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UN FORUM SERIES – The UN Guiding Principles in the Americas: Moving Forward?

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Much discussion has taken place about the development of a business and human rights agenda in different settings; most notably, an important focus has been on the development of [National Action Plans \(NAPs\)](#) by European States, as well as on the adoption of a business and human rights perspective within the wider [EU corporate social responsibility agenda](#). Some focus has been on supply chains of different industries in Asia and Africa, particularly on the garment sector in the first case and on conflict-minerals in the second case.

Generally, the work and role of the UN Working Group on human rights and transnational corporations and other business enterprises in supporting the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) has been on the spotlight.

However, the case of Latin American States and the different human rights challenges they face in the context of business activity has been relatively absent from these discussions. Several developments that have taken –and are taking– place in 2015 tend to suggest that the topic will enter the agenda of the Organization of American States (OAS) agenda in a more permanent and clear manner.

At the institutional level

In January 2015, the [Organization of American States](#) held a [meeting](#) to discuss the *Promotion and Protection of Human Rights in Business*, having as its main objectives to foster dialogue among Member States on implementing the Guiding Principles at the domestic level and to share best practices and experiences in this regard, with the participation of OAS Member States, civil society, academia, international organizations and business.

This meeting, the first to discuss the implementation of the UN Guiding Principles in the Americas, saw several OAS Member States explain their different policies and domestic legal frameworks to support and promote corporate social responsibility practices broadly; however, few examples actually focused on the implementation of the UN Guiding Principles, with the exceptions of Chile and Colombia.

Ecuador, one of the leading voices in the movement for the development of a treaty on business and human rights, maintained its position on the need to develop binding international standards to ensure corporate compliance and respect of human rights. However, most of the other delegations were cautious in this regard.

A [second meeting](#) took place in late June, where the Latin-American member of the UN Working Group on human rights and transnational corporations and other business enterprises discussed with the delegations the ongoing efforts for the implementation of the UNGPs, with a special focus on the need to adopt NAPs.

In addition to the work developed in the OAS General Assembly, other developments have started to take place within the Inter-American System of Human Rights. In Washington, the Inter-American Commission on Human Rights has included this topic within its work plan for the following years, more precisely in the work of the Unit for Economic, Social and Cultural Rights (soon to transform into a Rapporteur).

This work stream is accompanied by the [signing of an agreement](#) between the Commission and the Danish Institute for Human Rights, which will contribute to the development of capacity on this topic in the region (with a specific focus on the development of National Action Plans by OAS Member States). However, no other clear measures have been announced.

On the other hand, there is not much to say –yet– regarding the work of the Inter-American Court of Human Rights in relation to the UNGPs. Despite the fact that its case law on indigenous peoples' rights in the context of extractive or development projects has been particularly instrumental in advancing their protection (most notably through the clarification of standards and actions that States need to undertake), and that they regularly refer to universal or regional standards in their analysis of the merits of the cases before them, they have yet to use or make reference to the UNGPs.

The same can be said of those cases where private corporations perform tasks or functions usually corresponding to the State, such as in the fields of education, health or private security. There are several areas of opportunities to advance the implementation and use of the UNGPs in Inter-American case law.

At the domestic level

Domestically, several States are starting to work on [processes to implement](#) the UN Guiding Principles, or are in the middle of them.

Such is the case of Chile, for example, one of the first to start a NAP drafting process. The same can be said of Colombia, who presented its draft National Action Plan during the last UN Forum on Business and Human Rights, which has a particular focus on integrating the business and human rights discussion in their post-conflict and peace-process context.

[Other States](#), such as Mexico, Argentina and Guatemala, have announced their intention to develop action plans on business and human rights, being at different stages of progress at the moment (but mostly in preliminary stages). Brazil is another State that is currently undergoing that process, as [confirmed](#) in early December 2015 during the first ever visit of the UN Working Group on business and human rights to a Latin-American State.

On the other hand, Ecuador, Venezuela, Bolivia and Cuba have been supporting the development of a binding instrument on human rights and transnational corporations, while deciding not to undertake domestic processes to implement the UNGPs for the time being.

While the observance of Inter-American case law may have already contributed to the implementation of different aspects of the UNGPs, Latin-American States need to make sure that their domestic policies and legislation are aligned with the Guiding Principles, if only to achieve the policy coherence that was consistently mentioned by John Ruggie as being one of the gaps for preventing and mitigating human rights abuses linked to corporations. The fact that large groups of indigenous peoples as well as important amounts of natural resources exist in the region calls for immediate measures to be taken to protect their integrity, as well as that of people living in poverty throughout the Americas.

Moving forward?

If the implementation of the UN Guiding Principles is to move forward, different measures and aspects should be addressed: a regional declaration on business and human rights could be a starting point, highlighting the different needs that exist in the region.

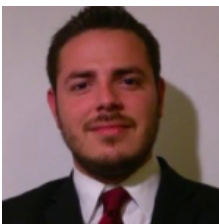
Such a document, while non-binding, could potentially make reference to indigenous peoples' rights, to sustainable development and the role of corporations, to the need to ensure corporate responsibility (including through home State regulation and jurisdiction), and to the role of the Inter-American System of Human Rights in using and interpreting the UNGPs.

This last point could be essential, since introducing the Guiding Principles to the Inter-American *corpus juris* could potentially contribute to strengthen their status, thereby 'hardening' their soft law character. The Inter-American Court needs to be more active in this regard, in order to close the circle and ensure that States take the appropriate measures to guarantee that corporations respect human rights within their jurisdiction.

Other measures are also required: the Inter-American Commission on Human Rights has an important role to play in capacity-building, not only of States but also of [national human rights institutions](#), who need to take a much more active role in this agenda and who could play an important part in relation to access to remedy. The need to translate the Guiding Principles to the regional context will also be of great help for the adoption of concrete actions, including for the development of NAPs in the region.

There are many ways to continue moving this agenda forward in the Americas: States, business and the society at large will all benefit from a clear regional action plan on business and human rights.

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