

Submission to the United Nations Human Rights Council

Universal Periodic Review Session 16: Colombia

October 2012

In Resolution 17/4 of 6 July 2011¹, the United Nations (UN) Human Rights Council endorsed Guiding Principles for implementation of the UN *Protect, Respect and Remedy* Framework on Business and Human Rights (UN Guiding Principles). In order to encourage constructive dialogue on private sector-related issues in the Human Rights Council Universal Periodic Review process, this submission addresses the way in which the government of Colombia is complying with its duty to protect against human right abuses caused by or involving private sector actors and seeking to promote the UN Guiding Principles throughout the country.

The preparation of this submission included consultations with representatives of the Colombian government, the private sector and non-governmental organizations in Colombia. The views expressed here are those of IHRB alone. The submission is organized as follows:

Part I. reflects on issues of relevance to the business and human rights agenda in Colombia.

Part II. offers a number of recommendations concerning implementation of the UN Guiding Principles on Business and Human Rights in Colombia.

Part I. Key issues relating to business and human rights in Colombia

The UN Guiding Principles on Business and Human Rights affirm that all governments must protect against human rights abuses involving third parties, including business enterprises operating within their territory and/or jurisdiction. This requires appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”²

The protection of human rights in Colombia is addressed by various agencies of the government including the President’s Program on Human Rights and International Humanitarian Law (*Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario*), the Office of the High Counsellor for Citizen Coexistence and Security (*Alta Consejería de Convivencia y Seguridad Ciudadana*), the Ministry of the Interior with its Directorates on Human Rights, Indigenous and Minority Affairs, Afro Colombian Communities and the Directorate addressing indigenous peoples’ rights; the Ministries of Defence, the Environment and Labour, the National Protection Unit (*Unidad Nacional de Protección*), the Constitutional Court, the Office of the

¹ <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>

² UN Guiding Principle 1 at:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

National Prosecutor General (*Procuraduría General de la Nación*), and the Office of the People's Ombudsman (*Defensoría del Pueblo*)³. In addition, *Acción de Tutela* is a constitutionally established recourse for the protection of fundamental rights of individuals in Colombia.

A number of recent legislative developments in Colombia are noteworthy. The creation of the National Human Rights and International Humanitarian Law System, established in Decree 4100 of 2011⁴, includes new responsibilities for government ministries, which are of direct relevance to business and human rights. For example, the Ministry of Mines is mandated to develop a strategy aimed at ensuring that companies in the extractive industry take adequate steps to prevent human rights abuses and address activities which might result in negative impacts on local communities, including issues relating to resettlement processes.

In 2011, the former Ministry of Social Protection, currently the Ministry of Labour, created a total of 100 new positions for Labour and Social Security Inspectors to serve in critical sectors such as the oil-palm, sugar cane, flower, mining and ports sectors, as well as in the surveillance of temporary services companies⁵.

Law 1448 of 2011⁶ on the provision of services, assistance and comprehensive reparations to the victims of the internal armed conflict is perhaps the most ambitious and relevant legislative initiatives recently approved by the Colombian Congress. Article 33 of this law foresees participation of private companies in the realization of the rights of victims. Article 177 establishes that one of the sources to finance the reparations fund established by the law will be contributions from companies that have financed illegal armed groups, the amounts of which will be determined by means of rulings issued to this effect.

The National Protection Unit of the Ministry of the Interior coordinates protection of the rights to life, liberty, integrity and security of individuals, groups and communities facing extraordinary or external risks as a direct result of their political, public, social or humanitarian activities, including trade union leaders and union activists⁷. Such measures have become necessary because armed opposition groups have historically targeted trade union activists. Over a quarter century from 1986, over 2,800 trade union activists or leaders have been murdered in Colombia. According to Amnesty International, in 2010⁸, 51 trade union members were killed in separate incidents. Paramilitary forces, some of whom have since disarmed, and security forces, have been alleged to have committed many of the offences. New protection measures include emergency measures, self-protection courses, police surveillance and physical resources, among others.

While such protection measures are necessary, it should be noted that the Office of the UN High Commissioner for Human Rights in Colombia has made several concerns publicly known. These

³ <http://www.hchr.org.co/documentoseinformes/documentos/EPU/Documentos%20previos%20a%20la%20sesion/Anexo%203%20Marco%20Institucional%20de%20DDHH%20Colombia.pdf>

⁴ <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Noviembre/02/dec4100022011.pdf>

⁵ http://wsp.presidencia.gov.co/Prensa/2011/Abril/Paginas/20110427_05.aspx

⁶ <http://www.leydevictimmas.gov.co/documents/10179/19132/completo.pdf>

⁷ <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/26/dec491226122011.pdf>

<http://www.mij.gov.co/Ministerio/Library/Resource/Documents/LGBTI/Unidad%20Nacional%20de%20Proteccion8160.pdf>

⁸ <http://www.amnesty.org/en/region/colombia/report-2011#section-30-12>

include “delays in assessing risks, slow implementation of measures, absence of a differential approach, and transfer of protection schemes to private companies...”⁹

The Office of the High Counsellor for Citizen Coexistence and Security (*Alta Consejería para la Convivencia y la Seguridad Ciudadana*) has assumed among its responsibilities leadership in government efforts to promote the Voluntary Principles on Security and Human Rights and, more recently, the UN Guiding Principles on Business and Human Rights. During the first half of 2012, the High Counsellor agreed to participate in a pilot exercise at a company which decided to proceed with human rights due diligence based on the UN Guiding Principles.

The company objective is to carry out a risk assessment in a project at exploration stage, with participation of the government to assure the promotion and protection of human rights, and two NGOs to assure impartiality and objective standards. The Office of the High Counsellor is collecting corporate practices for the purpose of disseminating the findings countrywide, as well as sharing information with communities with regard to protecting human rights.

Issues requiring further action

While the government of Colombia actively participated in the process that led to the adoption in 2011 of the UN Guiding Principles on Business and Human Rights, it has not yet precisely defined the mechanisms through which they will be disseminated and implemented nationally. It is noteworthy that in November 2011, a joint declaration on human rights between the governments of Colombia and the United Kingdom made specific reference to the importance of the UN Guiding Principles by stating:

“As we deepen commercial links between the UK and Colombia we acknowledge the importance of working with the private sector on human rights issues. We are committed to implementing the UN Guiding Principles on Business and Human Rights”.¹⁰

A number of governments have embarked upon the development of national plans for implementation of the UN Guiding Principles. Such an initiative in Colombia would represent a tangible commitment and encourage further uptake of the UN Guiding Principles by all actors – state and non-state, including companies and civil society groups. In this context, it should also be noted that additional efforts are needed to inform business enterprises in Colombia about the UN Guiding Principles and the scope of their responsibilities with respect to human rights due diligence. Such initiatives could be supported through the design and implementation of a dissemination and prevention strategy, which includes ongoing dialogue between various interest groups.

Several initiatives in Colombia seek to involve private enterprise and the government in discussion and identification of means of protection, respect and remedy regarding human rights and could be more actively linked to implementation of the UN Guiding Principles. The extractive sector has been active in such efforts, although others participate as well. Initiatives such as the Mining and Energy Committee (*Comité Minero Energético*),¹¹ Colombia Guides [*Guías Colombia*]

⁹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/105/73/PDF/G1110573.pdf?OpenElement>
Paragraph 15.

¹⁰ <http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=695253482>

¹¹ http://www.acp.com.co/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=52&Itemid=112

¹² and the UN Global Compact¹³ all provide forums for dialogue and joint action, but their scope is limited and coverage is almost exclusively circumscribed to the national capital and to large corporations.

Another issue of importance requiring further action concerns relations with indigenous peoples in Colombia. According to International Labour Organization Convention 169 of 1989, indigenous peoples have the right to be consulted regarding matters that concern them and the right to manifest their free, prior and informed consent. In the case of Colombia, no proper legislation exists, nor established procedures, to guarantee that consultations with indigenous and Afro Colombian peoples are conducted following established principles and jurisprudence when projects that exploit natural resources are undertaken in their territories. The absence of clear rules, based on the UN Declaration on the Rights of Indigenous Peoples, affects ethnic groups and companies alike and potentially leads to a variety of conflict situations, human rights violations and loss of social opportunities and capital investments.

Part II. Recommendations

The following recommendations are made to the government of Colombia in relation to the above concerns:

1. Prepare a national implementation plan for the UN Guiding Principles on Business and Human Rights, including selection of a government agency to lead the exercise and specify the roles of other agencies.
2. Inform companies of their responsibilities under the UN Guiding Principles on Business and Human Rights, particularly when operating in conflict areas and indigenous and Afro Colombian territories.
3. Develop targeted efforts to engage small and medium size enterprises in embracing the UN Guiding Principles agenda.
4. As part of continued efforts to implement the National Human Rights and International Humanitarian Law System, develop a comprehensive strategy to ensure effective coordination and dialogue with the private sector.
5. Guarantee effective application of Law 1448 of 2011, including areas concerning private sector activities, in order to guarantee comprehensive reparations for victims of the internal armed conflict.
6. Implement effectively National Protection Unit programs in order to ensure respect for the rights of trade union activists and union leaders, making sure that protection measures contemplated are timely and relevant.
7. Continue to actively promote the application of the Voluntary Principles on Security and Human Rights among Colombian companies.
8. Provide new Labour Inspectors with adequate resources to facilitate their work to monitor corporate performance with respect to human rights.
9. Update legislation regarding free, prior and informed consent in order to guarantee the protection of the rights of indigenous and Afro Colombian communities consistent with international standards as well as social and capital investment opportunities.

¹² <http://www.ideaspaz.org/index.php/guias-colombia>

¹³ <http://www.ideaspaz.org/index.php/guias-colombia>