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


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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.

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I. INTRODUCTION

Approximately 3.5 billion people live in countries rich in oil, gas, or mineral resources.¹ 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.²

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.³ 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.⁴

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
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:

**Extractives and NAPs Checklist**

This guidance provides an ‘Extractives and NAPs Checklist’ to assess the incorporation of human rights issues and protections salient to the extractive industry into the process of developing a NAP.

**Extractives and NAPs National Baseline Assessment (NBA) Template**

For the content of NAPs, this guidance provides a supplemental ‘Extractives and NAPs NBA Template’ to assess human rights protections in relation to extractive projects, uncover gaps in UNGPs implementation with respect to this issue, and establish priorities for action in relation to the extractive sector.

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...
ICAR and the International Service for Human Rights (ISHR) in 2016. 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 crossed 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. 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:

1. 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.
2. 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.
3. 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.
4. In the Central Kalahari Game Reserve, Botswana, the government forcibly displaced the San indigenous people from their ancestral lands to make way for human and livestock grazing and for diamond mining.
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.” 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. Consultations must be undertaken with the objective of obtaining consent. 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.

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. This includes “a myriad of activities, such as mining, oil and gas, [and] infrastructure.” Such consent must be obtained in accordance with the customs and traditions of the affected community.

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. 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. 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).