



The Irish Association of
Non-Governmental Development
Organisations

Dochas Response to the Working Outline of Ireland's National Action Plan on Business and Human Rights, 2016-2019

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Contributed by Dochas, The Association of Irish Non-Governmental Development Organisations
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1. Introduction:

The following is the submission by Dóchas, the Association of Irish Non-Governmental Development Organisations, responding to the working outline of Ireland's National Action Plan on Business and Human Rights, 2016-2019 published by the Irish Department of Foreign Affairs and Trade on 10th December 2015.

Dóchas very much welcomes the opportunity to respond and further engage in this important process. Since our last submission a number of significant events have taken place. As you are aware, as of the beginning of this year the Sustainable Development Goals (SDGs) replaced the Millennium Development Goals as the world's shared development agenda, aligning the efforts of governments, in partnership with civil society, the private sector, and other stakeholders. There is strong recognition that the SDGs will not be achieved through government initiatives alone and there appears to be increasing consensus that partnership with the private sector will be central to the implementation of this new framework. This new role does not come without risks and potential negative impacts on development initiatives. A robust accountability framework will be critical to the achievement of the SDGs and in particular a robust and comprehensive private sector accountability framework is needed to assess and regulate private sector contributions to ensure contributions are harnessed while the risks and potential negative business impacts are mitigated. Although the United Nations Guiding Principles for Business and Human Rights (UNGP) is minimally referenced in the Agenda 2030, a framework is needed to assess and regulate private sector contributions and UNGP should play a central part.

The Dóchas initial submission in 2015 made a number of recommendations under four overarching areas:

1. Ireland's National Action Plan should be based on a comprehensive analysis of the domestic legal environment;
2. Strengthened Policy Coherence;
3. Mechanism for effective multi-stakeholder participation;
4. Implementation and monitoring of framework;
5. Promotion of the framework;

2. Dóchas welcomes the following:

- ✓ Action points 4-7, which identify four multi-stakeholder mechanisms for implementation, monitoring and reviewing. We also welcome the clearly defined role for civil society;
- ✓ Action point 8, which commits Ireland to commissioning a baseline assessment of the business and human rights framework in Ireland;
- ✓ Action point 22, which recognises the role of the embassy staff in advising Irish companies on business and human rights questions, although it could go further in instructing embassies to also raise such concerns with relevant local authorities. It is also important to specifically note similar responsibility for semi state bodies such as Enterprise Ireland and the IDA who, as noted later in the document, offer advice service to Irish companies ;

- ✓ The inclusion of Action point 49 which commits a review of 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;
- ✓ The distinction on page 10 between CSR and respect for human rights. We do however note it further states that “CSR makes a contribution to human rights...” This is not necessarily the case and we would suggest to change to “ CSR can make a contribution to human rights”;
- ✓ Commitments under Action point 40 in relation to providing practical support to Irish businesses. It would be beneficial if this was developed in conjunction with, or led by, the Department of Jobs, Enterprise and Innovation;
- ✓ Action point 36, which makes explicit reference to the global Sustainable Development Goals. However, as outlined in the background section we would encourage the UNGP to be a central element of the SDG accountability framework. The UNGP have the potential to private sector effectiveness and accountability in area of development assistance. We would therefore recommend not limiting the engagement to specific goals;
- ✓ Action points 37 and 38, which address the heightened risk of gross human rights abuses in conflict-affected areas. Action point 38 stipulates that advice will be given. This action could be further expanded and consideration should be given to developing a system of early-warning indicators to alert state agencies and business enterprises to problems, as well as advise and alert companies about the human rights risk that their business activities may entail;
- ✓ The indication to transpose the EU Non-Financial Reporting Directive. However we believe that extra measures could be taken to encourage companies covered by the new legislation to fulfil their human rights reporting responsibilities.

3. Dóchas wishes to highlight for further strengthening

A. Irish State must lead by example

It has become apparent from other countries the importance of States taking additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies. There is a real opportunity for the Irish State to be a leading example to other Irish businesses and this should be done through establishing “**mandatory**” requirement at a minimum for state owned companies and agencies.

Specifically:

- It will be crucial that there is further progress on mandatory Human Rights Due Diligence in the elaboration of the next draft of the Action Plan in particular with respect to Action point 15. This commits to “promote awareness” of effective HRDD by State owned or controlled companies but should be strengthened to “require mandatory HRDD by State owned or controlled companies, in particular those with a significant overseas presence.”;
- Action point 17 should be strengthened by replacing the commitment to “encourage” state owned companies to operate in accordance with IFC performance standards to “require” this;
- Action point 21 mentions the (existing) regime with regard to the dual-use export licensing system – this should be strengthened by specifying that **those seeking licences for conflict-affected countries must be required to undertake human rights due diligence**;
- Action point 30 should also make explicit that Ireland will encourage the implementation of the UNGPs and development of National Action Plans in its bilateral relations;

- **Businesses with State supports should be required to undertake the appropriate HRDD**, pending the work of the Business and Human Rights Implementation Group (strengthening of Action Point 19).

B. Promotion of framework and a whole of government approach

- As per our original submission, we would like to reiterate the fundamental importance of a whole of government approach to this National Action Plan. Dóchas would recommend that ultimate oversight and responsibility for the effectiveness of the National Action Plan rest with the Department of the Taoiseach. For the successful implementation of the plan the Government of Ireland needs to break down the silos between departments with human rights accountability to ensure cross-Government involvement. In particular, the Department of Jobs, Enterprise and Innovation should have a pivotal role in the promotion of the framework;
- An incentive should be considered to encourage companies to implement effective human rights due diligence and reporting;
- Section 9 on Education and Awareness is an area that could be further strengthened. It may be worth noting that the Principles for Responsible Management Education (PRME) initiative¹, arising from the United Nations Global Compact, aims to address this issue, and has been adopted by 500+ business colleges worldwide since 2008 (in Ireland: University College Dublin, Dublin City University and the University of Limerick). The plan should not be limited to focusing on educating businesses but should look at opportunities to mainstream the UNGP into third level education particularly business related courses;

C. Taxation and Human rights

Tax is increasingly recognised as an important human rights priority. There is an ever growing school of thought that believes tax behaviour should no longer be treated in isolation from companies' other commitments to sustainable development. In their submission to the development of Ireland's National Action Plan on Business and Human Rights a number of Dóchas members highlighted the need for the National Action Plan to address tax issues.

Dóchas is disappointed that the draft outline makes no reference to the importance of tackling tax avoidance and evasion as it relates to the realisation of human rights. In the subsequent draft the National Action Plan should **make explicit the link between tax, business and human rights**. This should include Government recommendations to businesses not to engage in aggressive tax avoidance as part of their CSR commitments and human rights responsibilities. The government should also advise that companies negotiating tax incentives do so in a fully transparent manner, and in the full knowledge of government departments in the host country. Greater transparency in the tax affairs of multinational companies promotes accountability of both States and companies. The government should actively promote and support initiatives that enhance transparency such as full publicly accessible country by country reporting and the introduction of publicly accessible registers of the owners of companies.

¹ UN Principles for Responsible Management Education www.unprme.org