emprendimientos Responsables."

In Mexico there was the participation of the so-called Focus Group - a group of civil society organizations that had already been articulating before the formal beginning of the process - which included a series of organizations with a combative profile in the field of Human Rights advocacy, acting with international litigation and supervision of business activity. Regardless, the analysis that took place on the participation of the Focus Group indicates an instrumentalization built to legitimize the process, since the criticisms of the group were not incorporated into the text of the Plan and the organizations and movements that they indicated for consultation were ignored.

In general, the absence of communities that were affected by business activities and had their rights violated can be noticed. The perspective of the affected ones is key to the elaboration of a public policy of Human Rights, given their personal experience of violation of rights. However, the empowerment of these subjects of rights is not compatible with the neoliberal project of participation, because it places the actors involved in the deliberative process in opposite poles determined and mediated by the experience of the violation. Thus, business would be at the violators' pole, while the communities would be at the pole of resistance and confrontation against the violations, not conforming to the violation suffered.

As the disclosure of those "violent" relationships among the agents involved in the process of political elaboration produces unwanted tensions and questions, the affected communities are not included in the coordinating bodies for the Plans drafting.

Regarding the consultation procedures carried out in the drafting of the Plans, they formally took place in all the three countries analyzed. In Colombia, although consultations were carried out in four regions, according to Elisabet Pèriz, the chosen ones were not the most representative for the topic, and the areas with the highest degree of conflict against business activity were excluded from the consultations.

In Mexico, three workshops were held to present the subject and to draft the Plan through consultation, but only after insistence of the Civil Society Focus Group for the decentralization of activities. And in Chile, four workshops for the collection of information were held prior to the preparation of a draft, and 1 face-to-face consultation was held on the final document.

It was not possible to have access to the attendance lists of the workshops and consultation meetings held by the States to evaluate the representativeness of the organizations and individuals invited to participate. However, from the information collected, it is possible to point towards the formal character of the consultation process. Especially in the Mexican case, in which the formal withdrawal of the Civil Society Focus Group occurred due to the non-incorporation of the Group's criticisms and suggestions to the text of the document.

The implemented participation model does not grant any deliberative power to civil society, denying effective decision-making power in the process by reducing their participation to consultation meetings about a document at the point of being published. At this stage, it is no longer possible to carry out any structural change in the document, constituting this model as a tool to legitimize the elaboration process and the content of the Plan.

The Grammar of National Action Plans

By reproducing the wording standard adopted in the European National Action Plans and the Guiding Principles, the three documents analyzed resort to a Corporate Social Responsibility grammar, which is reluctant to characterize companies as violators of Human Rights. Hence, whenever there is reference to business activity, it

is emphasized that these produce impacts to communities or to the territory, impacts that can be positive and negative, but cannot be considered violations.

Another issue that is evident is the use of open-ended verbs to describe actions and proposals, such as boosting and strengthening, rather than verbs that give greater assertiveness and objectivity, such as implementing, executing, funding, etc. Those choices impact on the enforceability of the commitments assumed by the State in the edition of the Plan.

Thus, the lack of objectivity in National Action Plans towards their proposed measures denotes the adoption of a strategy that allows the States to claim the implementation of actions even if there is no real transformation neither in the concrete reality nor in the normative-institutional framework. After all, the actions of "boosting" or "strengthening" can mean many things.

In addition, as previously discussed in detail in the analysis of each Plan, the prevailing lexicon in the documents is that of Corporate Social Responsibility, only mentioning Human Rights norms, while not appropriating its principles, fundamental concepts, agencies and mechanisms of implementation and monitoring, and experiences of incorporation in several regions and countries.

The Market in the Business and Human Rights field

It is possible to see in all the National Action Plans analyzed, a strong presence of proposals for training public agents, the business sector the general public, as well as the requests for studies, surveys, mappings and diagnoses by the States.

This considerable presence establishes a previously non-existent demand for professionals and companies which work with offering consultancy to States and other companies on the subject of Social Responsibility, constituting a rising market. The problem is that the demands and needs of this market are overdetermined by the same players who provide the consulting services.

Since 2012, the major Corporate Social Responsibility and Human Rights consulting firms have been active in the advocacy spaces of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises, such as the regular meetings of the WG and the International Forums of the UN on Business and Human Rights that occur annually, developing research and presenting models and

standards for the conduction of due diligence procedures and for the elaboration of National Action Plans.

The activities of organizations such as ICAR⁸², the Danish Institute, Shift⁸³, and Mazzars⁸⁴ in the production of orientation documents to guide the preparation of National Plans, conduction of due diligence, social diagnoses, baselines for States and for production reports about implementation and compliance with the obligations of respect for human rights by companies are well known, and influence the guidelines produced by the WG in a decisive way.

In the case of Shift Consulting, the situation becomes more evident, since the former Special Representative of the Secretary General of the UN on the subject of Business and Human Rights, John Ruggie is the Council President of the organization, which was officially founded by two professionals who participated in the team who developed the Guiding Principles, Caroline Rees and Rachel Davis.

Funding Support and Political Influence

As previously discussed in this paper, the promotion of the agenda of the National Action Plans on Business and Human Rights in Latin America is directly related to the unfolding discussions in the Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with regard to Human Rights, which seeks to elaborate an international binding instrument on the UN to hold companies liable for human rights violations.

There is the interpretation that the adoption and implementation of the Guiding Principles through National Action Plans by a large number of States may weaken the process of drafting the International Treaty, which is constantly hampered by the European Union in various United Nations spaces - such as the General Assembly and the Human Rights Council.

In line with this artificial tension between the normative projects, the presence of funding support from the European Union and from the Spanish Cooperation Agency in the drafting processes at Colombia, Mexico and Chile was detected in the

⁸² More information available at: <<https://www.icar.ngo>>. Access on July 2, 2018.

⁸³ More information available at: <<https://www.shiftproject.org>>. Access on July 2, 2018.

⁸⁴ More information available at: <<https://www.mazars.com.br>>. Access on July 2, 2018.

interviews and the analysis of documents about the preparation of the Plans in those countries.

In addition, the presence of the Chamber of Commerce of the United States and Japan as components of the National Working Group to elaborate the National Action Plan of Mexico stands out.

It is possible to perceive the interest of countries that opposed the process of the International Treaty on Business and Human Rights in the UN, such as Spain, the United States and Japan, in implementing the agenda of the Guiding Principles and strengthening the neoliberal axis of political alliances while simultaneously following their interest in weakening the Ecuadorian leadership in this field.



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