



Irish Congress of Trade Unions

**Submission to Public Consultation for
New National Plan on Business and Human Rights**

September 2023

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Introduction

The Irish Congress of Trade Unions notes that the Department of Foreign Affairs and the Department of Enterprise, Trade and Employment are soliciting input from all interested stakeholders to inform the development of a second National Plan on Business and Human Rights (NAP) and welcomes this opportunity to contribute views from a trade union perspective. We are also founding members of the Irish Coalition on Business and Human Rights and this submission is informed by the 2021 “Make it Your Business”¹ report.

We note that a new National Plan on Business and Human Rights is intended to build on the first National Plan (2017-2021) and reflect significant developments in the space of business and human rights, particularly at EU level. We also note and welcome that the consultation paper² states that the new National Plan will align with the commitment in the Programme for Government to ‘ensure that the Action Plan [on Business and Human Rights] is further developed to review whether there is a need for greater emphasis on mandatory due diligence’.

The proposed introduction of mandatory human rights due diligence is very welcome. It is important to note however that the rights to freedom of association and collective bargaining are rights in themselves. Meaningful stakeholder engagement on due diligence does not replace a company’s obligation to respect the choice of workers to form trade unions and to engage in good faith collective bargaining over terms of employment and working conditions. Despite being a fundamental right, it is rarely central, adequately protected or even considered in due diligence measures. It is either not recognised as a common risk, nor taken seriously when breaches occur.

Importance of a National Action Plan (NAP)

Congress believes that it is important that Ireland has a National Action Plans which clearly articulates Government priorities and actions that it will adopt to support the implementation of international, regional, or national obligations and commitments with regard to Business and Human Rights and to promote the implementation of the UN Guiding Principles on business and human rights (UNGPs)³.

The development of a NAP presents a government with the opportunity to review the extent of its implementation of business and human rights frameworks, including the UNGPs, at the national

¹ <https://www.trocaire.org/documents/make-it-your-business/>

² <https://www.dfa.ie/media/dfa/ourrolepolicies/humanrights/Ireland-BHR-NAP2-consultation-document-230726-Updated2.pdf>

³ <https://www.undp.org/sites/g/files/zskgke326/files/migration/in/UNGP-Brochure.pdf>

level and then to identify gaps and reforms to increase coherence with the government's human rights commitments across business-related legal and policy frameworks and programs. If undertaken in an inclusive, transparent, and participatory manner, the process of developing a NAP can also be a catalyst for establishing multi-stakeholder coalitions supportive of progress on business and human rights, as well as with regard to the achievement of broader agendas, such as the Sustainable Development Goals (SDGs).

Experience to Date

Having said all of that, the period of the first plan was characterised by a very lengthy consultation that had very limited impact on the Government's approach, described by some experts as an essentially business as usual⁴ approach.

The first *National Plan on Business and Human Rights 2017-2020* was released in November 2017 to little fanfare when then Foreign Minister Simon Coveney emphasised the "business case" for human rights. It is our continued strongly held perspective that the absence of such a case does not remove any of the responsibility of business for their impact on human rights.

The vast majority of the commitments were limited to promoting respect for human rights by business. Of the firmer commitments, conducting an independent baseline assessment of law and policy in Ireland in relation to business and human rights and establishing an Implementation Group, both were only fulfilled after considerable delay. The baseline assessment⁵, published in 2019, provided a robust analysis of the state of play concerning business and human rights and offered numerous valuable recommendations, but the Implementation Group did not have the power to act on any of them. The same can be said for the Access to Remedy⁶ report. Congress was a member of the Implementation Group which met infrequently, and essentially turned into a series of presentations on various elements of business and human rights with little influence on the plan's implementation.

As in other areas, the national plan on business and human rights – with all of its faults - became the Government's stock response when questioned on the subject at home and abroad. There were no legislative efforts and Ireland has been luke-warm at best to the prospect of a new binding instrument⁷ on business and human rights. Only impending EU laws on human rights and environmental due diligence will lead to a change in the law here.

As the Department of Foreign Affairs and the Department of Enterprise, Trade and Employment launch this consultation on the development of Ireland's second national plan on business and human rights, we hope that the next plan will prove more effective and reflect the growing movement across the EU and elsewhere to introduce mandatory requirements on business and a new stronger system of corporate accountability for companies based or operating here.

⁴ <https://businesshumanrightsireland.wordpress.com/2016/01/22/remarks-to-irish-department-of-foreign-affairs-and-trade-on-working-outline-of-business-and-human-rights-plan/>

⁵ [baseline assessment](#)

⁶ [Access to Remedy](#)

⁷ [binding instrument](#)

- ***Are there any recommendations from the 2021 Review that our Departments should focus on when developing a second-generation plan?***

The 2021 review was a very useful exercise producing a range of 27 useful recommendations. Congress would like to emphasise the following elements:

4. The most important policy issues in a specifically Irish context should be identified and prioritised.

In this regard, we believe that it is essential that the lack of an effective legal framework for collective bargaining in Ireland finally be addressed. Research from the World Bank has shown that wage inequality falls during periods when union density is increasing, and rises when union membership is in decline.⁸

These issues may be improved as part of the EU Minimum Wages Directive, due to be transposed into Irish legislation in 2023 and the report of the High-Level Group on Collective Bargaining⁹ and Industrial Relations, whose recommendations will form the basis for the transposition of the directive, including placing collective bargaining on a statutory footing thereby creating more favourable conditions for progress towards Decent Work.

10. In light of policy discussions internationally, including at EU level, the Department of Enterprise, Trade and Employment to continue to play a central role in the development of policy on Business and Human Rights.

11. Consider how the OECD National Contact Point function might be further enhanced, in light of the findings of the ongoing OECD peer review.

We strongly support both of these recommendations and believe that the DETE is the appropriate department to lead on these issues.

Specifically, in relation to the OECD Guidelines and the NCP, we believe that the recently revised guidelines for multinational enterprises¹⁰ (MNE Guidelines) give unions new leverage for workers' rights in developing as well as developed countries.

Trade unions in the OECD through TUAC managed to improve the wording on employment and industrial relations and reinforce the following:

- Employers must not interfere with workers' right to be represented by trade unions of their choice;
- MNEs must respect fundamental rights of all workers, not only their own employees;
- The Guidelines apply to all businesses and not only multinationals. They also apply whether an enterprise is defined as an employer or as a digital intermediary;
- Fundamental rights now include occupational health and safety, and enterprises must "maintain the highest standards of safety and health at work"; and

⁸ <https://ictu.ie/sites/default/files/publications/2021/156283954032063131.pdf>

⁹ <https://ictu.ie/news/publication-collective-bargaining-coverage-recommendations>

¹⁰ [revised guidelines for multinational enterprises](#)

- Best possible wages and conditions of work should be applied in business operations in host countries.

All enterprises in the supply chain can help ensure respect for workers' rights. Implementing the guidelines can be made a condition by retailers for making purchasing orders and supplier agreements, by lenders and investors (including the IFC World Bank) for financing projects, and by government procurement agencies for awarding contracts. Similarly, institutional investors can seek guarantees from asset managers and private equity that they will ensure that companies they invest in uphold the MNE guidelines including the right to join a union and collective bargaining.

For the full benefits of the 2023 MNE Guidelines to be achieved, the procedures of the OECD network of National Contact Points (NCP) for complaints also needed revisiting. Unfortunately, the OECD missed the opportunity to improve them.

TUAC expected more from the revision to ensure that NCPs are fully staffed, funded and work with trade unions. It is disappointing that little has changed in the complaints procedure and that responsibility for dealing properly with complaints still relies on the goodwill of governments.

The Irish NCP is a case in point. The Peer Review held in 2021 was a welcome exercise that produced a modest set of recommendations¹¹, including on institutional arrangements:

“The NCP should increase and formalise its engagement with all stakeholder groups, for example by implementing a multistakeholder advisory body to provide more expertise, increase visibility and accessibility, spread workload, and increase accountability of the NCP”.

More than a year later, we are still awaiting implementation of this.

The new website¹² is a welcome development and there are signs of better timeliness in handling specific cases as well as enhanced transparency with the publication of findings on the website.

But much improvement is needed in terms of the operation of Ireland's NCP and hopefully the next NAP will chart this and monitor its implementation.

Recommendation 15.C on the report of the stocktaking exercise of the OECD Guidelines and the role of Government in promoting responsible business conduct is also relevant here.

Finally, all of the recommendations in the *Broader policy considerations* section are welcome and should form part of any second NAP:

24. Ireland should be a global leader in this policy area, part of our USP should be the state's sustainability brand.

25. The Government should play a more proactive role in seeking to shape EU initiatives such as the proposed Directive on sustainable corporate governance and should consider moving ahead of EU legislation.

¹¹ <https://enterprise.gov.ie/en/publications/publication-files/oecd-guidelines-for-multinational-enterprises-national-contact-point-peer-reviews-ireland.pdf>

¹² www.enterprise.gov.ie/oecdncp

26. Consideration should be given to orientating Irish company law and corporate governance structures to be more stakeholder focused.

27. A policy forum involving all relevant departments and open to relevant stakeholders should be convened during the lifetime of the current Implementation Group.

- ***How should the implementation of Ireland's second National Plan be monitored? Is the 'Implementation Group' model a good way forward?***

The main purpose of a National Action Plan should be to outline how the state will live up to its responsibilities to protect the human rights of people in Ireland from adverse effects of business operations. The last plan unfortunately was assigned to the Department of Foreign Affairs. Clearly DFA have an important role in the implementation of the plan (in terms of Irish business operations abroad and assisting developing country governments in their duty to protect), but it is essential that other Departments including the Department of Enterprise Trade and Employment must play a pivotal role. In this regard, it is welcome that both Departments are soliciting input from all interested stakeholders to inform the development of a second National Plan on Business and Human Rights and we hope that DETE will accept major responsibility in this area.

Any government strategy should have the following components to track, review and improve implementation over time, in line with recommendation 7 from the 2021 review:

- An independent oversight body with representation from social partners and civil society to monitor, evaluate and provide recommendations for improving implementation.
 - A cross-departmental implementation group with Ministerial-level participation.
 - An assessment framework that has measurable milestones and outcomes seeking to reduce business-related human rights abuses.
- ***Are there any other developments in the sphere of business and human rights that should be considered in the developments of Ireland's second national plan?***

i. Mandatory Human Rights Due Diligence

Through the gradual acceptance of the UNGPs by the international business community, since their unanimous adoption at the Human Rights Council in 2011, there has been a notable shift from ineffective Corporate Social Responsibility to more concrete action that must be welcomed.

Human rights due diligence to identify, prevent, mitigate and account for how enterprises address impacts on human rights, as set out in the UNGPs, has become central to the discussion on business and human rights.

Progress over the last decade can be tracked via the evolution in business response through periods of resistance, dismissal, avoidance, acquiescence, acceptance, to more demonstrated support for the UNGPs. The more responsible leaders in business are now actively advocating for

mandatory human rights due diligence in order to create a level playing field in this area, where they themselves are taking ownership of the principles. See, for example, statements from the European Brands Association (AIM), Business for Inclusive Growth, and the Investor Alliance for Human Rights. Unfortunately, that has not been the case in Ireland where studies, including the Trinity College Business School Benchmark Reports¹³, have shown very poor implementation of the UNGPs, in particular the implementation of human rights due diligence.

The important 2017 revisions to the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (ILO MNE Declaration) incorporate UNGP language and leaves no doubt that Fundamental Principles and Rights at Work are to be respected by business. Freedom of association and collective bargaining are highlighted as the cornerstone of effective human rights due diligence and indispensable in the movement towards decent work for all.

Elaborating on this centrality of freedom of association and social dialogue, the OECD Due Diligence Guidance for Responsible Business Conduct adopted in 2018 lays out how credible human rights due diligence is informed by stakeholder engagement and further specifies that “stakeholders” include workers, workers’ representatives, trade unions, and Global Unions.

States have a general and overarching responsibility to protect the human rights of those within their jurisdiction, including protection from business activity. Further, States directly engage in commercial transactions with business, not least through their procurement activities and export credit agencies. As such, these NAPs are essential opportunities to deploy States’ leverage as an economic participant, for implementing the UNGPs, and closing gaps in protection against business activities. NAPs enable the design of a holistic and comprehensive approach to ensuring business respect for human rights via all routes, including both direct and indirect state engagement in business practices. The first plan was a missed opportunity in this regard.

The urgency of the need for increased business action, for the prevention of human rights impacts, labour abuses, and the environmental damage and degradation that is inextricably linked to direct and collective human rights protection, requires mandatory measures.

The result of approaches set out in Germany’s 2016 National Action Plan show that, even where business is given a deadline to achieve adequate voluntary due diligence measures and incentivised by the additional threat of mandatory measures in the event of non-compliance, businesses overwhelmingly fail to act. This view is further confirmed by the results of the Corporate Human Rights Benchmark, which found that half of the companies assessed did not fulfil any of the steps outlined in the UNGPs as part of an effective due diligence process. Only nine out of ten companies were found to have carried out half the necessary steps required for due diligence.

We support mandatory human rights and environmental due diligence legislation. Trade unions across the world have signed up to the eight components of effective mandatory due diligence in the ITUC paper “Towards Mandatory Due Diligence in Global Supply Chains”¹⁴.

¹³ <https://businesshumanrightsireland.wordpress.com/2020/12/09/guest-post-benchmarking-the-adoption-of-the-un-guiding-principles-by-large-firms-operating-in-ireland/>

¹⁴ https://www.ituc-csi.org/towards_mandatory_due_diligence?msdyntrid=OmncL11h20XZVe3wjjDgEf4w27tz0ACF6Thdb32Pt2o

1. **All companies covered:** the obligation to conduct human rights due diligence should be imposed on all companies, regardless of their size, structure, or ownership.
2. **Obligations throughout corporate structures and business relationships:** the obligation to practice human rights due diligence should extend to entities to which business enterprises are connected through investment and contractual relationships.
3. **Internationally recognised human and labour rights:** the obligation to practice human rights due diligence should extend to all internationally recognised human rights, including labour rights, without distinction. Companies should also be expected to carry out due diligence with regard to their environmental impact, including climate impact.
4. **Workplace grievance and remedy mechanisms:** business enterprises should be required to establish or participate in effective operational-level grievance mechanisms with a view to identify and remediate adverse human rights impacts.
5. **Monitoring and sanctions:** enterprises' human rights due diligence obligations should be monitored by a competent public body, and violations of such obligations should carry effective and dissuasive sanctions.
6. **Liability:** the requirement to practice human rights due diligence and the requirement to remedy any harm resulting from human rights violations should be treated as separate and complementary obligations.
7. **Burden of proof:** the burden should be on the company's shoulders to prove that it could not have done more to avoid the causation of harm, once the victim has proven the damage inflicted and the connection to the business activities of the company.
8. **Role of trade unions:** human rights due diligence should be informed by meaningful engagement with trade unions.

These are broadly in line with the key elements of any proposed law on corporate accountability put forward by the Irish Coalition on Business and Human Rights in 2021:

1. **Establish a new legal duty** for businesses to conduct effective due diligence and prevent adverse impacts on human rights and the environment;
2. **Cover all businesses**, and apply throughout their own activities and value chains;
3. **Protect people and planet**, requiring respect for all internationally recognised human rights and key environmental standards;
4. **Ensure accountability**, holding companies liable if they cause or contribute to human rights and environmental harms;
5. Deliver **effective remedy**, with real access to justice for affected communities;
6. Be **gender-responsive**, recognising the often-disproportionate impact of human rights harms on women
7. Include early, on-going, meaningful and safe **engagement with affected communities**, civil society and trade unions;
8. Address **reprisals against communities** for defending human rights.

As noted above, of particular concern, is the dearth of attention on freedom of association in the activities of companies related to business respect for human rights. This is as much an issue in the practices of multinational enterprises in relation to their direct employees, as along their supply chains. Freedom of association is fundamental if workers are to ensure that their rights are protected every day on the job. If it is effectively exercised, there is little or no need for external monitoring, auditing or other measures. This is due to the nature of freedom of association as, in addition to a fundamental right, an enabling right that allows and empowers workers to protect other human rights. As such, it needs to be recognised as a salient rights risk: in and of itself, and as a route to the prevention or mitigation of widespread other potential human rights impacts.

Despite being a fundamental right, it is rarely central, adequately protected or even considered in the due diligence measures taken by many companies. It is not recognised as a common risk, nor taken seriously when breaches occur, and is, ultimately, not given the attention warranted of such an interwoven and underpinning right. That is true within major multinational enterprises, national and smaller businesses.

Further, where companies have made some first moves to comply with human rights requirements, we often see this twinned with a refusal to engage with worker representatives and unions. In the company view, they have taken some first steps in carrying out human rights due diligence, and therefore see no need for worker engagement for the resolution of worker issues. Companies cannot use engagement in (often negligible) human rights due diligence to justify a lack of respect for freedom of association rights: due diligence can never be deployed instead of freedom of association. Firstly, it is manifestly impossible for adequate and effective due diligence – the assessment, prevention, mitigation and addressing of potential or actual human rights impacts - to be carried out without freedom of association and social dialogue.

Workers are key stakeholders; potential adversely impacted parties. Furthermore, and equally essentially, as a fundamental right in and of itself, companies must mitigate freedom of association risks and ensure respect for this right throughout its own operations and at every stage of its supply chain. As such, in addition to ensuring respect for freedom of association in its own direct operations, it should be a priority issue in business relationships. These include with subcontractors, labour hire firms, contract workers, franchise holders, and otherwise along the supply chain. To be clear, no top-down measures can replace local freedom of association and collective bargaining as fundamental and essential human rights of workers. The mapping of supply chain risks must include the assessment of these risks. This is simply not taking place.

ii. Just Transition

Trade unions have also continued to highlight the salience of environmental labour risk and the 'human right' to a just transition¹⁵. The core elements of any conceptualisation of a just transition is already well-rooted in international human rights law and we contend that a just transition should not be considered merely as an abstract public policy concept but rather as a human right. Since that time, there have been major legal and policy developments forging momentum towards a standalone human right to a just transition, including in July 2022, the UN General Assembly (UNGA) passing a resolution recognising the right to a clean, healthy, and sustainable environment as a human right. The resolution affirmed the linkage between climate change and human rights and underscored the obligation of states “to respect, protect and

¹⁵ <https://www.equaltimes.org/a-just-transition-guaranteed-by#.ZPZA7HbMKUk>

promote human rights, including in all actions undertaken to address environmental challenges”. As the International Labour Organization (ILO) explained, this means “applying a ‘just transition’ logic which avoids trade-offs between the human right to work and the human right to a healthy environment; and protect biodiversity by supporting indigenous peoples’ livelihoods”.

This June, government, worker (including Congress), and employer delegates from around the world met at the International Labour Conference in Geneva to discuss how to achieve “a just transition towards environmentally sustainable economies and societies for all”. This discussion examined the distinct role of the ILO in developing and implementing mitigation and adaptation measures within a rights-based context, and in particular the right to work. The General Conference Discussion on Just Transition¹⁶ highlighted the urgency of action around climate and environmental degradation, with a central role to be played by trade unions in driving industrial change, with workers’ organising and bargaining rights fully protected. The ILC endorsed the ILO Just Transition Guidelines and the member states committed to engage on just transition policies and measures.

Any new National Action Plan must outline how Government will finally, after much delay, put in place the necessary institutional arrangements to ensure a Just Transition here, not least the formation of a Just Transition Commission.¹⁷

iii. Human Rights and the impact of new technology

New NAPs should also be looking very closely at the human rights impact of new tech, including generative AI. The risk to workers’ rights from growing technology is increasingly recognised and trade unions believe that legislation to protect workers from the misuse of AI is needed. Workers are already facing hiring and firing by algorithm, and hi-tech surveillance of their every move – but the rapid recent development of generative AI means the impact is being felt in more sectors. Impacts include infringement of privacy, work intensification, an increase of insecurity at work, and also potential for discrimination. We also acknowledge that artificial intelligence (AI) systems offer immense opportunities for improving work and workplaces. For example, AI tools can improve worker safety, productivity and free them up do more rewarding work. At the same time, however, without appropriate regulation the increased usage of these largely invisible technologies poses potential risks to workers which is why we strongly endorse the European Trade Union Confederation (ETUC) calls for a dedicated EU directive on AI in the workplace¹⁸.

In the same way that EU legislation sets minimum standards for occupational health and safety, new rules are needed to set European minimum standards for the design and use of AI in our workplaces and to guarantee that no worker is subject to the will of a machine. We need to equip the workforce with the skills required to keep pace with AI technologies. We need a Just Transition approach whereby policies are put in place to ensure that where parts of jobs or whole jobs or whole industries become redundant workers’ living standards are protected through pay-related and pro-active income supports, including through a genuine short-time work scheme for vulnerable but viable employment, retraining opportunities and that there are other quality jobs created into which workers can move.

¹⁶ [Just Transition](#)

¹⁷ <https://ictu.ie/publications/just-transition-open-letter>

¹⁸ <https://ictu.ie/news/artificial-intelligence-workplace-dr-laura-bambrick>

Although the legislative process has not yet been completed, the proposal submitted by the European Commission was more than disappointing from the workers' point of view. It only requires software providers to self-assess their own technology between low-risk and high-risk before putting it on the market and did not include any rules on the use of AI in the workplace. Some of the improvements we would like to see include:

1. Requiring consultation with workers and their unions before introducing AI in to the workplace. A recent OECD survey of workers on the impact of AI in their workplace in the manufacturing and financial sectors in seven countries found where consultation took place, workers were more likely to report AI had had a positive impact on their performance and working conditions (March, 2023).
2. Requiring an impact assessment on fundamental rights before an AI system is introduced into a workplace.
3. Allowing a Member State to restrict the use of an AI system in the workplace if it is done to protect workers' rights.

iv. Business and the Occupied Palestinian Territories

Congress is in full agreement with the recommendations from the DBIO coalition report of 2022¹⁹ including that European governments and institutions should:

1. Provide political and financial support to the UN Office of the High Commissioner for Human Rights (OHCHR) to fulfil its mandate to annually update and publish the UN database of business enterprises involved in certain activities relating to Israeli settlements in the OPT.
2. Address conflict-affected areas and occupied territories in the business and human rights frameworks that are being developed at national, European and UN levels (such as the European Commission's Corporate Sustainability Due Diligence Directive, National Action Plans, and the UN Binding Treaty on Business and Human Rights) and ensure that business enterprises operating within their jurisdiction undertake enhanced human rights due diligence procedures to immediately end and/or prevent involvement in violations of human rights in conflict-affected areas, including situations of occupation, in line with the UNGPs, OECD Guidelines, and other relevant responsibilities and obligations under international human rights and humanitarian law.
3. Ensure full and effective alignment of national and EU-level due diligence legislation with the UNGPs and OECD Guidelines, including by:
 - a. Integrating specific provisions regarding responsible business conduct in conflict-affected and high-risk areas in the upcoming Corporate Sustainability Due Diligence Directive as well as in national level due diligence legislations.
4. Prohibit the import of illegal settlement products and services to European markets, and ban trade with and economic support for illegal Israeli settlements, as part of implementing relevant positive and customary obligations of third States under international humanitarian law.

¹⁹ [DBIO coalition report of 2022](#)

5. Publish updated business advisories on direct and indirect financial investments, activities and relationships with the Israeli settlement enterprise, warning about the associated legal risks and consequences; and put in place a proactive dissemination strategy towards business enterprises and corporate actors. Actively encourage the European Union (EU) to publish a joint EU business advisory on financial investments and activities linked to Israel's settlement enterprise, and to develop and adopt a proactive dissemination strategy.
6. Make explicit in procurement guidelines that the State and local authorities are expected to apply public procurement law consistently in line with the State's obligations under international law and ensure companies' respect of the standards of conduct provided by the UNGPs and OECD Guidelines.
7. Incorporate legislation to give effect to the principle of universal jurisdiction at a domestic level, for the prosecution of corporate-related grave breaches of the Geneva Conventions and international crimes committed in the OPT, as part of the EU's fight against impunity and to ensure accountability.
8. Include corporate-related human rights violations, grave breaches and international crimes committed in the OPT, namely those linked to the illegal settlement enterprise, in the implementation of the EU Global Human Rights Sanctions Regime.

Conclusion

Congress welcomes the opportunity to feed into the iterative process of creating a new NAP and hope that our suggestions will be considered when finalising the plan. We also stand ready to play a constructive role in monitoring and improving its implementation.

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September 2023