

Submission on the Working Outline of Ireland's National Action Plan on Business and Human Rights

Hannah Grene, independent human rights and development consultant

The Working Outline of Ireland's National Action Plan on Business and Human Rights addresses a huge range of issues pertaining to business and human rights, and lays out a comprehensive framework for implementing and monitoring the National Action Plan.

Particularly welcome are the commitment to undertake a baseline assessment, specific actions to combat bribery of foreign officials, the provision that embassy staff should offer advice on human rights to Irish businesses, the detailed outline of a practical toolkit to be created for business and commitment to further explore both human rights due diligence and provision of grievance mechanisms.

It is understandable that, as Ireland's first effort to comprehensively tackle the business and human rights agenda, many of these actions are exploratory in nature. However, there is scope to be more specific and ambitious in several of the Action Points. A number of suggestions to achieve this are listed below.

Action Point 8: The commissioning of a baseline assessment of the legal and regulatory framework is greatly to be welcomed, but the follow up could be strengthened by tasking the Business and Human Rights Implementation Group with examining and addressing any gaps emerging.

Action Point 14: This point gives no information as to how the EU Directive on non-financial reporting will be transposed. If it is interpreted in its narrowest form, it will only apply to a handful of Irish companies. Clare Methven O'Brien of the Danish Institute of Human Rights [describes](#) a similar situation faced in Denmark, and outlines how the Danish Parliament, 'preferring to take the high road' adopted a framework of graduated application of the rules to a larger group of companies, including state-owned companies.

Action Point 15: It is very welcome that the National Action Plan opens the discussion on human rights due diligence, including several action points on this topic. However, this Action Point in particular could be strengthened, by committing to ensuring that State owned and controlled companies carry out human rights due diligence appropriate to their activities and operating context, and subject to guidance developed by the Business and Human Rights Implementation Group.

Action Point 20: The draft Regulation mentioned in this Action Point is much weaker than originally proposed, relying on voluntary and not mandatory approaches. Ireland could play a key role within the Council in advocating for a stronger provision. Likewise, in **Action Point 25**, Ireland could commit to advocating for stronger human rights provisions within free trade agreements, given Ireland's international reputation as a protector of human rights.

Action Point 24: As with the EU Directive on non-financial reporting, there are measures which Ireland can take in transposing the Directive on Public Procurement to strengthen it, including by ensuring that regulatory measures are available for the enforcement of Article 18(2), which is aimed at ensuring compliance of suppliers with environmental, social and labour law.

Action Point 38: It is very welcome that advice should be provided to business enterprises of the risks to human rights of operating in conflict affected areas, but it is unclear here who will provide this advice, and how it will be triggered. As discussed below, employees of Irish companies can currently benefit from a tax incentive to operate in at least one severely conflict affected country, the Democratic Republic of Congo, without any reference to human rights due diligence.

Action Point 52: As the OECD National Contact Point for Multinational Enterprises is one of the few grievance mechanisms available to victims on an extraterritorial basis, the National Action Plan should certainly take the opportunity to examine its functioning more closely. The priority should be to examine the structure of the NCP, which is currently housed within the Bilateral Trade Unit in the Department of Enterprise, Trade and Employment, where it has neither the human resources nor the independence to fulfil its role properly.

While the National Action Plan is commendably comprehensive, it is silent on **tax and human rights**, as others have pointed out. As Philip Alston, Special Rapporteur on extreme poverty and human rights, [has pointed out](#), the problem lies not so much in Ireland's low corporate tax rate, but in the wide range of other incentives and schemes which Ireland offers to corporations, without consideration of human rights issues. To take one example, **the Foreign Earnings Deduction** incentivises employees of Irish companies to work in emerging markets such as the BRICS, and a number of other African countries, including the Democratic Republic of Congo. To incentivise trade with a conflict-affected country such as the DRC without any consideration of human rights implications seems contrary to the principles outlined at length in the National Action Plan. The National Action Plan should therefore commit to ensuring Ireland's tax measures do not impact on the human rights of others, and specifically, that any company whose employees are availing of the Foreign Earnings Deduction in the DRC or any other conflict affected country should be obliged to undertake human rights due diligence.

Finally, gratitude is due to the Department of Foreign Affairs for organising an extensive consultation process, and for putting in place a strong framework of monitoring and implementation measures, which should ensure that the National Action Plan is just the first step in a process of transforming Ireland into a leader in the area of business and human rights.

Hannah Grene

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hannah@barncat.ie