

Business and Human Rights Implementation Group

Wednesday 29 January 2020

11am,

Ballroom, Iveagh House

Chair: Ms Breege O'Donoghue

Minutes

1. Welcome by Chair

Ms Breege O'Donoghue, Chair of the Implementation Group, welcomed members of the Implementation Group to the meeting, and conveyed the apologies received, including from Ms Anita Ramasastry. Professor Ramasastry will be invited to present at the next meeting of the Group in April.

2. Agree previous minutes, apologies and matters arising

The minutes were agreed with two factual changes proposed by **Ms Orlagh Collison, Department of Finance**.

On matters arising, **the Chair** informed that the establishment of the subgroups would be dealt with under agenda item 4.

Ms Martina Feeney, Department of Foreign Affairs (DFAT) updated on the appointment of additional members to the Implementation Group. Pending the formation of a new Government following the General Election, nominated members will be invited to the next meetings of both the Implementation Group and relevant subgroup meetings on an ad hoc basis.

4.ii. Update from Simon McKeever, Chair of subgroup 2 on Corporate Responsibility

This item was taken early to facilitate the chair of sub-group 2, **Mr Simon McKeever, Irish Exporters Association**, who reported that there had been a wide ranging discussion at the first meeting of the sub-group. In the light of differing levels of awareness among the business community of their human rights obligations, **Mr McKeever** felt it would be useful

to have business representation on the subgroup, noting the difference between representative bodies and representation from businesses directly. Consequently, **Mr McKeever** forwarded suggestions from the subgroup that Primark and Java Republic be invited to sit on the subgroup.

Mr McKeever then forwarded on the three agreed recommendations from the subgroup:

1. That a plain language version of the UN Guiding Principles be developed in order to make it easier for businesses and other stakeholders to better understand the rationale behind the Principles and potential requirements on businesses under the National Plan
2. To invite the Office of Government Procurement (OGP) to attend the next subgroup meeting to outline their work in the area of procurement with a view to potentially developing standardised procurement principles
3. To invite others, including businesses and investors, to attend the next meeting of the subgroup, with nominations to be provided by members.

In response to a query from the Chair, **Mr McKeever** replied that larger companies are quite aware of their human rights obligations, whilst smaller companies are less so. Among the latter, there is a general awareness of corporate social responsibility and of climate change issues, however less awareness of the extent of regulation. In this regard, the general idea of the subgroup was to break down the responsibilities of companies and present these in a way that is understandable.

Ms Rhona Murphy, Irish Business and Employers Confederation, noted that there is sometimes differing understandings of what human rights are, and thus it is difficult to determine exactly what compliance means.

Ms Martha O'Hagan Luff, Trinity College Dublin, drew attention to the benchmarking exercise carried out by researchers in TCD which had been considered by the subgroup. **Ms O'Hagan Luff** stated that her colleague, Ms Mary Lee Rhodes, had offered to extend this benchmarking exercise.

Mr McKeever said that the main challenge faced by the subgroup was assessing what elements of the UN Guiding Principles companies are already complying with through existing regulations. The TCD benchmarking exercise could be useful in this regard.

Mr McKeever noted that a common set of procurement guidelines could import Business and Human Rights into the value chains of companies, and in this regard opined that larger businesses and the government together could drive change through procurement.

On the third recommendation of the subgroup, **Mr McKeever** pointed to the importance of having business and investment voices on the subgroup. **Ms O'Donoghue** agreed that the involvement of investors was particularly important.

Mr McKeever noted that discussions in the first meeting of the subgroup touched on Ireland's corporate tax rate, and the question was asked as to whether corporate social responsibility could form the basis of the corporate tax regime.

Ms O'Donoghue opened the floor to questions.

Ms Collison noted that the issue of tax was outside the remit of the group, and that if tax was to be discussed colleagues from the Tax Division of the Department of Finance should be invited to sit on the group. On the topic of inviting investors to sit on the group, the Department of Finance would like to see representatives from the Ireland Strategic Investment Fund invited.

Ms O'Hagan Luff highlighted the importance of making businesses aware of financial reasons to change their practices, noting in particular the rise of ESG funds, and the possibility of being excluded from ESG funds because of company practices.

Ms Feeney reiterated the need to remain within the parameters of the National Plan, and that the issue of tax is not included in the National Plan, nor in the UN Guiding Principles.

Mr McKeever noted that of the three recommendations of the subgroup, the second recommendation, namely to invite the OGP to present to the subgroup was the easiest one to action. **McKeever** stated that the first recommendation would be more difficult to action. **Ms Feeney** told the group that the Human Rights Unit (HRU) would survey what guidance was already in existence and what other countries have done in this regard, noting that the Office of the High Commissioner for Human Rights has issued guidance on this. Existing information can then be compiled and assessed in an Irish context.

3. Presentation by Jacqueline Healy, Irish Human Rights and Equality Commission

Ms Jacqueline Healy, Irish Human Rights and Equality Commission (IHREC), made a presentation on the Public Sector Equality and Human Rights Duty and Procurement.

Ms Healy began by outlining Section 42 of the Irish Human Rights and Equality Commission Act 2014, which obliges public bodies to protect human rights and equality. It aims to mainstream human rights and equality within how public bodies operate, applying to both staff and service users. The public sector equality and human rights duty requires public bodies to be proactive rather than reactive.

Section 42(2) of the 2014 Act requires that a public body (a) assess; (b) address; and (c) report on human rights and equality issues. Guidance on how to do this has been provided by IHREC to all public bodies. One of the key messages is that the obligations of the public duty require a whole of organisation approach.

Public procurement, as a function of public bodies, is subject to the public sector duty. Public bodies are thus responsible for ensuring that equality and human rights obligations are included in agreements with contractual partners. IHREC receive queries from bodies in relation to their duty. There is a general openness to considering more about how they can fulfil their duty, taking into account the size of the contractor.

EU law provides minimum harmonised rules on procurement, which govern how goods, works, and services can be procured. The OGP has issued guidelines on public procurement addressing issues such as conflicts of interest, codes of conduct, encouraging SME participation, environmental, social and labour provisions etc. This is a living document that is updated as needed. The OGP has issued an information note on social considerations. It does not explicitly reference equality and human rights, however it outlines the various stage involves in the development of social considerations for use in public procurement.

Ms Healy noted that the Department of Finance (Northern Ireland), in consultation with the Northern Irish Human Rights Commission, have been exploring this issue, and have created guidance on legal obligations to consider human rights in procurement. **Ms Healy** noted that it would be good to invite relevant contacts from Northern Ireland to speak to the group in this respect.

Ms Healy further noted that much of what is contained in Principle 17 of the UN Guiding Principles relating to human rights due diligence is the same as contained in Article 42 of the 2014 Act.

From IHREC's point of view, there needs to be a mechanism in place, and the public sector duty can act as such a mechanism in the context of procurement. **Ms Healy** pointed to the European Network of National Human Rights Institutions (ENNHRI) statement, hard copies of which had been circulated to the group, which outlines the human rights implications of privatising or contracting out public services.

In terms of next steps, **Ms Healy** noted a positive meeting that had taken place with IHREC and the OGP. **Ms Healy** reported that the Office were open to linking in with the Implementation Group. IHREC will be working with the Office to integrate the public sector duty into core guidance on procurement.

Mr Shane Darcy, Irish Centre for Human Rights NUI Galway, asked whether any state-owned companies had acknowledged the duty under section 42. **Ms Healy** noted that compliance with the duty seems to be low so far, and that some departments haven't fully engaged in with the duty. IHREC are moving from a period of awareness raising to compliance and enforcement of the duty, and will look to use some of its compliance powers under section 42. Judicial Review has been a very effective tool in the UK context, and may be possible in an Irish context, though this is currently unexplored.

Ms O'Donoghue thanked **Ms Healy**, noting that there was a lot of food for thought. The floor was opened to questions.

Ms Feeney noted that in the research done for the National Plan, extensive consultation took place with both the OGP and IHREC. There was an interest in talking to both parties on delivering on some of the priorities of the National Plan.

Ms Feeney further noted that the Chief Commissioner of the Northern Irish Human Rights Commission Les Allamby, sits on the Department's Committee on Human Rights. **Ms Feeney** agreed that a member of the Commission could be invited to speak to the group.

4. Update on Subgroups

i. Niamh Garvey, Trócaire, Chair of Subgroup 3 on Access to Remedy

Ms Niamh Garvey, Trócaire updated the group on the work of subgroup three on Access to Remedy. The subgroup held its first meeting on 17 December 2019, to agree on the key responsibilities of the subgroup and how to action them. The meeting focused on action points 13, 14 and 15 of the National Plan, which are related to access to remedy.

On action point 13, the group discussed a mapping exercise of existing mediation mechanisms. **Ms Garvey** noted that outreach had been done on this since the meeting.

On action point 14, discussions focused on the OECD National Contact Point.

The subgroup decided to make one concrete recommendation to the Implementation Group, namely to commission a review on access to remedy. The rationale for the commissioning of such a review is action 15 of the National Plan and the recommendation of the Baseline Study to conduct a review of access to remedy.

Discussions thereafter considered issues relating to the scope and methodology of the review, with a terms of reference being agreed by the group. In relation to the scope of the review, the focus would be mostly on potential victims overseas, but could also consider next steps to address any gaps in access to remedy domestically. **Ms Garvey** noted that proposed review of the OECD National Contact Point within this project would consist of an initial scoping, given that the NCP is due to be peer reviewed by the OECD, potentially in early 2021. **Ms Garvey** further noted that this would be mostly a desk-based review. Finally, **Ms Garvey** hoped that the Implementation Group would endorse the commissioning of the review, with the understanding that there may be limited resources for such a project.

Ms Feeney informed that very constructive discussions had taken place with the relevant unit in DFAT about funding such a review. The issue will be progressed once the Department has received its 2020 budget. **Ms Feeney** noted that the proposed time-frame for the review was ambitious, and that this may need to be reviewed and revised, but that efforts would be made to get the project underway as soon as possible, subject to the approval of the Implementation Group.

Mr David Joyce, Irish Congress of Trade Unions, noted that the review of the OECD National Contact Points under this project had been revised following new information received on the prospect of an OECD peer review in early 2021. **Mr Joyce** pointed out that this potential review is not included in the schedule of reviews on the OECD website, and that if the review is not definite than it may be desired to review the NCP in more detail within the review. **Ms O'Donoghue** stated that HRU would follow up in this regard. **Ms Feeney** asked if the terms of reference could be taken as agreed, after which there were no more comments. **Ms O'Donoghue** concluded that the Implementation Group endorsed the recommendation.

iii. Martina Feeney, DFAT, update on subgroup 1, State Duty to Protect

Ms Feeney outlined that a chair of the first subgroup on the State Duty to Protect, who should be a Government representative, has yet to be appointed. As an interim solution, **Ms Feeney** proposed to chair the subgroup on a pro-tem basis in order to advance the work of the subgroup, and proposed to hold the first meeting of the in the week beginning 10 February, subject to room availability. **Ms Feeney** hoped to extend an invite to the additional members.

5. AOB

Ms Garvey drew the Group's attention to the launch of a new Trócaire report, on 25 February. An invitation to the event with more information will be shared with the Group.

Ms O'Donoghue raised the possibility of inviting a representative from another European country with a National Plan on Business and Human Rights to speak to the Group and share their experience. **Ms Feeney** noted that 16 EU countries currently have a National Plan. In particular, the Danish Institute for Human Rights are a centre of excellence and have done work on Business and Human Rights. Germany have a detailed National Plan on Business and Human Rights, and carried out a baseline study before the National Plan was drafted. **Ms O'Donoghue** concluded that there was agreement that this was a good idea.

6. Date of next meeting

Ms O'Donoghue stated that the next meeting of the Implementation Group will be held on Wednesday 22 April 2020.

It was decided that the following meeting would take place in the beginning of October 2020, likely 7 October 2020.

Ms O'Donoghue finished by summarising the action points emerging from the meeting:

- The meeting of the first subgroup, on the State Duty to Protect, will be held in the week beginning 10 February 2020.
- Confirmation of the new members of the implementation group will be made once a new Government is formed.
- Planning will begin on the commissioning of a review of access to remedy.

Ms O'Donoghue thanked the implementation group members for their participation and concluded the meeting.