

The Lack of Ambition of the Spanish National Action Plan on Business and Human Rights

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The three pillars – protect, respect and remedy – are essential to understand the operative logic of the UN Guiding Principles on Business and Human Rights (UNGPs). Indeed, this logic is based on the idea that, on one hand, States commit to adopt the necessary measures to protect human rights and safeguard access to remedy and, on the other, that business enterprises assert their commitment to respect human rights and put in place human rights due diligence processes. As a result of their endorsement by the EU, the CoE, the European Group of NHRIs, the World Bank and OECD, the UNGPs have become a global frame of reference. Most States have centered their adherence to the business and human rights agenda on the elaboration and adoption of National Action Plans (NAPs). This tool has received firm support from different stakeholders as well as European and international institutions, and especially from the European Union. In Spain, the Government followed the recommendations of the European Commission in its Revised Strategy on Corporate Social Responsibility by putting in place a Spanish NAP setting out a business and human rights strategy. The development process commenced in December 2012. From that point, the Spanish Government began to hold different informal meetings with representatives of Public Administrations, private businesses and NGOs in order to share the working plan and exchange on the main substantial elements of the NAP. The Human Rights Office (part of the *Ministerio de Asuntos Exteriores, Unión Europea y Cooperación*) was appointed as the

coordinating authority. The Human Rights Office has led the drawing up of the Plan combined with participatory process open to various actors.

Throughout the development process of the NAP, a number of major meetings were held. The drafting process of the NAP has been characterized by a positive dynamic during the years 2013 and 2014, leading to a number of drafts being presented. The first draft of the National Action Plan was presented in the meeting held in “Casa América” in June 2013. The second draft was presented in June 2014. This second draft adopted on 26 June 2014 was to be approved by the Council of Ministers. However, civil society organizations dissociated themselves from the proposed second draft because they felt that their contributions were ignored, in particular due to the relaxation of the requirements in relation to the effective monitoring of corporate practices in relation to their adverse human rights impacts, and to the perceived absence of transparency and meaningful engagement with social actors throughout the process.

However, due to the disturbances of the electoral processes in Spain over the past few years, the Council of Ministers took three more years to approve a new text of the NAP. The final text of the NAP was approved by the Council of Ministers on 28 July 2017 and published in the Official State Gazette on 14 September 2017. The NAP was scheduled to cover the period 2017–2020. The text of the 2017 NAP is very different from the second draft, technically deficient and much shorter. The elaboration of the text of the current NAP took place without any involvement from civil society organizations, and many of the proposals made by the latter in relation to earlier drafts were watered down. As a brief assessment of the Spanish NAP, (for a broader and in-depth analysis of the Plan see Carmen Márquez-Carrasco’s edited book) I would like to point out a number of major gaps in the text.

Firstly, there has been no comprehensive assessment made, nor is one envisaged, of whether existing Spanish legislation is compatible with the State duty to protect human rights as set out in the UNGPs, nor regarding the adequacy of its judicial and non-judicial mechanisms to provide remedy for the victims. Although these propositions were partially included in the draft versions of the Plan, they were eventually eliminated from the final version. In the EU, Spain is among the 16 Member States that have adopted a NAP. In line with the approach taken by other NAPs in Europe, it contemplates generic measures, is weak as far as the third pillar of the UNGPs on access to remedy is concerned, and lacks provisions designed to effectively monitor and evaluate corporate practices. In relation to the first Pillar of the Guiding Principles, there is no express mention of any regulation aimed at requiring business enterprises to respect human rights. Awareness-raising, information, training and promotion are the only measures envisaged. Despite the clear need for regulation, this would imply business enterprises do not need to budge an inch from a purely voluntary approach to respect human rights, which is an approach that has been repeatedly proven to be insufficient. Furthermore, no reference is made in the NAP to the connection between environmental damage and human rights abuses.

Also, it should be highlighted that the Spanish NAP does not make any explicit reference to the second pillar of the Guiding Principles. It includes measures concerning Pillar II within the ambit of Pillar I. The NAP does not even provide for any clear commitment for public enterprises to set in place due diligence processes in accordance with the UNGPs. As far as the third pillar is concerned (access to remedy), there is no mention of any prescribed measures to eliminate barriers to access for victims of human rights abuses by business enterprises. In addition, it is important to point out that the term “extraterritorial” is completely absent from the NAP, meaning that it does not cover at all the overseas adverse impacts of companies either registered in or that have their headquarters or main economic activity in Spain. Whilst many of these aspects had been included in earlier drafts of the NAP, they have disappeared from the 2017 text.

What is the current situation?

The 2017 National Action Plan does not come close to what is the required strategy according to the UNGPs, and only partially follows international best practices and guidance on the process and content of NAPs, although it may be seen a first step towards achieving it. For an adequate evaluation of the NAP, the pace and consistency of the process during the first three years were fundamental. Taken into account the lack of progress in implementing the Plan during its period of enforcement it is fair to say that it is more the cause for pity than for glory. The 2017 National Action Plan has expired in July 2020. The Human Rights Office of the Ministry of Foreign Affairs has announced an undergoing process of evaluation in order to receive proposals for the revision of the Plan. It is to be hoped that the commitment to address business respect and human rights issues will be strengthened and that the new version of the Spanish NAP will be aligned with best NAP practice and European and international (legal and other) developments.

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