

Informal background note

Human rights defenders and civic space – the business & human rights dimension

Summary

The safety and security of human rights defenders (HRDs) and increased threats to civic freedoms has become increasing public concern globally. It is also one of the most urgent issues for the business and human rights agenda, as defenders find themselves at great personal risk, including the risk of death and grave bodily harm. Civil society also finds itself with fewer avenues to express concerns regarding human rights issues, and also fears criminal prosecution when engaged in public protest or civil dissent. At the same time, the role of business is being called into question with respect to its role in potentially contributing to attacks against HRDs or in failing to take action when linked to abuses, but also its role in helping to protect defenders and support protection of civic space. In response to these challenges, there are emerging efforts by a range of actors seeking to address the problem.

Against this background, the UN Working Group on Business and Human Rights has decided to focus on this critical issue in its own work and has identified activities it proposes to undertake to complement and support efforts by others, including to (i) develop guidance for business on engaging, respecting and supporting human rights defenders in line with the UN Guiding Principles on Business and Human Rights (UNGPs) as well as the role of business in preserving civic space; (ii) facilitate multi-stakeholder dialogue among stakeholders with an interest in the issue, so as to develop coordinated efforts; and (iii) help identify and support new opportunities for collective action.

To begin its consultation process, the Working Group organized a workshop in Geneva, Switzerland, on 11 May 2017 during its 17th session.¹ It aims to consult further with a wider range of stakeholders, including human rights defenders themselves. Inputs will be sought through the Working Group's country visits and participation in meetings in different world regions. It is seeking to complement in-person consultations with written inputs and submissions from all relevant stakeholders. A call for written inputs has been issued, with an initial deadline of 1 September 2017.² The Working Group plans to issue a draft guidance document toward the end of 2017 for stakeholder feedback, and to finalize the guidance document for publication in 2018. It seeks to work in close coordination with relevant UN experts, in particular the Special Rapporteur on the issue of human rights defenders, and non-governmental organizations that are already active on this issue such as the Business and Human Rights Resource Centre.

¹ Summary is available at <http://www.ohchr.org/Documents/Issues/Business/Session18/WorkshopSummaryConsultationHRDefenders.pdf>

² See <http://www.ohchr.org/Documents/Issues/Business/Session18/CallInputsProjectHRDefenders.pdf>

Background: current “state of play” and identifying a role for the UN Working Group

Human rights defenders and international standards

Respect and support for the activities of human rights defenders³ are essential for the full realization of human rights, the rule of law and sustainable development.⁴ In relation to human rights risks and impacts arising in the context of business activities, human rights defenders across the world play a critical role in identifying concerns, and advocating for redress and accountability of government and business actors involved in human rights abuses. States have the primary obligation to ensure the rights and protections of human rights defenders, as set out in various human rights instruments – in particular the UN Declaration on Human Rights Defenders – and as reaffirmed in many UN Human Rights Council and General Assembly resolutions, including through the March 2016 resolution on the protection of human rights defenders working on economic, social and cultural rights.⁵

The UNGPs recognize the important and valuable role played by human rights defenders, the key role they can have in human rights due diligence and enable companies to understand concerns of affected stakeholders,⁶ and the risks they face as a result. Principle 18 urges businesses to consult human rights defenders as an important expert resource and highlights their role as watchdogs, advocates and facilitators. The risks faced by defenders are highlighted through Principle 26, the commentary to which requires states to ensure that the legitimate activities of human rights defenders are not obstructed.

In the last 15 years, the mandate of the Special Rapporteur on the situation of HRDs as well as OHCHR have developed the concept of a ‘safe and enabling environment’, in which defenders can carry out their work free from hindrance and insecurity. This is also the benchmark guiding the work of the Working Group on Business and Human Rights, as it strives to ensure states and businesses alike implement their human rights obligations and responsibilities.⁷

The Special Rapporteur on HRDs has starkly underlined that the 2030 Sustainable Development Agenda is “doomed to failure if the individuals and groups on the frontline of defending sustainable development are not protected at the national, regional and international levels”.⁸ He is currently preparing a report to the UN General Assembly on the role of business regarding human rights defenders.

³ “Human rights defender” is a term used to describe people who, individually or with others, act to promote or protect human rights. See: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

⁴ Recently recognized in a resolution by the 34th Human Rights Council: A/HRC/34/L.5

⁵ General Assembly Resolution 53/144: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

⁶ Guiding Principle 18 and its commentary.

⁷ See UN Working Group opinion piece: <http://www.ishr.ch/news/full-implementation-guiding-principles-means-protecting-human-rights-defenders>

⁸ UN Document A/71/281, paragraph 4.

Moreover, there is also increasing recognition of the links between the role of business with regard to human rights defenders and civic space generally⁹ and the “business case”, including considerations such as:

- Narrowing of the space for civil society weakens the rule of law, which also negatively impacts business, deteriorating the enabling environment for responsible business and effective government;
- When able to operate freely, civil society can be a key critical friend and partner for business helping to identify and address human rights risks and remediate abuses as well as to work cooperatively in multistakeholder and collective action models;
- Human rights defenders as first responders are often the best placed to identify risk and harms that can be mitigated or redressed, creating positive outcomes for rights holders as well as for the business itself;
- Ambitious goals and complex challenges – such as achievement of the SDGs – will need ideas, expertise, input and collaboration from all societal actors including an active and open civil society;
- Speaking up in support of civil society helps companies to meet social expectations and earn and maintain their “social license to operate”.

Challenges on the ground

There are increasing records of killings, attacks, threats and harassment against human rights defenders who speak up against business-related human rights issues, including the particular challenges faced by women human rights defenders. This situation has been well documented by UN Special Procedures: for example, in relation to land rights in particular by the Special Rapporteur on HRDs¹⁰ and by the Special Rapporteur on the human rights and the environment;¹¹ and in relation to labour rights by the Special Rapporteur on the rights to freedom of peaceful assembly and of association.¹² Documentation by civil society organizations (CSOs) has also helped in raising awareness of this situation, including much-cited work by Global Witness¹³ and by the Business & Human Rights Resource Centre, which recorded over 400 instances of attacks on defenders working on corporate accountability issues, in 2015 and 2016.¹⁴ However, thanks to efforts to document this situation and advocacy by CSOs, in particular, initiatives to tackle the problem have been gaining momentum.¹⁵

⁹ For recent commentary, see the Business and Human Rights Resource Centre: <https://business-humanrights.org/en/nationalism-xenophobia-and-authoritarianism-how-should-business-respond-to-these-rising-trends>

¹⁰ See UN document A/71/281.

¹¹ See: <http://www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrds-risking-today-tomorrow/>

¹² See UN document A/71/385.

¹³ <https://www.globalwitness.org/en/campaigns/environmental-activists/dangerous-ground/>

¹⁴ See <https://www.business-humanrights.org/en/business-human-rights-defenders-portal>

¹⁵ As an example of how the issue has become more prominent beyond human rights fora, the World Economic Forum’s 2017 “flagship report” on top global risks identified “fraying rule of law and declining civic freedoms” as a major issue that business leaders are and need to be concerned about. This included reference to the situation for human rights defenders and actions by companies to speak up. See: http://www3.weforum.org/docs/GRR17_Report_web.pdf.

Human rights defenders and the role of business – key messages from the UN Forum on Business and Human Rights

The issue has been increasingly central to the UN Forum on Business and Human Rights, with the 2014 conference the first Forum to feature a dedicated event on the issue in its main programme: *Business and Human Rights Defenders: Challenges and Good Practices*. There has been a dedicated discussion at each Forum since.

A key message emerging from the 2016 Forum was that there is indeed a pressing need for collective action to address the crackdown on human rights defenders. The Forum heard the moving personal story of Laura Cáceres, the daughter of Council of Popular and Indigenous Organizations of Honduras (COPINH) leader Berta Cáceres, who was dedicated to her work to defend life in the context of the Agua Zarca Dam hydro-electric project. Berta Cáceres was jailed, dismissed, threatened and finally killed for protecting the land of indigenous people.¹⁶

The High Commissioner for Human Rights, and other speakers, underlined that the story of Berta Cáceres is not an isolated incident, referring to the documentation by Global Witness that in 2015 alone, 185 people who were defending human rights in the context of development projects in 16 countries were murdered. The industries involved included mining, agribusiness, hydroelectric dams, and logging. Almost 40 per cent of the victims were indigenous people. While the issue is being raised by several actors – including by the Human Rights Council, Special Procedures, UN treaty bodies and civil society across the world – Forum discussions highlighted that it is time to think critically about how to bring together the collective power of business, civil society and Governments to address the crucial need to protect human rights defenders. Sometimes, building trust between these actors and identifying and implementing clear actions can be difficult for all sides. In this regard, the examples of corporate actors that are willing to speak up or take a position take action when human rights are under threat in the countries where they operate are encouraging.

Existing guidance for states

As provided by international human rights standards, states have the primary duty of ensuring respect and protection of human rights defenders, including those working on business-related issues. There are already a number of tools and guidance, based on international human rights instruments, on which to build for advancing more effective and better performance by states. Guidance by UN Special Procedures provide concrete recommendations for measures to be taken by states and regional mechanisms in order to ensure protection and support for human rights defenders that address business-related human rights risks and impacts.¹⁷ A 2017 General Comment by the Committee on Economic, Social and Cultural Rights also focuses on state obligations under the ICESCR in the context of business activities, and specifically recommends that states protect human rights defenders and refrain from legal measures that would criminalize their work.¹⁸

When developing national action plans (NAP) for implementing the UNGPs, states are expected to both engage with human rights defenders and ensure that protection and support of their work is

¹⁶ <http://www.ohchr.org/Documents/Issues/Business/ForumSession5/Statements/Laura%20Caceres.pdf>

¹⁷ E.g. UN document A/71/281, UN document A/71/385, <http://www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrd-risking-today-tomorrow/>

¹⁸ General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, paragraph 48, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en

addressed in the NAPs. In this regard, the International Corporate Accountability Roundtable and the International Service for Human Rights have developed practical guidance for states on how to meaningfully involve human rights defenders and address threats to them as part of NAP processes.¹⁹ Some existing NAPs recognize the need for protecting human rights defenders,²⁰ but as more states develop or update their NAPs – including both home and host countries – it is critical to build on existing tools and improve accessibility and impact of human rights defenders.

In the area of international development finance, which is linked to the issue of states' duty to protect human rights in business contexts, CSOs have issued a range of concrete recommendations for international financial institutions.²¹ In April 2016, the Office of the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) issued a consultation draft on the "CAO Approach to Complainant Protection" in relation to threats or reprisals against individuals lodging complaints against IFC-funded projects.²²

A critical aspect of the state duty to protect is to ensure access to remedy, as clarified by the third pillar of the UNGPs. In relation to the work of human rights defenders, this includes both ensuring access to remedy for human rights defenders when their rights have been violated; and providing an enabling environment for defenders who support communities and individuals that are seeking redress and access to justice.

Human rights defenders are particularly vulnerable to criminalization—the abuse of the legal system to penalize defenders for their work. Such misuse of the legal system includes the use of fraudulent or trumped up charges, pre-trial detention, arbitrary application of vague laws, denial of due process, and excessively long probation periods. The practice of criminalization human rights defenders has increased alarmingly in the past few years. In 2015, the Inter-American Commission on Human Rights published a report "Criminalization of the Work of Human Rights Defenders" to document this phenomenon and provide recommendations for preventing such abuse.²³

CSO and UN guidance and tools also cover this aspect and provide a range of recommendations for states, in particular. Yet, there is scope for expanding on possible forms of prevention or redress for such criminalization. (At the same time: the need for ensuring access to remedy for business-related human rights abuse extends beyond the issue of human rights defenders, as it essentially relates to the need for more effective implementation of the Guiding Principles third pillar, and to improving the effectiveness of judicial and non-judicial mechanisms in general.)

However, for states to take concerted action there is a need for encouragement and pressure from affected communities and civil society. Groups and coalitions such as the Coalition for Human Rights in Development and the International Service for Human Rights have developed toolkits and undertaken trainings with the aim of providing human rights defenders with information, skills and

¹⁹ https://www.ishr.ch/sites/default/files/documents/ishr_icar_hrds_in_naps_guidance_eng.pdf

²⁰ E.g. the 2013 UK NAP says the Government will: "Instruct our embassies and high commissions to support human rights defenders working on issues related to business and human rights in line with EU Guidelines on human rights defenders."

²¹ See: <http://rightsindevelopment.org/our-work/worldbank/>

²² <http://www.cao-ombudsman.org/documents/ConsultationDraft-CAOApproachtocomplainantsunderthreatApril2016.pdf>

²³ <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>

tools in order to support their work of holding States (and business actors) accountable.²⁴ A recent initiative by the Business & Human Rights Resource Centre provides a dedicated portal for the issue of human rights defenders,²⁵ includes a dedicated site for business with information about international standards documents, ideas for action, case studies, in-depth interviews, elements for the ‘business case’ for corporate action, tools and resources and latest news on the issue.

The next step: understanding the role of the business community

A small group of companies have focused on the need to protect and support human rights defenders, resulting in emerging good practice. For example, in a ground-breaking first step, Adidas in 2016 issued a general corporate policy statement in support of human rights defenders.²⁶ There have also been examples of public statements by individual companies in support of human rights defenders in concrete cases in Angola (Tiffany & Co²⁷) and Thailand (S-Group²⁸). Other examples include global garment multinationals speaking up to protect striking workers in Cambodia,²⁹ or companies raising concerns about discriminatory travel bans in the United States.³⁰ Moreover, there are signs that the wider situation of shrinking civic space around the world – of which the crack-down on human rights defenders is a part – is moving higher up on the mainstream corporate agenda. For example, the World Economic Forum’s 2017 ‘flagship report’ on top global risks identified “fraying rule of law and declining civic freedoms” as a major issue that business leaders are and need to be concerned about.³¹

While the UNGPs recognize a role for human rights defenders in corporate human rights due diligence, there is yet less practical guidance oriented toward companies, although there is movement in the right direction. Emerging good practice examples by some companies can provide inspiration for others.³² UN human rights campaigns, most recently the UN High Commissioner’s “#standup4humanrights” campaign,³³ also encourage companies to play a role in supporting human rights in the workplace and society.³⁴ And the UN Global Compact’s guidance for business on

²⁴ http://www.ishr.ch/sites/default/files/article/files/ishr_hrd_toolkit_english_web.pdf; <http://rightsindevelopment.org/our-work/hrd/hrd-resources/>; <https://www.business-humanrights.org/en/business-human-rights-defenders-portal>

²⁵ <https://www.business-humanrights.org/en/business-human-rights-defenders-portal>

²⁶ <https://www.business-humanrights.org/en/in-depth-with-william-anderson-of-adidas>

²⁷ <https://business-humanrights.org/en/open-statement-calling-for-charges-to-be-dropped-against-journalist-rafael-marques-de-morais-in-angola>

²⁸ <https://innovation-forum.co.uk/analysis.php?s=thai-court-case-thats-redefining-corporate-activist-relationships>

²⁹ <https://www.cafonline.org/about-us/global-alliance/case-studies/beyond-integrity-cambodia---solidarity-in-the-fight-for-the-freedom-of-assembly-and-association>

³⁰ <https://business-humanrights.org/en/trumps-travel-ban-how-is-business-responding>

³¹ http://www3.weforum.org/docs/GRR17_Report_web.pdf; see also: <https://www.weforum.org/agenda/2017/03/civil-rights-are-under-attack-here-s-why-the-business-world-should-care/>. See also a recent speech by Dutch Minister for Foreign Trade and Development Cooperation: <https://www.government.nl/documents/speeches/2017/04/19/speech-minister-ploumen-on-international-business-and-human-rights>

³² In addition to the references above, see also: <https://www.cafonline.org/docs/default-source/about-us-publications/caf-beyondintegrityreport-web-oct16v2.pdf?sfvrsn=4> and <https://www.ihrb.org/uploads/reports/2015-12-Human-Rights-Defenders-and-Business.pdf>

³³ <http://www.standup4humanrights.org/en/>

³⁴ http://www.standup4humanrights.org/en/highlight_davos.html. Currently OHCHR is also working in collaboration with the Institute for Human Rights and Business on a project to produce guidance for business on tackling discrimination against lesbian, gay, bi, trans and intersex (LGBTI) people.

supporting rule of law notably touches on aspects related to supporting human rights defenders and civic freedoms.³⁵

However, detailed guidance on the issue of human rights defenders consistent with the UNGPs, which could provide a common reference point for all stakeholders, has not yet been developed.

A role for the UN Working Group

Against this background, the UN Working Group has identified opportunities for it to play a role in supporting and reinforcing existing efforts on this issue:

- **Develop guidance on normative and practical implications of the corporate responsibility to respect human rights (the second pillar of the UNGPs) in relation to human rights defenders, based on consultations with a range of stakeholders, including human rights defenders as well as civil society and business. This guidance could serve as a useful reference point for civil society groups conducting advocacy and awareness-raising; governments seeking to improve corporate respect for human rights across jurisdictions; and companies looking to stay on the leading edge of implementation of the UNGPs.** It would seek to clarify what the UNGPs imply for companies to respect the rights and legitimate roles of human rights defenders in relation to the aspects of the corporate responsibility and human rights due diligence. It will also explore issues relating to action and engagement by businesses with states on issues relating to human rights defenders and restrictions on civic freedoms and the rule of law. With regard to both aspects, consultations will consider how different sectors might address these issues in varying contexts.
- **Facilitate exchange and coordination between different experts and stakeholders on this issue.** There is scope for more coordination and collaboration between various existing efforts, and more dialogue is also essential in order to ensure there is no duplication of roles and work. In this regard, while the Working Group wishes to engage more actively on the issue of human rights defenders in relation to its mandate to promote the UNGPs, it is also committed to complement and reinforce, rather than duplicate, the good work done by others, both within and outside the UN.
- **Support efforts to identify potential new coalitions and concrete collective actions.** The Working Group recognizes the critical need for and the opportunity for stronger concerted action on this issue, and is committed to work together with others in forging new coalitions and identifying new engagement opportunities.
- **Continue to use the annual UN Forum on Business and Human Rights in collaboration with OHCHR to sustain attention on this critical issue.** For example, there may be an opportunity to use the Forum as a platform to achieve statements of commitment and support from both states and businesses. Joint thinking on how to achieve this most effectively is necessary.

Consultation process

To begin its consultation process, the Working Group organized a [workshop in Geneva, Switzerland, on 11 May 2017](#) during its 17th session. It aims to consult further with a wider range of stakeholders, including human rights defenders themselves. Inputs will be sought through the Working Group's country visits and participation in meetings in different world regions. It is seeking to complement in-

³⁵ See: <https://www.unglobalcompact.org/take-action/action/business-rule-of-law>

person consultations with written inputs and submissions from all relevant stakeholders. The Working Group plans to issue a draft guidance document toward the end of 2017 for stakeholder feedback, and to finalize the guidance document for publication in 2018.

Call for written submissions

The Working Group would like to encourage all stakeholders to submit relevant research, documentation and materials to inform the Working Group's efforts as set out in i-iii above. In particular, the Working Group would like suggestions as to what types of recommendations might be useful for the business community with respect to how it can respect human rights through its engagement with human rights defenders, and in addressing challenges to the rule of law that are linked to their business operations. The Working Group hopes to come up with practical recommendations that elaborate on implications of the [UN Guiding Principles on Business and Human Rights](#).

More targeted calls and questionnaires may be issued at later stages. Initial deadline: 1 September 2017.

For questions, contact the Working Group's Secretariat at wg-business@ohchr.org indicating in the subject line "HRD CONSULTATION [+ name of contributor/entity/organization]".