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# **NATIONAL ACTION PLANS ON HUMAN RIGHTS AND BUSINESS: INPUTS FOR THE BRAZILIAN REALITY**

**PART I: GENERAL PERSPECTIVES ON THE NATIONAL ACTION PLANS  
ON BUSINESS AND HUMAN RIGHTS**

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## INTRODUCTION

This text is the first part of a series of works, product of research developed by Homa<sup>1</sup>, on the implementation of the Guiding Principles on Business and Human Rights - published in 2011 by John Ruggie, as a Special Representative of the Secretary General on Human Rights, Transnational Corporations and Other Business - through the elaboration of National Action Plans on Business and Human Rights.

This research began in September 2015, and was motivated by the perception of the need for a critical academic monitoring of the elaboration process of the National Action Plan by Brazil, in its initial phase.

Following the research conception adopted by Homa - Centre for Human Rights and Business, it is understood that the "theory is always directed to someone and with a specific purpose" (Cox, 1986, p. 207), reinforcing<sup>2</sup> a specific perspective. Therefore, all theory must also be understood along the ideology it carries within. This way, it is sought to accomplish a critical nature research in order to develop an analysis about the social practice with potential to contribute to the transformation of the reality.

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<sup>1</sup> To learn about the work of Homa – Human Rights and

<sup>2</sup> COX, Robert W. *Social Forces, States and World Orders: Beyond International Relations Theory*. KEOHANE, Robert O. (ed.). *Neorealism and its critics*. New York: Columbia University Press, 1986.

That being said, this series of studies will be made up of several parts: the first and current will present a brief historical introduction of the scenario of the United Nations in the area, to then penetrate in the debate of the National Plans, bringing some general considerations on the initiative and identifying guiding points on the eight plans already developed.

## HISTORY

Oriented by a critical perspective of international relations, it is understood that the international organizations are spaces governed by the hegemonic/anti-hegemonic dialectic (Murphy, 2013), with its relative autonomy in relation to the interests of capital. Thus, in dispute between conflicting interests it emerged the agenda on the necessity to regulate and control the activity of transnational corporations and their negative impacts on human rights in the UN in the 1970s, starting a troubled discussion process that continues until today in advances and setbacks.<sup>3</sup>

Since 1972, with the beginning of discussions for the development of a Code of Conduct for multinational companies, two perspectives oppose each other: one that sees the need to regulate internationally in a "binding" way the transnational companies and to create accountability mecha-

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<sup>3</sup> MURPHY, *Organização Internacional e Mudança Industrial: Governança Global desde 1850*. São Paulo: Unesp Press, 2013.

nisms of these actors by violations of Human Rights; and another that aligns with the Corporate Social Responsibility side, based on voluntary accession pacts, that generates positive marketing for companies and is comparable to philanthropic purposes.

Despite all the historical scenery in international theme not being able to be divided in this dichotomy, this has the important function of delimiting and reaffirming the existence of two distinct projects of "protection" of Human Rights. And this contraposition of projects has reached its apex at the end of the twentieth century, when the Global Pact was published by the former Secretary-General of the UN, Kofi Annan, and the Rules on Accountability of Transnational Corporations and Other Business Enterprises with Regard to Human Rights have been discredited in the Human Rights Council.<sup>4</sup>

Experiencing the discontent of international civil society with the abandonment of the "Rules" project, in 2005 the Secretary-General of the UN appointed Professor John Ruggie as the Special Representative of the General Secretariat on Human Rights, Transnational Corporations and Other Business.

Ruggie's mandate aimed to clarify the apparently nebulous roles and obligations of States and companies in relation to human rights, with the goal to produce some

"normative framework" for the area. At the end of the first mandate, after three years of research and discussions, it was drawn up the *"Protect, Respect and Remedy" Framework*, which contained the foundations of the Special Representative work and served as the basis for the "UN Guiding Principles on Business and Human Rights", of 2011, the product of his second mandate.

A more detailed study of Ruggie's Guiding Principles allows one to realize that he did not sufficiently advance in the path for the construction of an international regulatory framework that established clear rules for the transnational companies regarding Human Rights. What Ruggie<sup>5</sup> defines as "Principled Pragmatism" seems a deliberate theorization of a political-ideological strategy adopted by him in his mandate of not tensioning to the rupture with the hegemonic conception of the relationship between business and Human Rights.

With the end of Ruggie's mandate it was created by the Human Rights Council the UN Working Group on Human Rights and Businesses, in order to proceed with the Guiding Principles implementation process.

Composed by five experts from different countries, the Working Group had initially a

<sup>5</sup> See master thesis of the HOMA researcher Luiz Carlos S. Faria Jr., for a discussion on the current agenda of the United Nations on Business and Human Rights: "The Battle of David against Goliath: A Neo-Gramscian Analysis of the United Nations Agenda on Human Rights and Business" available at: <https://seminariosinternacionaisdireitoshumanoseempresas.files.wordpress.com/2015/11/dissertac3a7c3a30-faria-jr-a-agenda-da-onu-em-direitos-humanos-e-empresas.pdf>. Access at 11.09.2015, 12h57.

<sup>4</sup> Former "Commission of Human Rights".

three-year term, extended to another three years according to the Human Rights Council Resolution 26/22<sup>6</sup> of 2014, having as priority promoting the Guiding Principles and assisting in their actual global implementation; developing, therefore, dialogues with governments and interested parties in order to identify efficient results and practices in implementing the principles, as well as disseminating them.

The UN Working Group on Human Rights and Business, in its sphere of action, is quite limited institutionally, does not have the power to receive claims of Human Rights violations and have neither the jurisdiction of an international court to judge cases nor the competence to forward cases of violations to international or regional bodies that do have jurisdiction. Perhaps due to this limitation in its sphere of activity, the Working Group, in 2012, made its first annual report to the Human Rights Council, advising States to develop National Action Plans as part of the Guiding Principles<sup>7</sup> implementation process.

## THE NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

One of the main strategic agenda of the Working Group since 2012 is the development of National Action Plans on Business and Human Rights by States as part of the Guiding Principles implementation process. This idea was already in the first report of the Group to the Human Rights Council<sup>8</sup> and to the UN General Assembly<sup>9</sup> and won materiality in December 2014, with the release of a guide document by the Working Group to orientate the States in the development of this strategy (UNWG, 2014).

Considered by the Working Group as "key element" in the concretion and dissemination of the Principles, the National Plans may be understood as a vehicle to map and destroy the obstacles and optimize the good experiences to fulfill its obligations in the protection of Human Rights in relation to the coherent activities of companies (UNWG, 2014, p.5, par.15). According to the UNWG, the National Plans can be defined as the

*"evolving policy strategy developed by the State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs)." (UNWG, 2014, p.ii)*

<sup>6</sup> Resolution 26/22 June 2014, approved in the UN Human Rights Council. Available at: <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/26/22](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/22)>. Access at 03.03.2015 15h31.

<sup>7</sup> Report A/HRC/20/29. Available at: <[http://www.ohchr.org/Documents/Issues/Business/A.HRC.20.29\\_en.pdf](http://www.ohchr.org/Documents/Issues/Business/A.HRC.20.29_en.pdf)>. Access at: 03.07.2015, 12.00.

<sup>8</sup> Report A/HRC/23/32, p. 21, par. 'f'. Available at: <[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-32\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-32_en.pdf)>. Access at 11.04.2015, at 17h41.

<sup>9</sup> Report A/67/285, p. 14, par. 47. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/459/11/PDF/N1245911.pdf?OpenElement>>. Access at 11.04.2015 17h43.

According to the Working Group, the National Plans development process must contain four essential requirements: the Plans must necessarily be anchored in the Guiding Principles; they must be specifically contextualized in the reality of each State; they need to come from processes endowed with transparency and dialog; and they shall go through periodic revisions and updates, responding always to the dynamism and the evolution of new realities. The Group sees this new initiative as an opportunity for the domestic coordination of the Guiding Principles implementation process through national government agencies, getting close to the local reality.

Since the year 2013, seven countries have released their respective plans, they being: United Kingdom (September/2013)<sup>10</sup>, the Netherlands (December/2013)<sup>11</sup>, Denmark (April/2014)<sup>12</sup>, Finland (October/2014)<sup>13</sup>, Lithuania (February/2015)<sup>14</sup>, Sweden (August/2015)<sup>15</sup> and Norway (October/2015)<sup>16</sup>,

<sup>10</sup> Available at: <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf)>. Access at 03.07.2015, 11h29.

<sup>11</sup> Available at: <[http://www.netherlandsmission.org/binaries/content/assets/postenweb/v/verenigde\\_staten\\_van\\_amerika/the-permanent-mission-to-the-un/actionplanbhr.pdf](http://www.netherlandsmission.org/binaries/content/assets/postenweb/v/verenigde_staten_van_amerika/the-permanent-mission-to-the-un/actionplanbhr.pdf)>. Access at 03.07.2015, 11h30.

<sup>12</sup> Available at: <[http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark\\_NationalPlanBHR.pdf](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf)>. Access at: 03.07.2015, at 11h40.

<sup>13</sup> Available at: <[http://www.tem.fi/files/41214/TEMjul\\_46\\_2014\\_web\\_EN\\_21102014.pdf](http://www.tem.fi/files/41214/TEMjul_46_2014_web_EN_21102014.pdf)>. Access at: 02.07.2015, 11h45.

<sup>14</sup> Available at: <[http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania\\_NationalPlanBHR.pdf](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania_NationalPlanBHR.pdf)>. Access at 03.07.2015, 11h46.

<sup>15</sup> Available at:

and two countries are with the Plans ready, but with the final items pending national approval to be released: Italy (March/2014)<sup>17</sup> and Spain (July/2014)<sup>18</sup>. Until the present moment, no country in the global south has published a National Plan, although several States are in the process of developing their own document, among them Argentina, Colombia, Mexico and Brazil, which declares internationally that it has process in progress<sup>19</sup>.

On the National Action Plans, it is identified that it is possible to understand them under a dual perspective, one regarding their representation as a key policy in the Working Group activities and another that addresses the potential they have to transform the national legal frameworks for the protection of Human Rights.

The option of the working group for this route shows a low level of demand in short and medium term advancements, neither establishing concrete demands nor determining international norms to be observed

<<http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf>>. Access at 11.22.2015, 17h52.

<sup>16</sup> Available only in Norwegian in: <[http://www.ambnorwegen.ch/PageFiles/778315/UD\\_Naeringsliv\\_og\\_menneske\\_UU.PDF](http://www.ambnorwegen.ch/PageFiles/778315/UD_Naeringsliv_og_menneske_UU.PDF)>. Access at 11.22.2015, 14h36.

<sup>17</sup> Available at: <<http://www.ohchr.org/Documents/Issues/Business/NationalPlans/NationalPlanActionItaly.pdf>>. Access at: 03.07.2015, 11h37.

<sup>18</sup> Available at: <<http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>>. Access at: 03.07.2015, 11h50.

<sup>19</sup> Available at: <<http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>>. Access at: 11.07.2015 17h15.

and ratified by the States, maintaining all its guidelines in an abstract general plan.

In this way, the National Action Plans gives a very clear message, pointing to the focus on the relationship of the State with the Human Rights and reinforcing the idea that the companies do not have obligations, only moral responsibilities of secondary character, derived from social expectations of protection and respect for Human Rights.

Therefore, the National Action Plans strategy on Business and Human Rights does not represent a step forward in the development of a regulatory framework capable of making transnational companies accountable for violations of Human Rights, even opposing it, being used as evidence of advances in the construction of normative rules at national level, being reckless and unnecessary to draw up an international treaty on the subject.

In relation to the potential of National Plans in transforming the internal legislation framework, it should be observed what those plans have been bringing as content.

One must flee from the mystification of the existence of an instrument that would act as a panacea for all the problems and violations of Human Rights. Even if the National Plans cause significant changes in the State, they will not be able to break the global capitalist structure of action of transnational companies, Human Rights violator. The National Action Plans remain in the voluntariness paradigm and elevate the

companies to a *stakeholder* status, not considering the structural imbalance between the players affected by the business activity and the company itself.

However, initiatives that open space for social transformations capable of improving the individuals' conditions of life and generating some degree of protection of Human Rights in the international and national sphere are welcome, the problematic issue in case is whether this instrument is capable of producing in practice the promised advances. The absence of specific guidelines leads to an innocuous political instrument that only legitimises the States in the international sphere and does not create possibilities of transformation within local and national ones. The States, until the present moment, have developed vague plans, with no concrete measures, no specific legislative reform proposals, no measurable objective parameters to the corporate activity and no detailed criteria to evaluate results.

Nevertheless, if the processes of discussion of the Plans in the States are conducted in a transparent, participatory and popular way, they can open space for the insertion of discussions on the subject of Human Rights and business in the national politics, theme that is constantly neglected by the great majority of countries, allowing the construction of an anti-hegemonic movement that articulates the local, national and regional actors and demands and that ag-

glutinates them around a global agenda, which is the protection of Human Rights.

## GENERAL CONTRIBUTIONS FROM EXISTING NATIONAL PLANS

As previously mentioned, seven countries have published their respective plans: United Kingdom (September/2013), Netherlands (December/2013), Denmark (Apr/2014), Finland (October/2014), Lithuania (February/2015), Sweden (August/2015) and Norway (October/2015), and two countries are with their Plans ready, but with the final items pending for national approval to be released, namely Italy (March/2014) and Spain (July/2014).

Next, there are schematic analyzes of eight Plans, six Plans already released<sup>20</sup> and two ready, but waiting final approval to be published, emphasizing relevant characteristics of each one and highlighting briefly: the timeline of their elaboration processes; the proposed measures and the recognized rights; mentioned regulatory framework; and criticism of the instruments.

## UNITED KINGDOM

### Process Timeline

<sup>20</sup> The Norway National Action Plan was not examined because it was not available in English or another language but Norwegian.

In 1998 it was approved by the British Parliament the "*Human Rights Act*"<sup>21</sup>, legislation that ensures to the United Kingdom individuals the due reparation for violations of the rights protected by the European Convention on Human Rights (ECHR)<sup>22</sup>.

In 2011, with the publication of the Guiding Principles, the European Union, in communication with the European Commission on social corporate accountability, invited the Member States to develop National Plans for the implementation of the Guiding Principles<sup>23</sup>, and the Government of the United Kingdom was the first country to announce the intention to release a National Action Plan specific on the theme<sup>24</sup>.

The onus of the conduction of the process of drafting the National Plan was placed on the Ministry of Foreign Relations, more specifically under the Department of Democracy and Human Rights, and a targeting commission composed by different ministries was created to guide the process.

<sup>21</sup> See: "*Good Business: Implementing the UN Guiding Principles on Business and Human Rights*". <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf)>. Access at 11.09.2015 14h03.

<sup>22</sup> Id.

<sup>23</sup> See "*A renewed EU strategy 2011-2014 for Corporate Social Responsibility, Brussels, 25 October 2011*". <<http://www.eurocoop.org/en/publications/position-papers/enterprises-policy/448-ec-communication-a-renewed-eu-strategy-2011-2014-for-corporate-social-responsibility>>. Access at: 12.01.2015 15h40.

<sup>24</sup> See "*Corporate Responsibility Coalition (CORE), Good Business? Analysis of the UK Government Action Plan on Business & Human Rights 2 (2013)*" <[http://www.corporatejustice.org/IMG/pdf/goodbusiness\\_corecommentonuknap\\_final\\_dec2013-1.pdf](http://www.corporatejustice.org/IMG/pdf/goodbusiness_corecommentonuknap_final_dec2013-1.pdf)>. Access at 11.02.2015 09h32.

In the beginning of 2012 interviews and meetings were held with various agents involved, and each category of agents met separately during the process, only meeting all together at the end. The government, however, did not prioritize the participation of popular agents, not consulting directly with victims of violations, which considerably diminishes the legitimacy of the process.

Even with the government sending a copy of the preliminary document to the consulted agents and to more than 40 government agencies, it was not publicly circulated before being finalized and released. It has not occurred, therefore, a broad consultation with external agents in relation to the preliminary document.

In September 2013 the plan was published and the end of 2015, the government released the communication informing about the periodic updating of the National Plan.

### Proposed Measures and Provided Rights

The United Kingdom has structured its National Plan on the three pillars of Ruggie framework, using the business focus, emphasizing the "benefits" of respecting Human Rights for the companies and appointing the document as "*Good Business: Implementing the UN Guiding Principles on Business and Human Rights*".

Within the first pillar, i.e. the State duty to protect Human Rights, the National Plan exposes the current political and legal structure that exists in the United Kingdom as well as actions already implemented by the State and the planning of future actions, such as: creating partnerships with other governments for implementation of the Guiding Principles; the establishment of certification to private security companies<sup>25</sup>; working with partners for the implementation of the Voluntary Principles on Security and Human Rights<sup>26</sup>; revising the activities of state enterprises and private enterprises controlled and funded by the State in relation to Human Rights, making recommendations in order to ensure the implementation of the Guiding Principles; developing programs on freedom of online expression and programs that reduce the impact of companies' activities over minorities; and also recommending that the Investment Treaties involving the United Kingdom strengthen the mentioned principles.

Concerning the second pillar, corporate responsibility to respect Human Rights, the United Kingdom Government exposes its expectations about the business behavior, elaborating actions to assist and support companies in the implementation of the Guiding Principles. The plan states that re-

<sup>25</sup> According to the Code of Conduct for private security companies. For the full text, see: <[http://www.icoca.ch/en/the\\_icoc](http://www.icoca.ch/en/the_icoc)>. Access at 11.02.2015 15h26.

<sup>26</sup> See: <<http://www.voluntaryprinciples.org/>>. Access at 12.01.2015 15h19.

spect for Human Rights must be at the core of the enterprises' main activities and should not be treated as mere philanthropy or social investment. It is recognized that different enterprises must have different approaches in relation to the implementation of the Guiding Principles, that the implementation will be progressive and must be particularly compatible with the limitations of resources of small and medium-size businesses. The National Plan lists all the actions already taken for the implementation of the Guiding Principles until then, mentioning among others: the newly established obligation that the companies' directors include Human Rights matters in their annual reports; the update under the light of the Guiding Principles of the "*Business and Human Rights Toolkit*" of the British Government, a detailed guidance manual for all relevant officials; the release of an online page in 6 languages that promotes information and guidance about the United Nations Guiding Principles, in which companies can share successful results and promulgate best practices, etc. Regarding future actions, the focus of the Plan is in the implementation of recommendations for the dialog between the company, government and civil society, and the advisement to the development of voluntary sectorial codes of respect for Human Rights.

The last pillar proposes, in a generic way, business and governmental actions to promote access to reparation, but nothing

concrete or with the presumption of cogency.

### Mentioned Legislation

Concerning the use of regulatory instruments, it is noted an inability of the National Plan, because, even mentioning national and international laws on Human Rights protection, in terms of concrete future actions, it focus on corporate self-regulation - and, therefore, voluntary actions. The following laws are mentioned:

*"UK Bribery Act"*: in accordance with the State commitments towards OECD, United Kingdom companies are accountable for bribery attitudes committed anywhere in the world.

Declaration on Fundamental Principles and Rights at Work, adopted in 1998.

Section 172 of the "*Companies Act*" of 2006: it shows that, in fulfilling their duty to act for the company's success, directors should think about matters that have a weight in this success, including the interests of the company's employees and the impact of economic activity in the community.

Set of 8 ILO Central Conventions ratified by the United Kingdom that deals with work standards.

The OECD Guidelines for Multinational Enterprises: the United Kingdom is recognized

for having one of the most effective national points of contact.

The International Code of Conduct for Private Security Service Providers (ICoC). Until June 2013, a total of 659 companies signed the ICoC, being a third of those from the United Kingdom.

Voluntary Principles on Security and Human Rights.

### Critical Perspective

The document edited by United Kingdom errs since its preparation process, not being able to achieve nor reproduce the perspective of the victims of violations, besides not containing explanations on the implementation of the proposed actions. It is not clear which governmental sector will be responsible for implementing the actions. Despite having some actions detailed, the document does not elaborate in a specific way the methodologies for application nor sets deadlines, impeding a temporal monitoring.

It is observed, also, that the National Plan does not create new corporate obligations, reiterating only the ones that already exist in national and international laws, and does not deal with extraterritorial accountability nor with the development of jurisdictional mechanisms of companies accountability.

## THE NETHERLANDS

### Process Timeline

In 2011, after the publication of the Guiding Principles, the European Commission, defining a strategic plan on corporate social responsibility, invited the Member States to develop a national plan for the implementation of the UN Guiding Principles. In 2012, the Netherlands formed an interministerial working group<sup>27</sup> to develop such a plan. The Ministry of Foreign Relations was the responsible for coordinating the interministerial group that has led the elaboration process which resulted in the formation of the Dutch National Action Plan. The group remained active during the process of drafting the preliminary document, answering questions raised by the Dutch Parliament on the National Plan before the parliamentary debate on the document.

The Guiding Principles were compared with the Netherlands' governmental cy<sup>28</sup> and, based on interviews and consultations with about 50 representatives of the business community, civil society organizations, development agencies and other

<sup>27</sup> The Interministerial group was composed by the Ministry of Economic Affairs, Ministry of Finance, the Ministry of Security and Justice and the Ministry of Social Affairs and Labor.

<sup>28</sup> As examples of these policies "A World to Gain. The New Agenda for Aid, Trade and Investment," available at: <<https://www.government.nl/documents/letters/2013/04/05/global-dividends-a-new-agenda-for-aid-trade-and-investment>>; "Corporate Social Responsibility Pays Off," available at: <[https://www.google.com.br/search?client=safari&rls=en&q=Corporate+Social+Responsibility+Pays+Off.+House+of+Representatives&ie=UTF-8&oe=UTF-8&gfe\\_rd=cr&ei=wd5dVqvoB-up8wezq5PADA#](https://www.google.com.br/search?client=safari&rls=en&q=Corporate+Social+Responsibility+Pays+Off.+House+of+Representatives&ie=UTF-8&oe=UTF-8&gfe_rd=cr&ei=wd5dVqvoB-up8wezq5PADA#)>; and 'respect and Justice is All', available at: <<https://www.government.nl/documents/policy-notes/2013/06/14/justice-and-respect-for-all>>. Access at 12.01.2015, 15h58.

specialists, it was identified the most important points and ideas for the action plan. An external consultant has conducted the interviews in an attempt to ensure the neutrality of the process. The issues raised in these interviews were discussed in three meetings: one with representatives of the civil society and experts, a second one with entrepreneurs and a third with development agencies. No effectively broad and public query occurred, nor it was prioritized the popular participation in the process. The Dutch Government says that there was broad consensus regarding the need for an active role of the State, procedural consistency and clarifications on "*due diligence*". However, controversies have arisen on the transparency and accountability and on the extent of the repair of violations of human rights<sup>29</sup>.

On 10 December 2013, the Dutch National Action Plan on Business and Human Rights is sent to the House of Representatives for approval, obtaining it successfully.

### Proposed Measures and Provided Rights

The National Plan exposes the current Dutch policy in relation to the topic of Human Rights and Business, aligned with Corporate Social Responsibility. It is evident that the consultation process is the great fulcrum of the National Plan, always referring to the issues raised in it to propose

<sup>29</sup> Dutch NAP. See: <http://www.netherlandsmission.org/appendices/actionplanbhr.html>. p.3. Access at 11.03.2015, 17h45.

measures and detailing it according the five points that were approached most often during the consultation process. They are: an active role for the government; the need for procedural coherence; greater clarification about "*due diligence*"; transparency and accountability practices; and the extent of the reparation.

With regard to the active role of the government, it was recognized the need for a more proactive position in the partnership relations and fostering of discussion on Human Rights and business.

In relation to procedural coherence, the State recognizes that it needs more consistency in its policies and proposes the creation of online courses for ministers and members of the government, as well as the analysis of the relevance of the implementation of the OECD guidelines and of the Guiding Principles to municipal and state policies.

With regard to the third point, the Plan clarifies to the companies the meaning of "*due diligence*" according to Ruggie's Framework and claims that it provides aid to firms wishing to implement it. Then it is proposed to include content of ethics and CSR in university curricula, it is highlighted the decisive role of the embassies in international awareness on this subject and the commitment to extend the practices of "*due diligence*" also to the public sector. The section ends without establishing legally binding measures, leaves to the

companies the decision of fulfilling or not their "*due diligence*" obligations and suggests the implementation of courses for the various organs and agents of the State.

In the fourth point, on transparency and accountability practices, the National Plan only recommends the obedience to the Dutch guidelines of Social Responsibility, requesting its voluntary compliance within the limits of each company through the publication of periodic reports of sustainability and respect for human rights.

Finally, with regard to damage reparation, the Dutch Government mentions the "ACCESS system", mechanism that aims to improve the access to judicial and extrajudicial means of settling disputes, founded in December 2012. Believing in the potential of this initiative and in the effectiveness and sustainability of local solution of conflicts, the government began to finance it through its Fund for Human Rights. Concerning the judicial means of reparation, the plan makes clear the possibility of civil and criminal liability for violations that occurred in Dutch territory, promises to improve the internal legal infrastructure, but does not advance in the topic of extraterritorial jurisdiction. Regarding the extrajudicial mechanisms, it is pointed as complaint channels the OECD National Point of Contact and the companies' ombudsman.

The organization of this document in the form made explicit above does not reflect the division into three pillars of the Guiding

Principles, although it makes reference to them, and does not explain how determined action proposal will contribute to the achievement of a certain principle.

### **Mentioned Legislation**

Throughout the National Plan the Netherlands report existing initiatives and domestic and international documents ratified by the State, among them: Charter "*CSR Pays Off*"; regulamentation Charter "*Respect and Justice for All*", the national document on aid and trade "*A World to Gain*", agreements with the Dutch Federation of Agriculture and Horticulture to tackle abuses in the working conditions of these sectors and the government initiative, "*Sector Risk Analysis Project*", to identify the productive sectors that have a higher risk of social impacts.

The Netherlands has announced that it will develop various agreements on corporate social responsibility for the major risks sectors, starting by the textile, energy and financial industries. There is no mention about the possible content of these agreements.

International and regional organizations and instruments are mentioned by the State in the plan when it emphasizes that the country encourage the implementation of the Guiding Principles in multilateral organizations, as well as a "universal ratification" of the ILO general principles, so as to

ensure a leveled environment for businesses. It is also addressed in the National Plan the Dutch government work through various multilateral institutions, such as the ILO program "*Better Work*".

### Critical Perspective

The Netherlands' National Action Plan focuses on voluntary measures, both to the State and the companies, having scored very little in relation to the establishment of guidelines for complying with these.

Few concrete measures are discussed and those which in fact are faced by the document does not have a well-defined deadline for its success. There is also no monitoring strategy on the commitments made. The Dutch government has prioritized the already existing governmental actions and the issues raised in the consultation process when drafting the National Plan.

No reference is made to International Human Rights Treaties and nor it mentions vulnerable groups and minorities, or highlights any specific right.

## ITALY

### Process Timeline<sup>30</sup>

Since 2001 Italy has been adopting measures and has been involving itself in initiatives on Corporate Social Responsibility. In May 2004, the Ministry of Labor has created the "*Multistakeholder Forum on Corporate Social Responsibility*" with the purpose to define national policies on the issue, which met three times, and in 2005 presented its final report.

With the Guiding Principles release in 2011, and with the orientation of the European Union on Corporate Social Responsibility, in October of the same year, the Italian government started relating and articulating the development and updating of both Social Responsibility policies and Business and Human Rights, initiating the consultation process for the development of a National Action Plan on the subject.

The Consultation Process started between the end of 2011 and the beginning of 2012 and was led by the Ministry of Labor, which organised a round-table discussion composed by representatives of all the public authorities involved, such as the Ministry of Foreign Relations, Environment, Infrastructure, Agriculture and Environmental Policies and OECD National Point of Contact, as well as the National Institute of Public

<sup>30</sup> The information on the history of the process was taken from the "The Foundations of the Italian Action Plan on the United Nations "Guiding Principles on Business and Human Rights". id.17.

Health and Social Welfare (INPS) and the National Institute of Guarantee Against Labor Lesions.

In a second stage, the Ministry of Labor used the Conference of Italian Regions (*Conferenza Stato-Regioni*), asking the individual contribution of all 20 Italian regions on Business and Human Rights and on the Plan. Lastly, it was established a group of various interested parties, composed by representatives of the Italian Banking Association (*Associazione Bancaria Italiana - ABI*), of the Industrial Confederation (*Confindustria*), of some small and medium sized enterprises, trade unions and the Third Sector Forum.

The preliminary version of the National Action Plan was presented for public consultation between December 2012 and January 2013 and in June 2014 it was submitted to a peer review by representatives of three European Member States (Malta, Bulgaria and Germany) and an observer (France), composing the first Pilot Group of Peer Review.

In 2013, the Ministries of Labor, Social Policies and Economic Development began the process of developing a project of National Plan on Corporate Social Responsibility, which contains information of the period 2012-2014 and was the first to be released in Europe.

Since 2014 the Italian National Plan is ready and awaiting final approval by the council of ministers to be officially released and

the final version of its *draft* is available for consultation.

### Proposed Measures and Provided Rights

Given the urgent need for delivery of the study of the national plan so the Government could start its development<sup>31</sup>, it happened that the Italian National Plan chose to focus on a limited number of themes, so that those with the greatest relevance or more problematic are to be treated more effectively. In its final version, the plan is subdivided according to the three pillars of the Guiding Principles in the following way<sup>32</sup>:

#### **First Pillar (the Duty of the State to protect Human Rights):**

- *Agricultural Policies;*

<sup>31</sup> Information obtained through a report carried out by the Scuola Superiore Sant'Anna di Studi Universitari and di Perfezionamento (Pisa), commissioned by the Ministry of Economic Development -Department of Business and Internationalization. The report entitled "IMPRESE AND DIRITTI UMANI: IL CASE ITALIA ANALISI DEL DELLE POLITICHE DI SALVAGUARDIA" is available at [http://www.sviluppoeconomico.gov.it/images/stories/documenti/Imprese\\_e\\_diritti\\_umani\\_il%20caso\\_Italia\\_FINALE\\_NOV\\_2013.pdf](http://www.sviluppoeconomico.gov.it/images/stories/documenti/Imprese_e_diritti_umani_il%20caso_Italia_FINALE_NOV_2013.pdf). According to this preliminary report, the list of subjects that should be treated by the Action Plan would be the following: (i) questions that concern the conduct of companies significantly: Corporate Law; Stock market rights; obligations of transparency and report; Public Contracts; Public companies; Direct foreign investments and export credit; Development Cooperation; (ii) priority issues for the Italian Government in the field of Human Rights: Children Rights; Tutelage of gender; freedom of religious expression in the workplace; (iii) Issues of great criticality to Italian perspective: rights of irregular migrant workers; environment protection; (iv) Questions on access to state remediation: access to judicial remediation; access to state non-judicial remediation..

<sup>32</sup> *id.*17.

- *Environmental and Sustainable Development Policies;*
- *Labor and Egalitarian Opportunities Policies;*
- *Policies for the participating enterprises and for economic operators in privatized sectors;*
- *Policies for multinational companies, for foreign direct investments and for export credit;*
- *Public procurement policies;*
- *Freedom of religion or belief;*
- *Training policies for public administration;*

***The third pillar (access to compensation measures)***

- *Policies for access to State judicial remedies;*
- *Policies for access to non-State judicial remedies;*

Whereas, measures are proposed and initiatives are set out, their results are little assertive in regards to the social and legislative change. The Plan provides that there must be consistency in the actions of the government on the Business and Human Rights theme with regard to European and international bodies and in the political and economic relations with third-party countries; that there should be cooperation for

implementation of the Guiding Principles; that the State should support the initiatives of various interested parties (*multistakeholders*) of international scope on the theme; and that there must be effective and working reparation mechanisms, in particular with regard to the cases of extra-territorial violations of rights, but does not describe these reparation mechanisms.

### **Mentioned Legislation**

Italy claims in the plan that supports efforts for greater European cohesion in all themes related to Human Rights. Being it already recognized as an active State in the development of the Guiding Principles, also through the Post-2015 Development Agenda.

In the international context, it is mentioned the OECD Guidelines for Multinational Enterprises and the Strategic Framework for Human Rights and Democracy, approved by the European Union.

In the conclusion of the National Plan, it affirms that it is necessary the creation in Italy of a national independent institution for Human Rights, in line with the Paris Principles, the Resolution 48/134 of the UN General Assembly on 20 December 1993 and the Resolution of the Council of Europe (97) of 30 September 1997.

## Critical Perspective

Italy demonstrates through its National Plan their commitment to the European perspective. Along with national policies, it defends that only a genuinely European dimension is capable of effectively protecting Human Rights in a global scale. This perspective is at least curious and demonstrates the colonial rancidity still present, one that sees the solution to the dilemma of the violations of Human Rights in a global scale in the construction of regional policies for Europe.

It is claimed in the National Action Plan that Italy recognizes that the economic and social rights have the same ethical and political dignity as the civil and political rights. However, the Italian and European political practice gives the economic, social and cultural rights an eminently programmatic character, reason why their application is not endowed with the immediacy singular to civil and political rights.

## DENMARK

### Process Timeline

With the release of the Guiding Principles in 2011, the Danish government has started its process of implementation according to the Danish Council for Corporate Social Responsibility orientation<sup>33</sup>. It is worth emphasizing that this council also has the

<sup>33</sup> See: <<http://csrcouncil.dk/>>. Access at 12.02.2015

function to represent the business and financial organizations of Denmark. The Council made recommendations concerning the three pillars of Ruggie's Framework, and how they should be implemented in Denmark. Parallel to this internal movement, the European Council and the European Commission have called the Member States to develop National Plans of Action for the implementation of the guiding principles.

In 2012, based on the Council's recommendations, the process of drafting the National Action Plan began in Denmark. The Plan was influenced by various instruments already adopted by the Danish Government, such as the Second National Action Plan for Social and Corporate Responsibility 2012-2015<sup>34</sup>, the OECD Guidelines for Multinational Enterprises<sup>35</sup> and the renewed European Union strategy for CSR 2011-2014<sup>36</sup>. In March 2014 the National Plan was published<sup>37</sup>.

During the process of drafting the plan it is positively noticed that the advice of the Danish Board for RSC was taken into account. However it is also observed that only

<sup>34</sup> See: <[http://samfundsansvar.dk/file/318420/uk\\_responsible\\_growth\\_2012.pdf](http://samfundsansvar.dk/file/318420/uk_responsible_growth_2012.pdf)>. Access at 12.02.2015.

<sup>35</sup> See: <<http://www.oecd.org/corporate/mne/48004323.pdf>>. Access at 12.02.2015.

<sup>36</sup> See: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF>>. Access at 12.02.2015.

<sup>37</sup> Assessments of Existing National Action Plans (NAPS) on Business and Human Rights. See: <[https://drive.google.com/file/d/0BywPDLn\\_cuLSNU1KQl01Qkl2VXM/view](https://drive.google.com/file/d/0BywPDLn_cuLSNU1KQl01Qkl2VXM/view)>. Access at 12.02.2015.

a select group of Council members was consulted during the preparation of the plan's draft, and that there was a lack of communication in the process of consultation with the other parties concerned, such as the Danish Council of Consumers<sup>38</sup> which, for example, has been completely excluded of this step<sup>39</sup>.

### Proposed Measures and Provided Rights

The Danish National Plan initially brings a perspective of the State on the guiding principles followed by the CSR Council recommendations<sup>40</sup>, then presents the actions that are already underway and subsequently points actions planned for the future.

The Plan focuses on the preventive function of the State in the Protection of Human Rights, and exemplifies some ways through which the State can protect these rights, following the guidelines of the first pillar of the Guiding Principles: law enforcement, even with extraterritorial impli-

<sup>38</sup> See: <<http://taenk.dk/om-os/about-us>>. Access at 12.02.2015.

<sup>39</sup> Id.<sup>40</sup>

<sup>40</sup> The Council for Corporate Social Responsibility recommended the government, among other items: "Include a mandatory report on human rights and business in the Danish non-official business reports; encourage responsible public contracts, requiring that the suppliers of the government carry out *due diligence* on human rights in relation to the products or services covered by the contract, including the regular supervision of contractual requirements; require state enterprises and government agencies to distribute significant government funds to incorporate *due diligence* in its activities; advocate joint solutions at international level, for example, through the UN or the European Union, in the areas of human rights, labor rights and environment protection, which allow countries to sue companies involved in particularly serious violations abroad; and consider the possibility of relevant national measures that meet the need to process the particularly serious violations."

cations; encouragement of the corporate sector to respect human rights; and the promotion of respect for human rights by companies in bilateral and multilateral institutions through the development of mechanisms for cooperation.

Regarding measures already taken by the government, the development of courses and implementation of Councils on responsible business conduct in the corporate environment; as well as the offer of consultancy services on the *due diligence process* subsidized by the Council for Trade in the Ministry of Foreign Relations. The Plan also mentions the release of an information campaign on the Guiding Principles, making a connection between these and mechanisms for mediation and claim.

The National Plan also states that a partnership for responsible manufacturing in Bangladesh was established, wherein the Danish government, business associations and companies agreed to several commitments to improve the conditions in the context of their spheres of influence<sup>41</sup>.

Some "relevant" tools developed by the Danish government for the implementation of social responsibility are "*The CSR Compass*"<sup>42</sup> and the "*Global Compact Self-Assessment Tool*"<sup>43</sup>. In addi-

<sup>41</sup> See: <[http://um.dk/da/~media/UM/Danish-site/Documents/Udenrigspolitik/Nyheder\\_udenrigspolitik/2013/Partnership%20Bangladesh%20170513.pdf](http://um.dk/da/~media/UM/Danish-site/Documents/Udenrigspolitik/Nyheder_udenrigspolitik/2013/Partnership%20Bangladesh%20170513.pdf)>. Access at 12.02.2015.

<sup>42</sup> A free online tool that helps companies to implement the RSC in its chains of production. See: <<http://www.csrcompass.com/>>. Access at 12.02.2015.

tion, whenever the Ministry of Foreign Relations of Denmark signs contracts with companies, a requirement that they meet the anti-corruption policies of the Global Pact is imposed.

There are also measures specifically directed for state-owned companies, referring to the 2008 initiative of the government of requiring annual reports on sustainability and social responsibility regardless of the company's size, and also that they all took in the guiding principles by including these in their internal normative.

For the future, the Danish Government has a limited number of planned actions, but it is possible to find within the plan some examples such as: its commitment to creating a working group for assessing the need and feasibility of adopting extraterritorial legislation. This group will study, among others, practices of various States and the potential for legal action. Within the internal scope it is planned that in all contracts for government enterprises, labor clauses<sup>44</sup> shall be observed.

In relation to the responsibility of companies, the second pillar of the Guiding Principles, the plan is rather vague, pointing only that companies should have policies of commitment with its responsibility to re-

spect human rights, perform *due diligence* and develop measures to enable the reparation of any "adverse impact" to human rights that they have caused or contributed to. One of the legal obligations mentioned, is the inclusion of human rights and environmental responsibility actions in the annual balance of companies<sup>45</sup>. These balance sheets are evaluated and the best is awarded by the Danish Government, as a way of encouraging similar behaviors in the business community. There is also an obligation for companies that receive substantial support and services of state agencies to follow the *Environmental & Social Due Diligence Policy of the Danish Export Credit Agency* (EKF) which commits the countries to the implementation of the Guiding Principles.

As to the access to judicial redress mechanisms, the plan only raises the Danish act of Administration of Justice<sup>46</sup> as the main framework on access to judicial redress in cases involving companies and Human Rights, and argues that their provisions are under constant review to meet international parameters. In the sphere of non-judicial remedies, the Mediation and Complaints-Handling Institution for Responsible Business Conduct<sup>47</sup> is presented. Created in November 2012, this institution has the competence to examine complaints relat-

<sup>43</sup> Tool that helps companies assessing its performance as regards the ten principles of the Global Compact and how it can be managed. See: <<http://www.globalcompactselfassessment.org/>>. Access at 12.02.2015.

<sup>44</sup> Id. 40

<sup>45</sup> Regulated by the 2008 review of the "Danish Financial Statements Act".

<sup>46</sup> Consolidation Act 2012-10-24, No. 1008.

<sup>47</sup> More information at : <<http://www.businessconduct.dk>>.

ing to businesses, public agents and other private organizations in Denmark. It also has the power of the requesting and conducting investigations and mediation sessions regardless of previous complaints. Other extrajudicial mechanisms of access to repair mentioned are: the Employment and Consumer Tribunals and the *National Ombudsman*.

As regards the mentioned rights, the National Plan shows the commitment of the government with the following spheres of rights via: in the sphere of human rights, acts which prohibit discrimination, slavery and human traffic, torture; in labor law sphere: acts that provide for the right of association and assembly, and a safe and healthy working environment; on the individual rights sphere, the right to privacy among others; on the criminal law sphere, the National Plan exposes that their Criminal Code determines that companies may be criminally liable.

### Mentioned Legislation

In Denmark every new legislation is assessed in terms of the consequences for human rights by the Ministry of Justice. The country states its total commitment with human rights obligations, both nationally and internationally, which led to the ratification of various treaties of the United Nations, European Union and the European Council, and to the participation in UN

"*Universal Period Review*" process<sup>48</sup>, among others<sup>49</sup>.

### Critical perspective

The National Action Plan of Denmark, when applying the Guiding Principles, confuses Human Rights with Corporate Social Responsibility, raising more initiatives and proposals in this area than mechanisms and policies for the Protection of Human Rights.

The "consensus" on the Guiding Principles was taken into consideration during the preparation of the National Plan, based on the assumption that the principles would serve to unite all *stakeholders*. However, the consensus is not tenable, because it was built without proper participation of civil society, especially of the victims of violations of human rights.

The document under analysis avoids really important issues, not raising effective mechanisms of redress, especially as regards the extraterritoriality. In addition, a vocabulary distant from other international

<sup>48</sup> Among the actions related to Human Rights in the international sphere it is interesting to show its participation in the following programs: *OECD National Contact Point; The right to a Better Life; Program for Responsible business in Myanmar; Framework of the ILO conventions; the United Nations Global Compact; OECD guidelines for multinational enterprises.*

<sup>49</sup> For a complete list of the International Treaties Denmark has signed and ratified see <<http://www1.umn.edu/humanrts/research/ratification-denmark.html>>. Access at 12.02.2015.

instruments on Human Rights is employed, replacing terms such as "violations" with "adverse impacts".

The absence of binding and cogent norms in the guiding principles reflects in the National Plan, which is basically constituted of guidelines, recommendations and encouragement, with little normative relevance, and without definition of specific deadlines for implementation and development of national mechanisms for the protection of rights.

## SPAIN

### Process History

The Spanish National Action Plan on Business and Human Rights began to be developed in 2012, and the consultations for its preparation started in December and ended in February 2013. These consultations involved NGOs, companies, academics, ministers and other authorities, adding up to around 100 people. A second round of consultations was conducted between June and November 2013, including companies, civil society organizations and also an assessment by the UN Working Group on Business and Human Rights. Currently, the final draft is ready to be evaluated by the Spanish Ministerial Council<sup>50</sup>.

<sup>50</sup> There is no further information about what bodies participated in the consultation process of the plan, nor the methodology used for its development. The data contained in this text were taken from the doctoral thesis defended at the University of Rome. BORDIGNON, Marta. *The challenge of implementing the UN 'Protect, Respect and Remedy'*

### Proposed Measures and Provided Rights

The Spanish Government proposes the use of regulatory instruments, tax incentives, financial and commercial subsidies, and interinstitutional articulation to meet its goals. To facilitate this articulation, an interministerial commission was created, which by means of periodic meetings with companies, members of civil society and government bodies like the Prosecutor's Office, will manage the implementation and assessment of the NAP.

The plan covers the 3 pillars of the Guiding Principles of the UN: the duty of the State to protect, companies' duty to respect and mechanisms for redress of violations.

Regarding the duty of the State to protect, the plan proposes a comprehensive diagnostic of current legislation on Human Rights and Business in order to detect gaps to be filled. Simultaneously, it promises to promote awareness campaigns and training courses in the area, addressing themes such as: rights of children, sexual exploitation, discriminatory practices in companies, indigenous peoples and labor rights.

Regarding the responsibility of companies to respect human rights, the proposed measures consist of government incentives, establishment of guidelines for State aid in Human Rights and business, accredi-

*framework by States and the European Union through the UN Guiding Principles: The British, Spanish and Italian cases.* 2013. See at: <<http://business-humanrights.org/en/pdf/the-challenge-of-implementing-the-un-protect-respect-and-remedy-framework-by-states-and-the-european-union-through-the-guiding-principles-the-british-spanish-and-italian-cases>>. Access at: 11.10.2015 18h22.

tation in good practices of Human Rights carried out by independent audit committees, and measures to encourage companies to take public commitment to respect human rights.

The measures to address the challenges of reparation of violations encompass awareness of companies about their duty to remedy and the access of the population to channels of conventional and alternative claim. The Government also aims to create extrajudicial means of redress and accountability mechanisms on civil damages arising out of violations of human rights. These mechanisms include commissions with the authority to investigate violations and demand the necessary redress. The articulation with international financial institutions and the OECD is raised as a proposal for implementation of extrajudicial mechanisms of redress at the international level.

### Mentioned Legislation

The Spanish Government cites in annex to its national plan all international human rights treaties ratified by the country and reiterates the State's duty to protect all human rights, given its indivisible and interdependent character<sup>51</sup>.

<sup>51</sup> The annex of the Spanish National Plan contains the following international legislations as reference in its Annex 1: "Tratados de Naciones Unidas ratificados por España: Convención para la Prevención y la Sanción del Delito de Genocidio 1948; Convenio para la supresión de la trata de personas y de la explotación de la prostitución ajena 1951; Convención sobre el Estatuto de los Refugiados 1951; Convención suplementaria sobre la abolición de la esclavitud, la trata de esclavos y las instituciones y prácticas análogas a la

### Critical Perspective

The process of drafting the National Action Plan of Spain was apparently inclusive and transparent in its two rounds of public consultation. However, it ended up succumb-

esclavitud 1957; Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial, incluido el Artículo 14 de la misma que confiere al Comité para la Eliminación de la Discriminación Racial la competencia para recibir quejas individuales 1965; Pacto Internacional de Derechos Económicos, Sociales y Culturales (PIDESC) 1966; Pacto Internacional de Derechos Civiles y Políticos (PIDCP) 1966; Primer Protocolo Facultativo del PIDCP por el que se acepta la competencia del Comité de Derechos Humanos para recibir quejas de individuos sobre presuntas violaciones a los derechos contenidos en ese Pacto 1966; Protocolo sobre el Estatuto de los Refugiados 1967; Convención sobre la eliminación de todas las formas de discriminación contra la mujer (CEDM) 1979; Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes (CCT), así como el Art. 22 de la misma, que faculta al Comité contra la Tortura para recibir quejas individuales por presunta violación de alguno de los derechos contenidos en la Convención 1984; Segundo Protocolo Facultativo del PIDCP 59 destinado a abolir la pena de muerte 1989; Protocolo facultativo de la CEDM, que habilita con un doble sistema de investigación de oficio y de quejas individuales al Comité de ese nombre 1999; Convención sobre los Derechos del Niño (CDN) 1989; Protocolos facultativos de la CDN relativos a la participación de niños en los conflictos armados y a la venta de niños, la prostitución infantil y la utilización de niños en la pornografía 2000; Convención de las Naciones Unidas contra la delincuencia organizada transnacional y los Protocolos que la complementan sobre el tráfico ilícito de migrantes por tierra, mar y aire, así como para prevenir la trata de personas, especialmente mujeres y niños 2000; Protocolo Facultativo de la CCT que autoriza al Subcomité para la Prevención de la Tortura (25 personas expertas) a visitar regularmente cualquier centro de detención situado en los estados partes a los fines de prevenir la tortura y otros malos tratos, a la vez que obliga al estado parte a establecer uno o varios mecanismos nacionales de prevención de la tortura 2002; Convención sobre los derechos de las personas con discapacidad (CDPD) 65 2006; Protocolo facultativo de la CDPD que habilita al respectivo Comité para recibir quejas individuales 2006; Convención Internacional para la protección de todas las personas contra las desapariciones forzadas 2006; Protocolo facultativo del PIDESC, que habilita al Comité de Derechos Económicos, Sociales y Culturales para recibir quejas individuales por presunta violación de alguno de los derechos contenidos en el PIDESC; Protocolo facultativo 3 de la Convención de los Derechos del Niño, que habilita al Comité DN para recibir quejas individuales 2008- 2011; - Convenios de la OIT ratificados por España: Núm. 29 sobre el trabajo forzoso u obligatorio 1932; Núm. 105 sobre la abolición del trabajo forzoso 1959; Núm. 87 sobre la libertad sindical y la protección del derecho de sindicación 1950; Núm. 98 sobre el derecho de sindicación y de negociación colectiva 1951; Núm. 100 sobre la igualdad de remuneración 1953; Núm. 111 sobre la discriminación (empleo y ocupación) 1960; Núm. 138 sobre la edad mínima de admisión al empleo 1976; Núm. 182 sobre la prohibición de las peores formas de trabajo infantil y la acción inmediata para su eliminación 1999; - Documentos adicionales: Observación general N° 16 (2013) sobre las obligaciones del Estado en relación con el impacto del sector empresarial en los derechos del niño (CRC/C/GC/16)"

ing to the power of the business lobby, which managed to weaken some acclaimed proposals of the first draft, as for example, the prohibition of public funding to companies which infringe human rights abroad, that finished up restricted only to companies that have been actually convicted and denied to cooperate with the Spanish Government in the redress of committed violations. In addition, there was the exclusion of the high labor and environmental protection standards<sup>52</sup> required from companies.

As most of the National Plans released up until now, the Spanish document uses vague and inaccurate language, without making it clear, for example, what mechanisms would be used to hold Spanish companies that commit violations in other countries liable. Also, it does not create obligations for companies, limiting the action of the State to monitoring programs, incentives and awareness campaigns about human rights and business.

## FINLAND

### Process Timeline

On November 22, 2012, Finland announced its decision to create a National Action Plan on Business and Human Rights<sup>53</sup> in the pub-

<sup>52</sup> See: <[http://www.eldiario.es/desalambre/Gobierno-Responsabilidad-Corporativa-CEO-ONG\\_0\\_217678922.html](http://www.eldiario.es/desalambre/Gobierno-Responsabilidad-Corporativa-CEO-ONG_0_217678922.html)>. Access at: 11.10.2015, 18h14.

<sup>53</sup> See: <[http://www.tem.fi/files/41214/TEMjul\\_46\\_2014\\_web\\_EN\\_21102014.pdf](http://www.tem.fi/files/41214/TEMjul_46_2014_web_EN_21102014.pdf)>. Access at 12.30.2015.

lication of a resolution on Corporate Social Responsibility.

In the following year, on May 28, the Ministry of Labor and Economy<sup>54</sup> has established a Working Group to draft a proposal for implementation of the NAP in the country, setting the deadline to March 31, 2014.

From the end of March 2014 until September of the same year, the final adjustments in the plan were made and on September 17 it was adopted as a joint proposal written by an interministerial working group.

The process of drafting the National Plan included, in addition to various ministries of the government, two public consultations with stakeholders and the possibility to write reviews to the plan. The plan was also discussed in the Committee for Corporate Social Responsibility (YHVA)<sup>55</sup>, with the participation of trade unions, companies, NGOs and others. However it is possible to realize that the Finnish Government has not facilitated or encouraged the participation of less powerful stakeholders such as migrants, Indians and other minorities<sup>56</sup>.

### Proposed Measures and Provided Rights

The Finnish National Plan has a thematic approach, treating of children rights, com-

<sup>54</sup> See: <<https://www.tem.fi/en>>. Access at 01.02.2016.

<sup>55</sup> See: <[https://www.tem.fi/en/enterprises/corporate\\_social\\_responsibility\\_\(csr\)](https://www.tem.fi/en/enterprises/corporate_social_responsibility_(csr))>. Access at 01.02.2016.

<sup>56</sup> See: <[https://drive.google.com/file/d/0BywPDLn\\_cuLSNU1KQlo1Qki2VXM/view](https://drive.google.com/file/d/0BywPDLn_cuLSNU1KQlo1Qki2VXM/view)>. Access at 01.02.2016.

munication technology, vulnerable groups and of the impact of extractive activities.

The Plan also discusses exhaustively about regional and international organizations, which Finland intends to use to drive forward the implementation of the Guiding Principles.

The key objectives of the action plan are writing a legislative report, the definition of the obligation of *due diligence*, and the application of social criteria in public management.

The Finnish NAP has a very pragmatic approach, with the proposition of several practical measures, some already in their implementation phase and others that have just begun. For instance, the drafting of a report on the relevant national and international legislation on Business and Human Rights based on the Guiding Principles and another report, which aims to investigate whether labor laws and human rights have been observed in free trade agreements of the European Union, the United States and other countries.

Each list of action topics is correlated to one (or more) ministry(s) in particular, identifying the bodies responsible for the activity. The plan indicates an approximate completion deadline for part of the topics, what makes it, perhaps, the only National Plan to present more concrete goals for the implementation of the proposals.

## Mentioned Legislation

As a State, Finland actively works to ensure that human rights are respected within international arenas. In Finland, the Constitution provides strong protection for the fulfilment of human rights. Also according to the Constitution, Finland participates in international cooperation for the protection of peace, Human Rights and the development of society. As a member of the United Nations and the European Union, it is committed to the promotion of a society open to all.

Various human rights are provided in the Finnish Constitution and therefore must be respected and guaranteed in all legislation. In the final report of the National Action Plan itself, the Working Group proposes that a report about the Finnish legislation regarding regulation and guidelines of international business activities is carried out, intending to prevent particularly serious violations of human rights and to remedy any existing violation. The deadline for this report is set to mid 2015.

The country is also obliged to fulfill and respect international conventions, including the Conventions on Human Rights, due to the treaties to which it is signatory. However, there is no mention in the NAP of what treaties and laws that deal specifically with human rights and international business are those.

## Critical Perspective

Despite identifying the governmental entity responsible for each action and the deadline for its conclusion, the topics of action are wide and generic, not making possible to understand what the government intends to carry out in concrete terms in each topic. There is, for example, a topic of action proposing that Finland "should participate in UN forums of Business and Human Rights of and will support the activities of the UN Working Group related to the Guiding Principles". This topic does not bring up any changes in the national condition of human rights protection, does not represent progress, and only demonstrates the international commitment of the State with the Guiding Principles.

The Finnish plan does not move forward in relation to the third pillar, not having any proposal of a national mechanism for efficient access to reparation for violations of human rights. There are no measures with binding nature or regulatory proposals, focusing only on voluntary measures, such as dialog, training and research.

In addition, as stated previously, the Action Plan does not mention what national legislation would be related with the theme of the Global Agenda for Human Rights and business, leaving it to a new report, expected for mid 2015, which has not been completed up to now.

## LITHUANIA

### Process Timeline

No data were found that relate directly or indirectly to the process of drafting of this National Plan. There are only records of its submission to the High Commissioner for Human Rights of the UN in February 2015<sup>57</sup>.

### Proposed Measures and Provided Rights

The National Action Plan of Lithuania was released in February 2015, with emphasis on measures against discrimination and corruption. Legislative mechanisms of openness, transparency and accountability of public agents, as well as the intensification of its participation in the OECD and the public funding of Human Rights NGOs, were the actions listed regarding the duty of the State to protect human rights.

In relation to the second pillar, the listed measures include the drafting of a national strategy for sustainable development and a national program of Corporate Social Responsibility. Also, the promotion of sustainable investment and incentive strategies to companies that comply with the established guidelines were proposed.

The Lithuanian government claims that, in terms of measures for violations redress,

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<sup>57</sup> See:

<[http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania\\_NationalPlanBHR.pdf](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania_NationalPlanBHR.pdf)>.

Access at 01.03.2016.

the electronic judicial process and systems of online court hearings were already deployed, In addition, encouraging mediation as a way of solving conflicts; broadening access to public defenders; and regulating collective actions with a view to speeding up the legal process and facilitating access to justice were proposed. In the same sense, the government has also committed to: extending the improvements carried out in the framework of civil procedure to administrative procedures; facilitating the resolution of consumer relation conflicts via extrajudicial means; encouraging business self-regulation and establishing jury trials in Lithuanian courts.

### Mentioned Legislation

In order to fulfill the measures listed in the previous section, the Lithuanian government has used legal instruments such as the Interinstitutional Plan of Action for the promotion of non-discrimination, the National Program for the integration of people with disabilities, the National Program for equal opportunities between women and men, and the National Strategy for consumer protection. The recommendation of the Committee on Freedom of Association of the ILO, as well as numerous ministerial resolutions relating to already deployed actions<sup>58</sup> are also mentioned.

<sup>58</sup> Interinstitutional Plan of Action for the promotion of non-discrimination, the National Program for the integration of people with disabilities, the National Program for equal opportunities between women and men, the National

### Critical Perspective

The national plan of action of Lithuania is fairly concise and objective, but restricts its measures only to the right of labor association; fighting discrimination and corruption. Their proposals lack binding mechanisms that force companies to respect human rights and are capable of holding them effectively accountable for rights violations.

In short, although having a certain degree of concreteness and being measures already in the process of implementation, the proposals for action of the Lithuanian government are still shallow in a global scenario filled with serious cases of violations of human rights by companies.

## SWEDEN

### Process Timeline

The Swedish National Plan emerges as a response to the European Commission, which requested the Member States to develop this instrument. It was prepared by the Office of the Government under consultation with various interested players, including companies and NGOs.

A preliminary text for popular consultation was published on the Government's Office

Strategy for consumer protection. The recommendation of the Committee on Freedom of Association of the ILO, as well as numerous ministerial directives relating to actions already deployed are also mentioned. Footnotes on the national plan itself. See: <[http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania\\_NationalPlanBHR.pdf](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Lithuania_NationalPlanBHR.pdf)>. Access at 01.03.2016.

website and was also used in four public consultations, in which were present over 100 companies, government agencies, trade unions, NGOs and others<sup>59</sup>.

The final text was closed after the consultations held in March 2015, and the National Plan was published and submitted to the United Nations on August 2015.

### Proposed Measures and Provided Rights

The national plan initially establishes a connection between Corporate Social Responsibility and the issue of human rights and business, emphasizing the importance of CSR policies and Sweden's strategy of exports, claiming it would generate a strengthening on exports and opportunities for internationalisation of the Swedish companies in relevant international markets, and help ensuring that the country has the lowest unemployment rate in the European Union by 2020.

The Swedish NAP is organized in accordance with the structure of the three pillars of the Guiding Principles, being divided according to their order, followed by already taken and other planned measures and definitions of actions for all stakeholders: State, companies, investors, trade unions and civil society.

Regarding the obligations for companies, the plan only determines in an indirect way

that the State shall establish guidelines for those, such as stipulating values to be followed by the companies in their internal and external relations and make them public. There is a clear overlapping between the first pillar and the second, the obligation of companies to respect. The latter does not have solid foundations in this plan.

With respect to the values defined by the State to be followed by the companies, the National Plan identifies as companies duties (second pillar): identifying and monitoring the risks in the production chain and assessing how the company can have a positive impact; establishing a process within the company to identify, prevent and manage opportunities and risks to human rights, such as the size, nature and context of operations; making *due diligence*; adopting transparency as a principle of action, by communicating risks, opportunities and impacts to the society, whether they are favorable or not; and, within the sphere of the third pillar, creating processes to remedy adverse impacts.

As regards the third pillar - remedy - and the first - protection of human rights - , The State must provide remediation when companies commit abuses. The remediation mechanisms are divided in judicial and extrajudicial. Within this logic, the National Plan clarifies the operation of Swedish courts, the claim channel for those who do not receive a fair treatment of civil serv-

<sup>59</sup> The meetings for public consultation took place in Stockholm on March 5<sup>th</sup> and 23<sup>rd</sup> 2015, at Gothenburg and Malmö on March 12<sup>th</sup> and 16<sup>th</sup> of the same year.

ants, and also informs about the government's concern of providing an effective service.

The procedure addressed by the plan for remediation of violations is done by means of a kind of mediation, and the only possible outcome is the payment of compensation. In addition, the plan and the government follow the OECD guidelines for multinational companies, which give access to redress through the OECD National Point of Contact. In Sweden, the contact point acts in collaboration with the State, business and labor organizations. However, as adopting the guidelines or not is up to the companies, the contact point does not have the power to apply penalties, which restricts its task to promoting corporate compliance with the guidelines and aiding individual cases through dialog and discussion.

The guiding principles, following the second and the third pillar, determine that companies are responsible for ensuring that their operations do not infringe human rights, and if the companies infringe or contribute to this, they must seek to compensate the victim through apologies, financial compensation, and other measures agreed between the company and the victim. This way, the National Plan determines that if the impact was caused directly by business operation, the company must use mechanisms to prevent or mitigate this impact, in case this mechanism exists.

The Swedish government has adopted in 2003 a platform for the Swedish action in corporate social responsibility that resulted in measures such as the involvement of the State with the *Work Environment Act and Working Hours Act*<sup>60</sup>; proposed to the EU the requirement of a certificate from importers from particularly problematic countries; and supported the the *OECD Due Diligence Guidance for Responsible Supply Chains of minerals from Conflict-Affected and High-Risk Areas*<sup>61</sup>.

There are also measures to be implemented in the future, expected to 2017 year, such as the government plan of conducting an investigation to examine whether the United Nations Convention for the Rights of Children<sup>62</sup> must be incorporated in the Swedish law; the study conducted by the government on how the Swedish legislation compares to the Guiding Principles in order to determine whether there are obvious or immediate gaps that need to be filled; the consideration of the government of adapting the *due diligence* process to sectors with distinct challenges; the government plan of developing a new platform for complete access to RSC issues, including the respect for human rights, which will be sent to the Swedish parliament in the form

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<sup>60</sup> See <<http://www.arbeidstilsynet.no/binfil/download2.php?tid=92156>>. Access at 12.02.2015.

<sup>61</sup> See <<http://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>>. Access at 12.02.2015.

<sup>62</sup> See <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>. Access at 12.02.2015.

of written communication; and the plan of the Swedish government of encouraging organizations such as the UN, EU, OECD and World Bank to promote respect for human rights, corporate among others<sup>63</sup>.

Among the protected rights there are the ones provided by constitutional law, labor and criminal law, exemplified by the rights to: press freedom, freedom of expression; and other individual freedoms such as equal treatment; right of organization in trade unions, to a safe and suitable working environment, criminalization of child and slave labor, included in the right to human dignity.

### Mentioned Legislation

As regards the legal basis established by the plan, it makes reference to national and international laws. Among national legislation, constitutional, labor and criminal liability normative is cited.

The constitutional normative mainly addresses fundamental freedoms and non-discrimination such as: *the freedom of the Press Act*<sup>64</sup>, *the Fundamental Law on Freedom of Expression*<sup>65</sup>, *the European Convention for the Protection of Human Rights and*

*Fundamental Freedoms*<sup>66</sup>, *EU Charter of Fundamental Rights*<sup>67</sup> and *the Anti-Discrimination Act*<sup>68</sup>.

In relation to labor legislation, the focus was on the relationship between employer and employee, with emphasis to the right of organization in trade unions. *The Labor Disputes (judicial procedure) Act*<sup>69</sup>, *the Employment Protection Act*<sup>70</sup>, *THE Employment (Co-determination in the workplace) Act*<sup>71</sup> and *the Trade Union Representatives (Status at the workplace) Act*<sup>72</sup> were mentioned.

According to Swedish criminal law, there are provisions that identify the jurisdiction of the courts of the country in the prosecution of crimes committed in other

<sup>66</sup> See <[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)>. Access at 12.02.2015.

<sup>67</sup> See <[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)>. Access at 12.02.2015.

<sup>68</sup> See <<https://student.slu.se/en/rules-rights/rights-and-responsibilities/equal-treatment/swedish-discrimination-act-equality-ombudsman/>>. Access at 12.02.2015.

<sup>69</sup> See <[http://www.ilo.org/dyn/travail/docs/2595/Labour%20Disputes%20\(Judicial%20Procedure\)%20Act.pdf](http://www.ilo.org/dyn/travail/docs/2595/Labour%20Disputes%20(Judicial%20Procedure)%20Act.pdf)>. Access at 12.02.2015.

<sup>70</sup> See <[https://www.google.com.br/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&sqi=2&ved=0ahUKEwi-2\\_7H2L7JAhVlXpAKHSPcAAwQFggmMAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F3388%2Ffile%2FSweden\\_Employment%2520Protection%2520Act\\_1982\\_amended\\_until\\_2007\\_en.pdf&usq=AFQjCNEJg1TnKKwl6jsG9Qy6eEAWFcdO1Q&sig2=YM\\_e\\_1ubnsVugTte\\_NNjsg&bvm=bv.108538919,d.Y2l](https://www.google.com.br/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&sqi=2&ved=0ahUKEwi-2_7H2L7JAhVlXpAKHSPcAAwQFggmMAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F3388%2Ffile%2FSweden_Employment%2520Protection%2520Act_1982_amended_until_2007_en.pdf&usq=AFQjCNEJg1TnKKwl6jsG9Qy6eEAWFcdO1Q&sig2=YM_e_1ubnsVugTte_NNjsg&bvm=bv.108538919,d.Y2l)>. Access at 02.12.2015.

<sup>71</sup> See <[http://www.naturvetarna.se/Global/English/Act1976580\\_MBL.pdf](http://www.naturvetarna.se/Global/English/Act1976580_MBL.pdf)>. Access at 12.02.2015.

<sup>72</sup> See <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/15263/66005/F478088322/SWE15263.pdf>>. Access at 12.02.2015.

<sup>63</sup> Measures taken directly from the Swedish National Action Plan.

<sup>64</sup> See <<https://www.riksdagen.se/en/How-the-Riksdag-works/Democracy/The-Constitution/The-Freedom-of-the-Press-Act/>>. Access at 12.02.2015.

<sup>65</sup> See <<https://www.riksdagen.se/en/How-the-Riksdag-works/Democracy/The-Constitution/The-Fundamental-Law-on-Freedom-of-Expression/>>. Access at 02.12.2015.

States<sup>73</sup>. The *Act on criminal responsibility that the financing of Particularly Serious Crimes in Add Cases*<sup>74</sup> is also mentioned.

However, for the accountability of companies the only possible penalty is the application of fines, because only natural persons may be convicted for crimes<sup>75</sup>.

In relation to international norms, the plan mentions that Sweden joined various UN, ILO and European Council conventions on human rights, which require regular reports on the implementation of the measures proposed in the conventions. Some of them are: the United Nations Convention against Corruption<sup>76</sup>; the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*<sup>77</sup>; the United Nations Convention on the

Rights of Children<sup>78</sup>; and the *European Convention for the Protection of Human Rights and Fundamental Freedoms*<sup>79</sup>.

### Critical Perspective

The relationship established between the corporate social responsibility policies and human rights is placed to benefit companies and does not interact with human rights principles, since the only benefit that this relationship would bring to the social field is the reduction of the unemployment rate.

Whereas the National Plan of Action does not have a binding nature, the government encourages that all Swedish companies adopt the guidelines. The Plan also establishes that the State will assist them in this venture, but does not mention anything with regard to actions to remedy the violations caused by companies.

In relation to the process of elaboration of the plan it is not easy to identify what were the actors involved in the process, nor its proportion or level of influence. However, it can be assumed that the structural inequality between stakeholders was maintained, since business and NGOs have occupied the same space in the process of consultation, and it was not possible to find information about the participation of vic-

<sup>73</sup> In case of crimes committed outside the country, the Swedish Criminal Code, Chapter Second provides that: "Under Swedish law, jurisdiction is extensive and Swedish courts are therefore often able to adjudicate in cases concerning offences committed abroad. Normally, for this to occur, the perpetrator would need to have some ties to Sweden and the offence would need to be subject to criminal liability under the law of the place where it was committed. However, such restrictions do not apply to the most serious crimes, i.e. certain specified crimes such as crimes under the Act on criminal responsibility for genocide, crimes against humanity and war crimes and, in general, all crimes with a minimum sentence of imprisonment for four years, for example, exceptionally gross assault." See <[http://www.naturvetarna.se/Global/English/Act1976580\\_MBL.pdf](http://www.naturvetarna.se/Global/English/Act1976580_MBL.pdf)>. Access at 12.02.2015.

<sup>74</sup> See <[http://www.government.se/contentassets/d28a807aff3f4acb84dcae29daa1aac3/act-on-criminal-responsibility-for-the-financing-of-particularly-serious-crime-in-some-cases\\_2002\\_444\\_unofficial-translation.pdf](http://www.government.se/contentassets/d28a807aff3f4acb84dcae29daa1aac3/act-on-criminal-responsibility-for-the-financing-of-particularly-serious-crime-in-some-cases_2002_444_unofficial-translation.pdf)>. Access at 12.02.2015.

<sup>75</sup> The Criminal Code of Sweden, Chapter 36.

<sup>76</sup> See <[https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)>. Access at 12.02.2015.

<sup>77</sup> See <[http://www.oecd.org/daf/anti-bribery/ConvCombatBribery\\_ENG.pdf](http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf)>. Access at 12.02.2015.

<sup>78</sup> Id. 56.

<sup>79</sup> Id. 60.

tims of human rights violations in the process.

Clearly, Sweden has a very naive vision of business and their goals. According to them, "*Business enterprises appear to have a greater awareness of their responsibility to respect human rights and of the role this plays in creating value and building business competitiveness*", and the government should only "assist companies in their efforts in this area", in other words, no mechanisms are needed to provide reparation or holding companies liable, since they do not violate human rights.

The principles directed to corporations specifically do not create any type of direct obligation, i.e. business accountability is not admitted, only for the State, which should develop programs to guide the business practice.

It is also observed that the penalty for crimes committed by companies consists only of fines, since only natural persons may be convicted for crimes.

This national Plan appears to be a showcase of the Social Responsibility policy implemented by the State towards enterprises drawn up only to create the impression that something is being done and to demonstrate the concern with the theme to civil society. There are no mechanisms of criminal penalty or accountability of companies for adverse conduct in relation to Human Rights, on the contrary, the proposed policies revolve around awarding the

companies which apply the Guiding Principles and "respect human rights".

The access to judicial and extrajudicial redress is treated vaguely and no proposal of effective binding mechanism is raised. It is not clear whether there are really any proposals in this sense. A successful example used is the National Point of contact of the OECD, which is based only on the dialog between the parties and disregards the situation of structural inequality between abusers and victims, in addition to having its effectiveness questioned internationally.

## CONCLUSION

As already pointed out in the introduction and was evidenced through the whole text, the experience of existing national plans shows that these neither have in their content the potential for an effective progress in the development of national legislation and public policies for human rights protection against violations committed by companies, nor contribute to the full access to justice and to ensure that the victims are able to achieve repair by violations suffered.

The measures proposed in the totality of the National Plans analyzed are generic, do not provide enforcement mechanisms, do not have a clear methodology of evaluation and monitoring from civil society, and, mainly, do not have any level of "punisha-

bility" for companies that may violate human rights, nor to the State, in case it does not fulfill the proposals agreed in the plans.

Under a structural and systemic perspective, National Plans, as they are based on the Guiding Principles, reinforce the social category of *stakeholder*, and contribute to making important actors, such as the victims, invisible. In addition, they do not contribute to the improvement companies' reparation mechanisms for violations committed by them.

Despite the Plans bring in themselves a possibility of dialog and the construction of public policies and programs to improve the situation of communities affected by breach of rights, its development process must be popular and democratic, contemplating not only companies, but also the players who suffer rights violations,.

A National Action Plan on Business and Human Rights should focus on human rights and victims, guided by the logic of International Human Rights Law, and recognize the structural imbalance between violators of human rights and victims, in this case, businesses and affected communities, directing it towards the path of incorporation of the international human rights protection framework that already exists, with the approval of laws to regulate the implementation of the treaties and to build a fertile ground for future progress that can arise from the international

sphere, such as the International Treaty on Business and Human Rights, now in development at the UN Human Rights Council.

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