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# **NATIONAL PLAN ON BUSINESS AND HUMAN RIGHTS**

## **BASELINE ASSESSMENT OF LEGISLATIVE AND REGULATORY FRAMEWORK**

March 2019



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## Introduction

This Report was commissioned in furtherance of a commitment in Ireland’s National Plan 2017-2020. It aims to identify and assess the key legislative frameworks on Business and Human Rights in Ireland, as well as identifying gaps within these. The National Plan identifies key issues for Ireland including worker’s rights, anti-corruption, equality, anti-trafficking, data protection, environment, non-financial reporting, procurement and supply chain. The Report addresses each of these in turn. It also assesses Ireland’s commitments at an international level and the Actions Plans the State has undertaken in furtherance of these commitments.

This Report is divided into introduction and methodology sections as well as five substantive sections. The opening sections set out the parameters of the Report, addressing introductory matters, the methodology and scope of the Report. Sections I-V in turn engage in assessment of the substantive legal provisions relating to Business and Human Rights in Ireland.

<p><i>Section I</i></p>	<p>This section sets out Ireland’s provisions in relation to International and Regional Legal and Soft Law Instruments. This includes a consideration of the international and regional human rights legal instruments and protocols that apply in Ireland, formal statements by the State on the UN Guiding Principles on Business and Human Rights and the identification of other instruments relevant to Business and Human Rights. This latter category addresses Ireland’s engagement with the UN Human Rights Council Universal Periodic Review Process in 2011 and 2016, Ireland’s commitments in relation to the UN Sustainable Development Goals and the role of the OECD Guidelines for Multinational Enterprises in Ireland, as well as noting Ireland’s position in relation to a number of additional international instruments.</p>
<p><i>Section II</i></p>	<p>This section is focused on national laws, policies, and regulations. It begins by addressing the role of the Irish Human Rights and Equality Commission as Ireland’s National Human Rights Institution. The section then addresses structures for the implementation of UN Guiding Principles on Business and Human Rights which includes the consideration of the role of the Business and Human Rights Implementation Group. It also considers the commitments made by Ireland in its National Plan on Business and Human Rights. Following this, relevant national policies and action plans as well as a number of issues arising in relation to Business and Human Rights are addressed. These include corporate social responsibility, a more detailed consideration of the UN Sustainable Development Goals in Ireland, human rights due diligence and extra-territoriality. Protected disclosures,</p>

	<p>corporate structures and governance in Ireland are also addressed in this section.</p>
<p><i>Section III</i></p>	<p>In Section III, attention is turned to the analysis of key issues that have been identified in Ireland’s National Plan on Business and Human Rights. These are: worker’s rights, anti-corruption, equality, anti-trafficking, data protection, environment, non-financial reporting, procurement and supply chain. The key domestic legislative frameworks are set out in relation to each of these key issues as well as international commitments made by Ireland. Gaps in the regimes as they arise are identified and recommendations made in relation to the manner in which the State could seek to remedy the gaps in these provisions.</p>
<p><i>Section IV</i></p>	<p>A detailed consideration of remedies falls outside the scope of this Report. This section nonetheless addresses remedies and gaps in the regimes in a general sense, as remedies are addressed more fully within the sections dealing with each key issue.</p>
<p><i>Section V</i></p>	<p>This section contains a summary of the recommendations that have been made throughout the Report.</p>

## Methodology and Scope

This Report was commissioned to be completed over a 90-day period. Within this time frame it has not been possible to address in detail the manner in which legislation ought to be amended on a section-by-section basis. Additionally, it was not within the remit of the Report to consider remedies in an in-depth manner. Remedies are nonetheless considered as they arise across the key areas, as the other pillars of the UNGPs require that remedies be meaningful and available in order to properly give effect to human rights in practice.

The guiding questions published by the Danish Institute for Human Rights were utilised to set the parameters for the analysis in this report and these, combined with the National Plan, provide for the structure adopted in the Report.<sup>1</sup>

Numerous individuals and bodies have made valuable submissions to the Department of Foreign Affairs and Trade throughout the development of the National Plan on Business and Human Rights and the Working Outline of the Plan. These submissions are publicly available online and were consulted during the preparation of this report. These submissions as well as other relevant publications that were consulted are detailed in the appendix to the report.

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<sup>1</sup> Danish Institute for Human Rights, *The National Baseline Assessment (NBA) Template – National Action Plans on Business and Human Rights*, November 2017.

## I. International and Regional Legal and Soft Law Instruments

### International and Regional Human Rights Legal Instruments and Protocols

Ireland has a strong record in its support for and compliance with international human rights treaties. It has been a member of the United Nations since 1955 and has long been a party to the core UN Human Rights Treaties. Ireland is a party to the eight fundamental conventions of the International Labour Organisation (ILO) and has also adhered to the OECD Guidelines for Multinational Enterprises. The State is a party to the European Convention on Human Rights, which is incorporated into Irish Law by way of the European Convention on Human Rights Act 2003. The State is also a party to the EU Charter of Fundamental Rights. The Government also recently ratified the 2014 ILO Protocol on Forced Labour. Notably, Ireland has not signed or ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Ireland has signed and ratified the following treaties relevant to Business and Human rights:

- International Covenant on Civil and Political Rights, signed 16 December 1966, ratified by Ireland 8 December 1989;
- International Covenant on Economic, Social and Cultural Rights, signed 16 December 1966, ratified by Ireland 8 December 1989;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed 10 December 1984, ratified by Ireland 11 April 2002;
- Convention for the Elimination of All Forms of Discrimination against Women, signed 18 December 1979, ratified by Ireland 23 December 1985;
- Convention for the Elimination of Racial Discrimination, signed 7 March 1966, ratified by Ireland 29 December 2000;
- Convention on the Rights of the Child, signed 20 November 1990, ratified by Ireland 28 September 1992;
- Convention on the Rights of Persons with Disabilities, signed on 30 March 2007 and ratified by Ireland on 7 March 2018, (entered into force in Ireland 19 April 2018);
- European Convention on the Protection of Human Rights and Fundamental Freedoms, signed 4 November 1950, ratified by Ireland 25 February 1953;
- Forced Labour Convention 1930 (No. 29), ratified by Ireland 2 March 1931;
- Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), ratified by Ireland 4 June 1955;
- Right to Organise and Collective Bargaining Convention 1949 (No. 98), ratified by Ireland 4 June 1955;
- Equal Remuneration Convention 1951 (No. 100), ratified by Ireland 18 December 1974;

- Abolition of Forced Labour Convention 1957 (No. 105), ratified by Ireland 11 June 1958;
- Discrimination (Employment and Occupation) Convention 1958 (No. 111), ratified by Ireland 22 April 1999;
- Minimum Age Convention 1973 (No. 138), ratified by Ireland 22 June 1978;
- Worst Forms of Child Labour Convention 1999 (No. 182), ratified by Ireland 20 December 1999;
- Domestic Workers Convention 2011 (No. 189), ratified by Ireland 9 July 2014.

### Formal Statements on the UN Guiding Principles on Business and Human Rights

In the context of the UN Guiding Principles on Human Rights, the State published its National Plan on Business and Human Rights in November 2017. Prior to this, the November 2014 Forum on Human Rights hosted by the Department of Foreign Affairs and Trade had the theme of Business and Human Rights. Additionally, events have been held to include civil society and businesses in deliberations on Business and Human Rights. The National Plan on Business and Human Rights details the State's commitment to Business and Human Rights and details the steps that the government intends to follow to give effect to the UN Guiding Principles. The commitments made by the State in its National Plan are worth referring to here in order to contextualise the later discussions in this report.

In its National Plan, the State made a number of commitments to Business and Human Rights at the multilateral and EU level:

- 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;
- Continue to participate in the Kimberley Process Certification Scheme and support the Scheme's stewardship by the European Commission;
- Support the implementation of the Regulation establishing an EU-wide system for supply chain due diligence of responsible importers of tin, tantalum and tungsten, ores and gold originating in conflict-affected and high-risk areas;
- Continue to take account of the human rights elements of European Commission Impact Assessments when providing input in the course of Free Trade Agreement (FTA) negotiations and support the appropriate implementation of human rights clauses in FTAs as they arise in EU Agreements;
- Participate actively in the United Nations Forum on Business and Human Rights;
- Share information about challenges and good practices on Business and Human Rights with 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);

- Use the Universal Periodic Review to encourage States to implement the UN Guiding Principles and to report on their progress.

In relation to Trade and Investments the State made the following commitments in the National Plan:

- Provide information to participants in overseas trade missions led by Government representatives on human rights issues in the destination countries;
- Ensure that State agencies and staff involved in promoting two-way trade and investment have received briefing and guidance on the purpose and implementation of the UN Guiding Principles;
- Encourage Irish companies operating abroad to adopt good practice with regards to consultation with human rights defenders and civil society in local communities, particularly on environmental and labour conditions;
- Under the aegis of the Office of Government Procurement, continue to follow good practice on procurement and human rights standards in all Requests for Tenders, in line with EU law;
- Provide up to date guidance on the protection of human rights defenders working in the area of Business and Human Rights through the circulation of Human Rights Defenders Guidelines to all Embassies;
- Provide information from Embassies, working in cooperation with State agencies as appropriate, to Irish companies on Business and Human Rights issues in their host countries;
- Enhance awareness of human rights commitments, ethical business practice and development policy in international business promotion events, as appropriate;
- Provide advice to business enterprises of the possible risks of human rights situations when operating in conflict affected areas;
- Ensure awareness of the International Finance Corporation (IFC) performance standards among State owned companies that invest in or manage projects, outside of OECD high income countries, which exceed the euro equivalent of US\$10 million.

In relation to Development, the State made the following commitments in the National Plan:

- Promote the Inclusive Economic Growth Policy priorities set out in *“One World One Future: Ireland’s Policy for International Development”*, 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 - in particular promoting women’s access to formal employment, decent work, and the rights of marginalised groups;
- Support developing countries to 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.

*i. UN Human Rights Council – Universal Periodic Review Process*

Ireland has been engaged in the Universal Periodic Review (UPR) process, having had two Universal Periodic Reviews in 2011 and 2016. Ireland has publicly stated its commitment to the UPR process, including its most recent Review in 2016. This 2016 Report details the actions that have been taken by the State in furtherance of recommendations made in 2011.

Regarding businesses domiciled in Ireland, the State followed up on the 2011 Report recommendations by ratifying International Labour Organisation Domestic Workers Convention 2011 (No. 189) and the Optional Protocol to the Convention on the Rights of the Child. In the compilation paper informing the 2016 Review a number of recommendations were made to Ireland.<sup>2</sup> Recommendations of relevance to Business and Human Rights were by a number of UN Committees, including the Human Rights Committee,<sup>3</sup> Committee on the Rights of the Child<sup>4</sup> and the Committee on Economic Social and Cultural Rights<sup>5</sup> as well as by the Special Rapporteur on Human Rights Defenders.<sup>6</sup>

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<sup>2</sup> Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, (“Compilation Report”).

<sup>3</sup> The UN Human Rights Committee recommended the amendment of section 37(1) of the Employment Equality Act to bar discrimination in employment in the fields of education and health (p 9-10 of the Compilation Report).

<sup>4</sup> The Committee on the Rights of the Child had recommended that Ireland require companies to undertake assessments, consultations and full public disclosure of the environmental, health related and human rights impacts of their business activities and their plans to address such impacts. (See p.4 of the Compilation Report).

<sup>5</sup> The Committee on Economic, Social and Cultural Rights (CESCR) recommended that Ireland take effective measures to ensure that all women workers benefit from maternity benefits, that Ireland ensure paternity leave and that Ireland expand affordable public childcare services (See p7 of the Compilation Report). The Committee also recommended that Ireland expand the Civil Legal Aid Scheme, noting, inter alia, concerns regarding its application in employment, housing, eviction and social welfare proceedings (p.9 of the Report). The CESCR noted concern at the insufficiency of the national minimum wage to ensure a decent standard of living as well as concerns about exemptions from the National Minimum Wage and concerns about the lack of access to labour benefits and protections for workers on low hour/ zero-hour contracts. Further the CESCR recommended that Ireland expedite the enactment of the National Minimum Wage (Low Pay Commission) Bill 2015 and Industrial Relations (Amendment) Bill 2015. The Committee recommended that the State undertake to review relevant legislation and take measures to ensure the application of the minimum wage to all workers. The Committee also recommended targeted measures such as quota systems, training and employment support to address the disproportionate levels of unemployment among travellers, Roma, young people and people with disabilities. Improvements to the collection of data on unemployment was also recommended. Noting the disproportionate use of expenditure cuts to offset the financial crisis, the CESCR recommended that Ireland consider reviewing its tax regime in a transparent and participatory manner and consider instituting human rights impact assessments in its policymaking process.

<sup>6</sup> The Special Rapporteur on Human Rights Defenders, while observing that Ireland generally met human rights standards, recommended that the State investigate all allegations and reports of intimidation, harassment and surveillance in the Corrib Gas dispute in a prompt and impartial manner. Investigations into the actions of police were also recommended as well as the adoption of measures to equip police regarding the handling of protests. The Special Rapporteur also recommended that Ireland enact overarching legislation to protect whistle-blowers in all sectors of activity.

Some 262 recommendations were made by other Member States to Ireland at the Review in 2016. Ireland immediately accepted 152 of these, was unable to support 13 and undertook to further examine 97. Of these, 97 recommendations, Ireland has accepted 24 and partially accepted a further 45. In the addendum, Ireland provided concise explanations as to its position on them.<sup>7</sup> Of the 262 recommendations made, Ireland has therefore supported 176 recommendations and has partially accepted 45 recommendations.

Of relevance to Business and Human Rights, Ireland did not accede to the recommendations that it:

- Accede to the International Convention on the Protection of the Migrant Workers and Members of their Families;
- Study the possibility of mitigating the negative impact of budget cuts on access to health and an adequate standard of living;
- Consider establishing an adequate policy for a universal basic income for all its citizens.

### ***Gaps and Recommendations***

A number of the recommendations in the 2016 Universal Periodic Review Process relate to Business and Human Rights. Further consideration of these, as noted above, may be undertaken by the Implementation Group.

#### *ii. UN Sustainable Development Goals*

Ireland has made commitments to achieving the UN Sustainable Development Goals. In April 2018 Ireland launched its Sustainable Development Goals National Implementation Plan 2018 – 2020 which confirms the State’s support for the UN 2030 agenda for sustainability. This is discussed in greater depth in Section II.

#### *iii. OECD Guidelines for Multinational Enterprises*

Ireland is an adherent country to the Guidelines and the Department of Business, Enterprise and Innovation has published procedures for handling the OECD Guidelines for Multinational Enterprises (MNEs).

The OECD Guidelines for Multinational Enterprises are a set of recommendations addressed to multinational enterprises by Governments. They provide voluntary principles and

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<sup>7</sup> Report of the Working Group on the Universal Periodic Review: Ireland – Addendum - *Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.* (September 2016).

standards for responsible business conduct consistent with applicable laws. The Guidelines form part of the OECD Declaration on International Investment and Multinational Enterprises. The Guidelines envision that adherent governments will promote and encourage the use of the Guidelines and governments are obliged to establish National Contact Points (NCP) to promote the Guidelines and to act as a forum for discussion on all matters relating to the Guidelines. The role of National Contact Points, established under the OECD Guidelines for MNEs, further covers undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines.

### ***Gaps and Recommendations***

Numerous submissions made during the development of the National Plan on Business and Human Rights observe that the NCP in Ireland is not, as of yet, resourced in a manner that facilitates it to engage in the considerable work envisioned by the Guidelines.<sup>8</sup> In its submission on the National Plan, the Irish Human Rights and Equality Commission (IHREC) observe that the Irish NCP had played a limited role to date, in comparison with other countries.<sup>9</sup> The Commission points to independence of the office as well as public awareness, accessibility, sufficient resourcing and adequate human rights expertise as necessary conditions for the effectiveness of the NCP.<sup>10</sup>

The Commission also notes the location of the OECD National Contact Point in Ireland within the Department of Business, Enterprise and Innovation. This is contrasted with the position in Denmark where the OECD National Contact Point has been given an independent statutory basis, in order to maximise its 'legitimacy and authority', as well as the power to initiate investigations.<sup>11</sup> The Commission goes on to recommend that the Irish Government include a commitment in the National Plan to strengthening the role of the OECD National Contact Point in promoting business respect for human rights and remedies where breaches occur.

The OECD Guidelines have been revised to take account of the UN Guiding Principles on Business and Human Rights. The NCP has the potential to play a significant role in Business and Human Rights in light of this, as has been observed by IHREC. Consideration may therefore be given to the development of the role of the NCP, in light of developments in other jurisdictions such as Denmark, England and Wales.

#### ***iv. Additional Instruments***

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<sup>8</sup> A number of civil society groups including Trócaire, FIDH and FLAC in their Submission on the National Action Plan (2014/2015) have recommended the strengthening of the NCP as a means by which to advance Business and Human Rights in Ireland.

<sup>9</sup> Irish Human Rights and Equality Commission, "*Submission on Ireland's National Action Plan on Business and Human Rights*" (March 2015).

<sup>10</sup> Irish Human Rights and Equality Commission Submission at 18.

<sup>11</sup> Irish Human Rights and Equality Commission Submission at 18.

The OECD Anti-Bribery Convention and the UN Convention against Corruption are given effect through a cross departmental group led by the Department of Justice. The State has published detailed information online including information on international and national obligations as well as facilitating making complaints with An Garda Síochána.<sup>12</sup>

Ireland is taking part in the Open Government Partnership (OGP) and published its updated National Action Plan in December 2016 in line with the OGP Guidelines on Country Commitments. This is to cover 2016-2018 and is yet to be updated at the time of writing this report.

Ireland is a participant State in 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.

Ireland is not a party to the Extractive Industries Transparency Initiative (EITI) nor is it a party to the International Code of Conduct for Private Security Providers Association (ICoCA). Ireland is also not a government participant in the Voluntary Principles on Security and Human Rights.

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<sup>12</sup> This information is collated and provided on the website *anticorruption.ie*.

## II. National Laws, Policies, and Regulations

### National Human Rights Institution – The Irish Human Rights and Equality Commission

The Irish Human Rights and Equality Commission (IHREC) was established by statute (Irish Human Rights and Equality Commission Act 2014) to replace two existing organisations – the Human Rights Commission and the Equality Authority – in 2014. IHREC is the body designated for the purposes of Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

IHREC is an independent body which has general functions in relation to the promotion of human rights and equality in Ireland, as well as specific functions in relation to the provision of recommendations to government and the provision of assistance and the institution of proceedings in certain cases related to human rights. Section 10(1) of the Irish Human Rights and Equality Commission Act 2014 sets out the overall functions of the Commission, which include the promotion of human rights and equality with a view to establishing good practice and the elimination of human rights abuses, discrimination and prohibited conduct. Further to this, Section 10(2) of the 2014 Act provides for the specific functions of the Commission. These include the provision of information and education, the examination of legislation for human rights and equality compliance and the institution of proceedings as well as review and reporting functions.

The Commission's legal functions include the power to apply to the High Court, Court of Appeals or the Supreme Court for liberty to appear before the courts as *amicus curiae* (friend of the court) in proceedings that involve or are concerned with human rights or equality. This is provided for in section 10(2)(e) of the 2014 Act and is further detailed in Guidelines developed by the Commission.<sup>13</sup>

The Commission is also empowered by sections 40 and 41 of the 2014 Act to provide practical assistance, and in specified circumstances to provide legal representation, to persons in vindicating their rights under human rights and anti-discrimination legislation and more generally in relation to the protection and promotion of human rights and equality.<sup>14</sup>

The Commission also engages in the provision of submissions to UN and other treaty monitoring bodies in relation to Ireland's compliance with human rights norms and

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<sup>13</sup> This power has been utilised by the commission in numerous cases such as *NHV v Minister for Justice* [2017] IESC 35 which concerned the right to work for asylum seekers in the State.

<sup>14</sup> The Commission's power to provide representation under human rights and anti-discrimination cases arises in particular in cases under the Employment Equality Acts 1998–2015, the Equal Status Acts 2000–2015 and the European Convention on Human Rights Acts 2003.

agreements. IHREC provided a comprehensive submission to the Government on Ireland's National Plan on Business and Human Rights in 2015.<sup>15</sup>

## Structures for the Implementation of UN Guiding Principles on Business and Human Rights

### A. Business and Human Rights Implementation Group

Ireland has committed, in its National Plan, to establishing an Implementation Group to give effect to the UNGPs. At the time of writing this group was not yet established although it is understood that it will be established in the near future. The National Plan sets out the terms of reference for the Implementation Group and sets targets for the group within the context of broader government targets. It is envisaged that the Group will have three sub-groups, the chairs of which are determined by the National Plan.<sup>16</sup>

### B. Commitments in Ireland's National Plan

The State in its National Plan has also made a number of further commitments to Business and Human Rights. While a number of these have been discussed elsewhere, it is worth noting here the domestic commitments made in the Plan:

- Transpose the EU Directive on Disclosure of Non-Financial and Diversity Information (2014/95/EU) into Irish law;
- Enact the Mediation Bill;
- Facilitate mediation where appropriate in the OECD National Contact Point grievance procedures for cases arising under the OECD Multinational Guidelines following the publication of national procedures to give effect to the Guidelines.

To date, regarding these commitments, the State has transposed the EU Directive on Disclosure of Non-financial and Diversity Information (2014/95/EU) into Irish law through the European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) Regulations 2017 and has more recently amended these in the European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) (Amendment) Regulations 2018.

The Mediation Act 2017 was passed by the Oireachtas in October 2017, shortly before the publication of the National Plan. It was commenced by way of Ministerial Order on 1 January 2018.

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<sup>15</sup> Irish Human Rights and Equality Commission, "*Submission on Ireland's National Action Plan on Business and Human Rights*" (March 2015).

<sup>16</sup> See the National Plan for further detail on the Implementation Group.

## Relevant National Policies and Action Plans

### *i. Corporate Social Responsibility*

While Corporate Social Responsibility (CSR) cannot be considered as an alternative to Business and Human Rights, the culture, values and structures established through CSR are immensely valuable in advancing the Guiding Principles on Business and Human Rights. In this regard Ireland published its Second National Action Plan 2017-2020 in June 2017.<sup>17</sup> This plan builds on the actions from the First National Action Plan and sets out additional actions.

Many of these actions are of relevance to Business and Human rights and are therefore worth including here in full:

- Support and promote Government policy in areas which enrich responsible business practices;
- Collaborate with the Department of Foreign Affairs and Trade (DFAT) through the CSR Stakeholder Forum to communicate the National Plan on Business and Human Rights;
- Monitor best practice and evolving trends in CSR and benchmark activity through relevant tools and studies, the completion of a mapping exercise to fully quantify the scale of CSR activity, evolving best practice and emerging trends amongst businesses in Ireland and the use of the CSR online tool for SMEs to monitor the level of awareness of CSR, its implementation and management;
- Continue to increase awareness of CSR, its value to businesses and to society as a whole by establishing a panel of CSR Ambassadors to speak at business events around the country and encouraging relevant Government Departments to reflect responsible business practices in their national policies and strategies, where appropriate;
- Continue to increase awareness of CSR, its value to businesses and to society as a whole by collaborating with Enterprise Ireland and IDA Ireland to promote the benefits of CSR to their client companies and continue to populate the CSR Hub website with fresh relevant content, to post news and events via social media and publish the quarterly CSR e-zine;
- Develop a CSR Award – Bronze, Silver, Gold, Platinum;
- Develop a Work Programme to implement the Action Plan;
- The Department and the CSR Stakeholder Forum will hold an annual meeting of the leaders of Forum member organisations to reinforce the concept of best practice through leadership;

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<sup>17</sup> Department of Business Enterprise and Innovation: *Towards Responsible Business: Ireland's National Plan on Corporate Social Responsibility 2017 - 2020* (June 2017).

- Collaborate with Chambers Ireland and the Department of Housing, Planning, and Local Government to emphasise the increased need to expand the categories in the annual Chambers CSR Awards;
- Encourage more micro, small and medium-sized enterprises to raise their competitiveness through improved CSR engagement by developing a database of case studies, a CSR “how to guide”, providing information on practical measures to implement resource efficiency and developing and encouraging consortium initiatives for SMEs;
- Work to increase recognition among large businesses of the value of sustainable business practices and corporate social responsibility in boosting employment, attracting and retaining talent and their impact on wider society by businesses to report their CSR activity in their Annual Reports, publications, business media and websites and raising awareness of, and encourage participation in the National CSR Voluntary Mentorship Programme by large businesses;
- Identify and examine ways in which workplace related Government policies outlined in Action 1 can be supported and promoted by business through a number of different steps set out in the National Action Plan;
- Support and promote Government policy in areas which enrich responsible business practices including supporting the benefits of signing up to the Prompt Payment Code;
- Implement National CSR Voluntary Mentorship Programme;
- Encourage businesses to report CSR activity in their Annual Reports and other publications to communicate these initiatives to their stakeholders thereby building reputation and gaining trust in the marketplace by establishing a panel of trained mentors across a range of business skills to mentor start-ups, existing SMEs and micro enterprises, assisting them with business growth and to realise the benefits of responsible business through the provision of information, including on the Non-Financial Reporting Directive and OECD Guidelines for Multinational Corporations;
- Work to increase the recognition of the impact of business operations on the environment and to encourage businesses to mitigate their negative impacts through support and encouragement, including the promotion of the European Commission’s Circular Economy Package;
- Encourage businesses to build their CSR capacity in the community through support and promotion including the promotion of best practice case studies;
- Encourage businesses to align their CSR strategy and activity to the Sustainable Development Goals (SDGs) by developing a template document to encourage businesses to align the SDGs to their CSR strategies, displaying the potential positive impacts their business activities can make nationally and internationally for the betterment of society as a whole.

As can be seen, these goals as set out in the CSR National Action Plan are carefully linked to the National Plan on Business and Human Rights as well as to Sustainable Development Goals and the OECD Guidelines on Multinational Enterprises.

In addition to the detailed information in the Plan, the information and tools made available online through the CSR Hub website also provide a significant resource in the promotion of the principles as they set out practical information for businesses of different sizes regarding CSR.

### ***Gaps and Recommendations***

While the emphasis in the CSR National Action Plan on encouragement and facilitation may differ somewhat from the focus on compliance and enforcement required to advance Business and Human Rights, the CSR Action Plan is nonetheless of particular relevance. Its cognisance of Business and Human Rights provides a helpful platform upon which the UNGPs can be advanced.

The Irish Business and Employer's Confederation (IBEC), in its Submission on the National Plan points out that companies need be given clear guidance in the implementation of Business and Human Rights standards by Government.<sup>18</sup> The resources set out in the CSR Hub may provide a useful model for consideration by the Implementation Group in developing strategies for the dissemination of information regarding Business and Human Rights in Ireland.

### ***ii. UN Sustainable Development Goals***

In relation to development, Ireland published its Sustainable Development Goals National Implementation Plan 2018-2020 in April 2018.<sup>19</sup> The Plan sets out 19 actions to be undertaken by the Government and its various Departments and Agencies in the 2018-2020 period. In 2018, Ireland published a detailed Voluntary Review of its progress on the Sustainable Development Goals (SDGs).

This review observes that Ireland is performing well in relation to SDG 1: No Poverty, SDG 2: Zero Hunger, SDG3: Good Health and Well-being, SDG 4: Quality Education, SDG 8: Decent Work and Economic Growth, SDG 9: Industry, Innovation and Infrastructure, and SDG 16: Peace, Justice and Strong Institutions.<sup>20</sup> It notes however, that Ireland's performance against

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<sup>18</sup> IBEC "Submission on Ireland's National Plan on Business & Human Rights" (March 2015).

<sup>19</sup> Government of Ireland, "The Sustainable Development Goals National Implementation Plan 2018-2020" (April 2018).

<sup>20</sup> Government of Ireland, "Ireland - Voluntary National Review 2018: Report on the Implementation of the 2030 Agenda to the UN High-level Political Forum on Sustainable Development (June 2018).

other SDGs is more mixed and the Review highlights the particular challenges that exist in a number of areas.

### ***Gaps and Recommendations***

The Voluntary National Review highlights challenges in a number of areas for Ireland in achieving the Sustainable Development Goals. Of relevance in the context of Business and Human Rights are the difficulties the Review outlines in relation to housing, achieving sustainable consumption and production, biodiversity and habitat destruction, mitigating and adapting to climate change, addressing entrenched inequalities and mainstreaming a gender perspective into policy.<sup>21</sup>

The action points set out in the State's most recent National Action Plan on the Sustainable Development Goals aim to address a number of these challenges. Insofar as these relate to Business and Human Rights, further development of these may be considered as part of the work of the Implementation Group.

#### ***iii. Human Rights Due Diligence***

Human rights due diligence is envisioned as a key component of the UN Guiding Principles on Business and Human Rights. It is also addressed in the OECD Guidelines for Multinational Enterprises. UN Guiding Principle 17 provide that:

*In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights' due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.*

Human rights due diligence is also addressed in the OECD Guidelines for Multinational Enterprises which further provide that:

*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.*

Ireland has not generally required businesses to conduct human rights due diligence. The introduction of SI 360/2017, European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017, as amended in by SI

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<sup>21</sup> These are detailed in Chapter 4 of the Voluntary National Review.

410/2018, which give effect to the EU Directive 2014/95/EU, imposes an obligation on Company Directors to provide a Non-Financial Statement as part of their Annual Report.<sup>22</sup> These regulations do not establish human right due diligence obligations, other than for relevant companies to report on “due diligence policies implemented” and “the outcome of those policies”; while the regulations require that companies address respect for human rights alongside employment, environmental and social considerations they do not specify that due diligence must be conducted. Furthermore, the Regulations are limited to large groups and undertakings and therefore do not create obligations for smaller and medium sized businesses.

Human rights due diligence is discussed in the 2015 Working Outline in detail and is addressed in the National Plan on Business and Human Rights. The National Plan envisages that human rights due diligence will be encompassed in the work of the Implementation Group:

- i. Develop a practical toolkit on Business and Human Rights for public and private entities within 12 months to assist them in their human rights due diligence;
- ii. Ensure that relevant public servants are made aware of their obligation to report suspected cases of bribery under the OECD Convention on Foreign Bribery;
- iii. Encourage and support awareness of effective human rights due diligence by State owned or controlled companies;
- iv. Encourage and support effective human rights due diligence in the context of State support to business and NGOs.

### ***Gaps and Recommendations***

The commitments in the National Plan propose a largely voluntary regime, whereby the role of the State is to encourage and support rather than to ensure compliance by way of a mandatory regime. While such an approach may derive results in some cases, it may not result in compliance across the board, and indeed may take longer to achieve compliance. The Irish Human Rights and Equality Commission, as well as numerous civil society and other groups, have recommended a regime of mandatory rather than voluntary human rights due diligence.<sup>23</sup>

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<sup>22</sup> This is discussed further in Section 3 under the heading of Non-Financial Reporting.

<sup>23</sup> See for example Irish Human Rights and Equality Commission – *Submission on Ireland’s National Action Plan on Business and Human Rights* (March 2015); Amnesty International “*Submission to the Department of Foreign Affairs and Trade on its preparation of a National Action Plan on Business and Human Rights*” March 2014; Trócaire, *Developing a Comprehensive Irish National Action Plan for Implementing the UN Guiding Principles on Business and Human Rights Position Paper* (October 2014); Fidh and FLAC, “*Submission Consultation - Ireland’s National Action Plan on Business and Human Rights*” (March 2015); Christian Aid Ireland: *Submission on the Government of Ireland consultation on a National Action Plan for Business and Human Rights*, 1 March 2015.

Some concern about the impact of due diligence was expressed among business groups due to the impact that such a regime may have on small and medium enterprises in particular.<sup>24</sup> The UNGPs and the OECD Guidelines envisage that the nature of due diligence ought to be appropriate to the size and scale of the business, and indeed the tailoring of requirements to reflect the size and type of businesses may address these concerns. Human rights due diligence of a mandatory rather than discretionary character can therefore be developed in a manner that takes account of the size of businesses and also serves to give effect to the imperative to develop business in a human rights compliant manner.

The National Plan recognises and affirms the State's reputation with regard to human rights, noting that it has *"long valued and championed human rights and this is reflected in our foreign policy which reaffirms our commitment to the universality, indivisibility and interrelatedness of all human rights."*<sup>25</sup> In the context of Business and Human Rights, the UNGPs and the OECD Guidelines recognise the contribution that mandatory human rights due diligence can make in advancing human rights in the business context. It is suggested that the trend in human rights terms is towards mandatory due diligence rather than a more discretionary regime.<sup>26</sup> For the State to continue to develop its strong reputation in the protection of human rights it is suggested that consideration ought to be given to the adoption of mandatory human rights due diligence.

The development of European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017, as amended, provide a useful foundation upon which mandatory human rights due diligence could be developed. Mandatory due diligence such as the Netherlands Compact, France's Vigilance Law or the UK Modern Slavery Act should be looked to as examples of legislation that could be followed in Ireland.

At present, and in the absence of such a mandatory regime, the State may wish to consider the provision of additional benefits to companies that adopt human rights due diligence. This would serve to develop human rights due diligence as a norm in business, upon which a mandatory regime could, in turn, be developed. Consideration may also be given to the inclusion of human rights due diligence as an eligibility criterion for Government procurement, for investment by the State, for participation in trade missions, and for listing on the Irish Stock Exchange.

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<sup>24</sup> Chambers Ireland in its submission, *"Irish National Action Plan for Business and Human Rights Submission to the Department of Foreign Affairs and Trade"* February 2015; notes a concern about the impact of human rights due diligence on SMEs. A similar concern is noted by the Irish Small and Medium Enterprise Association (ISME) in its submission: *"Business and Human Rights – Submission to the Department of Foreign Affairs and Trade"* (March 2015).

<sup>25</sup> National Plan, Introduction, at 5.

<sup>26</sup> See for example the legislative changes in the Netherlands Compact, in France's Vigilance Law and in the UK Modern Slavery Act.

The State-Business Nexus requires that State's ensure that human rights standards are complied within their business relationships. Within this context, human rights due diligence ought to be considered as a minimum requirement for State companies, businesses that obtain government contracts through the public procurement process, businesses that Ireland engages with through its embassies and State agencies and bodies that derive State support and that act outside the jurisdiction. Human rights due diligence should include reporting on human rights practices outside the jurisdiction so that companies that provide human rights reporting in Ireland, whether due to being domiciled in Ireland, or otherwise, must also report on the human rights of their out of territory operations.

#### *iv. Extra-Territoriality*

Ireland is the European base for a number of MNEs, particularly in the technology sector. This means that in Irish context obligations and responsibilities that fall on companies that are domiciled in Ireland may need to be considered in the context of operations that they have in other jurisdictions. This is relevant to supply chain among other key issues considered in further depth in this report.

At present, Ireland does not impose extra-territorial obligations on businesses domiciled in the State in relation to their operations outside of the State, save insofar as the law on international crimes and trafficking may apply. Extra-territoriality is not a requirement of the UN Guiding Principles on Business and Human Rights, although it is nonetheless worth noting that other jurisdictions such as France, the Netherlands and the United Kingdom have introduced legislation that requires reporting on extra-territorial human rights abuses.

The EU (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations introduced in 2017 and amended in 2018, go some way towards establishing a norm for human rights reporting, although these regulations do not specify a requirement that reports include details related to operations outside the jurisdiction.

#### ***Gaps and Recommendations***

Given that the UNGPs do not require extra-territoriality to give effect to Business and Human Rights, it is not suggested that the absence of such provisions is a gap in the regime in Ireland. Nonetheless, it is worth noting that given that the EU (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017, as amended, provides for human rights reporting, the extent to which this reporting obligation covers business operations outside of the jurisdiction may need to be clarified.

## *v. Protected Disclosures*

The protection of human rights defenders and whistle-blowers in Business and Human Rights is an important element of a robust human rights regime. In this regard, Ireland has enacted the Protected Disclosures Act 2014 which serves to protect whistle-blowers from dismissal and other penalisation in the workplace. The passage of this Act was a recommendation of the Special Rapporteur on Human Rights Defenders in advance of Ireland's Universal Periodic Review Report in 2016.<sup>27</sup>

The 2014 Act is directed at disclosures made in the workplace and defines workers to include employees or former employees, trainees, people working under a contract for services, independent contractors, agency workers, people on work experience and the Gardaí (national police force). Section 5 of the 2014 Act provides that disclosures made may relate to specified areas of wrongdoing that a worker reasonably believes s/he has come across in the context of his or her work, namely:

- An offence has been, is being or is likely to be committed;
- A person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
- A miscarriage of justice has occurred, is occurring or is likely to occur;
- The health or safety of any individual has been, is being or is likely to be endangered,
- The environment has been, is being or is likely to be damaged;
- An unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
- An act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
- Information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

A worker can make a disclosure to the worker's employer, to a "prescribed body" (as defined by SI 339/2014 as amended by SI 448/2015) where within the remit of that body or in the case of a person employed in a public body to the relevant Minister. A protected disclosure may also be deemed to have been made to a journalist where certain conditions are met. Where a worker makes a disclosure s/he cannot be penalised or dismissed and if penalised or dismissed may be entitled to compensation of up to five years' remuneration.

Notably, section 5(4) states that:

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<sup>27</sup> See UPR Compilation Report, at 10.

*For the purposes of subsection (3) [which defines wrongdoing] it is immaterial whether a relevant wrongdoing occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.*

There is, therefore, a degree of extra-territorial reach under the Act such that the disclosure of wrongdoing committed outside the jurisdiction can still attract the protections of the 2014 Act.

Other protections for whistle-blowers include anonymity under section 16. Further, pursuant to section 13 of the Act, a worker who has made a disclosure may pursue a tortious action against another person who has caused him or her to suffer detriment as a result of having made the disclosure. The person who has made the disclosure is also given the benefit of immunity from civil suit in respect of the disclosure although this does not extend to immunity for defamation within the meaning of the Defamation Act 2009 (section 14 of the Act).

Particular rules are set out with regard to law enforcement for members of An Garda Síochána and the Defence Forces in sections 19 and 20 of the Act, in conjunction with sections 17 and 18 of the 2014 Act.

The legislation also closely reflects international best practice recommendations on whistle-blower protection made by the 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. The introduction of the Act was welcomed by civil society organisations including Transparency International.<sup>28</sup>

### ***Gaps and Recommendations***

In light of the recent coming into force of this legislation, and its general welcome among civil society organisations, it is not proposed to make any recommendations at this juncture.

#### ***vi. Corporate Structures and Governance in Ireland***

The Companies Acts are the overarching legislation that govern company law in Ireland, with the Companies Act 2014 having significantly overhauled this area of legislation. Under the Companies Acts, or other Acts of the Oireachtas, Ireland has not imposed specific human rights obligations on companies with regard to their subsidiaries outside the jurisdiction. Within the jurisdiction, Irish company law recognises the relationship between parent

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<sup>28</sup> Transparency International Welcomes Protected Disclosures Act 2014:  
[https://www.transparency.ie/news\\_events/transparency-international-welcomes-protected-disclosures-act-2014](https://www.transparency.ie/news_events/transparency-international-welcomes-protected-disclosures-act-2014)

companies and their subsidiaries to ascertain where the “controlling mind” of the company lies and imposing liability at this level. This includes corporate criminal responsibility, although action on law reform proposals in relation to corporate criminal responsibility is long awaited.<sup>29</sup>

The State exercises universal jurisdiction in respect of international crimes such as war crimes, crimes against humanity and torture.<sup>30</sup> As a matter of Irish law, legal personality is afforded to corporate bodies, and through this, companies may be held to account for actions that amount to international crimes across jurisdictions. Corporate legal personality also gives rise to remedies for breaches of employment law as against companies through domestic legislation.

### ***Gaps and Recommendations***

In terms of advancing Business and Human Rights, having regard to the submissions made to the National Plan, there are a number of means by which this could be achieved to which the State may wish to give further consideration.

As is discussed in further depth elsewhere, the European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017, as amended, impose certain requirements regarding human rights due diligence and diversity reporting. Beyond this, there are no requirements for boards of directors or stock exchange listing requirements. As noted above, the Companies Acts, and in particular the Companies Act 2014, provide for the overarching legislative framework governing company law in Ireland. It is suggested that an amendment to the Companies Acts include a duty to respect human rights could be another means by which human rights standards could be improved. As with any such inclusion, it could be reflected in positive advantages given to human rights compliant companies to encourage compliance.<sup>31</sup>

Ensuring that human rights reporting requirements cover operations and investments outside the State for Irish domiciled companies would also address key concerns regarding supply chain, investment in conflict affected areas and human rights compliance of the parent company more generally. In relation to overseas investments by Irish companies, there should be specific guidance provided to Irish businesses to ensure that they are fully informed and

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<sup>29</sup> Law Reform Commission, *Report on Corporate Killing* LRC 77-2005 (October 2005).

<sup>30</sup> International Criminal Court Act 2006.

<sup>31</sup> See the submissions of Business in the Community Ireland, “*Submission to the Human Rights Unit in the Department of Foreign Affairs and Trade on the drafting of a National Action Plan on Business and Human Rights.*” February 2015; Chambers Ireland, “*Irish National Action Plan for Business and Human Rights Submission to the Department of Foreign Affairs and Trade*” February 2015; Chambers Ireland also notes a concern about the impact of incentivised schemes on competition.

in turn that they are facilitated to comply with human rights standards. It may also be of assistance to provide country information for particular high- risk jurisdictions.<sup>32</sup>

A number of commentators, including the Irish Human Rights and Equality Commission have suggested that consideration be given to the introduction of a requirement of compliance with the OECD Guidelines on Multinational Enterprises as a condition of listing on the Irish Stock Exchange.<sup>33</sup> Such a requirement could encourage businesses seeking to be listed to engage with human rights standards. Expansion of the role of the OECD National Contact Point, as discussed elsewhere, may also serve to encourage compliance with the Guidelines on Multinational Enterprises and more general Business and Human Rights principles by companies.

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<sup>32</sup> IBEC, in its Submission, suggests that a portal with information and tools on human rights which links to country information collated by the Department of Foreign Affairs may be of assistance in ensuring that companies are informed and in a position to conduct their operations in a human rights compliant manner. See the IBEC Submission at 8.

<sup>33</sup> See for example IHREC Submission at 14.

### III. Key Issues in Ireland

The National Plan on Business and Human Rights identified a number of key issues of concern in the Irish context. These are considered in turn in this Section.

#### 1. Labour and Worker's Rights

In a global context, Ireland has a well-developed system of employment law and collective labour law that serves to protect the rights of workers. As noted above, Ireland has ratified the eight core ILO Conventions. There are nonetheless some gaps in the overall regime that lend themselves to potential human rights abuses. Notable among the International Conventions that have not been ratified is International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

#### *Fundamental Rights*

At the level of fundamental rights there are a number of rights that apply to workers protected at Constitutional level in Ireland. Among the most relevant worker's rights within the Constitution are: the right to equality (Article 40.1), to a good name (40.3), to freedom of expression (Article 40.6.1), the right of freedom of association and to form a union (Article 40.6.2), the right to religious expression (Article 44) and unenumerated rights such as the right to work and earn a livelihood, right to privacy and right to fair procedures (Article 40.3.1). This latter unenumerated right to fair procedures and constitutional justice is of particular importance in the context of remedies. There is a substantial body of constitutional law developing these rights, which include recent jurisprudence determining that a right to work may be afforded to citizens and non-citizens alike.<sup>34</sup>

In addition to the rights protected by the Constitution, the European Convention on Human Rights has application in Ireland having been transposed into the law of the State in the European Convention on Human Rights Act 2003.<sup>35</sup>

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<sup>34</sup> In *NHV v Minister for Justice and Equality and Others* [2017] IESC 3 the Irish Supreme Court determined that the absolute legislative prohibition on work for those seeking asylum in the State amounted to an unconstitutional breach of their right to work (Article 40.3.1) and to be held equal before the law (Article 40.1).

<sup>35</sup> Article 4 protects against slavery and forced labour. Other significant rights include right to privacy (Article 8), freedom of thought, conscience and religion (Article 9) rights to freedom of expression (Article 10), freedom of assembly and association (Article 11) and the prohibition on discrimination (Article 14).

Similar fundamental rights provisions also apply to Ireland pursuant to the EU Charter of Fundamental Rights and Freedoms.<sup>36</sup> As yet, the protections developed in the Charter have not been fully explored in the Irish courts.

Ireland has also ratified the Revised European Social Charter in relation to social and economic rights which includes protections for workers under Articles 1-8, 20-22 and 24-29. In this context, it is worth noting that Ireland has opted out of Art 8.3 (provision for mothers who are nursing their infants to be entitled to sufficient time off for this purpose), as well as opting out of Art 21 and Art 27.1.c (in relation to the development or promotion of services, public or private, in particular child day-care services and other childcare arrangements).

### *International Treaty Obligations*

Ireland has ratified the eight core ILO Conventions, as well as 65 other ILO Conventions. Absent among these Conventions are ILO Conventions 97 and 143 which relate to migrant workers.

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 Organise and Collective Bargaining (1949) in 1955 and these are given effect through the Industrial Relations Acts 1946-2015. The Industrial Relations (Amendment) Act 2015, serves to make a number of amendments to the existing legislation in order to bring Ireland in line with the jurisprudence of the European Court of Human Rights. Although the Irish Congress of Trade Unions has expressed some concerns regarding Ireland's compliance with Conventions 87 and 98.<sup>37</sup>

International treaty obligations are also given effect through domestic legislation which include the European Convention of Human Rights Act 2003, the Geneva Conventions Act 1962, the Criminal Justice (United Nations Convention Against Torture) Act 2000, the International Criminal Court Act 2006, the Criminal Law (Human Trafficking) Act 2008, Criminal Law (Human Trafficking) (Amendment) Act 2013 and the Child Trafficking and Pornography Act 1998.

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<sup>36</sup> The rights provided for in the Charter include Title II Freedoms protected by articles 7 (respect for privacy and family life), 8 (protection of personal data), 12 (freedom of assembly and association), 15 (freedom to choose an occupation and right to engage in work), 16 (freedom to conduct a business). Title III in turn provides for protections for Equality under articles 20 (equality before the law), 21 (non-discrimination), 22 (cultural, religious and linguistic diversity), 23 (equality between men and women) and under Title IV Solidarity protections are provided for in articles 27 (workers' right to information and consultation within the undertaking), 28 (right of collective bargaining and action), 29 (right of access to placement services), 30 (protection in the event of unjustified dismissal), 31 (fair and just working conditions), 32 (prohibition of child labour and protection of young people at work), 33 (family and professional life).

<sup>37</sup> See below in the context of gaps in the regime.

The State is generally compliant with the incorporation of workers' rights introduced by EU legislation into domestic Irish law. Discrimination in employment on 9 grounds - gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Travelling community - is prohibited throughout the recruitment process by the Employment Equality Acts 1998-2007 which serve to incorporate Directive 2007/78EC into Irish law. Similarly, the Employment Equality Acts 1998-2015 incorporate Directive 2003/88EC, Directive 75/117EC and Directive 76/207EC with regard to working hours and the equal treatment of men and women in the workplace.

Ireland has detailed legislative provisions protecting workers rights to pay and conditions. Key legislation in employment law includes:

- Redundancy Payments Acts 1967–2014;
- Industrial Relations Acts 1946–2015;
- Unfair Dismissals Acts 1977–2015;
- Protection of Employees (Employers' Insolvency) Act 1984;
- Payment of Wages Act 1991;
- Minimum Notice and Terms of Employment (Information) Acts 1973–2014;
- Maternity Protection Acts 1994 and 2004;
- Adoptive Leave Acts 1995 and 2005;
- Protection of Young Persons (Employment) Act 1996;
- Organisation of Working Time Act 1997;
- Parental Leave Acts 1998 and 2006;
- Employment Equality Acts 1998–2015;
- National Minimum Wage Act 2000;
- Carer's Leave Act 2001;
- Protection of Employees (Part-Time Work) Act 2001;
- Protection of Employees (Fixed-Term Work) Act 2003;
- EC (Protection of Employees on Transfer of Undertakings) Regulations 2003;
- Safety, Health and Welfare at Work Act 2005;
- Employees (Provision of Information and Consultation) Act 2006;
- Employment Permits Act 2003–2014;
- Protection of Employees (Temporary Agency Work) Act 2012;
- Protected Disclosures Act 2014;
- Workplace Relations Act 2015;
- Paternity Leave and Benefit Act 2016.

Complaints regarding breaches of employment legislation are directed through the Workplace Relations Commission (WRC) in the first instance, rather than directly through the

civil court system. Appeals from first instance decisions at the WRC are to the Labour Court which sits as a tribunal. The Labour Court also supports collective bargaining and provides a forum for the resolution of related disputes.

The Safety, Health and Welfare at Work Act 2005 provides for the establishment of the Health and Safety Authority (previously the National Authority for Occupational Safety and Health) which has a core role in the prevention of workplace accidents and personal injury. This is done through promotion, education and training, and by making recommendations to the Minister. The Health and Safety Authority has played a role in the enforcement of statutory provisions relating to health and safety in the workplace.

### ***Gaps and Recommendations***

Gaps in the protections in Ireland centre on lack of access to remedies through the absence of civil legal aid for employment law cases and through lack of access for particularly vulnerable workers. In particular, civil society groups note the difficulties faced by migrant workers in enforcing their rights and in accessing remedies. Gaps arise in particular in relation to collective bargaining, zero-hour contracts and migrant workers.

In relation to collective bargaining, the Irish Congress of Trade Unions (ICTU), the umbrella group for trade unions in Ireland, has expressed concern regarding the capacity of the Competition (Amendment) Act 2017 to cover certain categories of worker in relation to collective bargaining. In particular, ICTU has expressed concern that section 4 of the Act defined “self-employed” workers in such a manner that many self-employed people may find themselves deprived of the right to collectively bargain. ICTU has expressed its concern in relation to the compatibility of this Act with the ILO convention No 98 and notes its continuing concern about the lack of progress in Ireland in ensuring compliance with the terms of the decision of the European Court of Human Rights in *Wilson and Ors. v United Kingdom* [2002] ECHR 552 (2 July 2002) which relates to the recognition and protection of collective bargaining under Article 11 of the Convention.<sup>38</sup> Employer groups maintain that Ireland’s voluntarist regime is in compliance with ILO Convention 98, however.

The use of “zero-hour contracts” has received national and international attention in recent years as an abuse of fundamental employment rights of workers. The recently enacted Employment (Miscellaneous Provisions) Act 2018 addresses these types of contracts, among other employment related matters. Section 15 of the 2018 Act prohibits “zero-hour” contracts outside of situations of emergency or short-term relief to cover routine absence, by requiring that employees who have contracts requiring availability for hours of work are offered hours above zero. The Act also contains provisions relating to the provision of basic

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<sup>38</sup> Irish Congress of Trade Unions, *Response to Irish Government Reports to the ILO on Ratified Conventions* (August 2018).

contract terms to employees within a defined time frame (section 7), banded working hours (section 16) and provides for anti-penalisation provisions. Submissions on the Bill, prior to the passage of the Act, were made by the Irish Human Rights and Equality Commission among others and, on the whole, the development of the Bill was welcomed by Unions and groups campaigning for worker's rights in Ireland.<sup>39</sup> The Act was passed and signed into law in December 2018. As of February 2019, the Act had not been commenced, although it is anticipated to be commenced in March 2019.

The Irish Human Rights and Equality Commission notes concerns regarding the rights of migrant workers in Ireland.<sup>40</sup> The particular vulnerability of migrant workers must be acknowledged in the promotion of worker's rights and in ensuring that access to remedies is made available to such groups.<sup>41</sup> Work permit schemes for migrant workers must be cognisant of and compliant with human rights and must ensure that workers are given full information about their rights and entitlements in Ireland.<sup>42</sup>

In relation to migrant workers, concerns have arisen recently regarding trafficking of migrant workers in the fishing industry.<sup>43</sup> Concerns about exploitation in the fishing industry are acknowledged by the Anti-Human Trafficking Unit of the Department of Justice in its 2017 Annual Report.

The use of the Atypical Working Permission Scheme (AWPS) had attracted particular attention and has been the subject of litigation. The Scheme provides for 12-month work permissions for those working on Irish fishing vessels was introduced in 2016 with the aim of regularising the position of workers on Irish fishing boats. The conditions for employment under the scheme include that the crew member must be employed directly by the holder of a sea-fishing boat licence in Ireland. S/he must have a written contract of employment for a duration of 12 months for which s/he is paid the equivalent of the minimum wage as if s/he had worked a 39-hour week over the 12-month period. Additionally, the contract of employment must be certified by a practising solicitor in compliance with the conditions for the employment of non-EEA crewmembers. The International Transport Workers Federation has raised concerns regarding the operation of the scheme in Ireland, and it is of note in this

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<sup>39</sup> Irish Human Rights and Equality Commission, *Observations on the Employment (Miscellaneous Provisions) Bill 2017*, (February 2018).

<sup>40</sup> Irish Human Rights and Equality Commission, "*Submission on Ireland's National Action Plan on Business and Human Rights*" (March 2015) at 18.

<sup>41</sup> The translation of documentation by the Workplace Relations Commission and the development of outreach programs to ensure that migrant workers are informed of their rights and of remedies for breaches of these rights, forms part of this.

<sup>42</sup> It is of note that recent statements by the Minister for Business, Enterprise and Innovation indicate that the number of permits granted to migrant workers may be increased to meet demand in certain industries. See RTÉ News: "Government to reform employment permits for Non-EEA Workers". Available online at: <https://www.rte.ie/news/ireland/2018/0928/998574-economic-migration/>

<sup>43</sup> The AWPS has been criticised by a number of organisations including the International Transport Workers Federation. See further <http://www.itfglobal.org/media/1691097/itf-fish-report.pdf>.

context that there were some 16 suspected victims of trafficking identified in 2017/18 working within the Irish fishing industry.<sup>44</sup> A recent application seeking an interlocutory injunction (with a plenary hearing yet to take place) restraining the operation of the Scheme in the Irish fishing fleet was refused by the High Court in *International Transport Workers Federation v Minister for Justice and Equality & Ors.* [2018] IEHC 695. The Court refused the interlocutory relief for a number of reasons, emphasising the rights of workers who wished to continue to work under the scheme.

On 12 February 2019, in joint correspondence, Four UN Special Rapporteurs – the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery; and the Special Rapporteur on trafficking in persons – expressed concern about the Atypical Working Scheme and sought clarification from Ireland on its operation.<sup>45</sup>

Ireland has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This is a gap in the regime in Ireland. The signing of this Convention, alongside the development of the conditions required for its implementation would serve to address gaps in the regime. It is recommended that further consideration be given to the means by which the Convention can be signed and implemented in Ireland.

## 2. Anti-Corruption

At the domestic level, the Criminal Justice (Corruption Offences) Act 2018 provides for the core legislative framework for the prevention of corruption in Ireland. The prior regime was governed by the Prevention of Corruption Acts 1889-2010 which are repealed in large part by the 2018 Act. Certain provisions of 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 also form part of the legal regime regarding anti-corruption in Ireland.

The Criminal Justice (Corruption Offences) Act 2018 aims to give domestic effect to the Convention on the fights against corruption (drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union, 26 May 1997), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (21 November 1997), the Council of Europe Criminal Law Convention on Corruption (27 January 1999), the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption (15 May 2003) and

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<sup>44</sup> The Irish Times “Trafficked fishermen taken into State care” 17 May 2018:  
<https://www.irishtimes.com/news/social-affairs/trafficked-fishermen-taken-into-state-care-1.3499423>

<sup>45</sup> The correspondence available online at:  
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24331>.

the UN Convention Against Corruption (31 October 2003) and to give partial effect to Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.

The 2018 Act provides for offences of active and passive corruption such that a person may be convicted of corruption by directly or indirectly offering, giving, agreeing to give a gift or advantage, or by requesting, accepting, obtaining or agreeing to accept any gift or advantage in consideration for any act in relation to his or her office, employment, position or business.<sup>46</sup> There are also provisions within the Act for enforcement in relation to offences that take place both inside or in part outside the State.<sup>47</sup>

Ireland ratified the OECD Anti-Bribery Convention in 2003. Ireland's most recent update to the OECD under the OECD Anti-Bribery Convention was submitted in June 2018 and details the State's efforts to comply with previous recommendations made in relation to the implementation of the Convention.<sup>48</sup>

### ***Gaps and Recommendations***

Concerns have been raised about Ireland's failure to bring prosecutions under the legislation arising from the OECD Anti-Bribery Convention, and the undue length of time it was taking to investigate those cases which are currently open.<sup>49</sup> The new legislation should serve to give rise to meaningful remedies for breaches of the law, including properly resourced investigations and prosecutions for offences committed. Adequate resources and training should be given to relevant enforcement officials and public information regarding the legislative regimes should be widely available and accessible to ensure implementation.

### 3. Equality and Anti-Discrimination

In terms of fundamental rights that relate to equality and anti-discrimination in Ireland there is a constitutional equality guarantee afforded to individuals (citizens and non-citizens)<sup>50</sup> that is enshrined in Article 40.1 of the Constitution of Ireland.

Article 40.1 provides that:

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<sup>46</sup> Criminal Justice (Corruption Offences) Act 2018 Section 5.

<sup>47</sup> Criminal Justice (Corruption Offences) Act 2018 Sections 11 and 12.

<sup>48</sup>Phase 3 Evaluation of Ireland: Written Follow-Up Report (June 2018). Available online at: [https://one.oecd.org/document/DAF/WGB\(2018\)22/en/pdf](https://one.oecd.org/document/DAF/WGB(2018)22/en/pdf)

<sup>49</sup> See for example Chambers Ireland, "Irish National Action Plan for Business and Human Rights Submission to the Department of Foreign Affairs and Trade" (February 2015).

<sup>50</sup> See further: *NHV v Minister for Justice* [2017] IESC 35.

*All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.*

The constitutional equality provision has been under judicial scrutiny in the superior courts in Ireland which cannot be addressed meaningfully here but it is worth noting that the right is not absolute and has been somewhat underdeveloped in a comparative context. It nonetheless provides a constitutional backdrop for the legislative regime.

Within this constitutional framework, and with a strong foundation in EU Law, Ireland has a number of sets of legislation that deal with discrimination in the workplace and in the provision of services on 9 different grounds. These are: gender, civil status, family status, religion, sexual orientation, age, disability, race (including colour, nationality, ethnic or national origins) and membership of the Travelling community. Additionally, the ground of receipt of housing assistance from the Government has been introduced as a ground of prohibited discrimination to curb discrimination against tenants in the private rental market who are in receipt of State financial support in respect of their rent. This is provided for in Section 13 of the Equality (Miscellaneous Provisions) Act 2015.

In terms of legislation, the key frameworks concern employment and service provision. The Employment Equality Acts 1998–2015 prohibit discrimination in the workplace including during recruitment and promotion; working conditions; training or experience; dismissal and harassment including sexual harassment. The Employment Equality Acts also provide for equal pay and have given effect to a number of EU provisions in this regard.

The Equal Status Acts 2000–2015 prohibit discrimination in contexts outside the workplace. In particular these Acts address discrimination in the provision of goods and services, the selling, renting or leasing property and certain aspects of education.

The Workplace Relations Commission investigates or mediates claims of unlawful discrimination under equality legislation under both the Employment Equality Acts and the Equal Status Acts.

### ***Gaps and Recommendations***

Religious denominational education continues to play a hugely significant role in Ireland and section 37(1) of the Employment Equality Act 1998 (as amended) permits discrimination in the hiring of staff to denominational schools/ educational institutions and medical institutions on the basis that such discrimination is necessary to promote the ethos of the educational or medical institution. It was a recommendation in Ireland's Universal Periodic Review 2016 that this section be amended. The Equality (Miscellaneous Provisions) Act 2015 amended section

37 of the Act, in relation to publicly funded institutions, although it must be noted that the amendment did not remove the exemption for religious institutions.

## *Women's Rights*

Gender inequality is dealt with under the key equality legislation discussed above, namely the Equal Status Acts and Employment Equality Acts. Other legislation in place that focuses on 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. New parents, other than the mothers who have given birth to the child, are also entitled to 14 days leave following the birth of the child under the Paternity Leave and Benefit Act 2016, this applies not only to the father of the child, but to the mother's spouse, civil partner, cohabitant.

Ireland has also 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.

At the more general level of National Plans, the Irish Government published the National Strategy for Women and Girls 2017-2020 in April 2017. This follows on from the 2007-2016 strategy.

The Current Strategy sets out 6 key objectives which are of relevance to Business and Human Rights:

- Advancing socio-economic equality for women and girls;
- Advancing the physical and mental health and wellbeing of women and girls;
- Ensuring the visibility in society of women and girls, and their equal and active citizenship;
- Advancing women in leadership at all levels;
- Combatting violence against women;
- Embedding gender equality in decision-making.

The National Women's Council of Ireland described the publication as "ambitious" and particularly welcomed its commitments to gender budgeting, parental leave, affordable childcare and women's health.<sup>51</sup>

## ***Gaps and Recommendations***

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<sup>51</sup> See NWCI Press Statement June 2017:  
[https://www.nwci.ie/index.php/learn/article/new\\_national\\_womens\\_strategy\\_must\\_be\\_a\\_key\\_turning\\_point\\_for\\_womens\\_equality](https://www.nwci.ie/index.php/learn/article/new_national_womens_strategy_must_be_a_key_turning_point_for_womens_equality).

In 2014 the Government introduced Guidelines on Appointments to State Boards which include a requirement that Government Departments set out a plan to ensure approximately 40% representation from each gender on State boards. This is framed as a requirement to have a plan, rather than a requirement for gender equality *per se*. The Government nonetheless reports in the 2017-2020 Strategy that as of February 2017 the representation of women on State boards stands at 38%.<sup>52</sup>

The gender pay gap remains a problem in Ireland. A private members bill (a bill initiated other than by the government) was proposed in the Seanad in May 2017 to amend the Irish Human Rights and Equality Commission Act 2014 to require the publication of gender pay gap information by Irish employers. Following this, in April 2018, the Cabinet published the General Scheme of a bill to require companies of a certain size to publish information on the gender pay gap in their organisations.

The proposed Gender Pay Gap Information Act 2018 proposes that gender pay gap information be published in relation to mean and median hourly pay and bonuses for full-time, part-time and temporary contract employees. It includes information on proportions of bonuses paid, benefits-in-kind received, and proposes that information be provided across bands of pay within the organisation. Enforcement is proposed by way of Circuit Court Order upon application of the Irish Human Rights and Equality Commission. Redress is proposed through the Workplace Relations Commission. The bill does not apply to employers with fewer than 250 employees for the first 2 years after commencement. This reduced to 150 employees after 3 years and following this reduced again to 50 employees. It is worth noting that Head 2 of the Bill envisages that regulations made under the Bill will apply to Government Departments, An Garda Síochána and the Defence Forces.

The progress of the Gender Pay Gap Information Act 2018 through the Oireachtas should be monitored by the Implementation Group. In addition, gender equality on company boards, a recommendation of the Irish Human Rights and Equality Commission,<sup>53</sup> may also be worthy of consideration by the Implementation Group.

#### 4. Human Trafficking

Ireland has a detailed international and domestic legislative regime in relation to human trafficking, although concerns remain regarding the effectiveness of the regime in practice, with Ireland having recently been downgraded to a Tier 2 country by the US Department of State in its Trafficking in Persons Report 2018.

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<sup>52</sup> National Strategy for Women and Girls 2017-2020 (p 14).

<sup>53</sup> Irish Human Rights and Equality Commission, 2015 Submission p 11.

At the international level the State has ratified the ILO Convention on the Abolition of Forced Labour 1957, ILO Convention 182 on the Worst Forms of Child Labour 1999 and signed a Protocol to the 1930 Convention on Forced Labour in June 2014. Ireland has also ratified Council of Europe Convention on Action against Trafficking in Human Beings (2005) in 2010. Council of Europe Convention against Trafficking in Human Organs (2015) was adopted by the Council of Europe's Committee of Ministers on 9 July 2015 and was signed by Ireland in October 2015.

At the level of domestic legislation two key acts give effect to Ireland's international commitments in relation to human trafficking; the Criminal Law (Human Trafficking) Act 2008 and the Criminal Law (Human Trafficking) (Amendment) Act 2013.

Under the 2008 Act it is an offence to traffic adults or children for the purposes of labour exploitation, the sale of organs or sexual exploitation.<sup>54</sup> Soliciting a trafficked person to engage in prostitution is another offence provided for under the Act. Furthermore, the Act criminalises the sale or purchase of a person, for any purpose. Of note in the Business and Human Rights context is section 6 of the Act which provides for criminal liability where a trafficking offence is committed by a corporate body:

*Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.*

As noted elsewhere Ireland recognises corporate criminal liability as a general principle so section 6 adds a particular liability for officers of corporate bodies in the context of human trafficking. Sentences of up to life imprisonment are provided for in the Act for a number of the offences including for those convicted of trafficking of persons for the purposes of forced labour.

The 2013 Amendment Act in turn makes a number of amendments to the 2008 Act to give effect to provisions of Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims. It amends the definition of exploitation in section 2 of the 2008 Act to include forced labour involving the commission of offences and expands territorial reach of the offence. The 2008 Act has been further amended by the Criminal Law Sexual Offences Act 2017 to take account of amendments to the offence of prostitution such that the offence of the purchase of sex, rather than its sale, is now the focus of criminalisation.

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<sup>54</sup> Criminal Law (Human Trafficking) Act 2008, section 2 defines exploitation, labour exploitation, sexual exploitation.

The 2008 and 2013 Acts establish the key provisions in relation to trafficking, but must also be understood in the context of a broader legislative regime.<sup>55</sup> From the point of view of remedies for victims of trafficking the Civil Legal Aid Act 1995 as amended by the Civil Law (Miscellaneous Provisions) Act 2011 provides that legal advice provided to victims of trafficking acting as witnesses in criminal proceedings falls under the civil legal aid scheme (discussed in further depth below).

The Government published its Second National Action Plan to Prevent and Combat Trafficking in Ireland in October 2016.<sup>56</sup> The Second Plan builds on the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* and sets out 20 Actions Points for the State on trafficking prevention and protection.

In 2018 the US Department of State in its Report on Trafficking of Persons, downgraded Ireland from a Tier 1 country to a Tier 2 country, outlining in particular concerns about the lack of progress in the prosecution of traffickers, lack of protections for victims of trafficking and difficulties in the identification of victims.<sup>57</sup>

The Trafficking in Persons Report stated:

*The Government of Ireland does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government made significant efforts to meet the minimum standards during the reporting period by collaborating in international investigations and increasing funding for victim services. However, these efforts were not serious and sustained compared to the efforts during the previous reporting period. The government has not obtained a trafficking conviction since the law was amended in 2013; it initiated only three prosecutions in 2017, and had chronic deficiencies in victim identification and referral. Therefore, Ireland was downgraded to Tier 2.*<sup>58</sup>

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<sup>55</sup> This broader legislative scheme includes sections of the International Protection Act 2015 (which provides for the applications for asylum and international protection), the Illegal Immigrants (Trafficking) Act 2000 (offence of assisting a person known to be an illegal immigrant), the Sexual Offences (Jurisdiction) Act 1996 (offences against children committed abroad by citizens or ordinary residents of the State) and the Child Trafficking and Pornography Act 1998 (offences relating to arrangements, including transit and accommodation, for the purposes of the sexual exploitation of children).

<sup>56</sup> Department of Justice, *Second National Action Plan on Preventing and Combatting Trafficking in Persons* (October 2016). Available online at: [http://www.justice.ie/en/JELR/2nd\\_National\\_Action\\_Plan\\_to\\_Prevent\\_and\\_Combat\\_Human\\_Trafficking\\_in\\_Ireland.pdf/Files/2nd\\_National\\_Action\\_Plan\\_to\\_Prevent\\_and\\_Combat\\_Human\\_Trafficking\\_in\\_Ireland.pdf](http://www.justice.ie/en/JELR/2nd_National_Action_Plan_to_Prevent_and_Combat_Human_Trafficking_in_Ireland.pdf/Files/2nd_National_Action_Plan_to_Prevent_and_Combat_Human_Trafficking_in_Ireland.pdf).

<sup>57</sup> United States Department of State, "Trafficking in Persons Report 2018" (June 2018).

<sup>58</sup> United States Department of State, "Trafficking in Persons Report 2018" (June 2018), at 235.

Of the victims of trafficking identified in Ireland in 2017, 63 were exploited in sex trafficking, 35 in labour trafficking, 4 in forced criminality, and 1 in forced begging.<sup>59</sup> As noted in the previous section on Workers' Rights, in a number of cases, individuals working on Irish ships have been designated as victims of trafficking.

Ruhama, an NGO working with people in the sex industry, continues to report cases of trafficking for the purposes of sexual exploitation and prostitution. In its 2017 Annual Report it recorded having provided case work support to some 109 people who were victims of trafficking, of which 26 people were new referrals.<sup>60</sup> The Sexual Offences Act 2015 amended the existing law on prostitution to the effect that the purchases of sex, rather than the sale of sex, is now criminalised in Ireland. This shift in the balance in the criminal law has been the subject of criticism and welcome from opposing sides on the topic of sex work. However, in the context of anti-trafficking it appears to provide greater protection to victims of trafficking for sexual exploitation than was previously available in Ireland.

### ***Gaps and Recommendations***

In the context of Ireland's responsibilities, the US State Department Report on Trafficking should be considered by the Implementation Group.

The continued designation of victims of trafficking for the purposes of labour in Ireland discloses a gap in the regime from the perspective of Business and Human Rights. Regulatory regimes regarding workers and the schemes of existing and future work permit schemes may fall to be re-considered in light of human rights. In addition, the enforcement mechanisms through the WRC and other designated bodies must ensure that sufficient information is given to workers, particularly in industries which may be especially vulnerable to trafficking.

## 5. Data Protection

The law on data protection in Ireland is largely based on the EU data protection regime. The Data Protection Act 2018, which gives effect to the General Data Protection Regulation (Regulation (EU) 2016/679,) in conjunction with Data Protection Acts 1988 and 2003, which give effect to Council of Europe Convention 10839 and EU Directive 95/46/EC40, largely govern data protection in Ireland.

The key legislative provisions are contained in:

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<sup>59</sup> United States Department of State, "Trafficking in Persons Report 2018" (June 2018), at 235. The Department of Justice disputes figures used in the US Report as they do not cohere with its figures for the same period. See further, Department of Justice and Equality, Trafficking in Human Beings in Ireland: Annual Report 2017 and Department of Justice and Equality, Trafficking in Human Beings in Ireland: Annual Report 2016.

<sup>60</sup> Ruhama, *Annual Report 2017* (June 2018).

- Data Protection Act 2018;
- Data Protection Acts 1988 and 2003;
- General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679);
- Directive (EU) 2016/680) (The “Law Enforcement Directive” which has been transposed into Irish law by way of the Data Protection Act 2018);
- European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011) (S.I. No. 336 of 2011) (the “e-privacy regulations”).

The GDPR has had general application to data processing in Ireland, as in other jurisdictions, from 25 May 2018. The Regulation is directly applicable in Ireland setting out extensive obligations for data controllers and processors as well as protections for data subjects. Notwithstanding that it has direct effect the Regulation is supplemented in national law by the Data Protection Act 2018. Where data which is the subject of a complaint which was processed prior to 25 May 2018 this will be regulated by the pre-GDPR regime in Ireland under the 1988-2003 Acts.

The Law Enforcement Directive, transposed into Irish law in the 2018 Act (see Part 5 and 6 of the 2018 Act), applies in turn to personal data that has been processed for a law enforcement purpose such as the prevention, investigation, detection or prosecution of a criminal offence or the execution of criminal penalties.

The E-Privacy Regulations (SI 336/ 2011), (which transpose the e-Privacy Directive 2002/58/EC (as amended by Directive 2006/24/EC and 2009/136/EC into Irish law) in conjunction with the General Data Protection Regulation (GDPR), regulate the processing of personal data in the context of certain electronic communications (including unsolicited electronic communications made by phone, e-mail and SMS).

This legislative framework also establishes the role and responsibilities of the Data Protection Commission which is responsible for data protection regulation and complaints. The Data Protection Commission was first established under the Data Protection Act 1988, since amended by the 2003 and 2018 Acts.

### ***Gaps and Recommendations***

The Data Protection Commission is appointed by the Government and is independent in the exercise of his or her functions. The Commission is engaged in the enforcement of data protection obligations upon data controllers and receives and investigates complaints made against data controllers. The Data Protection Commission (DPC) in Ireland has taken on a significant role in the regulation of data of multinational companies in the technology sector

due to many large MNEs in this sector having their European headquarters in Ireland. Given the central role played by the Data Protection Commission in managing data protection in Ireland, and by virtue of Ireland's position as a home to many MNEs in the technology sector, the DPC should continue to be facilitated to ensure that all of the functions of the office can be fulfilled.

The data protection regime in Ireland has very recently been amended by way of the General Data Protection Regime and the Data Protection Act 2018, and, as such, no specific recommendations are made in this regard.

## 6. Environment

In common with the regime regarding data protection, environmental law and policy in Ireland is largely driven by, and derived from, EU law and policy on the environment.

In terms of fundamental rights, there is no constitutional right to the environment recognised in Ireland. However, in the recent case of *Merriman v Fingal County Council* [2017] IEHC 695, the High Court made comments in *obiter*, to the effect that there may be a constitutional right to the environment pursuant to Article 40.3.1° of the Irish Constitution. The High Court acknowledged:

*A right to an environment that is consistent with the human dignity and wellbeing of citizens at large is an essential condition for the fulfilment of all human rights. It is an indispensable existential right that is enjoyed universally, yet which is vested personally as a right that presents and can be seen always to have presented, and to enjoy protection, under Art. 40.3.1° of the Constitution. It is not so utopian a right that it can never be enforced.*<sup>61</sup>

The concept of a constitutional right to the environment would be novel in the Irish context and, if it becomes more fully recognised as flowing from constitutional rights of the citizen could be a significant development that should be monitored.

At an international level, 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 and ratified the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989) in 1994.

Key legislation on Environmental Protection in Ireland includes:

Environmental Protection Agency Act 1992

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<sup>61</sup> *Merriman v Fingal County Council* [2017] IEHC 695 at para 264. It is worth noting that leave to appeal the decision to the Supreme Court was not granted in the case, although this cannot be equated with approval by the Supreme Court of the comments made by Barrett J in the case.

Protection of the Environment Act 2003
Environmental (Miscellaneous Provisions) Act 2011
Waste Management Acts 1996-2011
Air Pollution Acts 1987 and 2011
European Communities (Environmental Liability) Regulations 2008–2011 (Environmental Liability Regulations)
European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000 – 2006
Local Government (Water Pollution) Acts 1977 – 1990
Water Services Acts 2007 – 2014
Dangerous Substances Acts 1972 – 1979
Fisheries (Consolidation) Acts 1959 – 2003
Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010 (as amended)
Energy (Miscellaneous Provisions) Act 2012
Electricity Regulation (Amendment) (Carbon Revenue Levy) Act 2010
Climate Action and Low Carbon Development Act 2015

Ireland is also part of the EU Emissions Trading Scheme, which covers various types of high emission stationary installations, including power stations, combustion plants and oil refineries, aiming to assist Member States to reduce greenhouse gas emissions. The national emission trading registry is maintained by the Environmental Protection Agency (EPA). Greenhouse permits are regulated in Ireland under the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012, as amended. The European Communities (Environmental Liability) Regulations 2008 (SI 547/2008), came into force in Ireland on 1 April 2009, transposing EU Directive 2004/35/EC into Irish Law. The regulations deal with environmental liability with regard to the prevention and remedying of environmental damage.

The Climate Action and Low Carbon Development Act 2015 provides for the establishment of a national framework with the aim of achieving a low carbon, climate resilient and environmentally sustainable economy by 2050. Public Bodies are obliged to have regard to the Climate Act in carrying out their functions. At EU level, Ireland has committed to the reduction of greenhouse gas emissions by 20% (of 1990 levels) by 2020.

In its Report on *Ireland's Greenhouse Gas Emission Projection 2018: Greenhouse Gas Emission Projections 2017 to 2035 Report* (May 2018), the EPA has reported concerns that Ireland is not meeting its carbon emissions targets and that emissions are in fact growing rather than reducing. The Report predicts that these levels will continue to grow over the coming years, linked to improved economic growth, unless significant policy changes are made to reduce

emissions. The Report goes on to state that at best, Ireland will only achieve a 1% reduction by 2020 compared to a target of 20%.<sup>62</sup>

In relation to major industry licencing and development, consents are managed by the EPA with regard to environmental discharges, emissions and waste handling. Under the domestic legislative regime, and under Directive 2011/92/EU (as amended by Directive 2014/52/ EU), an environmental impact assessment must be carried out at the development stage of any project that is likely to have a significant impact on the environment. Furthermore, an assessment pursuant to the Habitats Directive may be required where a project is likely to have a significant effect on a European Site (i.e. special protection area or special area of conservation).

Environmental enforcement in general is undertaken by local authorities and the EPA, through its Office of Environmental Enforcement. Fines of up to €15,000,000 or a term of imprisonment up to 10 years can be imposed for breaches of environmental law. As noted elsewhere, Ireland recognises the legal personality of companies for the purposes of criminal law meaning that criminal liability may attach to companies prosecuted and found to be in breach of environmental law. Civil liability may also attach to breaches of environmental regulation.

The European Communities (Access to Information on the Environment) Regulations 2007 (S.I. 133/2007) as amended by the European Communities (Access to Information on the Environment) Regulations 2011 (S.I. 662 of 2011) and the European Communities (Access to Information on the Environment) Regulations 2014 (S.I. 615 of 2014), which transpose Directive 2003/4 EC into Irish law, place an obligation on local authorities to provide information to interested parties and to the public more generally in relation to environmental matters. This is supplemented by the freedom of information regime which places a more general obligation on public authorities to provide information to the public upon request in relation to the activities of public bodies.

### ***Gaps and Recommendations***

Ireland's legal regime and agenda regarding environmental matters is largely set at EU level. Implementation of the standards that are set falls to the State, which it must manage by way of domestic regulation and enforcement. As noted above, of particular concern at present is Ireland's projected increase rather than decrease in carbon emissions, despite the State having committed to achieving a reduction of 20% by 2020.

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<sup>62</sup> Environmental Protection Agency, *Ireland's Greenhouse Gas Emission Projections 2018: Greenhouse Gas Emission Projections 2017 to 2035 Report* (May 2015). Available online at: [http://www.epa.ie/pubs/reports/air/airemissions/ghgprojections2017-2035/2018\\_Seminar\\_GHG\\_Projections\\_to\\_2035.pdf](http://www.epa.ie/pubs/reports/air/airemissions/ghgprojections2017-2035/2018_Seminar_GHG_Projections_to_2035.pdf)

It is therefore recommended that the implementation of the legislative and regulatory regime be considered by the Implementation Group with a view to formulating a timeline with concrete actions to achieve Ireland's goals and commitments to environmental policies. Climate justice considerations should also be form part of the analysis in the development and practice of environmental regulation by the State.

## 7. Supply Chain

As with a number of other areas considered in this Report, many recent developments regarding the supply chain have taken place at EU level and will take effect in Ireland in due course.

In relation to the extraction industries, the EU Regulation on ("the Conflict Minerals Regulation") was passed in May 2017 and will come into effect in January 2021. The Regulation applies to all imports of minerals, which are defined by the Regulation as ores and concentrates containing 3 TG ("minerals"), as well as metals containing or consisting of 3 TG ("metals"). The Regulation builds upon the 2011 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflicted-Affected and High-Risk Areas which provides the international framework for supply chain due diligence.

From January 2021, the Regulation requires that a number of obligations are met by EU importers of minerals and metals, including smelters and refiners processing minerals inside the EU. The obligations are divided into four categories which cover:

- Management system obligations;
- Risk management obligations;
- Third party audit obligations;
- Disclosure obligations.

As a member state of the European Union, the regulation will apply in Ireland as of 2021. In addition, Ireland, as an EU member state is a participant in the Kimberley Process Certification Scheme (KPCS), which addresses conflict diamonds coming into the market.

### ***Gaps and Recommendations***

The State should continue to remain vigilant for any potential human rights abuses in the supply chain. While the issues of minerals are addressed by way of the above international instruments, it is noted that abuses may arise in the textile industry among others. The submission of the Clean Clothes Campaign is noted in this regard. It states the majority of human rights abuses and infringements found within the supply chains of Irish companies

have occurred in developing countries with weak government laws and regulation, particularly in newly industrialised and developing countries.<sup>63</sup>

The use of human rights due diligence and reporting obligations discussed elsewhere in this report appear to offer a useful means by which these concerns regarding supply chain can be addressed. Human rights due diligence is discussed elsewhere in this report, but its application is particularly prescient in relation to the supply chain. The principles must apply in particular where companies are connected to high risk industries or conflict jurisdictions and must be a minimum standard in these circumstances.

Clear guidance must be given to companies who are engaged in supply chains in these jurisdictions or industries to facilitate compliance with human rights due diligence.

## 8. Procurement

The State-Business Nexus is detailed within UN Guiding Principles, Principles 4-6 which are of particular relevance in the context of public procurement.

Public procurement in Ireland is governed by both National and EU Law and there are extensive guidelines provided to those seeking to tender for public contracts. The criteria for public procurement are set out in guidelines developed through the EU Directives as transposed into Irish law. Directive 2014/24/EU on public procurement (goods, services and works), Directive 2014/25/EU on procurement by entities operating in the Utilities Sector and Directive 2014/23/EU on the award of Concession contracts have been transposed into Irish law by way of S.I. No. 284/2016 (the “2016 Regulations”); S.I. No. 286/2016 (the “2016 Utilities Regulations”) and S.I. No. 203/2017 (the “2017 Concessions Regulations”).

Tendering is divided by threshold with different processes applying to those tenders above and below the threshold and with different values applying to different types of contract. These are detailed in the Government Guidelines. In relation to all tenders, however, certain minimum standards apply. These minimum standards, and relevant exclusion criteria are linked to Business and Human Rights.

### *Minimum Standards in Tendering and Exclusion Criteria*

The 2016 Regulations require tenderers to comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided. These obligations are based on standards that have been established

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<sup>63</sup> See Clean Clothes Campaign Ireland “Submission to the Department of Foreign Affairs and Trade on the development of a national plan on Business and Human Rights (March 2015).

by European Union law, national law, collective agreements or by international, environmental, social and labour law. The agreements and conventions are:

- ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and Collective Bargaining;
- ILO Convention 29 on Forced Labour;
- ILO Convention 105 on the Abolition of Forced Labour;
- ILO Convention 138 on Minimum Age;
- ILO Convention 111 on Discrimination (Employment and Occupation);
- ILO Convention 100 on Equal Remuneration;
- ILO Convention 182 on Worst Forms of Child Labour;
- Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- Stockholm Convention on Persistent Organic Pollutants;
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its 3 regional Protocols.

Tenderers in the public procurement process in Ireland must also be compliant with general labour laws as a matter of EU law, with non-compliance a ground for exclusion.

Contracting authorities are also required to take “appropriate measures” to prevent, identify and remedy conflicts of interest (defined as a direct or indirect financial, economic or other personal interest which might be perceived to compromise impartiality and independence in the procurement procedure) in the conduct of a procurement to avoid any distortion of competition and to ensure equal treatment of tenderers.<sup>64</sup>

In relation to EU tenders, the 2017 Guidelines on Public Procurement set out the mandatory and discretionary exclusionary criteria for the contracting public authorities which include human rights. The mandatory exclusion criteria require that the contracting authority exclude from considering any tenderers who have been convicted of specified offences, these are:

- Participation in a criminal organisation;

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<sup>64</sup> Public officials who occupy “designated officials” must supply an Annual Statement of Interests pursuant to the Ethics in Public Office Acts 1995-2001. Gifts, bribes and corruption are also prohibited under the Criminal Justice (Corruption Offences) Act 2018, discussed elsewhere. Reports on collusion or bid-rigging in tendering can be made to the Competition and Consumer Protection Commission (“CCPC”).

- Corruption;
- Fraud;
- Terrorist offences or offences linked to terrorist activities;
- Money laundering or terrorist financing;
- Child labour and human-trafficking related offences;
- Breach of tax or social security obligations.

In addition to convictions for these offences, tenderers who have been subject to a binding and final decision (legal or administrative) that have found breaches of obligations to pay tax or to meet social security obligations must be excluded. Where no binding decision has been made the contracting authority has a discretion to exclude a tenderer where it can demonstrate "by any appropriate means" non-payment of taxes or social security contributions by the tenderer. However, with regard to both of these categories the tenderer can remedy the breaches by making full payment or entering into a binding agreement with a view to paying.<sup>65</sup>

Once the selection criteria (which are more detailed than those outlined above) are met by the tenderers in the tendering process, the 2016 Regulations provide that the contract should be awarded to the MEAT (most economically advantageous tender).

### ***Gaps and Recommendations***

While there is inclusion of some serious human rights considerations in the mandatory exclusions for inclusion in a tender, the fact is once these minimum standards are met the only criterion in effect is price. This is something that the State may wish to consider in light of the UN Guiding Principles on Business and Human Rights.

Consideration could be given to the provision of advantages in the procurement process to companies who comply with human right standards, in the case of Multinationals Enterprises, those that comply with the OECD Guidelines on MNEs. This would encourage development and further compliance with the UNGPs. The State has not provided any incentives such as preferential treatment in procurement processes where a company evidences the responsibility to protect human rights. This may be an avenue for development and it is recommended that this be considered.

In addition, it is recommended that the Implementation Group give consideration to the inclusion of a requirement for human rights due diligence in respect of State contracts, as

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<sup>65</sup> The contracting authority may disregard tax and social security breaches where exclusion on this basis would be "clearly disproportionate", for example where the value of unpaid amounts are very small, or breaches minor. There is also provision for "self-cleaning" detailed in the regulations.

discussed in the previous section on human rights due diligence. As a means by which to address the State-Business Nexus, engagement with human rights due diligence by companies who successfully procure State contracts would serve to both advance human rights in the companies concerned and to ensure that the State can meet its own obligations under the UN Guiding Principles.

## 9. Non-Financial Reporting

The EU directive on Non-Financial Reporting 2014/95/EU was transposed into Irish Law by way of SI 360/2017, the European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017, as amended by the European Union (Disclosure of non-financial and diversity information by certain large undertakings and groups) (Amendment) Regulations 2018 (SI 410/2018). These regulations impose an obligation on Company Directors to provide a Non-Financial Statement as part of their Annual Report.

Regulation 5 provides that this Non-Financial Statement is to include information on the development, performance, position and impact of the company's activity in relation to environmental matters; social and employee matters; respect for human rights; and bribery and corruption. The Statement must set out the company's policies in relation to these matters and include due diligence on the implementation of these policies. The Statement must also address the principle risks linked to the company's operations including business relationships, products or services which are likely to cause adverse impacts in those areas and how the company manages these risks.

This obligation applies only to companies of a particular size and type however, defined as companies which qualify as a large company within the meaning of the Companies Act 2014, whose average workforce is over 500. Companies must also be defined as "public interest entities" to be subject to the non-financial statement obligations set out in the Regulations.

In addition to the requirement to file a Non-Financial Statement, the Regulations require the filing of a "Diversity Report" which obliges large traded companies (as defined in the regulations) to include in their corporate governance statement details on the diversity policy applied in relation to the company's board of directors with regard to aspects such as age, gender or educational and professional backgrounds. The Diversity Report must also set out the objective of the policy, its implementation, and results achieved during in the year.

The Regulation specifies that the Non-Financial Statement or Diversity Report requirements apply to holding companies, but it is not explicit that businesses must provide such due diligence information in relation to all subsidiaries and suppliers regardless of where they operate in terms of jurisdiction. A broad reading of the obligation to provide details on the

impacts of the company's business, across the required headings, could include such detail, but the Regulations are silent in this regard. It is worth noting also that Ireland does not exercise extra-territorial jurisdiction in relation to many areas of law (as noted elsewhere, Ireland confines its extra-territorial effect to serious crimes under the jurisdiction of the International Criminal Court, under the Geneva Convention and in relation to trafficking).

In relation to guidance on due diligence requirements, the European Commission has provided guidance for companies that are affected by the Directive, to which the Irish Regulations give effect and the Irish government directs businesses to this guidance.

### ***Gaps and Recommendations***

The introduction of the 2017 and 2018 Regulations provides, for the first time, for large scale human rights reporting in the context of business reports. As discussed elsewhere, the State may wish to consider the expansion of the regulation to include companies of different types and sizes in order to advance Business and Human Rights.

## IV. Remedies

Access to a remedy is the third pillar of the UN Guiding Principles on Business and Human Rights. The Foundational Principle grounding this pillar, Principle 25, provides that the State must take steps to ensure that those affected by business-related human rights abuses must have access to an effective remedy.

A detailed discussion and analysis of remedies is outside the scope of this Report. The major judicial and non-judicial remedies have been discussed in the context of each of the key issues outlined in Ireland's National Plan. Judicial remedies include recourse to the Workplace Relations Commission for employment and equality complaints, to the civil court system for negligence, breach of duty etc. and recourse to the criminal law for offences outlined by legislation or at common law. Non-judicial remedies include recourse to the OECD National Contact Point, the expansion of the remit and resources of which, as discussed previously, may be worth considering to further the promotion and enforcement of Business and Human Rights standards.

Access to a remedy is at times referred to as the “forgotten pillar” of the three pillars underpinning the UNGPs.<sup>66</sup> In its submission on the National Plan, the Irish Human Rights and Equality Commission recommended that the State undertake a thorough review of existing legislation and the operation of State judicial and non-judicial mechanisms to ensure access to an effective remedy and to identify and address any potential barriers which may exist.<sup>67</sup> The Commission also identified from the UN Guiding Principles, a number of key procedural barriers that may be of particular relevance to Ireland, such as:

- The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability;
- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population;
- The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support, ‘market-based’ mechanisms (such as litigation insurance and legal fee structures), or other means;
- Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;

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<sup>66</sup> See further, Amnesty International and the Business and Human Rights Resource Centre, “*Creating a paradigm shift: Legal solutions to improve access to remedy for corporate human rights abuse*”, (September 2017).

<sup>67</sup> Irish Human Rights and Equality Commission, *Submission on Ireland's National Action Plan on Business and Human Rights* (March 2015), at 16-17.

- There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants;
- State prosecutors lack adequate resources, expertise and support to meet the State's own obligations to investigate individual and business involvement in human rights related crimes.

While the detailed consideration of remedies is outside the scope of this Report, it is recommended that the Implementation Group engage in a detailed review of remedies and access to these remedies as a priority. Remedies are essential to the functioning of the principles and to the advancing and mainstreaming of the values of Business and Human Rights in practice. A thorough review of remedies which focuses chiefly on meaningful access to remedies is therefore an important step in advancing remedies in the Irish context. The input of key stakeholders concerned with access to justice would be of assistance in this regard.

## V. Summary of Recommendations

### *General Recommendations*

- It is recommended that the Implementation Group be established and begin its work as soon as possible.
- A further forum of key stakeholders would likely be of assistance to the Implementation Group to provide it with up-to-date input from key stakeholders in Business and Human Rights.
- A further section-by-section analysis of legislation may be of further assistance in order to fully inform the Business and Human Rights Implementation Group which is to be established by the DFAT.
- It is recommended that further research be conducted into the access to remedies and gaps in the remedies available to individuals and groups for breaches of human rights in a business context in Ireland.
- Consideration may be given to the development of the role of the OECD National Contact Point, in light of developments in other jurisdictions such as Denmark and England and Wales as well as the recommendations of the Irish Human Rights and Equality Commission.
- The resources set out in the CSR Hub may provide a useful model for consideration by the Implementation Group in developing strategies for the dissemination of information regarding Business and Human Rights in Ireland.
- The action points set out in the State's most recent National Action Plan on the Sustainable Development Goals aim to address a number of challenges that the State faces. Insofar as these relate to Business and Human Rights, these may be considered as part of the work of the Implementation Group.

### *Human Rights Due Diligence*

- For the State to continue to develop its strong reputation in the protection of human rights it is suggested that consideration ought to be given to the adoption of mandatory human rights due diligence. Mandatory due diligence such as the Netherlands Compact, France's Vigilance Law or the UK Modern Slavery Act may be looked to as examples of legislation that could be followed in Ireland.
- In the absence of a mandatory regime, the State may wish to consider the provision of additional benefits to companies that adopt human rights due diligence. This would serve to develop human rights due diligence as a norm in business, upon which a mandatory regime could in turn be developed.

- Consideration may also be given to the inclusion of human rights due diligence as an eligibility criterion for Government procurement, for investment by the State, for participation in trade missions, and for listing on the Irish Stock Exchange.
- Human rights due diligence ought to be considered as a minimum requirement for State companies, businesses that obtain government contracts through the public procurement process, and for businesses that Ireland engages with through its embassies, State agencies and bodies that derive State support and that act outside the jurisdiction.
- Human rights due diligence should include reporting on human rights practices outside the jurisdiction so that companies that provide human rights reporting in Ireland, whether due to being domiciled in Ireland, or otherwise, must also report on the human rights of their out of territory operations.

#### *Worker's Rights*

- It is recommended that the promotion of worker's rights for migrant workers be considered with a focus on the provision of information to ensure compliance and access to remedies for these workers. Work permit schemes for migrant workers may be considered in this regard.
- It is recommended that further consideration be given to the means by which the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families can be signed and implemented in Ireland.

#### *Anti-Corruption*

- Adequate resources and training should be given to relevant enforcement officials and public information regarding the legislative regimes regarding anti-corruption should be widely available and accessible to ensure implementation of the legislative regime in place under the Criminal Justice (Corruption Offences) Act 2018.

#### *Equality and Anti-Discrimination*

- The progress of the Gender Pay Gap Information Act 2018 through the Oireachtas should be monitored by the Implementation Group.
- In addition, gender equality on company boards, a recommendation of the Irish Human Rights and Equality Commission, may also be worthy of consideration by the Implementation Group.

#### *Anti-Trafficking*

- The concerns raised by the US State Department Report on Trafficking should be considered by the Implementation Group. Victims of trafficking for the purposes of

labour in Ireland poses a very serious concern from the point of view of Business and Human Rights and every effort should be made to ensure that the regulatory regime is not open to abuse.

- The Atypical Working Scheme discussed in Section III should be reconsidered in this regard. In addition, the enforcement mechanisms through the WRC and other designated bodies must ensure that sufficient information is given to workers, particularly in industries which may be particularly vulnerable to trafficking.

#### *Data Protection*

- The data protection regime in Ireland has very recently been amended by way of the General Data Protection Regime and the Data Protection Act 2018. Given the central role played by the Data Protection Commission in managing data protection in Ireland, and by virtue of Ireland's position as a home to many MNEs in the technology sector, the DPC should continue to be facilitated to ensure that all of the functions of the office can be fulfilled.

#### *Environment*

- In light of the concerns raised by the Environmental Protection Agency regarding Ireland's carbon emissions, it recommended that the implementation of the legislative and regulatory regime be considered by the Implementation Group with a view to formulating a timeline with concrete actions to achieve Ireland's goals and commitments to environmental policies.
- Climate justice considerations should also form part of the analysis in the development and practice of environmental regulation by the State.

#### *Supply Chain*

- The State must maintain vigilance against any potential human rights abuses in the supply chain. The use of human rights due diligence and reporting obligations discussed elsewhere in this report appear to offer a fruitful means by which these concerns regarding supply chain can be addressed. The application of human rights due diligence is particularly prescient in relation to the supply chain. The principles must apply in particular where companies are connected to high risk industries or conflict jurisdictions and must be a minimum standard in these circumstances.
- Clear guidance must be given to companies who are engaged in supply chains in these jurisdictions or industries to facilitate compliance with human rights due diligence.

### *Procurement*

- The State may wish to consider the criteria for procurement in light of the UN Guiding Principles on Business and Human Rights.
- Consideration could be given to the provision of advantages in the procurement process to companies who comply with human right standards, in the case of MNEs, those that comply with the OECD Guidelines on MNEs would encourage development and further compliance with the UNGPs. The State has not provided any incentives such as preferential treatment in procurement processes where a company evidences the responsibility to protect human rights. This may be an avenue for development and it is recommended that this be considered.
- In addition, it is recommended that the Implementation Group give consideration to the inclusion of a requirement for human rights due diligence in respect of State contracts, as discussed in the section on human rights due diligence. As a means by which to address the State-Business Nexus, engagement with human rights due diligence by companies who successfully procure State contracts would serve to both advance human rights in the companies concerned and to ensure that the State can meet its own obligations under the UN Guiding Principles.

### *Non-Financial Reporting*

- The introduction of the 2017 Regulations provides for the first time for large scale human rights reporting in the context of business reports. The State may wish to consider the expansion of the regulation to include companies of different types and sizes in order to advance Business and Human Rights.

### *Remedies*

- While the detailed consideration of remedies is outside the scope of this report, it is recommended that the Implementation Group engage in a detailed review of remedies and access to these remedies as a priority. Remedies are essential to the functioning of the principles and to the advancing and mainstreaming of the values of Business and Human Rights in practice. A thorough review of remedies which focuses chiefly on meaningful access to remedies is therefore an important step in advancing remedies in the Irish context. The input of key stakeholders concerned with access to justice would be of assistance in this regard.

## Appendix

### Submissions and publications considered in the preparation of this report:

Amnesty International, *“Submission to the Department of Foreign Affairs and Trade on its preparation of a National Action Plan on Business and Human Rights”* (March 2014);

Business in the Community Ireland, *“Submission to the Human Rights Unit in the Department of Foreign Affairs and Trade on the drafting of a National Action Plan on Business and Human Rights”* (February 2015);

Chambers Ireland, *“Irish National Action Plan for Business and Human Rights Submission to the Department of Foreign Affairs and Trade”* (February 2015);

Christian Aid Ireland, *“Submission on the Government of Ireland consultation on a National Action Plan for Business and Human Rights”* (1 March 2015);

The Clean Clothes Campaign Ireland, *“Submission to the Department of Foreign Affairs and Trade on the development of a national plan on Business and Human Rights”* (March 2015);

Comhlámh, *“Submission to the Department of Foreign Affairs and Trade - Human Rights Unit on the Irish National Action Plan for Implementing the UN Guiding Principles on Business and Human Rights”* (March 2015);

Danish Institute for Human Rights, *“National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks”* (June 2014);

Danish Institute for Human Rights, *“The National Baseline Assessment (NBA) Template”* (November 2017).

Danish Institute for Human Rights, *“National Action Plans on Business and Human Rights Toolkit: 2017 Edition”* (November 2017)

Department of Justice and Equality, Anti-Human Trafficking Unit: *Trafficking in Human Beings in Ireland: Annual Report 2017*

Department of Justice and Equality, Anti-Human Trafficking Unit: *Trafficking in Human Beings in Ireland: Annual Report 2016*

Dóchas, *“Submission to the Consultation by the Government of Ireland on a National Action Plan for Business and Human Rights”* (March 2015);

Dóchas, *“Response to the Working Outline of Ireland’s National Action Plan on Business and Human Rights, 2016-2019”* (January 2016);

Fidh and FLAC, *“Submission Consultation - Ireland’s National Action Plan on Business and Human Rights”* (March 2015);

Fidh and FLAC, *“Comments to Ireland’s Working Outline of Ireland’s National Plan on Business and Human Rights 2016- 2019 Joint Submission”* (January 2016);

IBEC, *“Submission on Ireland’s National Plan on Business & Human Rights”* (March 2015);

Irish Congress of Trade Unions, *“Submission on Ireland’s Proposed National Action Plan on UN Guiding Principles on Business and Human Rights”* (February 2015);

Irish Congress of Trade Unions, *“Response to Irish Government Reports to the ILO on Ratified Conventions”* (August 2018);

ISME, *“Business and Human Rights – Submission to the Department of Foreign Affairs and Trade”* (March 2015);

Irish Human Rights and Equality Commission, *“Submission on Ireland’s National Action Plan on Business and Human Rights”* (March 2015);

Irish Centre for Human Rights, *“Report of the Irish Centre for Human Rights on Business and Human Rights in Ireland”* (2012);

Irish Centre for Human Rights, *“Submission to the National Action Plan on Business and Human Rights”* (2015);

Methven O’Brien, Claire, Amol Mehra, Sara Blackwell, And Cathrine Bloch Poulsen-Hansen, *“National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool”* *Journal of Business and Human Rights* (1 (2015), pp. 117–126);

National Women’s Council of Ireland, *“Submission on Ireland’s National Action Plan on Business and Human Rights”* (2015);

OECD, *“Annual Report on the OECD Guidelines for Multinational Enterprises 2017”* (2018);

OECD, *“OECD Guidelines for Multinational Enterprises”* (2011);

Trócaire, *“Developing a Comprehensive Irish National Action Plan for Implementing the UN Guiding Principles on Business and Human Rights Position Paper”* (October 2014);

Trócaire, *“Response to the Working Outline of Ireland’s National Action Plan on Business and Human Rights, 2016-2019”* (January 2016).

UN Human Rights Committee, *“Universal Periodic Review of Ireland 2011”*;

UN Human Rights Committee, *“Universal Periodic Review 2016”*;

Stakeholder input to UN Human Rights Committee Universal Periodic Review of Ireland 2016;

United States Department of State, *“Trafficking in Persons Report 2018”* (June 2018).

In addition to the consideration of written submissions, supplementary meetings were also held with Dr Shane Darcy, *Irish Centre for Human Rights*, David Joyce and Peter Rigney, *Irish Congress of Trade Unions*.