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# **Report on the Swiss strategy for the implementation of the UN Guiding Principles on Business and Human Rights**

Report of the Federal Council in fulfilment of postulate 12.3503, Alec von Graffenried, 14 December 2012

9 December 2016



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# 1 Summary

The present report and the National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights (NAP) that it contains have been drawn up in fulfilment of postulate 12.3503 *Eine Ruggie-Strategie für die Schweiz* ['A Ruggie Strategy for Switzerland']. The document sets out the position and expectations of the Federal Council with regard to the corporate sector, and presents – by means of 50 policy instruments – how Switzerland will implement the UN Guiding Principles on Business and Human Rights. The objective of the NAP is to improve the protection of human rights in the context of business activities. It also helps to communicate what the Federal Council expects of business enterprises, to raise awareness among and facilitate cooperation with the corporate sector, and also to improve the consistency of government action. The NAP does not create any new and legally binding measures. To monitor implementation, the Federal Department of Foreign Affairs (FDFA) and the Federal Department of Economic Affairs, Education and Research (EAER) will join with the various stakeholder groups to set up a six-strong multi-stakeholder Monitoring Group. The NAP will be revised in step with Switzerland's legislative periods.

## 2 Introduction

In fulfilment of postulate 12.3503 *Eine Ruggie-Strategie für die Schweiz* ['A Ruggie Strategy for Switzerland'], the Federal Council hereby submits to Parliament the present report and the National Action Plan for the Implementation of the UN Guiding Principles on Business and Human Rights (NAP) that it contains. The postulate mandates the Federal Council to submit a strategy for the implementation of the UN Guiding Principles on Business and Human Rights (referred to below as the 'UNGP') in Switzerland to the Federal Assembly. The strategy (NAP) should contain the following specific elements (cf. wording of postulate 12.3503):

1. *Integration of the paradigm shift resulting from John Ruggie's 'Protect, Respect and Remedy' framework, and thus a new definition of the concept of corporate social and environmental responsibility;*
2. *A description of the measures, outlined by Ruggie, that the Federal Council intends to implement to protect human rights, as well as the means of providing victims of human rights abuses better access to justice so that they can bring legal action and seek remediation;*
3. *Measures to resolve the present conflicts in federal government policy strategies between foreign trade and human rights protection objectives.*

Examining the specific details of current international law, political guiding principles and codes, the adoption of the UNGP authored by Prof. John Ruggie established the first international framework for business and human rights. The UNGP were endorsed unanimously by the UN Human Rights Council in 2011. The adoption of the UNGP signalled a paradigm shift by clarifying the complementary roles of States and business enterprises with respect to the protection of and respect for human rights in the context of business activities.

Switzerland is committed to protecting human rights. With this NAP implementing the UNGP, it is contributing towards the respect for human rights by business enterprises also when they operate outside of Switzerland. The report takes stock of current measures and sets out future action to protect human rights in connection with business activities, and to guarantee access to justice for victims of human rights abuses, thereby making it easier to seek remediation. The implementation of the UNGP will also be taken as an opportunity to strengthen cooperation between the federal agencies concerned, as well as policy consistency in general. The Federal Council requests that postulate 12.3503 be dismissed.

### 3 UN Guiding Principles on Business and Human Rights

The UN Human Rights Council endorsed the UNGP unanimously in June 2011<sup>1</sup>. The UNGP are rooted in an awareness that corporate activities not only lead to investment, jobs and economic growth, but can also have undesirable side-effects in certain situations. This perception has increased with advancing globalisation in recent decades, in addition to the view in some quarters that the national and international policy response has been inadequate<sup>2</sup>.

The framework contains 31 principles, which rest on three pillars:

1. The State duty to protect: The first pillar (Guiding Principles 1-10) emphasises the duty of all States to take the necessary action to protect the population from human rights abuses, whether committed by public or private-sector actors, including business enterprises. This can be achieved by means of legislation, incentives and support measures.
2. Corporate responsibility: The second pillar (Guiding Principles 11-24) describes the responsibility of business enterprises to respect human rights. To this end, business enterprises must exercise due diligence appropriate to the circumstances.
3. Access to remedy: The third pillar (Guiding Principles 25-31) highlights the responsibility of States and the corporate sector to permit access to effective remedy for those who are affected. This should be achieved by both judicial and non-judicial mechanisms.

### 4 Position of the Federal Council on the UN Guiding Principles on Business and Human Rights

#### 4.1 In general

The federal government provided both financial and substantial support to the drafting of the UN Guiding Principles on Business and Human Rights.

The UNGP represent an important step towards closing the relevant gaps in governance. They define the international policy framework for the State duty to protect, and corporate responsibility with regard to the impact of economic activity on human rights. As the outcome of a broad-based, six-year process of consultation led by the then-UN Special Representative John Ruggie, the UNGP are widely recognised among governments and business and civil society organisations. They have also been integrated into many other national and international processes and standards<sup>3</sup>. The broad acceptance enjoyed by the UNGP is a sign of a common international understanding of business and human rights, and the corresponding duties of the State. It helps to level the international playing field

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<sup>1</sup> Resolution A/HRC/RES/17/4 of 16 June 2011. The full text of the UNGP can be found at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>2</sup> The author of the UNGP, John Ruggie, described the background to his mandate in the following words: "The root cause of the business and human rights predicament today lies in the governance gaps created by globalisation – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences." cf. Ruggie (2008), *Protect, Respect and Remedy: a Framework for Business and Human Rights*, A/HRC/8/5, p. 3.

<sup>3</sup> These include, for example, guidelines by international organisations, such as the OECD Guidelines for Multinational Enterprises, ISO 26000 guidelines on social responsibility, and the Performance Standards of the World Bank's International Finance Corporation. The UNGP are also referenced in a variety of multi-stakeholder initiatives, such as the International Code of Conduct for Private Security Service Providers (ICoC), the Voluntary Principles on Security and Human Rights (VP), and the Equator Principles for the financial sector. Furthermore, on 2 March 2016 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states on human rights and business.

for business enterprises in the human rights domain. The Federal Council welcomes the implementation of the UNGP as an important contribution to sustainable development. In particular, this National Action Plan will help to implement the 2030 Agenda<sup>4</sup>.

## 4.2 The Swiss context

Economic freedom (Art. 27 Federal Constitution) and freedom of contract are key elements of the Swiss economic order. This economic system is set out in the Constitution and enhanced by elements such as further basic rights and social components (freedom of association and social partnership). Sound frameworks are therefore in place to permit the implementation of labour and human rights in Switzerland. Social partnership and the right to collective bargaining, specifically, are fundamental mechanisms ensuring that the country has good working conditions and a peaceful society.

Swiss companies are viewed world-wide as pioneers in the development of the global market and the creation of jobs and welfare. Many of these believe that respect for human rights is of strategic importance to their operations (in terms of, for example, competitive advantage, market positioning, greater productivity and avoiding reputational risks). Nowadays, increasing numbers of business enterprises are fulfilling their human rights responsibilities in a conscious way. Both business enterprises and civil society stakeholder groups are supporting and furthering respect for human rights with a wide range of programmes. Indeed, respect for human rights forms an integral part of many companies' corporate social responsibility (CSR) activities<sup>5</sup>. A further example is the discussion paper on the implementation of the UN Guiding Principles on Business and Human Rights in the banking sector published by the Thun Group of Banks, a group of international full-service banks<sup>6</sup>. Representatives of civil society play an active part in the Roundtable on Human Rights in Tourism<sup>7</sup>.

Umbrella business associations are also keeping active track of the human rights issue, are committing themselves to the UNGP, and are ready to engage in dialogue. In doing so, they are making a major contribution to the implementation of the UNGP<sup>8</sup>. The Federal Council acknowledges these achievements

Responsible corporate conduct throughout the value chain is becoming increasingly important to many consumers in Switzerland.

Many Swiss companies are currently having to tackle a large number of challenges simultaneously: securing their competitiveness on the international markets, against the backdrop of the strong franc

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<sup>4</sup> The implementation of the UN Guiding Principles on Business and Human Rights will contribute in particular to the achievement of Sustainable Development Goals 8, 10, 12 and 17. Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Goal 10: Reduce inequality within and among countries. Goal 12: Ensure sustainable consumption and production patterns. Goal 17: Strengthen the means of implementation and revitalise the global partnership for sustainable development.

<sup>5</sup> The booklet entitled 'CSR aus Sicht der Unternehmen' [CSR: the corporate perspective] from economiesuisse and Swissholdings is once source of good corporate examples here:

[www.swissholdings.ch/fileadmin/kundendaten/Dokumente/Archiv\\_Publikationen-Publikation/Corporate\\_Social\\_Responsibility\\_aus\\_Sicht\\_der\\_Unternehmen.pdf](http://www.swissholdings.ch/fileadmin/kundendaten/Dokumente/Archiv_Publikationen-Publikation/Corporate_Social_Responsibility_aus_Sicht_der_Unternehmen.pdf) [de]

<sup>6</sup> [www.skmr.ch/de/themenbereiche/wirtschaft/artikel/un-leitprinzipien-banken.html](http://www.skmr.ch/de/themenbereiche/wirtschaft/artikel/un-leitprinzipien-banken.html)

<sup>7</sup> [www.fairunterwegs.org/news-medien/im-fokus/menschenrechte/roundtable-menschenrechte-im-tourismus/](http://www.fairunterwegs.org/news-medien/im-fokus/menschenrechte/roundtable-menschenrechte-im-tourismus/) [de]

<sup>8</sup> [http://www.swissholdings.ch/fileadmin/kundendaten/Dokumente/Themen\\_sowie\\_Anlagen\\_News/Aktuell-Grundlagenbericht\\_SwissCode-nur-d.pdf](http://www.swissholdings.ch/fileadmin/kundendaten/Dokumente/Themen_sowie_Anlagen_News/Aktuell-Grundlagenbericht_SwissCode-nur-d.pdf) [de]

and the implementation of Corporate Tax Reform III and the Mass Immigration Initiative, investing in new technologies and human resources, and creating decent, well-qualified jobs in Switzerland and the wider world. With this in mind, the Federal Council can support SMEs in fulfilling their corporate human rights responsibility (cf. PI6 in Section 5.7.2), and ensure that the administrative and financial burdens are not excessive.

Article 54 para. 2 of the Federal Constitution (FC) stipulates that the Confederation will engage in foreign relations to promote respect for human rights, in addition to other objectives. Article 35 FC stipulates, among other provisions, that fundamental rights must be upheld throughout the legal system. This covers private, criminal and commercial law. Under Article 35 para. 3 FC, the authorities must ensure that, where appropriate, fundamental rights also apply to relationships between private individuals, and thus also in the private sector. Article 35 para. 3 FC is therefore relevant to international business enterprises that are connected to the Swiss legal system in some way, for example because they have their head office in Switzerland, make use of Swiss Export Risk Insurance services, or fulfil contracts abroad on behalf of the Swiss authorities. However, at present Swiss legislation does not make any provision for business enterprises having to conduct general, legally binding human rights due diligence. The Federal Council nonetheless supports due diligence on a voluntary basis (cf. PI1)<sup>9</sup>.

### 4.3 The position and expectations of the Federal Council

The UNGP distinguish between three types of adverse human rights impacts on the part of business enterprises:

1. Business enterprises may abuse human rights through their own activities.
2. Business enterprises may contribute to abuses of human rights through their activities.
3. Business enterprises may be involved in abuses of human rights via their business relationships, without contributing to those impacts themselves.

Business enterprises that are based and/or operating in Switzerland should duly fulfil their duty to uphold human rights. Here, they can draw guidance from Pillar 2 of the UNGP and from the 'Human Rights' chapter of the OECD Guidelines for Multinational Enterprises<sup>10</sup>. The UN's guidance on implementing Pillar 2 *The corporate responsibility to respect human rights*<sup>11</sup> as well as the relevant sector and topic-specific guidelines serve as a basis for this<sup>12</sup>. Business enterprises that are exposed to particularly high human rights risks should develop internal policies and procedures for their human rights due diligence for the business activities concerned. Their precise form will depend on factors such as the size of the enterprise and the nature of its business (sector, geographical scope, etc.). Attention should be paid to the specific circumstances of and options open to SMEs. The Federal Council will endeavour to support business enterprises and SMEs in particular, as they proceed with

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<sup>9</sup>Business enterprises can draw on guidelines by international organisations, such as the OECD Guidelines for Multinational Enterprises, ISO 26000 guidelines on social responsibility, and the Performance Standards of the World Bank's International Finance Corporation. The UNGP are also referenced in a variety of multi-stakeholder initiatives, such as the International Code of Conduct for Private Security Service Providers (ICoC), the Voluntary Principles on Security and Human Rights (VP), and the Equator Principles for the financial sector.

<sup>10</sup> cf. e.g. OECD Guidelines for Multinational Enterprises, OECD, 2011, chapter IV, as well as the Universal Declaration of Human Rights, the Children's Rights and Business Principles, the UN Global Compact, and the conventions and recommendations of the International Labour Organization.

<sup>11</sup> OHCHR (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*.

<sup>12</sup> For an overview of the various guidelines, please visit <https://www.business-humanrights.org/>

implementation, in order to keep the costs and administrative burden at a reasonable level. A number of different instruments are available depending on the business and nature of the enterprise:

- Human rights due diligence (Guiding Principles 17-21): (1) Identify potential and actual risks and impacts, (2) take precautions to minimise them, (3) review measures, and (4) report on activities and identified risks.
- Fundamental commitment (Guiding Principle 16): A clearly communicated independent undertaking from senior company management to respect human rights.
- Remediation (Guiding Principle 22): The creation of and cooperation in legitimate processes for remediation.
- Consultation with stakeholder groups (Guiding Principle 18): The use of instruments to consult affected stakeholder groups (e.g. vulnerable groups such as children).

The recommendations in this report and the National Action Plan are intended to serve business enterprises as a reference framework for their activities implementing the UNGP<sup>13</sup>.

In compliance with Pillar 2 of the UNGP and the 'Human Rights' chapter of the OECD Guidelines for Multinational Enterprises, business enterprises that are based and/or operate in Switzerland should respect human rights in all of their business activities, wherever they operate<sup>14</sup>. Accordingly they should seek to prevent adverse human rights impacts<sup>15</sup>.

The corporate responsibility to respect human rights refers to internationally recognised human rights. These include the human rights and principles rooted in the UN's Universal Declaration of Human Rights, the UN's International Covenant on Civil and Political Rights, the UN's International Covenant on Economic, Social and Cultural Rights, the principles of the basic rights laid down in the eight fundamental conventions of the International Labour Organization (ILO)<sup>16</sup>, and in the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy<sup>17</sup>. In addition to these instruments, the regional mechanisms instituted by the Council of Europe<sup>18</sup>, and specifically the European Convention on Human Rights and its Additional Protocols are also important for Switzerland. Depending on the circumstances, business enterprises must also observe additional standards concerning particularly vulnerable population groups (cf. OECD Guidelines for Multinational Enterprises, Guideline 40). These include, for example, the Declaration of the Rights of Indigenous Peoples, and the international conventions protecting women, minorities, children, people with

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<sup>13</sup> Pillar 2 of the UNGP and chapter 4 of the OECD Guidelines for Multinational Enterprises provide the benchmarks for what the Federal Council expects of business enterprises. Its expectations are also aligned with the UN's detailed statements on the implementation of Pillar 2. cf.: OHCHR (2012), The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)

<sup>14</sup> According to the UNGP, business enterprises that are based in Switzerland should ensure that their subsidiaries also respect human rights (cf. The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, p. 22, [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)).

<sup>15</sup> UNGP, Guiding Principle 11 and OECD Guidelines for Multinational Enterprises, chapter 4 <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>16</sup> The eight fundamental conventions of the ILO encompass the following principles: freedom of association and the right to collective bargaining, the elimination of forced labour, the abolition of child labour, and a ban on discrimination in employment and occupation.

<sup>17</sup> [http://www.ilo.org/empent/Publications/WCMS\\_094386/lang--en/index.htm](http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm)

<sup>18</sup> <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-organizations/council-europe.html>



disabilities and migrant workers and members of their families<sup>19</sup>. In addition, the Federal Council expects business enterprises in armed conflicts to abide by the standards of international humanitarian law<sup>20</sup>. Where local legislation does not correspond to international standards, the Federal Council recommends that business enterprises still comply with the international standards<sup>21</sup>.

The activities of Swiss companies should not result in any adverse impacts on human rights. They should therefore seek to prevent any negative effects to which they are directly linked through their business relationships<sup>22</sup>.

Business enterprises thus also have at least an indirect responsibility for business relationships via which they either themselves contribute to human rights abuses, or might otherwise become involved in. 'Business relationships' in the sense of the UNGP are understood to include relations with business partners (including entities in their value chains), and any other non-State or State entity linked to the company's business operations, products or services<sup>23</sup>.

## 5 National Action Plan on Business and Human Rights

The Federal Council hereby presents a National Action Plan to implement its State duties to protect and provide access to remedy in connection with business and human rights (Pillars 1 and 3 of the UNGP). Pillar 2 of the UNGP concerns the corporate responsibility to respect human rights, and is thus not dealt with directly in this governmental Action Plan. That said, Pillar 1 contains a large number of elements that are crucial to the implementation of Pillar 2. In this National Action Plan, State influence on corporate responsibility is dealt with under Pillar 1 (the responsibility of the State).

The Federal Council regards the implementation of the UNGP as an ongoing process which must adapt to shifting challenges, and will also make a key contribution to preventing any conflicts of objectives between Switzerland's human rights and foreign trade policies – or to resolving them. This NAP should be reviewed and updated every four years. In drafting the NAP, the Federal Council was guided by the experience of other European States and by the guidance on NAPs issued by the UN Working Group on Business and Human Rights. Stakeholder groups outside of the federal

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<sup>19</sup> cf.:

(1) Declaration on the Rights of Indigenous Peoples: <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>

(2) Convention on the Elimination of All Forms of Racial Discrimination: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

(3) Convention on the Elimination of All Forms of Discrimination Against Women: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

(4) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

(5) Convention on the Rights of the Child: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

(6) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-organizations/un/un-human-rights/state-reports/convention-migrant-workers.html>

<sup>20</sup> cf. Guiding Principle 12.

<sup>21</sup> cf. Guiding Principle 23.

<sup>22</sup> cf. Guiding Principle 13; OECD Guidelines for Multinational Enterprises, Chapter 4, point 3.

<sup>23</sup> cf. Commentary on Guiding Principle 13.

government were consulted on multiple occasions as part of the drafting process for the NAP<sup>24</sup>. With the NAP, the Federal Council fulfils one of the core points of the Recommendation of the Council of Europe on human rights and business.<sup>25</sup>

## 5.1 Aim of the NAP

The objective of the NAP is to improve the protection of human rights in the context of business activities. The Action Plan serves to:

- Communicate what the Federal Council expects of business enterprises;
- Provide information and raise awareness, as well as facilitate cooperation with the corporate sector;
- Improve the consistency of government action.

## 5.2 Structure of the NAP

The NAP is structured in line with the guidance provided by the UN Working Group on Business and Human Rights. The Federal Council sets out what current and future policy instruments are in place or are planned to implement Pillars 1 and 3.

The National Action Plan addresses the individual Guiding Principles as follows:

- 1) Explanation of the policy instrument;
- 2) Current activities connected with the policy instrument;
- 3) Evaluation and planned activities.

The table in the appendix provides information on new and current activities, as well as on the lead agency within the Federal Administration.

## 5.3 Role of the State and of business enterprises

With this NAP, the Federal Council recognises the State's duty to also protect human rights in connection with business enterprises that are based and/or operate in Switzerland, as laid down in the UNGP. The State duty to protect is described in Guiding Principles 1-10, 25-28, 30 and 31. Primary responsibility for protecting human rights lies with the State, not with the corporate sector. The federal government understands its role as being to support business enterprises with the implementation of the UNGP, to create incentives to comply with them, to encourage business enterprises to respect human rights and, where laws exist, to enforce them. The State can employ both binding and non-binding instruments to fulfil its duty to protect. In particular, it can also support and encourage

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<sup>24</sup> In the first round of consultations, external stakeholder groups were surveyed individually by an institution outside of the government. The outcome of this process was a report which served the federal government as one of the basis documents on which the Action Plan was drafted (cf. Graf et al. (2014) Zusammenfassender Bericht: Stakeholderkonsultationen zum Nationalen Aktionsplan Wirtschaft und Menschenrechte, swisspeace [Summary report: stakeholder consultations on the National Action Plan on Business and Human Rights, swisspeace]). The stakeholder groups also had the opportunity to provide written feedback on two drafts of the Action Plan. Finally, the progress of work was discussed several times in the form of multi-party dialogues.

<sup>25</sup> The Committee of Ministers of the Council of Europe adopted its Recommendation to member states on human rights and business on 2 March 2016.

corporate initiatives. The Federal Council views promoting due diligence as a horizontal element of its efforts to implement the UNGP.

The State duty to protect is supplemented by the corporate responsibility to respect human rights. With this in mind, Guiding Principles 11-24 and 28-31, which are aimed at business enterprises, are also important cornerstones of the federal government's work to fulfil its State duty to protect. These Guiding Principles describe the scope of the corporate responsibility to respect human rights, specifically by conducting human rights due diligence as a core element of fulfilment.

## 5.4 Smart mix as the conceptual foundation

In view of the economic freedom that is guaranteed by the Swiss Federal Constitution<sup>26</sup>, the federal government fulfils its duty to protect with a *smart mix* of non-legally-binding and – where necessary – supplementary statutory requirements, with national and international measures. All of these observe the principle of proportionality<sup>27</sup>. The approach is based on the internationally recognised understanding of the concept of a *smart mix*<sup>28</sup>. In other words, the *smart mix* approach means that States consider a bundle of mutually supportive binding and non-binding measures which influence the human rights consequences of economic activity. The UNGP do not require States to institute regulations outside of their own jurisdictions, but instead give them the discretion to implement their own *smart mix* in practice.

All in all, the measures instituted by the federal government should guarantee effective protection against abuses of human rights by business enterprises based and/or operating in Switzerland, while keeping the burden on those companies as light as possible.

## 5.5 Corporate responsibility

The Federal Council expects business enterprises to fulfil their human rights responsibility in Switzerland and everywhere else they operate.

Under the UN Guiding Principles on Business and Human Rights, the corporate responsibility to respect human rights applies to all business enterprises, regardless of their size, the sector to which they belong, their operating environment, ownership or structure<sup>29</sup>.

Consultations with stakeholder groups from business, civil society and the academic world showed that the greatest challenges faced by business enterprises based and/or operating in Switzerland are connected with their operations and business relationships abroad<sup>30</sup>. For this reason, while it does not exclude domestic operations, the NAP is geared more closely to business activities abroad.

As determined in the UNGP, the time and expense attached to possible conditions should be in proportion to the human rights risks to which the business enterprise is exposed.

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<sup>26</sup> Art. 27 FC.

<sup>27</sup> Art. 5 para. 2 FC.

<sup>28</sup> cf.: UN Working Group on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights, December 2014, p. 14.

<sup>29</sup> cf. Guiding Principle 14.

<sup>30</sup> Graf et al. (2014) Zusammenfassender Bericht: Stakeholderkonsultationen zum Nationalen Aktionsplan Wirtschaft und Menschenrechte, swisspeace [Summary report: stakeholder consultations on the National Action Plan on Business and Human Rights, swisspeace].

In view of their limited human and specialist resources, SMEs often face particular challenges in assessing and dealing with possible human rights risks. To ensure that measures are implementable, the NAP therefore pays particular attention to the needs of SMEs, with the aim of maintaining their scope for action. Unnecessary administrative burdens and costs, in particular, should be avoided.

## 5.6 Relation to the Federal Council position paper on CSR

The federal government's commitment to *Corporate Social Responsibility* (CSR) is set out in the *Federal Council's CSR position paper on corporate social and environmental responsibility*<sup>31</sup>. The CSR position paper addresses a very broad spectrum of issues of relevance to corporate social responsibility. These include working conditions (including health safeguards), human rights, the environment, preventing corruption, fair competition, consumer interests, tax and transparency. The present report and NAP in fulfilment of postulate 12.3503 and the CSR position paper on corporate responsibility are therefore complementary and of equal status.

## National Action Plan on Business and Human Rights

This Action Plan sets out how the federal government will fulfil its obligations under Pillars 1 and 3 of the UNGP. Both Pillars contain both foundational principles, which set the framework for the State's duties, and practical guidance for the implementation of these State duties, in the form of operational principles.

Relevant policy instruments (PI) are also identified for each operational UNGP. The NAP states which federal government measures have already been implemented for the policy instrument in question, and which additional measures the government is planning for the reporting period between August 2016 and July 2020. Each of the UNGPs is shown in a box.

## 5.7 Pillar 1: state duty to protect

### 5.7.1 Fundamental principles

#### ***Guiding Principle 1: general duty to protect***

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*States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and remediate such abuse through effective policies, legislation, regulations and adjudication.*

The Federal Council acknowledges its duty to protect, as laid down in Guiding Principle 1. To fulfil this duty, the federal government will implement a *smart mix* of appropriate measures.

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<sup>31</sup> Gesellschaftliche Verantwortung der Unternehmen, Erwartungen an die Verantwortung der Unternehmen für Gesellschaft und Umwelt [Corporate social responsibility, expectations for corporate social and environmental responsibility], position paper and action plan of the Federal Council, 1.4.2015

([https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/Gesellschaftliche\\_Verantwortung\\_der\\_Unternehmen/Positionspapier\\_und\\_Aktionsplan\\_BR.html](https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Gesellschaftliche_Verantwortung_der_Unternehmen/Positionspapier_und_Aktionsplan_BR.html)).

The duty to protect is based on Switzerland's existing obligations under international law. The UNGP do not subject the State to any new duties. Rather, they provide more specific detail about how the existing duty to protect human rights applies to the business sector. Of key importance to the UNGP are the UN's international conventions on human rights<sup>32</sup>, the fundamental conventions of the ILO, and the relevant provisions of the European Convention on Human Rights.

## ***Guiding Principle 2: Business enterprises' foreign operations***

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*States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations*

The Federal Council regards preventing human rights abuses by Swiss companies abroad, and ensuring access to effective remedy, as integral parts of its State duty to protect and its constitutional mandate to promote respect for human rights<sup>33</sup>. This is particularly true with regard to the foreign activities of companies that are based in Switzerland<sup>34</sup>.

However, in view of the political, legal and practical obstacles to the extraterritorial pursuit of policy and application and enforcement of law, the federal government is concentrating on domestic measures, the reach of which extends to partner States and the activities of business enterprises abroad. It also promotes international agreements and standards. As part of its international cooperation efforts, it supports States in the fulfilment of their duties under international law to protect.

### **5.7.2 Operational principles: legislative and information policy measures**

## ***Guiding Principle 3***

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*In meeting their duty to protect, States should:*

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps;*
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;*
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;*
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*

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<sup>32</sup> cf. Section 3.3.

<sup>33</sup> Swiss Federal Constitution, Art.54.

<sup>34</sup> cf. Section 4.5.

To an extent appropriate to the attendant risks, the federal government exercises its influence in the form of non-legally-binding and, where necessary, legally-binding instruments to encourage and to require business enterprises to respect human rights. Where appropriate, it also takes action tailored to the human rights risks specific to individual sectors or issues.

As one of the objectives of government, and a binding duty on the State, respect for human rights is laid down in the Federal Constitution (FC). Article 35 FC includes the provision that fundamental rights (Art. 7 et seqq. FC) must be upheld throughout the legal system (Art. 35 para. 1 FC), which also covers private, criminal and commercial law, and places the authorities under the obligation to ensure that fundamental rights, where appropriate, apply to relationships among private persons (Art. 35 para. 3 FC). Article 54 FC lists the federal government's foreign policy objectives. Of particular relevance in the context of *business and human rights* are the alleviation of poverty, respect for human rights, the promotion of democracy, the peaceful co-existence of peoples, and the conservation of natural resources. The fight against corruption also contributes to human rights, and to ensuring the rule of law.

Based on the Federal Constitution, the Federal Council is discussing the following policy instruments (PI) to implement Guiding Principles 3a and 3b<sup>35</sup>:

#### *PI1 Human rights due diligence*

Swiss legislation does not make any provision for business enterprises having to conduct general, legally binding human rights due diligence. Potential regulation in this area would have to have a broad base of international support to avoid placing Switzerland at a disadvantage as a business location. The Federal Council supports due diligence on a voluntary basis, however.

In May 2014, in fulfilment of postulate 12.3980 from the National Council Foreign Affairs Committee, the Federal Council had a report drawn up to compare legally binding due diligence obligations in other countries. It also discussed options for Switzerland in an accompanying commentary<sup>36</sup>. The report shows that no country makes any provision for a comprehensive duty to conduct human rights due diligence. In March 2015, the National Council rejected a motion from its Foreign Affairs Committee to introduce a binding obligation for business enterprises to conduct human rights due diligence<sup>37</sup>.

A key concern for a number of stakeholders is the introduction of legally binding human rights due diligence. In April 2015, an alliance of 66 civil society organisations launched the *Responsible Business Initiative*<sup>38</sup>, which would like to see a general human rights due diligence obligation enshrined in law. The popular initiative was submitted on 10 October 2016, and on 1 November 2016 the Federal Chancellery confirmed that it will go forward to a referendum<sup>39</sup>.

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<sup>35</sup> Guiding Principles 3a and 3b focus on legally binding measures. Further legal measures are discussed under Guiding Principle 3c (transparency) and Guiding Principle 7 (specific measures for conflict-affected areas).

<sup>36</sup> Rechtsvergleichender Bericht. Sorgfaltsprüfung bezüglich Menschenrechten und Umwelt im Zusammenhang mit Auslandaktivitäten von Schweizer Unternehmen [‘Comparison of laws: Human rights and environmental due diligence in connection with the foreign activities of Swiss companies’], 2 May 2014.

<sup>37</sup> Motion 14.3671 Umsetzung des rechtsvergleichenden Berichtes des Bundesrates über die Verantwortung von Unternehmen bezüglich Menschenrechten und Umwelt [‘Implementing the Federal Council's comparative report on corporate responsibility for human rights and the environment’] from the National Council Foreign Affairs Committee, 1 September 2014.

<sup>38</sup> <http://konzern-initiative.ch/>

<sup>39</sup> Federal Gazette 2016 8107.

### *PI2 Regulation of private security service providers*

The business context of private security service providers exposes them to an increased risk of becoming involved in human rights abuses. In September 2013, Parliament thus passed the Federal Act on Private Security Services provided Abroad. The Act and the associated Ordinance entered into force effective 1 September 2015. The Act prohibits security firms based in Switzerland from participating directly in hostilities in an armed conflict abroad, and forbids activities that support the commission of serious violations of human rights. It also contains reporting requirements for companies wishing to provide private security services abroad, and obliges Swiss-based providers to accede to the International Code of Conduct for Private Security Service Providers<sup>40</sup>.

The Federal Council regards the Federal Act on Private Security Services provided abroad as an appropriate means of ensuring respect for human rights in connection with the activities of private security service providers. It will undertake an initial assessment of its effectiveness at the end of the reporting period.

### *PI3 Regulation of war material*

Business enterprises which manufacture or trade in war material are exposed to an increased risk of becoming involved in human rights abuses by third parties. International standards on the regulation and control of international trade in conventional weapons were laid down in the international Arms Trade Treaty (ATT). It was adopted by the UN General Assembly in April 2013 and entered into force on 24 December 2014. Switzerland ratified the Treaty on 30 January 2015.

The manufacture and transfer of war material and the associated technologies is governed by the War Material Act and its Ordinance<sup>41</sup>. The manufacture, brokerage, export and transit of war material for recipients abroad will be authorised if this is not contrary to international law, international obligations and the principles of Swiss foreign policy. The decision on whether or not to issue authorisation for a foreign transaction must abide by the criteria laid down in the War Material Ordinance<sup>42</sup>. In addition to other factors, the domestic situation in the country of destination, specifically respect for human rights, must be taken into account. If the country of destination violates human rights in a systematic and serious manner, it is imperative that the export licence be denied. However, authorisation might still be granted in exceptional cases if there is a low risk that the exported war material will be used to commit serious violations of human rights.

The Federal Council regards the present legal foundation and practice for granting export licences as appropriate to guarantee that Swiss business enterprises that manufacture or trade in war material will respect human rights. No further measures are planned.

### *PI4 Regulation of technologies for internet and mobile communication surveillance*

Technologies for internet and mobile communication surveillance can be used for both civilian and military purposes, i.e. they are *dual-use* goods. They can be an element in state repression, for example, thereby exposing the business enterprises that manufacture or trade in them to an increased risk of becoming involved in human rights abuses.

The export or brokerage of technologies for internet and mobile communication surveillance is governed by goods control legislation. On 13 May 2015, the Federal Council decided that a licence to

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40 cf.: Ordinance on Private Security Services provided Abroad (SR 935.411).

41 For further information, please refer to: <https://www.admin.ch/opc/en/classified-compilation/19960753/index.html>

42 Art. 5 War Material Ordinance (SR 514.511).

export or to broker such goods must be refused if there is reason to believe that the exported or brokered good will be used by the final recipient as a means of repression. The transfer of intellectual property, including expertise and the grant of rights, concerning technologies for internet and mobile communication surveillance was also made subject to licence<sup>43</sup>.

The Federal Council regards the new legal foundation, and practice for granting export licences, as appropriate to guarantee that human rights will be respected in connection with technologies for internet and mobile telecommunication surveillance. No further measures are planned.

#### *PI5 Regulation of the manufacture and import of renewable resources (biofuels)*

The Mineral Oil Tax Act provides that biofuels (biogas, bioethanol, biodiesel and vegetable and animal-based oils) will be wholly or partly exempted from mineral oil tax if they satisfy minimum environmental and social requirements<sup>44</sup>. Under the Mineral Oil Tax Ordinance, the minimum requirements for socially acceptable production conditions are fulfilled if, in the cultivation of the resources and production of fuels, business enterprises comply with the social legislation applicable at the production location, but at a minimum with the fundamental conventions of the ILO<sup>45</sup>.

The criteria were toughened up further with the implementation of parliamentary initiative *09.499 Agrotreibstoffe. Indirekte Auswirkungen berücksichtigen* ['Agrofuels: considering the indirect impacts']. In the future (cf. Art. 12b para. 3 MinOTA), the Federal Council will have the right to refuse the tax exemption if biofuels have been produced in a country which does not have food security. Furthermore, the area used for cultivating the resources used to produce biofuels must have been acquired lawfully, to prevent the displacement or dispossession of the local population. Should biofuels which do not fulfil the criteria for tax relief enter circulation in large quantities in Switzerland in the future, the Federal Council may make them subject to an authorisation requirement.

The Federal Council regards the present legal foundation and practice for granting licences as sufficient and is not planning any further measures

The federal government will employ the following policy instruments (PI) to implement Guiding Principle 3c:

#### *PI6 Clarify and communicate what the Federal Council expects of business enterprises*

Governments should provide business enterprises with guidance on action to respect human rights, by clearly defining and communicating their expectations. This was one of the primary demands made by the business sector during the consultation process<sup>46</sup>.

Section 4.3 of the Federal Council's report in fulfilment of postulate *12.3503 Eine Ruggie Strategie für die Schweiz* ['A Ruggie Strategy for Switzerland'], which sets out the framework for this NAP, defines the position and expectations of the Federal Council with respect to business enterprises. Business

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<sup>43</sup> For further information, please refer to: [http://www.secco-cooperation.admin.ch/aktuell/00154/00575/index.html?lang=de&msg\\_id=57261](http://www.secco-cooperation.admin.ch/aktuell/00154/00575/index.html?lang=de&msg_id=57261) [de] [fr]

<sup>44</sup> cf.: Art. 12b para. 3 (B) MinOTA, SR 641.61, <https://www.admin.ch/opc/de/classified-compilation/19960320/index.html> [de] [fr] [it]

<sup>45</sup> cf.: Art. 19d, MinOTO, SR 641.611, <https://www.admin.ch/opc/de/classified-compilation/19960585/index.html> [de] [fr] [it]

<sup>46</sup> cf.: Graf et al. (2014) Zusammenfassender Bericht: Stakeholderkonsultationen zum Nationalen Aktionsplan Wirtschaft und Menschenrechte, swisspeace ['Summary report: stakeholder consultations on the National Action Plan on Business and Human Rights, swisspeace'], p. 15,

[http://www.swisspeace.ch/fileadmin/user\\_upload/Media/Publications/Newsletter/2014/NL\\_125\\_DE.pdf](http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Newsletter/2014/NL_125_DE.pdf)



enterprises based and/or operating in Switzerland should abide by international standards such as the UNGP, the OECD Guidelines for Multinational Enterprises, and the relevant sector and issue-specific guidelines<sup>47</sup>.

This NAP sets out the position and expectations of the Federal Council with respect to business enterprises in more specific detail, and strengthens the consistency of federal government action to protect and promote human rights in the context of business activities.

The federal government will carry out awareness-raising programmes (e.g. website, workshops, publications) geared specifically to the needs of SMEs, and will help to raise consciousness about the issue of business and human rights with information events and materials. Part of the aim of these programmes is to step up federal government efforts to communicate its expectations to business enterprises. This can, for example, also be achieved by means of forums for dialogue, and participation in events and courses aimed at stakeholder groups and the general public.

#### *PI7 Federal government contact point for stakeholder groups*

Many of the stakeholders taking part in consultations expressed the desire for a better overview of the various government activities in the business and human rights sphere, and to have the relevant information accessible in one place<sup>48</sup>.

As part of work to implement the CSR position paper (cf. Section 2.2.6), the federal government will establish a CSR web portal by the end of the reporting period. It is intended to make information on the federal government's commitment to corporate responsibility (including that for human rights) available to business enterprises and other interested organisations and individuals from a central point. The portal will bundle information about instruments, international developments, and support. It will also serve as a point of contact for questions and concerns about business and human rights. These will then be passed on to the federal agencies responsible for the issues in question<sup>49</sup>.

#### *PI8 Guidelines for business enterprises on implementing the UNGP*

The federal government has supported the development of a variety of guidelines on business and human rights in recent years<sup>50</sup>. Further to Recommendation 11 in the Federal Council's Background Report on Commodities<sup>51</sup>, the federal government is joining forces with NGOs and commodity trading

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<sup>47</sup> Pages 2, 3, 37 and 42 of the Background Report on Commodities, March 2013, list the following expectations that the Federal Council has of international business enterprises: *to conduct themselves with integrity and responsibility with regard to compliance with human rights and environmental and social standards at home and abroad, and to fulfil special due diligence obligations.*

<sup>48</sup> Graf et al. (2014) Zusammenfassender Bericht: Stakeholderkonsultationen zum Nationalen Aktionsplan Wirtschaft und Menschenrechte, swisspeace [Summary report: stakeholder consultations on the National Action Plan on Business and Human Rights, swisspeace] [http://www.swisspeace.ch/fileadmin/user\\_upload/Media/Publications/Newsletter/2014/NL\\_125\\_DE.pdf](http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Newsletter/2014/NL_125_DE.pdf)

<sup>49</sup> Positionspapier und Aktionsplan des Bundesrates zur Verantwortung der Unternehmen für Gesellschaft und Umwelt [Position paper and action plan of the Federal Council on corporate social and environmental responsibility], p.30, activity B.1.1., 1.4.2015.

<sup>50</sup> Other sector-specific guidelines: the EU commissioned the drafting of guidelines for the oil and gas sector, for job agencies, and for the information and communication sector. Meanwhile, the Thun Group of Banks has produced a discussion paper on the implementation of the UNGP in the banking sector. A similar document for the insurance industry was issued by the CRO Forum. For an overview of the various guidelines, please visit: <https://www.business-humanrights.org/>.

<sup>51</sup> cf. Background Report on Commodities, March 2013, p. 45, <http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf>

firms to draw up guidelines for the implementation of the UNGP in commodities trading. Under the terms of the mandate, the guidance should include specific recommendations concerning human rights due diligence and reporting.

During the reporting period (2016-2019), the federal government will work with the international sporting associations which are based in Switzerland (including the International Olympic Committee), with sponsors, NGOs, international organisations, other governments and the Institute for Human Rights and Business to implement the UNGP in the context of major sporting events. It is leading and supporting multi-party dialogue with the following objectives: to identify the primary challenges in respecting and protecting human rights in this context; to promote a learning process; to exchange best practices, and to strengthen responsibility. A multi-party steering committee is conducting a series of pilot projects on issues such as the integration of human rights due diligence into the awarding of major sporting events, the development of guidelines for host cities and countries, the integration of human rights in sporting association governance and in the value chains of products linked to sport, as well as the establishment of grievance mechanisms and the involvement of particularly vulnerable groups.

In the financial sector, SECO is supporting the OECD with the drafting of guidance on due diligence in this industry. Planned for the end of 2017, one of the objectives of the guidance is to support financial institutions in Switzerland to mitigate the negative impacts of their business activities on the environment on society around the world, including developing countries. The work is being supported by an advisory group of representatives of the federal government (SECO), industry (UBS), civil society (*Public Eye* [formerly the Berne Declaration] and the University of Zurich).

In the agricultural and food sector, the Federal Office for Agriculture (FOAG) and the Swiss Agency for Development and Cooperation (SDC), as well as the Committee on World Food Security, the UN FAO and the OECD are supporting the formulation of Principles for Responsible Investment in Agriculture and Food Systems, as well as the OECD-FAO Guidance for Responsible Agricultural Supply Chains. Both instruments stress the important role that business has to play in responsible investment, and offer relevant guidance on action. Switzerland will also actively support their implementation.

#### *PI9 Good practice award*

The Federal Council intends to promote good practice by creating an award for the *Swiss Business and Human Rights Champion* of the year. It will recognise business enterprises which make an outstanding contribution to the field of business and human rights. The FDFA and EAER will work alongside academic and civil society stakeholders to establish the award.

The concept for the award ceremony will be drawn up at the beginning of the reporting period (2016-2019). It is to be implemented using existing resources. No cash prize accompanies the award.

#### *PI10 Initiative on respect for labour and human rights in value chains*

The federal government promotes the implementation of the fundamental conventions of the International Labour Organization (ILO) as part of economic development cooperation, and in cooperation with the ILO itself. In this context, it designed a project with the ILO to ensure that labour rights are implemented by business enterprises in developing countries. It supports the ILO and International Finance Corporation (IFC) *Better Work* programme for the clothing industry as well as the ILO's *SCORE (Sustaining Competitive and Responsible Enterprises)* programme, which focuses on working conditions at SMEs. Among its economic cooperation programmes, the federal government also supports projects to protect children. These projects are run jointly with the ILO, governments, the private sector and unions, and are focused on compliance with fundamental labour standards,

including measures to combat child and forced labour. The federal government also pursues a wide variety of activities to support the human rights aspects of sustainable value chains. The federal government will continue these activities, as set out in its Dispatch on International Cooperation 2017-2020.

#### *PI11 Multi-stakeholder initiatives in the business and human rights field*

Switzerland is engaged and involved in multi-stakeholder initiatives in the business and human rights field. For example, it was a co-initiator of the International Code of Conduct for Private Security Service Providers (ICoC)<sup>52</sup>. It is also playing a key role in the development of an independent mechanism to manage and verify compliance with the Code on the part of business enterprises.

In the next two years, the controlling and governance mechanism for the International Code of Conduct for Private Security Service Providers (ICoCA) will implement certification and verification processes and will deal with complaints that have been received about member firms. Switzerland participates in the work of the Board of Directors of the ICoCA, and provides financial support to its secretariat. The initiative helps to implement the Federal Act on Private Security Services provided Abroad.

Switzerland is also a member of the 'Voluntary Principles on Security and Human Rights' (VP) initiative, and is involved in developing and enhancing the scheme. Within the framework of the VP, it promotes better and more transparent accountability for participants, and also contributed to the revision of reporting criteria. Switzerland also plays an active part in the discussions on reforming the governance of the VP initiative, which is intended to promote the practical implementation of the VP on the ground, as well as compliance. To raise awareness among Swiss companies from the mining and oil sector, as well as other interested business enterprises, Switzerland will be holding a workshop on the VP and on security and human rights in 2017.

Furthermore, Switzerland supports the policy dialogue instigated by the UN Special Rapporteur on trafficking in persons to prevent human trafficking in value chains. Within these bodies, Switzerland works towards the integration and implementation of the UN Guiding Principles on Business and Human Rights.

The federal government will employ the following policy instruments (PI) to implement Guiding Principle 3d:

#### *PI12 Sustainability reporting standards*

Reporting on the action taken by a business enterprise to respect human rights is an important element of due diligence under Pillar 2 of the UNGP<sup>53</sup>.

In line with the Grüne Wirtschaft ['Green Economy'] report (2016) and the Federal Council's national action plan on corporate social responsibility<sup>54</sup>, the federal government campaigns at both national and international levels for the promotion and harmonisation of corporate sustainability reporting. This also covers human rights. Switzerland is a member, among others, of the *Group of Friends of*

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<sup>52</sup> For more information, please visit <http://icoca.ch/>.

<sup>53</sup> cf. Guiding Principle 21.

<sup>54</sup> Grüne Wirtschaft: Massnahmen des Bundes für eine ressourcenschonende, zukunftsfähige Schweiz ['Green economy – Federal measures for a resource-conserving, future-proof Switzerland'] was adopted by the Federal Council on 20 April 2016; the position paper and action plan of the Federal Council on corporate responsibility for society and the environment was endorsed by the Federal Council on 1 April 2015.

*Paragraph 47 (GoF47)*, which promotes sustainability reporting internationally. Within the GoF47, Switzerland works in particular with the *Global Reporting Initiative (GRI)* and the *United Nations Environment Programme (UNEP)*.

The Federal Council will continue its work within the GoF47. It also supports the drafting of sector-specific guidance and practical examples.

#### PI13 Corporate sustainability reporting

The EU decided at the end of 2014 to introduce mandatory sustainability reporting. Member States have until the end of 2016 to put this obligation into effect<sup>55</sup>. EU Directive 2014/95/EU determines that certain large undertakings and groups must publish non-financial information on respect for human rights, diversity, and combating corruption and bribery in connection with environmental, social and employee matters. According to the *comply or explain* principle, business enterprises must also disclose why they have not published certain information. The Federal Council is closely monitoring developments with regard to the legally binding reporting of non-financial information in the EU. It is prepared to examine possible action, which would be as congruent as possible with international regulation, and intends to draw up a consultation draft on sustainability reporting that will be based on the EU instrument<sup>56</sup>. Work will begin when more is known about the way in which EU Member States intend to implement the Directive.

Swiss business enterprises are not obliged to report on sustainability issues. However, in line with the 2030 Agenda and its Sustainable Development Goals (SDGs), which were adopted by all UN Member States, and in particular to achieve SDG 12.6, companies are encouraged to introduce sustainable practices and to include sustainability information in their reporting<sup>57</sup>.

Accounting legislation requires all companies that are subject to an ordinary audit pursuant to Article 727 of the Swiss Code of Obligations (CO) to include a general assessment of risk in their management report. This also includes human rights risks, where these are present. Listed companies are also obliged by Article 53 of the SIX Swiss Exchange Listing Rules to report on human rights matters where these might affect the company's share price<sup>58</sup>. The Federal Council recommends incorporating the human rights risks which business enterprises identify in their due diligence processes, for example, in their sustainability reports.

#### PI14 Child protection in tourism

In collaboration with Austria and Germany, in 2012 Switzerland launched a trinational campaign to combat the sexual exploitation of children in connection with tourism.

Entitled *nicht-wegsehen.ch*<sup>59</sup> ('Don't look away'), the campaign draws public attention to the sexual exploitation of children and minors in the context of the tourism industry. The campaign website

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<sup>55</sup> Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups ([http://ec.europa.eu/internal\\_market/accounting/non-financial\\_reporting/index\\_en.htm](http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm)).

<sup>56</sup> cf. CSR position paper and action plan of the Federal Council of 1 April 2015, activity D 1.1.

<sup>57</sup> SDG 12.6: Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle.

<sup>58</sup> Kaufmann et al. 2013, Umsetzung der Menschenrechte in der Schweiz: Eine Bestandesaufnahme im Bereich Menschenrechte und Wirtschaft ['Implementing human rights in Switzerland: a snapshot of human rights and business'], Swiss Centre of Expertise in Human Rights, [https://register.weblaw.ch/bookinfo.php?book\\_id=287&pref\\_lang=de](https://register.weblaw.ch/bookinfo.php?book_id=287&pref_lang=de)

<sup>59</sup> cf. <https://www.nicht-wegsehen.ch/en/home.html>.

provides a publicly accessible form with which suspicious activities can be reported to the Federal Office of Police. The campaign is being extended to an increasing number of European countries.

To date, the campaign has been funded by public offices and child protection authorities, in close collaboration with the travel industry (SECO and the Swiss Foundation for the Protection of Children).

#### *PI15 Obligation to disclose payments to governments*

Fulfilling Recommendation 8 of the Background Report on Commodities and postulate 13.3365 *Mehr Transparenz im Schweizer Rohstoffsektor* ['Greater transparency in the Swiss commodities sector'], in May 2014 the Federal Council produced an interpretive framework for the commodities sector<sup>60</sup>. It subsequently integrated a transparency requirement compatible with EU provisions in its draft revision of company law in Switzerland. The Federal Council is proposing that listed and major companies in the extractive sector must disclose the payments they make to governments. The Dispatch on Amending the Code of Obligations (Company Law [including transparency provisions]) was adopted and referred to Parliament on 23 November 2016. The Federal Council will also continue to support international transparency standards, through vehicles such as the Extractive Industry Transparency Initiative (EITI)<sup>61</sup>.

#### *PI16 Reduction in human rights risks attached to gold extraction and trading*

In view of the important position that Switzerland occupies in gold trading, as well as in processing and refining, there is the risk that gold from illegal mines, used in some cases to fund armed groups or organised crime, will find its way into Switzerland. This might impact negatively on the protection of human rights in gold-producing countries.

The passing of postulate 15.3877 *Recordon – Goldhandel und Verletzung der Menschenrechte* ['Recordon – gold trading and human rights abuses'] resulted in the Federal Council being mandated to present a report examining the gold sector and its human rights risks in connection with Switzerland, as well as any options for action. The postulate should be fulfilled by the end of 2017.

The *Better Gold Initiative* launched in 2013 created a value chain for sustainably produced gold from small Peruvian mines. Since then, over a tonne of gold from certified mines has been imported into Switzerland, and sold at a fair price.

SECO is currently working alongside the Swiss Better Gold Association to plan the second phase of the scheme – the Better Gold Initiative for Artisanal and Small-Scale Mining – which is scheduled to start at the beginning of 2017. The second phase should see the Initiative extended from Peru to Columbia and Bolivia, and an increase in the traded volumes of responsible gold from small-scale mining. This is to be achieved by means of greater private-sector involvement, the introduction of entry standards, and by intensifying the political dialogue.

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<sup>60</sup> Regulations on the disclosure of payments made by commodities firms to governments are gaining growing recognition as an important instrument in the fight against corruption and the absence of the rule of law in commodity-rich countries. For example, in 2013 the European Union decided to introduce disclosure obligations for oil, natural gas and mining enterprises, as well as for timber companies operating in primary forests. These require the disclosure of payments to authorities that exceed EUR 100,000. The USA requires listed and major companies which extract, process or export commodities, as well as their subsidiaries, to disclose payments made to governments.

<sup>61</sup> Background Report on Commodities: Second status report on the implementation of the recommendations, August 2015, pp. 9-11 <https://www.news.admin.ch/news/message/attachments/40643.pdf>

### 5.7.3 The State-business nexus

#### **Guiding Principle 4**

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*States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.*

Guiding Principle 4 concerns the activities of business enterprises that are owned or controlled by the federal government (referred to below as federal government-associated businesses), or which receive considerable support and services from federal agencies. Given its direct influence on the activities of these companies, under the UNGP the federal government has a particular obligation to ensure that these federal government-associated businesses protect human rights, for example by conducting human rights due diligence. Where the acts of a business enterprise can be attributed to the federal government, abuses of human rights may entail a violation of Switzerland's own international law obligations to respect human rights.

The Federal Council acknowledges its particular responsibility to ensure that federal government-associated businesses respect human rights<sup>62</sup>. Federal government-associated businesses should serve as examples of good practice<sup>63</sup>. The Federal Council regards its expectations towards these enterprises as the benchmark that is mentioned in section 4.3 of the Federal Council report in fulfilment of postulate 12.3503 *Eine Ruggie Strategie für die Schweiz [‘A Ruggie Strategy for Switzerland’]*.

The federal government will employ the following policy instruments (PI) to implement Guiding Principle 4:

*PI17 Human rights due diligence by federal businesses and federal government-associated businesses*

Relations between government-associated enterprises and the Confederation are described in the federal government's *Corporate Governance Report*<sup>64</sup>. The Federal Council defines its strategic goals for related enterprises every four years. While these goals do not specifically contain criteria for

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<sup>62</sup> 'Federal government-associated businesses' are understood as entities which have been hived off from the federal government and are managed by means of strategic goals as described in Art. 8 para. 5 of the Government and Administration Organisation Act (GAOA, SR 172.010).

<sup>63</sup> Gesellschaftliche Verantwortung der Unternehmen, Erwartungen an die Verantwortung der Unternehmen für Gesellschaft und Umwelt [‘Corporate social responsibility, expectations for corporate social and environmental responsibility’], position paper and action plan of the Federal Council, 1.4.2015 (<http://www.news.admin.ch/NSBSubscriber/message/attachments/38880.pdf> [de]).

<sup>64</sup> Bericht des Bundesrates zur Auslagerung und Steuerung von Bundesaufgaben: Corporate-Governance-Bericht [‘Report of the Federal Council on the outsourcing and management of federal tasks’], September 2006, <https://www.admin.ch/opc/de/federal-gazette/2006/8233.pdf> [de].

business and human rights, the Federal Council expresses the expectation that related enterprises will pursue a sustainable corporate strategy to the best of their business ability<sup>65</sup>.

In 2017, the federal government will draw up a status report on the fulfilment of CSR in its own activities. This is to cover the federal government's role as an employer, a purchaser, an investor and as an owner of federal government-associated companies (in accordance with the Federal Council's CSR position paper, activity B.3.1). This interpretive framework should also highlight any need for action in the future, and where appropriate propose measures to the Federal Council.

*PI18 Requirement that business enterprises covered by Swiss Export Risk Insurance (SERV) conduct human rights due diligence*

The sustainability guidelines that have existed since 2003 are regularly updated and enhanced by the OECD. Switzerland is also part of this process. The guidelines are intended, among other things, to improve protection against human rights abuses by business enterprises, and they are largely recognised as an international standard by export credit agencies and export insurance providers.

Swiss Export Risk Insurance (SERV) attaches great importance to sustainability and thus also to human rights. The SERV Act and SERV Ordinance have undergone a partial revision, with the changes entering into force as of 1 January 2016. The latest change to the Ordinance expressly set out the insurance applicant's duty to provide information on human rights<sup>66</sup>. Unlike many other export credit agencies, SERV does not grant any export credits themselves (known as *direct lending*), but instead offers only insurance and guarantees (known as *pure cover*). SERV does not grant cover, neither can it accept any liability in the event of a claim, if the project being supplied or financed by the policyholder does not meet international human rights standards. The revised Ordinance entered into force at the beginning of 2016. In cases of elevated risk, SERV will require applicants to conduct human rights due diligence in the sense of the UNGP and the expectations towards companies that are described in Section 4.3. When deciding whether or not to grant cover, SERV also factors in the findings of investigations made by the National Contact Point for the OECD Guidelines for Multinational Enterprises.

*PI19 Human rights due diligence by the authorities in public-private development partnerships*

In March 2015, the SDC published guidelines for assessing the risks of partnerships with the private sector<sup>67</sup>. They factor in impacts on human and labour rights, government structures and the environment. The guidelines propose a three-stage due diligence process: first a brief analysis by the SDC, followed by a detailed external analysis, and finally dialogue with the partner. The SDC will not work with partners that have repeatedly been involved in human rights abuses and that cannot make a convincing case that they have substantially reduced human rights-related risks.

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<sup>65</sup> cf. for example, point 1.4 of the Federal Council's strategic goals for Swiss Federal Railways (<https://www.uvek.admin.ch/uvek/de/home/uvek/bundesnahe-betriebe/sbb/strategische-ziele.html> [de] [fr] [it]), or point 2.6 of the Federal Council's strategic goals for Swiss Post (<https://www.uvek.admin.ch/uvek/de/home/uvek/bundesnahe-betriebe/post/strategische-ziele.html> [de] [fr] [it])

<sup>66</sup> cf.: Art. 8 lit. a of the Ordinance on Swiss Export Risk Insurance [SERV-O], <https://www.admin.ch/opc/de/classified-compilation/20062072/index.html#a8> [de] [fr] [it]

<sup>67</sup> cf.: SDC Risk Assessment Guidelines for Partnerships with the Private Sector: Facilitating Decision-Making to Engage with Private Partners and Encouraging the Dialogue on Critical Development Issues Related to SDC's Values and Objectives, March 2015.



In implementing the new guidelines for assessing the risks of public-private partnerships, the SDC works with external partners which conduct the detailed risk analysis. The SDC also ensures that it does not enter into any public-private development partnerships with business enterprises which refuse to work with the National Contact Point for the OECD Guidelines for Multinational Enterprises.

### **Guiding Principle 5**

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*States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.*

Guiding Principle 5 concerns situations in which private business enterprises provide services on behalf of the federal government. The requirements that the federal government sets for these enterprises draw on Pillar 2 of the UNGP and the expectations for companies described in Section 4.3.

The federal government will employ the following policy instrument (PI) to implement Guiding Principle 5:

#### *PI20 Human rights due diligence for private security service providers*

The federal government uses a variety of services from private security service providers – for example to guard Swiss representations abroad. It is therefore obliged to check whether or not the firms that it engages fulfil their human rights responsibilities.

Article 31 para. 1 b of the Federal Act on Private Security Services provided Abroad states that, in a complex environment, the federal authorities may consider only those firms which are members of the ICoCA<sup>68</sup>. Since the ICoCA requires that firms abide by human rights standards, this is equivalent to demanding due diligence.

As a general rule, the federal government does not engage any security firms that are not members of the ICoCA to work in complex environments. It advocates that security firms should join the ICoCA, especially in regions in which there are still few, if any, member companies.

### **Guiding Principle 6**

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*States should promote respect for human rights by business enterprises with which they conduct commercial transactions.*

The federal government is committed to ensuring that the value chains of goods purchased by the public sector are free of human rights abuses.

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<sup>68</sup> Where no such firms are available, the FDFA is committed to broadening the reach of the Code of Conduct and encouraging firms to subscribe to it. cf. Art. 17 in Erläuternder Bericht des BJ zur Verordnung über die im Ausland erbrachten privaten Sicherheitsdienstleistungen (VPS) [Federal Office of Justice explanatory report on the Ordinance on Private Security Services provided Abroad (OPSA)], June 2015, <https://www.bj.admin.ch/dam/data/bj/sicherheit/gesetzgebung/archiv/sicherheitsfirmen/vn-ber-vps-d.pdf> [de].



The federal government will employ the following policy instrument (PI) to implement Guiding Principle 6:

*PI21 Human rights criteria in public procurement at federal level*

Public procurement practices in Switzerland are governed by the Federal Act on Public Procurement (PPA, SR 172.056.1) and the related Ordinance<sup>69</sup>. Article 8 para. 1 PPA states that the federal government awards contracts for goods and services in Switzerland on the following conditions: business enterprises must respect the usual health and safety regulations and working conditions at the location where the good or service is provided, and also ensure that men and women receive equal pay for equal work. Furthermore, procurement processes that are not subject to WTO requirements must take into account the training places offered by competing Swiss bidders which have submitted bids of equal value. Where goods and services are provided abroad, providers must comply at a minimum with the eight core conventions of the International Labour Organization (ILO)<sup>70</sup>.

The federal government's public procurement legislation is currently in revision in response to the changes made to the WTO Agreement on Government Procurement (GPA) in 2012. Sustainability aspects (economic, environmental and social) are now to be codified in law, rather than being governed at ordinance level, as is currently the case (Art. 2a draft PPA).

The federal government's purchasing offices ensure sustainable procurement practices while awarding contracts according to the principles of equal treatment, transparency, competition and the economic use of public funds<sup>71</sup>. The Federal Procurement Conference addressed the consideration of social and environmental factors in detail in its recommendation on *sustainable procurement*<sup>72</sup>. It recommends applying sustainability criteria in procurement procedures. Sustainability factors may be included as award criteria<sup>73</sup>. A tool for country-specific risk assessment permits an evaluation of the credibility of independent declarations.<sup>74</sup>

Furthermore, the *Sustainable Procurement* monitoring programme was introduced as part of the federal government's procurement audit in 2013.

The federal government is also looking into creating a national platform for sustainable public procurement. The aim of this platform would be to promote sustainable public procurement and ensure an exchange of information on this issue between the different levels of government.

The Federal Council attaches great importance to sustainable procurement practices and will continue its current activities in this field during the reporting period.

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69 (PPA, SR 172.056.11).

70 ILO Conventions no. 29 (SR 0.822.713.9), no. 87 (SR 0.822.719.7), no. 98 (SR 0.822.719.9), no. 100 (SR 0.822.720.0), no. 105 (SR 0.822.720.5), no. 111 (SR 0.822.721.1), no. 138 (SR 0.822.723.8), no. 182 (SR 0.822.728.2).

71 The revised WTO Agreement on Government Procurement (GPA) makes explicit provision for award criteria to protect the environment. However, such measures may not breach the non-discrimination obligation contained in Article IV, may not obstruct trade (Article X:1) or lead to the introduction of new discriminatory measures (Article XXII:6-8).

72 Link to recommendation on sustainable procurement practices:

<https://www.bbl.admin.ch/bbl/de/home/themen/nachhaltigkeit.html> [de] [fr] [it]

73 SR 172.056.11 Art. 27 para. 2 PPA

74 <http://www.ilo.org/dyn/normlex/en/f?p=11000:101:0::NO::>

## 5.7.4 Business respect for human rights in conflict-affected areas

### **Guiding Principle 7**

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*Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:*

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;*
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;*
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;*
- (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.*

Business enterprises operating in conflict-affected areas face a special set of human rights challenges. The federal government assists companies in conducting due diligence in conflict-affected and high-risk areas in a way that takes the local circumstances into account.

The federal government will employ the following policy instruments (PI) to implement Guiding Principle 7:

#### *PI22 Guidelines on human rights due diligence in conflict-affected and high-risk areas*

Over the years, the federal government has supported the drafting of a number of guidelines addressing the situation in conflict-affected areas. These include the *Guidance on Conflict Sensitive Business Practice* for the extractive sector issued by *International Alert*<sup>75</sup>, and the *Red Flags* initiative<sup>76</sup>. Switzerland also provides financial support for the implementation of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*<sup>77</sup>. In addition, Switzerland is a member of the multi-stakeholder group managing the implementation, spread and continued development of the Guidance. It is aimed primarily at companies operating in conflict-affected or high-risk areas in the extraction and trading of commodities.

#### *PI23 Advisory and support services provided by Swiss representations abroad*

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<sup>75</sup> [http://www.iisd.org/pdf/2005/security\\_conflict\\_sensitive\\_business.pdf](http://www.iisd.org/pdf/2005/security_conflict_sensitive_business.pdf)

<sup>76</sup> <http://www.redflags.info/>

<sup>77</sup> <http://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>

Representations abroad have enormous potential to raise awareness of human rights issues in the corporate sector and to offer country-specific advice. A number of Swiss representations in conflict-affected areas have developed innovative initiatives based on the UNGP – largely on an ad-hoc basis – to promote social responsibility on the part of Swiss business enterprises<sup>78</sup>. The federal government will involve Switzerland's representations abroad more closely in its efforts to raise awareness of and provide support for respect for human rights among business enterprises. Among other measures, this will involve training and awareness-raising for embassy staff, better experience-sharing between representations and with the relevant federal agencies in Bern, and more active communication about the representations' activities.

#### *PI24 Restriction of public services in the event of gross human rights abuses*

In the latest change to its ordinance, Swiss Export Risk Insurance (SERV) explicitly included the obligation for insurance applicants to provide information on human rights. SERV does not grant cover, neither can it accept any liability in the event of a claim, if the project being supplied or financed by the policyholder violates international human rights standards.

*Switzerland Global Enterprise* (S-GE) has a code of conduct<sup>79</sup> aimed at S-GE staff which is intended to ensure that international human rights are respected and staff avoid being complicit in any way in their violation. Should S-GE determine that customers are in breach of the relevant laws or regulations, or are committing human rights abuses, it will refuse mandates or withdraw from existing ones.

#### *PI 25 Regulations on transparency and due diligence concerning minerals from conflict-affected areas*

The introduction of transparency regulations for minerals from conflict-affected areas is a policy instrument that a number of OECD states have either already adopted or are seriously considering. The Federal Council is tracking international developments towards transparency and due diligence concerning minerals from conflict-affected areas, especially in the EU, and is observing their impact on the Swiss economy. If the EU were to introduce a certification system and/or disclosure obligations for companies, the Federal Council will consider putting forward appropriate proposals for a Swiss solution congruent with EU action.

#### *PI26 Economic sanctions*

The Federal Act on the Implementation of International Sanctions<sup>80</sup> forms the basis on which Switzerland is able to adopt non-military sanctions imposed by the UN, the OSCE and Switzerland's major trading partners in the interests of compliance with international law and respect for human rights. The Embargo Act itself does not contain any specific sanctions, but rather provides a legal framework that authorises the Federal Council to issue ordinances on the imposition of sanctions.

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<sup>78</sup> For example, the Swiss embassy in Myanmar maintains a platform for regular exchange with Swiss companies and other stakeholders. Meanwhile, the Swiss embassy in Colombia has drawn up a code through which Swiss companies commit to upholding social standards.

<sup>79</sup> cf: <http://www.s-ge.com/global/about/en/content/code-conduct>

<sup>80</sup> cf.: Embargo Act, EmbA, SR 946.237, <https://www.admin.ch/opc/en/classified-compilation/20000358/index.html>

For example, the Ordinance on the International Trade in Rough Diamonds of 29 November 2002<sup>81</sup>, which was issued on the basis of the Embargo Act, implements in Switzerland the provisions of the Kimberley Process, which addresses the trade in diamonds from conflict-affected areas.

The Federal Council regards the legal framework for the imposition of sanctions as sufficient. It continuously monitors the decisions of the UN, OSCE and key trading partners, and decides on a case-by-case basis on appropriate action.

### 5.7.5 Policy coherence

#### **Guiding Principle 8**

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*States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.*

According to Guiding Principle 8, in fulfilling their roles, federal authorities and other government institutions must be aware of the State's human rights obligations, and must receive relevant information and training.

The Federal Council regards the present National Action Plan, along with the position paper on CSR, as suitable means of achieving this goal.

The federal government will employ the following policy instruments (PI) to implement Guiding Principle 8:

#### *PI27 Implementation, review and update of the National Action Plan on Business and Human Rights*

The present Action Plan is the first strategy document from the federal government that addresses the specific issue of business and human rights.

In view of the rapidly changing environment and the variety of ways in which State action affects and is affected by the business and human rights domain, constant vigilance is required to ensure that government policy remains consistent. This can be fostered by means of an inclusive, ongoing process of drafting, reviewing and renewing the National Action Plan.<sup>82</sup> The Federal Council will implement, review and update the National Action Plan in line with the international standard defined by the UN Working Group on Business and Human Rights (cf. Point 6). It will present the first updated version of the National Action Plan in 2020.

#### *PI28 Coherence between the various policies, strategies and action plans*

Economic, social, environmental, development and human rights policies are all interrelated elements of a policy to promote sustainable development. The Federal Council attaches great importance to

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<sup>81</sup> cf.: Diamonds Ordinance, SR 946.231.11, <https://www.admin.ch/opc/de/classified-compilation/20022550/index.html> [de] [fr] [it]

[82 The UN Working Group on Business and Human Rights regards the continuity of processes to draft, implement and renew National Action Plans as one of the four essential criteria for effective action plans. cf.: NAP Guidance, p. 4.](#)

coherence between these policies. The issue of corporate social responsibility (CSR) is dealt with in the position paper and action plan of the Federal Council on corporate responsibility for society and the environment<sup>83</sup>. CSR and business and human rights are also mentioned in the goals of the 2030 Agenda, as well as in several federal government strategies. These include, for example, this present Action Plan, the Sustainable Development Strategy<sup>84</sup>, the Dispatch on Switzerland's International Cooperation<sup>85</sup>, the Foreign Policy Report<sup>86</sup>, the Foreign Economic Policy Report<sup>87</sup>, the FDFA Human Rights Strategy 2016-2019<sup>88</sup>, the Swiss Guidelines on the Protection of Human Rights Defenders<sup>89</sup> and the National Action Plan to Fight Human Trafficking<sup>90</sup>. Consistent policies on business and human rights are ensured by incorporating the UNGP into these strategies.

The Federal Council incorporated the UNGP, as a key reference framework for State activities in the business and human rights sphere, into the Sustainable Development Strategy, which it endorsed as part of its legislative planning programme in early 2016. The Principles incorporated into the Strategy include recognition of the federal government's duty to protect, as well as the responsibility of business enterprises to respect human rights – one of the means of doing so being the implementation of human rights due diligence.

#### *PI29 Legislative review to ensure conformity with the UNGP*

The federal government should ensure that the national legal framework supports and does not hinder respect for human rights. As part of the office consultation procedure, the federal government will verify that new law complies with this principle.

Under the present service level agreement, where new legislation which has a particular bearing on business and human rights is being drafted or discussed, the federal government can instruct the Swiss Centre of Expertise in Human Rights (SCHR) to review the consistency of that legislation with the UNGP.

#### *PI30 Interdepartmental cooperation*

The federal government maintains an International Human Rights Policy Core Group (KIM), in which all interested departments and offices are represented. Its role is to support coordination and consultation between federal agencies on all human rights matters.

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83 cf.: <http://www.news.admin.ch/NSBSubscriber/message/attachments/38880.pdf> [de]

84 cf.: <https://www.are.admin.ch/are/en/home/sustainable-development/strategy-and-planning/sustainable-development-strategy-2016-2019.html>

85 cf.: <https://www.eda.admin.ch/deza/en/home/sdc/strategy/legal-bases/message-international-cooperation-2017-2020.html>

86 cf.: <https://www.admin.ch/opc/de/federal-gazette/2015/1055.pdf> [de]

87 cf.:

[https://www.seco.admin.ch/seco/en/home/Publikationen\\_Dienstleistungen/Publikationen\\_und\\_Formulare/Aussenwirtschafts/Berichte\\_zur\\_Aussenwirtschaftspolitik/awb\\_2015.html](https://www.seco.admin.ch/seco/en/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Aussenwirtschafts/Berichte_zur_Aussenwirtschaftspolitik/awb_2015.html)

88 cf.:

[https://www.eda.admin.ch/dam/eda/en/documents/publications/MenschenrechtshumanitaerePolitikundMigration/Strategie-Menschenrechte-160224\\_EN.pdf](https://www.eda.admin.ch/dam/eda/en/documents/publications/MenschenrechtshumanitaerePolitikundMigration/Strategie-Menschenrechte-160224_EN.pdf)

89 cf.: [https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/menschenrechte-menschliche-sicherheit/2013-Leitlinien-Schutz-Menschenrechtsverteidiger\\_EN.pdf](https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/menschenrechte-menschliche-sicherheit/2013-Leitlinien-Schutz-Menschenrechtsverteidiger_EN.pdf)

90 cf.: <http://www.news.admin.ch/NSBSubscriber/message/attachments/28815.pdf>

In 2016, the FDFA drew up a strategy for Swiss human rights policy which also includes the issue of business and human rights. This strengthens the way in which human rights are incorporated into relevant policy fields.

#### *PI31 Awareness-raising and training programmes within the federal government*

The federal government offers a block course on business and human rights as part of annual human rights training for employees of the Federal Administration, and as part of general human rights training for future diplomats. It also offers targeted training to further the expertise of employees at Swiss representations abroad, especially in conflict-affected and high-risk regions.

#### *PI32 National human rights institution*

In 2010, the Federal Council and the SCHR embarked on a five-year pilot project with the remit to build capacity at all levels of the political system, in civil society and in business to fulfil Switzerland's international human rights obligations, and to encourage public debate about human rights<sup>91</sup>. One of the core areas covered by the SCHR is what it refers to as the 'thematic cluster' of Human Rights and Business<sup>92</sup>.

On 29 June 2016, the Federal Council decided to set up a national human rights institution. Its purpose is to further strengthen human rights in Switzerland, to support the authorities, civil society organisations and business enterprises in human rights matters, and to encourage exchange between the relevant actors. The FDJP and the FDFA have been commissioned to submit a consultation draft to the Federal Council by the end of June 2017. Under the UNGP, national human rights institutions play an important part in supporting States with the implementation of human rights.

### **Guiding Principle 9**

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*States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.*

Guiding Principle 9 relates to economic agreements that the federal government enters into with other States or with business enterprises. Specifically, these include the WTO, bilateral investment treaties, free trade agreements and contracts for investment projects. With these agreements, the federal government should ensure that sufficient domestic policy scope remains to fulfil the human rights obligations of both Switzerland and the contractual partner.

The Federal Council endeavours to ensure that protection for human rights is incorporated by means of consistency clauses into these contractual agreements, and that the contractual partners' regulatory scope to fulfil their human rights obligations is not restricted. It also runs targeted projects to foster respect for human rights among business enterprises in partner States.

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<sup>91</sup> The Swiss Centre of Expertise in Human Rights (SCHR) is a network consisting of the universities of Bern, Fribourg, Neuchâtel, Zurich and Geneva, in addition to the Centre of Human Rights Education at the University of Teacher Education in Central Switzerland, in Lucerne, and the humanrights.ch association.

<sup>92</sup> The Human Rights and Business thematic cluster, led by Prof. Christine Kaufmann, has enriched the Swiss debate on business and human rights in a variety of different ways in recent years. cf.: <http://www.skmr.ch/en/clusters/business/cluster-human-rights-and-business.html>

The federal government will employ the following policy instruments (PI) to implement Guiding Principle 9:

**PI33** Consistency between free trade agreements and protection for human rights

The primary aim of free trade agreements is to foster bilateral economic relations, and to improve the economic capacity of the contracting States' national economies. When negotiating free trade agreements (and investment protection agreements, see below), Switzerland, in the interests of policy coherence supports the inclusion of clauses requiring consistency with human rights, labour and environmental standards. One of the functions of such clauses is to underline the parties' obligation to comply with the applicable multilateral environmental agreements and International Labour Organization conventions, and to implement them effectively. At the same time, they reference international instruments to protect human rights, and the principles of responsible corporate governance. A further clause in Swiss free trade agreements provides that they may not compromise or challenge existing international law – and therefore also human rights – obligations. When negotiating human rights, labour and environmental law aspects, the competent federal agencies are consulted in the same way as with all other questions.

Free trade agreements, and thus also aspects of relevance to human rights, are monitored via consultation mechanisms, specifically joint committees.

International human rights obligations are implemented primarily by means of the organisations, forums and projects set up for this purpose (including UPRs by the UN Human Rights Council, and the ILO control mechanisms (cf. PI 38, 41, 44 and others)). Switzerland also arranges human rights dialogues, or collaboration on human rights, environmental, labour and employment issues, with selected partner countries.

The Federal Council continues to keep a close eye on international developments in human rights due diligence (referred to as *impact assessments*).

**PI34** Consistency between investment protection agreements and the protection of human rights

In the interests of policy coherence, Switzerland also advocates the inclusion of consistency clauses when negotiating investment protection agreements (IPA).

In 2012, SECO joined forces with interested federal agencies to draft new provisions that incorporate sustainability aspects into IPAs. These provisions state clearly that the agreements are to be interpreted and applied in a manner consistent with other international obligations incumbent on Switzerland and its partner countries, including those concerning human rights. This ensures that IPAs do not conflict with the protection of human rights. Switzerland has been proposing these new provisions in negotiations since 2012<sup>93</sup>. It is also committed to the application to new IPAs of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, which came into effect on 1 April 2014. In early 2015 an internal government working group was set up to review Swiss treaty practice, with the aim of incorporating the latest developments in international investment protection. The report on its findings was published on 7 March 2016<sup>94</sup>.

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<sup>93</sup> In June 2014, Switzerland and Georgia concluded an IPA which was the first to include these new sustainability provisions.

<sup>94</sup> cf.

[https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/Internationale\\_Investitionen/Vertragspolitik\\_der\\_Schweiz.html](https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Internationale_Investitionen/Vertragspolitik_der_Schweiz.html)



The new provisions formulated by the working group are tabled by Switzerland in all negotiations on the revision of existing or conclusion of new IPAs. Switzerland will also continue to track developments in investment protection in the future and, where necessary, review whether or not further amendments to its treaty practices are required.

*PI35 Promotion of the UNGP in political consultations, human rights dialogues and specific projects*

In the future, the Federal Council will be even more systematic in addressing the issue of business and human rights in its political consultations and human rights dialogues with relevant States. When preparing these consultations and dialogue meetings, the FDFA consults not only a variety of federal agencies, but also further interested groups such as representatives of private industry and civil society.

The federal government also aims to take on a greater number of specific bilateral projects, as a means of furthering the UNGP. In political dialogue and in strategic partnerships with the governments of partner states, it will discuss situations in which regulations, policies, or other action on the part of the host state make it difficult for Swiss business enterprises to respect human rights.

### **Guiding Principle 10**

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*States, when acting as members of multilateral institutions that deal with business-related issues, should:*

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;*
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;*
- (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.*

According to Guiding Principle 10, the federal government should play a part in ensuring that multilateral institutions take an active and consistent approach to the issue of business and human rights.

Creating and promoting international standards, and thereby levelling the playing field in this area, is a major priority for the Federal Council. It is a cause it campaigns for actively within multilateral institutions.



The federal government will employ the following policy instruments (PI) to implement Guiding Principle 10:

*PI36 UN Working Group on Business and Human Rights and the Office of the UN High Commissioner for Human Rights*

The UN Working Group on Business and Human Rights and the Office of the UN High Commissioner for Human Rights have a mandate to further the implementation of the UNGP<sup>95</sup>. Among their other activities, they are committed to ensuring that States implement the UNGP at the national level, and that the UNGP become an integral part of other international organisations and instruments.

The Federal Council regards the UN Working Group on Business and Human Rights as an important body through which to promote the implementation of the UNGP. It will maintain its political and financial support for the UN Working Group and the annual UN Forum on Business and Human Rights in Geneva. During the reporting period it will make an additional contribution to promote National Action Plans around the world.

*PI37 Negotiation of a legally binding international convention on human rights and transnational business enterprises*

In June 2014, the UN Human Rights Council passed a resolution to set up an intergovernmental working group to draft a legally binding convention on business and human rights<sup>96</sup>. The group held a first round of negotiations in July 2015, followed by a second round in October 2016.

The Federal Council is committed on principle to closing genuine gaps in international law and to strengthening the enforcement of human rights. It nonetheless takes a critical view of the growing density of colliding norms as the international law regime expands. The Federal Council doubts that a new and binding convention in line with the parameters currently under discussion would significantly improve protection against human rights abuses by business enterprises. Specifically, it takes the view that limiting any treaty to companies active internationally will not have the desired effect. Switzerland will nonetheless continue to observe the negotiating process, and will coordinate its actions with like-minded States.

*PI38 Examination of business and human rights issues as part of the UN Human Rights Council Universal Periodic Review*

The Universal Periodic Review (UPR) is an important multilateral instrument by which to strengthen the implementation of the UNGP. It is a peer review mechanism in which States on the UN Human Rights Council comment on the human rights situation in each other's jurisdictions, and offer recommendations.

In its interventions on the human rights situation in other States, Switzerland has repeatedly pointed out the lack of protection against human rights abuses committed by business enterprises and other parties.

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<sup>95</sup> cf.: UN Human Rights Council, Resolution A/HRC/RES/26/22,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>

<sup>96</sup> cf.: UN Human Rights Council, Resolution A/HRC/26/RES/26/9,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>

Switzerland will present an account of its activities in the business and human rights sphere in its reporting in the third round of the UPR in 2017. It will also include business and human rights issues more prominently in its remarks on the human rights situation in other States.

*PI39 Examination of business and human rights in other review procedures for international law*

Switzerland will include business and human rights appropriately in its periodic reports on the implementation of international conventions, such as the Convention on the Rights of the Child, and the Convention on the Elimination of all Forms of Discrimination Against Women.

*PI40 Coordination between multilateral organisations*

The integration of the UNGP in the processes and guidelines of a range of multilateral organisations is an important catalyst to their effect. Switzerland works within the relevant bodies to achieve greater cooperation and consistency between multilateral organisations. Examples include its engagement in the International Labour Organization (ILO) for social partnership at the international level, and in the World Trade Organization (WTO) for the ILO to have observer status within the WTO in the interests of closer cooperation between the two organisations.

A further example is support and funding for joint projects between the ILO and the United Nations Industrial Development Organization (UNIDO) in developing countries. The Federal Council will continue to pursue its strategy in the ILO.

*PI41 The standards and control mechanisms of the ILO*

The ILO has a reporting, representation and complaint system to monitor compliance with international labour standards (conventions). Within this system, complaints are heard by an independent, international tripartite body. In 2013, the federal government and its social partners adopted a strategy for Switzerland's engagement in the ILO that enables it to promote social justice<sup>97</sup>. This strategy has three main areas of focus: engagement to strengthen the ILO, the credible application and promotion of ILO norms and standards in Switzerland, and support for decent work around the world.

The Federal Council takes a proactive approach to the drafting and adoption of international labour standards, and continually reviews the possibility of ratifying conventions. The federal government ensures that ILO norms are applied. It also endeavours to exert greater influence and to encourage the implementation of fundamental ILO standards by raising awareness among social partners and the general public about social standards and their relevance.

*PI42 Activities of the UN Special Rapporteur on trafficking in persons*

Switzerland supports the independent policy dialogue being conducted by the UN Special Rapporteur on trafficking in persons, in order to prevent the risk of human trafficking in value chains. The objective is to improve consistency and synergies between the human rights-based fight against human trafficking and the UNGP. Among other approaches, the private sector is being involved in work to develop recommendations<sup>98</sup>.

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<sup>97</sup> cf. [https://www.seco.admin.ch/seco/de/home/Arbeit/Internationale\\_Arbeitsfragen/IAO.html](https://www.seco.admin.ch/seco/de/home/Arbeit/Internationale_Arbeitsfragen/IAO.html) [de] [fr] [it]

<sup>98</sup> For information on other areas of focus of the UN Special Rapporteur on trafficking in persons, especially women and children, please visit the website of the Office of the UN High Commissioner for Human Rights:

#### PI43 Council of Europe action to implement the UNGP

The Council of Europe is an appropriate multilateral body to draw up transnational human rights standards. On 16 April 2014, its Committee of Ministers adopted a declaration containing recommendations on the implementation of the UNGP for member states<sup>99</sup>.

Switzerland played an active part in this work. In particular, the Swiss delegation supported the proposal that the Council of Europe maintain consistency with the UNGP, and seek solutions to enable victims to obtain remediation more easily. By implementing its NAP, Switzerland is also implementing the corresponding Council of Europe recommendations.

#### PI44 Action on business and human rights within the World Tourism Organization

The World Tourism Organization (UNWTO) plays a key part in implementing the UNGP in the tourism sector. Worthy of particular mention here is the Global Code of Ethics for Tourism, which acknowledges respect for human rights as a fundamental principle<sup>100</sup>. Efforts are currently ongoing within the UNWTO to transform the Global Code of Ethics into an international convention on ethics in tourism. Furthermore, tourism has the potential to contribute directly or indirectly to the achievement of the UN's 17 Sustainable Development Goals. At its General Assembly in 2015, the UN declared 2017 to be the International Year of Sustainable Tourism for Development, and instructed UNWTO to organise a programme of relevant activities.

As a member of the UNWTO, the federal government works to ensure that the organisation actively promotes the implementation of the UNGP in the tourism sector. Switzerland is also on the management committee for the International Year of Sustainable Tourism for Development 2017. It is also working with Germany and Austria to produce a German translation of the UNWTO brochure on the contribution that tourism can make towards the UN's 17 Sustainable Development Goals.

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<http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx>; reports can be accessed via the following link:  
[http://ap.ohchr.org/documents/dpage\\_e.aspx?m=137](http://ap.ohchr.org/documents/dpage_e.aspx?m=137)

<sup>99</sup> cf. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c6ee3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c6ee3)

<sup>100</sup> cf. <http://ethics.unwto.org/en/content/global-code-ethics-tourism>

## 5.8 Pillar 3: access to remedy

### 5.8.1 Fundamental principle

#### ***Guiding Principle 25***

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*As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*

The Federal Council acknowledges its duty to grant access to remedy to those affected by human rights abuses committed on Swiss territory and/or under Swiss jurisdiction. It believes the principal means of doing this is via the well-functioning Swiss judicial system, along with alternative, non-judicial dispute-resolution mechanisms.

The Federal Council also acknowledges its responsibility to facilitate access to Swiss grievance mechanisms where business enterprises based in Switzerland are involved in human rights abuses abroad, and those affected in the host country have no appropriate access to effective remedy. A *smart mix* of judicial and non-judicial mechanisms will be considered.

### 5.8.2 Operational principles: state judicial mechanisms

#### ***Guiding Principle 26***

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*States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.*

The UNGP describe practical and procedural obstacles as court costs, lawyers' fees, the lack of opportunity for representative proceedings, or a lack of resources, specialist knowledge and support on the part of public prosecutors. These barriers can make it difficult for those affected by human rights abuses to seek remedy via the channels provided for in law. In international cases additional issues concerning jurisdiction and applicable law may arise.

The Federal Council recognises the importance of effective domestic judicial mechanisms to punish offenders and grant remedy to victims of human rights abuses connected with business enterprises. The extra-territorial dimension of any judicial mechanisms must be examined here. The Federal Council therefore supports efforts to achieve a better understanding of the relevant frameworks in different countries, and encourages international processes. Under certain circumstances, it is possible under Swiss law for individuals who believe that their rights have been violated by Swiss companies to bring an action or to appeal before Swiss courts. The competence of these courts to hear such cases, as well as the applicable law, must be assessed individually with reference to the applicable legal basis.

Judicial competence must be reviewed first in international cases. Here, treaty law must be considered in addition to national law. The rules of jurisdiction will determine whether or not an action can actually be brought before a Swiss court. The question of what law should apply to the action arises only in the

second phase. This law will determine whether or not a business enterprise bears any liability and, if so, according to what rules. Both questions must be examined independently.

For tort cases brought under private law in Switzerland against Swiss-based companies, the place of jurisdiction must always be stated as Switzerland (Art. 2 International Private Law Act (IPLA)<sup>101</sup> and Art. 2 of the Lugano Convention<sup>102</sup>). Action may even be brought in Switzerland against business enterprises based abroad, if the damage or loss (from a violation of human rights, for example) is realised or has had a direct impact in Switzerland, or was caused from a branch in Switzerland (Art. 129 IPLA, Art. 5 nos. 3 and 5 of the Lugano Convention). Art. 3 IPLA also provides for emergency Swiss jurisdiction if proceedings abroad are impossible or unreasonable. The condition here is that the case being brought has a sufficient association with Switzerland.

The success of any action, and especially the question whether or not a tort can be ascribed to a particular party, depends on the applicable law. In Swiss courts, this is determined for torts by Article 132 et seqq. IPLA. However, by virtue of the provisions on public policy (*ordre public*, Art. 17 and 18 IPLA), fundamental tenets of Swiss law – specifically human rights – apply irrespective of the law applicable to a given case.

Under certain circumstances, a business enterprise may face criminal prosecution under the General Provisions of the Swiss Criminal Code, in addition to the natural persons who have committed the punishable act, and who are punishable first and foremost<sup>103</sup>.

The federal government will employ the following policy instruments (PI) to implement Guiding Principle 26:

#### *PI45 Evaluation of access to Swiss courts and of the removal of practical and procedural obstacles*

In 2014, the federal government commissioned a study from the SCHR on jurisdiction in cases of infringements of human rights by transnational business enterprises<sup>104</sup>. It is intended in part to set out the legal options, and any barriers to access to Swiss courts. The analysis concentrates on the ways in which those affected by human rights abuses committed by Swiss companies abroad can claim effective remedy before Swiss courts. The study will also create a basis on which to evaluate Switzerland in comparison with the international community, and to identify the options for any future measures.

In fulfilment of postulate 14.3663 *Zugang zur Wiedergutmachung* ['Access to remedy'], submitted by the Council of States Foreign Affairs Committee, the Federal Council is also analysing which judicial and non-judicial measures are being put in place by other States to permit persons whose human rights have been violated by a company in a host state to seek remediation in that company's home State. The SCHR and the Swiss Institute of Comparative Law are drawing up the study jointly. Work is

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<sup>101</sup> SR 291. [de] [fr] [it]

<sup>102</sup> SR 0275.12. [de] [fr] [it]

<sup>103</sup> For a detailed treatise on access to judicial remediation in Switzerland, cf: Kaufmann et al. 2013, Umsetzung der Menschenrechte in der Schweiz: Eine Bestandesaufnahme im Bereich Menschenrechte und Wirtschaft ['Implementing human rights in Switzerland: a snapshot of human rights and business'], Swiss Centre of Expertise in Human Rights, p. 36-62 [https://register.weblaw.ch/bookinfo.php?book\\_id=287&pref\\_lang=de](https://register.weblaw.ch/bookinfo.php?book_id=287&pref_lang=de).

<sup>104</sup> cf. Extraterritorialität im Bereich Wirtschaft und Menschenrechte: Extraterritoriale Rechtsanwendung und Gerichtsbarkeit in der Schweiz bei Menschenrechtsverletzungen durch transnationale Unternehmen ['Extraterritoriality with regard to business and human rights: the extra-territorial application of law and jurisdiction in Switzerland in the case of human rights abuses by transnational companies'] [http://www.skmr.ch/cms/upload/pdf/160815\\_SKMR\\_Studie\\_Extraterritorialitaet.pdf](http://www.skmr.ch/cms/upload/pdf/160815_SKMR_Studie_Extraterritorialitaet.pdf) [de] [fr].

scheduled to be completed by the end of 2016. Drawing on the study, by 2019 the Federal Council will then examine the implementation of possible measures in the Swiss context, with a view to the revision of the National Action Plan on Business and Human Rights.

As part of work in fulfilment of motion 14.4008 *Anpassung der Zivilprozessordnung* ['Amendment of the Civil Procedure Code'] and postulate 14.3804 *Zivilprozessordnung. Erste Erfahrungen und Verbesserungen* ['Civil Procedure Code. Initial experience and improvements'], the Federal Council is currently examining the law of civil procedure that has been in effect since 2011 in order to identify shortcomings and weaknesses. It will submit any proposed revisions to Parliament by the end of 2018 at the latest. The situation with regard to legal costs, in particular, is to be investigated.

Furthermore, in fulfilment of motion 13.3931 *Förderung und Ausbau der Instrumente der kollektiven Rechtsdurchsetzung* ['Furthering and extending class action instruments'], the Federal Council is also currently drawing up draft bills which will make it easier for a number of injured parties in low-value and mass claims to bring a class action. Individual aspects of the existing instruments are to be improved, and new instruments introduced.

#### *PI46 Accountability and Remedy Project by the Office of the UN High Commissioner for Human Rights*

Switzerland works within international bodies to ensure that court jurisdiction is coordinated, and access to remedy improved. It provides both content and financial support for the work being undertaken by the office of the UN High Commissioner for Human Rights in this area. The corresponding report to the UN Human Rights Council was completed in May 2016 in collaboration with stakeholder groups. It contains recommendations for member states<sup>105</sup>. The next step for Switzerland will be to determine which OHCHR recommendations it is able to implement to improve access to remediation.

#### *PI47 Rule of law in host states*

Switzerland engages in political dialogue (cf. PI 34) and international development cooperation to support a variety of partner States which exhibit deficits in governance. This support aids them in establishing and strengthening the rule of law, so they are better able to fulfil their duty to protect. These programmes include public-private partnership projects, and will be continued on their existing scale.

### **5.8.3 Operational principles: state non-judicial grievance mechanisms**

#### ***Guiding Principle 27***

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*States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.*

<sup>105</sup> cf.: UN Human Rights Council, Resolution A/HRC/RES/26/22,

<http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/Download.aspx?SymbolNo=A%2FHRC%2FRES%2F26%2F22&Lang=fr>

State non-judicial grievance frameworks can be an important factor in gaining remedy for human rights abuses. They enable the parties to identify solutions through dialogue, without what are often lengthy and costly court proceedings.

The federal government will employ the following policy instruments (PI) to implement Guiding Principle 27:

*PI48 National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP)*

The states signatory to the OECD Guidelines for Multinational Enterprises are obliged to set up a non-judicial grievance mechanism in the form of an NCP. Submissions may be made to the NCP where multinational enterprises based in one of the signatory states are accused of failing to comply with the OECD Guidelines, which since their 2011 update also include a chapter on human rights.

The Swiss NCP forms part of SECO, but involves the relevant federal agencies in handling submissions, and receives advice on its strategic orientation and the application of the OECD Guidelines from the multi-stakeholder NCP Advisory Board.

The Federal Council regards the current practice of the Swiss NCP as appropriate and will continue to operate it in its current form.

*PI49 Dispute resolution support from representations abroad*

In recent years, certain representations abroad have helped companies and persons affected by human rights abuses to resolve their conflicts at the negotiating table. They have done so on an ad-hoc basis, but the federal government plans during the current reporting period to examine the possibility of Swiss representations abroad providing greater and more systematic support in resolving disputes.

#### **5.8.4 Operational principles: non-state grievance mechanisms**

##### ***Guiding Principle 28***

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*States should consider ways to facilitate access to effective non-State- based grievance mechanisms dealing with business-related human rights harms.*

Swiss business enterprises, and especially those that are particularly heavily exposed to human rights risks, should provide appropriate grievance mechanisms at the corporate level to allow those affected by abuses to claim remediation. Such mechanisms can also have a preventative effect.

##### ***Guiding Principle 30***

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*Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.*

The Federal Council regards support for grievance mechanisms as part of multi-stakeholder initiatives as an important means of guaranteeing access to remedy. They not only facilitate redress for those affected by abuses, but also boost the effectiveness and credibility of the initiatives concerned.



The federal government will employ the following policy instrument (PI) to implement Guiding Principle 30:

*PI50 Grievance mechanism under the International Code of Conduct (ICoC) and other multi-stakeholder initiatives*

The International Code of Conduct for Private Security Service Providers stipulates an innovative grievance mechanism by which to punish violations by business enterprises. Claims may be made by employees or by third parties<sup>106</sup>. Similar contact points for affected parties are under discussion in other multi-stakeholder initiatives.

Switzerland provided significant content and financial support for the introduction of the ICoC grievance mechanism. It also makes a substantial financial contribution to the *International Code of Conduct Association*, which is responsible for implementing the grievance mechanism.

Switzerland will continue to offer political and financial support for the implementation of the ICoC, and thus also its grievance mechanism. Furthermore, through its membership of other multi-stakeholder initiatives it will promote the introduction of further such mechanisms.

### **Guiding Principle 31**

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*In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:*

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;*
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;*
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;*
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;*
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;*
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;*

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<sup>106</sup> cf. <http://www.icoca.ch/en/complaints>



*(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;*

*Operational-level mechanisms should also be:*

*(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.*

The Federal Council supports the effectiveness criteria described in Guiding Principle 30, and will endeavour to pursue all of its action to promote non-judicial and non-governmental grievance mechanisms in accordance with them. It is not planning any separate activities.

## **6 Implementing, monitoring and revising the Action Plan**

The measures defined in this National Action Plan should be implemented within four years. The Federal Council will review and update the National Action Plan once in every legislative period. The next scheduled review will be in 2019.

The precise details of this process will be described below. They will follow the recommendations of the UN Working Group on Business and Human Rights<sup>107</sup>.

### **6.1 Implementation**

The National Action Plan defines a total of 50 policy instruments. These are summarised in Appendix 1. This table also states the lead agency in each case<sup>108</sup>.

Policy instruments will be implemented by the lead federal agencies in coordination with the other relevant offices. The coordination of National Action Plan implementation work lies with the FDFA and EAER.

### **6.2 Monitoring**

The FDFA and EAER, in collaboration with the various stakeholder groups, are setting up a Monitoring Group composed of representatives of the Federal Administration, business, civil society and the academic world<sup>109</sup>. Its first task will be to sit down with the responsible offices to define the committee's role and functions.

The FDFA and EAER will regularly discuss progress with the implementation of the National Action Plan with the Monitoring Group. At the end of each legislative period, the FDFA and EAER will publish a short joint report on the status of work. The Monitoring Group will be invited to comment on these reports.

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<sup>107</sup> UN Working Group on Business and Human Rights (2015), Guidance on National Action Plans on Business and Human Rights Version 2.0.

<sup>108</sup> This fulfils not only the UN Working Group on Business and Human Rights standard, but also the expectations of Swiss stakeholders. According to the outcome of stakeholder consultations, 'the majority of stakeholders from all groups [...] is of the opinion that actions should have a clearly defined time frames, responsibilities, and indicators' (cf. Graf et al. 2014, p. 45).

<sup>109</sup> This Monitoring Group should be composed of two representatives of the business stakeholder group (one from an SME and one from a multinational enterprise), two representatives of civil society (one academic and one NGO representative), and two representatives of the FDFA and EAER (one from each department).

The FDFA and EAER are also responsible for coordinating the timing of work to implement the CSR position paper Action Plan, in addition to the present National Action Plan, so that the time and cost involved for stakeholder groups remains reasonable. The establishment of a Monitoring Group that reports regularly on progress with the implementation of the NAP meets the requirements of the UN guidance for drafting national action plans.

### **6.3 Updating and revision**

The National Action Plan will be updated and revised once per legislative period, based on an external analysis of the Swiss context for business and human rights, and any gaps identified in Switzerland's implementation of the UNGP. This review will also examine the possible integration of environmental aspects associated with human rights. The revision will follow the recommendations of the UN Working Group on Business and Human Rights.



## 7 Appendix: overview of implementation

The measures defined in this National Action Plan should be implemented over four years. The services attached to the Federal Administration and Federal Council will review the Action Plan periodically and will update it in 2019.

Guiding Principle		Policy Instrument	Activity	Current or new	Lead
GP 3	1	Human rights due diligence	Support for and promotion of human rights due diligence by business enterprises.	Current	FDFA / EAER
	2	Regulation of private security service providers	Implementation of the Federal Act on Private Security Services provided Abroad	Current	FDFA
	3	Regulation of war material	Implementation of the War Material Act and its Ordinance	Current	EAER
	4	Regulation of technologies for internet and mobile communication surveillance	The Ordinance of 13 May 2015 is being implemented. It remains in force until 12 May 2019.	Current	EAER
	5	Regulation of the manufacture and import of biofuels	Implementation of the Mineral Oil Tax Act. The revised Act has been in force since 1 August 2016. Compliance with socially acceptable production conditions to benefit from tax relief is codified in law.	Current	EAER / FDF

			The new criterion of the lawful acquisition of cultivatable land also applies.		
	6	Clarify and communicate what the Federal Council expects of business enterprises	Launch and implementation of the NAP, organisation and participation in dialogue forums and events, awareness-raising events for business enterprises	New	FDFA / EAER
	7	Federal government contact point for stakeholder groups	Launch of a federal government CSR web portal that will also cover business and human rights issues	New	FDFA / EAER
	8	Guidelines for business enterprises on implementing the UNGP	Draft of guidance on human rights due diligence for <i>international sporting events</i> and <i>commodities trading</i>	Current	FDFA / EAER
	9	Good practice award	An award honouring good practice in the business and human rights sphere	New	FDFA / EAER
	10	Initiatives on respect for labour and human rights in value chains	Implementation of economic development cooperation projects	Current	EAER
	11	Multi-stakeholder initiatives in the business and human rights field	ICoC / ICoCA: - Participation in and support for an independent governance and controlling mechanism  VPs: - Advocate for improved accountability - Workshop on security and human rights	Current	FDFA
	12	Sustainability reporting standards	Commitment to promoting and harmonising sustainability reporting	Current	DETEC
	13	Corporate sustainability reporting	Implementation of the 2030 Agenda for Sustainable Development	Current	DETEC / FDFA / FDJP

	14	Child protection in tourism	Implementation of and financial support for the campaign	No further funding from 2017 onwards	EAER
	15	Obligation to disclose payments to governments	- Implementation of recommendation 8 from the Background Report on Commodities - Continue work to implement the Extractive Industries Transparency Initiative (recommendation 7 from the Background Report on Commodities)	Current	FDFA / FDJP/ EAER
	16	Reduction in human rights risks associated with gold extraction and trading	- Federal Council report on human rights risks in the gold sector - Implementation of the second phase of the Better Gold Initiative for Artisanal and Small-Scale Mining (BGI for ASM)	New	FDFA (report) EAER (BGI for ASM)
GP 4	17	Federal businesses and federal-government associated businesses	Status report on the fulfilment of CSR in federal government activities.	New	FDF / EAER
	18	Requirement that business enterprises covered by Swiss Export Risk Insurance (SERV) conduct human rights due diligence	Implementation of the Ordinance on Swiss Export Risk Insurance (SERV-O)	Current	EAER
	19	Human rights due diligence by the authorities in public-private development partnerships	Implementation of the <i>SDC Risk Assessment Guidelines for Partnerships with the Private Sector</i>	Current	FDFA
GP 5	20	Human rights due diligence for private security service providers	Implementation of the Federal Act on Private Security Services provided Abroad	Current	FDFA
GP 6	21	Human rights criteria in public procurement at federal level	Examination of the creation of a national platform for sustainable public procurement	New	DETEC / FDF

GP 7	22	Guidelines on human rights due diligence in conflict-affected and high-risk areas	Support for the implementation of guidelines on human rights due diligence in conflict-affected and high-risk areas	Current	FDFA / EAER
	23	Advisory and support services provided by Swiss representations abroad	Training and awareness-raising for embassy staff	New	FDFA / EAER
	24	Restriction of public services in the event of gross human rights abuses	<ul style="list-style-type: none"> <li>- Implementation of the Ordinance on Swiss Export Risk Insurance (SERV-O)</li> <li>- Application of the code of conduct of <i>Switzerland Global Enterprise</i></li> </ul>	In force since 1.1.2016  Current	EAER
	25	Regulations on due diligence for minerals from conflict-affected areas	Analysis of the impact of international regulation on the Swiss economy	Current	FDJP
	26	Economic sanctions	Implementation of the Embargo Act. The Federal Council consistently monitors the decisions of the UN, OSCE and key trading partners, and decides on a case-by-case basis on sanctions	Current	EAER
GP 8	27	Implementation, review and update of the National Action Plan on Business and Human Rights	Implementation, review and update of the National Action Plan on Business and Human Rights	New	FDFA / EAER
	28	Consistency between the various policies, strategies and action plans	Establishment of the UNGP as the key reference framework for business and human rights and the implementation of the Swiss Sustainable Development Strategy 2016-2019	Current	DETEC / FDFA / EAER

	29	Legislative review to ensure conformity with the UNGP	Office consultation procedure and cooperation with the SCHR	Current	Competent federal offices in cooperation with FDFA / FDJP
	30	Interdepartmental cooperation	Implementation of the FDFA Human Rights Strategy 2016-2019	Current	FDFA
	31	Awareness-raising and training programmes within the federal government	Human rights course for Federal Administration employees and future diplomats	Current	FDFA / EAER
	32	National human rights institution	Draw up consultation draft	Current	FDFA / FDJP
GP 9	33	Consistency between free trade agreements and protection for human rights	Integration and implementation of the relevant provisions in the free trade agreement, specifically those of the 'Trade and sustainable development' section	Current	EAER
	34	Consistency between investment protection agreements and protection for human rights	Implementation of the provisions to factor sustainability aspects into investment protection agreements	Current	EAER
	35	Promotion of the UNGP in political consultations, human rights dialogues and specific projects	Political consultations and bilateral human rights projects	New	FDFA

GP 10	36	UN Working Group on Business and Human Rights and the Office of the UN High Commissioner for Human Rights	Support for the Working Group on Business and Human Rights and OHCHR	Current	FDFA
	37	Negotiation of a legally binding international convention on human rights and international business enterprises	Observe negotiations	Current	FDFA
	38	Examination of business and human rights issues as part of the UN Human Rights Council Universal Periodic Review	UPR reporting on business and human rights and formulation of UPR recommendations on business and human rights for other States	Current	FDFA
	39	Examination of business and human rights in other review procedures for international law	Integration of business and human rights in periodic reports	New	FDFA / FDHA / FDJP/ EAER
	40	Coordination between multilateral organisations	Swiss commitment to better cooperation and consistency between multilateral organisations	Current	FDFA / EAER
	41	The standards and control mechanisms of the ILO	Review of ratification policy for and application of ILO standards	Current	EAER
	42	Activities of the UN Special Rapporteur on trafficking in persons	Political support for the independent political dialogue being conducted by the UN Special Rapporteur on trafficking in persons	Current	FDFA
	43	Council of Europe action to implement the	Implementation of the Council of Europe recommendation as part of the National	New	FDFA / FDJP/ EAER



		UNGP	Action Plan for Business and Human Rights		
	44	Action on business and human rights within the World Tourism Organization	Seat on the management committee for the International Year of Sustainable Tourism 2017	New	EAER

Guiding Principle		Policy Instrument	Activity	Current or new	Lead
GP 26	45	Evaluation of access to Swiss courts and of the removal of practical and procedural obstacles	Implementation of postulate 14.3663 <i>Zugang zur Wiedergutmachung</i> ['Access to remediation'] submitted by the Council of States Foreign Affairs Committee	Current	FDFA
	46	Accountability and Access to Remedy: project run by the Office of the UN High Commissioner for Human Rights	Financial and political support for the OHCHR project, and evaluation of the recommendation from the Swiss perspective	Current	FDFA / FDJP
	47	Rule of law in host states	Implementation of the Dispatch on International Cooperation 2017-2020 and of the FDFA Human Rights Strategy 2016-2019	Current	FDFA / EAER
GP 27	48	National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP)	Continued operation of the NCP in its current form	Current	EAER
	49	Dispute resolution support from representations abroad	Examination of greater and more systematic support for dispute resolution from Swiss embassies	New	FDFA
GP 30	50	Grievance mechanism under the International Code of Conduct (ICoC) and other multi-stakeholder	Financial and political support for the ICoCA and	Current	FDFA

		initiatives	other multi-stakeholder initiatives		
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