

NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS.

GOVERNMENT OF SPAIN

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I. Commitment to implement the United Nations Guiding Principles on Business and Human Rights

The protection and promotion of human rights are a priority for Spain, which reflects a clear requirement of Spanish society. Our country has assumed very broad commitments in this area in the international sphere. These have been reflected internally in the legislative, institutional, and public policy framework.

This document contains the National Action Plan to apply the United Nations Guiding Principles on Business and Human Rights. This Plan reflects Spain's commitment to protect human rights, as a specific manifestation of the broader commitment to the protection and promotion of human rights; also against any negative impact that business activity could have on them, and in providing victims with an effective remedy.

On June 16, 2011, the United Nations Human Rights Council adopted by consensus the Resolution 17/4, which endorsed the Guiding Principles on Business and Human Rights (hereinafter, Guiding Principles) contained in the Report submitted to the Council by the Special Representative of the United Nations Secretary-General on human rights and business (A/HRC/17/31).

According to these Guiding Principles, companies in Spain and abroad are expected to behave in conformity with their responsibility to respect human rights, which implies that they must act with due diligence to avoid the violation of rights of third parties, and to face the adverse impacts of their activity.

Many companies in our country have already incorporated this responsibility in the field of human rights into their business strategy. Others, particularly small and medium-sized enterprises, will find in this Action Plan the adequate tools to address this responsibility to respect human rights in the development of their operations.

A large number of Spanish companies have reinforced their commitment to human rights in recent years through their adherence to the United Nations Global Compact, progressively improving the understanding of their impacts on human rights on an international scale. This commitment is extremely important if one considers that the risk to the reputation of a company is currently especially sensitive to issues related to human rights.

Companies are increasingly aware that respect for human rights is an asset in terms of business, as it has effects on the reputation and the brand of the company; the evaluation made by consumers, investors and partners; the motivation of personnel; the reduction of risks regarding the continuity of operations; and the reduction of the risk of litigation.

In this sense, this Action Plan contributes to strengthen the competitive advantage of Spanish companies in the global market and offers companies the optimal framework to

develop their business operations, preventing and mitigating human rights-based risks and strengthening their capacities regarding them. This Plan aims to support companies that have already integrated the Guiding Principles into their business strategy while also sensitizing those that have not yet completed this process.

Therefore, it is presented as a Business and Human Rights Plan with the objective of raising awareness and promoting human rights among public and private business actors. Businesses and civil society have an essential role in the application of the United Nations Guiding Principles and their contribution will be decisive for the effective implementation of this National Business and Human Rights Plan.

II. ANTECEDENTS AND CONTEXT

As reflected in the Report made by the United Nations Special Representative of the Secretary-General submitted to the Human Rights Council (A/HRC/17/31), the topic of business and human rights was definitively incorporated into the global political agenda in the 1990s, reflecting the significant expansion experienced by the private sector at the time combined with a significant rise in transnational economic activity. These developments provided awareness of the business activity impact on human rights and consequently made the United Nations Organization consider them.

In the year 2005, the mandate for the Special Representative of the United Nations Secretary-General on Human Rights and Business was created and Professor John Ruggie was appointed to fill that position. The creation of this mandate and the work undertaken by the Special Representative are the origin of the current development of the national business and human rights plans.

In June 2008, after three years of research and extensive consultations with governments, companies, trade unions, civil society organizations, and experts to identify existing standards and practices, the Special Representative presented to the Human Rights Council the Framework "Protect, Respect and Remedy," which the Council unanimously endorsed by the Resolution 8/7. The Framework rests on three pillars:

1. The state duty to protect against human rights abuses by third parties, including business;
2. the corporate responsibility to respect human rights; and
3. greater access by victims to effective remedy, both judicial and non-judicial.¹

In the same Resolution 8/7, the Human Rights Council also requested the Special Representative to present concrete and practical recommendations for the application of the "Protect, Respect and Remedy" Framework.

In compliance with this last mandate, the Special Representative developed the United Nations Guiding Principles on Business and Human Rights, which he submitted to the Human Rights Council, which endorsed it through the adoption by consensus of Resolution 17/4 on June 16, 2011. Regarding the Guiding Principles, it is worth highlighting the following:

- they apply to all States and all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure;

¹ <https://business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights/un-protect-respect-and-remedy-framework-and-guiding-principles>

- nothing in them can be interpreted as creating new obligations under international law or in the sense of limiting or weakening the legal obligations that a State has assumed or to which it is subject in accordance with the norms of international human rights law ;

- they must be applied in a non-discriminatory manner, paying particular attention to the rights and needs of individuals who are members of groups or populations with a high risk of vulnerability or marginalization, and taking into account the different risks faced by men and women.

Within the Guiding Principles, the core principles enunciate and argue the duty of the operational principles, which detail the measures to be adopted to implement the core principles.²

The Guiding Principles have played an important role in the development of similar frameworks of other international and regional organizations, which leads to the convergence of standards. Thus, the corporate responsibility to respect human rights is reflected in the revised version of the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD) in 2011. This can be seen in the chapter about the Guidelines on Social Responsibility of the International Organization for Standardization (ISO 26000), and in the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (part of the World Bank Group).

Within the framework of the European Union (EU), the Charter of Fundamental Rights of the EU should be noted. In addition, relevant initiatives such as the European Platform against Poverty and Social Exclusion - one of the seven pillars of the Europe 2020 Strategy - or the Single Market Act of 2010 also address Corporate Social Responsibility. The Communication from the Commission of the European Parliament, to the Council, to the European Economic and Social Committee, and to the Committee of the Regions, "A renewed EU strategy 2011-14 for Corporate Social Responsibility" Brussels, 25.10.2011, COM (2011) 681 final, urges member States to develop a plan to implement the Guiding Principles. In order to promote the Corporate Social Responsibility of European companies abroad, the Commission presented in May 2014 the Communication "A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries " (COM (2014) 263 final).

In its Action Plan on Human Rights and Democracy 2015-2019, the EU includes among its objectives progress in the field of human rights and business and, in order to achieve this, it enumerates a series of activities to be developed by the member States, the European External Action Service, and the Commission, among them, initiatives to

² Dentro de los Principios Rectores se distinguen los llamados principios fundacionales, que enuncian y argumentan el deber, de los principios operacionales, que detallan las medidas a adoptar para poner en práctica los principios fundacionales.

implement the Guiding Principles on business and human rights (section II.18). Among the actions contemplated in the Plan, it is possible to find the development and implementation of National Plans of Action for the implementation of the Guiding Principles. In addition, there has been much debate about the role of the company in the field of EU development cooperation. Among other things, we should mention the Council Conclusions on sustainable clothing value chains, approved in May 2017.

The purpose of these Conclusions is to recall the areas in which cooperation can work to improve working, social and environmental conditions in the textile sector, supporting the efforts of all the actors involved: Governments of producing countries, civil society organizations, and the private sector. Within the framework of the United Nations, it is necessary to mention the 2030 Agenda for Sustainable Development approved by Resolution 70/1 of the United Nations General Assembly (UNGA) on September 25, 2015. This Resolution, of universal nature, marks the objectives of social, economic, and environmental nature in order to achieve 17 Sustainable Development Goals (SDG) with its 169 associated targets by the year 2030. Specifically, its paragraph 67 includes an explicit mention, within the framework of the promotion of a dynamic and efficient business sector, to the Guiding Principles on Business and Human Rights, a concept that is reinforced in the Resolution 70/224 of December 22, 2015 on global partnerships. On the other hand, the Addis Ababa Action Agenda, approved by Resolution 69/313 of the UNGA on July 27, 2015, which is incorporated into the 2030 Agenda itself as means of implementation, also includes in its paragraph 37 mention of the Guiding Principles. The 2030 Agenda invites companies to align their corporate business strategy with the development goals to seek the added value these goals can bring in developing countries, therefore the SDGs are a perfect framework. Companies understand that, in parallel to obtaining benefits, they must respond to the demands of society and build trust as a development actor. Through the local networks of the Global Compact, a development agenda can be built in the business environment. From Spanish cooperation (SC), progress can be made in the mainstreaming of development objectives in business agendas to achieve impacts in sustainable development. On the other hand, the Madrid Declaration "The social economy, a business model for the future of Europe", signed by representatives of 11 EU member States on May 23, 2017, reaffirms the commitment of the signatories to the SDGs.

Nonetheless, it is important to mention the approval by the Congress of Deputies, on April 4, 2013, of the Proposition of Law on Corporate Social Responsibility and Human Rights, in which the Government is urged to move forward in matters of business and human rights through various actions. More recently, in its session of March 28, 2017, the Foreign Affairs Committee of the Senate approved a motion urging the Government to adopt a national action plan that allows companies and institutions to be engaged in the universal principles and in the protection of human rights.

Finally, it is appropriate to refer in this context to the approval by the Council of Ministers, on October 24, 2014, of the Spanish Strategy for Corporate Social Responsibility; this concept considers the impact of companies on societies. Human rights are one of the elements that comprise Corporate Social Responsibility along with others such as social elements; environmental elements; also those relating to the balance of work and family life; good governance; and transparency. However, due to its peculiarities, the relation between business and human rights has been specifically considered in the Guiding Principles, the implementation of which is being carried out through the adoption of this Plan.

III. AREAS OF ACTION AND MEASURES

A. COMMON DISPOSITION

All the commitments derived from the implementation of the measures of this Plan are subject to the budgetary availability, and to the budgetary stability objectives set by the Government. This may not imply an increase in personnel expenses in the Administration.

B. PILLAR I: The State duty to protect human rights

B.1. FOUNDATIONAL PRINCIPLES

Guiding Principle 1.

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

The international obligations assumed by Spain demand that it respect and protect human rights. This includes the duty to protect against human rights violations or abuses committed by third parties, including business. Through this Plan, the commitment of Spain to protect human rights is reaffirmed, and to provide potential victims with an effective remedy.

The State duty to protect refers to the obligations defined in the treaties it has ratified. Spain is party to all of the main treaties on human rights and, specifically, to the following:

- The International Covenant on Civil and Political Rights, and its Optional Protocol;
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
- the International Convention on the Elimination of All Forms of Racial Discrimination
- the International Convention on the Elimination of All Forms of Discrimination against Women;
- the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- the Convention on the Rights of the Child and its three Optional Protocols;
- Convention on the Rights of Persons with Disabilities;
- the International Convention for the Protection of All Persons against Enforced Disappearances.

In addition to the aforementioned treaties, Spain has accepted the competence of the corresponding treaty bodies to hear individual complaints for alleged violation of the recognized rights directed against Spain.

Spain has also ratified the eight fundamental Conventions of the International Labor Organization (ILO):

- Forced Labour Convention (No 29)
- Freedom of Association and Protection of the Right to Organise Conventions (No 87)
- Right to Organise and Collective Bargaining Convention (No 98)
- Equal Remuneration Convention (No 100)
- Abolition of Forced Labour Convention (No 105)
- Discrimination (Employment and Occupation) Convention (No 111)
- Minimum age Convention (No 138)
- Worst Forms of Child Labour Convention. (No 182)

In addition, it should be noted that Spain is a party to ILO Convention No. 169 on Indigenous Peoples.

As regards the European sphere, Spain has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Within the EU, it is worth recalling the Charter of Fundamental Rights of the EU, incorporated into the Treaties and with the same legal obligation as these since the entry into force of the Treaty of Lisbon (December 2009), under the Article 6.1 of the Treaty of the European Union.

International legally binding human rights instruments are complemented by "soft law" instruments with which Spain has also expressed its commitment, such as the Tripartite Declaration of Principles on Multinational Enterprises and the Social Policy of the ILO, the Declaration related to the Principles and Fundamental Rights on Labor of the ILO, and the OECD Guidelines for Multinational Enterprises.

Guiding Principle 2. 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 State expects from Spanish companies, in Spain and abroad, a behavior consistent with its responsibility to respect human rights, which implies that they must act with due diligence, depending on their size and circumstances, to avoid the violation of the rights of third parties and to deal with the adverse impacts of their activity. In this regard, in addition to recalling the obligation incumbent upon the State to protect human rights, which

includes abuses that may result from business activity, also the need to preserve the reputation of the State and to promote the Brand Spain should be noted.

Ultimately, the State expects Spanish companies to exert their responsibility to respect human rights in accordance with the foundational and operational principles of the Pillar II of the Guiding Principles. In particular, it is appropriate to refer to the following:

Guiding Principle 13. The responsibility to respect human rights requires that business enterprises:

a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Guiding Principle 15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

a) A policy commitment to meet their responsibility to respect human rights;

b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Guiding Principle 16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

a) Is approved at the most senior level of the business enterprise;

b) Is informed by relevant internal and/or external expertise;

c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;

d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;

e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Guiding Principle 17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

Guiding Principle 18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- a) Draw on internal and/or independent external human rights expertise;
- b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Guiding Principle 19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

- a) Effective integration requires that:
 - i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
 - ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.
- b) Appropriate action will vary according to:
 - i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;

ii) The extent of its leverage in addressing the adverse impact

Guiding Principle 20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response.

Tracking should:

- a) Be based on appropriate qualitative and quantitative indicators;
- b) Draw on feedback from both internal and external sources, including affected stakeholders.

Guiding Principle 21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

In this context, in relation to what the State expects from Spanish companies, it is worth recalling Spain's membership and support to the OECD Guidelines for Multinational Enterprises.

MEASURES:

1. The Government will transfer the expectations described regarding human rights by-companies-to the business sector in a clear and consistent manner.

2. The Government will develop awareness and training actions based on the United Nations Guiding Principles on Business and Human Rights, the National Plan for Business and Human Rights, and the expectations of the State in matters of business and human rights. These actions can be organized, among others, with the National Contact Point of the OECD Guidelines for multinational companies, business associations, networks of the United Nations Global Compact, and civil society organizations. This action will be directed as a priority to those companies in which the State has participation, or to which it provides financial, diplomatic, or other support; to companies that may affect vulnerable groups; as well as to those companies that have received the endorsement of

Brand Spain. The awareness actions will be directed to the personnel of the companies at different decision-making levels, including the boards of directors and governing bodies.

3. In particular, the Government will develop awareness-raising campaign on actions aimed to protect groups with greater risk of vulnerability. In this sense, and in collaboration with the Spanish and international organizations, the Government will disseminate the UNICEF document, Save the Children and the Global Compact "Children's Rights and Business Principles" among the business sector and will specifically take into account General Comment No. 16 of 2013 of the Committee on the Rights of the Child.

4. The self-regulation codes will also be promoted, taking as an example relevant sector experiences, such as the Global Code of Ethics for Tourism of the World Tourism Organization (WTO) or the Code of Conduct for the protection of children and adolescents against sexual exploitation in the Tourism and Travel Industry, as well as the relevant labor conventions of the ILO.

5. Likewise, an awareness-raising strategy will be carried out on how to avoid discriminatory practices in public and private companies (by distinction, exclusion or preference) because of gender, age, ethnic origin, race, religion, disability, political affiliation or union, sexual orientation, nationality, marital status, socioeconomic origin or any other personal distinction.

6. Companies and vulnerable sectors will be informed about ILO Convention 169 on Indigenous and Tribal Peoples (1989), and the United Nations Declaration on the Rights of Indigenous Peoples (2007). This awareness-raising action will demonstrate the benefits that the respect for human rights can have for companies, as well as highlight examples of good practices.

7. The Government will establish networks among Spanish companies or that the ones that operate in Spain for the promotion of: measures, procedures or internal systems that can effectively contribute to the prevention and/or mitigation of the negative consequences of business activities on human rights; as well as for the dissemination of good practices aimed to avoid these consequences, or to influence their avoidance, reduction or remedy. The establishment of procedures for internal assessment and determination of action will be promoted in a manner that avoids other negative consequences on human rights.

8. The Monitoring Commission will design and submit to the Government the adoption of an incentive system that includes both large companies and Small and Medium Enterprises (SMEs) that carry out policies in the field of human rights. These incentives may be economic, commercial, visibility and image, or other nature, to encourage companies to have policies and reliably certify that they have implemented adequate procedures at a global level according to their size and circumstances, namely:

- A public commitment to assume its responsibility to respect human rights in accordance with the provisions of the Principle no. 16;

- A process of due diligence aligned with the sectorial guides regarding the OECD (due diligence guidance), and based on the dialogue with stakeholders that allows identification, prevention, mitigation, and accountability of how they address the impact of their own activities and those that are directly related to their business relationships in accordance with the provisions of Principles no. 17 to no. 21;

- Some processes that allow to remedy all the negative consequences on human rights that have caused or contributed to provoke according to what is established in Principles no. 22, no.29, no. 30, no. 31.³

B.2. OPERACIONAL PRINCIPLES

Guiding Principle 3. 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 to 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.

MEASURES:

1. The Government will develop actions to train civil servants and public employees in matters of business and human rights due to their assigned tasks.

2. The Government, through cooperation for development, will contribute to the development of the capacities of other States in matters of business and human rights.

3. The Monitoring Committee, referred to in chapter IV of this Plan, in collaboration with the State Council for Corporate Social Responsibility (CERSE⁴), will periodically evaluate if the laws and regulations to which the Guiding Principle 3 refers are appropriate.

³ Unos procesos que permitan reparar todas las consecuencias negativas sobre los derechos humanos que hayan provocado o contribuido a provocar de acuerdo a lo establecido en el Principios n°. 22, n°.29, n°30 y n°.31. (see the mentioned Principles)

⁴ Consejo Estatal de Responsabilidad Social de las Empresas

4. The Regulations will be implemented and the Directives will be transposed, and the adaptation of the Spanish legal system to the Recommendations and the Opinions made by the EU regarding the Guiding Principles will be studied. This, will be done taking into account the reports published by the European Commission on the legal framework for human rights and the environment applicable to European companies operating outside the EU (2010), and on responsible management of the supply chain (2011) and other relevant reports.

5. The implementation will be promoted by business and trade unions, general or sectorial, including representative organizations of social economy entities; as well as other institutions such as chambers of commerce, chambers abroad, universities, business schools, etc. of actions that should promote online training and advice and Resolution of queries, coordinated with those carried out in the application of the Spanish Strategy of Corporate Social Responsibility.

6. In accordance with the recommendations of the EU, the Government will promote information and training of SMEs and social economy entities, through all available means in business associations, and will promote the creation of sectorial forums of learning in order to discuss good practices and to reach commitments of interest for each sector.

7. In parallel, the Government, in collaboration with independent and specialized institutions with accredited experience in human rights matters where conflicts of interest do not arise, will collaborate in the creation and consolidation of on-site training programs and will promote the inclusion of specific contents on human rights in the training activities of business organizations and of the Public Administration.

8. The Government will collaborate with other governments in the development of training materials and tools

9. The Government will train the personnel of the State Foreign Service, in accordance with Law 2/2014, of March 25, of the Action and of State the Foreign Service, as well as to the agencies in charge of the internationalization of business abroad about the responsibility of companies to respect human rights and due diligence and redress procedures, and will incorporate the Guiding Principles into the Annual Plans for External Action and the Brand Spain. Likewise, through its Diplomatic Missions, Permanent Representations and respective Sectorial Offices, especially the Economic and Commercial Offices, as well as through the Consular Offices, Technical Cooperation Offices and Training Centers of Spanish Cooperation AECID⁵ abroad, will disseminate tools and guidelines according to the characteristics of each country.

⁵ La Agencia Española de Cooperación Internacional para el Desarrollo

10. In order to increase transparency, and the confidence of consumers and investors on Spanish companies, the Government will compile the reports that companies write voluntarily, in accordance with the Spanish Strategy for Corporate Social Responsibility, and the Article 39 of the Sustainable Economy Law. It will be encouraged that these take into account the impact of their activities on human rights, including the value chain, introducing a specific chapter for that purpose. Likewise, and in relation to the reports and reports mentioned in the article 35 2 a) of the Sustainable Economy Law, which binds state business corporations, and public business entities attached to the General State Administration, it will be promoted the inclusion of a section on human rights. In addition, the transposition of Directive 2014/95 / EU on disclosure of non-financial information and information about diversity by certain large companies and certain groups will be carried out.

11. The National Contact Point of the "OECD Guidelines" will act as a focal point to provide information and advice on business and human rights issues.

Guiding Principle 4. 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.

In this context, it should be recalled that Spain supports the OECD Council Recommendation on common approaches for export credits which benefit from official support and social and environmental due diligence.

MEASURES:

1. Within one year after the approval of this Plan, a Working Group will be created within the framework of the Strategic Plan for the Internationalization of the Spanish Economy, which will develop a specific Action Plan to examine the coherence of policies to support business internationalization, and its alignment with the Guiding Principles. The Working Group, which will present its conclusions to the Government, will study how cooperation for development, official credit agencies, export credit and official insurance or investment guarantee agencies of all administrations are able to condition, modulate or revise its support for investment based on the exercise of the responsibility to respect human rights by the beneficiary companies, both inside and outside of Spanish territory.

2. The Government will carry out an raising-awareness and training campaign on the Guiding Principles directed at all government departments and agencies, and other state institutions that support the internationalization of the Spanish companies.

3. Regarding public sector companies, the Government will promote the principles of Socially Responsible Investment, and must value this investment, in particular, from the perspective of respect for human rights, both within and outside Spanish territory.

4. The Government will support the inclusion of human rights considerations in financial institutions for regional and international development.⁶

Guiding Principle 5. 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 considers situations in which the State contracts with companies to provide services with a possible impact on the enjoyment of human rights. The lack of guarantees for the respect for human rights by companies which provide such services can have detrimental consequences for the State itself, not only in the field of reputation but also in the legal field.

MEASURES:

1. The Public Administrations will exercise an adequate supervision of the possible impact on human rights when contracting the services of companies, both within and outside of Spanish territory. This supervision must take into account the criteria of the specialized institutions, in accordance with the application of the Spanish CSR Strategy.

Guiding Principle 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

MEASURES:

1. The Government will examine how to apply criteria aligned with the Guiding Principles in relation to Royal Legislative Decree 3/2011, of November 14, which approves the revised text of the Public Sector Contracts Law, the Law 16 24/2011 , of 1 August, of contracts of the public sector in the fields of defense and security, and other regulations in force in the same field.

2. The Government will ensure strict respect for human rights by companies in commercial transactions with other companies, establishing the necessary measures so as to: not discriminate against SMEs; respect the provisions of the Treaty of the EU on non-discrimination; equal treatment and transparency: and no administrative charges are to be added to contracting authorities or companies.

Guiding Principle 7. Because the risk of gross human rights abuses is heightened in conflict affected areas, States should help ensure that business

⁶ El Gobierno apoyará la inclusión de consideraciones de derechos humanos en las instituciones financieras de desarrollo regional e internacional. (p. 15)

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.

The measures adopted regarding Guiding Principle 7 are incorporated to the obligations corresponding to the State under International Humanitarian Law in situations of armed conflict and in accordance with International Criminal Law and, in particular, those derived from signing of the Rome Statute of the International Criminal Court. In this context, it should also be noted that Spain is part of the Montreux Document on the relevant legal obligations and good practices of States with regard to the operations of private military and security companies during armed conflicts.

MEASURES:

1. The Government, through its representations abroad, will inform companies about the risks involved in their business activities and relationships, especially in areas affected by conflicts.

2. Within the framework of the implementation of the II National Action Plan on Women, Peace and Security, the Government will develop tools and action guides directed to companies on how to address the risk of sexual violence and gender violence in conflict situations.

3. The Government undertakes to include clauses on respect for human rights when contracting private military and security services in accordance with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), the Code of Conduct for Law Enforcement Officials (1979) and the Arms Trade Treaty (2013).

4. The Government will promote the application of the OECD Due Diligence Guide for Supply Chains Responsible for Minerals in Conflict or High Risk Areas.

5. The Government will participate in multilateral efforts aimed at improving the prevention, mitigation and remedy of situations in which companies are involved in serious human rights abuse.

Guiding Principle 8. 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.

MEASURES:

1. The Ministries of the Treasury and Public Function; Foreign Affairs and Cooperation; Economy, Industry and Competitiveness; Energy, Tourism and Digital Agenda will train and provide support on the Guiding Principles through their dependent agencies, to departments, government agencies and other state institutions that encourage and support the creation of businesses, business competitiveness and commercial and financial business practices in order to promote the coherence of policies and processes with the Guiding Principles and the international standards of human rights mandatory for Spain.

2. The Government will distribute the National Business and Human Rights Plan among civil servants and public employees through its publication in electronic and paper format.

Guiding Principle 9. 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.

MEASURES:

1. The Government will promote the inclusion of references to the respect of human rights in agreements on trade, investment or other related business activities signed by Spain that affect the scope of the Guiding Principles. Likewise, the Government will promote the inclusion of such references in the agreements entered into by the European Union with third-party States.

2. The Government will promote awareness-raising and the implementation of the United Nations Principles for Responsible Contracts recommendations, developed in 2011 by the then Special Representative of the Secretary-General John Ruggie (A/HRC/17/31/Add.3, 2011) .

Guiding Principle 10. 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.

MEASURES:

1. Spain will promote the effective implementation of the Guiding Principles within the framework of the mandate and activities of the United Nations Human Rights Council.
2. Spain will promote the inclusion of non-member states of the OECD to the Declaration on International Investment and Multinational Enterprises.
3. Spain will promote greater involvement of the International Labor Organization in the application of the Guiding Principles.
4. Spain will support the development of strategies on the implementation of the Guiding Principles within the framework of the European Union.
5. Spain will promote the European Union, international organizations and international financial institutions of which Spain is member to share best practices with a view to encourage policy coherence and technical assistance to member states where requested.
6. Spain will include in its Universal Periodic Review information on its activities in matters of business and human rights, and will promote its incorporation into the reports of other States.

C. PILLAR III: ACCESS TO REMEDY

C.1. FOUNDATIONAL PRINCIPLES

Guiding Principle 25. 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.

In relation to the access to reparation mechanisms, it is important to highlight the role of human rights defenders, and the serious obstacle posed by threats or repression directed against them. In this context, it is worth mentioning the Program for Protection and Temporary Shelter of Threatened Human Rights Defenders⁷, managed by the Human Rights Office of the Ministry of Foreign Affairs and Cooperation since 1995. The Program is directed to threatened human rights defenders in at risk situations due to non-violent activity in defense of universally recognized human rights. The Program is developed in close collaboration with civil society organizations, which can request the inclusion of a person in the Program.

MEASURES:

1. Within one year from the approval of this Plan, the Monitoring Commission will prepare a report on the legal mechanisms through which the civil liability of companies that cause damage or harm to human rights, including damage or harm caused through the lack of action on due diligence for the prevention of their own behavior, or that of their employees or agents, or that of the companies belonging to the same business group.

2. The Government will collaborate with civil society organizations in the distribution of existing redress mechanisms available to victims of human rights abuses caused by the activity of companies.

3. The Government will apply its commitments derived from the United Nations Declaration on Human Rights Defenders.

C.2. OPERATIONAL PRINCIPLES

Guiding Principle 26. 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 independence of the judiciary, stipulated in Article 117 of the Spanish Constitution, is an essential element to guarantee access to effective judicial redress mechanisms.

Regarding the need to remove obstacles of any kind that may limit access to remedy, which may include temporary limitations, it should be noted that the Spanish legal system provides no statute of limitation for the most serious crimes, that is, genocide, war crimes, and crimes against humanity.

⁷ Programa de protección y acogida temporal de defensores de derechos humanos amenazados

In 2010 a system of criminal liability of legal persons was introduced in the Spanish legal system (Article 31.bis of the Criminal Code), which was subject of technical improvement in 2015. This institution constitutes an important mechanism for the reparation of any damage caused by a company's activity to the possible victims.

Finally, the Law on Free Legal Aid guarantees that the lack of resources will not be an obstacle to access judicial mechanisms of reparation.

MEASURES:

1. The Government, through the policy of cooperation for development, will support the efforts of third-party States in favor of strengthening the independence of the judiciary.⁸

2. Specific training on business and human rights will be provided to judges and prosecutors.

3. The Government will develop and provide the necessary instruments so that every citizen can have access to comprehensible information about all of the grievance mechanisms that they can use. Therefore, a map of the existing resources in terms of legal assistance will be made and publicized.

Guiding Principle 27. 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.

Among the existing extrajudicial grievance mechanisms, it is worth mentioning the Spanish National Contact Point of the OECD Guidelines for multinational companies.

Furthermore, the Labor and Social Security Inspectorate of the Ministry of Employment and Social Security can provide arbitration, conciliation and mediation services for parties affected by labor disputes, when the parties agree to this process.

In relation to human rights abuses caused by companies, if there is, or might be, a presumed irregular action by the Public Administration, any citizen can go to the Ombudsman and demand their intervention.

MEASURES:

1. The Monitoring Commission will carry out a study on the current regulatory body, the mechanisms of extrajudicial claim for the receipt of complaints and mediation along the existing parties and the possible needs expressed by them. Within one year from

⁸ El Gobierno, mediante la política de cooperación al desarrollo, apoyará los esfuerzos de terceros Estados a favor del fortalecimiento de la independencia del poder judicial. (p.19)

the approval of this Plan, and based on the recommendations derived from the aforementioned study, recommendations may be made on the extension of existing extrajudicial mechanisms or on the creation of new ones in accordance with the criteria established in Principle No. 31

Guiding Principle 28. States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.

MEASURES:

1. The Government will promote the development of practical guides and compile good practices on the establishment of grievance mechanisms managed by companies themselves that respect the criteria identified in Guiding Principle 31.

Guiding Principle 30. 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 Guiding Principle 30 considers the role of the States as participants in collaboration initiatives.

MEASURES:

1. The Government will support the development of effective remedy mechanisms in the collaborative initiatives in which it participates reflecting the criteria identified in the Guiding Principle 31.

2. The Government will issue appropriate recommendations so that the companies establish or participate in effective grievance mechanisms at operational level made available to the people who suffer negative consequences.

Guiding Principle 31. 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;

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 Report containing the Guiding Principles (A/HRC/17/31) clarifies that the first seven criteria apply to any state or non-state mechanism, Resolution or mediation. The eighth criterion is specific to the operational level mechanisms that companies help to manage.

MEASURES:

1. Those contemplated in relation to Guiding Principles 27, 28 and 30.

IV. MONITORING AND UPDATE

The National Business and Human Rights Plan should be understood; not so much as a definitive and final document, but rather as a first step in a continuous process. Therefore, updating it periodically is an essential element. This inaugural Plan does not aspire to cover each and every one of the issues related to the impact of business activity on human rights; it is rather expected that progress in this area will be the result of a continuous effort to periodically review and update the measures contemplated therein.

This Plan will last three years after its approval by the Council of Ministers.

The Government will create a Plan Monitoring Commission within the quarter after its approval. This Follow-up Commission will be composed of the Ministry of the Presidency; the Ministry of Foreign Affairs and Cooperation; the Ministry of Employment and Social Security; the Ministry of Energy, Tourism and the Digital Agenda; the Ministry of Economy, Industry and Competitiveness; the Ministry of the Treasury and Public Function; the Ministry of Justice; and the Ministry of Health, Social Services and Equality. The Commission may decide to include other Ministries in its meetings. Each Ministry will appoint one or more representatives to attend the meetings. When these Ministries are represented in the State Council for Corporate Social Responsibility, the same person must hold the representation in both bodies in order to maintain the maximum connection between them. The decisions will be made by consensus.

In its first meeting, the Plan Monitoring Commission will approve its operating rules and appoint a chair and a secretary.

The Monitoring Commission may invite the Ombudsman, who will have a voice but not a vote. The Commission may also appoint experts of recognized prestige who support their work with their knowledge and experience. These experts may come from the public sector, academia, business, business, trade unions and social organizations, or be professionals in the protection and defense of human rights. These experts will be able to participate in the meetings of the Monitoring Commission as advisors or be consulted on specific issues, but they will not have decision-making capacity.

The Monitoring Commission will meet minimum once each semester.

The Monitoring Commission will take into consideration the opinions of different social actors related to the scope of the Plan (non-governmental organizations, trade unions, companies, business associations, universities). Thus, the Commission will convene a meeting with civil society and with the companies and business associations interested at least once a year. These meetings will be convened publically. Their objective will be to explain the actions carried out by the Monitoring Commission and the Government, as well as to exchange points of view on possible courses of action.

Likewise, the Plan Monitoring Commission may convene sectorial meetings to assess specific aspects of the Plan.

An annual meeting with the Permanent Commission of the State Council for Corporate Social Responsibility will be requested to promote coherence in the activities of both organizations.

The Monitoring Commission will annually evaluate through a report the execution of the measures of the Plan and will prepare proposals to update it. Therefore, the Monitoring Committee will establish a monitoring plan for each measure. This will detail the measure in question, the Ministry or the body or agencies responsible for its application, the compliance indicators, and the execution schedule.

The Monitoring Commission will send a report on the implementation of this Plan to *Las Cortes Generales* annually.

The Monitoring Commission will carry out within six months an evaluation of its impact in relation to the prevention, mitigation and remedy of the negative effects that the business activity could have on human rights after two years of the approval of this Plan by the Council of Ministers. Channels will be established for the stakeholders - representatives of civil society, companies, unions, universities, etc. - can participate and make contributions to the evaluation process.

Based on the evaluation and the consultations carried out, the Monitoring Commission will promote the drafting of an updated version of the National Business and Human Rights Plan. This draft must be completed once the three-year duration of this Plan comes to an end. The revision of the Plan will be carried out in accordance with the guidelines and recommendations related to the process of preparing a national action plan contained in the United Nations Working Group on Companies and Human Rights' Guide on National Action Plans on Business and Human Rights.