

A national action plan focused on human rights defenders

**Submission for Irish National Action Plan on Business and
Human Rights**

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ABOUT THE INTERNATIONAL SERVICE FOR HUMAN RIGHTS

The International Service for Human Rights is an independent, non-governmental organisation dedicated to promoting and protecting human rights. We achieve this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.

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1. Introduction

The International Service for Human Rights (ISHR) is an independent, non-governmental organisation dedicated to promoting and protecting human rights. We achieve this by supporting human rights defenders (HRDs), strengthening human rights systems, and leading and participating in coalitions for human rights change.

Human rights defenders play a critical role both in promoting corporate respect for human rights and in identifying, preventing, mitigating and ensuring accountability for corporate human rights abuses. Despite this, around the world, there are reports of increasing attacks, threats and harassment against human rights defenders who advocate for corporate accountability.

ISHR's work with human rights defenders who advocate on business and human rights issues strengthens and builds their capacity to seek corporate accountability for human rights abuses. It also seeks to ensure that such defenders are adequately protected from intimidation, harassment, attacks and restrictions associated with their work.

ISHR welcomes the call for input from Ireland to inform the development of its National Action Plan (NAP). We encourage Ireland to incentivise responsible business practice both internally and internationally, as a critical element of discharging its human rights obligation in this area.

A National Action Plan focused on Human Rights Defenders

Business-related human rights abuses against individuals and communities continue to an astonishing degree. In particular, human rights defenders face significant risks to their lives and livelihoods on a daily basis as they work under the threat of extrajudicial killings, abductions, surveillance and intimidation as a result of their efforts to defend human rights in the face of harmful business activities.¹ Adopting a human rights defenders' perspective in the development of the Irish NAP is essential to ensure that the plan serves to enhance the protection of human rights defenders and contributes to a more safe and enabling environment for their work.

ISHR has emphasised the importance of participation of affected communities and human rights defenders in the design of NAPs, and the importance of ensuring that the substance of NAPs provide for the protection of human rights defenders and communities against attacks, threats, restrictions and reprisals associated with business activities and operations.

Accordingly, NAPs should include concrete and specific commitments and measures to ensure that human rights defenders working on issues of corporate accountability are supported, and are able to work free from threats, attacks and other forms of harassment or interference.²

In doing so, NAPs should take into account the specific protection needs of certain groups of defenders, including those working on the issue of corporate accountability, many of whom are organised in collectives or communities and which therefore require collective protection measures.

¹ Sara Blackwell <http://www.ishr.ch/news/role-national-action-plans-business-and-human-rights-protecting-human-rights-defenders>

² <http://www.ishr.ch/news/human-rights-defenders-must-be-core-developing-business-and-human-rights-agendas>

2. Relevant pillars of the Guiding Principles

Guiding Principle I - State Duty to Protect Human Rights

Guiding Principle I stipulates that ‘States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.’

In emphasising this principle, ISHR highlights the specific protections needed by human rights defenders who are often at the forefront of combating and preventing business-related human rights violations. The State duty to provide protection is particularly pressing given the increasing prevalence of ‘private corporations ... involved in violations against defenders, including stigmatization, threats, harassment, attacks, death threats and killings,’³ as noted by the UN Special Rapporteur on human rights defenders.

In order for Ireland to ensure effective implementation of Pillar I of the Guiding Principles in its NAP, the work of human rights defenders should be closely considered in both the *design and implementation*, and the *substance*, of the NAP.

Design and implementation

It is vital that all relevant human rights defenders, affected communities in home or host countries, human rights experts and civil society organisations are fully consulted and able to participate in all stages of development, implementation and review of Ireland’s NAP. It is especially important that Ireland engage with disempowered, isolated or at-risk human rights defenders who may find it more difficult to participate in the NAP design process.

In their *Assessment of Existing National Action Plans (NAPs) on Business and Human Rights* (‘the Assessment’), the International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ) identified as a ‘positive trend that all of the governments that have published a NAP so far conducted some form of consultations with stakeholders.’⁴ However, the consultations of some were ‘more comprehensive and inclusive than others’, while ICAR and ECCJ identified that no governments took any ‘steps to facilitate participation in these consultations by disempowered or at-risk stakeholders.’⁵

In light of this assessment, ISHR calls on Ireland to be a leading government in the design of its NAP by heeding these concerns and ensuring maximum consultation and engagement with relevant stakeholders.

Accounting for the expertise and experiences gained by the stakeholders above — especially those who have, or are expected to, face reprisals or human rights violations — is essential to implementing an effective NAP that takes into account the risks that human rights defenders face in carrying out their work.

Direct engagement with human rights defenders by Irish embassies in host countries of corporations domiciled in Ireland is especially critical in that regard, and given Ireland’s foreign policy priority focus on human rights and those who defend them should be able to build on existing channels. In light of the strong existing collaboration by Irish embassies with

³ Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya’, UN Doc A/HRC/25/55 (2013), para 103.

⁴ International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ), *Assessment of Existing National Action Plans (NAPs) on Business and Human Rights*, November 2014, p 3.

⁵ *Ibid.*

other States in the context of the implementation of the EU Guidelines on the Protection of human rights defenders, using those channels for consultation on the NAP on business and human rights would also serve to send a clear signal to EU partners that consultation with human rights defenders, in both home and host States, is essential and feasible. In addition, this approach would have the benefit of increasing policy coherence in two critical but currently somewhat separate fields of Irish human rights policy, and as such strengthen both of those areas.

Ireland should also clearly identify the role of human rights defenders in the implementation and follow-up of specific action points within the NAP. This will best be achieved by ensuring maximum level of transparency; for example by publishing drafts of the NAP, summary reports on its implementation, and engaging with a broad range of human rights defenders and civil society actors for their ongoing comment and input.

Substance

The substance of the NAP must also provide for the protection of human rights defenders and communities against attacks, threats, restrictions and reprisals associated with business activities and operations, in home and host countries. Given the crucial role played by human rights defenders in ensuring that business activities respect and protect human rights, maximum levels of protection are to be afforded to human rights defenders in Ireland's NAP.

These protections should reflect freedoms guaranteed under international law, and should include in particular the rights to freedom of association, assembly, expression and peaceful protest, together with the right to public participation and the right to free, prior and informed consent for indigenous communities and other affected communities.

Further, the ICAR-ECCJ Assessment outlined that none of the existing NAPs conducted a national baseline assessment (NBA) 'to inform the content of the[ir] NAPs.'⁶ Remedying this failure will ensure that Ireland's NAP is 'evidence-based and tailored to address existing protection gaps' in its 'law, policies, and precedents.'⁷ In line with the above recommendations, the NBA should also take into account the existing levels of protection of human rights defenders and their rights in relevant contexts covered by the NAP.

Conducting an NBA and ensuring that all relevant rights and freedoms are sufficiently outlined and protected in Ireland's NAP will be most effectively achieved via the consultative process outlined above.

Guiding Principle II - Business Duty to Respect Human Rights

Pursuant to Guiding Principle II, corporations have a duty to respect human rights and human rights defenders. The discharge of this duty should extend to protecting human rights defenders from business-related human rights risks and to consulting and engaging with them so as to identify, mitigate and remedy the adverse human rights impacts of their operations. Free, prior and informed consent for business operations, particularly major development projects, should be sought from affected communities, with human rights defenders having a crucial intermediary role in this regard.

Corporations must also respect the right of human rights defenders and other civil society actors to protest against business activities and refrain from obstructing or interfering with

⁶ Ibid.

⁷ Ibid, p 4.

their legitimate activities in this regard. This extends to ensuring that private security firms acting for or on behalf of the corporation are not involved in attacks against human rights defenders or other human rights abuses and, in the case of investors, should include due diligence to ensure they are not indirectly financing any such attacks or abuses.

Corporations should also speak out against laws, policies and actions within a State that restrict the work of human rights defenders, particularly those working on issues of business and human rights. The joint letter of 17 January 2014 written by senior executives of over 30 global brands to the Cambodian Government to ‘communicate grave concern at the killing and wounding of workers and bystanders by security forces on 2 and 3 January 2014’ and calling for the Government to ‘launch a prompt and thorough investigation into the events ... and ensure full accountability of any members of security forces found to have used disproportionate and excessive force and to take measures to prevent the repetition of such acts’ is a good practice example in this regard.

In addition to having a duty to respect and engage with human rights defenders, corporations should also be encouraged and incentivised to do so as a matter of good business sense.

Constructive business engagement with human rights defenders should be encouraged by the NAP at all stages of business operations and in all aspects of implementation of the Guiding Principles:

1. Addressing human rights risks from the outset of a project can assist to prevent human rights abuse by business in the first place, and human rights defenders are often well placed to facilitate the building of trust and confidence among local stakeholders in this regard. This type of partnership can reduce cost and operational burdens by minimising the risk of community conflict, which can result in interruptions to production, higher security costs, staff time lost to crisis management and litigation.
2. Human rights defenders can also assist business to monitor and evaluate a company’s efforts to manage and address human rights risks and impacts associated with the particular business activity in question on an ongoing basis. This sets a solid foundation for the long-term security and effectiveness of an operation.
3. Finally, given that human rights defenders will often have extensive experience in dealing with the impacts of business on human rights, they are well placed to assist business in the design and implementation of company grievance mechanisms.

Guiding Principle III - Access to Remedy

Substance

The substance of the NAP should also give effect to Guiding Principle III which requires Ireland ‘take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when [business-related human rights] abuses occur’ within Ireland’s territory and/or jurisdiction or are perpetrated abroad by companies that are domiciled in Ireland’s territory or subject to its jurisdiction, that ‘those affected have access to effective remedy.’

Effective remedies are vital in redressing the harm done to human rights defenders by business-related human rights violations when carrying out their work. When States or businesses fail to protect human rights defenders from harm, access to effective remedies is a primary avenue via which to secure justice. ISHR endorses ICAR’s concern that ‘while

Pillar III has been widely recognized as an essential Pillar of the UNGPs, it is either addressed only very briefly or not at all in the existing NAPs.⁸

We encourage Ireland's NAP to ensure that Guiding Principle III is sufficiently activated in its NAP in order to grant effective redress to human rights defenders.

Finally, the Irish NAPs should not only be a key tool in the implementation of the Guiding Principles as a whole, but give critical support to the overall protection of human rights defenders.

3. Recommendations

Given all of the above, ISHR makes the following concrete recommendations for Ireland to take into account when developing the NAP:

Recommendation 1

Ireland should develop and implement a National Action Plan based on the Guiding Principles read in conjunction with the UN Declaration on Human Rights Defenders, which includes concrete policies and measures to protect and support human rights defenders, and should pay particular attention the specific protection needs of certain groups of defenders.

Recommendation 2

Ireland must use the opportunity of drafting its NAP to take further steps to create and maintain a safe and enabling environments for HRDs, in line with the UN Declaration on Human Rights Defenders, in both Ireland and the host states of corporations domiciled in Ireland.

Recommendation 3

Civil society organisations, home and host State affected communities, human rights experts and human rights defenders must be fully consulted in the development, implementation and review of the Irish NAP, including through Irish embassies in countries where human rights defenders are most at risk.

Recommendation 4

The NAP itself should:

1. Explicitly recognise the vital role of civil society and human rights defenders in monitoring the implementation of the UN Guiding Principles and acknowledge the particular risks they often face as a result of their work;
2. Reiterate the State duty to ensure safe and enabling environments for human rights defenders working in relation to business and human rights, in line with the UN Declaration on Human Rights Defenders
3. Detail the steps and measures that Ireland will take to encourage businesses to fully consult with civil society organisations and human rights defenders in the design and

⁸ International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ), *Assessment of Existing National Action Plans (NAPs) on Business and Human Rights*, November 2014, p 4.

implementation of projects, in order to guarantee free, prior and informed consent of affected communities;

4. Reflect a commitment to provide financial support to civil society organisations to promote protection of human rights defenders who are actively engaged on issues relating to business and human rights; and
5. Encourage and support the review of legislation that restricts and threatens human rights defenders, and the adoption of specific laws and policies that recognise and protect human rights defenders and their legitimate work, as well as laws and policies that guarantee free, prior and informed consent of communities affected by business. These processes should be undertaken both in Ireland and in States in which Ireland has diplomatic representation or business interests or operations, with the participation of civil society and taking into account international good practice.

Recommendation 5

In relation to business, the NAP should:

1. Clearly articulate the obligation of corporations to respect and support human rights defenders and their work, including by not interfering directly or indirectly with their exercise of the human rights to freedom of expression, association, assembly and protest, and foresee appropriate monitoring mechanisms and sanctions to enforce this obligation;
2. Promote consultation with and the protection of human rights defenders in host States;
3. Encourage businesses to publicly support human rights defenders and their protection, including by supporting State action in that regard;
4. Encourage business to fully consult with civil society organisations and human rights defenders, including in the design and implementation of projects, in conducting human rights impact assessments, developing due diligence policies, and in the design of grievance mechanisms; and
5. Encourage investors to consult with human rights defenders and ensure that investors do not invest in projects that result in violations of human rights or undermine the rights of human rights defenders and affected communities, including their rights to freedom of expression, assembly and of association.