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THE CATALAN CENTRE FOR BUSINESS AND HUMAN RIGHTS

INSTITUT CATALÀ INTERNACIONAL PER LA PAU

Autor
DANIEL IGLESIAS MÁRQUEZ
Universitat Rovira i Virgili
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Proyecto de investigación: Las nuevas normas de debida diligencia obligatoria como respuesta para hacer frente a la violencia que sufren las personas defensoras de los derechos humanos y el medio ambiente (ICI019/22/000010)

THE CATALAN CENTRE FOR BUSINESS AND HUMAN RIGHTS*

Daniel Iglesias Márquez
Universitat Rovira i Virgili

Summary: I. Introduction. II. Background. III. Overview of the proposal for a Catalan Centre for Business and Human Rights. IV. Unlocking access to remedy for extraterritorial corporate abuses in Catalonia? V. The Catalan Centre in the (European) landscape of Mandatory Human Rights Due Diligence. VI. Conclusions

I. Introduction

There appears to be particular momentum around mandatory human rights due diligence (HRDD) legislation.¹ Mandatory HRDD legislation is part of a recent trend to operationalize the State's duty to protect against human rights abuses by businesses,² which extends to all public authorities and all levels of government.³ Under international law, the State is one single entity, regardless of its unitary or federal nature and internal administrative divisions. In fact, subnational governments are, in principle, in a much better position to regulate business activities based on local contexts and priorities. As such, subnational

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¹ See Gabriela Quijano and Carlos Lopez, 'Rise of Mandatory Human Rights Due Diligence: A Beacon of Hope or a Double-Edge Sword?' (2021) 6:2 *Business and Human Rights Journal* 241-254. At the time of writing, the most prominent mandatory HRDD laws have been enacted at the national level in countries such as France, Germany, the Netherlands and Norway. See Surya Deva, 'Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?' (2023) *Leiden Journal of International Law*, 1-26. Many other European countries are considering mandatory HRDD legislation. ECCJ, 'Comparative Table: Corporate Due Diligence Laws and Legislative Proposals in Europe', <https://corporatejustice.org/publications/comparative-table-corporate-due-diligence-laws-and-legislative-proposals-in-europe-2/> (accessed 27 March 2023). In Latin America, there are also similar legislative proposals in Mexico and Peru. See Adoración Guamán and Julián Tole Martínez, 'Iniciativas Legislativas y Leyes de debida diligencia empresarial en Derechos Humanos: visiones del Sur y experiencias del Norte', (2022) 1:1 *Anuario Mexicano de Asuntos Globales*, 299-328.

² Markus Krajewski, 'The State Duty to Protect Against Human Rights Violations through Transnational Business Activities' (2018) 23 *Deakin Law Review* 13-40.

³ In this regard, the UN Human Rights Committee General Comment No. 31 states that '[t]he obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local – are in a position to engage the responsibility of the State Party'. Human Rights Committee, 'General Comment No. 31. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', CCPR/C/21/Rev.1/Add. 13 (26 May 2004), para. 4.

governments are also key actors in disseminating and implementing international business and human rights standards.

The human rights obligations of subnational authorities follow the classic tripartite typology of States' human rights obligations: the duty to respect, the duty to protect and the duty to fulfil human rights. The duty to protect requires measures to ensure that third parties do not violate the rights and freedoms of individuals. In this regard, some subnational governments have adopted legislative measures that require businesses to disclose information about certain human rights impacts, particularly modern slavery and forced labour. Examples include the California Supply Chain Transparency Act (2011), which requires certain retailers and manufacturers doing business in California to disclose information about their efforts to eradicate human trafficking and slavery in their supply chains, and the Australian State of New South Wales' (NSW) Modern Slavery Act (2018), which requires companies to report annually on the steps they have taken to prevent modern slavery in their own businesses and supply chains. To date, these legislative measures at the subnational level remain limited, although they play a key role in complementing responsible business conduct regulation at the national level.

Against this background, in the Autonomous Community of Catalonia in Spain, civil society organizations (CSOs) –in a similar way to the Canadian *Open for Justice* campaign demanding an extractive sector ombudsperson⁴- have pushed for a legislative proposal to create a Catalan Centre for Business and Human Rights. However, unlike the subnational corporate reporting regimes mentioned above, this initiative is unique because it seeks to establish a public body with the power to look into the foreign activities of businesses operating in Catalonia. This subnational non-judicial mechanism is on par with other accountability mechanisms that seek to hold parent companies accountable for the harm caused by their subsidiaries in their international supply chains, such as the Canadian Ombudsperson for Responsible Enterprise (CORE). This piece aims to assess the potential contribution and the operational and structural limitations of a Catalan Centre for Business and Human Rights to supervise the fulfilment of

⁴ Karyn Keenan, 'Canada's New Corporate Responsibility Ombudsperson Falls Far Short of its Promise', (2020) 5:1 *Business and Human Rights Journal* 137-142.

corporate responsibility regarding the respect of human rights and to hold businesses operating in Catalonia accountable for human rights abuses in third countries. It also examines how this proposal fits into the regional and national regulatory landscape of mandatory HRDD.

II. Background

Catalonia is an autonomous community in the northeast of Spain. It is the second most populated autonomous community in Spain, where a section of society claims its right to self-determination with continuous mobilization.⁵ The region is the main contributor to the Spanish economy, accounting for an estimated 19% of Spain's gross domestic product (GDP). This autonomous community has a GDP of 242,313 million euros, an economic output higher than the Spanish and European Union (EU)-27 averages.⁶ The Catalan economy is diversified and has a significant business presence. It is also an open economy based on exports. Exports account for 71,624 million euros per year. In addition, Catalonia has been at the forefront in terms of attracting foreign investment in manufacturing in Spain.⁷

The region has created a favourable business environment. More than 640,000 companies are active in Catalonia in various sectors, including the manufacture of electrical goods and equipment, electronics and optics, paper and graphics, textiles, leather and footwear, chemicals, pharmaceuticals and services (mainly tourism). Some 3,165 companies in Catalonia have 8,382 subsidiaries abroad, of which 50% are in Europe, 38% in the Americas and 13% in Asia, Africa and Oceania.

Some businesses operating in Catalonia are associated with human rights and environmental impacts within the autonomous community and abroad. Several socio-environmental conflicts in the region are linked to the impact of business activities, such as mining, nuclear power plants, natural gas storage, refining and

⁵ Daniel Iglesias Márquez and Maria Prandi, 'How the Business Debate Influenced (or not) the Conflict between Catalonia and Spain' (2018) 3:2 *Business and Human Rights Journal*, 1-6.

⁶ See Generalitat de Catalunya, 'Catalan Economy. The strength of an innovative and outward-looking nation', https://economia.gencat.cat/web/.content/70_economia_catalana/arxius/presentacio-economia-catalana/strength-outward-looking-country.pdf (accessed 18 March 2023).

⁷ Ibid.

petrochemical industries, infrastructure development and mass tourism, among others.⁸ Catalan business activities and investments abroad have also been linked to negative human rights impacts.⁹ In Colombia, for example, the Catalan company *Grup Marítim Terminal de Contenidors de Barcelona (Grup Marítim TCB)* operates a container terminal in Buenaventura (Valle del Cauca) through its subsidiary, *TCBUEN, S.A.* The facility began operations without prior consultation with Afro-Colombian communities. The subsidiary's activities have caused noise pollution in the area, irregular spills of liquids and the loss of recreational space for the community.¹⁰

For years, CSOs have urged Catalan authorities to address the harm caused by Catalan companies abroad. In 2015, the negative impact of the *Grup Marítim TCB* in third countries was denounced by CSOs to the Catalan Parliament. The parliamentary groups expressed their commitment to follow the situation in Buenaventura. Between April and March 2015, a delegation of parliamentarians, CSOs, and journalists visited Buenaventura. The delegation confirmed that the activities and investments of Catalan companies in infrastructure and urban development are linked to negative impacts on the local communities.¹¹

In line with the executive branch of the Government of Catalonia,¹² the Catalan Parliament has expressed its commitment to ensuring that Catalan companies operating abroad respect human rights.¹³ In 2016, the Catalan Parliament adopted Resolution 359/XI on the respect for human rights by Catalan companies

⁸ Alejandra Durán Castellanos, Beatriz Felipe Pérez and Isabel Vilaseca Boixareu, *Injusticia ambiental en Tarragona, Un análisis de conflictos y resistencias en el territorio* (Ingeniería Sin Fronteras, 2018) 5-7.

⁹ See 'alertaDH', <https://alertadh.org/es/los-datos/> (accessed 18 March 2023).

¹⁰ Tomàs Gisbert, Maria Jesús Pinto y Javier Sulé, *Asedio a las comunidades los impactos de una empresa catalana, Grup TCB, en Buenaventura, Colombia* (Taula Catalana per la Pau i els Drets humans a Colòmbia, 2019) 110-119.

¹¹ See 'Informe de la visita de la delegació catalana a Buenaventura', <https://www.lafede.cat/wp-content/uploads/2016/06/InformeDelegacioBVinteractiu.pdf> (accessed 25 March 2023).

¹² Síndic de Greuges and Institut de Drets Humans de Catalunya, *Pla de Drets Humans. Estats Generals de Drets* (Síndic de Greuges, 2019) 169.

¹³ See article 12.2.e) of Law 16/2014 on external action and relations with the European Union, which points out that, in the area of economy, the government must ensure that actions aimed at promoting the economic internationalization of Catalonia are in line with the United Nations Guiding Principles on Business and Human Rights, ensuring respect for human rights in any action that is taken.

operating abroad.¹⁴ It calls on the Government of Catalonia to begin work within eight months on the creation of a Centre for the study and assessment of the impact of Catalan companies abroad. The Centre would have the cumulative power to monitor corporate compliance with human rights legislation in force. Catalan civil society, the Government of Catalonia and the Parliament would be part of this public body.¹⁵ This commitment was confirmed by Motion 78/XII on the Government's vision regarding Catalan participation in colonialism and slavery¹⁶ and was also included in the Catalan 2019-2022 Development Cooperation Plan.¹⁷

CSOs in Catalonia have been key players in watchdog activism and law-making relating to the protection and respect of human rights.¹⁸ In fact, the lack of compliance by businesses with the Catalan government's commitment to respect human rights in the context of business activities led the Catalan Business and Human Rights Group, made up of several local CSOs,¹⁹ to draft a legislative proposal (*proposició de llei*²⁰) for the creation of the Centre and to secure parliamentary support for it (the Legislative Proposal). The work of the Catalan Group is akin to that of the activist groups that have pushed for similar legislative initiatives in their respective countries, such as the CORE coalition, which pushed for the Transparency in Supply Chain provision of the UK Modern Slavery Act (Section 54), or the Swiss Coalition of Corporate Justice, which drafted a mandatory due diligence law in Switzerland. Accordingly, CSOs in Catalonia

¹⁴ See 'Proposició de llei de Creació del Centre Catal d'Empresa i Drets Humans', <https://www.taulacolombia.org/wp-content/uploads/2020/07/Proposició-de-lllei-de-Creació-del-Centre-Català.pdf> (accessed 25 March 2023).

¹⁵ On this issue, see Section III of this piece.

¹⁶ See Parlament de Catalunya, 'Moció 78/XII del Parlament de Catalunya, sobre la visió del Govern amb relació a la participació catalana en el colonialisme i l'esclavisme 302-00094/12', https://www.parlament.cat/web/activitat-parlamentaria/mocions/index.html?p_pagina=18 (accessed 18 March 2023).

¹⁷ Generalitat de Catalunya, *Pla Director de Cooperació al Desenvolupament 2019-2022* (Generalitat de Catalunya, 2019) 48.

¹⁸ David Birchall, 'The role of civil society and human rights defenders in corporate accountability' in Surya Deva and David Birchall (eds.) *Research Handbook on Human Rights and Business* (Edward Elgar Publishing, 2020) 430-435.

¹⁹ See 'Grup Català d'empresa i drets humans', <https://alertadh.org/qui-som/> (accessed 31 March 2023).

²⁰ A "*legisl*" is a proposal made by a parliamentary group or subgroup, a group of members of Parliament (at least five) or citizens. See article 111 of the Regulation of the Catalan Parliament.

have served as an organized and legitimate platform to put business and human rights issues on the Catalan political and legislative agenda.

The legislative process to approve the Catalan Centre for Business and Human Rights Law was launched in February 2022.²¹ At the time of writing, the Legislative Proposal is being examined by the Committee on External Action, European Union and Cooperation of the Catalan Parliament. At this stage, the parliamentary groups and deputies can propose public hearings with the interested organizations and social groups and table amendments to the Legislative Proposal for the Catalan Centre for Business and Human Rights.²²

Some business representatives who participated in the public hearings believe this proposal criminalizes Catalan companies and affects their competitiveness.²³ In this regard, major Catalan employers and the chambers of commerce have expressed their opposition to creating a Centre with sanctioning powers and without the direct participation of companies in its governing bodies.²⁴ They have also argued that this proposal is not aligned with international business and human rights standards, particularly as the Legislative Proposal makes no express reference to the UNGPs.²⁵ Moreover, business representatives consider that the Centre could have a perverse effect, as this public body would affect the

²¹ Parlament de Catalunya, 'El Ple dona via lliure a la tramitació de la proposició de llei del Centre Català d'Empresa i Drets Humans i crea una comissió d'estudi del deute de l'Estat amb Catalunya', <https://www.parlament.cat/presidencia/noticies/el-ple-dona-via-lliure-a-la-tramitacio-de-la-proposicio-de-lllei-del-centre-catala-dempreses-i-drets-humans-i-crea-una-comissio-destudi-del-deute-de-lestat-amb-catalunya/> (accessed 18 March 2023).

²² Parlament de Catalunya, 'Proposició de llei de creació del Centre Català d'Empresa i Drets Humans', <https://www.parlament.cat/web/activitat-parlamentaria/siap/index.html?STRUTSANANCHOR1=detallExpedient.do&criteri=202-00014/13> (accessed 18 March 2023). See also, article 117 of the Regulation of the Catalan Parliament. All the public hearings regarding the Legislative Proposal for the Catalan Centre for Business and Human Rights can be consulted in the following link: <https://www.parlament.cat/ext/f?p=700:1> (accessed 25 March 2023).

²³ See public hearing on the Legislative Proposal of October 25, 2022, https://www.parlament.cat/ext/f?p=700:15:0:::15,RR,RIR,CIR:P15_ID_VIDEO,P15_ID_AGRUP,ACIO:13804702,13090449 (accessed 25 March 2023).

²⁴ See public hearing on the Legislative Proposal of November 15, 2022, https://www.parlament.cat/ext/f?p=700:15:0:::15,RR,RIR,CIR:P15_ID_VIDEO,P15_ID_AGRUP,ACIO:13878751,13090449 (accessed 25 March 2023).

²⁵ See public hearing on the Legislative Proposal of January 17, 2023, https://www.parlament.cat/ext/f?p=700:15:0:::15,RR,RIR,CIR:P15_ID_VIDEO,P15_ID_AGRUP,ACIO:13878751,13090449 (accessed 25 March 2023).

Catalan investment and business-friendly climate.²⁶ This argument has also been raised by right-wing parties in the Catalan Parliament.²⁷

III. Overview of the proposal for a Catalan Centre for Business and Human Rights

State-based non-judicial grievance mechanisms, including national human rights institutions (NHRIs) or OECD national contact points (NCPs), are relevant to addressing business-related human rights abuses as they contribute to the effective implementation of Pillar III of the UNGPs.²⁸ Although the Legislative Proposal for the creation of a Catalan Centre does not expressly refer to the UNGPs, this does not mean that this mechanism is contrary to or incompatible with them. In fact, the Legislative Proposal and the UNGPs share common objectives: to prevent and remedy business-related human rights abuses. Accordingly, this proposal fits perfectly into the implementation of Pillar III through a ‘smart mix’ of measures. In particular, it operationalizes Principle 27 on State-based non-judicial grievance mechanisms by meeting the criteria set out in Principle 31.

These State-based non-judicial grievance mechanisms complement and support judicial mechanisms.²⁹ They have additional advantages, such as being less costly and time-consuming than judicial mechanisms. Some of them even have functions or mandates regarding extraterritorial cases.³⁰ However, beyond the NHRIs or OECD NCPs, there has been little innovation in establishing State-based non-judicial grievance mechanisms to prevent and address business-related human rights risks and impacts. Moreover, recent experiences beyond the traditional State-based non-judicial bodies have proven to be fraught with

²⁶ See public hearing on the Legislative Proposal of October 25, 2022, https://www.parlament.cat/ext/f?p=700:15:0:::15,RR,RIR,CIR:P15_ID_VIDEO,P15_ID_AGRUP,ACIO:13804702,13090449 (accessed 25 March 2023).

²⁷ Ibid.

²⁸ Human Rights Council, ‘Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms’ A/HRC/38/20 (14 May 2018) Policy objective 1.

²⁹ See Guiding Principle 27 and commentary.

³⁰ OHCHR, ‘Accountability and Remedy Project /Part II: State-based non-judicial mechanisms State-based non-judicial mechanisms for accountability and remedy for business-related human rights abuses: Supporting actors or lead players?’ https://www.ohchr.org/sites/default/files/Documents/Issues/Business/DomesticLawRemedies/ARPII_DiscussionpaperonPhase2forUNForum_FINAL.pdf (accessed 18 March 2023).

shortcomings. For instance, the CORE in Canada has been considered a failure by scholars and practitioners due to its lack of investigative powers and independence.³¹

Considering the lessons learnt and the limitations of other non-judicial grievance mechanisms, the establishment of a Catalan Centre for Business and Human Rights is a unique opportunity to create and test a new model of non-judicial mechanism that ensures access to remedy in extraterritorial cases of business-related human rights abuses. According to the Legislative Proposal, the Centre would have the authority to study, evaluate and control the activities of Catalan companies in third countries.³²

In terms of material scope, the Centre aims to ensure that Catalan companies respect international human rights law, international humanitarian law, and international environmental and labour standards.³³ In this regard, the scope is aligned with the recent mandatory HRDD laws and proposals in Europe, such as the German Law on Supply Chain Due Diligence that covers all human, labour and environmental rights.³⁴

An interesting and challenging aspect of the Legislative Proposal is that regarding the companies covered, 'Catalan companies' refers not only to those with headquarters in Catalonia but also to foreign companies with operations in Catalonia. At least 634,223 companies have their headquarters in this autonomous community. In Catalonia, 83.4% of the companies with foreign subsidiaries are small and medium-sized enterprises (SMEs) with a turnover of less than 50 million euros, and 59.5% have fewer than 50 workers. This is a challenge, as there are no provisions to support SMEs in respecting human rights. However, large companies have objected to the broad definition of 'Catalan company'. In line with the UNGPs approach to HRDD as a tool whose complexity should be commensurate with the potential risks posed by business

³¹ Penelope Simons, 'Developments in Canada on business and human rights: One step forward two steps back', (2023) *Leiden Journal of International Law*, 1-26.

³² See article 1 of the Legislative Proposal.

³³ See article 2 of the Legislative Proposal.

³⁴ See Section 2 of the German Act on Corporate Due Diligence Obligations in Supply Chains, https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=4 (accessed 27 March 2023).

activities,³⁵ the Centre would cover a wider range of companies than most of the mandatory HRDD legislation enacted by European countries, which only apply to large companies that meet the employee number and annual turnover thresholds. Its scope is even broader than CORE's mandate, which only covers the mining, oil and gas, and garment sectors. Large companies have even alleged that the Centre would impose a disproportionate burden on SMEs, in order to shelve the Legislative Proposal. This despite SMEs and 'social economy' businesses being more open to the initiative.³⁶ Beyond these arguments, it is necessary to clarify and better define the scope of businesses covered by the Centre. In this regard, the Legislative Proposal to create the Centre makes no reference to its authority over public companies. It is important that the Centre has the authority to evaluate and control the activities of public companies, as Catalonia is one of the communities with the highest number of public companies in Spain.³⁷

The Catalan Centre is intended to be an independent public law body, attached to the Department of External Action, International Relations and Transparency. To guarantee the Centre's independence, the Legislative Proposal provides that its Governing Board,³⁸ its highest governing, management and administrative body, will be composed of members of the Government, the Catalan Parliament, trade unions and organizations and social movements that promote peace and human rights. The Legislative Proposal in its current form does not include the participation of businesses in its Governing Board. Moreover, the Centre would be accountable to civil society, the Parliament and the Government of Catalonia. This accountability regime should be further developed in future regulation of the Centre. In addition, the Centre would not be allowed to accept or receive funding from private companies or foundations that have a formal or economic relationship with private companies. This will reduce the likelihood of the Centre's

³⁵ As stated by UNGPs, the scale and complexity of the human rights due diligence process vary according to the size of the enterprise, its sector, operational context, ownership and structure (Principle 19).

³⁶ See public hearing on the Legislative Proposal of 29 November 2022, https://www.parlament.cat/ext/f?p=700:15:0:::15,RR,RIR,CIR:P15_ID_VIDEO,P15_ID_AGRUP,ACIO:13950770,13090449 (accessed 25 March 2023).

³⁷ Antoni Pigrau Solé et al., 'Proposta d'un codi ètic de respecte dels drets humans i de la igualtat de gènere per a la internacionalització responsable de les empreses catalanes', http://cooperaciocatalana.gencat.cat/web/.content/Documents/20161121_Proposta-de-Codi-etic.pdf (accessed 18 March 2023).

³⁸ See Article 5 of the Legislative Proposal.

work being hindered by undue political or corporate influence. It also enables the Centre to be trusted by the stakeholder groups for whose use it is intended, and accountable for the fair conduct of grievance processes (Principle 31³⁹). However, to ensure independence, accountability mechanisms and obligations should be further developed in the next step of the legislative process or future regulation of the Centre.

With regard to the alleged adverse impact of the creation of the Centre on the Catalan business environment, there is currently no data to confirm that initiatives such as the mandatory HRDD legislation or similar legal instruments are a sufficient reason to relocate business operations to other countries. In this case, if businesses decide to relocate from Catalonia to another Spanish autonomous community or another EU country, sooner or later they will be subject to the mandatory HRDD requirements resulting from transposition of the proposed EU Directive on Corporate Sustainability Due Diligence (CSDD Directive).

IV. Unlocking access to remedy for extraterritorial corporate abuses in Catalonia?

The creation of the Catalan Centre for Business and Human Rights would be a step forward in promoting the implementation of the UNGPs, the OCDE Guidelines and other international soft law instruments, notably because of its powers to prevent and alert to business-related human rights abuses. It may incentivize and assist businesses to undertake human rights and environmental due diligence in order to avoid an investigation. However, the empirical evidence shows that the preventive approach to the corporate responsibility to respect is

³⁹ Principle 31 of the UNGPs provides that in order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be: (a) legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes; (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access; (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation; (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake; (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights; (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

not always sufficient and that many companies fail to prevent negative human rights and environmental impacts. For example, in *Bodo Community v Shell Petroleum Development Company of Nigeria* in the English High Court, the court found that there was evidence that Shell had failed to take reasonable measures to prevent oil spills that caused environmental damage to the Bodo community.⁴⁰ This calls for measures to ensure access to remedy.⁴¹ In this regard, the Legislative Proposal for the creation of a Catalan Centre goes beyond merely requiring companies to carry out HRDD. Rather, it is legislation that seeks to address the obstacles to effective access to remedy and corporate accountability for extraterritorial business-related human rights abuses caused by due diligence failures.

The Centre would be able to receive and investigate complaints of human rights violations committed by Catalan companies abroad. Complaints can be submitted in an accessible manner by individuals, affected communities or CSOs. The Centre will have the power to investigate these allegations. It will also have the power to improve the investigation process by issuing further regulations to provide a clear and known procedure with an indicative time frame for each stage, clarity on the types of processes and outcomes available, and means of monitoring implementation. The investigations carried out by the Centre should address the asymmetry of resources between the parties, a predominant element in business and human rights cases. Furthermore, the Centre should ensure that affected parties have reasonable access to sources of information on business-related human rights abuses. To this end, it may require companies to provide all the information necessary to clarify the facts of complaints.

As a Catalan administrative body, it can exercise sanctioning powers since it is not a national exclusive competence.⁴² However, in the current Legislative Proposal, the Centre's sanctioning powers are limited. This means that it will not have the authority to impose sanctions on the merits. However, if a company

⁴⁰ *Bodo Community v Shell Petroleum Development Co of Nigeria Ltd*, 20 June 2014, [2014] EWHC 1973 (TCC).

⁴¹ See Gabrielle Holly and Claire Methven O'Brien, *Human Rights Due Diligence Laws: Key Considerations Briefing on Civil Liability for Due Diligence Failures* (Danish Institute for Human Rights, 2021) 25.

⁴² See *Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público*, BOE núm. 236, 2 October 2015.

obstructs or refuses to provide the relevant information during an investigation, this would constitute an infringement. Companies can be fined up to 10,000 euros, and up to 50,000 euros for refusing to cooperate with an investigation. The infringements and fines imposed will be published on the Centre's institutional website to allow public entities to take them into account as award criterion or a reason for prohibiting the award of contracts under the applicable public procurement rules.

In addition, the Centre would be able to advise and formulate proposals and recommendations to the Parliament, the Government and administrative bodies, in the field of prevention and sanctioning of business activities abroad that are contrary to the respect for human rights. Despite the lack of direct enforcement powers, the Centre can assess the extent to which the competent authorities apply the recommendations and can also monitor compliance by companies with any sanctions imposed by the authorities with sanctioning powers. In this regard, to make the Centre more effective, the law should stipulate that it has the capacity to refer cases to the relevant administrative and civil mechanisms or, if necessary, to the Office of the Prosecutor. Moreover, one of the functions of the Catalan Centre should be to promote the establishment by companies or their participation in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by business activities.

The Centre will publish an annual activity report, which will incorporate recommendations to promote the prevention and sanctioning of human rights abuses committed by Catalan companies abroad. In terms of access to remedy, this function of the Centre would contribute to the reduction of legal and practical obstacles through the development of future hard law measures. In this regard, the Centre would be in a position to promote innovative regulatory measures at the Catalan, national and international levels.

V. The Catalan Centre in the (European) landscape of Mandatory Human Rights Due Diligence

The creation of a Catalan Centre for Business and Human Rights comes at a particular juncture, as the EU legislative process on the CSDD Directive is underway, and the Spanish government has publicly recognized that a due

diligence law is necessary to end global injustices and threats to human rights, democratic principles and the sustainability of the planet.⁴³ Although a draft law has not yet been made available to the public, the *Plataforma por Empresas Responsables*, a coalition of national CSOs, has published a document setting out some minimum requirements to be included in Spain's future mandatory HRDD law.⁴⁴ Both proposals -the European and the Spanish mandatory HRDD laws- contemplate the creation of national supervisory authorities to ensure that companies comply with their due diligence obligations. Even though some of the powers of the Catalan Centre will coincide with those of the authorities envisaged in the proposals mentioned above, the Centre can play a complementary role. In this regard, the supervisory authorities under the CSDD Directive are expected to perform mainly supervisory and enforcement functions. However, the functions envisaged for the Centre concerning the prevention and warning of business-related human rights impacts abroad or the promotion of regulatory measures to fulfil the corporate responsibility to respect human rights, are not contemplated in the CSDD Directive.

In the case of the authority of the potential Spanish mandatory HRDD law, the experts working on the draft point out that many of the functions of the national authority are the same as, or are even greater than, those of the Catalan Centre. In this sense, the Centre can serve as a first instance for referring cases of abuse to the national authority, and a cooperation body for investigating human rights abuses committed by Catalan companies. On the other hand, given that the due diligence laws are mainly focused on large companies, the Catalan Centre can focus on supporting and supervising those companies that do not meet the thresholds set by the national-level legislation or in the CSDD Directive. It is worth noting that SMEs make up the majority of companies operating in Catalonia.

VI. Conclusions

⁴³ Ministerio de Derechos Sociales y Agenda 2030, 'Estrategia de Desarrollo Sostenible 2030. Un Proyecto de País para Hacer Realidad la Agenda 2030', <https://www.mdsocialesa2030.gob.es/agenda2030/documentos/eds-cast-acce.pdf> (accessed 18 March 2023) 198.

⁴⁴ Plataforma por las Empresas Responsables, 'Hacia una ley de Debida Diligencia en derechos humanos y medioambientales en España', https://empresasresponsables.org/wp-content/uploads/2022/08/Propuesta_tecnica_PER_enero2022.docx.pdf (accessed 18 March 2023) 11.

The Legislative Proposal to create the Catalan Centre for Business and Human Rights is not only an appropriate measure for the implementation of Pillar I of the UNGPs but also an innovative approach that goes beyond the model of mandatory HRDD legislation for the realization of Pillar III of the UNGPs on effective access to remedy.

Catalonia has a unique opportunity to establish a non-judicial grievance mechanism to prevent and remedy business-related human rights abuses committed abroad and even to promote the corporate responsibility to respect human rights within the Catalan business sector. This initiative is a pioneer in Europe and anticipates future legislative proposals that will also provide for similar non-judicial grievance mechanisms. However, Catalonia must not miss the opportunity to instrumentalize this non-judicial mechanism as a response to the limited access to remedy in the sphere of business and human rights.

The ongoing legislative process should ensure that the mechanism has sufficient supervisory and investigatory powers to prevent and contribute to effectively providing remedies in cases of business-related human rights abuses. Similarly, in order to make the Centre operational in the near future, it is important to allocate the human and financial resources for it to carry out its functions effectively. It is also crucial to clearly define the entities covered and the material scope, and for the Centre to meet the effectiveness criteria of Principle 31 of the UNGPs.

As the European mandatory HRDD landscape evolves, the Centre would play a complementary and collaborative role with the national authority overseeing the future Spanish mandatory HRDD legislation. If the CSDD Directive were adopted in the future, the harmonization effect of that instrument could improve legal certainty and create a level playing field in the area of due diligence. Yet, at the same time, it could hinder the ambition and innovation of national and subnational initiatives such as the one that is explored in this piece.