



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

Mr. Colin Wrafter
Director
Human Rights Unit
Department of Foreign Affairs and Trade
80 St. Stephen's Green
Dublin 2

23/2

22 February 2016

Re: Ireland's National Plan on Business and Human Rights

Dear Colin,

I am writing in response to the Department's request for feedback on the Working Outline of Ireland's National Plan on Business and Human Rights 2016-2019. We were pleased to attend the consultation event on 22 January and welcome the opportunity to provide further input at this stage of the development of the Working Outline.

As you know, the Irish Human Rights and Equality Commission submitted a detailed submission to the Department on this matter in March 2015. The Working Outline is a comprehensive draft document that addresses many of the recommendations of the Commission in its submission. For the purposes of this letter, we would like to focus on a number of specific areas drawn from our submission which, if addressed, would enhance the National Plan:

The Business and Human Rights Implementation Group

The Commission supports the proposed Action Point 6 in relation to the establishment of a 'Business and Human Rights Implementation Group' consisting of representatives from Government, the business community and civil society. The proposed group does not reference the Irish Human Rights and Equality Commission which, given our standing as an 'A Status' national human rights institution, is ideally placed to contribute to the Group. Action Point 6 does not detail the resourcing of the Implementation Group, nor the extent to which it is subject to direct ministerial oversight or involvement. To be most effective in its review function, adequate resourcing and high-level Government involvement are essential.

Human Rights Due Diligence

Under Action 1, the Working Outline commits the proposed Implementation Group with 'the need to work toward' establishing principles of human rights due diligence for companies, appropriate to their size and operation. This work will require appropriate resourcing of the Implementation Group and, as previously outlined, high-level Government commitment. The Working Outline does address the matter of State owned companies and agencies, however Actions 15 and 16 both propose to 'promote awareness' of initiatives to State owned or controlled companies. The Irish Human Rights and Equality Commission, in its original submission, recommends that 'compliance' with human rights is integrated in the activities of State owned or controlled enterprises and a prerequisite for companies wishing to do business with the State or avail of its support, services or investment.

Public Procurement

Action 23 of the Working Outline commits the Office of Public Procurement to 'follow good practice on procurement and human rights standards in request for tenders in line with existing EU law', but does not address State's wider obligations under international human rights treaties. The Irish Human Rights and Equality Commission has expressed concern in several fora that human rights accountability mechanisms can be significantly weakened where the State delivers its public functions through the outsourcing or procurement of services by non-State actors; for example in the areas of child welfare, Direct Provision, healthcare services and education. A National Plan has the potential to reflect this historic and ongoing risk by committing to a more robust and human rights-compliant procurement system. The Commission has called for a commitment in the National Plan to the systematic incorporation of business and human rights issues in reporting to the United Nations human rights treaty monitoring bodies.

Gender Equality

In its original submission, the Commission recommended that the National Plan should include a strong commitment to gender equality and the rights of women workers. The Working Outline contains a section on Gender Equality and the Empowerment of Women and Girls which itemises a number of current policy measures and initiatives. However this section does not include any specific action points for targeted improvement in this area. The Commission reiterates its concerns regarding gender equality in the workplace, such as with regard to pregnancy discrimination, including maternity related dismissals. The Commission recommended that the National Plan also includes a commitment to ensuring gender equality on company boards.

Regulatory and Policy Framework

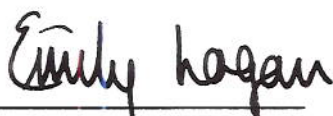
In our previous submission (p5) we made reference to the International Labour Organisation's 'Decent Work Agenda' and the increasing precariousness of employment, as exemplified by the growth of zero-hour contracts, emphasises the enduring vulnerability of workers to exploitation in Ireland. The regulatory framework has subsequently developed to include the Irish Low Pay Commission and the Labour Market Council and has evolved to have an oversight role in the implementation of Ireland's activation strategy Pathways to Work 2016-2020. These developments have clear implications for business and human right and should be included in the overall policy and regulatory framework for the National Plan.

State Duty to Protect

Our previous submission referred to the obligations Ireland has under the United Nations Convention on Economic, Social and Cultural Rights (p8) and also recommended that the National Action Plan should acknowledge the negative human rights impact of tax avoidance both nationally and globally, and include a commitment by the Irish Government to adopt a human rights based approach to addressing tax avoidance (p12 The UN Committee on Economic, Social and Cultural Rights Concluding observations on Ireland's third periodic report in July 2015) recommended that, in response to the economic crisis, any measures taken should be temporary, necessary and proportionate and 'must comprise all possible measures, including tax measures, to ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected.' (Concluding Observation No.11).

I trust that the above points are of some assistance to you in the final stages of drawing up the National Plan on Business and Human Rights. As always, if you have any questions, please do not hesitate to make contact.

Yours sincerely,



Emily Logan
Chief Commissioner