

Assessment of the Colombian National Action Plan (NAP) on Business and Human Rights

September 2016



In December 2015, the Colombian government launched a National Action Plan (NAP) on business and human rights. In response, the International Corporate Accountability Roundtable (ICAR) and the Center for the Study of Law, Justice, and Society (Dejusticia) conducted a structured assessment of the Colombian NAP, using the NAPs Checklist developed and published by ICAR and the Danish Institute for Human Rights (DIHR).¹ The NAPs Checklist lays out a set of twenty-five criteria that address both the content of NAPs and the process for developing them.

In analyzing the Colombian NAP's fulfillment of the criteria outlined in the NAPs Checklist, ICAR and Dejusticia conducted desk-based research and direct consultation with Colombian civil society organizations involved in the development of or affected by the content of the NAP.² Drawing from existing research and the experiences of local civil society groups, the ICAR-Dejusticia assessment of the Colombian NAP is intended as a living document, subject to further revision and review as the NAPs process continues within the country.

This assessment is part of a larger effort by ICAR to assess all existing NAPs on business and human rights. In November 2015, ICAR and the European Coalition for Corporate Justice (ECCJ) published an updated version of their joint report, *Assessments of Existing National Action Plans (NAPs) on Business and Human Rights*,³ which systematically assessed the published NAPs from the United Kingdom, the Netherlands, Denmark, Finland, Lithuania, and Sweden. This report will be updated at the end of 2016, in conjunction with both ECCJ and Dejusticia, to include the Colombian assessment, an assessment of Norway's NAP if an English translation is available in the near future, and any other released NAPs on business and human rights in the coming months.

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ASSESSMENT SUMMARY: COLOMBIAN NATIONAL ACTION PLAN

Introduction

The Colombian government announced its decision to create a National Action Plan (NAP) on business and human rights in early 2015.⁴ The Presidential Advisory Office for Human Rights led the drafting process, with the accompaniment of the Ministry of the Presidency. A steering committee was created to guide the drafting process, and the first draft of the NAP was published in October 2015. The NAP was officially launched in December 2015.

The Colombian NAP is organized around the three Pillars of the United Nations Guiding Principles on Business and Human Rights (UNGPs). The substantive content of the NAP is divided into eleven main lines of action, which are organized under the three Pillars, and contain multiple action points. Overarching the specific content, the NAP seeks to prioritize four key sectors: energy, mining, agro-industry, and road infrastructure.

This summary provides key trends in terms of process and content, as identified through the attached assessment of the Colombian NAP. It is hoped that other States that are considering beginning or are in the process of creating a NAP will use this assessment to inform their own processes.

Process

The positive aspects of the NAP drafting process include: (1) the government entity tasked with overseeing the drafting of the NAP was clearly identified; (2) various entities of the government were involved in the process through an inter-governmental working group; (3) various governmental, non-governmental, and international actors were involved in the process through a steering committee; (4) follow up and implementation measures were established; and (5) four public consultations were held with stakeholders on the draft NAP before final publication.

However, the consultation process failed to include in meaningful ways at-risk and disempowered stakeholders, including indigenous communities, Afro-descendent communities, peasants, Colombians living outside of the country as a result of the internal conflict, and other affected communities. Colombian NGOs and civil society organizations, like the authors of this report, have remarked on these failures, and some have heavily and publicly criticized the consultation process.

Additionally, while the NAP establishes a system of evaluation and follow-up, these mechanisms could be improved by explicitly committing the government to drafting a second iteration of the NAP following the completion of the three-year term of the current NAP. The revision process could also be improved by including affected communities, organizations that defend the rights of

these communities, and civil society organizations beyond organizations identified with corporate interests (however legitimate those organizations are) in the process of designing, drafting, and formulating the content of the revised NAP.

Another weakness in the process employed to draft the Colombian NAP was the failure to conduct and publish a national baseline assessment (NBA).⁵ By failing to conduct a NBA, the Colombian government missed the opportunity to map the State's unique context in relation to business and human rights and pinpoint the governance gaps that should be addressed in the content of the NAP in order to increase protection for human rights in the context of corporate activities. Moreover, the lack of a baseline assessment has resulted in complaints that the NAP fails to take into account the realities on the ground of affected communities' access to justice and to other mechanisms of protection or accountability. The UN Working Group on Business and Human Rights has insisted, in its 2014 and 2015 thematic reports, on the importance of NBAs in the elaboration of NAPs as well as in the process of developing appropriate modes of measuring the impacts and implementation of a NAP.⁶

The government also failed to publish terms of reference and a timeline for the overall NAP process.

Content

Overall, the content of the NAP aligned itself with several established good practices in business and human rights, particularly with regard to the provision of information for businesses to understand human rights obligations. It also focused on several, though not all, of the business activities that have the greatest risk of being carried out in a context that could lead to human rights violations.

One positive aspect of the Colombian NAP is that it does a good job of identifying within the content of each action point which State agency, ministry, or office is responsible for the implementation of that commitment. Each point specifically lists which organ will lead or supervise the implementation of the established action items. Similarly, all action points are forward looking. Additionally, the NAP lays out a well-developed framework for evaluation and follow-up. The NAP is seen as a "living plan, in constant revision" and provides for yearly reporting to the Presidential Advisory Office for Human Rights by each government institution tasked with taking specific actions in the NAP.⁷ This information is also to be made public. The NAP establishes bi-annual regional rounds of review to assess the ground implementation of the NAP. Additionally, following the NAP's three-year validity, the final evaluation of the NAP shall be completed within ten months. These follow-up mechanisms would be strengthened by an explicit commitment from the government to draft a second iteration of the NAP.

One negative aspect of the Colombian NAP is that many of the government action points are overly vague, making it difficult to discern the concrete steps the NAP is committing specific government

agencies or ministries to take. This difficulty hampers the ability for stakeholders, including internal government actors, to hold responsible government entities accountable for their commitments. A large percentage of action points are non-regulatory in nature, and appoint different State agencies the tasks of “supporting,” “reinforcing,” “guaranteeing” and “promoting,” various standards or programs. For example, action point 4.9 commits the Ministry of Labor to “reinforce actions aimed at protecting the right to freedom of unionization and collective negotiations.”⁸ Similarly, action point 7.3 commitments the same ministry to “guarantee respect for labor rights.”⁹ This type of broad language makes the exact nature, extent, and process of the government’s commitment unclear. Another weakness of the NAP is that, while it establishes specific timelines for some action points, it does not do so for the majority of action points, making it more difficult to hold government accountable during implementation and evaluation.

Moreover, there is very little detail on the accountability measures that the NAP will support, whether with regard to past human rights violations or with regards to human rights violations that may arise in the future

An important expected change in Colombia’s situation for the duration of the NAP, and throughout the process of its continued revision, is the peace process. Now that a peace agreement has been signed, it is recommended that the NAP be revised after the ratification vote and, assuming that the agreement is ratified, that it be harmonized more explicitly with the relevant provisions in that agreement, including the terms regarding accountability of third parties in point 5 of the current draft agreement (agreement on victims: an integral system for truth, justice, reparation and non-repetition.)¹⁰

**ASSESSMENT OF THE COLOMBIAN
NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS**

1. GOVERNANCE AND RESOURCES	COMMENTS
Leadership and Ownership of NAP Process	
<p>1.1. Commitment to the NAP process.</p>	<p>The Colombian government announced its intention to draft a NAP on business and human rights in early 2015.¹¹</p> <p>In its public statements and, in particular, during interventions in international fora on Business and Human Rights, the Colombian government has expressed a strong commitment to continuing the development and implementation of its NAP. Highlighting the symbolic weight accorded to the NAP, the Colombian government chose to publish the NAP on International Human Rights Day, at the same time it launched its 2015 Report on Human Rights (Informe de Derechos Humanos 2015).¹²</p> <p>In the NAP, the government acknowledges that the NAP is a “living plan, in constant revision” and that modifications can and should be made throughout the three-year term of the current NAP to maintain the “spirit with which it was constructed.”¹³ As such, the Colombian Working Group on Business and Human Rights¹⁴, with the advice of a Commission of Experts that the NAP mandates be created, is charged with assessing the implementation of the NAP through the mechanisms established in the NAP’s “Evaluation and Follow-Up” section.¹⁵ These follow-up measures include: (1) before the first of March each year, every institution mentioned in the NAP must report to the Presidential Advisory Office of Human Rights and publish the actions taken during the past year in implementing its obligations under the NAP; (2) the Presidential Advisory Office</p>

of Human Rights can convene stakeholders when it deems necessary to seek advice and opinions regarding the implementation of the NAP; (3) each year, “two rounds of regional review” will be undertaken to assess on-the-ground implementation of the NAP; (4) after the three year validity of the NAP has ended, a final evaluation of the plan will be made within ten months; and (5) the results of annual follow-up will be published on the Presidential Advisory Office of Human Rights’ micro-site, and the results of the final evaluation of the NAP will be presented for public opinion.¹⁶

The creation of the Commission of Experts, composed of elected representatives from a range of stakeholder groups,¹⁷ can be a positive indication of the government’s commitment to continuing the development and implementation of its NAP. On the other hand, changes to the existing NAP are to be carried out only by the Colombian Working Group as it may “consider pertinent.”¹⁸ The degree to which the Commission of Experts is capable of providing meaningful inputs that consider all stakeholders and is able to influence the Colombian Work Group remains unclear.

The mandated composition of the Commission of Experts, which includes three representatives, elected by national indigenous organizations, national Afro-descendent organizations, and the National Confederation of NGOs,¹⁹ one elected by each group respectively, along with business representatives, labor union representatives and other stakeholders,²⁰ offers some positive signs of the government’s willingness to receive input from a range of stakeholders. As stated above, the degree to which the Working Group will give meaningful consideration to the input of the Commission of Experts remains unclear.

Additionally, the lack of a national baseline assessment specifically related to business and human rights and the failure to broadly consult with affected communities indicate that the government’s commitment to a comprehensive

	<p>process, meaning one that involves structured evidence gathering and consultation to inform the content of the NAP, may be limited.²¹ This is evidenced as well by the removal of a provision from the draft NAP which called for the development of a diagnostic review to identify gaps in policy and other regulations related to human rights and business—a national baseline type assessment.²²</p>
<p>1.2. Ensure responsibility for the NAP process is clearly established and communicated.</p>	<p>The Presidential Advisory Office for Human Rights,²³ with the accompaniment of the then-Minister of the Presidency, María Lorena Gutiérrez, was responsible for the NAP process.²⁴ A steering committee was created to guide the process of drafting the NAP, and consisted of the Office of the Ombudsman, the “Ideas for Peace” Foundation (FIP), the technical secretary of the Mining and Energy Committee (CME), the Spanish Agency for International Development Cooperation (AECID), the United Nations Development Program (UNDP), and the Office of the United Nations High Commissioner for Human Rights (OHCHR).²⁵</p>
<p>1.3. Ensure an inclusive approach across all areas of government.</p>	<p>As noted above, the Presidential Advisory Office for Human Rights was the lead agency on the creation of the NAP, and the process of drafting the NAP was guided by a broad ranging steering committee, including certain agencies of the Colombian government.²⁶ In addition, the Colombian government created an inter-governmental Working Group on Business and Human Rights, not to be confused with the multi-stakeholder steering committee, charged with establishing which government entities are responsible for certain requirements established in the NAP.²⁷</p> <p>The Colombian Working Group consisted of the Department of Social Prosperity; Department of National Planning; Ministry of the Interior; Ministry of Education; Ministry of Culture; Ministry of Labor; Ministry of the Environment; Ministry of</p>

	<p>Agriculture; Ministry of Commerce; Ministry of Mines; Ministry of the Treasury; Ministry of Foreign Affairs; Ministry of Health; Ministry of Transportation; Ministry of Housing; National Service of Learning; Colombian Sports Institute; Administrative Department of Science, Technology, and Innovation; Ombudsman Office*; Comptroller General of the Republic*; Attorney General of the Nation*; and the Presidential Advisory Office for Human Rights*.²⁸</p> <p>* These government offices have stayed on as permanent members of the Colombian Working Group, post-publication of the NAP.</p>
1.4. Devise and publish terms of reference and a timeline for the NAP process.	<p>No terms of reference or a timeline for the NAP process were published. The government organized an October 2015 international stakeholder consultation and disseminated the draft of the NAP prior to the consultation.²⁹ In addition, the government held three regional workshops on the draft NAP during October and November in Cartagena, Apartadó, and Villavicencio.³⁰</p>
Adequate Resourcing	
1.5. Determine an appropriate budget for the NAP process.	<p>There is no information publicly available on the level of funding provided for the NAP process.</p>
2. STAKEHOLDER PARTICIPATION	COMMENTS
Effective Participation by All Relevant Stakeholders	
2.1. Conduct and publish a stakeholder mapping.	<p>No information on any stakeholder mapping specifically related to the NAP could be located. Related to the lack of stakeholder mapping information is a significant problem of trust on behalf of CSOs. It is particularly important to note that the only CSO organization that has been given a space for meaningful participation in</p>

	<p>the NAP process was the Fundación Ideas para la Paz (FIP). This organization has played a very important role in mobilizing corporate actors in the peace process and in framing the respect for human rights as an essential part of building a lasting peace. It has also played a key role in getting buy-in from the business community around issues of peace building and human rights. However, the scope and focus of its mission, while valuable, provides only one perspective from civil society, focused on providing tools and information for corporations relating to best practices.³¹ This focus, which can have a valuable role in facilitating corporate buy-in, leaves aside issues such as accountability, redress, and mechanisms that guarantee non-repetition. In order for NGOs to serve the purpose of representing the perspectives and interests of civil society more broadly, the Colombian government should have also included NGOs that work specifically with and on behalf of affected communities at all stages of the NAP process.</p>
<p>2.2. Develop and publish a clear plan and timeline for stakeholder participation.</p>	<p>During the first half of 2015, the government began working with “key actors” in order to inform the draft NAP.³² This was a “participative process of consultations with business, civil society, and government entities, along with other governments and international bodies.”³³</p> <p>The government then created a draft of the NAP, which was circulated prior to the consultations that took place in October and November 2015. In total, the government conducted four consultations on the draft NAP. An international stakeholder consultation was held in Cartagena, and three regional workshops were held in Cartagena, Apartadó, and Villavicencio.³⁴ In addition, the draft NAP was posted on the Presidential Advisory Office for Human Rights website, in Spanish and English, with an e-mail address provided to which comments could be submitted.³⁵</p> <p>The timeline and plan for stakeholder participation was not published.</p>

<p>2.3. Provide adequate information and capacity-building where needed.</p>	<p>The government provided information regarding international business and human rights frameworks at the three regional workshops. However, the adequacy of this information in terms of building the capacity of stakeholders to engage in informed and meaningful consultation is unknown.³⁶</p>
<p>2.4. Facilitate participation by disempowered or at-risk stakeholders.</p>	<p>Multiple civil society organizations have spoken out against the lack of facilitation by the government to ensure participation of disempowered or at-risk stakeholders in the NAP consultations. For example, Tierra Digna has openly criticized the Colombian government for not consulting with communities affected by corporate human rights abuse during the consultations.³⁷ Asociación Ambiente y Sociedad echoed this critique in communication with the authors. The International Network of Human Rights (RIDH) has also spoken out against the NAP process for not facilitating the participation of Colombians who live outside of the country, some of whom have been forced to migrate due to threats resulting from their work opposing corporate human rights abuses.³⁸ Similarly, the Colectivo de Abogados José Alvear Restrepo (CAJAR) highlighted the potential of the NAP process to end impunity and prevent repetition of human rights violations by corporate actors, but only if peasant, indigenous, Afro-descendant communities, and other affected communities are involved in the process of “constructing public policies to overcome the profound asymmetries that exist between victims and economic corporate powers that are interested in their territories.”³⁹</p> <p>No evidence of the participation of vulnerable communities in the drafting of the NAP is available. Moreover, the lack of a baseline assessment specifically focused on human rights and business (rather than on the development of broad-based human rights policies) has resulted in the absence of affected vulnerable communities’ perspectives in the process of framing the business and human rights situation in Colombia for the development of the NAP.</p>
<p>2.5. Consider establishing a stakeholder steering group or advisory committee.</p>	<p>The steering committee established by the Colombian government to guide the NAP drafting process was composed of the Office of the Ombudsman, the “Ideas</p>

for Peace” Foundation (FIP), the technical secretary of the Mining and Energy Committee (CME), the Spanish Agency for International Development Cooperation (AECID), the United Nations Development Program (UNDP), and the Office of the United Nations High Commissioner for Human Rights (OHCHR).⁴⁰ Whether the Colombian government considered including other actors, such as affected communities or business, is unknown. It is important to note that in its presentation of FIP, the government characterizes it as the “representative of civil society.”⁴¹ As noted in section 2.1 of this assessment, FIP plays the important role of increasing business participation in peace building and, in the case of business and human rights, in encouraging business to adopt rights-respecting practices. However, it represents only one perspective within civil society. No civil society organization with a mission to protect the human rights of affected communities was involved in this committee.

The NAP mandates the creation of a Commission of Experts, which consists of a broad ranging group of civil society and affected community stakeholders, to advise the Colombian Working Group, and aid in the implementation of the NAP.⁴² The Commission of Experts is composed of one representative elected by each of the following stakeholders groups: (1) national indigenous organizations; (2) national organizations of black communities; (3) the National Confederation of NGOs; (4) labor union confederations; (5) the Association of Colombian Universities; (6) the Ombudsman Office; (7) business and human rights multistakeholder initiatives; (8) multilateral organs which develop business and human rights activities; (9) the International Community; and (10) two representatives elected by the National Trade Union (one as delegate for business, and another as delegate for the trade union).⁴³ However, the NAP does not specify which government office or entity is charged with creating or managing the Commission of Experts, nor does it establish a timeline for the creation of the Commission of Experts. This situation, in turn, affects the effective implementation and monitoring of the NAP, and can have a negative impact on the ability of the Government to deliver on its promise that the NAP is a “living document.”

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
The NBA as the Foundation for the NAP	
<p>3.1. Undertake a NBA as the first step in the NAP process.</p>	<p>The Colombian government did not conduct a national baseline assessment. The NAP commits the Colombian Working Group to create a baseline assessment of all judicial and non-judicial remedial mechanisms available in the country relating to business and human rights within one year of the launch of the NAP.⁴⁴ This mapping and gap analysis will “identify which mechanism responds to each type of conflict,” though it is unclear what this analysis specifically entails.⁴⁵ It will also include a diagnostic review of the efficiency and efficacy of each mechanism, in accordance with the UNGPs.⁴⁶</p> <p>Although the commitment to conduct a remedy-specific baseline assessment is a step in the right direction, the Colombian government has backtracked on a stronger commitment to draft a full baseline assessment. As discussed in section 1.1 of this assessment, the government removed a provision from the draft NAP that called for the development of a full baseline following the publication of the NAP.⁴⁷ Conducting a full NBA prior to creating the NAP is recommended as the most effective process.⁴⁸ It is also strongly recommended by the Working Group on Business and Human Rights, most emphatically in its July 2015 report.⁴⁹</p> <p>While a full baseline assessment would be more effective, a baseline assessment of the existing mechanisms to obtain redress and remedies conducted during the first year after the launch of the NAP will give the Colombian government the opportunity to incorporate into its assessment the mechanisms for accountability that have been outlined in Point 5 of the current peace negotiation. Point 5 refers to the rights of victims and includes a requirement that there be mechanisms for accountability of civilian parties (“terceros civiles”), including corporations, in the</p>

3. NATIONAL BASELINE ASSESSMENT (NBA)	COMMENTS
	<p>conflict. At the same time, the Office of the Prosecutor has begun investigating thousands of alleged civilian funders, many of them corporations, relating to unlawful paramilitary activities during the armed conflict. Harmonizing the various regimes of accountability and making these regimes an explicit part of the NAP could be a positive outcome of the belated baseline assessment.</p>
<p>3.2. Allocate the task of developing the NBA to an appropriate body.</p>	<p>Not applicable. However, such a body should be identified with regard to the committed-to baseline assessment of accountability mechanisms, and the established timeline for this assessment (see point 3.1).</p>
<p>3.3. Fully involve stakeholders in the development of the NBA.</p>	<p>Not applicable. However, the principle of fully involving all stakeholders applies equally to the more limited baseline assessment of accountability mechanisms discussed in section 3.1 of this assessment. It will be particularly important that the participation of all stakeholders in the development of an NBA in the future be meaningful, and include the inputs of victims, affected communities, and organizations that advocate for the rights of these groups.</p>
<p>3.4. Publish and disseminate the NBA.</p>	<p>Not applicable. However, the more limited baseline assessment of mechanisms of redress recommended in section 3.1 of this assessment should be published and disseminated to the same degree as would a full NBA.</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Scope of NAPs	
<p>4.1. A NAP should address the full scope of the UNGPs.</p>	<p>The NAP is organized around the three Pillars of the UNGPs; however, it does not go through the UNGPs principle by principle. The NAP begins with an introduction of the UNGPs and a brief description of the three Pillars. The substantive content of the NAP is divided into eleven lines of action, which are organized under the three Pillars as follows:</p> <ul style="list-style-type: none"> • <u>State Duty to Protect</u> <ol style="list-style-type: none"> 1. Inter-institutional Coordination 2. The State as economic actor 3. Effective civil society participation 4. State guidance for human rights respect in business activities 5. Human rights due diligence • <u>Corporate Responsibility to Respect</u> <ol style="list-style-type: none"> 6. Culture of human rights and building peace in the business sector 7. Human rights due diligence for business entities 8. Human rights respect as a competitive advantage 9. Corporate social responsibility and human rights respect • <u>Access to Remedial Mechanisms</u> <ol style="list-style-type: none"> 10. Judicial and administrative mechanisms 11. Non-judicial mechanisms <p>A group of NGOs with experience in business and human rights in Colombia expressed deep concern over the NAP's treatment of remedial mechanisms, and its focus on alternative conflict resolution mechanisms and multi-stakeholder initiatives without acknowledging power imbalances between corporate and</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>community actors. They also noted the NAP's failure to refer to past violations committed by corporations.⁵⁰ Thus, in the view of these NGOs, the NAP mentions, but does not address the Third Pillar of the UNGPs.</p> <p>In terms of substantive content, the following four sub-criteria provide insight into the NAP's coverage of the full scope of the UNGPs without conducting an extensive analysis of the NAP's fulfillment of each UNGP, which is a task to be completed during the NBA process. These four sub-criteria are: (1) positive or negative incentives for business to conduct due diligence, (2) disclosure of due diligence activities, (3) measures which require due diligence as the basis for compliance with a legal rule, and (4) a regulatory mix (i.e. a combination of voluntary and mandatory measures that the State uses to encourage business to respect human rights).⁵¹ These sub-criteria are not an exhaustive list, but have been supported by other researchers and advocacy groups as indicative of a NAP's adequacy in terms of substantive content.</p> <p>The Colombian NAP is largely unsatisfactory in meeting these four sub-criteria. While the NAP provides an early commitment to creating incentives for due diligence and takes some steps in requiring due diligence as a basis for compliance with a legal rule, these commitments are nascent and piecemeal. Not only could the NAP do more in regards to these two sub-criteria, it also does not require due diligence disclosure and has an inadequate regulatory mix, as none of the action points directly regulate business activities.</p> <p>(1) <u>Positive and Negative Incentives for Due Diligence</u> While the NAP does not specifically establish incentives to promote due diligence, it does commit the government to doing so in the future. In action point 8.1, the NAP commits the Ministry of Commerce, Industry, and Tourism</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>to designing a strategy of incentives for large, medium, and small companies to, <i>inter alia</i>, implement due diligence procedures.⁵² While the NAP would ideally provide more discreet and specific ways in which positive and negative incentives for due diligence will be provided for, action point 8.1 is a step in the right direction.</p> <p>(2) <u>Disclosure of Due Diligence Activities</u> The NAP does not explicitly require disclosure of due diligence activities. Action point 5.7 commits the Colombian Working Group to evaluate and analyze different ways in which companies can include human rights due diligence reporting in their Sustainability Reports or other means of accountability.⁵³ This evaluation must be completed within a year of the launch of the NAP, and should be done in conjunction with “different actors.”⁵⁴ While the Colombian NAP does take the first step of analyzing different options for due diligence disclosure, it does not go as far as to express government commitment to mandate such disclosure or other future requirements of this sort, nor does the NAP directly refer to any existing regulatory regimes that may mandate such disclosures.</p> <p>(3) <u>Measures Requiring Due Diligence as the Basis for Compliance with a Legal Rule</u> The NAP does create a few circumstances where due diligence appears to be a requirement for compliance with a legal rule. Action point 5.2 commits the State entities with the largest volume of public contracts to establish and implement human rights due diligence mechanisms in their contracting processes.⁵⁵ However, as discussed in section 4.2 of this assessment, it is unclear which or how many State entities will qualify as those with the “largest</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>volume” of public contracting under this commitment, so the scope of the action item remains unclear. The timing of these actions is also unclear.</p> <p>Additionally, action point 2.2 commits the State agency, Colombia Buys Efficiently, to adapt its existing public procurement system to “incorporate measures to ensure that suppliers comply with due diligence in human rights.”⁵⁶ While no timeline or further guidelines are provided in this regard, action point 2.2 signals that the Colombian government plans to amend its public procurement system to require providers of public goods to comply with human rights due diligence requirements. While both of these action points require (or will require in the future) due diligence as a basis for compliance with a legal rule, the Colombian NAP could go much further in requiring human rights due diligence for a broader array of business entities.</p> <p>(4) <u>Regulatory Mix</u> The regulatory mix of the commitments outlined in the NAP is unsatisfactory as none of the action points explicitly commits to regulation of companies or calls for any mandatory measures to ensure that businesses respect human rights. Instead, the action points are comprised of commitments to provide training, develop guidance, design strategies, and facilitate dialogue around increasing business respect for human rights. Direct reference to existing or emerging regulatory and accountability measures and regimes would be particularly useful to understand the level of coherence between them.</p>
4.2. A NAP should address the full scope of the State’s jurisdiction.	The NAP does not adequately address the full scope of the State’s jurisdiction, as it does not discuss human rights abuses perpetrated by business abroad. The NAP is

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>focused only on the actions of Colombian or foreign enterprises operating within the country.</p> <p>Additionally, the NAP does not mention the Integral System of Truth, Justice, Reparation and Non Recurrence, an accountability regime that has emerged out of the current peace process and which will not be in place unless and until the recently signed peace agreement has been ratified. A direct reference to the terms of the peace agreement would be inappropriate, as it had not been finalized at the time of the publication of the NAP, and it is under the strict principle that none of its terms are final until all the negotiation points have been agreed upon. However, the NAP commits to coordinating with the Framework of Corporations and Peace, which is being designed by the Direction on Post-Conflict, along with the Office of the High Commissioner for Peace.⁵⁷ In noting this effort at inter-institutional coordination, the NAP highlights forward-looking strategies to promote reconciliation. The NAP is not clear about whether this coordination effort will also emphasize accountability mechanisms. It does not make any explicit reference for its future harmonization with post-conflict accountability regimes that are outside the jurisdiction of regular courts.</p>
<p>4.3. A NAP should address international and regional organizations and standards.</p>	<p>The NAP extensively discusses international and regional organizations and standards.</p> <p>The NAP claims to align not only with international human rights standards, as established by the International Bill of Human Rights and international humanitarian law, but also with regional human rights standards, including those espoused in the Inter-American Human Rights System, and standards recognized</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>in the ILO Declaration on Fundamental Principles and Rights at Work.⁵⁸ Colombia, like several other Latin American nations, incorporates international human rights treaties into its constitution, under a “block of constitutionality” doctrine.⁵⁹ The NAP thus contains a commitment to upholding existing established human rights standards as they flow from these instruments. However, the text of the NAP is not explicit about how the government will incorporate or disseminate information about these standards, even as it emphasizes the importance of generating “information” and “capacity-building” of State actors and corporations to respect rights.⁶⁰</p> <p>In addition to being structured around the three Pillars of the UNGPs, the Colombian NAP explicitly commits itself to maintaining coherence with other international standards and norms relating to business and human rights, including the UN Principles on Responsible Contracting, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the Voluntary Principles on Security and Human Rights, the UN Global Compact, ISO Standard 26000, and the Sustainable Development Goals.⁶¹</p> <p>The NAP also mentions additional international standards, including international standards on the rights of women and the Extractive Industries Transparency Initiative (EITI).⁶² However, it does not mention Principle 10 of the Rio Declaration of 1992⁶³, which calls for participation, access to information, and access to justice, despite the fact that the Rio Declaration is incorporated into Law 99/93 for Environmental Issues.⁶⁴</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.4. A NAP should address thematic and sector-specific human rights issues.</p>	<p><u>Sector-specific human rights issues:</u> The NAP prioritizes energy, mining, agro-industry, and road infrastructure.⁶⁵ The NAP highlights these sectors as priority areas using information gathered during a round of regional and territorial workshops in realization of the 2014 Guidelines for Public Policy on Business and Human Rights, held in Casanare, Huila, Norte de Santander, Bolívar, Antioquia, and Valle del Cauca, as well as follow-up studies by the Ministry of the Interior.⁶⁶ It is unclear why the NAP does not also prioritize cattle ranching, which has generally been identified alongside extractive industries and agro-industry as an industry tied to human rights violations.⁶⁷</p> <p>The prioritization of these sectors can be seen throughout the NAP in terms of specific references to these sectors or references to processes that often accompany projects in these sectors. For example, action point 4.12 tasks the Ministry of Energy and Mines with designing a strategy for advancing respect for human rights in the energy and mining sector within a year of the NAP launch.⁶⁸</p> <p><u>Thematic human rights issues:</u> Less specifically, multiple action points in the NAP reference steps to be taken to mitigate human rights violations which often accompany projects within these specific sectors, such as environmental degradation or the use of private security forces. For example, action point 5.4 commits the Presidential Advisory Office for Human Rights and the Ministry of National Defense to promote the implementation of the Voluntary Principles on Security and Human Rights.⁶⁹ Additionally, action points 7.7 and 7.8 discuss ways in which the Colombian Working Group on Business and Human Rights and the Commission of Experts can help businesses create and follow through with strategies to properly evaluate personal and environmental risks and impacts</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>caused by projects and to mitigate these negative impacts.⁷⁰</p> <p>A recurrent thematic concern by organizations that represent affected communities is the lack of access to justice, and the power imbalance between victims and corporate powers. The Colectivo de Abogados José Alvear Restrepo (CAJAR), for example, in its public statement regarding the draft NAP summarized the significant obstacles to access to justice and to mechanisms of prevention of human rights violations and underscored that the NAP should contribute to strengthen judicial and other regulatory mechanisms and to devise public policies that address these obstacles.⁷¹ This thematic concern is not present in the NAP as it stands now. However, the NAP's commitment to a baseline assessment of existing mechanisms of accountability and redress (see section 3.1 of this assessment) can be an opportunity to focus on this thematic issue.</p>
Content of NAPs	
<p>4.5. The NAP should include a statement of commitment to the UNGPs.</p>	<p>The NAP includes a statement of commitment to the UNGPs and states that the process of drafting the NAP was undertaken with “the object of strengthening the commitments and the implementation of the UN Guiding Principles.”⁷² In addition, the NAP is designed around the three pillars of the UNGPs and mentions the UNGPs specifically throughout the NAP.⁷³ For example, under action point 3.1, within a year of the launch of the NAP, the Colombian Working Group on Business and Human Rights must look for partners in capacitating civil society, small business, and other groups regarding the UNGPs.⁷⁴</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
<p>4.6. A NAP should comprise action points that are specific, measurable, achievable, relevant, and time-specific.</p>	<p>All eighty of the specific action points developed in the NAP appear to be relevant to the goal of promoting business respect for human rights and protecting against and remedying business-related human rights abuse.</p> <p>Out of the eighty action points that comprise the NAP, only sixteen have specific timelines for implementation.⁷⁵ The remaining sixty-four action points contain no reference to when the government plans should begin or complete the commitments.</p> <p>Within the NAP, there is a broad range of specificity and measurability represented in the eighty action points. While the NAP does assign specifically each action point to a relevant office or offices of the government (for more information, see section 6.1 of this assessment), a large percentage of the action points are overly vague, making it difficult for stakeholders, including internal government actors, to hold the responsible government entity accountable for its commitments. For example, action point 4.7 commits the Ministry of Labor and the Colombian Institute for Family Wellbeing to “strengthen efforts to provide advice, training and support” to companies for the protection of children.⁷⁶ Similarly, action point 7.3 commits the Ministry of Labor to “guarantee respect for labor rights.”⁷⁷ There are many other action points similar to these that appoint different State agencies the task of “supporting”, “reinforcing”, “promoting”, and “helping” various standards or programs. This type of broad language makes the exact nature, extent, and process of the government’s commitment unclear. Moreover, it emphasizes the government’s role as provider of information and a resource for capacity-building while leaving the specifics of implementation to either corporations or unspecified actors.</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>While there are a number of action points that are more specific, these more explicit action points still vary broadly in the amount of specificity, and therefore, measurability, they provide. For example, there are many action points, which, while being more specific in relation to what actions are required by government actors, are still too vague to fully interpret government commitment and expectations. For instance, action point 3.2 commits the Post-Conflict Director and the Office of the High Commissioner for Peace to design a protocol for dialogue between communities, businesses, and public entities that will “facilitate the participation of social organizations in accordance with international standards on business and human rights.”⁷⁸ While this commitment goes a step further than merely committing the government to promote or support human rights considerations in relation to the peace process, the requirements that accompany this government commitment remain vague. It is unclear what a “protocol for dialogue” entails, what it requires of the government, and what shape and form it is to take. As such, it will be difficult to measure the government’s compliance with and fulfillment of this commitment.</p> <p>Moreover, action points 1.3 and 5.2 are both good examples of more specific government commitments, but which are still lacking key information to elucidate the full extent of the government commitment. For example, action point 1.3 commits the government to creating a Commission of Experts to help advise the Colombian Working Group on Business and Human Rights.⁷⁹ The Commission is to be composed of elected representatives from a number of stakeholder groups, including national indigenous organizations and national Afro-Colombian organizations.⁸⁰ However, it is unclear from this commitment how the election process is to occur. Additionally, there is no information regarding the format of</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>the Commission’s inputs, or whether its findings will be public. Procedural clarity of this kind would increase opportunities for civil society to monitor and evaluate the NAP process as it evolves.</p> <p>Similarly, and as highlighted above, action point 5.2 commits the entities of the State with the “largest volume” of public contracting to establish and implement due diligence mechanisms in their hiring processes.⁸¹ However, without more information, it is unclear how many State entities will qualify as those with the “largest volume” of public contracts. It is also unclear how soon these mechanisms will be established and implemented, and how easily accessible they will be. Both action points 1.3 and 5.2, while committing the government more specifically to complete certain actions, are still too vague to establish clear expectations.</p> <p>Finally, there are a few action points that identify very specifically the government’s commitment to future action and how this future action will take shape. As an example, action point 10.2 provides a detailed description of the mapping and gap analysis the Colombian Working Group on Business and Human Rights is committed to realizing within a year of the launch of the NAP.⁸² This commitment requires the Colombian Working Group to identify all existing judicial and non-judicial remedy mechanisms relating to business and human rights in Colombia.⁸³ In addition, this mapping must identify which mechanism “responds to each type of conflict”, and include a diagnostic regarding the efficacy and efficiency of each mechanism.⁸⁴ In preparing this diagnostic, the UNGPs’ presentation of legal and practical barriers to accessing remedy must be referenced.⁸⁵ Action point 10.2 establishes a clear and specific government commitment, and provides ample detail to enable the monitoring and measuring of future implementation.</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
Priorities for NAPS	
<p>4.7. A NAP should prioritize for action the most serious business-related human rights abuses.</p>	<p>As discussed in section 4.4 of this assessment, the NAP prioritizes the energy, mining, agro-industry, and road infrastructure sectors. These sectors were prioritized because they “generate the most social conflict in the country due to their impacts on human rights and the environment.”⁸⁶ The NAP refers to “social conflict” but does not include any reference or sources related to the direct participation of companies in the violation of human rights.</p>
<p>4.8. In line with the HRBA, the NAP should focus on the most vulnerable and excluded groups.</p>	<p>The NAP discusses and includes follow-up actions that specifically relate to vulnerable and excluded groups. The introductory section of the NAP discusses the different frameworks and approaches that played an integral role in the creation and content of the NAP. Many of these approaches focus on or involve vulnerable and excluded groups. The NAP states that the content and action points of the NAP have been developed keeping in mind a human rights-based approach.⁸⁷ According to the NAP, the participation of different actors has been decisive in collecting their visions, interests, and concerns and in discerning how to include these perspectives into concrete action items, thus contributing to stakeholder empowerment.⁸⁸ The NAP states that it took a “differential focus” aimed at empowering groups who have been previously prejudiced, discriminated against or stigmatized, including ethnic groups, women, children, LGBTI persons, persons with disabilities, union movements, and other minority groups.⁸⁹ The NAP also states that it has a “territorial emphasis” aimed at keeping in mind the socio-historic, cultural, and environmental characteristics of the territories and inhabitants where the NAP is to be implemented.⁹⁰</p>

4. SCOPE, CONTENT, AND PRIORITIES	COMMENTS
	<p>While the NAP explicitly references these groups, the lack of consultation with these groups in the drafting process, as well as the absence of a NBA that could have given the opportunity for these groups to influence the content of the NAP, raise doubts about the full commitment to a genuine focus on the most vulnerable groups.</p> <p>The NAP discusses and addresses vulnerable and excluded groups within certain action points. For example, action point 1.3 ensures the inclusion of representatives from a number of vulnerable and excluded groups, including indigenous peoples and Afro-descendant communities, as members of the Commission of Experts.⁹¹ Notably, no women’s groups or advocacy organizations focused on women are mandated to be included in the Commission of Experts.</p> <p>In action point 3.1, the NAP establishes that, within one year of the launch of the NAP, the Colombian Working Group on Business and Human Rights must find “allies” to help in building up the capacity of “groups of special protection” on the UNGPs, other international business and human rights standards, and the contents of the NAP, though it is unclear what types of actors the NAP is referencing in relation to “allies.”⁹² Additionally, multiple action points within section 4 of the NAP discuss key steps to be taken by specific government offices regarding vulnerable and excluded groups.⁹³ For instance, in action point 4.5, the Ministry of Labor is tasked with providing guidance to employers on the inclusion of people with disabilities.⁹⁴ Moreover, in action point 4.11, the Ministry of the Interior is charged with improving practices to ensure participation of affected populations in future prior consultation processes, as well as increasing respect for the rights of indigenous communities, afro-descendants, and ethnic minorities.⁹⁵</p>

5. TRANSPARENCY	COMMENTS
Full Transparency With All Stakeholders	
<p>5.1. The NBA and any other significant analyses and submissions informing the NAP should be published.</p>	<p>No NBA was conducted or published. However, a draft of the NAP, in both Spanish and English, was made publicly available in October 2015 on the government’s website.⁹⁶ No information is available regarding how many comments were submitted or the content of such comments.</p> <p>In addition to failing to conduct an NBA, the Colombian NAP process does not reveal how or whether it has taken into consideration the numerous reports that have been published by domestic and foreign NGOs, as well as media reports, regarding corporations’ role in human rights violations in Colombia.⁹⁷</p> <p>In addition to previously-existing documented human rights violations by corporations, there is emerging information from the office of the prosecutor, which has created a special task force to investigate thousands of cases of civilian participation in human rights violations in the context of the armed conflict.⁹⁸ A future version of the NBA should include lessons learned from this process by the Office of the Prosecutor, as well as from existing documentation of human rights violations in which corporations participated, and from the accountability and non-repetition mechanisms emerging from the peace process.</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
Holding Duty-Bearers Accountable for Implementation	
<p>6.1. NAPs should identify who is responsible for implementation of individual action points and overall follow-up.</p>	<p>The NAP does a good job of identifying which State agency, ministry, or office is responsible for the implementation of individual actions points outlined in the NAP. Each point specifically lists which organ will lead or supervise the implementation of the established action item(s).⁹⁹ However, there are a few action points that are too vague to clearly establish who will be responsible for their implementation. For example, there are three action points that place the impetus of implementation broadly on the national government.¹⁰⁰ Similarly, action point 5.2 places the obligation of establishing and implementing due diligence mechanisms within hiring practices on “State entities with the largest volume of public contracts.”¹⁰¹ It is unclear from this definition how many and which State entities will meet this definition.</p> <p>The NAP establishes a specific timeline for implementation for only sixteen out of eighty action points.¹⁰² The Colombian Working Group on Business and Human Rights, with the help of the Commission of Experts, and the Presidential Advisory Office for Human Rights are specifically tasked with assessing the implementation of the NAP.¹⁰³ The Colombian Working Group is also empowered with the ability to make modifications to the NAP, while the Presidential Advisory Committee is in charge of compiling and publishing information regarding annual and final review of the NAP.¹⁰⁴</p> <p>In April 2016, the former director of the Unit of Victims, Paula Gaviria Betancur was named as the new Advisor to the Presidency on Human Rights.¹⁰⁵ Ms. Gaviria Betancur is well respected throughout civil society for her defense of human rights and work on behalf of victims; her appointment could have a positive impact on</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>the public’s perception of the Government’s commitment to the implementation of the NAP. It could also contribute to the harmonization of the NAP with other relevant regimes of accountability and redress.</p>
<p>6.2. NAPs should lay out a framework for monitoring of and reporting on implementation.</p>	<p>The NAP lays out a framework for evaluation and follow-up. The NAP is seen as a “living plan, in constant revision.” As such, it can be modified and adjusted in order to “always maintain the spirit” of the NAP as it was drafted.¹⁰⁶ The Colombian Working Group, with the help of the Commission of Experts, is charged with verifying the implementation of the NAP and amending the NAP as it sees fit.¹⁰⁷</p> <p>According to the evaluation and follow-up plan, before March 1st of each year, each institution mentioned in the NAP should report to the Presidential Advisory Office for Human Rights steps taken in relation to the fulfillment of their obligations under the NAP.¹⁰⁸ This information will be consolidated and published by the Presidential Advisory Office.¹⁰⁹</p> <p>Each year, the Presidential Advisory Office for Human Rights and the Colombian Working Group will convene two regional rounds of review to assess on-the-ground implementation of the NAP.¹¹⁰ Additionally, the Presidential Advisory Office is empowered to consult stakeholders regarding NAP implementation.¹¹¹</p> <p>The NAP is valid for three years.¹¹² The final evaluation of the NAP shall be completed within ten months after the completion of the three-year period.¹¹³ The results of annual follow-up mechanisms will be published on the Presidential Advisory Office’s NAP micro-site.¹¹⁴ No date for the launch of the NAP micro-</p>

6. ACCOUNTABILITY AND FOLLOW-UP	COMMENTS
	<p>site has been set. At the time of publication, the micro-site had not been launched. The results of the final evaluation of the NAP will be widely disseminated to the public.¹¹⁵</p> <p>The evaluation and follow-up plans of the NAP could be improved by explicitly committing the government to drafting a second iteration of the NAP following the completion of the three-year term of the current NAP. Moreover, this revision process could be strengthened by committing to including affected communities and/or organizations that defend the rights of these communities in the process of designing, drafting, and formulating the content of the revised NAP. Additionally, including civil society organizations in the drafting process, aside from organizations identified with corporations (however legitimate these organizations are), would improve the NAP process going forward.</p> <p>Finally, given the ongoing developments regarding the peace process, it is imperative that the NAP be revised once the peace agreement has been finalized in order to harmonize the NAP more explicitly with the relevant provisions in that agreement, including the relevant terms of point 5 of the agreement (agreement on victims: an integral system for truth, justice, reparation and non-repetition.)¹¹⁶</p>

ENDNOTES

- ¹ DANISH INSTITUTE FOR HUMAN RIGHTS & INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A TOOLKIT FOR THE DEVELOPMENT, IMPLEMENTATION, AND REVIEW OF STATE COMMITMENTS ON BUSINESS AND HUMAN RIGHTS (2014) [hereinafter NAPs Toolkit].
- ² Dejusticia and ICAR thank Tierra Digna for convening a series of meetings for civil society organizations working in Colombia on issues related to Business and Human Rights. Recent interventions (open letters and requests for information) by participants in these meetings are cited in this report. We are also grateful to Asociación Ambiente y Sociedad for thoughtful comments on the Colombian NAP.
- ³ INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE & EUROPEAN COALITION FOR CORPORATE JUSTICE, ASSESSMENTS OF EXISTING NATIONAL ACTION PLANS (NAPS) ON BUSINESS AND HUMAN RIGHTS, NOVEMBER 2015 UPDATE (2015).
- ⁴ *Colombia Avanza: Hacia la Construcción de un Plan Nacional de Acción sobre Empresas y Derechos Humanos*, CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA (Oct. 20, 2015), available at <http://www.derechoshumanos.gov.co/Prensa/2015/Paginas/Colombia-Avanza-Plan-Nacional-Accion.aspx>.
- ⁵ An NBA is a tool for evaluating a State's implementation of the UN Guiding Principles and other business and human rights frameworks. NAPs Toolkit, *supra* note 1.
- ⁶ United Nations, General Assembly, *Report of The Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, A/70/216 ¶¶ 71-72 (July 30, 2015); United Nations, General Assembly. *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, A/69/263 ¶¶ 20-24 (August 5, 2014). See also, generally, NAPs Toolkit, *supra* note 1.
- ⁷ CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, PLAN DE ACCIÓN DE DERECHOS HUMANOS Y EMPRESAS 3 (2015).
- ⁸ *Id.* at 15 pt. 4.9.
- ⁹ *Id.*, at 19, pt. 7.3
- ¹⁰ Alto Comisionado para la Paz, *Preguntas y respuestas sobre el Sistema Integral de Verdad, Justicia, Reparación y no Repetición*, available at <http://www.altocomisionadoparalapaz.gov.co/Documents/informes-especiales/abc-del-proceso-de-paz/preguntas-respuestas-victimas.html> (last visited May 16, 2016) (see the Q&A section on Point 5 of the agreement).
- ¹¹ *Colombia Avanza: Hacia la Construcción de un Plan Nacional de Acción sobre Empresas y Derechos Humanos*, CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA (Oct. 20, 2015), <http://www.derechoshumanos.gov.co/Prensa/2015/Paginas/Colombia-Avanza-Plan-Nacional-Accion.aspx> [hereinafter Colombia Avanza].
- ¹² The Presidential Advisory Office on Human Rights (Consejería Presidencial para los Derechos Humanos) captured the social media dissemination of these events in this story: Presidencia de la República, *Lanzamiento Plan Nacional de Acción en Derechos Humanos y Empresas*, STORIFY, www.storify.com/ConsejeriaDDHH/lanzamiento-plan-nacional-de-accion#1 (last visited May 23, 2016).
- ¹³ CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, PLAN DE ACCIÓN DE DERECHOS HUMANOS Y EMPRESAS 25 (2015), <http://www.derechoshumanos.gov.co/Prensa/2015/Documents/Plan%20Nacional%20de%20Accion%20DDHH%20Empresa.pdf> [hereinafter Colombian NAP].
- ¹⁴ This working group is composed of: the Department for Social Welfare, the National Department for Planning, the Ministry of the Interior, the Ministry of Education, the Ministry of Culture, the Ministry of Labor, the Ministry of the Environment, the Ministry of Agriculture, the Ministry of Commerce, the Ministry of Mines, the Ministry of Finances, the Ministry of Foreign Affairs, the Ministry of Health, the Ministry of Transportation, the Ministry of Housing, SENA, Coldeportes, and Colciencias. They work with the Ombudsman's Office, the Treasury Inspector's Office of the Republic, and the Attorney General's Office of the Country, as permanent guest members, and with the Office of the Technical Secretary of the Council to the President for Human Rights. See, Colombian NAP, *supra* note 13 at 10, fn. 2. Please note that the English version of the Colombian NAP refers to the Colombian Working Group as the "Task Force," however, because we used the Spanish version of the NAP to inform this assessment, we retain the term "Working Group."
- ¹⁵ Colombian NAP, *supra* note 13, at 25.
- ¹⁶ *Id.*, at 25.
- ¹⁷ *Id.*, at 10, pt. 1.3.
- ¹⁸ *Id.*, at 25.

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- ¹⁹ This Confederation includes about 850 NGOs from across Colombia. It includes corporate foundations, religious organizations, and public interest organizations writ large. *Quiénes Somos*, Confederación Colombiana de ONG, http://ccong.org.co/ccong/quienes-somos/quienes-somos_22 (last visited Aug. 30, 2016). On July 25, 2016, a group of NGOs working on business and human rights submitted an official request of information to the Presidential Advisory Office of Human Rights, asking whether the government had researched the membership of this Confederation as well as whether it had a mapping of all the NGOs in Colombia that work on issues related to business and human rights. The organizations also sought to find out the criteria for selection for the members of the Commission of Experts. These questions were presented in an official request for information, filed in August 2016, under Colombian law (on file with authors). As of this writing, no response had been provided.
- ²⁰ Colombian NAP, *supra* note 13 at 10-11, pt. 1.3.
- ²¹ The government cites a number of consultations as having informed the content of the NAP, including the participative processes that it held around the formulation of the Integral Public Policy of Human Rights and the Guidelines for Public Policy in Business and Human Rights; however, it did not hold consultations specifically in relation to the content of the NAP before releasing the draft NAP in October 2015. The government conducted four consultations on the draft NAP during October and November 2015: an international workshop was held in Cartagena, and three regional workshops were held in Cartagena, Apartadó, and Villavicencio.
- ²² CONSEJERÍA DDHH, PRESIDENCIA DE LA REPÚBLICA, BORRADOR DEL PLAN NACIONAL DE ACCIÓN SOBRE DE DERECHOS HUMANOS Y EMPRESAS (2015) at pt. 1.2, http://www.derechoshumanos.gov.co/Prensa/2015/Documents/151027-PNA_borrador-ESP.pdf [hereinafter Colombian Draft NAP].
- ²³ This office reports to the Office of the President, as its name suggests.
- ²⁴ Colombia Avanza, *supra* note 11.
- ²⁵ Colombian NAP, *supra* note 13, at 5.
- ²⁶ *Id.*
- ²⁷ Colombia Avanza, *supra* note 11.
- ²⁸ Colombian NAP, *supra* note 13, at 10, fn. 2.
- ²⁹ *Id.*, at 5.
- ³⁰ *Id.*
- ³¹ The FIP's business and human rights work falls under the umbrella of its "Corporate Sector and Peace Building" Program Area, where BHR is one of two strategic lines of work. The mission of this Program Area is as follows: "The mission of this area is to promote, orient, facilitate and cement the participation of the corporate sector in overcoming conflict and in building a sustainable peace, by strengthening capacities and generating knowledge, inputs, and tools for the development of public policies and the adoption of private practices." Fundación Ideas para la Paz, *Sector empresarial y construcción de paz*, <http://www.ideaspaz.org/foundation/work-areas/5> (last visited May 16, 2015)[author translation].
- ³² Colombian NAP, *supra* note 13, at 5.
- ³³ *Id.*
- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ Tierra Digna, *Las 7 Perlas del Plan Nacional de Acción de Empresas y Derechos Humanos*, (Mar. 9, 2016), [http://tierradigna.org/pdfs/Las 7 perlas del PNA.pdf](http://tierradigna.org/pdfs/Las%207%20perlas%20del%20PNA.pdf).
- ³⁷ *Id.*
- ³⁸ International Network of Human Rights, *Apuntes sobre el Plan nacional de empresas y derechos humanos de Colombia* (Nov. 27, 2016, 4:11 PM), <http://ridh.org/news-and-events/news-articles/apuntes-sobre-el-plan-nacional-de-emprendas-y-derechos-humanos-de-colombia/>.
- ³⁹ Colectivo de Abogados José Alvear Restrepo, *El Cajar se pronuncia sobre el plan "Colombia Avanza"* (Oct. 27, 2015), <http://www.colectivodeabogados.org/?El-Cajar-se-pronuncia-sobre-el-plan-Colombia-Avanza>.
- ⁴⁰ Colombian NAP, *supra* note 13, at 5.
- ⁴¹ *Id.*
- ⁴² *Id.* at 10-11, pt. 1.3.
- ⁴³ *Id.*
- ⁴⁴ *Id.*, at 23, pt. 10.2.
- ⁴⁵ *Id.*
- ⁴⁶ *Id.*
- ⁴⁷ Colombian Draft NAP, *supra* note 22, at pt. 1.2.
- ⁴⁸ *See, e.g.*, DANISH INSTITUTE FOR HUMAN RIGHTS AND INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE, NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A TOOLKIT FOR THE DEVELOPMENT,

IMPLEMENTATION AND REVIEW OF STATE COMMITMENTS TO BUSINESS AND HUMAN RIGHTS FRAMEWORKS (2014), <http://icar.ngo/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf>; Sara Blackwell, Presentation at the Open Consultation on National Action Plans, 7th Session of the UN Working Group on Business and Human Rights (Feb. 20, 2014), http://www.ohchr.org/Documents/Issues/Business/NationalPlans/SaraBlackwell_statement.pdf; Sara Blackwell, *Time for a NAP: Five Recommendations for the U.S. National Action Plan on Responsible Business Conduct*, INSTITUTE FOR HUMAN RIGHTS AND BUSINESS (Dec. 12, 2014), <http://www.ihrb.org/commentary/five-recommendations-for-us-nap-on-responsible-business-conduct.html>.

- ⁴⁹ United Nations, General Assembly *Report of The Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, A/70/216 ¶¶ 71-72 (July 30, 2015). The WG explicitly endorsed the use of NBAs in the design of NAPs, as it allows States to assess their “current level of implementation of the Guiding Principles,” and is a key tool “for tracking performance over time.” It strongly commended states, such as Chile and South Africa, that have explicitly embraced the development of a national baseline assessment as part of the national action plan development, and stated that it intends to revisit its guidance on national action plans in order to address the issue of measurement (¶ 71). The capacity to measure effective implementation is affected significantly by the absence of baseline assessments. *See also* UN General Assembly, *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, A/69/263 ¶¶ 20-24. (Aug. 5, 2014).
- ⁵⁰ Tierra Digna, *Comunicado de la sociedad civil colombiana frente a la política pública sobre derechos humanos y empresas de gobierno de Colombia* (July 12, 2016), <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/>.
- ⁵¹ These sub-criteria are laid out in Kristin Jesnes, *Statens plikt til å beskytte menneskerettighetene: En analyse av nasjonale handlingsplaner for oppfølging av FNs veiledende prinsipper for menneskerettigheter og næringsliv*, (The State Duty to Protect: An Analysis of National Action Plans on Business and Human Rights). Fafo-notat 2014:15 (2014), <http://www.fafo.no/~fafo/images/pub/2014/10202.pdf> (currently only available in Norwegian).
- ⁵² Colombian NAP, *supra* note 13, at 20, pt. 8.1.
- ⁵³ *Id.*, at 17, pt. 5.7.
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*, at 16, pt. 5.2.
- ⁵⁶ *Id.*, at 12, pt. 2.2.
- ⁵⁷ *Id.*, at 7.
- ⁵⁸ *Id.*, at 6.
- ⁵⁹ For a definition and discussion of the Block of Constitutionality doctrine in Colombia, see MANUEL EDUARDO GÓNGORA MERA, *INTER-AMERICAN JUDICIAL CONSTITUTIONALISM*. SAN JOSÉ, COSTA RICA: INTER-AM. INSTITUTE OF HUMAN RIGHTS, 175 (2011).
- ⁶⁰ *See, e.g.*, Colombian NAP, *supra* note 13, at 11, at pts. 1.4, 1.5, 1.7, 1.8.
- ⁶¹ *Id.*, at 6.
- ⁶² *Id.*, at 15, pt. 4.12.
- ⁶³ UN Commission on Human Rights, *Human rights and the environment*, 24 February 1995, E/CN.4/RES/1995/14, available at: <http://www.refworld.org/docid/3b00f0cc14.html>.
- ⁶⁴ L. 99, diciembre 22, 1993, DIARIO OFICIAL [D.O.] No. 41146, available at <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=297>.
- ⁶⁵ *Id.*, at 7.
- ⁶⁶ *Id.*, at 5, 7.
- ⁶⁷ *See, e.g.* Camila Osorio, *Can Colombia's Displaced Go Home Again?* THE NEW REPUBLIC (May 16, 2016), <https://newrepublic.com/article/133562/can-colombias-displaced-go-home-again>; AMNESTY INTERNATIONAL, *COLOMBIA: A LAND TITLE IS NOT ENOUGH: ENSURING SUSTAINABLE LAND RESTITUTION IN COLOMBIA*, 75 (2014).
- ⁶⁸ Colombian NAP, *supra* note 13, at 15, pt. 4.12.
- ⁶⁹ *Id.*, at 16, pt. 5.4.
- ⁷⁰ *Id.*, at 20, pts. 7.7-7.8.
- ⁷¹ *See El Cajar se pronuncia sobre el plan “Colombia Avanzada”* (Oct. 27, 2015), *supra* note 39.
- ⁷² *Id.*, at 4.
- ⁷³ *See, id.*, at 9, pt. 3.1.
- ⁷⁴ *Id.*, at 13. For more references to the UNGPs, see pts. 5.3, 9.5, and 10.2.
- ⁷⁵ *Id.*, at pts. 2.1, 3.1, 4.12, 5.3, 5.5, 5.6, 5.7, 6.1, 7.5, 8.3, 8.5, 10.2, 10.3, 10.5, 11.1, and 11.3.
- ⁷⁶ *Id.*, at 15, pt. 4.7.
- ⁷⁷ *Id.*, at 19, pt. 7.3.

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- ⁷⁸ *Id.*, at 14, pt. 3.2.
- ⁷⁹ *Id.*, at 10-11, pt. 1.3.
- ⁸⁰ *Id.*
- ⁸¹ *Id.*, at 16, pt. 5.2.
- ⁸² *Id.*, at 23, pt. 10.2.
- ⁸³ *Id.*
- ⁸⁴ *Id.*
- ⁸⁵ *Id.*
- ⁸⁶ *Id.*, at 7.
- ⁸⁷ *Id.*, at 6.
- ⁸⁸ *Id.*
- ⁸⁹ *Id.*
- ⁹⁰ *Id.*, at 7.
- ⁹¹ *Id.*, at 10, pt. 1.3.
- ⁹² *Id.*, at 13, pt. 3.1.
- ⁹³ *See, id.*, at 14-15.
- ⁹⁴ *Id.* at 15, pt. 4.5.
- ⁹⁵ *Id.*, pt. 4.11.
- ⁹⁶ *Id.*, at 5.
- ⁹⁷ *See, e.g.* FOREST PEOPLES PROGRAMME, DEFORESTACIÓN, POLÍTICAS NACIONALES Y DERECHOS DE LOS PUEBLOS INDÍGENAS EN LA AMAZONÍA COLOMBIANA (2016); INTERCHURCH JUSTICE AND PEACE COMMISSION, COLOMBIA: BANACOL, A COMPANY IMPLICATED IN PARAMILITARISM, AND LAND GRABBING IN CURVARADÓ AND JIGUAMIANDÓ (2012); PAX, THE DARK SIDE OF COAL: PARAMILITARY VIOLENCE IN THE MINING REGION OF CESAR, COLOMBIA (2014) (Also note Drummond’s response to PAX report in Annex A, threatening to use “any and all legal action available to it” for publishing or distributing this report); RESGUARDO DE CAÑAMOMO Y LOMAPRIETA, FOREST PEOPLES PROGRAMME, & PROCESO DE COMUNIDADES NEGRAS, DIÁLOGOS INTERCULTURALES SOBRE MINERÍA EN COLOMBIA PROPUESTAS DESDE EL RESGUARDO INDÍGENA CAÑAMOMO LOMAPRIETA Y EL PALENQUE ALTO CAUCA (2015). For news reports, *see, e.g.* Emma Rosser, *Drummond Executive Arrested Over Paramilitary Charges*, COLOMBIA REPORTS (May 26, 2015), <http://colombiareports.com/drummond-executive-arrested-over-paramilitary-murder-charges/>; *see also* Verdad Abierta’s report on Poligrow, a palm oil producer, and Poligrow’s response. *Lupa a la multinacional Poligrow que opera en Mapiripán, Meta*, VERDAD ABIERTA (Nov. 4, 2015), <http://www.verdadabierta.com/lucha-por-la-tierra/6054-lupa-a-la-multinacional-poligrow-que-opera-en-mapiripan-meta>; and *Poligrow le responde a VerdadAbierta.com*, VERDAD ABIERTA (Nov. 13, 2015), <http://www.verdadabierta.com/desde-regiones/6071-poligrow-le-responde-a-verdadabierta-com>. This includes only some reports and news articles as a sampling of the wide array of available publications. It does not, however, seek to suggest that these are the specific documents that should have been used.
- ⁹⁸ *Así investigan a financiadores del paramilitarismo*, VERDAD ABIERTA (May 7, 2016), <http://www.verdadabierta.com/otros-negocios-criminales/6265-asi-investigacion-a-financiadores-del-paramilitarismo> (last visited May 17, 2016) [on file with authors].
- ⁹⁹ *See generally*, Colombian NAP, *supra* note 13.
- ¹⁰⁰ *Id.*, at pts. 3.4, 4.1, 4.3.
- ¹⁰¹ *Id.*, at 16, pt. 5.2.
- ¹⁰² *Id.*, at pts. 2.1, 3.1, 4.12, 5.3, 5.5, 5.6, 5.7, 6.1, 7.5, 8.3, 8.5, 10.2, 10.3, 10.5, 11.1, 11.3.
- ¹⁰³ *Id.*, at 25.
- ¹⁰⁴ *Id.*
- ¹⁰⁵ Paula Gaviria Betancur, *actual director de la Unidad para las Víctimas, será la nueva Alta Consejera de Derechos Humanos de la Presidencia*, UNIDAD PARA LAS VÍCTIMAS (Apr. 19, 2016), <http://www.unidadvictimas.gov.co/es/paula-gaviria-betancur-actual-directora-de-la-unidad-para-las-v%C3%ADctimas-ser%C3%A1-la-nueva-alta-consejera>.
- ¹⁰⁶ Colombian NAP, *supra* note 13, at 25.
- ¹⁰⁷ *Id.*
- ¹⁰⁸ *Id.*
- ¹⁰⁹ *Id.*
- ¹¹⁰ *Id.*
- ¹¹¹ *Id.*
- ¹¹² *Id.*
- ¹¹³ *Id.*
- ¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See the Q&A section on Point 5 of the agreement.; Alto Comisionado para la Paz, *Preguntas y respuestas sobre el Sistema Integral de Verdad, Justicia, Reparación y no Repetición*, <http://www.altocomisionadoparalapaz.gov.co/Documents/informes-especiales/abc-del-proceso-de-paz/preguntas-respuestas-victimas.html> (last visited May 16, 2016).