

Statement from Colombian civil society regarding the Colombian Government's policy on Business and Human Rights

May 23 2016

As organizations of Colombian civil society who have signed this letter, we express our concern regarding the public policies on Business and Human Rights (BHR) developed by the Presidential Council for Human Rights, as well as the implementation of their most important mechanism: The National Action Plan of Business and Human Rights (NAP). This policy, which at its core should be focused on dealing with and providing solutions to the human rights violations of communities living in areas subject to natural resources extraction and investment activities led by diverse economic actors, suffers from a series of underlying structural defects, which are cause for concern and have prompted us to make this statement.

We are concerned because **the NAP** – in the words of the Presidential Council itself – **is a framework that responds to the needs of investment companies**, seeing as it is silent with respect to: i) the impacts and human rights violations caused as a result of the development of commercial activities in the territories, ii) gaps in Colombia's regulatory framework relating to Business and Human Rights, iii) effective mechanisms for the prevention and reparation of human rights violations. These are all factors we consider must be properly addressed if the Colombian government truly seeks to provide solutions with guarantees for victims affected by commercial actions. To these gaps in Colombia's BHR policy, it is worth adding that the text of the NAP unashamedly considers **respecting human rights to be a "competitive business advantage"**. This clearly indicates that the government's BHR policy seeks to create a favorable environment to attract foreign investment; providing a political and judicial framework based on international standards of responsibility, but without this necessarily ensuring the effective protection of the rights of affected communities, nor imposing obligations on companies to respect human rights.

The BHR policy **normalizes and ignores the obvious asymmetry of power in the dialogue between companies and communities affected by human rights violations**; promoting multi-actor spaces and non-judicial mechanisms as suitable instruments for the prevention, mitigation and resolution of conflicts, and even for accessing remedies for human rights violations. Correspondingly, the government, through this NAP, **fails to offer any type of guarantee for victims whose human rights have been violated by companies**, precisely because it delegates to these same companies the responsibility of i) receiving complaints and grievances with regard to adverse impacts on human rights, ii) monitoring their progress in mitigating negative impacts, and iii) evaluating the possible or existing impacts of their activities on people and the environment. In this model, whereby the victim must bring their claim directly to the very actor who violated his or her rights, the Colombian Government is failing to recognize the *pro victim* focus that must be the foundation of all human rights frameworks; moreover, no one outside the business community has assessed the appropriateness of these measures. Furthermore, the NAP does not provide for any mechanisms to deal with cases in which no action is taken to address the negative impacts caused, leaving a great margin for impunity.

With these types of proposals it is clear that the government does not take seriously the fact that **businesses**, while carrying out their activities, **cause impacts (harm) which result in human rights**

violations. The government also negligently fails to recognize the need to incorporate fundamental principles for the realization of human rights (principles of pro-victim, *pro-homine*, equality and non-discrimination, precaution and prevention, etc.) in dealing with these undesirable situations. **The majority of human rights violations are the result of non-compliance with national law and the Constitution by businesses and the State itself;** the government must demand (and demand of itself) total compliance with the Constitution and the law, considering respect for human rights as a matter of constitutionality, as this is essential and critical for the development of economic activities in Colombia. Respect for human rights cannot be left to the mercy of the goodwill of businesses, but rather must constitute an obligation to be adhered to by all, including the State and the business community.

At this point, having established the crisis that exists in many parts of the country in terms of companies' lack of respect for human rights, it does not help that the Presidential Council keeps insisting that the NAP has been a great achievement and proof of the goodwill of the government to work on this issue. Neither does it help that, the Presidential Council continues to state that the NAP is a "living document, when it is already in the implementation phase of the plan. The real cause of our concerns, and the question upon which we invite you to analyze here is whether the NAP really provides some kind of guarantee for victims or whether it rather continues to fail to recognize the heart of the issue: the responsibility of businesses for human rights violations and the deepening vulnerabilities of the communities located in the areas of investment interest.

We consider that the promotion and implementation of the NAP and the Colombian Executive's rejection of possible binding business and human rights mechanisms denies the affected communities the possibility of truly enforcing their rights. It furthermore diminishes all guarantees (judicial or political) for victims of human rights violations associated with business activities on the ground. By continuing in the direction set by this policy, ignoring the victims, the real problems on the ground and the tools essential for the protection of human rights, this initiative will only serve to deepen injustice and socio-environmental conflicts, eroding the possibilities of constructing a true, stable and lasting territorial peace in Colombia.

For all the reasons presented above, we urge the Government to:

1. **Analyze and reconsider the structural gaps** in its Business and Human Rights policy;
2. Fulfill its responsibility to ensure the **effective compliance of the law and constitutional principles in order to ensure effective control** of the risks that the implementation of investment projects on the ground has been demonstrated to have;
3. Provide a response that would be expected of policy on a business and human rights: an institutional framework that provides effective mechanisms for the prevention of impacts caused by investment projects as well as **clear guarantees – of a normative and regulatory nature – for the victims of human rights violations** already perpetrated, and to prevent their repetition.

Signatory Organizations:

Asociación AMBIENTE Y SOCIEDAD
Asociación MINGA

Centro de Estudios para la Justicia Social TIERRA DIGNA
Colombia PUNTO MEDIO
Comisión Intereclesial de JUSTICIA Y PAZ
Comité Ambiental en Defensa de la Vida
Equipo Jurídico PUEBLOS
Foro Interétnico Solidaridad Chocó - FISCH
Fundación Comité de Solidaridad con los Presos Políticos
Greenpeace Colombia
Grupo de investigación geo-ambiental TERRAE
Instituto de Estudios para el Desarrollo y la Paz - INDEPAZ
Instituto Latinoamericano para una Sociedad y un Derecho Alternativos – ILSA
Observatorio de Expansión Minero-Energética y Re-Existencias
Pensamiento y Acción Social - PAS
SOS Ambiental

