

NATIONAL BASELINE ASSESSMENTS FOR THE IMPLEMENTATION OF THE U.N. GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS IN GUATEMALA

GENERAL CONSIDERATIONS*

INTRODUCTION

The objective of the National Baseline Assessment (NBA) for the Implementation of the U.N. Guiding Principles on Business and Human Rights (UNGPs) is to identify the implementation status of the UNGPs and other business and human rights frameworks in Guatemala through an analyze the legal system of the country, and identify gaps in both legislation and its implementation which may result in corporate-related human rights abuse.

The results of the NBA seek to generate useful data to establish an effective dialogue between various stakeholders on the topic, as well as to provide inputs to the future creation of a National Action Plan (NAP) on business and human rights.

The UNGPs are structured around three pillars: The State duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy. The NBA analyzes the States' implementation of Pillars I and III; specifically, those Guiding Principles which represent obligations of the State.

The NBA is primarily based on official information, facilitated by the collaboration of the *Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos* (COPREDEH), the executive-based entity tasked with addressing the issue of business and human rights.

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The Constitution of the Republic of Guatemala complies with the obligation of the State to protect against human rights abuses, and contains all the necessary elements for the implementation of the UNGPs; however, the legal framework in Guatemala does not currently consider private sector activities as being able to violate human rights.

In general, it can be said that government agencies do not consider business or human rights within their mandate. Gaps in the domestic legal framework, scarce legislation on the subject matter coupled with lack of implementation, and the lack of policies promoting the corporate responsibility to respect human rights all contribute to the lack of implementation of the UNGPs by the Guatemalan State.

In general terms, Guatemala is in the initial stages of addressing issues of business and human rights. Government institutions currently lack a focus on business and human rights, both within their internal policies and external activities, evidenced by the scarcity of public information on the subject of human rights and the absence of

* The following is a partial translation of a larger document produced by UDEFEQUA outlining the most relevant conclusions from their analysis of the implementation of the UNGPs and other business and human rights frameworks through conducting a shadow National Baseline Assessment (NBA) on the Implementation of the UNGPs in Guatemala.



information relating to business and human rights. This is a large problem, especially when considering that these State institutions are tasked with guaranteeing and protecting human rights.

Especially important to highlight is the lack of State focus on sectors which present elevated risk towards vulnerable populations, such as women indigenous people and children. These sectors include the textile, extractive, and agriculture industries. The NBA did not find any special initiatives directed towards these groups within the framework of promoting business respect for human rights. Instead, the NBA revealed irreverence towards culturally sensitive considerations, which will continue to propagate the marginalization of indigenous populations through State policies.

In relation to immediate actions, the State should consider creating a more robust process of disseminating information relating to the UNGPs to relevant government entities, and increased capacity building particularly with government institutions who have a direct or indirect relationship with the subject matter; for example, the Ministry of Environment and Natural Resources, Ministry of the Economy, Ministry of Labor and Social Welfare, Ministry of Energy and Mines, and the Ministry of Foreign Relations. The State should also prioritize the dissemination of guides and other materials related to the UNGPs through media and other means to the general public and the private sector.

It is also extremely important for the State to strengthen its focus on the prevention of human rights abuses by business. The NBA did not find sufficient mechanisms which seek to prevent business-related conflict, and existing mediation efforts are insufficient to fulfill demand, given the high level of conflict present in different areas of the country.

There exist a number of challenges in Guatemala in relation to access to remedy. Although Guatemala provides judicial mechanisms for accessing remedy, the NBA did not find any non-judicial mechanisms in Guatemala that could serve as alternatives for victims of corporate-related abuse. The only example of a situation where effective non-judicial remedy was realized in Guatemala is the case of the Chixoy Hydroelectric Dam, which can serve as a good example of how the State can construction an effective non-judicial remedy system in cases of human rights abuses.