

Business and Human Rights Implementation Group

Minutes of Second Meeting

Wednesday, 3 April 2019 at 11am

Ballroom, Iveagh House

1. Welcome by Chair

Ms Breege O'Donoghue, Chair of the Implementation Group, welcomed the Implementation Group (see Appendix V) and gave the members of the group the opportunity to comment on the minutes of the previous meeting. The minutes were adopted.

In response to a matter arising **Ms Martina Feeney, Department of Foreign Affairs and Trade (DFAT)**, noted that the Department will set up a dedicated mailbox for the group and continue to explore the possibility of using other IT tools and services to support its work.

2. General discussion on the baseline study

Ms O'Donoghue handed over to **Ms Feeney** to brief the members on the progress made in relation to the baseline study, before opening the floor for comments on the content of the study.

Ms Feeney thanked the members of the group for their submissions on the baseline study and noted that the study has now been finalised and published on the DFAT website. She added that the final draft takes on board observations from members of the group where they relate to factual inaccuracies and errors. However, statements of opinion and arguments relating to the interpretation of the legislative framework in Ireland could not be accommodated.

Ms Fiona Crowley, Amnesty International, noted that the study has assigned an incorrect date to Amnesty's written submission on the National Plan; the submission was made in March 2015, not 2014.

Mr Simon McKeever, Irish Exporters Association, took the view that a toolkit on human rights due diligence for business enterprises should be a priority for the group.

Dr Sheila Cannon, Trinity College Dublin, suggested that the group consider linking impact investment work being done by investors at the moment with the assessment of human rights impact. She added that voluntary reporting by business enterprises on human rights impact is not sufficiently robust. Mandatory reporting would also not be

sufficient in itself and thought would have to be put into the process. Recommendations to “encourage” business enterprises to respect human rights are not strong enough.

Dr Vittorio Bufacchi, University College Cork, observed that the word “encourage” appears a number of times in the National Plan and echoed **Dr Cannon’s** remark that encouraging business enterprises does not go far enough.

Ms Niamh Garvey, Trócaire, welcomed the study’s recommendation in relation to mandatory human rights due diligence and referred to developments in other jurisdictions, such as Germany and the Netherlands, which are moving in the direction of mandatory, as opposed to voluntary, models of due diligence. She asked about the connection between the recommendations in the baseline study and the work plan of the group.

Dr Shane Darcy, National University of Ireland, Galway, highlighted the importance of promoting the baseline study and the National Plan effectively to raise public awareness about business and human rights. He welcomed the recommendations in the study and in particular the introduction of mandatory human rights due diligence, which should be seen as a priority. He asked whether the action points in the National Plan may need to be revisited in light of the recommendations in the study.

Mr David Joyce, Irish Congress of Trade Unions, remarked that a number of other countries are developing regimes of mandatory human rights due diligence. He also drew attention to the study’s recommendation in relation to the National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, suggesting that the Irish NCP could seek to be reviewed as part of the OECD NCP Peer Review process. He added that while the baseline study discussed workplace rights, it was rather disappointing that the recommendations only referenced the rights of migrant workers.

Ms Emma Kerins, Chambers Ireland, welcomed the study’s recommendation to match due diligence with the size of corporations, as SMEs have different needs and require attention.

Dr Kara McGann, IBEC, agreed that attention and extra care should be given to SMEs.

Dr Darcy also agreed that proportionality is needed, and that such nuance is reflected in the baseline study, which also recommends that the existing 2017 Regulations on non-financial reporting could be a good starting point for developing mandatory human rights diligence.

Mr Éanna Ó Conghaile, Department of Communications, Climate Action and Environment, informed the group that from January 2021, Ireland will be complying with the EU Directive on mandatory due diligence in relation to conflict minerals. He added that if this were in force today, a dozen companies would exceed the threshold.

Ms Céline McHugh, Department of Business, Enterprise and Innovation, stressed that there were other relevant fora that the group could work with and their complementarity should be explored. She also welcomed the recommendation to conduct further research. In relation to mandatory and voluntary models of due diligence, she remarked that there is a balance between mandating and encouraging. Businesses have a role to play as leaders and they can influence other businesses to change their conduct. Since businesses can lead by example, mandating them may not be necessary.

Ms Orla O'Connor, National Women's Council Ireland (NWCI), stressed that women's rights is a crosscutting issue, something that was addressed in NWCI's submission but which was not reflected in the final version of the study. The issues under the section of the study focusing on women's rights are arbitrary.

Dr John Geary, University College Dublin, was of the view that the report's methodology is flawed, as it points to gaps in the law but does not show how the law conflicts with rights.

Mr Joyce agreed with this remark, referencing ICTU's written submission.

Ms Crowley welcomed the point on extraterritoriality, which should be reflected in the aims of the Group and should be included in the discussions.

Mr McKeever remarked that US corporations based in Ireland comply with US rules, including trading bans, which could have an effect on smaller businesses. He added that a type of standard should be included, allowing corporations to have their compliance certified.

Dr McGann echoed the previous intervention and added that the emphasis should be on the sharing of good corporate practices.

Ms Kerins stressed that due diligence does not have to be about form-filling. It is about asking the right questions. For SMEs in particular a different consciousness of a business's impact is needed.

Ms Feeney welcomed the input and responded to some of the questions made by members of the Group. In relation to the workplan of the Group, she said that it will be informed by the baseline study and the recommendations in the National Plan. The aim will be to develop a deliverable workplan for the three sub-groups. She welcomed the input from the business community and recognised the practical toolkit for businesses as a priority for the Group. She added that the Plan recognises the importance of coherence between existing fora on Corporate Social Responsibility and the Business and Human Rights agenda. Further, she noted that a forum on Business and Human Rights may be held two years after the establishment of the Group. Finally, responding to the point on extraterritoriality, she remarked that there are currently limits under

international law to the prescription of extraterritorial jurisdiction and that this issue requires further exploration.

Dr Darcy noted that the Irish legislation on corruption already provides for extraterritorial jurisdiction. Regarding human rights due diligence, he noted that although businesses already conduct due diligence to assess risks to the company, human rights due diligence requires an assessment of the risks that a company's activities may have for human rights.

Ms Feeney responded to a question from **Mr McKeever** in relation to the Forum on Business and Human Rights, saying that the annual Civil Society Forum held by the Department of Foreign Affairs and Trade every year could be devoted to Business and Human Rights. She also added that it is important to hear more from the business community; the membership of the Group could be supplemented to ensure relevant stakeholders are represented.

Dr Cannon noted that she would be happy to share material on an ongoing research project which examines how Irish companies conduct due diligence. She added that an annual panel on Business and Human Rights will be taking place on May 23rd. Finally, she remarked that Front Line Defenders should be invited to participate in the Group.

3. Discussion on key actions in the National Plan (see Appendix II)

Ms O'Donoghue invited the members of the Group to discuss the key action points in the National Plan and how they should be prioritised.

Ms Garvey asked whether only some of the action points will be taken forward by the Group.

Ms Feeney responded to the question saying that the aim should be to deliver all points but that the Group is invited to deliberate on which of them can be delivered at this stage.

Mr Joyce asked what the relevance of these action points is and how they will influence the work of the Group.

Ms Feeney responded that the prioritisation of these action points will shape the workplan of the Group.

Dr McGann noted that points 1 (a practical toolkit on business and human rights for public and private entities to assist them in their human rights due diligence) and 8 (encourage business representative bodies to provide examples, templates and case studies to help support companies in their efforts to develop human rights focused policies and reporting initiatives) should be prioritised.

Ms Garvey said that there are useful toolkits that the Group could use and that it may not be necessary to start from scratch. She emphasized the importance of introducing mandatory due diligence, as well as point 15 in the National Plan (review how best to ensure remedy for potential victims overseas of human rights abuses by Irish companies, with a focus on barriers to justice, including legal, procedural or financial barriers). She added that the Danish Institute for Human Rights has found that National Action Plans are weak when it comes to gender-related issues. Trócaire would like to see emphasis on gender across the different action points.

Mr McKeever noted that there is a link between points 1 (practical toolkit) and 8 (encourage business representative bodies to provide examples, templates and case studies). In relation to point 9 (encourage companies and NGOs funded by the state to carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risk of adverse human rights impacts), he noted that the Group could look at how Enterprise Ireland invest in other companies, as they play a key role. He added that IDA's investment practices could also be examined. He singled out points 1, 8, 9, 11 and 12 as priorities. He also remarked that it would be good if actual business leaders could be represented on the group. **Mr McKeever** asked about the resources of the sub-groups and the relevant time scale.

Ms Kerins said that Chambers Ireland have experience in relation to point 13 (engage with business representative bodies to promote and strengthen mediation as a viable option when businesses and their stakeholders are engaged in disputes) and would be happy to share information. She added that there needs to be a campaign to raise awareness about the National Plan.

Ms Caroline Mellows, Department of Justice and Equality, welcomed the emphasis on point 1 (toolkit) and stressed that to avoid duplication the Group should look at the public sector equality duty. She welcomed the focus on gender and mentioned that other equality grounds, such as LGBTI+ and disability, should also be examined.

Dr Darcy stressed that point 15 (review remedies for potential victims overseas) is key to address. He added that the Implementation Group does not have a marketing department and that it would seem like the action points are for Government Departments and not for the Group.

Ms Crowley echoed the above remark, adding that some action points fall outside Amnesty's mandate, which cannot be involved in something it might criticise.

Ms Feeney responded to the questions about the Group's resources saying that the Human Rights Unit of the Department of Foreign Affairs and Trade is responsible for providing the Secretariat to the group. The Unit will have to make use of the department's budget for policy planning, which is why it is important that a workplan is agreed. In relation to communications, she added that members of the group can promote the business and human rights agenda at their own organisations and that the

group can make use of the HRU's twitter account and the Department's website. A group of communications experts could also be put together. In relation to the Group's time line, the members are appointed for 3 years but work will likely not be completed by then. In relation to the point on the public sector equality duty, the Irish Human Rights and Equality Commission is represented on the group and can provide input.

Ms Crowley noted that the public sector equality duty is limited.

4. The three sub-groups (see Appendix III)

Ms O'Donoghue invited the members of the Group to express their interest in chairing the sub-groups by sending an email to the Human Rights Unit by April 17th. The members were also invited to submit their views on the membership of the sub-groups.

Ms Orlagh Collison, Department of Finance, asked for more information about the way in which the list was decided.

Ms Feeney responded that the list, as proposed, was drafted with a view to ensuring that the mix of different stakeholder groups was maintained in the sub-groups. She added that the membership could be changed and that academics in particular could be moved to a different sub-group, which might be aligned with their area of expertise.

Ms Garvey asked if there is a mechanism that would allow members to feed into the work of different sub-groups. She also asked if the action points are for the sub-groups or the plenary.

Ms Feeney responded that the sub-groups will be reporting to the plenary. The issue of using IT tools to exchange information will also have to be resolved. She also noted that some of the action points are for the plenary and some are for the sub-groups.

5. Presentation by Anita Ramasastry

Professor Anita Ramasastry gave a presentation on the National Action Plans published by other countries to give effect to the UN Guiding Principles and focused on Norway, Finland, the Netherlands and Germany as models that Ireland could emulate. She noted that most countries have decided to focus on a couple of big ideas and concepts, such as human rights due diligence, trade support for conducting business abroad, remedies, procurement and development finance. She suggested the Group map their ecosystem, which would include investors, the EU and OECD, multinationals, SDGs and the UN Global Compact.

Mr Éanna Ó Conghaile, Department of Communications, Climate Action and Environment, remarked that Ireland has jointed a forum relating to conflict minerals. The Netherlands in this context buy minerals from countries that comply with the

sustainable development goals (SDGs). He added that there is a clear link between profitability and respect for human rights.

Dr Bufacchi thanked Professor Ramasastry and asked if it would be possible to receive a copy of the presentation.

Professor Ramasastry offered to give a copy and also suggest reports of the Working Group on Transnational Corporations and other Business enterprises that could be of assistance.

Dr Geary asked if there is an area which Ireland could lead on.

Professor Ramasastry identified the development sector and the financial sector as particular important in Ireland. The Group could identify the relevant areas by looking at key sectors in Ireland, as the issues often come out of the sectors.

Ms Garvey noted that in the development sector, there is a new DFAT policy, which was launched recently.

Professor Ramasastry noted that in the context of bilateral development finance, part of the state duty to protect would be to require that there is a commitment to human rights due diligence.

6. Any Other Business

Mr Ó Conghaile noted that the next forum on the SDG's will be taking place on the 30th of July in Dublin Castle. Ireland will apply to become the main authority for the Kimberley process in relation to the export and important of rough diamonds. Once the UK leaves the EU Ireland will have to lead in this respect. He added that a responsible minerals authority will be established.

Ms Crowley asked if a standing item could be added to the agenda to allow for the discussion of relevant business and human rights issues.

Ms Feeney responded such issues could be discussed at other fora, such as the DFAT Committee meetings, to avoid duplication.

Ms O'Donoghue noted that the theme of this year's UN Forum on Business and Human Rights is "Time to act: Governments as catalysts for business respect for human rights" and added that the Human Rights Unit will be in touch with more information about the event.

Ms Feeney remarked that the Group could actively participate at the coming session and perhaps present on progress made in the implementation of the National Plan. A small delegation could be sent to Geneva for the forum, in the same way a delegation is sent to the Commission on the Status of Women session. She also invited the Group to make suggestions.

Professor Ramasastry also invited the members of the Group to consider participating and making a presentation.

Dr Darcy asked for more information about the way in which new members can be nominated to join the Group.

Ms Feeney responded that the issue is under consideration, as it is important that a balance is maintained in the membership of the Group. If a nomination is not accepted, an explanation will be provided.

Dr Buffachi asked who will be in charge of deciding when and where the sub-groups will meet.

Ms Feeney responded that the Human Rights Unit will be facilitating the meetings and will inform the sub-groups in due course about the date and place of the meetings. She noted that members are free to propose hosting the meetings in their offices.

7. Date of next meeting

The next meeting will be held on 9 October 2019.

Appendix I

Business and Human Rights Implementation Group

Wednesday 3 April 2019

11am,

Ballroom, Iveagh House

Agenda

Chair: Ms Breege O'Donoghue

1. Welcome by Chair
2. General discussion on the baseline study
3. Discussion on key actions in the National Plan
4. The three sub-groups
5. Presentation by Anita Ramasastry
6. Any Other Business
7. Date of next meeting

Appendix II

Business and Human Rights Implementation Group

Wednesday 3 April 2019

11am,

Ballroom, Iveagh House

List of action points

The State Duty to Protect

1. Develop a practical toolkit on business and human rights for public and private entities to assist them in their human rights due diligence.
2. Ensure that relevant public servants are made aware of their obligation to report suspected cases of bribery under the OECD Convention on Foreign Bribery.
3. Encourage and support awareness of effective human rights due diligence by state owned or controlled companies.
4. Encourage and support effective human rights due diligence in the context of state support to business and NGOs.
5. Encourage civil society and business representative bodies to engage with the United Nations Forum on Business and Human Rights.
6. Provide clarity to relevant stakeholders on the applicable Irish law, reporting channels and protections for whistle-blowers/protected disclosures.
7. Promote awareness of relevant multi-stakeholder and multilateral initiatives such as the UN Global Compact, the Principles for Responsible investment and the Children's Rights and Business Principles among state owned or controlled companies.

The Corporate Responsibility to Respect Human Rights

8. Encourage business representative bodies to provide examples, templates and case studies to help support companies in their efforts to develop human rights focused policies and reporting initiatives.

9. Encourage companies and NGOs funded by the state to carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risk of adverse human rights impacts.

10. Encourage engagement with human rights reporting standards, such as the UN guiding Principles Reporting Framework, the global Reporting initiative or the Business Working Responsibly mark.

11. Encourage and facilitate the sharing of best practice on human rights due diligence, including effective supply chain audits.

12. Create a fact sheet on the OECD anti-Bribery Convention, the criminal offences in Irish law on bribery, the reporting systems in place for reporting suspicions of foreign corruption and the protections provided by the Protected disclosures act to be distributed by enterprise Ireland to all Irish companies engaged in trade missions.

Access to Remedy

13. Engage with business representative bodies to promote and strengthen mediation as a viable option when businesses and their stakeholders are engaged in disputes.

14. Introduce a standing agenda item to explore international best practice and principles governing the development of operational level grievance mechanisms for individuals and communities who may be adversely impacted to make it possible for grievances to be addressed early and remediated directly.

15. Review how best to ensure remedy for potential victims overseas of human rights abuses by Irish companies, with a focus on barriers to justice, including legal, procedural or financial barriers.

Appendix III

Business and Human Rights Implementation Group

Membership of the sub-groups

State Duty to Protect

1. Amnesty International
2. Chambers Ireland
3. Department of Communications, Climate Action and Environment
4. Department of Foreign Affairs and Trade
5. Department of Housing, Planning and Local Government
6. IDA Ireland
7. University College Cork
8. University of Limerick

Corporate Responsibility to Respect

1. Business in the Community Ireland
2. Department of Business, Enterprise and Innovation
3. Department of Finance
4. Enterprise Ireland
5. IBEC
6. Irish Exporters Association
7. National Women's Council of Ireland
8. Trinity College Dublin

Access to Remedy

1. Department of Business, Enterprise and Innovation
2. Department of Employment Affairs and Social Protection
3. Department of Justice and Equality
4. Irish Congress of Trade Unions
5. Irish Human Rights and Equality Commission
6. National University of Ireland, Galway
7. Trócaire
8. University College Dublin

Appendix IV

Follow Up Points

Action	Due Date	Responsible
Suggestions regarding composition of sub-Groups	17 April 2019	Members of Group
Indication of willingness to act as sub-Group chairs	17 April 2019	Members of Group
Outline of Professor Ramasastry's Presentation	Not specified	Professor Ramasastry
Identifying individuals/organisations who/which could add value to the work of Group	Ongoing	Members of Group
Examine the use of IT solutions to facilitate the work of the sub-Groups	Ongoing	Department of Foreign Affairs and Trade

Appendix V

Attendance

Chair: Breege O’Donoghue
Guest Speaker: Professor Anita Ramasastry
Secretariat: Pádraig Mac Coscair and Markos Volikas

Organisation	Represented by
Amnesty	Fiona Crowley
BITC	Apologies
Chambers Ireland	Emma Kerins
Department of Communications, Climate Action and Environment	Éanna Ó Conghaile
Department of Business Enterprise and Innovation	Céline McHugh
	Siobhan O’Carroll
Department of Employment Affairs and Social Protection	Marina Louarn
Department of Finance	Orlagh Collison
Department of Foreign Affairs and Trade – Human Rights Unit	Martina Feeney
	Pádraig Mac Coscair
	Markos Volikas
	Lauren Flanagan
Department of Foreign Affairs and Trade – Trade Division	Anne-Marie Flynn
	Caoimhe Fleming-Farrell
Department of Housing, Planning and local government	Paula Donoghue
Department of Justice and Equality	Caroline Mellows
Enterprise Ireland	Apologies
IBEC	Kara McGann
ICTU	David Joyce
IDA Ireland	Apologies
IHREC	Ruth Gallagher
Irish Exporters Association	Simon McKeever
National University of Ireland, Galway	Dr Shane Darcy
National Women’s Council of Ireland	Orla O’Connor
Trinity College Dublin	Dr Sheila Cannon
Trócaire	Niamh Garvey
University College Cork	Dr Vittorio Bufacchi
University College Dublin	Dr John Geary
University of Limerick	Apologies