

QUESTIONNAIRE - THEMATIC REPORT

BUSINESS AND HUMAN RIGHTS INTER-AMERICAN STANDARDS

1. INTRODUCTION AND OBJECTIVE

The Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (SRESCER) of the Inter-American Commission on Human Rights (IACHR) initiates a public consultation in order to receive information for the preparation of the thematic report on "Business and Human Rights: Inter-American Standards".

It is essential to consider that, in recent years, the international community has been discussing the treatment of the growing role of national and transnational companies in human rights violations and the corresponding obligations of States in terms of prevention of and response to such problems.¹ The Inter-American Human Rights System has not been unaware of these situations and its organs have repeatedly recognized that, under certain circumstances, a State may incur international responsibility for the attribution to that State of acts that violate human rights committed by non-state actors, which clearly includes private companies. In this context, it should be noted that, for example, in 2015 the IACHR approved a report on the obligations of States in the framework of extractive, exploitation and development activities in relation to the rights of indigenous peoples and communities of African descent.²

Afterwards, the General Assembly of the OAS approved Resolution AG/RES.2887 (XLVI-O/16) during the second plenary session held on June 14th, 2016, in which it requested the IACHR to conduct a study on Inter-American standards in matters of business and human rights based on an analysis of the conventions, jurisprudence and reports stemming from the Inter-American system, which may serve as an input for the efforts made by Member States in several national and international initiatives in this area.

Likewise, the Strategic Plan 2017-2021 of the IACHR identified this topic as a priority for the work of the SRESCER which was given the mandate to advance its treatment from a perspective of indivisibility.³

¹Consider, for example, the Guiding Principles on Business and Human Rights approved by the United Nations Human Rights Council through resolution A / HRC / RES / 17/4 on July 6th, 2011, and the adoption, through resolution A / HRC / RES / 26/9 of July 14th, 2014 issued by the same body, to establish an open intergovernmental working group for the elaboration of a legally binding treaty on the matter.

² IACHR. Indigenous peoples, Afro-descent Communities and Natural Resources: Rights Protection in the Context of Extraction, Exploitation and Development Activities (December 31st, 2015).

³ IACHR. Strategic Plan 2017/2021 OAS/ Ser.L / V / II.161 Doc. 27/17, p. 36.

To this end, the SRESCER has taken actions aimed at gathering preliminary information on the subject. For example, it held an open consultation within the framework of the First Forum of the Inter-American Human Rights System and participated and dialogued with key stakeholders within the III Regional Consultation for Latin America and the Caribbean on business and human rights organized by the Regional Office of the United Nations High Commissioner for Human Rights in Santiago, Chile. It also organized a workshop on experiences, challenges and good practices on National Action Plans in the area of business and human rights as well as a regional public hearing on Business and Human Rights within the framework of the 167th Period of Sessions of the IACHR in Bogotá, Colombia.

Based on the above, and recognizing the expectations and the high regional and international interest in this matter, the IACHR has decided to gather information from different stakeholders that will serve as inputs for the preparation of the aforementioned thematic report in order to analyze and systematize the Inter-American obligations and standards on the subject, to consider the facts and regional context of the topic and to make recommendations in order to offer support to OAS Member States in the area.

Through this approach, this report aims to be a tool to create, improve and strengthen legislation and public policies throughout the continent seeking to address human rights violations committed and/or facilitated by companies as well as to clarify and develop standards on legal obligations of OAS Member States in this field.

2. INSTRUCTIONS

The Inter-American Commission invites States, civil society and other interested actors to respond to this questionnaire.

- 1) The questionnaire can be answered partially or fully, according to the information available.
- 2) Clearly identify the numbers of the questions that you have answered in the document sent to the SRESCER.
- 3) Respond directly to each of the questions asked by providing specific and precise information of what is considered most relevant or significant.
- 4) When annexes are submitted, clearly identify and differentiate them from the main document. Previously published reports may be presented as annexes.
- 5) The answers to the questionnaire must be sent by Monday, May 14th, 2018.
- 6) The answers to the questionnaire can be sent electronically or by mail.

- By electronic means, to: CIDH_DESCA@oas.org

- By post, to the address:

Inter-American Commission on Human Rights
Organization of American States,
1889 F Street NW, Washington DC 20006,
addressed to the Special Rapporteurship on Economic, Social, Cultural and Environmental
Rights of the IACHR

7) Electronic submissions are preferred. Please indicate "Questionnaire on Business and Human Rights" in the subject line of the email.

8) Please do not send duplicates.

3. QUESTIONNAIRE

This form consists of 4 blocks which seek to collect relevant information for the preparation of the thematic report on Business and Human Rights: situations of context of particular concern (Block 1); regulatory frameworks and public policies (Block 2); mechanisms and standards in prevention and supervision (Block 3); and, mechanisms and standards on investigation, accountability and remedies (Block 4).

BLOCK 1 – Context

1. Provide information on the problems of greatest concern in your country and/or regionally within the American continent regarding direct or indirect human rights violations on groups in a particularly vulnerable situation in the framework of business activities. In particular:

- a. Human Rights Defenders
- b. Women
- c. Indigenous Peoples
- d. Communities of African descent
- e. LGBTI Population
- f. Migrants, Refugees, Stateless People and Displaced Persons
- g. Children and Adolescents
- h. Persons Deprived of Liberty
- i. People with Disabilities
- j. Elderly People
- k. Peasant Population
- l. Labor Unions and low-wage workers

2. Provide information on existing obstacles to the realization and enjoyment of human rights within the following contexts:

- a. Transitional justice processes and corporate accountability
 - b. Privatization of public services, in particular water and electricity, health, education, pension funds and security
 - c. Unstructured or informal economy
 - d. Business operations in sensitive and/or complex ecosystems
 - e. Role of States in multilateral credit organizations
 - F. Public investment and development projects
 - g. Negotiation of investment treaties
 - h. Economic diplomacy and activities to promote trade and investment
 - i. Public-Private associations
 - j. Purchase or public procurement of goods and services
 - k. Public company operations
 - l. Influence power of companies in the process of formulating norms and public policies related to the economic activity that they carry out
 - m. Technology, big data and cyber surveillance
3. Provide observations and comments on international legal obligations and standards, in particular those from the Inter-American Human Rights System, which you consider applicable to OAS Member States in each of the situations identified in Question 2.

BLOCK 2 – Regulatory frameworks and Public Policies

4. Provide information on regulatory frameworks (e.g legislation, etc) and public policies (e.g National Action Plans) on business and human rights. Identify and provide current norms and policies related to the matter.
5. Describe progress and challenges in the implementation of the regulatory frameworks and public policies mentioned above. Wherever possible, indicate the reasons that explain these challenges and the efforts that have been developed to overcome them.
6. Mention the indicators and official inter-institutional mechanisms which monitor and/or evaluate these advances and challenges. If they do not exist, what indicators and general mechanisms have been identified as the most appropriate.
7. Provide information on good practices aimed at compliance with human rights standards in the framework of business activities.
8. Provide observations and comments on international legal obligations and standards, in particular those arising from the Inter-American Human Rights System, which you consider applicable to OAS Member States regarding the establishment and implementation of regulatory frameworks and public policies on business and human rights, including extraterritorial application where appropriate.

BLOCK 3 – Prevention and Supervision

9. Identify and describe existing local, regional and/or international mechanisms to address prevention, due diligence and supervision actions related to the exercise of human rights in the context of business activities. Specify the relevance and the obstacles associated with each mechanism.
10. Provide information on prevention, due diligence and supervision in the States of origin of companies involved in human rights violations in territories of third States. Specify the relevance and the obstacles associate with each mechanism.
11. Provide observations and comments on international legal obligations and standards, in particular those from the Inter-American Human Rights System, which you consider applicable to OAS Member States in matters of prevention, due diligence and supervision in matters of business and rights human rights, including extraterritorial application where appropriate.

BLOCK 4 – Investigation, Accountability and Remedies

12. Identify and describe existing judicial and non-judicial mechanisms at the local, regional and international levels that address human rights violations related to business activities, particularly what are they and how effective are the available resources to affected individuals and communities? In this framework, provide information on relevant judicial and/or non-judicial decisions on the matter that have been issued or are in the process of being issued. Identify and describe the importance of the decision and, where possible, attach the respective decisions or pronouncements.
13. Describe obstacles (legal and practical) for the comprehensive reparation and access to justice for victims of human rights violations related to business activities in the American hemisphere.
14. Provide information on mechanisms of investigation, accountability and integral reparation for victims in the States of origin of companies involved in human rights violations in territories of third States. Specify and attach pertinent information.
15. Provide observations and comments on international legal obligations and standards, particularly those from the Inter-American Human Rights System, which you consider applicable to OAS Member States on investigation, accountability and remedies in matters of business and human rights, including extraterritorial application where appropriate.