



An Roinn Gnóthaí Eachtracha
agus Trádála
Department of Foreign Affairs
and Trade

**Working Outline of Ireland's National Plan on
Business and Human Rights
2016-2019**

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1. Introduction

“Ireland has an opportunity to become a leader in the area of business and human rights.”
Mr Charles Flanagan TD, Minister for Foreign Affairs and Trade, at the DFAT NGO Forum on Business and Human Rights, 7 November 2014.

Business enterprises of all sizes and kinds, from local companies to transnational corporations, can significantly impact the communities in which they operate. Business enterprises play a substantial role in the lives of workers, the lives of consumers, the protection of the environment and sustainable development. Crucially, business enterprises can impact on the enjoyment of human rights. This impact can extend from the area in which the company is located to the wider international community. As business operations are increasingly globalised, business enterprises and States are called upon to work together to ensure that companies respect human rights.

On 16 June 2011, the UN Human Rights Council unanimously endorsed the **Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework**.¹ This established a set of Guiding Principles (UNGPs) to act as the global standard of practice for all business enterprises and States with regard to business and human rights.²

The UNGPs include 31 principles that are structured according to three pillars. The principles are grounded in recognition of:

1. States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms.
2. The role of business enterprises as organs of society performing various functions, required to comply with all applicable laws and to respect human rights.
3. The need for rights and obligations to be matched to appropriate and effective remedies when breached.³

While the UNGPs do not by themselves constitute a legally binding document, they elaborate on the implications of existing standards and practices for States and business enterprises and include points covered in international and domestic law.

¹ Report of the Special Representative of the Secretary-General on the issues of human rights, transnational corporations and other business enterprises, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, 21 March 2011, A/HRC/17/31. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement>

² OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, (2011) (hereinafter *UN Guiding Principles on Business and Human Rights*). Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

³ *ibid*, 1.

Corporate respect for human rights is becoming more important than ever. There is a growing awareness of the demand for responsible business behaviour. The public is increasingly interested in how profits are made and how business affects society and the environment. Business enterprises are demanding certainty about the Government's expectations of them in terms of their human rights responsibilities and are becoming increasingly focused on human rights and how to apply the UNGPs. The Economist Intelligence Unit Report (2015), 'The road from principles to practice: Today's challenges for business in respecting human rights', found that out of 853 senior corporate executives surveyed 83% of respondents agreed that human rights are a matter for businesses as well as for governments.⁴ The UNGPs have been endorsed by international business associations including the International Chamber of Commerce (ICC), the International Organisation of Employers (IOE),⁵ the International Council on Mining and Metals (ICMM)⁶ and the International Petroleum Industry Environmental Conservation Association (IPIECA)⁷.

A central achievement of the UNGPs is to help create a level playing field for business enterprises as the Principles apply to all businesses. To help ensure this, the UNGPs are being implemented within their respective national contexts. Both the United Nations and the European Union have called on all States to develop National Plans in order to implement the UNGPs. The Government decided on 24 June 2014 that Ireland would develop a National Plan for the implementation of the UN Guiding Principles on Business and Human Rights. The National Plan aims to support their implementation by providing companies with guidance on how to ensure respect for human rights in their activities, including all companies operating in Ireland and Irish companies operating overseas.

The Government is committed to making Ireland one of the best countries in the world in which to do business. Central to this commitment is enabling and encouraging business enterprises to become more competitive by integrating responsible and sustainable business practices and respect for human rights across their operations. The National Plan on Business and Human Rights will seek to create functional tools to help business enterprises achieve this, targeting, among others, the Small & Medium Enterprises (SME) sector in Ireland which accounts for the vast majority of enterprises. The National Plan will

⁴ The Economist Intelligence Unit, *The road from principles to practice: Today's challenges for business in respecting human rights*, 16 March 2015, 2. Available at: http://www.economistinsights.com/sites/default/files/EIU-URG%20-%20Challenges%20for%20business%20in%20respecting%20human%20rights%20WEB_corrected%20logos%20and%20UNWG%20thx.pdf

⁵ ICC, the IOE and BIA, *Joint IOE-ICC-BIAC Comments on the Draft Guiding Principles on Business and Human Rights*, 26 January 2011. Available at: <http://business-humanrights.org/sites/default/files/media/documents/ruggie/ioe-icc-biac-comments-on-guiding-principles-26-jan-2011.pdf>

⁶ ICMM, *ICMM endorsement of the "UN Guiding Principles on Business and Human Rights: Implementing the 'Protect, Respect and Remedy' Framework"*, 25 May 2011. Available at: http://business-humanrights.org/sites/default/files/media/documents/icmm-letter-to-john-ruggie-25_may_11.pdf

⁷ IPIECA, *New initiative on business and human rights launched by IPIECA*, Press Release, January 2011. Available at: http://www.ipieca.org/system/files/uploads/Press-release_June2011.pdf

also strengthen Ireland's reputation as a State which promotes responsible and competitive business practice both in Ireland and internationally. The Plan will build on the achievements of Ireland's National Plan on Corporate Social Responsibility which was published by the Department of Jobs, Enterprise and Innovation in April 2014.⁸

The Human Rights Unit of the Department of Foreign Affairs and Trade has led the development of the National Plan and has worked closely with Government Departments, State Agencies, business enterprises and civil society to devise a plan that is practical, credible and ambitious. The wide consultation undertaken by the Government has enabled the Plan to reflect the experience of stakeholders and to present action points that are based on best practice.

The objective of the National Plan is to inform public and private policy making in relation to the impact of business activities on human rights.

The National Plan as presented in this document seeks to:

- Set out the current state of play in Ireland in relation to actions which can be deemed to already assist in the implementation of the UNGPs.
- Set out actions which can be taken over a 2/3 year period in order to further implement the UNGPs.

The National Plan is structured according to the three pillars of the UNGPs: the State duty to protect; the corporate responsibility to respect; and the need to provide a means of effective remedy. This is designed to help clarify the distinct interrelated roles and responsibilities of States and business enterprises in this area.

The National Plan contains a number of highlighted "Action Points" that will further the implementation of the UNGPs and will form the basis of a sustained commitment to the Plan by the State. The Government also hopes that the Plan will raise awareness of business and human rights among all stakeholder groups. Ongoing engagement throughout the development process has been a foundational component of the Plan.

⁸ Department of Jobs, Enterprise and Innovation, *Good for Business, Good for the Community, Ireland's National Plan on Corporate Social Responsibility 2014-2016*, April 2014. Available at: <https://www.djei.ie/en/Publications/Publication-files/Good-for-business-Good-for-the-community.pdf>

2. Principles to Guide the Ongoing Development of the National Plan

The development of a National Plan on Business and Human Rights is a valuable opportunity to reflect on our approach to business and human rights, to identify any gaps in the legal and regulatory framework, and to put in place initiatives to strengthen the overall approach by Government and business enterprises toward business and human rights. This will be an ongoing process and has been informed to date by the following principles:

- The National Plan will build upon Ireland’s reputation in the promotion and protection of human rights.
- The National Plan will be the first step on the road to implementing the UNGPs as informed by recommendations of international human rights bodies, the International Labour Organisation (ILO), the European Union and the Council of Europe.
- The development of the Plan is focused heavily on engagement with stakeholders, including business enterprises, civil society, Government Departments and international partners.
- The National Plan will promote understanding of how addressing human rights risks and impacts can help build business success and contribute to sustainable development.
- The objective is that the National Plan would be pragmatic and practicable.
- The National Plan will build on best practice and existing initiatives in the field of business and human rights. The Plan will build on and encourage the use of existing national and transnational initiatives and industry programmes, such as the Business Working Responsibly Mark⁹, the Global Reporting Initiative¹⁰ and the UN Global Compact¹¹.
- The National Plan will encourage and provide space for companies to meet their responsibility to respect human rights above and beyond legal requirements.

⁹ The Business Working Responsibly Mark is an initiative from Business in the Community Ireland (BITCI) which allows companies to benchmark their sustainable policies against other companies and ultimately gain certification for high standards from the NSAI, based on the ISO 26000 Mark. For more information visit:

<http://www.bitc.ie/csr-certification/>

¹⁰ The Global Reporting Initiative (GRI) is a non-profit initiative that has established a Sustainable Reporting Framework and is used by companies globally to report on the economic, environmental and social impacts caused by their everyday activities. The GRI enjoys strategic partnerships with the United Nations Environment Programme, the UN Global Compact, the Organisation for Economic Co-operation and Development, the International Organization for Standardisation and others. For more information visit: <https://www.globalreporting.org/Pages/default.aspx>

¹¹ The UN Global Compact is a strategic policy initiative of the UN for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. For more information visit: <https://www.unglobalcompact.org/>

3. Human Rights Due Diligence

(a) Due Diligence

Due diligence forms a central component of a business enterprise's ability to assess and act upon potential and actual risks to their operations. The OECD Guidelines on Multinational Enterprises, updated in 2011 in light of the adoption of the UNGPs, urge companies to carry out due diligence. Due diligence is understood, and outlined in the OECD Guidelines, as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.¹² In the context of human rights, due diligence means that business enterprises should be encouraged to assess the actual and potential impacts of their operations on human rights, in particular before entering into a partnership agreement or establishing a presence abroad and in relation to supply chains.¹³ The Plan will encourage the corporate sector to adopt international best practice in relation to human rights due-diligence and ensure it is an ongoing activity of the business in its management of human rights risks and impacts.

Human rights due diligence is referenced regularly throughout the Plan, under both the State duty to protect and the corporate responsibility to respect human rights. The purpose of this chapter is to explore in more detail the concept of human rights due diligence and how it applies to both the State and business enterprises in identifying, preventing, mitigating and accounting for actual and potential adverse impacts on human rights.

(b) Human Rights Due Diligence

The UNGPs, through Principles 17-21, define human rights due diligence and elaborate on its essential components. Principle 17 states that human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.¹⁴

¹² OECD, *OECD Guidelines for Multinational Enterprises*, OECD Publishing, (2011), 23, para 14 (hereinafter *OECD Guidelines for Multinational Enterprises* (2011)). Available at:

<http://dx.doi.org/10.1787/9789264115415-en>

¹³ *ibid.*

¹⁴ *UN Guiding Principles on Business and Human Rights*, Principle 17.

The corporate responsibility to respect human rights in essence means to act with due diligence to avoid infringing on the rights of others.¹⁵ Human rights due diligence is an ongoing process where the human rights impacts of the activities of business are assessed in an appropriate and sufficient manner. For example, actors engaged in conflict areas may need to ensure that they have carried out a credible analysis of the factors underpinning the conflict and the human rights situation in the area affected.

An effective human rights due diligence policy also enables companies to avoid or reduce their legal and operational risks. The policy will be an attempt to prevent any adverse impacts on human rights which could be caused by the activities of the business itself, impacts that the business would considerably contribute towards or impacts which are directly related to the business activities, products or services through business relations.¹⁶ The UNGPs define business relationships as including relationships with business partners, entities in the value chain, and any other non-State or State entity directly linked to business operations, products or services.¹⁷

An effective human rights due diligence policy should include:

- An assessment of how the business activity impacts or has the potential to impact human rights.
- A process in place to prevent or mitigate potential or actual negative impacts on human rights.
- A process in place to account for actual negative impacts on human rights.

The 2010 *Guide to Human Rights Impact Assessment and Management*¹⁸, prepared by the International Business Leaders Forum (IBLF) and the International Finance Corporation (IFC), in association with the UN Global Compact, contains two interactive tools to assist companies in integrating these elements into their own human rights due diligence policy:

- **The Human Rights Identification** tool aims to help companies become aware of a range of potential and/or existing human rights risks and impacts
- **The Human Rights Due Diligence Mapping** tool aims to help companies map the policies, risks and impact assessment processes

¹⁵ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Business and human rights: Towards operationalizing the “protect, respect and remedy” framework*, A/HRC/11/13, 22 April 2009, para 2. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>

¹⁶ *OECD Guidelines for Multinational Enterprises* (2011), 23.

¹⁷ *UN Guiding Principles on Business and Human Rights*, 15.

¹⁸ The International Business Leaders Forum (IBLF) and the International Finance Corporation (IFC), in association with the UN Global Compact, *Guide to Human Rights Impact Assessment and Management* (2010). For tools and guidance on their implementation see page 60. Available at: http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management

The National Plan recognises that the extent and scope of human rights due diligence policies will vary greatly across companies depending on their size, the countries and regions in which they operate and their business activities. Therefore the appropriateness and sufficiency of following human rights due diligence shall be weighed on a case-by-case basis. As the conditions and potential risks posed by companies to human rights vary greatly, so too will the extent and scope of their respective human rights due diligence policies.

The National Plan does not propose a single approach for companies in developing human rights due diligence policies and instead focuses on a risk based approach to human rights due diligence, allowing companies to tailor their human rights efforts accordingly. This approach is outlined in the UNGPs and is further reflected in the revised OECD Guidelines (2011):

*Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations, carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.*¹⁹

As a follow-up mechanism to the National Plan, a ‘Business and Human Rights Implementation Group’ will be established (see Action Point 6). This group will work towards identifying the size, nature and context of operations and severity of risks applicable in the Irish business context to encourage the relevant business sectors and operations to develop human rights due diligence policies.

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| <p>1. Action Point: The ‘Business and Human Rights Implementation Group’ will have on its agenda the need to work toward establishing the principles governing human rights due diligence for companies as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts (See Action Point 6 below).</p> |
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¹⁹ OECD Guidelines for Multinational Enterprises (2011), 31.

4. Ireland's Business and Human Rights Priorities

Pillar I – The State Duty to Protect Human Rights

Foundational Principles for Pillar I

UNGP 1: *States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.*

UNGP 2: *States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.*

Ireland's international human rights law obligations require the State to respect, protect and fulfil the human rights of individuals within our territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.²⁰ This Chapter explores the measures Ireland has in place to protect against human rights violations from business enterprises, and identifies Action Points where further steps can be taken to strengthen this protection and ensure implementation of the UNGPs.

The National Plan outlines the State's obligation to protect human rights as set out in the UNGPs under the following headings:

1. **The Development of the National Plan as a Multi-Stakeholder Process**
2. **Assessment of Legislative and Regulatory Environment**
3. **The State as an Economic Actor**
4. **Gender Equality and the Empowerment of Women and Girls**
5. **Human Rights Defenders**
6. **Bilateral Relations**
7. **Advancing the Business and Human Rights Agenda through International Fora**
8. **Conflict Affected Areas**

²⁰ UN Guiding Principles on Business and Human Rights, 3.

1. The Development of the National Plan as a Multi-Stakeholder Process

Ireland has sought to adopt a progressive and inclusive approach to developing a National Plan. The development of the Plan is participatory, ensuring the inclusion of the perspective and experience of rights-holders. Initiating a multi-stakeholder process was a central first step. Ensuring the participation of civil society, business and government stakeholders is vital to the development of a credible and legitimate national plan.

(a) Civil society

Input and feedback from our civil society partners is invaluable to the Government in policy making. The Department of Foreign Affairs and Trade NGO Forum on Human Rights which took place on 7 November 2014 focused on the theme of business and human rights and marked the start of the consultation process on Ireland's National Plan. The role of civil society was highlighted in the submissions, which were also received from NGOs, academics and the business community.²¹

(b) Whole of Government approach

The UNGPs cover a wide range of issues which span the policy responsibilities of a number of Government Departments and Agencies. An inter-departmental working group on business and human rights, consisting of representatives of Departments and Agencies, was established in October 2014. The contribution of Departments is crucial to the development of a comprehensive analysis of Ireland's legal framework on business and human rights. Government-wide participation also recognises the various ways the State interacts with business enterprises and assists in identifying responsibility amongst Departments for different elements of the UNGPs.

Ireland's National Plan on Corporate Social Responsibility – *Good for Business, Good for the Community*, was published in 2014. The Corporate Social Responsibility (CSR) Stakeholder Forum was established to drive the National CSR Plan's objectives. The Forum brings together representatives from the business sector, the public sector and the wider community, with the Department of Foreign Affairs and Trade also represented on the Forum. The National Plan on Business and Human Rights is intended to be both separate and complementary to the National Plan on Corporate Social Responsibility. It is recognised that while voluntary corporate social responsibility initiatives make a positive contribution to human rights, they are no substitute for the legal protection of human rights.

²¹ Civil society, business and individual submissions on the development of the National Plan are available at: <https://www.dfa.ie/our-role-policies/international-priorities/human-rights/human-rights-in-ireland/national-plan-on-business-and-human-rights/>

2. Action Point: Ensure coherence between the National Plan on Corporate Social Responsibility and the National Plan on Business and Human Rights.

(c) Business

In order to gain the perspective of business enterprises and to increase the participation of the business community in the process, the Department of Foreign Affairs and Trade has had the benefit of submissions received from a number of business organisations. On 13 February 2015 the Department co-hosted with Chambers Ireland a workshop for business enterprises on the UNGPs and the National Plan. Approximately 40 businesses were represented.

(d) International engagement

Ireland will continue its active participation in the annual United Nations Forum on Business and Human Rights and in the Council of Europe Drafting Group on Human Rights and Business (CDDH-CORP).

3. Action Point: Encourage civil society and business representative bodies to engage with the United Nations Forum on Business and Human Rights.

(e) Follow-up

The National Plan marks the commencement of a process which will include monitoring, evaluation and review with the involvement of business and civil society. On the principle of making best use of existing mechanisms Ireland commits to the following action points:

4. Action Point: The Inter-Departmental Committee on Human Rights will help to monitor Government wide implementation of the National Plan. Ireland's Foreign Policy Review, entitled: *Global Island: Ireland's Foreign Policy for a Changing World (2015)*²² established an Inter-Departmental Committee on Human Rights tasked to "improve the coherence of the promotion and protection of human rights in our foreign policy." The terms of reference of the Committee will be amended to include the monitoring of the National Plan.²³

²² Government of Ireland, *The Global Island: Ireland's Foreign Policy for a Changing World* (2015), 36. Available at: <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/ourwork/global-island/the-global-island-irelands-foreign-policy.pdf>

²³ See generally for the Inter-Departmental Committee on Human Rights: <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2015/march/minister-chairs-human-rights-committee/>

5. Action Point: Business and Human Rights will be included as a regular item on the agenda of the DFAT NGO Standing Committee on Human Rights²⁴. The DFAT NGO Standing Committee on Human Rights comprises human rights experts, academics, NGO representatives and representatives of the Department of Foreign Affairs and Trade and other Governmental Departments as required. The Committee meets approximately four times a year to discuss international matters of concern, including Ireland's obligations under international human rights law and Ireland's foreign policy positions on international human rights issues of concern.

6. Action Point: Establish the 'Business and Human Rights Implementation Group', which will consist of representatives from Government, the business community and civil society, and will meet twice a year to review the implementation of the National Plan over the first three years.

7. Action Point: A forum on Business and Human Rights will take place two years after the adoption of the National Plan. This will facilitate the exchange of views on the progress toward the implementation of the Plan and will bring together stakeholders including Government, the business community and civil society.

²⁴See generally on the DFAT NGO Standing Committee: <https://www.dfa.ie/our-role-policies/international-priorities/human-rights/human-rights-in-ireland/>

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. This section will examine how the State legislates for areas and activities relating to business and human rights, as well as the international regulatory framework and best practices. It is not intended to be a complete assessment of Irish law, rather to outline the current framework of protection. A comprehensive review of relevant legislation is necessary in order to identify and address any potential areas for improvement in the protection of human rights in business activity.

8. Action Point: 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.

Review of the legislative and regulatory framework in the area of business and human rights

The promotion and protection of human rights is central to Ireland's domestic and foreign policies. Our historical experience informs our approach to human rights and our Constitution, through its recognition of fundamental rights for the individual, including freedom, equality and justice. The large number of rights specifically provided for in the Constitution include, but are not limited to: equality before the law (Art. 40.1); property rights, including the right to own, transfer, bequeath and inherit property (Art. 40.3.2 in conjunction with Art. 43); personal liberty (Art. 40.4); the inviolability of the dwelling (Art. 40.5); freedom of expression (Art. 40.6.1 (i)); freedom of assembly (Art. 40.6.1 (ii)); freedom to form associations and unions (Art. 40.6.1 (iii)); freedom of conscience and the free profession and practice of religion (Art.44); the right to have justice administered in public by judges who are independent (Arts. 34 and 35); the right to criminal trial in Courts of law (Art. 38.1), and; the right to trial by jury (Art. 38.5).

(a) Workers' rights

Ireland is strongly committed to the protection and promotion of workers' rights through national and international legislation, with a robust body of employment rights legislation which provides employees with a means for redress in cases where their employment rights have been breached. Ireland has consistently supported the ILO in its efforts to promote core labour standards and has ratified the eight core ILO Conventions, as well as 65 other ILO Conventions²⁵.

²⁵ More information on ILO labour standards and Conventions is available at: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

The experience of Ireland's National Employment Rights Authority (NERA) is that a very important element in combating non-compliance or breaches of rights within the State is a culture and practice of co-operation and sharing of information between the bodies engaged in enforcement. The manner in which NERA works with the Revenue Commissioners, the Department of Social Protection, and An Garda Síochána through joint inspections and in particular the sharing on both a formal and informal basis of information is a very good example of the benefits of such co-operation.

(i) Industrial Relations Acts

Ireland ratified both the **ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948)** and **Convention No.98 on the Right to Organize and Collective Bargaining (1949)** in 1955. **The Industrial Relations Acts 1946-2012** gives effect to these Conventions.

It has been the consistent policy of successive Irish Governments to promote collective bargaining through law and through the development of an institutional framework supportive of a voluntary system of industrial relations that is premised upon freedom of contract and freedom of association. There is an extensive range of statutory provisions designed to back up the voluntary bargaining process.

The Programme for Government contained a commitment to reform the current law on employees' right to engage in collective bargaining (**the Industrial Relations (Amendment) Act 2001**), so as to ensure compliance by the State with judgments of the European Court of Human Rights.

Both the **Industrial Relations Act 2001** and its associated **Act of 2004** were enacted to provide a mechanism by which the fairness of the employment conditions of workers employed by employers that do not engage in collective bargaining could be assessed and to provide protection for employees initiating action in this regard. However, the 2007 decision of the Irish Supreme Court in *Ryanair v. The Labour Court* has cast doubt on the functionality of these Acts.²⁶

In addition, the ILO Committee on Freedom of Association issued its report in response to a complaint referred to it by the Irish Congress of Trade Unions (ICTU) and the IMPACT trade union, arising from the Supreme Court judgment in *Ryanair*. As part of Ireland's response to the ILO, it was indicated that these matters would be addressed in the context

²⁶ *Ryanair v. The Labour Court* [2007] IESC 6.

of a review of the operation of the **Industrial Relations (Amendment) Acts 2001 & 2004** as signalled in the Programme for Government.²⁷

Extensive consultation with stakeholders took place both around their experience of the operation of the 2001 & 2004 legislative framework, following which a set of proposals were developed and agreed by Government.²⁸

Current status of the Industrial Relations legislation

The **Industrial Relations (Amendment) Act 2015** was signed into law on 22 July 2015 and commenced on 1 August 2015. The legislation is in fulfilment of the Programme for Government commitment to “reform the current law on employees' right to engage in collective bargaining (the **Industrial Relations (Amendment) Act 2001**), so as to ensure compliance by the State with recent judgments of the European Court of Human Rights”.²⁹

The Act respects Ireland’s voluntary industrial relations system but ensures that where an employer chooses not to engage in collective bargaining either with a trade union or an internal ‘excepted body’ there is an effective means for a trade union, on behalf of members in that employment, to have disputed remuneration, terms and conditions assessed against relevant comparators and determined by the Labour Court if necessary.

It also ensures that if an employer chooses to collectively bargain with an internal ‘excepted body’, as opposed to a union, that body must pass tests as regards its independence. Provisions are included to ensure the Act is used appropriately and not abused in any way. There are provisions to ensure cases dealt with are ones where the numbers of workers are not insignificant; provisions to ensure elements of remuneration and conditions of employment are not challenged without regard for the totality of remuneration and conditions of employment; provisions to manage the frequency of reassessment of the same issues.

Additional protection by way of interim relief is provided where a union member, identified in the course of use of the process under the Act, is to be dismissed.

(ii) Workplace Relations Act 2015

The **Workplace Relations Act 2015** was signed into law by the President on 20 May 2015. The passing of this important piece of enabling legislation is a critical milestone towards the full implementation of the reform of employment rights and industrial relations

²⁷ *Programme for Government 2011-2016*. Available at: http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Programme_for_Government/Programme_for_Government_2011-2016.pdf

²⁸ Details of the proposed legislation are set out in a press release issued on 16th December 2014 and are available at: <https://www.djei.ie/en/News-And-Events/Department-News/2014/December/Ministers-Bruton-and-Nash-to-reform-the-Industrial-Relations-Amendment-Act.html>

²⁹ *Programme for Government 2011-2016*.

structures and framework to deliver a service which is simple to use, independent, effective, impartial and cost-effective.

(iii) Protection of Young Persons (Employment) Act 1996

Ireland ratified **ILO Convention No. 138 on the minimum age for admission to employment and work (1973)** in 1979. The **Protection of Young Persons (Employment) Act 1996** is designed to protect the health of young workers and ensure that work carried out during school years does not put young people's education at risk. The Act sets minimum age limits for employment, rest intervals and maximum working hours and prohibits the employment of anyone under 18 on late night work. The Act also requires employers to keep specified records for workers under 18. The Act generally applies to employees under 18 years of age. It defines children as being aged under 16 and young persons are those aged 16 and 17.

Additional legislation protecting the rights of workers includes:

- **Protection of Employees (Fixed-Term Work) Act 2003** (No.29 of 2003)
- **Safety, Health and Welfare at Work Acts 2005 and 2010**
- **Protection of Employees (Temporary Agency Work) Act 2012** (No.13 of 2012)
- **Unfair Dismissals Acts 1977-1993**
- **Employment Agency Act 1971** (No. 27 of 1971)
- **Minimum Notice and Terms of Employment Act 1973** (No. 4 of 1973)
- **Protection of Employment Act 1977** (No. 7 of 1977)
- **Payment of Wages Act 1991** (No. 25 of 1991)
- **Terms of Employment (Information) Act 1994** (No. 5 of 1994)
- **Protection of Young Persons (Employment) Act 1996** (No. 16 of 1996)
- **Organisation of Working Time Act 1997** (No. 20 of 1997)
- **Carer's Leave Act 2001** (No. 19 of 2001)
- **Protection of Employees (Part-Time Work) Act 2001** (No. 45 of 2001)
- **European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003** (No. 131 of 2003)
- **Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007** (No. 27 of 2007)
- **National Minimum Wage Act 2000** (No. 5 of 2000)

(b) Anti-Corruption

In recent years, United Nations and regional organisations have increasingly recognized the negative impacts of corruption on the enjoyment of human rights. Moreover, the treaty bodies and special procedures of the United Nations human rights system have regularly

identified corruption as a critical factor contributing to the failure of States to satisfy their human rights obligations.³⁰

The key anti-corruption legislation is contained in the **Prevention of Corruption Acts 1889 to 2010**, which provide the legislative measures for implementing the **OECD Anti-Bribery Convention** (21 November 1997, ratified by Ireland on 22 September 2003). The Oireachtas enacted the **Prevention of Corruption (Amendment) Act 2001** to make provision for the Convention in Irish law. The legislation covers corruption within both the private and public sectors and provides for offences by corporate bodies and their members. It also provides for extra territorial jurisdiction in respect of offences committed outside of the State. The scheme of the **Criminal Justice (Corruption) Bill 2012** has been published and will strengthen and update existing anti-corruption laws.³¹

The most recent peer review of Ireland's implementation of the Anti-Bribery Convention made a number of specific recommendations around awareness raising and reporting³². Recommendation 9b of the Report states that Ireland should 'establish procedures for public sector employees, including employees of DFAT and trade promotion and development aid agencies, to encourage and facilitate the reporting of suspected foreign bribery offences that they may uncover in the course of their work, as previously recommended in Phase 2'.³³

The report also recommends that Ireland should 'raise greater awareness in the public and private sectors of available channels for reporting suspected cases of foreign bribery, and raise greater awareness of whistle-blower protections in legislation. The **Protected Disclosures Act 2014** became operational on 15 July 2014 and provides a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so. The legislation also closely reflects international best practice recommendations on whistle-blower protection made by, the G20/OECD, the UN and the Council of Europe and draws on recent developments in legislative models adopted or being put in place in other jurisdictions.

Other international anti-corruption measures to which Ireland is a party include the **Council of Europe Criminal Law Convention on Corruption (1999)** and the **EU Convention against Corruption Involving Officials (1997)**.

³⁰ OHCHR, *The Human Rights Case against Corruption*, (2013). Available at: <http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/HRCASEAGAINSTCORRUPTION.PDF>

³¹ Criminal Justice (Corruption) Bill 2012. Available at: <http://www.justice.ie/en/JELR/Pages/PR12000180>

³² Phase 3 report on implementing the OECD anti-bribery convention in Ireland, December 2013, see recommendation 9. Available at: <http://www.oecd.org/daf/anti-bribery/IrelandPhase3ReportEN.pdf>

³³ *ibid.*

The **United Nations Convention against Corruption (UNCAC) (2005)** was ratified by Ireland in 2011. This is a comprehensive anti-corruption treaty, providing a set of standards and rules, to encourage countries to strengthen their legal and regulatory regimes to fight corruption, both within the private and public sectors. The main legislation implementing this measure is the aforementioned Prevention of Corruption Acts 1889 to 2010, as well as the **Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013**, the **Criminal Justice Act 1994**, and the **Criminal Justice (Mutual Assistance) Act 2008**.

9. Action Point: Ensure that relevant public servants are made aware of their obligation to report suspected cases of bribery under the OECD Convention on Foreign Bribery.

10. Action Point: Provide clarity to the relevant stakeholders on the applicable Irish law, the penalties under Irish law, the reporting channels and the protections for whistle-blowers/protected disclosures.

11. Action Point: 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 as part of the pack provided to companies on trade missions.

12. Action Point: Provide for the insertion of a new Part 26 into the Companies Act 2014 dedicated to reporting payments to governments in accordance with in Chapter 10 of Directive 2013/34/EU.

(c) Equality

Ireland ratified **ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation (1958)** in 1999 and **ILO Convention No. 100 on Equal Remuneration (1951)** in 1974.

The Employment Equality Acts 1998-2015 give effect to the rights enshrined in these Conventions and under EU anti-discrimination law. Employment rights legislation, including that of redress for violations of employment rights, applies equally to all workers in Ireland. The Employment Equality Acts prohibit direct and indirect discrimination in the area of employment on nine grounds including gender, civil status, family status, age, race, religion, disability, sexual orientation and membership of the traveller community. They cover all aspects of work including recruitment and promotion, the right to equal pay, conditions of employment, training or experience.

The statutory-based Irish Human Rights and Equality Commission (formerly in part the Equality Authority) works towards the elimination of discrimination and the promotion of equal opportunities. It is tasked with providing information and advice to persons who

consider themselves discriminated against on any of the nine grounds in employment or non-employment situations.

The **Workplace Relations Act 2015** overhauls current redress procedures including dealing with disputes in the equality area with regard to the workplace and in relation to access to goods and services.

Other legislation aimed at ensuring equal rights for workers include the **Maternity Protection Act 2004**; the **Adoptive Leave Act 1995**; the **Parental Leave Act 1998**; and the **Carer's Leave Act 2001**. The National Women's Strategy 2007-2016 provides a policy framework in which, inter alia, greater gender equality in the workplace in practice is fostered.

It was announced in Budget 2016 that statutory paternity leave of 2 weeks is to be introduced, together with a new Paternity Benefit, in respect of births from September 2016.³⁴

(d) Anti-trafficking

Ireland ratified **ILO Convention No. 182 on the Worst Forms of Child Labour (1999)** in 1999; **ILO Convention No. 29 on Forced Labour (1930)** in 1931; **ILO Convention on Abolition of Forced Labour (1957)** in 1958; and signed a Protocol to the 1930 Convention on Forced Labour in June 2014.

The **Criminal Law (Human Trafficking) Act 2008** and **Criminal Law (Human Trafficking) (Amendment) Act 2013** give effect to these Conventions. The 2008 Act creates separate offences of trafficking in children for the purpose of their labour exploitation or the removal of their organs, trafficking in children for the purpose of their sexual exploitation and trafficking in adults for the purposes of their sexual or labour exploitation or the removal of their organs. It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person, adult or child, for any purpose. It is an offence to solicit or importune a trafficked person for the purpose of prostitution. Sentences of up to life imprisonment are provided for those convicted of trafficking of persons for the purposes of forced labour.

In addition to the above legislation, the National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012 was developed to prepare Ireland for the ratification of the **Council of Europe Convention on Action against Trafficking in Human Beings (2005)**, which was ratified by Ireland in 2010. The second National Action Plan to Prevent and Combat Human Trafficking in Ireland is currently undergoing consultation

³⁴ Budget 2016. Available at:
<http://www.budget.gov.ie/Budgets/2016/Documents/Budget%20Book%202016%20-%20full%20document.pdf>

among stakeholders and will build on the work carried out to date in combating trafficking and set out Ireland's strategy for the coming years.

The **Council of Europe Convention against Trafficking in Human Organs (2015)**³⁵ was adopted by the Council of Europe's Committee of Ministers on 9 July 2015. The purposes of this Convention are to prevent and combat trafficking in human organs by providing for the criminalisation of certain acts, to protect the rights of victims of the offences, to facilitate co-operation at national and international levels on action against the trafficking in human organs.

On 22 July 2015, the Government authorised the Minister for Foreign Affairs and Trade, on behalf of the Minister for Health, to arrange for the signature, subject to ratification, of the Convention. The Department of Health is currently liaising with officials in the Department of Foreign Affairs and Trade to put the necessary arrangements in place to sign the Convention as soon as possible.

(e) Data Protection and Privacy Online

The Office of the Data Protection Commissioner (DPC) is established under the **1988 Data Protection Act**. The **Data Protection Amendment Act 2003** updated the legislation, implementing the provisions of **EU Directive 95/46**. The Acts set out the general principle that individuals should be in a position to control how data relating to them is used.

The DPC is responsible for upholding the rights of individuals as set out in the Acts, and enforcing the obligations upon data controllers. The Commissioner is appointed by Government and is independent in the exercise of his or her functions. Individuals who feel their rights are being infringed can register a complaint with the Commissioner, who will investigate the matter, and take whatever steps may be necessary to resolve it.

The **e-Privacy Regulations 2011** (No. 336 of 2011) deal with data protection for phone, e-mail, SMS and Internet use. They give effect to the **EU e-Privacy Directive 2002/58/EC** (as amended by Directive 2006/24/EC³⁶ and 2009/136/EC)³⁷.

In addition, the **EU Human Rights Guidelines on Freedom of Expression Online and Offline (2014)** state that the EU will ensure a structured and consistent approach to export

³⁵ Council of Europe Convention against Trafficking in Human Organs (2015). Available accessed at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/216.htm>

³⁶ Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

³⁷ Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

controls of certain sensitive information and ICT items. In addition, the EU will promote action at the international level to prevent the sale of surveillance or censorship technology to authoritarian regimes, including the presentation of proposals in the context of key multilateral export control regimes such as the Wassenaar Arrangement³⁸.

The **Data Protection Acts 1988** and **2003** give effect to Council of Europe Convention 108³⁹ and EU Directive 95/46/EC⁴⁰.

In January 2012, the European Commission published proposals for an updated Data Protection Regulation to replace Directive 95/46/EC. The objectives of the proposed Regulation are broadly as follows:

- Increase individuals' control over their personal data.
- Ensure a more harmonised and streamlined implementation of data protection standards across the EU.
- Accommodate the increasingly globalised nature of personal data transfers.

Once adopted, the new Regulation will be directly applicable. Furthermore, proposals to modernise Convention 108 were published in November 2011.

(f) Public health

Healthy Ireland – A Framework for Improved Health and Wellbeing 2013 – 2025 is the national framework for action to improve health and wellbeing in Ireland. Through Healthy Ireland, policy documents were launched covering a wide range of public health initiatives, including **Tobacco Free Ireland**. One of the many recommendations in **Tobacco Free Ireland** relates to the introduction of standardised packaging for tobacco products. The **Public Health (Standardised Packaging of Tobacco) Act 2015** was passed by both Houses of the Oireachtas and signed into law by the President on 10th March 2015. Under this Act non-compliant retail packaging may not be manufactured from May 2016, and may not be sold after May 2017.

(g) Occupational Health and Safety

The right to just and favourable conditions should include the right to a safe place of work. The current process of developing and enforcing legislation to protect the safety, health and welfare of workers assists, and will continue to assist, in the implementation of the UN's Guiding Principles on Business and Human Rights. Under Irish law an employer is obliged to provide a safe work place for his/her employees. Self-employed persons are

³⁸ Wassenaar Arrangement, 12 July 1996. Available at <http://www.wassenaar.org/>

³⁹ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Council of Europe, (1981).

⁴⁰ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data.

considered to be both employers and employees and therefore retain the obligations of an employer.⁴¹

The **Organisation of Working Time Act 1997** sets out, among other matters, the maximum weekly working hours an employee can be requested to fulfill, the regulations concerning Public Holidays (and compensation for same) and Annual Leave entitlements.

Ireland supports the negotiation and conclusion of transnational and international agreements on the part of multinational enterprises and global union federations designed to promote safe working conditions across corporate operations and their worldwide supply chains. These efforts are greatly informed by the principles embodied in the ILO's Conventions on occupational health and safety.

(h) Environment

The **European Communities (Environmental Liability) Regulations 2008**, came into force in Ireland on 1 April 2009. These Regulations (No. 547 of 2008) transpose **EU Directive 2004/35/EC**. The regulations deal with environmental liability with regard to the prevention and remedying of environmental damage.

The **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)** is especially important in terms of the shipment of hazardous waste from developed to developing countries. Ireland ratified the Convention in 1994.

Ireland ratified the **Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters) (1998)** in 2012. The Convention is designed to promote the involvement of citizens in environmental matters and improve enforcement of environmental law.

(i) Extraction industries

The **EU draft Regulation on responsible extraction of minerals (2014/0059)** allows for an EU importer of minerals to choose to self-certify as a “responsible importer”. This will trigger an obligation on the part of that importer to take steps to eradicate conflict minerals from its supply chain, such as:

- Conducting **due diligence** consistent with the *OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*
- Adopting a **policy** on conflict minerals in its supply chain which should be publicly available
- Strengthening engagement with suppliers by incorporating the above supply chain policy into **contracts with suppliers**

⁴¹ Safety, Health and Welfare at Work Acts, 2005 and 2010.

- Operating a **chain of custody** or supply chain traceability system supported by documentation
- Carrying out **audits** via an independent third party to assess the importer's conformity with the draft Regulation
- Establishing a company-level **grievance mechanism**, which may be done in collaboration with other organisations

The Kimberley Process

The European Union is a participant in the Kimberley Process Certification Scheme (KPCS), which was established by United Nations General Assembly Resolution 55/56 to prevent 'conflict diamonds' from entering the mainstream rough diamond market.⁴²

The Kimberley Process (KP) is a joint government, industry and civil society initiative to stem the flow of conflict diamonds – rough diamonds used by rebel movements to finance wars against legitimate governments. The KP has 54 participants, representing 81 countries, with the European Union and its Member States counting as a single participant. The KPCS sets out the requirements for controlling rough diamond production and trade. The KPCS entered into force in 2003, when participating countries started to implement its rules.

Under the terms of the KPCS, participating States must meet 'minimum requirements' and must put in place export, import and internal control and commit to transparency and the exchange of statistical data. Participants can only legally trade with other participants who have also met the minimum requirements of the scheme, and international shipments of rough diamonds must be accompanied by a KP certificate guaranteeing that they are conflict-free.

13. Action Point: Continue to participate in the Kimberley Process Certification Scheme and support the Scheme's stewardship by the European Commission.

(j) Non-financial reporting

The **Amendment to the EU Accounting directive on non-financial reporting 2014/95/EU** will require certain companies known as 'public interest entities' to include a declaration in their annual management report containing information stating material data related to the environment, social affairs, human rights, and prevention of corruption. It was adopted in September 2014. The Directive came into force in November 2014 and Member States have until 6 December 2016 to transpose it. Businesses will be offered guidance on non-financial reporting obligations relevant to them as part of the toolkit to be developed under this Plan (See Action Point 40).

⁴² United Nations A/RES/55/56. Adopted on 29 January 2001.

14. Action Point: Transpose the EU Directive on Non-Financial Reporting 2014/95/EU into Irish law.

(k) Military technology and equipment

European Council Common Position 2008/944/CFSP defines common rules governing the control of exports of listed military technology and equipment, which provides that respect for human rights in the country of final destination should be considered before licences to export to that country are granted.

(l) Humanitarian Law

International humanitarian law is mentioned in the commentary to Guiding Principle 7 and Guiding Principle 12. Ireland has ratified the Fourth Geneva Convention, the first additional protocol to the Geneva Conventions and related instruments.

(m) Private military and security companies

The *Montreux Document On Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict*⁴³ recognises that well-established rules of international law apply to States in their relations with private security service providers and provides for good practices relating to private security companies. Ireland subscribed to the *Montreux Document* in 2014.

⁴³ *Montreux Document On Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict*, 17 September 2008. Available at: https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf

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.

(a) State owned companies and agencies

The Government is committed to encouraging all state owned companies and agencies, in particular those with a significant overseas presence (e.g. Enterprise Ireland, Bord Bia, ESB International), to demonstrate the highest possible attention to human rights. For example, following the introduction of revised OECD guidelines in 2011, Ireland developed procedures for implementing the Guidelines in State owned companies and agencies

15. Action Point: Promote awareness of effective human rights due diligence by State owned or controlled companies.

16. Action Point: Promote awareness of relevant multi-stakeholder and multilateral initiatives such as the UN Global Compact and the Principles for Responsible Investment among State owned or controlled companies.

17. Action Point: Encourage state owned companies to operate in accordance with IFC Performance Standards when making investments or implementing projects outside of OECD high-income countries with a project cost exceeding the euro equivalent of US \$10million.⁴⁴

(b) State investments

The National Pensions Reserve Fund (NPRF), now the Ireland Strategic Investment Fund (ISIF), was a founding signatory of the UN Principles for Responsible Investment (PRI)⁴⁵. The PRI are a set of 6 principles aimed explicitly at considering the relevance of environmental, social and governance (ESG) issues to investment – particularly long term investment. They focus on the integration of ESG issues into investment decision making together with active ownership of those investments.

⁴⁴International Finance Corporation (IFC), *IFC Performance Standards on Environmental and Social Sustainability*, (2012). Available at: http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES

⁴⁵ PRI Association, *United Nations-supported Principles for Responsible Investment (PRI) Initiative*, April 2006. Available at: <http://www.unpri.org/>

As a PRI signatory and a long term investor, the ISIF believes that ESG issues may impact the value of its returns and considers the implications of such factors in its investments, primarily through active ownership – or engagement with the underlying company, or representative organisations e.g. extractives industry, governance bodies etc.

The ISIF currently operates on the basis of the Responsible Investment (RI) policy put in place by its predecessor, the NPRF – which has a particular emphasis on Active Ownership - the use of voting and engagement to positively influence companies. In light of the revised mandate of the ISIF, the current RI policy is being reviewed with the intention to better adapt it to the new domestic mandate and higher degree of private markets investment. This process is currently underway.

Any exclusions from the Fund are mandated by legislation - the **Cluster Munitions and Anti-Personnel Mines Act 2008** being the relevant legislation. The NPRF originally developed a list of prohibited securities in line with the Act and ISIF continues to update this list in line with developments. Currently there are fourteen companies on the list.

With regard to the types of product based exclusions provided for in the Act, establishing that there are issues with a company in relation to its products should in principle be reasonably straightforward, involving an objective test of a company’s business. However, experience to-date is that it can be complicated by the fact that companies may have subsidiaries involved in such production, or that companies were previously involved, are no longer involved, but retain capacity. This is evidenced by the fact that while many funds exclude cluster munitions and anti-personnel mines, very few funds operate the exact same list of prohibited securities – this is just a simple example of the challenges in operating an exclusion list, even with very specific guidelines.

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

(c) How the State supports business

(i) Enterprise Ireland

Enterprise Ireland works with companies to help them start, grow, innovate and win export sales in global markets. In this way, it supports sustainable economic growth and regional development, and secures employment. As an open economy, export success is fundamental to Ireland’s economic growth.

Enterprise Ireland provides strategic support (aimed at developing capability within companies) and financial supports (for co-funded development projects). Very often both are combined to maximise the impacts of the supports provided.

Supports are aimed at all aspects of a company's business plan and are designed to work together and mutually reinforce each other. Supports range from management development programmes, export development programmes, lean/productivity improvement, various financial supports (including grants to undertake feasibility, R&D) the provision of equity to start-ups, access to 30 Overseas Offices around the world, access to mentors and access to third level research.

Enterprise Ireland's agenda covers a number of key areas:

- **Entrepreneurship & New Companies:** Developing the pipe-line of entrepreneurs and start-up companies with the potential to trade internationally in the future in cooperation with, for example, the relevant Local Enterprise Offices, Universities and Institutes of Technology.
- **Non-Exporting Established Companies:** Working with domestically focused companies with the potential to export via the Potential Exporters Division (PED) regionally-based seminars, workshops, on-line diagnostic tools and market research resources are all provided to companies seeking new opportunities and preparing to enter new markets.
- **Established (Exporting) Companies:** Enterprise Ireland engages with established companies in developing their capability to consolidate and deepen their footprint in existing export markets. Supports range from LEAN, R&D, management development, funding and access to 30 Overseas Offices – all as part of a comprehensive growth strategy.
- **Innovation:** Enterprise Ireland offers a range of supports to drive innovation activities within all companies at different stages of development.

Local Enterprise Offices

The role of the Local Enterprise Office is to drive the development of local enterprise, putting local micro and small business at the heart of job creation. They support business start-ups and work to increase the job potential of new and existing micro and small businesses. Support is provided in the form of information, advice, training, mentoring, management development and financial support.

(ii) IDA Ireland

IDA Ireland supports clients and potential clients and provides certainty around all aspects of operating a business in Ireland, through the provision of support and information. Once a company invests in Ireland they are provided with a range of supports from IDA Ireland on an on-going basis to encourage them to sustain, grow and expand their business presence.

(iii) Strategic Banking Corporation of Ireland

The Strategic Banking Corporation of Ireland (SBCI) was established in 2014 to support Ireland's SMEs in accessing the funding they need to grow their businesses. In total, the SBCI is funded to the value of €800 million, of which €150 million is from KfW Bank, €400 million from the European Investment Bank (EIB) and €250 million (€240 million loan/ €10 million equity) sourced from the National Pension Reserve Fund, which has since become the Ireland Strategic Investment Fund. Each of the SBCI's funders have conditions attaching to their loans. For example the EIB require that none of their funding can be passed to companies involved with activities targeting the production of weapons and ammunition, arms, military or police equipment or infrastructures, and equipment or infrastructure which result in limiting people's individual rights and freedom or in violation of human rights.

19. Action Point: 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.

(d) Supply chain due diligence

The Government supports the proposal by the European Commission for an EU Council Regulation which provides for the establishment of an EU wide system for supply chain due diligence of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas.⁴⁶

The main objective of this proposal is to help reduce the financing of armed groups and security forces through mineral proceeds in conflict-affected and high-risk areas by supporting and further promoting responsible sourcing practices of EU companies in relation to tin, tantalum, tungsten and gold originating from such areas. The proposal builds on existing international due diligence frameworks and principles and aims to ultimately develop a comprehensive and responsible EU mineral sourcing framework.

The due diligence framework requires responsible importers of mineral and metal within the scope of the Regulation to establish a strong company management system; to identify and assess risks in the supply chain; to design and implement a strategy to respond to identified risks; to carry out independent third-party audits of supply chain due diligence at identified points in the supply chain; and to report on supply chain due diligence.

Irish expertise has also been commissioned by multi-national corporations and technical cooperation programmes to undertake third party audits in the context of supply chain due

⁴⁶ Proposal for a Regulation of the European Parliament and of the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas /COM/2014/0111 final - 2014/0059 (COD). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014PC0111>

diligence on factory standards. The design and implementation of a long-term building inspection and enforcement regime for all buildings in Bangladesh has, for example, been greatly assisted by Irish engineering expertise.⁴⁷ Such initiatives are supported by international development aid programmes, the European Union, and the International Labour Organisation, as well as by significant business donations through mechanisms such as the Rana Plaza Trust Fund, with the aim of improving labour standards in global supply chains and of preventing and reducing workplace-related deaths and serious injuries by strengthening public frameworks and establishing sustainable business practices.

The Export Licensing Unit of the Department of Jobs, Enterprise and Innovation is responsible for managing controls on exports of dual-use items, military items and items destined for countries to which trade sanctions apply. OELAS is the Departments online export licensing application system. Exporters should use OELAS to register and apply for export licences/authorisations.⁴⁸

20. Action Point: Support the adoption of the Regulation establishing an EU wide system for supply chain due diligence of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas.

21. Action Point: Companies seeking licences to export dual-use items, military items or items destined for countries to which trade sanctions apply must be authorised by the Export Licensing Unit under the Department of Jobs Enterprise and Innovation.

22. Action Point: Embassy staff will be asked to help advise Irish companies on business and human rights questions in the host State.

(e) The State as a party to commercial activities

Procurement

The Request for Tender Forms (RFTs) issued by The Office of Government Procurement to prospective suppliers includes human rights conditionality insisting on human rights compliance by companies with which it contracts for products or services.⁴⁹

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

⁴⁷ Such initiatives include the *Accord on Factory and Building Safety in Bangladesh* and the *Alliance for Bangladesh Worker Safety*.

⁴⁸ For more information on the OELAS application system and the Export Licensing Unit see: <https://www.djei.ie/en/What-We-Do/Trade-Investment/Export-Licences/>

⁴⁹ Office of Government Procurement- eTenders procurement website. Available at: <http://www.etenders.gov.ie/>

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.

(f) Trade and investment

(i) Trade agreements

The Government commits to reaffirm respect for human rights and sustainable economic development when conducting bilateral and multilateral negotiations.

As a member of the EU, Ireland cannot enact trade policy norms or conclude trade agreements with countries outside of the EU. An Impact Assessment is carried out before the European Commission proposes any major policy initiative, including a proposal to open trade negotiations. A more detailed Sustainability Impact Assessment is carried out during the negotiation process. EU Free Trade Agreements (FTAs) are linked through ‘passerelle’ clauses to the corresponding political framework agreements, which include human rights clauses. If there is no Association or Framework Agreement in force, a separate human rights clause is inserted in FTAs. The principal value of a human rights clause is to demonstrate the shared commitment of the parties to human rights, while it also constitutes the legal basis for appropriate measures, including the suspension of the agreements, in the event of grave human rights violations.

In follow up to the EU’s Strategic Framework and Action Plan on Human Rights and Democracy, concluded in 2012, the European Commission’s Trade Directorate in July 2015 published Guidelines on the analysis of human rights in impact assessments of trade-related policy initiatives.⁵⁰ This analysis will be done when conducting Impact Assessments (IAs), Sustainability Impact Assessments (SIAs) or ex post evaluations. The EU Action Plan on Human Rights and Democracy 2015 – 2019 includes further commitments on supporting human rights in the area of trade/investment policy focusing on the Generalised Scheme of Preferences + (GSP+); extending the existing quantitative analysis in assessing the human rights’ impact of trade and investment initiatives; and by EU Member States to include human rights provisions in new or revised Bilateral Investment Treaties with third countries. The European Commission also published a new Trade Strategy on 14 October 2015, which reaffirms measures to support sustainable development, fair and ethical trade and human rights.⁵¹

⁵⁰ Directorate-General for Trade, European Commission, *Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives*, July 2015. Available at: http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf

⁵¹ European Commission, *Trade for all: Towards a more responsible trade and investment policy*, 14 October 2015. Available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

25. Action Point: Ireland will continue to take account of the human rights elements of European Commission Impact Assessments when providing input in the course of FTA negotiations and will support the appropriate implementation of human rights clauses in FTAs.

(ii) Trade missions

Trade missions are a valuable way of developing new and existing markets overseas for Irish businesses. This is particularly important given the value of exports to our economy. The Department of Foreign Affairs and Trade works with the Department of Jobs, Enterprise and Innovation to support Enterprise Ireland's programme of trade missions.

26. Action Point: Prior to overseas trade missions led by Government representatives, provide an assessment of the human rights issues in the countries in question to the participating delegation.

27. Action Point: Ensure that State agencies and staff involved in promoting two-way trade and investment are aware of the UNGPs.

4. Gender Equality and the Empowerment of Women and Girls

Policy-making should incorporate a gender perspective to ensure that women and girl's rights are fully respected and that the barriers to the empowerment of women and girls are eliminated. The Government recognises that business activities may have different impacts on women and men, and that gender equality and the empowerment of women and girls should have its own section in the National Plan.

(a) Enforce non-discrimination in recruitment, employment and labour

Gender discrimination remains the most prevalent form of inequality in the work arena, according to the ILO, and is a significant barrier for women in business whether as entrepreneurs, business leaders or decision-makers. Ireland has signed and ratified a number of normative instruments which provide the foundation for women's equality at work including the Convention on the Elimination of Discrimination against Women (CEDAW) and the core conventions and relevant undertakings of the ILO.

Ireland is actively working to fulfil these commitments and has enacted a range of domestic legislation to this effect (see Assessment of Legislative and Regulatory Environment above, (c) Equality).

(b) Promoting gender balance in decision making and leadership positions

Gender equality is first and foremost a matter of human rights. However, women's inclusion in economic governance and decision-making has significant economic benefits and expands the talent pool available to business enterprises. The Government is working with business enterprises to address women's equal access to business leadership and entrepreneurship and the need to mainstream gender into corporate responsibility and evaluation of the impacts of business:

- The DJEI Action Plan for Jobs 2015 promotes female entrepreneurship via promotional and support programmes.⁵²
- Enterprise Ireland operate a 'women only' application for High Potential Start Up (HPSU) funding.
- Enterprise Ireland's 'Going for Growth' programme targets women for skills development.
- The National Women's Strategy promotes women entrepreneur and the advancement of women in the workplace under theme two, 'Equalising Socio-Economic Opportunity For Women'.

⁵² Department of Jobs, Enterprise and Innovation, *Action Plan for Jobs 2015*, (2015). Available at: <https://www.djei.ie/en/Publications/Publication-files/Action-Plan-for-Jobs-2015.pdf>

(c) Promoting women's rights internationally

Globally, women are far more likely than men to be in vulnerable and informal employment and women undertake almost two and a half times as much unpaid and domestic work as men. Furthermore, women continue to be denied equal pay for equal work, resulting in women earning 24% less than men, globally and too often, lack a safe working environment.

Through missions and agencies, the Department of Foreign Affairs and Trade will take action to ensure inequalities between women and men in accessing resources and the benefits of development are reduced. This will include activities to support women to have better access quality jobs, financial services and technology; to have increased control over economic assets and to be empowered to make choices about their participation in the economy. Efforts will be made to increase awareness among business enterprises of such issues and to encourage adherence to the Women's Empowerment Principles. This information will be provided as part of the toolkit described in Action Point 40.

5. Civil Society and Human Rights Defenders

Human Rights Defenders

Operative paragraph 1 of the **UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms** states that “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”.⁵³

Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.⁵⁴

Support for human rights defenders is a long established priority in Ireland’s international human rights policy. *One World, One Future* (OWOF)⁵⁵, Ireland’s policy for international development, recognises that human rights defenders can play an important role in accountable and effective development. In OWOF, Ireland commits to “use our voice, influence and partnerships to protect and promote the ability of civil society organisations to operate and to encourage an enabling environment for human rights defenders – and we will monitor this where we work”.

The Department of Foreign Affairs and Trade has developed Guidelines for Embassies on human rights defenders, with guidance on providing support to human rights defenders at risk and streamlining support for human rights defenders into everyday work. At the EU level, Ireland played a key role in the drafting of EU Guidelines on Human Rights Defenders, which were adopted during our EU Presidency in 2004⁵⁶. Ireland also provided the impetus for the development of OSCE Guidelines on the Protection of Human Rights Defenders⁵⁷ during the Irish OSCE Chairmanship-in-Office in 2012.

⁵³ United Nations, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted by General Assembly resolution 53/144 of 9 December 1998. Available at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>

⁵⁴ European Union, General Affairs Council of 8 December 2008 *Ensuring Protection – European Guidelines on Human Rights Defenders*, (updated on 28 September 2010). Available at

<http://www.consilium.europa.eu/uedocs/cmsUpload/16332-re02.en08.pdf>

⁵⁵ Government of Ireland, *One World, One Future*, Ireland’s Policy for International Development, (2013). Available at:

<https://www.irishaid.ie/media/irishaid/allwebsitemedia/20newsandpublications/publicationpdfsenglish/one-world-one-future-irelands-new-policy.pdf>

⁵⁶ *Ensuring Protection – European Guidelines on Human Rights Defenders* (2008, updated in 2010).

⁵⁷ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on the Protection of Human Rights Defenders*, (2014). Available at: <http://www.osce.org/odihr/119633?download=true>

Civil Society Space

Civil society actors have come under increasing pressure in many parts of the world in recent years. In some countries, dialogue with civil society remains limited and the space for civil society engagement is narrow or shrinking. In September 2013, as part of our commitment to the protection of civil society space at the UN Human Rights Council, Ireland took the lead, with a group of member states, on a new draft resolution entitled “Civil society space: creating and maintaining, in law and in practice a safe and enabling environment”. Ireland followed this by negotiating a second resolution on civil society space in 2014. These resolutions address, for the first time at the Human Rights Council, the issue of civil society space as a human rights concern. They underline the importance of the contribution of civil society in so many aspects of our lives, and call on States to create and maintain, in law and practice, a safe and enabling environment in which civil society can operate effectively.

Ireland recognises the vital role of civil society and human rights defenders in assessing the impact of business activities on human rights and in monitoring the implementation of the UNGPs. The State has a duty to ensure a safe and enabling environment for civil society organisations and human rights defenders working in relation to business and human rights. Ireland seeks to make clear that corporations must respect civil society actors and human rights defenders in their work, including by not interfering directly or indirectly with human rights defenders in the exercise of their rights to freedom of expression, association, assembly or protest.

Protected Disclosures

With regards to protection in Ireland, the **Protected Disclosures Act 2014** represents a new standard of international best practice for whistle-blowers in Ireland. Public sector bodies must now put in place whistle-blowing policies which meet the requirements of the Act. Where private sector businesses have policies in place, they need to review them to ensure that they are aligned to the requirements of the Act and that there are no gaps leaving them potentially exposed.

28. Action Point: Irish companies operating abroad will be encouraged to adopt good practice with regards to consultation with human rights defenders and civil society in local communities, particularly on environmental and labour conditions.

29. Action Point: The Human Rights Defenders Guidelines prepared by the Department of Foreign Affairs and Trade will provide up to date guidance to embassies on the protection of Human Rights Defenders working in relation to business and human rights.

6. Bilateral Relations

Ireland's Foreign Policy, *The Global Island*, and International Development Policy, *One World, One Future*, both affirm Ireland's commitment to business and human rights. Ireland commits to being guided by the UN policy framework for business and human rights and working to ensure that economic development, including engagement by Irish companies, is compatible with our commitment to human rights. We will promote business respect for human rights across the geographical reach of our mission network, in accordance with Ireland's commitments on human rights and the empowerment of all women and girls. .

30. Action Point: In line with the Inclusive Economic Growth policy priority in *One World, One Future*, promote this approach by encouraging and supporting partner governments to ensure that business and economic regulation and legislation implements national and international commitments to human rights, , such as those relating to gender equality, decent work, and the rights of marginalised groups.

31. Action Point: Enhance awareness of human rights commitments, ethical business practice and development policy in international business promotion events.

32. Action Point: Through Ireland's programme for overseas development, undertake efforts to support developing countries improve their business and investment environment, and continue to promote transparent, accountable and effective governance systems, rule of law, and equitable and inclusive economic growth, including transforming economic opportunities and outcomes for women and girls.

7. Advancing the Business and Human Rights Agenda through International Fora

Business enterprises increasingly need a stable international environment in which to operate, with sustainable markets and a “level playing field” of opportunities. Human rights offer a common framework for businesses to understand societies’ expectations and to deliver value to stakeholders in a more sustainable way. The Government seeks to promote the implementation of the UNGPs in international fora to advance international cooperation in the management of business and human rights challenges and to maximise the opportunity to create a global level playing field for business enterprises. The National Plan will determine the scope for future dialogue on business and human rights at the international level for Ireland.

As mentioned in Action Point 3, Ireland will encourage business enterprises and representative bodies to attend the UN Forum on Business and Human Rights in order to provide their input and perspective on issues linked to business and human rights, and increase their awareness of challenges faced in particular sectors, operational environments or in relation to specific rights or groups.

33. Action Point: Active Participation in the United Nations Forum on Business and Human Rights and the Council of Europe Drafting Group on Human Rights and Business (CDDH-CORP).

34. Action Point: Share information about challenges and good practices on business and human rights with its partners in the EU and the UN, including promoting coherence in the implementation of the EU’s Action Plan on Human Rights and Democracy (2015-2019) and the EU’s Gender Action Plan (2016-2020).

35. Action Point: Use the Universal Periodic Review to encourage States to implement the UNGPs and to report on their progress.

36. Action Point: Promote business and human rights issues in global policy processes within the framework of the 2030 Agenda for Sustainable Development, in particular through Sustainable Development Goals 8, 1 and 5.⁵⁸

⁵⁸ United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, 25 September 2015. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

8. Conflict Affected Areas

The former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie, produced a report at the seventeenth session of the UN Human Rights Council on 'Business and human rights in conflict-affected regions: challenges and options towards State responses'.⁵⁹ The report recommends that States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas and clearly communicate their expectations with regard to business respect for human rights, even in such challenging environments.⁶⁰

When working with private sector entities in fragile and conflict-affected situations, the Department of Foreign Affairs and Trade and State agencies will promote synergies between this work and the empowerment of women and girls, in line with commitments made in Ireland's National Action Plan on Women Peace and Security e.g. awareness raising among private sector stakeholders of core values including gender equality and CEDAW obligations.

37. Action Point: Ensure coherence between the implementation of the National Plan on Business and Human Rights and Ireland's National Action Plan on Women, Peace and Security.⁶¹

38. Action point: Provide advice to business enterprises of the possible risks of human rights situations when operating in conflict affected areas.

⁵⁹ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Business and human rights in conflict-affected regions: challenges and options towards State responses*, 27 May 2011. Available at: <http://www.ohchr.org/Documents/Issues/TransCorporations/A.HRC.17.32.pdf>

⁶⁰ *ibid.*

⁶¹ Government of Ireland, *Ireland's Second National Action Plan on Women, Peace and Security 2015-2018*, (2015). Available at: <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/ourwork/empoweringwomen-peaceandsecurity/Irelands-second-National-Action-Plan-on-Women-Peace-and-Security.pdf>

9. Education and Awareness

The National Plan on Business and Human Rights makes clear to business enterprises that Government is calling upon companies domiciled and operating in Ireland to respect human rights both in Ireland and throughout their global operations. The Plan seeks to support business enterprises in achieving this and a key first step is to capacitate State owned companies and agencies, and business with knowledge and understanding of the UNGPs.

39. Action point: Business training where provided by the State will utilise the toolkit to create awareness of the UNGPs.

40. Action Point: Develop a practical toolkit on business and human rights for public and private entities.

The toolkit will:

- Contain specific guidance on the UNGPs.
- Contain guidance on the OECD's Guidelines for Multinational Enterprises (2011) implementation of the complaints procedure via the Irish National Contact Point (NCP).
- Outline 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.
- Suggest actions staff can take overseas to promote respect for human rights (e.g. raise awareness of human rights issues, facilitate contact between business and civil society).
- Provide information on issues concerning the rights of the child (child protection and child labour), gender equality, decent work, the rights of people with disabilities and the rights of marginalised groups, in line with Ireland's development policy, *One World, One Future*.
- Provide reference to a range of initiatives and resources in the area of business and human rights, including the Women's Empowerment Principles.
- Raise awareness of tools that provide country specific information on human rights issues to assist in human rights due diligence.
- Encourage the use of the Business Working Responsibly Mark where appropriate to measure, manage and report on human rights compliance.

Pillar II – The Corporate Responsibility to Respect Human Rights

Foundational Principles for Pillar II

UNGP 11: *Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

UNGP 12: *The responsibility of business enterprises to respect human rights refers to internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.*

While international human rights treaties do not generally impose legal obligations on business enterprises, businesses have the ability to affect the enjoyment of human rights. Infringements of human rights by business enterprises are often a result of a lack of sufficient attention of, or failure to foresee, the consequences of their respective activities. The Guiding Principles on Business and Human Rights remind business enterprises of their responsibility to pay sufficient attention to the consequences of their business activities on the enjoyment of human rights.

Businesses are increasingly aware of the need for, and benefits of, demonstrating respect for human rights in their activities. Responsible entrepreneurship is the driving force for sustainable economic development. Beyond that, business enterprises are part of society and have a moral obligation to respect human rights. Professor John Ruggie has stated that “the responsibility to respect is the baseline expectation for all companies in all situations”.⁶²

While the business case for respecting human rights need not be overstated, it is clear that responsible behaviour and ‘doing the right thing’ has been shown to benefit business in the long run. The perception and reality of how a business deals with human rights issues can influence its competitive advantage, reputation, and attraction to employees. It can affect a company’s relationship with Government and investors, NGOs and, most importantly, its customers.

⁶² Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, 7 April 2008, A/HRC/8/5, 9. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/128/61/PDF/G0812861.pdf?OpenElement>

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size, the nature and context of operations and the severity of the risk of adverse human rights impacts, including:

- a) A policy commitment to meet their responsibility to respect human rights;
- b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their adverse impacts on human rights;
- c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.⁶³

41. Action Point: Encourage business representative bodies to provide examples, templates and case studies to help support companies in their efforts to develop human rights focused policies and reporting initiatives.

The National Plan outlines the corporate responsibility to respect human rights as set out in the UNGPs under the following headings:

- 1. International Standards**
- 2. Corporate Human Rights Policy Statements**
- 3. Human Rights Due Diligence**
- 4. Business Education**
- 5. Tailored Resources**

⁶³ *UN Guiding Principles on Business and Human Rights*, Principle 15, 15-16.

1. International Standards

Making companies aware of, and promoting adherence to, international standards that relate to human rights is a productive way of ensuring that human rights are taken into account in corporate behaviour, across jurisdictions. These include the OECD Guidelines for Multinational Enterprises, which were revised in May 2011 to incorporate a new chapter on human rights following the publication of the UNGPs. They also incorporate the UNGP's concept of due diligence as a general principle, and set an expectation for responsible behaviour in all areas. The ISO 26000 Standard on Social Responsibility,⁶⁴ the Revision of the Global Reporting Initiative's G4 Sustainability Reporting Guidelines⁶⁵ and the IFC Performance Standards⁶⁶ are also useful resources available to identify international best practice and guidance for business enterprises seeking to ensure respect for human rights.

2. Corporate Human Rights Policy Statements

The OECD Guidelines for Multinational Enterprises (2011) recommend that companies express their commitment to respect human rights through a statement of policy, or a company strategy statement. This would have senior level buy-in and stipulate the company's human rights commitments and expectations.⁶⁷

The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.⁶⁸ The Global Compact is a practical framework for the development, implementation, and disclosure of sustainability policies and practices for companies, and could be very useful in guiding companies with their policy statements.

42. Action Point: Include examples of human rights policy statements for business enterprises in the toolkit (See Action Point 40).

3. Human Rights Due Diligence

As outlined in Chapter 3, the National Plan will encourage the business enterprises to adopt international best practice in relation to human rights due diligence and ensure it is an

⁶⁴ More information on the ISO 26000 Standard on Social Responsibility is available at: <http://www.iso.org/iso/home/standards/iso26000.htm>

⁶⁵ *G4 Sustainability Reporting Guidelines*, Global Reporting Initiative, (2015). Available at: <https://www.globalreporting.org/standards/g4/Pages/default.aspx>

⁶⁶ International Finance Corporation (World Bank Group), *IFC Performance Standards on Environmental and Social Sustainability*, (2012). Available at: http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES

⁶⁷ *OECD Guidelines for Multinational Enterprises* (2011), para 44.

⁶⁸ United Nations Global Compact. Available at: <https://www.unglobalcompact.org/index.html>

ongoing activity of the business in its management of risks and impacts. The objective of human rights due diligence is to prevent the companies' activities from leading to human rights abuses. The Plan draws on the OECD Guidelines on Multinational Enterprises (2011) in adopting a tailored risk based approach for companies when determining human rights due diligence policies.

43. Action Point: Encourage companies 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.

44. Action Point: Encourage and facilitate the sharing of best practice on human rights due diligence, including:

- Make use of EU tools - e.g. Human rights guides for enterprises in ICT, employment and recruitment, and oil and gas.
- OECD Guidelines on Multinational Enterprises *Guide to Human Rights Impact Assessment and Management (HRIAM) (2011)*.
- Global Union Paper on the '*UN Guiding Principles on Business and Human Rights*' and *the human rights of workers to form or join trade unions and bargain collectively*.
- *The Employer's Guide to the UN Guiding Principles on Business and Human Rights*, published by the IOE (2012), which aims to help employer's organisations and their members understand the Guiding Principles and start the process of implementation.
- The Office of the High Commissioner for Human Rights has published *Human Rights Translated: A Business Reference Guide* which helps businesses in terms of risk assessment.
- *OECD Guidelines for Multinational Enterprises, 2011 Edition*-including complementary guidance from the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.
- *Human Rights Compliance Assessment Tool*, as developed by the Danish Institute for Human Rights, which is designed to detect human rights risks in company operations.
- *Human rights due diligence: Policy measures for effective implementation (CIDSE)*.
- *Web Accessibility Initiative (WAI)*, guidelines widely regarded as the international standard for Web accessibility.

Reporting

Human rights reporting can help companies pre-emptively deal with environmental, political and social risks. By promoting more awareness of the potential human rights harms that a business may be exposed to, these matters can be addressed before harm occurs. Reporting can also form an integral part of a business enterprises' human rights due diligence policy. Such obligations will vary between business enterprises depending on the size, nature and context of operations and the severity of the risk of adverse human rights impacts of the business in question. The first comprehensive guidance for companies on human rights reporting in line with the UNGPs was launched in February 2015. The tool

enables companies to begin reporting on their human rights performances, regardless of their size.⁶⁹

45. Action Point: Encourage engagement with human rights reporting standards, such as the UN Guiding Principles Reporting Framework, the Global Reporting Initiative or the Business Working Responsibly Mark.

4. Business Education

Business enterprises play a key role in informing working behaviours and practices through business education and training. In line with the UNGPs, such initiatives should include a focus on the promotion and protection of human rights in business activities.

46. Action Point: The 'Business and Human Rights Implementation Group' will have on its agenda the dissemination of the toolkit on Business and Human Rights as a training resource (See Action Point 40).

5. Tailored Resources

The plan must acknowledge that many Irish companies are Small and Medium Enterprises (SMEs). Whilst a key focus of the plan is raising awareness and education, this must also be tailored to smaller companies. Communications must be accessible and easy to understand in order to efficiently inform businesses of their duties and responsibilities in relation to human rights. SMEs could benefit from a simple checklist outlining the key things that they must do and be aware of.

47. Action Point: Provide a shortened and user-friendly version of the Plan to companies and create a checklist aimed at SMEs.

Existing business organisations, such as Chambers Ireland, Business in the Community Ireland or the international Chamber of Commerce, have a number of tools and resources freely available on their websites for companies who are interested in developing policies related to human rights. The National Plan proposes a centralised resource for companies to facilitate access to such material.

48. Action Point: A webpage tailored to business will be constructed, making available a list of resources to facilitate implementation by business enterprises of the UN Guiding Principles on Business and Human Rights.

⁶⁹ UN Guiding Principles Reporting Framework (2015) (An initiative of Shift and Mazars). Available at: <http://www.ungpreporting.org/>

Pillar III – Access to Remedy

Foundational Principle for Pillar III

UNGP 25: As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

The realisation of human rights requires that the victims of human rights violations have access to an effective remedy. Pillar III of the UNGPs covers the range of grievance mechanisms which should be available to victims of human rights abuses. This includes:

1. **State-based Judicial Mechanisms**
2. **Non-judicial Mechanisms**
3. **Individual Enterprise Grievance Mechanisms**

1. State-based Judicial Mechanisms

(a) Employment rights

Ireland's suite of employment rights legislation provides employees with a means for redress in cases where their employment rights have been breached. The Workplace Relations Act 2015 provides for a conciliation service and an early resolution service.

Part 3 of the Workplace Relations Act sets out the role and functions of Inspectors in the Workplace Relations Commission to secure compliance with employment rights legislation. Under the current reform programme the former NERA Information Unit has been restructured and expanded to form a new Workplace Relations Customer Service Section. This Section provides information in relation to employment, equality and industrial relations rights and obligations.

(b) Constitutional and international human rights

The rights of citizens under the Constitution are enforceable directly in the Irish Courts. The European Convention on Human Rights Act 2003 provides for the recognition and enforcement of rights under the European Convention on Human Rights. The EU Charter on Fundamental Rights 2007 is also recognised in Irish law.

The particular areas of human rights identified in the relevant legislation individually provide for enforcement mechanisms, either through civil litigation in the Irish courts for compensation for wrongs done or through the prosecution of criminal offences committed under the relevant legislation.

In general, it can be observed that between the applicable legislation, the Constitution, EU law, the established jurisdiction of the Irish courts and the prosecution of criminal offences in the Irish courts, a wide range of enforcement mechanisms are provided for following the breach of legally recognised rights.

(c) Data Protection

Individuals who feel their rights are being infringed can complain to the Data Protection Commissioner, who will investigate the matter and take whatever steps may be necessary to resolve it.

(d) Extraterritorial Application

The Irish courts in general only deal with disputes and crimes which occurred within the jurisdiction of the State, subject to particular exceptions provided for in international conventions and EU measures concerning the recognition and enforcement of judgments and jurisdiction between Member States of the European Union. All disputes by private parties are litigated before the Irish courts in accordance with well-established principles of natural justice and fair procedures under the Constitution and common law.

Exceptions include the **Prevention of Corruption Act 2010**, under which Irish companies (and individuals) may be prosecuted in Irish courts for crimes committed abroad in relation to bribery of foreign officials, and the **Human Trafficking Act 2008**.

A study commissioned by the European Commission highlighted that when subsidiaries or contractors of European companies violate human rights and environmental legislation of third countries, victims face significant barriers to obtain redress, both in third countries and within the EU.⁷⁰

49. Action Point: Review how best to ensure remedy for potential victims overseas of human rights abuses by Irish companies, with a focus on barriers to justice, including legal, procedural or financial barriers.

⁷⁰ Daniel Augenstein, *Study of the legal framework on human rights and the environment applicable to European enterprises operating outside the European Union*, (2013) University of Edinburgh. Available at: http://ec.europa.eu/growth/industry/corporate-social-responsibility/research-projects/index_en.htm

2. Non-judicial Mechanisms

Traditionally, it has been held that human rights abuses require judicial based remedial processes, preferably through the courts. Indeed, for certain extreme forms of human rights abuse, the courts may be the most appropriate forum. However, mediation and other Alternative Dispute Resolution (ADR) processes can also provide a complementary means to remedy. The capacity of mediation to support inclusion, participation, empowerment and attention to vulnerable individuals and groups can encourage the advancement of human rights.

The UN Guiding Principles set out effectiveness criteria for non-judicial grievance mechanisms, which must be legitimate, accessible, predictable, equitable, transparent, and consistent with human rights. The European Court of Human Rights has established principles in respect of the relationship between ADR and the right to a fair trial held in Article 6 of the European Convention on Human Rights. The European Court of Human Rights has found that parties can waive their right to a trial and opt for a privatised method of dispute resolution, as long as the waiver is supported by minimum procedural guarantees. For example, each party has the right to opt out of mediation and instead revert to the courts at any stage of the proceedings.

The use of non-judicial dispute resolution is available in Ireland through various forms of arbitration and mediation, for example, under the **Arbitration Act 2010**.⁷¹ Mediation of commercial disputes is actively encouraged by the High Court as a means of resolving commercial litigation without resorting to judicial decision-making.

The **Draft General Scheme for the Mediation Bill** was published in 2012. Stated aims of the proposed legislation are to:

- Integrate mediation into the civil justice system as a mainstream alternative to litigation.
- Encourage citizens to regard mediation as preferable to litigation and to use the process in civil disputes generally.
- Ensure that mediation remains a voluntary process.
- Reinforce the confidentiality of mediation.
- Introduce a statutory duty on lawyers to inform clients of the mediation option in all cases before issuing proceedings.
- Introduce a statutory basis for all courts to invite parties to consider mediation.

50. Action Point: Enact the Mediation Bill.

⁷¹ Arbitration Act, 2010. Available at: <http://www.irishstatutebook.ie/2010/en/act/pub/0001/>

51. Action Point: Engage with business representative bodies to promote and strengthen mediation as a viable option when Business and their stakeholders are engaged in disputes.

OECD National Contact Point

Ireland adhered to the OECD Declaration and Decisions on International Investment and Multinational Enterprises adopted in 1976 and created a National Contact Point (NCP) in 2000. Given the revision of the OECD Guidelines in 2011, following the publication of the UNGPs⁷², the OECD NCP system can contribute to ensuring access to remedy for victims under the UNGPs.

According to the OECD Guidelines, any “interested party” can file a complaint. The complainant may, for example, be a community adversely affected by a company’s activities, employees or their trade union, or an NGO.

When the NCP accepts a complaint, it will discuss with the parties involved and offer its “good offices” with the objective of bringing both parties together to discuss the issues and come to mutually agreed resolution without undue delay. If the parties are unable to agree on mediation or mediation fails, the NCP will conduct an examination of the case and issue a final report. Where appropriate, the NCP may make specific recommendations.

52. Action Point: Facilitate mediation where appropriate in the OECD NCP grievance procedures for cases arising under the OECD Multinational Guidelines following the publication of national procedures to give effect to the Guidelines.

3. Individual Enterprise Grievance Mechanisms

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”.⁷³

53. Action Point: The Business and Human Rights Implementation Group will have on its agenda the need to explore international best practice and principles governing the development of operational level grievance mechanisms for individuals and communities who may be adversely impacted to make it possible for grievances to be addressed early and remediated directly.

⁷² *OECD Guidelines for Multinational Enterprises* (2011).

⁷³ The UN Guiding Principles on Business and Human Rights, 31.

OHCHR Accountability and Remedy Project

The OHCHR is running a global online consultation process as part of the Accountability and Remedy project which was established to enhance corporate accountability and improve access to remedy in cases of corporate involvement in severe human rights abuses.⁷⁴

The consultation aims to gather information from a wide variety of jurisdictions on the legal situation with respect to corporate liability under criminal, quasi-criminal and civil law; funding of legal claims; criminal law sanctions; civil law remedies and cases involving prosecution of companies for involvement in severe human rights abuses. The consultation will be carried out through a series of online surveys to be completed by the relevant Government Departments.

54. Action Point: Ireland will continue to participate in the OHCHR Accountability and Remedy Project through the global online consultation process.

⁷⁴ For full details on the project and the consultation process are available at:
<http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx>