



## Extractives and National Action Plans (NAPs) on Business and Human Rights

A Thematic Supplement to 'National Action Plans on Business and Human Rights  
Toolkit: 2017 Edition'

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Due Process of Law Foundation (DPLF)  
International Corporate Accountability Roundtable (ICAR)



The International Corporate Accountability Roundtable (ICAR) is a civil society organization that harnesses the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.



The Due Process of Law Foundation is a nonprofit organization working to strengthen the rule of law and promote respect for human rights in Latin America through applied research, strategic alliances with actors in the region, advocacy activities, and the effective communication of their message.

## Report Authors

Cindy Woods, Legal and Policy Associate  
International Corporate Accountability Roundtable

Katharine Valencia, Program Officer  
Daniel Cerqueira, Senior Program Officer  
Due Process of Law Foundation

## Acknowledgements

Emily Greenspan, Oxfam America  
Daniel Mulé, Oxfam America  
Sarah Zoen, Oxfam America  
Rutuja Pol, International Corporate Accountability Roundtable  
Alice Garside, Peace Brigades International UK  
Fernanda Hopenhaym, Project on Organizing, Development, Education, and Research (PODER)  
Kindra Mohr, Accountability Counsel  
Plataforma Internacional contra la Impunidad

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## I. INTRODUCTION

Approximately 3.5 billion people live in countries rich in oil, gas, or mineral resources.<sup>1</sup> While the development of these natural resources has the ability to positively impact citizens of the countries where these resources are located, often very little of the wealth created from extractive projects benefits the communities where they operate.<sup>2</sup>

Communities in areas affected by extractive projects often suffer from displacement, environmental pollution, and a lack of meaningful voice in decision making, as well as other harms and human rights abuses.<sup>3</sup> Within these communities, the rights of women and youth are particularly at risk. Furthermore, human rights defenders seeking to protect their communities and environment increasingly face threats and reprisals for their work opposing extractives projects.

In addition, many countries rich in oil and minerals face what has become known as a “resource curse,” where despite their abundance of natural resources, they see less economic growth, democracy, and equitable development than their resource-poorer neighbors. Corruption and poor governance are often at the root of this phenomenon; key to overcoming it are transparency and accountability, better resource management, stronger legal frameworks for businesses, and fiscal policies that benefit affected communities and society as a whole.<sup>4</sup>

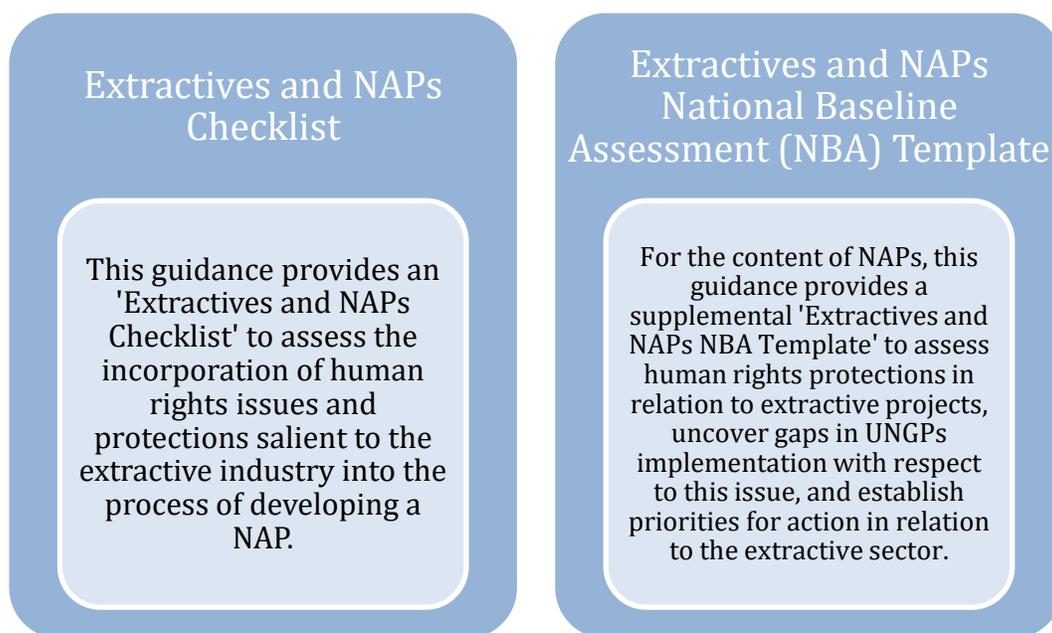
Despite the widely recognized ill-effects of extractive operations on the communities in which they operate, States, development banks, and extractive companies continue to support these projects without due consideration of their potential human rights impacts. In particular, indigenous and tribal peoples are often not consulted regarding potential project licenses that would affect their communities, as required by the internationally recognized right to free, prior, and informed consent (FPIC).

In this context, this guide is offered as a tool for States and other stakeholders to evaluate the human rights impact of potential and ongoing extractive projects in the framework of National Action Plans (NAPs) on business and human rights. As a preliminary matter, the United Nations Guiding Principles on Business and Human Rights (UNGPs) apply to all States and business enterprises “regardless of their size, sector, location, ownership and structure.” Following the adoption of the UNGPs in 2011, the UN Human Rights Council called on all Member States to draft NAPs on business and human rights. While a State must consider all sectors and industries when developing a NAP on business and human rights, given the high likelihood of adverse impacts caused by extractive projects, States that are rich in natural resources and/or home to multinational extractive companies should give specific consideration to the extractive sector within the substantive framework of their NAP.

## II. ABOUT THIS GUIDANCE

This report provides guidance on how human rights issues related to the extractive sector can be addressed in NAPs on business and human rights, as well as other similar policies. This guide is intended for use by both States with large amounts of oil, gas, and mineral wealth and extraction (host States) and States where multinational extractive companies are domiciled or registered (home States).

This document contains two application tools:



While it is beyond the scope of this publication to present an in-depth analysis of all of the human rights implications of extractive projects, this guidance aims to provide a set of practical tools through which States, in conjunction with civil society and other relevant actors, can explore these specific challenges. Through the NAP checklist and NBA template, States can analyze existing legal frameworks and policy responses, and propose new laws, policies, and practices that respond specifically to the human rights risks presented by the extractive industry.

The practical tools included in this guidance are intended for use in conjunction with the “NAPs Toolkit” developed by the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR).<sup>5</sup> This guidance is the third in a series of thematic publications focusing on specific groups of rights holders or topics particularly relevant to the issue of business and human rights. As such, it draws on prior guidance in the series: the “Children’s Rights in National Action Plans (NAPs) on Business and Human Rights” thematic supplement, published by ICAR, DIHR, and UNICEF in 2015, and the “Human Rights Defenders in National Action Plans (NAPs) on Business and Human Rights” thematic supplement, published by

ICAR and the International Service for Human Rights (ISHR) in 2016.<sup>6</sup> To the extent that human rights defenders are individuals protecting their rights in the context of extractive operations, the ICAR-ISHR Guidance on Human Rights Defenders should be cross-referenced. Similarly, to the extent that human rights considerations specific to the extractive industry impact on children, reference should be given to the ICAR-DIHR-UNICEF Guidance on Children's Rights in NAPs.

This extractive industry guidance draws on ICAR's expertise in the creation, implementation, and revision of NAPs on business and human rights. It also draws upon the extensive research and analysis conducted over the past decade by the Due Process of Law Foundation (DPLF)'s Human Rights and Extractive Industries program. Its content was revised on the basis of consultation with other civil society organizations working in the field of business, human rights, and the extractive industry.

This guidance should be taken as a set of minimum elements for consideration in the creation of a NAP. Moreover, States should always consult with communities affected by extractive operations throughout the development and implementation of a NAP to ensure that it will be as effective as possible.

### III. EXTRACTIVES AND NAPS PROCESSES

Communities in areas where extractive projects are being explored, planned, constructed, operated, or closed (“affected communities”) often face a number of human rights risks and harms, including, but not limited to: forced displacement; violence by public or private security forces; environmental pollution; criminalization of human rights defenders and social leaders; and community division. These problems are often exacerbated by a lack of meaningful community voice in decision-making processes.

Human rights concerns are particularly serious when communities are displaced and resettled to make way for extractive industry projects. Displacements may result from an extractive project’s environmental effects or because of direct pressure, including physical force, by the State or an extractive company.<sup>7</sup> These situations often have grave and irreversible effects on communities, including denying fulfilment of their basic rights to livelihoods, cultural integrity, shelter, and water. Women and youth community members often suffer most severely under these conditions.

The following examples help to elucidate the types of human rights impacts faced by communities affected by extractive projects, and how these often lead to displacement:

- In Bajo de la Alumbrera, Argentina, farmers and stockbreeders were forced to leave their traditional residences and farms due to a nearby mining project. The mine’s pollution killed livestock, deteriorated the water supply, and led to an increase in serious illnesses.<sup>8</sup>
- In Honduras, it was reported that the licensee company of the Entre Mares mine urged—and in some cases forced—neighboring communities to sell their land. These communities now face serious health problems: the mine’s pollution of the local water supply has caused lead poisoning, gastrointestinal issues, and painful bodily disfigurements.<sup>9</sup>
- Approximately 400 families have been displaced by exploratory blasting and water contamination since 2003 in the Indian State of Chhattisgarh following the creation of the South Eastern Coalfields Limited (SECL). The company destroyed homes, farmland, and animal habitats without the consent of the affected people.<sup>10</sup>
- In the Central Kalahari Game Reserve, Botswana, the government forcibly displaced the San indigenous peoples from their ancestral lands to open the land for large-scale diamond mining.<sup>11</sup>
- In the Democratic Republic of the Congo (DRC), the diamond mining industry has led not only to mass displacement of the Congolese people, but also increased violence due to the presence and control of rebel factions in the area utilizing mining activities to finance insurgency.<sup>12</sup>

The State is obligated under international law to “consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them.”<sup>13</sup> This includes undertaking projects that affect indigenous peoples’ rights to land, territory, and resources, including mining projects and other utilization or exploitation of natural resources.<sup>14</sup> Consultations must be undertaken with the objective of obtaining consent.<sup>15</sup> In situations where: (1) indigenous peoples would be relocated from their land, or (2) hazardous materials are to be stored or disposed of on indigenous peoples’ lands or territories, consent is not just the goal of consultation, but a requirement.<sup>16</sup>

Expanding upon these universal UN standards, the inter-American human rights system requires that free, prior, and informed consent of any potentially impacted indigenous or tribal community be obtained regarding “large-scale development or investment projects that would have a major impact” within their territory.<sup>17</sup> This includes “a myriad of activities, such as mining, oil and gas, [and] infrastructure.”<sup>18</sup> Such consent must be obtained in accordance with the customs and traditions of the affected community.<sup>19</sup>

It is also worth noting that standards are moving forward within the private sector as well, as more and more mining companies have adopted public positions in favor of FPIC in recent years.<sup>20</sup> In preparing NAPs, States should consider how to further this trend, such as by incentivizing companies to actively and publicly support the right to free, prior, and informed consent.

Consultation and consent are important given that very few communities benefit from extractive operations in a way that fully compensates for the resulting negative economic, environmental, and social impacts. In Guatemala, for example, a study found that the Marlin Mine, over its entire lifecycle, cost far more in environmental damage than it provided in economic benefit.<sup>21</sup> Furthermore, the benefits tend to be enjoyed disproportionately by companies and political elites; very little trickles down to the community level where the negative impacts of extractive projects are ultimately absorbed. Moreover, the amount paid in taxes or royalties by companies is not always publicly available information (under law or in practice), making it difficult for affected communities to hold their governments and companies accountable. There are, however, a number of voluntary and regulatory initiatives which seek to address this issue, such as the Extractive Industries Transparency Initiative (EITI), the European Union Transparency Directive, and national laws, such as the Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1504 in the United States,<sup>22</sup> and the Extractive Sector Transparency Measures Act (ESTMA) in Canada.<sup>23</sup> Therefore, in accordance with developing international standards and best practices, all States should implement, via NAPs and other policies, economic development plans that ensure impacted communities receive a fair share of revenue and

exercise adequate community voice and agency in determining both whether and how a project should proceed, and how to invest revenue created from a project.

States are also obligated under international law to ensure that business operations, including extractive projects, do not violate the human rights of individuals and communities in which they operate. The right to effective remedy is also well-established under international law.<sup>24</sup> As such, States must ensure that there is a legislative and regulatory system in place to provide access to effective remedy when such violations do occur. Specifically, home States where extractive companies are headquartered or registered must also put in practice effective grievance mechanisms for communities or individuals affected by the acts of these companies' subsidiaries operating in third countries.<sup>25</sup> In addition, pursuant to the global consensus established around the Sustainable Development Goals (SDGs), States should ensure that natural resource revenues are used to reduce inequality and promote development in affected areas, in line with internationally accepted principles of sustainable development.

While some of the human rights risks in the extractive industry context are present in other sectors and industries, the particularly strong nexus between extractives and human rights abuses make it incumbent upon States with large amounts of oil, gas, and mineral wealth, and States where multinational extractive companies are domiciled, to take these sector specific issues into consideration in the creation of NAPs on business and human rights. Furthermore, given the key role that the extractive industry plays in global infrastructure and economic development, specific focus on this sector in the NAP process can also help align State practice and policy not only with the UNGPs and other business and human rights frameworks, but with other global standards and norms regarding sustainable development.

### ***1. Engaging with communities affected by extractive operations***

As mentioned above, there are a number of direct human rights risks and impacts that arise in the context of extractive operations. As such, as part of the State's consideration of the extractive industry in a NAP process, it is important that communities that have been, or could be, negatively impacted during the course of extractive operations are fully consulted with and able to participate in all stages of development, monitoring, evaluation, and updating of NAPs. This means that States should take fully into account language, culture, geography, and gender.

Inclusive and adequate stakeholder consultation, both during the creation of an NBA and in the process of drafting the content of the NAP, is critical to the legitimacy and credibility of a NAP process. In some instances, a lack of consultation has led to public criticism and negative repercussions for the validity of a NAP.

- Following the release of the Colombian NAP in December 2015, civil society organization Tierra Digna published a seven-point critique of the NAP process and content. The first point raised was the limited participation of civil society in the creation of the NAP; in particular, the lack of effective participation of communities affected by corporate-related human rights abuses.<sup>26</sup>
- In Mexico, the “Focal Group on Business and Human Rights,” comprised of nine civil society organizations, was included as a member of a multi-stakeholder steering group as part of the NAP process. In addition, the Focal Group independently created an official NBA, which was used as a reference by the government during the NAP process. However, following the release of the draft NAP, the Focal Group withdrew from the NAP process, citing in part the failure of the process to include in a “transparent, participative, inclusive, and informed” manner stakeholders affected by corporate activities during the draft process, and in the consultation process of the draft NAP.<sup>27</sup>

Consulting affected communities during the NAP process in a manner that is inclusive of diverse communities, representative of different regions and origins, and well-resourced enables States to learn from and incorporate the views and experiences of individuals affected by extractive operations, in order to gain insight into how existing policies relating to human rights and the extractive industry affect local communities and how to better address concerns relating to the extractive sector. For example, affected community members can speak to the impacts of current national and subnational regulations around approving oil, gas, and mining projects, including the application of consultation and consent procedures (such as FPIC); potential environmental, economic, social, and cultural impacts; guidance and criteria relating to resettlement action plans; and company disclosure of human rights impacts and payments to government.

This type of direct consultation with individuals affected by extractive operations builds and strengthens relationships between State officials and stakeholders to facilitate future consultation, feedback, and buy-in during NAP implementation, evaluation, and revision. It also helps to demonstrate the States’ commitment to prioritizing those negatively impacted by extractive sector operations in the NAP.

In addition, many affected community members who feel their rights will be or are negatively impacted by an extractive project and speak out against it are also human rights defenders

(HRDs). HRDs often face significant risks to their lives and livelihoods; they often work under threats of abductions, surveillance, intimidation, destruction of sources of livelihood, violence, enforced disappearance, and death as a result of their efforts to defend human rights in the face of harmful business activities.<sup>28</sup> The recent global downturn in mineral prices may serve to exacerbate this situation even further, as States become even more desperate to push projects forward to increase foreign direct investment and the creation of revenues and reduce perceived obstacles, such as social and environmental regulations. As such, not only is it crucial to ensure that human rights defenders are consulted throughout the NAP process, but that their participation is facilitated in a way that enables them to engage in a manner that does not put their lives or safety at risk and ensures that the results of consultation are genuinely taken into account by all parties. Third party observation of consultations may help to reduce the risk for defenders and communities. More specific information on the issue of human rights defenders is laid out in the ICAR-ISHR Guidance on Human Rights Defenders.

## ***2. Reflections on existing NAPs on Business and Human Rights***

At the time of publication of this guidance, nineteen States have produced NAPs on business and human rights.<sup>29</sup> The quality of NAPs processes and their resulting content has varied greatly across existing NAPs and NAPs processes currently underway.

In relation to process, most NAPs have failed to: (1) conduct comprehensive baseline assessments to inform the NAP content; and (2) facilitate the participation and consultation of key stakeholders, including individuals historically discriminated against; Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) people; women; children; and afro-descendants.<sup>30</sup> As to the content, an overarching criticism of many existing NAPs is that they generally do not present new policy or legislative commitments; instead merely summarizing and supporting existing State commitments. Furthermore, most NAPs have failed to address the issue of access to remedy in a meaningful way.

As more States continue to undertake NAPs processes, it is crucial that they address these salient concerns, and commit to creating a NAP that is responsive to the situation on the ground, includes the involvement of a broad range of stakeholders (including affected communities), and contains bold, forward looking commitments.

## ***3. The Extractives and NAPs Checklist***

The following checklist contains the minimum elements needed for States to ensure that the human rights implications of the extractive industry are adequately taken into account as they begin the process of developing, evaluating, or revising a NAP. It is designed for use in concert with the NAP Checklist found in the ICAR-DIHR NAPs Toolkit.

TABLE 1: EXTRACTIVES AND NAPS CHECKLIST

<b>Governance</b>	<ul style="list-style-type: none"> <li>• Ensure that government bodies with a remit to address the rights of individuals affected by extractive operations are included in the NAP process. Ensure a broad range of government actors, including not just Mining or Energy Ministries and Secretaries but also representatives from the National Human Rights Institution (NHRI) or Human Rights Ombudsperson and from organs in charge of indigenous rights, women's rights, and access to information.</li> </ul>
<b>Resources</b>	<ul style="list-style-type: none"> <li>• Allocate adequate resources for the consultation of stakeholders affected by extractive operations, taking into account applicable legal obligations such as FPIC.</li> </ul>
<b>Stakeholder Mapping</b>	<ul style="list-style-type: none"> <li>• Seek out stakeholders affected by extractive operations as part of a wider stakeholder mapping.</li> </ul>
<b>Participation</b>	<ul style="list-style-type: none"> <li>• Facilitate the active and safe participation of stakeholders, especially marginalized communities, affected by extractive operations, taking into consideration cultural traditions, language barriers, and timing issues.</li> </ul>
<b>National Baseline Assessment</b>	<ul style="list-style-type: none"> <li>• Incorporate and address human rights issues salient to the extractive industry in the NBA by fully involving stakeholders affected by extractive operations in the development and completion of the NBA, and integrate the results of the Extractives and NAPS NBA Template included in this guidance into the overall NBA process.</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>• Address international and regional standards relating to respect for human rights in the extractive industry, including the UN Declaration on the Rights of Indigenous People (UNDRIP), the Sustainable Development Goals (SDGs), the Voluntary Principles on Security and Human Rights (VPs), the International Code of Conduct for Private Security Service Providers (ICOCA), and the Extractive Industries Transparency Initiative (EITI), among others.</li> </ul>
<b>Content</b>	<ul style="list-style-type: none"> <li>• Include a statement of commitment to implementing the UNGPs and other business and human rights frameworks with respect to those negatively impacted by the extractive industry and ensure that all commitments relating to the extractive industry are specific, achievable, measurable, relevant, and time-specific.</li> </ul>
<b>Priorities</b>	<ul style="list-style-type: none"> <li>• Prioritize, in collaboration with stakeholders affected by extractive operations, the most serious extractive industry-related human rights abuses for action.</li> </ul>
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• Publish information about the NBA and NAP in an accessible, easy-to-understand format, in languages understood by all stakeholders, ensuring that any stakeholders affected by extractive operations who were consulted understand how their input was taken into account.</li> </ul>
<b>Follow-up</b>	<ul style="list-style-type: none"> <li>• Include stakeholders affected by extractive operations in the framework for monitoring and reporting on implementation of the NAP.</li> </ul>

## IV. EXTRACTIVES IN NAPs CONTENT

In undertaking a NBA and utilizing it as a tool to create a NAP, States should analyze and evaluate specific measures to guarantee both State protection and business respect for the rights of individuals and communities negatively impacted by extractive operations, as well as access to effective remedy when these rights have been violated.

In this context, State commitments to the rights of those affected by extractive operations must be holistic and universal, looking at the full range of ways in which individuals and communities are affected by extractive operations. The UNGPs, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the SDGs, should guide States in this respect. Similarly, so should international and regional standards on FPIC,<sup>31</sup> and other relevant international initiatives such as the Extractives Industries Transparency Initiative (EITI), the International Code of Conduct for Private Security Service Providers (ICOCA), and the Voluntary Principles on Security and Human Rights (VPS). Similarly, a gender perspective should always be included within State commitments to those adversely impacted by extractive operations.

The ‘Extractives and NAPs National Baseline Assessment (NBA) Template’ can be used to determine how the rights of those affected by extractive operations are considered as part of a State’s legal and policy framework on business and human rights and within the wider national, regional, and international contexts. It is designed for use together with the full NBA Template, contained in the ICAR-DIHR NAPs Toolkit, and subsequent thematic NBA templates on the rights of children and human rights defenders.

The following template contains the minimum scoping questions in relation to the protection of human rights in extractive operations that States should consider in creating a NBA.<sup>32</sup>

### *Overview of the Extractives and NAPs NBA Template*

1. LEGAL AND POLICY FRAMEWORK	2. EXPECTATIONS, INCENTIVES, AND SANCTIONS ON BUSINESS	3. REDRESS AND REMEDY	4. CONTEXT
<ul style="list-style-type: none"><li>• This section gathers information on the legislative framework and domestic and foreign policy initiatives in place to guarantee the State protects against extractive industry-related human rights abuse.</li></ul>	<ul style="list-style-type: none"><li>• This section gathers information on State policies, expectations, and incentives to ensure that businesses engaged in the extractive sector, both at home and abroad, respect human rights in their operations.</li></ul>	<ul style="list-style-type: none"><li>• This section gathers information regarding what institutions and avenues exist to ensure access to remedy for extractive industry-related human rights abuses.</li></ul>	<ul style="list-style-type: none"><li>• This section gathers information on the local context through international and local sources.</li></ul>

TABLE 2: EXTRACTIVES AND NAPS NATIONAL BASELINE ASSESSMENT (NBA) TEMPLATE

<b>1. LEGAL AND POLICY FRAMEWORK</b>	
States should assess the legal and policy frameworks in place to protect against extractive industry-related human rights abuses, and the degree to which these laws and policies contribute to preventing such abuses.	
1.1 International, Regional, and Other Standards	
INTERNATIONAL STANDARDS	<p>Has the State signed, ratified, and implemented relevant international human rights instruments, such as the:</p> <ul style="list-style-type: none"> <li>• Nine core international human rights instruments and their optional protocols, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;</li> <li>• UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;</li> <li>• UN Declaration on the Rights of Indigenous Peoples (UNDRIP);</li> <li>• International Labor Organization (ILO) Convention No. 169, Indigenous and Tribal Peoples Convention?</li> </ul>
<i>Most relevant to Section 1.1, 1.2, and 2.2 of the full NBA Template.</i>	
Status/Gaps:	
REGIONAL STANDARDS	<p>Has the State signed, ratified, and implemented relevant regional human rights instruments, such as the:</p> <ul style="list-style-type: none"> <li>• American Declaration on the Rights of Indigenous Peoples;</li> <li>• American Convention on Human Rights;</li> <li>• American Declaration on the Rights and Duties of Man;</li> <li>• African Charter on Human and Peoples’ Rights;</li> <li>• European Convention on Human Rights?</li> </ul>
<i>Most relevant to Section 1.1 and 1.2 of the full NBA Template.</i>	
Status/Gaps:	
OTHER STANDARDS	<p>What other relevant standards and initiatives related to the human rights impacts of the extractive industry has the State signed, engaged with, or otherwise endorsed, such as the:</p> <ul style="list-style-type: none"> <li>• Voluntary Principles on Security and Human Rights (VPs);</li> <li>• International Code of Conduct for Private Security Service Providers (ICOCA);</li> <li>• OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector;</li> </ul>

1. LEGAL AND POLICY FRAMEWORK	
	<ul style="list-style-type: none"> <li>• OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;</li> <li>• Extractive Industry Transparency Initiative (EITI) and its Civil Society Protocol;</li> <li>• The International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability?</li> </ul>
<i>Most relevant to Section 1.4 and 2.2 of the full NBA Template.</i>	
Status/Gaps:	

1.2 National Laws and Policies	
FREE, PRIOR, AND INFORMED CONSENT (FPIC)	<ul style="list-style-type: none"> <li>• Is the right to free, prior, and informed consent of potentially affected communities effectively guaranteed?</li> <li>• Is the government institution in charge of implementing consultations and guaranteeing FPIC independent? Does it have sufficient resources and capacity to operate effectively?</li> <li>• Are communities able to use their own traditional consultation processes, and are these processes and their outcomes taken into account by the State?</li> <li>• Is the implementation of extractive industry projects stopped when there are doubts about meaningful community participation in and support for the project? If not, what is the response of the State in such instances?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps:	
LAND TITLING AND USE; CUSTOMARY LAND	<ul style="list-style-type: none"> <li>• Are there laws and policies in place to guarantee clear and transparent processes to establish land title, and do they provide for the proper consultation of local communities?</li> <li>• Are there legal frameworks for the recognition of customary land in accordance with community traditions?</li> <li>• Are there laws and policies in place to guarantee due process and transparency in situations where land is potentially subject to transfer from traditional owners to extractive companies?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps:	

RESETTLEMENT	<ul style="list-style-type: none"> <li>• Does the State have guidance and criteria for resettlement compensation that reflects land tenure rights, household investment in agriculture and associated infrastructure, and loss of access to economic opportunities, including those losses faced by women and youth?</li> <li>• Are affected communities allowed to participate in decision-making processes regarding resettlement?</li> <li>• Are company resettlement action plans (RAPs) subject to final approval by the State, with the State bearing ultimate legal responsibility for their implementation in accordance with human rights principles?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps:	
ESIAs	<ul style="list-style-type: none"> <li>• Are there laws and policies in place to ensure that environmental and social impact assessments (ESIAs) are conducted before granting licenses or concessions in relation to extractive operations?</li> <li>• Does the State ensure that the development of ESIAs have the full participation of affected communities?</li> <li>• Are ESIAs conducted by the competent State institutions, or by independent and technically trained entities under strict State supervision?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps	
CORPORATE DISCLOSURE	<ul style="list-style-type: none"> <li>• Are there laws and policies in place that require oil, gas, and mining companies to disclose information on their human rights impacts in an ongoing manner?</li> <li>• Do these laws also require companies to disclose their resettlement action plans (RAPs) and to formally update these RAPs on transfer of ownership?</li> <li>• Has the State adopted and implemented payment disclosure laws in relation to oil, gas, and mineral revenues at the project level?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps:	
TRANSPARENCY	<ul style="list-style-type: none"> <li>• Has the State instituted public tender processes for oil and gas blocks and mining concessions?</li> <li>• Does the State maintain a central, public, geo-referenced and up-to-date cadaster of concession and licenses? Does the State make information on potential concession areas public?</li> </ul>

	<ul style="list-style-type: none"> <li>• Does the State make public all ESIA in a form and language easily accessible to civil society and local communities?</li> <li>• Does the State make clear, via publicly available information, how extractive sector revenues are spent by national and local governments?</li> <li>• Has the State implemented laws requiring contract disclosure with extractive industry companies, including contracts concluded by State-owned companies? Are these contracts made public in an open, timely, and accessible manner?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps:	
TAXES	<ul style="list-style-type: none"> <li>• Has the State adopted and implemented project-by-project taxation reporting requirements to facilitate revenue transparency and reduce risks of corruption?</li> <li>• Has the State developed effective and efficient administration, collection, and auditing of taxes from extractive industry companies at the local and national levels?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps:	
BENEFICIAL OWNERSHIP	<ul style="list-style-type: none"> <li>• Has the State adopted and implemented beneficial ownership legislation to ensure that the public understands the actual individuals who benefit from extractive operations?</li> <li>• Does the State maintain a public beneficial ownership registry?</li> <li>• If the State participates in EITI, does it publish beneficial ownership data in its EITI reporting?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps:	
SUSTAINABLE DEVELOPMENT	<ul style="list-style-type: none"> <li>• Are there laws and policies in place to ensure that national and subnational frameworks regulating the assessment, approval, operation, and closure of oil, gas, and mining projects are consistent with internationally accepted principles of sustainable development?</li> </ul>
<i>Most relevant to Section 1.5 of the full NBA Template.</i>	
Status/Gaps:	
SUPPLY CHAINS	<ul style="list-style-type: none"> <li>• Are businesses required, expected, or encouraged to undertake actions to ensure the absence of conflict minerals in their global supply chains (e.g., auditing, disclosure)? What efforts have been</li> </ul>

	<p>taken to raise awareness of these issues within the business community?</p> <ul style="list-style-type: none"> <li>• Are businesses required, expected, or encouraged to undertake actions to ensure the absence of human rights violations, such as forced or child labor, or social conflict and violence in their supply chains, and compliance with environmental sustainability standards?</li> </ul>
<p><i>Most relevant to Section 1.5 and 3.1 of the full NBA Template.</i></p>	
<p>Status/Gaps:</p>	
<p>DUE DILIGENCE</p>	<ul style="list-style-type: none"> <li>• To what extent and in what circumstances are extractive companies required or expected to undertake human rights due diligence?</li> <li>• Does the State provide any guidance or required methodology for due diligence processes?</li> </ul>
<p><i>Most relevant to Section 3.4, 4.1, and 4.2 of the full NBA Template.</i></p>	
<p>Status/Gaps:</p>	

## 2. EXPECTATIONS, INCENTIVES, AND SANCTIONS ON BUSINESS

States should assess what laws, policies, and mechanisms exist to educate and incentivize businesses engaged in the extractive sector to fulfil their duty to respect the human rights of individuals and communities impacted by their operations, both at home and abroad, and to sanction actions by business that violate these rights.

### PROACTIVE ENGAGEMENT ON BUSINESS RESPONSIBILITY

- Is the responsibility of extractive companies to respect and support human rights in their operations, including throughout their supply chains, clearly established in law and policy? If so, are there appropriate monitoring mechanisms and sanctions to enforce this duty?
- Are companies incentivized to consider and engage with community-based human rights impact assessment processes?

*Most relevant to Sections 2.1, 3.1, and 3.2 of the full NBA Template.*

Status/Gaps:

### FREE, PRIOR, AND INFORMED CONSENT

- Are there laws and policies in place that incentivize a culture of consultation and consent around the proposal, development, and implementation of extractive sector projects?
- Are companies required or encouraged to develop and comply with FPIC policies that meet or exceed the best industry standards?

*Most relevant to Sections 3.1, 3.3, and 3.4 of the full NBA Template.*

Status/Gaps:

### RESETTLEMENT

- Are there laws and policies in place to ensure that companies' resettlement action plans follow International Finance Corporation (IFC) Performance Standards 5 (PS5), including the obligations to actively engage with affected communities, avoid resettlement whenever possible, and restore livelihood?

*Most relevant to Sections 3.1, 3.3, and 3.4 of the full NBA Template.*

Status/Gaps:

ESIAs	<ul style="list-style-type: none"> <li>• Are there laws and policies in place to incentivize companies to disclose all information relevant to the elaboration of ESIAs, including assessment of human rights impacts?</li> <li>• Does the State ensure that businesses fully implement their mitigation plans?</li> </ul>
<i>Most relevant to Sections 3.1, 3.3, and 3.4 of the full NBA Template.</i>	
Status/Gaps:	
PRIVATE SECURITY FIRMS	<ul style="list-style-type: none"> <li>• Are there laws and policies in place that clearly establish the legal responsibility of private security forces (including when they contract with public security forces) to respect human rights?</li> </ul>
<i>Most relevant to Section 1.4, 3.1, 3.2, 6.1, and 7.2 of the full NBA Template.</i>	
Status/Gaps:	
GRIEVANCE MECHANISMS	<ul style="list-style-type: none"> <li>• Are there laws and policies in place to encourage and support the establishment of effective company or project level grievance mechanisms to address human rights violations, consistent with the UNGPs? Is there monitoring of such mechanisms by an independent third party with input from affected communities?</li> </ul>
<i>Most relevant to Sections 27, 28, and 31 of the full NBA Template.</i>	
Status/Gaps:	
GENDER EQUALITY	<ul style="list-style-type: none"> <li>• Are there laws and policies in place to incentivize companies to promote gender equality in community engagement policies and practices, in order to avoid negative gender impacts and ensure that women have access to the potential economic benefits of extractive projects?</li> </ul>
<i>Most relevant to Section 7 of the full NBA Template.</i>	
Status/Gaps:	

<b>3. REDRESS AND REMEDY</b>	
States should assess what judicial and non-judicial remedies are available to individuals affected by extractive operations, and their effectiveness.	
JUDICIAL REMEDY	<ul style="list-style-type: none"> <li>• Are there affordable, prompt, and effective judicial remedies before independent and impartial tribunals for extractive industry-related human rights abuses?</li> <li>• Does the State guarantee non-recurrence in cases of extractive industry-related human rights abuse?</li> <li>• Do effective reparation mechanisms exist to prevent and mitigate the violation of FPIC in situations where indigenous peoples and communities have been affected by extractive projects without the proper prior consultation?</li> </ul>
<i>Most relevant to Section 1.6 and all sections under UNGPs 25 and 26 of the full NBA Template.</i>	
Status/Gaps:	
ACCESSIBILITY	<ul style="list-style-type: none"> <li>• Are instruments for access to justice for victims of extractive industry-related human rights abuses accessible, taking into account geographic, linguistic, and cultural barriers?</li> </ul>
<i>Most relevant to all sections under Pillar III of the full NBA Template.</i>	
Status/Gaps:	
ACCESS TO INFORMATION	<ul style="list-style-type: none"> <li>• Does the State facilitate access to information in relation to available remedy mechanisms, including judicial and other state-based grievance mechanisms, as well as non-State-based grievance mechanisms, such as those implemented by companies, multistakeholder initiatives, and international institutions? Is this information easily accessible and digestible?</li> </ul>
<i>Most relevant to all sections under Pillar III of the full NBA Template.</i>	
Status/Gaps:	
STATE-BASED NON-JUDICIAL MECHANISMS	<ul style="list-style-type: none"> <li>• Are there policies in place to create and promote access to State-based non-judicial grievance mechanisms, such as an OECD National Contact Point (NCP) or National Human Rights Institution (NHRI)?</li> <li>• Are these mechanisms legitimate, independent, accessible, predictable, equitable, transparent, and rights-compatible?</li> <li>• Are there law or policies in place to incentivize the good-faith participation of extractive companies in these mechanisms?</li> </ul>
<i>Most relevant to Section 25.1 and 27.1 of the full NBA Template.</i>	
Status/Gaps:	

<p>EXTRATERRITORIAL JURISDICTION</p>	<ul style="list-style-type: none"> <li>• Does the State exercise extraterritorial jurisdiction over the actions of businesses headquartered or registered therein, or their subsidiaries, for human rights abuses committed abroad, particularly in relation to extractive-industry operations?</li> <li>• Is there a legally enforceable 'duty of care' for parent companies in terms of the human rights impacts of their operations and the operations of their subsidiaries, regardless of where the subsidiaries operate?</li> </ul>
<p><i>Most relevant to Sections 25.1, 26.2, and 26.3 of the full NBA Template.</i></p>	
<p>Status/Gaps:</p>	

<b>4. CONTEXT</b>	
In order to ensure that the laws, policies, and actions articulated through a NAP are as comprehensive as possible, States should consult existing guidance on their current policy framework in the completion of a NBA.	
For this section, it is recommended that the researcher use: <ul style="list-style-type: none"> <li>• Country-specific sources;</li> <li>• Universal Periodic Review recommendations;</li> <li>• UN Human Rights Council resolutions;</li> <li>• Concluding Observations, General Comments, and case jurisprudence of UN Treaty Bodies;</li> <li>• Reports, recommendations, and case law of relevant regional human rights system where applicable (e.g., the Inter-American and African human rights systems);</li> <li>• International, regional, national and local international civil society reports and recommendations;</li> <li>• Media reports.</li> </ul>	
INTERNATIONAL MONITORING	<ul style="list-style-type: none"> <li>• What recommendations on human rights defenders, business and human rights, civil society space, land and water rights, FPIC, UNDRIP, sustainable development, resettlement, gender equity, and other related issues have been issued to the State through the Universal Periodic Review?</li> <li>• What calls have been made to the State through UN Human Rights Council resolutions on those affected by extractive operations, including human rights defenders or the rights of indigenous peoples?</li> <li>• What Concluding Observations, General Comments, and case jurisprudence of the UN Treaty Bodies relating to business and human rights and the extractive sector exist?</li> <li>• What UN and/or regional Special Procedures recommendations pertaining to business and human rights and the extractive sector exist?</li> </ul>
<i>Most relevant to Sections 1.1, 1.2, and 2.2 of the full NBA Template.</i>	
Status/Gaps:	
CIVIL SOCIETY	<ul style="list-style-type: none"> <li>• What civil society campaigns related to the human rights impacts of extractive operations exist in the national context and what are their key messages?</li> <li>• What relevant information has been published by local, national, regional, and international civil society organizations?</li> </ul>
<i>Most relevant to Section 1.4 of the full NBA Template.</i>	
Status/Gaps:	

MEDIA	<ul style="list-style-type: none"><li>• What coverage have issues relevant to the human rights impacts of the extractive sector received in the local, national, and international media?</li></ul>
<i>Most relevant to Section 1.3 of the full NBA Template.</i>	
Status/Gaps:	

## ENDNOTES

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<sup>1</sup> *Extractive Industries Overview*, WORLD BANK, <http://www.worldbank.org/en/topic/extractiveindustries/overview#1>, (last visited Dec. 8, 2017).

<sup>2</sup> OXFAM AT A GLANCE: NATURAL RESOURCES AND RIGHTS, OXFAM AMERICA (2015), <https://www.oxfamamerica.org/static/media/files/EI-at-a-glance-Feb15update.pdf> (last visited Dec. 8, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> See Jeffery Sachs and Andrew Warner, *Natural Resource Abundance and Economic Growth*, Nat'l Bureau of Econ. Res., Working Paper No. 5398 (Dec. 1995), <http://www.nber.org/papers/w5398.pdf> (last visited Dec. 8, 2017); Daniel Kaufman, *Poverty in the Midst of Abundance: Governance Matters for Overcoming the Resource Curse*, THE BROOKINGS INST. (Sept. 13, 2012), <https://www.brookings.edu/opinions/poverty-in-the-midst-of-abundance-governance-matters-for-overcoming-the-resource-curse/> (last visited Dec. 8, 2017).

<sup>5</sup> NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS TOOLKIT: 2017 EDITION, INT'L CORP. ACCOUNTABILITY ROUNDTABLE & DANISH INST. FOR HUM. RTS.(2017). The NBA template published in this report is, at the time of publication, open for consultation; therefore, this supplement references the original NBA template, published by ICAR-DIHR in the first edition of the NAPs Toolkit. 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, INT'L CORP. ACCOUNTABILITY ROUNDTABLE & DANISH INST. FOR HUM. RTS (2014).

<sup>6</sup> CHILDREN'S RIGHTS IN NATIONAL ACTION PLANS (NAPs) ON BUSINESS AND HUMAN RIGHTS, DANISH INST. FOR HUM. RTS., INT'L CORP. ACCOUNTABILITY ROUNDTABLE, & UNICEF (2015); HUMAN RIGHTS DEFENDERS IN NATIONAL ACTION PLANS (NAPs) ON BUSINESS AND HUMAN RIGHTS, INT'L SERV. FOR HUM. RTS. & INT'L CORP. ACCOUNTABILITY ROUNDTABLE (2016).

<sup>7</sup> See e.g., THE IMPACT OF CANADIAN MINING IN LATIN AMERICA AND CANADA'S RESPONSIBILITY, WORKING GROUP ON MINING AND HUMAN RIGHTS IN LATIN AMERICA, [http://www.dplf.org/sites/default/files/report\\_canadian\\_mining\\_executive\\_summary.pdf](http://www.dplf.org/sites/default/files/report_canadian_mining_executive_summary.pdf) (last visited Dec. 8, 2017) [hereinafter Impact of Canadian Mining].

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Elizabeth Puranam, *The Mine that Displaced India's indigenous people*, AL JAZEERA (July 7, 2016), <http://www.aljazeera.com/blogs/asia/2016/07/displaced-india-indigenous-people-160707062855721.html> (last visited Dec. 8, 2017).

<sup>11</sup> Africa: Conflicts and Mining-Induced Displacement, WAR RESISTERS' INT'L, (Feb. 1, 2008), <https://www.wri-irg.org/en/story/2008/africa-conflicts-and-mining-induced-displacement> (last visited Dec. 8, 2017); see also, Rory Carroll, *Bushmen fight for ancestral lands*, THE GUARDIAN (July 9, 2004), <https://www.theguardian.com/world/2004/jul/10/rorycarroll> (last visited Dec. 8, 2017).

<sup>12</sup> Africa: Conflicts and Mining-Induced Displacement, *supra* note 11.

<sup>13</sup> G.A. Res. 61/195, at art. 19, U.N. Doc. A/RES/61/195 (Sept. 13, 2007) [hereinafter UNDRIP].

<sup>14</sup> *Id.* at art. 32.

<sup>15</sup> Free, Prior, and Informed Consent of Indigenous Peoples, U. N. Off. of the High Commissioner on Hum. Rts. (Sept. 2013), <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf> (last visited Dec. 8, 2017).

<sup>16</sup> UNDRIP, *supra* note 13, at art. 10, 29; James Anaya, *Report of the former Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, ¶ 47, U.N. Doc. A/HRC/12/34 (July 15, 2009) [hereinafter Anaya Report].

<sup>17</sup> *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H. R. (ser. C) No. 172 ¶ 134 [hereinafter Saramaka Case].

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<sup>18</sup> *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, INTER-AM COMM. ON HUM. RTS, OEA/Ser.L/V/II. Doc. 47/15 (Dec. 31, 2015) [hereinafter IACHR Extractive Report].

<sup>19</sup> Saramaka Case, *supra* note 17, at ¶ 134.

<sup>20</sup> See, Community Consent Index 2015, 207 Oxfam Briefing Paper, OXFAM (2015), [https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bp207-community-consent-index-230715-en\\_0.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp207-community-consent-index-230715-en_0.pdf) (last visited Dec. 8, 2017).

<sup>21</sup> Impact of Canadian Mining, *supra* note 7; LYUBA ZARSKY AND LEONARD STANDLEY, SEARCHING FOR GOLD IN THE HIGHLANDS OF GUATEMALA: ECONOMIC AND ENVIRONMENTAL RISKS OF THE MARLIN MINE, TUFTS U. GLOBAL DEVELOPMENT AND ENVIRONMENT INSTITUTE (2011).

<sup>22</sup> Section 1504 requires U.S. listed companies engaged in commercial development of oil, gas, and minerals to publish detailed reports of what they pay to U.S. and foreign governments on a country-by-country and project-by-project basis. In February 2017, U.S. Congress passed a joint resolution to repeal Section 1504; it is currently unenforceable. See, e.g. Cristina Narvaez, *Transparency in the Extractive Industry – The United States: from hero to zero?* DUE PROCESS OF LAW FOUNDATION BLOG (Apr. 18, 2017), <https://dplfblog.com/2017/04/18/transparency-in-the-extractive-industry-the-united-states-from-hero-to-zero/> (last visited Dec. 8, 2017).

<sup>23</sup> The ESTMA requires certain extractive businesses to report annually on specific payments to Canadian and foreign governments. For more information, see *Extractive Sector Transparency Measures Act (ESTMA)*, NATURAL RESOURCES CANADA: GOVERNMENT OF CANADA, <https://www.nrcan.gc.ca/mining-materials/estma/18180> (last visited Dec. 8, 2017).

<sup>24</sup> See, generally, Committee on Economic, Social, and Cultural Rights, General Comment No. 9: The Domestic Application of the Covenant, ¶19, U.N. Doc. E/C.12/1998/24 (Dec. 3, 1998); Bithashwiwa & Mulumba v. Zaire, Hum. Rts. Comm. No. 241/1987, ¶14, U.N. Doc. CCPR/C/37/D/241/1987 (Nov. 29, 1989) (this right has also been explicitly recognized by a number of other UN and regional human rights bodies).

<sup>25</sup> E.g., IACHR Extractive Report, *supra* note 18; Committee on Economic, Social, and Cultural Rights, General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UN Doc. E/C.12/60/R.1 (Oct. 17, 2016).

<sup>26</sup> *Las 7 Perlas del Plan Nacional de Acción de Empresas y Derechos Humanos*, TIERRA DIGNA <http://tierradigna.org/pdfs/Las%207%20perlas%20del%20PNA.pdf> (last visited Dec. 8, 2017).

<sup>27</sup> *Altera sociedad civil sobre omisiones en la creación del Programa Nacional de Empresas y Derechos Humanos en México*, EL GRUPO FOCAL DE SOCIEDAD CIVIL (Mar. 16, 2017), [https://www.projectpoder.org/wp-content/uploads/2017/03/Comunicado\\_OSC\\_PNEDH.pdf](https://www.projectpoder.org/wp-content/uploads/2017/03/Comunicado_OSC_PNEDH.pdf) (last visited Dec. 8, 2017).

<sup>28</sup> E.g., Michel Forst, *Supporting and protecting defenders who work on business and human rights*, INT'L SERVICE FOR HUM. RTS., (Nov. 16, 2014), <http://www.ishr.ch/news/supporting-and-protecting-defenders-who-work-business-and-human-rights>; INT'L SERVICE FOR HUMAN RIGHTS, THE ROLE OF BUSINESS AND STATES IN VIOLATIONS AGAINST HUMAN RIGHTS DEFENDERS OF LAND RIGHTS, THE RIGHT TO TERRITORY AND RIGHTS RELATED TO THE ENVIRONMENT (2015); HUMAN RIGHTS WATCH, AT YOUR OWN RISK: REPRISALS AGAINST CRITICS OF WORLD BANK GROUP PROJECTS (2015).

<sup>29</sup> At the time of publication of this report, the following countries have published NAPs: Belgium, Chile, Colombia, Czech Republic, Denmark, France, Finland, Germany, Ireland, Italy, Lithuania, Netherlands, Norway, Poland, Spain, Sweden, Switzerland, United Kingdom, and the United States. *National Action Plans on Business and Human Rights*, DANISH INST. FOR HUM. RTS, <https://globalnaps.org/> (last visited Dec. 8, 2017).

<sup>30</sup> E.g., ASSESSMENT OF EXISTING NATIONAL ACTION PLANS (NAPS) ON BUSINESS AND HUMAN RIGHTS: AUGUST 2017 UPDATE, INT'L CORP. ACCOUNTABILITY ROUNDTABLE, DEJUSTICIA, & EUR. COALITION FOR CORP. JUST. (2017).

<sup>31</sup> Anaya Report, *supra* note 16, at ¶ 47; see also, IACHR Extractive Report, *supra* note 18; Saramaka Case, *supra* note 17, at ¶ 134.; Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and reparations, Inter-Am. Ct. H.R. (June 27, 2012).

<sup>32</sup> This thematic supplement references the NBA template provided in the 2014 edition of the ICAR-DIHR NAPs Toolkit. At the time of publication of this report, the updated NBA template contained in the 2017 edition of the ICAR-DIHR NAPs Toolkit was open for consultation, and not yet finalized. 23