

National Women's Council of Ireland is the leading national women's membership organisation. We seek full equality between men and women. We represent and derive our mandate from our membership, which includes 180 member groups from a diversity of backgrounds, sectors and locations.

We regret that due to time constraints, the organisation was not in a position to contribute to the initial public consultation on Ireland's National Plan on Business and Human Rights. We do however greatly welcome this subsequent opportunity to offer a few observations on the current "Working Outline" with a particular focus on Sections 2, 3 and 4.

## **Section 2. Assessment of Legislative and Regulatory Environment**

*"Ireland recognises that the State duty to protect human rights from harm by third parties, including business enterprises, is based on existing international human rights law."*

NWCI were concerned to note a shortage of concrete action points within this section. NWCI are particularly concerned at the lack of any specific Action Point within the section on Equality.

While Action points 9- 12 offer welcome actions in relation to the very specific issue of anti-corruption, all other areas are covered by a single Action Point;

**Action Point 8:** *Commission a study to conduct a comprehensive baseline assessment of the legislative and regulatory framework pertaining to business and human rights as it applies in Ireland. Upon completion, the study is to be added to the agenda of the Business and Human Rights Implementation Group for review.*

The implementation group is given the very mild mandate of reviewing an assessment but is not given a clear mandate to suggest revision of legislation or set targets for improvement according to the findings of the baseline assessment. NWCI would also note our interest in contributing to any consultation which might take place as part of such an assessment. Overall, the focus seems to be on listing existing legislation rather than setting out future ambition, goals or commitment as would be appropriate for a Plan.

NWCI believe this section should, for example, reference emerging concerns such as precarious work and related initiatives such as the Government commissioned University of Limerick recommendations on low hour contracts. The extent to which human rights concerns are not reflected in new institutional mechanisms such as the Low Pay Commission is also of real importance. NWCI have strongly advocated, for example, for the explicit inclusion of minimum essential standards of living, in work poverty levels and the gender pay gap in the legislation establishing the Commission.

Moreover it is surely essential that the Plan would include an **Action Point which sets out a clear future commitment to ensure that human rights concerns are appropriately considered and reflected in any new legislation related to business.**

It is also absolutely crucial that the Plan would, in recognition of the State duty to protect human rights, include an explicit **Action Point reaffirming the State's right to regulate – including the introduction of new regulation in relation to emerging issues or enhanced protections** e.g a new environmental concern or social equality target.

On a global level, we are seeing a number of direct and indirect challenges from private corporations to changes or enhancement of State regulation wherever that could impact on projected profits. Such cases, whether or not they are successful, can often lead to a chilling effect on legislation and regulation. It is essential that this Plan would provide a countervailing pressure and protection by strongly affirming the state's right and duty to continue to legislate and regulate towards not only the protection, but the enhanced vindication of, Human Rights.

### 3. The State as an Economic Actor

*States are both the authors and the subjects of international human rights law and have a legal duty to protect human rights when business activities can be attributed to the state e.g. State owned or controlled companies. The State also has a responsibility to protect human rights where the state supports indigenous companies or concludes contracts with private parties or with other States.*

NWCI welcome the specific proposals in relation to State owned companies and agencies although we would like to see stronger language within the Action Points and the focus on the promotion of 'awareness' reinforced by 'setting measurable targets and ensuring compliance'. In particular, NWCI would expect to see a stronger emphasis and clear **Action Point around the new Public Service Duty on Equality and Human Rights as introduced in the IHREC legislation.**

A particular area of serious concern for NWCI is the vitally important question of Public Procurement. Procurement policy is one of the largest expressions of the State's role as economic actor and its most significant interaction with business. This requires active engagement far beyond that reflected in Action Points 23 and 24.

*23. Action Point: Office of Government Procurement will follow good practice on procurement and human rights standards in request for tenders in line with existing EU law.*

*24. Action Point: Transpose the European Directive on Public Procurement (2014/24/EU) into Irish law.*

Specifically, Action Point 24 is deeply inadequate in simply committing to transposition of new Directive without any reference to the manner in which the State might choose to execute that transposition. As stated, "*the European Directive on Public Procurement 2014/24/EU (to be transposed by April 2016) calls upon Member States to bring about the 'appropriate integration of environmental, social and labour requirements into public procurement procedures'*". The Directive clearly places the responsibility on each State to specify and outline what that State consider to be appropriate integration and how it is to be reflected in legislation. The Irish State is presented with a number of important choices, will it reserve public delivery of certain public services by excluding them from competitive tender? Will it employ Lowest-Cost or Most Economically Advantageous

Tender as the frame? Will it integrate environmental, employment, equality or human rights criteria or clauses within its procurement processes. Crucially, how are these decisions reflective and supportive of the States commitment to the protection and vindication of human rights.

The crucial requirement for this Plan must be to include an **Action Point which commits the state to ensuring that any current or future transposition of Procurement Directives will be compliant with our human rights obligation and also be subject to specific examination and approval by the Irish Human Rights and Equality Commission.** The same test should also be applied to the policy on Public Commissioning which is currently in development

In regard to the section on State Investments, NWCI would like to ensure that the ISIF is flexible enough to reflect any emerging or future human rights concerns beyond the current restrictions re cluster munitions etc. This might, for example, include future political decision to divest in relation to environmental concerns.

***Action Point 18 :** Support the Ireland Strategic Investment Fund (ISIF) in reviewing, developing and adapting its existing Responsible Investment (RI) policy for its new mandate.*

This might perhaps be reflected by editing Action Point to include of explicit reference to “adapting its existing Responsible Investment policy for new or future mandate”.

Regarding the other areas of investment such as the significant expenditure by Enterprise Ireland, NWCI believe it would be positive to look beyond potential areas for exclusion on human rights grounds and the delivery of ‘due diligence’ as reflected in Action Point19

***Action Point 19 :** The ‘Business and Human Rights Implementation Group’ will consider on its agenda the promotion of human rights due diligence in the context of State support to business.*

There should, NWCI believe, also be scope for **Action Points which provide for the potential application of social criteria or clauses designed to improve Ireland’s national vindication of human rights.**

#### **4. Gender Equality and the Empowerment of Women and Girls**

NWCI are pleased to see the inclusion of a specific section on Gender Equality and the Empowerment of Women and Girls. We are, however, concerned to see that this section does not, at present, include any Action Points. Moreover, the National Women's Strategy, referred to extensively in this section is due to expire this year. There has been public Ministerial commitment to the development and delivery of a new “Action Plan for Women’s Equality” which is likely to hold significant implication for business and human rights. While that process has not yet begun it is important that this Plan would, at a minimum, include a specific **Action Point around the integration of human rights in the delivery of an Action Plan for Women’s Equality following expiry of the current NWS.** There are also crucial discussions taking place at EU level where the current Strategy for Equality between Women and Men is due to expire. It is important that the Plan include an **Action Point for Ireland to support integration of human rights in development of a strong new European Strategy for Equality between Women and Men.**

