

Response submitted by the Department of Foreign Affairs, Ireland

Questionnaire: Working Group on the issue of human rights and transnational corporations and other business enterprises

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UNGP	Existing Practices and Challenges	Actionable targets and goals for the next decade
Commitment to Implementing the UNGPS		
State commitment to implement the UNGPs, e.g. National Action Plans, public statements, national baseline assessments.	<p>Ireland's National Plan on Business and Human Rights 2017-2020 was published in November ss2017.</p> <p>In 2019, a National Baseline Assessment was completed.</p> <p>Challenges include promoting awareness and engagement among relevant stakeholders, particularly in the context of wider challenges such as Brexit and the Covid-19 pandemic.</p>	<p>A Toolkit is in preparation.</p> <p>An independent review of Access to Remedy is nearing completion.</p> <p>The 2020 Programme for Government includes a commitment to review the implementation of the National Plan.</p> <p>The second iteration of the National Action Plan will be produced, in consultation with stakeholders, taking account of mandatory due diligence proposals.</p>
State structures mandated to implement the UNGPS, e.g. government ministry tasked with implementation measures; allocation of internal resources	<p>The National Plan on Business and Human Right 2017-2020 is being taken forward by an independently chaired Implementation Group, which comprises representatives of various government departments, civil society and the corporate sector.</p> <p>The Implementation Group is supported by the Human Rights Unit of the Department of Foreign Affairs. No dedicated resources have been allocated to this busy portfolio and this constitutes a challenge.</p>	<p>Under the Programme for Government, the implementation of the National Plan on BHR is to be reviewed. This may lead to resourcing recommendations and changes.</p>
Regulatory and policy efforts		
Legal and regulatory developments that enable or require business enterprises to respect human	Section 2 of the National Plan on Business and Human Rights 2017-2020 sets out the legislative and	Ireland is monitoring developments at EU level and the Irish Minister for Foreign Affairs

rights, e.g. mandatory human rights due diligence, duty of care, reform of securities law	regulatory framework, as of November 2017. The absence of a comprehensive EU regulatory framework is a challenge.	has warmly welcomed the EU Commission proposals on sustainable corporate governance.
Legal or regulatory developments that enable or require reporting and transparency on how business enterprises address human rights risks (own activities and value chain)	As above	As above
Legal or regulatory developments that enable or require financial institutions, including institutional investors, to embed respect for human rights throughout their core business activities	As above	As above
Incentives for responsible business (e.g. sanctions for practice that breaches human rights standards; or, “carrots” or “sticks” by export credit or finance institutions to encourage responsible business)	As above	As above
Guidance on human rights expectations for business enterprises including financial institutions	The Implementation Group for the National Plan on Business and Human Rights is in the process of putting a together a toolkit that will provide guidance for businesses on their human rights obligations and offer practical ways they can comply with them.	Finalise and publish toolkit for business. Promote awareness with the corporate sector. Expand content over time.
Integration of the UNGPs in other policy tools orientated to responsible business (e.g. do other policy instruments relating to responsible business or “CSR” refer to the UNGPs, or if not are there plans to strengthen alignment)	In 2017, Ireland published its Second National Plan on Corporate Social Responsibility . It is an action-orientated plan aimed at supporting businesses and organisations of all sizes and all sectors to adopt responsible business practices. The Plan mentions the UNGPs and outlines how the Plan and UNGPs work together. Progress reports on this Plan were published in 2018 and 2019.	A third National Plan on CSR is anticipated.
Human rights at the “state-business nexus”- leading by example		

<p>State efforts to protect human rights among business enterprises that are owned or controlled by the State, and when providing funding or other support to business. e.g. export credit agencies</p>	<p>State owned enterprises are subject to relevant EU directives. Irish Embassies are tasked with promoting human rights overseas various and for ensuring coherence when providing advice to Irish business.</p>	<p>The toolkit for businesses on business and human rights, when finalised, will be promoted to State owned and controlled enterprises by Government.</p>
<p>State efforts to protect human rights when contracting with businesses to provide services, e.g. healthcare, social security, education</p>	<p>The OECD National Contact Point promotes the OECD Guidelines for Multinational Enterprises and OECD Guidance on Due Diligence along with relevant sectoral guidance on diligence as part of its promotion and information provision functions.</p> <p>The mission of the Department of Social Protection is to promote active participation and inclusion in society. The Department’s objective is to continue putting its customers at the centre of all its operations and it is committed to the positive difference it can make to its customers’ lives and Irish society. The Department upholds the protection of human rights by administering the State’s welfare system and by providing various social welfare supports and employment services both of which are vital elements of social inclusion. Through its relationship with various agencies and NGOs it communicates the importance of providing a high standard of client centred services to all members of the public.</p>	<p>The obligation to comply with the UNGPs on BHR will be promoted across Government by the Implementation Group for the National Plan on Business and Human Rights.</p>
<p>State efforts to protect human rights through public procurement</p>	<p><i>Legislation/Existing Practices</i></p> <p>Public procurement is governed by EU and national rules, the aim of which is to ensure that procurement transactions and decisions are open and transparent, fair, equitable and achieve value for money.</p>	<p>An initiative to mainstream best practice in terms of target-setting by Contracting authorities.</p>

	<p>The 2016 Regulations require tenderers to comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided that have been established by European Union law, national law, collective agreements or by international, environmental, social and labour law.</p> <p>These agreements and conventions include ILO Conventions 87, 98, 29, 105, 138, 111, 100, 182, Vienna Convention on the Protection of the Ozone layer, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Stockholm Convention on Persistent Organic Pollutants and Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.</p> <p>Furthermore, the statutory obligation of the Public Sector Equality and Human Rights Duty (the Duty) was inaugurated by Section 42 of The Irish Human Rights and Equality Commission Act 2014. The Duty is a legal obligation on public bodies when performing their functions, to have regard to the need to:</p> <ul style="list-style-type: none">• Eliminate discrimination;• Promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and• Protect the human rights of its members, staff and the persons to whom it provides services.	
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	<p>Public procurement, as a function of public bodies, is subject to the Duty. Public bodies bound by the Duty are therefore responsible to ensure that equality and human rights obligations equivalent to the Duty are included in agreements with contractual partners. In order to meet the core requirement of the Duty, public bodies shall, having regard to the functions and purpose of the body and to its size and resources available to it:</p> <ul style="list-style-type: none">• Assess - set out in its strategic plan an assessment of the human rights and equality issues it believes to be relevant to the functions and purpose of the body;• Address - set out in its strategic plan the policies, plans and actions in place or proposed to be put in place to address those issues;• Report - report on developments and achievements in its annual report.• All the above steps must be set out and reported on in a manner that is accessible to the public. <p>The Irish Human Rights and Equality Commission (IHREC) provides public bodies with guidance and encourages the development of policies and good practice in relation to human rights and equality.</p> <p><i>Strategic Procurement</i></p> <p>The Office of Government Procurement established the cross Departmental Social Considerations Advisory Group in March 2019, now called the</p>	
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	<p>Strategic Procurement Advisory Group, bringing together officials from policy Departments to share best practice and to facilitate the process of incorporating social and environmental considerations into public procurement. This cross-departmental group recently met on the 22 September. In addition to the Group, the OGP has also engaged in bilateral meetings with Government Departments and promotes strategic procurement at procurement related events aimed at public sector bodies as well as for suppliers and social enterprises across the country.</p> <p>The OGP published Circular 20/2019: Promoting the use of Environmental and Social Considerations in Public Procurement in October 2019. The Circular highlights opportunities for Departments to deliver wider social and environmental aims through public procurement including in relation to employment and training opportunities for disadvantaged groups, disability access, promoting social inclusion and social enterprises.</p> <p>The Circular was the latest in a series of measures following publication of the Information Note on Incorporating Social Considerations into Public Procurement in December 2018. The Information Note assists policy makers and practitioners in understanding how public procurement can be used to facilitate the advancement of existing social policy objectives as well as the wider context and implications of including them in particular public procurement projects.</p>	
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	<p>It is worth noting that the OGP cannot decide for other contracting authorities, or at a whole-of-Government level, what social considerations should be included in the frameworks and contracts that it puts in place on their behalf. The OGP requires guidance from policy departments (and Government approval as appropriate) as well as the agreement of individual contracting authorities who are responsible for managing their own contracts and the associated costs. The appropriateness of including social considerations needs to be examined on a contract-by-contract basis and there needs to be sufficient flexibility to allow each individual contracting authority to decide what, how, and when social considerations can be used. The OGP facilitates the process of incorporating those objectives, once agreed, into planned procurement projects.</p>	
<p>State efforts to protect human rights through development finance</p>	<p>Commercial financial institutions are generally not eligible for Irish development funding which is substantively delivered via NGO's; multilateral organisations; and recipient national Governments.</p> <p>A new criterion was introduced to the Department of Foreign Affairs' Civil Society Fund scheme this year excluding activities in contravention of international human rights norms and standards.</p> <p>Irish agri-food companies that apply for funding via the Africa Agri Food Development Programme (co-funded and co-managed by DFA and the Department of Agriculture, Food and the Marine)</p>	

	<p>must demonstrate how their proposal will consider land rights and land tenure issues, improve women’s economic empowerment and incorporate the SDGs and Ireland’s development policy priorities. Moreover, applicants must explain how their proposal will adhere to national and international guidelines on Business and Human Rights.</p>	
<p>Policy coherence at the national, regional and international levels</p>		
<p>Horizontal and vertical policy coherence, e.g. coordination on business and human rights policies across government agencies and departments, at multiple levels of government. e.g. BHR and SDG NAPs cross-reference or are integrated, government training curriculum on BHR, NHRI recommendations to government</p>	<p>The terms of reference of the Interdepartmental Committee on Human Rights were amended to include the monitoring of the National Plan.</p> <p>The Department of Foreign Affairs presented to the Corporate Social Responsibility Stakeholder Forum (run by the Department of Enterprise, Trade and Employment) in March 2019 with updates on the Business and Human Rights Implementation Group.</p> <p>The Department of Enterprise, Trade and Employment is represented on the Business and Human Rights Implementation Group and on its subgroups (on Corporate Responsibility to respect Human Rights and Access to Remedy).</p>	
<p>Business-related policy with other State and businesses (e.g. trade and investment agreements, investor-state contracts)</p>	<p>Trade policy is an exclusive EU competence so the EU legislates on trade matters and concludes international trade agreements.</p> <p>In January 2019, following the passing of the Fossil Fuel Divestment Act 2018, Ireland became one of the first countries in the world to completely divest from fossil fuel companies. The value of the divestment from 38</p>	

	<p>fossil fuel companies was €68 million.</p>	
<p>Across multi-lateral institutions (e.g. regional organizations, participation in other international processes on BHR, integration of BHR in multi-lateral finance and trade</p>	<p>The Department of Finance has reoriented capital flows towards sustainable investment, in order to achieve sustainable and inclusive growth.</p> <p>The implementation of the EU Taxonomy Regulation and the Sustainability-related disclosures in financial services sector Regulation will assist in supporting the UN Guiding Principles on Business and Human Rights. The SFDR, which will generally apply from March 2021, aims to include environmental, social and governance (ESG) considerations in the decision-making process of investors and asset managers in a consistent manner across the EU financial services sector.</p>	<p>Article 4 of the SFDR requires financial market participants to assess and report to investors on any principal adverse impacts of investment decisions on sustainability factors; this includes respect for human rights.</p> <p>In particular, financial market participants making available products that have sustainable investment as its objective (as defined under Article 9 of the SFDR) and products which promote environmental characteristics (as referred to under Article 8 of the SFDR) will be required to disclose information on: a) the environmental objective or objectives (as defined under the Taxonomy Regulation) which the underlying product contributes to; and b) description of how and to what extent the investments underlying the financial product are invested in taxonomy activities.</p> <p>For an economic activity to be considered environmentally sustainable (taxonomy compliant), it must contribute substantially to at least one environmental objective as defined under the taxonomy regulation, do no significant harm to any of the other five objectives, as well as meeting minimum social safeguards. Under Article 18 it is specified that those minimum safeguards will be aligned with the UN Guiding Principles on Business and Human Rights.</p> <p>Additionally of note, undertakings which are subject to the obligation to publish a non-financial statement under the Non-Financial</p>

		Reporting Directive are obligated to disclose in their statements, their turnover, investment or expenditure associated with taxonomy compliant activities.
Access to remedy		
Effectiveness of judicial mechanisms to address business-related human rights abuse allegations	<p>An access to remedy review is nearing completion.</p> <p>The number of complaints concerning potential human rights violations by businesses operating in Ireland and reported to the National Contact Point (NCP) is extremely low.</p> <p>Access to Remedy is a key strand of the work of the BHRIG of which DETE is a part.</p>	It is anticipated that the access to remedy review will feed into the second iteration of the NAP.
Effectiveness of and access to non-judicial state-based processes, e.g. OECD, NCPs, NHRIs, multi-stakeholder grievance mechanisms, international grievance and regional mechanisms	<p>An access to remedy review is nearing completion</p> <p>Peer Review of OECD National Contact Point is coming up in February 2021.</p> <p><i>Protected Disclosures/Whistle-blowers</i></p> <p>In terms of the implementation of the Protected Disclosures Act (PDA) since its enactment in 2014, the key actions since then have included:</p> <ul style="list-style-type: none"> • The Minister for Public Expenditure and Reform has issued statutory guidance under section 21 of the Act to assist public bodies in establishing and maintaining procedures for staff in such bodies to make protected disclosures.. • The Workplace Relations Commission has issued a statutory code of practice 	<p>As above</p> <p><i>Protected Disclosures/Whistle-blowers</i></p> <p>In terms of the future direction of policy relating to protected disclosures, the key issues/challenges we are facing are:</p> <p>The transposition of the EU Whistleblowing Directive, adopted in October 2019. Ireland must transpose the Directive by 17 December 2021. This will require substantial amendments to the Protected Disclosures Act.</p> <p>A key impact of the Directive for the business community is that it will impose a legal obligation on all organisations – public and private – with over 50 employees to establish formal channels and</p>

	<p>for workers and employers giving guidance and setting out best practice in understanding the law relating to protected disclosures and how to deal with said disclosures.</p> <ul style="list-style-type: none"> • Some regulatory entities have been designated as prescribed bodies under section 7 of the PDA. Workers who do not want to report to their employer or who have reported to their employer but no action or insufficient action was taken have the option of reporting to one of these prescribed bodies. The Minister for PER signed the most recent update to this list into law on 24 September 2020. • An Exchequer grant of €220,000 per annum is paid from the Department of Public Expenditure and Reform's Vote to Transparency International Ireland (TII) to operate a Speak Up Helpline and Free Legal Advice Centre to assist workers who have made or are considering making a protected disclosure. • TII also operate an Integrity at Work programme to assist employers in developing a workplace culture where workers are encouraged to raise concerns about wrongdoing. A range of public and private organisations participate in this initiative. 	<p>procedures for their workers to make protected disclosures.</p> <p>A public consultation on Ireland's approach to transposing the Directive closed in July, with some 24 submissions received from a range of interested parties in the public, private and non-profit sectors.</p> <p>As part of the transposition process, we are also looking at the findings of the statutory review to see if there are any other areas of the Act that may need legislative changes to address some of the issues raised.</p> <p>The Department of Public Expenditure and Reform has also provided some input, along with TII, to the NSAI on Ireland's comments on the development of an ISO standard (ISO 37002) for whistleblowing management systems.</p>
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	<ul style="list-style-type: none"> • A Statutory Review of the Act was conducted and published in 2018. A public consultation carried out as part of this process elicited some 25 submissions from a range of interested parties in the public, private and not for profit sectors. The review concluded that overall the Act was operating as intended but a number of implementation issues were identified. An interdepartmental protected disclosures network is advising on how these issues can be addressed. 	
Multi-stakeholder platforms		
Multi-stakeholder initiatives to support responsible business	<p>The Implementation Group for the National Plan on Business and Human Rights includes government, businesses and business representative groups and civil society representation.</p> <p>Ireland's National Plan on CSR is being implemented by a multi-stakeholder National CSR Stakeholder Forum with representatives from public, private and NGO sectors.</p>	The development of a second (or expanded) NAP will involve multi-stakeholder consultations.
Other relevant information		
Please include information about other efforts and developments involving the State that you consider relevant	In Q1 of 2021, the Irish government intends to convene a Forum on Business and Human Rights that will bring together stakeholders including government, the business community and civil society and will facilitate the exchange of views on progress in delivering on the National Plan.	Later in 2021, proposals for a new or expanded NAP will be explored, taking account of legislative and policy developments at EU level and the UN's 10+ Project proposals.