

DEVELOPMENTS IN THE FIELD

The Experience of Multistakeholder Dialogue in the Process of Elaboration of the National Action Plan on Business and Human Rights in Peru

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Abstract

Multiple independent studies have highlighted the remarkable process of multistakeholder dialogue in the development of Peru's first National Action Plan (NAP) on business and human rights. While facing several challenges, not least a global pandemic, the process was indeed a success in so far as it opened up a new path for policy making in Peru: that of multistakeholder dialogue including actors who traditionally deeply mistrust each other. This piece describes the key enabling conditions and operational strengths that allowed for such a highly participatory process and, ultimately, resulted in some strong commitments on business and human rights.

Keywords: business and human rights; multistakeholder dialogue; national action plan; Peru

1. Introduction

Multiple independent studies have highlighted the remarkable process of elaboration of Peru's first National Action Plan (NAP) on Business and Human Rights¹. The Danish Institute for Human Rights, for example, noted civil society organisations' description of the process as a 'highly inclusive, democratic and decentralized' process, and 'a unique experience in a country where, often, government decisions are made centrally with limited consultation'². The former chair of the United Nations Working Group on Business and Human Rights (UNWGBHR) identified it as 'the best process in the world leading to a (NAP)', highlighting that it was 'very participatory, inclusive and adding actors with little or bad experience in seeking joint solutions'³.

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¹ The NAP 2021–2025 was approved by Decreto Supremo N°. 09-2021-JUS, of 11 June 2021, <https://cdn.www.gob.pe/uploads/document/file/2399831/Plan%20National%20of%20Acci%C3%B3n%20about%20Companies%20and%20Rights%20Humans%202021-2025.pdf?v=1636730881> (accessed 6 May 2024).

² The Danish Institute for Human Rights, *Gender in national action plans on business and human rights: where are we and where are we heading? Reflections from Peru, Thailand and Uganda*, (February, 2023), 10, https://www.humanrights.dk/files/media/document/Case_study_Gender%20in%20National%20Action%20Plans%20on%20Business%20and%20Human%20Rights.pdf (accessed 6 May 2024).

³ Dante Pesce, 'Sobre la obligatoriedad de la debida diligencia sobre empresas y derechos humanos en Perú (Prólogo)', in Fernández-Maldonado Enrique (ed.), *Conducta empresarial responsable y derechos humanos. Normas*

The process of elaboration of Peru's NAP faced several challenges. It took place during the profound political crisis that has engulfed the country since 2016, and the COVID-19 pandemic. In addition, it had to contend with many societal challenges: the lack of a culture of dialogue within Peruvian society, no human rights approach to public policy-making and the significant corporate capture of the State generated by historical levels of inequality in Peru. These challenges negatively impacted both the process of elaboration of the NAP and its outcome. However, the experience did open up a path for policy-making that until then had been little explored in Peru: that of multistakeholder dialogue including the business sector. This piece will describe the mechanisms used to achieve a highly participatory process, focusing on the 'enabling conditions' and the 'operational strengths' that allowed participants to maximise the positive results.

2. Enabling Conditions

The most important factor for a robust NAP process was the state's genuine commitment to have an NAP in place. The idea to create the NAP was born of the visit of the UNWGBHR to the country in July 2017. After this visit, the UNWGBHR stated in its May 2018 country visit report '[t]he Working Group welcomed ... the commitment [of the Government of Peru] to develop a National Action Plan on Business and Human Rights ...'⁴; and emphasised 'the need to further strengthen mechanisms for multi-stakeholder engagement when business-related decisions are made'⁵. The political decision to formally commit the government to the preparation of an NAP was facilitated by the Ministry of Justice and Human Rights (MINJUSDH, by its Spanish acronym).⁶ This ministry played a critical role from the outset, ensuring a basic level of stability and general coordination throughout the process.

The UNWGBHR's report also positively impacted some of the government's decisions in connection with the NAP⁷, such as the decision to leave the formulation of the plan under the jurisdiction of the MINJUSDH.⁸ Separately, Guideline 5 of Peru's National Human Rights Plan 2018–2021, approved in February 2018, also provided strong foundations, determining that the main objective of the future NAP on business and human rights would be to progressively implement the United Nations Guiding Principles on Business and Human Rights, which would be complemented by other relevant international

vinculantes y debida diligencia, (Universidad Antonio Ruiz de Montoya and Centro de Políticas Públicas y Derechos Humanos Perú Equidad, 2022), 16, (own translation, original in Spanish), <https://equidad.pe/publicacion/conducta-empresarial-responsable-yderechos-humanos-normas-vinculantes-ydebida-diligencia/> (accessed 6 May 2024).

⁴ United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru*, (May, 2018), A/HRC/38/48/Add.2, § 87, <https://documents.un.org/doc/undoc/gen/g18/129/16/pdf/g1812916.pdf?token=XpbgO59dvc1iAwKL8i&fe=true> (accessed 6 May 2024).

⁵ *Ibid.*, § 88.

⁶ The decision was formally adopted by the then Vice Minister of Human Rights, Gisella Vignolo Huamani. Mr. Edgardo Rodríguez Gómez led the process, first, as Director of Public Human Rights Policies, and later, as General Director of Human Rights.

⁷ Although the final report was published in May 2018, at the end of its visit in July 2017 the UNWGBHR delivered a preliminary report to the Peruvian government in which these recommendations were already included.

⁸ At the beginning of the process, a sector of the business community requested that jurisdiction over the NAP be assigned to an office of the Presidency of the Council of Ministers or the Ministry of Economy and Finance, arguing the impact it would have on the economic development of the country. This discussion was definitively settled with the approval of the process methodology in September 2019.

instruments. Importantly, it established that the methodology, diagnoses, baseline assessment and content of the NAP would be constructed in a broad, participatory, consensual and decentralised manner among the state, business, workers and civil society⁹.

3. Operational Strengths

A. Creating Trust

For the first time, the Peruvian government attempted to incorporate companies as relevant actors in human rights policy-making. This novelty brought with it an important challenge, given the limited experience of dialogue between the business sector and civil society, the deep distrust between these actors, and, especially, the mistrust of social sectors (civil society and grassroots organisations) in public authorities' capacity to guarantee corporate respect for human rights in a context of marked corporate capture of the State. This mistrust became evident from the first consultation on the NAP carried out by the MINJUSDH in November 2017. This meeting was characterised by the impossibility of a dialogue that would advance beyond mutual claims and serious questions to the State, from both sides. The climate of mistrust continued, and even seemed to increase, when, a little over one year later,¹⁰ in mid-January 2019, the MINJUSDH appointed a General Coordinator of the NAP to steer the process.¹¹ The coordinator's call for input was initially met by a generalised refusal from non-state actors to participate.

In response to the paralysis, the MINJUSDH decided to deploy a national training strategy to strengthen the ability of all different stakeholders to engage with the international business and human rights framework. A key objective was to enable all the key actors to participate in the multistakeholder dialogue stage in a better position, and to show them how the process of elaboration of a NAP could provide them with tools to strengthen their organisations. This strategy was maintained throughout the entire process, and became an operational strength that, at first, allowed 'the ice to be broken'; four months later, more than 60 organisations accepted to participate.

B. Support from the International Community

Another operational strength was the political support of international organisations such as the UNWGBHR, the International Labor Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Organization for Economic Cooperation and Development (OECD). The support from these organisations was crucial to ensure the process kept moving, particularly in light of constant resistance and pressure from some parts of the private sector. The technical and financial support from

⁹ Ministry of Justice and Human Rights, National Human Rights Plan 2018–2021, approved on February 2, 2018, guideline 5, strategic action AE1, pp. 166–167 (own translation, original in Spanish), <https://observatorioderechoshumanos.minjus.gob.pe/wp-content/uploads/2019/09/PLAN-NACIONAL-2018-2021.pdf> (accessed 6 May 2024).

¹⁰ After the approval of the PNDH 2018–2021, in February 2018, the country faced a serious political crisis that caused the process of preparing the NAP to stop throughout that year, except for a preparatory activity, carried out in November.

¹¹ Initially, this designation was made through a letter addressed by the general director of human rights to the person designated as such. Subsequently, in September 2019, it was formalised with the official approval of the process methodology.

the embassies of the United Kingdom, Germany, Sweden, Switzerland and the Netherlands, and the Friedrich Ebert Foundation, was also pivotal.¹²

C. Approval of a Widely Endorsed Methodology

Perhaps the most relevant operational strength was the approval and implementation of a robust methodology to guide the process. In April 2019, the MINJUSDH established a 'Working Group of the Executive Branch for the NAP' (GTPE, by its Spanish acronym). One of the GTPE's key tasks would be to gather and consolidate relevant proposals and documents from state institutions, as a preliminary step to consulting with nonstate actors. In May 2019, the MINJUSDH presented to the group a methodology proposal based on two guides: the 'Guidance on National Action Plans on Business and Human Rights', of the UNWGBHR¹³, and the 'Guidelines for States on the effective implementation of the right to participate in public affairs', of the OHCHR.¹⁴ The GTPE submitted the proposal for public consultation and received a total of 260 observations.¹⁵

The General Coordination of the NAP was in charge of systematising all observations in a single matrix, which was made known to all actors. To guarantee that all observations were considered, it proposed a review system, through a virtual table, whereby each observer identified the paragraph under comment and justified its observation, and the MINJUSDH responded by arguing its rejection if that was the case. After reviewing two additional versions of the document, the methodology was finally approved at a multistakeholder meeting and formalised through a vice-ministerial resolution at the beginning of September 2019.¹⁶ In this document, the GTPE and a newly created 'Multi-stakeholder Group' ('Mesa Multi-actor', in Spanish), made up of all the participating groups and institutions, were formalised as decision-making bodies for the NAP. They were to work under a scheme of a multistakeholder dialogue between equals, in good faith, transparently, decentralised and based on the search for consensus.¹⁷

D. Inclusive and Participatory Delivery

The multistakeholder review and approval scheme was strictly implemented in the following stages of the NAP development process. Although this required great efforts from the small General Coordination team and the teams of each of the participating groups, it became an operational strength because it clearly transmitted the government's will to incorporate all proposals and observations into the dialogue, even if they were ultimately not accepted. This way of operating increased the trust in, and credibility of,

¹² The participation of some of these organisations was expressly mentioned in the 'Metodología del proceso de elaboración del [PNA]', para 48-49. The ILO's support, for example, was formalised in the ILO Country Program - Peru 2020-2021, 5, <https://www.ilo.org/es/media/404206/download> (accessed 6 May 2024).

¹³ United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf (accessed 6 May 2024).

¹⁴ Office of the United Nations High Commissioner for Human Rights, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf.

¹⁵ The comments were requested by the general coordination and sent by the stakeholders via e-mail. A table format was used to ensure that the observations were systematised and publicised.

¹⁶ The 'Metodología del proceso de elaboración del [PNA] (Implementación del Lineamiento N° 5 del [PNDH] 2018-2021)' was approved by Resolución Viceministerial N° 001-2019-JUS, of 6 September 2019, <https://observatoriorederechoshumanos.minjus.gob.pe/wp-content/uploads/2019/10/Resoluci%C3%B3n-Viceministerial-N%C2%B0-001-2019-JUS.pdf> (accessed 6 May 2024).

¹⁷ Metodología del proceso de elaboración del [PNA], para 50-51, 60-63.

both the process and the actors, to the point that, at the end of the diagnosis stage, in December 2020, the number of participating institutions had doubled, reaching 132. This number now included representatives from the state, the business sector, indigenous peoples, civil society organisations, unions, international organisations and international cooperation.

The longest stage in the NAP development process (one and a half years) related to the preparation of the diagnosis and baseline assessment for 23 prioritised topics¹⁸. In all cases, an initial proposal was commissioned from prestigious university institutions¹⁹ (16 diagnoses), the MINJUSDH (5), the OECD (1), and the OHCHR (1). A review stage followed, under the participatory parameters already indicated (in some cases, a single diagnosis received close to 500 observations), which required multiple bilateral meetings (close to 300), strategically developed to guarantee that the documents reached the multistakeholder dialogue with an acceptable level of consensus. Working groups were also held on the most complex topics, in addition to specific sessions of the Multistakeholder Group for the final approval of all diagnoses. It should be noted that at this stage, an average of 90% agreement was reached regarding the nearly 3000 observations raised by participants across all the diagnoses. Any diverging positions were made public in the final documents, with the indication that they would be adequately addressed later in the process.

The third stage, which lasted five months, was the preparation of the NAP itself. This culminated in the approval of 97 action points, and 150 indicators and goals, most of which were to be delivered or overseen by the GTPE. Despite the efforts made, several proposed actions were not approved for reasons that deserve an explanation that goes beyond the objectives of this piece.

4. Conclusion

Peru's NAP on Business and Human Rights is a milestone in the country's history of public policy-making. The process lasted two and a half years and involved nearly 500 dialogue activities, many of which were compiled in the MINJUSDH Human Rights Observatory²⁰. The effort deployed by both state and non-state actors participating in the process demonstrated a genuine desire to seek understanding and common ground for this new public policy. The spaces for dialogue established by the NAP development process have now been strengthened and expanded to address the implementation stage²¹. It will

¹⁸ All diagnoses are available at: https://drive.google.com/drive/folders/1DTMhBkeCpcGbYB_l5TD7_FLqamKuHn. At the request of the Peruvian government, the OECD carried out a diagnostic study on the situation of responsible business conduct in Peru, which was incorporated as one of the central inputs of said diagnoses. The study, published in June 2020, is available at: https://www.investinperu.pe/RepositorioAPS/0/0/JER/DIRECTRICES_OCDE/Estudio-OCDEsobrepolicaspublicasdeconductaempresarialresponsablePeru.pdf (accessed 6 May 2024).

¹⁹ Four university organisations participated: the Institute of Democracy and Human Rights of the Pontifical Catholic University of Peru, the Institute of Ethics and Development of the Antonio Ruiz de Montoya University (Jesuits), the Center for Studies on Mining and Sustainability of the Universidad del Pacífico, and the Institute of Human Rights and Business of the University of Monterrey, Mexico.

²⁰ Ministry of Justice and Human Rights, Observatorio de Derechos Humanos, <https://observatoriorederechoshumanos.minjus.gob.pe/plan-nacional-de-accion-sobre-empresas-y-derechos-humanos/> (accessed 6 May 2024)

²¹ Through Resolución Directoral N°. 04-2022-JUS/DGDH, of April 21, 2022, the 'Guide to the operation of multi-actor coordination spaces for the implementation of the [PNA] 2021-2025' (original, in Spanish) was approved, which incorporated new spaces: a multistakeholder committee, a technical group on labour issues, and another on indigenous peoples, <https://cdn.www.gob.pe/uploads/document/file/3058409/Gui%CC%81a%20de%20functioning%20de%20espacios%20de%20coordinacio%CC%81n%20multiactor%20para%20la%20implementacio%CC%81n%20del%20PNA%202021-2025.pdf?v=1651611478> (accessed 6 May 2024)

depend on all the actors, but mainly the state, to ensure the great strides in participatory human rights policy-making witnessed through the NAP process bear fruit. In particular, the process must galvanise the construction of a culture of dialogue that strengthens public policy and concrete action to ensure respect for human rights in the field of business activities.

Cite this article: Federico Chunga Fiestas, 'The Experience of Multistakeholder Dialogue in the Process of Elaboration of the National Action Plan on Business and Human Rights in Peru' (2024) *Business and Human Rights Journal*, 1–6. <https://doi.org/10.1017/bhj.2024.11>