



**Congress Submission on Ireland's proposed National Action Plan on
UN Guiding Principles on Business and Human Rights**

February 2015

Introduction

The Department of Foreign Affairs and Trade is developing a National Plan on Business and Human Rights, and is seeking consultation with interested individuals and groups, both Irish and international. In developing this plan, the Department is leading a consultation process with members of the public, Government departments, agencies, the business community and civil society groups. This builds on the DFAT NGO Forum on Business and Human Rights, which took place in Dublin in November. At the Forum, Minister for Foreign Affairs and Trade, Charlie Flanagan, TD, led discussion with human rights organisations, business leaders, trade unions and civil society representatives on what the priorities of the National Plan should be. Congress welcomed the opportunity for both ourselves and the International Trade Union Confederation to feed in a trade union perspective at the Forum and we are grateful for the opportunity to now expand on this in our submission. The recently adopted [UN Guiding Principles on Business and Human Rights](#) represent a strong international consensus on how to tackle the rise in business-related human rights abuses.

The UN Framework and the Guiding Principles constitute the most significant development in over 30 years with respect to international standards of behaviour for business. The UN Framework was formally welcomed by the UN Human Rights Council in 2008 giving it official status and marking the first occasion that the UN body mandated for human rights adopted substantive policy on Business and Human Rights. The UN Guiding Principles joins The OECD Guidelines for Multinational Enterprises (The [OECD Guidelines](#)) and the International Labour Organisation's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (The [ILO MNE Declaration](#)) as a third authoritative, non-legally binding international instrument addressing the behaviour of business. Many of the most important instruments and initiatives concerning the social responsibility of business

have been updated in the light of the UN Guiding Principles. The OECD Guidelines for Multinational Enterprises revised in May 2011 now have a new chapter on human rights based on the Guiding Principles. Just as importantly, they also incorporate the Guiding Principles' concept of due diligence as a general principle setting an expectation for responsible behaviour in areas other than human rights. The International Standard Organisation's (ISO) [ISO 26000](#) standard on social responsibility is fully compatible with the Guiding Principles. The revision of Global Reporting Initiative's Sustainability Reporting Guidelines completed in [2013](#) also reflects the Guiding Principles.

The roles of the state and of business are clearly outlined as different and independent of each other. States cannot use the power of business as an excuse to not do their duty to protect human rights. Businesses cannot use the failure of the state to protect as an excuse to avoid their responsibility to respect human rights. The main purpose of a National Action Plan should be to outline how the state will live up to its responsibilities to protect the human rights of people in Ireland from adverse effects of business operations. For that reason it is somewhat unfortunate that the development of the plan has been assigned to the Department of Foreign Affairs and Trade. Clearly DFAT will have an important role in the implementation of the plan (in terms of Irish business operations abroad and assisting developing country governments in their duty to protect), it is essential that other Departments including the Department of Jobs Enterprise and Innovation will have a pivotal role. The promotion of Corporate Social Responsibility is no substitute for the state duty to protect people.

This paper outlines our policy priorities for the Irish government and other actors under the 31 Guiding Principles.

Background to the Guiding Principles

In 2011, the UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (the “Guiding Principles”).¹ Developed over a six year period, by John Ruggie, the UN Special Rapporteur on Business and Human Rights, this framework represents a strong international consensus to deal with what he calls the “governance gaps” of globalisation: where the scope and impact of business has vastly outgrown the ability of societies to manage their adverse consequences.

To address this rise in business-related human rights abuses, Ruggie proposes three “pillars” to guide action: firstly, states should fulfil their “duty to protect” people under international human rights law. Secondly, businesses should meet their “responsibility to respect” the human rights of those affected by their activities. And thirdly, those affected by business-related harm should have access to effective remedy.

To meet their “responsibility to respect”, Ruggie proposes that businesses should identify and address any adverse human rights impacts they have on workers and communities through a continual process he calls “human rights due diligence”. The responsibility of business to respect human rights applies to all businesses everywhere and includes all of the internationally recognised human rights. The UN Guiding Principles specifically refer to the ILO Declaration on Fundamental Principles and Rights at Work that is based on the eight ILO fundamental workers’ rights conventions, as well as other key rights at work around pay, hours and safety.

¹ The Guiding Principles are seeking to “operationalise” the earlier “Protect, Respect and Remedy” Framework on Business and Human Rights approved by the UN Human Rights Council in 2008 at: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

Why are the Guiding Principles important for trade unions?

The Guiding Principles are potentially important for trade unions in a number of respects. Firstly, the Guiding Principles helpfully clarify the different roles and responsibilities of the state and business. It is the duties of states to enact and implement laws and policies to protect against human rights abuse. And businesses should not decide what their responsibilities to society are - as many CSR policies do - but instead should meet their "responsibility to respect" the human rights of all people affected by their operations.

Secondly, the Guiding Principles call on businesses to prevent their negative human rights impacts wherever they occur, even beyond the direct employment relationship. This could include workers in jobs that business outsourcing has made insecure, low paid, and dangerous. For example, if a supermarket's purchasing practices are denying an agricultural worker her legal wage or resulting in unsafe working conditions, then it needs to act to prevent that irrespective of whether or not she is directly employed by them.

Thirdly, the Guiding Principles, though not legally binding, can be a strong advocacy tool to improve existing rules and policies, given the strong backing for them from governments, employers, trade unions and other civil society organisations. For example, Congress worked with the Trade Union Advisory Committee to the OECD (TUAC) to secure language from the Guiding Principles in the update of the OECD Guidelines for Multinational Enterprises. Unions have also begun including the Guiding Principles in collective bargaining and global framework agreements with multinational companies.²

² See UNI (19 October 2012) 'UNI PS, Swedish Transport Workers and Securitas renew Global Agreement', at <http://tinyurl.com/9xjuazv>

Congress implementation of Guiding Principles

This submission outlines Congress policy priorities under the 31 Guiding Principles which the Irish government and other actors are encouraged to adopt. This list is not meant to be exhaustive.

Pillar 1: The state duty to protect

Guiding Principles ("GPs") 1, 2 & 3 – States should meet their "duty to protect"

There are significant gaps in the Irish legal and policy framework to ensure that businesses operating in or from Ireland are respecting for human rights.

To address such gaps the Irish Government should:

- Conduct a "root and branch" review to bring Ireland into compliance with its international human rights law obligations. This should include a special emphasis on the international treaties, and the jurisprudence of the International Labour Organisation Committee of Experts, the European Social Rights Committee and the European Court of Human Rights, particularly as they relate to freedom of association and the right to collective bargaining and the right to strike.
- Allied to such a review, the Irish Government should ensure that appropriate measures are in place to ensure the effective implementation of these obligations. This should include:
 - The absence of a proper framework for **Collective Bargaining** since the infamous Supreme Court decision in *Ryanair* (2007) has been a major impediment to trade unions trying to advance the pay and conditions of workers. Collective Bargaining is an essential requirement of the workplace if growing inequality in society is to be arrested and a fundamental right of all workers. Government must finally introduce the long awaited new regime of Collective Bargaining. Effective legal protections are essential but so are

workplace policy and practice. Business cannot cherry pick between human rights deciding to respect and promote some while ignoring others. Respecting the human right of their workforce to freedom of association, the right to organise and collective bargaining is a key measure of how a business complies with human rights in practice. It is sometimes difficult to reconcile business claims of support for human rights with the ongoing attacks on the processes and structures promoting collective bargaining and just and fair wages and working conditions. For example, despite the enactment of legislation to restore the Joint Labour Committee (JLC) system Employers in a number of key sectors have boycotted the re-established JLCs and have thus totally frustrated the ability of the JLC to conclude an Employment Regulation Order (ERO) that will set out much needed basic pay and employment conditions. While other representative associations of employers have resorted to further legal challenges to halt the operation of the JLC on technicalities.

- Ensuring **access to justice** for workers:
 - At the level of the enterprise this means providing the worker with an entitlement to be represented by their union as part of a fair grievance and discipline process.
 - A key issue for workers is the delay in having cases involving complaints of breach of trade union, equality, employment, labour and human rights at work heard. Long delays, two years is not uncommon, undermine the right to effective and adequate remedies. It is hoped that the workplace relations bill, when enacted will reduce such delays.
 - However this is not enough, all too often the only remedy afforded is limited financial compensation. For workers who

have lost their job this is not an adequate remedy. Legislation needs to prevent unfair dismissals from occurring. Workers faced with an unfair dismissal relating to a breach of human rights - such as freedom of association, the right to organise and collective bargaining - should be able to prevent the dismissal from going ahead until the case is finally determined. This much need protection has been introduced to **protect whistle-blowers** and Congress argues that it should be extended to protect workers against reprisals from employers when they exercise their human right to unionise.

- No fees should be introduced for workers seeking to use the Workplace Relations Commission as this will price many working people out of access to justice.
- Ensure measures to reduce the vulnerability of work, by ensuring statutory enforcement agencies, including the Health and Safety Authority and the Labour Inspectorate under the Workplace Relations Commission are properly resourced and have effective inspection and enforcement powers.
- **Amend the Companies Act to ensure that the "responsibility to respect human rights" is included as a director's duty**, and where all such duties contribute towards the primary duty to promote the long-term success of the company.
- Require business to communicate on their human rights impacts and how they address them through strengthening requirements for narrative reporting on social and environmental due diligence and impacts at Irish and EU level.
- Strengthen the ability of institutions such as the Irish Human

Rights and Equality Commission, the Oireachtas Joint Committee on Jobs and Enterprise, Joint Committee on Justice, Defence and Equality and Joint Committee on Foreign Affairs and Trade to periodically assess the adequacy of our laws and policies to meet the state's "duty to protect" against business-related human rights harm.

GPs 4, 5 &6 - The State-business nexus

These Guiding Principles call on the state to use its interactions with businesses to promote human rights due diligence. Yet the Irish government's current approach is very fragmented and often contradictory.

To meet these Guiding Principles, the Irish government should:

- **map out how it supports or interacts with business.** This includes businesses that it owns or controls, including contracted-out services. It also includes the whole range of supports³, financial and non-financial, available from Government Departments, Offices and Agencies to assist companies to grow, improve competitiveness, create employment and improve productivity. This includes support or services provided to business provided by Enterprise Ireland and IDA Ireland, the Micro Finance scheme, the Credit Guarantee Scheme, and the Credit Review Office, and through public-private partnerships, development assistance, finance, insurance or other forms of guarantee. It should especially include commercial transactions that it conducts with business, including its procurement activities.
- It should then develop clear guidance, in consultation with civil society and the UN Working Group on Business and Human Rights, on what it expects of companies when conducting human rights due diligence (see GPs 16 to 24 below). This could include reference to the Global

³ DJEI listed supports: <http://www.djei.ie/enterprise/businesssupport.htm# Access to Credit>

Union paper⁴ on the UN Guiding Principles on Business and Human Rights and the human rights of workers to form or join trade unions and to bargain collectively. This paper outlines how businesses should at the very least:

- Implement due diligence for the right to form or join a trade union by identifying and preventing anti-union policies and practices as well as mitigating the adverse impacts on the exercise of this right by other business activities and decisions;
 - Implement Due diligence for the right to bargain collectively by recognising that business enterprises must be prepared to bargain under a wider range of structures in countries where the law and practice does not provide a well-defined framework for bargaining.
- The Irish Government should seek to introduce a harmonised “human rights due diligence” requirement into all of these interactions with business, such as through contracts, investment policies, procurement processes, legislation, or regulation. This could also include member states putting in place human rights due diligence requirements in procurement policies. It should also establish appropriate screening or complaints mechanisms or procedures, such as using the Irish National Contact Point (NCP) for the OECD Guidelines.⁵
 - The Irish government should require Irish state agencies/companies operating abroad (i.e. ESB International) to operate in accordance with the IFC Performance Standards and strongly encourage Irish businesses to do the same. These environmental and social standards have been implemented by IFC clients, clients of European government financing (i.e. UK, Germany, Netherlands) and clients of 80 large financial institutions (Bank of America, Citigroup, Barclays, Deutsch

⁴ http://www.ictu.ie/download/pdf/joint_paper_on_due_diligence_and_foa.pdf

⁵ Each of the 43 signatory countries to the OECD Guidelines for Multinational Enterprises is obliged to set up a National Contact Point to hear complaints against companies operating in or from their territory for alleged breaches of the Guidelines.

Bank, KBC etc - but no Irish bank).

GP 7 - Conflict-affected areas

Irish business operates in a range of countries where conflict or dictatorship has led to terrible abuses of workers' rights. Such countries include Colombia, Burma and Qatar among many others. Irish business stands a high risk of being directly associated with such human rights abuses, and in some cases causes or contributes to them.

The Irish Government should:

- Support the establishment, at least in high risk cases such as Burma, Colombia and Qatar, of a binding mechanism to require businesses sourcing or investing in such countries to conduct human rights due diligence. This would also include publicly reporting on such due diligence and their business relationships, as well as being subject to binding mediation and arbitration processes. The ITUC's "Business and Human Rights in Burma: A trade union proposal" outlines such a mechanism for Burma which Congress is urging the Irish Government to support.⁶
- Issue country specific guidance to businesses investing in or sourcing from a high risk country, on steps to take to meet human and trade union rights standards.
- Conduct in-country briefings on human rights risks for Irish business and investors that involves local unions and other human rights defenders.

⁶ ICONGRESS, *Business and Human Rights in Burma: A trade union proposal*, at www.iCongress-csi.org/IMG/pdf/investment_burma.pdf

GP 9 – Maintaining domestic policy space under international treaties or contracts

States may enter into international trade and investment agreements or private contracts that constrain their ability to fully implement their international human rights obligations. For example, such agreements can have so-called “stabilisation clauses” which allow foreign investors to be exempt from any future government regulation, or states may lower human rights standards seeking to attract foreign investment, especially through Export Processing Zones. The Trans Atlantic Trade and Investment Partnership negotiations are a source of much concern to our membership and to trade unions across the EU and USA. Of particular concern is the way that TTIP creates a right for companies to launch a suit for financial compensation if a Government introduces a rule or regulation and that rule or regulation has a negative impact on the company’s profit, or expected profit.

The Irish Government should ensure that any agreement or contract contains:

- a guarantee that the states will not lower or “freeze” human rights standards, especially through “stabilisation clauses”; and
- strong and broad exemptions for states to take action in the public interest, and especially to meet its human rights obligations.

GP 10 – States acting as member of multilateral institutions

The Irish government can use the multilateral institutions it engages with to promote the implementation of the Guiding Principles in the following ways:

- Support the introduction of human rights due diligence requirements in the World Bank Groups’ safeguards procedures, as well as those of the regional development banks and the commercial banks’ Equator Principles. Congress welcomes the intention of the World Bank to adopt

a labour safeguard, but notes that the version proposed (ESS2) would have almost no impact in protecting the rights of those who work in Bank-financed projects, since it would not apply to contracted workers nor, except for some very limited provisions, to public servants. An important feature of all of the other banks' labour safeguards has been their application to contractors and sub-contractors, thus ensuring coverage of a category of workers that is highly vulnerable to exploitation and abuse. By proposing to not protect these workers in its projects, the World Bank will perpetuate instances of unsafe working conditions, child labour, unpaid wages and denial of freedom of association that we have seen in Bank-funded projects. A second major weakness of the World Bank's draft labour safeguard is the proposal that the ILO's core labour standards only be fully complied with if they are incorporated in national law. Specifically, the freedom of association and right to collective bargaining provisions would apply only "where national law recognizes" them, thus opening the door to retaliatory measures by project managers against workers who wish to exercise those rights. This is another example of the World Bank taking a step backwards, in this case not only relative to the provisions protecting those rights in projects of the other development banks, but also relative to the Bank's stated support for all of the core labour standards since 2002. We fully hope and expect that the World Bank will catch up to the labour standards provisions adopted by the other development finance institutions over the past several years, and not undermine the progress that has been made by adopting a labour safeguard that is full of exemptions and exclusions and urge the Irish Government to support such improvements.

- Continue to provide funding and support for the ILO to assist governments, especially in the developing world, to improve their "duty to protect", with a particular focus on businesses operating in their territory. The Governing Body of the ILO has also selected the

item “decent work in global supply chains” with a view to a general discussion for the 105th Session (2016) of the International Labour Conference and we urge the Irish Government to play an active role, and to encourage the active participation of Irish business in these discussions with a view to promoting human rights due diligence amongst Irish Companies with global supply chains. It is likely that this discussion will be greatly informed by the work of the Accord on Fire and Building Safety in Bangladesh (the [Accord](#)) was signed on May 15th 2013. It is a five year independent, legally binding agreement between global brands and retailers and trade unions designed to build a safe and healthy Bangladeshi Ready Made Garment (RMG) Industry. The agreement was created in the immediate aftermath of the Rana Plaza building collapse that led to the death of more than 1100 people and injured more than 2000. In June 2013, an implementation plan was agreed leading to the incorporation of the Bangladesh Accord Foundation in the Netherlands in October 2013.

- Support and fund an ILO action plan on implementing the ILO Declaration on Multinational Enterprises, including a survey to monitor its implementation.
- Seek to include in EU trade agreements, commitments for the parties to require businesses operating in or from their territory to conduct human rights due diligence; and adhere to and implement the OECD Guidelines for Multinational Enterprises.
- Ensure that the IMF, World Bank, WTO and other multilateral institutions do not act in ways that erode respect for international labour standards and other human rights, or restrict states in meeting their “duty to protect”.
- Support the establishment of a WTO working group on business and human rights to explore how trade and trade agreements can support and not undermine the promotion of human rights.

- Support the inclusion of the implementation of the Guiding Principles as part of the UN Human Rights' Council's Universal Periodic Review
- Support the OECD to put in place a strong peer review mechanisms to improve the effectiveness of National Contact Points in implementing the OECD Guidelines for Multinational Enterprises.

Pillar 2: The business responsibility to respect

GPs 11 to 24 - the steps for businesses to conduct human rights due diligence

To increase the number of Irish based businesses that are conducting human rights due diligence and to accordingly reduce business-related human rights abuses the Irish government should:

- Develop definitive guidance and support, in consultation with civil society and the UN Working Group on Business and Human Rights, for companies on how to carry out "human rights due diligence" as described in the Guiding Principles under this pillar.
- Require companies to implement such guidance in exchange for state support (see GPs 4-6) and through non-financial reporting requirements (see recommendations for GPs 1-3 above).
- Establish a funding pool to support organisations with a credible track record, to work with businesses to improve their respect for human rights.
- Development specific guidance on what business should be doing to addresses difficult governance gaps such as the denial of freedom of association in supply chains.

Pillar 3: Access to remedy

GP 25 and 26 - Judicial mechanisms

As stated in GPs 1-3 above, the Irish government should ensure access to justice for workers by making the changes suggested above.

GP 27 – Non-judicial mechanisms

One of the useful contributions of a national action plan could be to shine a light on the revised [OECD Guidelines on Multinational enterprises](#), which now incorporate this basket of rights to compliment the UN Guiding Principles. The OECD Guidelines for Multinational Enterprises comprise a set of recommendations from Governments to MNEs on responsible business conduct. They apply to MNEs with headquarters in countries that have signed the Guidelines, wherever those MNEs operate and their business relationships, subsidiaries as well as suppliers, investors and other business partners.

A unique feature of the guidelines is a Government-backed complaints mechanism where potentially big business can be held to account for its impacts on workers and the environment. Under the Guidelines, each signatory government is required to set up a National Contact Point (NCP) – a government body hearing complaints and generally promoting the Guidelines. Out of the 40 or so signatory governments, barely a handful have functioning NCPs (the [UK NCP](#) is generally regarded as one of the best). The [Irish NCP](#) is among the poorest performers, because of its lack of procedures, oversight body, and lack of track record in resolving disputes. It has received only 4 cases - hardly surprising given the lack of promotion and knowledge of the guidelines among Irish business and civil society. (You can read more about trade union cases brought to other NCP's and an evaluation of NCP performance on the Trade Union Advisory Committee to the OECD (TUAC) [website](#)).

There is significant room for improvement. The Irish government should:

- Increase the resources of the Irish NCP especially to enable it to conduct in-country investigations and mediations; and
- Use the Irish NCP in carrying out any assessments of business adherence to the Guiding Principles, particularly in determining state

support or whether or not to establish a business relationship as per the recommendations in GPs 4, 5 & 6 above.

An example of the kind of initiative that could be led by the NCP is outlined in a TUAC [submission](#) to the 2014 Meeting of the National Contact Points and the Informal Ministerial Meeting on Responsible Business Conduct, urging governments to take action on the severe violations of migrant workers' human rights in Qatar. Trade unions are gravely concerned about the high level of work-place accidents in Qatar leading to injury and death of migrant workers and the widespread violations of workers' human rights. Qatar has the highest ratio of migrants to citizens in the world. The awarding of the FIFA 2022 World Cup to Qatar will likely further increase the demand for migrant labour. In [April 2014, the UN Special Rapporteur on human rights of migrants](#) published a report that identified a host of abuses that constitute severe violations of workers' human rights.

The TUAC submission called for government action by Ministers, National Contact Points (NCPs) and the OECD itself to address these violations of the OECD Guidelines in Qatar. Governments, in line with the State duty to protect against business-related human rights abuses, should recognise the central role of the National Contact Points in implementing the OECD Guidelines and invite NCPs to convene meetings involving MNEs operating in or with links to operations in Qatar, trade unions and investors with a view to addressing these human rights violations, including through human rights due diligence. The submission lists a number of Irish companies operating in Qatar.

GP 28 -31 – Non-state-based mechanisms

Operational-level or enterprise based grievance mechanisms can have a role to play as part of a mature system of industrial relations that has

collective bargaining at its heart. However such mechanisms should not be used as a substitute for trade unions or genuine collective bargaining, which should be recognised as playing a vital role in providing routes for redress and vigilance against human rights abuses.

The Irish Government should encourage any multi-stakeholder initiative that it supports which has the aim of improving business respect for human rights to have effective grievance mechanism in line with Guiding Principles 30 and 31.

Oversight of the strategy

The Guiding Principles will not be achieved overnight. They are ambitious, and will present both technical and political barriers to their effective implementation. Accordingly, any government strategy should have the following components to track, review and improve implementation over time:

- An independent oversight body with representation from social partners and civil society to monitor, evaluate and provide recommendations for improving implementation
- A cross-departmental implementation group with Ministerial-level participation.
- An assessment framework that has measurable milestones and outcomes seeking to reduce business-related human rights abuses.

Conclusion

Congress welcomes the opportunity to feed in a trade union perspective to the development of a national action plan on business and human rights. It is timely that we embark upon such a plan as we approach the centenary of the foundation of the International Labour Organisation. The ILO is making the future of work one of its main priorities for investigation as it moves towards celebrating its centenary in 2019.

In whatever ways the world of work evolves, all stakeholders, including governments, employers and unions, need to shape policies which recognize that the human right to decent work is at the heart of an ethical society. Or has President Higgins put it in his recent [Edward Phelan lecture](#) , "The Future of Work":

"The time has come, in other words, to revive "the spirit of Philadelphia.

As we thus work to end human subordination to a false, or at least dubious, economic efficiency and to foster a rights-based approach to labour grounded in an architecture of revitalised multilateral institutions, we can with great benefit draw on the recent recommendations of the Commission for Human Rights of the Council of Europe in the publication "Safeguarding human rights in times of economic crisis." We can build, too, on the tools and principles offered by the ILO's current Decent Work Agenda, which takes up many of the challenges the Organisation faced at its inception."

A National Action Plan along the lines suggested could make a significant contribution.