

# Options for Promoting Human Rights Compliance by the International Association of Prosecutors

## *Policy Brief*

While governments have the primary duty to protect and promote human rights, human rights have become increasingly important to many sectors worldwide. This led (legal) professional bodies to incorporate the principle that their members are required to respect human rights<sup>1</sup>.

The International Association of Prosecutors (IAP) is the only global organization of prosecutors, spanning 172 institutional members and 2600 individual members, which represent more than 170 countries<sup>2</sup>. Taking into account the various legal traditions and criminal justice systems of IAP members, there can be divergence in how members respond to human rights issues interfacing with their work. Domestic law may not adequately protect all human rights or may not be enforced in some countries. In addition to that, reports of international human rights groups raise concerns about failures of prosecution services and individual prosecutors in many countries to live up to meet professional ethical standards and human rights obligations, in particular guaranteeing everyone's right to a fair trial.

As the originator of the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, the IAP is uniquely placed to take a leadership role in raising awareness about the relevance of international human rights law to prosecutors, and encouraging them to comply with their professional responsibility obligations to respect human rights. Currently, however, no institutionalized human rights mechanism exists with the IAP to promote compliance with professional integrity standards or hold its members to account for human rights abuses.

This policy briefing presents a set of possible measures to be taken by the IAP to step up its professional integrity policies and implementing human rights into practice<sup>3</sup>. These measures may pose some challenges for the IAP but they also come with significant benefits, including protecting the organization from damaging reputational impact due to potential allegations of "bluewashing" or even complicity in the human rights abuse committed by its members.

### **Recommendation 1: Monitoring and complaint mechanisms**

The IAP should encourage its (existing and new) members to adopt appropriate human rights policies by establishing an adequate monitoring and complaint mechanism within its

---

<sup>1</sup> This includes, for instance, the new periodic review of the International Association of Judges (IAJ) that monitors the compliance of its members with its Universal Charter of the Judge (IAJ, <<http://www.iaj-uim.org/>> accessed on 4 September 2016.). In recent years, the (non-binding) UN Guiding Principles on Business and Human Rights (UNGPs), for example, have also enjoyed a global-wide uptake. The finance sector, such as the International Finance Corporation (IFC), which has amended its performance standards, and the Equator Principles, a minimum standard for due diligence adopted by financial institutions for assessing environmental and social risk in their projects, were updated to support the UNGPs. Similarly, legal representative bodies, such as the International Bar Association (IBA), the CCBE and national bar associations, have set up working groups and other initiatives to remind their members, who advice multinational business clients, of their professional responsibility to respect human rights. Specifically, they emphasize to avoid contributing to abuse and use its leverage with their clients to mitigate human rights violations in their supply chains to the greatest extent possible (For instance, see OECD, *Guidelines for Multinational Enterprises* (OECD Publishing: 2011) <<http://www.oecd.org/daf/>> accessed 4 September 2016).

<sup>2</sup> IAP, <<http://www.iap-association.org/Membership/Opening-Remarks>> accessed on 4 September 2016.

<sup>3</sup> The below recommendations are meant to inform the decision-making processes with the IAP. The recommendations are not exhaustive and do not attempt to define every means by which the IAP may wish to design a human rights policy.

organization. In particular, the IAP may consider setting up an independent oversight body that addresses pressing human rights problems within its organization. This may include, for example, to periodically monitor the human rights compliance of IAP members, develop and design policies and strategies on how such a human rights abuse may be handled.

Such a monitoring or audit procedure may include internationally recognized human rights standards as a reference point and pay particular attention to the systematic persecution of human rights defenders and other serious human rights violations. Assessment of each IAP member in an independent manner is advisable. Producing country reports may help to explore practices, challenges and opportunities of IAP members that could be based on, for example, questionnaires, fact-finding country visits, and annual reports submitted by IAP members. Additionally, the IAP may wish to encourage its members to take active steps to develop and enact their own human rights policies, responding to pressing human rights concerns of national context. In this context, it might be useful to ask members to submit an annual report to the IAP, disclosing whether, for instance, appropriate actions to identify and address human rights problems were taken.

The IAP should consider to establish a complaint mechanism that might be, depending on the admissibility and merits of the complaint, accessible for individuals and groups, including members of the public, who are affected by the actions of individual IAP members, as well as human rights groups and civil society organizations. To achieve an efficient working complaint system and avoid lengthy procedures, it might be useful to assess whether a complaint gives a factual description of the alleged human rights abuse, is submitted by a person or a group of individuals who claims to be victim of actions of an individual IAP member and if domestic remedies have been exhausted.

To ensure that its human rights policy is accountable and clearly focused, it might be useful to delegate the human rights policy of the IAP to an appointed committee, sub-committee or working group of IAP members with a special interest in human rights law. To ensure that the selected candidates themselves are not involved or linked to human rights abuse, the IAP may also consider carrying out background checks of the selected candidates. Depending on means and capacity, the IAP may wish to support the new human rights body with the assignment of appropriate staff and budget.

Moreover, it is recommended to open up channels of communication and information-sharing with civil society organizations to strengthen dialogue between the IAP and the international community, including the possibility of reporting for coalitions of civils society organizations during the IAP annual conferences.

Additionally, the IAP may wish to consider an "urgent appeal" procedure in situations in which the physical and/or mental integrity of an individual is concerned (such as the risk of torture at the hands of an IAP member) and where IAP members may play a role in preventing grave human rights violations. In that case, the IAP Executive Committee may consider contacting the responsible IAP member and its oversight bodies. In this context, the IAP may wish to welcome information from different communities, including but not limited to civil society organizations and individual human rights defenders.

To ensure that an effective human rights policy is in place, the IAP may think about taking action in the case members fail to take the necessary steps to prevent or mitigate a human rights abuse. Depending on the severity of the violation, responses of the IAP may range, for instance, from raising the abuse with the member concerned, providing advice on how to mitigate the abuse to the suspension of their membership unless they prove that appropriate actions were taken to cease contributing to the abuse and that they would act differently in the future ("on-hold membership"). Additionally, it might be appropriate to check a member's

compliance with human rights standards at the stage of its accreditation to avoid the risk of being linked to human rights abuse and to set the “right” tone for the future relationship between the IAP and the potential member. This may include, for instance, evaluating the severity of human rights abuse committed by the applicant, making recommendations on how to address the violation and the right to re-apply for membership.

### **Recommendation 2: Education program**

It seems that knowledge of human rights standards is not widespread among prosecutors and that they lack ongoing and broader training in this respect. For instance, there are countries in which prosecutors systematically violate the rights of human rights defenders, journalists and (other) dissidents. The IAP may therefore think, in line with its Human Rights Manual for Prosecutors<sup>4</sup>, about introducing an (invigorated) educational program. Generally, education and training are key to equip members with the relevant skills<sup>5</sup>. In that case, IAP members would be more likely to identify wrongdoings and make appropriate decisions associated with their day-to-day work.

The IAP may therefore consider incorporating initiatives that make members more familiar with their professional responsibility to respect human rights. This could include organizing a series of free workshops with human rights expert teams, seminars and conferences on the relevance of human rights and their applicability to prosecutors, distributing relevant information to members (in the form of weekly or monthly updates and newsletters), and providing a comprehensive and relevant guide, such as in the form of a revised edition of the IAP’s Human Rights Manual for Prosecutors. This guidance may include, for instance, the provision of a handbook on international and regional human rights mechanisms, a case studies series that provides more detail about efforts to implement human rights, the way in which international human rights law should be adopted into national law, in which situations prosecutors are at risk of causing or contributing to gross human rights violations, and sharing examples of good practice. For instance, an online human rights learning tool and webinars, in which experts would present and lead discussions on furthering human rights, could facilitate this process. The IAP may also wish using its online communications tools, such as its website, Twitter and key publications, to disseminate its materials.

### **Recommendation 3: Code of ethics**

It might also be useful to develop a separate code of ethics, a practical framework consisting of a set of succinct and accessible principles for members to avoid becoming complicit in human rights abuse. The purpose of such a framework would be to align IAP members with universally accepted human rights standards, and supporting them to find practical solutions when they are confronted with human rights abuse. It could assist prosecutors in understanding the core content of human rights law and guide them on how to comply with these standards in their day-to-day work. For instance, such a code may describe situations in which prosecutors are at risk of causing or contributing to human rights violations, how to adopt human rights standards when national law is absent, weak, unenforced and in tensions with them, and under which circumstances prosecutors may consider to withdraw their representation of a case.

*This policy brief is produced in the framework of the Initiative "Increasing Accountability and Respect for Human Rights by Judicial Authorities" by the Netherlands Helsinki Committee (NHC) and the Helsinki Foundation for Human Rights (HFHR). © NHC, HFHR, 2016.*

---

<sup>4</sup> Myjer, E., Hancock, B., and Cowdery, N. (eds), *International Association for Prosecutors: Human Rights Manual for Prosecutors*, 2<sup>nd</sup> ed., Wolf Legal Publishers 2009.

<sup>5</sup> These measures cannot, however, substitute adequate compliance oversight to safeguard observance of human rights.