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

Swiss National Action Plan 2020–23

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# 1 Introduction

The pursuit of economic interests and respect for human rights can be mutually supportive. Business can strengthen human rights by delivering practical solutions to local problems. Innovative communication technologies developed by free market economies like Switzerland bolster free speech, while corporate investments create jobs and improve living conditions. Swiss companies lead the way on sustainable development and the promotion of global prosperity. They increasingly regard responsible business conduct as an integral part of good corporate governance and devote more attention to the issue of human rights. This approach not only boosts their productivity and market positioning but also helps businesses mitigate potential risks to their reputation. Switzerland's commitment stems from its firm belief that the fulfilment of human rights is essential for sustainable economic, social and environmental development.

The UN Guiding Principles on Business and Human Rights (referred to below as the 'UN Guiding Principles') sets out States' obligations and corporate responsibility with regard to the impact of business activities on human rights. In 2016, the federal government adopted a four-year National Action Plan (NAP) detailing how Switzerland intended to implement the UN Guiding Principles. This action plan is an updated version of the original NAP and covers the 2020–23 period. It builds on the outcomes and achievements of the first implementation phase (2016–19). These include the tools, brochures, guidance and multi-stakeholder initiatives which have supported action taken by business enterprises based and/or operating in Switzerland to implement the UN Guiding Principles. Despite this upward trend, companies have yet to firmly anchor these principles in their business activities, particularly in their operations abroad. In addition, progress on human rights due diligence and on the introduction of grievance mechanisms has been slow, and putting the UN Guiding Principles into practice is particularly challenging for SMEs. The updated National Action Plan takes account of these and other challenges by setting out a series of concrete measures to advance the implementation of the UN Guiding Principles by the federal government and companies.

## 1.1 UN Guiding Principles on Business and Human Rights

The UN Guiding Principles were unanimously adopted by the Human Rights Council in 2011. These principles are internationally recognised and clarify the complementary roles of States and business enterprises in safeguarding and respecting human rights in the context of business activities. They also help to level the international playing field.

The 31 Guiding Principles are based on three pillars: 1) the State duty to protect the population from human rights abuse by private actors, including business enterprises; 2) corporate responsibility to respect human rights, including the exercise of due diligence; and 3) the responsibility of States and business enterprises to ensure those affected by human rights abuses have access to effective remedy.



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

The Federal Council recognises the vital role that business can play in implementing and protecting human rights. It wishes to support and encourage efforts in this regard.

The Federal Council recognises the duty of States to ensure that business enterprises based and/or operating in Switzerland respect human rights. It is therefore committed to the prevention, mitigation and remediation of business-related human rights abuse. The federal government believes that it should support business enterprises in implementing the UN Guiding Principles, create appropriate incentives, encourage business enterprises to respect human rights, and enforce applicable laws. Corporate responsibility to respect and uphold human rights (Pillar 2) complements federal government efforts. The Federal Council has formulated measures to facilitate the implementation of Pillar 2. The State can employ binding and non-binding instruments to fulfil its duty to protect and, in particular, support and promote corporate initiatives.

Under the UN Guiding Principles on Business and Human Rights, corporate responsibility to respect human rights applies to all business enterprises, regardless of their size, sector, operating environment, ownership and structure. Business enterprises that are particularly exposed to human rights risks should develop internal policies and procedures for exercising human rights due diligence in their sphere of activity. Their precise form will depend on factors such as the size of the company, the nature of its business, the sector in which it operates, and the geographical scope of its operations.

The Federal Council expects business enterprises based and/or operating in Switzerland to fulfil their human rights responsibilities wherever they operate and to carry out human rights due diligence. Swiss companies must therefore ensure that their business operations have no adverse human rights impacts.

As indicated in the UN Guiding Principles, it is nevertheless important to ensure that the administrative burden associated with human rights due diligence is proportional to the human rights risks to which the business enterprise is exposed. The management of potential human rights risks often poses a considerable challenge for SMEs given that they have limited human, financial and technical resources. The 2020–23 NAP responds to the challenges that SMEs specifically face by affording them greater flexibility in terms of implementation so that the associated administrative burden and costs they incur are not disproportionately high.

### **1.3 Adapting to change**

The corporate responsibility landscape, both nationally and internationally, has been steadily evolving since the adoption of the 2016–19 NAP. In Switzerland, the Responsible Business Initiative has been a major source of discussion in parliament and the media. At the international level, many States – mostly in Europe and latterly in Asia – have produced an NAP or are in the process of doing so. One change has been in the combination of binding and non-binding measures, or ‘smart mix’, in the NAPs, particularly those developed by European countries. Since the adoption of the first NAP in 2016, around 30 events on business and human rights have been held across Switzerland. These were organised in partnership with chambers of commerce, umbrella organisations and industry associations, and reached several hundred companies, including SMEs. The federal government also launched a designated NAP website ([www.nap-bhr.admin.ch](http://www.nap-bhr.admin.ch)) and issued a brochure for SMEs, providing an overview of the opportunities and challenges of responsible business conduct in relation to human rights. A further way in which it supported the private sector was the publication of Guidance on Implementing the UN Guiding Principles for the commodities trading sector.<sup>1</sup> Alongside stronger support for multi-stakeholder initiatives involving representatives from the private sector, NGOs and academia, the federal government engaged in dialogue with key stakeholders on the issue of major sporting events and human rights. This process culminated in the creation of a Centre for Sports and Human Rights in Geneva. Switzerland also addressed the issue of business and human rights in political consultations and carried out projects in partner countries such as Mexico. Finally, Switzerland backed International Labour Organization (ILO) projects on core labour standards, supported a series of workshops on preventing the exploitation of migrant workers in the Middle East and provided support for the Myanmar Centre for Responsible Business.

### **1.4 Revision of the National Action Plan**

The federal government reviewed the NAP by conducting a gap analysis.<sup>2</sup> This indicated that Switzerland has the right framework conditions for the federal government and business enterprises to implement the UN Guiding Principles and that the NAP fulfils the duty to protect human rights in line with Switzerland's international obligations. The analysis also identified challenges for implementation and recommended that the 2016–19 NAP be updated. Based on a review of these proposals in an official report,<sup>3</sup> the Federal Council decided to update the existing NAP. It consulted multiple stakeholders on the proposals for revising the 2016-19 NAP.

### **1.5 Policy, strategy and action plan coherence**

Economic, social, environmental, development and human rights policies are all interrelated elements of a policy to promote sustainable development. The Federal Council believes it is essential for these

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<sup>1</sup> [The Commodity Trading Sector – Guidance on Implementing the UN Guiding Principles on Business and Human Rights](#)

<sup>2</sup> [Bestandsaufnahme über die Umsetzung der UNO-Leitprinzipien für Wirtschaft und Menschenrechte durch den Bund und durch Schweizer Unternehmen \(14.12.2018\)](#). (Review of the implementation of the UN Guiding Principles on Business and Human Rights by the federal government and Swiss companies), by external consultants *twentyfifty* Ltd (in German).

<sup>3</sup> Report by the FDFA and EAER to the Federal Council, 14 December 2018: [Report on the UN Guiding Principles on Business and Human Rights: state of implementation by the Confederation and Swiss companies](#) (in German).

policies to be consistent and that consistency in its approach to the business community is also extremely important.

The Federal Council's Action Plan on corporate social and environmental responsibility (referred to below as the CSR Action Plan)<sup>4</sup> covers a wide range of topics, including working conditions, human rights, the environment, anti-corruption measures, fair competition, consumer interests, taxes and transparency. The NAP and the CSR Action Plan are complementary instruments: they focus on different sets of issues but reference one another. Given the highly complex challenges involved and the need for targeted awareness-raising efforts, the Federal Council believes that the issue of business and human rights warrants a stand-alone action plan. The 2020–23 NAP therefore spells out the federal government's commitment to business and human rights, and articulates the priority actions and measures put forward by the Federal Council in support of Switzerland's implementation of its national and international obligations and commitments with regard to the implementation of the UN Guiding Principles. The Swiss NAP meets UN good practice criteria.<sup>5</sup>

Other federal government strategies and reports also deal with corporate social responsibility and the issue of business and human rights.<sup>6</sup> Incorporating the UN Guiding Principles within these documents helps ensure consistency between economic and human rights policies.

The NAP assists Switzerland in its efforts to achieve the goals set out in the 2030 Agenda for Sustainable Development, specifically Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; Goal 12: Ensure sustainable consumption and production patterns; and Goal 16: Promote peaceful and inclusive societies for sustainable development. The NAP also contributes to the broader efforts to implement the federal Sustainable Development Strategy 2030. The UN Guiding Principles provide the main framework for activities in the business and human rights sphere.

A clean, healthy and sustainable environment is integral to the full enjoyment of human rights. Pollution, for example, can have an adverse impact on health and well-being, which is a violation of the rights laid down in human rights conventions. While the 'Green Economy' report explicitly addresses the economy–environment link<sup>7</sup>, the CSR Action Plan sets out cross-cutting thematic instruments rather than focusing specifically on this issue.

With regard to the commodities sector, the Federal Council report 'Swiss Commodities Sector: Current Situation and Outlook'<sup>8</sup> concludes that challenges remain, particularly in relation to human rights and environmental protection. Specific measures were established with the aim of strengthening the integrity, sustainability and respect for human rights by the Swiss commodities sector; these were the subject of a separate report by the Interdepartmental Platform on Commodities.<sup>9</sup>

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<sup>4</sup> Corporate Social Responsibility – Position Paper and Action Plan of the Federal Council on Corporate Social and Environmental Responsibility, 2015, [www.csr.admin.ch](http://www.csr.admin.ch).

<sup>5</sup> UN Working Group on Business and Human Rights: Guidance on National Action Plans on Business and Human Rights.

<sup>6</sup> cf. The Sustainable Development Strategy; Dispatch on Switzerland's International Cooperation; foreign policy report; foreign economic policy report; FDFA Human Rights Strategy; Swiss Guidelines on the Protection of Human Rights Defenders, and the national action plan against human trafficking. The UN Guiding Principles are also cited in other Federal Council reports, including the Federal Council Report dated 14 September 2018 entitled 'Business and human rights: comparative analysis of access to non-judicial and judicial remedies' (de, fr); the Federal Council Report dated 14 November 2018 on gold trading and human rights (de), and the Federal Council Report dated 30 November 2018 entitled 'The Swiss Commodities Sector: Current Situation and Outlook' (cf. below).

<sup>7</sup> Report by the FOEN dated 20 April 2016 'Economie verte – Mesures de la Confédération pour préserver les ressources et assurer l'avenir de la Suisse' (Green economy – Federal government measures to conserve resources and safeguard Switzerland's future' – in French).

<sup>8</sup> Swiss Commodities Sector: Current Situation and Outlook, Federal Council Report, 30 November 2018.

<sup>9</sup> The platform is chaired by the Federal Department of Foreign Affairs (FDFA), the Federal Department of Finance (FDF) and the Federal Department of Economic Affairs, Education and Research (EAER) and brings together the FCA, the HSD, the SDC, FEDPOL, FINMA, the SFOE, the FOEN, the FOJ, SECO and SIF.

## 2 National Action Plan on Business and Human Rights 2020-23

The NAP sets out how Switzerland intends to implement the UN Guiding Principles and is based on a clearly defined international framework. It was produced in response to a postulate.<sup>10</sup> By means of 35 key measures, the NAP aims to strengthen the protection of human rights in relation to economic activities undertaken by the federal government and Swiss companies. The federal government has defined the following priority actions for the next few years:

### **Communication**

- clarification of what the federal government expects from the corporate sector;
- enhanced dialogue with the private sector;
- creation of a business and human rights forum.

### **Support for business enterprises**

- targeted support for SMEs, promotion of exchange of information and best practices;
- guidance on initiatives and certifications for the private sector;
- promotion of guidance for businesses;
- developing expertise at Swiss embassies in order to support businesses.

### **Policy coherence**

- awareness-raising among federal government-associated businesses;
- better interdepartmental cooperation;
- inclusion of objectives and indicators for all policy instruments.

The revised NAP now includes a Pillar 2 setting out the support measures to be put in place by the federal government in relation to corporate responsibility to respect human rights. Although a growing number of business enterprises, which are based and/or operate in Switzerland, now give due consideration to human rights in relation to their activities, challenges remain. Despite their good intentions, it is more difficult for Swiss companies to ensure that human rights are respected throughout their production chain, especially if they import goods and services from abroad. For this reason, the 2020–23 NAP focuses more on the business activities of Swiss companies abroad than on domestic business operations.

The NAP is structured around the 3 pillars of the UN Guiding Principles (see section 1.1). As well as formulating measures and objectives for each pillar, the revised NAP includes indicators to measure the level of implementation and improve outcome transparency.

## 2.1 Pillar 1: state duty to protect

### 2.1.1 Foundational principles

#### ***Guiding Principles 1 to 3***

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The UN Guiding Principles do not impose any new duties on the State. Rather, they provide more specific detail on how the existing duty to protect human rights also applies to businesses. Of key importance to the UN Guiding Principles are the UN's international conventions on human rights, the ILO core conventions, and the relevant provisions of the European Convention on Human Rights. States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. The duty to protect is based on Switzerland's existing obligations under international law. The Federal Council regards the prevention of human rights abuses by Swiss companies and ensuring access to effective remedy as integral to its State duty to protect.

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<sup>10</sup> Postulate 12.3503, Alec von Graffenried, 14 December 2012: *Une stratégie Ruggie pour la Suisse*.

## 2.1.2 Operational principles: legislative and information policy measures

Respect for human rights is laid down in the Federal Constitution.<sup>11</sup> 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 require business enterprises to respect human rights.

Swiss legislation does not require companies to carry out human rights due diligence. In response to the popular initiative 'Responsible Business – Protecting Human Rights and the Environment', the Federal Council proposed submitting it to the people (referendum), without a counter-proposal. It advised voters to reject the initiative, explaining that it prefers a coordinated approach at the international level and the use of existing instruments, specifically the national action plans on the subjects covered by the popular initiative (NAP on Business and Human Rights, Corporate Social Responsibility (CSR) Action Plan and the 'Green Economy' report). On 14 June 2018, the National Council tabled an indirect counter-proposal, which is still being debated in parliament. The Federal Council is monitoring the debates, as well as international developments, emerging legislative trends on corporate human rights due diligence and the implementation of the UN Guiding Principles by businesses. Of particular interest are legislative changes in the EU regarding the mandatory reporting of non-financial information.<sup>12</sup> Measure 13 of the 2020–23 CSR Action Plan provides for the development of a consultation draft on sustainability reporting based on the EU directive.

Any rules governing business and human rights should enjoy broad stakeholder support and the Federal Council needs to ensure that Switzerland is not placed at a disadvantage in comparison with the international community.

The federal government intends to implement UN Guiding Principles 1 to 3 by taking the following measures:

### **Measure 1 Rules on the export of war material and technologies for internet surveillance**

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.<sup>13</sup> 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>14</sup> Among the domestic factors that inform this decision is whether the country of destination respects human rights. 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.

Technologies for internet and mobile communication surveillance (goods, technology and software) can be used for both civilian and military purposes, i.e. they are dual-use goods. As such, they can be an element in state repression, 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 the *Ordonnance sur l'exportation et le courtage de biens destinés à la surveillance d'Internet et des communications mobiles* (Ordinance on the export and brokerage of technologies for internet and mobile communications

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<sup>11</sup> Article 35 of the Federal Constitution (Cst.) provides that fundamental rights (Art. 7 ff. Cst.) must be upheld throughout the legal system. Article 54 Cst. sets out the federal government's foreign policy objectives, including, in particular, alleviating need and poverty and promoting respect for human rights and democracy. Article 2 Cst. provides that the Swiss Confederation shall protect the liberty of the people and promote the common welfare and sustainable development of the country.

<sup>12</sup> cf. Directive 2014/95/EU of the European Parliament and of the Council as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

<sup>13</sup> War Material Act (WMA SR 514.51)

<sup>14</sup> War Material Ordinance (WMO; SR 514.511)



surveillance).<sup>15</sup> A licence to 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.

| Objective   | Indicator  | Responsibility |
|---|--|----------------|
| Implement legal provisions on the transfer of controlled goods with a view to ensuring that international law and, in particular, human rights are respected. | Report on Federal Council activities to the parliamentary Control Committees detailing exports of war material, and the foreign economic policy report that includes an appendix listing all goods exported under the Goods Control Act. | EAER           |

## **Measure 2 Security and human rights**

Private security service providers are at increased risk of becoming involved in human rights abuses. The federal government should ensure that business enterprises which are subject to the Federal Act on Private Security Services Provided Abroad (PSSA)<sup>16</sup> meet their human rights obligations. The PSSA prohibits security firms based in Switzerland from participating directly in hostilities in the context of an armed conflict, and from engaging in activities that could facilitate human rights abuses. In addition, it requires Swiss-based providers to become signatories to the International Code of Conduct for Private Security Providers (ICoC). Switzerland also helped to establish the International Code of Conduct Association, which requires private security providers to uphold human rights standards. The ICoC Association has a grievance procedure to address claims brought by employees or third parties regarding human rights abuses by companies. It has also produced guidance for private security providers on setting up complaints-handling schemes within their organisation, as well as guidelines on preventing sexual exploitation and abuse. Other multi-stakeholder initiatives are exploring similar mechanisms for victims of business-related human rights abuses.

Switzerland and the ICRC were the driving force behind the Montreux Document on private military and security companies.<sup>17</sup> The purpose of the intergovernmental document is to promote respect for international humanitarian law and human rights by private military and security companies (PMSCs) operating in situations of armed conflict.

Switzerland is a member of the Voluntary Principles on Security and Human Rights initiative and contributes to its development. This initiative is targeted at companies in the extractive sector and offers them guidance on maintaining the safety and security of their operations within a framework that ensures respect for human rights, especially when private and/or public security providers are also involved. Switzerland is an active member of the Steering Committee and assumes the chair on a rotating basis. It is also committed to the application of the Voluntary Principles in the field and works to expand membership of the initiative.

| Objective   | Indicator  | Responsibility |
|---|--|----------------|
| Ensure that business enterprises subject to the Federal Act on Private Security Services Provided Abroad uphold their human rights obligations. | Annual Federal Council reports on implementation of the Federal Act on Private Security Services Provided Abroad.<br><br>Concrete examples of initiatives to promote the protection of human rights by private security providers. | FDFA           |

<sup>15</sup> Goods Control Act (GCA; SR 946.202) and Ordinance on the export and brokerage of technologies for internet and mobile communications surveillance (OSIC; SR 946.202.3).

<sup>16</sup> Federal Act on Private Security Services Provided Abroad (PSSA; SR 935.41).

<sup>17</sup> The Montreux Document on the relevant legal obligations and best practices of States with respect to private military and security companies operating in situations of armed conflict.

### **Measure 3 Promotion of UN Guiding Principles**

The Federal Council will develop a business and human rights communications strategy<sup>18</sup> that promotes the UN Guiding Principles and sets out in clear terms what it expects from companies and management in this regard. The strategy will comprise:

- awareness-raising efforts (incl. a website, workshops, webinars, presentations, publications);
- a platform for dialogue and the sharing of best practices (see Measure 26 below);
- communication with Swiss representations abroad;
- communication with the general public through articles, newspaper columns, company profiles, expert analyses and interviews;
- participation in forums for dialogue, particularly on commodities, alongside representatives from the cantons, the private sector, NGOs and the research community.

This communication strategy aims to raise awareness and advance the implementation of the UN Guiding Principles by the Federal Administration (policy coherence), the business community and the general public.

| <b>Objective</b>   | <b>Indicator</b>   | <b>Responsibility</b> |
|--|--|-----------------------|
| Improve knowledge and implementation of the UN Guiding Principles. | Number of participants at awareness-raising and other events.<br><br>A review of the NAP finds improved awareness and implementation of the UN Guiding Principles among business enterprises (cf. measure 23). | FDFA, EAER            |

### **Measure 4 Geneva Center for Business and Human Rights**

The Geneva Center for Business and Human Rights<sup>19</sup> was established in 2019. Its mission is to educate future business leaders on human rights issues, provide a focus for rapidly changing political and trade discussions on the subject, and bolster Geneva's status as the human rights capital. The centre, which will benefit from federal government support, carries out research on the human rights challenges faced by the corporate sector and fosters collaboration between academia and industry to gain new insights and advance existing knowledge on the subject.

| <b>Objective</b>   | <b>Indicator</b>   | <b>Responsibility</b> |
|--|--|-----------------------|
| Support research and academic input on the subject of business and human rights. | Research published by the centre that offers solutions (business models) for companies in ensuring respect for human rights. | FDFA                  |

### **Measure 5 Multi-stakeholder initiatives on business and human rights**

Many multi-stakeholder initiatives on business and human rights are already under way. The federal government plays an active and major part in several of them, such as the ICoC Association and the Voluntary Principles on Security and Human Rights.

The federal government works with international sports bodies based in Switzerland (including the International Olympic Committee), with sponsors, NGOs, international organisations and other governments to implement the UN Guiding Principles in the context of major sporting events and in sport generally. It also launched a multi-stakeholder dialogue which culminated, in 2018, in the creation of the Centre for Sport and Human Rights. The mission of the Geneva-based centre is to prevent, mitigate and

<sup>18</sup> Coordinated implementation with Measure 4 of the 2020–22 CSR Action Plan.

<sup>19</sup> <https://www.unige.ch/gsem/en/research/centers/geneva-center-for-business-and-human-rights/>

ensure effective remedies for sports-related human rights abuses. The FDFA will support this initiative in coordination with the Federal Office of Sport.

The federal government also backs multi-stakeholder initiatives that focus on human rights issues in sectors such as textiles, cocoa and gold. As these initiatives cover other subjects such as corruption and the environment, they are dealt with in Measure 10 of the 2020–23 CSR Action Plan.

| Objective  | Indicator   | Responsibility |
|--|---|----------------|
| Support multi-stakeholder initiatives on business and human rights | Federal government support for at least two projects launched as part of multi-stakeholder initiatives. | FDFA, EAER     |

### **Measure 6 Business enterprises and human rights defenders**

Human rights defenders (HRDs) act or endeavour to act, individually and in association with others, to promote, protect and implement human rights, including those arising from adverse impacts on the environment. HRDs working in the field of business and human rights can run the risk of threats, criminalisation and physical attack.

Companies should take on board the concerns of stakeholders, including human rights defenders, who may be affected by their activities. They also should not obstruct the legitimate and peaceful work of HRDs. Business enterprises can contribute to protecting human rights defenders by raising the matter with the authorities. As part of its State duty to protect, Switzerland supports the work of HRDs and is committed to ensuring that they are protected against unfair treatment, threats and violence, including abuses committed by private companies. The FDFA's guidelines on human rights defenders<sup>20</sup> are intended to raise awareness among Swiss representations abroad about their role and the resources available to them.

| Objective   | Indicator   | Responsibility |
|---|---|----------------|
| Protect human rights defenders working on business-related human rights issues. | Concrete example of Swiss support for human rights defenders. | FDFA           |

### **Measure 7 Reduction in human rights risks associated with gold extraction and trading**

At the end of 2018, the Federal Council adopted a report setting out a range of measures designed to improve the traceability of gold imported to Switzerland, strengthen multi-stakeholder dialogue and expand development cooperation on responsible gold production.<sup>21</sup>

The measures aim to improve the collection and publication of information on the sources of gold imported in Switzerland, and increase transparency not only regarding the risk assessments conducted by the industry but also regarding its human rights due diligence. The federal government will take steps to promote best practices and examine the possible use of blockchain technologies to improve traceability in the gold industry.

Switzerland will continue to support the implementation of OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and other relevant guidelines. As recommended in the above report, it will explore the possibility of granting the Central Office for Precious Metals Control wider responsibilities, including with respect to transparency on the provenance of gold imported to Switzerland.

<sup>20</sup> [Swiss Guidelines on Human Rights Defenders](#)

<sup>21</sup> Federal Council Report on gold trading and human rights dated 14 November 2018 (in German).

| Objective   | Indicator   | Responsibility        |
|---|---|-----------------------|
| Prevent human rights risks associated with gold extraction and trading. | A number of recommendations in the Federal Council Report on gold trading and human rights have been implemented. | FDFA, FDF, EAER, FDHA |

### **Measure 8 Human rights in tourism**

The tourism sector is a major driver of the Swiss economy. However, tourism can have adverse impacts on human rights. For example, local communities may be forced to vacate an area to make way for new hotels, workers may suffer human rights abuses, and children may be exploited and fall victim to sex tourism (cf. Measure 27 below).

The federal government supports the Roundtable on Human Rights in Tourism assessment of human rights impacts along the tourism value chain. This project, which will initially focus on Thailand, adopts a multi-stakeholder approach and seeks to develop practical guidelines for the tourism industry as a whole.

The World Tourism Organization (UNWTO) plays a key part in implementing the UN Guiding Principles in the tourism sector. For example, it has developed and adopted a Global Code of Ethics for Tourism, which acknowledges respect for human rights as a fundamental principle.<sup>22</sup> As a member of the UNWTO, the federal government is committed to actively promoting implementation of the UN Guiding Principles by the tourism industry.

| Objective   | Indicator  | Responsibility |
|---|--|----------------|
| Promotion of the implementation of UN Guiding Principles by the tourism industry. | Guidelines for the tourism industry.<br><br>Example of Switzerland's contribution to multilateral standards/recommendations. | FDFA, EAER     |

## **2.1.3 The State-business nexus**

### **Guiding Principles 4 to 5**

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Given the federal government's direct influence on the activities of federal government-associated businesses, it has a particular obligation to ensure that these companies respect human rights, for example by conducting human rights due diligence. It also expects federal government-associated businesses<sup>23</sup> to have in place human rights best practices.<sup>24</sup>

### **Measure 9 Human rights due diligence by federal government-associated businesses**

The Federal Council defines its strategic goals for federal government-associated businesses every four years and expects these companies to pursue a sustainable corporate strategy to the best of their business ability.<sup>25</sup> As regards the protection of human rights, a number of these businesses already exercise due diligence and document these efforts in their reporting.

<sup>22</sup> cf. <http://ethics.unwto.org/en/content/global-code-ethics-tourism>

<sup>23</sup> Federal government-associated businesses mean 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>24</sup> Cf. activities set out in the report [Responsabilité sociétale des entreprises \(RSE\): Exemple, la Confédération?](#) (Corporate Social Responsibility (CSR): does the federal government lead by example? – in French), 30 November 2018. Cf. also Measure 9 of the 2020–23 CSR Action Plan.

<sup>25</sup> Cf. OECD Guidelines on Corporate Governance of State-Owned Enterprises.

To advance the implementation of UN Guiding Principles by federal government-associated businesses, interdepartmental coordination must be stepped up. Failure by these entities to meet international standards on human rights due diligence could pose a reputational risk to the federal government. The Federal Council therefore intends to assist federal government-associated businesses in playing a lead role by raising awareness of human rights due diligence and promoting the exchange of best practices, particularly with regard to risk management, monitoring and public reporting. This optional measure is geared primarily towards federal government-associated businesses which work with suppliers and business partners abroad.

The federal government may also run optional training sessions on UN Guiding Principles and human rights due diligence for the members of boards of directors and senior management of federal government-associated businesses.

| Objective   | Indicator   | Responsibility   |
|---|---|------------------|
| Assist federal government-associated businesses in taking a lead role and encourage them to put in place human rights due diligence procedures. | Examples of human rights due diligence exercised by federal government-associated businesses.<br><br>At least one training session held for federal government-associated businesses. | FDF, EAER, DETEC |

**Measure 10 Human rights due diligence by business enterprises covered by Swiss Export Risk Insurance (SERV) and supported by Switzerland Global Enterprise (S-GE)**

The OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence<sup>26</sup> is constantly being updated and developed. Switzerland contributes to this process. The guidelines are intended, among other things, to provide greater protection against business-related human rights abuses, and they are widely recognised as constituting an international standard by export credit agencies and export risk insurance providers.

The SERV Ordinance<sup>27</sup> (as amended) expressly requires insurance applicants to disclose human rights-related information. Unlike many other export credit agencies, SERV does not grant export credits, i.e. engage in direct lending, but solely provides insurance and guarantees, i.e. pure cover. SERV does not provide cover or accept liability in respect of claims relating to projects that do not meet international human rights standards because of the insured party's activities.

Switzerland Global Enterprise (S-GE) works on behalf of the federal government and the Swiss cantons to promote exports and attract companies to Switzerland. It helps companies exploit new international markets, thus promoting Switzerland's as a business location. S-GE has a Code of Conduct<sup>28</sup> which is intended to ensure that its staff are not implicated in human rights abuses by Swiss companies. If S-GE determines that a company has committed a human rights abuse, it will decline the mandate in question.

| Objective   | Indicator  | Responsibility |
|---|--|----------------|
| A rights-aware approach in all export promotion activities. | Human rights due diligence by SERV (source: report to Federal Council on the achievement of strategic objectives). Verification of compliance with Code of Conduct (source: S-GE monitoring report submitted to the EAER). | EAER           |

<sup>26</sup> <https://www.oecd.org/trade/topics/export-credits/environmental-and-social-due-diligence/>

<sup>27</sup> Ordinance on Swiss Export Risk Insurance (SERIO; SR 946.101)

<sup>28</sup> <https://www.s-ge.com/en/code-conduct>

## **Measure 11 Human rights due diligence by public-private development partnerships**

As laid down in the Code of Conduct for Contractual Partners of the FDFA<sup>29</sup>, respect for human rights and gender equality are two of the values which should be promoted in the interests of Switzerland. All individuals, companies or other entities that work with the FDFA are required to contribute to the promotion of these values and to act in accordance with them, and with the legal order. The Code of Conduct outlines the attitude and behaviour that the FDFA expects from its contractual partners (suppliers of goods and services, consultants, contractors, organisations responsible for implementing projects and/or recipients of contributions, etc.) in Switzerland as well as abroad. The Code of Conduct is binding and forms an integral part of all agreements between the FDFA and its partners.

The Swiss Agency for Development and Cooperation (SDC) Risk Assessment for Partnerships with the Private Sector<sup>30</sup> takes into account the impact that these partnerships could have on human and employment rights, government structures and the environment. Consequently, the federal government will not work with partners which have repeatedly been involved in human rights abuses or cannot provide cogent evidence that they have substantially reduced their exposure to human rights risks.

For the purpose of implementing these guidelines, the federal government may work with external providers in carrying out a detailed risk assessment if this can reasonably be required for the partnership in question. The federal government also ensures that it does not enter into any public-private development partnerships with business enterprises which refuse to cooperate with the National Contact Point for the OECD Guidelines for Multinational Enterprises.<sup>31</sup>

The federal government is currently working with other donors on a risk management model for public-private development projects. The outcome of this process, which takes place within the framework of the Private Sector Engagement Working Group of the Donor Committee for Enterprise Development (DCED), could necessitate amendments to the SDC Risk Assessment for Partnerships with the Private Sector.

| Objective  | Indicator  | Responsibility |
|--|--|----------------|
| Prevent human rights risks in public-private development partnerships. | A tangible example that the SDC Risk Assessment guidelines have been implemented, including a human rights risk assessment, prior to entering into a new public-private development partnership. | FDFA, EAER     |

## **Guiding Principle 6**

The federal government is committed to ensuring that the value chains of goods purchased by the public sector are free of human rights abuses. It promotes respect for human rights by business enterprises with which they conduct commercial transactions.

## **Measure 12 Criteria under the core ILO conventions in public procurement at federal level**

The Federal Council attaches great importance to sustainable public procurement practices. Public procurement practices in Switzerland are governed by the Federal Act on Public Procurement (PPA) and the Ordinance on Public Procurement (PPO).<sup>32</sup> The PPA stipulates that the federal government must, as a minimum, monitor compliance with the core ILO conventions where goods and services are

<sup>29</sup> <https://www.eda.admin.ch/eda/en/fdfa/fdfa/auftraege/informationen-downloads/contract-documents-fdfa.html>

<sup>30</sup> cf. SDC Risk Assessment for Partnerships with the Private Sector: Facilitating Decision-Making to Engage with Private Partners and Encouraging Dialogue on Critical Development Issues Related to SDC's Values and Objectives, March 2015.

<sup>31</sup>

[https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/NKP.html](https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP.html)

<sup>32</sup> Public Procurement Act (PPA, SR 172.056.1) and Public Procurement Ordinance (PPO, SR 172.056.11).

to be supplied abroad. The contracting authority may require bidders to comply with other core international labour standards, provide proof of compliance, and agree to audits.

The Public Procurement Act is currently being revised in line with changes to the WTO Agreement on Government Procurement (GPA) 2012. The PPA (as amended) will include all three pillars of sustainability – economic, environmental and social. Accordingly, the principle of sustainable public procurement will govern the interpretation and implementation of the PPA and the PPO. In its recommendations on sustainable procurement, the Federal Procurement Conference specifically calls for social, environmental and economic factors to be taken into account, including the human rights criteria covered by the core ILO conventions. It also recommends that sustainability criteria be reflected in award procedures.

The federal government will also explore the option of creating a national platform to promote sustainable public procurement practices and facilitate information-sharing between the different levels of government.

| Objective  | Indicator  | Responsibility   |
|--|--|------------------|
| Promote sustainable public procurement practices and information-sharing between the different levels of government. | The possibility of creating a national platform for sustainable public procurement was explored. | FDF, DETEC, EAER |

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

### *Guiding Principle 7*

Given the heightened risk of human rights abuses in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved in such abuses or lead State entities to commit human rights violations. The federal government expects companies operating in conflict-affected and high-risk areas to conduct due diligence in a way that takes local circumstances into account. This requires the adoption of a conflict-sensitive approach based on human rights and observance of the ‘do no harm’ principle (consideration of problems intrinsic to fragile contexts).

### **Measure 13 Guidelines on human rights due diligence in conflict-affected and high-risk areas**

Guidelines on human rights due diligence in conflict-affected and high-risk areas have been drawn up at international level and adopted by various OECD members. The Federal Council works at international level to advance the development, promotion and implementation of global standards. Switzerland also supports the implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.<sup>33</sup> It is also a member of the multi-stakeholder group that manages the implementation, dissemination and continued development of these guidelines. The OECD Due Diligence Guidance is aimed primarily at companies involved in the extraction and trading of commodities in conflict-affected and high-risk areas, but it also applies to manufacturers of products containing minerals which operate in the downstream value chain and are required to exercise due diligence.

In addition, the federal government supports a project led by the UN Working Group on Business and Human Rights that aims to clarify the practical steps that companies, investors and States should take to prevent and combat business-related human rights abuses in conflict, post-conflict and fragile contexts.<sup>34</sup>

<sup>33</sup> Cf. [https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-of-minerals-from-conflict-affected-and-high-risk-areas\\_9789264111110-en](https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-of-minerals-from-conflict-affected-and-high-risk-areas_9789264111110-en)

<sup>34</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx>



The EU adopted Regulation 2017/821 of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. The relevant provisions will take effect on 1 January 2021. In accordance with the Federal Council decision of 14 August 2019, the FDJP is mandated to examine the introduction of a mandatory due diligence in the area of "minerals from conflict areas". In the meantime, on 18 December 2019, the Council of States adopted a regulation on this issue as part of the preparation of an indirect counter-proposal to the popular initiative for responsible businesses. The National Council has not yet commented on this. The Federal Council is of the opinion that it should await the end of the parliamentary debates.

| Objective  | Indicator  | Responsibility   |
|--|--|------------------|
| Develop, promote and implement specific guidelines in respect of high-risk, conflict-affected areas.<br><br>Explore possible measures that are consistent with international rules, including a bill to be submitted for consultation. | Example of the federal government's contribution to organisations developing these guidelines.<br><br>Explore possible measures that are consistent with international rules, including a bill to be submitted for consultation. | FDFA, EAER, FDJP |

#### **Measure 14 Advisory and support services provided by Swiss representations abroad**

Swiss representations abroad are well placed to raise awareness of human rights issues among businesses and provide country-specific advice. A number of representations in conflict-affected areas have developed innovative initiatives based on the UN Guiding Principles – largely on an ad hoc basis – to promote respect for human rights by Swiss business enterprises.<sup>35</sup> The federal government will involve Switzerland's representations abroad more closely in its efforts to raise awareness of and provide support for the implementation of human rights by business enterprises. Such efforts may include training and awareness-raising for embassy staff, encouraging the sharing of experiences between representations and with the relevant federal agencies in Bern.

The federal government provides a module on business and human rights as part of its human rights training course for Federal Administration employees and training course for future diplomats. It also offers targeted training to upgrade the skills of staff working in Swiss representations abroad.

In recent years, certain representations have helped companies and individuals 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 intends to explore the option of representations abroad providing greater and more systematic support in resolving disputes.

| Objective   | Indicator   | Responsibility |
|---|---|----------------|
| Involvement of Swiss representations abroad in efforts to improve awareness and support the implementation of human rights by businesses. | Example of support provided by a Swiss representation abroad to a business enterprise (source: human rights report by a Swiss embassy).<br><br>Systematic inclusion of the business and human rights module in human rights training courses for Federal Administration personnel.<br><br>Participation of future diplomats in the business and human rights course module. | FDFA, EAER     |

<sup>35</sup> The Swiss embassy in Myanmar, for example, maintains a platform for regular information-sharing with Swiss companies and other stakeholders. Meanwhile, the Swiss embassy in Colombia has drawn up a code under which Swiss companies commit to upholding social standards.



### **Measure 15 Economic sanctions**

The Federal Act on the Implementation of International Sanctions (Embargo Act, EmbA)<sup>36</sup> provides that Switzerland may apply non-military sanctions imposed by the UN, the OSCE and Switzerland's major trading partners for the purpose of complying with international law and, in particular, upholding human rights. The Embargo Act itself does not refer to specific sanctions as such, but provides the legal framework for the Federal Council to adopt ordinances on the imposition of sanctions. Sanctions may include restrictions or prohibitions on the trade in goods, services, payments, capital and the movement of people. Sanctions policy strategy is based on the principles laid down in Switzerland's foreign policy and foreign economic policy.

| Objective   | Indicator  | Responsibility |
|---|--|----------------|
| Contribute to ensuring compliance with international law, in particular human rights, through the implementation of economic sanctions. | The list of current sanctions shows that UN Security Council sanctions are implemented fully and systematically. The Federal Council also decides, having duly considered the interests involved in the particular circumstances, to join the sanctions imposed by its main trading partners, especially the European Union. | EAER           |

## **2.1.5 Policy coherence**

### **Guiding Principle 8**

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Under Guiding Principle 8 the federal authorities and other public bodies must, in fulfilling their respective mandates, be aware of the State's human rights obligations, and to support such obligations by way of relevant information and training.

### **Measure 16 Interdepartmental cooperation**

As laid down in the 2020–23 CSR Action Plan, the federal government has created an interdepartmental working group on corporate social responsibility. Members are drawn from the federal offices involved in national CSR action plans and strategies. The group meets regularly to discuss and coordinate their CSR-related activities. It also investigates conflicts of interest and structures policy debate with a view to ensuring that the UN Guiding Principles are implemented consistently across the Federal Administration.

The federal government has also established an International Human Rights Policy Core Group (KIM). It functions as an interdepartmental information exchange platform and its members are drawn from the federal offices in charge of international human rights conventions. The group also receives regular briefings on NAP-related activities.

The Interdepartmental Platform on Commodities identifies and promotes synergies between sectoral policies and monitors national and international developments in the commodities sector.

The outcomes of this interdepartmental cooperation are also reflected in the consistent position which the representatives of all Departments adopt during bilateral consultations with other States, in multilateral bodies and in their public statements.

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<sup>36</sup> Embargo Act (EmbA; SR 946.237).

| Objective                                  | Indicator  | Responsibility |
|--|--|----------------|
| Improve policy coherence at federal level. | <p>Inclusion of the NAP in federal government CSR strategies and reports.</p> <p>Number of meetings held by the various interdepartmental platforms and groups.</p> <p>Consistent public position by the representatives of all Departments.</p> | FDFA, EAER     |

### **Measure 17 National human rights institution**

With the Swiss Competence Centre for Human Rights (SCMR), a successful pilot project for a national human rights institution (NHRI) has been running since 2011. A core topic of the SCMR is human rights and business.

This pilot project will be replaced by a permanent, legally established institution. The Federal Council approved the corresponding bill on 13 December 2019, parliamentary consultation will begin in 2020. The NHRI will strengthen the protection and promotion of human rights in Switzerland. Its independence enables it to cooperate with authorities at all levels of government, but also with non-governmental organisations, the private sector, research and international organisations and to support their human rights activities. Its tasks include information and documentation, research, consultancy, human rights education and awareness-raising, promotion of dialogue and cooperation, and international exchange. In addition to domestic human rights issues, its mandate also includes questions relating to the implementation of international human rights obligations in Switzerland.

| Objective   | Indicator   | Responsibility |
|---|---|----------------|
| Support the establishment of an NHRI that deals with, among other things, business and human rights | Mandates and activities of the NHRI in the business and human rights field. | FDFA           |

### **Guiding Principle 9**

The federal government enters into economic agreements with other States or with business enterprises. They include bilateral investment promotion and protection agreements, free trade agreements and agreements governing investment projects. The federal government should ensure that these agreements provide sufficient domestic policy scope to fulfil the human rights obligations of both Switzerland and the contracting partner.

As part of its commitment to upholding human rights, the Federal Council should ensure that provisions to achieve coherence are included in agreements. The provisions should provide contracting partners with sufficient scope to fulfil their human rights obligations. The federal government also supports projects specifically designed to foster respect for human rights among business enterprises in partner countries.

### **Measure 18 Consistency between trade agreements and protection of human rights**

The primary aim of free trade agreements is to foster bilateral trade relations and increase the economic competitiveness of contracting states. In negotiating free trade agreements (and investment promotion and protection agreements; see below), Switzerland is committed to ensuring that provisions to achieve consistency between trade and sustainable development are included. These serve to underline the parties' obligation to comply with the applicable multilateral environmental agreements and ILO conventions, and to implement them effectively. They also refer to international instruments to protect human rights, and the principles of responsible corporate governance. Swiss free trade agreements also

contain provisions stipulating that the agreement should not impede or compromise existing obligations under international law, including in respect of human rights. Free trade agreements are monitored by joint committees. Civil society contributes to the preparatory work for joint committee meetings, specifically through the WTO/FTA liaison group. The Federal Council continues to monitor and conduct impact assessments regarding international developments on human rights due diligence in trade agreements.

In the interests of policy coherence, Switzerland also advocates the inclusion of consistency provisions when negotiating investment protection agreements (IPAs). The federal government drafted provisions to achieve greater consistency between IPAs and sustainable development objectives (e.g. provisions setting out the right to regulate; references to human rights and corporate social responsibility in the recitals to IPAs). These provisions underline the importance of interpreting and applying these agreements in a manner that is consistent with other international commitments undertaken by Switzerland and its partner countries, including those on human rights protection.

| Objective  | Indicator   | Responsibility |
|--|---|----------------|
| Improve consistency between Switzerland's trade agreements and respect for human rights. | <p>Human rights references, corporate social responsibility and the right to regulate are incorporated into trade agreements (FTAs/IPAs) submitted to parliament.</p> <p>The subject is discussed by the WTO/FTA liaison group.</p> | EAER           |

### **Guiding Principle 10**

Under 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. This applies to all relevant multilateral institutions, not only those that deal with trade issues. The federal government is committed to levelling the international playing field with regard to business and human rights.

#### **Measure 19 Promotion of respect for human rights and labour standards within financial institutions**

As a general rule, an evaluation of the environmental and social risks is integral to the process of approving any project or programme conducted as part of Swiss economic cooperation. The aim is to ensure that any investments Switzerland makes fully comply with applicable legislation and rules, including international human rights standards.

Investments by the Swiss Investment Fund for Emerging Markets (SIFEM) are subject to full due diligence with regard to its environmental, social (including working conditions) and governance (ESG) responsibilities. The relevant human rights standards are applied in all ESG risk assessments. This means that the risks of human rights abuses are always taken into account in the investment decision-making process. SIFEM partners (fund managers) are required to submit an annual or half-yearly report detailing their ESG activities and any major ESG accidents and incidents. This information makes it possible to improve the monitoring of human rights issues from the initial situation assessment and right through the investment cycle.

As part of its involvement in international financial institutions, Switzerland actively promotes the systematic reinforcement of ESG standards.<sup>37</sup> It supports the strictest transparency standards and helps to mitigate the potential adverse human rights impacts of projects by strengthening the independent

<sup>37</sup> cf. Measure 12 of 2020–23 CSR Action Plan

inspection committees that handle project-related complaints lodged by the communities concerned. By creating frameworks and exemplary programmes, financial institutions can advance the promotion of ESG standards, respect for human rights at international level and a shared understanding of problems.

| Objective   | Indicator  | Responsibility |
|---|--|----------------|
| Ensuring that investments and projects supported by Switzerland in relation to its economic development cooperation and international financial institutions do not have an adverse impact on human rights and serve as an example of international best practices. | Human rights due diligence as part of SIFEM investments (source: summary report of the Federal Council on the achievement of its strategic goals).<br><br>Swiss contributions within international financial institutions to promote ESG standards, transparency and respect for human rights. | EAER           |

**Measure 20 Promotion of the UN Guiding Principles in consultations, human rights dialogue and bilateral projects**

The federal government systematically profiles 'business and human rights' in political consultations and human rights dialogue conducted with partner States. When preparing consultations and dialogue meetings, the FDFA consults with different federal agencies as well as other interest groups such as the private sector and civil society.

The federal government also promotes the UN Guiding Principles in supporting specific bilateral projects. It also engages in political dialogue and strategic partnerships with the governments of host States to discuss circumstances where regulations, policies, or other action on the part of the host State make it difficult for Swiss business enterprises to respect human rights.

| Objective  | Indicator   | Responsibility  |
|--|---|-----------------|
| Encourage other States to develop strategies (NAPs) and activities to advance the implementation of UN Guiding Principles. | Example of human rights dialogue that explicitly addresses business and human rights.<br><br>Example of the inclusion of UN Guiding Principles in political and economic consultations. | FDFA, EAER, FDF |

**Measure 21 Support for UN bodies in charge of promoting the UN Guiding Principles**

The mandate of the UN Working Group on Business and Human Rights and the Office of the UN High Commissioner for Human Rights includes action to further the implementation of the UN Guiding Principles.<sup>38</sup> Among their other activities, they are committed to ensuring that the UN Guiding Principles are implemented by States at national level and established within other international organisations and instruments.

The federal government will continue to lend political and financial support to the UN Working Group, the Office of the UN High Commissioner for Human Rights and the annual UN Forum on Business and Human Rights in Geneva. It will work with these bodies on several projects that:

- take account of gender issues in the implementation of UN Guiding Principles;
- establish authoritative guidelines on the application of UN Guiding Principles to fundamental issues in connection with the development, use and governance of digital technologies;
- clarify the practical steps that States, business enterprises and investors should take to prevent and combat business-related human rights abuses in conflict and post-conflict situations; and

<sup>38</sup> Cf. UN Human Rights Council, Resolution A/HRC/RES/26/22

- improve access to remediation mechanisms for those affected by business-related human rights abuses.

| Objective  | Indicator   | Responsibility |
|--|---|----------------|
| Provide the UN with political and financial support to promote the UN Guiding Principles, and develop instruments that provide practical recommendations on the implementation of the UN Guiding Principles. | <p>Example of UN project implementation supported by Switzerland.</p> <p>An example that reflects Switzerland's position, such as answers given in special procedures questionnaires.</p> | FDFA           |

### **Measure 22 Commitments by Switzerland to the UN Guiding Principles at multilateral level**

In June 2014, the UN Human Rights Council set up an intergovernmental working group to draft a legally binding agreement on business and human rights.<sup>39</sup> The first draft of the agreement was submitted in July 2018. It sets out the objectives and scope of any future convention, the responsibilities of States and business enterprises, and access to remedy for those affected. Based on the draft, the agreement will apply to human rights abuses committed in the context of activities of transnational corporations and other business enterprises. Switzerland's efforts are focused on the implementation of the UN Guiding Principles. However, it will continue to monitor this process, particularly with regard to consistency with the UN Guiding Principles.

Switzerland puts forward business and human rights recommendations as part of the Universal Periodic Review (UPR). Business and human rights issues will feature more prominently in Switzerland's recommendations and regular reports to the UN treaty bodies. Switzerland reported on its activities in the business and human rights sphere during the third UPR cycle in November 2017, and accepted and implemented some of the business and human rights recommendations it received.

Within the ILO, Switzerland supports the follow-up to the 2016 ILO Resolution on the UN Guiding Principles and global supply chains<sup>40</sup>. It also comments on violations of fundamental rights at work committed by other ILO member states. In 2019, Switzerland declared that it was in favour of adopting the 'ILO Centenary Declaration for the Future of Work'<sup>41</sup> which puts workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies. The federal government also promotes the recommendations of the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. These activities are part of efforts to promote the NAP and provide business enterprises with guidance on compliance with labour standards.

Switzerland actively contributed to the drafting of the Recommendation<sup>42</sup> on business and human rights adopted by the Committee of Ministers of the Council of Europe on 2 March 2016. In implementing the NAP, Switzerland is implementing the Committee of Ministers Recommendation. It also supports Council of Europe efforts to improve access to remedy for those affected by human rights abuses, as well as to its online business and human rights platform.

| Objective  | Indicator  | Responsibility |
|--|--|----------------|
| Influence the activities of multilateral bodies on business and human rights in a way that is compatible with Switzerland's interests. | Example of Switzerland's contribution to multilateral standards/recommendations. | FDFA, EAER     |

<sup>39</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>.

<sup>40</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_497555.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497555.pdf)

<sup>41</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_711695.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711695.pdf)

<sup>42</sup> [Recommendation CM/Rec\(2016\)3 of the Committee of Ministers to member states.](#)

## 2.2 Pillar 2: the corporate responsibility to respect human rights

The growing interdependence of businesses resulting from their involvement in global value chains has pushed issues such as working conditions, human rights, corruption and the environment to the top of the political and social agenda. Like civil society stakeholders, business enterprises are committed to supporting and promoting respect for human rights, particularly as part of their responsible business conduct. Umbrella business organisations and trade associations also keep active track of human rights-related issues and lobby their members to implement the UN Guiding Principles. For example, as part of the UN Global Impact, a number of Swiss companies have voiced their commitment to respecting the freedom of association and recognise the right to collective bargaining in countries where these rights are limited or not recognised; they are involved in efforts to eliminate all forms of forced and compulsory labour; they seek to abolish child labour, and they play an active part in eliminating all forms of professional and employment discrimination.<sup>43</sup>

In promoting the UN Guiding Principles at national and international levels, the federal government seeks to create the right framework conditions for business enterprises to implement the principles, and to support them during this process. By respecting human rights, Swiss companies can consolidate their international standing over the long term as responsible and competitive players. The Federal Council therefore helps companies to meet their human rights responsibilities. Pillar 2 of the NAP sets out a series of measures for the private sector in upholding human rights. In particular, it assists the efforts of SMEs in ensuring respect for human rights.

### 2.2.1 Foundational principles

#### *Guiding Principles 11 to 15*

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Business activities generate investment, jobs and economic growth, but they can sometimes have undesirable side-effects too. The Federal Council expects companies to exercise human rights due diligence.

Under the UN Guiding Principles, respecting human rights is a general standard of conduct that all business enterprises are expected to meet wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their human rights obligations. The responsibility of business enterprises to respect human rights refers to internationally recognised human rights such as those expressed in the UN Universal Declaration of Human Rights, the UN International Covenant on Civil and Political Rights, the UN International Covenant on Economic, Social and Cultural Rights, and the human rights principles contained in the eight core ILO conventions.<sup>44</sup> In addition to these instruments, the regional mechanisms instituted by the Council of Europe,<sup>45</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,<sup>46</sup> including agreements protecting indigenous people, women, minorities, children and people with disabilities.<sup>47</sup>

SMEs are particularly important in Switzerland because they are a major part of the country's economic fabric. Given their limited human resources and expertise on human rights, the management of potential

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<sup>43</sup> Cf. Members of the Swiss Global Compact Network, an initiative which calls on businesses to align their strategies and operations with a range of human rights principles, international labour standards, environmental standards and anti-corruption efforts. Cf. Measure 6 of the 2020–23 CSR Action Plan

<sup>44</sup> The eight core ILO conventions set out the following principles: freedom of association and the right to collective bargaining, the elimination of forced labour, the abolition of child labour, and non-discrimination in relation to employment and occupations.

<sup>45</sup> <https://www.eda.admin.ch/eda/en/dfa/foreign-policy/international-organizations/council-europe.html>

<sup>46</sup> Cf. chapter IV, para. 40 of the OECD Guidelines for Multinational Enterprises.

<sup>47</sup> Cf. (1) Declaration on the Rights of Indigenous Peoples; (2) Convention on the Elimination of All Forms of Racial Discrimination; (3) Convention on the Elimination of All Forms of Discrimination Against Women (4) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (5) Convention on the Rights of the Child; (6) Convention on the Rights of Persons with Disabilities.

human rights risks can pose a significant challenge for SMEs. Despite their good practices, they generally lack systemic responses to human rights-related issues. The concepts developed by international bodies like the OECD and UN must be presented in a way that takes into account the limited resources available to SMEs and the business environment in which they operate. SMEs are therefore encouraged to use the support measures provided by the federal government and umbrella associations.

## 2.2.2 Operational principles: human rights due diligence

### ***Guiding Principles 16 to 21***

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Pillar 2 of the UN Guiding Principles focuses on human rights due diligence. This process should include (1) identifying risks and possible and actual impacts, (2) taking measures to mitigate risks, (3) verifying effectiveness of these measures, and (4) reporting on the action taken and the risks identified. This is the most important mechanism for preventing human rights abuses. Business enterprises must seek ways to prevent or mitigate adverse human rights impacts which are directly linked to their business operations, products or services, even if they have not contributed to these impacts. The UN Guiding Principles defines business relationships as 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.

#### ***Measure 23 Evaluation of implementation of the UN Guiding Principles by business enterprises***

The federal government aims to review the progress made by companies in implementing the UN Guiding Principles and, in particular, in respect of human rights due diligence. This external evaluation will be carried out in tandem with the review of the implementation of the OECD Due Diligence Guidance provided for in Measure 16 of the 2020–23 CSR Action Plan. These evaluations, which will also consider action taken by umbrella organisations and trade associations, should generate a clearer picture of the challenges posed by the implementation of the UN Guiding Principles.

The mission of private initiatives like B Lab and the Corporate Human Rights Benchmark (CHRB) is to assess how companies incorporate human rights in their business activities. The CHRB assesses 101 of the world's largest publicly traded companies based on a set of human rights indicators and ranks them according to their human rights performance. A similar initiative in Switzerland is currently in the development phase. The federal government supports these efforts because they encourage private-sector commitment to upholding human rights. The detailed analyses and rankings of companies operating in the same sector, based on their human rights performance, also contribute to greater transparency.

| Objective  | Indicator   | Responsibility |
|--|---|----------------|
| Review progress on the implementation of the UN Guiding Principles among business enterprises based and/or operating in Switzerland. | Publication of external evaluation findings on the implementation of the UN Guiding Principles by business enterprises. | FDFA, EAER     |

#### ***Measure 24 Support for industry initiatives***

Umbrella organisations and industry associations contribute to the development of industry initiatives. As well as playing a major role in raising awareness and furthering the implementation of human rights due diligence among business enterprises, initiatives led by umbrella organisations and industry associations can provide practical responses to the specific challenges faced by particular sectors. Companies operating in the same sector tend to encounter similar problems but do not have the financial resources or expertise to tackle them single-handedly. Participation in industry initiatives can help companies, especially SMEs, to widen their sphere of influence.



The federal government will step up cooperation with industry initiatives, associations and chambers of commerce which promote the UN Guiding Principles, and support action taken by businesses to uphold human rights.<sup>48</sup> This will involve identifying initiatives and actors which have the potential to substantially further the implementation of the UN Guiding Principles by businesses. Priority will be given to initiatives that contribute to due diligence training for business enterprises or that are developing practical and effective human rights tools for SMEs. All tools developed as part of initiatives supported and recognised under the NAP will be made available to the businesses online.

| Objective  | Indicator  | Responsibility |
|--|--|----------------|
| Support and work with business enterprises on solutions to facilitate the implementation of the UN Guiding Principles. | Federal government cooperation with an industry initiative to develop a human rights tool. | FDFA, EAER     |

#### **Measure 25 Promotion of ILO Helpdesk for Business**

The ILO Helpdesk for Business is a valuable resource for company managers and workers seeking information on how to better align their business operations with international labour standards and build good industrial relations. The ILO Helpdesk provides information in response to specific questions and has a website featuring ILO tools and business-specific resources. Specific queries on applying international labour standards in company operations can be sent by email directly to the ILO. Employers' organisations and individual companies can also use the free and confidential service provided by the ILO Helpdesk for Business. The responses are prepared by an ILO expert team based on the various ILO standards, strategy documents and tools.

| Objective  | Indicator  | Responsibility |
|--|--|----------------|
| Promote the use of the ILO Helpdesk for queries regarding the application of international labour standards. | The number of queries submitted to the ILO Helpdesk and the volume of website traffic to its website (source: ILO Annual Report on the services provided by the Helpdesk). | EAER           |

#### **Measure 26 Promotion of best practices**

The federal government intends to hold a Swiss Business and Human Rights Forum as part of its efforts to encourage and promote human rights best practices among businesses. The forum will provide stakeholders with a platform to discuss trends and challenges in implementing the UN Guiding Principles and foster dialogue and cooperation, particularly on the operational challenges faced by certain sectors. The forum will also help identify best practices for SMEs. In addition to these activities, the federal government will explore the option of creating a Swiss Business and Human Rights Award for business enterprises that have made an outstanding contribution to protecting human rights.

| Objective   | Indicator   | Responsibility |
|---|---|----------------|
| Promote human rights best practices among business enterprises. | Launch the Swiss Business and Human Rights Forum. Number of participating businesses. | FDFA, EAER     |

<sup>48</sup> Cf. Measure 10 of 2020–23 CSR Action Plan



### **Measure 27 Promote efforts to end all forms of child exploitation in supply chains**

The exploitation of children includes child labour, forced labour, sexual exploitation and child trafficking. The federal government works with civil society and the private sector to develop tools and organise events to raise awareness among businesses about the exploitation of children in all its forms.

The federal government will establish partnerships with the private sector and civil society to advance Goal 8.7 of the 2030 Agenda for Sustainable Development: end child labour in all its forms by 2025, eradicate forced labour, and end modern slavery and human trafficking by 2030. It will also evaluate its participation in Global Alliance 8.7, which aims to strengthen international cooperation, coordination and assistance through appropriate multi-stakeholder partnerships.

The federal government also takes action to prevent the exploitation of children in travel and tourism. The 'Don't look away' initiative seeks to raise public awareness of the problem. Tourists and travellers who suspect cases of child sexual exploitation can go to the website, fill out the online report form and send it directly to the Federal Office of Police (fedpol). Increasing numbers of European countries are now joining the campaign. As part of its membership of ECPAT International, which works to end all forms of child sexual exploitation, the federal government launched the 'Don't look away' campaign (*ne-detournez-pas-le-regard.ch*), regularly attends meetings organised by the network and contributes to discussions.

In accordance with the Federal Council decision of 14 August 2019, the FDJP is mandated to examine the introduction of a mandatory due diligence in the area of "child labour". In the meantime, on 18 December 2019, the Council of States adopted a regulation on this issue as part of the preparation of an indirect counter-proposal to the popular initiative for responsible businesses. The National Council has not yet commented on this. The Federal Council is of the opinion that it should await the end of the parliamentary debates.

| Objective   | Indicator   | Responsibility |
|---|---|----------------|
| Promote efforts to end all forms of child exploitation. | Launch an event/tool to raise companies' awareness of child exploitation.<br>Federal government efforts to promote the 'Don't look away' campaign.<br>Participation in the ECPAT global network.<br>Swiss participation in Global Alliance 8.7 was evaluated. | EAER, FDJP     |

### **Measure 28 Promotion of gender equality**

The Federal Council recognises the importance of addressing the disproportionate impact that business activities can have on women and girls.

The private sector is fundamental to advancing gender equality and women's rights. In December 2018, parliament passed an amendment to the Gender Equality Act<sup>49</sup> which adds pay equity to companies' mandatory due diligence obligations. The revised legislation also requires public and private sector employers with at least 100 employees to conduct regular equal pay analyses. This new requirement will take effect on 1 July 2020. An independent body reviews the findings and the employer must inform the workforce of its conclusions. Companies which are found to have an equal pay policy are exempt from further assessment. The new provisions, which will take effect on 1 July 2020 for a period of 12 years, will be evaluated nine years after they come into force.

The federal government provides a free equal pay self-test tool, Logib, which allows companies with fewer than 50 employees to check for instances of wage inequality in their workforce.

<sup>49</sup> Gender Equality Act (GEA; SR 151.1)

| Objective                            | Indicator  | Responsibility |
|--------------------------------------|--|----------------|
| Achieve equal pay for men and women. | <p>Number of companies using the Logib tool.</p> <p>Example of a public sector employer publishing detailed findings from its equal pay analysis as well as the conclusions of the independent auditor.</p> <p>Example of a listed company publishing detailed results of its equal pay analysis in their annual report.</p> | FOGE           |

**Measure 29 Public-private partnerships to promote respect for human rights in the value chain**

To promote the implementation of labour rights and human rights by business enterprises, the federal government, together with the ILO, supports the Better Work programme for the textile industry and the Sustaining Competitive and Responsible Enterprises (SCORE) programme to support SMEs in creating decent working conditions. These projects are jointly run by 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 tools developed by these programmes are shared with the private sector.<sup>50</sup>

The federal government supports a project to promote human rights due diligence with a view to preventing the exploitation of Syrian refugees and migrant workers in neighbouring countries (Turkey, Lebanon, Jordan). The aim is to strengthen the contribution that business enterprises make to providing decent work opportunities and combatting exploitation in the textile, agricultural and construction sectors in these countries.

As part of its foreign policy efforts, Switzerland establishes public-private partnerships to promote measures aimed at combatting human trafficking.

| Objective   | Indicator   | Responsibility |
|---|---|----------------|
| Establish partnerships with the private sector to create decent work opportunities in value chains. | Swiss and private sector contributions to the Better Work and SCORE programmes and to projects aimed at protecting migrant workers from exploitation. | FDFA, EAER     |

**Measure 30 Guides and tools to implement the UN Guiding Principles**

Most business enterprises use certification and private labels (e.g. UTZ, Fairtrade, and amfori/BSCI) as a means of ensuring compliance with social and environmental standards along the entire value chain. The federal government intends to help businesses identify which certifications meet the human rights due diligence standards under the UN Guiding Principles.

In response to Recommendation 11 of the Background Report on Commodities, the Swiss government worked with a multi-stakeholder group (cantons, civil society and the private sector) to draw up a best practice guide for the commodity sector. ‘The Commodity Sector – Guidance on Implementing the UN Guiding Principles on Business and Human Rights’, which was published in November 2018, provides companies working in this sector with practical advice on exercising due diligence along their value chains. Measures, including awareness-raising events and practical workshops, will be put in place to disseminate and promote its application.

<sup>50</sup> <https://www.nap-bhr.admin.ch/napbhr/en/home/unternehmen/multistakeholder-initiativen.html>

The OECD has also produced a series of guidelines for companies that contain practical recommendations on the adoption of due diligence along their value chains. In May 2018, it published guidance for companies of all sizes that are exposed to risks in their value chains, irrespective of the sector within which they operate. Other guidelines are aimed at specific sectors such as the agricultural, financial and textile sectors.<sup>51</sup>

Many international guides and tools are already available. The federal government will explore the possibility of translating some of these into the national languages to enable them to be adapted and implemented in Switzerland. The complex nature of these guides means that some companies, especially SMEs, may find it difficult to put them into practice. Easy-to-use online interactive tools could provide a starting point for SMEs. The Swiss government will develop instruments that enable SMEs to carry out risk assessments and identify measures. They also could provide the basis for an assessment of the action needed to improve human rights due diligence.<sup>52</sup>

| Objective   | Indicator   | Responsibility |
|---|---|----------------|
| Provide guidance to business enterprises on implementing the UN Guiding Principles. | Develop practical tools for business enterprises and making these available at <a href="http://www.nap-bhr.admin.ch">www.nap-bhr.admin.ch</a> . | FDFA, EAER     |

## 2.3 Pillar 3: access to remedy

Many business enterprises have introduced mechanisms that enable their employees and/or business partners to share their concerns about possible human rights abuses and bring claims. Dealing with such claims internally, for example through mediation, often produces satisfactory outcomes for all affected parties. When a constructive solution cannot be found, the State must provide non-judicial and judicial mechanisms which give those affected by human rights abuses access to effective remedy.

### 2.3.1 Foundational principle

#### *Guiding Principle 25*

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The Federal Council recognises the need to provide access to remedy for 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 state have no appropriate access to effective remedy. In such instances, due consideration must be given to a smart mix of judicial and non-judicial mechanisms.

### 2.3.2 Operational principles: state judicial mechanisms

#### *Guiding Principle 26*

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Domestic judicial mechanisms (the courts) may be used to determine matters involving business-related human rights abuses. The federal government intends to ensure the effectiveness of these mechanisms

<sup>51</sup> <http://mneguidelines.oecd.org/duediligence/> and [www.csr.admin.ch](http://www.csr.admin.ch) > Position Paper and Action Plan of the Federal Council on Corporate Social and Environmental Responsibility.

<sup>52</sup> Cf. also Measure 4 of the 2020–23 CSR Action Plan on support for SMEs in assessing major risks in connection with their business activities.

by devising measures to reduce legal, practical and other hurdles that could prevent those affected from gaining access to remedy. These measures should pay particular attention to the additional obstacles that women may face.

In this context, it is necessary to consider the extra-territorial dimension of any judicial mechanisms. 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 appeal before Swiss courts. Whether Swiss courts have jurisdiction to hear and determine such cases and the governing law must be assessed on a case-by-case basis with reference to applicable legal provisions.

The Federal Council addressed all these issues in a report<sup>53</sup> and acknowledges that the mechanisms available in Switzerland are, by international standards, sufficiently well-developed. The report also identified areas where improvements could be made. The Federal Council subsequently decided on additional measures to improve access to remedy in Switzerland for individuals who have suffered human rights abuses committed by a business enterprise based in another country.

**Measure 31 Promoting the option of collective redress**

The Federal Council intends to make selective amendments to the Civil Procedure Code (CPC) to improve its applicability. These will focus on removing obstacles to legal redress such as fees and the risks associated with legal costs, strengthening collective redress mechanisms and simplifying the coordination of procedures.

In the process of revising the CPC, the federal government drafted amendments to the provisions governing costs with a view to extending the scope of the conciliation procedure. New rules on group actions and establishing a group settlement mechanism will close a gap in the available legal protection by facilitating class actions in respect of mass and dispersed damage claims. These amendments and new articles bring the draft bill in line with Business and Human Rights Recommendations 39 and 42 of the Committee of Ministers of the Council of Europe of 2 March 2016.<sup>54</sup> They also meet the expectations of the UN, as expressed in Guiding Principle 26.

| Objective                  | Indicator                       | Responsibility |
|----------------------------|---------------------------------|----------------|
| Facilitated class actions. | Selected amendments to the CPC. | FDJP           |

**Measure 32 Rule of law and access to justice in host states**

The federal government contributes to the strengthening of the rule of law and the promotion of human rights in host States. It engages in political dialogue and international development cooperation programmes in the field of good governance and access to justice. The federal government aims to ensure that communities have access to a fair, transparent and functioning judicial system where they can bring claims and hold the relevant authorities to account. Within this framework, particular attention is given to women and the additional obstacles they can face with regard to access to justice in general and, more specifically, in relation to business-related human rights abuses. At the same time, action will be taken to support and strengthen the capacities of legal stakeholders so that they are better equipped to fulfil their duty to protect.

<sup>53</sup> Federal Council Report of 14 September in response to Postulate 14.3663 of 26 November 2014 from the Foreign Affairs Committee of the Council of States: 'Business and human rights: comparative analysis of judicial and non-judicial mechanisms providing access to remedy' (in German and French). It draws on a study by the Swiss Centre of Expertise in Human Rights (SCHR) and the Swiss Institute of Comparative Law (SICL): Christine Kaufmann, Lukas Heckendorn Urscheler, Access to Remedy. Study in Fulfilment of Postulate 14.363: Swiss Centre of Expertise in Human Rights (SCHR) and the Swiss Institute of Comparative Law (SICL), Zurich and Lausanne, 2017. Available at: <http://www.skmr.ch/>.

<sup>54</sup> Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States, 2 March 2016.

| Objective                                      | Indicator  | Responsibility |
|--|--|----------------|
| Help improve access to justice in host States. | Example of measures by public sector and civil society actors to improve access to judicial proceedings or alternative conciliation procedures and access for specific sections of the population, such as women and disadvantaged groups (source: report on development cooperation programmes to promote good governance and access to justice). | FDFA           |

### 2.3.3 Operational principles: state non-judicial grievance mechanisms

#### **Guiding Principle 27**

State non-judicial grievance frameworks can be an important factor in ensuring access to remedy for business-related human rights abuses. They often enable the parties to resolve differences through dialogue, therefore avoiding lengthy and costly court proceedings.

#### **Measure 33 Visibility of non-judicial grievance mechanisms**

Switzerland already has several state and non-state non-judicial grievance mechanisms in place, such as the National Contact Point for the OECD Guidelines for Multinational Enterprises and ombudsman services. However, the role they play and the work they carry out are not well known. The Federal Council wishes to increase the visibility of non-judicial individual and collective redress mechanisms. Measures will include the provision of information resources and other tools developed as part of the NAP (website: [www.nap-bhr.admin.ch](http://www.nap-bhr.admin.ch); brochures etc.), as well as activities to promote these mechanisms.

| Objective  | Indicator   | Responsibility |
|--|---|----------------|
| Raise the visibility of non-judicial grievance mechanisms. | Provision of information on non-judicial grievance mechanisms in Switzerland. | EAER           |

#### **Measure 34 National Contact Point for the OECD Guidelines for Multinational Enterprises**

The OECD Guidelines for Multinational Enterprises include a chapter on human rights. The 48 signatories to the OECD guidelines are required to set up a non-judicial grievance mechanism in the form of a National Contact Point (NCP) to receive and handle complaints regarding the application of the OECD Guidelines. They also serve as an important non-judicial grievance mechanism for business-related human rights abuses.

Measure 5 of the 2020–23 CSR Action Plan deals with the NCP in detail. As well as providing a mediation platform, the NCP should clearly position itself as a point of contact for the prevention of problems in connection with responsible business conduct (e.g. by having a social media presence and participating in stakeholder events).

| Objective  | Indicator   | Responsibility |
|--|---|----------------|
| Strengthen the position of the NCP as a point of contact for the prevention of problems in connection with responsible business conduct. | Evaluation of NCP activities (source: NCP annual report to the OECD and annual report of the NCP Advisory Board). | EAER           |

## 2.3.4 Operational principles: non-state grievance mechanisms

### **Guiding Principles 28 to 31**

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Swiss business enterprises, especially those with considerable exposure to human rights risks, should have in place appropriate grievance mechanisms to facilitate access to remedy for those affected by abuses. To ensure their effectiveness, these mechanisms must be legitimate, accessible, predictable, fair, transparent and in compliance with Swiss law and constitute a source of learning for all stakeholders. The Federal Council considers the promotion of grievance mechanisms through multi-stakeholder initiatives as an important means of guaranteeing access to remedy.

#### **Measure 35 Grievance mechanisms as part of multi-stakeholder initiatives**

The UN Guiding Principles underline the importance of multi-stakeholder initiatives and processes led by business associations which are designed to facilitate access to remedy. The judicial authorities and professional legal practitioner associations are not currently represented in such initiatives. In order to improve access to remedy as stipulated in the UN Guiding Principles, the federal government will explore the option of involving these groups in multi-stakeholder initiatives in the field of business and human rights. This could take the form of dialogue within existing multi-stakeholder initiatives. Participants would include representatives from industry, public law enforcement bodies and NGOs, and other key actors such as lawyers and mediators.

| Objective   | Indicator  | Responsibility   |
|---|--|------------------|
| Involve legal actors in multi-stakeholder initiatives on business and human rights with a view to improving access to remedy in keeping with the UN Guiding Principles. | Participation of representatives from the legal community in a multi-stakeholder initiative meeting on ways to improve access to remedy. | FDFA, EAER, FDJP |

## 3 Implementing, monitoring and reviewing the NAP

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 at the end of the four-year period. The details of this process are based on the recommendations of the UN Working Group on Business and Human Rights.<sup>55</sup>

The National Action Plan sets out 35 measures in total to be implemented by the lead federal agencies in consultation with other relevant offices. The FDFA and EAER are jointly responsible for coordinating the implementation of the National Action Plan and involving the private sector in this process. A monitoring group composed of representatives of the Federal Administration, business, civil society and academia follows the implementation efforts of the FDFA and the EAER. Its members also serve as the point of contact for their respective stakeholder groups and ensure that interests are properly taken into account.

The FDFA and the EAER will base its evaluation of NAP implementation on the performance indicators assigned to each measure. All policy instruments include clear objectives as well as performance indicators to gauge the progress the federal government has made on implementation and improve the transparency of the outcomes. The federal government will also explore the possibility of conducting an impact assessment at some point in the future. At the end of the legislative period, the FDFA and the EAER will publish a short joint status report.

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<sup>55</sup> UN Working Group on Business and Human Rights (2015), Guidance on National Action Plans on Business and Human Rights Version 2.0.