



**CHAMBERS
IRELAND**
IN BUSINESS FOR BUSINESS

**Submission on the Working Outline of
Ireland's National Action Plan on
Business and Human Rights**

January 2016

Introduction:

Chambers Ireland is the largest business network in the State. With members in every geographic region and economic sector in Ireland, we are well positioned to understand the concerns of businesses and represent their views. Chambers Ireland commends the commitment from Government and the Department of Foreign Affairs and Trade in promoting the protection of human rights and we welcome the drafting of a National Action Plan for implementing the United Nations Guiding Principles on Business and Human Rights. We also welcome this opportunity to contribute to the consultation process initiated by the Department as to how best a National Action Plan can be developed to promote responsible and ethical behaviour of businesses both in Ireland and abroad. The ethos of the Chamber of Commerce movement has always been that the cause of human rights is best served by increasing communication, commerce and interdependence between nations. We believe that international trade supports economic development which in turn promotes equitable social development and the increased recognition and protection of human rights.

Working Outline of the Irish National Plan for Business and Human Rights:

In the opening lines of the Working Outline of the National Action Plan, it states the objective of the Plan will be to help “promote understanding of how addressing human rights impacts can help build business success” and that the aim of the Plan is to be “pragmatic and practicable”. We particularly welcome the emphasis on working towards framing the Plan in a way that’s accessible to companies “as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts”. According to the Central Statistics Office, 99% of companies operating in Ireland are Small and Medium Sized Enterprises and employ 68% of the workforce.¹ Therefore, the acknowledgement by the Working Outline that a ‘one size fits all’ approach will not be sufficient is appreciated.

Chambers Ireland supports and encourages ethical behaviour in the business community. It is our belief that responsible entrepreneurship is the driving force for sustainable economic development and that ethical conduct should be encouraged and promoted amongst businesses. We have long worked with the Irish Chamber Network and companies all over Ireland to promote Corporate Social Responsibility. Our annual CSR awards, now in their thirteenth year, celebrate the efforts that the

¹ <http://www.cso.ie/en/releasesandpublications/er/bd/businessdemography2012/>

business community in Ireland makes to enhance the environment in which they operate. While human rights and corporate social responsibility are not interchangeable terms, the manner in which CSR has developed in Ireland over the past decade can provide a model for how the relationship between business and human rights can develop in the years to come. Responsible behaviour and 'doing the right thing' has been shown to be good for business in the long run. We believe that the promotion of these benefits should be the priority of the National Action Plan.

As highlighted at a consultation event hosted by the Department of Foreign Affairs and Trade on the 22nd January 2016, "business listens to business" and so companies are more likely to listen to their peers when it comes to explaining not just the business case for incorporating the Guiding Principles into their operation, but also the necessity of doing so. As an example of the business community showing leadership in the promotion of responsible business practices, Chambers Ireland has made a number of tools, developed by the International Chamber of Commerce, freely available on its website for companies who are interested in developing anti-corruption policies and engaging in responsible supply chain management.² These tools include an "Anti Corruption Clause" for contracts, a Guide to Responsible Sourcing, Guidelines on Gifts and Hospitality and the International Chamber of Commerce Rules on Combating Corruption. Disseminating these simple templates and tools allows a company to develop internal processes to ethically meet the challenges of international commerce at little or no cost. This methodology can also be applied in helping businesses gain a more comprehensive understanding of the importance of human rights in a globalised economy and the development of industry standards. Therefore, the Department's proposal to develop a practical toolkit on business and human rights for public and private entities that specifically outlines existing Irish policy on business and human rights issues in language that is clear and tailored to the business sector, including small and medium enterprises, will be vital if the National Plan is to be successfully implemented.³

We also welcome the position of the Department when it comes to informing and educating companies engaged in trade missions. Action 11 of the Working Outline states that Enterprise Ireland will provide Irish companies engaged in a trade mission with a fact sheet on the OECD 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. We additionally welcome the proposal, as we suggested in our submission in March 2015, that Embassy

² <http://www.chambers.ie/policy/csr/csr-resources.html>

³ Action 40 and Action 41 of the Working Outline

staff will be asked to advise Irish companies on business and human rights questions in the host State.⁴ Chambers Ireland believes that the cause of human rights is best served by increasing communications, trade and interdependence between trading partners. It is vital that the State continues to undertake trade missions to all corners of the world, even those with poor human rights records. By continuing to trade and do business with all countries, we can play a role in driving economic growth and social development which we believe will generate a greater dialogue on the importance of equality and human rights.

A significant part of the conversation around what should be contained in the Irish National Plan on Business and Human Rights has been how human rights impact assessments and due diligence should be incorporated into the final version. Chambers Ireland would advocate that conducting due diligence and human rights impact assessments can be useful as a strategic tool for companies. Human rights reporting can be helpful in determining strengths and weaknesses and can help companies pre-emptively deal with environmental, political and social risks. However, as we noted in our submission in 2015, we are of the view that due diligence reporting and human rights impact assessments must not be made mandatory. The additional administrative burden that would be imposed on Irish businesses would impede competitiveness and drain scarce resources and capacity. Again, there is the issue of relative burden, as larger companies would be in a better position to dedicate resources to reporting on their policies. Therefore we welcome the position of the Department in the Working Outline that companies should be encouraged 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.⁵ We recommend that the proposed toolkit for business should provide templates and case studies to support companies in their efforts to develop human rights focused policies.

There has been an additional focus on how companies could be incentivised to complete human rights impact assessments and conduct due diligence. While incentivised compliance has much to recommend it in principle, in practice it can very often generate situations of unfair competition between enterprises. This could manifest itself when companies competing for access to a State provided support or service (such as licensing, state supports, or trade missions) are requested to prove their credentials in terms of compliance with predetermined standards through some

⁴ Action 22

⁵ Action 43

form of reporting mechanism. Very often, it is companies with greater resources that benefit from incentivised compliance approaches rather than those companies who genuinely excel in their practices. The additional costs to the companies to access the services or participate in initiatives such as trade missions may become at best a box-ticking exercise and at worst a de facto barrier to participation for companies who cannot demonstrate their compliance as effectively as their peers.

The use of social clauses (which may involve human rights due diligence reporting) in public procurement has also been discussed as a way of encouraging greater engagement with the Guiding Principles for Business and Human Rights. There would be concerns as to how this requirement would impact SMEs, who make up 99% of the businesses operating in Ireland, and their ability to compete with larger and better resourced corporations. While it does not need to financially cost a small business to implement responsible practices and human rights policies, introducing requirements for monitoring and reporting on an ongoing basis could become a drain on resources for smaller companies. One step that could be taken to reform tendering process would be to provide information on potential human rights impacts in public procurement, particularly where companies are being invited to tender for contracts that may involve provision of services to vulnerable groups such as children, refugees etc.

The final pillar of the Guiding Principles concerns both the state and business duty to provide a remedy. The Guiding Principles state that if a right is violated, victims must have access to an effective remedy, either through judicial or non-judicial means. The Guiding Principles specifically note that “business enterprises should establish or participate in effective operational level grievance mechanisms for individuals and communities who may be adversely impacted”. They also add that for a non-judicial grievance mechanism to be effective, it should be legitimate, accessible, predictable, equitable, and transparent and rights compatible.

Chambers Ireland has long promoted the use of Alternative Dispute Resolution processes as an option for businesses seeking to resolve conflict. As part of our submission in the initial consultation, we proposed that ADR mechanisms could be a useful tool for both the State and the business community to address human rights abuses, both in Ireland and extra-territorially. By way of example, mediation offers a flexible and accessible mechanism for parties in a dispute, (or those who want to prevent a dispute from arising) to constructively manage their situation. It recognises that the conflict is more likely to be solved amicably when both parties

are directly involved in the process. ADR processes generally tend to be more efficient and more cost-effective. The capacity of mediation to support inclusion, participation and empowerment of vulnerable individuals and groups can encourage the further advancement of human rights. We especially welcome the recommendation in the Working Outline of the National Plan to enact the Mediation Bill.

Conclusion:

The underlying theme of the Working Outline of the National Plan on Business and Human Rights is to promote dialogue between the state, business and civil society, while educating businesses about human rights, the potential impacts of their operations, and what companies can do to ensure that the Guiding Principles are implemented across their operations. The approach taken by the Department and the Human Rights Unit is a welcome one, with the emphasis on dialogue with the business community and promoting awareness of the UN Guiding Principles. The commitment to a baseline study on legislative and regulatory framework pertaining to business and human rights as it applies in Ireland is also welcome as it will give us all a better idea of where all stakeholders stand, where the gaps are and what needs to be done in the future.

The proposal to create a tool-kit for business, that includes templates and policy descriptions accessible to small businesses, is a very positive step and we welcome future engagement with the Department in developing this tool-kit. We also welcome the emphasis on increased education on 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. The National Action Plan on Business and Human Rights is the first step towards awareness of and engagement with human rights by the business community. We commend the Department for its work so far in developing a National Plan for Business and Human Rights and look forward to engaging with Human Rights Unit and the Department of Foreign Affairs and Trade after the publication of the first National Plan for Business and Human Rights.