

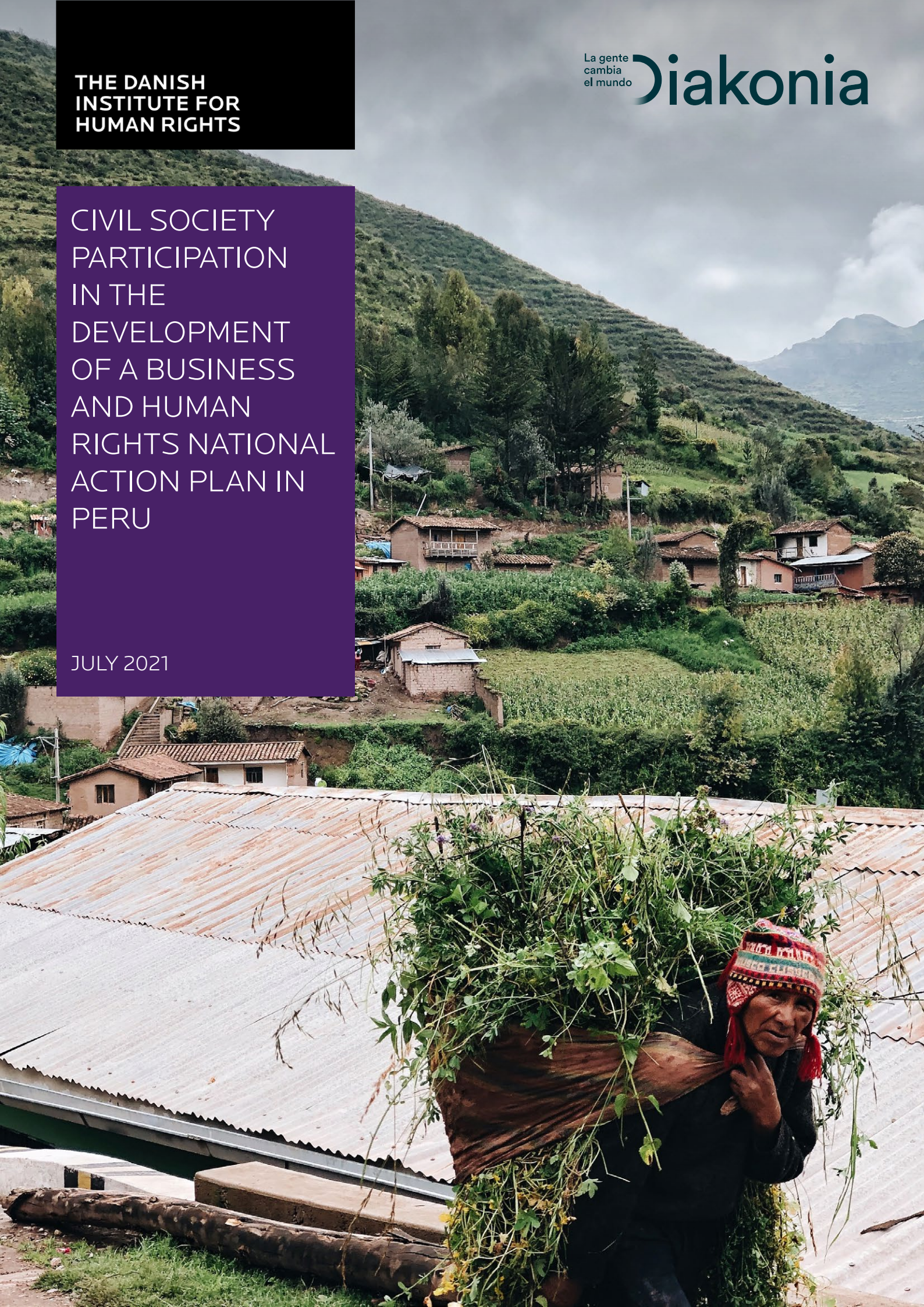
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CIVIL SOCIETY  
PARTICIPATION  
IN THE  
DEVELOPMENT  
OF A BUSINESS  
AND HUMAN  
RIGHTS NATIONAL  
ACTION PLAN IN  
PERU

JULY 2021





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# CIVIL SOCIETY PARTICIPATION IN THE DEVELOPMENT OF A BUSINESS AND HUMAN RIGHTS NATIONAL ACTION PLAN IN PERU

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# 1 INTRODUCTION

The primary aim of this report is to identify learning on civil society engagement in the development of a national action plan on business and human rights (NAP) in Peru. This learning can strengthen civil society engagement in future processes in Peru and in inform civil society engagement in NAP development processes in other countries.

Since 2011 numerous actors including the UN Human Rights Council, the European Union, the Council of Europe, the Organization of American States, national human rights institutions and business associations have encouraged states to develop NAPs. NAPs articulate a state's priorities and actions to implement the UN Guiding Principles on Business and Human Rights (UNGPs). Preferably, NAPs should be informed with an assessment of the current state of UN Guiding Principles implementation, which is often done through a national baseline assessment (NBA).

Participation of civil society in a NAP development process is fundamental to ensure the legitimacy of the instrument. Civil society organisations (CSOs) can provide up to date information on the business and human rights situations to inform the NAP development and ensure that the NAP responds to local realities and needs. Moreover, a NAP development process requires buy-in and ownership from all relevant stakeholders (including CSOs, workers' representatives, communities and businesses) to ensure that the ground is set for the implementation stage, which will benefit from stakeholder engagement and support. However, the level of participation in the NAPs processes around the world is often low. Where participation exists, it is mainly focused on consultative measures with no clarity on whether the participants input have been considered. This report identifies how the NAP development process in Peru has integrated participation in general and of civil society organisations (CSO) in particular, and how this participation has been developed, highlighting challenges and good practices.







## 2 METHODOLOGY

This report was commissioned by Diakonia and developed by the Danish Institute for Human Rights (DIHR). It is based on publicly available information from the NAP processes in Peru, semi-structured interviews with stakeholders who have participated in the NAP development process and further information shared by those interviewed. The interviews were conducted in February and March 2021.

The actors interviewed were: Three CSO partners of Diakonias, two states actors and one business organisation, who generously contributed with information about their work in business and human rights, their engagement in the NAP process and their views on the future of the NAP.

Four of the interviewees were women and six of them were men.

The interviews were focused on how the participating organisations work with business and human rights, including how they gained expertise and knowledge in this field. Regarding the NAP process and CSOs participation, the interviews focused on the methods of participation, the engagement experience itself and the perspectives to the future NAP and its implementation. All the interviews were conducted online.

To analyse the information three components were prioritised:

1. the CSO engagement in the NAP process, including the comparison between the first steps, the current stage of the NBA and their expectation to the adoption of the NAP and its implementation;
2. the opinion of all actors regarding the exercise of the right to participate in the NAP process context, and;
3. the perception of the actor interviewed regarding the NAP process in general. This analysis took into account two perspectives: on the one hand, a human right based-approach, specially the scope of participation as a human right, and; on the other hand, a gender perspective.

The study has several limitations. First, the small number of respondents reached is not a sufficiently representative sample. Secondly, actors interviewed noted that the 23 studies (referred to locally as 'diagnoses') forming the NBA have a human rights' focus and integrate a gender lens. However, as of the date of completion of this research, these studies were not publicly available, so this report was unable to investigate this further. Finally, the NAP was adopted by decree in June 2021 by the Government of Peru.



### 3 AN OVERVIEW OF THE NAP DEVELOPMENT PROCESS IN PERU

The UN Working Group on Business and Human Rights visited Peru in 2017 and welcomed “the measures taken by the Government of Peru to implement the Guiding Principles, including the commitment to develop a national action plan on business and human rights and the institutional and policy measures adopted to address social conflicts, a majority of which arise in the context of business operations”.<sup>1</sup> Additionally, the UN Working Group addressed several challenges related to large-scale development projects, labour rights, indigenous peoples, human rights defenders, and access to remedy and made recommendations about these issues. Thus, the visit of UN Working Group helped stimulate a process to develop a NAP in Peru.

The Organisation for Economic Co-operation and Development (OECD) concluded in its Responsible Business Conduct Policy Review on Peru of 2020 that “designing and implementing a strong [responsible business conduct, (RBC)] policy framework could first improve the performance of Peru’s economy” and could also “improve Peru’s sustainability outcomes and promote social cohesion”.<sup>2</sup> The OECD review recommended to “continue the development of the NAP according to the planned timeline, while ensuring participation of all relevant government actors and stakeholders. Clearly define institutional mandates and allocate respective resources and capacity for the NAP’s implementation, including an active role for the NCP”.<sup>3</sup>

The Government of Peru committed to developing a NAP in their 2018 National Action Plan of Human Rights, as a means to “implement in a progressive way the UN Guiding Principles on Business and Human Rights”.<sup>4</sup> This action was entrusted to the Ministry of Justice and Human Rights with three specific indicators:

1. A Methodology to develop a national base line assessment (NBA) through 23 studies (referred to locally as ‘diagnoses’) on the business and human rights situation in Peru and a national action plan on business and human rights (NAP);
2. A national baseline assessment report containing 23 studies;
3. A draft NAP on Business and Human Rights.<sup>5</sup>



## **STAGES IN THE PROCESS OF DEVELOPING AND ADOPTING THE NATIONAL ACTION PLAN FOR BUSINESS AND HUMAN RIGHTS IN PERU**

1. Call for proposals and development of methodology (January-August 2019);
2. Development and dialogue on diagnostics and baseline (September 2019-March 2021);
3. Elaboration of actions, indicators and goals (January-June 2021);
4. Approval and publication of the NAP (June 2021)

The Ministry of Justice initiated the NAP development process in 2019 with dialogues and capacity building events with the participation of 5 stakeholder groups: public authorities, CSOs, unions, indigenous people's organisations, public and private businesses. Additionally, international organisations (including, among others, Diakonia, the Office of the United Nations High Commissioner for Human Rights in Peru, the OECD and the ILO under the CERALC Project) and embassies have provided technical and financial support. Also the CSOs have received financial support to their participation in the NAP process from Diakonia. In addition, the Executive Branch Working Group was created to coordinate government entities in the preparation of the NAP.

In August 2019 a Methodology to develop the 23 studies constituting the NBA was adopted. The government received more than 250 contributions from stakeholders on the Methodology. These 23 studies were conducted by the Ministry of Justice and Human Rights (5), Peruvian Universities (16)<sup>6</sup> and international agencies (2)<sup>7</sup> and addressed the following topics:

- Specific groups and specific rights, including:
  1. Afro-Peruvian people;
  2. Foreign migrant persons;
  3. Human rights defenders;
  4. Indigenous peoples' rights;
  5. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people;
  6. Older people;
  7. People with disabilities;
  8. Women
- Specific sectors, including:
  9. Agroindustry;
  10. Mining;
  11. Oil and gas;
  12. Private security;

- Specific and cross-cutting issues, including:
  13. Capacity building needs on business and human rights;
  14. Child labour;
  15. Environmental impact assessments;
  16. Judicial remedy mechanisms;
  17. Non-judicial remedy mechanisms;
  18. Operational (business) repair mechanisms;
  19. Labour informality;
  20. Social conflict;
  21. Transparency, integrity and anticorruption;
  22. Unionisation and collective bargaining;
  23. Use of force and social protest.

The Methodology established that “both, the NBA and NAP itself will include a balance of the contribution from the actors, as well as good practices that could be replicated and of the impact of informality in the economy”.<sup>8</sup> As a consequence, the NBA and the NAP “will be undertaken in a wide, participative, consensual and decentralised way amongst the state, business, workers, civil society and indigenous people’s sectors”.<sup>9</sup> The government received more than 250 contributions from stakeholders on the Methodology, including from the CSO Platform on Business and Human Rights.<sup>10</sup> This platform organised itself as a means for CSOs to collaborate in the NAP process, in which the Amazon Indigenous Platform and a coordination structure of the 4 central trade unions also participated.

The Methodology included a multi-stakeholder approach, with working groups (‘mesas de trabajo’) lead by the Ministry of Justice and Human Rights. The decisions taken by these working groups were taken on ‘reasonable consensus’ rather than by voting. Moreover, the Methodology detailed mechanisms to allow all elements of society to participate, such as a form on the Human Rights Observatory of the Ministry of Justice and Human Rights website to receive suggestions and contributions, as well as providing information on workshops and working groups at the sub-national level, and other channels of participation. Finally, the Methodology adopted the principle of maximum transparency (‘maxima transparencia’) for the NAP process, which includes publication of the relevant documents of the process on the website of the Human Rights Observatory of the Ministry of Justice and Human Rights and the adoption of mechanisms to access to information.<sup>11</sup>

The NBA consists of 23 studies listed above. Several methodologies were utilised to develop the 23 studies:

1. A questionnaire;
2. Technical contributions from Universities;
3. Internal reviews by the Ministry of Justice and Human Rights (informing 5 studies);



4. Meetings of the multi-stakeholder worktable; and
5. Consultations at the sub national level.

There is no publicly available information on why these specific areas of focus were selected nor are these 23 studies publicly available.

#### **ACTIVITIES CARRIED OUT IN THE PROCESS OF ELABORATING THE NAP FOR BUSINESS AND HUMAN RIGHTS IN PERU**

ACTIVITY	NUMBER
Multi-Stakeholder Board Meetings	14
Executive Branch Working Group meetings	14
Working Groups on diagnostics and baselines	12
Bilateral working meetings	318
Regional dialogues	22
Training workshops	17
National discussions	11
International discussions	2
Participation in external activities	16

**Source:** Ministry of Justice and Human Rights

The NAP was finally adopted on June 11, 2021 through Supreme Decree No. 009-2021-JuS by the Government of Peru.<sup>12</sup> It includes the general conclusions of the national baseline assessment, as well as the strategic guidelines, objectives, actions and goals of the NAP.

There are 5 strategic guidelines of the NAP and their respective objectives, which are summarized as follows:

1. The promotion of human rights in business activities, targeting state officials, CSOs and business actors;
2. The design of public policies for the prevention of human rights violations in business activities, including the design of regulations in this regard and the ratification of international human rights treaties;
3. The promotion of policies or standards that guarantee respect for human rights by companies and technical assistance to companies to ensure the observance of human rights;
4. The promotion and design of human rights due diligence procedures by companies and the establishment of mechanisms to ensure that these processes are communicated;

5. The design and strengthening of mechanisms for access to redress, both judicial and non-judicial, and the operational mechanisms of the companies.

Based on these guidelines, 97 actions were defined, with their corresponding responsible parties, goals and indicators.<sup>13</sup> The Ministry of Justice and Human Rights will be the leading entity in the implementation of the NAP and the other state entities -according to their functions- will implement the actions that correspond to them.<sup>14</sup> In addition, it was determined that they must use the resources they currently have and, therefore, no additional resources will be allocated to comply with the NAP.<sup>15</sup>

The actions are varied and some of them incorporate different population approaches (gender, ethnic, age, disability and migrants). However, other actions are neutral in scope and implementation. In terms of prioritized economic sectors, the NAP actions do not result in a general prioritization of a specific sector. However, some actions related to particular sectors such as agro-industry and state-owned enterprises are included. In addition, several environmental protection actions were included in the context of business activities.

It was decided to create, on the one hand, a coordination space for government entities for the implementation of the NAP and, on the other hand, a multi-stakeholder space to accompany the implementation, follow-up, monitoring, evaluation and updating of the NAP: In addition, the creation of an exclusive coordination space with indigenous peoples to strengthen them in the follow-up, monitoring and evaluation of the NAP.<sup>16</sup>







## 4 BUSINESS AND HUMAN RIGHTS AND THE RIGHT TO PARTICIPATE

The United Nations Guiding Principles on Business and Human Rights (UNGPs) provides a global guiding framework for addressing human rights in the context of business operations. It is based on a three-pillar approach to business and human rights: the state duty to protect human rights; the corporate responsibility to respect human rights; and, access to effective remedy for victims of business-related abuses. The UNGPs define expectations and responsibilities for states and businesses. They provide civil society actors with a baseline standard to hold states and businesses to account.

A NAP articulates a state's priorities and actions to implement the UN Guiding Principles on Business and Human Rights. As of April 2021, 28 states have published a NAP. A further 15 states are in the process of adopting an inaugural NAP including Peru.

The development of a NAP should provide civil society actors with an opportunity to identify the salient business and human rights issue with a country and result in a NAP tailored to the local context and needs. However, this can only be achieved if civil society actors can effectively participate and are engaged in the NAP development process.

### 4.1 THE RIGHT TO PARTICIPATE

Participation is a human right and a key element in the realisation of all human rights. As a human right, participation is detailed in international instruments including the International Covenant on Civil and Political Rights (Article 25) and the American Convention on Human Rights (Article 23). Participation is most notably interconnected with the right to access to public information, freedom of expression, freedom of association and the right of peaceful assembly. The right to participate is also interconnected with all human rights through the right to participate in the formulation, implementation and evaluation of legislation, public policies and instruments adopted by the state. More recently, the “Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean” (Escazú Agreement) provides for participation in environmental matters, including those related to business activities.

Under international human rights law, certain groups have an explicit right to participation and consultation. ILO Convention No. 169 and the United



Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides indigenous peoples with a right to be consulted in line with the principle of free, prior and informed consent. The Convention on the Rights of the Child (CRC) further provides children with the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken, including within the family, the school and the community.

The UNGPs highlight the importance of participation in corporate human rights due diligence (Principle 18) and for the non-judicial mechanisms adopted to ensure access to remedy to victims of business-related human rights violations (Principle 31.h). Furthermore, the Guidance on National Action Plans on Business and Human Rights of the UN Working Group on Business and Human Rights notes that “NAP processes, including NAP development, monitoring and update must be both inclusive and transparent and take the views and needs of individuals or groups who may be impacted and other relevant stakeholders into account”.<sup>17</sup> In addition, the OECD Due Diligence Guidance for Responsible Business Conduct urges states to ensure “meaningful stakeholder engagement”.<sup>18</sup> CSOs can play a central role in supporting and facilitating the participation of rights-holders.

## **4.2 PARTICIPATION AND BUSINESS AND HUMAN RIGHTS NAP PROCESSES**

The UN Working Group points out that NAP “consultation processes should be open and accessible to all relevant non-governmental stakeholders and might, for instance, take the form of workshops, online consultation, public hearings, targeted interviews, or written submissions”.<sup>19</sup>

In the context of a NAP process, different types of engagement have been used to allow for the participation of civil society actors, such as:

- Stakeholder consultation meetings, hearings or dialogue;
- Selected or by invitation consultations;
- Bilateral meetings;
- Questionnaire survey;
- Capacity building workshops;
- Technical assistant;
- Online consultations;
- Multi-stakeholder steering committee or advisory group;
- Draft consultation / invitation to comment draft;
- National baseline assessment (NBA) consultation.<sup>20</sup>

NAP development processes in other countries have used a mix of these approaches at different stages of the NAP development process. Regardless

the participation formula applied in a specific NAP process, “[t]he goal of participation is to ensure NAPs are relevant in terms of issues affecting right-holders, which in turn requires access to information to ensure their effective participation”.<sup>21</sup>

State practice reveals that in at least 27 NAP processes<sup>22</sup> civil society organisations, unions, NGOs, rightsholders or other social organisations were invited or able to participate (using a variety of mechanisms from a country to another in terms of methodology and scope) in the elaboration of the national baseline and/or the formulation, implementation and evaluation of NAPs.

Participation is a vital element to a NAP process, and it must be promoted to strengthen their legitimacy, transparency, accountability, and effectiveness.

### **4.3 ENSURING A GENDER PERSPECTIVE IN BUSINESS AND HUMAN RIGHTS**

Business-related human rights abuses often affect women and girls disproportionately. In 2019, the UN Working Group published a report on the ‘Gender Dimensions of the Guiding Principles on Business and Human Rights’.<sup>23</sup> The report noted that women and girls experience unique and aggravated forms of gender-based discrimination in the context of business operations, due to structural and social factors. To discharge their respective human rights duties and responsibilities, states and business enterprises should address gender, specifically. They face additional hurdles in seeking access to effective remedies and intersecting and multiple forms of discrimination. The human rights impacts of such discrimination in the context of business activities is sometimes compounded by their age, colour, caste, class, ethnicity, religion, language, literacy, access to economic resources, marital status, sexual orientation, gender identity, disability, residence in a rural location, and migration, indigenous or minority status.

The UNGPs requires states and businesses to pay special attention to gender considerations. In the commentary to Principle 3 of the UNGPs, states are required to provide appropriate guidance to businesses on, “how to consider effectively issues of gender, vulnerability and/or marginalization.” The commentary to Principle 7 stipulates that states should provide adequate assistance to business enterprises operating in conflict affected areas, “to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence.”

In the development of NAPs on business and human rights, two approaches have been adopted by states seeking to address gender. The first approach



integrates gender considerations across the various substantive thematic areas in business and human rights. The second approach addresses gender as a substantive standalone thematic area. There is further scope for gender to be addressed through a combination of the two approaches.<sup>24</sup>

More concretely, addressing gender in business and human rights requires states and business enterprises to shun gender-blind policies, laws and frameworks for accountability. States and business enterprises should, for instance, make provision for: gendered due diligence and impact assessments; gender-sensitive remedy frameworks; gender-inclusive value chains; gender-sensitive safeguarding frameworks; and, gender inclusion in assessing the impact of investment, formulating trade and tax policies, among others. To address the socio-cultural aspects of gender discrimination, there is need for sensitisation, awareness raising among the society and appropriate programmes for empowering women and girls.





## 5 CIVIL SOCIETY ENGAGEMENT IN PROCESSES TO IMPLEMENT THE UNGPS IN PERU

### 5.1 HOW ARE CSOS IN PERU INVOLVED IN BUSINESS AND HUMAN RIGHTS WORK?

The CSOs interviewed noted that their engagement with the topic of business and human rights is relatively recent, especially their use of the UNGPs as means to frame and guide their work. They further noted that their work on business and human rights has increased significantly in the last few years along with knowledge and understanding. The CSOs work on business and human rights is diverse and often originated from existing focus areas and activities which overlapped with business and human rights, including:

- Work with indigenous peoples and the oil and gas activities in their ancestral territories;
- Work on the trade of agricultural commodities;
- Impacts of mining activities in rural areas, including indigenous peoples' territories;
- Accompanying communities in their calls, complaints and accessing to remedy mechanisms.

Social conflicts related to the activities of business triggered the CSOs' desire to better understand how human rights are related to business. Two CSOs interviewed developed their capacities on business and human rights through projects analysing business related human rights impacts, which were funded by international donors/ cooperation partners. One CSO developed a project to capacitate indigenous peoples on the UNGPs. Another CSO implemented a project on indigenous people's territories and their protection in Brazil, Argentina and Colombia, with reference to the UNGPs and funded by the European Union.

One CSO interviewed had not received training or conducted practical work applying the UNGPs but engages with companies based on general human rights principles, particularly the rights of workers, the rights of women, and non-discrimination.

CSO engagement on business and human rights has included actions on all



three pillars of the UNGPs (the state obligation to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims of abuse), as well as the promotion of work in this field to other CSOs. CSOs interviewed in Peru have called for state actors to fulfil their obligations through different approaches, including:

- Participating in discussions on public policies to ensure these reflect human rights standards. It was noted that some public authorities are not open to participation, by CSOs which impedes the presentation of demands to the state;
- Issuing calls to public authorities to adopt measures to protect the rights of workers and communities impacted by the business activities. In the beginning these calls were not adequately addressed, however the CSOs interviewed noted that public authorities nowadays increasingly recognise the human rights impacts connected to business activities and require the companies to comply with their obligations.

CSOs interviewed have called on companies to fulfil their responsibility to respect human rights by:

- Creating a tool called “Indigenous barometer” to measure how the engagement with indigenous peoples is carried out in extractive and infrastructure projects;<sup>25</sup>
- Directly addressing the companies as well as filing complaints before the labour authorities about the labour conditions of women workers.

CSOs have engaged in work related to access to remedy by:

- Representing and supporting victims of human rights abuses in judicial procedures. This included families of murdered human rights defenders and for abuses which occurred in the context of the social conflicts.

Furthermore, the CSOs interviewed have encouraged other organisations to work on business and human rights issues, including indigenous peoples’ organisations, rural communities, and women’s organisations. This engagement strategy included the creation of a platform to coordinate joint efforts and share information.<sup>26</sup> In addition a mini-platform on gender and human rights and business was formed as a space for sharing and strengthening a gender-based approach to human rights and to make visible the special impact women face in activities related to oil, mining and agriculture exports and to promote a higher participation of women in the NAP process.

## **5.2 WHAT ARE THE MODES OF PARTICIPATION IMPLEMENTED IN THE NAP PROCESS IN PERU?**

Several mechanisms have been developed to facilitate participation in the NAP development process in Peru. First, the Government of Peru made a commitment to develop a NBA and a NAP through participatory processes. The Ministry of Justice and Human Rights, as leader of the NAP development process in Peru, made a public call for CSOs to participate. One CSO interviewed highlighted this as good practice as other processes have seen public authorities engage only with CSOs they already know or work with. The public call provided several CSOs with an opportunity to learn about the process and participate.

Second, the Ministry of Justice and Human Rights organised several events and workshops to increase the knowledge and capacities of stakeholders on business and human rights and NAP development. This included the workshop “Roadmap to the implementation of the national action plan on business and human rights”,<sup>27</sup> that took place on 15 June 2018. This event was organised by the Ministry of Justice and Human Rights and the Defensoria del Pueblo (the national human rights institution of Peru), with the support of the UN Office of the High Commissioner on Human Rights (OHCHR) and the Democracy and Human Rights Institute of the Pontificia Universidad Católica del Perú. CSOs, representatives from indigenous people’s organisations, trade unions, and academia participated in the discussion panels and the working groups and further information on this event is publicly available.<sup>28</sup> Eleven public exchanges with the participation of businesses, public servants and CSO were organised by the Ministry of Justice and Human Rights. These workshops and exchanges were focused on the UNGPs generally supplemented with a focus specific topic, such as, child labour, gender, human rights defenders, international standards, amongst others.

Third, CSOs participated in the elaboration of the NBA via two mechanisms:

- Multi-stakeholder consultations;
- Comments on draft documents, raised during the consultations and by writing. Two CSOs highlighted that their input on the NBA was considered and incorporated into the documents.<sup>29</sup>

Although the CSOs interviewed recognise the level of participation in the NAP process as high and highlight this as good practice, they highlighted that the existence of these opportunities to participate in the NAP development process came as a result of calls made by the CSOs to the government in this regard.

### **5.3 HOW DID OTHER STAKEHOLDERS VIEW CSO INVOLVEMENT?**

The state actors interviewed stated that the participation of CSOs was positive and active. Two CSOs and one state actor described how at the beginning of the process they were not confident enough to actively participate, while noting that the training and the process itself increased the trust and the participation. The state actors also noted that the level of participation by CSOs was high, compared with the usual levels of CSO participation in public policy development in Peru. One actor interviewed felt that the step to formulate and adopt the NAP had not yet begun and highlighted the need for CSO participation at this stage also.

The business actor interviewed highlighted the importance of complying with the Methodology, to ensure the participation of all actors, including CSOs. They also noted that the participation of representatives of social and community actors would contribute to have a broader conversation on the complex business and human rights issues the NAP will address.

### **5.4 HAS THERE BEEN A GENDER PERSPECTIVE IN THE NAP PROCESS?**

The NAP process in Peru has integrated a gender perspective in two ways. First, by having two studies on gender and on LGBTI people in the NBA and second, by including a gender dimension in other 21 studies constituting the NBA and in the NAP itself.

All the stakeholders interviewed considered a gender perspective to be a key issue for the NAP development process. Moreover, the Methodology to formulate the NAP determined that the NBA and the NAP development process were developed with a human rights perspective, including a gender perspective, recognising the asymmetries and power relationships and inequities between men and women, stating:

"The gender approach considers the roles and tasks performed by women and men in a society, as well as the asymmetries and power relations and inequities that occur between them, recognising and explaining the causes that they produce in order to formulate measures (policies, mechanisms, affirmative actions, norms, etc.) that contribute to overcoming the social gaps produced by gender inequality."<sup>30</sup>

However, there is no certainty on how each actor understands what a 'gender perspective' in the NAP process means. Two CSOs and one state actor interviewed highlighted their attempts to ensure a gender balance



participation in the workshops and discussions in the NAP process. The two state actors interviewed consider a gender dimension to be a key element in the development process and felt that it was incorporated in the methodology and NBA. In addition to the two studies on women's rights and business and another on LGBTI people and business a state actor highlighted in an interview, gender is considered as a cross-cutting element in all the 23 studies constituting the NBA. Gender perspective in a NAP process implies not only participation of women over the process but "to identify differentiated impacts on their rights in the context of business activities".<sup>31</sup>

One CSO interviewed described how in 2020 civil society actors created a 'mini-platform' (in addition to the CSO platform detailed earlier coordinating their engagement) to (i) enhance women participation in the NAP process; (ii) collect women testimonies on business and human rights issues, and; (iii) facilitate cooperation between social women leaders. This platform has helped identify the issues and challenges that occurred at the subnational level.

Analysing documents produced in the development of the NAP, it was possible to see that CSO participants in NAP development events and processes included 81 men and 67 women. However, it was noted in interviews that the 'lead' representatives were often male.

## 6 OPPORTUNITIES FOR CSO CONTRIBUTION TO THE DEVELOPMENT OF A NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

The CSOs interviewed were asked what opportunities there are to strengthen CSO participation in NAP processes and how CSOs can support NAP development processes. The following are a compilation of what they wished to highlight:

- Two CSOs interviewed remarked on the role of effective and concrete participation of empowered CSOs in the development of the NAP. To play this role, CSOs must understand the UNGPs in detail. For this reason, they recommend CSOs to get the strongest knowledge possible on the UNGPs before and during their process in the NAP process;
- 
- Three CSOs highlighted their role as a bridge between local communities and the NAP process and noted that giving voices to rights-holders and ensuring the state listens to them can also provide the state with valuable information on business and human rights. This role is fundamental to make sure sub national voices are considered in the process and to build and implement a NAP aligned with local social, economic and cultural conditions. To play this role CSOs need local coordination capacities, which implies an ongoing conversation and spaces for sharing with local communities. To make this possible, financial resources are also needed;
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- Two CSOs highlighted that without civil society, multi-stakeholder processes are not multi-stakeholder. They further highlighted their ability to ensure that human rights are at the centre of the NAP. Companies are very strong social and political actors, having CSOs part of the process (including all its steps) contribute to its balance. CSOs which work together can gain a stronger position in the NAP development process and ensure rights-holders voices are heard in the development of the NBA and the NAP.

The interviews highlighted a number of ways that CSOs might require support to engage in the NAP development process:

- One CSO interviewed noted the need for more workers representatives, not only those who are unionised. Local authorities (mayors and governors)



should also form part of the NAP implementation. The NAP development process and future implementation is an opportunity to expand the number and type of actors engaging with business and human rights;

- Participation of CSOs is fundamental to the implementation of the NAP and follow up steps. One CSO felt that having a monitoring body with CSO participation should be created as part of the NAP. Another CSO felt further capacity building activities for CSOs are needed in the context of the formulation and implementation of the NAP.



## 7 CHALLENGES, GOOD PRACTICE AND RECOMMENDATIONS

### 7.1 CHALLENGES TO CSO PARTICIPATION IN THE NAP DEVELOPMENT PROCESS

**Centralism.** The NAP development process was centred largely in Lima. One state actor and two CSOs interviewed consider the capital-centric approach as a limitation of the process. 16 subnational workshops were organised by the state to gather the voices of the local communities for the development of the NBA. These efforts are important, although one CSO still noted their worries on the excessive centralism of the process and the need to expand engagement further at the subnational levels to gather input from local communities and CSOs. The COVID-19 pandemic reinforced centralism as some events in different regions were cancelled.

**Financial limitations.** The NAP development process in Peru suffered from financial limitations which impacted, amongst other dimensions, on the participation of CSOs. CSOs need support to increase their capacities (through training) and to ensure their presence in the meetings and workshops. This is especially significant for CSOs and stakeholders based outside of Lima, including indigenous peoples. There is no publicly available information on the level of state funding for the NAP development process. The NAP development processes benefitted from funds provided by the European Union, the Embassy of Switzerland in Peru, the Embassy of Sweden in Peru, the Embassy of the United Kingdom in Peru, the Embassy of the Netherlands in Peru and the UN OHCHR, amongst others. However, these financial resources were not directly available to CSOs, unions or indigenous organisations, which could have increased the participation of these actors in the NAP process.

**Gender participation.** All the actors interviewed consider a gender dimension to be a key element to be included in the NAP and a study on gender and LGBTI people in the context of business and human rights were undertaken as part of the NBA. CSOs fostered women participation, especially in the workshops. Although the voices in the discussion of the NBA were mainly masculine, the gender mini-platform contributed cross-cutting analysis of several of the studies that constitute the NBA. One CSO interviewed proposed to identify women from the CSOs to lead the discussion on the NAP and to increase women capacities to enhance their participation in the NAP process.

**Institutional instability.** The NAP process in Peru is behind schedule. State actors interviewed noted that this was due to institutional instability over the last two years. Added to this, the current government's term ends in mid-2021 which has put pressure on the government to ensure the NAP is adopted before the end of June 2021. It is uncertain whether the next government will continue maintain the same level of focus on business and human rights and the NAP.

## **7.2 GOOD PRACTICES AND FACTORS THAT ENCOURAGE CSO PARTICIPATION IN NAP PROCESS**

**Trust in the NAP process.** The CSOs interviewed highlighted that their experiences in other processes to formulate public policies eroded their trust and enthusiasm, so they were hesitant to engage in the NAP development process. Compared with other processes in Peru, those who engaged in the NAP development process consider it very participative. Those interviewed noted that the attitude of the state to consider opinions from CSOs strengthened trust in the process and encouraged further and active CSO participation.

**State neutrality.** As the NAP development process involved different stakeholder with different interest and positions, the CSOs expected the state to be neutral but human rights oriented and realise the right to participate during the NAP development process. The stakeholders felt the state met this expectation so far.

**Empowerment.** CSOs are motivated to participate in fields they know. Capacity-building of CSOs on business and human rights is crucial for informed and effective participation. Indeed, all the CSOs interviewed described how their expectations related to the NAP process developed over the time and today they feel more confident engaging in the discussions and activities related to business and human rights and the NAP process.

**Social organisation and the use of platforms.** The CSOs created a Platform on Business and Human Rights to collaborate as they engaged with the NAP process. This platform was self-organised, and the interviewed CSOs noted that this strengthened the participation and the capacities of the CSO participants in the field of business and human rights. One CSO interviewed highlighted the diversity amongst the platform members as a positive, noting that the different actors had different capabilities and knowledge. In addition, a mini-platform on gender and business and human rights was formed as a space for sharing and strengthening a gender-based approach to human rights and to make visible the special impact women face in activities related to oil, mining and agriculture exports and to promote a higher participation of

women in the NAP process. CSO platforms are useful for: sharing updates on relevant developments and work; planning and jointly developing strategies on their work; capacity building and peer experience sharing; and, developing project and informal collaborations.

**The role of international agencies.** All the actors interviewed recognised the role of international agencies and international donors/ cooperation partners in the promotion and support of the process, including capacity building and participation of CSOs. Additionally, the support of international actors created trust in the process and that it was consistent with international standards.

**Participation of the Defensoría del Pueblo, the national human rights institution** in the NAP process encouraged CSO engagement, especially at the sub-national level. One CSO interviewed suggested that involving the Defensoría del Pueblo in the local/ regional workshops could be perceived as a sign of confidence for the CSOs to participate also. Another CSO interviewed said that the Defensoría del Pueblo played a part in NAP process in Lima, but not at the regional level. Although the Defensoría del Pueblo participated at several points, the CSOs interviewed felt the Defensoría del Pueblo could have engaged further in the NAP development process.

### 7.3 RECOMMENDATIONS

This study makes recommendations to the state, businesses, CSOs and international actors and donors/ cooperation partners on how they can, respectively, encourage and support the contribution of CSOs to promoting human rights in the context of business activities and in the development and implementation of a NAP in Peru:

## RECOMMENDATIONS TO THE STATE

**Continue to promote the participation of all actors, including CSOs, in the implementation of the NAP.** The government should continue to focus on the participation of CSO and communities' representatives in accordance with the NAP Methodology. This is especially relevant in future implementation measures. This should include consultation and participation of communities' and right-holders close to where they live.

**Ensure full and timely transparency in the NAP implementation, not only for the active participants but also for the public.** Stakeholders which have actively engaged, including CSOs and businesses, have found the NAP development process to be open. This standard of openness should be applied to all, including those which have not yet engaged, during the development and implementation phases (e.g. by publishing the NBA studies online, publishing and actively disseminating the NAP and having the information on the implementation public and accessible).

**Ensure coordination and engagement of state actors in implementation.** The NAP implementation will require coordination between several state bodies. Based on successful measures seen in other states, the proper functioning of the inter-ministerial mechanism that will be responsible for the coordination and supervision of monitoring the implementation and execution of the NAP's actions must be ensured.

**Ensure a continued focus on the NAP.** In Peru, the NAP was adopted in June 2021 by Supreme Decree, which is good practice to strengthen the application of the NAP regardless of institutional changes. The experiences of Colombia and Chile where the NAP implementation continued over different governments can serve as inspiration. The new Peruvian government could consider other measures to strengthen the NAP's legal basis. One way to keep the NAP on the agenda during any institutional change is to empower non-state actors to support the implementation.

**Guarantee a gender perspective in the NAP implementation.** The participation of women and LGBTI people is crucial not only in the formulation of the NAP but also for its implementation. Promoting, facilitating, and ensuring participation of women and LGBTI people from all backgrounds can strengthen a focus on gender during implementation.

**Ensure a role for the Defensoría del Pueblo in accountability measures.** Empowering the Defensoría del Pueblo to ensure accountability in the NAP implementation would build confidence and trust in the NAP both nationally and internationally and could ensure greater buy-in from CSOs and business to support with implementation measures. Financial resources must be provided so that the Ombudsman's Office can advance accountability.



## RECOMMENDATIONS TO BUSINESSES

**Participate in the implementation of the NAP.** This could include participation in the development of standards and guidelines including at sectoral level which are benchmarked to global human rights legal frameworks, with comprehensive coverage of human rights content.

## RECOMMENDATIONS TO CIVIL SOCIETY ORGANISATIONS

**Capacity building on business and human rights and the UNGPs:** CSOs should continue to enhance their capacities in the field of business and human rights, both in theory and in practice, to ensure they can participate fully in future actions and hold the government to account on the NAP implementation.

**Strengthen CSO networks and platforms.** Collaborative work in business and human rights may increase the impact that CSOs have on public policies (including the NAP process) and cases related to business and human rights. The networks or platforms created to participate in the NAP process should continue operating in the framework of its implementation.

**Participate in the implementation and monitoring of the NAP.** CSOs can offer assistance with the NAP implementation. CSOs can monitor the implementation process to ensure impacts are seen by rightsholders. This information can support independent monitoring mechanisms and inform future reviews and adjustments of the NAP.

**Strengthening the integration of gender into the work of CSOs.** CSOs have advanced in integrating the gender perspective in their work, but more steps could be taken to integrate intersectionality. This is crucial in the Peruvian context, especially regarding indigenous peoples and other vulnerable populations. This could include ensuring an ongoing conversation about gender, including women as lead or key representatives, and integrating LGBTI dimensions into their work. Strengthening the role of the gender business and human rights mini-platform is a next step that could be taken in the NAP implementation.

## RECOMMENDATIONS TO INTERNATIONAL ACTORS AND DONORS/ COOPERATION PARTNERS

**Increase consultation with local CSOs, other stakeholders and rightsholders in developing donor-funded programmes.** International actors and donors should continue to engage with CSOs, stakeholders and rights-holders to conceptualise and develop donor-funded programmes that are implemented by CSOs in the field of business and human rights. This will ensure CSOs maintain their capacities on business and human rights issues and work to ensure business respect for human rights.

**Provide funding for civil society platforms.** International actors and donors could provide technical support and/ or funds to strengthen the participation of CSOs in the NAP process through existing platforms, including the mini-platform on gender and business and human rights.







## **7.4 CONCLUSIONS**

CSOs have played a significant role in the NAP process in Peru, including the development of the NBA. There is significant scope for CSOs to continue to highlight the social, environmental and human rights challenges faced by communities as a result of business activities. This information can help the state understand the needs of communities and ensure that measures the state designs are effective in meeting their needs and. However, local communities can be capacitated (alongside local CSOs) to facilitate their direct participation in the NAP implementation process.

The CSOs interviewed place importance in understanding and communicating on business and human rights through human rights frameworks, including the UNGPs. Maintaining such capabilities is fundamental to guarantee the effective participation of the CSOs in the NAP process, especially in the implementation and assessment phase. Therefore, ongoing capacity building is important and should be supported by the state or through international cooperation.

The platforms established by the CSOs to coordinated participation in the NAP process have been successful. Furthermore, the mini-platform on gender and business and human rights may provide a deeper gender perspective in the adoption, implementation and assessment of the NAP.

With presidential elections in 2021, CSOs and other social actors, alongside business organisations and international actors, can be clear in their desire to continue with the NAP process to ensure business and human rights remains a priority for the incoming government. In addition, the regulatory strength of the NAP, which was adopted by Supreme Decree, will remain in force despite the change of government.

## ENDNOTES

- 1 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru. Distr.: General. 9 May 2018. A/HRC/38/48/Add.2. Para. 87.
- 2 OECD (2020), OECD Responsible Business Conduct Policy Reviews: Peru, OECD Paris. Pg. 71.
- 3 Ibid
- 4 Government of Peru. Ministry of Justice. Plan Nacional de Derechos Humanos 2018-2021. Pg. 167. Access on line [PLAN-ANUAL.pdf \(minjus.gob.pe\)](#)
- 5 Government of Peru. Ministry of Justice. Plan Nacional de Derechos Humanos 2018-2021. Pg. 167-168. Access on line [PLAN-ANUAL.pdf \(minjus.gob.pe\)](#)
- 6 Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú (IDEHPUCP), al Instituto de Ética y Desarrollo de la Universidad Antonio Ruiz de Montoya (IED - UARM), y al Centro de Estudios sobre Minería y Sostenibilidad de la Universidad del Pacífico (CEMS - UP)
- 7 The Office of the United Nations High Commissioner for Human Rights and the OECD.
- 8 “Tanto el diagnóstico como el PNA propiamente dicho incorporarán un balance de la contribución de los actores en este sentido, así como de las buenas prácticas que pueden ser replicadas, y del impacto de la informalidad de la economía en el país” Ministerio de Justicia. Metodología del proceso de elaboración del Plan Nacional de Acción sobre Empresas y Derechos Humanos”. Pg 3.
- 9 “la elaboración de un diagnóstico y una Línea de base que, al igual que el propio plan, serán construidos de modo amplio, participativo, consensuado y descentralizado entre los sectores estatal, empresarial, de trabajadores, de la sociedad civil y de pueblos indígenas” Ministerio de Justicia. Metodología del proceso de elaboración del Plan Nacional de Acción sobre Empresas y Derechos Humanos”. Pg. 4.
- 10 The Methodology lists the following actors as participating in the NBA and NAP development process: The Ministry of Justice and Human Rights; The Working Group of the Government for the NAP (composed of 21 public entities); The Defensoría del Pueblo (the national human rights institution of Peru); The National Congress, the Judicial Power, the Public Prosecutor, and other autonomous State entities; Regional governments; Municipalities; Business actors and organizations (9 organisations); Civil society organisations (25); Indigenous people’s organisations (12); Trade unions (4); International actors (15); International donors (8).
- 11 Ministerio de Justicia y Derechos Humanos. Metodología del proceso de elaboración del Plan Nacional de Acción sobre Empresas y Derechos Humanos”. Pg. 17.
- 12 Republic of Peru. Plan Nacional de Acción sobre Empresas y Derechos Humanos 2021-2025. Available on-line in [Plan Nacional de Acción sobre Empresas y Derechos Humanos 2021-2025.pdf.pdf \(www.gob.pe\)](#).
- 13 Republic of Peru. Plan Nacional de Acción sobre Empresas y Derechos Humanos 2021-2025. Pg. 61 – 127.
- 14 Republic of Peru. Decreto Supremo N° 009-2021-JuS. Art. 2 y 3.
- 15 Republic of Peru. Decreto Supremo N° 009-2021-JuS. Art. 4.
- 16 More information about the NAP is available at <https://globalnaps.org/country/peru/>

- 17 [UNWG\\_NAPGuidance.pdf \(ohchr.org\)](#)
- 18 OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>
- 19 UN Working Group on Business and Human Rights. Guidance on National Action Plans on Business and Human Rights. Pg. 8 On line: [UNWG\\_NAPGuidance.pdf \(ohchr.org\)](#)
- 20 For more information on forms on participation and engagement, see <https://globalnaps.org>
- 21 Danish Institute of Human Rights. National action plans on business and human rights: analysis of plans from 2013-2018. Pg. 16. Online: [nap-analysis\\_2018 \(humanrights.dk\)](#)
- 22 E.g. the NAP processes in Belgium, Chile, Colombia, Czechia, Finland, France, Georgia, Germany, Indonesia, Ireland, Italy, Japan, Kenya, Luxembourg, Malaysia, Mexico, the Netherlands, Norway, Poland, Scotland, Spain, Sweden, Switzerland, Thailand, Ukraine, United Kingdom and United States of America. Source: [National Action Plans on Business and Human Rights \(globalnaps.org\)](#)
- 23 UN Working Group '[Gender Dimensions of the Guiding Principles on Business and Human Rights](#)'
- 24 DIHR, [Addressing the gender dimensions of business and human rights: a summary report from three thematic gender learning exchanges on the digital transition, national action plans and feminist approaches, 2020](#)
- 25 Barómetro indígena sobre empresas y derechos humanos. Accesible online: Proyecto-Barómetro-Indígena.final\_.pdf (dar.org.pe)
- 26 The broader network is the "Plataforma de Sociedad Civil sobre Empresas y Derechos Humanos", which has 23 CSO members.
- 27 Rutas para la implementación del Plan Nacional de Acción de Empresas y Derechos Humanos en el Perú. Memoria del Conversatorio. Accesible online [https://cdn01.pucp.education/idehpucp/wp-content/uploads/2018/07/31221331/plan\\_empresas\\_v3-2.pdf](https://cdn01.pucp.education/idehpucp/wp-content/uploads/2018/07/31221331/plan_empresas_v3-2.pdf)
- 28 Ministry of Justice and Human Rights "Rutas para la Implementación del Plan Nacional de Acción en Empresas y Derechos Humanos. Memoria del conversatorio" Online: [plan\\_empresas\\_v3-2.pdf \(pucp.education\)](#)
- 29 Local stakeholders were invited to comment on draft versions of the 23 studies constituting the NBA
- 30 Ministerio de Justicia. Metodología del proceso de elaboración del Plan Nacional de Acción sobre Empresas y Derechos Humanos". Pg. 7  
"El enfoque de género considera los roles y tareas que realizan mujeres y hombres en una sociedad, así como las asimetrías y relaciones de poder e inequidades que se producen entre ellas y ellos, conocer y explicar las causas que las producen para formular medidas (políticas, mecanismos, acciones afirmativas, normas, etc.) que contribuyan a superar las brechas sociales producidas por la desigualdad de género."
- 31 Danish Institute of Human Rights. Addressing gender dimensions of business and human rights. 2021. Pg. 13



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