

Government of Switzerland's 2021 Annual Report

for the Voluntary Principles Initiative

Commitment to the Voluntary Principles on Security and Human Rights

1. Public statement of commitment or endorsement of the Voluntary Principles, engagement in the Voluntary Principles Initiative, and transparency.

Switzerland continues to be strongly committed to the Voluntary Principles on Security and Human Rights (VP) as expressed in its action plan submitted when joining the VP Initiative (VPI) as a participant government in September 2011.

This includes:

- our commitment to promoting the VP, especially with regard to Swiss extractive companies and with governments for which the VP are relevant;
- to supporting priority in-country processes through Swiss embassies;
- to supporting VP implementation by companies;
- to creating synergies between the International Code of Conduct for Private Security Service Providers (ICOC), the VP and the Swiss strategy to implement the UN Guiding Principles on Business and Human Rights (UNGP).

2. Statement of commitment to implement National Plan(s) (where applicable) and progress on its implementation

The VP were mentioned in the first Swiss National Action Plan on Business and Human Rights (NAP), adopted by the Federal Council on December 9th, 2016, and in Switzerland's Human Rights Strategy 2016-2019.

This commitment has been renewed on 15 January 2020 when the Swiss Federal Council updated its National Action Plan on Business and Human Rights for the period 2020-2023. With this new version, the Federal Council renewed its commitment to security and human rights in measure 2 (security and human rights), measure 5 (multistakeholder initiatives) and measure 35 (grievance mechanisms). A specific website dedicated to the National Action plan includes a link the Voluntary Principles Associations.

In June 2021, the Swiss Federal Department of Foreign Affairs has launched Human Rights Guidelines for the period 2021-2024 where it strongly supports the VPI and the VP implementation (www.news.admin.ch/newsd/message/attachments/671117.pdf). These guidelines replace the Human Rights Strategy 2016-2019.

In November 2018, the Federal Department of Foreign Affairs and the State Secretariat for Economy jointly issued a Human Rights sector guidance for the implementation of the UNGP by the commodity trading sector. In 2020, an online version of the guidance has been created (www.commodity-trading.org) and includes a reference to the VP.

In November 2018, the Federal Council also issued a new report "The Swiss commodities sector: current situation and outlook" describing the commodity trading sector in Switzerland. The report includes 16 recommendations to address future challenges and opportunities. The report refers to the

VP, and one recommendation addresses the future support of Switzerland to the VPI. In 2021, a progress report with references to the VP implementation has been issued.

in 2021, Switzerland has reiterated its strong commitment to the VP through public statements, bilateral consultations and policy dialogues (for example in Brazil, Mozambique, Senegal, Nigeria, Liberia, China, Peru, Columbia, France and Germany).

Switzerland also agreed to join again the steering committee in March 2018 and assumed the chairmanship in 2019. Switzerland was still in the steering committee in 2020 and 2021.

DOMESTIC POLICIES, LAWS, AND REGULATIONS

3. As related to the Voluntary Principles, describe relevant policies, legislation, procedures, and/or guidelines relevant to promoting and protecting human rights, consistent with international human rights obligations.

The protection of human rights is anchored in the Swiss Constitution's art. 55 and is a cornerstone of the Swiss foreign policy.

With respect to responsible business conduct, the Federal Council expects all companies operating in or from Switzerland to respect common standards as set up by the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD's Guidelines for Multinational Companies, wherever they operate.

Switzerland favors a smart mix approach between voluntary and mandatory measures. The main policies, legislation and procedures relative to business and human rights are those referred to in the NAP (adopted 09.12.2016, revised 15.01.2020).

With the entry into force on 1 January 2022 of the provisions of the Federal Council's counter-proposal to the federal popular initiative "Responsible Business", the level of regulation in the commodities sector has increased. The provisions on due diligence and transparency with regard to "conflict minerals" and child labour include non-financial reporting obligations based on regulations of the European Union (EU), particularly with regard to environmental, social, labour, human rights and anti-corruption issues. Both types of obligations are based on EU regulations.

4. Within the context of the Voluntary Principles and in accordance with national and international law, describe how the government takes appropriate steps to prevent, investigate, punish and redress human rights abuses within its territory and/or jurisdiction by third parties, including extractive companies and public and private security providers.

Switzerland recognizes its state duty to protect human rights (art. 7 of the Constitution) and has ratified the main human rights treaties.

Switzerland recognizes for businesses a corporate responsibility to respect human rights and to provide access to remedy. In certain cases, the government has legislation in place, for example for private security services provided abroad (PSSA) or issued recommendations and guidance (commodities sector, small and medium enterprises).

Switzerland facilitates access to remedy through different means. Complaints of human rights violations are first lodged at cantonal level. Switzerland has a federal criminal court and a federal tribunal acting as the supreme judiciary body. In rare instances, cases are settled at the European Court of Human Rights in Strasbourg.

Liability of employers: Article 55 of the Swiss Civil Code, from 1972, determines the principal liability of employers over the conduct of their employees (equivalent to vicarious liability in Common Law):

1. An employer is liable for the loss or damage caused by his employees or ancillary staff in the performance of their work unless he proves that he took all due care to avoid a loss or damage of this

type or that the loss or damage would have occurred even if all due care had been taken.

2. The employer has a right of recourse against the person who caused the loss or damage to the extent that such person is liable in damages.

The liability of parent companies to human rights violations by their business subsidiaries is derived from article 55.

Mandatory human rights due diligence: there is mandatory human rights due diligence legislation in Switzerland for PSSA, child labour and conflict minerals.

Prevention of human rights violations in Switzerland: Switzerland is committed to the protection of human rights in internal and external affairs. This commitment is expressed in its external human rights policy, economic policy, asylum policy, protection of vulnerable groups, etc. Switzerland hosts a vibrant civil society and an independent and critical media. Organizations and reporters regularly report on cases involving Swiss businesses all over the world.

The creation of an official national human rights institution has been accepted by the Federal Council in December 2019. Its mandate includes prevention of human rights violations, providing expertise and working with cantons.

Redress / access to justice:

Access to remedy in Switzerland is based on judicial and non-judicial means. The Swiss government recognizes its role to facilitate access to grievance mechanisms and dispute resolution mechanisms, including when victims affected abroad do not have appropriate access to effective remedy. It also encourages businesses to develop grievance mechanisms, notably as part of multistakeholder initiatives.

In terms of non-judicial dispute resolution mechanisms, the national contact point (NCP) of the OECD in Switzerland, at the State Secretary for Economic Affairs, is able to organize sessions of mediation between parties.

The B&HR team at the Peace and Human Rights Division also reacts to allegations of human rights abuses brought by communities, NGOs or the press. It regularly receives civil society representatives in their offices or meets companies for informal meetings to assess needs and opportunities. The team then provides advice and monitors the situation.

Promotion and Implementation

5. Describe how the government publicly communicates its commitment to the Voluntary Principles (e.g., species, statements, publicly available reports, conferences, presentations and statements made in multilateral and bilateral forums).

Switzerland has committed to promote the VP since 2011. It uses bilateral meetings and multilateral recommendations to promote the uses and benefits of the VPI to governments and companies of priority.

In 2020, Switzerland expressed its commitment and made the promotion of the VPI during the following events:

- Swiss Forum on B&HR (September).
- National Workshop on the VP in Kinshasa (September).
- Annual General Assembly of the ICoCA (December).
- Several trainings organized on due diligence for the commodity sector in Switzerland.

6. Describe how the government conducts outreach to, and awareness-raising activities with, NGOs, extractive companies, and governments (e.g., build understanding and support for the Voluntary Principles such as through in-country stakeholder meetings) to encourage them to

implement the Voluntary Principles and/or join the Voluntary Principles Initiative. Suggest including country specific examples.

Switzerland supported DCAF and the ICRC to develop a professional 2 minutes video on the three initiatives relating to security and human rights, which explains the Montreux Document, the ICoCA and the VPs in very simple terms for partners on the ground.

Through its partnership with DCAF and ICRC, Switzerland financially supported the development of a Conflict Prevention Tool as well as the update of the DCAF-ICRC Toolkit and Knowledge hub.

In 2021, Switzerland has directly contributed to the implementation of the VP in Brazil, in China, in the Democratic Republic of Congo (DRC), in Mozambique, in Nigeria and in Peru.

Brazil: in November 2021, Switzerland conducted a human rights dialogue with Brazil. It took this opportunity to organize a one day workshop on the VP with government officials in Brasilia. It also organized meetings on the VP with business and civil society representatives in Sao Paulo. Switzerland translated several VP key document into Portuguese for these different meetings.

China: Switzerland, through its implementing partner ICRC and DCAF, supported the translation of key VP documents into Chinese. It also actively participated in a webinar on the VP organized by the China Chamber of Commerce of Metals, Minerals & Chemical Importers & Exporters and DCAF / ICRC.

DRC: directly and through its partnership with DCAF and ICRC, Switzerland supported the government to conduct the process of submitting an application for membership to the VPI. Individual consultations and workshops were organized with government, civil society and business representatives. Day to day technical support was provided to the government to ensure a good coordination between ministries and to elaborate the documents required for the membership application. Technical and financial support was also provided to existing working groups in Kinshasa and Lubumbashi.

Mozambique: directly and through its partnership with DCAF and ICRC, Switzerland supported the creation of a national working group.

Nigeria: the Embassy of Switzerland has been able to provide effective leadership to the in-country working group and ensured the convening of regular meetings at its Abuja office. Working with its co-chair, the Embassy ensured the group has a methodical approach to its operations with the development and subsequent update of work plans which incorporates a set of activities it could engage in towards the objective of promoting the implementation of the VPs in Nigeria as well as membership. Moreover, the Swiss Embassy has continued to conduct outreach to the Nigerian government and coordinated to this end with other VP participants in-country. A membership of Nigeria of the VPA is envisaged, possibly in 2022 with the support of the Swiss Embassy together with the Australian and Canadian High Commission on Abuja.

7. Describe how the government promotes the Voluntary Principles within its own government (coordination within its own government (coordination within and among different government agencies and ministries, as well as with Embassies, etc.).

The Federal Department of Foreign Affairs organized the following internal events:

- A half-day webinar on commodities and human rights was organized with all Swiss American representations. Initiatives like the VPs were introduced to all embassies and cooperation field offices.
- A half-day meeting was organized with other federal departments on commodities and human rights. Initiatives like the VPs were introduced to all federal departments dealing with different aspects of commodities.

8. Describe government engagement in the VPI, including when the government last did a verification presentation, points raised during the peer review about the government, and how

the government has responded.

Switzerland is ready to participate in a new verification presentation whenever required.

9. Describe how the government works with companies, communities, and civil society organizations on Voluntary Principles implementation.

See point 6

10. Describe how the Government engages with companies on issues related to company risk assessment.

Switzerland has contributed to the financing of practical tools that help companies ascertain their key human rights risks and impacts. For example, Switzerland is supporting since beginning of 2013 a project launched and implemented jointly by the DCAF and the ICRC to develop guidance and toolkits for VP Member Companies and Governments in relation to companies' engagement with public and private security forces as well as with communities in complex environments. The project has created a knowledge hub to share existing tools and good practices (<http://www.securityhumanrightshub.org/>). It is an ongoing project which is constantly adopting and developing guidance tools that take experiences of companies' into account. It has begun an implementation phase in 2016 to support local implementation activities and develop an implementation mechanism and support tools including adapting the toolkit to different local contexts, translating it into other languages, and having it tested by companies on the ground. An updated version of the toolkit will be launched in 2022. Thereby, the project aims to contribute significantly to the improvement of VP implementation on the ground.

11. Describe how the Government engages with companies around engagement with public and private security forces.

The Swiss Government has been strongly engaged in developing the governance and oversight mechanism of the International Code of Conduct for Private Security Service Providers (ICoC). The International Code of Conduct Association (ICoCA) was launched in September 2013. The overarching purpose of the Association is to promote the responsible provision of private security services and respect for human rights and national and international law by exercising independent governance and oversight of the ICoC. Under the Articles of Association, the ICoCA has three main functions, namely certification of private security service providers, monitoring their activities, and maintaining a complaints process for alleged victims of ICoC violations. In 2016, the ICoCA General Assembly approved the procedures for reporting, monitoring and assessing performance, and a complaints process, in addition to certification procedures adopted in 2015. Switzerland chairs the Board of Directors of the Association. About 105 private security companies, 45 NGOs and 7 governments (among them 6 VP members) are current ICoCA members. Given the Swiss government's leadership of the ICoC, which is of direct relevance to the VP, complementarities are being sought between both initiatives. The ICoCA is an observer of the VPI and the VPI is an observer to the ICoCA. Switzerland, through its participation in the ICoCA, is organizing regular outreach sessions with clients of private security providers, and encourages them to apply the VP and require ICoCA certification.

The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict which sets forth how international law applies to the activities of private military and security companies (PMSCs) when they are operating in an armed conflict zone. It contains a set of good practices designed to help states take measures nationally in order to fulfil their obligations under international law. In December 2014, the Montreux Document Forum was launched. It provides a platform for member states to continue working on the implementation of the Montreux Document, to discuss challenges regarding the regulation of PMSCs and to exchange good practices for example with the ICoCA. The Montreux Document is now supported by 53 states and three international organizations: the EU, the OSCE and NATO.

The Federal Act on Private Security Services Provided Abroad (PSSA) which builds on the Montreux Document on Private Military and Security Companies (Montreux Document) and on the International Code of Conduct for Private Security Service Providers (ICoC) entered into force in September 2015.

Companies based in Switzerland that provide private security services abroad, are subject to a prior declaration requirement and are required to become a member of the ICOC Association. The purpose of the Act is, among others, to ensure respect for international law, in particular for human rights and international humanitarian law. It is complementary to the VPs as it promotes the responsible provision of private security services. The Private Security Services Section of the FDFA's Directorate of Political Affairs is responsible for implementing this Act. According to the second annual report on the implementation of the PSSA, there is growing recognition of the importance of the oversight mechanism introduced by the PSSA for private security services abroad and the pioneering role played by Switzerland in this field.

Lessons and Issues

12. To help determine what best practices and lessons learned can be leveraged going forward, provide a summary of issues from this reporting year, as well as plans or opportunities to advance the Voluntary Principles for the government.

Mandatory due diligence is an emerging challenge for MSI like the VPI, that will have to prove their complementarity and added value in the current trend that goes towards more regulation. Switzerland will continue to show the added value of MSI as well as the development of technical tools, especially when it comes to implementation.

Government participation and active involvement in the VPI continues to be a challenge, mainly because of lack of resources. Government participation of countries hosting mining operation should be increased, in order to reinforce the credibility of the initiative, and show different perspectives and experience that could help implementation. Switzerland will continue to do outreach activities towards other governments.