The Catalan Centre for Business and Human Rights: Addressing Extraterritorial Corporate Human Rights Abuses at the Subnational Level

Daniel Iglesias Márquez

Faculty of Legal Sciences, Rovira i Virgili University, Tarragona, Spain
Associated Researcher, Human Rights and Business Institute, University of Monterrey, Monterrey, Mexico
Emails: danniel.iglesias@gmail.com; daniel.iglesias@urv.cat

Abstract

This piece aims to assess the potential contribution and the scope and structure of a Catalan Centre for Business and Human Rights to supervise the fulfilment of the corporate responsibility to respect human rights and to hold businesses operating in Catalonia accountable for human rights abuses within the autonomous community and abroad. It also examines how this proposal fits into the regional and national regulatory landscape for mandatory human rights due diligence.

Keywords: Catalonia; Extraterritoriality; legislative proposal; non-judicial grievance mechanisms; subnational public body; third Pillar

I. Introduction

Subnational governments are key actors in disseminating and implementing international business and human rights (BHR) standards. 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) and the Australian State of New South Wales Modern Slavery Act (2018). These legislative measures 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) have pushed for a legislative proposal to create a Catalan Centre for BHR. 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 piece aims to assess the potential contribution and the operational and structural limitations of a Catalan Centre for BHR to supervise the fulfilment of corporate responsibility to respect human rights and to hold businesses operating in Catalonia accountable for human rights abuses within the autonomous community and abroad. It also examines how this proposal fits into the regional and national regulatory landscape of mandatory human rights due diligence (HRDD).
II. Background

Catalonia is an autonomous community in the northeast of Spain. 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, África and Oceania.¹

Catalan business activities and investments abroad have been linked to negative human rights impacts. In Colombia, for example, the Catalan company Grup Marítim Terminal de Contenedors 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.²

For years, CSOs have urged Catalan authorities to address the harm caused by Catalan companies abroad. In 2016, the Catalan Parliament adopted Resolution 359/XI on the respect for human rights by Catalan companies operating abroad.³ 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. The Catalan government’s commitment to create the Centre was included in the Catalan 2019–2022 Development Cooperation Plan.⁴

CSOs in Catalonia have been key players in watchdog activism and law-making relating to the protection and respect of human rights in the context of business activities. In fact, the lack of compliance with the Catalan government’s commitment to create the subnational non-judicial mechanism led the Catalan BHR Group, made up of several local CSOs,⁵ to draft a legislative proposal (proposició de llei⁶) for the creation of the Centre and to secure parliamentary support for it (the Legislative Proposal). Accordingly, CSOs in Catalonia have served as an organized and legitimate platform to put BHR issues on the Catalan political and legislative agenda.

The legislative process to approve the Catalan Centre for BHR was launched in February 2022.⁷ At the time of writing, the Legislative Proposal is being examined by the Committee

² Tomàs Gisbert, Maria Jesús Pinto and 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.
⁶ A ‘proposició de llei’ 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.
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 BHR.\(^8\) The Legislative Proposal with amendments is expected to be adopted in the second semester of 2023.

Some business representatives who participated in the public hearings believe this proposal criminalizes Catalan companies and affects their competitiveness.\(^9\) 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.\(^10\) They have also argued that this proposal is not aligned with international BHR standards, particularly as the Legislative Proposal makes no express reference to the United Nations Guiding Principles (UNGPs) on Business and Human Rights.\(^11\) Moreover, some business representatives consider that the Centre could have a perverse effect, as this public body would affect the Catalan investment and business-friendly climate. This argument has also been raised by right-wing parties in the Catalan Parliament.\(^12\)

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

State-based non-judicial grievance mechanisms are relevant to addressing business-related human rights abuses as they contribute to the effective implementation of Pillar III of the UNGPs.\(^13\) 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.

Considering the lessons learnt and the limitations of other non-judicial grievance mechanisms, the establishment of a Catalan Centre for BHR 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 abroad.\(^14\)

---


\(^14\) See article 1 of the Legislative Proposal.
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.\textsuperscript{15} 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.\textsuperscript{16}

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.\textsuperscript{17} This is a challenge, as there are no provisions to support SMEs in respecting human rights.

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 activities,\textsuperscript{18} 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. 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.\textsuperscript{19} 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 Spanish autonomous communities with the highest number of public companies in Spain.\textsuperscript{20}

The Catalan Centre is intended to be an independent public law body, under the Department of External Action, International Relations and Transparency. To guarantee the Centre’s independence, the Legislative Proposal provides that its Governing Board,\textsuperscript{21} 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. 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 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

---

\textsuperscript{15} See article 2 of the Legislative Proposal.
\textsuperscript{16} See Section 2 of the German Act on Corporate Due Diligence Obligations in Supply Chains.
\textsuperscript{18} See Principle 19 of the UNGPs.
\textsuperscript{21} See Article 5 of the Legislative Proposal.
grievance processes. 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 BHR would be a step forward in promoting the implementation of the UNGPs and other international soft law instruments. It may incentivize and assist businesses to undertake human rights and environmental due diligence in order to avoid an investigation. However, the Legislative Proposal for the creation of a Catalan Centre goes beyond merely requiring companies to carry out HRDD. Rather, it 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. In this regard, it will be necessary 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 BHR 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 functions. 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 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

---

22 See Principle 31 of the UNGPs.
23 See Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público, BOE núm. 236, 2 October 2015.
24 See Article 3 of the Legislative Proposal.
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.

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

The creation of a Catalan Centre for BHR 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 HRDD law is necessary to end global injustices and threats to human rights, democratic principles and the sustainability of the planet.\(^\text{25}\) 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.\(^\text{26}\) Both proposals—the European and the Spanish mandatory HRDD legislations—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. 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 alerting 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.

VI. Conclusions

The Legislative Proposal to create the Catalan Centre for BHR 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. Catalonia has a unique opportunity to establish a non-judicial grievance mechanism to prevent and remedy business-related human rights abuses committed abroad. This


initiative anticipates future legislative proposals that will also provide for similar non-judicial grievance mechanisms.

The ongoing legislative process for the creation of the Centre 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. In this sense, the Centre would play a collaborative and complementary role in overseeing the future European and national mandatory HRDD landscape.

Acknowledgements. I would like to thank Professor Dr Antoni Pigrau Solé, Dr Marco Aparicio Wilhelmi, Dr Beatriz Felipe Pérez and the editors, Gabriela Quijano and Caio Borges, for their insightful comments on an earlier version of this piece. All errors remain my own. This piece was concluded in March 2023.

Competing interest. The author declares none.

Financial support. This piece has been prepared in the framework of the research project ‘The potential of mandatory human rights and environmental due diligence laws to address violence against human rights and environmental defenders’ (ICI019/22/000010), funded by the International Catalan Institute for Peace (ICIP).