

Response to the call for inputs: Investors, ESG and Human Rights

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The EurAsia Forum would like to thank the UN Working Group on Business and Human Rights for the opportunity to contribute to the upcoming thematic report on “Investors, ESG and Human Rights” to be presented to the UN 56th session of the Human Rights Council in June 2024. The contribution is structured on the basis of the questionnaire proposed and other relevant international documents and includes input from the EurAsia Forum clarifying that Switzerland’s responsibility to respect human rights applies to all financial institutions.

The recommendations offered in this report will be targeted to States, financial actors and other relevant stakeholders, and will address the strengths, weaknesses and opportunities that financial regulations, policies and practices offer to move towards a sustainable finance framework centred on a human rights approach. The recommendations are building on existing regional and global developments in the field.

About Corporate responsibility to respect human rights

Swiss companies lead the way on sustainable development and the promotion of global prosperity.

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.

About State duty to protect human rights

Switzerland has a new human rights strategy for the 2021-2024 period which aims to promote human rights in the areas of peace and security, business, and sustainability. The Federal Department of Foreign Affairs aims to provide better protection for human rights defenders and through this give legitimacy to their work.

In 2016, the federal government adopted a four-year National Action Plan (NAP) detailing how Switzerland intends to implement the UN Guiding Principles. 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.

The Swiss federal government's duty to protect stems from its international commitments, namely the international human rights conventions that it has ratified (UN conventions, ILO conventions, European Convention on Human Rights).

Good practices: Smart mix of mandatory and voluntary measures

The State duty to protect emphasises the duty to take the necessary action to protect the population from human rights abuses, whether committed by public or private-sector actors, including business enterprises. This can be achieved by means of legislation, incentives and support measures.

The State can employ both binding and non-binding instruments to fulfil its duty to protect. In particular, it can also support corporate initiatives. The State duty to protect is supplemented by the corporate responsibility to respect human rights.

Switzerland's international obligations require it, for example, to take measures to combat forced labour and human trafficking. Human trafficking for labour exploitation is defined as the recruiting or trading of people who are forced to work against their will. The State Secretariat for Economic Affairs SECO is committed to making labour inspectors aware of this issue. SECO's Labour Directorate began its awareness campaign on 20 July 2020 with the publication of an information brochure containing practical tools, including indicators for identifying potential victims.

Examples of legislative measures

1. Regulation of private security service providers

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

2. Regulation of war material

Business enterprises which manufacture or trade in war material are exposed to an increased risk of becoming involved in human rights abuses by third parties.

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

3. Regulation of technologies for internet and mobile communication surveillance

Technologies for internet and mobile communication surveillance can be used for both civilian and military purposes, i.e. they are dual-use goods.

They can be an element in state repression, for example, thereby exposing the business enterprises that manufacture or trade in them to an increased risk of becoming involved in human rights abuses. The export or brokerage of technologies for internet and mobile communication surveillance is governed by goods control legislation. On 13 May 2015, the Federal Council decided that a licence to export or to broker such goods must be refused if there is reason to believe that the exported or brokered good will be used by the final recipient as a means of repression. The transfer of intellectual property, including expertise and the grant of rights, concerning technologies for internet and mobile communication surveillance was also made subject to licence.

Examples of support measures

1. Initiative on respect for labour and human rights in value chains

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

The federal government also pursues a wide variety of activities to support the human rights aspects of sustainable value chains.

2. Support of Multi-stakeholder Initiatives

Brochure "Human trafficking for the purpose of labor exploitation" (german) (PDF, 437 kB, 10.11.2020)

3. Advisory and support services provided by Swiss representations abroad

Offering country-specific advice: A number of Swiss representations in conflict-affected areas have developed innovative initiatives based on the UNGP – largely on an ad-hoc basis – to promote social responsibility on the part of Swiss business enterprises.

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

The federal government will involve Switzerland's representations abroad more closely in its efforts to raise awareness of and provide support for respect for human rights among business enterprises. Among other measures, this will involve training and awareness-raising for embassy staff, better experience-sharing between representations and with the relevant federal agencies in Bern, and more active communication about the representations' activities.

4. Guidance on business and human rights for the Swiss network of representations

The Guidance on Business and Human Rights for Swiss representations abroad is intended to help them engage in a constructive dialogue with Swiss companies in order to raise awareness of human rights issues and provide specific advice in relation to the local context.

The guidance is part of the National Action Plan on Business and Human Rights 2020-2023, which foresees the involvement of representations in raising awareness and supporting Swiss companies to ensure respect for human rights in line with the Federal Council's expectations. It provides an overview of internationally recognized guidelines, standards and principles relating to business and human rights, as well as practical tools for implementing human rights due diligence measures.

What State, regional, and international mechanisms and regulations exist to promote or restrict investment/financing using an ESG approach that takes human rights into account and how do they align with the UNGPs?

Switzerland follows the United Nations' definition with regard to the scope of ESG and defined sustainability goals. The focus is on diligence and reporting obligations. In Switzerland, financial institutions, commodity traders, and energy providers are the most affected industry players and, therefore, have the most specific obligations regarding ESG. The emphasis is on sustainable business, as well as diversity and equal treatment. Switzerland has always been committed to human rights and fair working conditions.

On January 1, 2021, Switzerland introduced its first complement to the Swiss Code of Obligation, compelling companies to have a certain gender representation on the board of directors and in the executive management, or to explain why the required

representation has not been reached. On January 1, 2022, further complements to the Code of Obligation were made.

We hope that the above concrete example is helpful to further develop the implementation of the UNGPs.