

# **Submission to the Irish Department of Foreign Affairs and Trade call for input on the National Plan on Business and Human Rights**



**Ireland-Palestine Solidarity Campaign**

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## 1. Introduction

As the Department of Foreign Affairs and Trade is developing a National Plan on Business and Human Rights, and is seeking consultation with interested groups for the plan, among them civil society groups, the Ireland-Palestine Solidarity Campaign (IPSC) is making this submission in order to ensure that Palestinian rights are not overlooked in the Plan, and that businesses operating out of Ireland are cognisant of and respect those rights. As a solidarity organisation that advocates a meaningful and just solution for all the people of the Palestine-Israel region, and as one based in Ireland, it is of the utmost importance to us that the Irish government takes concrete measures to ensure that international law, including international human rights law, is upheld with regard to Palestine and the Palestinian people.

For the purposes of providing a concrete example, we have in some instances highlighted our past experiences in trying to ensure that Irish multinational CRH conform to international guidelines on best practice for business and human rights.

The Irish company CRH plc (formerly Cement Roadstone Holdings) owns a 25% stake in the Mashav group in Israel. Mashav is the holding company for Nesher Cement, which, according to its website, is the sole producer of cement in Israel. Nesher is involved in the building of the separation wall in the West Bank which, in effect, annexes Palestinian land to Israel, and has been declared illegal by the International Court of Justice. Such action supports and sustains the illegal Israeli occupation of Palestinian land. Nesher Cement is used in the construction of illegal settlements in the occupied territories, checkpoints that impede travel and commerce for Palestinians, and more than 700 kilometres of Israeli-only roads in the West Bank (See the [Who Profits website for details of Nesher's involvement](#)).

The implication of an Irish company in the systematic breach of the Fourth Geneva Convention, the UN Declaration of Human Rights, the Advisory Opinion of the International Court of Justice and numerous UN Security Council resolutions should be a matter of grave concern to the Irish government, as it raises serious questions about the values and priorities it promotes through its foreign policy and trade activities, particularly in the light of the development of a National Plan on Business and Human Rights.

It is worth bearing in mind the position taken by the International Court of Justice regarding the obligations states have in their dealings with Israel:

*"As regards the legal consequences for States other than Israel, it was contended before the Court that all States are under an obligation not to recognize the illegal situation arising from the construction of the wall, not to render aid or assistance in maintaining that situation and to co-operate with a view to putting an end to the alleged violations and to ensuring that reparation will be made thereafter."*

## **2. The Current Situation**

The current situation in Israel/Palestine is increasingly worrying from a human rights perspective, with the prospect of a real and meaningful peace becoming ever distant. This is due in large part to the international community failing to sanction Israel for its breaches of international law and human rights violations. While Ireland positions itself as an honest-broker regarding this issue, until it makes serious efforts to ensure that business which profits from occupation and illegality is not conducted by companies based here, such claims lack credibility.

At the time of writing, illegal settlement expansion continues apace, the number of Palestinians in Israeli prisons, among them children, continues to grow and life under occupation is increasingly difficult for Palestinians. Gaza is facing a full-blown humanitarian disaster following last summer's attack on the besieged Strip, when over 2,200 Palestinians, including more than 540 children were killed, thousands maimed and hundreds of thousands made homeless. Indeed, this month Minister Flanagan, during a visit to Gaza, said: "The sheer scale of the destruction and the devastating humanitarian impact on a largely refugee population is truly shocking." [1]

Writing about the situation in Gaza last week, Chris Gunness, director of advocacy and strategic communications for The United Nations Relief and Works Agency stated:

"The situation teeters on the brink of another major crisis, with worrying implications for Palestinians and Israelis. Funding for humanitarian operations is urgently needed, but such assistance will only mitigate the worst impacts of the crisis." [2]

It has long been the view of the IPSC that statements of condemnation and aid money alone are ineffective remedies for the problems faced by Palestinians living under Israel's decades-long military occupation. We believe that Israel's continued belligerence and violations of human rights norms and international law over since the outbreak of the second *Intifada* (in 2000) alone years illustrate this quite clearly.

Thus, it is our contention that if the Minister and the Irish government wish to be consistent in their words and actions, decisive steps need to be taken in order to ensure that Israel abides by the same international legal and human rights norms that are expected of any state that is as diplomatically and economically connected to the international community as Israel is.

## **3. Ireland's National Plan on Business and Human Rights**

It is incumbent on the government to do all in its power when drawing up the National Plan on Business and Human Rights to ensure that it takes into account the real, human impact of companies conducting business with Israeli companies complicit in the settlements, the apartheid wall, and the security/military industry.

The [UN Guiding Principles](#) on Business and Human Rights state that governments have the duty to protect human rights, companies have a responsibility to respect rights, and both governments and companies must work to provide a remedy when violations occur.[3] This is known as the “Protect, Respect, and Remedy” framework. Ireland is a member of the Human Rights Council for the 2013-2015 term and as such, should try to fulfil such duties both for and after the term.

#### **4. International Norms on Corporate Responsibility**

There are two ‘soft law’ instruments regarding business and human rights which Ireland, as a member of the UN and the OECD, is obliged to implement and promote. These are the UN Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (2011) and the OECD Guidelines for Multinational Enterprises (updated 2011). [4]

The IPSC welcomes the commitment made by the government to develop a National Action Plan to implement the UN Guiding Principles and is encouraging the state to take a proactive approach to the promotion of the OECD Guidelines for Multinational Enterprises. By Implementing the UN Guiding Principles the state can ensure that companies are demonstrating respect for human rights throughout their operations, including conflict areas such as the Occupied Palestinian Territories/State of Palestine.

#### **4. The UN Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**

The UN Guiding Principles on Business and Human Rights were developed by the Special Representative of the Secretary-General, John Ruggie, on the issue of human rights and transnational corporations and other business enterprises. In Ruggie’s initial report in 2008 he identified three key principles; ‘Protect, Respect and Remedy,’ which outlined the duties and responsibilities which must be addressed in order to maintain and ensure compliance with national and international laws.

The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011. The first of these principles is the **State’s duty to protect Human Rights**. This highlights that states have a primary role to play in preventing and addressing corporate-related human rights abuses not only within its borders but, as stated in Guiding Principle 2, “states should set out clearly the expectation that all business enterprises domiciled in their territory... respect human rights throughout their operations” .

In order for a state to meet fulfil this duty it is required to take appropriate steps to prevent abuse abroad by business enterprises domiciled in their jurisdiction. This can only happen if the state enforces laws requiring business enterprises to respect human rights and provide effective guidance on how to respect them and address adverse human rights impacts by the application of the OECD Guidelines. States should encourage human rights due diligence as a way of assessing the risks to human rights by business operations.

In conflict affected areas such as the Occupied Palestinian Territories/State of Palestine, where gross human rights abuses are occurring daily, the Irish state has a particular duty to ensure that any business based in this jurisdiction is not contributing to such abuses. Guiding principle 7 states that State should engage “at the earliest opportunity to identify, prevent and mitigate the human rights related risks of their activities and business relationship’ and also deny” access to public support and services for a business involved with gross human rights abuses.’

While the Irish government’s advising against Irish business involvement in financial and economic activities in illegal Israeli settlements in the Occupied Palestinian Territories is welcome, it must now move beyond passive advice and actively investigate companies that may be engaged in activities with negative human rights impacts.

Indeed, the Ireland-Palestine Solidarity Campaign (IPSC) and others have brought the activities of a subsidiary of the Ireland-based materials company CRH to the attention of the government on many occasions yet the state has failed to investigate our claims of the company’s complicity with Israel’s violations of International Humanitarian Laws and Human Rights Laws. [5]

The second part of the Guiding Principles emphasises the **corporate duty to respect human rights**, and the fact that this duty “exists independently of States” abilities and/or willingness to fulfil their own human rights obligations. Although it is addressed largely to enterprises themselves, the State clearly has a role to play in encouraging, incentivising or requiring best practice by companies in demonstrating their respect for human rights. This refers again to the importance of due diligence.

In order to discharge this responsibility the company must engage in due diligence to “prevent and address adverse human rights impacts”. Due diligence consists of positive action by the company to ensure that their business conduct does not contribute to human rights abuses. Companies should assess the risk of human rights abuses in countries where they operate on an individual basis and tailor their policies accordingly.

The IPSC have continually called on CRH to carry out due diligence but these calls have fallen on deaf ears. By implementing the UN Guiding Principle 17 in relation to due diligence the Irish state can ensure that CRH will properly assess the “actual and potential human rights impacts” of their operations and take the “necessary steps to cease or prevent its contribution to those human rights abuses”.

CRH claim that their 25% share in the Israeli holding company Mashav makes them a minority shareholder in Neshar, Israel’s sole cement manufacturer which Mashav owns outright. The implication is thus that CRH do not have a say in the operations of the company. This is patently not the case as a quarter stake is a large shareholding. Furthermore, if this were the indeed case, Guiding principle 17 advises that where “a business enterprise lacks the leverage to prevent or mitigate the adverse impact it should consider ending its relationship”. This brings us back to the State and its duty to Protect should the business continue to engage in human rights abuses.

Where Irish companies are found to be complicit, Ireland should review how best to ensure remedy for potential victims overseas of human rights abuses by Irish companies, ensuring that victims of human rights violations are not faced with undue barriers to justice, including legal, procedural or financial obstacles.

The Irish government has made a welcome commitment to develop a National Action Plan to implement the UN Guiding Principles. It must do so robustly.

## **5. Promoting the OECD Guidelines for Multinational Enterprises as part of the National Plan for the Implementation of the UN Guiding Principles**

The OECD Guidelines cover all major areas of business ethics. The Guidelines are recommendations by governments covering all major areas of business ethics, including corporate steps to obey the law, observe internationally-recognised standards and respond to other societal expectations. Their recommendations are set out in 11 chapters and cover topics such as information disclosure, human rights, employment and labour, environment, anti-corruption, and consumer interests. Multinational businesses operating from Ireland are expected to fulfil the recommendations of the guidelines. As a member of the OECD, Ireland has a responsibility to implement the OECD Guidelines for Multinational Enterprises.

The Guidelines provide voluntary principles and standards for responsible business conduct consistent with applicable laws and internationally recognised standards. However, the countries adhering to the Guidelines make a binding commitment to implement them in accordance with the Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises.

Unfortunately, these guidelines are relatively unknown in Ireland and their promotion by the state appears to be virtually non-existent. Significant progress could be made to strengthen the guidelines if Ireland were to take a proactive approach to promoting the effective observance of the Guidelines. The state could help enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors, or industries.

The OECD Guidelines are the only international corporate responsibility instrument with a built-in grievance mechanism. They include a full chapter on human rights referencing the UN Guiding Principles. Within the OECD Guidelines is a mechanism whereby a complaint against a multinational enterprise can be referred to the country's National Contact Point for mediation. The NCP is the key person tasked with the promotion of the guidelines; carrying out investigations where companies may be considered non-observant and providing a mediation and conciliation platform for resolving issues.

In Ireland the NCP operates from the Bilateral Trade Promotion Unit within the Department of Jobs, Enterprise and Innovation. Their primary job is working for the promotion of Irish business abroad. Their task as NCP is very secondary and is evidently under-resourced and given little importance or priority.

Being located within the Trade Department raises a significant risk of a conflict of interest arising when dealing with complaints being made against businesses, especially businesses with which the Department may have developed relationships.

A concrete example of how these deficiencies impact on ineffectiveness of the position of NCP as currently set up is outlined below.

In May 2011 the IPSC followed the procedures in the guidelines to raise “a specific instance” concerning the failure by the Ireland based material’s company, CRH plc, to observe the OECD Guidelines. This complaint referred specifically to its subsidiary’s activities in Israel-Palestine and how it impacted on the human rights of the Palestinian people.

The IPSC requested the NCP to investigate whether CRH was complying with the OECD Guidelines for Multinational Enterprises with respect to Palestinian human rights; to investigate what due diligence measures has CRH undertaken in order to ensure the company adheres to the OECD Guidelines and to the discharge of its corporate responsibility to comply with national and international law to ensure it does not contribute to human rights abuses in countries where it operates; and to require CRH plc to commit itself to comply scrupulously with the OECD Guidelines and with International Human Rights Laws referred to in the Guidelines.

The guidelines state that the NCP “should strive to conclude the procedure within 12 months from receipt of the specific instance”. However, four years later there has been no clarity on the status of the complaint or an indicative timeframe for mediation. This suggests that that there is either an inability or unwillingness, or both, by the NCP to operate in accordance with the guidelines. During this 4 year period the IPSC persisted with their demand that the complaint be investigated yet the complaint remains “blocked”, according to the [OECD Watch Quarterly Report of December 2014](#).

As part of the National Action Plan for the promotion of the UN Guiding Principles, the IPSC are calling on the DFAT to take a proactive approach to the promotion of the OECD Guidelines for Multinational Enterprises by raising awareness of the OECD NCP as a potential grievance mechanism. In doing this it is imperative to strengthen the role of the NCP by the creation of an independent position for the NCP outside of the Department of Jobs, Enterprise and Innovation and to provide the NCP with sufficient resources to enable them to carry out their function effectively; and to provide the NCP with the investigative powers and authority to ensure that Multinational businesses adhere to the OECD Guidelines and to the UN Guiding Principles.

The active promotion of these guidelines will ensure that they are implemented by the state and observed by the Multinational Enterprises. By Implementing the UN Guiding Principles, the state can ensure that companies such as CRH are demonstrating respect for human rights throughout their operations, including conflict areas such as the Occupied Palestinian Territories/State of Palestine.

## **6. Investigate CRH plc as a first step in implementing the UN Guidelines**

It is the opinion of the IPSC and others that CRH have failed and neglected to comply with the UN Guiding Principles and the OECD guidelines. They are guilty of failure to implement business practices which respect international law in accordance with the due diligence process. CRH have been put on full notice of their complicity with these human rights abuses. They have full knowledge of the nature of these abuses and have failed to take positive action to prevent complicity. CRH have failed, and continue fail, in their corporate responsibility to protect against human rights abuses in their business dealings. Their action and inaction makes a direct contribution to the perpetration of human rights abuses against the Palestinian people.

## **7. There can be no 'business as usual' with the illegal settlements**

During the period since the signing of the Oslo Accords, Israel's illegal settlement activity in the West Bank has been virtually unrelenting; since 1993, 53,000 settler homes have been constructed in the occupied West Bank. The year 2013 saw a sharp increase in settlement activity, with the rate of construction in the first half of that year jumping 70 percent from 2012. Israeli settlement construction increased by 40 percent during 2014. At present, the number of illegal Israeli settlers stands at around 500,000 in over 121 illegal settlements dotted across the West Bank and in East Jerusalem.

Regarding the settlement issue, EU High Commissioner Catherine Ashton said:

“The EU has repeatedly stated that settlements are illegal under international law and that bold and decisive leadership is needed for the current peace negotiations to succeed. The EU deplores the latest settlement announcement and calls on the Israeli government to reverse its decision. Any actions that could hamper or undermine the on-going negotiations must be avoided.” [6]

## **8. Steps Ireland can take regarding trade with illegal settlements**

The state should introduce a ban on trade with companies operating in Israeli settlements. As long as the economic viability of the settlements is being sustained by Israel's European trading partners, there is no real reason for Israel to take statements of condemnation of its settlement activity seriously. As the then *Tánaiste*, Eamon Gilmore, rightly pointed out in May 2013, given that all of the settlements in the West Bank are illegal under international law, it follows that conducting business in these settlements is also illegal. The DFAT states: “The Government accordingly wishes to offer advice to both the general public and, in particular, Irish companies and businesses of the risks related to economic and financial activities in the settlements and to make clear that we do not encourage or offer support in any way to such activity.” [7]

However, these guidelines are merely advisory and, so long as there is no penalty for doing so, can be ignored by companies. Ireland is therefore legally bound to ensure that that all economic support to the

settlements comes to a halt, as such support is tantamount to the facilitation of grave breaches of the Fourth Geneva Convention.

Both the Tánaiste and the Joint Oireachtas Committee on Foreign Affairs and Trade have indicated that this is Ireland's position regarding settlements, indeed the [DFAT states](#):

“Ireland and its EU Partners have a clear position on Israeli settlements. The West Bank, including East Jerusalem, Gaza and the Golan Heights are territories which have been occupied by Israel since 1967. Israeli settlements are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution to the Israeli-Palestinian conflict impossible. The EU and its Member States will not recognise any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties.”

Furthermore, Ireland should also prohibit trade with companies complicit in the settlement enterprise, i.e. Israeli companies that source any goods in settlements, or companies complicit in the construction, or physical or economic maintenance of these settlements, thereby giving both material and ideological legitimacy to these illegal projects.

The time to act on this is now. At a time when the issue of settlements is receiving unprecedented attention and scrutiny internationally, Ireland should take the lead in calling for international law to be upheld by creating strict rules regarding the prohibition business with illegal settlements and insisting that “companies must work to provide a remedy when violations occur,” as per the UN guidelines.

Similarly, to comply with the UN Guiding Principles on Business and Human Rights which state that “governments have the duty to protect human rights, companies have a responsibility to respect rights”, the Irish government should implement a national ban on settlement produce and to push for an EU wide ban to be adopted.

Failing such moves, or in the interim leading up to it, Ireland should at the very least ensure that all produce stocked by retailers that originates from the settlements is clearly marked as such, so that Irish consumers can make the informed decision not to support violations of Palestinian human rights. A unilateral move such as this would set a precedent and could pave the way for other states to introduce similar measures.

## **9. Ensuring that multinational companies operating in Ireland have no involvement in Israel's illegal occupation, or in its violations of international law and Palestinian human rights.**

The promotion of human rights and trade are two fundamental stated elements of Ireland's foreign policy. While both goals can often be pursued without contradiction, the presence in Ireland of certain companies with highly dubious track records in the Occupied Palestinian Territories/State of Palestine would seem to indicate a prioritisation by the Irish Government of trade and Foreign Direct Investment

over human rights. Below we outline some of the steps the Irish Government could take in relation to such companies in order to ensure that its commitment to human rights is upheld unequivocally.

## **10. Upholding international law: Boycott, Divestment and Sanctions**

We are currently witnessing a slow but steady shift in approach to the issue of Israel and Palestine. This change reflects a gradual recognition of some fundamental elements of the conflict that have gone unnoticed or ignored by the Western world for many years, namely the power imbalance between the two sides—an imbalance that was institutionalised in the Oslo Accords— and the unviability of any resolution that retains this vast disparity. Some states and certain private entities are finally beginning to take account of this and act upon the dictates of international law, by making their dealings with Israel contingent upon it fulfilling its legal responsibilities as the occupying power.

There are several recent diverse examples of this trend. In February 2014, Luxembourg's state pension fund FDC excluded nine major Israeli banks and firms and one US company because of their involvement in Israeli settlements and human rights violations in the occupied Palestinian territories. Meanwhile, Denmark's largest bank, Dankse Bank, blacklisted Israel's Bank Hapoalim over its involvement with financing settlement construction. [8]

In September 2014, authorities in Kuwait announced they were excluding French multinational Veolia from \$750m contract following campaigning by Kuwaiti groups and the Palestinian Boycott, Divestment and Sanctions National Committee (BNC). That month Veolia, which has lost billions of dollars of contracts as a result of campaigns over its construction of infrastructure for illegal Israeli settlements, stated that it intends to “step back from Israel as a market place” and sell most parts of its Israeli interests during 2015. [9]

In November 2014, More than 300 political parties, trade unions and campaign groups called for the suspension of a the EU-Israel Association agreement that facilitates largely unrestricted trade between the EU and Israel and allows Israel to participate in a wide range of the Union's programs. Signatories to the call included the Irish Congress of Trade Unions and other major national trade union bodies from Spain, Denmark, France and Belgium. [10]

Such examples provide a template for the Irish government to ensure that under the National Plan on Business and Human Rights it can draw up solid guidelines, rooted in respect for international law and human rights protection, which will position the state as a leader in this crucial area and ensure that companies operating out of the country are not complicit in human rights abuses.

## **11. Why Israel?**

While one often hears the argument from defenders of Israel's occupation that Israel is being “singled out” for criticism and calls for effective remedial action; this is simply not the case. Many countries have

faced and continue to face EU and UN sanctions and embargoes, among them China, Russia, Iran, Syria, Zimbabwe, Sudan, Yemen, Belarus, Myanmar and North Korea, to name a few. China is subject to a US and EU arms embargo, as is Zimbabwe, as well as being subject to an international loans embargo. In this light, the only manner in which Israel is being 'singled out' is through its unique ability to persistently violate international norms with utter impunity. Israel is in violation of more UN Security Council Resolutions requiring action by it and it alone than any other nation, and yet has faced no sanction for such brazen contempt for the international community. Rather, it has been consistently rewarded economically.

Thus by making the demands set out in this document, the Ireland-Palestine Solidarity Campaign is merely insisting that the same standards are brought to bear on Israel as are on all other states that commit human rights violations and breaches of international law. It is, in our view, this impunity that explains the fact that the Palestine-Israel issue has remained unresolved for so long.

## **12. Conclusion**

As the situation the Palestinian people face becomes increasingly desperate, Ireland should take a decisive leadership role by promoting the universal values of human rights and the rule of law in relation to Israel/Palestine. The time is long overdue for governments to support the work that has been done by grassroots civil society organisations and ordinary conscientious citizens, by insisting that Israel be held to the standards set by international law and that businesses also comply with and respect human rights law. It has so far been up to civil society organisations to act upon and enforce the statements of politicians and EU and UN officials.

In taking the concrete steps set out in this document, the Irish government could help break this trend and build upon the international reputation it earned through the experience of the peace process in the north of Ireland, leading toward a just and lasting settlement to the Middle Eastern conflict and ensuring that businesses are both cognisant of and compliant with international human rights law.

If Palestinians are to experience the freedom and equality they desire and deserve, then we, citizens and states, must do all in our power to aid them, for there can be no true peace without justice.



## **About the Ireland-Palestine Solidarity Campaign**

The Ireland-Palestine Solidarity Campaign (IPSC) is the largest and longest established organisation working for Palestinian rights on this island. We formed in 2001 as a democratic, broad-based and multi-faceted campaign to support the human, civil, political and national rights of the Palestinian people in the Occupied Territories, in Israel and in the Palestinian Diaspora. In partnership with Palestinians now living in Ireland the IPSC was formed to provide a voice for Palestine in Ireland. We are proud to stand in solidarity with the Palestinian people and have been to the forefront in promoting the Boycott, Divestment and Sanctions (BDS) campaign against Israel since the Palestinian call was issued ten years ago.

The IPSC is a volunteer-based coalition of individuals, human rights and political activists, academics, journalists and trade unionists all committed to a just peace in the Middle East. We are independent of all Irish and Palestinian political parties and groups.

The IPSC campaigns for freedom, justice and equality for the Palestinian people and for an end to Israel's racist and colonialist apartheid system. We do this through raising public awareness about the human rights abuses in the occupied territories, the violations of international law and the historical causes of the injustices to the Palestinians that lie at the heart of the Palestine-Israel issue.

The IPSC lobbies the Irish government and politicians at local, national and international level and the EU, campaigns on the streets and urges for a vigorous Boycott, Divestment and Sanctions campaign similar to the one that played a part in ending Apartheid in South Africa. The IPSC also holds public talks with Israeli and Palestinian speakers and various cultural and fundraising events.

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