



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Bern, 14 December 2018

---

## **Report by the FDFA and the EAER**

# **UN Guiding Principles on Business and Human Rights: current state of implementation by the Swiss Confederation and Swiss business enterprises**

---

## **Table of contents**

|            |  |           |
|------------|--|-----------|
| <b>1.</b>  | <b>Introduction.....</b>   | <b>3</b>  |
| <b>2.</b>  | <b>National and international context .....</b>  | <b>3</b>  |
| <b>3.</b>  | <b>NAP on business and human rights .....</b>  | <b>4</b>  |
| <b>4.</b>  | <b>Analysis of UNGP implementation .....</b>   | <b>5</b>  |
| <b>4.1</b> | <b>Measurement of the progress and gaps in UNGP implementation.....</b>                    | <b>6</b>  |
| <b>4.2</b> | <b>Gaps in UNGP implementation by business enterprises .....</b>                           | <b>7</b>  |
| <b>4.3</b> | <b>The role of federal government-associated businesses .....</b>                          | <b>8</b>  |
| <b>5.</b>  | <b>Recommendations .....</b>   | <b>9</b>  |
| <b>5.1</b> | <b>General recommendations to further UNGP implementation by the Confederation .....</b>   | <b>9</b>  |
| <b>5.2</b> | <b>Recommendations to promote human rights due diligence by business enterprises .....</b> | <b>11</b> |
| <b>5.3</b> | <b>Specific recommendations concerning federal government-associated businesses .....</b>  | <b>12</b> |
| <b>5.4</b> | <b>Other recommendations examined .....</b>  | <b>13</b> |
| <b>6.</b>  | <b>Next steps .....</b>  | <b>14</b> |

# 1. Introduction

This report has been prepared jointly by the Federal Department of Foreign Affairs (FDFA) and the Federal Department of Economic Affairs, Education and Research (EAER). It contains the findings of an assessment of Switzerland's national action plan (NAP) to implement the UN Guiding Principles on Business and Human Rights (UNGPs) and serves as a basis for deciding on the need for an updated version of the NAP.

The UNGPs, adopted by the Human Rights Council in June 2011, are founded on three pillars:

- The state's duty to protect human rights;
- The corporate responsibility to respect human rights;
- The need for access to appropriate and effective remedy for victims of business-related human rights abuses.

In response to postulate 12.3503 of 13 June 2012 (von Graffenried), the Federal Council adopted a report containing Switzerland's NAP on 9 December 2016. Switzerland was one of the first countries to adopt such a NAP to promote coherence between business activities and human rights. The Swiss NAP focuses on the state's duty to protect human rights and the need for access to remedy. It contains 50 policy instruments (PIs) to foster business respect for human rights, mainly by raising awareness among companies domiciled and/or operating in Switzerland, including Swiss companies operating abroad.

According to the current NAP (section 6.3 'Updating and revision'), the FDFA and the EAER are required to review the progress made in its implementation. It also states that the NAP is to be updated and revised once during each legislative period, based on an external analysis of the Swiss context for business and human rights. Following several parliamentary initiatives,<sup>1</sup> the Federal Council decided on 22 February 2017 to explore the possibility of updating the NAP every two years instead of the four years initially planned. As the NAP was adopted on 9 December 2016, the FDFA and the EAER are now submitting a report on its implementation to the Federal Council on the basis of an external study jointly commissioned by the two departments (see Annex 1).

This report begins with an overview of the national and international context in regard to business and human rights. It then discusses the various measures implemented within the framework of the Swiss NAP, some of which have produced positive results. This is followed by an analysis of the gaps identified in the external study (see section 4 below). The FDFA and the EAER then consider the various recommendations made to close these gaps. The report concludes with an opinion on the need to update the NAP. On this basis, the FDFA and EAER propose to produce a new NAP for the period 2020–23.

## 2. National and international context

To date, 21 states around the world have adopted national action plans to implement the UNGPs. A further 23 states are in the process of developing a NAP or have announced their intention to do so. In nine countries, the NAP was produced on the basis of an NGO initiative. Some countries have already or are in the process of developing a second NAP. A comprehensive cross-sectional study does not yet exist to identify trends in the development or updating of NAPs and their impact. However, an analysis by the World Business Council for Sustainable Development has shown that the balance of measures set out in Switzerland's NAP lie within the norm internationally.<sup>2</sup>

Business and human rights is a subject of intense discussion on the multilateral stage. In 2014 the UN Human Rights Council commissioned a working group to develop an international legally binding treaty on transnational corporations and human rights.<sup>3</sup> Switzerland has observed this process from a critical standpoint as it is of the opinion that priority should be given to implementing the UNGPs. Contrary to

---

<sup>1</sup> 16.4052 Ip Amherd / 16.4092 Ip Seydoux / 16.4127 Ip Arslan / 16.4165 Ip Moser.

<sup>2</sup> World Business Council for Sustainable Development's analysis of the business & human rights landscape: [https://humanrights.wbcsd.org/wpcontent/uploads/2018/08/WBCSD-Business-Human-Rights-analysis\\_August-2018.pdf](https://humanrights.wbcsd.org/wpcontent/uploads/2018/08/WBCSD-Business-Human-Rights-analysis_August-2018.pdf)

<sup>3</sup> Resolution 26/9 of 26 June 2014: 'Developing an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights'.

the zero draft of this treaty, Switzerland believes that domestic and transnational companies should be subject to similar expectations.

At the national level, the Responsible Business Initiative was tabled on 10 October 2016. This popular initiative calls for all companies having their registered head office, central administration or principal place of business in Switzerland to respect human rights and environmental standards both in Switzerland and abroad. The Federal Council attaches great importance to respect for human rights and environmental protection. However, it rejects this initiative on the basis that it goes too far, particularly with regard to corporate civil liability. Instead, it favours a coordinated approach at the international level and in regard to existing instruments, specifically the action plans already adopted which cover areas included in this popular initiative (NAP on business and human rights, corporate social responsibility (CSR) action plan and Green Economy action plan). Some countries have introduced regulations in the area of business and human rights and legislation on the duty of vigilance, transparency provisions or sustainability requirements.<sup>4</sup> Switzerland is closely monitoring the development, impact and consequences of these initiatives.

### **3. NAP on business and human rights**

The Federal Council adopted the NAP on business and human rights on 9 December 2016. The Swiss NAP clarifies the Federal Council's expectations of business enterprises and describes how Switzerland is implementing the UNGPs. Regarding the progress made in implementing the NAP between December 2016 and June 2018, the Federal Administration notes that practically all the policy instruments outlined in the NAP have been pursued or implemented, in collaboration with the multi-stakeholder group set up to monitor NAP implementation (representatives of business, NGOs and academia).

The following is an outline of the progress made to date in improving business respect for human rights:

- Swiss companies have learnt more about the implementation of human rights due diligence through a series of awareness-raising and training workshops arranged and held throughout Switzerland in collaboration with chambers of commerce and business associations. These communication activities were complemented by a new federal government website ([www.nap-bhr.admin.ch](http://www.nap-bhr.admin.ch)) dedicated to the topic of business and human rights. Particular focus was placed on the needs of small and medium-sized enterprises (SMEs).
- Swiss companies operating abroad received more support from Swiss embassies in relation to specific projects. Guidance is currently being prepared to enable Swiss embassies to better respond to business requests in relation to human rights and carry out human rights awareness activities. The human rights courses for administrative staff and future diplomats also include a training module specifically devoted to business and human rights.
- The Confederation supports a number of standards and multi-stakeholder initiatives that contribute to human rights protection in the corporate environment. In particular, the Confederation financed the secretariat of the International Code of Conduct for Private Security Service Providers' Association (ICoCA) and led the work of the Board of Directors. Switzerland continues to provide political and financial support for implementing this code.
- In the context of the multi-stakeholder initiative on major sporting events and human rights, the Centre for Sport and Human Rights was established in 2018. This Geneva-based organisation aims to promote effective approaches to prevent, mitigate and redress the human rights impacts of sport. Together with the main actors involved – sports federations (FIFA, IOC, UEFA), governments, NGOs, sponsors, athletes, international organisations – the aim is to build capacities, exchange knowledge and share lessons learnt in order to leverage the full potential of sport for the benefit of human rights.

---

<sup>4</sup> For example: California Transparency in Supply Chains Act, 2010 (US); Directive 2014/95/EU on disclosure of non-financial information, 2014 (EU); Modern Slavery Act 2015, Part 6 (UK); Dodd-Frank Act, Section 1502, 2010 (US); EU Regulation 2017/821 on supply chain due diligence obligations for importers of various minerals from conflict-affected and high-risk areas, 2017; French corporate duty of vigilance law, 2017; updated guidance on the implementation and interpretation of Directive 2013/34/EU of the European Parliament and of the Council on the transparency of companies' annual accounts and reports.

- Several of the policy instruments in the NAP refer directly or indirectly to the commodities sector, which is particularly exposed to the risk of human rights violations. The Confederation issued guidance on implementing the UNGPs in commodity trading in collaboration with a multi-stakeholder group representing cantons, NGOs and the private sector. This sets out the expectations on commodity trading companies to respect human rights and provides practical advice for implementing human rights due diligence at all stages of the value chain. This is the first initiative worldwide to produce recognised guidance on best practices for UNGP implementation in commodity trading.
- In response to postulate 13.3877 (Recordon) concerning trade in gold produced in violation of human rights, an independent report on this topic was produced. In addition to a comparison of the prevailing legislation in Switzerland with that of other refining centres, this report provides an overview of potential risks and challenges, analyses the effectiveness of the measures taken and proposes several recommendations.

Switzerland is actively engaged in promoting the UNGPs at both a national and international level:

- Switzerland has raised the issue of business and human rights in its political consultations and dialogue with numerous countries, such as Nigeria, Mexico, South Africa, Colombia, the United Arab Emirates, Kuwait, Russia and China. Moreover, the FDFA has several bilateral projects dedicated to promoting the UNGPs in partner countries, which it does by supporting the development of NAPs (e.g. in Mexico and Nigeria) and contributing to regional advocacy workshops in Latin America and Africa.
- At the multilateral level, Switzerland supported the independent political dialogue of the UN Special Rapporteur on trafficking in persons, which aims to minimise risks and prevent this activity. Switzerland also 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.

The FDFA and the EAER are satisfied with the progress made to date in implementing Switzerland's NAP. Since the NAP was adopted, the Federal Administration has intensified its dialogue with business enterprises. While almost all the policy instruments have been implemented, it should be noted that some continue to evolve over time. Implementation of the NAP has also led to increased policy coherence on business and human rights and improved the coordination of activities within the Federal Administration. A table outlining the progress made in implementing the individual policy instruments is appended to this document (Annex 2).

## 4. Analysis of UNGP implementation

Drawing on PI 27 in the NAP, the Federal Administration reviewed the progress made in UNGP implementation by way of an external study (gap analysis)<sup>5</sup> conducted by the management consultancy *twentyfifty*. This study explores whether the Confederation's policy in business and human rights provides a suitable framework for UNGP implementation by the Confederation and business enterprises. The objectives of this study were to:

- evaluate the coherence of the policy instruments in the NAP with the Swiss government's international legal obligations;
- assess the progress made and the gaps in UNGP implementation by Swiss companies;
- identify whether there is a need to revise the current NAP.

In terms of methodology, the authors carried out a legal review and an analysis of international best practices in the development of similar action plans with a view to identifying potential gaps in the Swiss NAP. The authors also conducted a survey and interviews with companies to assess the implementation of the UNGPs in the private sector.

---

<sup>5</sup> Bestandsaufnahme über die Umsetzung der UNO- Leitprinzipien für Wirtschaft und Menschenrechte durch den Bund und durch Schweizer Unternehmen (Stocktaking of the implementation of the UNGPs by the federal government and Swiss companies)

It should also be noted that the Federal Council recently adopted reports for Parliament which contain recommendations closely related to both the NAP and the present report (see 5.4. below).

On this basis, the Federal Administration assessed the need for additional measures to ensure implementation of the UNGPs in Switzerland.

#### **4.1 Measurement of the progress and gaps in UNGP implementation**

The study concludes that the Swiss NAP fulfils the requirement of the state's duty to protect, in coherence with Switzerland's international obligations. Switzerland has both legally binding and non-binding initiatives at its disposal to fulfil its international obligations in relation to business and human rights and to encourage companies to respect human rights. The Swiss NAP's preference for non-binding measures is a valid approach. However, by comparing the specific content of the Swiss NAP with a blueprint of international best practices in the development and content of NAPs (as defined by, for example, the UN treaty bodies, the UN Working Group on Business and Human Rights, the OECD and the Council of Europe), a number of gaps were identified. From a legal perspective, it should be noted that these gaps do not represent a violation of the state's duty to protect. However, they do pose an opportunity for the Federal Council to strengthen the promotion and protection of human rights by the state and business enterprises.

##### Scope of the NAP

The study claims that, in focusing (almost) exclusively on the foreign trade dimension, the NAP does not meet the requirement of addressing the economy as a whole.

The FDFA and the EAER do not share this viewpoint. Consultations with stakeholders from the private sector, NGOs and academia have demonstrated that the main risks and challenges facing companies domiciled and/or operating in Switzerland are in relation to their trade relations abroad. It is for this reason that the NAP focuses primarily on business activities abroad, without excluding those within Switzerland. The Swiss NAP's focus on business activities abroad is therefore not a deficiency but a deliberate and concerted decision in response to the specific needs of Swiss businesses and the higher risks posed abroad.

##### Clarification of the Federal Council's expectations

According to the study, the companies surveyed say the Federal Council's expectations are not sufficiently precise and they would like clearer instructions.

The FDFA and the EAER are aware of the difficulties faced by the private sector, and particularly SMEs, in fully understanding the Federal Council's expectations regarding due diligence. The current NAP includes communication and awareness measures to address these challenges. The aim is to continue to promote human rights due diligence while leaving companies sufficient freedom to implement the most reasonable and appropriate procedures in their case. The details of these procedures depend on various factors such as company size and the type of business activities (economic sector, geographical scope, etc.) and must also take account of the competitive environment facing the companies and sectors concerned. In this respect, the specific circumstances and capacities of SMEs and their sectors must be taken into consideration so that the administrative burden and costs they incur are not disproportionately high.

##### Consistency in internal and external communication

The study finds that the NAP lacks an overarching (internal and external) communication strategy to mainstream the UNGPs within the Federal Administration (policy coherence) and the business community (expectation management).

The issue of policy coherence was also raised several times in the surveys carried out for the study. The business community wants the Confederation to 'speak with one voice' on sustainable corporate governance and, consequently, on the implementation of the UNGPs in Switzerland. The NAP aims to

ensure greater coherence in government action. The need to continue the efforts already undertaken is recognised.

#### Human rights and the environment

The study includes a brief review of environmental measures that have a direct or indirect impact on human rights in business contexts. It concludes that government measures in environmental protection can have a significant impact on ensuring business respect for human rights. The main challenge for the Federal Administration is to ensure coherence among the measures taken and to highlight the interaction between the various strategies and action plans in existence (specifically the 'Green Economy' report of 20 April 2016, the Federal Council's CSR action plan of 1 April 2015, which includes a chapter on the environment, and the Sustainable Development Strategy 2016–2019).

## **4.2 Gaps in UNGP implementation by business enterprises**

Following an assessment of the level of awareness and implementation of the UNGPs by Swiss companies, the following gaps were identified:

#### Awareness of the UNGPs, the NAP and their content

The study found there was a low level of awareness of the existence and content of the UNGPs and the NAP among the participating companies. The Federal Council was conscious of this gap when preparing the NAP. This is why one of the policy instruments in the NAP is specifically aimed at disseminating information on the UNGPs and the NAP. Various activities and communication tools have been developed to this end, specifically a brochure for SMEs, and there are plans to continue these efforts in the future.

#### Implementation of the UNGPs by business enterprises

The study found that, although most companies refer to human rights in their codes of conduct, few have issued an independent policy commitment to respect human rights. It also mentioned the difficulties facing companies, particularly SMEs, in establishing the impact of their activities on human rights. This is especially a challenge for industries which are less exposed to the public or which operate in the B2B (business-to-business) market, which may have problems accessing reliable data or establishing a link between their activities or trade relations and human rights. In some cases there is uncertainty as to the degree of due diligence required to identify risks in the supply chain.

The study found there was a need, particularly among SMEs, for more support in implementing human rights due diligence. The main gaps are in relation to their risk assessment capabilities and the scope of responsibilities in the supply chain. This need is particularly marked for SMEs operating in international supply chains.

Access to human rights information in the supply chain can be difficult in the case of intermediaries or where the company has no influence on its suppliers. SMEs, in particular, may have very little say in the corrective measures to be taken.

In conclusion, two distinct gaps have been identified here. One is the knowledge gap: companies do not know which tools are available to plan and conduct their human rights due diligence. The other is a skills gap: even where companies are aware of the tools available, they do not necessarily want to implement them or have the information, resources and/or expertise required to do so. Efforts to plug these gaps can be costly for the companies concerned. Building companies' knowledge and expertise in this area could enable them to exert more control on the ground and thus contribute to human rights protection. Companies must continue to receive support in this area as well as information on the programmes and initiatives that exist (e.g. tools in relation to security and human rights or tools for implementing due diligence in value chains by the commodities sector).

### Anchoring and integration

The study found that larger companies tend to devote more attention to the issue of human rights. The bigger the company, the more likely it is to have institutionalised procedures and specific people or resources dedicated to sustainable development and corporate responsibility. Smaller companies are less likely to have any formal anchoring of the issue, particularly beyond management level. Integrating human rights expertise in the various functions is a challenge for businesses – especially for SMEs, which generally do not have the resources for such specialists. Very few companies offer employee awareness training or information about human rights. This failure to anchor and integrate business and human rights in the corporate environment falls under the more general gap in UNGP implementation by business enterprises.

### Human rights monitoring and reporting

The study found that only a small number of the companies had systematically implemented human rights monitoring and reporting. This aspect tends to be integrated into sustainability reporting mechanisms and procedures, such as the Global Reporting Initiative (GRI)<sup>6</sup> or the UN Global Compact. The GRI standards are not (yet) aligned with the UNGPs. Companies following the GRI framework must therefore make an additional effort to comply with the UNGPs. Reporting poses a huge administrative burden on companies. For SMEs it is a particularly onerous task, or even impossible, as they may not have the human resources needed. Consequently, SMEs rarely produce public reports on their actions in this regard. Given these challenges, SMEs are in need of further support.

The Confederation already contributes to the development, updating and promotion of instruments that assist companies in their sustainable development reporting. Sustainability reports cover topics related to CSR, and such measures are outlined in the Federal Council's CSR action plan. Therefore, given that this subject is already addressed in the CSR action plan, the FDFA and the EAER do not intend to create additional measures as part of the NAP.

### Grievance and complaint mechanisms

Many companies have put in place internal dispute resolution mechanisms for dealing with employee grievances. The Federal Council welcomes these findings. However, the absence of corporate complaint mechanisms accessible by third parties (external stakeholders) has been identified as a significant gap. There are currently no plans to develop additional measures in support of corporate mechanisms. In adopting postulate 14.3663 ('Access to remedy'), however, the Federal Council decided to support state reparation mechanisms (see 5.4 below) through promotional and information measures.

## **4.3 The role of federal government-associated businesses**

The study finds that, in general, the level of CSR practice within the Confederation is high in comparison with other countries' public administrations and also on a national comparison within Switzerland.<sup>7</sup> However, a number of gaps were identified in regard to the human rights dimension. According to the authors, public companies (companies in which the Confederation is the sole or majority shareholder) could, within the context of their business activities, strengthen their existing human rights protection measures and align them even more closely with the government's expectations. When analysed as a separate group, some public companies show lower levels of knowledge and implementation than other participants, e.g. listed companies. As a general rule, they have only included human rights criteria in their supplier codes of conduct but have not acted to establish responsibilities, carry out impact assessments or provide training for their employees and business partners. In most cases, however, they do have complaint mechanisms accessible by third parties and employees.

---

<sup>6</sup> A study commissioned by the Confederation shows that 49% of Swiss companies use the GRI standards: H. Winistörfer et al., *Bedeutung und Stellenwert der OECD-Leitsätze für Multinationale Unternehmen in der Schweiz*, Zurich: 2018.

<sup>7</sup> In 2016–17, a consulting company commissioned by the Confederation drew up an inventory of the Confederation's social responsibility as an employer, resource consumer, buyer, owner and investor: <https://www.are.admin.ch/are/fr/home/media-etpublications/publications/developpement-durable/corporate-social-responsibility-csr-der-bund-als-vorbild.html> (in German). Another report was drawn up in 2018 to analyse the Confederation's CSR performance in its role as a purchaser: <https://www.are.admin.ch/are/fr/home/media-etpublications/publications/developpement-durable/corporate-social-responsibility-csorder-bund-als-beschafter.html> (in German).



The FDFA and the EAER acknowledge the Confederation's specific responsibility to ensure that federal government-associated businesses respect human rights and act as a role model. There should be greater emphasis on increasing coherence within the Federal Administration to ensure that federal government-associated businesses can better implement the UNGPs.

## 5. Recommendations

The external study commissioned by the FDFA and the EAER identified a number of gaps and issued a series of recommendations for the NAP. In this section, the two departments present the recommendations which they have accepted, partially accepted and not accepted.

### 5.1 General recommendations to further UNGP implementation by the Confederation

#### *Recommendations accepted:*

- Clarify the Federal Council's expectations of businesses

The Federal Council should clarify its expectations of the business community. This will mean exploring the possibility of expanding the NAP with a chapter on the corporate responsibility to respect human rights (pillar 2). This should be coordinated and consistent with the Federal Council's existing action plan on CSR, which covers a wide range of topics (e.g. corruption, taxation, environment), including human rights.

- Define indicators to assess the degree to which the measures have been implemented and their impact on the field

This will mean exploring the possibility of developing clear and time-bound objectives and indicators to measure the level of implementation and the practical impact of the measures taken. These will be based on the recommendations set out in the NAP guidance published by the UN Working Group on Business and Human Rights.<sup>8</sup>

- Develop a communication strategy to promote the UNGPs

With the current NAP, the Federal Administration has increased its communication activities to raise the level of awareness among businesses and the general public about the UNGPs. The current framework provides sufficient scope for the Federal Administration to develop activities to promote and enhance awareness of the UNGPs in the business community. It is imperative to continue these activities in accordance with companies' needs and the resources available. They will be coordinated and aligned with the CSR action plan.

- Disclose the function, composition and scope of competency of the multi-stakeholder monitoring group

The members of the multi-stakeholder monitoring group represent the various stakeholders. They serve as the liaisons for their respective stakeholder groups and ensure their positions are represented in the discussions on NAP implementation. Following discussions within the group itself, it was decided to publish the group's composition and terms of reference on the NAP website.<sup>9</sup>

#### *Recommendations partially accepted:*

- Increase policy coherence

The NAP seeks to ensure greater coherence in government activities to protect and promote human rights in the business context. The implementation of the UNGPs enhances collaboration

---

<sup>8</sup> [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

<sup>9</sup> [www.nap-bhr.admin.ch](http://www.nap-bhr.admin.ch)

within the Federal Administration and also promotes policy coherence. The latter is of particular importance to the Federal Council. The CSR interdepartmental group ensures an exchange of information between the different government departments. There is therefore no need to institutionalise a new interdepartmental group. The CSR interdepartmental group could possibly analyse the need to define a strategy on how to approach companies. In general, however, the existing consultation procedures between the various departments and other entities of the Federal Administration sufficiently meet the needs for policy coherence.

- Regular reports on NAP implementation

As mentioned in the NAP and in chapter 1 of this report, the FDFA and the EAER already review the progress in NAP implementation on a regular basis. At the end of each legislative period, the two departments jointly publish a brief progress report. The monitoring group is invited to comment on these reports. There are no plans to increase the frequency of these reports.

*Recommendations not accepted:*

- Develop a broad economic perspective so as not to limit the NAP to the external economy

As mentioned in 4.1 above, the NAP's focus on the foreign trade dimension is explained by the nature of the risks and gaps associated with these activities. This is therefore not a shortcoming in the scope of the NAP but a reflection of the needs of the Swiss economy with regard to human rights risks. It is therefore not necessary to further examine this recommendation.

- Specify under what conditions legislative measures could be envisaged

Regarding the 'smart mix' of legislative and non-legislative measures, the study recommends that the Federal Council formulate under which conditions legislative measures could be envisaged or define the expectations that companies must meet in order to avoid the introduction of legislative measures. Germany's NAP, for example, provides for legislative measures to be introduced by the German government if fewer than 50% of all enterprises with more than 500 employees have incorporated human rights due diligence into their business processes by 2020.

The Responsible Business Initiative submitted in October 2016 calls for binding measures in regard to human rights due diligence by business enterprises. On 11 January and 15 September 2017, the Federal Council decided, in adopting the corresponding dispatch, to propose that Parliament submit this initiative to the people without a counter-proposal and recommend that they reject it. The Federal Council favours a coordinated approach at the international level which promotes the various instruments that already exist, such as NAPs. These instruments are:

- the NAP of 9 December 2016 to implement the UNGPs on business and human rights;
- the CSR action plan of 1 April 2015; and
- the 'Green Economy' report of 20 April 2016, which is an extension of the action plan published under the same name in 2013.

- Policy coherence at the legislative level

The study recommends that all new federal laws envisaged should be reviewed for conformity with the UNGPs. Moreover, it specifies that this review should be carried out by the Swiss Centre of Expertise in Human Rights (SCHR). In view of the fact the UNGPs are not legally binding, the Confederation is not required to carry out such a conformity check.

- Promote the subject of business and human rights in training programmes and communicate with consumers

The study recommends promoting the subject of business and human rights at all educational levels (vocational education and training, lower and upper secondary levels, universities of applied sciences, universities, etc.) in order to raise awareness and prepare tomorrow's

decision-makers. The study also recommends that the general public should be better informed about the UNGPs, such as in Germany, for example, where a nationwide poster campaign informed the entire country about the German NAP.

Contributing to human rights education falls under the remit of the SCHR. The SCHR has organised various information days and training sessions on human rights education, particularly for teaching staff. It has also prepared teaching materials, and in 2015 it published a study on school education in the field of human rights, particularly in the curriculum for French-speaking Switzerland. Moreover, the Federal Council has published a report<sup>10</sup> on citizenship education in Switzerland, which demonstrates that this is now a well-established subject.

## 5.2 Recommendations to promote human rights due diligence by business enterprises

### *Recommendations accepted:*

- Support private-sector initiatives to promote business compliance with the UNGPs and support platforms for SMEs

There are a number of private initiatives to promote business compliance with the UNGPs. The one(s) worth supporting will have to be identified; they must also be consistent with the CSR action plan. The Confederation already supports a number of sectoral platforms, such as the Swiss Platform for Sustainable Cocoa. A decision on the relevance and form of such support will be taken on a case-by-case basis in order to encourage business activities to implement the UNGPs (explore support for sectoral initiatives and initiatives supporting SMEs).

- Ensure specific support for business enterprises operating in conflict-affected areas and fragile contexts

Measures have already been implemented to support Swiss companies operating in conflict-affected areas and fragile contexts, for example in Iran, Colombia and Myanmar. Businesses in such areas can offer the local population economic opportunities and better prospects. Through their actions and influence, or even merely their presence, they may also have a positive impact on the course of a conflict.

For the time being, the processes currently in place are to be continued. This includes support for issuing guidance on human rights due diligence in conflict-affected and high-risk areas by way of a UN project. Directives already in place, such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, should be taken into account.<sup>11</sup> As Swiss representations abroad are sometimes approached by companies operating in fragile contexts, there are also plans to expand the advisory skills available at Swiss embassies. A project to enhance awareness and support for human rights protection, aimed at Swiss companies operating in conflict-affected areas and fragile contexts, could also be considered.

### *Recommendations partially accepted:*

- Issue practical guidance for human rights due diligence

Practical guidance for companies is being developed or has been adopted, e.g. for the commodity trading sector. These efforts are to be pursued in accordance with the needs and opportunities identified, especially for SMEs, and the implementation of existing sectoral instruments, including OECD guidance, is to be promoted.

---

<sup>10</sup> Federal Council report of 7 November 2018 'Citizenship education in Switzerland - an overview' (available in German and French).

<sup>11</sup> <http://mneguidelines.oecd.org/mining.htm>

*Recommendations not accepted:*

- Create a central helpdesk to support business enterprises

Such a service managed by the Federal Administration would not be in a position to meet the individual needs of companies in a thorough and satisfactory manner. The tasks of such a helpdesk go beyond the role of the state. Better support can be provided by sectoral initiatives and the expertise of private actors, meeting the specific needs and expectations of the private sector.

- Specific analysis for SMEs

The study recommends conducting a specific analysis for SMEs to assess their needs, gaps and risks in the field of human rights. This analysis should improve the support available to SMEs for the implementation of human rights due diligence.

The FDFA and the EAER are of the opinion that such a study would not provide sufficient added value. The gap analysis which has been published already includes a survey of SMEs. Moreover, the Confederation's support measures were developed in consultation with representatives of the private sector, including SMEs.

- Clarify the interaction between the various instruments available

The study suggests that the Confederation instruct companies on the differences and interactions between the various instruments in place (GRI, OECD Due Diligence Guidance, EU Directive on disclosure of non-financial information, etc.). Many instruments and standards have been developed as part of private-sector initiatives. It is not within the Confederation's remit to take a position on such private standards. Private businesses are free to choose any standards they wish. Regarding the international standards developed at the multilateral level, Switzerland already works to ensure coherence between these instruments.

- Map out the various human rights issues of relevance to Swiss business enterprises at a sectoral, national and international level

The study recommends undertaking a mapping of relevant human rights topics at the sectoral, national and international levels. The FDFA and the EAER do not wish to engage in a classification of human rights; they consider it more relevant to support the multi-stakeholder initiatives and sectoral standards (e.g. from the OECD) which provide practical guidance for business enterprises. There is therefore no need to develop another measure in this respect.

### **5.3 Specific recommendations concerning federal government-associated businesses**

*Recommendations accepted:*

- Clarify the role model function of federal government-associated businesses: strategic objectives

It is imperative to clarify the Federal Council's expectations of companies in which the government is the sole or majority shareholder. The need for a measure to align the strategic objectives of such companies with the NAP should be evaluated.

- Increase communication with these companies

Several of these companies are already implementing CSR and even human rights measures. Communication with these companies should be stepped up. One proposed measure could promote mutual learning, an exchange of best practices between actors and awareness-raising among these companies.

## 5.4 Other recommendations examined

In addition to the aforementioned study and the recommendations it makes, three other reports submitted by the Federal Council to Parliament are also of relevance in this context.<sup>12</sup> Given the thematic overlap, it was decided to include these recommendations in this report.

### Postulate 14.3663 FAC-S 'Access to remedy'

The Federal Council's report in fulfilment of postulate 14.3663 FAC-S 'Access to remedy' demonstrated that the various remedy mechanisms in Switzerland are sufficiently well developed: in an international comparison, Switzerland is neither ahead nor lagging behind. The Federal Council has nonetheless decided to make further strides in this direction and implement additional measures to strengthen access to remedy in Switzerland for victims of human rights abuses by a company located in another country. The measures adopted are the following:

- increase the visibility of judicial and non-judicial mechanisms for access to remedy;
- continue the dialogue within multi-stakeholder initiatives;
- consider, for future multi-stakeholder initiatives, whether professional associations of judges and lawyers may be included in relevant consultations;
- continue efforts to reduce court costs and to promote class action opportunities.

These measures are to be integrated into the NAP updating process, as announced by the Federal Council in its response to the postulate.

### Re-evaluation of the commodities sector

The report 'The Swiss commodities sector: current situation and outlook' was adopted by the Federal Council on 30 November 2018. This report identifies new trends and considers ways to address the most serious challenges. A number of recommendations are presented as prospective courses of action. The recommendations specific to human rights will be taken into account in the revised NAP.

### Postulate 15.3877 (Recordon) on gold trading in violation of human rights

In its response to postulate 15.3877 (Recordon), the Federal Council decided to include postulate 15.3877 as a measure in the NAP. The gold sector must be supported in its efforts to promote responsible production worldwide. According to the conclusions and recommendations set out in the Federal Council's response, such support should be given in the areas of transparency, responsible supply chains, multi-stakeholder dialogue and development cooperation, and should be integrated into the NAP.

In addition to the recommendations outlined above, certain international organisations have also made recommendations for Switzerland. The Council of Europe Commissioner for Human Rights recommends reinforcing the human rights due diligence obligations of Swiss companies.<sup>13</sup> The United Nations Independent Expert on the effects of foreign debt recommends the government and public institutions in Switzerland should "*present [their] views on possible measures to improve financial businesses' respect for human rights through regulation in response to proposals that are part of a popular initiative aimed at embedding human rights due diligence in the Swiss legal order*".<sup>14</sup> The FDFA and the EAER already work with business enterprises to support them in developing due diligence. This support is often on a sectoral basis. In the financial sector, for example, the Confederation works with companies to support the development of guidance that meets their specific needs. In addition, the FDFA and the

---

<sup>12</sup> Federal Council report on business and human rights in response to postulate 14.3663 FAC-S of 26 November 2014 (German and French only), Federal Council report 'The Swiss commodities sector: current situation and outlook', and Federal Council report on gold trading and human rights in response to postulate 15.3877 (Recordon) of 21 September 2015 (German and French only).

<sup>13</sup> N. Muižnieks, Report by the Council of Europe Commissioner for Human Rights following his visit to Switzerland from 22 to 24 May 2017 (in French only), CommDH(2017)26, §56-66, p.16-19

<sup>14</sup> [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/37/54/Add.3](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/54/Add.3)

EAER support the work of the Thun Group, a group of international banks which met for the first time in 2011 to discuss the implementation of the UNGPs.<sup>15</sup>

## **6. Next steps**

This report demonstrates that improvements could be expected by producing a revised version of the NAP. An update is therefore proposed for the period 2020–23. Drafting of the new version will commence in 2019 by way of internal consultations at the Federal Administration and with the participation of various stakeholders such as NGOs, trade unions, business associations and academia. This will be done with respect to the progress made in implementation of the current NAP.

---

<sup>15</sup> The Confederation also supported the development of guidance for UNGP implementation in the commodity trading sector. SECO has supported the OECD in developing guidance for the financial sector: Responsible business conduct for institutional investors (2017); Recommendation of the Council on Sustainable Lending Practices and Officially Supported Export Credits (2018); Implementation tool for due diligence on corporate lending and securities underwriting services (2019).