

Claire Methven O'Brien on Ireland's Working Outline for a national plan on business and human rights

The following remarks were delivered by Ms Methven O'Brien at the Department of Foreign Affairs and Trade consultation on the 'Working Outline' in Dublin on 22 January 2016¹

Thank you to the DFAT for the invitation to join you here in Dublin today.

First of all, let me congratulate the DFAT and all the organisations who have contributed to the development of the Working Outline of the NAP.

In my assessment the draft Outline document is a commendable first move in the development of a progressive business and human rights policy, that promotes the uptake of key international standards, including the UN Guiding Principles on Business and Human Rights (UNGPs), while maintaining relevance to Ireland's own national context, and the profile of risks to human rights linked to business activity here in Ireland as well as those linked to Irish businesses operating abroad.

It has benefited from a participatory process, where the voices of a broad range of stakeholders, from business and civil society – and across government – have been heard – the importance of which we emphasised in our [DIHR-ICAR NAPs Toolkit](#), which is now in use by government, NHRIs and civil society organisations to support NAPs development in countries from Chile and Colombia, to Germany, Scotland, Tanzania and Kenya.

And in many respects the Outline compares favourably with the [ten NAPs published by other countries to date](#). Amongst the positive aspects that I think deserve note, and which should be carried forward into the final NAP, are the following:

1. It distinguishes Corporate Social Responsibility (CSR) from respect for human rights. It explicitly affirms the UNGPs, and calls on all Irish businesses to implement them through risk-based due diligence, which it prominently explains.
2. It addresses the various topics covered by the UNGPs in a systematic way.

¹ <https://businesshumanrightsireland.wordpress.com/2016/01/28/guest-post-claire-methven-obrien-on-irelands-working-outline-for-a-national-plan-on-business-and-human-rights/>

3. It commits to providing practical support to Irish businesses, including through a toolkit for public and private enterprises.
4. It specifies detailed arrangements for monitoring and follow-up on the NAP through a combination of dedicated structures, in the form of the Human Rights and Business Implementation Group, and existing mechanisms, with the aim of anchoring human rights and business issues in broader policy-making processes and debates.
5. It commits to produce an NBA, and also a review of obstacles to access to justice for victims overseas.
6. It attempts to achieve a balance– which has been lacking in some other NAPs – between issues affecting rights-holders in Ireland, and extraterritorial ones.
7. It manages at least to highlight some key issues that until now have so far been neglected in NAPs, such as gender, human rights defenders, and links between business and human rights and the Sustainable Development Goals.

At the same time, there are a number of points where the Outline could, from my viewpoint, be strengthened.

1. [Public procurement](#): Public procurement accounts for 14% GDP on average across OECD countries, rising to 19% including procurement by public utilities. Given this scale of spending, and the global nature of production today, we can say with certainty that there is forced labour, child labour, and other serious human rights abuses in the supply chains of public bodies in Ireland.

In addition, the increasing use of contracting-out to deliver essential public services on behalf of the state puts the users of such services into contact with companies in situations which by their nature their human rights may be at risk – as was highlighted last week by IHREC in its [submission to the UN Committee on the Rights of the Child](#).

From a legal standpoint, [public buyers have harder obligations](#) for supply chain risks than do companies. Failure to tackle this issue moreover undermines policy coherence – and dilutes the impact of the millions of Euros of taxpayers’ money spent on aid in developing countries. It is good that procurement is mentioned in the Outline. But the action points are weak. Additional steps that could be taken in this area would include:

- Developing guidance for procurers on practical steps they can take to address risks in procurement of both goods and services, as part of the transposition of the new [EU Procurement Directives](#)
- Establishing online tools on risks per product and country of origin, as the [US](#), [Dutch](#) and [Danish](#) governments have done

- Identifying [collaborative approaches](#) public authorities can use to pool resources and achieve economies of scale in the monitoring of compliance with contractual obligations to meet ILO Core Labour Standards
 - Capacity building activities for procurement personnel, in partnership with professional bodies and others. One good example here comes from Scotland, where meetings are held periodically that allow public authorities such as the police and healthcare providers to discuss specific upcoming tenders with the national human rights institution and others with relevant expertise to identify what human rights safeguards might be needed.
2. Ireland's [National Contact Point under the OECD Guidelines for Multinational Enterprises](#): I understand that the NCP has acted in only 2 cases to date, which would suggest that, like most NCPs, its existence is a little known fact amongst those who might benefit from its services. Here, similarly, the Action Point should be strengthened, with a commitment, at least, to review the effectiveness of the current institutional model and its function in practice, against those of other OECD countries.
 3. On the national baseline assessment: While the commitment to perform an national baseline assessment is very positive, besides analysing the legal and regulatory framework, this should consider the operation and effectiveness of that framework in practice, paying particular attention to [reported instances of abuse](#), high-risk sectors and vulnerable groups, such as [children](#).
 4. On non-financial reporting (NFR): Beyond implementing the [EU NFR Directive](#), the NAP could commit to soft measures to encourage companies covered by the new legislation to fulfil their human rights reporting responsibilities, for instance, through benchmarking reports produced by the biggest Irish companies, as the [Dutch government](#) does, or by awarding prizes for the best reports, as happens in [Denmark](#). Targets might also be set for the number of eligible companies reporting after given period of time.
 5. On due diligence for State-owned enterprises: Similarly, the ambition level of the NAP could be raised by setting a target for the number of SOEs doing and reporting on HR due diligence by the end of the period of the NAP, in line with the approach taken in the [2011 European Commission Communication on CSR](#).
 6. EU conflict minerals legislation: There is widespread opinion that a voluntary approach in this area will not work, and that the seriousness of human rights abuses attaching to conflict minerals warrant a [mandatory approach](#). The NAP should commit Ireland to work towards that goal.
 7. Finally, more emphasis could be put in the NAP on the business opportunities presented for companies in raising their game on sustainability

issues, including human rights. This is a crucial message in persuading companies to get on board with human rights work, and should be expressed more visibly in the NAP as a key policy document.

Thank you.