

PBI Ireland Submission to Irish Government consultation on Business and Human Rights National Action Plan.

Organisational profile

Peace Brigades International is a human rights organization with over 30 years of field and advocacy experience protecting and promoting the work of human rights defenders (HRDs) and women human rights defenders (WHRDs) around the world, including those working in the context of business related human rights violations.

We provide international protective accompaniment to human rights defenders at risk through our physical presence on the ground and by setting up networks of support through our diplomatic and international connections. Protective accompaniment, consisting of this combination of physical and political accompaniment, is a strategy pioneered by PBI for protecting (W)HRDs and communities whose lives and work are threatened by political violence. Our work in the field is backed up by a network of country groups in Europe, the America's and Australia who support the field projects and carry out advocacy efforts to improve protection mechanisms for (W)HRDs. PBI Ireland is the newest addition to this network and was founded in May 2014.

In our decades of field work in the countries in which we maintain permanent field presence – currently Colombia, Guatemala, Honduras, Kenya, Mexico, Indonesia, and Nepal - PBI has found that business-related human rights violations against individuals, communities, and the human rights defenders who represent them, continue largely unabated. Human rights defenders and women human rights defenders ((W)HRDs) are key players in the field of business and human rights. Yet too often (W)HRDs lack basic guarantees for their security, and are subject to smear campaigns and legal persecution designed to impede their work with rights holders and victims. According to Global Witness, at least 908 defenders have been killed since 2002 in the context of increased competition for the use of land and natural resources.¹

The legal system is often stacked against them too; a paradoxical logic pervades in which (W)HRDs will face spurious charges and arbitrary treatment before the law, while at the same time investigations into attacks against defenders themselves languish in impunity. The upshot of repressive tactics is that affected communities and individuals are less able to reclaim their rights while the likelihood of further violations increases. To improve access to justice, promote rights-awareness in communities, and to prevent future violations from occurring, it is essential that (W)HRDs' work is fully enabled by states, companies, and multi-lateral bodies. As drawing attention

¹ Global Witness, "*Deadly Environment: the dramatic rise in killings of environmental and land defenders*", special report, January 2014.
<http://www.globalwitness.org/sites/default/files/library/Deadly%20Environment.pdf>

to these business-related human rights violations and the difficulties faced by (W)HRDs working in this context is a key priority for PBI, and given our on-going engagement with the United Nations Working Group on Business and Human Rights (UNWG) and European and North American governments on this issue, we hope to contribute to the Irish Government's development of a comprehensive and responsive National Action Plan (NAP) on Business and Human Rights. Recognizing the important role that Ireland has played in developing and highlighting the protection needs of (W)HRDs at a European and at an international level to date we are confident that the Irish government and DFAT will develop a strategy that takes into account the needs of human rights defenders in the context of business investments overseas, with a specific focus on women human rights defenders. As a result, we hope that Ireland will produce a NAP that builds on the experiences of other European governments that have produced similar NAPs in previous years, and one that incorporates key learning from the UN Forums on Business and Human Rights.

In addition to noting that the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights have published a toolkit for developing a National Action Plan² that contains useful guidelines for establishing an inclusive and multi-stakeholder process, and that the UNWG have recently published a useful guidance document that was developed in consultation with CSOs³, our additional recommendations are set out below.

Pillars of the Guiding Principles that this submission relates to and areas of Irish domestic or foreign policy you wish to cover:

This PBI Ireland submission will make specific recommendations related to the three pillars of the UN Guiding Principles as detailed below. Given the remit of PBI Ireland's work and our accompaniment of (W)HRDs and communities living and working in the context of business related human rights violations we relate our recommendations to the Irish Government's foreign policy, with particular reference to Ireland's commitments to Human Rights (*A Just World*) in its recent statement on foreign policy, and in relation to its focus on strengthening Irish trade relations with overseas countries and entities (*Driving Economic Growth, Removing Barriers to Trade, Investment and Mobility and Deepening Engagement with Priority and High Potential Markets.*)⁴

² International Corporate Accountability Roundtable (ICAR) and The Danish Institute for Human Rights (DIHR) "NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks", Special Report, June 2014. <http://accountabilityroundtable.org/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf>

³ UN Working Group on Business and Human Rights "Guidance on National Action Plans on Business and Human Rights" version 1.0, December 2014. http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf

⁴ Government of Ireland "The Global Island: Ireland's Foreign Policy for a Changing World" Foreign Policy Review, January 2015. See "A Just World" pp 34 - 36; and pp 45-57.

General Recommendations

Concerned with the occurrence of attacks and threats against all human rights defenders, including indigenous people and women human rights defenders, PBI Ireland wishes to make the following recommendations to the Irish Government to be included in their National Action Plan:

- Full and effective implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) depends on meaningful engagement with all stakeholders concerned. Therefore, the NAP should create and/or refer to legally enforceable mechanisms regulating that engagement, guaranteeing free, prior and informed consent of all representatives of the community, as well as consultation during operational phases of business activities, with measurable indicators for engagement and participation of (W)HRDs and communities.
- The NAP should as much as possible refer to or encourage the creation of statutory mechanisms and should be as clear as possible concerning the implementation of the Plan.
- A genuine monitoring mechanism that guarantee's the participation of affected (W)HRDs and communities should be included in the NAP, and be revised periodically following the NAP's publication in order to provide for greater accountability. (W)HRDs and affected communities should be invited to take part in the design of an effective monitoring mechanism that best suits their local context.
- The NAP should make clear that peaceful protest against any kind of business enterprises should be respected.
- The NAP should ensure that the rights of indigenous peoples as stated in the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169, including their right to Free Prior and Informed Consent on business activities and development projects, are protected by making explicit reference to them in the plan.
- The UN Declaration on Human Rights Defenders, the UN Guiding Principles on Business and Human Rights and the National Action Plan itself should all be translated into indigenous languages and promoted through awareness-raising activities with indigenous communities.
- The NAP should take an integrated approach to regulating the three pillars of the UN framework rather than addressing them individually to avoid a piecemeal approach that could miss opportunities to capitalise on regulatory opportunities. As the Introduction to the UNGPs states, "each pillar is an essential component in an inter-related and dynamic system of preventative and remedial measures". Understanding and recognising the linkages that exist between the different pillars enables the "smart mix" of regulation and incentives needed to improve the human rights performance of companies.

Recommendations Related to Specific Pillars of the UN Guiding Principles

The state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication:

- All Irish Embassies and Government representatives overseas or working with relevant international bodies should be instructed to support (women) human rights defenders working on issues related to business and human rights in line with the EU Guidelines on HRDs
- All Irish Government officials working across departments to implement the NAP should receive mandatory training regarding human rights, in particular regarding (women) human rights defenders. Such training should be conversant with human rights and international humanitarian law mechanisms to support, protect, and guarantee participation of (W)HRDs and communities, and also include clear practical guidance for diplomats on how to support (W)HRDs.
- Irish Embassies and Government representatives overseas or working with relevant international bodies should promote the NAP among national government officials, Irish business entities and their supply chains, and civil society organizations, in order for all actors to know their rights, duties and responsibilities.
- Irish Embassies and Government representatives overseas should work with host governments, local and Irish businesses, trade unions, NGOs, human rights defenders, academics, lawyers and other local experts to help inform companies of the human rights risks faced by (W)HRDs. The Irish Government should engage “at the earliest possible stage” with business enterprises working in conflict-affected areas, to “help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships”, to provide adequate assistance and to deny access to public support to any business enterprise involved in gross human rights abuses that “refuses to cooperate in addressing the situation” (UNGP 7);
- The Irish Government should support dialogue between business owners and managers, parliamentarians and civil society on the implementation of the business and human rights agenda and share examples of good practice and examples where the absence of this has created difficulties for companies.
- Embassy officials have an important role to play when it comes to the implementation of NAPs. PBI has observed some good practices from European and Canadian embassies in Mexico, which visited projects where (W)HRDs have been threatened, met with civil society organizations as well as representatives of companies, and discussed and advised the Mexican government about the design and importance of their own NAP (see case 1 details below). We recommend the Irish NAP make specific reference to field visits by Embassy officials as mentioned in the EU Guidelines on HRDs.
- The Irish Government should also strongly consider facilitating specific consultation and/or dialogue mechanisms at a local level in countries in which Irish or EU companies operate,

whereby (W)HRDs and communities are given a space to voice their concerns to business (if they choose to) in the presence of Embassy officials. Such a mechanism should include assurances that all representatives are invited and consulted, not only those most sympathetic to the project. It is important that such dialogues are sensitive to the particular vulnerabilities of and risks facing participating (W)HRDs.

The corporate responsibility to respect human rights, that is, to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved

- The NAP should reiterate the responsibility of businesses to respect human rights exists independently of States' abilities (and/or willingness) to fulfil their own human rights obligations.
- The NAP should clearly outline the responsibility of business enterprises to respect the work of (W)HRDs, including by respecting their right to freedom of expression, assembly, and association and it should "provide effective guidance to business enterprises on how to respect human rights throughout their operations" (UNGP 3)
- The NAP should "encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts" (UNGP 3) and include measures that could be taken if companies are unwilling to meet the standards set for conflict-affected situations.

The need for greater access by victims to effective remedy, both judicial and non-judicial.

- Also of concern to PBI is the high level of impunity that perpetrators and those responsible for violations, be they agents of the State, illegal groups, or business and other non-state actors, continue to enjoy at both national and international level across the world. There needs to be a greater focus on implementation of the third pillar of the UNGPs: access to effective remedies, both via judicial and non-judicial means. In addition there is a need for more effective regulations and mechanisms to guarantee reparation for direct and indirect victims of business-related human rights violations. The NAP should also give specific instruction to improve judicial investigations that deal with attacks on (W)HRDs working to end impunity.
- The Irish Government should work actively to help states who wish to develop their human rights protection mechanisms and reduce barriers to remedy by offering technical and legal support to the improvement of protection mechanisms and judicial investigations that deal with attacks on (W)HRDs working on land and environmental issues.
- Irish Embassies and Government representatives overseas should actively lobby foreign states to support widespread implementation of the UNGPs and other relevant international instruments including the ILO's Fundamental Principles and Rights at Work and the eight core Conventions which embody them, and the OECD Guidelines for Multinational Enterprises. It is imperative that (W)HRDs have unhindered and secure access both to judicial and non-judicial complaint mechanisms without fear of reprisals. In order to ensure (W)HRDs' and affected communities' participation on equal terms, cultural, linguistic and

gender aspects should always be taken into consideration. The NAP should outline the steps to be taken by businesses and Irish diplomats overseas to guarantee access to justice referring specifically to the types of measures that State Representatives will take to protect and support (W)HRDs and communities according to their specific situation of risk.

- We believe it is crucial that members of civil society can file a complaint when a specific principle, such as free, prior and informed consent, is not respected. If this does not work at the national level, the international community should be able to intervene. This was the case in Colombia with the Mandé Norte Project. Thanks to a complaint filed with the Constitutional Court and precautionary measures granted by the Inter-American Commission on Human Rights, the exploratory drilling of a project that did not carry out proper consultations was suspended until proper impact studies and consultation are conducted (see case 2 details below).

Concluding Remarks

Peace Brigades International welcomes the Department of Foreign Affairs and Trade's efforts to develop a comprehensive and inclusive National Action Plan on Business and Human Rights and are encouraged by the invitation to CSOs to provide submissions to the NAP and the discussions generated at the 14th NGO/DFAT annual forum which was dedicated to this thematic.

We consider it imperative that the Human Rights Unit take this opportunity to explore the types of issues outlined above, to look at ways to include these suggestions in the NAP, and especially, to consider making use of the ICAR and Danish Institute NAP toolkit. We would be more than happy to work with those at the Unit or at DFAT who will be tasked with carrying out the development of the NAP, and in contributing views and input on specific issue areas, in particular with regard to (W)HRDs. We also would be happy to facilitate communication with affected communities and (W)HRDs who work on these issues in the countries where PBI works.

Kindest regards,

PBI Ireland.

Annex: Case Details

Case Details 1: PBI Mexico - Field visit by Embassies.

In December 2013, the German, Norwegian and Swiss embassies visited a region in the State of Oaxaca where communities are opposed to the construction of wind farms at a moment when the situation of risk (threats and attacks) for human rights defenders had increased.⁵ They met the communities and HRDs, and visited the wind farms and the affected areas. The visit was publicized on the embassies' websites and incorporated in the reports to their respective Foreign Affairs Ministries. The risk decreased momentarily after the visit. The Canadian Embassy also visited the region during the spring of 2014, and then organized a meeting with the responsible companies of those wind farms in Mexico in order to listen to them and express their concern for the human rights defenders who work on this case.

In the last round of the Human Rights Dialogues between Mexico and the European Union in March 2014, Netherlands and Spain shared with Mexico their experience with the design of their respective National Action Plans. The European Union is currently supporting Mexico with technical assistance the field of Business and Human Rights, including support for design of a NAP.

Between May and October 2014, the UK and Dutch embassies in Mexico and representatives from EU Delegation in Mexico and other representatives of EU member states met with human rights organizations to explain their NAPs, listen to their concerns and discuss possible follow up in Mexico. During the meeting with Dutch officials, representatives from the Mexican Government and from Dutch companies were also present. The meeting with the EU Delegation was not only attended by the Head of Political Sections at the Embassies but also by the Heads of Trade and Economic sections.

Case Details 2: PBI Colombia - Mandé Norte project.

In 2005, the Colombian government awarded nine mining titles to the U.S. company Muriel Mining Corporation for a period of 30 years for the exploitation of gold, copper and molybdenum for the so-called Mandé Norte project. These titles represent 16,000 hectares located in the Lower and Middle Atrato regions (north-western part of Colombia) where there are ancestral territories of Embera people and Afro-descendants communities.⁶

The affected communities reported the project did not respect the principle of free, prior and informed consent as the consultation was made fraudulently. Said one community member, "They invited some leaders to a meeting where they were given drink and food, but not told about the exploration they would do. This procedure was validated by the government and they started the exploration drilling soon after."⁷ They also made sure that the government accepted as spokesmen people who were representing neither the 12 Embera peoples nor the two Afro-Colombians communities who live there.⁸

⁵ PBI Mexico, "Wind Farms and Concerns about Human Rights Violations in Oaxaca", March 2014, http://www.peacebrigades.org/fileadmin/user_files/projects/mexico/files/PBI_Publications/1403BriefingWindFarmsPBI.pdf.

⁶ Constitutional Court of Colombia, Decision T-769 of 2009, October 2009.

⁷ PBI Colombia, "A Struggle for the Good of Humanity: Indigenous peoples reject mining project", Informational Newsletter #11, May 2009.

Given this situation, the communities decided to conduct a survey in order to answer the following question “Do you or do you not want exploration and mining of the Mandé Norte project in our territory?” Between 24 and 28 February 2009, 12 indigenous communities from Uradá, Jiguamiandó, Chageradó, Turriquitadó, and Murindó, as well as Afro-descendant communities from the Pueblo Nuevo Humanitarian Zone in Jiguamiandó participated in the survey. The mining project was unanimously rejected.⁹

In response to a complaint filed by the communities in October 2009, the Constitutional Court issued a decision, T 769, which ordered the suspension of the exploration phase until studies on social, environmental and cultural impact were made and a consultation was properly conducted, ensuring the free, prior and informed consent of the affected communities.¹⁰ Communities reported that people who opposed the mining project in the area were accused of being members of the guerrillas; they were stigmatized and their lives were threatened.¹¹ In January 2010, after a bombing of the Army in the area that wounded two indigenous people, the Inter-American Commission on Human Rights granted precautionary measures to 87 families because of the risk provoked by the presence of armed groups in their territory, and recognized their territory as a humanitarian zone.¹²

Unfortunately the Constitutional Court decision regarding the consultation and the necessary studies has still not been implemented by the government. The Interior Ministry and the Ministry of Justice even asked the Constitutional Court to nullify the Court’s decision.¹³

⁸ El Tiempo, “Corte Constitucional ordena suspender explotación en complejo minero más importante del país”, 24 March 2010.

⁹ PBI Colombia, Op. Cit.

¹⁰ Constitutional Court of Colombia, Op. Cit.

¹¹ Regional Indigenous Council of Cauca, “La grave situación de los pueblos indígenas no contó para la UE a la hora de rubricar el TLC con Colombia”, 22 June 2011, <http://www.cric-colombia.org/portal/la-grave-situacion-de-los-pueblos-indigenas-no-conto-para-laue-a-la-hora-de-rubricar-el-tlc-con-colombia>.

¹² Inter-American Commission on Human Rights, Precautionary Measures for the Community of Alto Guayabal-Coredocito of the Emberá People, Colombia, 2010.

¹³ Colombian Ministry of the Interior and Justice, “Nulidad sentencia T-769-09”, 15 April 2010.