

To: wg-business@ohchr.org

1st September 2017

Reference: Call for written submission – Human rights defenders and civic space. The business and human rights dimension.

Finnwatch welcomes the developing by the UN Working Group on Business and Human Rights of guidance on the role of the private sector in relation to human rights defenders and preserving civic space, and thanks the Working Group for the invitation to contribute a written input to inform these efforts.

The Working Group has particularly requested 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 the challenges to the rule of law that are linked to their business operations.

In preparation for this input, Finnwatch has mostly drawn from its body of work on buyer-led supply chains in countries where criminal law and the legal system are being abused to penalise human rights defenders for their legitimate human rights work, such as the organisations work in Thailand where a Finnwatch researcher Andy Hall faces multiple criminal and civil defamation charges, filed by a Thai pineapple company¹.

The organisation notes that the human rights defenders are a varied group and that the risks and challenges that they face are also varied and highly depend on the sector and country. The guidance that is being developed by the Working Group should unpack these issues, for example by developing action plans for different scenarios.

In Finnwatch's view, the guidance being developed by the Working Group should re-enforce and elaborate on the UN Guiding Principles on Business and Human Rights as the primary means for companies to support human rights defenders and their work. In many ways, the risks and reprisals that human rights defenders face in the context of business and human rights could be prevented if companies conducted genuine stakeholder consultations and implemented proper human rights due diligence.

¹ For more information see for example, Finnwatch, Q&A: Criminal and Civil Prosecutions - Natural Fruit vs. Andy Hall (updated on 28th August 2017), available at https://www.finnwatch.org/images/pdf/NaturalFruitvsAndyHallQA_August2017_Final.pdf. More recently, another Thai company has filed similar defamation charges against Andy Hall see for example Business and Human Rights Resource Centre, Betagro & Thammakaset lawsuit, <https://business-humanrights.org/en/betagro-thammakaset-lawsuit-re-labour-exploitation-in-thailand> (accessed on 1st September 2017).

Encouraging states to fulfil their duty to protect

As noted in the consultation background paper and 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 and human rights related issues. However, in practice many states are failing this task. Without taking away from the duty of states, the guidance that is being developed by the Working Group should make recommendations to companies on how they can encourage states to fulfil their duty to protect.

A first step could be for companies to clearly and publicly communicate their position on human rights defenders and the importance of their work. A company policy on human rights defenders should be embedded from the top of a company to all its functions and operations.

In some countries, criminalisation of human rights defenders and the abuse of the legal system to wage campaigns of judicial harassment against them poses a particular challenge. In such cases, companies should be encouraged to engage in active lobbying of the states to ensure that the provisions in the criminal law that are abused to restrict the legitimate work of human rights defenders and that contravene international human rights standards, are either being amended (to exclude ambiguity) or repelled to bring them in line with international standards.

When human rights defenders are, however, taken into court for their legitimate human rights work, companies should be prepared to voice their support for them, including testifying in court if called to do so by the defence. As also noted in the consultation background paper, there are existing best practice examples of such cases that could be drawn from for the guidance². Companies could also be encouraged to offer financial assistance to cover the legal costs of human rights defenders as such court battles are often long and costly and funding from other sources for such purposes may be difficult to obtain. However, such funding should be carefully managed so as not to jeopardise or compromise human rights defenders' independence. It should also be extended to be applicable to cover bail surety costs.

Where violations of human rights defenders' rights are reported through companies' grievance mechanisms, in addition to undertaking their own corrective actions, companies should be encouraged to routinely report allegations also to the competent authorities of the country in question and to follow-up on the authorities' response to the reported, alleged abuse. To encourage such reporting, companies should strengthen their own grievance mechanisms, including their reach and accessibility in countries that they source from.

Especially in situations where human rights defenders are either attacked by the state or state is failing to protect them, companies should be called upon to increase their leverage and take collective action through for example industry or trade associations.

² One of such examples involved the Finnish company S-Group that testified in Andy Hall's case. For more information see for example Finnwatch, Q&A: Criminal and Civil Prosecutions - Natural Fruit vs. Andy Hall

Implementing corporate responsibility to respect

The lack of due recognition places human rights defenders at risk. This applies both who human rights defenders are and what they do as well as the value of their work to companies. Therefore, the guidance that is being developed by the Working Group should include examples of human rights defenders and their work in the context of business-related abuse and what are the benefits to companies of engagement with human rights defenders. In particular, the role of trade union leaders and worker organisers as human rights defenders requires attention.

In many cases, human rights defenders lack resources to carry out their work, including research that could be a valuable contribution human rights due diligence processes and provide important information to companies about the human rights impacts of their business operations. As a way of supporting human rights defenders, companies could be encouraged to contribute much required resources, including funding, towards human rights defenders work. In some cases, this might also help to provide a counterbalance for government restrictions on or cuts to funding for civil society organisations. However, such company funding should be pooled and independently managed so as not to compromise the independence of human rights defenders.

To counter the challenge of human rights defenders being portrayed as trouble-makers and criminals by business partners and in some cases, even governments, the guidance should re-emphasise the principle of stakeholder consultations, encourage comprehensive stakeholder mapping in consultation with human rights experts with appropriate country or sectoral knowledge, and early engagement. The guidance should also include practical case examples on how to conduct genuine stakeholder consultations.

As also noted in the consultation background note, human rights defenders face the risk of criminal prosecution when engaged in public protest, reporting or civil dissent. In Finnwatch's experience, human rights defenders often seek publicity for their work as a last resort in order to maximise their leverage over the company allegedly abusing human rights. To mitigate this risk, buyer companies could be encouraged to lend their and leverage to human rights defenders. In practice, this would often require increased supply chain transparency so that human rights defenders could identify, access and engage relevant brands and downstream supply chain actors without needing to resort to public exposure. Brand companies and other downstream supply chain actors could also provide forums or otherwise facilitate the exchange between their business partners and human rights defenders in private.

Role of home states

Many of the suggestions listed above, including the calls for increased supply chain transparency and strengthened human rights due diligence, could be advanced also by home states of the companies through statements, guidance and legislative measures such as mandatory human rights diligence.